

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13959 of 2015

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Veer Mani Kumar s/o Sri Baleshwar Prasad, Resident of Village Nakatapura, Police Station Bihar, District Nalanda.

.... Petitioner/s

Versus

- 1.The State of Bihar.
- 2.The Director General of Police, Bihar, Patna.
- 3.The Inspector General of Police, Bhagalpur.
- 4.The Deputy Inspector General of Police, Munger.
- 5.The Superintendent of Police, Shekhpura.
- 6.The Deputy Superintendent of Police.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shivendra Kishore, Sr. Adv & Mr. Raj Kishor Prasad, Adv

For the Respondent/s : Mr. GP21- Sanjay Pandey & Mr. Nishant Kumar Jha, AC to GP-21

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

2 07-09-2015 Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application reads as follows:-

“To quashing the Shekhpura District order No. 923/2014 dated ss08.10.2014 according to Memo No. 1727/GO, R. Ka dated 08.10.2014 and 09.10.2014 passed by the Superintendent of Police, Shekhpura, whereby and whereunder, the petitioner has been dismissed from Police Service. The petitioner was implicated in 3 (three) cases he has been acquitted but one case is pending.

To quashing the order of Memo No. 2501/Sa, Sha dated 28.11.2014 passed by the Deputy Inspector General of Police, Munger whereby the appeal of the petitioner against the Sekhpura district order No. 923/2014 has been dismissed without considering over the application of the petitioner.

To the respondent be directed to appoint the petitioner from where he was dismissed as well as his training may be completed.”

3. Mr. Shivendra Kishore, learned counsel



appearing on behalf of the petitioner, while assailing the impugned order has basically concentrated on the aspect that the petitioner was appointed on 02.06.2013, and had completed the period of probation of one year, his dismissal from service could not have been made without following the mandate of Rule 828 of the Bihar Police Manual, which lays down that an order of dismissal can only be passed after holding regular departmental proceeding. He has, accordingly, also placed reliance on Appendix-49 of the Bihar Police Manual (Vol. 3) to contend that their being specific provision for holding of the departmental proceeding, the services of the petitioner could not have been dispensed with on the basis of show cause notice.

4. Mr. Sanjay Pandey, learned counsel appearing on behalf of the respondents, on the other hand has submitted that the petitioner had made a misrepresentation and in fact was a party to fraud, inasmuch as, when he had sought his appointment in the Bihar Police on the post of Constable pursuant to Advertisement No. 1 of 2012, he had suppressed the information of his being accused in three



criminal cases. To that extent, he has placed reliance on the appellate order, wherein, column no. 7 of the application form of the petitioner has been referred to and relied by the appellate authority for showing that when the petitioner had answered in negative (nahi), in response to specific information sought from the candidate including the petitioner as to whether he was made accused in criminal case that itself would go to show that the petitioner had obtained appointment by suppressing his criminal antecedent. Mr. Pandey, also relies on the judgment of the Apex Court in the case of **Commissioner of Police, New Delhi & Another vs Mehar Singh & Ors**, reported in **(2013) 7 SCC 685** and Division Bench judgment of this Court in the case of **Navin Kumar vs the State of Bihar & Ors** reported in **2015 (2) PLJR 739**.

5. In the considered opinion of this Court, there would be no dispute at least on basic fact that when the petitioner had sought appointment on the post of Constable, he had to fill up the application in the prescribed proforma. Column No. 7, of the petitioner's application in which the



details of criminal antecedent had to be given but the petitioner did not give such information and he had filled in the column 'nahi' for creating an impression that he had no criminal antecedent. It was this aspect of the matter, which was later on discovered that the petitioner had made a false statement and in fact had suppressed the fact regarding his criminal antecedent.

6. Once this aspect becomes clear that the petitioner had obtained his appointment by playing fraud and in fact making misrepresentation of his criminal antecedent, he would not be entitled to protection under Article 311(2) of the Constitution of India, an aspect which stands settled by the judgment of the Apex court in the case of **R. Vishwanatha Pillai Vs. State of Kerala & Ors.** reported in **2004(2) SCC 105** wherein affirming the full bench judgment of this Court in the case of **Rita Mishra Vs. State of Bihar & Ors.** reported in **1987 BBCJ 701**, it was held as follows:-

"15. ----- Unless the appellant can lay a claim to the post on the basis of his appointment he cannot claim the constitutional guarantee given under Article 311 of the Constitution. As he had obtained the appointment on the basis of a false caste certificate he cannot be



considered to be a person who holds a post within the meaning of Article 311 of the Constitution of India. Finding recorded by the Scrutiny Committee that the appellant got the appointment on the basis of a false caste certificate has become final. The position, therefore, is that the appellant has usurped the post which should have gone to a member of the Scheduled Castes. In view of the finding recorded by the Scrutiny Committee and upheld up to this Court, he has disqualified himself to hold the post. The appointment was void from its inception. It cannot be said that the said void appointment would enable the appellant to claim that he was holding a civil post within the meaning of Article 311 of the Constitution of India. As the appellant had obtained the appointment by playing a fraud, he cannot be allowed to take advantage of his own fraud in entering the service and claim that he was holder of the post entitled to be dealt with in terms of Article 311 of the Constitution of India or the Rules framed thereunder. Where an appointment in a service has been acquired by practicing fraud or deceit, such an appointment is no appointment in law, in service and in such a situation Article 311 of the Constitution is not attracted at all.

