

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2590 of 2022

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

... .. Petitioner/s

Versus

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.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Pramod Mishra
For the Respondent/s : Mr.M. N.H. Khan (SC-1),
Md. Fazle Karim, AC to SC-1

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL JUDGMENT

Date : 19-06-2024

Heard learned Advocate for the petitioner as well as learned Advocate for the State.

2. The petitioner has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India seeking for the following reliefs:-

“(i) A certiorari setting aside an order dated 30.11.2021 passed in Service Appeal Case No. 15/2020 by the Divisional Commissioner Koshi Division, Saharsa



(Respondent No.2) whereby and where-under the Respondent concerned has in a very casual, mechanical, illegal and torturous manner rejected the service appeal of the petitioner filed against the order of punishment dated 15.01.2020 passed from the level of Respondent District Magistrate, Supaul contained in Memo No. 332 dt. 15.1.2020 without application of it's own judicial mind which has no legal leg to stand upon.

(ii) A further certiorari setting aside the order of punishment passed against the petitioner from the level of Respondent District Magistrate, Supaul contained in Memo No. 332 dated 15.01.2020 in a very arbitrary, illegal, unjust and prejudiced manner which is a case of no evidence and violation of principle of natural justice.

(iii) A mandamus commanding and directing the Respondent concerned to reinstate the petitioner in service w.e.f. the date of his dismissal alongwith all its consequential monetary benefits, as the poor third grade employee petitioner is being penalized and tortured at the behalf of some interested high- ups without any fault on his part.”



3. It is the case of the original writ petitioner (since deceased) that when he was posted in the office of S.D.O. at Nirmali P.S. On 5th February, 2018 he was apprehended by the S.H.O. of the said Police Station on the allegation that he contravened Section 37 (a) and 37 (c) of the Bihar Prohibition and Excise Act, 2016. After his arrest he was in Judicial custody for few days. As per the relevant provision of the Service Code, the original petitioner was suspended from service as he was in incarceration for more than 48 hours. Subsequently, he was released on bail and on his prayer the order of suspension was revoked and he was directed to join his service. However, on the same ground that he consumed alcohol in contravention of the above mentioned provision of the 2016 Act, a departmental proceeding was initiated. Simultaneously, a criminal case was also initiated, which is still pending.

4. In the meantime, the District Magistrate, Supaul passed an order in conclusion of the disciplinary proceeding on 11th January, 2020 and communicated on 15th January, 2020 holding as follows:-

“श्री प्रभाकर कुमार सिंह, तत्कालीन लिपिक, अनुमंडल कार्यालय, निर्मली सम्प्रति अंचल कार्यालय, किशनपुर के विरुद्ध गठित आरोप, उक्त गठित आरोप पत्र पर उनके द्वारा समर्पित स्पष्टीकरण, समर्पित स्पष्टीकरण पर उपस्थापन



पदाधिकारी का मंतव्य तथा वर्णित मामले में संचालन पदाधिकारी द्वारा विभागीय कार्यवाही संचालनोंपरान्त समर्पित अभिलेखबद्ध जांच प्रतिवेदन के परिशीलन एवं समीक्षा से यह बात पूर्णतः स्पष्ट है कि श्री सिंह आरोपी कर्मी निर्मली में शराब के नशे में थे और निर्मली थानाध्यक्ष द्वारा शराब पीकर हंगामा करते हुए पकड़ा गया है तथा ब्रेथ एनलाईजर से जांच करने पर अल्कोहल की मात्रा 102mg/100m पाया गया और आरोपी कर्मी की चिकित्सीय जांच प्राथमिक स्वास्थ्य केन्द्र, निर्मली में करवाई गई। जिसमें चिकित्सक के द्वारा इनके शराब पीने की पुष्टि की गई है। तदुपरान्त आरोपी कर्मी के विरुद्ध निर्मली थाना कांड सं०- 18/2018 दिनांक 05.02.2018 बिहार मद्य निषेध एवं उत्पाद अधिनियम-2016 की धारा 37(c) के तहत गिरफ्तार करके न्यायालय में पेश किया गया। जहां से उनको न्यायिक हिरासत में भेज दिया गया। जमानत से मुक्त होने के उपरान्त दिनांक 28.02.2018 को योगदान समर्पित किया गया। वर्तमान में मामला न्यायालय में विचाराधीन है।

श्री सिंह द्वारा अपने पक्ष एवं बचाव में 13.8.2019 को समर्पित द्वितीय कारणपृच्छा के अवलोकन से स्पष्ट होता है कि उनके द्वारा स्पष्टीकरण में तथ्यहीन, आधारहीन बातों का उल्लेख किया गया है जो स्वीकार योग्य नहीं है। इनके द्वारा समर्पित कारणपृच्छा में ऐसी कोई बात का उल्लेख नहीं है जिसपर पुनर्विचार किया जा सके। इन्हें अपना पक्ष रखने हेतु पर्याप्त अवसर दिया गया परन्तु इनके द्वारा किसी प्रकार का ठोस पक्ष एवं साक्ष्य प्रस्तुत नहीं किया गया। अतः श्री सिंह के द्वितीय कारणपृच्छा को अस्वीकृत किया जाता है।

