

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1466 of 2017

In
Civil Writ Jurisdiction Case No.5325 of 2014

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Mukesh Kumar S/O - Sri Sabura Singh, R/O - At and P.O. - Emirita, P.S. -
Suryapura, District - Rohtas

... .. Appellant/s

Versus

1. The State Of Bihar
2. The Director General Of Police, Bihar, Patna.
3. The Superintendent Of Police, Supaul, District - Supaul.
4. The Superintendent Of Police, Rohtas, District.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Rajeev Kumar Singh, Advocate
For the Respondent/s : Mr.Prabhat Kumar Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 25-11-2019

The instant intra court appeal has been preferred against the judgment dated 04.08.2017 passed in C.W.J.C. No. 5325 of 2014 whereby the learned Single Judge was pleased to dismiss the writ application filed by the petitioner.

2. The facts not in dispute are that pursuant to the publication of the advertisement no. 1 of 2012 on 31.05.2012 in the daily news papers, 7606 posts of constable were advertised. The selection and appointment in different districts police force and Bihar Military Police were to be done by the Chairman of the Central Selection Board, Bihar, Patna. The appellant was



one of the applicants. He appeared in the written examination and on having cleared the same, appeared in the physical test.

3. The appellant was finally declared selected for the post of constable and was issued an appointment letter contained in memo no. 386 dated 02.06.2013 under the signature of the Secretary of the Central Selection Board, Bihar Patna. Pursuant to his appointment, he joined in the office of the Superintendent of Police, Supaul and was allotted District Force no. 172 under the police line, Supaul.

4. A show cause notice contained in memo no. 1952 dated 06.12.2013 under the signature of Superintendent of Police, Supaul was issued to the petitioner asking him to file his reply. By order bearing memo no. 2044 dated 21.12.2013 (Annexure 1) issued under the signature of Superintendent of Police, Supaul, the appellant was removed from service from the post of constable on the ground that he had not disclosed that he had been made accused in different criminal cases, the details of which were given in the said order. The appellant preferred C.W.J.C. No. 5325 of 2014 praying therein for quashing the said order contained in memo no. 2044 dated 21.12.2013 issued by the Superintendent of Police, Supaul and for consequential reliefs. The said writ application was



dismissed by the learned Single Judge by order dated 04.08.2017 and against the same the instant appeal has been preferred.

5. Heard learned counsel for the appellant and learned counsel for the respondents.

6. It was submitted by learned counsel for the appellant that the appellant was served with a show cause notice dated 06.12.2013 to which he filed representation/petition demanding certain documents which were referred to in the show cause notice. However, the same were not supplied to the appellant and the respondents proceeded to pass the order dated 21.12.2013 (Annexure-1) removing him from service from the post of constable. It has further been submitted by learned counsel for the appellant that it is true that the appellant was made accused in three cases bearing Suryapura P.S. Case No. 51 of 2007, Suryapura P.S. Case No. 63 of 2009 and Suryapura P.S. Case No. 98 of 2011. However, it has further been submitted, that so far as Suryapura P.S. Case No. 51 of 2007 is concerned, the petitioner was a minor on the alleged date of occurrence which related to dispute between two families. The appellant had been acquitted in the said case on 14.03.2018. So far as Suryapura P.S. Case No. 63 of 2009 is concerned, charge sheet



in the said case was submitted on 30.09.2009, wherein the appellant was not made accused and he stood exonerated. In Suryapura P.S. Case No. 98 of 2011, both charge sheet and cognizance in the matter had been taken after appointment of the appellant as a constable and in this case also the appellant had been acquitted by the learned trial Court by judgment dated 13.05.2019.

7. The appellant, in support of his contentions, relied on the judgments in the case of the **Avtar Singh vs. Union of India** reported in **(2016) 8 SCC 471** and in the case of **Daya Shankar Yadav vs. Union of India** reported in **(2010) 14 SCC 103**. Further contention on behalf of the appellant is that in the impugned order as contained in Annexure-1 to the writ application, there is no consideration of the fact that while in one of the cases, as mentioned above, the appellant was a minor when he was made accused therein, in the other two cases both charge sheet had been submitted and cognizance had been taken after the appointment of the appellant as a constable. It is the appellant's case that the allegations in the said three cases were neither heinous nor one of moral turpitude. The offences are petty in nature. Taking into consideration the observations of the Hon'ble Supreme Court in paragraph no. 38 of the judgment in



the case of **Avtar Singh** (supra) together with the nature of allegations in the aforementioned cases, subsequent acquittal and age of the appellant, it has been submitted that the case of the appellant should be considered sympathetically as upholding the order of termination would not only deprive him of his service but would also be a stigma on the appellant in the society. As such it is submitted that the order of the learned single Judge be set aside, the order removing him from service impugned in the writ application be quashed and he be reinstated on his post with all consequential benefits.

