

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23560 of 2019

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Md. Jamil Akhtar, Son of Late Aniruddih, Resident of Village- Sakraili, P.S.-
Semapur (Barari), District- Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Home Secretary (Police), Old Secretariat, Patna, Bihar.
2. The Director General of Police, Bihar, Sardar Patel Bhawan, Bailey Road, Patna.
3. The Inspector General of Police, Darbhanga Range, Darbhanga.
4. The Deputy Inspector General Of Police, Darbhanga Range, Darbhanga.
5. The Assistant Superintendent of Police, Jhanjharpur-cum-Conducting Officer.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Awadhesh Kumar Mishra, Advocate Ms. Shivani Mishra, Advocate Mrs. Pragati Singh, Advocate Mr. Shashank Shekhar, Advocate
For the Respondent/s	:	Mr. N.H.Khan, SC-1

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 17-03-2025

Heard Mr. Awadhesh Kumar Mishra, learned
Advocate for the petitioner and Mr. N.H. Khan, learned
Standing Counsel No. 1 for the State.

2. The petitioner is aggrieved with the order as
contained in memo no. 2457 dated 14.07.2019 issued under the
signature of Superintendent of Police, Purnea whereby the order
of dismissal inflicted by the Deputy Inspector General of Police,
Darbhanga has been communicated to the petitioner. The
petitioner is also aggrieved with the appellate order passed by
the Inspector General of Police as contained in memo no. 16



dated 21.08.2019 whereby the appeal preferred by the petitioner came to be rejected.

3. The, short facts, as culled out from the materials available on record are that the petitioner was duly appointed as Sub Inspector of Police way back in the year 2009. While the petitioner was posted at Khutouna Police Station in the District of Madhubani, he performed second marriage with Fuldai Khatoon on 03.08.2016 as per the Muslim rights and rituals with due permission from all the family members, as well as after taking consent from the first wife. The dispute as has arisen on account of second marriage led to institution of Mahila P.S. Case No. 90 of 2016 for the offences punishable under Section 341, 323, 494, 498A, 504, 506 of the Indian Penal Code read with $\frac{3}{4}$ of the Dowry Prohibition Act. In such premise, the show cause notice was issued to the petitioner and on being dissatisfied with the reply, the petitioner was placed under suspension and a Memo of Charge was issued on 25.10.2016 giving rise to Departmental Proceeding no. 78 of 2016. The Memo of Charge contains the imputation that despite having the first wife of the petitioner alive, the petitioner performed another marriage in complete disregard to the terms of Bihar Government Servant Conduct Rules, 1976. The petitioner was



asked to submit his explanation before the Conducting Officer. After inquiry, the Conducting Officer submitted inquiry report, exonerating the petitioner from the imputations contained in the Memo of Charge.

4. The facts of the case further reveal that after completion of enquiry, a report has been submitted in favour of the petitioner, however the disciplinary authority without differing from the finding of the inquiry report asked for fresh inquiry; and surprisingly another inquiry was conducted by the same Conducting Officer, who submitted another inquiry report as contained in memo no. 251 dated 04.02.2017 holding the petitioner guilty of the charges. On submission of the inquiry report before the Superintendent of Police, it has been found that there is no Presenting Officer appointed in the Disciplinary Proceeding and in such premise, direction was given for a fresh inquiry, accordingly a third inquiry was conducted by another Conducting Officer, who submitted the inquiry report on being found the charges proved.

5. The Superintendent of Police on receipt of the inquiry report issued second show cause notice against the proposed dismissal which was duly responded by the petitioner by filing a detailed representation. The response of the petitioner



did not find favour and the Superintendent of Police, Purnea made recommendation for dismissal of the petitioner to the Deputy Inspector General of Police, Bihar. Subsequent thereto, the Deputy Inspector General of Police passed the order of dismissal, which has been communicated to the petitioner by the impugned order as contained in Annexure 10. The petitioner being aggrieved preferred appeal before the Inspector General of Police, which also came to be rejected and thus made impugned herein.

