

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 10563 of 2020

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Sunil Kumar, aged about 33 years (male), S/o Rajendra Prasad Yadav,
Resident of Village + P.O. Teyar, P.S. Akbarpur, District Nawada.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. Of Bihar, Old Secretariat, Patna..
2. Director General of Police, Bihar, Patna.
3. Director General, Military Police, Bihar, Patna.
4. D.I.G. of Police, Military Police, Northern Zone, Muzaffarpur.
5. Commandant, BMP-7.

... .. Respondent/s

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Appearance :

For the Petitioner : Mr. Ram Hriday Prasad, Adv.

For the Respondents : Mr. Md. Harun Qureshi, AC to SC-1

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date: 06-08-2021

The instant case has been taken up for consideration through the mode of Video conferencing in view of the prevailing situation on account of COVID 19 Pandemic, requiring social distancing.



2. The present writ petition has been filed for quashing the order dated 15.09.2019 passed by the Commandant, BMP-7, Katihar by which the petitioner has been inflicted with the punishment of removal from service. The petitioner has also prayed for quashing of the order dated 28.02.2020 passed by the Deputy Inspector General of Police, Military Police, Northern Zone, Muzaffarpur, whereby and whereunder the appeal filed by the petitioner has been rejected as also the order dated 28.05.2020, whereby and where-under the memorial of the petitioner has also been rejected.

3. The brief facts of the case are that the petitioner was selected and appointed on the post of constable in BMP-7 on 10.07.2015. Subsequently, a charge-sheet dated 27.10.2018 was issued to the petitioner wherein charges were framed against the petitioner to the effect that at the time of filling the application form for appointment on the post of constable in pursuance to the Advertisement no. 2 of 2014, the petitioner, in paragraph no. 8 of the character verification declaration form, had mentioned in his own hand-writing that against him no civil or criminal case is pending, however, upon enquiry made by the respondents, it



Akbarpur P.S. Case No. 61 of 2014, dated 17.3.2014, under Section 147, 148, 149, 448, 323, 378, 307, 344 and 504 of the Indian Penal Code, hence he has misled the department and obtained employment, thus it is apparent that the petitioner had given false information and had engaged in cheating and fraudulent behaviour.

4. The Enquiry Officer had conducted the enquiry and had submitted his enquiry report dated 02.07.2019 finding the charges to have been proved. The Disciplinary authority had then issued a second show cause notice dated 22.8.2019 to which the petitioner had submitted his reply and then the order of removal from service qua the petitioner herein was passed on 15.09.2019 by the Commandant BMP-7, Katihar. Thereafter, the petitioner had filed an appeal, however, the same was also rejected by the D.I.G., Military Police, Northern Zone, Muzaffarpur, vide order dated 28.02.2020. Lastly, the petitioner had filed a memorial, however, the same has also stood dismissed vide order dated 28.05.2020.

5. The learned counsel for the petitioner has submitted that firstly the petitioner has been acquitted in the aforesaid Akbarpur P.S. of 2014 by a judgment dated



19.12.2019 passed by the learned Additional Sessions Judge-X, Nawada and secondly, it is a settled law that a person cannot be debarred from the Government service merely on the basis of pendency of a criminal case. In this regard, the learned counsel for the petitioner has referred to a judgment rendered by the Hon'ble Apex Court, reported in (2011) 4 SCC 744 (**Commissioner of Police & Ors. Vs. Sandeep Kumar**), Paragraph no. 7 to 13 whereof are reproduced herein below:-

“7. The learned counsel for the appellants has submitted that the respondent should have disclosed the fact of his involvement in the criminal case even if he had later been acquitted. Hence, it was submitted that his candidature was rightly cancelled.

8. We respectfully agree with the Delhi High Court that the cancellation of his candidature was illegal, but we wish to give our own opinion in the matter. When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often be condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.

9. In this connection, we may refer to the character “Jean Valjean” in Victor Hugo's novel *Les Miserables*, in which



for committing a minor offence of stealing a loaf of bread for his hungry family Jean Valjean was branded as a thief for his whole life. The modern approach should be to reform a person instead of branding him as a criminal all his life.

10. We may also here refer to the case of Welsh students mentioned by Lord Denning in his book *Due Process of Law*. It appears that some students of Wales were very enthusiastic about the Welsh language and they were upset because the radio programmes were being broadcast in the English language and not in Welsh. They came up to London and invaded the High Court. They were found guilty of contempt of court and sentenced to prison for three months by the High Court Judge. They filed an appeal before the Court of Appeals. Allowing the appeal, Lord Denning observed:

“I come now to Mr Watkin Powell's third point. He says that the sentences were excessive. I do not think they were excessive, at the time they were given and in the circumstances then existing. Here was a deliberate interference with the course of justice in a case which was no concern of theirs. It was necessary for the Judge to show—and to show to all students everywhere—that this kind of thing cannot be tolerated. Let students demonstrate, if they please, for the causes in which they believe. Let them make their protests as they will. But they must do it by lawful means and not by unlawful. If they strike at the course of justice—and I speak both for England



and Wales—they strike at the roots of society itself, and they bring down that which protects them. It is only by the maintenance of law and order that they are privileged to be students and to study and live in peace. So let them support the law and not strike it down.

