

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.137 of 2016

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Arjun Roy, Son of Late Munshi Roy, Resident of village - Minapur, P.O.- Salmari,
P.S.- Balia Balown, District – Katihar.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Home Department, Government of Bihar, Patna.
3. The Inspector General, Prisons and Reforms Services, Home Department, Government of Bihar, Patna.
4. The Additional Secretary -cum- Director (Training), Inspectorate of Prisons and Reforms Service, Home Department, Government of Bihar, Patna.
5. The Bihar Staff Selection Commission, through its Secretary, Veterinary College, Patna 14
6. The Secretary, Bihar Staff Selection Commission, Veterinary College, Patna 14.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gaurav Govind, Advocate
For the Respondent/s	:	Mr. Kumar Alok, SC-7
For the Respondent-BSSC	:	Mr. SS Sundaram, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 21-06-2017

Heard Mr. Gaurav Govind, learned counsel appearing for the petitioner, Mr. Kumar Alok, learned Standing Counsel No.7 for the State and Mr. S.S. Sundaram, learned counsel appearing for the Bihar Staff Selection Commission.

The petitioner prays for issuance of a writ in the nature of mandamus for commanding the respondents to appoint him on the post of Prison Warder in pursuance of selection process initiated vide Advertisement No.10 of 2013 enclosed at Annexure-2 to the writ petition.

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



Some undisputed facts arising in the present case is that the petitioner was enrolled as a Homeguard on 1.11.1989 vide Annexure-1 and continues to be on the rolls of the respondent department. The petitioner appeared in the Matriculation examination conducted by the Bihar School Examination Board in the year 1990 and passed the examination in 2nd division, the certificate of which has been placed on record in the counter affidavit filed on behalf of the respondent nos.1 to 4 at Annexure A/1. The date of birth of the petitioner given in the Matriculation certificate is 4.1.1974.

An advertisement was issued by the Bihar Staff Selection Commission for appointment of Prison Warders inviting applications only from Ex-servicemen and trained Homeguards. In other words, the vacancies were exclusively meant for Ex-servicemen and trained Homeguards on the rolls of the State Government. The advertisement bears No.10 of 2013 and earmarks 575 vacancies for trained Homeguards as against the different categories and 751 vacancies for Ex-servicemen. The cut-off date was fixed as 1.8.2013. The minimum age fixed for filing application is 18 years and maximum was 42 years in so far as the trained Homeguards belonging to Scheduled Caste are concerned and 45 years for ex-servicemen. The petitioner applied for appointment and was issued admit-card vide Annexure-3. The petitioner appeared in



the written examination and succeeded therein. Vide Annexure 4 dated 25.2.2014 he was called for verification of document on 8.3.2014. The petitioner presented himself on 8.3.2014 for verification of the document. Annexure-5 is the final result requiring all the successful candidates to appear in medical examination and the roll number of the petitioner appears under the Scheduled Caste category bearing No.20620238. A direction was issued on 23.7.2015 as is manifest from Annexure-5 and the petitioner appeared for the medical examination in view of the command present at Annexure-6. Annexure-7 is the final result in which the name of the petitioner is missing from result nor he was informed as to the reasons why his name did not figure in the final list present at Annexure-7 despite having been successful at every stage of selection process. Feeling aggrieved the petitioner is before this Court.

A counter affidavit has been filed and while not disputing the sequence of events Mr. Kumar Alok, learned Standing Counsel No.7 in reference to the statements made in paragraphs 6 to 10 of the counter affidavit filed on behalf of the respondent nos.1 to 4 has submitted that since there was a dispute as regarding the date of birth of the petitioner more particularly in view of the date of birth so disclosed by the him before the Bihar School Examination Board as manifest from Annexure A/1 and according whereto the petitioner would have been aged only 15 years on the date of his enrolment on



1.11.1989 that the matter was considered and when it transpired that if the date of birth so mentioned in the Matriculation Certificate present at Annexure A/1 is accepted then the petitioner was underage for enrolment as Homeguard on 1.11.1989 and if the petitioner is treated to be 19 years on the date of his enrolment on 1.11.1989 then he would be overage in terms of the stipulation present in the advertisement at Annexure-2 since on the cut-off date i.e. 1.8.2013 he would be aged more than 43 years. It is stated that although clarification was sought for from the Bihar Staff Selection Commission but nothing has been received from them.

A counter affidavit is filed on behalf of the Staff Selection Commission and in which they without contesting the issue in dispute, have mentioned in paragraph 8 that they have no role to play in the instance case.

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

The only issue that falls for consideration before this Court in view of the stand taken by the learned State Counsel in reference to the statement present in the counter affidavit is, whether the petitioner was entitled to get the benefit of past experience considering that he was underage on the date of his enrolment as Homeguard on 1.11.1989 treating his date of birth as 4.1.1974 in terms of the Matriculation certificate present at Annexure A/1.



In my opinion, an unnecessary ghost has been created in the present case to deprive the petitioner of a valid appointment. Annexure-2 confirms that the advertisement was issued exclusively for trained Homeguards and Ex-servicemen. In other words, a continuity in service was irrelevant rather the only relevant condition in the advertisement is that the applicant had either to be an Ex-servicemen or a trained Homeguard. It is not in dispute that the petitioner is a trained Homeguard rather a bogie is sought to be created to deprive the petitioner of a valid appointment in reference to the date of birth recorded in the Matriculation certificate present at Annexure A/1 which mentions 4.1.1974 as his date of birth and according where to the petitioner was aged 15 years on the date of his enrolment as a Homeguard on 1.11.1989.

