

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9828 of 2022

Neeraj Kumar, son of Shri Arun Kumar, Resident of Village- Mudhari, P.S.-
Harnaut, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Additional Director General of Police, Headquarter, Bihar, Patna.
4. The Inspector General of Police, Headquarter Bihar, Patna.
5. The Inspector General of Police, Tirhut Range, Muzaffarpur.
6. The Senior Superintendent of Police, Muzaffarpur.
7. The Enquiry Authority-Cum- Police Inspector-Cum- SHO, Brahmpura Circle, Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Vinay Ranjan, Advocate Mr.Abhishek Tirthankar, Advocate Mr.Prashant Kumar, Advocate
For the Respondent/s	:	Mr.Sheo Shankar Prasad (SC8) Ms.Ruchikar Jha, AC to SC 8

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

3 03-10-2024 The petitioner has invoked extraordinary jurisdiction
of this Court under Article 226 of the Constitution of India,
praying for the following reliefs :-

*“1. For issuance of a Writ in the nature
of certiorari to quash the Muzaffarpur District
Order bearing No. 74/2021 as contained in Memo
No. 185 dated 14.01.2021 issued under the
signature of Disciplinary Authority- Cum- Senior
Superintendent of Police, Muzaffarpur; whereby
and where under petitioner has been discharged
from service and further to quash the order*



Appellate order passed in Departmental appeal by the Inspector General of Police, Muzaffarpur vide Memo No. 847 dated 12.07.2021 communicated through Muzaffarpur District Order No. 1374/2021 as contained in Memo No. 3394 dated 16.07.2021 by which the Departmental Appeal preferred by the petitioner has been rejected and also to quash the subsequent order passed by the Director General of Police, Bihar, Patna communicated vide Letter No. 127 dated 30.05.2022 whereby the memorial application filed by the petitioner against the Appellate Order of the Inspector General of Police, Tirhut Range, Muzaffarpur has also been rejected and further for issuance of a writ in the nature of mandamus commanding and directing the Senior Superintendent of Police, Muzaffarpur to reinstate the petitioner on his respective post with all consequential benefits to which the petitioner is legally entitled too and further for issuance of any other appropriate writ or writs, order or orders to which the petitioner may be legally too.”

2. The petitioner was a Driver, posted in Muzaffarpur District Police. He was on leave and went to his parental village at Harnaut in the District of Nalanda. On 16th of August, 2019, he went to Harnaut market to purchase some grocery items. In the meantime, quarrel took place in between some persons. As soon as police party appeared on the spot, the persons who were



involved in quarrel started to flee away. The petitioner was witnessing the incident, standing in front of the grocery shop. However, police apprehended him and brought into the police station along with other persons. Thereafter, he along with other arrested persons were sent to Nalanda Excise Office. The petitioner and other persons were tested by breath analyzer and from breath analyzer report, it is opined that he consumed alcohol which is a prohibited item under Bihar Prohibition Excise Act, 2016.

3. It was urged by the petitioner that he was suffering from abdominal disorder and took homeopathy medicine for his ailment.

4. On the basis of breathe analyzer report, a formal FIR was lodged against the petitioner. He was arrested and a case under the penal provision of Bihar Prohibition and Excise Act, 2016 was instituted against him.

5. As the petitioner was made an accused in a criminal case under the Bihar Prohibition and Excise Act, 2016, he was suspended in contemplation of departmental proceeding. Subsequently, departmental proceeding was started. On conclusion of the departmental proceeding, the petitioner was dismissed from service. He filed the statutory appeal against the



said order which was also dismissed.

6. Hence, the instant writ petition.

7. It is submitted by the learned Advocate for the petitioner that the petitioner was examined at Nalanda Excise Office by breathe analyzer to ascertain as to whether he consumed alcohol or not. However, neither blood nor urine test of the petitioner was done and without examining the urine and blood of a person, this can not be ascertain as to whether the petitioner consumed prohibited alcohol or not.

8. It is also submitted by the learned Advocate for the petitioner that during inquiry, the petitioner submitted that he had not taken alcohol, rather used homeopathy medicine, but the inquiry officer failed to consider such explanation. The petitioner was dismissed only on the basis of the breathe analyzer report, submitted by the Excise Officer of Nalanda.

9. The learned Advocate on behalf of the petitioner also draws my attention to Annexure-9 of the writ petition which is a notification issued by D.I.G., (Personnel), Bihar Police Headquarters (Personnel and Welfare Department) on 20th of May, 2022 to all the officers of the State regarding the ways and means of departmental inquiry in respect of misconduct committed by a police personnel. The said



memorandum clearly states that an employee of the police department cannot be held guilty for misconduct of consuming alcohol only on the basis of breathe analyzer report. However, the said departmental order has not been complied with by the officers of the police department.

10. Learned Advocate on behalf of the respondents, on the other hand, submits that the disciplinary authority passed the order on the basis of breathe analyzer report and relying on the said report, the petitioner was dismissed.

11. Learned Advocate for the respondents does not deny the notification dated 20th of May, 2022 issued by the D.I.G., (Personnel), Bihar Police Headquarters (Personnel and Welfare Department).

12. Thus, the learned Advocate for the respondents has left the matter for decision of this Court as to whether the order of dismissal is to be sustained or the same requires quashment.

13. Having heard the learned Counsels for the parties and on careful perusal of the materials on record, I am surprised to note that when there is a departmental order that no disciplinary proceeding will lie on the allegation that a police personnel consumes alcohol on the basis of breathe analyzer



report, how can the disciplinary proceeding was allowed to be conducted and the petitioner was dismissed and the said order was upheld by the appellate authority.

14. Way back in 1971, the Hon'ble Supreme Court in the case of *Bachubhai Hassanalli Karyani v. State of Maharashtra*, reported in *(1971) 3 SCC 930*, observed and held that no conclusion with regard to the consumption of alcohol by a persons can be made on the fact that appellant's breath was smelling of alcohol, that his gait was unsteady, that his speech was incoherent and that his pupils were dilated. Consumption of alcohol can only be ascertained by way of blood and urine test of persons suspected to have consumed alcohol.

15. The Hon'ble Supreme Court found that the blood and urine examination of the appellant was not done and finally held that mere smell of alcohol is not enough to hold that the appellant consumed alcohol on the date of his apprehension.

16. It is, thus, held that breathe analyzer report is not a conclusive evidence of consumption of alcohol by a person. The disciplinary authority as well as the appellate authority failed to consider such aspect of the matter enunciated by the Hon'ble Supreme in *Bachubhai Hassanalli Karyani* (supra) and also the standing order no. 294 dated 20th of May, 2022 where the D.I.G.,



(Personnel), Bihar Police Headquarters (Personnel and Welfare Department) directed the police officers that no disciplinary proceeding can be conducted for consumption of alcohol on the basis of breathe analyzer report.

17. In view of the above discussion, I have no alternative but to set aside and quash the impugned orders dated 14th of January, 2021 and 30th of May, 2022.

18. The respondents are directed to reinstate the petitioner forthwith with all consequential benefits.

19. The instant writ petition is, accordingly, disposed of on contest.

20. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

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