

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1516 of 2014

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1. Sanjay Kumar Pal Son Of Jagdeo Lal Resident Of Miris Kar Toli, Police Station
- Alamganj, District Patna Petitioner/s

Versus

1. The State Of Bihar
2. The Home Secretary Home (Police) Department, Government of Bihar, Old
Secretariat, Patna
3. The Director General of Police, Police Head Quarter, Bihar, Patna
4. The Deputy Inspector General of Police C.I.D. Bihar, Patna
5. The Deputy Inspector General of Police (Human Resources), Bihar, Patna
6. The Superintendent of Police (C), C.I.D. Bihar, Patna Respondent/s

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Appearance :

For the Petitioner/s : Mr. SANDIP SINGH

For the Respondent/s : Mr. S.RAZA AHMAD

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 29-08-2017

Heard both sides.

2. The petitioner has come to this court against the order dated 03.09.2010, as contained in memo No. 2459 (Annexure-9), by which the representation of the petitioner, in the light of the order passed by this court in CWJC NO. 507 of 2004, has been rejected.

3. The petitioner was appointed on the post of experienced electrician (Constable)) in the Crime Investigation Department (CID). The petitioner remained on daily wages from February, 1992 till 15th November, 1992 and subsequently he was absorbed on the post of Constable (Electrician) w.e.f. 16.11.1992 vide order No. 1830/92 but on 10.09.2003, vide memo No. 2189, the Superintendent of Police (C) CID in pursuance of the letter of the headquarter called upon the petitioner to show cause why he should not be removed from service as he was illegally and irregularly appointed on the post of Constable. The petitioner submitted his reply that his appointment was made in accordance with law but after perusal of the reply of the petitioner the Superintendent of Police (C) CID vide order dated 26.09.2003, as contained in memo No. 1296/2003,



terminated the service of the petitioner along with eight other Constables with immediate effect. The petitioner moved this court by filing CWJC No. 507 of 2004 and this court vide order dated 30.04.2010 held that “*considering the law laid down by various benches of this court and the law laid down in the case of **State of Karnataka vs. Uma Devi reported in (2006)4 SCC 1**, this court cannot pass any positive orders. The application of the petitioner has to be considered in terms of the law laid down by the Supreme Court in the aforesaid case by the concerned authority i.e. the Superintendent of Police, C.I.D., Bihar, Patna within a period of four months*”. Whereafter, the petitioner filed representation before the competent authority but the Superintendent of Police (C) CID rejected the representation of the petitioner holding that petitioner was appointed illegally.

4. The learned counsel for the petitioner submits that nine persons were terminated from service on 26.09.2003, out of which Satish Chandra Jha and Jagdish Paswan, whose names figured at serial No. 9 and 4 in the aforesaid letter, preferred CWJC No. 3799 of 2006 and 4097 of 2006. A single bench of this court vide order dated 23.07.2012 set aside the order of termination that those persons were illegally terminated from service by non speaking order and that does not satisfy the principles of natural justice. The learned counsel for the petitioner further submits that the case of the petitioner stands on the same footing and from perusal of the order rejecting the representation of the petitioner it would appear that the authorities did not consider at all the representation of the petitioner. Hence, the order of termination of the petitioner is fit to be set aside.

5. The State has filed counter affidavit. The respondents-State have stated that Superintendent of Police, CID has got no power to appoint a Constable without following the procedure of law meant for selection of Constables. In the case of **Sudhir Kumar v. the State of Bihar reported in 2001 (3) PLJR 717** this court has interpreted the Police Manual Rule 661(b) and



Section 12 of the Police Act and held that the appointment to the post of Constable is to be made by the District Superintendent of Police for which a select list is to be prepared by the selection Board duly constituted for this purpose and the Director General of Police has no discretionary power to order or to make appointment on any ground. Letters Patent Appeal filed against the aforesaid judgement was also dismissed. It is further stated that show cause was asked from the petitioner and the petitioner submitted his reply. It has nowhere been stated in the reply that petitioner was appointed in accordance with law after due advertisement for appointment on the post of Constable. Out of nine persons Ram Bharosa Singh, whose name figured at serial No.7, filed CWJC No. 3648 of 2013 but the writ petition was dismissed on the ground that he was appointed illegally. Ram Bharosa Singh filed Letters Patent Appeal No. 619 of 2013 and the division bench of this court vide order dated 27.11.2013 held that Ram Bharosa Singh earlier filed CWJC No. 11594 of 2003 and thereafter he filed representation before the authorities and the same was dismissed on the ground of illegal appointment. Thereafter, Ram Bharosa Singh filed CWJC No. 3648 of 2013 but this court dismissed the writ petition on the ground that rejection of representation did not give rise to a fresh cause of action. The learned counsel for the respondents further submits that case of the petitioner stands exactly similar to the case of Ram Bharosa Singh who was also terminated by the same letter.

6. Having considered the facts and submission of the parties, it appears that petitioner earlier filed CWJC No. 507 of 2004 and the writ petition was disposed of on 30.04.2010 with clear order that considering the law laid down by various benches of this court and the law laid down in the case of *State of Karnataka vs. Uma Devi reported in (2006)4 SCC 1*, this court cannot pass any positive orders. It appears that this court expressed opinion on the merit of the case and thereafter petitioner was allowed to file representation before the



competent authority. The petitioner did not file any Letters Patent Appeal against the order dated 30.10.2004 passed in CWJC No. 507 of 2004. The petitioner filed this writ petition after disposal of his representation but disposal of representation does not give any fresh cause of action to the petitioner and the order passed in CWJC No. 507 of 2004 has attained finality inter parties when the court declined to interfere with the order of termination and also declined to make any observation with regard to a representation and the right to move the court again on basis of a fresh cause of action. In **(1997) 2 SCC 534 (Avinash Nagra v. the Navodaya Vidyalaya Samiti)** it was observed as follows:-

“13. The High Court also was right in its conclusion that the second writ petition is not maintainable as the principle of constructive res judicata would apply. He filed the writ petition in first instance but withdrew the same without permission of the court with liberty to file the second writ petition which was dismissed. Therefore, the second writ petition is not maintainable as held by the High Court in applying the correct principle of law. Thus considered we find no merit in the appeal for interference.”

7. From the facts it also appears that petitioner accepted the order passed in CWJC No. 507 of 2004 and filed representation. Therefore, after disposal of the representation the petitioner does not get any fresh cause of action. Thus, having regard to the discussion and facts stated above, I do not find any merit in this writ petition and consequently the writ petition is dismissed.

(Prabhat Kumar Jha, J)

BKS/-

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