IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1199 of 2024
In
Civil Writ Jurisdiction Case No.6621 of 2023
CNR No. BRHC011166632024

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1. The State of Bihar through the Director General of Police, Government of Bihar, Patna.
2. The Additional Director General of Police-Cum-Director, Bihar Police Academy, Rajgir.
3. The Deputy Inspector General of Police-Cum-Deputy Director, Bihar Police Academy, Rajgir.
4. The Assistant Director (Administration), Bihar Police Academy, Rajgir.
5. The Chief Legal Instructor, Bihar Police Academy, Police Academy, Camp C.T.S. Nathnagar, Bhagalpur.
6. The Deputy Superintendent of Police-Cum-Enquiry Officer, Bihar Police Academy, Rajgir.

... ... Appellant/s

Versus

Rakesh Kumar Son of Late Baidyanath Ray, Resident of Village- Mata Mandir Marg, Ward 19, Bhabdepur, Sitamarhi Bazar, P.S.- Sitamarhi, District- Sitamarhi, at Present R/o- Nagar Thana Road Ward No. 10, P.S.- Sitamarhi, District Sitamarhi.

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr.Sanjay Kumar (AC to SC 8)
For the Respondent/s : Mr.Avinash, 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 order dated 29.08.2024 passed by the learned Single Judge in CWJC No. 6621 of 2023, whereby the writ petition preferred by the respondent-writ petitioner was allowed and the orders of dismissal from service and rejection of departmental appeal were quashed.

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2. The facts of the case reveals that respondent-writ petitioner was appointed as a Sub-Inspector of Police and was undergoing probationary training at CTS, Nathnagar, Bhagalpur and had proceeded on sanctioned leave for the period from 21.04.2018 to 27.04.2018 to go to Sitamarhi, his native place, to see his ailing father. On 25.04.2018, while accompanying his father to a local hospital at Sitamarhi for medical treatment, an incident allegedly took place when his father objected to a tout approaching another patient for treatment at a private nursing home. An altercation ensued, resulting in arrival of the police at the place of occurrence. The police allegedly found the respondent to have consumed liquor. He was subjected to a breath analyser test, which reportedly recorded the presence of alcohol at 78 mg/100 ml. Consequently, a criminal case was instituted against him under Section 37 of the Bihar Prohibition and Excise Act. He was arrested and remanded to judicial custody. After being released on bail, he joined his service on 29.04.2018, but on account of the aforesaid incident, the respondent was placed under suspension and departmental proceedings were initiated against him. Upon conclusion of the departmental inquiry, he was found guilty of gross misconduct and an order of dismissal from service was passed vide Order No. 385/2022, Memo No. 2280 dated 31.05.2022, issued under the signature of Deputy Inspector General of Police-cum-Deputy Director, Bihar Police Academy, Rajgir. Against

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aforesaid order, the respondent preferred a departmental appeal, which too was rejected by the Additional Director General of Police-cum-Director, Bihar Police Academy, Rajgir, vide order dated 06.01.2023.

3. Being aggrieved, the respondent approached this Court by filing CWJC No. 6621 of 2023. The learned Single Judge, by the order dated 29.08.2024, quashed the order of dismissal as well as the appellate order and directed the authorities to reinstate the respondent. However, the learned Single Judge denied him back wages for the period, during which, he remained under suspension and dismissal. The State of Bihar, being aggrieved by the aforesaid order, has preferred the present Letters Patent Appeal.

4. 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 respondent was subjected to a Breath Analyzer Test, wherein the alcohol content was found to be 78 mg/100 ml. The learned Single Judge also overlooked the deposition of departmental witness Shri Shashi Bhushan Singh, who was posted as Station House Officer at Sitamarhi on the date of occurrence, who had deposed regarding the information received about the respondent creating a disturbance at Sadar Hospital and the subsequent breath analyser examination recording 78 mg/100 ml. The delinquent was given an opportunity to defend his

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case and after following due procedure in the departmental proceeding, the punishment of dismissal was awarded to the 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 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.

5. *Per contra*, learned counsel for the respondent supports the impugned order 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 that neither his blood nor urine samples were collected for examination and the disciplinary authority substantially relied upon the Breath Analyzer Report and on the deposition of so

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called departmental witness. The deposition of the departmental witness does not establish that the respondent was actually found consuming liquor. The witness primarily speaks about the information received and the subsequent examination. The source and reliability of the information and the circumstances in which the breath analyser test was conducted were required to be examined.

6. Learned counsel for the respondent further contends that it has been specifically held in 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. 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.

7. 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*

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> *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."*

8. Heard learned counsel for the parties and perused the materials available on record, including the impugned 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 respondent 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.

9. After having considered the materials on record, which includes the order of dismissal of respondent from service and the appellate order confirming the same, the

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show-cause and its reply as also the inquiry report, the following facts emerge:

> *"(a) Whether the Breath Analyzer Report recording alcohol content of 78 mg/100 ml, in the absence of blood and urine examination, was sufficient to establish the charge against the delinquent employee?*
>
> *(b) Whether the absence of independent medical examination and other corroborative materials affects the reliability of the departmental findings?*
>
> *(c) Whether the learned Single Judge was justified in interfering with the disciplinary and appellate orders in exercise of writ jurisdiction?*
>
> *(d) Whether the punishment of dismissal from service was sustainable in the absence of sufficient and reliable evidence establishing the charge?"*

10. 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 ***78 mg/100***

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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.

11. 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’, we are of the considered view that the disciplinary action taken against respondent 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.

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12. We accordingly find that the learned Single Judge was justified in quashing the disciplinary order i.e. Order No. 385/2022, bearing Memo No. 2280 dated 31.05.2022, issued under the signature of Deputy Inspector General of Police-cum-Deputy Director, Bihar Police Academy, Rajgir, as well as the consequential appellate order, issued by the Additional Director General of Police-cum-Director, Bihar Police Academy, Rajgir, vide Memo No. 90 dated 06.01.2023.

13. Accordingly, the present L.P.A. is dismissed upholding the order dated 29.08.2024 passed by the learned Single Judge in CWJC No. 6621 of 2023.

14. Pending interlocutory applications, if any, also stand disposed of.

(Prabhat Kumar Singh, J.)

(Rana Vikram Singh, J.)

Anay

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