

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3289 of 2020

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Dinesh Kumar Son of Late Janki Yadav, Resident of Ward No. 22, Ranka,
P.O. Karki, P.S. Ariyari, District-Sheikhpura.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Government of Bihar, Patna.
2. The Principal Secretary, Department of Home, Government of Bihar, Patna.
3. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
4. The Under Secretary, General Administration Department, Government of Bihar, Patna.
5. The Director General of Police, Bihar, Patna.
6. The Inspector General of Police, Head Quarter, Bihar, Patna.
7. The District Inspector General of Police, Munger Division, Munger.
8. The Superintendent of Police, Shaikhpura.
9. The Bihar Staff Selection Commission through its Secretary, Patna.
10. The Chairman, Bihar Staff Selection Commission, Patna.
11. The Secretary, Bihar Staff Selection Commission, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Chakrapani, Adv Mr. Dipak Kumar, Adv Mr. Madhuresh Singh
For the Respondent/s	:	Mr. Md. Nadim Seraj (Gp5) Ms Shalini AC to GP-5

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

2 21-12-2023 Heard learned counsel for the petitioner and learned
counsel for the State.

I.A. No. 1 of 2023

2. The present I.A. No. 1 of 2023 has been filed by
which the demand of fresh relief has been requested by to be
added as relief 1(VI) by which quashing of Letter No. 1779/GS



dated 28.08.2019 issued by Respondent No. 7 by which the petitioner was eligible for appointment on the post of Sub-Inspector due to proposed suppression about the pendency of the criminal proceeding made by him.

3. Counsel for State has no objection in allowing the said I.A. No. 01 of 2023 and by the said I.A. No. 01 of 2023 he has challenged a letter which is already Annexure-B of the Counter affidavit.

4. In this background, the said I.A. No. 01 of 2023 is hereby allowed and pleadings of the I.A. No. 01 of 2023 shall be treated as part and parcel of the writ petition.

C.W.J.C. No. - 3289 of 2020

5. The present application is filed for directing the respondent authorities to appoint the petitioner on the post of Sub Inspector of Police pursuant to advertisement No. 704 of 2004 with further prayer adding in the I.A. No. 01 of 2023 by which of Letter No. 1779/GS dated 28.08.2019 shall directed to be quashed.

6. Counsel submits that the Bihar staff Selection Commission, Patna had issued advertisement bearing Advertisement No. 704 of 2004 calling application from the eligible candidates for appointment on the post of Sub-Inspector



of Police in the State of Bihar.

7. Counsel further submits that the petitioner applied for the said post and was allotted Roll No. X04593. The claim of the petitioner has arisen by virtue of order passed by the Hon'ble Supreme Court in contempt petition (Civil) Nos. 14-18 of 2018 in Civil Appeal No. 2806-2810 of 2017 with contempt petition (Civil) No. 22 of 2018 in Civil Appeal No. 2805 of 2017 on 8th May 2018 clarified that 133 applicants before the Hon'ble Supreme court would not have to go physical efficiency test again and they would only be subjected to the same test as undergone by 186 candidates appointed in the year 2017-2018 during the process thereupon too.

8. Counsel further submits that petitioner is one of the 133 applicants before the Hon'ble Apex Court and his name was figured in Sr. 103.

9. Counsel submits that unfortunately due to village politics the petitioner's name was figured in Araiya P.S. Case No. 130/2015 dated 27.11.2015 in which the police has submitted the charge-sheet on 21.09.2016. Counsel submits that after investigation petitioner was not sent for trial as such the petitioner was under clear impression that there is no criminal case pending against him. Counsel further submits that in this



regard the Office of Superintendent of Police vide memo no. 2266 dated 18.07.2018, petitioner was issued the character certificate indicating that no criminal case pending against the petitioner in any matter.

10. Counsel submits that pursuant to the order dated 08.05.2018 when nothing was done in favour of 133 applicants then they again moved the Hon'ble Apex Court in Contempt Petition(C) No. 1711 of 2018 for implementation of the order of the Hon'ble Court and by order dated 24.10.2018, the Hon'ble Apex Court directed the State and Bihar Staff Selection Commission to complete the selection process on or before 01.11.2018 and issue appointment letters and only thereafter, respondent authorities had submitted the lists of the 133 candidate who were to be considered for appointment without physical efficiency test before the Hon'ble Apex Court.

11. He further submits that pursuant to the order dated 24.10.2018, the respondents on 28.10.2018 asked the petitioner to fill up the form in Prapatra 101 specifically to certify whether any criminal case was pending against the petitioner or not. Counsel further submits that the petitioner was well aware of the fact that he was not sent up for trail and character certificate dated 18.07.2018 has already been issued from the Office of



Superintendent of Police, Sheikhpura stated that no criminal case was pending against him. But upon verification of Prapatra 101 by the local police, it was found that one criminal case was pending against the petitioner and as such vide Annexure-B the said letter which has challenged by the petitioner in I.A. No. 01 of 2023 has been issued that the petitioner has suppressed about the pendency of the criminal case so he was not fit to be appointed.

