

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5451 of 2004

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RAMANUJ SINGH son of late Kripit Singh, resident of village and P.O. Berhna, P.S. Barh, District-Patna.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR through the Secretary-cum-Commissioner, Department of Home, Bihar, Patna.
2. The Director General-cum-Inspector General of Police(Crime), Bihar,Patna.
3. The Additional Director General-cum-Inspector General of Police(CID)Bihar, Patna.
4. The Superintendent of Police(c) CID, Bihar, Patna.
5. The Superintendent of Police, Supaul
6. The Superintendent of Police, Saharsa

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. SATYENDRA NARAYAN SINGH, Adv.
For the Respondent/s	:	Ms. Shilpa Singh, GA12
		Ms. Abhanjalli, AC to GA12

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 22-03-2018

This writ petition under Article 226 of the Constitution of India has been filed for quashing the order dated 17.12.2003(Annexure-2) passed by Superintendent of Police, Saharsa (Respondent no. 6) by which services of petitioner has been terminated on the ground that his initial appointment was illegal.

Brief, facts of the case as stated in the petition is that petitioner learnt about the vacancy published and displayed at the office of C.I.D and applied before the respondent-authorities for his appointment on the post of constable. The ability of the



petitioner was tested and he was found qualified to be appointed and after medical and physical check up by the department's doctor he was found suitable for appointment as constable and was accordingly appointed on 23.3.1992 and was allocated Brass no. 131 by appointment letter issued under the order of Respondent no.2. Petitioner joined as constable on 23.3.1992 in the office of CID(c) Patna where he regularly served in the department and in January 1997 he was transferred to District Police, Supaul, and he was given Brass (constable) no. 349 where he continued to serve and he was transferred to the District Police, Saharsa, as constable No. 31 where he joined on 21.8.2003. Petitioner was posted at the outpost Chiraiya under Saharsa Police Station within the district of Saharsa in November 2003 and all of a sudden on 17.12.2003 he was handed over order of termination as contained in Memo no. 2592 dated 17.12.2003 on the ground of cancellation of his appointment being contrary to the laid down procedure and same was illegal. It has further been submitted that after his appointment on 23.3.1992 petitioner continued to serve for 11 years against permanent vacant post for which he was duly paid his monthly salary and was never subjected to any departmental proceeding or even any show cause was issued to him.



It has been submitted by learned counsel for the petitioner that no service of an employee having long tenure can be terminated only on the ground of irregularity committed by the authorities at the time of initial appointment. Petitioner has relied upon several judgments and two judgments have been enclosed by him in the rejoinder to the counter affidavit as contained in Annexures 3 and 4.

A counter affidavit has been filed on behalf Superintendent of Police, Saharsa (Respondent no. 6) in which it has been stated that petitioner was transferred from Supaul district to Saharsa district by order dated 21.8.2003 and he was adjusted in Saharsa District Police and petitioner served in Chairaiya out post as constable. On 13.12.2003 Superintendent of Police, Supaul, vide memo dated 9.12.2003 which was reproduced by the Supaul District Order No. 1450 of 2003 was received in the office of the respondents and from which it reveals petitioner was dismissed from service on the ground of illegal appointment. This illegal appointment refers Police (headquarter) Patna Memo dated 20.9.2000 and Memo dated 6.3.2003 and Criminal Investigation Action Department, Patna, order no. 1295 of 2003 and Memo dated 26.9.2003.



