

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9756 of 2017

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1. Naushad Alam, Son of Late Nawab Miyan, resident of Village- Madhopur Sheikh Toli, Post- Madhopur, Tansariya, P.S.- Turkailiya, District- East Champaran.
 2. Dilip Kumar, Son of Shambh Prasad Yadav, Resident of Village + Post- Nimoiya, P.S. Ghodasahan, District- East Champaran.
 3. Pawan Kumar Yadav, Son of Baidhyanath Rai, resident of Village + Post- Ramkaran Pakri, P.S.- Chakiya, District- East Champaran.
 4. Jawed Alam, Son of Shafi Ahmad, resident of Village- Jogaurliya Thela Gulab, Post- Rupni, P.S.- Madhuban, District- East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. Principal Secretary, Home (Police) Department, Bihar, Patna.
3. District Magistrate, East Champaran, Motihari.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhinav Srivastava

For the Respondent/s : Mr. SHEOSHANKAR PRASAD-SC8

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date: 18-04-2018

The petitioners herein have prayed for quashing the order dated 18.03.2017 passed by the District Magistrate, East Champaran, Motihari by which their services have been terminated.

2. The brief facts of the case are that the petitioners herein were appointed vide memo no.80 dated 11.04.2000. It appears that one Hazari Lal Prasad and Prabhudayal Das had filed writ petition bearing CWJC No.4773 of 2000 and CWJC No. 4742 of 2000, challenging the said order dated 11.4.2000, by which the petitioners herein had been appointed, on the ground that their cases



had been illegally rejected. This Court by a judgment dated 7.10.2005 passed in the case of the said two petitioners, namely, Hazari Lal Prasad and Prabhudayal Das, set aside the order dated 11.4.2000 in so far as the same related to the said petitioners and directed the authorities to reconsider the case of the said petitioners. However, the case of the said two petitioners was rejected by the respondents by an order dated 18.11.2013, which was challenged by the said Hazari Lal Prasad and this Court by an order dated 10.3.2014, passed in CWJC No.1024 of 2014 had quashed the said memo no. 80 dated 11.4.2000, however, to the extent the cases of the applicants in reference to the circular mentioned herein had been rejected. It would be pertinent to reproduce the relevant portion of the aforesaid order dated 10.03.2014 passed in CWJC No. 1024 of 2014 herein below:-

“In view of the order dated 7.10.2005 passed in CWJC No. 4773 of 2000 which was preferred by the present petitioner and which has not been reported to have been challenged by the respondents, this Court has no option than to quash the entire memo no.80 dated 11.4.2000 issued by the District Magistrate, East Champaran, Motihari rejecting the cases of the applicants in reference to the said two circulars dated 6.11.1991 and 20.12.1995. In view of the findings of the Court in the said order, the said two circulars have also to be held inapplicable and require to be quashed which are hereby quashed as violative of Article 14 and 16 of the Constitution of India.

The respondent District Magistrate, East



Champan is directed to proceed with the appointment of the Chowkidar on the available vacancies strictly in accordance with paragraph 3 of the said circular dated 17.1.1990 i.e. by holding a selection process laid down for appointment on government posts. The process must be initiated by the District Magistrate within one month from today and appointments must be made within six months thereafter. If any of the candidates, whose cases were rejected by the said memo no. 80 dated 11.4.2000 in reference to the said circulars dated 6.11.1991 and 20.12.1995, applies for his selection, he shall be given age relaxation for the period 2000 to the date of advertisement. As a consequence of this order, the order of the In-charge Officer of the District, General Administration Department, East Champaran contained in Memo No.2357 dated 18.11.2013 is also quashed.”

3. The District Magistrate, East Champaran, Motihari by the impugned order dated 18.3.2017 has terminated the services of the petitioners herein along with others on the sole ground that this Court by an order dated 10.3.2014 passed in CWJC No. 1024 of 2014 has quashed the entire memo no. 80 dated 11.4.2000.

4. The aforesaid order dated 18.3.2017 passed by the District Magistrate, East Champaran, Motihari is under challenge in the present proceedings.

5. The learned counsel or the petitioners has submitted that the impugned order dated 18.3.2017 is not only perverse but misconceived since this Court had never directed for quashing of the memo no. 80 dated 11.4.2000 in its entirety, but was only confined to



that portion by which the cases of the applicants had been rejected inasmuch the said memo no. 80 dated 11.4.2000 contains two parts i.e. one part whereby and whereunder a group of persons including the petitioners herein were appointed on the post of Chowkidars and second part whereby and whereunder the cases of a group of persons were rejected and they were found unsuitable for appointment and this Court by an order dated 10.3.2014 had only quashed that part of memo no. 80 dated 11.4.2000 in entirety whereby and whereunder the cases of applicants therein had been rejected and, in fact, had not quashed the appointment of the petitioners herein, which, even otherwise could not have been quashed by this Court, firstly on account of the fact that the said appointed Chowkidars were not before the writ court in the said proceeding and secondly there was no allegation of any sort of illegality having been committed in appointment of the said chaukidars including the petitioners herein. It is further submitted that in any view of the matter, the said judgment dated 10.3.2014 is a judgment in personam and not a judgment in rem and the petitioners herein being not party to the said judgment, the said judgment would not bind them.

6. Per contra, the only defence by the learned counsel for the respondents is that since this Court by its Judgment dated 10.3.2014 has quashed the entire memo no. 80 dated 11.4.2000, the



services of the petitioners have been terminated by the impugned order dated 18.3.2017.

7. Having heard the learned counsel for the parties and having given thoughtful consideration to the case in hand as also upon consideration of the materials on record, I find that this Court by judgment dated 10.3.2014 passed in CWJC No. 1024 of 2014 had never sought to quash the appointment of the petitioners herein and, in fact, only that portion of Memo no. 80 dated 11.4.2000 was quashed in entirety, which pertains to the rejection of the cases of the applicants therein since the said memo no. 80 contained of two parts, one regarding those applicants who were appointed as Chowkidar and second regarding those who were rejected. The other aspect of the matter is that the appointments of the petitioners herein and other similarly situated persons, appointed by memo No. 80 dated 11.4.2000 was never challenged by any one either before the authorities or before this Court, hence, there was no occasion for setting aside their appointment order. In view of what has been stated herein above, I find that the order passed by the District Magistrate, East Champaran, Motihari dated 18.3.2017 is not only perverse, but is based upon non-application of mind as well as unintelligent reading and interpretation of the order of this Court dated 10.3.2014 and is, therefore, untenable in the eye of law.



8. For the reasons mentioned herein above, the order dated 18.3.2017 passed by the District Magistrate, East Champaran, Motihari contained in Memo No. 108 is hereby set aside qua the petitioners herein.

9. The writ petition is allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	12.04.2018
Uploading Date	19-05-2018
Transmission Date	

