

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3234 of 2017

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Chandan Kumar, S/o Sri Mahendra Rai @ Ray, Resident of Village-
Madhuban, P.O.- Kalbari, P.S.- Kanti, District- Muzaffarpur.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Chairman, Central Selection Board of Constable, Sai Complex, Jawaharlal Nehru Marg, Beli Road, Patna.
3. The Secretary, Central Selection Board of Constable, Sai Complex, Jawaharlal Nehru Marg, Beli Road, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Bauye Jee Jha (B.J. Jha), Advocate
For the Respondent/s : Mr. Lalit Kishore, Advocate General

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 13-07-2018

Heard learned counsel for appearing for the
respective parties.

2. In this case, the petitioner is claiming to issue a writ
of *mandamus*, directing the respondents to appoint the petitioner
on the post of Excise Constable as the petitioner was declared
successful in written examination as well as in physical test in
general male category under 25% reserved for Home-Guard
trained candidates against the advertisement no. 01 of 2015.



3. The petitioner is a trained Home-Guard bearing no.233020. An advertisement was published for appointment of 831 Excise Constable. As per the advertisement, 25% was reserved for the Ex-Army men and 25% reserved for Home-Guards. The break-up of 831 vacancies are as follows; for scheduled castes 133, for scheduled tribes 9, for most backward class 176, for backward class 94, for backward class female (3%) i.e. 29 and for unreserved class 390. Total comes to 831 posts.

4. The petitioner appeared in the written test and obtained 144 marks in unreserved category, but could not be selected on account of fact that last person, namely, Ram Bahadur Paswan, having Roll No.2115390099 was selected and appointed has secured 144 marks and his date of birth is 18.04.1986 whereas the date of birth of the petitioner is 30.09.1989.

5. Learned counsel for the petitioner submits that 25% of total vacancy i.e. 831 comes to 208 posts, whereas 97 posts have wrongly been given for the general category candidates, whereas in terms of Reservation Policy, it should have been in a higher side as 50% of 208 vacancies would come to 104, so there should be 7 more persons to be appointed in the general



category candidates, inasmuch as, learned counsel for the petitioner submits that Ram Bahadur Paswan has been accommodated in the category of male Home-Guard, maximum age limit is 28 years and Sri Ram Bahadur Paswan, who has been selected and recommended, his age was 28 years 8 months and 13 days. So, the selection and appointment of last candidate i.e. Ram Bahadur Paswan, is completely illegal and the petitioner should be substituted in his place.

6. A Counter affidavit has been filed by the Central Selection Board of constable, wherein it has been stated that Ram Bahadur Paswan has also secured 144 marks in the written examination, he was selected under the general male Home-Guard category. In the advertisement, the maximum age limit for scheduled castes has been mentioned as 28 years, being the Home-Guard he is entitled to age relaxation of five years maximum. It has further been stated that when two candidates having equal marks in the merit list, the criteria of selection will be made on the basis of date of birth. In case the date of birth is also equal, then selection would be on the basis of educational qualification, the person having higher qualification would get preference over the lower qualification. It has also been stated that Mr. Ram Bahadur Paswan has secured the equal



marks as that of the petitioner but his date of birth is in higher side i.e. 18.04.1986 whereas the date of birth of the petitioner is 30.09.1989, so Ram Bahadur Paswan selected and appointed. It has also been pointed out that the advertisement itself has identified 390 posts for the general category candidates and 25% from that category will go to the Home- Guard that comes to 97 posts and out of that 35% vacancies was reserved for the women category candidates and the vacancy position is 63 for the male category and 34 for the female category, total comes to 97 vacancies. Total 63 candidates were selected and out of 34 vacancies of female only 9 candidate were selected, 25 posts of female category remained vacant and as such, rest 25 posts have been filled up by unreserved category male candidates, and as such, learned counsel for the Central Selection Board of Constable submits that there is no illegality in the selection as though they have identical marks but the date of birth of the petitioner is lower side, so the preference was given to Ram Bahadur Paswan, having higher date of birth.

7. In reply, learned counsel for the petitioner submits that Ram Bahadur Paswan cannot be selected on the score that he was a member of scheduled caste, was given the relaxation of age as well as relaxation in fee, now he cannot be allowed to



encroach upon general category, he cannot take benefit of age of relaxation of scheduled caste and at the same time compete with the general category candidate, placed reliance on the decision rendered in the case of *Deepa E.V. vs. Union of India and Ors.*, reported in *2017(2) PLJR, 304 (S.C.)*.

8. Having considered the rival contentions of the parties, this Court is of the view that there is no substance in the contention of learned counsel for the petitioner as the total vacancies for the general category comes to 390 and 25% vacancies for the Home-Guard comes to 97, in terms of the advertisement total 97 posts have to be filled up. Since out of 34 vacancies of female only 9 female candidates were selected, rest 25 vacancies have been transferred to the male category and against that 25 vacancies, male candidates were selected. So this Court does not find that any vacancy has been left out to be filled up from the general category candidate of Home-Guard. In terms of the advertisement, in case of identical marks, the date of birth would play important role in selection as the person having higher age will be given primacy and would be selected.

9. So far the granting of relaxation of age in scheduled caste cannot compete with the general candidate, is not acceptable to this Court as the judgment of *Deepa E.V. (supra)*



deals with interpretation of the Office Memorandum issued by the Department of Personal and Administrative Department. In that context the Supreme Court has held that if the benefit of the age relaxation has been given, those persons will not be allowed to compete with unreserved category candidates. In the same judgment the reference has been made to the decision rendered in the case of *Jitendra Kumar Singh and Another vs. State of Uttar Pradesh and Others* reported in (2010)3 SCC 119, where it has been quoted in extenso the para of the judgment and held that the relaxation in age limit is merely to enable the reserved category candidate to compete with the general category candidate, all other things being equal. The State has not treated the relaxation in age and fee as relaxation in the standard for selection, based on the merit of the candidate in the selection test i.e. main written test followed by interview. Therefore, such relaxations cannot deprive a reserved category candidate of the right to be considered as a general category candidate on the basis of merit in the competitive examination.

10. In the light of aforesaid judgment of *Jitendra Kumar Singh (supra)*, it is very much clear that the relaxation of age and fee is only making the person enable to compete with general category candidate, and as such, the plea that has been



taken by the petitioner that Shri Ram Bahadur Paswan cannot be appointed under general category as he has given the benefit of age relaxation, is of no substance, even though he has been given the age relaxation he can compete with general category candidate.

11. In such view of the matter this writ petition is dismissed as having no merit in the claim of the petitioner.

(Shivaji Pandey, J)

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