

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1584 of 2017

Arising out of

C.W.J.C. No. 5538 of 2014

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1. Umesh Kumar Verma, S/o- Late Vinod Kumar Verma, resident of Village- Dighwara Police Station- Dighwara, Dist.- Saran at Chapra
 2. Mohd. Munna, S/o- Mazloom, resident of Village- Bachhauta, P.S.- Morkahi, Distt.- Khagaria

... .. Appellant/s

Versus

1. The State of Bihar through the Secretary, Department of Home, Government of Bihar, Patna
2. The Director General cum Inspector General of Police, Bihar, Patna
3. The Joint Secretary to the Government, Department of Home (Police), Government of Bihar, Patna
4. The Additional Director General of Police (Head Quarter), Bihar, Patna
5. The Deputy Inspector General of Police, Munger Range, Bihar
6. The Deputy Inspector General of Police, Bhagalpur Range
7. The Superintendent of Police, Jamui at Jamui

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Awadhesh Kumar Mishra, Advocate Mr. Ajay Kumar, Advocate Mr. Ujjwal Kumar, Advocate Mr. J. Bhattacharya, Advocate Mr. Capt. B. Sen Mishra, Advocate
For the Respondent/s	:	Mr. P.K.Verma -AAG3

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 31-01-2018

Seeking exception to an order passed on 31.10.2017 passed by the learned Writ Court in C.W.J.C. No. 5538 of 2014, this appeal has been filed under Clause 10 of the Letters Patent.

Appellants sought reinstatement in pursuance to the



litigation policy of the State Government and various orders passed in the case of other similarly situated Constables in whose cases this Court had granted benefit of reinstatement.

It is the grievance of the appellants that similarly situated Constables have been reinstated but benefit is not being granted to them. Ventilating the aforesaid grievance, they approached this Court in the year 2012 in C.W.J.C. No. 4711 of 2012 and when the matter came up for consideration on 06.04.2012 they withdrew the writ petition with liberty to approach the departmental authorities concerned. Permission was granted and the appellants approached the departmental authorities, namely, the Home Department and pointed out the action taken in case of other similarly situated employees, orders passed by this Court in the case of some of the employees namely in C.W.J.C. No. 12005 of 2006, L.P.A. No. 1167 of 2009 and various other cases and represented to the competent authority namely the Secretary of the Home Department along with various documents. The representation submitted by the appellants is at page 63 of the records of the writ petition and they represented the matter to the Principal Secretary in the department of Home, Government of Bihar along with various documents and also the recommendation of the Home



Department, as contained in Annexure-16 dated 17.10.2012. They also brought to the notice of the authorities the recommendation made by the Superintendent of Police, Jamui vide Annexure-10 on 22.04.2008 and claimed the benefit on the following three counts:-

- (1) That under clause 4c (1) of the State Litigation Policy, they are entitled to be treated alike with all other petitioners in whose cases orders were passed in the writ petition and the L.P.A., as detailed hereinabove.
- (2) All other persons have been reinstated. They gave the particulars of the persons who have been reinstated and claimed parity and further submitted that in their case they have been discriminated.

However, vide order Annexure-22 dated 31.03.2016 the Under Secretary of the department rejected the claim by a two line order, holding that they are not entitled to any benefit and the claim does not come under the State Litigation Policy.

Challenging this order Annexure-22 the writ petition in question was filed and the Writ Court dismissed the



writ petition by so observing. However, while doing so, the Writ Court did not take note of the grievance of the appellants particularly with regard to violation of the Litigation Policy, benefit granted to other similarly situated employees by virtue of the orders passed by the Writ Court in various cases and the communications made by the Home Department vide Annexure-20.

That apart, when the appellants had given the particulars of the employees who have been reinstated, at least an inquiry with regard to the question of discrimination should have been considered. Neither the Under Secretary of the department while rejecting the claim on 31.03.2016 vide Annexure-22 nor the Writ Court in dismissing the writ petition, as indicated hereinabove, adverted to consider this question. Today, during the course of hearing, we are informed that the Home Department is not the competent authority to do so. It is the Director General of Police who is required to take action in the matter.

Having considered the rival contentions, we find that inspite of the fact that there were various orders passed in the writ petition and L.P.A. as indicated hereinabove, recommendation made by the Home Department vide



Annexure-20 and the recommendation of the Superintendent of Police, Jamui, none of the authorities thought it appropriate to examine the case of the appellants in the backdrop of the averments made in the representation, the question of discrimination and thereafter by a speaking order, showing application of mind, decide the same. Instead, in a casual manner, without adverting to consider various factual aspects of the matter, including the question of discrimination, the matter has been rejected. Even the Writ Court on the ground that the earlier writ petition was withdrawn with liberty to approach the authorities, refused to interfere into the matter. In our considered view, the Writ Court should have gone into various questions which arose for consideration after rejection of the appellants' representation on 31.03.2016 vide Annexure-22. This having not been done, the learned Writ Court has committed an error in doing so.

Accordingly, we allow this appeal, quash the order dated 31.10.2017 passed by the Writ Court in C.W.J.C. No. 5538 of 2014. Having done so, normally, either way, we should have remanded the matter back to the Writ Court for reconsideration by examining the matter in this appeal. However, we find that the appellants had given various details



and had raised a specific claim before the Joint Secretary of the Home Department and the Joint Secretary merely forwarded his recommendation to the Additional Director General of Police (Headquarters), Bihar Patna recommending for rejection of the claim but the Additional Director General of Police, (Headquarters) Bihar, Patna has not passed a speaking order showing application of mind and considering the claim of the appellants, instead passed the order without adverting to consider all these questions. In our considered view, this could not be done. It is a fit case where the matter should be remanded back to the Director General of Police, Bihar who will examine the case of the appellants afresh in accordance to the observations made hereinabove and take a decision by passing a speaking order and if required, granting liberty to file further representation or hearing the appellants.

Accordingly, we quash the order Annexure-22 dated 31.03.2016 passed by the Under Secretary of the Home Department and direct that on the appellants filing a certified copy of this order along with relevant documents, the Director General of Police, Headquarters, Bihar, Patna shall examine the claim of the appellants in the backdrop of the observations made hereinabove and decide it by a speaking order showing



application of mind within a period of 60 days thereof and while doing so, the Litigation Policy of the State Government and the benefit granted to similarly situated employees shall be adverted to and addressed in the order to be passed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

P.K.P./-

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