

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5459 of 2014

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1. Ravi Bhushan Prasad Sinha, Son of Shree Yogendra Prasad Sinha Resident of
Village- Medanimal, P.O.- Hajipur, P.S.- Hajipur Town, Distt.- Vaishali

.... Petitioner

Versus

1. The State Of Bihar through the Director General Of Police, Bihar, Patna
2. The Director General Of Police, Bihar, Patna
3. The Chairman, Tirhut Range Board, Muzaffarpur Range, Muzaffarpur
(Constable)
4. The Inspector General of Police Muzaffarpur Range, Muzaffarpur
5. The Senior Superintendent of Police, Patna
6. The Deputy Inspector General of Police, Central Range, Patna
7. The Attendant Selection, New Police Line, Muzaffarpur
8. The Superintendent of Police, Muzaffarpur
9. District Commissioner, Hq, Muzaffarpur

.... Respondents

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Appearance :

For the Petitioner : M/S Siya Ram Shahi, Manoj Kumar & Indu
Bhushan Pandey, Advs.

For the Respondents : Mr. Vivek Prasad, GP XVIII

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

CAV JUDGMENT

Date: 12-10-2017

Heard both the sides.

2. The petitioner, herein, seeks relief for quashing the order, contained in Memo No. 17898/R. Ka, dated 25.11.2013 (Annexure 17) issued by the Senior Superintendent of Police, Patna, whereby the petitioner has been dismissed from service from the post of Constable.

3. The petitioner, further, seeks for quashing of the order passed by the Deputy Inspector General of Police, Central Range, Patna, as contained in Memo No. 140, dated 25.07.2014, by which the appeal of the petitioner, against the order of dismissal has been dismissed and the order passed by the Director General of Police, Bihar, Patna, in memorial,



as contained in Memo No. 551/L-1, dated 10.02.2015, by which the memorial of the petitioner has also been dismissed.

4. Facts relevant for this case are as follows :

- (i) In pursuance of Advertisement no. 1 of 1998 for recruitment of 13034 Constables in different district of Bihar, the petitioner applied. The sole criteria for selection was the height of the candidates. The petitioner submitted his application form duly signed by him disclosing therein that his height is 186 cm. The petitioner was selected by the Selection Board on 16.05.1999 and appointment letter was issued accordingly. The petitioner was appointed on the post of Constable in the district of Muzaffarpur.
- (ii) During the course of selection process, many illegalities and irregularities were committed. Nitesh Kumar Sharma and others filed C.W.J.C. No. 6952 of 2000 alleging therein that the persons, such as Indra Kumar Jha, Ravi Bhushan Prasad Sinha, the petitioner of the present writ petition, Md. Babar Ali, Parmeshwar Sinha and Rakesh Kumar, have lesser height than the petitioners of C.W.J.C. No. 6952 of 2000 (Nitesh Kumar Sharma & Ors.) were illegally appointed ignoring the bonafide claim of Nitesh Kumar Sharma and others. On such, this Court directed the Deputy Inspector



General of Police, Tirhut Range, Muzaffarpur, to look into the representation of the petitioner as well as the master chart and candidates register in order to find out that any person or persons having lesser height than the petitioner have been recommended for appointment or not. If it is found that the names of the persons having lesser height than the petitioner were recommended for appointment, the authorities shall also appoint the petitioners.

- (iii) Many other aggrieved persons complaining the illegality committed in the selection of the Constable in pursuance of Advertisement no. 1 of 1998 filed C.W.J.C. No. 12842, 12861 of 2000, 12875 of 2000 and 12879 of 2000 in which they alleged that the persons having lesser height than the petitioners of aforesaid writ petitions were appointed and on otherwise considerations they were left out. This Court in view of such large number of writ applications filed in the Court on same and similar ground that the persons having lesser height were appointed, directed the concerned Deputy Inspector General of Police or Zonal Inspector General of Police to adopt uniform policy for dealing with the such representations in accordance with law and keeping in view the exact number of vacancy available. In pursuance of the



order of the High Court passed in the aforesaid writ petitions, the Director General of Police directed all the Zonal Inspector General of Police or the Deputy Inspector General of Police to invite representations from the concerned persons after publishing advertisement from the candidates/applicants for appointment to the post of Constable and dispose off the same. Thereafter, C.W.J.C. No. 7042 of 2002 was filed and this Court dismissed the writ petition that the advertisement was issued in the year 1998 and large number of candidates have already been appointed, therefore, the procedure for appointment on the basis of the aforesaid advertisement should come to an end and the candidates subsequently becoming eligible should be given opportunity.

