IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.54 of 2025
In
Civil Writ Jurisdiction Case No.14846 of 2021

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1. The State of Bihar through the Home Secretary, Bihar, Patna.
2. The Director General-cum-Inspector General of Police, Bihar, Patna.
3. The Additional Director General of Police, Bihar, Patna.
4. The Deputy Inspector General of Police, Champaran Range, Bettiah.
5. The Superintendent of Police, East Champaran, Motihari.
6. The Additional Superintendent of Police-cum-Enquiry Officer, Head Quarter, East Champaran, Motihari.

... ... Appellants.

Versus

Dharmraj Singh @ Dhamraj Singh Son of Chanarik Singh, Resident of Village- Kera, Post- Samser Nagar, Police Station- Daudnagar, District- Aurangabad.

... ... Respondent.

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Appearance :
For the Appellants : Mr. Manoj Kumar, AC to GP-4
For the Respondent : Mr. Upendra Mishra, Advocate
Mr. Sanjeev Kumar Sanju, Advocate
Mr. Bhaskar Sandilya, Advocate
Mr. Ravi Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE SMT. JUSTICE SONI SHRIVASTAVA

C.A.V. JUDGMENT
(Per: HONOURABLE SMT. JUSTICE SONI SHRIVASTAVA)

Date : 09-07-2026

The present Letters Patent Appeal has been filed by the respondents-State/Appellants assailing the order dated 09.05.2024, passed by the learned Single Judge, whereby the writ application has been allowed in favour of the petitioner /respondent by setting aside the order of his dismissal from service dated 02.07.2020 and also affirming the order of

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dismissal dated 30.09.2020 as well as order dated 29.06.2021 dismissing the memorial appeal of petitioner/respondent. Noticing that the petitioner /respondent has since retired, a further direction of giving all his retirement dues and financial benefits during the period 16.01.2020 till the date of his superannuation has been passed.

2. The facts of the case reveals that the respondent, after rendering satisfactory service for about thirty-two years as a constable of police under the Home Department, Government of Bihar, Patna was promoted to the post of Assistant Sub-Inspector in the year 2020. While he was posted in the reserved force at Motihari police Line, a raid was conducted in the Barrack with regard to consumption of liquor and the respondent was arrested upon finding that he had consumed liquor and Motihari Town P.S Case No. 59/2020 was registered against him under Section 37(b) of the Bihar Prohibition and Excise (Amendment) Act, 2018 and departmental proceeding No. 03/2020 was also initiated against him.

3. The learned Counsel for the appellant, has submitted that 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 respondent vide range order no. 55 of 2020. It has been contended that after coming into force of the

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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.

4. It is next submitted that the reliance placed by the learned Single Judge on the judgment of **Bachubhai Hassanalli Karyani V. 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. A reference has also been made to the judgment of **State of Bihar V. Bhagwan Singh reported in 2026 (3) PLJR 106,** especially relying on para-17 of the said judgment, wherein it has been once again been reiterated that the breath analyzer report would be admissible in evidence.

5. *Per contra*, the contention of the respondent is that he was arrested on the pretext of smell of alcohol coming from his mouth and he was examined only by a breath analyzer but neither the amount of alcohol was shown in the report nor he was subjected to any blood or urine test. The respondent has filed his reply to the show cause in the departmental proceeding taking a specific plea

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that since he was suffering from tuberculosis, he was using cough syrup and other medicines on account of the same and has also brought the prescriptions on record. However, the order of dismissal was passed on total non-consideration of the same.

6. It is further contended that, besides non-consideration of the defence of the respondent, also on the basis of totally vague evidence, he was held guilty of the charges framed against him by the inquiry report dated 30.05.2020. Learned counsel has further contended 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. 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 been made to the case of **Bachubhai Hassanalli Karyani (supra)** and reliance has been placed on paragraphs-4 and 5 of the judgment which is reproduced as under:

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> ***"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.*
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> ***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. It has also been pointed out that the Presenting Officer was not present in the proceedings which is violative of Rules-17 & 18 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 and such plea was also taken in his reply to show casue which was not addressed.

