

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.36 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 11128 of 2007**

- =====
1. The State of Bihar
 2. Director General of Police-Cum-Inspector General of Police, Bihar, Patna
 3. Inspector General (Administration) of Police Bihar, Patna
 4. Deputy Inspector General of Police, Sahabad Zone, Dehri on Son
 5. Superintendent of Police, Buxar
 6. Commandant, Bihar Home-Guard, Bhojpur, Ara
 7. District Magistrate, Buxar

.... Appellant/s

Versus

1. Kamla Singh, Son of Late Budhu Singh, Resident of Village- Sareja, Police Station- Rajpur, District- Buxar
2. Ram Suresh Singh, Son of Hriday Narayan Singh, resident of Village- Sareja, Police Station- Rajpur, District- Buxar

.... Respondent/s

with

=====

**Letters Patent Appeal No. 1286 of 2013
Arising out of
Civil Writ Jurisdiction Case No. 16168 of 2007**

=====

1. The State of Bihar
2. Director General of Police - Cum - Inspector General of Police, Bihar, Patna
3. Inspector General (Administration) Of Police Bihar, Patna
4. Deputy Inspector General of Police, Sahabad Zone, Dehri on Son
5. Superintendent of Police, Buxar
6. Superintendent of Police, Arwal
7. Sunil Kumar, then Dy. S.P. Dumaraon, son of late Chandrika Prasad, Resident of village- SRT-27, Rajendra Nagar, P.S.-Kadamkuan, District- Patna.

.... Appellant/s

Versus

1. Ramkesh Singh, son of late Umanath Singh, resident of village- Khatiba, PS.- Itarhi, District- Buxar.
2. Sri Ram Singh, son of Sri Dharam Raj Singh, resident of village- Bhelupur, P.S.- Itarhi, District- Buxar
3. Angad Singh, son of Ramchandra Singh, Resident of village- Bhelupur, PS- Itarhi, District- Buxar.
4. Sardar Singh, son of Sri Bhagwan Singh, Resident of village- Bhelupur, PS- Itarhi, District- Buxar.
5. Vijay Kumar Singh, son of Ram Ganesh Singh, resident of village Jamauli, P.S.- Rajpur, District- Buxar.
6. Vijay Narayan Singh, son of Sri Shiv Prasad Singh, resident of village Ekdarh, P.S.-Rajpur, District- Buxar.
7. Sukhlal Pandey, son of late Ramjanam Pandey, resident of village Bashmanpur, P.S.- Sikroul, District- Buxar.
8. Manoj Kumar Singh, son of Sri Teju Singh, resident of village Kharahana, PS.-

Itarhi, District- Buxar

9. Ajit Kumar Pandey, son of late Shivshankar Pandey, resident of village Pandeypatti, P.S.- Buxar (M), District- Buxar
10. Yogendra Chouhan, son of late Aashpujan Chouhan, resident of village Basaon Khurd 'Dera', PS.-Itarhi, District- Buxar
11. Shiv Shankar Singh, son of late Dhushan Singh, resident of village Bashudhar, P.S.- Itarhi, District- Buxar.
12. Ramashankar Singh, son of Late Dushan Singh, resident of village – Bashudhar, PS- Itarhi, District- Buxar
13. Lakshman Singh Yadav, son of Sri Sudama Singh, resident of village – Bashudhar, PS.- Itarhi, District- Buxar.

.... Respondent/s

Appearance :

(In LPA No.36 of 2014)

For the Appellant/s : Mr. Harishankar Roy, AC to PAAG

For the Respondent/s : Mr. Krishna Ranjan, Advocate.
Mr. D.K.Ojha, Advocate

(In LPA No.1286 of 2013)

For the Appellant/s : Mr. Mr. Harishankar Roy, AC to PAAG

For the Respondent/s : Mr. Krishna Ranjan, Advocate.
Mr. D.K.Ojha, Advocate

**CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 26-07-2016

The present intra court appeals under Clause X of the Letters Patent of High Court are directed against the common order dated 22.01.2013 passed by the learned Single Bench, by which the writ petitions filed by the writ petitioners (respondents herein) in both the cases, have been allowed and the orders of removal/dismissal from service of the concerned respondents has been quashed with a direction to reinstate them maintaining continuity in service since the date of removal and holding them entitled to all consequential

benefits.

