

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10101 of 2012

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Maheshwar Rajak Son Of Late Babulal Rajak Resident Of Village - Misrauli,
Post Office- Chandanpatti, Police Station - Sakra, District - Muzaffarpur

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Home Department, Patna
2. The Director General Of Police, Government Of Bihar, Patna
3. The Deputy Inspector General Of Police, Darbhanga Range, Government Of Bihar, Darbhanga
4. The Superintendent Of Police, Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar, Advocate
For the Respondent/s : Mr. Gyan Prakash Ojha, GA-7

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

Date : 15-04-2024

Heard Mr. Arun Kumar, learned counsel for the petitioner
and Mr. Gyan Prakash Ojha, learned GA-07 for the State.

2. The present writ petition has been filed for the
following reliefs :-

"1. Issuance of writ in the nature of certiorari for quashing the order contain in memo no. 337 dated 27.01.12 passed by Director General of Police (DGP), the Appellate order no. 89 dated 27.06.2007 (memo no. 580 dated 27.07.2007) issued by Deputy Inspector General of Police and the order passed by the Superintendent of Police Samastipur as contained in memo no 765 dated 26.11.2006 on the ground that acquittal of the Petitioner after trial in Session Trial No. 406/2001 the punishment



inflicted is liable to be set aside and the Petitioner is entitled to be reinstated with all consequential benefits as the departmental proceeding initiated and proceeded while the Petitioner was in Custody was totally based on the lodgment of Kaji Mohamdapur PS Case No. 90/2000 dated 21.05.2000 in which the judicial verdict of acquittal has been granted.

II. Issuance of declaration that the D.G.P., Bihar was obliged to review/recall his order. once the judicial order of acquittal was placed before him and the observations on the judicial order amounted to sitting over the judicial verdict not granting the benefit and effect of acquittal to the Petitioner.

III. Issuance of writ in the nature of mandamus commanding the Respondent to reinstate the Petitioner and to allow/grant the back wages at least from the date the Petitioner was available the discharge is duty but prevented by the respondent there from entitling him for entire back wages.

IV. Issuance of declaration that the Respondents should have themselves stayed the departmental proceeding till the verdict of the Trial Court hence the onus of withdrawing the punishment order passed before the verdict of the Trial Court lies upon them on account of subsequent acquittal of the Petitioner by the Trial Court.

V. Issuance of declaration that the Respondents are duty bound to implement and grant all effect of judicial verdict failure of which would amount acting contrary to the verdict of the judicial order and at the same time the reasoning of the alleged separation of departmental allegation of criminal charge is no longer tenable as a charges are still contained being enforcing and totally



*based on the institution of FIR bearing Kazi Mohamdpur
P.S Case no. 90/2000 dated 21.05.2000.”*

3. Learned counsel for the petitioner submits that the entire departmental proceeding was the ex-parte initiated and conducted while the petitioner was in judicial custody and the petitioner was completely deprived of any participation in the departmental proceeding. The petitioner was appointed as Constable and the F.I.R. was instituted against the petitioner in connection with Kaji Mohamadpur P.S. Case No. 90 of 2000 dated 21.05.2000 and after institution of the aforesaid F.I.R. the petitioner was placed under suspension. The petitioner surrendered before the learned Court below on 24.02.2002 and the proceeding was initiated against the petitioner. The Enquiry Officer had directed the petitioner for submission of his reply of defense by 25.09.2003. The aforesaid proceeding was initiated against the petitioner behind his back. The respondents were aware of the judicial custody of the petitioner as the subsistence allowance of the petitioner was being paid through jail. Learned counsel for the petitioner submits that during the departmental proceeding the petitioner had requested to the authorities to stay the departmental proceeding on the ground that the charges of the proceeding as well as the criminal case were identical. The respondent no. 4 has awarded the punishment of dismissal and from perusal of the



dismissal order it appears that Kaji Mohamadpur P.S. Case No. 90 of 2000 was the only basis for departmental proceeding. The petitioner has preferred an appeal before the respondent no. 3 which was dismissed vide Order No. 409 of 2007 in Memo No. 580 dated 27.06.2007. Learned counsel for the petitioner submits that thereafter the petitioner was acquitted from the charges on 13.01.2009 in Sessions Trial No. 406 of 2001 and thereafter the petitioner represented before the respondent no. 4 on 23.02.2010 enclosing the order of the learned Trial Court and requested the respondent no. 4 to reinstate the petitioner. Learned counsel for the petitioner submits that there is clear cut violation of CCA Rules and the proceeding was conducted in accordance the CCA Rules and the presenting officer was not appointed for conducting the departmental proceeding.

