

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 8976 of 2000

Jay Kumar, son of Sri Suraj Dev Singh, resident of Village – Aspura, Police Station – Bikram, District - Patna

... .. Petitioner/s

Versus

- 1 The State of Bihar
- 2 Director General -cum- Inspector General of Police, Bihar, Patna
- 3 Additional Director General, Bihar Military Police, Patna
- 4 Sri Mihir Kumar Jha, DIG, BMP, Central Range, BMP – 5 Campus, Patna
- 5 Commandant, Bihar Military Police – 5, Phulwarisharif, Patna
- 6 Commandant, Bihar Military Police – 14, Phulwarisharif, Patna
- 7 Commandant, Bihar Military Police – 13, Gaya
- 8 Commandant, Bihar Military Police – 10, Phulwarisharif, Patna
- 9 Mahendra Narayan Choudhary, Constable No 395, C/o Commandant, Bihar Military Police – 14, Phulwarisharif, Patna
- 10 Shailesh Kumar Sharma, Constable No 439, C/o Commandant, Bihar Military Police – 5, Phulwarisharif, Patna
- 11 Basant Kumar Singh, Constable No 118, C/o Commandant, Bihar Military Police – 5, Phulwarisharif, Patna
- 12 Naresh Kumar Thakur, Constable No 402, C/o Commandant, BMP – 14, Phulwarisharif, Patna
- 13 Sanjeev Kumar, Constable No 209, C/o BMP – 18, Bodh Gaya, District – Gaya
- 14 Aas Mohammad, Constable No 543, C/o Commandant, BMP – 18, Bodh Gaya, District – Gaya
- 15 Ashok Sharma, Constable No 592, C/o Commandant, BMP – 10, Phulwarisharif, Patna
- 16 Dilip Kumar, Constable No 455, C/o Commandant, BMP – 5, Phulwarisharif, Patna
- 17 Mundrika Mochi, Constable No 460, C/o Commandant, BMP – 5, Phulwarisharif, Patna
- 18 Bijay Kumar, Constable No 464, C/o Commandant, BMP – 5, Phulwarisharif, Patna
- 19 Arvind Kumar, Constable No 466, C/o Commandant, BMP – 5, Phulwarisharif, Patna
- 20 Gautam Kumar Jha, C/o Commandant, BMP – 5, Phulwarisharif, Patna
- 21 Sheo Nandan Mahto, C/o Commandant, BMP – 5, Phulwarisharif, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr Ajay Kumar Thakur, Advocate with M/s Md Imteyaz Ahmad, Ritwaj Raman & Ms Babita Kumari, Advocates
For the Respondent/s	:	Mr Prabhat Kumar, AC to GA XI



CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 28-06-2019

Heard learned counsel for the petitioner and the respondent-State.

2 Pursuant to Advertisement No 1 of 1995, the petitioner herein had made his application for being appointed as a Constable in the Bihar Military Police (for brevity, *BMP*). The petitioner was an applicant under the General Category. The case of the petitioner is that upon his assessment on various parameters in the process of selection, he has been discriminated against. Those, having lesser height than the petitioner, have been selected and appointed as Constables, whereas the petitioner, who was above the minimum required height for unreserved category, i e, 177 centimeters, has been rejected in the process of selection. The discrimination has been made out by alleging that persons, who had participated in the selection process and have been impleaded in the instant proceedings as respondents No 9 to 21, have been selected despite being disqualified on the ground of height and despite the fact that they had lesser height than the petitioner. Petitioner has also alleged that the benefit of relaxation has been



granted to some on grounds of their sports capability and on the ground that they were appointed as Trade Rank Sepoy although no such post as Trade Rank Sepoy exists.

