

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8456 of 2011

=====

Om Prakash Sharma, son of Ramdeo Sharma R/O Village- Gobind Ganj, P.S-
Gobindganj, District- East Champaran.

.... Petitioner

Versus

1. The State of Bihar
2. The Director General of Police, Bihar, Patna.
3. The D.I.G., Sasastra Bal, Bihar, Patna.
4. The Samadeshta (S.P.), B.M.P.-10, Patna.

.... Respondents

=====

Appearance :

For the Petitioner : Mr. Suresh Chandra Prasad Sinha, Adv
Mr. Ratan Kumar Sinha, Advocate
Mr. Madhukar Pandey, Advocate
For the Respondents : Mr. Kumar Kamal Nayan, AC to SC 28

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 08-09-2017

I.A. No. 615 of 2012

This Interlocutory Application has been filed for amendment of the prayer in the writ petition by adding prayer for quashing memo no. 5307/P-03 dated 27.12.2011 and communicated to the petitioner by memo no. 3451 dated 29.12.2011. Prayer has also been made for adding para 19, 20, 21 and 22 to the writ petition.

2. Having regard to the nature of the prayer made in the interlocutory application, the same is allowed and is treated as forming part of the writ petition.

3. I.A. No. 615 of 2012 stands allowed.

CWJC No. 8456 of 2011



4.The present writ petition has been filed for quashing the order of dismissal vide memo no. 455 dated 21.02.2007 (Annexure-1) as also the appellate order vide memo no. 48 dated 27.01.2009 (Annexure-2) in Appeal No. 6 of 2006; and for consequential reliefs.

5. Learned counsel for the petitioner makes a short submission to assail the order of dismissal on the ground that the show cause reply has not been duly considered by the authorities. It is further stated that the petitioner has since been acquitted in both the criminal cases in which he was made accused.

6. Learned counsel for the respondents relies on the counter affidavit to submit that the order of dismissal as well as the appellate order have rightly been passed after consideration of all the materials on the record. The petitioner was found to be indulging in criminal activities for which he was arrested. The second show cause of the petitioner was received through the Superintendent of Beur Jail which showed that once again the petitioner was in jail. The petitioner had overstayed on leave 11 times and had been absenting from his duties for three years. Punishments were meted out to him in the past during 1992, 2001- 2005, one of which was related to theft. Having regard to the track record of the petitioner therefore, he was not found to be a fit person to be retained in uniformed service as he was tarnishing the image of the Police Department.

7. Having heard the parties and on a consideration of the materials on record, this Court is of the view that as far as the ground of violation of natural justice is concerned with regard to non-consideration of the petitioner's show cause reply, there is not much merit in the submissions of



learned counsel for the petitioner. The order of dismissal dated 21.02.2007 itself discloses that both the show cause replies of the petitioner have duly been taken note of. The appellate authority has also perused the entire record and noticed the discrepancy in the stand taken by the petitioner with regard to family partition as against the plea of illness taken in the memo of appeal.

8. However, there is one aspect of the matter which requires to be considered and that is with regard to the petitioner having been acquitted in both the criminal cases in terms of judgment dated 05.03.2009 (Annexure-4) and judgment dated 05.01.2011 (Annexure-5). These judgments have come into existence after passing of the impugned order of dismissal and the appellate order. The authorities therefore, had no occasion to apply their minds to the fact that the petitioner had been acquitted of the criminal charges against him.

9. Having regard to the above and having regard to the decision of this Court in the case of *Saheb Singh @ Saheb Prasad Singh vs. State of Bihar and others*, 2003(2) PLJR 145, the impugned order dated 21.02.2007 (Annexure-1), the appellate order dated 27.01.2009 (Annexure-2) as well as the order dated 27.12.2011 (Annexure-7) dismissing the review petition of the petitioner are set aside and the matter is remanded to the Samadeshta (S.P.), B.M.P.-10, Patna (respondent no. 4) for fresh consideration and passing orders afresh in accordance with law.

10. The writ petition stands disposed of.

(Vikash Jain, J)

Chandran/BT



AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	11.09.2017
Transmission Date	N.A.

