

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8065 of 2022

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Kavindar Kumar, Son of Brijnandan Paswan, Resident of Village and P.O.-
Barara via Sohsarai, P.S.- Noorsarai, District- Nalanda, Pin No.- 803118.

... .. Petitioner

Versus

1. The State of Bihar Through the Principal Secretary Home (Police) Department, Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The D.I.G. of Police, Darbhanga Range, Darbhanga.
4. The Superintendent of Police, Samastipur.
5. The Central Selection Board for Constables in Bihar Police, Patna.
6. The Chairman, Central Selection Board for Constables, Bihar Police, Patna.

... .. Respondents

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Appearance :

For the Petitioner	:	Dr. Mayanand Jha, Sr. Advocate
		Mr. Arvind Kumar, Advocate
For the State	:	Mr. Sheo Shankar Prasad, SC-8
For the Board	:	Mr. Sanjay Pandey, Advocate
		Mr. Binod Kumar Mishra, Advocate
		Mr. Vivekanand Amritesh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 08-05-2023 Heard Dr. Mayanand Jha, learned senior counsel assisted by Mr. Arvind Kumar, learned counsel for the petitioner, Mr. Sheo Shankar Prasad, learned SC-8 for the State and Mr. Sanjay Pandey, learned counsel for the Central Selection Board for Constables (hereinafter referred to as the 'Board').

2. The petitioner in the present case is seeking the following reliefs:-

“i. For issuance of an appropriate writ/ order including the writ in the nature of certiorari for setting aside the order contained in memo No. 1344 dt. 10.12.2018 issued by the D.I.G. of Police, Darbhanga Range, Darbhanga (given/



served to the petitioner on 6.2.2022) whereby he rejected the appeal preferred by the petitioner against the order of discharge (dismissal) from service passed by the S.P. Samastipur;

ii. For setting aside the order contained in Memo No. 892 dt. 21.4.2017 passed by the S.P. Samastipur whereby the petitioner has been discharged (dismissed) from service as a constable with effect from 29.7.2015 without any subsistence allowance for the service period.

iii. For setting aside entire departmental proceeding bearing No. 12 started against the petitioner vide Memo No. 221 dt. 25.1.2016.

iv. For issuance of an appropriate writ/ order / direction commanding the respondent authorities to reinstate the petitioner as a constable in Bihar police from the date of his discharge with consequential benefit including salary/ subsistence allowance.

v. For grant of any other relief to which the petitioner may be deemed fit to be entitled by this Hon'ble Court."

Brief facts of the case

3. It is the case of the petitioner that he has applied for the post of Constable in Bihar Police vide Advertisement no. 1/14. The petitioner passed the written examination and was called for physical test held in Patna High School Campus at Patna on 27.03.2015. The petitioner cleared the physical test and was selected as a Constable on temporary basis and was allotted Samastipur Districe vide Board's Letter No. 414 dated 23.06.2015 (Annexure 'P4'). He then joined on the said post on 29.07.2015 and started discharging his duties.



4. The Board received information that the petitioner had used unfair means in the said examination and for verification of the bonafide of the petitioner, the Board asked the Superintendent of Police, Samastipur to send the petitioner to its office at Patna vide Letter No. 993 dated 28.09.2015 (Annexure 'P5').

5. It is stated that on 03.10.2015 when the petitioner went to the office of the Board, he was forced to confess that he got help from someone to write answers in the written examination. The verification of the signature and writing of the petitioner was conducted thereafter the O.S.D. of the Board wrote a letter to S.P., Samastipur vide Letter No. 1054 dated 03.10.2015 stating that fraud was committed by the petitioner for securing job and suggested action against him. Pursuant to the Letter of the Board, an FIR being Samastipur P.S. Case No. 307 of 2015 was registered on 17.10.2015 against the petitioner under Sections 419, 420, 468, 469, 471 and 34 of the Indian Penal Code read with Section 3/4 of the Bihar Conduct of Examination Act, 1981. Subsequently, the petitioner was suspended vide Memo No. 2969 dated 24.12.2015 issued under the signature of the Superintendent of Police, Samastipur (Annexure 'P6') from the date of lodging of the FIR i.e. 17.10.2015.

6. Thereafter a departmental proceeding was initiated against the petitioner vide Memo No. 221 dated 25.01.2016 (Annexure 'P7'). One Md. Shakiullah (Police Inspector) O.S.D. was appointed as conducting officer but no presenting officer was



appointed. It is stated that two persons were made departmental witnesses-one was the OSD of the Board who had issued letter to take action against the petitioner and another was a formal witness who proved the letter issued by the S.P. The petitioner appeared in departmental proceeding and demanded the letters of the Board on the basis of which the departmental proceeding was initiated but those letters were not provided to him. The petitioner filed his written defence statement (Annexure 'P8') asserting that he did not commit any fraud. The S.P., Samastipur as the disciplinary officer issued a second show cause notice along with the copy of the inquiry report bearing Letter No. 653 dated 28.03.2017 asking the petitioner as to why he be not dismissed from service. It is stated that due to non-service of second show cause notice to the petitioner, the petitioner was unable to defend. The Superintendent of Police thereafter came out with the impugned order of dismissal of the petitioner from service from the very date of joining of the petitioner i.e. 29.07.2015 vide Memo No. 892 dated 21.04.2017 (Annexure 'P12').

7. The petitioner aggrieved by the order of dismissal filed CWJC No. 7259 of 2018 and the same was disposed of with the direction to avail the statutory remedy of appeal vide order dated 20.04.2018. Thereafter the petitioner preferred an appeal before the DIG of Police, Darbhanga Range who is the Appellate Authority on 03.05.2018 which got rejected vide Memo No. 1344 dated 10.12.2018 (Annexure 'P16').



Submission of the Petitioner

8. Learned Senior Counsel for the petitioner submits that this case is identical to CWJC No. 4515 of 2017 and other analogous cases which have been allowed by this Court vide order dated 10.04.2023. It is submitted that similar order may be passed in the present case also.

Submission on behalf of the State

9. Mr. Ruchikar Jha, learned AC to SC-8 admits that this case is identically situated with that of CWJC No. 4515 of 2017 and other analogous cases, hence, it would be covered by the order dated 10.04.2023 passed by this Court in those cases.

Consideration

10. In CWJC No. 4515 of 2017, having considered the entire materials and submissions of the parties, this Court allowed the writ application, the operative part of the order reads as under:-

“25. In the nature of the submissions and the materials present on record and there being an admitted position that no Presenting Officer was appointed, this Court sets aside the impugned order of dismissal and the appellate order in all these writ applications and directs the concerned disciplinary authority to conduct the disciplinary proceeding from the stage of inquiry afresh in accordance with the procedures laid down under Rule 17 of the Service Rules governing the employment of these petitioners and take an appropriate decision thereon within a period of four months from the date of receipt/production of the copy of this order.

26. Needless to say that in terms of the Hon'ble



Constitution Bench judgment in case of B. Karunakar (supra), the disciplinary authority shall take an appropriate decision as regards reinstatement for purpose of conducting the disciplinary proceeding only. Other consequential benefits, if any admissible to the petitioners would depend upon the result of the disciplinary proceeding.

27. These writ applications are allowed to the extent indicated hereinabove.”

11. In the aforesaid view of the matter, the order of dismissal (Annexure ‘P12’) and the order of Appellate Authority (Annexure ‘P16’) are hereby set aside and the writ application is allowed in terms of the order dated 10.04.2023 of this Court passed in CWJC No. 4515 of 2017 and other analogous matters.

(Rajeev Ranjan Prasad, J)

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