8. It has been submitted on behalf of the State that from perusal of copy of the application filed by the appellant and which has been brought on record as Annexure-A to the counter affidavit filed on behalf of the respondent Superintendent of Police, Supaul in C.W.J.C. No. 5325 of 2014, it would transpire that inspite of the appellant having criminal antecedents on the date of filing of the said form, he did not disclose the same and in fact gave false information. It has further been submitted that although the appellant has brought on record the order of his acquittal in criminal cases arising out of the FIR of Suryapura P.S. Case No. 57 of 2007, however, from perusal of the same it would transpire that the said order of acquittal has been passed



only on 14.03.2018 i.e. much after the impugned order of the appellant's removal from service.

9. Having heard learned counsel for the parties, on going through the records of the case and on having considered their respective submissions, it transpires that the application, which the applicants were required to fill up ran into two pages. Photocopy of the application filled up by the appellant in his own hand writing has been brought on record as Annexure- A series to the counter affidavit on behalf of the respondent no. 3 in the writ application. Clause 7 of the said application contained the query as to whether at any point of time the applicant had been an accused in a criminal or civil matter and whether he had been taken into custody ? The applicants were required to give the details thereof. To this query the categorical reply of the petitioner was "in the negative" (to be more specific "नहीं").

10. From perusal of the relevant annexures, it appears that the form was filled up sometime in December 2012. At the same time it is not in dispute that the three cases referred to above being Suryapura P.S. Case No. 51 of 2007, Suryapura P.S. Case No. 63 of 2009 and Suryapura P.S. Case No. 98 of 2011 had been registered in the year 2007, 2009 and 2011 itself i.e. much



before filling of the application form by the appellant.

11. Further so far as the knowledge of the appellant about the cases pending against him is concerned, in paragraph no. 26 of the writ application the appellant has stated that he was granted anticipatory bail in Suryapura P.S. Case No. 98 of 2011, on 28.02.2012. Even otherwise at no place in the writ application any statement has been made to the effect that on the date of filling up of the application form for the post of constable, the appellant had no knowledge about pendency of the criminal case against him.

12. So far as the non-supply of the documents asked for by the appellant in response to the show cause notice issued to him is concerned, I find that the show cause notice dated 06.12.2013 issued to the appellant was very categorical and which stated that from the information received from the office of the Superintendent of Police, Rohtas it has transpired that the appellant was an accused in three criminal cases, details of which had been given therein. Neither in his representation dated 19.12.2013 nor in his averment in the writ application/appeal any statement has been made by the appellant to the effect that the statement of the appellant being an accused in the three criminal cases were incorrect or that he was not



aware about pendency of the said three criminal cases on the date of submitting his application form for appointment as constable.

13. The judgments relied on by the appellant's counsel in support of his contentions are also not of much help. In the case of **Avtar Singh** (supra) the Hon'ble Supreme Court had held that the employer cannot dismiss/discharge/terminate an employee for misunderstanding a vague and complex question and giving a wrong answer. It further held that in case verification form is vague, no fault can be found on the ground of suppression. So far as the instant case is concerned, neither the query/question as contained in Clause 7 of the application form nor the answer given by the appellant being categorical can be said to be vague. Further, even the judgment in the case of **Daya Shankar Yadav** (supra) is of no assistance to the appellant for the reasons of Clause 38.5 and 38.7 as contained in the said judgment. For ready reference, the said two clauses are being reproduced herein below :

“38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.”

“38.7. In a case of deliberate suppression of fact with respect to



multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.”

14. So far as paragraph 38.5 is concerned that gives liberty to the employer that in case the employee has made a declaration truthfully of a concluded criminal case, the employer still has the right to consider the antecedents, and cannot be compelled to appoint the candidate. Clause 38.7 goes a step further and states that in case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order canceling candidature or terminating his services. So far as the instant case is concerned, in view of the facts and circumstances narrated herein above, there is no doubt to the fact that a specific and clear question/query was made in the application form by the respondent authorities to which the appellant gave a categorical reply which was subsequently on verification was discovered to be a deliberate suppression of fact with respect to multiple pending cases against the appellant. As a consequence, the respondent authorities issued show cause notice and finally passed the order



removing the appellant from service. In the facts and circumstances of the case, we neither find any illegality in the order of the respondent authorities removing the appellant from service nor in the order of the learned Single Judge.

15. Not finding any merit in this appeal, the same is dismissed.

(Partha Sarthy, J)

I agree
Shivaji Pandey, J :

(Shivaji Pandey, J)

Prakash/-

AFR/NAFR	
CAV DATE	05.11.2019
Uploading Date	
Transmission Date	

