

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2363 of 2023

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Madan Kumar Son of Ashesar Yadav, Resident of Village - Purana Salempur,
P.S. - Surajgarha, District - Lakhisarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Home (Jail), Government of Bihar, Patna.
2. The Additional Chief Secretary, Department of Home (Jail), Government of Bihar, Patna.
3. The Home Secretary, Government of Bihar, Patna.
4. The Inspector General (Prisons and Correctional Services), Bihar, Patna.
5. The Joint Secretary cum Director Administration (Prisons and Correctional Services), Bihar, Patna.
6. The Deputy Secretary-cum-Deputy Director, Administration (Prisons and Correctional Services), Bihar, Patna.
7. The Jail Superintendent, Mandal Jail, Bettiah (West Champaran).

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Krishna Chandra, Advocate
For the Respondent/s : Mr. Sanjay Kumar, AC to SC 8

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 11-11-2024

Heard Mr. Krishna Chandra, learned counsel
appearing on behalf of the petitioner and Mr. Sanjay Kumar,
learned AC to SC 8 for the State.

2. Petitioner has *inter alia* prayed for following reliefs
in the paragraphs No.1 of the writ petition:-

*a. For issuance of an appropriate Writ/Writs,
direction/directions in the nature of Certiorarified
Mandamus calling for the entire connected records
pertaining to the Departmental Enquiry and upon being
satisfied be pleased to quash the Appellate Order dated
26.12.2022 passed by Additional Chief Secretary*



Department of Home (Jail), Government of Bihar, Patna as contained in Memo No.-3973 dated 26.12.2022, preferred against the Order of dismissal as contained in Memo No.-5970 dated 27.05.2022 issued by Deputy Secretary-cum-Deputy Director Bihar, Patna having been rejected without appreciating the fact that the petitioner has been dismissed from service in complete disregard to the provisions laid down under Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 and further be pleased to quash the order of dismissal as contained in Memo No.-5970 dated 27.05.2022 issued by Deputy Secretary- cum-Deputy Director, Bihar, Patna having been passed de-hors the Principles Judicially settled by Hon'ble Courts for conducting the departmental enquiry and in consequent of setting aside the order of dismissal, be pleased to direct reinstatement of the petitioner in service with all consequential benefits along with interest from the date of his removal.

b. For any other relief/reliefs which the Hon'ble court may grant in general interest that may be deemed appropriate and necessary in this case including stay of impugned order during the pendency of this application.”

3. Learned counsel appearing on behalf of the petitioner seeks interference of this Court with the appellate order contained in Memo No.3973 dated 26.12.2022 only to the extent that subsequent to the said order, the then Deputy Superintendent of Prison, namely, Sanjay Kumar Gupta, for the similar charges, was awarded minor penalty of censor and withholding of two increments. Learned counsel has relied upon



the provision of sub-rule(x) of Rule 799 and sub-rule (vi) of Rule 830 of Bihar Prison Manual, 2012, which are reproduced hereinafter:-

“799(x) Deputy Superintendent (Administration and Security) shall arrange that every prisoner, who is desirous of seeing the Medical Officer or who is ill, or whose state of mind or of body appears to require medical attention, is shown to the Medical Officer without delay and he/she shall record the circumstance on every such prisoner's health card forming part of the History ticket. He/she shall comply with all directions issued by the Medical Officer relating to the treatment of such prisoner, unless they are contrary to any provisions of this Manual or unless he/she has no means or power to carry them out. In every case, he/she shall record on the prisoner's history ticket what action he/she has taken or reasons for not taking any action and refer the matter to the Superintendent.

830(vi) Each warder shall bring to the notice of the senior officers and Medical Officer any sign of sickness, or any prisoner complaining of sickness.”

4. Learned counsel referring to the above provisions submitted that the charges are similar and the petitioner cannot be discriminated. The petitioner seeks parity with the said Deputy Superintendent of Prison in so far as penalty order has been passed against the petitioner and upheld by the appellate authority. Learned counsel further contended that case of the



petitioner has not been considered in light of Rules 799 and 830 of Bihar Prison Manual, 2012. Learned counsel has relied upon paragraphs no.9 to 12 of a judgment of the Apex Court rendered in *Rajendra Yadav Vs. State of Madhya Pradesh and others*, reported in *(2013) 3 SCC 73*. He contended that the action of the disciplinary authority, imposing major penalty in comparison to the Deputy Superintendent of Prison, against whom, minor punishment has been imposed for the identical allegation, is not in accordance with law and, as such, the petitioner is required to be treated on the same footing and be given the benefit of parity.

5. *Per contra*, learned counsel appearing on behalf of the State contended that the petitioner cannot seek parity in respect of the duty assigned to him, which required to be more vigilant and he was required to be more responsible in his duty. The show cause filed on his behalf was found not convincing and after following the due process of law and the prescribed procedure laid down under Rule 17 of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005, the petitioner has been dismissed from service. There has been no violation of principle of natural justice. He further submitted that the petitioner has not been able to support the parity



claimed by him and in absence of the charge memo served to the then Deputy Superintendent of Prison, the Court cannot interfere with the order passed by the appellate authority.

6. Heard the parties.

7. The question which falls for consideration in view that the petitioner has restricted his prayer, seeking parity with that of the then Deputy Superintendent of Prison Mr. Sanjay Kumar Gupta, against whom also, disciplinary action was taken for the identical allegation, as against the petitioner, who has been awarded minor punishment during the pendency of the present writ petition, whereas for the same allegation, petitioner has been dismissed from service.

8. It is admitted by the parties that both the delinquents were proceeded for the alleged incidence of commission of suicide by an inmate prisoner and allegation against the petitioner was that he was not present at his place of duty, leading to commission of suicide by the said inmate. During the pendency of the present writ petition, in case of Deputy Superintendent of Prison, the disciplinary authority after examining the entire material has concluded to pass minor penalty of censor and withholding of two increments with non-cumulative effect. I find that the incidence is same and the



charges can be compared what has been levelled against the petitioner with that of the then Deputy Superintendent of Prison, namely, Shri Sanjay Kumar Gupta. The penalty suffered by the petitioner being iniquitous, the same calls for interference in light of law laid down by the Apex Court in case of **Rajendra Yadav (Supra)**. Further reliance is placed in the case of **Man Singh vs. State of Haryana** reported in **(2008) 12 SCC 331**, wherein the Hon'ble court observed in paragraph no. 20, which is, *inter alia*, reproduced hereinafter :

“20. We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair-minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equals have to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of “fair play” and reasonableness”

9. In above view of this admitted fact and law laid down by the Apex Court in cases of **Man Singh (supra)** and **Rajendra Yadav (Supra)**, the appellate order dated 26.12.2022 confirming the penalty, contained in Memo No.3973, passed by the appellate authority, is hereby set aside and quashed and the matter is remanded back to the Disciplinary Authority to re-



examine the matter in accordance with law, after granting due opportunity of hearing to the petitioner, within the time prescribed under Bihar Government Servants (Classification, Control & Appeal) Rules, 2005.

10. The writ petition is, accordingly, disposed of.

11. Interlocutory Application(s), if any, also stands disposed of.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	14.11.2024
Transmission Date	NA

