

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15528 of 2018

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Kumar Amrit Raj Son of Late Sanjay Kumar Singh, Resident of village-
bhartkhand Daurhi, P.S. Parbatta, Distt. Khagaria.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner, Bhagalpur.
3. The District Magistrate, Bhagalpur
4. Senior Superintendent of Police, Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	M/s Rajive Ranjan Singh and Shanti Bhushan Singh, Advs.
For the Respondent/s	:	Mr.Prabhat Kumar Verma -AAG 3
	:	Mr. Suman Kumar Jha, AC to AAG 3

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 01-08-2019

Heard the parties.

2. In this case, the petitioner is seeking the relief that the respondents be directed to appoint the petitioner on the post of Constable on the grade pay of Rs.2000/- at par with the other colleagues who have also been appointed on compassionate ground on the post of Constable.

3. The father of the petitioner was a regular employee, was working as a Constable, vide no. 820, and was posted in the police line, Bhagalpur. He died during his service period at Lok Nayak Hospital, New Delhi on 21.01.2013 at 3:15 P.M., accordingly his death certificate was also issued by the Hospital.

4. The petitioner was Intermediate pass and also he has acquired the qualification of Diploma in Computer and filed an



application for appointment on compassionate ground to the respondents, as he has all requisite qualification for appointment on compassionate ground. On receipt of the application of the petitioner, his case was placed before the Compassionate Appointment Committee (herein after referred to as "Committee") and the same was approved by the Committee on 06.01.2016, vide Memo no. 33-XXIII/2015-01 dated 06.01.2016 (Annexure-2), in the grade pay of Rs.2000/-. The Committee approved the name of three persons, namely, Sunil Kumar son of Late Brahmdeo Yadav, Kumar Madhukang son of Late Sudhakar Singh, Kumar Amrit Raj (petitioner) and Rahul Kumar Dubey son of Krishandeo Dubey. The respondents knowingly not appointed the petitioner on the post of Constable grade pay of Rs.2000/-, but two others at the same time were appointed as a Constable in the grade pay of Rs.2000/-. It has further been stated that the respondents did not follow the Government Notification no. 5958 dated 25.04.2012 which was considered by the Committee while taking decision in the matter of petitioner, but in the case of others, the Respondents followed the aforesaid Circular. On the basis of letter no. 1472 dated 02.05.2016, the petitioner joined the Class-IV post. The petitioner was not appointed on the post of Constable whereas the similarly situated persons, who were appointed along with petitioner on the compassionate ground, have been appointed to the post of Constable



and were granted the grade pay of Rs.2000/-, but this benefit has not been conferred to the present petitioner, which is nothing but is invidious discrimination as in the same class, few persons have been appointed as Constable, but singling out the petitioner, appointed him as a Class-IV employee. It has further been submitted that when all are in equal status, as all were seeking the appointment on compassionate ground then all should have been treated equally, uniformly and as per the Circular issued by the State Government, but in the case of petitioner, a selective decision has been taken by the competent authority, appointed him as Class-IV employee.

5. The State has appeared and submitted, they were appointed because they passed the examination and also submitted that when he has already accepted the appointment, he cannot turn round and say that he has wrongly been treated. If he had a grievance, he should not have joined and raised objection.

6. So far the passing examination as per the State, the counsel for the petitioner has brought to notice of this Court to Annexure-B, those who have appointed as Constable in the grade pay of Rs.2000/-, they were also declared fail, which is amply clear from the letter of District Magistrate, Bhagalpur dated 14.03.2016 in which Kumar Amrit Raj is at item no.3, Rahul Kumar Dubey is at item no. 4 and Sunil Kumar Ram is also at item no. 6, all three have been declared to have failed, so the explanation that has been



assigned by the State that as they have passed the examination is not correct. The explanation furnished does not stand the test of Article 14 of the Constitution of India. Article 14 qualifies that all the persons should be treated equally if they are standing in the same platform but an unequal cannot be treated to be equally. In the present case, the resultant fact is that all were recommended for appointed, and as such all three are standing on the same pedestal, so all should have been treated alike but the petitioner has been treated differently violates Article 14 of the Constitution of India. Reliance can be placed on the judgment passed in the case of Ram Krishna Dalmia v. Justice Tendolkar, reported in A.I.R. 1958 SC 538 where the Hon'ble Supreme Court has explained the parameter and applicability of Article 14 of the Constitution of India, so the relevant portion of the judgment is as follows:-

“11. The principal ground urged in support of the contention as to the invalidity of the Act and/or the notification is founded on Article 14 of the Constitution. In Budhan Choudhry v. State of Bihar [(1955) 1 SCR 1045] a Constitution Bench of seven Judges of this Court at p. 1048-49 explained the true meaning and scope of Article 14 as follows;

“The provisions of Article 14 of the Constitution have come up for discussion before this Court in a number of cases, namely, Chiranjit Lal Choudhuri v. Union of India [(1950) SCR 869] , State of Bombay v. F.N. Balsara [(1951) SCR 682] , State of West Bengal v. Anwar Ali Sarkar [(1952) SCR 284] , Kathi Raning



Rawat v. State of Saurashtra [(1952) SCR 435] , Lachmandas Kewalram Ahuja v. State of Bombay [(1952) SCR 710] , Qasim Razvi v. State of Hyderabad [(1953) SCR 581] and Habeeb Mohamad v. State of Hyderabad [(1953) SCR 661] . It is, therefore, not necessary to enter upon any lengthy discussion as to the meaning, scope and effect of the article in question. It is now well established that while article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.”

The principle enunciated above has been consistently adopted and applied in subsequent cases. The decisions of this Court further establish—

(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is



upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(d) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

(e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and un-known reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.

The above principles will have to be constantly borne in mind by the court when it is called upon to adjudge the constitutionality of any particular law attacked as discriminatory and violative of the equal protection of the laws.

7. In the present case, situation is the same, so petitioner could not have been treated differently when all the three are standing in the equal platform. Another point has been taken that the



petitioner has joined the post in 2016, now after joining and taking benefit from the said post cannot be allowed to challenge the action of the respondents. This part of submission is not tenable, looking real stock of situation when there is scarcity of the job, he was compelled to join the post which was offered to him that too when his father has died and entire family was facing the financial crunch. In this situation, the Respondent should not have taken advantage of penury family status of the petitioner, treating the petitioner in a different manner cannot be approved, so far the issue of estoppel, does not apply in the matter of deprivation of fundamental right has been violated against the citizen, so this submission raised by the State is also not tenable.

8. Accordingly, this petition is allowed with a direction that the petitioner should be granted the same benefit as has been given to his colleagues who have been appointed on compassionate ground. The relief should be granted within a period of three months from the date of receipt or production of a copy of this order.

(Shivaji Pandey, J)

Mahesh/-

AFR/NAFR	NAFR
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