6. Learned Advocate for the petitioner while assailing the impugned orders has urged that the Superintendent of Police is neither the Appointing Authority, nor the Disciplinary Authority of the petitioner, who was holding the post of Sub Inspector of Police. In terms of Rule 825(c) of the Bihar Police Manual, it is the Deputy Inspector General of Police, who being the Appointing Authority, is the competent person to proceed with the departmental proceeding, if any misconduct was found. The entire proceeding, right from the issuance of the Memo of Charge to the recommendation made by the Superintendent of Police is wholly without jurisdiction and for this reason alone, the impugned order is fit to be set aside. To support the aforesaid contention heavy reliance has been placed on a Bench



decision of this Court in the case of ***Uday Pratap Singh vs. The State of Bihar & Ors. 2017 (4) PLJR 195.***

7. Referring to the order of dismissal which has been duly communicated to the petitioner through the impugned order issued under the signature of Superintendent of Police, Purnea, it is further contended that the impugned order is based upon the recommendation of the Superintendent of Police, which clearly manifest that there is no independent application of mind and, as such, the same is fit to be quashed and cancelled.

8. It is also the contention of the petitioner that neither the Memo of Charge contains the list of witnesses, nor the list of documents whereby the proposed charges stand proved. Hence, the proceeding is bad in view of the clear transgression of the prescription of Rule 17(3) and 17(4) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 hereinafter referred to as Rules, 2005.

9. It is lastly contended that this is the case in which the complainant has not even been examined and thus, the charges remains disproved. To support the aforesaid contention reliance has been placed on a decision rendered by the Apex Court in the case of ***Kuldeep Singh vs. Commissioner of Police***



& Ors., AIR 1999 SC 677.

10. *Per Contra* learned Advocate for the State submitted that it is the admitted case that the petitioner has solemnized second marriage during the life time of the first wife, without taking permission from the State Government and, as such, in any view of the matter, the misconduct of the petitioner stands proved, which resulted into initiation of a departmental proceeding.

11. The petitioner has been given proper opportunity of hearing at all the stages and considering the facts that the first wife of the petitioner has also instituted an FIR during the course of inquiry, the charges levelled against the petitioner stood proved on the basis of the materials brought before the Inquiry Officer. The second explanation of the petitioner was duly considered by the Superintendent of Police, who is the Disciplinary Authority and on being dissatisfied with the reply of the petitioner, he recommended for inflicting the punishment of dismissal. Moreover, the order of dismissal has been passed by the Appointing Authority, i.e. the Deputy Inspector General of Police.

12. This Court has given anxious consideration to the submissions advanced on behalf of the respective parties and



also pursued the materials available on record.

13. Perusal of the memo of charge clearly shows that the same was not accompanied by the list of documents and list of witnesses and thus, there is complete defiance of Rule 17(3) and 17(4) of Rules, 2005. It would be worth noting that Rule 17(3) casts an obligation on the disciplinary authority to draw a charge against a delinquent Government servant or cause it to be drawn up against the officer delinquent. It is specifically ruled that the substance of imputation of misconduct or misbehaviour has definite and distinct Articles of Charge. In support of each charge the statement of all relevant facts, including a list of such documents by which and a list of such witnesses by whom the Articles of Charge is sustained. Rule 17(4) of Rules, 2005 further mandates the delivery of charge memo so drawn up either through the disciplinary authority or through an officer duly authorized. The obligation cast on the disciplinary authority has further mandated him to satisfy himself, whether the explanation so forwarded by a delinquent on the proposed charge requires an enquiry by the enquiry officer or requires a closure. While reiterating the afore-noted proposition of law, this Court in the case of *Shankar Dayal vs. The State of Bihar & Ors. (C.W.J.C. No. 7207 of 2016)* held that this power is



exclusively vested in the disciplinary authority and cannot be delegated.

14. It is the specific contention of the petitioner that the petitioner was holding the post of Sub Inspector and, as such, in any circumstances it is the Inspector General of Police/ Deputy Inspector General of Police who would be the appointing authority as well as disciplinary authority. To support the aforesaid contention, the reliance of the petitioner on a decision rendered by a Bench of this Court in the case of **Uday Pratap Singh (supra)** would be worth noting herein:-

“31. In so far as the case in hand concerned it is the Senior is Superintendent of Police, Patna who has initiated the proceeding against the petitioner by service of charge memo placed at Annexure-6 and which also directs the petitioner to file his reply before the Senior Superintendent of Police but then in absence of any authorization given to the Senior Superintendent of Police either under the Bihar Police Manual or by the Inspector General of Police being the appointing authority or the Deputy Inspector General of Police being the Disciplinary Authority to initiate the process, the very initiation is without jurisdiction.”