9. 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 respodnent is an instance of violation of principles of natural justice because of non-consideration of medical documents filed by him at

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the time of departmental inquiry. 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.

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

(a) The charge made against the respondent is based upon the doctor’s report confirming the fact that he had consumed alcohol but such medical report has not stood the test of proof by the maker thereof as no doctor has been examined in this regard nor the said report was proved by any other witness, coupled with the fact that the Inquiry Report does not *per se* refers or discusses, the doctor’s report, as such no reliance could have been placed on such report.

(b) The witnesses who have been examined during inquiry are only on the point of some smell coming out of the mouth of the respondent leading them to conclude that he was drunk. However, no witness has claimed to have seen him drinking and they have rather stated that no incriminating recovery was made to lend support to alcohol consumption. Thus, the evidence of the witness are merely based on conjectures and surmises.

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(c) Neither the Inquiry Report nor the order of dismissal reflect any consideration of analysis of the defence of the respondent that he was a patient of tuberculosis and was on medication, including cough syrups, which may have alcohol like smell or content.

11. 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.

12. In this regard, we may gainfully refer to the judgment of the of the Hon'ble Apex Court passed in the case of **Deputy General Manager and others vs. Ajai Kumar Srivastava** reported in **(2021) 2 SCC 612** and quote paragraphs-24 and 27 thereof:

> ***24.*** *It is thus settled that the power of judicial review, of the constitutional courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The court/tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon*

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> *consideration of the evidence reached by the disciplinary authority are perverse or suffer from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact.*
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> ***27.*** *It is true that strict rules of evidence are not applicable to departmental enquiry proceedings. However, the only requirement of law is that the allegation against the delinquent must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravity of the charge against the delinquent employee. It is true that mere conjecture or surmises cannot sustain the finding of guilt even in the departmental enquiry proceedings.*

13. In the case at hand, the materials on record go to show that the doctor's report (breath analyzer report) has not been proved in absence of the examination of the doctor and the conclusion of alcohol consumption only by smell, is a flawed conclusion. Thus, the nature of evidence which had led to finding of guilt, on the face of the record, appears to be based merely on conjectures and surmises and tantamounts to a case of no evidence and any finding based thereupon would be patently perverse requiring interference.

14. The order of the learned Single Judge has taken into account the fact that violation of natural justice has occurred on account of non-consideration of the medical documents filed by the respondent at the time of departmental inquiry. We totally concur with the view taken

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by the learned Single Judge in this respect and hold that the findings of the inquiry report are arbitrary and improper.

15. So far as the breath analyzer report is concerned, its admissibility in evidence is one thing, while its probative and conclusive value stands on a different footing. In the present case, the said report, although admissible in evidence as per Section 75(3) of the Bihar Prohibition and Excise Act, 2016, the same never got proved during the departmental inquiry and there was no other blood or urine test conducted which could act as a conclusive proof of consumption of alcohol by the respondent. As such, the inquiry report as also the order of dismissal, based solely upon such unproved document, suffers from the vice of vagueness, bordering on perversity.

16. 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, we are of the considered view that the disciplinary action taken against the respondent based on vitiated inquiry report, would not be legally sustainable. As the inquiry report is not legally sustainable, the decisions of both the disciplinary authority as well as the appellate authority can also not be sustained in the eyes of law.

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17. In view of the foregoing reasons, we are of the considered view that there is no illegality in the impugned order passed by the learned Single Judge and the same warrants no interference.

18. Accordingly, the present L.P.A. is dismissed upholding the order dated 09.05.2024 in C.W.J.C. No. 14846 of 2021.

I agree.

(Soni Shrivastava, J) **(Meenakshi Madan Rai, CJ)**

Trivedi/-

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