IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10670 of 2020

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Lal Babu Manjhi S/o-Late Narayan Manjhi Resident of Village-Bargachiya, PS-Thawe, District-Gopalganj

... ... Petitioner/s

Versus

1. The State of Bihar through the Secretary Govt. of Bihar, Patna.
2. D.G. of Police Bihar Patna
3. A.D.G. (Law and Order) Bihar Patna.
4. D.I.G. Saran Range Chapra
5. S.P. Siwan

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Ebrahim Kabir, Advocate
Ms. Shruti Sinha
For the Respondent/s : Mr. N.H. Khan, SC-I
Ms. Babita Kumari, AC to SC-I

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT
Date : 09-03-2022

Heard the learned counsels for the parties.

2. In the instant petition, petitioner has prayed for following reliefs:

> "That this is an application for issuance of an appropriate writ order or direction for quashing memo no-985/Ra.Ka. dt.-24-02-2020 issued by S.P. Siwan whereby in the light of order of dismissal passed by the D.I.G. Saran Range Chapra vide Range Order No.-45/2020 memo no-535/Go dt.- 22-02-2020 the petitioner has been dismissed from service Annexure- 4 and also ordering respondents to produce range order no. -45/20 memo no- 535/Go dt. - 22-02-2020 issued by D.I.G. Saran Range Chapra whereby petitioner has been dismissed from service as copy of the same has not been supplied to petitioner and then to

> quash the same also quash the order of S.P. Siwan memo no. - 2814/Ra.Ka. dt.-12-07-20 Annexure-6 in which he has informing that A.D.G. (Law and Order) Bihar Patna has rejected the appeal of petitioner ordered for making district order and also for ordering respondents to produce letter no. - Vi. Vaya-Go/Appeal Abhyavedan- 12/2020/101 dt 08-06-2020 whereby appeal of petitioner has been rejected and then to quash the same as said order has not been supplied to the petitioner and to reinstate the petitioner with all consequential benefits."

3. The petitioner was appointed to the post of Constable on 22.01.1990 and he has earned promotion to the post of next higher post. While he was working in the cadre of Assistant Sub-Inspector, he was involved in a case relating to offences under Section 37(B)/37(C) of Bihar Prohibition & Excise Act, 2018 and the case was registered at Muffasil (Mahadeva Out Post) Police Station Case No. 76 of 2020 dated 16.02.2020. He was arrested and released on bail on 17.02.2020. Arising out of the aforesaid incident, the disciplinary authority proceeded to issue memo on 17.02.2020. Thereafter, proceeded to dismiss the petitioner from service on 24.02.2020.

4. Feeling aggrieved and dissatisfied with the order of dismissal, petitioner preferred appeal before the appellate authority on 04.03.2020. The appellate authority confirmed the order of the disciplinary authority on 08.06.2020. Thus,

petitioner has presented this petition in questioning the orders of the disciplinary authority as well as appellate authority.

5. Learned counsel for the petitioner submitted that petitioner is a permanent employee of the Police Department of State of Bihar. Before imposition of any major penalty, he should have been subjected to disciplinary proceedings. Disciplinary authority resorted to short circuit method in dismissing the petitioner while invoking Article 311 of the Constitution and it was affirmed in appeal.

6. Learned counsel for the petitioner submitted that disciplinary authority has not recorded impracticability to hold enquiry in respect of alleged allegations levelled against the petitioner in respect of the fact that the petitioner stated to have consumed alcohol and he was doing *Hulla & Hungama* and creating nuisance in the public. The disciplinary authority has not recorded as to under what circumstances there is impracticability of holding enquiry when the allegation is that petitioner was under intoxication and disturbing the general public. The appellate authority has also not apprised the aforesaid issue relating to impracticability of holding enquiry and in the absence of recording reasons, the appellate authority has proceeded to confirm the order of disciplinary authority.

Therefore, the impugned orders passed by the disciplinary authority dated 24.02.2020 and the appellate authority dated 08.06.2020 are liable to be set aside.

