

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7408 of 2015

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1. Pasupati Kumar, Son of Sri Laxmi Kant Pandit, Resident of village + Post Office - Champur via Ag Bazar, P.S.- Falaka (Pothia), District - Katihar.
 2. Surendra Kumar, Son of Sukdeo Chouhan, Resident of Village - Govindpur, P.O.+ P.S.- Rautara, District - Katihar.
 3. Rupesh Kumar, Son of Janardan Yadav, Resident of Village - Barmasia, P.O.+ P.S.- Katihar, District - Katihar.
 4. Chandan Kumar Roy, Son of Wakil Roy, Resident of Mohalla - Indrapuri, B.M.P.- 7, Mirchi Bari, P.O.- Katihar, District - Katihar.
 5. Md. Habil, Son of Md. Samsul, Resident of Village - Raghuni Chak, P.O.+ P.S.- Mansahi, District - Katihar.
 6. Md. Zakir Hussain, Son of Md. Mustkin, Resident of Village - Labha, P.O.- Mahadevpur, P.S.- Pranpur, District - Katihar.
 7. Rajendra Kumar, Son of Dinesh Prasad Sharma, Resident of Village - Padampur, P.O.- Hasanganj, P.S.- Dandkhora, District - Katihar.
 8. Kumar Gourav, Son of Manohar Das, Resident of Village - Soti, P.O.- Ragheli via Sonaili, P.S.- Dandhora, District - Katihar.
 9. Amit Kumar, Son of Subodh Yadav, Resident of Village - Ruchdev Simaria, P.O.- Pothia, P.S.- Falka, District - Katihar.
 10. Niraj Kumar, Son of Upendra Prasad Yadav, Resident of Karhagola Uchla, P.O.- Gurubazar, P.S.- Barari, District - Katihar.
 11. Ajeet Kumar Arya, Son of Satish Prasad Arya, Resident of Mohalla + P.O.- Ayodhyaganj Bazar, P.S.- Kursela, District - Katihar.
 12. Ajit Kumar Singh, Son of Shiv Shankar Prasad Singh, Resident of Village - Kohwara, P.O.- Pothia, P.S.- Falka, District - Katihar.
 13. Md. Kamaluddin, Son of Md. Yusuf, Resident of Village - Bathna, P.O.- Dilli Dewanganj, P.S.- Ambabad, District - Katihar.
 14. Md. Ataur Rahman, Son of Md. Tafihul Haque, Resident of Village - Bathna, P.O.- Dilli Dewanganj, P.S.- Ambabad, District - Katihar.
 15. Suman Kumar Das, Son of Hemlal Das, Resident of Village - Braiya, P.O.- Bharri, P.S.- Kadwa, District - Katihar.
 16. Binod Kumar Chouhan, Son of Anandi Prasad Chouhan, Resident of Village - Govindpur, P.O.+ P.S.- Rautara, District - Katihar.
 17. Ravi Bhushan Kumar, Son of Late Surya Narayan Das, Resident of Harijan Colony, T.V. Center, P.O.- B.M.P.- 7, District - Katihar.
 18. Ajit Kumar, Son of Surya Deo Prasad, Resident of Mohalla - Nepali Tola, P.O.- B.M.P.- 7, District - Katihar.
 19. Gaurav Kumar Rajak, Son of Narayan Rajak, Resident of Lohiya Nagar Barmasia, Ward 12, P.O.- Katihar, District - Katihar.
 20. Rajeev Kumar, Son of Madan Sah, Resident of Village - Korha, P.O.+ P.S.- Korha, District - Katihar.
 21. Binod Kumar Mehta, Son of Parmeshwar Mehta, Resident of Village + P.O.- Bhatwara, P.S.- Korha, District - Katihar.
 22. Jiveet Kumar Sharma, Son of Yogendra Sharma, Resident of Village + P.O.- Chhohar, P.S.- Falka, O.P.- Pothia, Anchal Sameli, District - Katihar.
 23. Vinod Kumar Singh, Son of Hari Prasad Singh, Resident of Village - Bhandartal, P.O.- Bhandartal via Gurubazar, P.S.- Barara, District - Katihar.
 24. Bishu Hembram, Son of Nayki Hembram, Resident of Village - Kanchan bari, P.O.- Jhagruchak, P.S.- Falka, District - Katihar.

25. Bhawesh Kumar, Son of Umesh Prasad Choudhary, Resident of Village + P.O.- Kuretha, P.S.- Mansahi, District - Katihar.
26. Amir Ali, Son of Md. Samser Ali, Resident of Village - Aminabad Tarbana, P.O.- Semapur, P.S.- Semapur, O.P. (Barari), District - Katihar.
27. Satyendra Kumar. Son of Resham Lal Uraon, Resident of Village - Rajwara, P.O.+ P.S.- Rautara via Ranipatna, District - Katihar.
28. Pramod Kumar Paswan, Son of Sita Ram Paswan, Resident of Village + P.o.- Kanta Kosh via Manihari, District - Katihar.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Home (Police) Department, Bihar, Patna.
3. The Chairman, Central Selection Board, Computer Bhawan, Jawahar Lal Nehru Marg, Patna.
4. The Secretary, Central Selection Board, Computer Bhawan, Jawahar Lal Nehru Marg, Patna.
5. The Officer on Special Duty, Central Selection Board, Computer Bhawan, Jawahar Lal Nehru Marg, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajeev Kr. Verma, Sr. Advocate
Mr. Gaurav Govind

For the Respondent State: Mr. Sanjeet Kumar Singh, A.C. to AAG10

For C.S.B.C.: Mr. Sanjay Pandey
Mr. Binod Kr. Mishra

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 04-11-2015

The 28 petitioners were all applicants for appointment on the post of constable under the category of Home Guard. The advertisement in question was Advertisement No. 1 of 2014.

