

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14923 of 2017

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Manoj Kumar Mishra Son of Late Surendra Mohan Mishra, resident of
Village- Gogri, P.O.- Gogri, District- Khagaria Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Chief Secretary, Govt. of Bihar, Patna.
3. The Principal Secretary, General Administration Deptt., Govt. of Bihar, Patna.
4. The Principal Secretary, Cabinet Vigilance Deptt., Govt. of Bihar, Patna.
5. The Principal Secretary, Minor Irrigation Deptt., Bihar, Patna. null null
6. The Principal Secretary to Governor, Bihar, Patna.
7. The Bihar State Information Commission, Patna, Bihar, through its Secretary.
8. Mr. Ashok Kumar Sinha, Chief Information Commissioner, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajesh Sinha, Advocate
For the Respondent/s : Mrs. Binita Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 21-04-2023

The present Public Interest Litigation seeks a declaration to the effect that the Respondent No. 8, who was continuing in the post of Chief Information Commissioner, is not entitled to hold the said office for reason of involvement in a corruption case and also his resultant removal from the said post.

2. At the outset, it was pointed out by the learned



State Counsel that the term of the 8th Respondent, as Chief Information Commissioner ('CIC' for brevity) has already expired and he is no longer continuing there. The petitioner's counsel, however, insists that the appointment itself was bad and if so held, necessarily the entire benefits flowing from the appointment should be recovered from the said officer.

3. It is argued by the learned counsel for the petitioner with reference to the Right to Information Act, 2005, specifically its preamble, that the enactment intended secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, which is vital in the functioning of a democracy and ensures containment of corruption. A tainted officer, who was involved in a corruption case, cannot be allowed to hold the post or receive remuneration in the said post.

4. The allegation as seen from the memorandum is that a corruption case was pending against the 8th Respondent related to an incident, while he was serving as a District Magistrate, Sitamarhi in the year 1982-84, pertaining to a Tubewell Scheme in which financial irregularities were committed. It is stated that the Additional Secretary, General



Administration Department addressed the Commissioner-cum-Secretary, Minor Irrigation Department by a letter dated 07.6.2006 (Annexure-1) noticing an enquiry and supervision report of the Vigilance Department pertaining to irregularities in the purchase of Tubewells. A reminder was sent by the Cabinet (Vigilance) Department, produced as Annexure-2, which was followed up by Annexure-3 and 4, both issued by the General Administration Department. The petitioner himself filed a representation to His Excellency, the Governor of Bihar and another to the Ministry of Personnel, Public Grievance and Pension of the Central Government, seeking CBI enquiry, respectively annexed as Annexure-5 and 6. On the basis of the above, the reliefs aforementioned have been prayed for.

5. A detailed counter affidavit has been filed by the State pointing out that the appointment was made under Section 15(3) of the Right to Information Act, 2005 and that the CIC can be removed only as per the procedure stipulated in Section 17 of the Act. The writ petitioner is alleged to have *mala fide*ly approached this Court against the CIC especially when he had moved another writ petition (C.W.J.C. No. 8128 of 2016) against the very same officer. It was also asserted that the petitioner was a habitual applicant under the RTI Act and there



were 106 appeals filed before the CIC by the petitioner. It is also pointed out that there is absolutely no basis for the allegation and there is no reason to find fault with the appointment of the 8th respondent or his continuance in the post.

6. Section 15(3) indicates that the appointment has to be made by the Government on the recommendation of a Committee consisting of: (i) the Chief Minister, who shall be the Chairperson of the Committee; (ii) the Leader of Opposition in the Legislative Assembly and (iii) a Cabinet Minister to be nominated by the Chief Minister. Section 17 refers to removal of the State Chief Information Commissioner or State Information Commissioner and none of the reasons in the aforesaid provision is alleged against the 8th Respondent.

7. It is pertinent that the allegation against the 8th Respondent, dates back to 1982-84, when he was a District Magistrate, Sitamarhi. It is admitted that he was promoted successively and reached the post of Chief Secretary of the State and there is no vigilance case registered against him on any issue and neither with respect to the allegation raised. As has been pointed out by the State in its counter affidavit, the office order issued by the State Government dated 06.08.2013 enunciates the stated policy of the Government insofar as



finding a person ineligible to be promoted or appointed to a post if, (i) he is placed under suspension, (ii) a disciplinary proceeding is initiated against him or a memo of charges has been issued or (iii) if a charge sheet has been framed in a criminal proceeding by a court of law. None of these has occurred in the case of the 8th respondent and he was promoted from the post of the District Magistrate held in 1982-84 to the post of the Chief Secretary.

8. As far as the enquiry report relating to the 8th respondent, when he was continuing as District Magistrate of Sitamarhi, the then Chief Secretary had made the following remarks in the file put up before the Chief Minister of the State.

“I have gone through the file. In my opinion the purchase of the pipe was not made in Sitamarhi District and its purchase was done by the farmers themselves then there is no basis of the charge made out. Here it is worth mentioning that the purchase was made at a time when the facility to provide irrigation was required on speedy way. In a short span of time, it is an achievement itself to set up seven thousand Tubewell. In my opinion, the concerned officer deserves appreciation. It is not proper to take action on a charge of general nature after such a long year.

Therefore, the file is closed after accepting the explanation.”

9. Further, it is evident from Annexure-4 produced by the petitioner himself, that the Advocate General of Bihar, with respect to the incident that occurred in 1982-84, has it been in the year 2014, expressed the following opinion:-



“I would like to know precisely, what action has been taken after the enquiry report was forwarded to Minor Irrigation Department in the year 1992. Information sought for has a direct bearing on the issue. If follow up action remained dormant for such a long period without any explanation, no action against officer concerned can be legally sustained.

I shall record my opinion after receipt of information sought for.”

10. Even the petitioner does not have a case that there was any vigilance case registered against the 8th respondent while he was in service. Merely based on an unsubstantiated allegation, it cannot be assumed that the officer is corrupt. We have also noticed that the allegation itself has engaged the attention of the Chief Secretary, who had recommended exoneration of the officer from the allegation to the Chief Minister. We find absolutely no reason to keep the writ petition pending also on the facts disclosed that the 8th respondent is no longer the CIC of the State of Bihar. The writ petition stands dismissed.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	27.04.2023
Transmission Date	

