

**Leela Devi and anr. Vs. the State of Bihar and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/129687](http://sooperkanoon.com/129687)

**Court :** Patna

**Decided On :** Dec-18-2007

**Judge :** V.N. Singh, J.

**Appeal No. :** CWJC No. 11334 of 2006

**Appellant :** Leela Devi and anr.

**Respondent :** The State of Bihar and ors.

**Advocate for Def. :** Piyush Lal, JC to AAG 3

**Advocate for Pet/Ap. :** Ebrahim Kabir, Adv.

**Disposition :** Application allowed

**Judgement :**

**N.N. Singh, J.**

1. Heard learned Counsel for the petitioners and the State.
2. Husband of the petitioner was serving as Warder in the sub-jail, Jamui on 11.3.2002 and around 7.30 in the evening of 11.3.2002 when her husband was on duty, bombs were exploded in jail campus enabling 11 of the jail inmates to escape from the prison, for which a departmental proceeding was initiated against the petitioner and others posted in the sub-jail. By the impugned order, bearing

Memo. No. 2725 dated 26.9.2002, Annexure-1, her husband has been removed from service with further direction that during the period of suspension, he shall not be allowed any salary beyond the subsistence allowance. Removal order was challenged in appeal put before the appeal could be considered and disposed of, petitioner filed the instant writ case with averment that the appeal is pending before the Appellate Authority. During the pendency of the writ application, appeal has been dismissed under order, bearing Memo No. 5550 dated 1.11.2006 and the order has been placed on record through supplementary counter affidavit filed on behalf of Respondent Nos. 1 to 4 and is contained in Annexure-A.

3. Learned Counsel for the petitioner has challenged both the punishment order as also the appellate order on the ground that perusal of the two orders would indicate that the same proceeds on the basis of enquiry report dated 5.7.2002, Annexure-C to the second supplementary counter affidavit, which stood rejected by the Disciplinary Authority under orders dated 11.7.2002 as the said enquiry report was submitted without even serving the memo. of charge and in that connection, he has referred to the order dated 11.7.2002, passed by the Disciplinary Authority, which is at page 42 of the brief. He has further challenged the two orders as the same proceeds without taking into account any objective materials to prove the charge against the petitioner as also for the reason that the two orders do not take into account the defence taken by the petitioner in his show cause reply dated 17.7.2002, Annexure-G to the second supplementary counter affidavit, whereunder husband of the petitioner the delinquent had clearly stated that at the time of occurrence, dinner was being served to the jail inmates and as per the instruction of Sri Darbani Kishku, who had relieved the petitioner from duty on the date and time of occurrence, he had gone into the prison office for depositing the medicine register. The dinner continued even beyond the schedule time as the number of jail inmates was three times more than the sanctioned strength as also on account of paucity of the cook(s) which forced the authorities to draft jail inmates themselves for cooking the food. The ration store was also outside the jail gate at some distance which also consumed time in bringing the ration and cooking food. The difficulties enumerated in the written defence prevented the prison authorities, including the delinquent in carrying out the routine affair of serving food to the inmates within the schedule time over which

husband of the petitioner, the delinquent as Warder hardly had any control. It was further stated in the written defence that during the last 30 years, service records of the delinquent was blemishless and for the lapses on account of the factors, which were beyond his control, he should be exonerated from the charges leveled against him.

4. The defence as set out in the written defence does not appear to have been considered either in the original removal order or in the appellate order. The disciplinary authority himself had become the enquiry officer after he rejected the earlier enquiry report dated 5.7.2002 under orders dated 11.7.2002, as such, there was greater responsibility on his part to consider the defence of the husband of the petitioner in the impugned removal order, but perusal thereof would indicate that the defence as noted in Annexure-G to the second supplementary counter affidavit has not at all been considered rather the removal order proceeds on the basis of examination of witnesses, which witnesses were also not examined as from the order sheet of the disciplinary authority, Annexure-F to the supplementary counter affidavit, it does not appear that any witness was examined during the enquiry proceeding. Only the husband of the petitioner and one another delinquent was cross-examined as is evident from Annexures-F1 and F2 to the supplementary counter affidavit and by cross-examining the delinquent, in my opinion, charge levelled against the delinquent cannot be proved. It may be pointed out that second show cause notice dated 12.8.2002, Annexure-1 refers to preliminary enquiry report, which was submitted by the Disciplinary authority, in the circumstances, the witnesses examined during the preliminary enquiry referred to in the impugned removal order, ought to have been examined during the enquiry with liberty to the delinquent to cross examine them.

5. In the circumstances, for failure to consider the written defence of the husband of the petitioner in the original removal order dated 26.9.2002, Annexure-1 as also to examine the witnesses during the enquiry proceeding as is evident from the order sheet, Annexure-F to the supplementary counter affidavit, I set aside both the original removal as also the appellate orders, but as the husband of the petitioner left for his heavenly abode during the pendency of the appeal, I direct the authorities to pay the petitioner arrears of salary of her husband for the

suspension period till the date of superannuation/ death, whichever is earlier. For similar lapses on the part of the other employees of sub-jail, Lakhisarai, namely, Ramji Pandey and Shambhu Sharma after conclusion of the departmental proceeding, they have been let off by awarding punishments other than removal and dismissal. In this connection, reference be made to the orders dated 18.8.2007 and 26.11.2007, passed by this Court in Cr. Misc. Nos. 27760 of 2007 and 41253 of 2007, on the basis of which I had asked the counsel for the State to seek appropriate instruction on 11.12.2007, but he has not been able to respond to such direction, as such, this Court proceeded on the basis that aforesaid Ramji Pandey and Shambhu Sharma, who were involved in similar occurrence, of course in different sub-jail, were awarded punishments other than removal and dismissal.

This application is, accordingly, allowed.

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