

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2293 of 2016

Vineet Kumar Ram Son of Mohan Ram, Resident of Chanchaura, P.S. -
Rasulpur in the District of Saran, Chapra. Petitioner/s

Versus

1. The State Of Bihar through the Director General of Police, Government of Bihar, Patna
2. The Inspector General of Police I.G., Patna.
3. The Senior Superintendent of Police, Patna.
4. The Inspector of Police Training, Police Centre, Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Braj Nandan Kr. Tiwary, Advocate Mr. Hareram Singh, Advocate Mr. Rajoday Salyleel, Advocate
For the Respondent/s	:	Mr. Karandeep Kumar, AC to GP 6

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 01-03-2019

Writ petition has been filed for quashing the order dated 07.10.2015 issued by Senior Superintendent of Police, Gaya whereby the petitioner was dismissed from service.

2. The brief facts are that pursuant to the recruitment process undertaken in the year 2014 by the Central Selection Board of Constable Recruitment, petitioner was finally selected for the post of constable. He was sent for necessary training at Gaya training camp. It is while the petitioner was a probationer undergoing training that he has been dismissed from service.

3. The writ petition has been filed raising a grievance that since the order of dismissal is based upon a charge and finding of the petitioner having indulged in fraud, the order without affording due opportunity to the petitioner and in violation of Principles of Natural of Justice is unsustainable.



4. Taking note of petitioner's submissions this Court had directed the Senior Superintendent of Police, Gaya to place on record the procedure under which the impugned order dated 07.10.2015 dismissing the petitioner has been issued.

5. Supplementary counter affidavit has been filed by the Senior Superintendent of Police, Gaya. Reliance is placed on Rule 668 of Bihar Police Manual. Rule 668 provides as follows :

'668. Removal or reversion of officers appointed direct or promoted on probation.-The following rules shall govern first appointments and the promotion of police and ministerial officers as detailed in Appendix 41 :-

(a) All officers shall in the first instance be appointed or promoted on probation. Where the period of probation is not otherwise provided for in the rules it shall be for a period of two years in the case of executive officers and one year in the case of ministerial officers. The authority authorized to make such appointment or promotion, may at any time during such probationary period and without the formalities laid down in Rule 828, remove an executive officer directly appointed or revert such an officer



promoted who has not fulfilled the conditions of his appointment or who has shown himself unfit for such appointment or promotion. Similarly probationary period may also be extended without any show cause. No appeal shall lie in such cases.

(b) Executive Officers appointed or promoted in other than permanent vacancies are also liable to removal or reversion in the manner indicated in clause (a) above.

6. Submission to the extent that the competent authority can resort to Rule 668 of the Bihar Police Manual in view of the fact that the petitioner is still a probationer in opinion of this Court cannot be disputed by the petitioner. Plain reading of Rule 668 shows that in case of the petitioner who was still a probationer (ministerial officer), the respondent authorities can resort to the power and procedure contained under Rule 668 of the Bihar Police Manual. By resorting to such power at any time during the probationary period, the petitioner could have been removed without formalities/procedure provided under Rule 828. Such power however, can be exercised under two circumstances. The first circumstance contemplated under Rule 668 is that if the officer has not fulfilled the conditions of his



appointment and the second is that he has shown himself unfit for such appointment.

7. The power and procedure under Rule 668 therefore, cannot be exercised in a case where dismissal of the petitioner as in the instant case is alleging a fraud.

8. It is clear from the impugned order dated 07.10.2015 that the authorities have dismissed the petitioner on the allegation that one Ramesh Kumar was found at the training center, Gaya who was not one of the selected candidates undergoing training. It is alleged that the said Ramesh Kumar was impersonating himself as a constable. It is also alleged that while counting the constables at the center this fact was discovered and Ramesh kumar was caught by Constable Bipin Kumar Choudhary and constable Mantosh Kumar. Upon questioning the said Ramesh Kumar disclosed that he was at the training center for the last 10 days adorning the uniform of a constable and undergoing training and duty. It is also alleged that Ramesh Kumar disclosed that he was at the training centre because the petitioner had been selected for a Group D post by the Railway Recruitment Board, and had gone for verification of his testimonials. The order also records that the claim of Ramesh Kumar was verified and constables present at that



point of time as well as the records were examined upon which the authorities concluded that Ramesh Kumar was an impersonator who was at the training center in place of the petitioner as the petitioner was traceless from the training center. Upon such report the impersonator Ramesh Kumar was arrested and taken into judicial custody. One Rampur P.S. Case No. 227 of 2015 for alleged offences under Sections 402/34 of IPC was also instituted against the said Ramesh Kumar and the petitioner.

9. It is in these circumstances that the petitioner was removed by the impugned order alleging and recording a finding of the petitioner having indulged in fraud (फर्जीबाड़ा) and of conducting himself contrary to the service conditions for a newly recruited constable.

10. The impugned order dated 07.10.2015, therefore, in the opinion of this Court is not an exercise of power coming within the power and scope of Rule 668 of the Bihar Police Manual. Allegations have been levelled against the petitioner as noticed herein above. Enquiry has been conducted by the authorities in respect thereof behind the back of the petitioner and findings which are stigmatic have been recorded in the impugned order dated 07.10.2015. Clearly the order is not



issued under Rule 668 of the Bihar Police Manual.

11. Counsel for the respondents has submitted that the authorities have rightly exercised jurisdiction under Rule 668. They have also denied the petitioner's assertion that he had submitted an application on 13.09.2015 prior to the date on which he was found traceless requesting leave for the period 15.09.2015 to 16.09.2015. It is submitted that the petitioner's claim that he was absent from the training center on the fateful day i.e. on 16.09.2015 by virtue of his leave application submitted on 13.09.2015 for requesting leave for 15.09.2015 to 16.09.2015 is false. This gives rise to a disputed issue on the fact whether petitioner had actually given an application as claimed by Annexure 2 to the writ petition, or not. This Court is of the opinion that the impugned order dated 07.10.2015 does not show any consideration of these factual disputes also.

12. Petitioner's counsel has placed reliance on a judgment of the Apex Court in the case of **State of Bihar v. Gopi Kishore Prasad** reported in **AIR 1960 SC 689**. He has led emphasis on sub para 3, 5 of paragraph 5, as well as para 6 of the said judgment.

13. As noticed above the finding of the petitioner not fulfilling the conditions of his service, or his unfitness is based



on allegations of corruption/misconduct. The findings have been recorded without any enquiry and without affording an opportunity of hearing to the petitioner in gross violation of Principles of Natural Justice. The order of dismissal is stigmatic and amounts to a punishment. It is needless to say that before an order having such panel consequences and casting a stigma on the basis of findings is recorded, the concerned employee would be entitled to opportunity of hearing by resorting to a procedure which can be sustained on the touchstone of fairness and in compliance with the Principles of Natural Justice. Same has not been done in the instant case. The order of dismissal dated 07.10.2015 is therefore, quashed. Removal of the petitioner being beyond the scope of Rule 668 of the Bihar Police Manual cannot be sustained. It goes without saying that it would be open to the respondent authorities to take decision afresh in accordance with the scope of the Bihar Police Manual or any other extant service rules applicable to the petitioner.

14. Writ petition is allowed.

(Madhuresh Prasad, J)

Prakash/-

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CAV DATE	
Uploading Date	
Transmission Date	

