

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.2 of 2024
In
Civil Writ Jurisdiction Case No.16848 of 2015

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Prem Patwari Son of Late Mukti Nath Patwari, Resident of Village-Narkatia
(Done), Police Station-Gobarahiya, District-West Champaran.

... .. Appellant/s

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna.
2. The Inspector General of Police, Muzaffarpur Zone, Muzaffarpur.
3. The Deputy Inspector General of Police, Saran Range, Chapra.
4. The Deputy Inspector General of Police, Champaran Range, Bettiah.
5. The Superintendent of Police, West Champaran.
6. The Superintendent of Police, Siwan.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Dhanendra Chaubey, Advocate Mr. Milind Kumar Mishra, Advocate Mr. Akash Chaturvedi, Advocate
For the State	:	Mr. Sanjay Kumar Shosarvey, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

5 01-12-2025 This appeal is directed against the judgment and

order passed by the Writ Court in C.W.J.C. No. 16848 of 2015

dated, 30th November, 2023 under Rule 10 of Letters Patent

Rules of the Rules of High Court at Patna.

2. By virtue of the impugned order, the service of the



petitioner which he received, as an exception to Rule 661B of the Bihar Police Manual, 1978, was dismissed by the learned Single Judge relying on the decisions passed by this Court in ***C.W.J.C. No. 3959 of 2002*** and other analogous matters (***Ram Narayan Harijan & Anr. Vs The State of Bihar & Ors.***), the judgment of ***Sudhir Kumar Vs The State of Bihar & Ors.*** reported in ***2000 (3) PLJR 717*** and also the decision passed in ***L.P.A. No. 1136 of 2014*** decided on 7th February, 2018 (***The State of Bihar & Ors. Vs Shivbhajan Pal***).

3. We have heard the learned counsel for the appellant as well as the State-respondents. At the outset, we are of the view that the decisions referred to in the judgment by the learned Single Judge is required to be dealt with in C.W.J.C. No. 3959 of 2002 where the petitioners were appointed on the recommendation of the Director General of Police on exemplary bravery was not considered.

4. A learned Single Judge of this Court relying on the decision in the case of ***Sudhir Kumar Vs The State of Bihar & Ors.*** reported in ***2000 (3) PLJR 717***, was pleased to hold that DGP has no discretionary power to make appointment on the post of Constable even on compassionate ground.

5. We are not against the ratio laid down in the



aforesaid case by the learned Single Judge. Rule 661B clearly states that the Superintendent of Police of the District has the sole power to appoint a Constable on the basis of the record of selection of the candidates.

6. It may be noted that *C.W.J.C. No. 3959 of 2002* was reported in *2003 (3) PLJR 158*. In *2000 (3) PLJR 717 (Sudhir Kumar Vs. The State of Bihar & Ors.)* which was relied on in Ram Narayan Harijan (supra). The issue was regarding the competence of the Director General of Police for making appointment to the post of Constable on compassionate ground. The Court was pleased to answer in the negative.

7. It is needless to say that in Ram Narayan Harijan, the issue was regarding DGP's power for recommendation to the post of Constable on the ground of exemplary bravery was considered.

8. Subsequently, this issue came for consideration before another learned Single Judge in *C.W.J.C. No. 3461 of 2004* in the case of *Kamal Chandra Sah Vs The State of Bihar & Ors.*, in this case also the petitioner was appointed as Constable on the orders of Government of Bihar for his bravery in executing four notorious armed dacoits and defeated an attempt by the armed dacoits who came for looting. Later on,



his service was terminated, as the said appointment was contrary to the procedure laid down in Rule 661B of Police Manual.

9. The learned Single Bench held that Police Manual is a creation of Government of Bihar in its executive side and not of the Government of Bihar in its legislative side and accordingly, Executive Government of Bihar can always make an exception to Rules 661 in deserving case but such exception must be made consciously and the same must be apparent on the face of the records.

10. With the above reason, the petitioner was directed to be reinstated in the service.

11. The aforesaid order was tested before the State of Bihar and other respondents in LPA No. 221 on 2008 and the Division Bench in ***The State of Bihar & Ors. Vs Kamal Chandra Sah*** reported in ***2008 (3) BBCJ V 443*** observed in paragraph 4 as hereunder:-

4. This aspect has been considered by the Single Judge thus:

“It is true that the Government of Bihar, by making the Manual and by providing therein Rule 661 B has directed all its Officers including the Director General of Police to recruit constables in the manner as has been



provided for in the said Rule. It is the Government of Bihar who has created the Rule and it is, therefore, open to the Government of Bihar to make a departure from that Rule in appropriate cases and the same was done in the instant case by the Government of Bihar for the purpose of rewarding the petitioner for his bravery. It was unjust on the part of the police department of the State to think that Government of Bihar cannot make a departure in appropriate cases. It is true that no Officer of the Government of Bihar is capable of acting contrary to the said Rule and, accordingly, no officer of the Government can give an appointment contrary to what has been prescribed in Rule 661 B of the Manual. However, the Government of Bihar itself could make an exception and the same was done in the instant case. It must be kept in mind that the Manual, as it stands, is a creation of the Government of Bihar in its executive side and not of the Government of Bihar in its legislative side and, accordingly, executive Government of Bihar can



always make an exception to Rule 661 B of the Manual in deserving cases, but such exception must be made consciously and the same must be apparent on the face of the records.”

12. Thereafter the LPA was dismissed, as the Division Bench did not find any illegality in the order passed by the learned Single Judge.

13. In the order of the learned Single Judge which is being challenged before us, the judgments passed in 2006 BBCJ (4) 331 and the Division Bench order reported in 2008 (3) BBCJ V 443 were not considered.

14. We are of the view that the ratio laid down by the LPA Court in Kamal Chandra Sah (supra) is to be applied since the respondents have failed to produce any contrary judgment subsequent to Kamal Chandra Sah.

15. For the reasons stated above, we are of the view that the impugned judgment suffers from infirmities and is liable to be set aside.

16. Accordingly, the appeal is allowed. The impugned judgment is set aside. The appellant be allowed to join his service and his service shall be regularize from the date of his termination.



17. With the aforesaid order, the instant appeal is disposed of.

(Bibek Chaudhuri, J.)

(Dr. Anshuman, J.)

Jyoti Kumari/-

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