

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11590 of 2024

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Vidya Sagar son of Late Jagdish Rai, R/o Village-Mohinimandal, P.S.-Suppi,
District-Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Administrative Reforms, Government of Bihar, Patna.
2. The Divisional Commissioner, Tirhut Division, Muzaffarpur.
3. The District Magistrate, Sitamarhi.
4. The Superintendent of Police, Sitamarhi.
5. The Dy. S.P. Sitamarhi.
6. The Circle Officer, Suppi, Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Jha, Advocate Mr. Saurav Anand, Advocate
For the Respondent/s	:	Mr. Sita Ram Yadav-GP-16 Mr. Jitendra Kumar, AC to GP-16

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

2 05-08-2024 The petitioner has filed the instant writ petition under Article 226 of the Constitution of India praying for the following reliefs:-

“(i) A certiorari for setting aside the order dated 14.05.2024 passed in Service Appeal Case No.375 of 2023 by the Divisional Commissioner, Tirhut Division, Muzaffarpur (respondent no.2) whereby and whereunder the respondent no.2 has in very casual, mechanical, illegal and tortours manner rejected the Service Appeal of the petitioner filed



against the order of punishment dated 31.10.2023 passed by the learned District Magistrate, Sitamarhi contained in Memo No.2459 dated 31.10.2023 without application of quashi judicial mind which has no legal leg to stand upon;

(ii) A further certiorari for setting aside the order of punishment passed against the petitioner from the level of respondent no.3 the District Magistrate, Sitamarhi contained in Memo No.2459 dated 31.10.2023 which has been passed in very mechanical manner as no proof of the charges has been established and violated the principle of natural justice.

(iii) A Mandamus commanding and directing the respondent concerned to reinstate the petitioner in service with effect from the date of his dismissal along with all consequential monetary benefits as the poor third grade employee (petitioner) has been penalized without any fault on his part;

(iv) And/or any other relief or reliefs to which the petitioner is found entitled to in the facts and circumstances of the case.”



2. The case of the petitioner, in brief, is that he was appointed as as a Chaukidar at Suppi Police Station on 26.09.2009 on compassionate ground. He had been discharging his duties honestly and diligently to the satisfaction of his higher officer. On 13.06.2018, the SHO, Dumra Police Station suspected that the petitioner consumed liquor in violation of the provision contained in Section 37(b)(c) of the Bihar Prohibition and Excise Act. Even after his arrest on the allegation that he consumed liquor, no medical examination was done to ascertain the allegation and just from Breath Analyzer Report, it was alleged that the petitioner consumed liquor. Therefore, Dumra P.S. Case No.226 of 2018 under Section 37(b)(c) of the Bihar Prohibition and Excise Act was registered against him. He was subsequently, put under suspension, a departmental proceeding was initiated against the petitioner. The petitioner in his defense pleaded his innocence and stated that on 13.06.2018, he took some cough syrup due to his illness from cough and cold. His written statement of defense was not considered by the Enquiry Officer and he was held guilty for illegal consumption of liquor on the basis of breath analyzer report.

3. On the strength of the enquiry report, the disciplinary authority dismissed the petitioner from service. The



petitioner filed an appeal before the DIG Police of the concerned range but his appeal was also dismissed.

4. Hence, the instant writ petition.

5. I have heard the learned Advocate on behalf of the petitioner as well as the State-Respondents.

6. In *Bachubhai Hassanalli Karyani Vrs. 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 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 by a person suspected to have consumed alcohol.

7. In the instant case, there is also no allegation to the effect that at the time of arrest, the gait of the original petitioner was unsteady, he was speaking incoherently or that his pupils were dilated.

8. In *Bachubhai Hassanalli Karyani (Supra)*, the Hon'ble Supreme Court found that the blood and urine examination of the appellant was not done and finally held that mere smelling of Alcohol is not enough to hold that the



petitioner consumed alcohol on the date of his apprehension.

9. For the reasons stated above, I have no other alternative but to hold that the disciplinary authority failed to consider the observation of the Hon’ble Supreme Court and passed his order of punishment on the basis of the Breath Analyzer Report, which can not be said to be a conclusive proof of consumption of alcohol.

10. For the reasons stated above, this Court is not in a position to uphold the impugned orders dated 31.10.2023 and 14.05.2024 passed by the Disciplinary Authority as well as Appellate Authority against the petitioner.

11. Accordingly, both the orders of punishment are quashed and set aside. The petitioner be reinstated in service with all financial and consequential benefits.

12. The instant writ petition is allowed on contest.

(Bibek Chaudhuri, J)

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