

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9890 of 2013

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1. The Bihar Police Association (Wireless) through its Secretary, Dr. Arvind Kumar Singh Son of Ram Nath Singh, resident of village - Sirsa Ram Rai, Police Station- Lalganj, District- Vaishali.
 2. Rajeev Kumar Sinha Son of Late Shambhu Sharan Prasad, resident of mohalla- Alkapuri, Police-Station- Gardanibagh, P.O.- Anisabad, District- Patna- 800002
 3. Yamuna Dayal Ojha Son of Late Kanhaiya Ojha, resident of village- Nimeg, Police-Station- Barahmpur, District- Buxar
 4. Md. Abulais Son of Late Hafizullah, resident of village- Kathia Mathia, Police Station Kangli, District- West Champaran
 5. Ram Balak Paswan Son of Late Mangi Paswan, resident of village- Basour, Police Station- Bhagwanganj, District- Patna
 6. Shyam Kishore Singh Son of Late Uma Shankar Singh, resident of village- Chhap, Police Station- Paroo, District- Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Home Secretary, Govt. of Bihar, Patna
3. The Director General of Police, Bihar, Patna
4. The Additional Director General of Police (H.Q.), Bihar, Patna
5. The Additional Director General of Police, Wireless and Technical Services, Bihar, Patna.
6. The Superintendent of Police (Wireless), Bihar, Patna
7. The Joint Director, Home (Police) Department, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Bindhyachal Singh and Satya Prakash, Advs.
For the Respondent/s : Mr. Rajesh Kr. Sinha, AC to GP-23

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 04-08-2016

In the present case, petitioners are challenging the Notification dated 15.03.2013, whereby the Director General of Police has approved the proposal to send the requisition to the Staff Selection Commission with the roster points by the Home (Police) Department to fill up 48 vacant posts of Police Sub-Inspector (Wireless).



In a nut-shell, prayer has been made that the entire posts of Police Sub-Inspector (Wireless), which has been kept for direct recruitment, be filled up by promotees. Further prayer has been made that as per the judgment and order of the Hon'ble Supreme Court passed in Civil Appeal No. 2439 of 1982 directed to provide two promotional opportunities to the employees working in the wireless branch of the Bihar Police Service.

The short fact of this case is, before 06.05.1970, there was a combined police force in the State of Bihar created under the Police Act, 1961, was inclusive of the police personnel general as well as the police personnel were serving in signal (Wireless) branch. On 06.05.1970, the wireless branch was separated and that branch was divided in two wings, namely, Operational and Technical Wing. In both the wings, the number of posts created i.e. Deputy Superintendent of Police, Inspector, Sub-Inspector, Assistant Sub-Inspector (Operational) and Literate Constable. The Wireless Organisation of the Bihar Police is a closed cadre, having few chance of the promotion. The Government of Bihar, in view of the judgment passed in **C.W.J.C. No. 21 of 1968 (*Sri Ram Deo Singh and others vs. State of Bihar*)**, granted the option that those, who are working in the wireless, may opt for the general police wing. In pursuance thereof, large number of persons opted for general police. One



Raghunath Prasad failed to give his option within time, but later on, his belated prayer for option was rejected, that led to litigation and the matter went to the Hon'ble Supreme Court in Civil Appeal No. 2439 of 1982 where the Hon'ble Supreme Court though rejected the appeal of Raghunath Prasad, but had given an observation that as Wireless Wing is a closed cadre organisation, having no avenue for the promotional opportunity, the Government should ensure reasonable opportunity of promotional avenue to the police personnel working in that wing, otherwise the people working in that wing, will loose their interest and efficiency, in such circumstance, it is duty of the employer, at least, should make room for two promotional opportunities to the officers and employees of the State Police working in the wireless organisation within six months. It will be relevant to quote the order, which is as follows:-

