

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5025 of 2013

Ganesh Chaudhary S/O Late Gulab Chaudhary R/O Vill-Sumati Path,
Mohalla-Ranighat, P.O.Mahendru-800006, P.S.Sultanganj, Distt-Patna

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Home (Police) Department, Government Of Bihar, Patna
3. The Superintendent Of Police(Crime), Crime Investigation Department, Government Of Bihar, Patna
4. The Director, Forensic Science Laboratory, Bihar, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Gyanand Roy
For the Respondent/s : Mr. AMAR NATH DEO

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 09-01-2018

This writ petition under Article 226 of the Constitution of Indian has been filed for quashing the order dated 17.01.2013, as contained in Annexure-1, by which direction has been issued to terminate the services of petitioner from the post of peon as well as order dated 31.01.2013, as contained in Annexure-2, by which service of petitioner has been terminated from the post of peon with effect from 31.01.2013.

Briefly stated the fact of the case is that petitioner was appointed against leave vacancy by Memo dated 19.06.



1993 issued by the Director, Forensic Science Laboratory, Bihar, Patna, for the period from 07.06.1993 to 30.06.1993 at the initial pay of Rs. 950 and other admissible allowances.

Thereafter, by Memo dated 04.01.1994 issued by the Director, Forensic Science Laboratory, Bihar, Patna, petitioner was appointed on the post of peon on temporary basis for a period of three months against the sanctioned post of peon for Regional Office Forensic Science Laboratory, Muzaffarpur, in the pay scale of Rs.775 – Rs.1025 along with other admissible allowances and petitioner joined on 05.01.1994.

By office order dated 25.01.1994 issued by the Director, Forensic Science Laboratory, Bihar, Patna, it was directed that petitioner will discharge his duty at Forensic Science Laboratory, Bihar, Patna, till the Regional Office of Forensic Science Laboratory, Muzaffarpur, becomes functional. Subsequently, by office order dated 07.04.1994 issued by the Director, Forensic Science Laboratory, Bihar, Patna, an ad hoc appointment of the petitioner was extended for a further period of three months from 07.04.1994 to 06.07.1994. Thereafter, it was further extended from 12.07.1994 to 11.10.1994 and thereafter again extended upto 02.03.1995 and thereafter by office order dated 28.02.1995 issued by the Director, Forensic



Science Laboratory, Bihar, Patna, ad hoc appointment of petitioner against the sanctioned vacant post of peon was extended till further orders against the post of peon in the Regional Office of Forensic Science Laboratory, Muzaffarpur.

In the meeting of the Establishment Committee held on 13.03.2008, service of the petitioner was regularised with effect from 28.02.1995 and confirmed on the post of peon and an office order dated 16.04.2008 under the signature of the Director, Forensic Science Laboratory, Bihar, Patna was issued. It has been further contended that after 12 years of service the petitioner was granted first A.C.P. with effect from 28.07.2007 and by office order dated 18.05.2010 the salary of the petitioner was revised in the pay scale of Rs. 4440 - Rs.7440 in the grade pay of Rs.1300/-with effect from 01.01.2006. It has further been submitted by the learned counsel for the petitioner that suddenly the Superintendent of Police (Crime) by order dated 17.01.2013, as contained as Annexure-1, without any enquiry or show cause notice or opportunity of hearing to the petitioner asked the Director, Forensic Science Laboratory, Bihar, Patna, to terminate the service of petitioner and in compliance of the said order the service of the petitioner has been terminated on 31.01.2013, as contained in Annexure-2. It has been contended



on behalf of the petitioner that appointment of petitioner was made against the vacant and sanctioned post of peon in Forensic Science Laboratory, Muzaffarpur, and he was directed to discharge his duty at Patna till Laboratory becomes functional at Muzaffarpur. As such, the service cannot be terminated without making enquiry and show cause notice. It has been submitted that petitioner was appointed by the competent authority against Class-IV post and possess the requisite qualification for appointment against Class-IV post.

