

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17373 of 2016

=====

Mukesh Kumar Singh Son of Shri Ajab Narain Singh, Resident of Village-
Jasparha, Police Station- Tisiauta, District- Vaishali at Hajipur.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate, Vaishali at Hajipur.
3. The Superintendent of Police, Vaishali at Hajipur.
4. The Sub Divisional officer, Mahua, District- Vaishali at Hajipur.
5. The Sub Divisional Officer, Hajipur-cum-Conducting officer, District-
Vaishali at Hajipur.
6. The Circle Officer, Patepur, District- Vaishali at Hajipur.
7. The Officer-in-Charge, Tisiauta Police Station, District - Vaishali at Hajipur.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Shashank Chandra, Advocate
For the Respondent/s : Mr. Md. Nadeem Seraj, GP-5

=====

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 18-09-2025

1. Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. The petitioner has filed the instant application for
the following relief :-

*“1. That this is an application for
issuance of an appropriate writ, order or
direction or quashing the order passed by the
District Magistrate, Vaishali the Respondent No.
2, vide Memo No. 2292 dated 21.9.2016 whereby
and where under dismissed the services of the
petitioner from the post of Chaukidar flouting*



the order passed by this Hon'ble Court in cancellation of his appointment on the same ground passed in C.W.J.C No 7379 of 2003 dated 13.4.2007 and as also confirmed by Division Bench of this Hon'ble Court by order dated 09.09.2008 in L.P.A. No. 358 of 2008 filed by the State."

3. The case of the petitioner in brief is that on retirement of one Ambika Singh on 30.4.1993 from the post of *Dafadar*, Tisiauta Police Station, the petitioner being related to him, filed an application before the Superintendent of Police, Vaishali for his appointment as *Dafadar*. The application of the petitioner was recommended by Ambika Singh as also by the *Mukhiya* of the panchayat and the *Chowkidar*. The petitioner was appointed on the post of *Chowkidar* by order dated 24.7.2001 passed by the Circle Officer, Patepur, Vaishali.

4. On an application being filed by one Jitendra Singh claiming to be the nephew of Ambika Singh wherein he made allegations against the petitioner to the effect that the petitioner was not related to Ambika Singh and that Ambika Singh had not sworn any affidavit in favour of the petitioner, the Collector, Vaishali directed the Deputy Collector, Land Reforms to enquire into the matter. A show-cause notice was issued to the petitioner to which the petitioner submitted his reply.



5. It is further case of the petitioner that the Deputy Collector, Land Reforms directed the Circle Officer, Patepur, Vaishali to enquire into the matter and on an incorrect enquiry report being submitted the appointment of the petitioner was cancelled by order dated 7.7.2003. The petitioner challenged the order of cancellation in CWJC no.7379 of 2003, which was allowed by order dated 13.4.2007 (Annexure-9) passed by this Court quashing the order dated 7.7.2003 cancelling the appointment of the petitioner and directing for his reinstatement.

6. Relevant portion of the order dated 13.4.2007 passed in CWJC no.7379 of 2003 is reproduced herein below for ready reference :-

“8.What I find that in case of petitioner’s appointment, Rule 35 of Bihar Chowkidari Manual was fully complied. On occurrence of vacancy, after retirement of Ambika Singh, the local thana and the Panchayat made nomination in favour of the petitioner and some other persons. Considering suitability of the petitioner he was appointed on the post. The recommendation of Ambika Singh, outgoing Chowkidar has no relevance in case of appointment under the provisions of Rule 35 of the Bihar Chowkidari Manual. the Collector, Vaishali, on receipt of complaint from Jitendra Singh totally ignored this aspect of the matter that even without recommendation of Ambika



Singh if appointment was made after observing the procedure enshrined under Rule 35 of the Bihar Chowkidari Manual, there was no reason for cancellation of petitioner's appointment. The impugned order has been passed simply for reason that petitioner is not successor of outgoing Chowkidar coming from his family. Another reason was that affidavit of Ambika Singh making recommendation in favour of the petitioner, was subsequently declined by Ambika Singh himself.