7. Per contra, learned counsel for the State resisted the aforesaid contention and submitted that petitioner being in police service he should have been disciplined and model to others. On the other hand, he was under intoxication and causing nuisance in general public which has resulted in spoiling the reputation of the police department. Therefore, there is no infirmity in invoking Article 311 of the Constitution and imposition of penalty of dismissal from service. Further it is submitted that there is no infirmity in the order of the appellate authority dated 08.06.2020.

8. Heard the learned counsels for the respective parties.

9. Crux of the matter in the present petition is whether disciplinary authority could dispense holding of disciplinary proceedings against the petitioner for the alleged fact that the petitioner was in intoxication and causing nuisance in the general public on 16.02.2020 and without recording reasons for impracticable to hold inquiry.

Article 311 of the Constitution reads as under:-

"**311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State**. – (1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges

[Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply –]

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or ***(underline supplied)***

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered

to dismiss or remove such person or to reduce him in rank shall be final.]"

10. Perusal of the aforesaid Article, it is evident that it is permissible to the disciplinary authority to impose any of the major penalty (dismissal, removal and reduction in rank) without resorting to the disciplinary proceedings, however reasons is to be recorded for impracticability to hold a disciplinary proceeding.

11. No doubt, the disciplinary authority is empowered to impose any one of the major penalty pursuant to Article 311 of the Constitution. At the same time, disciplinary authority was required to write reasons as to why there is impracticability to hold enquiry so as to resort or invoke Article 311(2)(b) of the Constitution to dismiss the petitioner from service. Thus, there is non-compliance to the aforesaid provision. There is an exception provided by way of incorporation of Article 311(2) with sub-clauses (a), (b) and (c). No such inquiry is required to be conducted for the purposes of dismissal, removal or reduction in rank of persons when the same relates to dismissal on the ground of conviction or where it is not practicable to hold an inquiry for the reasons to be recorded in writing by that authority empowered to dismiss or remove a person or reduce him in rank or where it is not

possible to hold an enquiry in the interest of the security of the State. These three exceptions are recognized for dispensing with an inquiry, which is required to be conducted under Article 311 of the Constitution of India when the authority takes a decision for dismissal or removal or reduction in rank in writing. In other words, although there is a pleasure doctrine, however, the same cannot be said to be absolute and the same is subject to the conditions that when a government servant is to be dismissed or removed from service or he is reduced in rank a departmental inquiry is required to be conducted to enquire into his misconduct and only after holding such an inquiry and in the course of such inqury if he is found guilty then only a person can be removed or dismissed from service or reduced in rank.

However, such constitutional provision as set out under Article 311 of the Constitution of India could also be dispensed with under the exceptions provided in Article 311(2) of the constitution where clause (a) relates to a case where upon a conviction of a person by a criminal court on certain charges he could be dismissed or removed from service or reduced in rank without holding an inquiry. Similarly, under clause (c) an inquiry to be held against the government employee could be dispensed with if it is not possible to hold such an inquiry in the

interest of the security of the State. Sub-clause (b) on the other hand provides that such an inquiry could be dispensed with by the concerned authority, after recording reasons, for which it is not practicable to hold an inquiry. The aforesaid power is an absolute power of the disciplinary authority who after following the procedure laid down therein could resort to such extra ordinary power provided it follows the pre-conditions laid down therein meaningfully and effectively.

It should also be pointed out at this stage that clause (b) of the second proviso to Article 311(2) of the Constitution of India mandates that in case the disciplinary authority feels and decides that it is not reasonably practical to hold an inquiry against the delinquent officer the reasons for such satisfaction must be recorded in writing before an action is taken. Clause (c) of the second proviso to Article 311(2) on the other hand does not specifically prescribe for recording of such reasons for the satisfaction but at the same time there must be records to indicate that there are sufficient and cogent reasons for dispensing with the enquiry in the interest of the security of the State. Unless and until such satisfaction, based on reasonable and cogent grounds is recorded it would not be possible for the Court or the Tribunal, where such legality of an

