

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 797 of 2014

IN

Civil Writ Jurisdiction Case No 18630 of 2011

- =====
1. The Union of India through the Director General of Police, Central Reserve Police Force, New Delhi
 2. Director General of Police, Central Reserve Police Force, Bihar Sector, Patna
 3. Inspector General of Police, Central Reserve Police Force, Bihar Sector, Patna
 4. Deputy Inspector General of Police, Group Central, Muzaffarpur
 5. Commandant office of the Deputy Inspector General of Police, Group Centre, Muzaffarpur

.... Appellant/s

Versus

Shri Kishun Prasad Son of Sh Deo Nandan Prasad Resident of village - Kharjama,
P.S. Masaurhi, District - Patna

.... Respondent/s

WITH

Letters Patent Appeal No 850 of 2014

IN

Civil Writ Jurisdiction Case No 21162 of 2011

- =====
1. The Union of India through the Director General of Police, Central Reserve Police Force, New Delhi
 2. Director General of Police, Central Reserve Police Force, New Delhi
 3. Inspector General of Police, Central Reserve Police Force, Bihar Sector, Patna
 4. Deputy Inspector General of Police, Group Centre, Muzaffarpur
 5. Commandant Office of the Deputy Inspector General of Police, Group Centre, Muzaffarpur

.... Appellant/s

Versus

1. Kamlesh Kumar, son of Shri Ramashish Singh, Resident of Village- Umarpur, P.S.- Buxar (Industrial Area), District- Buxar
2. Ranganath Prasad, Son of Shri Hiralal Prasad, Resident of Village- Semaria Ojhapatti, P.S.- Shahpurpatti, District- Bhojpur
3. Vidya Sagar, Son of Shri Vijay Singh, Resident of Village- Simra, P.S.- Belagunj, District- Gaya.

.... Respondent/s

WITH

Letters Patent Appeal No 852 of 2014

IN

Civil Writ Jurisdiction Case No 20366 of 2011

- =====
1. The Union of India through the Director General of Police, Central Reserve Police Force, New Delhi
 2. Director General of Police, Central Reserve Police Force, New Delhi

3. Inspector General of Police, Central Reserve Police Force, Bihar Sector, Patna
4. Deputy Inspector General of Police, Group Centre, Muzaffarpur
5. Commandant Office of the Deputy Inspector General of Police, Group Centre, Muzaffarpur

.... Appellant/s

Versus

1. Sanjay Kumar, son of Shri Parsan Tiwari, Resident of Loukhan, P.S.- Pahrpur, District- East Champaran
2. Sanjeev Kumar Singh, son of Shri Anand Prasad Singh, Resident of Village- Chechar, P.S.- Bidupur, District- Vaishali
3. Shobha Kant Yadav son of Shri Amar Nath Yadav, Resident of Village- Sonu Tola, Kachharia, P.S.- Pirpainty, District- Bhagalpur

.... Respondent/s

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Appearance :

For the Appellants : M/s Sanjay Kr, ASG, Anjani Kr Sharma, CGC & Rajesh Kr Verma, CGC

For the Respondents : M/s Ashok Kr Singh & Tej Bahadur Singh, Sr Advs
With Mr Manish Kr, Advocate

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH
And
HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 22-01-2016

These three intra-Court appeals principally arise out of the judgment and order of the learned Single Judge passed in CWJC No 20366 of 2011 and analogous cases being judgment and order dated 05.10.2012 and 06.12.2012 respectively.

2 With consent of parties, these appeals are being heard for its final disposal at this stage itself.

3 These cases are illustrative of the fact how persons

are harassed even though they are not at fault and on grounds of pure hyper technicalities.

4 An advertisement was issued for recruitment of General Duty Constables in the Central Reserve Police Force (for brevity, *CRPF*). The writ petitioners, who are respondents in these appeals, had applied. There was a written test. They all qualified. This was followed by physical fitness test. They all qualified. Interviews were taken and all the writ petitioners were found qualified but were put on the waiting list. There being substantial vacancies, appointments were then made from the waiting list as well. Accordingly, appointment letters were issued to all the writ petitioners in the year, 2003 and they all joined. On or about 28.03.2004, they were all asked to go home. They challenged this before this Court in various writ applications. *CRPF* took a stand that Central Bureau of Investigation (for brevity, *CBI*) was conducting enquiry into the examination process in respect of candidates selected for being posted in Bihar. The fact remains that *CBI* ultimately found that the candidates had committed no wrong nor were they parties to any malpractice. The only thing they could point was that the examiners had committed certain mistakes. Even those mistakes were not limited to one or other candidates but were mistakes across the selection process inasmuch as where the answer to an objective type

question had been corrected by overwriting, instead of marking the answer wrong for overwriting, the answer being correct, one mark was allotted. At the cost of repetition, this was done by the examiners not in case of any or group or a few of the examinees but it was for all examinees wherever such a situation arose. In other words, the examiners awarded the right answers with full marking notwithstanding there being overwriting therein on the basis that they were objective type questions and answers. According to CBI, this was a wrong procedure followed by the examiners. Thus obviously, the writ petitioners had nothing to do with it and they were not to be blamed for this nor is there any evidence to suggest to that. What then happened is that CRPF constituted a Board to enquire as to who were the beneficiaries of the mistake committed by the writ petitioners and who were the beneficiaries of the mistake committed by the examiners and it is because of that that they, having already been appointed, were sent home. When the said writ petition was taken for final hearing, this Court held that the writ petitioners had committed no mistake. The writ petitioners were not at fault and, as such, their appointments could not be terminated. They were all ordered to be reinstated forthwith with back wages. Accordingly, the writ petitioners were taken back in service in the year, 2005. Against these judgments by the Single Judge then delivered, pursuant to which they