2. The writ petitioners were appointed as Constables under special circumstances in the District of Buxar, pursuant to the recommendation to such effect by the then Director General of Police, followed by the recommendation of a committee constituted for the purpose of considering out of turn promotion as per Rule 660C of the Bihar Police Manual, 1978. Subsequently, by letter dated 19.09.2003 of the Superintendent of Police, Buxar, writ petitioners were intimated that they have been removed from service pursuant to letters dated 21.11.2002 and 22.08.2002 issued by the Inspector General of Police (Administration), Bihar, directing all the Deputy Inspector Generals of Police to remove the persons, who had been appointed under special circumstances.

3. Being aggrieved, the respondents filed CWJC No. 955 of 2004 challenging the order of termination dated 19.09.2003 and the same was allowed by order dated 13.09.2005, quashing the order of termination on the ground that such termination order was passed in violation of the principles of natural justice, as no show cause was issued or departmental proceeding conducted prior to passing of the impugned order. However, it was observed that the matter may be reconsidered by the authorities, if so advised, in accordance with law.



4. Pursuant to order dated 13.09.2005 in CWJC No. 955 of 2004, the respondents were reinstated in service on 30.08.2006. Thereafter, the respondents were issued show cause, to which they submitted their reply. Departmental proceeding was conducted and the respondents were again dismissed from service vide order dated 21.10.2006. The said order of termination dated 21.10.2006 was impugned in the writ petitions and the same were quashed by the learned Single Bench by order dated 22.01.2013, which has been assailed in the instant Letters Patent Appeals.

5. Learned counsel for the appellants submitted that the learned Single Bench has misdirected itself by presuming that within two months the whole procedure of conducting departmental proceeding having been completed, was nothing but an official fraud, without considering the factual aspects that such a proceeding, after giving opportunity of hearing, had been taken to its logical conclusion expeditiously, which, besides being desirable is in fact laudable. It was submitted that the learned Single Judge, at paragraph 11 of the order under appeal, has accepted that the order is a detailed order, but without any basis, has also commented that it is one sided order without giving proper opportunity or show cause etc. to the respondents.

6. Learned counsel submitted that under the



provisions of the Bihar Police Manual, 1978, which has been promulgated under the Police Act, Rules have been framed for recruitment of Police Constables and recruitment to such post has to be made, in the light of the relevant Rule, i.e. Rule 661(b) read with Police Order No. 202/1988 and Section 12 of the Police Act, 1861, by the District Superintendent of Police, for which a select list is prepared by the Selection Board duly constituted for the purpose and the Director General of Police has no discretionary power to make appointment to the post of Constable on any ground. For such proposition, he had relied upon the decision of the learned Single Bench of this Court in the case of *Sudhir Kumar v. State of Bihar* reported as **2000(3) PLJR 717**, which has been approved by a Division Bench of this Court in the case of *Hemkant Jha v. State of Bihar* reported as **2007(3) PLJR 657**.

7. Learned counsel for the appellants submitted that the State Government never amended or modified the Rules relating to recruitment of police Constables and even the Director General of Police has no special discretion to order for such appointment on any special ground, as it has not been provided for in the relevant Rules, specially the Bihar Police Manual, 1978 as amended by Notification No GSR.-1463/Ka. dated 4th February, 1989. It was submitted that in view of the aforesaid, the very appointment of the respondents as

Constables was in utter violation of the legal and statutory provisions relating to such recruitment and, thus, the same was an illegality, which cannot be condoned and the authorities have rightly removed the respondents from service following the procedure prescribed in law.