9. Considering the fact that after 1990, any person who has been appointed on the post of Chowkidar after observing the requisite procedure for the same, could not have been terminated from his service simply by asking the Circle Officer, Patepur, Vaishali, to submit report in this respect. For termination of service a departmental proceeding should have been initiated, an opportunity should have been provided to the petitioner and only after following the procedure of a departmental proceeding harsh punishment like dismissal from service could have been imposed, that was not done.

10. Jitendra Singh was appointed during the pendency of the writ application without following the procedure under Rule 35 of the Bihar Chowkidari Manual. As informed by the petitioner's counsel that subsequently, he was also dismissed finding his indulgence in criminal activities. Counsel for the petitioner has also



stated that the post is lying vacant.

11. On consideration of all these, the impugned order, dated 07.07.2003, cancelling appointment of the petitioner is quashed. Respondent no. 2, the District Magistrate, Vaishali, is directed to reinstate the petitioner forthwith. The period in between, i.e., from the date of cancellation of appointment and date from which petitioner is reinstated will be treated as continuous service. For this period petitioner will be paid his basic salary. The payment must be made within eight weeks from the date of production/communication of the order.

12. This application is allowed.”

7. The State of Bihar preferred LPA no.358 of 2008 which was dismissed by order dated 9.9.2008. Relevant part of the order is reproduced herein below for ready reference :-

“3. We are constrained to observe that the concerned authorities did not proceed with the matter in filing the appeal with due dispatch of urgency, and as a matter of fact, the file tossed between the District Magistrate, Vaishali and the Deputy Secretary, Home (Police) at their own pleasure and leisure. Even if, we accept the explanation up to 20th July, 2007, when the Deputy Secretary Home (Police) informed the District Magistrate that the opinion of the Advocate General, Bihar, Patna for Letters Patent Appeal has been obtained and steps be



taken for filing Letters Patent Appeal immediately, the matter remained dormant thereafter up-to 11th April, 2008. There is no explanation whatsoever for this eight months period. Once, an opinion was already given by the Advocate General for filing Letters Patent Appeal much before the 20th July, 2007, where was the justification to send the file to Advocate General after eight months on 11th April, 2008. There is total negligence on the part of the concerned authorities.

4. We are, thus, satisfied that the cause shown in the application does not constitute sufficient cause within the meaning of Section 5 of the Limitation Act.

5. The application for condonation of delay is liable to be rejected.

6. Even if for the argument sake, we assume that the delay is explained, in our view, the appellants have no case at all. The government counsel admitted that no disciplinary proceedings were initiated against the respondent prior to the passing of the order of dismissal. Merely because some preliminary inquiry was held and it was found that the respondent obtained the employment by false signature, it did not absolve the appellants in holding the disciplinary inquiry against the respondent. The consideration of the matter by the single judge is, thus, not at all legally flawed.

7. Letters Patent Appeal is liable to be dismissed and is dismissed. This disposes of



application for condonation of delay (I.A.No.2887/2008) as well.

8. Since the appeal has been dismissed, the application for interim relief does not survive and consequently I.A.No.2886/2008 is also rejected.”

8. It is submitted by learned counsel appearing for the petitioner that as the directions contained in the order passed in the writ application was not complied with by the respondents, the petitioner filed a contempt application (MJC no.1799 of 2007) and it was only thereafter that the directions contained in the order were complied.

9. Learned counsel for the petitioner submits that though the order cancelling the appointment of the petitioner was set aside in the writ application and the appeal preferred by the State of Bihar was also dismissed, no liberty having been granted to the respondents to proceed again against the petitioner, they could not have proceeded afresh for the same charges.

10. Nevertheless, the respondents once again initiated a departmental proceeding appointed a conducting officer and after submission of the enquiry report and giving show-cause notice to the petitioner proceeded to pass the order impugned dated 21.9.2016 dismissing him from service. It is against this



order that the instant writ application has been preferred.

