

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5347 of 2006

Nilam Devi, Wife of Late Murari Singh, resident of Village Atapur, P.O. Nakuni, P.S. Hasanpur, Dist. Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. Home Secretary, Government of Bihar, Patna.
3. The D.G. cum I.G. of Police, Bihar, Patna.
4. The D.I.G. of Police, Manwadhikar, Bihar, Patna.
5. The D.I.G. of Police, Darbhanga.
6. S.P., Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ram Hriday Prasad, Adv.
For the Respondent/s	:	Mr. Kinkar Kumar SC9
		Mr. Zaki Haider, AC to SC9

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 16-01-2019

Learned counsel for the petitioner submits that there is a typographical error in the order dated 3.12.2018 as in place “Nilam Devi”, it has been wrongly typed as “Nilama Devi”.

In view of the above, let the order dated 3.12.2018 be modified to the extent that the “Nilama Devi” will be read as “Nilam Devi”.

Heard learned counsel for the petitioner and counsel for the State.

In this case, the petitioner is challenging the order of Superintendent of Police, Samastipur dated 30.4.2002 (Annexure-9) and the appellate order of the Home Commissioner cum Secretary



dated 20.9.2003 (Annexure-11) by which the services of the original petitioner after due enquiry has been dispensed with.

The original petitioner has died during pendency of this case. The short fact of this case is that the petitioner was Home-guard and posted as a Guard in the Thakur Paper Mills. In the night on 20/21.2.1990, he found certain persons were committing theft, he challenged them and, later on, fired from the official rifle upon the accused persons and one of the persons died, whereafter, for discharging the extraordinary duty, as per the petitioner, after assessing his physical, mental and educational level of eligibility, was appointed as regular Constable in the Bihar Police Service but, after ten years, a proceeding was initiated, the show-cause was issued in which an allegation has been made that he has entered into the service illegally i.e. from the back-door which is not sustainable in law, and the appointment itself is illegal.

As per learned counsel for the State, the notice was sent to the petitioner who refused to participate in the proceeding, ultimately, the enquiry officer has submitted his report recording therein the entry of the petitioner was through back-door, completely illegal and found him guilty of illegal entry in the service.

The petitioner was served with the second show-cause which he has replied, whereafter, the services of the petitioner has been dispensed with on account of illegal entry in service. Against



that, the petitioner filed appeal before the Home Commissioner cum Home Secretary who vide order dated 20.9.2003 (Annexure-11) dismissed the appeal.

Learned counsel for the petitioner submits that on account of extraordinary duty discharged by him, after due notice published in the notice board and after making assessment of his physical and mental efficiency, the petitioner was appointed as Constable in Bihar Police Service, wrongly his services has been dispensed with without giving proper notice. Learned counsel for the petitioner placed reliance in the case of Kamal Chandra Sah Vs. The State of Bihar & Ors. reported in 2006 (3) PLJR 468.

Learned counsel for the State submits that the entry of the petitioner is bad, entered into service in complete illegal manner, without due process of law, de hors to the provision of 661 of the Bihar Police Manual as neither the notice was ever published in the newspaper nor any proper Committee was constituted for the selection of the petitioner but, in an illegal manner, he was appointed as Constable.

When this Court asked the petitioner to show the appointment letter, instead of showing the same, he has drawn attention of this Court towards certain annexures which are certainly not the appointment letter of the petitioner and, thereafter, he has shown the statement made by the Om Prakash Chaudhary, Surgent



Major, who has stated that he was appointed on the post of Constable but the fact remains that there is no appointment letter, the respondents after due notice recorded the findings against the petitioner of illegal entry in the service which has been affirmed by the appellate authority.

In view of the above, this Court cannot go beyond the scope of judicial review as this Court has to see the decision making process not the decision and if the government servant has entered into the service illegally, no efficacy can be attached to those appointments.

In that view of the matter, this Court does not find any merit in the present writ application and the same is, accordingly, dismissed.

If any amount of L.I.C. or G.P.F. is standing in the account of the original petitioner, the State would be obliged to make payment to the widow of the original petitioner expeditiously preferably within a period of five months from the date of receipt of this order.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.02.2019
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