

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.103 of 2015

IN

LPA 1221 of 2012

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1.The Central Selection Board of Constable, Bihar, Patna
2.The Central Selection Board (Constable Recruitment), Bihar,
Patna through its Secretary
3.The Chairman, Central Selection Board (Constable Recruitment),
Bihar, Patna

.... **Petitioners**

Versus

1. Raj Kumar S/o Manohar Prasad Yadav, Resident of At + P.O.-
Latra, P.S.- Gopalpur, District- Bhagalpur.
2. Sanjay Kumar Yadav, S/o Bisheshwar Yadav, Resident of At-
Bhowra No. 13, P.O.- Bhowra, P.S.- Sudamdih, District- Dhanbad
3. Fudena Yadav, S/o Sri Kawal Yadav, Resident of village-
Chandrapura, P.O.- Hathilpur, P.S.- Brahmpur, District- Buxar
4. Dinesh Kumar, S/o Suresh Prasad Yadav, Resident of At-
Araria, P.O.- Balaha, District- Khagaria
5. Sanjay Kumar Yadav, S/o Anil Yadav, Resident of Village +
P.O.- Arai, P.S.- Shahjahanpur, District- Patna
6. Pravin Kr. Yadav, S/o Basudeo Pd., R/o Village- Sadpur, P.S.-
Shahkhurd, District- Bhagalpur
7. Shankar Kumar, S/o Ram Chandra Bhagat, R/o Village+ P.O.-
Kab, P.S.- Ranitalab, District- Patna
8. Ravindra Kumar Singh S/o Satyanarayan Singh, R/o Village-
Damodarpur, Shahkund, District- Bhagalpur
9. Vinay Kumar, S/o Mahendra Ram, R/o Village- Budh Ghareya,
P.S.- Wazirganj, District- Gaya
10. Mukesh Kumar S/o Indal Ram, R/o Village- Budhghareya,
P.S.- Wajirganj, District- Gaya
11. The State of Bihar, through the Secretary, Central Selection
Board, Patna.

.... **Respondents**

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Appearance :

For the Petitioners: Mr. P.N. Shahi, Sr. Advocate
Mr. Sanjay Pandey, Advocate
Mr. Binod Kumar Mishra, Advocate
For the Respondents: Mr. Rajendra Prasad Singh, Sr. Advocate
Mr. Nirala Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 22-11-2016

This Civil Review Application has been filed on behalf of the Central Selection Board of Constables and its officials.

2. By this application, they have sought review of the judgment and order of this Court dated 26.02.2015, passed in Letters Patent Appeal No. 1221/2012. On behalf of the review petitioners two grounds have been taken. Firstly, that even though they were necessary party in the appeal and had been so made, they were not noticed before the appeal was heard and allowed. Secondly, while allowing the appeal, the Division Bench took a view contrary to an earlier Division Bench Judgment, without noticing the said binding precedent. The earlier judgment of the Division Bench also related to the same recruitment process.

3. We have heard Sri Pushkar Narain Shahi, learned Senior Advocate, for the Review Petitioners and Sri Rajendra Prasad Singh, learned Senior Advocate, for the writ petitioners/appellants, who are the contesting respondents in this Review Application and, with their consent, this Review Application is being disposed of at this stage itself.

4. The dispute is in very narrow compass. On the first issue, that review petitioners i.e. the Central Selection Board (Constable Recruitment), Bihar, was a





necessary party and had been made respondent in the Appeal, which was not noticed nor heard, and the appeal was disposed of. We can say that due to inadvertence this was done. But the legal effect would be that the appeal was disposed of without hearing and noticing the necessary party. Such an order suffers from procedural infirmity and the order has to be recalled on grounds of procedural review. Such power of procedural review is inherent in all courts, tribunals or authority. It is distinct from substantive review, as has been held by the Apex Court in the case of **Grindlays Bank Vs. Central Govt. Industrial Tribunal** since reported in **AIR 1981 SC 606**; where in paragraph 13, it was held which reads as such:

13. Furthermore, different considerations arise on review. The expression 'review' is used in two distinct senses, namely, (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the Court in Narshi Thakershi's case held that no review lies on merits

unless a statute specifically provides for it, obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to prevent the abuse of its process, and such power inheres in every Court or Tribunal.

5. Thus, we have no option but to recall the judgment and order dated 26.02.2015, passed in Letters Patent Appeal No. 1221/2012, and to rehear the matter on its merit. As parties have appeared and pleadings being complete, we have heard the Letters Patent Appeal all over again in order to save time with consent of parties.

