

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.7733 of 2015**

Prabhu Dayal Yadav Son of Late Ramdhani Yadav, Resident of Geeta Babu Road, Lal Darwaja, P.S. Kotwali, District- Munger.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Department of Home, Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Inspector General of Police, Munger Range, Munger.
4. The Deputy Inspector General of Police, Munger Range, Munger.
5. The Superintendent of Police, Khagaria.

... .. Respondent/s

**Appearance :**

|                      |   |                                |
|----------------------|---|--------------------------------|
| For the Petitioner/s | : | None                           |
| For the Respondent/s | : | Mr. Manish Kumar, AC to AAG -6 |

**CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI**  
**ORAL JUDGMENT**

**Date : 10-11-2023**

None appears for the petitioner.

2. On 19.10.2023, the following order was passed:-

*Learned counsel for the petitioner argued for sometime.*

*2.The question for consideration is whether the petitioner while working as a Constable was in any manner assisting his wife insofar as execution of certain contract work of her or not?*

*3. On this point, learned counsel for the respondents is hereby directed to apprise this Court what are the material evidence adduced in the departmental inquiry and in what manner it was proved.*

*4. Learned counsel for the State, on instructions, submitted that having regard to the fact that the petitioner was involved in contract work which was executed by the petitioner's*



*wife and her partner, petitioner was transferred and he had disobeyed the order of transfer. It is also submitted that for disobeying the order of transfer, he was placed under suspension. In this regard, any charge-memo was issued and the petitioner was subjected to departmental inquiry on the allegation of remaining unauthorized absence on his transfer and also disobeying the order of transfer. On these counts, learned counsel for the State is hereby directed to secure instructions.*

*5. The concerned Superintendent of Police is hereby directed to depute an official who is well conversant with the matter along with the relevant records on the next date of hearing, failing which adverse order would be passed against the concerned official.*

*6. Re-list this matter on 10th of November, 2023.*

3. Md. Masheer Alam, Deputy Superintendent of Police Khagaria is present in Court. He has given instruction to the State Counsel to the extent that the alleged allegation relating to that petitioner as a constable was assisting his wife insofar as execution of certain contract work. In this regard, respondents were directed to produce any material evidence adduced in the departmental inquiry read with the imposition of penalty of dismissal from service.

4. Today, it is submitted on behalf of the Deputy Superintendent of Police Khagaria that there are no material



evidence produced in the inquiry insofar as the alleged allegations relating to assisting his wife insofar as execution of certain contract work. Therefore, it is a case of no evidence from the alleged allegations. Ordinarily, Courts will not interfere in respect of imposition of penalty in a departmental inquiry unless and until it is in violation of any statutory provision or perverse evidence. It is a case of no evidence and Hon'ble Apex Court in the case of **Union of India and Ors. Vs. Dalbir Singh** reported in **(2021) 11 SCC 321** in which it is held that High Court can interfere if there is no evidence in a departmental inquiry. The relevant paragraph no. 21 reads as under:-

***21. This Court in Union of India v. P. Gunasekaran [Union of India v. P. Gunasekaran, (2015) 2 SCC 610 : (2015) 1 SCC (L&S) 554] had laid down the broad parameters for the exercise of jurisdiction of judicial review. The Court held as under : (SCC pp. 616-17, paras 12-13)***

*“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High*



*Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:*

*(a) the enquiry is held by a competent authority;*

*(b) the enquiry is held according to the procedure prescribed in that behalf;*

*(c) there is violation of the principles of natural justice in conducting the proceedings;*

*(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*

*(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*

*(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*

*(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*

*(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*

*(i) the finding of fact is based on no evidence.*

*13. Under Articles 226/227 of the Constitution of India, the High Court shall not:*



- (i) reappreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*
- (v) interfere, if there be some legal evidence on which findings can be based;*
- (vi) correct the error of fact however grave it may appear to be;*
- (vii) go into the proportionality of punishment unless it shocks its conscience.”*

5. Further, Hon'ble Apex Court in the case of **Commissioner of Police Vs. Kuldeep Singh** reported in **(1999) 2 SCC 10** reiterated the same. The relevant paragraph nos. 40, 41 and 43 are as under:-

*"40. To sum up, the charge against the appellant consisted of two components, namely:*

- (a) On 22-2-1990, Smt Meena Mishra paid Rs 1000 to the appellant for being paid to the three labourers.*
- (b) The appellant paid Rs 800 to the labourers and kept Rs 200 with himself.*

*41. Smt Meena Mishra, appearing as a witness for the Department, denied having made any payment to the appellant on that day. The labourers to whom the payment is said to have been made have not been produced at the domestic enquiry. Their so-called previous statement could not have been*



*brought on record under Rule 16(3). As such, there was absolutely no evidence in support of the charge framed against the appellant and the entire findings recorded by the enquiry officer are vitiated by reason of the fact that they are not supported by any evidence on record and are wholly perverse.*

*43. For the reasons stated above, the appeals are allowed. The judgment and order dated 28-2-1997 passed by the Central Administrative Tribunal is set aside. The order dated 3-5-1991 passed by the Deputy Commissioner of Police by which the appellant was dismissed from service as also the order passed in appeal by the Additional Commissioner of Police are quashed and the respondents are directed to reinstate the appellant with all consequential benefits including all the arrears of pay up to date which shall be paid within three months from today. There will, however, be no order as to costs."*

6. In the present case, it is a case of no evidence.

Therefore, the petitioner has made out a case. Accordingly, the impugned orders dated 26.12.2014 (Annexure- 11), 20.05.2014 (Annexure- 9) and 01.03.2014 (Annexure-7) are set aside. Having regard to the distance of time from the alleged allegations it is not appropriate to remand the matter to the disciplinary authority to proceed afresh. The concerned respondent is hereby directed to extend all service and monetary benefits during the intervening period from the date of dismissal till reinstatement or monetary and service benefits shall be extended to the petitioner from the



date of dismissal till attaining the age of superannuation. They are also hereby directed to examine the eligibility of re-fixation of pay and pension, if he is entitle the same shall be extended within the stipulated time. The above exercise shall be completed within a period of four months from the date of receipt of this order.

5. Accordingly, the present writ petition stands allowed.

**(P. B. Bajanthri, J)**

abhishekk/-

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