5. Again, C.W.J.C. No. 15217 of 2001 was filed and single Bench of this Court directed the authorities to consider the representation of the petitioner and a Division Bench of this Court in C.W.J.C. No. 8304 of 1999 and its analogous cases disposed off the writ petition vide order, dated 15.07.2005, that no fresh representation should be entertained for appointment in pursuance of Advertisement no. 1 of 1998 as the advertisement was issued inviting representation from the candidates and the process of the appointment in pursuance of a particular advertisement



can not be allowed to be unending process and allowed to go for a long time depriving the candidates, who subsequently become eligible.

6. Nitesh Kumar Sharma, the petitioner of C.W.J.C. No. 6952 of 2000, filed complaint before the Director General of Police and, on such, the Director General of Police called for a report from the Deputy Inspector General of Police, Magadh Range, Gaya, vide Memo No. 1667, dated 10.06.2013, as he was the Senior Superintendent of Police, Muzaffarpur, and a member of the Selection Committee. The Deputy Inspector General of Police submitted report that the height was measured in his presence by the Sergeant Major, thereafter, a complaint was filed before the Lok Ayukta stating that the height of the petitioner, Ravi Bhushan Prasad Sinha was wrongly mentioned as 186 cm in his application for appointment on the post of Constable and the petitioner managed the authority, who measured the height of the petitioner, also mentioned the height of the petitioner as 186 cm whereas the height of the petitioner is only 172 cm. the petitioner was eligible as the candidates from the general category having 182.5 cm height were appointed in pursuance of the aforesaid advertisement, but, the petitioner got fraudulently manipulated the entire procedure and he was illegally appointed in conspiracy with Vinod Kumar Sinha, the then Sergeant Major.

7. The Lok Ayukta called for a report and it transpired during



the enquiry that the height of the petitioner is only 172 cm, which is much less than the height of the last candidate of the general category, i.e., 182.5 cm, selected for appointment, but, even then the name of the petitioner figured in the selected list. When the Lok Ayukta directed the authorities to enquiry the matter, the show cause was issued to the petitioner and first information report was also lodged against the petitioner and Sergeant Major, the then Assistant Selection officer, Vinod Kumar Sinha. A departmental proceeding was also initiated, resulted in the dismissal of the petitioner and the enquiry officer found the petitioner guilty of interpolation of the application form as well as in the registers. It was found that some impersonation was made in selection of the petitioner and, accordingly, the petitioner was dismissed from service, vide order, dated 25.11.2013.

8. The appeal and memorial of the petitioner have also been dismissed.

9. Mr. Siya Ram Shahi, the learned counsel for the petitioner, made two fold submissions. Firstly, it has been submitted that during the course of departmental enquiry, the petitioner was not given sufficient opportunity to defend himself. The disciplinary authority asked the second show cause, but, the petitioner took adjournments and the petitioner could not file his show cause on account of his illness. The disciplinary authority dismissed the petitioner. Therefore, the order of



dismissal is bad on account of violation of principles of natural justice as no sufficient opportunity was given to the petitioner. It is, further, submitted that the appellate authority as well as the Director General of Police dismissed the appeal and memorial of the petitioner without giving any reasons. The appellate order and the order passed in the memorial do not reflect that the authorities considered the grounds of the petitioner, at all, while dismissing the appeal and memorial. The enquiry report was also not served.