8. Learned counsel for the respondents submitted that the learned Single Bench has rightly considered the matter and come to the conclusion that the termination orders were unsustainable in law and, thus, quashed the same. Learned counsel submitted that though, initially, the then Director General of Police had recommended the names of respondents, but it was, in view of the fact that they were Home Guards and had shown exemplary courage in fighting with criminals and in this view of the matter, their appointment as Constables cannot be said to be illegal. It was further submitted that the matter was then recommended by a duly constituted committee in which the Member Secretary was an officer of the rank of Joint Secretary to the State Government and, thus, it would be deemed that the Government had approved such appointment. It was further submitted that it is the Director General of Police (cum-Inspector General of Police), who is vested with the administration of the police, as per Section 4 of the Police Act, 1861 and Section 12 of the said Act empowers him to frame such orders



and rules as he shall deem expedient relative to the organization, classification and distribution of the police force etc. It was further submitted that such power clearly made the Director General of Police (Inspector General of Police) competent to issue directions for appointment of the respondents as Constables, moreso, in view of them having shown exemplary courage in fighting with criminals while discharging the duty of Home Guard.

9. Learned counsel for the respondents placed reliance on the judgments of the High Court of Jharkhand in the case of *Madan Mishra vs. State of Bihar & Ors.* [CWJC No. 10957 of 2003]; *Awadh Prasad vs. The State of Jharkhand & Ors.* [CWJC (s) No. 3741 of 2002]; *Arbind Kumar & Anr. v. The State of Jharkhand & Ors.* [W.P.S.No. 1760 of 2002] with *Sanjeet Kumar Jha & Anr. vs. State of Jharkhand & Ors.* [WPS No. 1784 of 2003] and the judgments of this Court in the cases of *Ashok Kumar Choudhary vs. State & Ors.* [CWJC No. 10663 of 2003]; *Vijayanand Pathak vs. State of Bihar & Ors.* [CWJC No. 5279 of 2014] and *Ram Payre Pd. Singh & Ors vs. State of Bihar & Ors.* [CWJC No. 10603 of 2003], by which the writ petitioners concerned, who were also appointed, pursuant to the order of the then Director General of Police, Bihar Patna, were removed from service and such order was set aside.

10. Learned counsel for the respondents also referred to the order of the learned Single Bench of this Court in the case of ***Kamal Chandra Sah vs. The State of Bihar & Ors.*** reported as ***2006(3) PLJR 468***, in which also similar order has been passed.

11. Having considered the rival contentions, we find merit in the submissions of learned counsel for the appellants. The undisputed position is that the respondents were appointed under special circumstances by the orders of the then Director General of Police. Though a Committee, constituted for the purpose of considering out of turn promotion, under Rule 660C of the Bihar Police Manual, 1978, had also recommended their case, the procedure adopted cannot be said to be legal. Rule 660C, as amended by Government Notification bearing No GSR.-1463/Ka. dated 4th February, 1989, stipulates as under:

“660-C out of turn promotion:- The following criteria and procedure will be adopted for giving out of turn promotion:

(a) (i) The officer concerned should not have been awarded any major punishment within the date of consideration and order of out of turn promotion.

(ii) Should have very good entries in permanent character Roll.

(iii) Should have received citations for High standard of investigation, supervision of cases and for excellence in intelligence work.

(iv) Should have ability for should ring higher responsibilities consonant with the proposed promotion.

OR

Should have been awarded presidents Medal or Medal for gallantry.

OR

Should have received citation for outstanding operational work.

(b) Out of turn promotion will be decided by committee which will be constituted as follows:-

- (i) Director General and I.G. of Police, Bihar, Chairman.*
- (ii) Senior Officer-in-Charge of CID, Bihar, Member.*
- (iii) Senior Most Officer in-charge of Special Branch, Bihar-Member.*
- (iv) Senior Most Officer-Incharge of Personnel, Bihar- Member.*
- (v) Senior Most Regional I.G. of Police- Member.*
- (vi) Special Secretary /Addl. Secretary, Home Police Deptt.- Member Secretary.*

By the order of the Governor of Bihar

Sd/- S.S.P. Sinha

Deputy Secy. To Govt.”