16. In *Ishwar Dayal Sah v. State of Bihar* the Division Bench of the Patna High Court examined the point as to whether a person who obtained the appointment on the basis of a false caste certificate was entitled to the protection of Article 311 of the Constitution. In the said case the employee had obtained appointment by producing a caste certificate that he belonged to a Scheduled Caste community which later on was found to be false. His appointment was cancelled. It was contended by the employee that the cancellation of his appointment amounted to removal from service within the meaning of Article 311 of the Constitution and was therefore void. It was contended that he could not be terminated from service without holding departmental inquiry as provided under the Rules. Dealing with the above contention, the High Court held that if the very appointment to

the civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily follow that no constitutional rights under Article 311 of the Constitution can possibly flow. It was held: (Lab IC pp. 394-95, para 12)

If the very appointment to civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily follow that no constitutional rights under Article 311 can possibly flow from such a tainted force. In such a situation, the question is whether the person concerned is at all a civil servant of the Union or the State and if he is not validly so, then the issue remains outside the purview of Article 311. If the very entry or the crossing of the threshold into the arena of the civil service of the State or the Union is put in issue and the door is barred against him, the cloak of protection under Article 311 is not attracted.

17. The point was again examined by a Full Bench of the Patna High Court in Rita Mishra v. Director, Primary Education, Bihar. The question posed before the Full Bench was whether a public servant was entitled to payment of salary to him for the work done despite the fact that his letter of appointment was forged, fraudulent or illegal. The Full Bench held: (AIR p. 32, para 13)

"13. It is manifest from the above that the rights to salary, pension and other service benefits are entirely statutory in nature in public service. Therefore, these rights, including the right to salary, spring from a valid and legal appointment to the post. Once it is found that the very appointment is illegal and is non est in the eye of the law, no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise. In particular, if the very appointment is rested on forgery, no statutory right can flow from it."

18. We agree with the view taken by the Patna High Court in the aforesaid cases.

19. It was then contended by Shri Ranjit



Kumar, learned Senior Counsel for the appellant that since the appellant has rendered about 27 years of service, the order of dismissal be substituted by an order of compulsory retirement or removal from service to protect the pensionary benefits of the appellant. We do not find any substance in this submission as well. The rights to salary, pension and other service benefits are entirely statutory in nature in public service. The appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eye of the law. The right to salary or pension after retirement flows from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on a false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for a Scheduled Caste, thus depriving a genuine Scheduled Caste candidate of appointment to that post, does not deserve any sympathy or indulgence of this Court. A person who seeks equity must come with clean hands. He, who comes to the court with false claims, cannot plead equity nor would the court be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practicing fraud."

(underlining for emphasis)

7. As a matter of fact, this Court would also find



from perusal of Rule-673 of Bihar Police Manual, that there is specific satisfaction to be recorded by the Superintendent of Police as with regard to criminal antecedent while opening the Service Book of the petitioner. For this purpose, a verification has to be made and therefore, if the petitioner had suppressed such information, his termination of service on verification of the criminal antecedent that his being accused in three criminal cases as on the date of filing of his application by itself would be sufficient to justify the order of removal of the petitioner from service.

8. Admittedly, the petitioner was on probation and his probation was never confirmed. Bihar Police Manual, does not talk of automatic confirmation of completion of the period of probation of one year and therefore, the petitioner was not entitled for the privilege of Article 311 (2) of the Constitution of India, which in fact is given by way of Rule 828 of the Bihar Police Manual.

9. This aspect of the matter, as with regard to suppression of criminal antecedent and its consequence by way of dismissal from service of an employee of uniformed



service is not only settled by the Supreme Court in the case of **R. Radhakrishnan Vs. Director General of Police & Ors.** reported in **2008(1) SCC 660** and in the case of Mehar Singh (supra) but also in a recent Division Bench judgment of this Court in the case of Navin Kumar (supra), wherein, after considering all the judgments of the Apex court, it was held that:-

“When a candidate suppressed material facts and fraudulently obtained order of appointment, his appointment can be legitimately treated as voidable at the option of the employer or could be recalled by the employer and, in such case, merely because the employee has continued in service for a number of years, on the basis of such fraudulently obtained employment, cannot get any equity in his favour or any estoppel against the employer.”

10. Thus in view of the aforesaid discussion, this Court does not find any error in the impugned order dismissing the petitioner from service.

11. At this stage, Mr. Shivendra Kishore, learned senior counsel appearing on behalf of the petitioner, submits that on account of impugned order of dismissal as affirmed by the appellate authority, the petitioner in future will stand debarred from getting appointment in the Government service though the petitioner has now been acquitted in all the three cases.

12. While this Court would not like to make any observation as with regard to impediment in the future selection of the petitioner this much can be said that now when the petitioner has been acquitted in criminal cases his case for appointment shall be considered sympathetically subject to the Rules of such employment and in accordance with law.

13. Subject to the aforesaid observation, this application fails and is, accordingly, dismissed.

(Mihir Kumar Jha, J)

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