10. The learned counsel for the petitioner placed his reliance on the Full Bench judgment of the Supreme Court reported in **(1993) 4 SCC 827 (Managing Director ECIL Vrs. B. Kasuhe Kumar) AIR 2006 SC, 1748 (Narendra Mohan Arya Vrs. United India Insurance Company & Ors.)** and **A.I.R. 1968 SC, 158 (State of UP & Ors. Vrs. C.S. Sharma & Ors.)**.

11. On the other hand, Mr. Viveke Prasad, G.P. XVII, has submitted that there is no procedural illegality in holding the departmental enquiry. The enquiry officer offered opportunity to cross examine the witnesses, but, the petitioner, himself, refused to cross-examine the witnesses. The enquiry officer submitted report. The disciplinary authority, thereafter, issued show cause to the petitioner, but, the petitioner did not submit his show cause and took adjournments on one pretext or the other. The petitioner did not even state the fact that the



enquiry report was not given to him so that he was not in a position to file the show cause. The petitioner stated that on account of illness he is unable to give his show cause and on such ground adjournment was sought for.

12. Having heard both the sides and on perusal of the records, I find that when enquiry was held in pursuance of the order of the Lok Ayukta, a departmental proceeding was also initiated against the petitioner on the charge that the petitioner submitted his application form in pursuance of Advertisement no. 1 of 1998 for appointment on the post of Constable. In the aforesaid application form, the petitioner mentioned his height as 186 cm and he also put his signature on the application form, but, during the course of enquiry it transpired that in the master chart the photo of the petitioner does not tally with the photo of the petitioner affixed on the identity card. It was found that some interpolation was made in the master charge with regard to measurement of height.

13. The enquiry officer examined four witnesses on different dates and also marked different documents produced by the witnesses in order to prove the charge. The petitioner neither cross-examined the witnesses nor raised any objection about the genuineness of the documents, exhibited during the enquiry. The enquiry officer submitted enquiry report. The disciplinary authority gave sufficient opportunity to



the petitioner, but, the petitioner took several adjournments to file show cause on the ground of his illness, but, when the petitioner did not submit his show cause, the disciplinary authority dismissed the petitioner from the service on the ground that the petitioner wrongly mentioned his height in the application form and also got wrong measurement of his height and got entered into the master chart. The appellate authority and the Director General of Police also gave reasons and found that the petitioner made interpolation and got the height mentioned in the master chart as 186 cm, but, the height of the petitioner is only 172 cm. It appears that some body impersonated the petitioner in the physical test as the signature of the petitioner does not tally with the person, who put his signature on the master chart. Thus, I find no force in the submission of the learned counsel for the petitioner that no sufficient opportunity was given to the petitioner to cross-examine the witnesses or the enquiry report was not given to the petitioner before passing the final order by the disciplinary authority and the judgments on which the learned counsel for the petitioner placed reliance is on different facts and is of no help in the case of the petitioner.

14. Mr. Siya Ram Shahi, the learned counsel for the petitioner, secondly, submits that in pursuance of Advertisement no. 1 of 1998 Abhay Kumar Singh and others were appointed on the post of Constables. During the course of enquiry, in pursuance of the order of



the High Court, it transpired that Abhay Kumar Singh and others got manipulation and wrong entry of height then their actual height in the master chart and they were illegally appointed. Their services were terminated. A single Bench of Patna High Court set aside the termination of Abjay Kumar Singh and others, but, the Division Bench set aside the order of the single Bench and held the termination of Abhay Kumar Singh and others as legal. They preferred special leave to appeal before the Supreme Court, reported in **(2015) 1 SCC, 90 (Abhay Kumar Singh & Ors. Vrs. the State of Bihar & Ors.)** and the Supreme Court directed them to be reinstated in service as Constable against available vacancies, but, without back wages and continuity in service and, therefore, the petitioner may be given the same treatment and dismissal of the petitioner may be set aside without back wages and continuity in service.

