IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.446 of 2024
In
Civil Writ Jurisdiction Case No.2546 of 2023

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1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Deputy Inspector General of Police, Military Police, Now called as Bihar Special Armed Police, Northern Zone, Muzaffarpur.
4. The Commandant, B.M.P.-6, Now Called as B.S.A.P.-6, Muzaffarpur.
5. The Deputy Superintendent of Police, B.M.P.-6, Now called as B.S.A.P.-6, Muzaffarpur.

... ... Appellant/s

Versus

Vikash Kumar @ Vikas Kumar Son of Sri Umesh Prasad Singh, Resident of Mohalla- Kanhauli Vishundat (Kalkatia Gachi), P.O.- Ramna, P.S.- Mithanpura, District- Muzaffarpur.

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr.P.K. Shahi, AG
Mr.Nadeem Seraj, GP-5
Mr.Shahbaj Alam, AC to GP-5
For the Respondent/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 21-08-2024

The appeal is by the State against the judgment of the learned Single Judge which set aside the order of dismissal passed by the appointing authority; confirmed by the appellate and revisional authority

2. We heard the learned Advocate General for the State.

3. The respondent, who was the writ petitioner was a Constable who was proceeded against on allegations of misconduct, an enquiry conducted and allegedly based on the evidence adduced, dismissed from service. The allegation of misconduct was that he celebrated a birthday party with a Probationer Lady Constable.

4. The learned Single Judge found that there was absolutely no valid evidence led at the enquiry conducted. Two officers of the police force who conducted the preliminary enquiry were examined before the Enquiry Officer. They merely stated that statements taken from eye witnesses, who saw the petitioner with the lady probationer, indicated that they were at a party and to avoid detection; the petitioner together with the probationer ran away and jumped over the boundary wall of the party venue. The learned Single Judge found that since there was no valid evidence led at the enquiry, the order of dismissal cannot be sustained.

5. We find absolutely no reason to interfere with the impugned judgment, especially in the context for there being no valid evidence led at the enquiry. Admittedly, there was a preliminary enquiry conducted and those who conducted the preliminary enquiry were alone examined before the Enquiry

Officer. They deposed only about the statements recorded from eye witnesses; which deposition is only hearsay evidence. The eye witnesses were not examined and, in such circumstance, it cannot be said that there was any valid evidence regarding the allegation of misconduct.

6. Faced with the above prospect, the learned Advocate General urged that this was a fit case where the learned Single Judge ought to have remanded the matter to the Enquiry Officer.

7. We beg to differ, since the ground on which the dismissal order was interfered with, was not a technical defect in the conduct of the enquiry. It is only when the termination of an employee is faulted on a technical ground, there is need for a remand on the ground *inter alia* of violation of principles of natural justice; so as to resume the enquiry from the stage at which the technical defect is noticed. Where, in an enquiry carried out, there was no proper evidence led, the management cannot be allowed to correct its mistake by making a remand and permitting fresh evidence to be led to find the delinquent employee guilty of the misconduct.

8. The decisions in ***Union of India v. Mohd. Ramzan Khan, (1991) 1 SCC 588*** and ***ECIL v. B. Karunakar, (1993) 4***

SCC 727; considered the issue of denial of reasonable opportunity, when the enquiry report was not supplied to the delinquent employee; after the 42nd amendment of the Constitution of India. Before the 42nd amendment of the Constitution, there was a requirement to issue notice to the delinquent employee to show-cause against the punishment proposed, for which a reasonable opportunity of making representation on the penalty proposed was a mandatory condition under Article 311 (2) of the Constitution of India. The 42nd amendment removed the above condition and it was the contention of the employers that there was no requirement to supply the enquiry report. It was categorically held that whenever the Enquiry Officer is someone other than the Disciplinary Authority and the report of the Enquiry Officer holds the employee guilty of all or any of the charges; with proposal for any punishment or not, the delinquent employee is entitled to a copy of the report to enable him to make a representation to the Disciplinary Authority against the findings in the report.

9. The non-furnishing of the report, hence amounts to violation of principles of natural justice; in which context a remand is necessitated, to supply the enquiry report and afford a

reasonable opportunity to the delinquent to represent against the prejudicial findings. The remand is to cure the technical defect, so as to avoid any prejudice being caused to the delinquent, by reason of denial of a reasonable opportunity, before being penalized and not to clear up the lacuna committed by the Management in the conduct of the enquiry; especially when the enquiry was carried out in a negligent manner without adducing any valid evidence.

10. ***ECIL*** *(supra)* by a larger Bench, on a reference made, reaffirmed the dictum in ***Mohd. Ramzan Khan*** *(supra)*. These were cases in which the Hon'ble Supreme Court found that a reasonable opportunity, to defend the allegation of misconduct levelled and represent against the findings of the enquiry report, was not afforded to the delinquent employee; in which case alone there could be a remand made for the purpose of curing the defect and affording a reasonable opportunity to the delinquent employee.

11. The learned Single Judge has relied on ***Union of India v. P. Gunasekaran; (2015) 2 SCC 610*** from which we extract Paragraph 12 and 13:

> ***12.*** *Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the*

evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

(a) the enquiry is held by a competent authority;

(b) the enquiry is held according to the procedure prescribed in that behalf;

(c) there is violation of the principles of natural justice in conducting the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) ***the finding of fact is based on no evidence.***

13. *Under Articles 226/227 of the Constitution of India, the High Court shall not:*

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.

(underlining & bold font supplied, for emphasis)

12. From the above extract it is very clear that the High Court under Article 226/227 is entitled to interfere when the finding of fact is based on no evidence. If in every case where no valid evidence is led at the enquiry proceedings, there is a remand made, it would be offering a premium to the negligence of the Management/ Disciplinary Authority and condoning the levity with which the departmental enquiry was conducted. It is the Disciplinary Authority who appoints the Enquiry Officer and also the Presenting Officer. We would think that the Presenting Officer would be well versed in the procedures and also be informed of the manner in which evidence has to be led before the Enquiry Officer to prove the misconduct alleged against the delinquent employee.

13. In disciplinary enquiry proceedings, it is also the trite principle that the standard of proof is preponderance of probability as distinguished from proof beyond reasonable

doubt; as would be required in a criminal prosecution. However, if there is no evidence led at the enquiry, there is no question of any preponderance of probability being drawn to find the allegations proved nor can the delinquent be penalized on the basis of peremptory findings without any valid evidence.

14. We find absolutely no reason to accede to the request of the learned Advocate General to grant a remand for the purpose of producing valid evidence. The Disciplinary Authority/the Department had an opportunity in a properly constituted enquiry proceeding and if such evidence was not led, the punishment of dismissal has to be found to be imposed on no valid evidence. We perfectly agree with the findings in the impugned judgment of the learned Single Judge and dismiss the appeal *in limine*.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree.

(Partha Sarthy, J)

Anushka/-

AFR/NAFR	AFR
CAV DATE	06.08.2024
Uploading Date	21.08.2024
Transmission Date	