

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.120 of 2017

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1. Tuntun Sah, Son of Sri Jaganath Sah, resident of village-Akbarpur, P.S. Bhagwanpur, District - Vaishali

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Home Department, Govt. of Bihar, Patna
2. The Director General- Cum- Inspector General of Police, Bihar Old Secretariat, Patna
3. The D.I.G., B.M.P. North Range, Muzaffarpur
4. Commandant B.M.P. 13, Darbhanga
5. Commandant B.M.P. 6, Muzaffarpur
6. The Superintendent of Police, Muzaffarpur
7. The Dy. S.P. Mahua Sub - Division, Vaishali
8. The I.G. of Police, B.M.P. Bihar, Patna
9. The A.I.G. of Police, B.M.P. Bihar, Patna
10. The Commandant, B.M.P. 6, Muzaffarpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Uma Shankar, Adv.
Mr. Kamlesh Kumar Sharma, Adv.
For the Respondent/s : Mr. Anil Kumar, A.C. to S.C.8
Mr. Sheoshankar Prasad, SC8

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 17-04-2017

Heard learned counsel for the parties.

The petitioner is aggrieved by the order dated 17.9.2015 issued under the signature of the Commandant, Bihar Military Police 6, Muzaffarpur informing him regarding his failure in the physical examination held following the Advertisement No. 1 of 1995 wherein the chest measurement of the petitioner was found at 82.5 centimeters as against the prescribed 84 centimeters. There is no dispute on facts



that chest measurement of the petitioner did not meet the standard.

In fact an earlier challenge on the same issue in C.W.J.C.No.8117 of 1997 filed by the petitioner along with some others, was withdrawn as having become infructuous inasmuch as they informed the Court that they had been granted relief when in fact, no such relief was granted to them. The reliance of the petitioner was on the master chart, a copy of which has since been brought on record by the respondents vide Annexure-A to the counter affidavit which though mentions the chest measurement of the petitioner as 82.5 centimeters but inadvertently declares him pass. It is taking clue from this typographical error or inadvertent mistake as it can be called, that the petitioner chose to approach this court in the previous round and vide Annexure-2 also chose to withdraw the writ petition which was disposed of as withdrawn vide judgment and order dated 17.5.2011.

A copy of the counter affidavit in the said proceeding has also been placed on record vide Annexure-B to the counter affidavit filed in the present case and the case of the petitioner is detailed at running page 74. The stand of the respondents is that measurement of the petitioner was lesser than the minimum required of 84 centimeters. This was the specific stand taken by the respondents before this court in the earlier round of proceedings in C.W.J.C.No.8117 of 1997.



Despite this position, the petitioners herein chose to withdraw the writ petition as is conformed form paragraph 1 of the judgment placed at Annexure-2. He now chooses to start a second round litigation merely because the position has been confirmed by the communication impugned at Annexure-3 dated 17.9.2015. The attempt made is neither sustainable on merits nor on the principles of res judicata.

The writ petition is dismissed.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.5.2017
Transmission Date	NA

