

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.615 of 2016

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1. Satyendra Kumar Singh Son of Late Vishwanath Singh Resident of Village-Karma, P.O.-Dhawani, P.S.-Karakat, District-Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Director General of Police, Bihar, Patna.
3. The Inspector General (Welfare), Bihar, Patna.
4. The Deputy Inspector General of Police (Personnel), Patna.
5. The District Magistrate, Rohtas, Sasaram.
6. The Commandant, Bihar Military Police, Buttalion No.-2, Dehri On Sone, Rohtas.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rakesh Narain Singh, Adv.

For the Respondent/s : Mr. Ravi Verma, A.C. to G.P.4

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 16-05-2017

Heard Mr. Rakesh Narain Singh, learned counsel for the petitioner and Mr. Ravi Verma A.C. to G.P.4 for the State.

With the consent of the parties, the writ petition has been heard with the view to final disposal at the stage of admission.

The petitioner prays for appropriate direction in the nature of mandamus to the respondents for appointment of the petitioner on a Class-III post of Constable by way of compassionate appointment in pursuance of the recommendation so made by the District Compassionate Appointment Committee, Rohtas, in the meeting held on 30.1.2011 circulated vide minutes bearing Memo No.268 dated 28.2.2012, a copy of which has been brought on record vide



Annexure-A to the counter affidavit filed on behalf of the respondent No.6.

There is no dispute on facts. It is also not in dispute that the petitioner is entitled for a compassionate appointment. It is again not in dispute that the recommendation was earlier made for appointment on class-III post of Constable. The dispute is that since by a passage of time, the educational qualification for appointment to the post of Constable has undergone a change and prescribes Intermediate qualification, while the petitioner at the relevant time was holding the qualification of Madhyama which is equivalent to matriculation hence he could only be appointed on a Class-IV post and it is accordingly that a recommendation has been made by the Commandant, Bihar Military Police, Dehri-On-Sone, Rohtas vide his letter dated 17.7.2015 addressed to the District Magistrate, Rohtas at Sasaram present at Annexure-9, which has aggrieved the petitioner to come to this Court.

Facts of the case briefly stated is that the father of the petitioner, a Hawaldar in the State Police Force, died in harness on 1.3.2009 leaving behind his widow, two sons including the petitioner and two daughters, the details of whom are present at paragraph 5 of the writ petition. The petitioner applied for appointment on compassionate ground and his application was accepted by the



District Compassionate Committee, Rohtas in its meeting held on 31.1.2011. A recommendation was made for appointment of the petitioner on Class-3 post of Constable which is confirmed from the minutes of the meeting present at Annexure-A to the counter affidavit of the respondent No.6 with the name of the petitioner appearing at running page 46. At the relevant time, the prescribed qualification for appointment on the post of Constable, a class-III post, was matriculate or equivalent and the petitioner held such qualification.

It is following the recommendation made by the District Compassionate Appointment Committee at Annexure-10 of the supplementary affidavit that the petitioner was directed to be present with his identification, before the Commandant vide letter dated 16.5.2012 at Annexure-1. The petitioner again vide letter dated 16.4.2013 of the Commandant was directed to produce his medical fitness report and while this exercise was being carried out that the qualification prescribed for appointment on the post of Constable underwent a change and was enhanced to intermediate vide Home (Police) Department Notification bearing Memo No.4573 dated 13.6.2013. The petitioner was again directed to be present before the Commandant on 6.1.2014 vide letter dated 19.12.2013 for taking necessary steps towards his compassionate appointment. Thereafter while this process was going on that alongside an interaction was



happening between the Commandant and the Deputy Inspector General of Police (Personnel) as regarding the entitlement of the petitioner to a Class-III post in view of the amendment in qualification as confirmed from Annexures-4 and 5. Ultimately vide Annexure-7 which is a letter dated 16.3.2017 of the Commandant that the petitioner was recommended for appointment against a Class-IV posts inter alia on grounds that the qualification for Class III posts had undergone a change and was enhanced to intermediate vide Notification of Home (Police) Department bearing No. 4573 dated 13.6.2013. The petitioner is thus before this Court.

Although the petitioner claims to be intermediate but there is nothing on record of the proceedings to support this.

I have heard learned counsel for the parties and I have perused the records.

There is no dispute on facts. As I have already observed, the recommendation of the petitioner vide Annexure-10 to the writ petition, was for the post of Constable and the petitioner was holding qualification for such appointment. Law is well settled on this issue and it is the qualification prescribed for a post which is existing on the date on which the case of a incumbent is tested for appointment which would be relevant for his candidature and not any subsequent amendment to the qualification. There is no dispute on fact that the



petitioner fulfilled the eligibility qualification for appointment on a Class-III post when the District Compassionate Committee took a decision to recommend his case for appointment on the post of Constable a Class-III post in its meeting held on 13.1.2013. In such circumstances, a change in qualification subsequently vide the notification of the Home (Police) Department through memo No.4573 dated 13.6.2013 can not have a retrospective application nor can effect the recommendation earlier made. A delayed action on the part of the respondents to take the appointment process of the petitioner to its conclusion cannot act as an obstruction to the process. The case of the petitioner has to be tested on the basis of the qualification which stood prescribed on the date when his case was taken up for consideration for compassionate appointment and there is no dispute that he fulfilled the educational qualification for such appointment on the said date.

In the aforesaid view of the matter, the respondents cannot take advantage of their own folly and to reject the claim of the petitioner on account of delayed action on their part which is totally attributable to them.

In the circumstances discussed and in view of the recommendation made by the District Compassionate Committee, Rohtas present at Annexure-10 to the supplementary affidavit, the District Magistrate, Rohtas and the Commandant, Bihar Military



Police and others connected with the process, are hereby directed to take necessary steps towards the completion of the legal formalities following the recommendation present at Annexure-10 for appointment of the petitioner on a Class-III posts of a Constable to be completed within six weeks from the date of receipt/production of a copy of this order.

The writ petition is allowed.

Bibhash/-

(Jyoti Saran, J)

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	01.06.2017
Transmission Date	NA

