

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2351 of 2020

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Fuleshwari Devi, Wife of Late Ram Narayan Yadav Resident of Village-
Harishvara, P.O- Kanhauli, P.S.- Khajauli, District- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home (Police) Department, Bihar, Old Secretariat, Patna.
2. The Inspector General of Police, Bhagalpur Zone, Bhagalpur.
3. The Deputy Inspector General of Police, Eastern Range, Bhagalpur.
4. The Senior Superintendent of Police, Bhagalpur.
5. The Sub Inspector of Police Adampur (outpost) Police Station Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Narain, Sr. Adv. Mr. Ram Nibash Prasad, Adv. Mr. Mukesh Kumar, Adv.
For the State	:	Mr. Md. N.H. Khan (SC-1) Mrs. Babita Kumari (AC to SC-1)

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 23-02-2024

Heard learned senior counsel for the petitioner and
learned counsel for the State.

2. The present writ petition has been filed for
quashing of Memo No.32/G.S. dated 07.01.2012 (annexed as
Annexure-14) by the Deputy Inspector General of Police,
Eastern Range, Bhagalpur (respondent no.3) and for quashing
the District Order no.2362/13, Memo No. 4282/R.O. dated
02.12.2013 (annexed as Annexure-16) issued under the
signature of Senior Superintendent of Police, Bhagalpur



(respondent no.4). And further prayer has also been made for quashing the order issued *vide* Memo No. 904 dated 19.09.2019 (annexed as Annexure-22) by the Deputy Inspector General of Police, Eastern Range, Bhagalpur.

3. Learned senior counsel for the petitioner submits that the petitioner was in service and appointed as Constable since 1975 and he was discharging his duties and subsequently, promoted to the post of Head Constable according to the provision of Police Manual in the year 1984. Counsel also submits that in the year 2007, he was transferred to Bhagalpur Police Line from Khagaria. In the year 2008, the petitioner was entrusted the duty to escort the prisoners for producing them in the Court of Judicial Magistrate 1st Class with two other constables. But, during the course of Court process, one of the accused fled away and then the petitioner immediately informed the Magistrate and his Peskar regarding the occurrence verbally and also informed the in-charge of Court Hazat about the occurrence and the in-charge of Court Hazat immediately gave the information over the telephone to Adampur(Outpost) Police Station. Then, a preliminary enquiry was conducted and the petitioner was subject to the departmental proceeding for his latches. Counsel further submits that in the said departmental



proceeding, the petitioner was ordered to be terminated from service and FIR was also lodged against him. The petitioner has earlier moved before this Hon'ble Court in Civil Writ Jurisdiction Case No. 1635 of 2011 which was disposed off on 30.06.2011 with a direction to approach the Director General of Police for seeking proper direction on the issue. Then, the petitioner has preferred Letters Patent Appeal No. 1237 of 2011 in which *vide* order dated 23.11.2011, the order has been passed which is as follows:-

“To us, it appears that the Deputy Inspector General of Police, Eastern Region, Bhagalpur made a cryptic order without considering the records of the departmental proceedings and remanded the matter without setting aside the order of punishment made by the disciplinary authority and without making any consequential order. Such an order can not be sustained. In our opinion the ends of justice should be met, if the said order is set aside and the Deputy Inspector General of Police, Eastern Region, Bhagalpur is directed to hear and decide the appeal preferred before him by the appellant in accordance



with law.

With this direction, the appeal stands disposed off.”

Thereafter, the petitioner has filed representation before the D.I.G. and he was re-instated in the service and departmental proceeding was re-instated. Subsequently, in the said departmental proceeding, the punishment order has been passed against the petitioner imposing punishment of forfeiture of increment of two years with non-cumulative effect and forfeiture of pay and allowances for the period out from the service on the ground of no work for no pay and the said punishment was equivalent to withholding of two increment.

