

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.427 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 23580 of 2013**

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Kamlesh Kumar Rai, Son of Late Harihar Rai, Resident of village - Dianman ,
P.S. - Krishna Brahm , District - Buxar , Bihar.

.... Appellant/s

Versus

1. The State of Bihar through the Director General of Police, Bihar, Old Secretariat, Patna.
2. The Deputy Inspector General of Police , Central Range, P.S. - Gandhi Maidan , District- Patna.
3. The Senior Superintendent of Police, Patna, P.S. - Gandhi Maidan, District- Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Y.V .Giri, Sr. Advocate.
Mr. Awadhesh Kumar Mishra, Advocate.
Mr. Manoj Prabhakar, Advocate.

For the Respondent/s : Ms. Ratna Kumari, AC to SC 13
Mr. Mahendra Prasad, AC to SC 13.

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

**(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)
Date: 24-06-2016**

Heard learned counsel for the parties.

The present appeal, under Clause X of the Letters Patent of Patna High Court, is directed against the judgment dated 21st November, 2014 passed by the learned Single Bench by which C.W.J.C. No. 23580 of 2013, filed by the appellant, has been dismissed.

The appellant was appointed as Constable in the year



1988 and had since been working, till a departmental proceeding was initiated against him alleging that his appointment itself was illegal. The Inquiry Officer submitted his report on 25.06.2011 finding him guilty, upon which, the Disciplinary Authority, by order dated 15.10.2012, imposed punishment of dismissal from service. The appeal against the said order was also dismissed by order dated 01.06.2013, which was under challenge in the writ petition. The order dismissing the writ petition is impugned in the present appeal.

Learned counsel for the appellant submits that the appointment having been made in the year 1988 and the disciplinary proceeding having been initiated in the year 2009, due to sheer efflux of time, the appellant ought not to have been dismissed from service. Learned counsel submits that the appointment being made by the then Senior Superintendent of Police, Patna, who was the appointing authority in law, the presumption would be that the prescribed procedure had been adhered to and thus, the charge itself being untenable, any penal action, based on the same, is fit to be interfered with. Learned counsel submits that during his service period, there was no complaint and thus, after such a long period, dismissal from service is iniquitous. Learned counsel has relied on a decision of the Hon'ble Apex Court in the case of ***Kuldeep Singh v. Commissioner of Police*** reported as ***AIR 1999 SC 677***, for the



proposition that complaints not being produced during inquiry, the inquiry officer, relying on the previous statements of the complainant without supported by evidence, being perverse, the dismissal order based on such inquiry report was set aside. He has further referred to the decision of the Hon'ble Supreme Court in the case of *State of U.P. v. Saroj Kumar Sinha* reported as (2010) 2 SCC 772 for the proposition that the inquiry officer acting in a *quasi judicial* authority is not supposed to be representative of the department/disciplinary authority/Government and has to examine the evidence presented by the department and no oral evidence being examined and the documents not having been proved, could not have been taken into consideration to conclude that charges have been proved. Learned counsel has also referred to the decision of the Hon'ble Supreme Court in Civil Appeal No. 2899 of 2007 (*Sushil Kumar Yadav vs. State of Bihar & Ors.*) dated 24.07.2008, wherein it has been held that on the ground of equity, a person, having continued in service for more than ten years, should not have been disturbed. Learned counsel has also relied on the decisions of this Court dated 27.07.2011 in LPA No. 1746 of 2010 (*Deepak Kumar vs. The State of Bihar & Ors.*); dated 08.08.2011 in LPA No. 1167 of 2009 (*State of Bihar vs. Md. Manzoor Alam*) and its analogous case as well as CWJC No. 3799 of 2006 (*Satish Chandra Jha vs.*

The State of Bihar & Ors.) dated 23.07.2012 and analogous case in support of his contention.