2. As per the advertisement contained in Annexure-1, the last date indicated therein for making application for consideration against the same said post was fixed as 28.02.2014. The date of the advertisement is 21.1.2014. The number of vacancies indicated therein was 11783, out of which 50% of the said vacancy was reserved for

Home Guard category only. However, there was a clause that in case of non-availability of candidates in the said category, other candidates from other category could be considered for such appointment.

3. The crux of the issue in the present writ application is whether the Respondent Central Selection Board for Recruitment of Constables could read something more in the advertisement, which was not provided for or talked about with regard to eligibility.

4. As per the learned senior counsel for the petitioner, the law is well settled by the Apex Court time and again. Reliance has been placed on the case of **Ashok Kumar Sonkar Vs. Union of India**, reported in (2007) 4 SCC page 54. The Hon'ble Apex Court after taking into consideration the issues concluded as under in paragraph 20:-

“20.-Possession of requisite educational qualification is mandatory. The same should not be uncertain. If an uncertainty is allowed to prevail, the employer would be flooded with applications of ineligible candidates. A cut-off date for the purpose of determining the eligibility of the candidates concerned must, therefore, be fixed. In absence of any rule or any specific date having been fixed in the advertisement, the law, therefore, as held by this Court would be the last date for filing the application.” (emphasis mine)

5. Similar view again has been reiterated in the case of **Dipitimayee Parida Vs. State of Orissa and others, (2008) 10 SCC 687.**

6. Keeping in mind the opinion of the Hon`ble Supreme Court and applying it to the present set of facts, the advertisement contained in Annexure-1, it is evident that it does not talk of eligibility or cut-off date with regard to training. The advertisement does indicate that the minimum and maximum age of various candidates will be reckoned from 1st of January, 2014.

7. The date 01.01.2014 is also relevant for acquiring educational degree of Intermediate. Training in the State of Bihar and enrollment as a Home Guard in the State of Bihar was a pre-requisite for consideration for such appointment. So far as the clause on training is concerned, the advertisement is silent. The submission of learned senior counsel, therefore, is that the training, therefore, must be completed before 28.02.2014 i.e. the last date for filing of applications. Since most of these petitioners had completed their training prior to 28.02.2014, the decision to disqualify them for consideration is an arbitrary decision not only in teeth of the Hon`ble Apex Court decision, but also violative of Articles 14 and 16 of the Constitution of India.

8. The Stand of the counsel representing the Selection Board is

that for every aspect of the matter the Board has treated 01.01.2014 as the cut-off date. If the age and the qualification is referable to 01.01.2014 then the Board also decided to keep 01.01.2014 as the last date for completion of training as a Home Guard. Since these petitioners did not have training on 01.01.2014, the Board as a conscious policy decision decided to disqualify them at the stage of physical evaluation test. There is a rationality why such a decision was taken because a uniform yardstick had to be adopted across the board.

9. In response to the above stand of the Recruitment Board, learned senior counsel brings to the attention of this Court an advertisement issued in the year 2015. In the said advertisement, which is Annexure-6 to the rejoinder application, the same Board has now indicated the cut-off date for training as well to be 01.01.2015. Obviously a necessity for doing so in the next advertisement was felt because there was ambiguity in the previous advertisement No. 1/14.

10. If these are the facts then keeping in mind the principles of law noted in the earlier part of the order, settled by the Apex Court, in absence of any clear date having been specified as to eligibility for training, the last date for application, which was 28.02.2014, has to be reckoned for eligibility for training.

11. There cannot be any quarrel that for age and educational

qualification the referable date will be 01.01.2014 but for the purposes of training it has to be 28.02.2014 i.e. the last date for making application.

12. If that be so, then obviously the reason for ouster of the petitioners from consideration of such appointment is not only arbitrary but violative of the fundamental right of these petitioners for consideration, if not non-appointment.

13. Learned counsel for the Selection Board thereafter informs the Court that the exercise is over. It may have been over but the fact remains that if a citizen has been wrongly and arbitrarily ousted from the zone of consideration and if a Court finds such a grievance to be valid and supported by law, it cannot remain a mute spectator nor can the court be a silent observer. The enforcement of fundamental right by a constitutional court is a paramount obligation created under the constitution.

14. In view of the above, the writ application is allowed.

15. The Respondent Selection Board is directed to complete the exercise with regard to selection and recommendation of all the petitioners, if there is no other legal impediment in their way, which does not seem to be so because non-selection was on the ground that these petitioners had obtained training after 01.01.2014 but before

28.02.2014. Let such an exercise be done within a period of three months from today.

16. Before parting, it may be noticed that the number of such candidates who stands disqualified for the above reason adds up to 31 only of which 28 are before this Court.

(Ajay Kumar Tripathi, J)

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