

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14091 of 2007

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Ramesh Kumar Singh, son of Sri Rajeshwar Singh, resident of village & P.O. Dahibar, P.S. Buxar, District- Buxar

.... Petitioner

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna
2. The Inspector General of Police, Administration, Old Secretariat Building, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Abhay Kumar Singh I
 Mr. Brajesh Kumar
 Mr. Parmatma Singh

For the Respondent/s : Mr. AC to GP-11

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 02-04-2015

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Heard Sri Abhay Kumar Singh, learned counsel for the petitioner and learned AC to GP-11.

2. This is unfortunate that though the writ petition was filed in the month of November, 2007, no counter affidavit has been filed till date, whereas earlier on 21.01.2015 on the prayer made by learned State Counsel, the case was adjourned for filing counter affidavit. Thereafter, on 18.02.2015 again a prayer was made for granting time for filing counter affidavit. This time, while granting further six weeks time, this Court indicated that if within extended time, counter affidavit is not filed, the Court may contemplate to proceed with the case and decide the same on the basis of

materials available on record. Even this order was not enough for the State for filing counter affidavit and, as such, the matter was taken up for final disposal,

3. Short fact of the case is that the petitioner was initially appointed as constable on 30.06.1999 on the basis of recommendation of the selection committee, however on frivolous ground his appointment was cancelled on the basis of re-measurement of height of the petitioner by the Dy. Superintendent of Police and his services had come to an end on the ground of re-measurement on 28.07.1999. The said termination order was challenged before this Court by filing a writ petition vide C.W.J.C.No.11121 of 1999. The writ petition was allowed on 11.03.2005 and the respondents were directed to comply the order of the writ court within a period of three months. Instead of complying the order, the State preferred an appeal vide L.P.A. No. 861 of 2005, which stood dismissed on 28.11.2006. This was not the end, but thereafter, the petitioner was constrained to file a contempt petition and only thereafter the respondents by order dated 10.3.2007 issued by the Superintendent of Police, contained in Annexure-4 to the writ petition, the petitioner was appointed with effect from 10.03.2007. The petitioner has prayed for



directing the respondents to pay his salary and other allowances from the date of his initial removal till the date of his appointment vide Annexure-4 to the writ petition i.e. 10.03.2007. In support of his argument, learned counsel for the petitioner has placed reliance on an order passed by this Court on 10.02.2005 in C.W. J.C. No. 837 of 2000; Sandip Kumar Singh Vs. The State of Bihar & Ors. He submits that the petitioner of the said case was similarly removed and said removal order was set aside by this Court vide Annexure-6 to the writ petition and this Court directed to pay salary, even though the said petitioner had not discharged his duty from the date he was prevented from discharging his duty by the State. By referring to Annexure-7 to the writ petition, it has been argued that in compliance with the order of the writ court passed in C.W.J.C.No.837 of 2000, the concerned Superintendent of Police had implemented the same. Taking the plea that since in similar circumstances, one another constable i.e. Sandip Kumar Singh was granted salary for the period, during which he was prevented from discharging his duty, same relief may be granted to the petitioner. On the aforesaid ground, a prayer has been made for directing the respondents to regularise the service of the petitioner with

effect from his date of initial removal instead of re-appointment vide Annexure-4 i.e. 10.03.2007 and also for making payment of salary and other allowances.

4. Learned State Counsel even in absence of counter affidavit has argued that in the case of Sandip Kumar Singh, while setting aside the order of removal, the writ court itself had directed to make payment of salary during the period, he was restrained from discharging his duty. However, in the case of petitioner, the writ court had not granted such relief, which is evident from Annexure-2 to the writ petition. The writ court had unsettled the order of removal preliminary on the ground that it was in violation of principles of natural justice and, as such, he submits that such relief may not be granted to the petitioner.

5. Besides hearing learned counsel for the parties, I have also perused the materials available on record. Fact remains that the removal of the petitioner was already unsettled by this Court vide Annexure-2 to the writ petition and direction was given to allow the petitioner to join the service within three months. Even thereafter, the said order was not complied with and the State preferred an appeal vide L.P.A. No. 861 of 2005, which was rejected and thereafter a



contempt petition was also filed and only thereafter Annexure-4 has been issued. It is surprising that once the removal of the petitioner was set aside by the writ court, there was no occasion for the authority concerned to pass an order as if it was new appointment i.e. with effect from 10.03.2007. Once in compliance with the order of the writ court the petitioner was reinstated, it will be deemed that the petitioner continued his service from the date when earlier removal order was passed.

6. Accordingly, the period in between removal and joining pursuant to Annexure-4 shall be treated as service period and this period is required to be regularised by the respondents in accordance with law and the petitioner shall be entitled to get all other benefits save and except pay and other allowances. In view of the fact that in earlier writ petition, which was filed by the petitioner challenging the removal order, no direction was issued to make payment of salary, the Court considers that in view of principles of 'no work no pay' the petitioner may not be entitled to get salary for the said period.

7. Accordingly, the writ petition stands disposed of with above observation and direction. The regularisation of the said period

must be completed within a period of three months from the date of receipt/production of a copy of this order.



(Rakesh Kumar, J)