

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.569 of 2018
in
Civil Writ Jurisdiction Case No.10573 of 2014

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Shailesh Kumar Mall @ Shailesh Kumar, Son of Ramadhar Mall, Resident of
Village- Punak, Police Station- Darauli, District- Siwan (Bihar).

... .. Appellant/s

Versus

1. The State Of Bihar
2. The Director General of Police, Bihar at Patna.
3. The Inspector General of Police, Patna.
4. The Deputy Inspector General of Police, Magadh Range, Gaya.
5. The Superintendent of Police, Nawada.
6. The Superintendent of Police, West Champaran at Bettiah.

... .. Respondent/s

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Appearance :

For the Appellant	:	Mr. Dhanendra Chaubey, Advocate
		Mr. Arun Kumr Pandey, Advocate
For the S t a t e	:	Mr. Saroj Kumar Sharma, A.C. to A.A.G. -3

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 08-02-2019

Re: I.A. No. 3149 of 2018

Heard Shri Dhanendra Chaubey, learned counsel
for the appellant and Shri Saroj Kumar Sharma, Assistant
Counsel to Additional Advocate General No.3 for the State of
Bihar.

2. The appeal is reported to be delayed by 53
days.

3. We have considered the affidavit filed in
support of the delay condonation application and we find that
sufficient cause has been shown to condone the delay in filing
the appeal. The delay is condoned and the appeal shall be
treated to be within time.



4. I.A. No.3149 of 2018 stands allowed accordingly.

Re: L.P.A. No. 569 of 2018

The appointment of the appellant as a Constable came to be questioned by the department itself on the ground that his appointment under special circumstances by the then police authorities was without following the procedure prescribed in law.

2. The appellant was put to a show cause on 14th June, 2003 after almost 12 years of having served the police force to which he gave reply on 26th June, 2003. The reply refers to the selection having been held, but in response to the issue of advertisement, it was categorically stated by the appellant that he cannot be held responsible as he is not aware of any advertisement having been made.

3. The appellant's service came to be terminated by the order dated 10th September, 2003 and an appeal in respect thereof also failed. The appellant approached this Court by filing C.W.J.C. No.12148 of 2003, which was dismissed on 02nd March, 2005. Letters Patent Appeal No.291 of 2007 against the same was also dismissed on 27th February, 2008 by a Division Bench after having referred to the judgment in the case of



Hemkant Jha Vs. State of Bihar & Ors., reported in **2007(3) PLJR 657**. The appellant approached the Apex Court and his special leave to appeal was dismissed on 25th July, 2008 on merits, observing that the appellant would be entitled to the benefit of the observation made for future appointment in age bar relaxation keeping in view the judgment of the Apex Court in the case of **Nagendra Chandra & Ors. Vs. State of Jharkhand & Ors.**, reported in **(2008) 1 SCC 798**.

4. It appears that arising out of similar dismissals, certain other writ petitions had been filed, including C.W.J.C. No. 5279 of 2005, decided on 18th May, 2005, whereby the writ petition was allowed on account of violation of principles of natural justice. The said judgment was accepted in L.P.A. No. 945 of 2010 that had arisen out of C.W.J.C. No.204 of 2004. A Division Bench of this Court on 5th January, 2012 approved the order passed in C.W.J.C. No.5279 of 2005.

5. The said judgments were taken notice of in C.W.J.C. No.3799 of 2006 that was decided along with C.W.J.C. No.4097 of 2006 on 23rd of July, 2012. While allowing the aforesaid writ petition, the learned single Judge of this Court came to the conclusion that violation of principles of natural justice vitiated the impugned order and consequently, the orders



were quashed with liberty to the respondents to proceed afresh. It is, therefore, clear that the said judgment was delivered only on the premise that no opportunity had been given to the petitioners therein to defend themselves.

6. However, while allowing the writ petition, even though the judgment of the learned single Judge in the case of **Sudhir Kumar Vs. The State of Bihar & Ors.**, reported in **2000(3) PLJR 717**, was noticed, yet no consideration thereof appears to have been made.

7. After the aforesaid two writ petitions were allowed, the petitioners therein approached the respondents and an order was passed on 06th August, 2013 referring to the said judgment reinstating both the petitioners with a rider that it will be open to the department to undertake fresh proceeding against them. There is nothing on record to indicate as to whether any proceeding was undertaken or have culminated in any further action in the matter or not, but the fact remains that the writ petition had been allowed only on the ground of violation of principles of natural justice without entering into the issue of the procedure of appointment as was discussed and deliberated upon in the judgment in the case of **Sudhir Kumar** (supra). It may be mentioned that the judgment of **Sudhir Kumar** (supra)



was subjected to challenge in L.P.A. No.1131 of 1999 that was dismissed by a Division Bench on 15.02.2000. The judgment is extracted herein under:-

“Heard learned counsel for the appellant.

We are not persuaded to interfere in this appeal because we find that the appellant was not even applicant for the post of Constable and his appointment was made de hors the rules on the approval of the Director General of Police. The learned Judge in the impugned judgment and order has carefully considered various provisions of law and has found that the Director General of Police has no special power to recommend/approve an appointment, that too of a person who was not even an applicant. This appeal is dismissed.”

8. In the background aforesaid, what we find is that with the dismissal of the special leave to appeal of the appellant on 25th July, 2008, his claim stood foreclosed and even otherwise the claim made on the basis of parity also does not appear to be available inasmuch as the judgments relied upon are only in relation to the violation of principles of natural justice leaving it open to the department to take appropriate proceedings in the matter. The said ratio would not be attracted on the facts of the present case inasmuch as here the appellant had been given a show cause to which he gave a reply whereafter his services were terminated. Consequently, the said



judgments do not come to the aid of the appellant.

9. Apart from this, the judgment in the case of **Sudhir Kumar** (supra) appears to have laid down the law correctly after going through the entire gamut of the provisions relating to selections and appointments and the powers to be exercised by the police authorities while making appointments. We find that the judgment has been referred to by the Apex Court in the case of **State of Bihar & Ors. vs. Chandreshwar Pathak**, reported in **(2014) 13 SCC 232**, which finally clinches the issue. The judgments running contrary to the said ratio, therefore, cannot be said to lay down the law correctly.

10. Consequently, for all the reasons aforesaid, we do not find any reason to extend any such benefit on the ground of parity to the appellant on the facts of the present case. The appeal is, therefore, consigned to records with the aforesaid observations.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

PNM/Jagdish

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	12.02.2019
Transmission Date	N.A.

