

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6280 of 2018

=====

Sudhir Kumar Yadav Son of Gajbadan Prasad Yadav, Resident of Village-
Post Office-Saligrami, Police Station-Sahebpur Kamal, District- Begusarai.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Director General of Police, Bihar, Patna.
3. The Inspector General Of Police, Railway, Bihar, Patna,
4. The Deputy Inspector General of Police, Railway, Bihar, Patna.
5. The District Superintendent of Police, Railway, Muzaffarpur.

... .. Respondent/s

=====

WITH
Civil Writ Jurisdiction Case No. 6335 of 2018

=====

Umesh Kumar Singh @ Umesh Singh son of Jagarnath Singh, Resident of
Village- Ranipur, Post Office- Khanpur, P.S. Dariyapur, District- Saran at
Chapra.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Director General of Police, Bihar, Patna.
3. The Inspector General of Police, Railway, Bihar, Patna.
4. The Deputy Inspector General of Police, Railway, Bihar, Patna.
5. The District Superintendent of Police, Railway, Muzaffarpur.

... .. Respondent/s

=====

Appearance :

(In Civil Writ Jurisdiction Case No. 6280 of 2018)

For the Petitioner/s : Mr. Sudhir Kumar Singh, Advocate
Mr. Ranvijay Singh, Advocate

For the Respondent/s : Mr. Ajay Kumar, AC to GP-4

(In Civil Writ Jurisdiction Case No. 6335 of 2018)

For the Petitioner/s : Mr. Sudhir Kumar Singh, Advocate
Mr. Ranvijay Singh, Advocate

For the Respondent/s : Mr. Md. Nadeem Seraj, GP-5

=====

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT



Date : 07-10-2023

In both the writ petitions the questions directly and substantially identical, therefore, it has been decided that both the cases should be heard together.

2. Learned counsel for the petitioners and learned counsel for the State in both these cases are present.

3. Learned counsel for the petitioners submits that in both the cases the orders of departmental proceeding No.32/2010 issued vide Memo No.1648 dated 28.07.2011 (in CWJC No.6280 of 2018) and departmental proceeding No.31/2010 issued vide Memo No.1649 dated 28.07.2011 (in CWJC No.6335 of 2018) were challenged.

4. Counsel for the petitioners submits that the petitioners of both the cases have been suspended in accordance with Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'the CCA Rules, 2005) and Charge Memo has been issued but there is a gross violation in preparation of the charge memo as there is no indication of Presenting Officer in both the cases and without appointing of the Presenting Officer the charge has been proved against them. Counsel further submits that the genesis of the departmental proceeding is the filing of the criminal case



bearing Siwan Rail P.S. Case No.21 of 2010, which was finally decided on 05.08.2016 in which the petitioners were acquitted, but this aspect has completely been ignored. Counsel for the petitioners submits that there is extra-ordinary situation occurred as the entire departmental proceeding has been conducted without Presenting Officer and, therefore, the entire departmental proceeding may be vitiated.

5. Learned counsels for the State on the other hand submit that the petitioners are working in the police department and their appointments and services are being guided by the Bihar Police Manual and entire action has been taken place against the petitioners in accordance with the Police Manual only. Counsels for the State further submits that a Full Bench decision of this Hon'ble Court in the case of **Kashi Nath Singh, Dinesh Yadav Vs. The State of Bihar and Others** reported in **2019(2) PLJR 293**, it has been categorically held in paragraph-69, the extract of which is reproduced as under:-

“Having regard to the well settled law as enunciated by the Hon'ble Apex Court and referred to me hereinabove, I am of the view that the Bihar Police Manual, which has got approval of the Cabinet and has been notified under the orders of the



Governor, will govern the field pertaining to the matters relating to the recruitment, appointment, promotion, punishments, transfer, leave, retirement etc., in the police services, until by a legislative enactment, statutory rules are framed by the State Government. Thus, the Bihar Police Manual can definitely be said to be very much alive and having the force of Law by virtue of exercise of executive powers by the State Government.

6. Learned counsels for the State further submits that whether the Disciplinary Authority has been guided by the CCA Rules, 2005 or it has been guided by the Bihar Police Manual, but in both the situation there are statutory appeal lies before the appellate authority under Rule 851 of the Bihar Police Manual. The appellate authority against the decision of the Superintendent of Police, the Deputy Inspector General of Police and according to them the appeal shall lie to the Deputy Inspector General of Police from the order passed by the Superintendent of Police. Counsel submits that here in the present case, the statutory remedy is already available to the petitioners then the petitioners ought to have exhaust the statutory remedy first then come to this Hon'ble Court.



7. After considering the argument of the parties and the pleadings particularly in the light of the Full Bench decision, this Court is of the view that the punishment to the petitioners has been imposed under the provisions of the Police Manual, which is appealable before the Deputy Inspector General of Police. Section 29 of the Bihar Police Act, 2007 (Bihar Act 1 of 2007) also indicates about the provision of punishment and, therefore, this Court is of the firm view that the petitioners ought to avail the remedy before the Appellate Authority. It is made clear that this Court has not expressed any opinion on the merit or demerit of the case. It is directed to the appellate authority that upon filing appeal by the petitioners, their appeal shall be decided on merit within 90 days from the date of production of the appeal and delay, if any, in filing the appeal is directed to be condoned.

8. With this direction, the writ petition is disposed of.

(Dr. Anshuman, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	10.10.2023
Transmission Date	

