

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15238 of 2006

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Dev Narayan Prasad, son of Ram Swaroop Prasad, resident of village
Aurangpur, P.S. Dhanarua, District Patna

.... Petitioner/s

Versus

1. The State of Bihar through Secretary, Department of Home Affairs,
Government of Bihar, Patna
2. Director General of Police, Bihar, Patna
3. Inspector General of Police, Transport, Old Secretariat Patna
4. Deputy Superintendent of Police, H.Q.R.T., Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. K.M.Joseph
Mr. Hemant Kumar

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

6 27-02-2015 Heard Mr. K.M. Joseph, learned counsel for the
petitioner and learned AC to GP No. 31.

The sole petitioner invoking writ jurisdiction of this court under Article 226 of the Constitution Of India has prayed for quashing of an order dated 16.11.2005 passed by the Inspector General of Police (Administration) /respondent no. 3. By the said order the prayer of the petitioner for regularization of his service with effect from 5.10.1986 i.e. date of initial appointment, has been rejected on the ground that there was break in service. The said order was passed in compliance with the order of the writ court passed in CWJC No. 15561 of 2004. The impugned order has been brought on record as Annexure - 9 to the writ petition.

The petitioner besides claiming for quashing of the order dated 16.11.2005 has also prayed for directing the respondents to regularize his service with effect from 5.10.1986 and also to direct for making payment of arrear of salary and allowances.

Short fact of the case is that the petitioner was appointed in view of Annexure - 1 to the writ petition on the post of attendant (anuchar), vide Annexure - 2 to the writ petition in regular pay scale. However, subsequently without any notice to the petitioner, respondents introduced break in service of the petitioner. Thereafter, petitioner filed number of representations. Learned counsel for the petitioner while referring to Annexure - 3 Series to the writ petition submits that since break was introduced in the service, the petitioner filed representation before the Assistant Inspector General of Police (Inspection) Bihar, Patna for regularizing his service. It was pleaded that without any rhyme and reason break after every six months of his service was being introduced and salary for two dates were being deducted. The petitioner thereafter filed a writ petition vide CWJC No. 249 of 1992 which was disposed of with direction to the respondents to pay salary of the petitioner from the month of June, 1992. The said writ petition was disposed of with certain directions. Since no step was taken by the



respondents the petitioner along with others were constrained to approach this court by filing contempt petition. However, said contempt petition was converted into writ petition vide CWJC No.3413 of 1994. Finally, it has been accepted that vide Annexure - 7 to the writ petition the services of the petitioner was regularized as attendant but while regularizing the service of the petitioner apparent error was committed by the authority concerned and instead of regularizing the services from the date of his initial appointment i.e. from the year 1986, it was regularized with effect from August, 1996. Along with petitioner some similarly situated persons were also regularized. Since benefit of regularization from initial date of appointment was not made the petitioner filed a writ petition vide CWJC No. 15561 of 2004 which was disposed of with a direction to the petitioner to file fresh representation before the Director General Of Police, Bihar, Patna and thereafter the D.G.P. was directed to consider the same within a specified time. Since the order dated 25/7/2005 was not complied the petitioner was constrained to file a contempt petition vide MJC No. 65 of 2006. However, during the pendency of the contempt petition order on representation of the petitioner was passed by the competent authority and thereafter the petition was disposed of granting liberty to the

petitioner to assail the said order by filing another writ petition and as such, the present writ petition has been filed.

Learned counsel for the petitioner assailing the order i.e. Annexure – 9 to the writ petition submits that the competent authority has incorrectly rejected the claim of the petitioner for regularizing his services from his initial date of appointment i.e. 20.6.1986. He submits that incorrectly break was shown in the service and as such, the order impugned is liable to be set aside.

Learned State Counsel has opposed the prayer of the petitioner. It was argued that it is the case of the petitioner himself that in his service after every six months break was introduced. Of- course same was done after two years of his initial appointment. It has further been argued that the initial appointment of the petitioner was not against sanctioned post and as such, the petitioner was working as casual worker and as such, emoluments were being paid to the petitioner. Finally, 238 posts of attendant were created and thereafter services of the petitioner was regularized by order dated 24.9.1996 i.e. Annexure - 7 to the writ petition. It was argued that along with the petitioner cases of other similarly situated persons were also regularized but regularization was done from 29.8.1996. Keeping in view the fact that after interval of every six months there was break in

service it has been argued that there is no error either in Annexure - 7 or Annexure -9 to the writ petition.

Besides hearing learned counsel for the parties I have also perused the material available on record. It is true that initially the petitioner was appointed on regular pay scale but it is evident that immediately after some time the status of the petitioner was changed. Of- course petitioner earlier filed writ petitions but on no occasion any favourable order was passed. However, it is evident that posts of attendant were not sanctioned, which was subsequently sanctioned and thereafter petitioner's service along with other similarly situated persons were regularized. On perusal of Annexure - 3 to the writ petition it is evident that at least in the year 1989 when the petitioner had filed representation it was within the knowledge of the petitioner that there was break in the service of petitioner after six month. It is further corroborated vide Annexure - 3 which is at page no. 19 i.e. representation dated 29.1.1990 that for two dates emoluments were also not paid to the petitioner. From Annexure - 5 to the writ petition i.e. an order passed by a bench of this court i.e. order dated 26.4.1995 passed in CWJC No. 3413 of 1994, it is evident that this court while permitting the petitioner to withdraw the writ petition for filing representation before the Director

General of Police had observed that so long the posts are not sanctioned the petitioner can not claim for regular scale. Since position has been clarified vide Annexure - 5 to the writ petition and in view of the order of the writ court subsequently posts were sanctioned and regularized, I do not find any defect either in the order contained in Annexure - 7 whereby services of the petitioner along with others were regularized as well as order contained in Annexure -9 whereby representation filed by the petitioner was rejected.

I do not find any ground to interfere with the matter.
The writ petition stands dismissed.

(Rakesh Kumar, J)

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