Learned counsel for the State submits that the authorities have rightly dismissed the appellant from service as the same was without any advertisement, written or physical examination and not by any duly constituted Board, which is the requirement of law as per the relevant provisions of the Bihar Police Manual. It is submitted that the appointment of the appellant, being based on a recommendation of the Deputy Superintendent of Police, Sachivalaya, can in no way be termed to be legal. It is submitted that the mere fact that the appellant may have continued for some time will not give him protection from dismissal as employment to a public office without following the process of law being *void ab initio*, cannot be saved. Learned counsel submits that plea of non-examination of witnesses is frivolous since the appellant himself did not produce any witness in support of his case and the onus being on him, since no details with regard to the circumstances of his appointment, except for the appointment letter, being available in the official records, it was incumbent upon the appellant to justify and show to the authorities that his appointment was in accordance with the prescribed procedure in law. Learned counsel submits that the appellant has been shown indulgence by the authorities by only

dismissing him from service and not initiating any other action against him for having entered service in a patently illegal manner.

Having considered the rival contentions, we do not find any merit in the appeal. The issues raised on behalf of the appellant, of there being no evidence produced during the inquiry and his continuation in service for a long period, are fit to be rejected. From the Inquiry Report, it is clear that the appellant had not asked for adducing any evidence and, thus, the authorities themselves could not have examined any witness on behalf of the appellant. Further, there was no question of there being any evidence led on behalf of the authorities, as there cannot be any evidence for proving something which is not in existence inasmuch as when the stand of the authority was that there was no advertisement or written or physical examination or recommendation of a duly constituted Board, there could not be any evidence with them to show that the same was not done and thus, obviously, the onus was on the appellant to dispute such fact of non-existence of the advertisement, written and physical examination as well as recommendation of a duly constituted Board, either by producing documents or leading oral evidence. Thus, the same not having been done by the appellant himself, the Inquiry Report cannot be said to be bad in law. This being the factual position, in the present case, the decision of the



Hon'ble Supreme Court in the case of **Kuldeep Singh** (supra) as well as **Saroj Kumar Sinha** (supra) are distinguishable and would, thus, not be of any help to the appellant. Further, the decision of the Hon'ble Supreme Court in the case of **Sushil Kumar Yadav** (supra) and this Court in the case of **Md. Manzoor Alam** (supra) are distinguishable for the simple reason, that the order to make appointment was by the Chief Minister of the State, who is the highest executive authority and much superior to the appointing authority, i.e., the Superintendent of Police, whereas in the present case, appointment was made on the recommendation of a junior officer, i.e., the Deputy Superintendent of Police, to the appointing authority, i.e., Superintendent of Police.

As far as the case of **Satish Chandra Jha** (supra) is concerned, the order of termination was set aside in view of infraction of natural justice as there was no proper inquiry, no consideration of show cause and the order was non-speaking. Moreover, the Court had given liberty to the State to proceed afresh in accordance with law. As far as the case of **Deepak Kumar** (supra) is concerned, the same cannot be said to be a good law in view of law laid down by the Full Bench of this Court in the case of **Ram Sevak Yadav vs. State of Bihar** reported as **2013((1)PLJR 964**, in which, after considering the decisions of the Hon'ble Supreme Court



in the case of *State of Karnataka vs. Uma Devi*(3) reported as (2006) 4 SCC 1 and *The State of Karnataka v. M.L.Kesari* reported as (2010)9 SCC 247, the Court summed up its conclusion by holding that appointment made contrary to the mandate of Article 14 without open competitive selection is *void ab initio*. The Hon'ble Supreme Court in the case of *State of Bihar v. Chandreshwar Pathak* reported as (2014) 13 SCC 232, has clearly held that back door appointment without any advertisement or selection process cannot be permitted. The said case also referred to appointment of a Constable by Inspector General of Police without issuing any advertisement or giving opportunity to all eligible candidates to compete or undergo any selection process and the Court has held that in absence of any advertisement or selection process, the appointment is not protected and can be validly terminated and also negated the contention that the incumbent having served for 15 years his services could not have been terminated.

Thus, on an overall consideration of the facts and circumstances of the case and relying upon the decision of the Hon'ble Supreme Court in the case of *Chandreshwar Pathak* (supra), we do not find any error in the order of the Disciplinary Authority or the Appellate Authority, which have rightly been upheld by the learned Single Bench by the judgment impugned dated

21.11.20104 in CWJC No. 23580 of 2013.

For the reasons aforesaid, the present Letters Patent Appeal, being devoid of merit, stands dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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