3 Mr Ajay Kumar Thakur has laid great emphasis on the fact that appointment of some of the respondents were the subject matter of *CWJC No 3253 of 1997 (Sheoshankar Tiwari & Others -Versus- State of Bihar & Others)*, *CWJC No 2354 of 1998 (Guddu Kumar Singh & Others -Versus- State of Bihar Others)* as well as *CWJC No 2137 of 1999 (Guddu Kumar Singh -Versus- State of Bihar & Others)*. It is pointed out that in the case of *Guddu Kumar Singh (supra)*, this Court had directed for examining the issue with respect to some of the candidates appointed and consider the case of the petitioners therein. It is submitted that pursuant to entire exercise undertaken after the orders passed by this Court in the case of *Guddu Kumar Singh (supra)*, Additional Director General of Police (*for brevity, ADGP*) (*BMP*), Patna brought out an order dated 22.06.2011. The same is also impugned by the petitioner by way of Interlocutory Application No 1 of 2019. By the said order, the ADGP has, after considering the case of the petitioners therein, passed a reasoned order. The case of 16 petitioners were considered and all were rejected even upon reconsideration. It was also mentioned in the



order issued by the *ADGP (BMP)* that some of the private respondents, common to this instant proceeding, have been appointed under Home Guard Category and, as such, the petitioner could not claim parity with them. It is specific assertion of the *ADGP (BMP)* that no candidate in the petitioner's category, having lesser height than the petitioner, was appointed in the process wherein the petitioner had participated. The case of only one of the private respondents, namely, Mahendra Narayan Choudhary was found to have been made by a wrong measurement and, accordingly, departmental proceedings were initiated against Mahendra Narain Choudhary.

4 From the order of *ADGP (BMP)*, which is Annexure 5 brought on record by way of Interlocutory Application No 1 of 2019 as also Annexure 1 to the supplementary counter affidavit filed by the respondents, it is evident that after a thorough scrutiny of the issue at the level of the *ADGP (BMP)*, pursuant to the directions passed in the case of *Guddu Kumar Singh (supra)*, there is a clear cut finding with reasons to the extent that only one of the private respondents have been wrongly selected against whom departmental action has been taken.

5 Mr Thakur, however, would submit that there was no separate cadre for the sports person and Trade Rank Sepoys and,



therefore, if any one, below the requisite height of 170 centimeters selected/appointed, petitioner too is entitled to be selected even if it is asserted by the respondents that he does not fulfill the requisite minimum height criteria of 170 centimeters. The other submission is that his candidature has wrongly been rejected on the ground that he does not have 170 centimeters height.

6 Respondents have taken a specific stand in the process of selection as also in the instant proceedings that the petitioner did not fulfill the requisite minimum height criteria of 177 centimeters.

7 Stand of the respondents vis-a-vis the petitioner gives rise to a disputed question of fact. Such disputed question of fact, which can only be settled by way of evidence, is normally not to be considered by the Writ Court exercising jurisdiction under Article 226 of the Constitution. In this regard, this Court would refer to unreported judgment of a Division Bench of this Court in the case of *Ritu Kumari -Versus- State of Bihar & Others (LPA No 895 of 2014)*.

8 Whether, at such a belated stage having regard to the fact that the selection process is of 1995, the petitioner would be in a position to avail any other civil remedy, is an issue which is to be considered in the appropriate proceedings.



9 Other aspect of the matter is that whether the petitioner can claim issuance of a writ to the extent that others have been appointed below the minimum requisite criteria and so he too should be offered appointment though he does not fulfill the requisite criteria. It is trite law that no writ in the nature of mandamus can be issued to authorities to do something which is contrary to law. Even if appointments have been made of persons having height below the minimum height criteria, then such illegal action of the Appointing Authority would not confer a right on petitioner to be enforced by a Court of Equity exercising jurisdiction under Article 226 of the Constitution of India, effect of which would amount to perpetuation of an illegality. In this connection, the Court would consider judgment of the Apex Court in the case of *State of Uttar Pradesh & Others -Versus- Harish Chandra & Others*, (1996) 9 Supreme Court Cases 309.

10 An additional fact in the instant case is that the *ADGP (BMP)* has come to a finding upon thorough reconsideration based on facts regarding the appointment of private respondents being in accordance with law, this Court, for the above noted reason, also does not consider it appropriate to interfere with such findings of fact based on thorough scrutiny by the *ADGP (BMP)*.



11 Claim of the petitioner, in the writ petition, therefore,
does not merit any consideration.

12 Writ petition is devoid of merit and the same is
dismissed.

(Madhuresh Prasad, J)

M.E.H./-

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