15. From the perusal of the judgment of the Supreme Court in the case of **Abhay Kumar Singh and others** (supra), it appears that there was a difference of opinion and disagreement by a Bench of two Judges with the earlier order of the Court on the question whether the height can be the sole criteria for the selection of a police Constable and a Division Bench of the Supreme Court differed with the view of another Division of the Supreme Court in the **State of Bihar Vrs. Malbabu Sharma** case. During the course of hearing, it was brought to the notice of the Supreme Court that the Rule for selection of the Constable on the sole basis of



height got changed and there was amendment in Rule 663(b) of the Bihar Police Manual 1978 read with the Bihar Police Act, 2007, and, therefore, the question that the height should be the sole criteria for selection of the candidates who had the prescribed height remained academic and the Supreme Court held in the facts and circumstances in the case directed the respondents to reinstate the appellants against future vacancies within three months without back wages and continuity in service.

16. From the perusal of aforesaid judgment, it is apparent that the Apex Court has not decided any principle nor has laid down any law, but, on mere compassion the appellants were directed to be reinstated against future vacancies without any back wages and continuity in service. But, facts of the present case are quite different. It is apparent that the petitioner applied for appointment on the post of Constable and he was allotted Roll No. 4890. The petitioner, himself, mentioned in the application form that his height is 186 cm. On the basis of the height, the petitioner was selected in the general category, but, Nitesh Kumar Sharma and others filed C.W.J.C. No. 6952 of 2000. They stated in the petition that the persons, such as, Indra Kumar Jha, Ravi Bhushan Prasad Sinha, the petitioner of the present writ petition, Md. Babar Ali, Parmeshwar Sinha and Rakesh Kumar, having lesser height than them were appointed. On such averment, a single Bench of this Court vide order, dated 03.08.2000, directed the Deputy Inspector General of Police



to look into the grievances of Nitesh Kumar Sharma and others and if he finds that the person having lesser height were appointed, they should also be appointed. Thereafter, many writ petitions, such as, C.W.J.C. No. 12842 of 2000, 12861 of 2000, 12875 of 2000 and 12879 2000, were filed and the learned single Bench of this Court in view of the large number of writ applications coming to this Court on same grounds directed the Director General of Police to issue general direction to the concerned Deputy Inspector General of Police or Zonal Inspector General of Police to adopt uniform policy in dealing with the circumstances and keeping in view the exact number of vacancy available. Almost all the writ petitions were filed on the ground that the persons having lesser height than the petitioners were appointed. It appears that in pursuance of the aforesaid order the Director General of Police directed to issue notice inviting objection-cum-representation from the aggrieved applicants and, thereafter, their representations were disposed off and it appears that they were appointed. It appears that Nitesh Kumar Sharma and others petitioners of C.W.J.C. No. 6952 of 2000 were not appointed and they, again, filed complaint before the Director General of Police about the illegalities committed by the Selection Board in measurement of the height of the candidates. They also filed complaint before the Lok Ayukta. It transpires that before that many persons earlier filed C.W.J.C. No. 8304 of 1999 and analogous cases (Annexure 6) for a direction for



appointment in pursuance of Advertisement no. 1 of 1998. The grievances of the petitioners of the aforesaid writ petitions were that they were selected, but, later on they could not be appointed on the ground that at the time of appointment it was found that their height is less than the height mentioned at the time of selection and on this ground they were denied appointment. A Division Bench of this Court vide order, dated 15.07.2005, passed in C.W.J.C. No. 8304 of 1999 and analogous cases (Annexure 6) dismissed the writ petitions and held as follows :

“Be that as it may, we are of the view that once this Court directed that all concerned should file their representations and the representations were filed by the persons and their cases were considered, then fresh application by the candidates without availing the opportunity of filing representation before the Director General of Police should not be entertained by this Court when the advertisement by the police department was published in the newspaper and enough opportunity was given.

Process of appointment in pursuance of a particular advertisement cannot be allowed to be unending business and go on for long time, thus, depriving the candidates who subsequently become eligible. After sometime, the employer is entitled to have a fresh advertisement to fill up



the vacancies. This discretion cannot be taken away by this court by issuing direction to consider the case on the basis of old advertisement of 1998. The stand of the State in the counter affidavit is that there was manipulation in mentioning the heights of the petitioners at the time of selection and on re-measurement, lesser height was found by the appointing authority and as such they have been denied the appointment.