order is challenged, to ascertain as to whether such an order passed in the interest of security of State is based on reasons and is not arbitrary. If and when such an order is challenged in the Court of law the competent authority would have to satisfy the court that the competent authority has sufficient materials on record to dispense with the enquiry in the interest of the security of the State. There are no credible and substantial materials on record in terms of clause (c) to second proviso to Article 311(2) of the Constitution. The aforesaid action of invoking the extra ordinary provisions like clause (c) to second proviso to Article 311(2) was also not found to be justified. Accordingly, the petitioner has made out a case that there is violation of Article 311(2)(b) of the Constitution. In the result, both the disciplinary authority's order dated 24.02.2020 and the appellate authority's order dated 08.06.2020 are set aside. The petition is allowed. Regulating intervening period is required to be examined by the disciplinary authority in the light of Apex Court's decision rendered in the case of ***Managing Director, ECIL V. B. Karunakar*** reported in ***(1993) 4 SCC 727*** read with ***Chairman-cum-Managing Director, Coal India Limited & Ors. V. Ananta Saha & Ors.*** reported in ***(2011) 5 SCC 142*** para 46 to 50 reads as under:

"46. In the last, the delinquent has submitted that this Court must issue directions for his reinstatement and payment or arrears of salary till date. Shri Bandhopadhyay, learned Senior Counsel appearing for the appellants, has vehemently opposed the relief sought by the delinquent contending that the delinquent has to be deprived of the back wages on the principle of "no work-no pay". The delinquent had been practising privately i.e. has been gainfully employed, thus, not entitled for back wages. Even if this Court comes to the conclusion that the High Court was justified in setting aside the order of punishment and a fresh enquiry is to be held now, the delinquent can simply be reinstated and put under suspension and would be entitled to subsistence allowance as per the service rules applicable in his case. The question of back wages shall be determined by the disciplinary authority in accordance with law only on the conclusion of the fresh enquiry.

47. It is a settled legal proposition that the result of the fresh enquiry in such a case relates back to the date of termination. The submissions advanced on behalf of the appellants that the result of the enquiry in such a fact situation relates back to the date of imposition of punishment, earlier stands fortified by a large number of judgments of this Court and particularly in R. Thiruvirkolam V. Presiding Officer, Punjab Dairy Development Corpn. Ltd. V. Kala Singh and Graphite India Ltd. V. Durgapur Projects Ltd.

48. In ECIL V. B. Karunakar and Union of India V. Y.S. Sadhu, this Court held that where the punishment awarded by the disciplinary authority is quashed by the court/tribunal on some

technical ground, the authority must be given an opportunity to conduct the enquiry afresh from the stage where it stood before the alleged vulnerability surfaced. However, for the purpose of holding fresh enquiry, the delinquent is to be reinstated and may be put under suspension. The question of back wages, etc. is determined by the disciplinary authority in accordance with law after the fresh enquiry is concluded.

49. The issue of entitlement of back wages has been considered by this Court time and again and consistently held that even after punishment imposed upon the employee is quashed by the court or tribunal, the payment of back wages still remains discretionary. Power to grant back wages is to be exercised by the court/tribunal keeping in view the facts in their entirety as no straitjacket formula can be evolved, nor a rule of universal application can be laid for such cases. Even if the delinquent is reinstated, it would not automatically make him entitled to back wages as entitlement to get back wages is independent of reinstatement. The factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate authority/court or tribunal. In such matters, the approach of the court or the tribunal should not be rigid or mechanical but flexible and realistic. (Vide U.P. SRTC V. Mitthu Singh, Akola Taluka Education Society V. Shivaji and Balasaheb Desai Sahakari S.K. Ltd. V. Kashinath Ganapati Kambale.)

50. In view of the above, the relief sought by the delinquent that the appellants be directed to pay the arrears of back wages from the date of first termination order till date, cannot be entertained and is hereby rejected. In case

> the appellants choose to hold a fresh enquiry, they are bound to reinstate the delinquent and, in case, he is put under suspension, he shall be entitled to subsistence allowance till the conclusion of the enquiry. All other entitlements would be determined by the disciplinary authority as explained hereinabove after the conclusion of the enquiry. With these observations, the appeal stands disposed of. No costs."

Disciplinary authority is hereby directed to take note of aforesaid judicial pronouncement in regulating the intervening period from the date of dismissal till a decision is taken by him. The disciplinary authority is at liberty to initiate disciplinary proceedings and conclude the same within a period of three months from the date of receipt of this order.

12. Accordingly, the present petition stands allowed.

(P. B. Bajanthri, J)

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CAV DATE	
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