12. Bare perusal of the said provision leaves no doubt that the Committee, which was constituted under Rule 660C of the Bihar Police Manual, has no jurisdiction for recommending any fresh appointment. The appointment of Constables has to be made in terms of Rule 661(a), which is quoted hereinbelow:

“661(a) Class of Constables.- Constables shall be distinguished as (i) Writer Constables, and (ii) Ordinary Constables. Those constables who are at least matriculates and have qualified at the competitive examination for promotion to the rank of Assistant Sub-Inspector as per rule 685 shall be known as Writer Constables whose duties will solely be those of a station writer at police-stations and will not be given out door work. He will perform office duties and conduct routine business of the police-station in the absence of the Sub Inspectors and Assistant Sub-Inspectors for which he shall be an allowance of at least Rs. 7 per month.

The strength of such posts in a district for allowance

shall be equal to the number of police stations in a district plus leave and training reserve. Certain number of posts are sanctioned for Criminal Investigation Department and Intelligence Department also for office duties.

(b) By whom appointed.- Constables shall be appointed by district Superintendent of Police for which a list will be prepared by the selection Board duly constituted for the purpose.

(c) No direct recruitment shall be made in Railways, Criminal Investigation Department, Intelligence Department and in the ranks of experts such as motor drivers and armourers (for the period of probation, see Rule 668)."

13. Thus, procedure having been codified in the Bihar Police Manual, 1978, there could not have been any departure from the same without amending the said provision. It is not the case of either side that the Bihar Police Manual, as it existed then, provides for any special power to the Director General of Police to direct for recruitment of Constables.

14. During the course of hearing, on 20.06.2016, the Court had passed the following order:

"During the course of hearing, we find that the following questions need response from the State Government:-

(1). Whether the recommendation of the Superintendent of Police for appointment of the writ-petitioners as the Constables has the approval of the State Government or not?

(2). Is there any provision in the Bihar Police Rules for relaxation of its provisions including the process of recruitment?

(3). Whether the removal of the Constables have been initiated by the State Government or by the Director General of Police?

Counsel for the appellants shall file response by way of an affidavit within two weeks. He shall produce the file wherein the Director General of Police has approved the recommendation of the Superintendent of Police for appointment of 28 persons as Constables.

List these appeals on 4th of July, 2016.”

15. Pursuant to the same, a supplementary affidavit has been filed on behalf of the appellants and the query of the Court have been replied in the following manner:

“5. That this supplementary affidavit is being filed in pursuance of order dated 20.6.2016 whereby and whereunder Hon’ble Court made enquiry on three points:-

(1). Whether the recommendation of the Superintendent of Police for appointment of the writ-petitioners as the Constables has the approval of the State Government or not?

(2). Is there any provision in the Bihar Police Rules for relaxation of its provisions including the process of recruitment?

(3). Whether the removal of the Constables have been initiated by the State Government or by the Director General of Police?

6. That regarding query no. 1, it is humbly submitted that the recommendation of the Superintendent of Police, Buxar for appointment of the writ petitioners as Constables was approved by a six members committee duly constituted by Notification of the State Government under Provisions of Rule 660(C) of the Bihar Police Manual for grant of out of turn promotion to the officers/personnel of the Bihar Police Organization.

7. That from the records available in the office it is clear that the recommendation of S.P, Buxar for the appointment of writ petitioners was not approved by the State Government. However, the above mentioned Committee, comprising of one member of the rank of Joint Secretary to the Government as its Member-Secretary, on 06.09.1997 approved the recommendation of Superintendent of Police, Buxar for appointment of the writ petitioners as Constables.

8. That in pursuance of query no. 2 of the Hon'ble Court it is humbly submitted that there is no provision in the Bihar Police Rules/Manual for relaxation of provisions regarding recruitment.