4. Learned counsel for the State submits that Kaji Mohamadpur P.S. Case No. 90 of 2000 was registered against the petitioner under Sections 324, 326, 307, 302 of the Indian Penal Code and after investigation chargesheet was submitted against the petitioner and a departmental proceeding bearing No. 14 of 2002 was initiated against the petitioner and the conducting officer found the petitioner guilty and considering the report submitted by the conducting officer, the respondent no. 4 directed the petitioner to submit his reply on clarification report but the clarification of the petitioner was not satisfactorily and respondent no. 4 after perusal



of the complete record as well as report submitted by the conducting officer passed a reasoned order and dismissed the petitioner from service and the order of dismissal circulated by Memo No. 7657/Conf. Dated 26.11.2006 to all concerned. The petitioner being dissatisfied from the order of dismissal passed by the respondent no. 4 filed an appeal before the respondent no. 3 on 06.12.2006 and respondent no. 3 after perused the complete record has been pleased to confirm the order passed by the respondent no. 4 and dismissed the appeal of the petitioner and the same was circulated vide Memo No. 580/Gen. Sec. Dated 27.06.2007 and thereafter the petitioner has filed an appeal memorial application before the respondent no. 2 against the order of respondent nos. 4 and 3 and respondent no. 2 after perusal of the entire record minutely has been pleased to affirm both the orders passed by the respondent no. 4 and 3 and dismissed the appeal memorial filed by the petitioner and the same is circulated vide Memo No. 337/P-3 dated 27.01.2012. Learned counsel for the State further submits that as far as non compliance of the CCA Rules, 2005 as alleged by the petitioner the presenting officer was appointed for conducting the departmental proceeding. It is further submitted that the departmental proceeding was initiated against the petitioner vide Samastipur District Departmental Proceeding No. 14 of 2002 pursuant to an F.I.R. lodged against the petitioner and it is next submitted that the Bihar Government CCA Rules notified vide No.



3/M-1-1/2001-KG-1112 dated 12.07.2005 the mandate of the Rule 2005 was not applicable in the year 2002 and the conducting officer has held the petitioner guilty after considering the enquiry report, supervision and the petitioner has also submitted his show cause. Learned counsel for the State further submits that from perusal of the Rule-32 of Sub-Rule 3 and 5 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005, which are as follows:-

“(3) Anything done or any action taken in exercise of the powers under the Civil Services (Classification, Control & Appeal) Rules, 1930 and the Bihar and Orrisa Subordinate Service (Discipline & Appeal) Rules, 1935 shall be deemed to have been done or taken in exercise of the powers conferred by or under those Rules as if those Rules were in force on the day on which such thing or action was done or taken.

(5) Notwithstanding anything contained in these Rules any departmental proceedings initiated under the Rules repealed shall continue under those Rules including the Appeal preferred against any punishment imposed as if those Rules were still in existence.”

5. In view of the aforesaid, it appears that the petitioner was finally dismissed from service in the year 26.11.2006 and he was acquitted from the charges in the year 13.01.2009 after dismissal from service and the departmental proceeding was conducted in accordance with Rules as prescribed at the relevant



time and the petitioner was given ample opportunity to defend his case and he has submitted his written reply before the authority concerned and after duly considered the reply of the petitioner, the disciplinary authority passed the order and the same was confirmed by the Appellate Authority as well as in Memorial and hence there is no infirmity in the order impugned.

6. The writ petition is, accordingly, dismissed.

(Rajesh Kumar Verma, J)

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AFR/NAFR	NAFR
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