IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.960 of 2024
In
Civil Writ Jurisdiction Case No.2590 of 2022

CNR No. BRHC010958042024

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1. The State of Bihar Through the Additional Chief Secretary, Department of General Administration Government of Bihar, Patna.
2. The Divisional Commissioner, Koshi Division, Saharsa.
3. The District Magistrate, Supaul.
4. The Deputy Development Commissioner, Supaul.
5. The Sub-Divisional Officer, Nirmali, District- Supaul.
6. The Circle Officer, Kishanpur, District- Supaul.

... ... Appellant/s

Versus

Manju Devi W/o Late Prabhakar Kumar Singh, resident of Mohalla Bumphar Chowk, Ward No. 12, Gautam Nagar Gangjala, P.S. - Saharsa, District - Saharsa.

... ... Respondent/s

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Appearance :
For the Appellant/s : Ms. Priyanka Raj Laxmi, S.C.2
Mr. Rajesh Kr. Sinha (A.C. To S.C.2)
For the Respondent/s : Mr.Pramod Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
and
HONOURABLE MR. JUSTICE RANA VIKRAM SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH)

Date : 18-11-2026

The present Letters Patent Appeal has been preferred by the State of Bihar and its officials (appellants herein) challenging the judgment dated 19.06.2024 passed by the learned Single Judge in C.W.J.C. No. 2590 of 2022, whereby the writ petition filed by the respondent / Manju Devi was allowed and the orders passed by the disciplinary authority as well as the appellate authority were quashed.

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2. The facts of the case reveals that on 05.02.2018, husband of respondent (since died), who was working as a third-grade employee in the office of the Sub-Divisional Officer, Nirmali, was apprehended by the Station House Officer, Nirmali Police Station, for alleged violation of Sections 37(a) and 37(c) of the Bihar Prohibition and Excise Act, 2016. It was alleged that upon being subjected to a Breath Analyzer Test, the alcohol content was found to be 102 mg/100 ml. Thereafter, he was taken to the Primary Health Centre, Nirmali, where the Medical Officer also allegedly confirmed consumption of alcohol. A criminal case was instituted against him in connection with the aforesaid occurrence and since he (husband of respondent) remained in judicial custody for more than 48 hours, he was placed under suspension in accordance with the applicable service rules. Subsequently, upon his release on bail, the order of suspension was revoked and he was directed to resume his duties. Thereafter, a departmental proceeding was initiated against him and the disciplinary authority, by order dated 11.01.2020, communicated on 15.01.2020, imposed the punishment of dismissal from service. The departmental appeal preferred by the delinquent employee before the Divisional Commissioner, Koshi Division, Saharsa, was also rejected by order dated 30.11.2021. Being aggrieved by the aforesaid orders, the respondent approached this Court by filing C.W.J.C. No. 2590 of 2022 and the learned Single Judge,

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upon consideration of the materials available on record, found that the Breath Analyzer Report could not be treated, as conclusive proof of consumption of alcohol, quashed the disciplinary order as well as the consequential appellate order. Aggrieved by the aforesaid judgment, the State has preferred the present Letters Patent Appeal.

3. Learned counsel for the appellants/State submits that the learned Single Judge has committed an error in interfering with the order of dismissal passed by the disciplinary authority. He contends that husband of respondent was subjected to a Breath Analyzer Test on 05.02.2018, wherein the alcohol content was found to be 102 mg/100 ml. The result was also allegedly confirmed by the Medical Officer of the Primary Health Centre, Nirmali. The delinquent was given an opportunity to defend his case and after following due procedure in the departmental proceeding, the punishment of dismissal was awarded to the husband of respondent. He contends that after coming into force of the Bihar prohibition and Excise Act, 2016, the consumption of liquor in the State of Bihar is an offence and has also pointed out that Rule 4 of the Bihar Government Servant’s Conduct Rules, 1976 was amended in accordance with the said Act. Learned counsel for the appellants/State further submits that the reliance placed by the learned Single Judge on the judgment of **Bachubhai Hassanalli Karyani Vs. State of Maharashtra, reported in (1971) 3 SCC 930,** would not

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be applicable in the instant matter as the standard of proof is different in a criminal trial vis-à-vis disciplinary proceeding. It has been pointed out that Section 75(3) of the Bihar Prohibition and Excise Act clearly emphasizes on the fact that the report of breath analyzer test shall be admissible as evidence under the Indian Evidence Act.

4. *Per contra*, learned counsel for the respondent supports the judgment passed by the learned Single Judge. He submits that the extreme punishment of dismissal from service has been imposed without there being sufficient and reliable scientific evidence establishing the charge of consumption of alcohol. It is the contention of the respondent/Manju Devi that neither blood nor urine samples of her husband were collected for examination and the disciplinary authority substantially relied upon the Breath Analyzer Report. Husband of respondent had specifically explained that he was suffering from cold and cough and had consumed cough syrup containing alcohol, but merely on the basis of Breath Analyzer Report, the extreme penalty of dismissal from service was imposed upon him.

