

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18649 of 2014

1. Munendra Singh, aged about 50 years son of Late Devi Dayal Singh (father) and Late Sohara Devi (Mother).
2. Birender Kumar Singh , aged about 48 years , son of Late Devi Dayal Singh , (Father) and Late Sohara Devi (Mother).
3. Upendra Narayan Singh, aged about 46 years , son of Late Devi Dayal Singh (Father) and Late Sohara Devi (Mother).
4. Kanti Devi aged about 50 years, wife of Late Surendra Singh, elder son of Late Devi Dayal Singh (Father) and Late Sohara Devi (Mother)

All four residents of Villages -Narbirpur , Panchayat - Narbirpur ,
Proposed Block - Narbirpur , P.O. - Narhichandi , P.S.-Koelawar
(Now Chandi) , District - Bhojpur (Arrah) Bihar .

... .. Petitioner/s

Versus

1. The State Of Bihar, through the Principal Secretary, Home Department, Government of Bihar, Patna
2. The Chief Secretary, Government of Bihar , Patna.
3. The Principal Secretary , Home Department , Government of Bihar , Patna .
4. The Director General of Police , Bihar ,Patna .
5. The Deputy Director General of Police Saran at Chapra , Bihar .
6. The Regional Director General of Police Muzaffarpur, Bihar .
7. The Superintendent of Police Saran , Bihar.
8. The Director, Provident Fund , Bihar , Patna .
9. The District Provident Fund Officer , Saran , Bihar .
10. The Treasury Officer Bhojpur Arrah , Bihar .
11. The Accountant General, Bihar, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Harendra Pratap Singh, Adv Ms. Priyanka Singh, Adv
For the Respondent/s	:	Mr. Prashant Pratap, GP-2 Mr. Lala S.N Rais, AC to GP-2
For Accountant General	:	Mr. Ram Kinkar Choubey, Adv

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 19-12-2022

The petitioners' father who was a constable in the police



service was prosecuted on an allegation of smuggling Nepali Ganja. He was tried and convicted in Criminal Appeal No. 93 of 1965 decided on 02.04.1965. The judgment of conviction is said to have been set aside.

2. The petitioners' father produced the judgment of the appellate court before the State Government. Thereafter, giving an opportunity of hearing to the petitioners' father, the petitioners' father was dismissed from service on 14.04.1966.

3. The petitioners claim that their father filed an appeal against the order of dismissal, which was dismissed by the Deputy Director General of Police under D.O No. 343 of 1971. Thereafter, the revision was also dismissed by the Director General of Police, Bihar. This is an admitted fact as per averment made in paragraph 3 of the writ petition.

4. It is the petitioners' assertion that thereafter their father had made a representation against his dismissal from the service, which was placed before the then State (Home) Minister, Government of Bihar on 24.01.1974. After opinion of the Law Department, the petitioners assert that on 24.04.1977, the order was communicated to the Director General of Police, Patna, Bihar from the office of hon'ble the Chief Minister of Bihar. The document which the petitioners claim to be a copy of



this decision has been enclosed at Annexures 1, 2 and 3 of the writ petition. These documents are nothing more than notings in the departmental file recording only opinion and recommendation.

5. It is not the petitioners' case that the same was ever communicated to their father or notified. It is settled law that notings in the file are not to be considered as a final decision. Till such time that notings result in issuance of formal order/ communication or notification, the same cannot form the basis of asserting any claim by the petitioners, as is sought to be done in the instant case.

6. Having observed as such, this Court would further record that the file noting is of the year 1974, in respect of petitioners' father dismissal of the year 1966, which decision attended finality by rejection of the their father's appeal vide D.O No. 343 of 1971. Rejection of revision is also an admitted fact as noted above.

7. After the said file notings dated 11.02.1974, 06.04.1974 and 24.04.1977, the petitioners' father had approached several authorities, apparently representing that under the said file notings there is a recommendation of hon'ble the Chief Minister to withdraw the dismissal order and to take



him back in service. This is apparent from Annexure-5, being copy of a file noting, as well as letter dated 26.12.1989 (Annexure-6) by a Member of Bihar Legislative Assembly.

8. There are several such recommendations claimed to be by Minister/s and Members of State Legislature in favour of the petitioners, on the premise that on 24.04.1977 the then hon'ble Chief Minister directed for taking their father back in service. However, there is no such order of the hon'ble the Chief Minister on record.

9. The petitioners, at Annexure-3, have placed on record a file noting dated 24.04.1977, in which there is nothing more than a recommendation in view of certain decisions of the Law Department. Just below this file noting, there is a note by the office that the same be notified to the Director General of Police. However, it is not the petitioners' claim that pursuant to these file notings any decision was notified to the Director General of Police.

