

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13384 of 2011

- 1.1. Savitri Devi Wife of late Ramshresth Paswan, Resident of Village- Sursand, P.O. and P.S.- Sursand, District- Sitamarhi.
- 1.2. Manish Kumar, Son of late Ramshresth Paswan, Resident of Village- Sursand, P.O. and P.S.- Sursand, District- Sitamarhi.
- 1.3. Sanjyoti Kumari, D/o of late Ramshresth Paswan, Resident of Village- Sursand, P.O. and P.S.- Sursand, District- Sitamarhi.
- 1.4. Savita Kumari, D/o of late Ramshresth Paswan, Resident of Village- Sursand, P.O. and P.S.- Sursand, District- Sitamarhi.
- 1.5. Satish Kumar, Son of late Ramshresth Paswan, Resident of Village- Sursand, P.O. and P.S.- Sursand, District- Sitamarhi.
- 1.6. Navin Kumar, Son of late Ramshresth Paswan, Resident of Village- Sursand, P.O. and P.S.- Sursand, District- Sitamarhi.
- 1.7. Anushka Kumari, D/o of late Ramshresth Paswan, Resident of Village- Sursand, P.O. and P.S.- Sursand, District- Sitamarhi.
- 1.8. Dev Kumar, Son of late Ramshresth Paswan, Resident of Village- Sursand, P.O. and P.S.- Sursand, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Director General Of Police, Government Of Bihar, Patna
3. The Deputy Director General Of Police, Purina Range, Purnia
4. The Superintendent Of Police, Katihar
5. The Officer In-Charge, Amdabad Police Station, Katihar
6. The Sergeant Major, Katihar
7. The Incharge, Leave Section, Police Line, Katihar
8. Rakshit Arakshi Nirikchak, Police Line, Katihar
9. The Enquiry Officer, Departmental Enquiry No. 14 Of 2008, Katihar
10. The Conducting Officer-Cum-Police Inspector Katihar, Departmental Enquiry No. 14 Of 2008, Katihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Kumar Priya Ranjan, Advocate
For the Respondent/s : Md. Irshad, AC to SC 1

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

Date : 31-07-2024



In the instant writ petition, petitioners have prayed for the following relief/reliefs:

“That this writ application is being filed by the petitioner for quashing the dismissal order dated 06.12.2008 passed in Katihar District Departmental Enquiry No. 14 of 2008 (Annexure :7) passed by the Superintendent of Police, Katihar.

Further, for quashing the appellate order issued by the Deputy Inspector General of Police, Purnia Range, Purnia issued vide Purnia Regional Order No. 72/2009 dated 06.11.2009 (Annexure:8) and also for quashing the order of the Director General of Police, Bihar, Patna passed in Memorial of the petitioner issued vide memo no. 1445/P-2 52-20-13-2010 dated 18.04.2011 (Annexure:9).

(i) For quashing the dismissal order as contained in Annexure:7 passed in Katihar District Departmental Enquiry No. 14 of 2008 by the S.P. Katihar.

(ii) For quashing the appellate order issued by the D.I.G., Purnia Range, Purnia issued vide Purnia Regional Order No. 72/2009 dated 06.11.2009, as contained in Annexure :8.

(iii) For quashing the order of the Director General of Police, Bihar, Patna



passed in Memorial of the petitioner, vide memo no. 1445/P-2 52-20-13-2010 dated 18.04.2011 as contained in Annexure : 9

(iv) For direction to the concerned respondents to reinstate the petitioner on the post from which he has been dismissed and to consider the application dated 30.07.2007, medical documents submitted by the petitioner and the due of earned leave.

(v) For any other relief (s) for which the petitioner is found entitled in the facts and circumstances of this case.”

