

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.239 of 2021

=====

Umesh Kumar Singh Son of KrishNandan Prasad Singh Resident of Village-
MirNagar, P.S.- Sarmera, District- Nalanda, At present residing at Adityapur,
Indra Colony, Road No.- 4, P.S.- RIT, District- Saraikela Kharsawan
(Jharkhand).

... .. Petitioner/s

Versus

1. The State of Bihar through the Home Secretary, Bihar, Patna.
2. The Director General-Cum- Inspector General of Police, Bihar, Patna.
3. The Deputy Inspector General of Police, Mithila Range, Darbhanga.
4. The Senior Superintendent of Police, Darbhanga.
5. The Sub- Divisional Police Officer-cum- Enquiry Officer, Barol, Darbhanga.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.Upendra Mishra, Adv.
For the State	:	Mr.Dhuvendra Kumar AC to GP 5

=====

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

9 20-07-2023 Heard learned counsel for the petitioner and learned
counsel for the State.

2. The Officer in Charge of Lahariyasari Police
Station received intimation that some persons were consuming
liquor in a room adjacent to the principal's room in the school.
He has reached the place, where it is alleged that he found four
persons, including the petitioner, consuming liquor. The breath
analyzer test also confirmed consumption of liquor by these
persons.

3. It is, on such premise, that a charge memo dated
31.07.2018, (Annexure-P-4) has been issued to the petitioner. It



is submitted by the learned counsel for the petitioner that from the stage of institution of the proceedings, there is a fatal lapse inasmuch as the breath analyzer report has not been made a part of the list of documents which was to be produced in the inquiry to bring home the charge.

4. Referring to the inquiry report, it is submitted that, altogether, five out of six named witnesses have deposed in the proceedings. One of the witnesses, namely, Govind Kumar in spite of repeated opportunity has not appeared in the proceedings. Two of the witnesses have merely affirmed issuance of certain correspondence in this regard. Two others have stated that they found the petitioner standing outside the room where it is alleged that liquor was being consumed. The Officer in charge who has instituted the case, has stated that he saw the petitioner in the room where liquor was being consumed and that petitioner had been subjected to a breath analyzer test, which confirmed a consumption of liquor.

5. This Court finds that the fact that there is no breath analyzer report in the charge memo is also manifest from the inquiry report, where there is no consideration of the alleged breath analyzer report. It has not been brought in the inquiry. None of the witnesses who have appeared in the proceeding



have stated that they saw the petitioner consuming liquor. The issue, therefore, is not of sufficiency of evidence, but an issue of no evidence in support of the charge regarding the allegation of the petitioner being found consuming liquor in the room adjacent to the principal's office. Neither any witness has supported the said allegation, nor there is any documentary material in support of this charge.

6. The findings, therefore, are without reference to any material on record and are found to be unsustainable by exercise of jurisdiction under Article 226 of the Constitution of India.

7. The issue whether a conclusion is founded on any material or not, is an issue which lies within the realm of judicial review and as has been held by the Apex Court in the case of *Union of India & Ors. vs. P. Gunasekaran* reported in *(2015) 2 SCC 610*.

8. The order of punishment as a result of such an inquiry visiting the petitioner with the severe consequence of dismissal is, therefore, unsustainable. The order dated 24.09.2019, (Annexure 16) is hereby quashed.

9. The petitioner's appeal has also been rejected by an order dated 24.04.2020, bearing no. 58, issued by the ADG (law



and Order). The said order, insofar as it is an affirmation of the said illegal order of the disciplinary authority, therefore, must also collapse. The same is also quashed.

10. The writ petition stands allowed in the aforesaid terms. The petitioner would be entitled to all consequential benefits.

(Madhuresh Prasad, J)

uttam/-

U			
---	--	--	--