10. In fact, it is the petitioners' case is to the category, that again their father represented before the hon'ble the Chief Minister of Bihar. The relevant extract of his representation dated 25.05.1985 (Annexure-4) reads as follows:

"मैं माननीय मुख्यमंत्री के आदेश दिनांक 24-4-



1977 के आलोक में उच्च अधिकारियों से मिलता रहा और पुनः सेवा में रहते हुए बकाये वेतन की राशि का मांग करता रहा परन्तु गृह (आरक्षी) विभाग या आरक्षी महानिरीक्षक बिहार, पटना द्वारा किसी प्रकार का विचार नहीं किया गया। जबकि मैं लगभग 1982 में या बाद की तिथि में सेवा निवृत्त हो गया।....."

11. Petitioners' father thereafter has also been pursuing the Members of State Legislature as well as Minister/s claiming service benefits, ignoring his dismissal. Pursuant thereto recommendations have also been made in this respect by the public representatives.

12. The petitioners' father has continued in his efforts to take benefit of the noting dated 24.04.1977 treating the same as an order. However, it is not his case that at any point of time any order was issued/notified as a result of the notings, setting aside his dismissal; and for his reinstatement.

13. As a sequel to his relentless efforts, petitioners' father has filed CWJC No. 3723 of 1991. The writ petition was dismissed as withdrawn on 10.02.1992 by recording the following order.

"After some argument learned counsel prays for permission to withdraw this application.

This application is dismissed as withdrawn."



14. This dismissal was by a Division Bench. After withdrawing his case, the petitioners' father again moved the public representatives by making representations, again claiming the arrears of salary from the date of his dismissal as also post retiral benefit, as if he had never been dismissed from service.

15. From the records, it appears that when the petitioners' father had filed CWJC No. 3723 of 1991, the State counsel has sought instructions from the authorities. The same caused some inter-departmental communication, apparently with the objective of filing a counter affidavit in the said proceedings.

16. Now based on these inter office communications, the petitioners' father filed another writ petition, bearing CWJC No. 10617 of 1999. The same was disposed of on 21.12.2000 by the following order, passed in a batch of cases.

"Accordingly, these writ applications are disposed of in terms of the general direction of this Court in the aforesaid case. The petitioners shall file representation with respect to their claim in detail before the authority concerned, which if filed within two weeks, shall be considered and disposed of by the authority concerned strictly in terms of the said general direction within the time fixed therein."



17. The petitioners' father got legal notice sent through his advocate to the State authorities. Again, he had claimed payment of salary from that date of his dismissal dated 14.04.1966 till date of his superannuation, vaguely claimed as 1986; as also the post retiral dues.

18. In response to the legal notice, there is some communication between the office of Deputy Inspector General of Police, Saran Range Chapra and the Superintendent of Police Saran as well as office of the Accountant General, Bihar.

19. The petitioners' father thereafter invoked the contempt jurisdiction of this Court alleging violation of the order dated 21.12.2000 passed in his second writ petition bearing CWJC No. 10617 of 1999. This contempt petition bearing MJC No. 1325 of 2001 was also withdrawn on 03.05.2002, which reads as follows:

"After some argument, as prayed by the learned counsel for the petitioner, the MJC application is permitted to be withdrawn with the liberty, however, to the petitioner to pursue his grievance before any other appropriate forum available to him in law."

20. Having withdrawn the contempt proceedings, the petitioners' father filed his third writ petition for the same relief



bearing CWJC No. 6491 of 2002, relying upon some letter issued by the office of Superintendent of Police, Saran of the date prior to withdrawal of contempt proceedings, i.e. 30.04.2002. However, this communication from the Superintendent of Police, Saran, as per the pleadings on record, appears to be in light of Rule 844 and Rule 845 of the Bihar Police Manual read with Rule 46 of the Bihar Pension Rules.

21. Under the provisions of the Bihar Police Manual, noted above, petitioners could have claimed their father's pay up to the date on which he ceased to perform his duty, but for the same he was required to appear before the Superintendent of Police along with details in support of his claim.

22. Under Rule 46 of the Bihar Pension Rules, the petitioners could have claimed compassionate allowances only if he was deserving a special consideration, to the extent limited under Rule 46 provided he produced any material in support of his claim under Rule 46 of the Bihar Pension Rules.

23. The third writ petition filed by petitioners' father bearing CWJC No. 6491 of 2002 was disposed of on 03.10.2002 by recording the following order.

"Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the AG,



Bihar.

2. Admittedly petitioner has availed of remedy of writ petition to claim his pensionary benefits in the year 1999 which was disposed of by order dated 21.12.2000 (Annexure-15). Thereafter he filed a contempt petition which was disposed of on 3.5.2002 vide Annexure-21 whereby petitioner was given liberty to pursue his grievance before any other appropriate forum available to him in law. Immediately thereafter this second writ petition has been filed on 22.5.2002 although from Annexure- 28 of the supplementary affidavit brought on record by the petitioner himself, it appears that the office of Superintendent of Police, Chapra has issued a letter on 30.4.2002 requesting the petitioner to personally appear in the office and sign his pension papers so that the same may be sent to the AG, Bihar. Learned counsel for the petitioner informs this Court that pursuant to Annexure- 28 dated 30.4.2002 petitioner has appeared in the office of SP, Chapra and has signed the pension papers.

