

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 18411 of 2019

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Sandeep Kumar, aged around 40 years, Male, son of Shri Bachchu Prasad Singh, resident of Akhatwara, Bahadurpur, P.O. Ballipur, District Samastipur, Bihar, presently residing at Shashtrinagar, CID Colony, Quarter No. 19/48, P.O + P.S. Shashtrinagar, District- Patna, Bihar- 800023.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Inspector General of Police, Patna Range, Patna.
4. The Senior Superintendent of Police, Patna.
5. The Deputy Superintendent of Police, Navin Police Kendra, Patna.
6. The Deputy Superintendent of Police, Law & Order, Patna.
7. The Inspector cum Station House Officer, Buddha Colony Police Station, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner : Mr. Apurva Harsh, Adv.

For the Respondents : Mr. Md. Nadim Seraj, G.P. 5

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 06-07-2021

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 seeking quashing of the office order contained in Memo No. 4524/ 2018 dated 04.11.2018, issued by the Senior Superintendent of Police, Patna, whereby and where-under the petitioner has been dismissed from service.

3. At the outset, the Ld. Counsel for the petitioner has submitted that admittedly, the present case is squarely covered by a judgment rendered by a co-ordinate Bench of this Court dated 03.05.2021 passed in CWJC No. 23925 of 2018 (Pratima Kumari & Ors. Vs. The State of Bihar & Ors.) and other analogous cases whereby and whereunder, the impugned orders of termination of services of similarly situated police personnel, by the Senior Superintendent of Police, Patna, have been quashed. It is submitted that by the impugned order dated 04.11.2018, apart from the petitioner, one other constable namely Shri. Damodar Paswan was dismissed from service and by the aforesaid judgment dated 03.05.2021, his writ petition bearing CWJC No. 22996 of 2018 has also been allowed and the order of termination of service has been quashed. At this juncture, it would be relevant to quote paragraphs No. 56 to 59 herein below:-



"56. In the present case, the question is that whether the action was merely a motive or foundation. it will be appropriate to consider certain paragraph of the counter affidavit which has been filed by the City Superintendent of Police (Central), Patna. Paragraph nos. 4, 5, 6, 8, 9 of the counter affidavit gives the details of the incident took place. In paragraph no.10, it has been stated that criminal case has been lodged against erring police officials. In paragraph no.13 it has been stated that Zonal I.G. Patna perused the entire fact mentioned in the inquiry report and agreed with the opinion of the Senior Superintendent of Police, Patna, and subsequently Inspector General of Police, Patna Range, Patna, directed the Senior Superintendent of Police, Patna, to terminate all the answerable/guilty Police personnel, who were involved in such violent behaviour and consequently 164 newly appointed constables who were found unfit for discharging the duties of constables were terminated from the service vide order no. 4522/18 contained in memo no. 13624/R.O. dated 04.11.2018. Besides this, one Havaladar and three constables were also ordered to be dismissed from the police service under Section 311(2) of the Constitution of India.

57. So, the above statements itself show that action has been taken by way of punishment based on foundation act of violence in which 164 probationer constables were found involved have been terminated along with 4 permanent constables. They have not brought any material to show that their period of probation has been extended. their inefficient discharge of duty



nor any record has been brought to show that the performance of the probationer constables was not upto the marks but, only real fact are coming out from the record that it is the incident, in which all the police personnel involved, was the foundation of termination of service of the probationer constables and their termination is held to be illegal and same is quashed.

Conclusion.

58. For the reasons stated hereinabove, this Court holds that action of the respondents cannot be approved. Accordingly, the impugned order of termination passed against probationer constables contained in Memo no. 13624 dated 04.11.2018 and order of termination passed against permanent constables contained in Memo No.13625 dated 04.11.2018 issued under the signature of Senior Superintendent of Police, Patna, are quashed. However, liberty is given to the authority, if they so like, they may take appropriate action in accordance with law and the rule applicable to them.

59. In the result, all the writ petitions filed by the permanent constables and probationer constables are allowed to the above extent with liberty to the respondents, as mentioned hereinabove."

4. The learned counsel for the petitioner has further submitted that in fact, the case of the petitioner stands on a much better footing inasmuch as the Investigating Officer of the FIR in questio

Superintendent of Police (Law &



Order) has submitted a detailed report dated 14.03.2019 in which all case records, CCTV footage and other materials have been considered and the petitioner was found not to be present at the place of occurrence, hence the petitioner has been found innocent by the Investigating Officer. It is also submitted that the same finding has been submitted by the Superintendent of Police (Centre), Patna vide memo dated 22.04.2019 absolving the petitioner from the alleged incident. The said documents are annexed as Annexure-6 series to the present writ petition.

5. The learned counsel for the respondent State, Shri. Md. Nadim Seraj, G.P. 5, assisted by Shri .Shailesh Kumar, Advocate has not disputed the fact that the impugned order dated 04.11.2018 qua Damodar Pawan, one of the constables, who had been dismissed from service by the same impugned order dated 04.11.2018 by which the petitioner has been dismissed from service, has got relief by the aforesaid judgment dated 03.05.2021 inasmuch as his Order of dismissal from service has been quashed. Consequently, it is submitted that the respondent State cannot deny the fact that the present case is squarely covered by the aforesaid judgment dated 03.05.2021 passed in the case of Pratima Kumari & Ors. (supra).

6. Havi : facts and circumstances of the



case, considering the submissions made by the learned counsel for the parties and taking into account the fact that the present case is squarely covered by the aforesaid judgment dated 03.05.2021 passed in the case of Pratima Kumari & Ors. (supra), I deem it fit and proper to quash the impugned order of termination dated 04.11.2018, passed by the Senior Superintendent of Police, Patna, qua the petitioner herein, however, with liberty to the authorities to take appropriate action in accordance with law, if they so desire, nonetheless, taking into account the peculiar facts of the case of the petitioner to the effect that the Investigating Officer of the FIR in question as also the Superintendent of Police (Centre) Patna have absolved the petitioner from the alleged incident, as has been averred by the petitioner in paragraph no. 14 of the present writ petition.

7. It is needless to state that any order passed by the respondent authorities, qua the petitioner herein, pursuant to the order of dismissal from service dated 04.11.2018, are held to be non-est and void in the eyes of law, as a consequence of quashing of the impugned order of termination dated 4.11.2018.

8. The writ petition stands allowed.



(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	19.08.2021
Transmission Date	N/A