rejoined, CRPF took the matter in intra-Court appeal and the Letters Patent Appeals were summarily dismissed. Thus, the order of the learned Single Judge, setting aside the order of disengagement and directing the reinstatement, became final and binding inter-party. Taking a cue from the judgment of the learned Single Judge that once a person has been appointed substantively, he could only be terminated in accordance with the disciplinary proceedings, now a disciplinary proceeding was initiated against the writ petitioners for gross misconduct. In those disciplinary proceedings, again there was no evidence against the petitioners except that they were innocent beneficiaries of a mistake committed by the CRPF examiners and upon that finding, they were all once again dismissed on grounds of gross misconduct. They filed appeal, revision and being unsuccessful, filed the present set of writ petitions. The learned Single Judge held and rightly so, in our view, that misconduct is a conscious act by an employee directing punishment through disciplinary proceedings. The learned Single Judge, in our view, rightly held that upon the entire finding of the CRPF, there was no misconduct on part of the writ petitioners and there being no misconduct on their part, the disciplinary proceeding itself was wholly misconceived and consequently, the order of dismissal was wholly without jurisdiction. The writ petitions were, thus, allowed with a direction for

reinstatement. Much belatedly, these appeals were filed by the CRPF and after condoning delay of over two years, the appeals are now being heard on merit. The parties have appeared.

5 On behalf of the writ petitioners, who are the contesting respondents, it is submitted that all along from the very initial stage, the CBI or the departmental authorities have not got an iota of evidence to show that the writ petitioners had anything to do with the mistake, as committed by the examiners. They further urge that mistake was not in case of one or two candidates but was a uniformly mistaken evaluation across the board. There was no nexus as between the examiners and the writ petitioners or any of the candidates. Then on this hyper technicality, why should the careers of the writ petitioners be sacrificed especially when they have lost almost 15 years of their prime life and will not be able to get any other employment now? In other words, they submit that they are made to suffer for fault of someone else.

6 We have heard the learned Assistant Solicitor General for the appellants and learned Senior Counsels for the contesting respondents. The first thing, we would like to notice, is what was the mistake. The mistake was that the examiner had awarded one mark for the correct answer though there was overwriting and for overwriting, they ought to have penalized the

candidate notwithstanding the correct answer. To us, it seems that if marks were awarded arbitrarily to some and for the same mistake, some others were deprived of the marks, something could be said. But, the CBI and the Department itself found that this mistake was across the board as if the examiner was not aware that if there was overwriting in the objective type question and answer, the answer had to be rejected. Other mistake was, the examiner rounded off the marks in the sense .05 and above was rounded off to 1 applying the rule of half and above. Again, this was done across the board. Are these mistakes such as to deprive the writ petitioners of their livelihood for they were not authors of the mistake or in any manner associated with the mistake? Had the mistake been taken note of before the results were published or soon thereafter but before appointment letters were issued and appointments made, then probably Courts would not have interfered but having allowed the writ petitioners to join, and then, to go back to the mistakes committed by the examiner and cancel their appointment, cannot be accepted by the Court. Moreover, this pertains to the first round of litigation as between the writ petitioners and CRPF which the CRPF lost and that order became binding inter-party. We cannot sit in appeal over that order because that order stood affirmed by the Division Bench by dismissal of the appeal of CRPF against which



they did not proceed further. Once that was done, the chapter stood closed. CRPF then started disciplinary proceedings for misconduct and, finding misconduct, dismissed the petitioners which led to the second round of litigation from which these appeals arise. The learned Single Judge has clearly held, and we agree, that when disciplinary rules talks of misconduct, misconduct being delinquency, it is not a misconduct of any third party for which the officer could be punished. It is not a case of transferred malice nor a case of something akin to vicarious liability. Misconduct is a personal conduct which is punishable. There is no misconduct at all on part of the writ petitioners and, therefore, the proceedings itself were wholly without jurisdiction. That being so, the order of dismissal was rightly set aside by the learned Single Judge and we affirm.

7 Before parting, we would like to notice that even though the learned Single Judge delivered the judgment, setting aside the dismissal in the year, 2012 and we are in the year, 2016 and there being no stay in between, the writ petitioners have been kept out of job. The order of the learned Single Judge remains to be implemented. That is a sad reflection on part of the CRPF.

8 In the result, the appeals are dismissed as meritless and the judgment and order of the learned Single Judge stands affirmed.

9 Needless to say that the writ petitioners would be made to join forthwith granting them full continuity of service and full back wages, for their dismissal was without jurisdiction. This would, however, be subject to the exception that from the time of termination of their service to the date of judgment of the learned Single Judge, which is period of about two years, they would not be entitled to their wages, if the writ petitioners are allowed to join within one month from today and all arrears are paid to them within three months. If this is not done, then even those two years' period wages would have to be paid by the CRPF.

(Navaniti Prasad Singh, J)

M.E.H./-AFR

(Nilu Agrawal, J)

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