A counter affidavit has been filed on behalf respondents no. 2, 3 and 4 in which it has been stated that petitioner was appointed on temporary basis till further orders by office order dated 08.02.1995 as contained in Annexure-10 to the writ petition and from perusal of the said order it appears that procedure established by law was not followed in case of appointment of petitioner. It has further been submitted that for confirmation of the service of non-gazetted employees of Forensic Science Laboratory, Bihar, Patna, necessary information was sent to CID Bihar by the then Director, Incharge, vide Memo dated 16.06.2005 in which it was stated that procedure of appointment of petitioner was not correct. The CID, Bihar, Patna vide Memo dated 06.07.2005 issued list of



confirmed employees, according to which, the petitioner's service was not confirmed and his appointment was not made permanent. The respondents have further stated that admittedly the then Director Incharge Forensic Science Laboratory, Bihar, Patna, vide office order dated 16.04.2008 confirmed the services of the petitioner and also granted benefits of A.C.P. vide office order dated 05.06.2008 but as per Rule 1255 and Appendix 99 of the Police Manual the Director, Forensic Science Laboratory, Bihar, Patna, is the Appointing Authority of employees belonging to Class-III and Class-IV and such power is not vested upon Director in Charge and Home (Police) Department by letter dated 04.04.1998 and 15.04.2009 has made it clear that Director Incharge has no power of Appointing Authority. It has further been stated that a meeting of the Establishment Committee was organized by CID, Patna, which was held on 26.05.2007 for approving the order of confirmation and in the said meeting it was decided to send the proposal to Home(Police) Department for regularizing the appointment of the petitioner and the Director Incharge was asked to make available the said proposal. The Director, Forensic Science Laboratory, Bihar, Patna, by Memo dated 08.07.2011 sent the proposal in which it was stated that process of appointment was



not correct and Home (Police) Department, Bihar, Patna, was requested to issue order/direction regarding regularization of the service of the petitioner by CID vide letter dated 04.01.2012. The Home(Police) Department informed that CID is competent to take decision in this regard. As such, the matter was examined and reviewed by CID at highest level and a direction was issued to the Director, Forensic Science Laboratory, Bihar, Patna, to remove the petitioner vide order dated 17.01.2013 and in compliance thereof the petitioner has been terminated by order dated 31.01.2013 which is impugned in this petition.

After hearing the rival contention of the parties, it appears to this Court that petitioner was appointed on daily wages and thereafter on temporary basis and continued as ad hoc appointee from time to time although the procedure as prescribed for appointment on Class-IV post was not followed. There was no advertisement issued nor name was sponsored by the Employment Exchange, as such, the appointment of the petitioner was not legal. However, it is also admitted fact that petitioner's service has been continued from 1994 and thereafter, his appointment has also been confirmed and he has been granted A.C.P. and he was appointed by the competent authority against the sanctioned vacant post. In such



circumstances, termination of service of the petitioner without any show cause or departmental proceeding that his initial appointment was bad, cannot be sustained. Since petitioner is a Class-IV employee and his service has been confirmed and regularised and matter was sent before the competent authority for the approval but same was denied and direction was issued for termination of his service as his initial appointment was illegal. As services of petitioner were confirmed and regularised he cannot be removed from service without following procedure as prescribed for removal of confirmed employee as the orders at Annexures- 1 and 2 cannot be sustained and are set aside.

The Apex Court in para-17 in the case of ***Kamal Nayan Mishra Vs. State of Madhya Pradesh and others*** reported in [(2010) 2 Supreme Court Cases 169] has held that

“17. Ram Ratan Yadav held that the services of a probationer who gave wrong information in regard to material particulars having a bearing on his fitness or suitability for appointment, can be terminated without giving any opportunity to show cause against the proposed termination. But once a probationer is confirmed in the post, his position and status become different as he gets the protection of Article 311. If it is found that the government servant who is the holder of a civil post, has given any false information during the course of employment, that will have to be treated as a misconduct, and punishment can be imposed only after subjecting him to an appropriate disciplinary proceedings as per the relevant service rules.”



In the result, order dated 17.01.2013 and 31.01.2013 as contained in Annexure-1 and Annexure-2 are set aside and petitioner is directed to be reinstated in the service with liberty to Respondents to proceed in accordance with law.

(S. Kumar, J)

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CAV DATE	NA
Uploading Date	
Transmission Date	

