

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12177 of 2015

1. Anil Kumar son of Sri Rajendra Prasad Yadav, resident of village- Sahmalpur, Post and P.S.- Kajra, District- Lakhisarai (Bihar)

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, General Administration Department, Bihar, Patna
2. The Bihar Staff Selection Commission, Patna through its Chairman
3. The Chairman, Bihar Staff Selection Commission, Bihar, Patna
4. The Secretary, Bihar Staff Selection Commission, Bihar, Patna
5. The Additional Secretary-cum-District (Administration), Jail Reform Services Inspectorate Home Department, Bihar, Patna
6. The Inspector General of Prison, Government of Bihar, Patna

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 14307 of 2015

1. Manoj Kumar Singh son of Late Ram Pratap Singh, residence at Naya Tola Basbariya, Near Kamla Garden, Ward No.- 10, P.O. Sitamarhi, P.S. Mehsoul (O.P.), District- Sitamarhi. At present posted as Kakshpal (Warden), at Central Jail Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar, through Principal Secretary, Central Administration Department, Bihar, Patna
2. The Home Commissioner, Jail Inspectorate Home (Jail) Department, Government of Bihar, Patna
3. The Additional Secretary-cum-District (Administration), Jail Reform Services Inspectorate Home Department, Bihar, Patna
4. The Inspector General of Prison, Government of Bihar, Patna
5. The Bihar Staff Selection Commissioner, Patna through its Chairman
6. The Chairman, Bihar Staff Selection Commission, Bihar, Patna
7. The Secretary, Bihar Staff Selection Commission, Patna.

.... Respondent/s

Appearance :

(In CWJC No. 12177 of 2015)

For the Petitioner/s : Mr. Arvind Kumar Singh
Mr Mukul Jee

For the State : Mr. Shailendra Kr. Jha, AC to AAG 13

For the Commission : Mr K.K.Upadhyaya

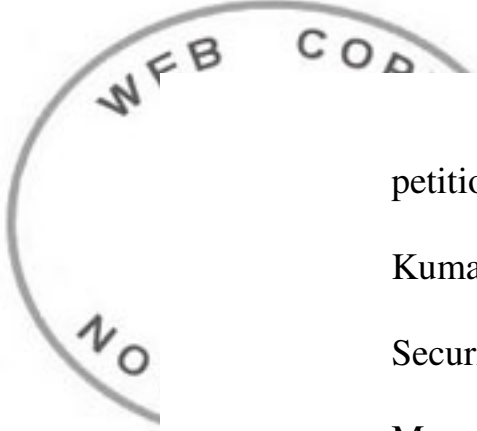
(In CWJC No. 14307 of 2015)

For the Petitioner/s : Mr. Arvind Kumar Singh
Mr Mukul Jee

For the State : Mr. Amit Kumar Anand, AC to GP 15

For the Commission : Mr K.K.Upadhyaya

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
ORAL JUDGMENT
Date: 17-09-2015



The two writ applications have been filed by two set of petitioners having diverse background as to service. Petitioner Anil Kumar of CWJC No.12177 of 2015 is an ex- personnel of Border Security Force and retired from the post of a Havildar. Petitioner Manoj Kumar Singh of CWJC No.14307 of 2015 retired as a Havildar from Assam Rifles. Both of them were applicants on the post of Jail Warden in terms of advertisement no.10 of 2013. They went through the process of selection but ultimately did not get appointment under the respondents so decided to file the writ applications seeking a direction and mandamus.

It is the stand of learned counsel in the case of Manoj Kumar Singh that he is also working as a Warden but on contract and the State of Bihar had engaged him despite knowing his background.

The respondents were directed to file a counter affidavit and explain the reason why the two petitioners were not recommended or appointed, to which response of the State as well as Staff Selection Commission has been filed by way of affidavit. They take a plea that the terms of the advertisement no.10 of 2013 indicated the category of people, who were eligible for applying and for consideration for appointment on the post of Jail Warden. The



categories included ex-servicemen as well as home guards, who had taken training in the State of Bihar. Since the two petitioners do not come within the definition of ex-servicemen during the final verification of their applications and status, the respondent authorities came to a considered opinion that neither BSF personnel nor ex- personnel of Assam Rifles came under the definition of ex-servicemen. There is no other mischief or reason for non-selection. The respondents have gone strictly by the terms and conditions of the advertisement.

In Anil Kumar's case, office memorandum dated 23.11.2012 issued by the Government of India, Ministry of Home Affairs, Police Division (Resettlement and Welfare Directorate) has been annexed. From a reading of the said office memorandum, it is evident that the Central Government has decided to request the State Governments and Union Territories that they should take steps to extend suitable benefits even to retired Central Armed Police Force Personnel like CRPF, BSF, CISF, ITBP and SSB.

Even from a reading of this office memorandum contained in Annexure-2, it is evident that there is a distinction between ex-servicemen and personnel of Central Armed Police Force. They are two different categories and class. No doubt, by virtue of this memorandum the Ministry of Home has advised the

State Governments and the Union Territories to extend similar benefits as ex-servicemen of the Defence Forces. But such an advice of the Central Government will have to be either acted upon or implemented by way of a policy taken by the respondent State Government.

In the present case, the advertisement is unambiguous as to the category of people, who are required to be selected and appointed on the post of Warden in the Jails of State of Bihar. Even by a broad reading of Annexure- 2, the memorandum of the Central Government, the two petitioners coming from diverse backgrounds cannot be treated to be members of Defence Forces or ex-servicemen. The reason for non appointment and selection of the petitioners is obvious.

Counsel for the petitioners before parting submits that taking into consideration Annexure- 2, a directive ought to be issued upon the State Government as well as Staff Service Commission to include the two petitioners and extend them the benefit of the office memorandum.

The time for the same is over. If the petitioners had approached the High Court at the time of issuance of the advertisement, there could have been an occasion for this Court to give a direction for modification of the advertisement and the

personnel, who can be made eligible for such consideration but after the exercise is over and completed, this Court cannot alter the terms and conditions of the advertisement retrospectively.

However, the Court would surely like to direct the State of Bihar that for future appointments and selection for the post of such kind, the office memorandum dated 23.11.2012 of Government of India should be kept in mind for after all these are meant as welfare schemes for giving an opening to such personnel from such background, who have had a tough service career because of the nature of the work, their service is cut short by early retirements.

The writ applications of the two petitioners are dismissed. No direction in their favour can be issued for their substantive appointment in terms of advertisement no.10 of 2013.

(Ajay Kumar Tripathi, J)

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