

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15624 of 2019

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1. Subhash Kumar Jha Son of Krishna Kumar Jha Resident of Village and P.O.- Mahinam- Via- Benepur, P.S.- Bahera, District- Darbhanga, Bihar- 847103.
 2. Sunny Kumar Son of Ram Sharan Singh Resident of Village and P.O.- Ram Nagar Diyara, P.S.- Athmalgola, District- Patna, Bihar- 803212.
 3. Abhishek Kumar Son of Chandra Shekhar Singh Resident of Village Maner Church, P.O. and P.S.- Maner, District- Patna, Bihar- 801108.
 4. Nirmal Kumar Son of Ram Shebak Singh Resident of Village- Nayagaon, P.S.- Nayagaon, P.O.- Chhitraur, District- Begusarai, Bihar- 851129.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary Home Department, Government of Bihar, Patna.
3. The Director General of Police Government of Bihar, Patna.
4. The Bihar Police Subordinate Services Commission Through its Chairman, Santosh Mansion, B Block, Near R.P.S. Law, College, Raghunath Path, Danapur, Patna- 801503.
5. The Chairman Bihar Police, Subordinate Services Commission, Santosh Mansion, B Block, Near R.P.S. Law, College, Raghunath Path, Danapur, Patna- 801503.
6. The Member Secretary Bihar Police, Subordinate Services Commission, Santosh Mansion, B Block, Near R.P.S. Law, College, Raghunath Path, Danapur, Patna- 801503.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Kumar Kaushik, Advocate
For the BPSSC	:	Mr. Sanjay Pandey, Advocate
		Mr. Nishant Kumar Jha, Advocate
For the Respondent/s	:	Mr. Md.N.H.Khan (SC1)
		Mr. Harun Quareshi, AC to SC-1

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 19-08-2019

Heard Mr. Kumar Kaushik, learned Advocate for
the petitioners, Mr. Sanjay Pandey, for the Bihar Police



Subordinate Service Commission and Mr. Md. Nasrul Hoda,
for the State.

The petitioners have approached this Court under special circumstances for directing the respondent / State as also the Commission for considering their cases for appointment on the post of Sub-Inspector against Advertisement No. 1 of 2017.

It has been submitted that the petitioners were successful in two rounds of tests / elimination and only at the stage of calling of the candidates for PET (Physical Eligibility Test), they were excluded.

At that time, the cut-off marks was fixed at 137.2, which statement by the lawyer for the Commission has not been denied by the petitioners.

Candidates six times more than the number of seats advertised were called for physical eligibility test. Admittedly, nobody at this stage was called for physical eligibility test who had secured less than 137.2 marks. The petitioners have secured between 136.2 to 137 marks, but



none of the petitioners had the requisite cut-off marks of 137.2.

The impelling motive for the petitioners to approach this Court at this stage when the process of selection is over and almost all the seats have been filled up, is the information provided to them that there are still 55 seats left to be filled up and that in general category 8 seats are still vacant. It is under this circumstance that the petitioners have approached this Court for a direction to the respondent / Commission as also to the State so that as a matter of public policy, all the seats for which advertisement had been issued must be filled up and it should not be carried forward to the next recruitment process.

With respect to the factual assertion of the petitioners based on the information derived under the Right to Information Act, 2005, the last of the candidates finally selected under the General Category had secured 136.2 marks. This *prima facie* gave an impression to the



petitioners that they have secured more marks than the last person who was selected, recommended and appointed on such post. The figure of 136.2 being the marks obtained by the last of the selected candidate has actually created an impression that the petitioners also are entitled for being selected.

Mr. Sanjay Pandey, learned Advocate for the Commission has submitted that at the stage when the candidate six times more than the number of advertised posts were called for Physical Eligibility Test, the cut-off bench mark was 137.2 which fact has not been and cannot be disputed. It was only when the persons of the general category did not succeed and persons with reservation obtained more marks, then there was an interse mobility in various categories and persons with reservation also entered in the general category because of their performance. It was under such circumstance that the last person with 136.2 marks, as shown in the chart annexed by the petitioner as P-8 to the petition, was selected.



After the aforesaid explanation, Mr. Kumar Kaushik, learned Advocate for the petitioners has submitted that in the general category, 8 seats have remained vacant and there is no reason assigned by the Government or the Commission not to fill it up with the candidates who are just below the successful candidates.

In response to the aforesaid argument, Mr. Pandey has submitted that even those 8 posts have been filled up from amongst such persons who were given horizontal reservation for being grand-children of freedom fighters. Out of those 8 posts, 7 have been filled up by male candidates and 1 with a female candidate hailing from such category who were given one percent horizontal reservation referred to above.

In that view of the matter, none of the posts advertised are vacant.

In this background, this Court finds no occasion to issue any direction to either the State or the Commission for considering the case of the petitioners. This Court finds



to its solace that the petitioners in the present petition still have their age to participate in the next recruitment process and they would be well advised to do so.

With the aforesaid observation / direction, this petition stands disposed off.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	21.08.2019
Transmission Date	