A counter affidavit has also been filed on behalf of Superintendent of Police © CID. Bihar, Patna, (Respondent no. 4) in which it has been stated that services of petitioner was terminated on the ground that his initial appointment was illegal and without following the procedure for appointment of constable. The appointment of constable is to be made by the District Superintendent of Police for which a list is prepared by Selection Board duly constituted for this purpose. The D.G.P. has no discretionary power to make appointment in this regard even on compassionate ground and appointment has to be made by the District Level Committee under the Chairmanship of the District Magistrate. Section 12 of the Police Act empowers the D.G.P. to make Rules including mode of selection of constable but the same does not empower him to make appointment or issue direction for appointment of individual constable by issuing order. As per police manual Rule 661(b) and Section 12 of Police Act 1861 appointment is to be made by District Superintendent of Police and same has been upheld in case of Sudhir Kumar vs. State of Bihar and others since reported in 2000(3) PLJR 717 and same has been upheld by Division Bench also. The Hon'ble High Court has directed the State Government to look into the backdoor illegal appointment made by police department by violating the Rules



governing appointment of constable. It has been submitted from perusal of appointment letter of the petitioners, as contained in Annexure-1, that the appointment of petitioner was made by the order of the then Inspector General of Police, CID, Bihar, contrary to rules for appointment on the post of constable and pursuant to direction of Hon'ble Court the Home (Police) Department , Government of Bihar vide letter dated 4.9.2000 instructed the D.G-cum-I.G. Police, Bihar, to take steps for terminating/cancelling appointment of such illegal appointees who have been appointed violating the prescribed Rules. It has further been submitted that petitioner was asked to submit his explanation vide Memo dated 10.9.2003 but he did not submit his explanation and CID, Bihar, thereafter vide Memo dated 26.9.2003 issued the letter of termination.

After hearing the parties and going through the materials available on record, this Court finds that initial appointment of petitioners was contrary to the Rules and procedures prescribed for appointment of constable and as such it was a backdoor appointment. The appointment was void from its inception. There was no requirement of compliance of any natural justice. However, in case of petitioner even show cause has been given to him. Petitioner cannot take a plea of violation of Article 14 and 16 as



his appointment itself was in violation of Article 14 and 16 of the Constitution. Petitioner must perish by the same sword by which he came. The appointment of petitioners itself is illegal, void ab initio. They cannot claim any protection under Article 311 of the Constitution as they are not holder of any civil post.

Similar issue had come up before the Hon'ble Apex Court in the case of ***State of Bihar and Others vs. Chandreshwar Pathak*** since reported in ***(2014) 13 Supreme Court Cases 232*** and paragraphs No.7, 8, 9, 10 and 13 are extracted below :-

“ 7. The learned counsel for the respondent supported the impugned order and submitted that having regard to the fact that the respondent had already served for 15 years, termination of his services was not called for.

8. The only question for consideration is whether the appointment of the respondent made without any advertisement or selection process can be considered to be a valid appointment to a public post protected under Articles 14 or 311 of the Constitution of India?

9. On due consideration, we are of the view that the impugned judgment cannot be sustained for the reasons that follow.

10. The order of appointment, in the present case, is as follows :

“In the light of the order passed by the Inspector General of Police, Criminal Investigation Department, Bihar, Patna, vide his Letter No.6/86 F3 Shri Chandeshwar Pathak, s/o Shri Devnarayan Pathak of Village-Haraji, PO Haraji, PS Dimbara, District Chhapra was appointed as Constable temporarily from 14-1-1988



afternoon on the condition that his previous character found satisfactory and as and when necessary, his service shall be terminated without assigning any reason or show cause. His pay scale shall be Rs. 425010,565 EB-10-605 with the basic pay of Rs.425. He has been allotted CT No. 390.”

It is clear from the above order that the appointment has been given only on the asking of the Inspector General of Police. There is nothing to show that any advertisement was issued giving opportunity to all eligible candidates to compete or any selection process was undertaken before appointment of the respondent.

13. Accordingly, it has to be held that in the absence of any advertisement or selection process, the appointment of the respondent is not protected and could be validly terminated. The learned Single Judge was justified in dismissing the writ petition while the Division Bench erred in interfering with the same.”

The writ petition is devoid of any merit and is accordingly dismissed.

(S. Kumar, J)

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CAV DATE	
Uploading Date	
Transmission Date	

