

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13626 of 2013

SHIV PUJAN SINGH S/O LATE RAM BARAN SINGH RESIDENT OF
VILLAGE- JURAWANPUR, P.S. JURAWANPUR, P.O. JURAWANPUR,
DISTRICT- VAISHALI

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Commissioner, Tirhut Division, Muzaffarpur
3. The District Magistrate, Vaishali At Hajipur
4. The Superintendent Of Police, Vaishali
5. The Sub Divisional Officer, Hajipur Sadar
6. The Circle Officer, Raghapur Circle Under Vaishali District
7. The Officer Incharge, Jurawanpur, Police Station Under District Vaishali

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Abhay Kumar
For the Respondent/s : Mr. S.A. Alam

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 02-04-2018

Heard learned counsel for the parties.

2. This writ petition under article 226 of the constitution of India has been filed for issuance of a writ of certiorari for quashing order dated 28.12.2010 passed by the Collector, Vaishali and order dated 18.12.2012 passed by Commissioner(Appellate Authority), Muzaffarpur, by which services of petitioner has been terminated from the post of Dafadar.

3. Briefly stated the case of the petitioner is that he was appointed on the post of Dafadar under Jurawanpur police station, in Beat No. 1 by Superintendent of Police, Vaishali vide memo no. 90 dated 16.01.1985 on recommendation of Officer-in-Charge of Jurawanpur P.S as well as Inspector of Sadar in the



district of Vaishali.

4. After his appointment, petitioner joined on the post of Dafadar and he was regularly working to the satisfaction of all when suddenly services of the petitioner was terminated by the Collector, Vaishali by his order dated 05.08.2003(Annexure-2) and also order of recovery of salary was made.

5. The order of termination was challenged before this Court in CWJC No. 13588 of 2003 and the same was disposed of by order dated 07.04.2004, directing the petitioner to file an appeal before the Divisional Commissioner, Muzaffarpur, and in compliance thereof petitioner filed an appeal before the Appellate Authority and after considering the facts and circumstances of the case, Divisional Commissioner by order dated 26.07.2005 set aside the order of Collector and remanded the matter back to the Collector for fresh consideration.

6. Even after receipt of the order of the Commissioner dated 26.05.2005 (Annexure-3), the Collector did not pass fresh order and after lapse of many years, petitioner filed a writ petition being CWJC No. 1973 of 2007, and the same was disposed of by this Court by order dated 20.09.2010 directing the Collector, Vaishali to decide the issue within six months from the date of receipt/production of a copy of the order.

7. Accordingly, the petitioner filed representation along with the order but without consideration same was rejected by the Collector by order dated 28.12.2010. Petitioner again



preferred appeal before the Divisional Commissioner, Muzaffarpur, against the order dated 28.12.2010 passed by the District Magistrate but the appellate authority dismissed the appeal of petitioner by his order dated 18.12.2012.

8. It has been submitted on behalf of the petitioner that he was working on the post of Dafadar since 16.01.1985 and had completed 18 years of service on the post of Dafadar and thereafter he has been terminated from the post and as such has challenged the order of termination dated 28.12.2010 passed by the District Magistrate, Vaishali as contained in Annexure-4 as well as order dated 28.12.2012 passed by the appellate authority dismissing the appeal of the petitioner as contained in Annexure-5.

9. A counter affidavit has been filed on behalf of respondents in which they have stated that one Dukhit Mahato was appointed on the post of Dafadar on 15.04.1976 on Beat No. 1 of Jurawanpur Thana in the district of Vaishali and his service was terminated by the Superintendent of Police, Vaishali vide memo dated 16.01.1985. The petitioner was appointed on the vacant post of Beat No. 1 of Jurawanpur Thana in the district of Vaishali by the Superintendent of Police, Vaishali vide memo no. 90 dated 16.01.1985.

10. Dukhit Mahato filed Miscellaneous Case No. 30 of 1985-86 before the Collector, Vaishali against the order dated 16.01.1985 passed by the Superintendent of Police, Vaishali



terminating his service. The order of Superintendent of Police, Vaishali, was set aside by the Collector, Vaishali and it was ordered that Dukhit Mahato be reinstated in service. However, no order was passed in the matter of appointment of petitioner.

11. The Circle Officer, Raghapur, did not pay salary to Dukhit Mahato and sought guidance of District Collector regarding payment of salary to him and he continued to pay salary to Shiv Pujan Singh with the condition that in case of adverse order from the District Collector, Vaishali, recovery of paid salary will be done.

12. Finally in compliance of the order dated 20.02.2003 of High Court passed in CWJC No. 1062 of 2003, District Collector, Vaishali considered all the facts of the case and vide memo no. 19/mu dated 05.08.2003 terminated the service of Shiv Pujan Singh with retrospective effect and ordered Circle Officer, Raghapur to pay Shri Dukhit Mahato his salaries and to recover the conditional payments from Shiv Pujan Singh w.e.f. 16.01.1985. Petitioner filed CWJC No. 13588 of 2003 before the High Court against the order of Collector, Vaishali dated 05.08.2003 and by order dated 04.07.2004, this Court directed the petitioner to file an appeal before the Commissioner, Muzaffarpur. In compliance of said order petitioner filed Appeal No. 7 of 2004-05 before the Commissioner, Muzffarpur who by his order dated 26.07.2005 set aside the order of Collector dated 05.08.2003 and directed the Collector to pass a fresh order.



13. Petitioner filed CWJC No. 1973 of 2007 and by order dated 20.03.2007, this Court directed Collector, Vaishali to pass a fresh order after the matter was remanded by the Commissioner by his order dated 26.07.2005 in Miscellaneous Case No. 07 of 2004-05.

14. In compliance of the order passed by this Court and after hearing the petitioner and considering the materials available on record, the Collector, Vaishali, dismissed the representation of the petitioner on 28.12.2010 on the ground that Superintendent of Police, Vaishali, had no power to appoint Dafadar/Chaukidar and the same order was communicated to the petitioner vide memo dated 29.01.2011. Against the order dated 28.12.2010 passed by District Magistrate, Vaishali, petitioner filed Appeal No. 51 of 2011 before the Commissioner Tirhut Division, Muzaffarpur, who after hearing the petitioner found that although the appointment of Shiv Pujan Singh was illegal, he was paid for the period for which he rendered his services and dismissed the appeal of petitioner.

15. After hearing the parties and considering the materials available on record, this Court does not find any error in the order passed by the District Magistrate, Vaishali or Commissioner, Tirhut Division, Muzaffarpur and as the appointment of petitioner was pursuant to termination of service of Dukhit Mahato and order of termination of Dukhit Mahato was set aside, he was directed to be reinstated, as such the petitioner had no right to continue on the said post. The



Commissioner, Tirhut Division, Muzaffarpur, has already held that the petitioner has been paid salary for his work rendered during said period, as such same is not recoverable and there cannot be any recovery of the salary paid to the petitioner although he had undertook that if adverse order is passed against him, he will refund the salary paid to him but same being against public policy cannot be enforced.

There is no merit in the writ petition and the same is, accordingly, dismissed.

(S. Kumar, J)

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AFR/NAFR	NAFR
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