निष्कर्ष:-



श्री सिंह के ब्रेथ एनलाईजर जांच में अल्कोहल की मात्रा 102mg/100m पाया गया तथा चिकित्सा पदाधिकारी, प्राथमिक स्वास्थ्य केन्द्र, निर्मली द्वारा भी अल्कोहल सेवन की पुष्टि की गई है। इसके लिए वे पूर्णरूपेण दोषी हैं। इनका यह कृत्य बिहार मद्यनिषेध और उत्पाद अधिनियम-2016 के कंडिका 37(क) एवं 37(ग) और बिहार सरकारी सेवक आचार नियमावली-1976 के कंडिका-3.1 के उपकंडिका-i,ii,iii तथा नियम 04 (यथासंशोधित नियमावली-2017) में निहित निदेश के प्रतिकूल है। इनके इस आचरण से अन्य कर्मियों पर भी प्रतिकूल प्रभाव पड़ सकता है तथा अन्य कर्मियों बीच गलत संदेश जायेगा। इनके इस कृत्य के लिये वृहद शास्ति अधिरोपित किया जाना उचित प्रतीत होता है।

अतएव उपरोक्त प्रमाणित आरोपों के लिये श्री प्रभाकर कुमार सिंह, तत्कालीन लिपिक, अनुमंडल कार्यालय, निर्मली सम्प्रति अंचल कार्यालय, किशनपुर के संचालन प्रतिवेदन एवं श्री सिंह द्वारा समर्पित द्वितीय स्पष्टीकरण के सम्यक विचारोंपरान्त बिहार सरकारी सेवक (वर्गीकरण, नियंत्रण एवं अपील) नियमावली-2005 यथा (संशोधित) नियमावली-2007 के नियम-14 के उप कंडिका-(X) में निहित प्रावधानानुसार मैं महेन्द्र कुमार, भा0प्र0सं0, जिला दण्डाधिकारी एवं समाहर्ता, सुपौल इस आदेश निर्गमन की तिथि से सेवा से बर्खास्त(Discard) (जो सामान्यतया सरकार के अधीन भविष्य में नियोजन के लिये निरर्हता होगी) करने का दंड (शास्ति) देता हूँ। इस आशय की प्रविष्टि श्री प्रभाकर कुमार सिंह के सेवापुस्त में लाल रेशनाई से अंकित की जायेगी। साथ ही विभागीय कार्यवाही की प्रक्रिया समाप्त की जाती है।”



5. The original writ petitioner challenged the order of the disciplinary authority, whereby the disciplinary authority had dismissed him from his service on the ground that he took a specific defence that at the relevant point of time he was suffering from cold and cough and he took cough syrup containing certain percentage of alcohol and on suspicion he was arrested. It is also stated by the delinquent employee that no scientific examination was done by the Medical Officer or any other authority to conclusively ascertain as to whether he consumed alcohol or not on 5th February, 2018. His blood and urine samples were not taken for examination of percentage of alcohol in his blood or urine. Therefore, on the basis of breathe analyzer report a person cannot suffer major penalty like dismissal from service.

6. Having heard the learned Advocate for the petitioner and the State respondents and on perusal of the entire materials on record, this Court likes to record that breathe analyzer report is not a conclusive proof of consuming liquor by a person.

7. In *Bachubhai Hassanalli Karyani Vrs. State of Maharashtra*, reported in 1971 (3) SCC 930, the Hon'ble Supreme Court held that no conclusion with regard to consumption of alcohol by a person can be made on the facts that the appellant's breathe was smelling of alcohol, that his gait was



unsteady, that his speech was incoherent and that his pupils were dilated. Consumption of alcohol can only be ascertained by way of blood and urine test by a person suspected to have consumed alcohol.

8. In the instant case, there is also no allegation that at the time of arrest the gait of the original petitioner was unsteady, he was speaking incoherently or that his pupils were dilated.

9. In the above stated report, the Honble Supreme Court found that the blood and urine examination of the appellant was not done and finally held that mere smelling of alcohol is not enough to hold that the petitioner consumed alcohol on the date of his apprehension.

10. For the reasons stated above, I have no other alternative but to hold that the disciplinary authority failed to consider the observation of the Hon'ble Supreme Court and based his order of punishment of the original petitioner of breathe analyzer report which cannot be said to be a conclusive report of consumption of alcohol.

11. For the reasons stated above, this Court is not in a position to uphold the impugned order dated 11th January, 2020, communicated on 15th January, 2020, passed by the District Magistrate, Supaul against the original petitioner as well as the



order passed in appeal by the Commissioner based on the order dated 11th January, 2020. Accordingly, both the orders are quashed and set aside.

12. The instant writ petition is allowed.

(Bibek Chaudhuri, J)

pravinkumar/-

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Transmission Date	

