

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3659 of 2019

1. Abhinandan Kumar and Anr Son of Brahmdeo Yadav R/o Village-Chandpura, P.s. Nima Chandpura, District-Begusarai
2. Amit Kumar Gaurav S/o Bigan Das R/o Village-Sagarpur, P.s. Makhdumpur, District-Jehanabad

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Government of Bihar, Patna
2. The Principal Secretary Department of Home, Government of Bihar, Patna
3. The Director General of Police Bihar, Patna
4. The Additional Director General of Police (Headquarter) Bihar, Patna
5. The Inspector General of Police, Patna Range Patna
6. The Deputy Inspector General of Police, Central Range Patna
7. The Senior Superintendent of Police Patna
8. The Superintendent of Police (Rural) Patna
9. The Superintendent of Police City (M) Patna
10. The Deputy Superintendent of Police, Kotwali Law and Order cum- Investigating Officer Patna
11. The Principal Constable Training School, Nath Nagar, Bhagalpur

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ranjan Kumar Singh
For the Respondent/s : Mr.Partha Sarthy (Ga4)

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 08-12-2021

In the instant petition, petitioners have prayed for the following relief/reliefs:

“(i) For issuance of writ in the nature of certiorari for quashing the Training Order bearing Training Order No. 576/2018 contained in Memo No. 1489 dated 17.12.2018 under the signature of the Principal, Constable Training School, Nath Nagar, whereby and whereunder the services of the petitioners have illegally and arbitrarily been terminated in



a very mechanical manner having without jurisdiction w.e.f. ante-dated 4.11.2018 in pursuance of Memo No. 13624 dated 04.11.2018 of the office of Senior Superintendent of Police, Patna.

(ii) For issuance of writ in the nature of certiorari for quashing the Patna District Order No. 4522/2018 issued vide Memo No. 13624 dated 04.11.2018 from the office of the Senior Superintendent of Police, Patna whereby and whereunder 168 Trainee Constables excluding the petitioners have been declared as unfit to be a constable and their services have been terminated with immediate effect.

(iii) For issuance of writ in the nature of certiorari for quashing the Training Order No. 487/2018 issued vide Memo No. 1263 dated 06.11.2018 under the signature of the Principal, Constable Training School, Nath Nagar, whereby and whereunder in pursuance of Memo No.13624 dated 04.11.2018 of the office of Senior Superintendent of Police, Patna, the 168 Trainee Constables excluding the petitioners have been terminated.

(iv) For issuance of writ in the nature of mandamus for directing the responsible respondent authorities to reinstate the services of the petitioners w.e.f. 4.11.2018 and allow them to take training of Constable at their earlier place of training i.e. Constable Training, Nath Nagar.

(v) For commanding and directing the respondent authorities to stay the operation of the impugned order till the final disposal of the writ application.

(vi) For issuance of writ in the nature of mandamus for directing the responsible respondent authorities to pay all the consequential benefits of service w.e.f. 4.11.2018 onwards.

(vii) For issuance of writ in the nature of mandamus for restraining the respondent authorities from taking any coercive step against the petitioners in criminal case bearing Buddha Colony P.S. Case No. 437/2018 during the pendency of this writ application.

(viii) For any other relief/reliefs to which the petitioners are entitled to in the facts and circumstances of the case.”

Short question for consideration in the present petition is whether petitioners' termination is in accordance with law or not?

Learned counsel for the petitioners submitted that incompetent authority has passed the order of termination of the



petitioners i.e Principal, Constable Training School and further submitted that order of termination is in violation of principles of natural justice.

Per contra, learned counsel for the State submitted that order of termination was passed by the Senior Superintendent of Police, Patna and not the Principal. Perusal of the records, it is evident that both the Principal and Senior Superintendent of Police, Patna have terminated the services of the petitioners. Learned counsel for the State submitted that in terms of paragraph No. 668 of Police Manual no notice is required before termination, therefore, the petitioners are not entitled to relief sought in the present petition.

Heard learned counsel for the respective parties.

Crux of the matter in the present petition are two folds namely termination order passed by the Principal, Constable Training School and simultaneously Senior Superintendent of Police, Patna are without authority of law or not? Further whether notice is mandated before termination of services of the petitioner or not? There is a dispute in respect of competency of disciplinary authority as on 04.11.2018 the Principal, Constable Training School has exercised the power even though the petitioners were not under the administrative control. Simultaneously, Senior Superintendent of Police, Patna has also terminated the services of the petitioners among others on 04.11.2018. In the light of these two orders even



assuming that Principal, Constable Training School's order is illegal at the same time Senior Superintendent of Police, Patna order dated 04.11.2018 is in accordance with law. The next question is whether notice is mandated before termination of the services of the petitioners -Constable or not?

Paragraph 668 of Police Manual reads as under:

“Removal or reversion of officers appointed direct or promoted on probation – The following rules shall govern first appointments and the promotion of police and ministerial officers as detailed in Appendix 41:-

(a) All officers shall in the first instance be appointed or promoted on probation. Where the period of probation is not otherwise provided for in the rules it shall be for a period of two years in the case of executive officers and one year in the case of ministerial officers. The authority authorised to make such appointment or promotion, may at any time during such probationary period and without the formalities laid down in rule 828, remove an executive officer directly appointed or revert such an officer promoted who has not fulfilled the conditions of his appointment or who has shown himself unfit for such appointment or promotion. Similarly probationary period may also be extended without any show cause. No appeal shall lie in such cases.

(b) Executive Officers appointed or promoted in other than permanent vacancies are also liable to removal or reversion in the manner indicated in clause (a) above.”

No doubt in the light of the aforesaid provision petitioner is not entitled to notice before termination, at the same time one cannot ignore the fact that such a termination is pursuant to the allegation levelled against the petitioners. Termination is in on account of his defects to hold the post of Constable. When there are allegations against petitioner, even temporary employee is entitled to notice/domestic enquiry. Therefore, the aforesaid provision namely



paragraph No. 668 of Police Manual is not attracted in the present case only for the reasons that order of termination is with reference to allegations levelled against the petitioners. In the light of these facts and circumstances, petitioners have made out a case only on the ground that termination order is without notice to him and so also without holding enquiry with reference to the allegations levelled against the petitioners.

Accordingly, petition stands allowed. Petitioners shall be taken back to duty and the First Respondent is hereby directed to extend all monetary benefits during the intervening period from the date of termination till date. Reserving liberty to the respondents to initiate appropriate proceedings in respect of alleged allegations and complete the proceedings within a period of four months from the date of receipt of this order.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.12.2021
Transmission Date	NA

