

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.45 of 2020

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Laxminarayan Mahto @ Lakshminarayan Mahato Son of Basant Mahato
resident of Nautanwa, P.S.- Nautanwa, District- West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Government of Bihar, Patna.
2. The Director General of Police, Government of Bihar, Patna.
3. The Inspector General of Police, Muzaffarpur.
4. The Deputy Inspector General of Police, Charopxaran Region, Bettiah-cum-Deputy Inspector General of Polie, Saran Region, Chapra.
5. The Superintendent of Police, Gopalganj.
6. The Officer-in- Charge, Baikunthpur Police Station, District- Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Arjun Prasad, Advocate
For the State	:	Mr. Dhurendra Kumar, AC to GP- 5

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 18-07-2023

Heard learned counsel for the petitioner and learned
counsel for the State.

2. The writ application has been filed for quashing the
order dated 19.10.2018, by the Deputy Inspector General of
Police (DIG), whereby and whereunder the petitioner has been
dismissed from service. The petitioner has moved in appeal
against said order, which has been rejected on 11.04.2019, by
the Inspector General of Police (IG), Muzaffarpur Range,
Muzaffarpur. The order of dismissal has been passed without
conducting any inquiry; and inpurported exercise of jurisdiction



under Article 311(2)(b) of the Constitution of India.

3. Learned counsel for the petitioner submits that order of dismissal, dispensing with inquiry under Article 311(2) of the Constitution of India is unsustainable, as the same does not contain any reason showing satisfaction of the Disciplinary Authority, that it was not reasonably practicable to hold an inquiry.

4. Learned counsel for the State, on the other hand, submits that the petitioner was sub-Inspector of Police and released a 'Bolero' vehicle containing prohibited liquor by issuing instructions in this regard to his subordinate official. He was made accused in Baikunthpur P.S. Case No. 258 of 2018. The Disciplinary Authority has taken note of the fact that there is total prohibition in the State of Bihar. The petitioner as a police officer, has participated in and facilitated illicit trade of liquor, which act of the petitioner shows his irresponsible behaviour and manifests behaviour unbecoming of a police official. It also shows his criminal intention bringing to disrepute the image of the police force. In the investigation, arising out of Baikunthpur P.S. Case No. 258 of 2018 also, sufficient material has emerged against the petitioner. He was therefore, issued show-cause notice, dated 13.10.2018. On the



pretext of being unwell, after his incarceration, in connection with Baikunthpur P. S. Case No. 258 of 2018, he sought time expressing inability to properly place his reply to the show-cause notice. The Authority, thereafter, has issued the impugned order dismissing the petitioner by invoking Article 311(2) of the Constitution of India.

5. Considering the rival submissions, this Court would consider it appropriate to extract Article 311(2) of the Constitution of India, which reads as follows :-

*"¹[(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges ²[***]:*

³[Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply-]

(a) where a person is dismissed or removed or reduced in rank on the ground of



conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.]"

6. The provision is clear in its scope and intent. It requires the Authority to record a satisfaction that it is not reasonably practical to hold the inquiry. No such satisfaction has been recorded in the impugned order. The Court, in this connection, would take notice of the decision of the Apex Court in the case of ***Union of India & Anr. vs. Tulsiram Patel***, reported in **(1985) 3 SCC 398**. Paragraph No. 130 of the same reads as follows :-

"180. The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that 'it is not reasonably practicable to hold' the inquiry



contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are 'not reasonably practicable and not 'impracticable'. According to the Oxford English Dictionary 'practicable' means 'Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible'. Webster's Third New International Dictionary defines the word 'practicable' inter alia as meaning 'possible to practice or perform : capable of being put into practice, done or accomplished : feasible'. Further, the words used are not 'not practicable' but 'not reasonably practicable'. Webster's Third New International Dictionary defines the word 'reasonably' as 'in a reasonable manner : to a fairly sufficient extent'. Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation."

7. The impugned order does not contain any consideration showing satisfaction of the authority that it was not reasonably practical to hold the enquiry.

8. Considering the settled legal position, the facts as



noted above, this Court finds that the impugned order, dated 19.10.2018, is not one which can be sustained by placing reliance on Article 311(2) of the Constitution of India. The same is unsustainable and is hereby quashed.

9. Accordingly, the writ petition stands disposed of.

(Madhuresh Prasad, J)

Raj kishore/-

AFR/NAFR	NAFR
CAV DATE	N/A
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