

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.230 of 2022
In
Civil Writ Jurisdiction Case No.8447 of 2020

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1. The State of Bihar through the Principal Secretary, Home Department, Bihar, Patna.
 2. The Principal Secretary, Home Department, Bihar, Patna.
 3. The Special Secretary (Home) Police Department, Bihar, Patna.
 4. The Director General Board through Director General of Police, Bihar, Patna cum Chairman.
 5. The Additional Director General of Police (Headquarter), Bihar, Patna cum Member.
 6. The Additional Director General of Police, Crime Investigation Department and Weaker Section Wing, Bihar, Patna cum Member.
 7. The Inspector General of Police (Budget/Appeal/Welfare), Bihar, Patna cum Member Secretary.
 8. The Inspector General of Police (Headquarter), Bihar, Patna.

... .. Appellant/s

Versus

Tripurari Prasad, Son of Late Raj Kumar Prasad Sinha, Resident of Village-
Chandaura, P.S.- Kako, District- Jehanabad.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. P.K. Shahi, AG
		Mr. Nadim Seraj, Advocate
For the Respondent/s	:	Mr. Vinay Ranjan, Advocate

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 16-03-2023

The State is in appeal under Letters Patent of this Court, putting to challenge an order dated 14.12.2021 passed in CWJC No. 8447 of 2020 by a learned Single Judge of this Court.



2. The short facts of the case, necessary for disposal of the present appeal, are not at all in dispute. The sole respondent was initially appointed as Sub-Inspector of Police in the year 1994 and was subsequently promoted to the rank of Inspector of Police vide Memo No. 3108/P-1 dated 12.11.2013. Subsequently, he was granted promotion to the rank of Deputy Superintendent of Police vide Memo No. 934 dated 29.01.2019. After such promotions were granted to the respondent, it emerged that he was an accused in criminal case being Vigilance Case No. 22 of 2006, which was pending when the promotion was being considered by the DPC and granted to him by the Department to the rank of Inspector of Police.

3. Apparently, taking into account the fact that the respondent was wrongly granted promotions to the rank of Inspector of Police and subsequently to the rank of Deputy Superintendent of Police, he was asked by letter dated 13.09.2019 to provide a detailed information as regards pendency of Vigilance Case No. 22 of 2006 before a criminal court. After the respondent submitted his response to a communication dated 13.09.2019 (Annexure-G to the supplementary counter affidavit filed on behalf of respondent No. 4 in CWJC No. 8447 of 2020), the DG Board, in its meeting



dated 15.06.2020, decided to withdraw its earlier recommendation for the respondent's promotion to the rank of Inspector of Police. Consequently, the promotion granted to the respondent to the ranks of Inspector of Police and Deputy Superintendent of Police has been cancelled.

4. The respondent approached this Court by filing writ petition under Article 226 of the Constitution of India, giving rise to the aforesaid CWJC No. 8447 of 2020, putting to challenge the resolution of the DG Board dated 15.06.2020, whereby the recommendation made for his promotion to the post of Deputy Superintendent of Police from the post of Inspector of Police was decided to be withdrawn on the ground of pendency of Vigilance Case No. 22 of 2006.

5. During the pendency of the aforesaid writ application, the appellant-State of Bihar came out with notifications issued vide Memo No. 4919 dated 22.07.2021 under the signature of Joint Secretary, Department of Home (Police Wing), Government of Bihar and 4920 dated 22.07.2021 issued under the signature of Joint Secretary, Department of Home (Police Wing), Government of Bihar, whereby the promotion granted to the respondent to the rank of Deputy Superintendent of Police from Inspector of Police and to the



rank of Inspector of Police from the rank of Sub-Inspector of Police were cancelled.

6. The respondent questioned the validity of the said two notifications both dated 22.07.2021 by seeking an amendment in the writ petition, which was allowed. It is evident from the records of the writ proceeding that the main thrust of the challenge to the impugned notifications dated 22.07.2021 was non-compliance of the principles of natural justice and breach of the constitutional requirement under Article 311(2) of the Constitution of India.

