

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21534 of 2013

Shivaji Kumar Son Of Gajendra Prasad Yadav Resident Of Village - Godhiya,
Po - Balam, Ps - Madhepura, Bihar

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. Central Selection Board Constable Selection Through It'S President
Computer Building , Jawahar Lal
3. The Additional Director General Of Police In Charge/President Of The
Central Selection Board Consta

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ashok Kr. Chaudhary, Sr. Advocate Mr. Uday Chand Prasad, Advocate Mr. Manoj Kumar, Advocate
For the CBSC	:	Mr. Kunal Tiwary, Advocate
For the State	:	Mr. Nandan Nayak, AC to AAG-10

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT
Date : 14-12-2021

Heard the learned counsels for the parties.

2. In the instant petition, petitioner has prayed for
following reliefs:-

“i) For that the respondents be
directed to appoint the petitioner on the post
of constables in terms of the advertisement
no. 01 of 2012 published on 31.05.2012 as
the petitioner fulfills each and every criteria to
be appointed as a constable in terms of the
advertisement as well further actions thereto
but has been denied for no reasons(s) at all.

ii) For holding herein that the
petitioner is fit and qualified in all respects
right from the advertisement for appointment-
written test, physical test, examination,



measurements every thing before the camera, but has been denied for no valid and legal reasons.

iii) For issuance of a writ in the nature of a writ of mandamus directing and commanding the respondents to appoint the petitioner on the post of constable even if a single candidate in this category has come with even one mark less than the petitioner.

iv) For issuance of orders for an appropriate enquiry by an independent agency which this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.

v) For that any other writ(s) order(s) as your lordship may deem fit and proper in the facts and circumstances of the case in hand.”

3. Petitioner is a candidate for the recruitment to the post of Constable pursuant to Advertisement No. 01 of 2012 under Backward Class Category. He has been disqualified with reference to a decision of the appellate authority which is at page -36 (Annexure-A) to the counter affidavit filed on behalf of Respondent Nos. 2 & 3.

4. Perusal of the aforesaid physical evaluation test dated 16.04.2013, petitioner has passed in the 'Events' like Shot Put, High Jump and Long Jump. So also he is physically fit with reference to height, chest and chest expansion. In all the six



items he has shown as passed. On the other hand, on the right hand column, 'In case of Appeal' in so far as the chest measurement and its expansion has been shown as failed while entering measurements as 80 cm and 82.5 cm respectively on 24.04.2013. Such incorporation is in the absence of any appeal preferred by the petitioner. Obviously, petitioner was not aggrieved by the measurement as on 16.04.2013 which has been shown as he has passed in height, chest and chest expansion.

5. In the light of these facts and circumstances, the respondents have not apprised this Court under which provision of law or source of power vested upon the authority to take up *suo motu* the case of the applicant and to re-measure the chest and its expansion and showing it as he has failed in the chest measurement & its expansion. Such a decision has been written by the Deputy Superintendent of Police on 27.05.2013 which is "Fail in Chest".

6. In the absence of source of power for re-examination of a candidate once he has passed in the physical test, the authorities were not empowered to re-examine a candidate unless there is an appeal by the candidate. In the present case, petitioner-candidate has not filed any appeal against the decision dated 16.04.2013, the date on which he was



subjected to physical efficiency test. Thus, there is a glaring error in disqualifying the petitioner to the post of Constable with reference to that he has failed in chest (In case of Appeal) dated 24.04.2013 read with the note "Failed in chest" dated 27.05.2013.

7. Learned counsel for the State, on instruction, submitted that all the vacancies pursuant to the advertisement have been filled. At this juncture, it is not possible to accommodate the petitioner.

8. For no fault of the petitioner and on the default of the Deputy Superintendent of Police, petitioner shall not be penalized. Therefore, the impugned order dated 27.05.2013 stands set aside.

9. The concerned respondent is hereby directed to create a supernumerary post if the post/vacancy is not available and issue order of appointment within one month from the date of receipt of this order. The petitioner is not entitled to arrears of salary on par with the selected/appointed candidate. However, he is entitled to all service benefits like pay fixation, seniority and other benefits including increments as if he was appointed with other selected candidate. Aforesaid exercise shall be completed within a period of two months from the date of



receipt of this order.

(P. B. Bajanthri, J)

rakhi/-

AFR/NAFR	
CAV DATE	
Uploading Date	22.12.2021
Transmission Date	