3. In the facts and circumstances of the case, this Court is of the view that petitioner should personally appear and pursue his remedy before the departmental



authorities who are directed to expedite the matter of payment of pension and other retiral benefits to the petitioner in accordance with law. The admitted dues should be sanctioned and paid to the petitioner without delay and preferably within a period of three months. It is desirable that the pension, if admissible in law, should be sanctioned within the aforesaid period of three months and the Accountant General should pass appropriate orders with regard to payment order within a further period of one month.

4. The writ petition is disposed of."

24. It is not the petitioners' case that after this Court's order dated 03.10.2002, their father had placed any material before the authorities so as to entitle him to any payment under either Rules 844, Rule 845 of the Bihar Police Manual; or under Rule 46 of the Bihar Pension Rules. He had again started moving the authorities for payment of salary from the date of his dismissal till his retirement, and for the post retiral benefits.

25. This has led to filing of contempt application alleging non-compliance of the order passed in CWJC No. 6491 of 2002. The same was numbered as MJC No. 441 of 2003, which was dismissed by recording the following order.



"After the order of this court, the Superintendent of Police, Saran, Chapra has passed a reasoned order and communicated to both learned counsel for the original writ petitioner as well as to the original writ petitioner. During pendency of the present contempt petition, the original writ petitioner died in the year 2007 itself, however, keeping in view the fact that it was in relation to so-called claim of retiral dues, the interlocutory application, which was filed in the year 2014 for substituting legal heirs of original writ petitioner, was allowed. Accordingly legal heirs of the original writ petitioner were substituted.

Learned counsel for the petitioners, submits that in respect of re-instatement of the original writ petitioner, order was passed at high level but same was not carried out. It was submitted that despite order by superior authorities, order of re-instatement was not passed.

In this case a counter affidavit has been filed by opposite party no. 6 i.e. the Superintendent of Police, Chapra. It has been pleaded that after order passed by the writ court matter was examined and a detailed order has already been passed vide Annexure -A/1 to the



counter affidavit of Superintendent of Police, Chapra. Once in compliance with the order of this court a detailed order was passed, there is no reason to proceed further in the present proceeding. Besides this, along with the counter affidavit, the opposite party no. 6 has brought on record an order passed in the departmental proceeding, wherein, on the charge of moral turpitude order of dismissal of the original writ petitioner was passed. Along with the same counter affidavit a communication made by the Government Pleader No. 1 to the opposite party no. 6 has also been brought on record, which indicates that a writ petition was filed by the original writ petitioner for his re-instatement vide C.W.J.C. No. 3723 of 1991, which stood dismissed. Of-course, the original writ petitioner had also filed rejoinder but the averment made in the counter affidavit particularly regarding rejection of the writ petition for his re-instatement has not been specifically dealt with. It has also been stated that no salary is due.

Keeping in view the fact that a reasoned order has been passed in compliance with the order passed in C.W.J.C. No. 6491 of 2002, no case is made out for



initiating any proceeding.

The petition stands dismissed."

26. From the sequence of events, recorded above, it is more than evident that after withdrawal of the writ petition before the Division Bench, writ petition has been filed for the same relief/s, thrice including the instant writ petition.

27. The claim is based on assertions that their father's dismissal in 1966 was not in accordance with law. The facts thus pose a unique situation before this Court.

28. This Court is clearly of the opinion that the petitioners are filing frivolous cases and indulging in luxurious litigations in their relentless efforts to somehow obtain some orders from this Court by invoking the equitable writ jurisdiction although their father has withdrawn writ petition for the same relief before the Division bench in CWJC No. 3723 of 1991. His subsequent two writ petitions have also been either dismissed or disposed of.

28. In the instant proceedings also, the prayer has been made in such a way so as to somehow again introduce the same prayer, in prayer no (iii), which has been rejected thrice in earlier writ proceedings arising out of CWJC Nos. 3723 of 1991, 10617 of 1999 and 6491 of 2002, i.e. a declaration that the order



of dismissal dated 14.04.1966 is illegal.

29. In view of the above discussion, the prayer of the petitioners, in the opinion of this Court is not only fit to be rejected, but the Court would be justified in imposing heavy cost on the petitioners for repeatedly invoking the writ jurisdiction for the same relief, in the way that they have done.

30. However, this court would refrain from imposing any cost and record that the writ petition is frivolous, hopelessly barred by limitation, an abuse of the equitable writ jurisdiction.

31. The writ petition is dismissed.

(Madhuresh Prasad, J)

SUMIT/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.12.2022
Transmission Date	NA