9. That regarding query no. 3 of this Hon'ble Court it is humbly submitted here that the removal of constables have been initiated by the State Government on the direction of this Hon'ble Court in response to which the police Head Quarters, Bihar, Patna vide its letter bearing Memo No. 6324/P2 dated 20.09.2000 directed all the Police establishments of Bihar to remove the constables as directed.

10. That by the same order dated 20.06.2016, this Hon'ble Court has directed to produce the file wherein the director General of Police, Bihar, Patna has approved the recommendation of the Superintendent of Police, Buxar for appointment of 28 persons as Constables. In compliance of this direction sought for file is being produced before this Hon'ble Court for its kind perusal."

16. Upon considering the categorical stand of the appellants in the supplementary affidavit, it is obvious that the State Government had never approved the appointment of the respondents

and, in fact, the steps for removal had been initiated by the State Government.

17. We have also gone through the records produced by learned counsel for the appellants, and find that such position stands corroborated. Thus, it is not in dispute that there was no provision in the Bihar Police Manual, which is the only repository of power and procedure relating to appointment of police Constables, conferring any discretionary power on the Director General of Police, to direct for appointment of Police Constables. It is also not the case of the either side that there has been any amendment granting any discretionary power to the Director General of Police to direct for appointment of Police Constables under any special circumstances.

18. It is needless to state that once the State Government has exercised its power for making the Rules i.e., the Bihar Police Manual, the same has to be strictly complied with by all concerned, till such time an appropriate amendment is made changing/modifying any of the provisions or granting any special/discretionary power to any authority. We have not been shown any such provision. The decisions relied upon by the learned counsel for the respondents are of no help to them since in the cases of ***Madan Mishra*** (supra), ***Awadh Prasad*** (supra), ***Arbind Kumar*** (supra), ***Sanjeet Kumar Jha*** (supra), ***Ashok Kumar Choudhary*** (supra),

Vijayanand Pathak (supra) and *Ram Payre Pd. Singh* (supra), the termination was without show cause and following the principles of natural justice whereas in the case of *Kamal Chandra Sah* (supra), the appointment was made by the Government of Bihar. Such is not the position in the present case.

19. In the present case, initially, the termination of the respondents had been set aside by the Court on the ground of there being no show cause and later on, the authorities, after issuing show cause, and pursuant to a proper proceeding, have passed the order of termination. Further, the State Government has taken a categorical stand on an affidavit in the present proceeding, that such appointment of the respondents was never approved by the State Government. Since, the Committee formed for considering out of turn promotion, under Rule 660C of the Bihar Police Manual, does not have any authority to recommend for any fresh appointment of Constables, even if the Member Secretary is an officer of the rank of Joint Secretary to the State Government, such recommendation can in no way be said to be a decision of the State Government for the reason that a statutory Committee has the power and jurisdiction only to the extent which has been conferred by the Statute.

20. Moreover, the present case is squarely covered by the decision of the learned Single Bench of this Court in the case of

Sudhir Kumar (supra) and a Division Bench of this Court in the case of *Hemkant Jha* (supra), where it has been held that such appointment on the post of Constable, without any advertisement and without following the procedure of appointment, is a back door method and in complete disregard of the relevant rules of the Bihar Police Manual and in violation of the constitutional mandate of equality in public employment and such dismissal has been upheld.

21. For the reasons aforesaid, the order passed by the learned single Bench dated 22.01.2013 in CWJC No. 11128 of 2007 and CWJC No. 16168 of 2007 cannot be sustained and is, accordingly, set aside and the writ petitions stand dismissed.

22. The Letters Patent Appeals stand allowed in the aforesaid terms.

(Ahsanuddin Amanullah, J)

Hemant Gupta, J I agree.

(Hemant Gupta, J)

Sujit/-

AFR/NAFR	AFR
CAV DATE	18.07.2016
Uploading Date	28.07.2016
Transmission Date	