“Before we part with the appeal, we would like to take notice of another aspect. In course of hearing of the appeal to a query made by us, learned counsel for the appellant indicated the reason as to why the appellant was anxious to switch over the general cadre. He relied upon two or three communication which are part of the record where it has been indicted that there is no promotional opportunity available in the wireless organization. Reasonable promotional opportunities should be available in every wing of



public service. That generates efficiency in service and fosters the appropriate attitude to god for achieving cost the service is bond to degenerate, and stagnation kills the desire to serve properly. We would, therefore, direct the State of Bihar to provide at least two promotional opportunities to the officers of the State police in the wireless organization within six months from today by appropriate amendments of rules. In case the State of Bihar fails to comply with this direction, it should with two months thereafter, give a fresh opportunity to personal in the police wireless organization to exercise option to revert to the general cadre and that benefit should be extent to everyone in the wireless organization.”

In pursuance thereof, the Government was to provide avenues for two promotions as has been submitted by the counsel for the petitioners though they have been given the benefit of Time Bound Promotion, A.C.P., which cannot be said to be at par with the normal promotion though there may be an enhancement of the pay, but there is no enhancement of the post. In nut shell, the claim has been made, the Government has not complied the order of the Hon’ble Supreme Court and further submitted that in pursuance of the decision, altogether 150 posts were filled up through promotees and later on, a Higher Powered Committee was constituted, which took a decision to fill up the rest (48) posts through the promotion, in support



of the same, he has placed reliance on the three letters of Government, i.e. letter dated 29.08.1995 (Annexure-3) written by Deputy Secretary, Home (Police) Department, Government of Bihar, letter dated 10.09.2006 (Annexure-4) written by Joint Secretary, Home (Police) Department, Government of Bihar and letter dated 4.9.2000 (Annexure-6) and the proceeding of Higher Powered Committee dated 21.08.2000 proposed that 50 posts meant for direct recruitment, be filled up through promotees and also suggested to create more posts to strengthen the wireless wing.

The counsel for the petitioners submits that when the State Government and the Higher Powered Committee have taken decision, there was no justification for the Director General of Police or the Additional Director General of Police (Administration) to turn the table and take different decision to fill up 48 vacant posts meant for the direct recruitment through advertisement by the fresh persons. The basic claim is that the posts, which are meant for direct recruitment, should be filled up by the promotees. The decision of the Director General of Police or the Additional Director General of Police dehors to the recommendation of the Committee is not sustainable in law, to substantiate his submission that the regular promotion is quite different to the Time Bound Promotion or the A.C.P., placed reliance on judgments reported in (1994) Suppl. 2 SCC

250, para-7 (*Patna University and others vs. Awadh Kishore Pd. Yadav and others*), (1999) 9 SCC 271, para-3 (*State of Bihar vs. Surjit Singh*), and (2008) 5 SCC 100 (*Food Corporation of India and others vs. Purashotam Das Bansal and others*).

On perusal of the three judgments, it is completely clear that the observation of the Hon'ble Supreme Court has been given in different contexts and different subjects, which is not applicable to the present case.

The State has pointed out that there is a Rule which governs the field for filling up the vacancy through direct recruitment vis-à-vis promotion, 150 posts meant for direct recruitment have already been filled up through promotees, only 50 posts has been left for direct recruitment. He further submits that any recommendation of High Powered Committee will not prevail over the Rule that has been framed which has statutory force and any decision dehors to the Rule, will be treated to be nullity. This argument of the State is completely correct.

This Court is of the view that the decision of Director General of Police or Additional Director General of Police cannot in any manner be defaulted, but the State Government should implement the judgment of the Hon'ble Supreme Court which has been passed in the year 1987, by creating more posts for the purposes of

promotion, otherwise the persons, who are working there, will loose their interest and will kill the desire to serve properly. This Court hopes and trusts that the State Government will come forward with a decision to create avenues for promotion with an intention to implement the order of the Hon’ble Supreme Court within a period of six months from the date of receipt/production of a copy of this order.

With the above observation/direction, this petition is disposed of.

(Shivaji Pandey, J)

Mahesh/-

AFR/NAFR	NAFR
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