

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4087 of 2014

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1. Sunil Kumar S/O Indradeo Prasad Resident Of Village - Jaitpur, P.O. Jaitpur,
P.S. Haspura, Distt. - Aurangabad

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Director General of Police - Cum - Inspector General Of Police, Patna
3. The Deputy Director General Of Police (Personnel), Bihar, Patna
4. The Deputy Inspector General (Personnel), Bihar, Patna
5. The Superintendent Of Police, Aurangabad

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. RAJENDRA PRASAD SINGH, Sr. ADVOCATE
Mr. NAVJOT YESHU & MR. RISHI RAJ

For the Respondent/s : Mr. SHARAD KUMAR SINGH, (G.P. 15.)

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 15-02-2016

The petitioner was selected on the post of Sub Inspector of Police on the basis of Advertisement No. 704/04. However, despite the petitioner being successful in all the exercise, he was still not appointed. The reason which emerges from the impugned order contained in Annexure-1 series is attributable to the petitioner and not to the respondents.

2. After the petitioner qualified in the written examination, he was required to fill in a form giving details about himself for police verification. The form filled up by the petitioner on 08.07.2008 required the petitioner to give truthful declaration about the information sought for.

3. Column 7 of annexure-5 indicates that the

petitioner had to give a clear declaration whether the petitioner was ever an accused in a criminal case and whether he had suffered any incarceration. Answer given by the petitioner was categorically 'No'.

4. When the authorities referred the matter for police verification to the concerned police station, it emerged that two criminal cases were instituted against the petitioner, namely, Haspura P.S. Case no.61 of 2008 dated 12.05.2008 and the other being Haspura P.S. Case No. 72/08 dated 02.06.2008. Both these cases were instituted against the petitioner prior to his declaration given in the form, in Annexure-5 on 08.07.2008. The respondent authorities, therefore, treated it to be a deliberate suppression of vital facts and decided not to offer him appointment on the post of Sub-Inspector of Police.

5. Learned Senior Counsel for the petitioner, Mr. Rajendra Prasad Singh, submits that the petitioner did not have clear knowledge about institution of the cases because he had not received any summons. This position stands reiterated even in reply to the counter affidavit filed on behalf of the petitioner. He further informs the Court that final form was also submitted atleast in one of the cases on 30.06.2008. It is another thing that the court disagreed and took cognizance but in both the cases, petitioner, however, stood acquitted. It is submitted that taking into consideration what the Hon'ble Apex Court had opined through Justice Markandey Katju in the case of **Commissioner of Police and others Vs. Sandeep**

Kumar, (2011) 4 S.C.C., 644., a modern approach towards reforms should be adopted by the Court and minor indiscretions committed on behalf of young and youthful persons ought to be condoned. Taking such a view, the Court, in similar circumstance, directed appointment of a person who was an accused under section 325/34 of the Indian Penal Code.

6. The State has taken a stand that the suppression on behalf of the petitioner was deliberate and willful. The Hon'ble Apex Court has taken a consistent view on such kind of abrasions and suppressions in a recent decision rendered in the case of **Devendra Kumar Vs. State of Uttaranchal and others, (2013) 9 SCC, 363.** Learned counsel representing the State takes the Court through various paragraphs of the above decision and the ratio of the decision has culminated into paragraphs 24 and 25 which reads thus :

“24. In the instant case, the High Court has placed reliance on the Government Order dated 28.04.1958 relating to verification of the character of a government servant, upon first appointment, wherein the individual is required to furnish information about criminal antecedents of the new appointees and if the incumbent is found to have made a false statement in this regard, he is liable to be discharged forthwith without prejudice to any other action as may be considered necessary by the competent authority. The purpose of seeking such information is not to find out the nature or gravity of the offence or the ultimate result of a criminal case, rather such information is sought with a view to judge the character and antecedents of the job seeker or suitability to continue in service. Withholding such material information or making false representation itself amounts to moral turpitude and is a separate and distinct matter altogether than what is involved in the criminal case.



25. More so, if the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. *Sublato fundamento cadit opus* --- a foundation being removed, the superstructure falls. A person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent court. In such a case the legal maxim *nullus commodum capere potest de injuria sua propria* applies. The persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation. (Vide Union of India Vs. Major General Madan Lal Yadav and Lily Thomas Vs. Union of India). Nor can a person claim any right arising out of his own wrongdoing (*jus ex injuria non oritur*). “

7. The Court after going through the two decisions of the Hon'ble Apex Court does not find any conflict as such with the two opinions or the views expressed in the two decisions above. In fact, this Bench had the occasion to deal with a similar matter and in the given facts of the case did adopt the view expressed by Justice Katju in the case of Sandeep Kumar (Supra). However, the same view cannot be taken in the present case because it is not only distinguishable in fact but also keeping in mind that in a small village institution of a police case does become talk of the town and since the institution of the two first information reports were dated 12.05.2008 and 02.06.2008 and the information form was filled up only on 08.07.2008, obviously the petitioner may be out of fright or over caution not to lose out on the appointment did not declare the actual position. The petitioner could have very well indicated the position after making a truthful declaration about final form etc. but,

obviously, the petitioner took a chance.

8. In addition to that, the reason why the Court is not inclined to exercise its discretion is that such selection process is long over. All appointments have been completed. The reason for non-appointment of the petitioner was communicated and made known in the year 2009 itself. Merely because he filed yet another application to seek information under Right to Information Act and the position was made known to him in the year 2011 also does not help the Court in condoning the delay because the petitioner has approached the High Court only on 20.02.2014.

9. Therefore, the settled position cannot be unsettled since the exercise of filling up the posts are long over and, in fact, persons so selected are well ensconced in service for more than half a decade or more. This writ application, therefore, is dismissed and no relief can be extended to the petitioner for the reasons above.

(Ajay Kumar Tripathi, J)

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