Similar question arising out of Advertisement no. 1 of 1998 had gone to the Apex Court in Civil Appeal No. 2711 of 2002 which was disposed off on 15th April, 2002 [which was disposed off on 15th April, 2002] and the Apex Court set aside the order of this Court by which direction was issued for appointment to the post of Constable on the basis of said advertisement and held that efforts were made to check the manipulation and as such the High Court committed error in issuing a mandamus for appointment of the respondents before the Supreme Court as a Constable.

17. Thus, from the facts, noticed above, it is apparent that Nitesh Kumar Sharma and others, who had filed C.W.J.C. No. 6952 of 2000 brought to the notice of this Court that Indra Kumar Jha, Ravi Bhushan Prasad Sinha, the petitioner of the present writ petition, Md.



Babar Ali, Parmeshwar Sinha and Rakesh Kumar are all having less height than the height mentioned at the time of selection, but, even the authorities allowed them to continue in service. Nitesh Kumar Sharma and others were having higher height, than those persons, were denied appointment. It is apparent that the Selection Board had committed illegality at large scale in measuring the height of the candidates. It has been found that at the time of selection, the heights of many candidates were wrongly mentioned more than their actual heights and they were selected. Later on, many of them were denied appointment as has also been noticed by the Division Bench of this Court in the case of C.W.J.C. No. 8304 of 1999 and analogous cases. It is admitted that the petitioner himself filled-up his form and submitted before the authority in pursuance of Advertisement no. 1 of 1998 on which the authority put Roll No. 4890. The petitioner mentioned his height as 186 cm. One Binod Kumar Sinha was the Sergeant Major-cum-Assistant Selection Officer, who was authorized to measure the height of the candidates. It transpired that in place of the petitioner some body impersonated the petitioner and appeared at the time of selection in place of the petitioner as the signature on the selection register containing master chart does not tally with the signature of the petitioner appearing on the application form. Even after complaint before the competent authority and order passed by this Court in C.W.J.C. No. 6952 of 2000 the height of the petitioner was not re-



measured and he was allowed to continue in service. The authority for the reasons best known to them, allowed the illegality to be perpetuated although there was thorough enquiry held in pursuance of the order of this Court after inviting representation from the applicants. When the grievance of Nitesh Kumar Sharma was not redressed, he also filed complaint before the Lok Ayukta and when the Lok Ayukta directed the authorities to hold enquiry, it transpired that actual height of the petitioner is near 172 cm, but, the petitioner wrongly stated his height as 186 cm in his application. The petitioner also got wrong measurement and entry in the master chart that the height of the petitioner is 186 cm whereas the actual height of the petitioner is 172 cm, but, the petitioner was selected. In the enquiry, it also transpired that the photographs of the candidates, who appeared at the selection process, were removed from the register and the signature of the petitioner, appearing in his application, does not tally with the signature on the register on which the candidate at the time of his selection put his signature.

19. From the facts, aforesaid, it is manifestly clear that the petitioner has managed the entire processes to get himself appointed on the post of Constable, although even on the sole criteria of height the petitioner was not fit to be appointed on the post of Constable because the height of the petitioner is only 172 cm whereas the candidates of general category having minimum height of 182.5 cm were selected. Thus, from



the facts, it is apparent that the petitioner manipulated entire processes and got himself illegally appointed.

19. Many such persons, as it appears from the order of the Division Bench of this Court, were got selected on the basis of wrong measurement of heights, at the time of selection process from their actual heights, were later on denied appointment after enquiry and their writ petitions were also dismissed.

21. Therefore, in my view, the illegality should not be allowed to be perpetuated any more and the petitioner, who got his appointment through fraud and manipulation, does not deserve any leniency.

22. Having considered the facts and discussions, made above, I do not find any merit in this writ application. Accordingly, this writ petition is **dismissed**. The record of departmental proceeding is returned back to the learned counsel for the State.

(Prabhat Kumar Jha, J)

SA/-

AFR/NAFR	NAFR
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