2. The petitioner (deceased) joined service as a Constable in the Police department, State of Bihar on 06.07.1979. He has applied for earned leave for about 40 days on account of his daughter's marriage and it was sanctioned. Before expiry of sanctioned leave, the petitioner (deceased) could not report back to duty on the score that there was flood in his village. He has sought for extension of earned leave for about 30 days more. The same was not appraised and considered, on the other hand, he was placed under suspension on 20.08.2007, resultantly, he remained absent for about 60 days without there being sanction of leave. In this regard, departmental inquiry was initiated and it was concluded in imposition of penalty of dismissal from service on 06.12.2008. He has exhausted the remedy of filing appeal and



memorial, even those were rejected on 06.11.2009 and 18.04.2011 respectively. Petitioner – *Ramshresth Paswan* has died on 18.10.2023 during the pendency of the present *lis*.

3. Learned counsel for the petitioners submitted that for remaining absent and in not sanctioning leave for a particular period and proceeded to initiate inquiry and conclude in imposition of penalty and dismissal, it is a highest penalty which is not commensurate with the alleged misconduct committed by the deceased Constable. It is also submitted that it was beyond his control, in not reporting to the duty, in view of the fact that there was flood where the deceased Constable was residing. It is also submitted that having regard to the length of service rendered by him from 06.07.1979 to the date of dismissal on 06.12.2008, the disciplinary authority should have taken a lenient view while imposing some minor penalty. In fact, leave should have been sanctioned on the score that it was not intentional in remaining absent beyond the leave sanctioned period.

4. *Per contra*, learned counsel for the respondents resisted the aforementioned contentions and submitted that deceased Constable had a history in respect of alleged certain misconduct and he was subjected to disciplinary proceedings, therefore, no interference is warranted insofar as imposition of



penalty of dismissal from service and its affirmation by the next two authorities.

5. Heard learned counsels for the respective parties.

6. The deceased Constable was appointed on 06.07.1979. On account of his daughter's marriage, he had applied for earned leave for about 40 days which was sanctioned. Before its expiry, he was compelled to remain absent on account of natural calamity like flood. Before reporting for duty, he has been placed under suspension on 20.08.2007 and the department proceeded to initiate disciplinary proceedings and concluded the same in imposition of penalty and dismissal and it has been affirmed by the next higher authorities.

7. Learned counsel for the petitioners submitted that imposition of major penalty for remaining absent for about 60 days would be too harsh. On this issue, learned counsel for the petitioners relied on Hon'ble Supreme Court decision in the case of *Yashodhar Kamat vs. Director General BSF & Ors.* reported in (2021) 13 SCC 333. The Hon'ble Supreme Court has taken note that remaining unauthorized absent for a period of about 100 days would not result in imposition of major penalty read with the number of years of service rendered by an employee. On this score even legal heirs of the deceased petitioner have made out a case.



8. Learned counsel for the respondents submitted that deceased Constable had a history in respect of certain misdeeds stated to have been committed and those were the subject matter of departmental inquiry. The same cannot be taken note of in the present case, for the reasons that, in the charge memo it is not alleged that the deceased constable was a habitual in committing alleged certain misdeeds, in other words, extraneous material cannot be taken into consideration for the purpose of imposition of major penalty of dismissal from service.

9. It is a case for remand, however, having regard to the fact that deceased Constable has died on 18.10.2023, therefore, I am of the opinion that the matter need not be remanded to the disciplinary authority in view of the fact that the Constable has died. Accordingly, legal heirs of the deceased Constable have made out a case so as to interfere with the dismissal order dated 06.12.2008 and consequential orders dated 06.11.2009 and 18.04.2011 passed by the Deputy Inspector General, Purnea Range, Purnea and memorial order by D.G.P., Bihar in rejecting the memorial stand set aside.

10. Writ petition stands allowed.

11. The concerned respondents are hereby directed to settle the deceased Constable monetary benefits to his legal heirs



after due identification. The above exercise shall be completed within a period of six months from the date of receipt of copy of this order.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.08.2024
Transmission Date	NA

