

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1485 of 2018

In

Civil Writ Jurisdiction Case No.12182 of 2012

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Ramesh Ram Son of Sheri Godhan Ram, Resident of Village-Baraon Kala,
P.S.-Akorhigola, District-Rohtas.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Home (Police) Department, Bihar, Patna
2. The Director General of Police, Bihar, Patna.
3. The Deputy Inspector General of Police Sahabad Range, Dehri-on-Sone Rohtas.
4. The Superintendent of Police, Bhojpur.
5. The Deputy Superintendent of Police, Ara, Bhojpur.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mrs. Punita Kumari Singh, Advocate
Mr. Surendra Kumar Mishra, Advocate
For the Respondent/s : Mr. Saroj Kumar Sharma, A.C. to AAG-3

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 16-04-2019

Heard learned counsel for the appellant at length.

2. The impugned judgment has upheld the order of dismissal and the order passed in appeal, whereby the appellant came to be dismissed from service from the post of Constable in the Bihar Police Service. The charge against him was of unauthorized absence continuously for a fairly long period and



the defence taken was that the appellant on account of his continued ailment, about which regular information had been tendered, had not been able to attend his duties. The officials, therefore, erroneously did not consider this explanation of the appellant and in a mechanical manner the order of dismissal came to passed.

3. It is the contention of the learned counsel for the appellant that the punishment even otherwise is disproportionate looking to the background of the case and she has relied on a judgment of this Court in the case of **Mithlesh Kumar Pathak Vs. The Union of India and others**, reported in **2007 (Supp.) PLJR 97 Paragraph 14** to support the said contention.

4. The explanation of the appellant was that he was suffering from an eye ailment and when he came to Patna to get himself treated he was advised also for further treatment whereafter he was being treated by a doctor at Dehri-on-Sone. From there he was referred for some mental problem, as a result whereof, he went to Ranchi and after getting himself treated he reported back for duty.

5. The charge against the appellant was not only of unauthorized absence but also of having disobeyed the orders of his superiors who had called upon him to join duties particularly



with regard to the Parliamentary Elections in the year 2004. The charges were replied to and a disciplinary inquiry was set into motion where the appellant had participated. He was also given the opportunity to cross-examine the witnesses and the report of the Inquiry Officer having recorded the entire procedure made a recommendation that the charges levelled against the appellant, particularly that of unauthorized absence, stood proved.

6. The Disciplinary Authority issued a show-cause notice and on receiving the explanation passed the impugned order of dismissal thereby confirming the findings of the Inquiry Officer and imposing the punishment of dismissal. An appeal filed against the same was pending when the appellant approached this Court by filing a writ petition which was disposed of with a direction to decide the appeal. The Appellate Authority concurred with the order of the Disciplinary Authority and upheld the order of punishment. It was recorded by the Concurring Authority that from the facts as brought on record in support of the charges it was evident that the appellant voluntarily came and went back whenever he wished. This attitude of the appellant, therefore, was not that of a member of a disciplined Police Force and consequently the mitigating circumstances about which the submissions have been raised



were not found to be available for the purpose of either reducing the penalty or even otherwise differing with the view taken by the Inquiry Officer or the Disciplinary Authority.

7. The orders, therefore, passed against the appellant having been confirmed by the Departmental Authorities led to the filing of the writ petition that has given rise to the present appeal.

8. The learned Single Judge after having traversed the aforesaid facts came to the conclusion that the findings recorded with regard to the unauthorized absence of the appellant were based on evidence and there being no procedural violation, interference was not called for. Aggrieved, the appellant is before this Court.

9. We have heard and considered the submissions raised and from the Inquiry Report, which is extensive in nature, we find that at every stage of the inquiry proceedings the appellant was given a fair opportunity to participate in the same including the opportunity to cross-examine the witnesses which has been categorically recorded by the Inquiry Officer. The evidence which was led, therefore, clearly indicated that the appellant even though had absented himself on account of his stated ailment, yet he did not join his duties and was unable to



prove that he was suffering from such a continuous ailment that it was impossible for him to join his duties. It is also evident from record that the treatment at Patna was as an Outdoor Patient and it was not that the appellant had been admitted into hospital or had been advised not to join duties. The issue relating to mental ailment and its treatment at Ranchi even though is based on a prescription but the same also does not indicate that the appellant was suffering from any such chronic ailment that impelled him not to join his duties. Thus, the finding recorded by the Inquiry Officer that the appellant according to his own choice came and went back whenever he wished does not appear to be unfounded. This finding of fact by the Inquiry Officer has been supported by the evidence on record and the conclusion drawn by the Disciplinary Authority to that effect about unauthorised absence cannot be said to be suffering from any perversity. We, therefore, do not find any error either in the procedure or the propensity of the punishment awarded which was thought proper on the facts of the present case. The appellant having not chosen to join his duties on his own volition, therefore, did not deserve to be a member of the disciplined Force.

10. We, therefore, do not find force in the appeal,



which is accordingly rejected.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.K.P./-Jagdish

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