

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6621 of 2023

=====

Rakesh Kumar S/o-Late Baidyanath Ray R/o Village- Mata Mandir Marg,
Ward 19, Bhabdepur, Sitamarhi Bazar, P.S.-Sitamarhi, District-Sitamarhi, at
Present R/o- Nagar Thana Road Ward no. 10, P.S.-Sitamarhi, District-
Sitamarhi

... .. Petitioner/s

Versus

1. The State of Bihar the Director general of Police, Government of Bihar, Patna.
2. The Additional Director General of Police-Cum-Director, Bihar Police Academy, Rajgir.
3. The Deputy Inspector General Of Police-Cum-Deputy Director, Bihar Police Academy, Rajgir.
4. The Assistant Director (Administration), Bihar Police Academy, Ragir
5. The Chief Legal Instructor, Bihar Police Academy, Police Academy, Camp- C.T.S. Nathnagar, Bhagalpur.
6. The Deputy Superintendent of Police-Cum-Enquiry Officer, Bihar Police Academy, Rajgir.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. N.C. Verma, Mr. Avinash, Advocate Mr. K.N. Jha, Advocate
For the Respondent/s	:	Mr. Sheo Shankar Prasad (SC-8) Mr. Sanjay Kumar, AC to SC-8

=====

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

4 29-08-2024 The petitioner was a Sub-Inspector of Police on probation at CTS, Nathnagar Bhagalpur. While on training, he took leave from 21.04.2018 to 27.04.2018. During the said period of leave, he went to Sitamarhi at his native place and on 25.04.2018 he took his ailing father to the local hospital for medical treatment. In the hospital, the father of the petitioner saw that one tout was approaching another patient for treatment



in a private Nursing Home. He raised objection against such illegal activity of the tout. As a result, he was hue and cry and police came to the place of occurrence. During initial inquiry, police allegedly found that the petitioner consumed liquor and therefore, arrested him. He was subjected to breath analyzer test and the test report was found to be positive.

2. A case was registered under Section 37 of the Bihar Prohibition and Excise Act against the petitioner. After the petitioner being released on bail, he joined his service on 29.04.2018. However, as a result of institution of a criminal case, he was suspended from service, a disciplinary proceeding followed by the departmental authority. In the disciplinary proceeding, he was found guilty for gross misconduct and dismissed from service. He preferred an appeal before the appellate authority but his appeal was also dismissed.

3. The petitioner has challenged the order of dismissal on the ground that the allegation of consumption of liquor against the petitioner was not proved scientifically and he was illegally dismissed.

4. Therefore, the petitioner has filed the instant writ petition praying for issuance of writ in the nature of certiorari setting aside the Order No.385/2022, Memo No.2280 dated



31.05.2022 issued under the signature of the Deputy Inspector General of Police-Cum-Deputy Director, Bihar Police Academy, Rajgir.

5. Only question involved in the instant writ petition is as to whether, breath analyzer report is sufficient for holding that the petitioner consumed liquor and committed offence under Section 37 of the Bihar Prohibition and Excise Act.

6. In *Bachubhai Hassanalli Karyani Vs. State of Maharashtra* reported in (1971) 3 SCC 930, the Hon'ble Supreme Court held that no conclusion with regard to consumption of alcohol by a person can be made on the facts that the appellant's breath was smelling of alcohol. Consumption of alcohol can only be ascertained by way of blood and urine test by a person suspected to have consumed alcohol.

7. In the instant case, petitioner's blood and urine sample was not taken for pathological examination to ascertain as to whether, he consumed alcohol or not. Moreover, breath analyze examination was done in the police station and not even in the hospital. Thus, the prosecuting agency himself prepared a report on the basis of alleged breath analyzer test and used the same against the petitioner. Non production of any independent



report of consumption of alcohol violates the basic principles of natural justice and speaks a volume about the bias of the investigating agency as well as the disciplinary authority against the petitioner.

8. For the reasons stated above, this Court has no other alternative but to quash and set aside the order No.385/2022 bearing Memo No.2280 dated 31.05.2022 under the signature of the Deputy Inspector General of Police-cum-Deputy Director, Bihar Police Academy, Rajgir-respondent No.3 as well as order dated 06.01.2023 passed in departmental appeal by the Additional Director General of Police-cum-Director Bihar Police Academy, Rajgir.

9. The respondents are directed to allow the petitioner to be reinstated. However, the petitioner is not entitled to claim back wages, during the period when he was under suspension and under the order of dismissal.

10. Accordingly, the instant writ petition is thus, disposed of.

(Bibek Chaudhuri, J)

mdrashid/-

U			
---	--	--	--