4. Learned senior counsel for the petitioner submits that the said order was passed against which the petitioner has preferred appeal, but his appeal was rejected without considering on merit and on the ground of delay. The petitioner again preferred writ petition before this Hon'ble Court in Civil Writ Jurisdiction Case No. 15198 of 2018 in which *vide* order dated 04.07.2019, this Hon'ble Court has pleased to direct to entertain the appeal and thereafter, appeal was entertained and final order has been passed and the petitioner has aggrieved by the said final order in which the points taken by him in the



appeal has not taken into consideration and the reason has been assigned by the D.I.G. for not considering the appeal is that:-

“अपचारी ने अपने अपील अभ्यावेदन में खराब हथकड़ी होने का जो योथी दलील का जिक्र किये हैं, वो मान्य नहीं है। अगर हथकड़ी खराब थी तो कैदियों को लगाने के पूर्व हथकड़ी बदल लेनी चाहिए थी।”

On this point, the said appeal has been rejected and punishment for stoppage of increment for two years has been imposed along with no work no pay. In consonance was the same, the subsequent letter has been issued by the Superintendent of Police.

5. Learned senior counsel for the petitioner has specifically pleaded that in the memo of appeal, he has categorically taken the plea that the information with regard to non providing of the handcuff (*hathkadi*) has already been intimated to the Police Headquarter from where it has to be delivered repeatedly and ratio of handcuff and prisoners are not as per the mark and this pleading has been made by him specifically in page 91 of his pleading which is as follows:-

“कि संचालन पदाधिकारी के द्वारा इस तथ्य पर विचार नहीं किया गया कि



हथकड़ी के खराब रहने, काफी कम संख्या में रहने और अतिरिक्त हथकड़ी की आपूर्ति करने का बारम्बार अनुरोध किए जाने के बावजूद भी हथकड़ी की आपूर्ति नहीं की गई। हथकड़ी की आपूर्ति परिचारी प्रवर/जी० पी० परिचारी के द्वारा की जाती है और पुलिस केन्द्र में हथकड़ी की आपूर्ति पुलिस मुख्यालय से की जाती है, इसमें आरोपित की कोई भूमिका नहीं है। पुलिस कर्मी कैदी की अभिरक्षा हेतु सदैव प्रयासरत रहते हैं, फिर भी परिस्थितिजन्य कारणों के कैदी के भागने की घटना घटित होती रहती है। अतः बिना किसी ठोस एवं पुख्ता साक्ष्य के इस प्रकरण में अपीलार्थी के विरुद्ध आरोप लगाया जाना कतई न्यायोचित नहीं है।”

On this point, there is absolutely no discussion made by the respondent.

6. Learned counsel for the State on the other hand submits that every such point has already been discussed in the order impugned and there is no need of any interference in the said order. Counsel also submits that while the petitioner was posted in Bhagalpur District, he was entrusted the duty to escort the prisoners for court proceeding in the Court of J.M. 1st Class, Bhagalpur alongwith two constables and in course of escort, one



of the re-knowned criminal got success in fleeing away. Counsel further submits that carelessness, negligence, misconduct and indiscipline has been occurred on the part of petitioner and that's why the departmental proceeding was initiated against him. Counsel further submits that every best opportunities were afforded to the petitioner to disprove the charges, but he failed to do so and ultimately he was dismissed from service w.e.f. 15.04.2010. Counsel submits that in compliance of the order of D.I.G., Eastern Range, Bhagalpur, the departmental proceeding no.96/2008 was re-conducted and again the petitioner was found guilty and his two years pay increment was forfeited equivalent to the three black marks. Thereafter, the petitioner preferred appeal before D.I.G., Eastern Range, Bhagalpur which was dismissed on account of its filing after 42 months. Counsel further submits that upon considering all the facts, it shows that the order is based on the principle of "No work No Pay" and as such, the petitioner does not deserve any relief as sought for in memo of writ petition and it is fit to be dismissed.

7. Upon perusal of the grounds mentioned in the memo and the order, it transpires that the respondent authority has not considered the points at all, instead there of, taken the stand that the plea is absurd and not acceptable which is not the



correct position of fact. It is due to this reason, this Court is hereby set aside the order contained in Memo No.32/G.S. dated 07.01.2012 (annexed as Annexure-14); District Order no.2362/13, Memo No. 4282/R.O. dated 02.12.2013 (annexed as Annexure-16) and order issued *vide* Memo No. 904 dated 19.09.2019 (annexed as Annexure-22).

8. At the time of argument, it also comes that the petitioner of the writ petition has already died and now the case is defended by his wife. So, let the benefits with regard to setting aside the said orders be provided to the substituted heirs of the original petitioner within six months.

9. With the aforesaid observations and directions, this writ petition is hereby allowed.

(Dr. Anshuman, J.)

Divyansh/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	28.02.2024
Transmission Date	NA