7. The learned Single Judge, after having perused Annexure-G to the supplementary counter affidavit filed on behalf of the appellant-State of Bihar, has concluded that the said communication cannot be treated to be show cause notice and interfered with the impugned notifications both dated 22.07.2021, in the following terms :-

"Merely issuing letter asking certain information from the petitioner vide letter dated 13.09.2019 do not satisfy that the petitioner has been provided an opportunity of hearing before reverting him from the post of Deputy Superintendent of Police to Inspector of Police to Sub-Inspector of Police, therefore, the petitioner has made out a prima facie case so as to interfere with the impugned order dated 22.11.2021 and it is set aside reserving liberty to the respondent-board to reconsider the petitioner reversion matter in the light of order of government order dated 11.09.2002 (paragraph 5) so as to convert the proposed reversion from Deputy



Superintendent of Police to Police Inspector and further Police Inspector to Sub Inspector of Police to the extent that the petitioner is entitled to ad hoc promotion in the cadre of Police Inspector in terms of paragraph 5 of the order dated 11.09.2002 and further necessary action shall be taken to revert the petitioner from the post of Deputy Superintendent of Police to that of Police Inspector. Before taking such decision or pass such order, fresh notices shall be given to the petitioner in respect of the aforesaid issue and proceed to pass appropriate order in accordance with law after due consideration of the petitioner's explanation to be submitted against show cause notice to be issued along with aforesaid order dated 11.09.2012.

The above exercise shall be completed within a period of four months from the date of receipt of this order. Petitioner is entitled to monetary benefits from the date of reversion till date of passing of further orders on behalf of the official respondents.

Accordingly, the present petition stands allowed"

8. Mr. P.K. Shahi, learned Advocate General, Bihar has submitted that in the light of the essential requirements for promotion to the rank of Inspector of Police to the effect that no criminal case should have been pending, the respondent lacked the basic eligibility to be considered for promotion to the rank of Inspector of Police and subsequently to the rank of Deputy Superintendent of Police. He has accordingly submitted that in such circumstance, the provision under Article 311 (2) of the Constitution of India does not apply. He has also submitted that the respondent was put to a show cause notice through communication dated 13.09.2019 as regards pendency of the



criminal case against him. However, his case was being considered for promotion to the rank of Inspector of Police and Deputy Superintendent of Police and, therefore, according to him, the learned Single Judge has erred in recording a finding that no show cause notice was issued to the respondent.

9. In support of his submission that in case where a person is not eligible for appointment/ promotion, the provision under Article 311(2) of the Constitution of India shall have no application if a decision is taken by the competent authority to terminate such appointment/promotion and revert a person who has been granted promotion, though he was ineligible to be promoted to a higher post, he has placed reliance on a Supreme Court's decision dated 20.02.2023 in SLP(Civil) No. 4860-4861/2019 (*Yogeeta Chandra vs. The State of Uttar Pradesh & Anr.*), with special reference to paragraph-7 of the same, which reads as under :-

"7. From the impugned judgment and order passed by the High Court, it appears that it was the case on behalf of the appellant that the services of the appellant could not be put to an end without holding the departmental enquiry under Article 311 of the Constitution of India. However, it is required to be noted that the termination was not on the ground of any misconduct. It was the case of cancellation of the appointment on not disclosing the true and correct facts in the application form. Therefore, as rightly observed by the High Court, there was no question of holding any departmental enquiry under Article 311 of the Constitution of India."



10. We have carefully perused the communication made to the respondent dated 13.09.2019, in the light of the submission which has been advanced by Mr. P.K. Shahi, learned Advocate General. The said communication, in our opinion, by no stretch of imagination, can be treated to be a show cause notice requiring the respondent to explain against the proposed action of the State to revert him to the post of Sub-Inspector of Police from the post of Deputy Superintendent of Police. By the said communication, the respondent was merely asked to furnish information as to whether he had submitted any affidavit as regards pendency of criminal case against him when his case was being considered for promotion to the rank of Inspector of Police or not.

11. In our considered opinion thus, the learned Single Judge has rightly interfered with the notifications which were under challenge in the writ proceeding.

12. We do not find any reason to take a different view than what has been taken by the learned Single Judge in the present Intra-Court Appeal.

13. This appeal has no merit and is accordingly dismissed.

14. While dismissing the appeal, we consider it



proper, in the interest of justice, to extend the time prescribed by the learned Single Judge for the State of Bihar to proceed in the matter against the respondent by four months from today.

(Chakradhari Sharan Singh, ACJ)

(Madhuresh Prasad, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.04.2023
Transmission Date	NA

