

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (S) No. 100 of 2008

Manoj Kumar Singh, Son of Late Bhagwan Singh, Resident of Village- Patla, P.O.-Samaspur, P.S.-Gogari, District Khagaria, Constable No.285 posted in Police Lines- Deoghar. Petitioner

Versus

1. The State of Bihar.
2. The State of Jharkhand.
3. Director General of Police, Bihar, Patna.
4. Director General of Police, Jharkhand, Ranchi.
5. Dy. Inspector General of Police Dumka Range (Jharkhand).
6. Superintendent of Police, Deoghar (Jharkhand).
7. Superintendent of Police, Aurangabad. Respondents

CORAM : HON'BLE MR. JUSTICE PRAMATH PATNAIK

For the Petitioner : Dr. S. N. Pathak, Sr. Advocate & Satish Kumar, Advocate

For the Respondent Nos. 2 to 7 : Mr. Rakesh Kumar Shahi, J.C. to A.A.G. (Mr. H. K. Mehta)

For State of Bihar : Mr. Pankaj Kumar, J.C to G.A. (Bihar)

7/Dated:29th January, 2016

Per Pramath Patnaik, J.

In this writ application, the petitioner has prayed for issuance of writ of certiorari for quashing the suspension of the petitioner and for issuance of writ of mandamus commanding the respondents to revoke the suspension of the petitioner and for payment of full salary from the date of suspension till date and for direction to the respondents to post the petitioner in a suitable post to resume his duties.

2. Sans details, facts as described in writ petition is that initially the petitioner was appointed as a constable in the erstwhile State of Bihar in the year 1982 in the district of Dumka, where he continued till the year 1988. The petitioner was sent on deputation alongwith other constable and Hawaldar for maintenance of law and order in the district of Aurangabad. From Aurangabad the petitioner was deputed to Goh Police Station. Since the

petitioner did not join at Goh Police Station, Superintendent of Police, Deoghar forfeited the salary of the petitioner. Thereafter, on 27.02.1988 placed under suspension by S.P. Aurangabad (respondent no.7). Being aggrieved by order of suspension the petitioner submitted his representation for revocation of suspension order. Again after bifurcation of State, the petitioner submitted his representation vide Annexure-4 to the writ application but the said representation did not evoke any response. On 14.10.2004 vide Annexure-5, the D.I.G. Dumka Range wrote to the Superintendent of Police, Deoghar i.e. respondent no.6 as to why no departmental proceeding has been initiated and how the petitioner is put under suspension without any payment of subsistence allowance. Being aggrieved and dissatisfied with long continuous suspension for about 19 years and having no other alternative, efficacious and speedy remedy, the petitioner has approached this court by extra-ordinary jurisdiction under Article 226 of the Constitution of India for redressal of his grievances.

3. A counter-affidavit has been filed by S.P., Deoghar i.e. respondent no.6 repelling the contentions made in the writ application. It has been submitted in the counter-affidavit that the DIG, Police (Administration) on 18.08.1988 issued Last Pay Certificate and the petitioner was sent to Aurangabad (Bihar). It is evident from the letter dated 03.02.2006, the petitioner was transferred to Aurangabad vide Message dated 18.08.2008 of DIG, Patna and dated 16.03.1988 and District Order No.1219/88 of Deoghar and subsequently Last Pay Certificate issued and the copy of the letter dated 03.02.2006 has been annexed as to the counter-affidavit. It has further been submitted that the matter relates to District of Aurangabad (Bihar). The petitioner was suspended by S.P., Aurangabad (Bihar). Later on the petitioner was

transferred to Goh Police Station in Aurangabad (Bihar) and the petitioner was absconding since than. Hence, the matter completely pertains to District-Aurangabad (Bihar). It has further been submitted that there is no violation of fundamental rights and principle of natural justice as the petitioner has absconded since 19 years without any information and valid reason.

4. A counter-affidavit has been filed on behalf of respondent no.7-State of Bihar wherein it has been submitted that the petitioner was commanded to Rafiganj P.S., but he did not join Rafiganj P.S and absconded. Since the petitioner was absconded Aurangabad District Order no.269/88 dated 19.03.1988 vide Annexure-R7/A to the counter-affidavit was passed placing him under suspension. It has further been submitted that the petitioner was transferred from Deoghar District to Aurangabad but he did not join Aurangabad as evident from District Order 1438/88 dated 20.09.1988 Annexure-R7/B to the counter-affidavit. It has further been submitted that the petitioner did not join Aurangabad District after transfer so decision to revoke his suspension or initiating departmental proceeding was to be done by Deoghar District.

5. Heard Dr. S. N. Pathak, learned Senior counsel appearing for the petitioner, Mr. Rakesh Kumar Shahi, J.C. to A.A.G. learned counsel appearing for the respondent nos. 2 to 7 and Mr. Pankaj Kumar, J.C to G.A. (Bihar), learned counsel appearing for the State of Bihar and perused the records.

6. Learned senior counsel for the petitioner submits that the suspension of petitioner for long 19 years is illegal, arbitrary and against the provisions of law. Learned senior counsel further submits that the petitioner is entitled to get subsistence allowance during the suspension and learned counsel further

submits that the order of suspension is liable to be quashed on the ground of inordinate delay. Learned senior counsel for the petitioner during course of argument has referred to decision in the case of **O.P. Gupta Vs. Union of India And Others** as reported in **(1987) 4 SCC 328** wherein the Hon'ble Apex Court has been pleased to hold that suspension in a case like the present where there was no question of inflicting any departmental punishment prima facie tantamounts to imposition of penalty which is manifestly repugnant to the principles of natural justice and fair play in action. The conditions of service are within the executive power of the State or its legislative power under the proviso to Article 309 of the Constitution, but even so such rules have to be reasonable and fair and not grossly unjust. It is a clear principle of natural justice that the delinquent officer when placed under suspension is entitled to represent that the departmental proceedings should be concluded with reasonable diligence and within a reasonable period of time. If such a principle were not to be recognized, it would imply that the executive is being vested with a totally arbitrary and unfettered power of placing its officers under disability and distress for an indefinite duration.

7. Learned counsel for the respondents has assiduously submitted that the petitioner being a member of disciplined force absconded from the place of working without intimation and justifiable reason, therefore, due to such misconduct and indisciplined attitude the petitioner is not entitled to any relief.

8. After hearing learned counsel for the respective parties at length and on perusal of the documents on records, it would be apposite in the interest of justice to dispose of the writ application to consider the case of petitioner and to direct the respondents to consider the case and pass appropriate orders

under relevant provisions of Bihar Service Code, Rule 96 and 97 so far as the order of suspension is concerned. Accordingly, the writ application is disposed of with a direction to respondent nos. 6 and 7 to consider the case of petitioner and pass appropriate orders in accordance with law pertaining to suspension of petitioner within a period of 16 weeks from the date of communication/receipt of the order.

With the aforesaid direction, the writ petition stands disposed of.

(Pramath Patnaik, J.)

RKM/-