

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5192 of 2003

-
-
1. Digambar Kumar Choudhary son of Sri Sudhir Prasad Choudhary, resident of village- Rampur, P.S. Amarpur, District Banka (Constable no. 1425).
 2. Pramod Kumar Singh son of Asharfi Prasad Singh, resident of village- Shrikhandi, P.S. Halsi, District Lakhisarai. (Constable no.19).
 3. Ramji Upadhyay son of Sudheshwar Upadhyay, resident of village Piro, District Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Director General of Police, Government of Bihar, Patna.
3. Inspector General of Police, Govt. of Bihar, Patna, Patna Region, Patna.
4. Deputy Inspector General of Police, Govt. of Bihar, Magadh Range, Gaya.
5. Superintendent of Police, Nawadah.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mrs. Nivedita Nirvikar, Adv.
For the Respondent/s : Mrs. Abhanjali, AC to GA 12.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 19-04-2019

At the outset, the learned counsel for the petitioners submits that the petitioner no.1, Digambar Kumar Choudhary has left the service of the respondents and has been gainfully employed else where, hence, he does not wish to press the writ petition.

2. Accordingly, the writ petition qua the petitioner no.1 is dismissed as not pressed.

3. Now, coming to the petitioner nos. 2 and 3 it is submitted that initially the show cause notice dated 25.04.2003 was challenged, however, during the pendency of the writ petition, the services of the petitioners were terminated vide order dated



4.6.2004, whereafter an interlocutory application was filed for amendment of the writ petition and the writ petition stood amended vide order dated 07.09.2018. In effect the petitioner no.2 and 3 seek quashing of the show cause notice dated 25.4.2003 as also the order of termination dated 4.6.2004.

4. The brief facts of the case are that an advertisement was issued in the year 1989 and after holding the selection process, the respondents had appointed the petitioners vide letter dated 19.06.1990 as constable and thereafter, the petitioner nos.2 and 3 continued to work to the satisfaction of all concerned, however, suddenly, the respondents had issued a show cause notice dated 25.04.2003 directing the petitioner no.2 and 3 to submit their reply as to why their services should not be terminated on account of certain illegalities being discovered in the selection process, hence, the same had led to filing of the present writ petition. However, during the pendency of the present writ petition, the services of the petitioner no.2 and 3 were terminated vide letter dated 4.6.2004, after the petitioners had served the respondents for about 14 years.

5. The learned counsel for the petitioners has submitted that similarly situated Constables, whose services had been terminated, had also approached this Court and a learned Division Bench of this Court by a judgment dated 02.07.2008 passed in



L.P.A. No. 221 of 2008, had affirmed the order passed by the learned Single Judge, whereby and whereunder the order of termination had been quashed. The learned counsel for the petitioners has also referred to the order dated 03.02.2003 passed in WP(S) no. 2087 of 2002, wherein also the cases of similarly situated persons have been allowed and the order of termination has been quashed, primarily on the ground that the writ petitioners had worked for about 14 years and there was no justification to issue show cause notice after 14 years of service and to terminate the services merely on the ground that the rules provided in the Police Manual, were not followed. The learned counsel for the petitioner has also relied upon the judgments passed by the learned Division Bench of this Court, reported in (1994)2 BLJ 499 (**Ashok Kumar & Ors. vs. State of Bihar & Ors.**) and the one reported in (2004) 1 BLJ 733 (**State of Bihar & Ors. v. Sudhanshu Shekhar Mullick**) to contend that though the initial appointment of the incumbents may be wrong but as the incumbents have not obtained appointment by means of any forgery or misrepresentation, the validity of appointment cannot be challenged or opened after a lapse of 12 years.

6. It is further submitted by the learned counsel for the petitioners that as far as the petitioner no.2 and 3 are concerned,



they are still continuing in service and have also been promoted to the post of A.S.I. Lastly, it is submitted that the present case is squarely covered by a judgment dated 28.8.2018 passed by this Court in CWJC No. 8739 of 2003 and other similar type of cases.

7. The learned counsel for the respondents does not dispute the fact that the case of the similarly situated petitioners has already been allowed by this Court and the order of termination has been quashed.

8. I have heard the learned counsel for the parties and perused the materials on record and I find that the present case is squarely covered by the aforesaid judgments passed from time to time in various cases, hence this Court has no option but to allow the present writ petition and quash the orders of termination dated 4.6.2004.

9. The writ petition is allowed and the orders of termination dated 04.06.2004 qua the petitioner no.2 and 3 are quashed.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	03.05.2019
Transmission Date	N/A