11. Learned counsel for the petitioner submits that no liberty having been granted to the respondents in any of the earlier orders of the Court while quashing the order of cancellation of the petitioner's appointment, the respondents could not have moved afresh by initiating a departmental proceeding on the same charges and thus the departmental proceeding as also the order of punishment passed in the same is illegal, not sustainable and fit to be set aside.

12. The application is opposed by learned counsel for the State of Bihar who having narrated the facts of the case as noted herein above submits that in fact liberty was granted to the respondents to move against the petitioner. Referring to paragraph no.9 of the order dated 13.4.2007 passed in the earlier writ application it is submitted that the very observation of this Court that *'for termination of service a departmental proceeding should have been initiated, an opportunity should have been provided to the petitioner and only after following the procedure of a departmental proceeding punishment like dismissal from service could have been imposed'* and at the same time not specifically restraining the respondents from starting a department proceeding afresh, it is submitted that the



respondents were at liberty to start a fresh departmental proceeding against the petitioner. In these circumstances, the initiation of a fresh departmental proceeding against the petitioner which ended in the order of dismissal dated 21.9.2016 is just and proper in the facts of the case. There is no merit in the instant application and the same be dismissed.

13. Heard learned counsel for the parties and perused the material on record.

14. The facts relevant for the instant application are that the petitioner having been appointed on the post of *Chowkidar* on 24.7.2001 was issued with a show-cause notice on an application/complaint having been filed by one Jitendra Singh, who claimed to be a nephew of Ambika Singh. The complaint of Jitendra Singh contained mainly two allegations i.e. that the petitioner was not related to and was not the nephew of Ambika Singh and that Ambika Singh had never sworn any affidavit in his favour. On the petitioner replying to the said show-cause notice, the respondent-District Magistrate, Vaishali proceeded to pass order dated 7.7.2003 cancelling the appointment of the petitioner on the post of *Dafadar*.

15. The petitioner challenged the order of cancellation of his appointment by filing CWJC no.7379 of 2003 which was



allowed by order dated 13.4.2007. The appeal (LPA no.358 of 2008) preferred by the State of Bihar was dismissed by order dated 9.9.2008.

16. A perusal of both the order dated 13.4.2007 allowing the writ application as also the order dated 9.9.2008 dismissing the appeal, relevant portions of which have been quoted herein above, it would transpire that neither there is any mention of the respondents-State of Bihar having sought any liberty nor the Court having granted any liberty to the respondents to proceed afresh against the petitioner in the matter in issue.

17. So far as the submission of learned counsel for the respondents is concerned that liberty was granted to the petitioner in paragraph no.9 of the writ application, which is also quoted herein above, this Court is of the opinion that no liberty can be read into the same as is being attempted to by learned counsel for the respondents. What the Court simply observes is that for imposing a harsh punishment like dismissal from service it was required that a departmental proceeding should have been initiated, an opportunity should have been provided to the petitioner and only after following the procedure of a departmental proceeding the order should have been passed



which was not done in the petitioner's case while passing the order dated 7.7.2003, which was thus quashed.

18. No liberty having been granted by the Court in either of its orders passed in the writ application or in the appeal, the respondents could not have proceeded afresh in a departmental proceeding on the same charges and pass an order of dismissal dated 21.9.2016, impugned herein.

19. In view of the facts and circumstances stated herein above, the order dated 21.9.2016 passed by the District Magistrate, Vaishali dismissing the petitioner from the post of *Chowkidar* is not sustainable and is hereby set aside.

20. The petitioner is directed to be reinstated in service with back wages for the period from the date of dismissal till the date of his reinstatement. The arrears shall be paid to the petitioner within a period of three months from the date of receipt of a copy of this order.

21. The writ application stands allowed.

(Partha Sarthy, J)

avinash/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	18.09.2025
Transmission Date	

