

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1581 of 2017

IN

Civil Writ Jurisdiction Case No. 5459 of 2014

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Ravi Bhushan Prasad Sinha, Son of Sri Yogendra Prasad Sinha, Resident of Village
Medanimal, P.O. Hajipur, PS Hajipur Town, District Vaishali

.... Petitioner/ Appellant/s

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
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, Police
7. The Attendant Selection, New Police Line, Muzaffarpur,
8. The Superintendent of Police, Muzaffarpur
9. District Commissioner, HQ, Muzaffarpur

.... Respondents/ Respondent/s

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Appearance :

For the Appellant/s : Mr. Siya Ram Shahi, Mr. Manoj Kumar Lal

For the Respondent/s : Mr. P.K. Verma, AAG 3

Mr. Saroj Kumar Sharma, AC to AAG 3

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 23-01-2018

Seeking exception to an order passed by the learned
Writ Court on 12.10.2017 in CWJC No. 5459 of 2014 this appeal
has been filed under Clause 10 of the Letters Patent.

Petitioner- appellant was a candidate who in pursuance
to an advertisement bearing Advertisement No. 1/98 participated in
the process of recruitment of 13034 Constables in various districts in
the State of Bihar. The only criteria for selection was the height of
the candidate. In the application form submitted and signed by the



petitioner his height was mentioned as 186 cm. He was selected on 16.05.1999 and the appointment letter was issued. He started working as a Constable in the district of Muzaffarpur. However, in the meanwhile CWJC No. 6952 of 2000 was filed by Nitesh Kumar Sharma and various other alleging illegalities in the matter of selection and in the said writ petition apart from various other allegation specific allegations were made that the appellant hererin Ravi Bhushan Prasad Singh was also selected by manipulation of his height. On this petition, the Court directed Deputy Inspector General of Police, Tirhut Range, Muzaffarpur to consider the representation of the aggrieved persons and take appropriate action as per law. Meanwhile, many aggrieved persons complaining illegalities in the selection process filed various writ petitions and the main allegations were that many persons having lesser height have been appointed by manipulation. It is seen that investigations were conducted, case registered before the Lok Ayukt and on such the height of the petitioner was found to be 172 cm. It was found that on physical verification and again measuring the height of the petitioner he was found to be of 172 cm. and it was also found that he was appointed by manipulation and impersonation was also undertaken in the process of selection and was accordingly a case has been registered in which the petitioner is facing prosecution. Meanwhile,



based on the departmental enquiry conducted the allegation found to be proved the petitioner has been terminated from service.

Challenge to the same having been failed before the learned Writ Court, this appeal.

Learned counsel for the appellant tried to argue that departmental enquiry has not been properly conducted and opportunity of hearing was not given to the appellant and placing reliance upon the judgment of the Supreme Court in the case of **Abhay Kumar Singh & Ors. Vs. State of Bihar & Ors. [(2015) 1 SCC 90]** it was tried to argue that now after having worked for so many years the service of the appellant cannot be terminated.

On the contrary, learned counsel for the State argued that in the enquiry it was established that the appellant was found to be impersonating at the time of appearing for final test of physical verification and 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 appellant did not tally with the signature on the register on which the candidate at the time of his selection put his signature. Based on this, when an adverse finding has been recorded, no indulgence is called for.

Having hearing learned counsel for the parties at length, we find that the judgment in rendered in the case of **Abhay Kumar**



Singh (supra) cannot be applied in the facts and circumstances of the present case, as that was a case of height of Schedule Caste candidates and it was the impersonation and illegality committed. manipulation in the present case except for contending that that enquiry was not properly conducted in respect of the measurement of the appellant regarding his height of 172 cm. Once going into every aspect of the matters the writ petition was dismissed by a detailed order passed by the learned Writ Court we see no reason for indulgence into the matter.

When grant of hearing or claiming the principle of *audi alteram partem*, Rule is a very flexible, malleable and adaptable concept of natural justice, formulated on mere special change in the circumstances indulgence is not called for. The principle discussed in the case of **Swadeshi Cotton Mills vs Union of India (AIR 1981 Supreme Court 818)** in a detailed order running from more than 18 pages. The learned Writ Court has gone into various aspects of the matter, i.e. on the question of conclusion of the height of the appellant of 172 cm and the last person had the height of 182.5 cm, the Enquiry Officer had given adequate opportunity to the appellant, the appellant refused to cross-examine many of the witnesses and finding the Enquiry Officer conducted a proper enquiry wherein facts of impersonation in respect of allegation of 172 cm was



established, the learned Writ Court has refused to enquire into the matter.

In our view, the findings recorded by the learned Writ Court is not called for any interference. The appeal is, therefore, dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

mr1/-

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