

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4939 of 2018

=====

Virendra Yadav Son of Late Ram Sarida Yadav, Resident of Gram-Gopalpur,
P.S.- Sahpur, District- Bhojpur Arrah.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. Director General of Police, Bihar, Patna.
3. Deputy Inspector General of Police, State Crime Records Bureau, Bihar, Patna.
4. Superintendent of Police, State Crime Records Bureau, Bihar, Patna.
5. Deputy Superintendent of Police, State Crime Records Bureau, Bihar, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Abhinav Srivastava, Adv
For the Respondent/s : Mr.Sheo Shankar Prasad- Sc8

=====

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

4 15-01-2024 Heard learned counsel for the petitioner and counsel
for the State.

2. The present writ petition has been filed for quashing the order of 09.10.2017 passed by the Director General of Police, Bihar, Patna by which the petitioner has been dismissed from Service from the post of constable under Bihar Police which has been communicated to him vide memo no. 1008 dated 12.10.2017.

3. Counsel submits that further prayer has been made to the respondent to re-instate the petitioner in the service of Bihar Police against the post of Constable and direction for



payment of all consequential benefits shall be made including the benefit of seniority and payment of salary. It has also been prayed that inflicting the punishment of dismissal for service is arbitrary, unreasonable and untenable in the eyes of law.

4. Counsel submits that the petitioner has earlier moved before this Hon'ble Court against the order of punishment of dismissal by the Director General of Police, Bihar, Patna which is annexure-19 and the said order was set aside and the discrepancy was raised that in the said order which is annexure-19 of the writ petition and the petitioner was directed to re-instate with 50% back wages. But, in the said order, the permission was granted to the Director General of Police Patna that "This order however would not preclude the Director General of Police to proceed afresh in the matter but in accordance with law"

5. Counsel for the petitioner submits that in compliance of order passed in C.W.J.C. 2806 of 2014, the petitioner was re-instated with 50% backwages Vide memo no. 484 dated 13.01.2017. Counsel submits that a show cause was again issued on 23.03.2017 from the Office of D.G.P. Patna, and thereafter, the another letter was issued on 11.04.2017 directing the petitioner to file show-cause against his dismissal. The



petitioner has filed a show-cause, and thereafter, final order has been passed on 09.10.2017 by the Director General of Police, Patna vide memo no. 114/32617/L-1 dated 12.10.2017.

6. Counsel for petitioner submits that in the departmental proceeding, the complainant and his father had submitted letters before the enquiry Officer to pardon/leave him and not to proceed on his complaint on the basis of which the enquiry officer, the Superintendent of Police has exonerated the petitioner from charges. This aspect has completely been ignored by the Director General of Police, Patna. Counsel further submits that the D.G.P. Patna has assumed the charges as like that of disciplinary authority and pass order which is in gross violation of Bihar Government Servant (Classification, Control and Appeal) Rule 2005. Counsel also submits that show-cause which has been issued by the Inspector General is bad in law, particularly when direction was made by this Hon'ble Court to the Director General of Police, Patna to do so. Counsel submits that it is the gross error in the procedure and this order be set aside.

7. Counsel for the State on the other hand submits that at the time of passing the order dated 19.09.2016 passed in C.W.J.C. No. 2806 of 2016, this Hon'ble Court has pleased to



observe that there are four discrepancies which is as follows:

- *Director General of Police or the authority concerned would have to express his tentative reasons for disagreement with the finding of the disciplinary authority, to enable to delinquent to respond thereto, in purposeful manner but no such exercise was undertaken.*
- *The second aspect of the matter is that even though the show-cause is against enhancement of punishment but here there is no punishment order. The whole proceedings culminating in the dismissal order is thus without application of mind.*
- *The third infirmity in the matter is that there is no show cause against dismissal.*
- *The fourth infirmity in the proceeding is that there are two orders passed in the case of the petitioner because even when the director General of police proceeds to order dismissal, he doesn't bother to set aside the order of the disciplinary authority.*

8. Counsel submits that the specific liberty has been given to the Director General of Police to proceed in the matter in accordance with law. Counsel further submits that the proceeding against the petitioner was going on in the light of Rule 853A(a) of the Bihar Police Manual in which jurisdiction is vested in the Director General of Police, Patna to exercise *suo-motu* powers of review of an order passed in disciplinary proceeding which has already been tested by this Hon'ble Court in order dated 19.09.2016 passed in C.W.J.C. 2806 of 2014 and due to this reason this liberty was given to the Director General of Police, Patna to proceed afresh in this matter in accordance with law.

9. Counsel for State submits that in due compliance of



the observation made by this Hon'ble Court in the earlier order dated C.W.J.C. 2806 of 2014, the Office of Director General of Police has issued a show-cause in which the reasons for disagreement with the finding of the Disciplinary Authority has been specifically assigned.

10. Counsel further submit that show cause has been issued and further on the point of punishment also, show cause has been issued. Thereafter, representation has been filed by the delinquent and only thereafter considering those aspects of the matter, a reasonable order has been passed, and hence, there is no need of any interference of the said order and writ petition is fit to be dismissed.

11. Upon going through the pleadings of the parties and the documents, particularly after going through Annexure-22 i.e. it transpires to this Court vide Annexure-22 that reasons for disagreement has been assigned. Show-cause on the fight of punishment has also been issued. Thereafter, upon acceptance of the reply to the show-cause filed by the delinquent, a reasonable order has been passed which is impugned here.

12. Upon perusal of the basic complaint which is annexed here as Annexure-5 and Annexure-6 and upon bare reading of those Annexures written by the complainant, it



transpires that the said complainant has nowhere mentioned that her allegation is incorrect from the content of the reading of the alleged withdrawal letter, it transpires that she is still stucked on her allegations, but only looking the status of the delinquent, she wanted to withdraw and in disciplinary proceeding there is no such provisions available in law and the reasons assigned in the final order are completely consistence with the allegation made in the complaint petition, and therefore, this Court is of the opinion that there is no interference required in the order and therefore, this writ petition stands dismissed.

(Dr. Anshuman, J)

Sunnykr/-

U			
---	--	--	--