6. The facts are not in dispute. The writ petitioners had applied for recruitment of constables in the Bihar Police. The minimum educational qualification was matriculation. In the application form, they were required to give their category indicating whether they were candidates of EBC Schedule-I, BC Schedule-II or General Category. It may be noted that so far as scheduled castes and scheduled tribes candidates are concerned, there were different sets of form. The candidates had to indicate the same by number given against their Category. The candidates were not required

to give the original certificates, which were to be verified at a latter stage. The candidates were required to give a declaration that, if any information given in the application form was found to be incorrect, their application would be rejected at any stage.

7. The writ petitioners had filled up their Categories BC Schedule-II or EBC Schedule-I, as they had desired. They sat in the preliminary physical test and their original certificates were, then, compared. What was found at that stage that, those who had claimed EBC Schedule-I and filled up the form accordingly produced certificate showing that they were of BC Schedule-II Category and not EBC Schedule-I Category candidates, as claimed. Similarly, those who had filled up BC Schedule-II, as their category in their application form, produced certificates to show that they were EBC Schedule-I candidates. In short, there was total variance between the Category shown in the application form and Category shown as per original certificates produced. Central Selection Board for constable recruitment, on this mismatch, treated that the information given in the application form had not been supported by documents (original certificate). The information supplied was wrong, and as such, cancelled their candidature. It is against this step, they filed the writ petition being CWJC



No. 19808/2011, which was dismissed by the learned Single Judge holding that once the information given in the application form was incorrect and was not substantiated by the original certificate, the candidates had no right to be selected. Rejection of their candidature was in order and the writ petition was dismissed.

8. The matter came in Appeal before us in Letters Patent Appeal No. 1221/2012, which as noted above, was heard without notice to the Central Selection Board (Constable Recruitment) and allowed on 26.02.2015. We, in the Intra-Court Appeal, took the view that the mistake was unintentional. It was done by a backward category candidate having only matriculation qualification. In either of the categories they would have, otherwise, completed on merits. Thus, on these equitable principles, we allowed the appeal, set aside the judgment and order of the learned Single Judge, and directed that their candidature be considered according to their certificate produced, if there is any vacancy. It is this judgment and order which is sought to be reviewed.

9. As indicated above, on the ground of procedural review, we had already recalled the said judgment. It is, then, pointed out that for the purposes of substantive review, there was earlier a binding





precedent of another Division Bench in the case of Anil Kumar Vs. State of Bihar and Another, being LPA No. 1276/2012, which was decided on 10.01.2013, wherein the order of learned Single Judge dismissing the writ petition on the same ground, was upheld clearly holding that the wrong entry in the application form would invalidate the candidature. The binding precedent, having not been brought to our notice, we have taken a different view of the matter on equitable principles.

10. Having heard the parties, we are of the view that this necessitates a substantive review. Our judgment was passed in ignorance of a binding precedent. If we are to follow the binding precedent, which we are bound to, then, the Intra-Court Appeal i.e. Letters Patent Appeal No. 1221/2012, has to be dismissed affirming the order of the learned Single Judge, as passed in the writ proceedings.

11. Sri Rajendra Prasad Singh, learned Senior Counsel, then, raised the plea that the petitioners, having been permitted, pursuant to direction, to sit in the preliminary test and participate in interview, it is not open to the Central Selection Board (Constable Recruitment) to as such cancel the candidature. The answer to this is to be found in the case of **T. Jayakumar Vs. Gopu** since reported in **(2008) 9 SCC**

403; and in particular paragraph 12 thereof which reads as such:

"12. We are not aware of any principle of law under which once a candidate is allowed participation in the selection process, the selection authority is precluded from examining whether his application was complete, in order, within time or otherwise acceptable. A defect in the application form that renders the candidate ineligible might be overlooked in the initial screening and as a result he may be called for interview and may get a chance to take part in the selection process but that alone does not mean that the candidate cannot be held ineligible for selection at a later stage once the defect in the application comes to light."

12. Thus, in law, we find that the writ petitioners having given a wrong declaration in his application form, which he could not be substantiated by original document, makes their candidature itself invalid. It is a case of wrong categorization which is material for the selection process and become more material when it comes to stage of appointment.

13. As a last effort, Sri Singh, learned Senior

Counsel, submits that rejection of writ petitioners' application at this stage would violative of Article 14 and 16 of the Constitution. We see no reason to agree with that, for the simple reason that it is a mistake of the applicant himself, which has brought this situation and no mistake on the part of authorities. A mistake committed of this nature cannot be overruled or ignored. If that be so, the question of violation of Article 14 and 16 of the Constitution does not arise. The application itself is invalid.

14. Thus, we allow this Review Application and recall our judgment and order dated 26.02.2015, passed in Letters Patent Appeal No. 1221/2012, and consequently, we would not interfere with the writ court's order which dismisses the writ petition. The appeal would thus stand dismissed.

(Navaniti Prasad Singh, J.)

(Jitendra Mohan Sharma, J.)

Rajeev/

AFR/NAFR	AFR
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