

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1506 of 2015

IN

Civil Writ Jurisdiction Case No. 21730 of 2014

- =====
1. Anil Kumar, Son of Yugal Prasad, resident of village-Sukhmal Char, P.O.-Daulatpur, P.S.- Bhagwanganj, District-Patna.
 2. Sanjay Kumar, Son of Govind Sharma, resident of village-Dumari, P.O.-Malikpur, P.S.-Rajgir, District-Nalanda.
 3. Lalan Paswan, Son of Parmeshwar Paswan, resident of village-Mirzapur Koahi, P.O.-Laheraisarai, P.S.-Bahadurpur, District-Darbhanga.

.... Petitioners-Appellants

Versus

1. The State of Bihar.
2. The Principal Secretary, Home Department, Govt. of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Superintendent of Police, Rohtas at Sasaram.
5. The Chairman, Central Selection Board, (Constable Recruitment), Bihar, Patna.
6. The Secretary, Central Selection Board, (Constable Recruitment), Bihar, Patna.

.... Respondents/Respondents

=====

Appearance :

For the Appellants : Mr. Prashant Sinha, Advocate
For the State : Mr. Gyan Prakash Ojha,G.P.-22
For the Respondent Nos.5 & 6: Mr. Sanjay Pandey, Adv.

=====

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

C.A.V. JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 03-11-2015

Can a candidate, who willingly subjects himself, in a selection process, to medical examination, constituted for the purpose, be allowed to turn back and challenge the findings of the Medical Board and/or its opinion by means of a writ petition, made under Article 226 of the Constitution of India, on the ground that the findings and/or opinion of the Medical Board are not correct inasmuch as another doctor or a specialist, in the discipline concerned, has given a contrary finding and/or opinion?

2. The above is the moot question, the present appeal, arising out of the judgment and order, dated 16.02.2015, passed by a learned single Judge, in C.W.J.C. No.21730 of 2014, has raised.

3. Ordinarily, a disputed question of fact cannot be settled and decided in a writ proceeding under Article 226 of the Constitution of India. It is only in exceptional circumstances and/or in extraordinary situations, where the findings and/or opinion of a Medical Board, in a selection process, appears to be suffering from *mala fide*



or relevant rules or relevant policy of recruitment permits, can a finding or opinion be allowed to be contradicted by the findings and/or opinion of yet another doctor nor a writ Court, unless extraordinary situation necessitates, allow a writ petitioner to undergo another medical test, more so, by a doctor, who falls outside the scheme of selection process and/or allow the findings and/or opinion of such a doctor to prevail upon the findings of the Medical Board, which had examined the candidate during the course of the selection process unless the findings and/or opinion are proved to be *mala fide*.

4. The appellants herein, who were writ-petitioners, are aggrieved by the judgment and order, dated 16.02.2015, passed by a learned single Judge, in C.W.J.C. No.21730 of 2014, whereby their writ application has been dismissed.

5. The facts, in the present case, are, in brief, thus: The appellants, who were applicants for appointment, as Constables, in Bihar Police, had appeared in the written examination and the physical test held pursuant to the Advertisement No.1 of 2012. They claim to have been declared selected by the Central Selection Board, constituted for making recruitment, and



were, accordingly, recommended for appointment as Constables in the district of Rohtas; but when they offered to join the office of the Superintendent of Police, Rohtas, they were not allowed to do so on the ground that they were not found medically fit for being appointed as Constables.

6. Raising a grievance against the non-acceptance of their joining, the appellants approached this Court by making a writ application, under Article 226 of the Constitution of India, which gave rise to C.W.J.C. No.21730 of 2014.

7. In the said writ proceeding, a counter affidavit came to be filed by the State respondents bringing on record a report of the Medical Board to the effect that the petitioners (i.e., appellants herein), who are three in number, had been found to be colour blind by the Medical Board and, later on, by the Review Medical Board. On the contrary, the appellants assert that they are not colour blind.

8. The appellants took a plea before the learned single Judge, in the writ proceeding, that they should be allowed to obtain certificate from an eye-specialist, who may be a government doctor, in order to establish the fact that they were not colour blind. The learned single



Judge did not accede to the request so made and, upon having found that the appellants were subjected to medical examination and, in the course thereof, they were found to be colour blind and were subjected to another review by Medical Board and the review Medical Board confirmed that the writ petitioners suffered from colour blindness, the learned single Judge concluded that the decision of the authorities concerned, regarding non-acceptance of the writ petitioners' joining, could not be said to be irrational. The learned single Judge, accordingly, dismissed the writ petition. Being aggrieved by this decision, the appellants have preferred the present appeal under the Letters Patent of this High Court.

9. In the present appeal, the appellants have reasserted that they are not colour blind and have brought on record, by way of Annexure-1, "**Out Patient Registration Details/Outdoor OPD Registration Ticket**", which said to have been issued by the Patna Medical College Hospital, Patna, and Darbhanga Medical College Hospital, Darbhanga, in support of their plea that they have been found to be normal so far as their colour vision is concerned.

10. There is, thus, an apparent disputed question

of fact, which has arisen, the disputed fact being as to whether the appellants are or are not colour blind.

11. We have heard Mr. Prashant Sinha, learned counsel, appearing on behalf of the appellants, and Mr. Gyan Prakash Ojha, learned G.P.-22, appearing on behalf of the State. We have also heard Mr. Sanjay Pandey, learned counsel, appearing on behalf of the respondent Nos.5 and 6.

12. We have perused the counter affidavit filed on behalf of the Central Selection Board of Constables. In the notification (Annexure-A to the counter affidavit, filed on behalf of respondent Nos.5 and 6, in the writ proceeding), issued by the Home (Police) Department, Government of Bihar, it has been clearly laid down that medical fitness of the candidates will be mandatory for appointment and the medical test of selected candidates will be conducted prior to appointment as regard the eyes, colour blindness, audio capacity and stammering. It further transpires that after the appellants were selected and recommended for appointment, as Constables, in the district of Rohtas, the appellants were found to be colour blind by a duly constituted Medical Board. It also appears from the letter No.31, dated 14.01.2014, that on the basis of complaint made before



the Chief Minister of Bihar, in Janta Darbar, a Medical Board was constituted, headed by the Director-in-Chief, Health Services, Government of Bihar, and medical examinations of the petitioners were, accordingly, conducted. The appellants were found to be colour blind by the said Board, too, on 08.01.2014 and a communication to this effect was, accordingly, sent to the Principal Secretary, Health Services, Government of Bihar.

13. From the facts, as narrated above, we do not find any reason to interfere with the judgment, under appeal, passed by the learned single Judge inasmuch as the petitioners-appellants have been found to be colour blind by two separate Medical Boards. We cannot accede to the request, made on behalf of the appellants, that they should be allowed to obtain certificates from the government doctors or the certificates, which they have obtained, should be given preference over the opinion of the Medical Board duly constituted for the purpose of their appointment.

14. At any rate, the writ petition, admittedly, raises an intensely disputed question of fact. Determination of such dispute required holding of roving enquiry and recording of evidence, which was neither

desirable nor warranted in a case of present nature.

15. No case, therefore, of invoking extraordinary jurisdiction, under Article 226 of the Constitution of India, was made out by the appellants.

16. Resultantly, therefore, the writ petition has been dismissed and we find no reason to interfere with the decision so rendered.

17. In the result and for the foregoing reasons this appeal fails and shall accordingly stands dismissed.

(I. A. Ansari, ACJ.)

Chakradhari Sharan Singh. J. I agree.

(Chakradhari Sharan Singh. J.)

Praveen-II/-

U			
---	--	--	--