12. Counsel for petitioner submits that petitioner was not sent up for trial i.e. the said Ariyari P.S. Case No. 130 of 2015 and thereafter, he has obtained certificate from the Superintendent of Police, and became reluctant that no criminal case is pending against him, but in the said case a supplementary charge-sheet has been filed on 22.10.2014. In this regard, the counsel for the petitioner submits that petitioner is completely unaware of filing supplementary charge-sheet nor any notice has been served to him either at the level of Investigating Officer or at the level of Superintendent of Police, Sheikhpura or at the level of the Court, and as such, he was completely unaware of filing of the supplementary charge-sheet and under complete wrong impression he has submitted the Prapatra 101 on the basis of the police report obtaining from the



Office of Superintendent of Police, Sheikhpura that there is no criminal case pending against him i.e. 28.10.2018.

13. Counsel for petitioner submits that it is a unique situation where in charge-sheet, he was not sent up for trial, the report of Superintendent of Police is in his favour but only due to lack of knowledge, the supplementary charge-sheet has been filed, Praptra 101 had been submitted.

14. Counsel for the petitioner further submits that finally in the said criminal case he was acquitted. The order of the said acquittal is annexed as Annexure-7, order dated 21.05.2019. Counsel for the petitioner also relied on two judgments i.e. order dated 06.08.2021 passed in ***C.W.J.C. No. 10563 of 2020 (Sunil Kumar Vs. State of Bihar and Anrs.)*** as well as the case of ***Surendra Kumar Choudhry Vs. Union of India reported in (2007) 2 PLJR SC 190*** whose paragraph 10-13 are relevant which are as follows:

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 Chaudhary. However, pursuant to the order passed by the CAT 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 GAT 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.



15. Counsel submits that in the light of two judgments and particularly when the Intention of the petitioner is not to suppress the facts rather it is the circumstance under which he has filed the certificate. His case may not be taken into the case of submission and the order challenged in Annexure-1 in I.A. No. 01 of 2023 i.e Annexure-B may be set aside.

16. Counsel for the State submits that the service of the petitioner has been guided by the Bihar Police Manual, 1978 and its Rule 673 is applicable in the case of the petitioner under which he has to furnish Prapatra 101. Counsel submits that here in this case petitioner has submitted its Papatra 101 on 28.10.2018 and it is the day on which there is criminal case admittedly pending against him and therefore the decision taken by the D.I.G., Munger has rightly been taken and the case of the petitioner is fit to be set aside.

17. After going through the pleading of the parties, there are certain material which are very much relevant in deciding the case and that it also necessary to identify that “whether the facts mentioned in Prapatra 101 dated 28.10.2018 amounts to suppression or it amounts to a human error?”

18. Admittedly, a criminal case was pending namely Ariyari P.S. Case No. 130 of 2015 against the petitioner and it is



also admitted that in the said case, final form has been submitted and petitioner was not put on trial which is apparent from the pleadings made by the petitioner in Paragraph-8 then charge-sheet was filed on 21.06.2016 in which the petitioner was not sent for trial rather other persons were sent for trial. It is also true that the Office of Superintendent of Police, Seikhpur vide Memo No. 2266 dated 18.07.2018 has issued a certificate showing no criminal case pending against the petitioner in any matter and this certificate is also absolutely lawful and correct because on the said date no case was pending against him and relying on these two documents, the petitioner has filed up the form i.e. Prapatra 101 in which he has mentioned that no criminal case is pending against him. But in the meantime, on 22.10.2018 a supplementary charge-sheet has come about which petitioner was completely unaware and in view of the Court there is no provision in law about information of submission of supplementary charge-sheet to any accused until and unless the summons not served from the Court. It also transpires that as soon as petitioner has received the summons, he has contested the case and in which he had acquitted and acquittal order has been annexed as Annexure-7 dated 21.05.2019.

19. In the opinion of this Court, the production of



Prapatra 101 in which he showed himself that no criminal case is pending is basically a human error and as such the said Letter No. 1779/GS Annexed in Annexure-B dated 28.08.2019 is hereby quashed.

20. Respondent authorities are directed to demand a fresh letter i.e. Prapatra 101 from the petitioner disclosing all the facts and documents and take decision afresh in case of the petitioner within sixty days from the date of production of the order.

21. In case the petitioner found fit, joining letter shall be given to him at once.

22. With the aforesaid direction, this writ petition is disposed of.

(Dr. Anshuman, J)

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