

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12015 of 2011

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MAHENDRA NARAYAN CHAUDHARY S/O Sri Sadashiva Chaudhary
R/O VillP.O- Panchobh, P.S.Bishanpur, Distt-Darbhanga, , At Present
Constable No.-395, Bmp.14, Patna. Petitioner

Versus

1. THE STATE OF BIHAR
2. The Director General Of Police , Bihar, Patna.
3. The Additional Director General Of Police, Bihar Military Police, Bihar, Patna.
4. The Deputy Inspector General Of Police , Bihar Military Police Central Range, Patna.
5. The Commandant,B.M.P.-14, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Rajeev Kumar Singh Mr. Gyanendra Kumar Diwakar
For the Respondent/s	:	Mrs. Binita Singh, SS 28 Mr. Apurv Harsh, AC to SC 28

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

10 02-09-2019 Heard Mr. Singh for the petitioner as well as learned
State Counsel.

The petitioner was selected as a Constable pursuant to advertisement of the year 1995. He was proceeded against alleging that at the time of his appointment he was selected on basis of wrong measurement which recorded his height as 179 centimeters.

Counsel for the petitioner has submitted that the issue regarding petitioner's height being 179 cm stands concluded in the proceedings arising out of CWJC No. 2137 of 1999 and CWJC No. 2153 of 1999 wherein the petitioner was respondent



Nos. 9 and 15 respectively. The order dated 18.2.2009 passed in the earlier proceeding is relied upon by Mr. Singh appearing for the petitioner. He would submit that this Court in the said order at para 10 and 11 has clearly taken note of the fact that the petitioner was appointed upon his height being found 179 centimeters. It is also submitted that there was no complaint necessitating initiation of the proceeding against the petitioner as has been done by charge memo dated 14.6.2011. It is also submitted by Mr. Singh that subsequent upon his joining in the respondent Force the petitioner till date continues to serve the respondent authorities.

Counsel for the respondent State submits that continuance of the petitioner till date is in light of the order dated 27.7.2011 passed earlier in this case. This Court in the said order had been pleased to direct for taking no coercive steps against the petitioner. It is submitted that since the interim protection was only till filing of the counter affidavit and since now the proceedings have concluded against the petitioner, I.A. No. 2610 of 2018 should be allowed and respondents should be granted permission to pass order of punishment against the petitioner pursuant to the charge memo.

Since the matter has been heard for final disposal



interim orders as prayed for in I.A. No. 2610 of 2018 are not required to be passed.

This Court would observe that the order passed by this Court on 18.2.2009 records a finding which is admitted by the petitioners of those writ petitions as well as the instant petitioner who was respondent therein reads as under:-

“From the above, it is not in dispute that at least the respondent Mahendra Narayan Choudhary, who was appointed, was having lesser height than at least three writ petitioners namely, Shree Shankar Tiwary, Rajkumar Rai & Sarvjit Kumar Singh in general category for having their heights as 178.3 cm, 177 cm & 177.2 cm respectively as respondent no.4 himself found the height of the respondent Mahendra Narayan Choudhary on re-measurement to be 176.7 cm. In the circumstances these three writ petitioners ought to have been appointed as directed by this Court as per its order dated 30.10.1998 passed in C.W.J.C.No. 3253 of 1997. Accordingly, it is directed that the above named three writ petitioners be appointed on the post of Constables as directed by the Court vide order dated 30.10.1998 in CWJC No. 3253 of 1997 (Annexure-2) within a period of six weeks on receipt/production of the certified copy of the present order. As regards the case of rest of the writ petitioners, their claim for appointment vis-à-vis the assertion of the respondent no.4 that there exist a separate category for appointment of constables under Band trained, home guard trained and sportsmen would be considered by the respondent no.3 namely,



Additional Director General, Bihar Military Police, Patna within a period of six months on receipt/production of the certified copy of the present order and shall dispose of the matter by a reasoned order in accordance with law.”

In view of such admitted position in the earlier writ proceedings, the respondent authorities are justified in proceeding against the petitioner with regard to the dispute in relation to measurement of petitioner’s height as recorded in the order passed by this Court in the earlier writ proceedings. To contend that no complaint has been made therefore is not relevant.

In view of the said circumstances, this Court does not find any reason to preclude the respondent authorities from examining the issue in accordance with law and complying with the procedural requirement by affording due and adequate opportunity to the petitioner.

The writ petition, to the extent it prays for a direction restraining the respondents from proceeding pursuant to charge memo dated 14.6.2011, is therefore devoid of merit.

The writ petition is dismissed.

It will be open to the petitioner to challenge the subsequent orders to be passed in the proceedings.

(Madhuresh Prasad, J)

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