

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.636 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 21121 of 2012**

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Bijendra Kumar, son of Shri Rasik Lal Sharma, resident of village- Jhapri Tola,
Ward No. 26, P.O. and P.S. Saharsa, District- Saharsa

.... Appellant

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna
2. The Deputy Inspector General of Police, Darbhanga
3. The Deputy Inspector General of Police, Koshi Range, Saharsa
4. The Deputy Inspector General of Police, Bhagalpur, Eastern Zone, Bhagalpur
5. The Deputy Inspector General of Police, Patna
6. The Superintendent of Police, Supaul.

.... Respondents

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Appearance:

For the Appellant/s : Mr. Ashok Kumar Sinha, Advocate.
Mr. Shyam Sunder Pandey, Advocate.
For the Respondent/s: Mr. Md. Nasrul Hoda Khan, SC-1.
Mr. Md. Harun Quereshi, AC to SC-1.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 27-09-2016

The order dated 11.03.2014 passed by the learned Single Bench of this Court in CWJC No. 21121 of 2012 is subject matter of challenge in the present Letters Patent Appeal. The challenge in the writ application was to an order dated 03.05.2012 rejecting the claim of the petitioner for the appointment of the post of constable.

2. An Advertisement No. 01/1998 was published inviting applications for appointment to the post of constables. The appellant was one of the candidates and he was found successful in

the written and viva voce, but during the medical examination, he was found not fit and consequently he was not appointed.

3. As per the appellant, he submitted a representation before the Superintendent of Police, Supaul. Since such representation was not decided, the appellant filed a writ petition bearing CWJC No. 8497 of 2001. The writ petition was withdrawn on 10.07.2001 in view of the observation that the grievance of the appellant shall be examined by the Deputy Inspector General of Police in accordance with law.

4. It is in pursuance of such order, Shri Girirja Nandan Sharma, Dy. Inspector General of Police, C.I.D., Bihar, Patna communicated to the appellant on 01.04.2005 that height of the appellant as shown in the Master Chart is 168.2 cms and the height of the last candidate selected in the category to which the appellant belongs is 176 cms. Since the height is lower by 7.8 cm, therefore, the appointment could not be made. It was also communicated to the appellant that reconsideration for the purpose of appointment is not permissible as he has failed to appear for the test as directed by this Court in another bunch of petitions. The said communication has been endorsed to the Deputy Inspector General of Police, Koshi Range, Saharsa; Inspector General of Police, Darbhanga; Deputy Inspector General of Police, Human Rights and Superintendent of Police, Supaul.

5. It is, thereafter, the appellant filed CWJC No. 15291



of 2005 before this Court. Such writ application was decided along with other bunch of writ applications on 23.03.2007, whereby the petitioners in all the cases were given liberty to submit representation within four weeks before the concerned authorities and it was ordered that such representation shall be decided within three months in accordance with law.

6. It is, thereafter, on 12.07.2007, Shri Girija Nandan Sharma, then posted as Deputy Inspector General of Police, Bhagalpur, the officer who has earlier communicated that the appellant cannot be appointed because of lesser height, communicated an order that the appellant has produced certain documents with regard to his height as 176 cms. Therefore, he should be appointed. Such communication does not show that the appellant was subjected to any medical examination but such communication is based on a certificate produced by a private medical practitioner.

7. The appellant filed a contempt petition before this Court vide M.J.C. No. 3663 of 2010 which was dismissed on 30.08.2011, when the factum of representation having been decided on 12.07.2007 was brought to the notice of the Court. However, the matter was re-examined by Superintendent of Police, Supaul on 03.05.2012, when the facts were brought to the notice of Inspector General, Darbhanga. It was observed that Shri Girija Nandan Sharma was not competent to issue such communication, as he was Deputy Inspector General of Police, Bhagalpur whereas the appointment



relates to Koshi Range. It could not be found out that in what circumstances such communication has been sent to the appellant and when no re-measurement has taken place. In view of the above, the appellant was informed on 14.06.2012 affirming the communication submitted by the Superintendent of Police, Supaul on 03.05.2012.

8. Though the communication dated 03.05.2012 or 14.06.2012 was not challenged by the appellant before learned Single Judge, the fact remains that the claim of the appellant for appointment as constable stood declined by the aforesaid orders.

9. Once Shri Girija Nandan Sharma has passed and communicated an order dated 01.04.2005 that the appellant had not appeared for physical re-examination in pursuance of the advertisement issued and that his height is less than 176 cms, it is not understandable that what made him to arrive at a conclusion that the appellant meets physical standards. It appears that the appellant relies upon a medical certificate given by a private doctor showing that his height is 176 cms. It appears that the said certificate was the basis of reason for finding that the height of the appellant is 176 cms. The appellant was not subjected to medical examination before writing such letter on 12.07.2007. Still further, it is not explained by the appellant that how Deputy Inspector General of Police, Bhagalpur can recommend the appointment of the appellant when Bhagalpur Range has nothing to do with the process of appointment as

mentioned in the communication letter dated 03.05.2012.

10. A perusal of the communication dated 03.05.2012 (Annexure-10) produced by the appellant shows that in terms of an order passed on 10.07.2001 by this Court, all the candidates were informed through public advertisement to appear for re-measurement, but the appellant did not appear. Therefore, once the appellant has not availed the opportunity of his re-measurement, therefore, there is nothing to doubt that the entry in the Master Chart regarding height of the appellant is 168.2 cms. The certificate of a private doctor obtained on 05.08.2002 cannot rebut the medical examination conducted by the police authorities.

11. We find that the entire claim of the appellant is untenable as has been raised primarily on the report of the Deputy Inspector General of Police, Bhagalpur, when he had nothing to do with the matter.

12. Learned counsel for the appellant points out that Shri Girija Nandan Sharma was an officer when the selection process has taken place and he has issued the said communication.

13. We find that an officer who has conducted the selection is not expected to carry the records of selection with him. Still further, the communication (Annexure-7) does not show that he was the incharge of the Selection Committee who had issued such letter. The entire genesis of such letter is shrouded in suspicious circumstances. In the entire sequence, the conduct of Shri Girija

Nandan Sharma, Deputy Inspector General of Police indicates lacks of *bona fide* and may be of extraneous considerations.

14. Consequently, we dismiss the present Letters Patent Appeal. However, the Director General of Police, Bihar or the Home Secretary, Government of Bihar, or who so ever is the competent authority is directed to examine the authority of Shri Girija Nandan Sharma to write communication dated 12.07.2007 (Annexure-7). If such a communication is found to be by an officer not authorized to deal with the appointments, an appropriate action shall be taken.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Mishra/-

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