

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11235 of 2024

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Imamuddin Son of Md. Naimuddin, resident of Mohalla - Abarpur, Police Station - Town (Ara) District - Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of General Administration, Government of Bihar, Patna.
2. The Divisional Commissioner, Patna Division, Patna.
3. The District Magistrate, Bhojpur.
4. The Deputy Development Commissioner, Bhojpur.
5. The Sub -Divisional Officer (Establishment), Bhojpur.
6. The Incharge Officer, District Record Room, Bhojpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Kundan Kumar Sinha, Advocate.
For the Respondent/s : Mr. W. A. Khan, AC to SC-25.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

4 19-12-2024 Heard Mr. Kundan Kumar Sinha, learned counsel

 appearing on behalf of the petitioner and Mr. W. A. Khan,

 learned AC to SC-25 for the State.

2. The petitioner in paragraph no. 1 of the present writ

petition has sought, *inter alia*, following relief(s), which is

reproduced hereinafter:-

“a) For quashing/setting aside the order dated 26.4.2022, bearing Memo No.589 issued under the signature of the District Magistrate, Bhojpur and signed by the other officials also under which the petitioner was imposed upon major punishment of dismissal from service as Lower Division clerk.

II. For setting aside of an order dated 18.4.2024, passed in Service Appeal Case No.256 of 2022, by the Divisional Commissioner, Patna Division, Patna (the Appellate Authority) whereby and whereunder the Respondent Divisional commissioner, Patna Division,



Patna has on a very casual mechanical and illegal manner rejected the service Appeal filed by this petitioner against the order of punishment dated 26.4.2022 bearing Memo No.589 and affirm the said order. The Appellate order is without application of its own judicial mind which has no legal leg to stand upon.

III. For a direction to the Respondent Authorities to reinstate the petitioner in service w.e.f. the date of his dismissal along with all the consequential monetary benefits as the poor class III employee is being penalized and tortured at the behest of some interested high-ups without any fault on his part.

IV. For grant of any other relief/reliefs for which the petitioner is legally entitled in the facts and circumstances of the case.”

3. In continuation of the order dated 30.07.2024 and in view of the indulgence required by the counsel appearing on behalf of the State who has now filed the counter affidavit, it appears that the General Administration Department Notification No. 1323 dated 16.02.2017 has directed to take a hard action on the Government Employee, who are found taking or under influence of liquor. The petitioner was taken into custody on 12.03.2020 on the allegation that he was under influence of liquor and he was released on bail on 17.03.2020 by one of the Special Court, Excise, Ara. Following the due process as required under Bihar CCA Rules 2005, the petitioner was dismissed from service vide order dated 26.04.2022 contained in Memo No. 589 (Annexure P/1).

4. I can only observe that the disciplinary authority was influenced by the Notification No. 1323 dated 16.02.2017 and with a pre-determined mind, the inquiry officer has



conducted the inquiry and submitted the inquiry report recommending for dismissal of the petitioner. The petitioner was served with second show cause notice in accordance with Sub Rule 3 of Rule 18 of the Bihar CCA Rules, 2005 and thereafter the disciplinary authority having not satisfied by the reply to the second show cause submitted by the petitioner passed the impugned order.

5. Such order with pre-determined mind to take hard action against the government servant is reflected in the action of the disciplinary authority who has dismissed the petitioner from service.

6. The post decisional hearing which has been done in the present case calls for interference by this Court.

7. For the reason that the order has been passed with pre-determined mind, the same cannot be justified in light of the ***Chander Prakash vs Dakshin Haryana Bijli Vitran Nigam Ltd***, reported in ***2024 SCC OnLine P&H 7377***, wherein in para ***16***, it was held that

16. The aforesaid show cause notice has to be analysed also from two perspectives. Firstly, a perusal of the aforesaid show cause notice as reproduced above would show that it has been issued by stating in so many words and by repeating the same that it has been 'decided' by the competent authority to recover the amount from the retiral benefits of the petitioner. It is very strange that a show cause notice was issued for grant of opportunity of hearing, wherein it was already



decided to recover the amount and therefore, clearly it was a case of a pre-determined mind and issuance of show cause notice was merely an empty formality and therefore, not only that it was non-est and void ab initio being issued with a pre-determined mind but was also contrary and violative...

8. In view of the recorded evidence, the penalty order as contained in Memo No. 589 dated 26.04.2022 and also in view of the law laid down by the Apex Court in the case of **Bachubhai Hassanalli Karyani v. State of Maharashtra**, reported in **(1971) 3 SCC 930**, wherein the Apex Court has held that no conclusion with regard to consumption of alcohol by a person can be made on the facts that the appellant's breathe 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 a person suspected to have consumed alcohol, the order dated 26.04.2022 passed by District Magistrate, Bhojpur is hereby set aside and quashed. As a consequence of the same, the appellate order dated 18.04.2024 passed in Service Appeal Case No. 256 of 2022 is also hereby set aside and quashed.

9. The matter is remitted back to the Disciplinary Authority to proceed afresh in accordance with law laid down by the Apex Court in the case of **B. C. Chaturvedi V. Union of India & Ors.** reported in **(1995) 6 SCC 749**.



10. If the disciplinary authority wants to take any disciplinary action against the petitioner, the petitioner should be suspended and proceed afresh from the stage of inquiry.

11. It goes without saying that the petitioner is entitled for payment of the salary from the date of his suspension till the date of his reinstatement.

12. The writ application stands disposed of.

(Purnendu Singh, J)

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