May be according to the date of birth recorded in the Matriculation certificate the petitioner was underage on the date of enrolment but it is undisputed that he continued to be enrolled as a Homeguard until he attained the age of 19 years on 4.1.1993 and continues even today. It is not the case of the respondents that the petitioner was delisted on this ground rather it is uncontested that having been enrolled and attained training, the petitioner has continued as Homeguard till he attained 19 years of age i.e. 4.1.1993 and continues to be enrolled as such until date.

The petitioner thus having continued as a Homeguard after



attaining 19 years and having possessed the required training, even if the period prior to 4.1.1993 be looked with some degree of suspicion, the very fact that the petitioner continues to be enrolled as Homeguard even after 4.1.1993 when he attained 19 years of age on the basis of date of birth recorded in the Matriculation certificate, there cannot be any dispute on his eligibility because since after 4.1.1993 the petitioner possesses valid enrolment.

Though learned State Counsel has tried to support the disqualification by submitting that where the initial engagement itself was void, no premium can be gathered on continuity but in my opinion there is a fallacy in the submission. A case of enrolment cannot be equated with a case of an appointment, Undoubtedly if an appointee was underage on the date of appointment, he cannot seek benefit from continuity of service. The law is well settled in this regard but then the comparison itself is misplaced. The case of an appointment and an enrolment as a Homeguard is entirely different. In fact an enrolment as Homeguard is neither an appointment nor there is any salary paid rather it simply means that their services can be requisitioned as and when exigency would arise. In other words, an enrolment as a Homeguard is not akin to an appointment rather it stands on even a lower pedestal to a daily wager because while a regular appointee gets paid his salary month to month, a daily wager gets paid on per day basis while an enrolled Homeguard gets paid as



and when his services are requisitioned.

In view of the legal position so discussed hereinabove even if the enrolment of the petitioner prior to 4.1.1993 may not be held valid for the purpose, the respondents certainly cannot ignore the trained experience possessed by the petitioner post 4.1.1993 i.e. after he attained 19 years of age and whereafter he continues to be enrolled as a valid Homeguard rendering his service to the State Government. As I have already observed that since the continuity of training period is not a relevant factor for the appointment rather the only requirement in the advertisement is that the applicant is a trained Homeguard, and in view of the admitted position that the petitioner continues as an enrolled trained Homeguard since after 4.1.1993, the denial is illegal. Perhaps the respondents are themselves unsure about their decision as reflected from paragraph 11 of the counter affidavit where they have sought guidelines from the Staff Selection Commission.

Similar issue came up for consideration in the case of daily wagers engaged as a contingent menials in different jails arising from CWJC No.19298 of 2016 and where a similar objection was raised by the prison authorities refusing to appoint those petitioners on the ground that they were underage on the date of their initial engagement. The opinion expressed by the Bench in similar situation runs as follows:



“In my opinion the present batch of writ petitions are fit to be allowed by a simple reference to the judgment and order passed in the case of **Brahmdeo Prasad** (supra), a copy of which is present at Annexure-7 but then I would consider it appropriate to deal with the argument of the State Counsel that if the initial engagement of these petitioners were not valid then their simple continuation cannot enure to their benefit. The learned State Counsel has tried to distinguish the case of these petitioners from the Bench decision in the case of **Brahmdeo Prasad** (supra). In my opinion even this argument of the respondents is only taken to be rejected. Although the legal position as to the status of a daily wager is well settled that his appointment begins with the day and dispenses with at the end of the day but in support of my opinion I would also refer to the opinion expressed by the Supreme Court in the case of **State of Punjab vs. Jagjit Singh** reported in (2017)1 SCC 148 more particularly paragraph 46.4 when the Supreme Court in consideration of the issue of equal pay for equal work claimed by a daily wager has opined thus :

“46.4 Temporary employees (irrespective of their nomenclature) are governed by any rules of disciplinary action. As a matter of fact, a daily wager is engaged only for a day, and his service can be dispensed with at the end of the day for which he is engaged. Rules of disciplinary action are therefore to the advantage of regular employees.”

Applying the principles so well settled to the present case and even accepting the stand of the respondents that the initial engagement of these petitioners may not have been valid as the petitioner(s) were below 18 years, yet in my opinion, the date on which each of these petitioners attained 18 years and were allowed to continue on their respective posts albeit on daily wages, it is that date which would be the date of their engagement for the purpose of consideration of their respective cases for appointment by way of regularization. Thus even if the period served by the petitioners prior to their attainment of the age of 18 years, is held invalid for the purpose of continuity of service, the continuous service rendered by each of them since after attaining



the age of 18 years would be the foundation for consideration of their cases for their respective appointment(s).”

In result of the discussions above, the respondent authorities are directed to consider the case of the petitioner afresh as a valid applicant for the post and pass appropriate orders within a period of three months from the date of receipt/production of a copy of this judgment.

The writ petition is allowed.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	06-07-2017
Transmission Date	NA