15. This Court also finds that at the inception of enquiry conducted by the conducting officer led to exoneration of the petitioner from all the charges, however the



Superintendent of Police on being dissatisfied has directed for further enquiry and accordingly a fresh enquiry has been done. The power of the disciplinary authority on submission of the enquiry report has been duly contemplated under the Rules, 2005.

16. In the event of submission of the enquiry report, the disciplinary authority had option of either accepting or rejecting the finding of the enquiry officer's report or in the event of disagreeing with the enquiry officer's report or finding show cause notice as required to be issued to the concerned person to the extent of disagreeing with the enquiry officer's report or finding, he had option of remanding the matter to the enquiry authority to commence the enquiry from the defective stage and complete the process of enquiry or he/she can complete the enquiry. This Court in the case of **Ashok Kumar vs. The State of Bihar & Ors., 2021 (2) BLJ 117** has held that :-

"9. No provision under the Rules contemplates a second departmental inquiry. In case, a Disciplinary Authority notices any serious defect having crept into the inquiry or some important witnesses could not be examined because of their nonavailability, he could have remitted the matter back to the Enquiring Authority for further



inquiry as contemplated under sub-rule (1) of Rule 18 of the Rules."

17. It would also be relevant to observe here that mere production of an FIR in case cannot be treated as evidence to uphold the charge as misconduct in absence of any evidence standing upto prove the same. The Hon'ble Supreme Court in the case of ***Roop Singh Negi vs. Punjab National Bank & Ors., (2009) 2 SCC 570*** while crystallizing the aforesaid proposition of law has held that the purported evidence collected during investigation against the accused by itself could not be treated to be an evidence, unless it is proved by the oral evidence. It would be apt and proper to encapsulate paragraph 14 of the decision hereunder:-

"14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia,



was placed by the enquiry officer on the FIR which could not have been treated as evidence.”

18. In the case in hand, it is admitted fact that the complainant who is none else, but the second wife of the petitioner has never been examined by the enquiry officer; moreover, non-examination of complainant during departmental proceeding leads to denial of an opportunity to a Government servant of cross-examination [vide ***Commissioner of Police, Delhi & Ors. vs. Jai Bhagwan, (2011) 6 SCC 376***]. This Court has also perused the enquiry report as well as the impugned order inflicting the punishment of dismissal as well as appellate order. On perusal of the same, this Court finds that the finding of the enquiry officer based upon which the order of punishment has been passed rest upon the allegation levelled in the FIR and the statement of the witnesses recorded during the investigation, which cannot be taken into consideration without oral examination of the witnesses during enquiry after giving proper opportunity to the delinquent to cross-examine.

19. The order of the disciplinary authority as also the appellate authority are devoid of any reason, nonetheless the materials suggesting the guilt are required to be proved by admissible evidence. The Court time without number cautioned



that the provisions of Evidence Act may not be applicable, but the principles of natural justice are. Moreover, both the orders impugned herein, lacking complete application of independent mind.

20. In view of the aforesaid facts, circumstances and the position obtaining in law, the entire disciplinary proceeding leading to issuance of the impugned order of dismissal is held to be illegal, *dehors* the statutory procedure, accordingly the impugned order of punishment passed by the Deputy Inspector General of Police, Darbhanga Range, Darbhanga communicated by the Superintendent of Police, Purnea in the memo no. 2457 dated 14.07.2019 as also the appellate order no. 5/2019 dated 21.08.2019 stands set aside; the petitioner is hereby directed to be reinstated.

21. Now the question which would arise before this Court as to whether the petitioner would be entitled to back wages, especially when this Court has set aside the impugned orders after holding it bad and illegal. Suffice it to observe that in cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take



into consideration the length of service of the employee, the nature of misconduct, if any found proved against the employee, the financial condition of the employer and similar other facts [Vide: *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya and Others, (2013) 10 SCC 324*].

22. Having regard to the facts that the respondents have completely failed to justify their action in inflicting the punishment and they have acted in gross violation of the statutory provisions and/or principles of natural justice, this Court further directs the respondents to pay the 50% of the salary to the petitioner along with consequential benefits for the period the petitioner remained out of the service, which would serve the justice.

23. The writ petition stands allowed.

(Harish Kumar, J)

supratim/-

AFR/NAFR	NAFR
CAV DATE	NA
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