5. Learned counsel for the respondent further contends that it has been held by several judgments of this Court that the breath analyzer test is not a conclusive evidence of consumption of alcohol. In support of the same, he has referred to the Division Bench order dated 26.02.2026 of this Court passed in the case of the **State of Bihar Vs.**

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Aswasthama Mahto @ Ashwathama Mahto (L.P.A. No.105 of 2024), wherein the facts were similar and it was found that a major punishment of dismissal was imposed on the delinquent where the allegation was supported only by a report of doctor on the basis of breath analyzer test and no blood or urine test was conducted to conclusively establish the consumption of alcohol.

6. Further, reference has also been made to the case of **Bachubhai Hassanalli Karyani (supra)** and reliance has been placed on paragraphs - 4 and 5 of the judgment, which are reproduced as under:

> ***"4.*** *.....Dr Kulkarni, who examined the appellant, based his conclusion merely on the facts that the appellant's breath was smelling of alcohol, that his gait was unsteady, that his speech was incoherent and that his pupils were dilated. The doctor had admitted that a person, placed in the circumstances in which the appellant was put as a result of the accident, would be under a nervous strain and his gait might be unsteady. The doctor had also admitted that a person could smell of alcohol without being under the influence of drinking. No urine test of the appellant was carried out and although the blood of the appellant was sent for chemical analysis, no report of the analysis was produced by the prosecution.*
>
> ***5.*** *It seems to us that on this evidence it cannot be definitely held that the appellant was drunk at the time the accident occurred."*

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7. This Court has perused the order of the learned Single Judge, who, having referred to the case of **Bachubhai Hassanalli Karyani (supra)**, has held that the breath analyzer report is not a conclusive proof of consumption of alcohol and the order of dismissal of the respondent's husband is an instance of violation of principles of natural justice. On account of the aforesaid reasons, the learned Single Judge quashed and set aside the order of dismissal passed against the respondent and also the subsequent appellate order.

8. After having considered the materials on record, which includes the order of dismissal of respondent's husband from service and the appellate order confirming the same, the show-cause and its reply as also the inquiry report, the following facts emerge:

> *"(a) Whether the Breath Analyzer Report recording alcohol content of 102 mg/100 ml, in the absence of blood and urine examination, was sufficient to establish the charge against the delinquent employee?*
>
> *(b) Whether the medical examination conducted at the Primary Health Centre, Nirmali, provided adequate scientific corroboration to the Breath Analyzer Report?*
>
> *(c) Whether the defence of consumption of cough syrup was duly considered by the disciplinary authority?*
>
> *(d) Whether Section 75(3) of the Bihar Prohibition and Excise Act, 2016, could be treated as dispensing with the requirement of establishing the reliability and evidentiary value of the test report?*
>
> *(e) Whether the punishment of dismissal from service was sustainable in the absence of*

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sufficient and reliable evidence establishing the charge?"

9. This Court is thoroughly conscious of the well established principle that the High Court, while exercising its jurisdiction under Article 226 of the Constitution of India, cannot re-appreciate the evidence and arrive at finding of fact unless the authority below either exceeded his jurisdiction or acted perversely. But, if there was no evidence to justify a conclusion of guilt leading to perversity in the order, the same cannot be ignored or overlooked. The disciplinary authority, while exercising its jurisdiction, was required to arrive at a finding on the basis of relevant materials and cannot impose a major penalty merely on the basis of an allegation or an assumption. The principal material relied upon by the disciplinary authority in the present case was the ***Breath Analyzer Report*** recording alcohol content of ***102 mg/100 ml***. It is true that a Breath Analyzer is a scientific instrument used for detecting the presence of alcohol. However, the mere fact that a particular reading has been generated by a machine does not, by itself, make the result infallible or conclusive in every proceeding. The mere recording of a medical opinion confirming consumption of alcohol, without adequate particulars of the examination and its scientific basis, cannot automatically cure the deficiencies in the principal test report.

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10. Thus, taking into account the illegalities committed in the departmental proceeding and considering that the order of the disciplinary authority is visited with perversity, as the same appears to be virtually based on no evidence and also in total disregard of the defence taken by the respondent with regard to his medical condition and the use of medication, as cough syrup, we are of the considered view that the disciplinary action taken against respondent's husband based on vitiated inquiry report, would not be legally sustainable. The absence of blood and urine examination, coupled with the lack of adequate scientific corroboration and the failure to satisfactorily examine the defence taken by the delinquent employee, renders the basis of the disciplinary action legally unsustainable. The statutory recognition of test reports under Section 75(3) of the Bihar Prohibition and Excise Act, 2016, does not dispense with the requirement of examining their reliability and evidentiary value. The appellants/State have failed to make out any ground warranting interference in the present Letters Patent Appeal.

11. We accordingly find that the learned Single Judge was justified in quashing the disciplinary order dated 11.01.2020, communicated on 15.01.2020, as well as the consequential appellate order dated 30.11.2021.

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12. Accordingly, the present L.P.A. is dismissed upholding the judgment dated 19.06.2024 passed by the learned Single Judge in C.W.J.C. No. 2590 of 2022.

(Prabhat Kumar Singh, J.)

(Rana Vikram Singh, J.)

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CAV DATE	**N/A**
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