But now what is to be done? The law has been vindicated by the sentences which the Judge passed on Wednesday of last week. He has shown that law and order must be maintained, and will be maintained. But on this appeal, things are changed. These students here no longer defy the law. They have appealed to this Court and shown respect for it. They have already served a week in prison. I do not think it necessary to keep them inside it any longer. These young people are no ordinary criminals. There is no violence, dishonesty or vice in them. On the contrary, there was much that we should applaud. They wish to do all they can to preserve the Welsh language. Well may they be proud of it. It is the language of the bards—of the poets and the singers—more melodious by far than our rough English tongue. On high authority, it should be equal in Wales with English. They have done wrong—very wrong—in going to the extreme they did. But, that having been shown, I think we can, and should, show mercy on them. We should permit them to go back to their studies, to their parents and continue the course which they have so wrongly



disturbed.”

In our opinion, we should display the same wisdom as displayed by Lord Denning.

11. As already observed above, youth often commits indiscretions, which are often condoned.

12. It is true that in the application form the respondent did not mention that he was involved in a criminal case under Sections 325/34 IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified. At any event, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter.

13. For the reasons given above, this appeal has no force and it is dismissed. No costs.”

6. The learned counsel for the petitioner has also relied upon a judgment rendered by the learned Division Bench of this Court, reported in 2007 (2) PLJR 190 (**Surendra Kumar Choudhary vs. The Union of India & Ors.**), paragraphs no. 10 to 13 whereof are reproduced herein below:-

“10. From the facts, as enumerated above, it is manifestly clear that at the initial stage opposite party no. 5 Chandra Kishore Thakur was selected by the postal authorities and appointment letter was issued in his favour in view of pendency of the criminal case against the petitioner, Surendra Kumar Choudhary. However, pursuant to the order pa claim of the petitioner was again



examined and appointment of Chandra Kishore Thakur was cancelled and appointment letter was issued in favour of the petitioner, which subsequently was cancelled vide order dated 18th July, 2002 pursuant to the order impugned passed by this Court.

11. The question, in this view of the matter, arises as to whether when this Court observed for filing of a review application was it open to it to set aside the order of termination passed against the writ petitioner on consideration of the fact that the present petitioner, Surendra Kumar Chaudhary, was appointed during pendency of a criminal case in view of the finding of this Court itself in case of Santosh Kumar Jha (supra). More so, the order of termination passed against the writ petitioner was not under challenge, though it was brought on record by way of an interlocutory application challenging the same.

12. It is, obviously, therefore, clear that pendency of a criminal case was not an impediment for appointment on a Government post in view of the ratio laid down by this Court in Santosh Kumar Jha (supra) and, thus, the subsequent order passed by the postal authorities appointing the petitioner, Surendra Kumar Chaudhary and terminating the services of Chandra Kishore Thakur would not be vitiated and in this context it is held that the latter part of the order passed by this Court by the order impugned setting aside the order of terminating of Chandra Kishore Thakur was uncalled for. Further it is



borne out from the materials on record that before passing of the order under review, Chandra Kishore Thakur had already filed a review application before the CAT being O.A. No. 1 of 2002 bringing to its notice the fact that Surendra Kumar Chaudhary was involved in a criminal case. The review application was dismissed as barred by limitation as also on merit, as involvement of Surendra Kumar Chaudhary in a criminal case was already noticed by the CAT in its earlier order.

13. In this view of the matter, this application is allowed and latter part of the order under review setting aside the order of termination of Chandra Kishore Thakur is recalled and to this extent, the order under review stands reviewed.”

7. Per contra, the learned counsel for the State, Shri Md. Harun Quereshi, AC to SC-1 has submitted that there is no laches as far as conduct of the departmental proceedings are concerned and more over, it is an admitted fact that the petitioner has suppressed the fact that he was an accused in a criminal case, while filling the form for appointment on the post of constable and moreover, the employees of police service are required to be disciplined, hence no fraudulent behaviour on their part can be tolerated, thus, the petitioner has been rightly dismissed from service by the impugned orders, which have



been challenged in the present writ petition.

8. I have heard the learned counsel for the parties and gone through the materials on record. It is an admitted fact that the petitioner, while filling up the application form had not mentioned that he is an accused in a criminal case, but then it is equally true that a Panchayati had taken place pertaining to the aforesaid criminal case wherein the matter was settled and the decision of the Panchayat was submitted before the court below leading to the petitioner being under the impression that the case was over and moreover, the petitioner has also stood acquitted by the aforesaid judgment dated 19.12.2019, apart from the fact that not only the punishment of removal from service is harsh and disproportionate to the allegation levelled against the petitioner, but then it is also true that the petitioner was not involved in such a heinous offence like, rape or murder, as such a more lenient view can be taken in the matter, especially in view of the law laid down by the Hon'ble Apex Court in the case of **Sandeep Kumar** (supra) as also by the learned Division Bench of this Court in the case of **Surendra Kumar Choudhary** (Supra).

9. Havi : facts and circumstances of the



case and for the reasons mentioned herein above, the order of punishment dated 15.09.2019 passed by the Commandant, BMP-7, Katihar whereby and where-under the petitioner has been removed from service as also the appellate order dated 28.02.2020 passed by the Deputy Inspector General of Police, Military Police, Northern Zone, Muzaffarpur and the order rejecting the memorial of the petitioner dated 28.05.2020 are hereby quashed.

10. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
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