

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11876 of 2008

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Dudh Nath Ram, son of Hari Ram Resident of village Bihta English, P.O.
and P.S. Tarari, District Bhojpur, Arrah

.... Petitioner

Versus

1. The State of Bihar, through the Chief Secretary, Govt. of Bihar, The
Director General – cum – Inspector General of Police, Bihar Old Secretariat,
Patna
2. The Commandant B.M.P. -2 Dehari – on Sone, Rohtas
3. Deputy Inspector General of Police, Central Zone, B.M.P., Bihar, Patna

.... Respondents

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Appearance :

For the Petitioner : M/s Dr. K.N.Singh, Sr. Advocate
Mira Kumari, Advocate

For the State : Mr. Sudhir Kumar Singh, AC to G.A. 4

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 28-07-2015

I have heard learned counsel for the petitioner and
the State.

Initially this writ application was filed for quashing
the order no. 1923/91 dated 31.10.1991 issued by respondent
no. 2 by which the petitioner, who was a constable, has been
terminated from service. However, later on when the matter was
heard on 14.7.2015 and was posted for passing order then on
20th July 2015 I.A. No. 5722 of 2015 was filed for amendment
of the writ application as petitioner also wanted to challenge the
appellate order dated 20.8.2008 contained in Annexure D in the

counter affidavit and has been marked as Annexure 9 to the interlocutory application having been passed by the appellate authority, i.e., the respondent no. 3.

There is no opposition on the part of the State for the aforesaid amendment, thus, the same is allowed at this stage.

Learned counsel appearing for the State has submitted that the aforesaid Annexure has already been dealt with in the counter affidavit and has been appended as Annexure D, therefore, there is no requirement for filing further counter affidavit.

In the aforesaid background the matter has finally been heard.

The petitioner was terminated vide order dated 31.10.1991 as contained in Annexure 1 passed by the respondent no. 2 only stating that his services are not required in the Force. It is further admitted position that the petitioner was appointed on the temporary post of constable and while he was sent for police training, as has been recorded in Annexure 2, his character was found bad and he was found involved in at least four criminal cases and, thereafter, in terms of Rule 67(3) of the Bihar Police Manual read with order no. 30 of 1990, the impugned order was passed terminating him without assigning reason. Though the

word dismissal has been used in the order, learned counsel for the State admits that proper word would be 'terminated' as the petitioner has not been dismissed after initiating a departmental proceeding rather has terminated under the relevant provision without assigning any reason.

The petitioner assailed the aforesaid order by filing C.W.J.C. No. 3965/1992 which was dismissed on 30.10.92 by a Division Bench of this Court holding that in view of nature of cases pending against the petitioner the Court is not satisfied that any ground could be set forth warranting interference of Court. That order was never put to challenge and has attained finality. However, it appears that after acquittal in one of the cases and the case of the petitioner being that in other three cases he was not involved at all, i.e., no chargesheet having been submitted naming him, he should be reinstated in the service. The order dated 6.4.2005 passed in C.W.J.C. No. 2166 of 2004 clearly indicate that the Court was not inclined to interfere in the matter, however, the authority concerned was directed to dispose of the representation filed by the petitioner. That representation was disposed of vide decision contained in Annexure 3/1. It appears from the content of the aforesaid that the order of termination itself was assailed before the authority which was

upheld but surprisingly it has also been stated that the petitioner has a remedy of appeal also against the order. The petitioner, thereafter, has filed the appeal which was also dismissed vide Annexure 9.

It has been stated in the appellate order also that the petitioner was temporary constable and one of the conditions was that if his performance would be found dissatisfactory he can be terminated from the service. Further, that he was found involved in four criminal cases, the fact which was suppressed by him and on that count only the order of termination was passed.

Now it is contended on behalf of the petitioner that since in three other cases even chargesheet was not submitted against him and in one of the cases in which he was put on trial, judgment of acquittal has been passed in his favour, he is entitled to be reinstated. In support of the aforesaid submission the petitioner has placed reliance upon a provision contained in the circular of the State Government available in Memo No. III/RI-102/63A-10158 dated 23rd August, 1963. It is urged that in paragraph no. 7 thereof it stands stipulated that if the criminal court acquits the accused the Government servant who has earlier been punished in departmental proceedings, the appointing authority must immediately review the case as to whether he is fit

to be reinstated in service or not.

Dr. K.N.Singh, learned Senior Counsel appearing on behalf of the petitioner submits that in such a situation the only consideration should have been regarding his reinstatement and the authorities were bound to consider the same in view of the decision of the State Government as mentioned above.

I do not find substance in the submission made on behalf of the petitioner. The termination order itself discloses that it was a termination simplicitor without assigning any reason only stating that the petitioner's services are not required in the Force. It appears from the appellate order also that the petitioner being on temporary service, it was one of the condition that if his services are not found satisfactory then he would be removed from the service. The termination was not on the ground of conviction rather it was the conduct of the petitioner which was not found satisfactory and which had led to passing of the order of termination.

Thus, in my considered opinion the aforesaid circular would have no application in the case of the petitioner. That apart the order of termination was challenged before this Court and a Division Bench of this Court has already upheld that holding that, in view of the fact that the cases were pending



against the petitioner, there was no reason or sufficient ground for interference in the order impugned. Once the termination is on such ground there would be no question of reinstatement as it was not a case of dismissal on the ground of conviction in a criminal case rather was on the ground that he had suppressed factum of filing of criminal cases against him though no reason as such has assigned in the impugned order.

Thus, in my view the petitioner case is not fit for reopening the matter or for reinstatement on the aforesaid ground as the matter has already been set at rest by a Division Bench of this Court vide Annexure 2.

Accordingly this writ application is dismissed but there would no order as to costs.

(Dr. Ravi Ranjan, J)

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