

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10452 of 2019

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Mantu Kumar Singh Son of Late Rameshwar Singh Resident of Village-
Barap, P.O.-Bagwan, P.S.-Garhani, District-Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Department ,
Bihar, Patna.
2. Principal Secretary, Home Department, Bihar, Patna.
3. Deputy Secretary, Home Department, Bihar, Patna.
4. Director General-Cum-Commandant General, Home Guards, Bihar, Patna.
5. District Magistrate, Bhojpur.
6. Superintendent of Police, Bhojpur,
7. District Commandant, Bihar Home Guards, Bhojpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Harshvardhan Shivsundaram, Advocate
For the Respondent/s : Mr. Sheo Shankar Prasad (SC8)

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
CAV JUDGMENT

Date : 26 -10-2021

The present writ application has been filed seeking a direction to the respondent authorities to complete the selection / nomination process of Home Guards in the Bhojpur District pursuant to Advertisement No. 1 / 2006 and 2 / 2011 issued by the Home Department, Government of Bihar, Patna. The petitioner subsequently filed an interlocutory application bearing I.A. No. 1 of 2019 for quashing the Memo No. 383 dated 15.02.2019 by which the District Magistrate has cancelled the Advertisement No. 01 / 2006 & 02 / 2011 for selection / nomination of the Home



Guards. The aforesaid interlocutory application was allowed by this court vide order dated 22-06-2021.

2. The brief facts giving rise to the present writ application is that the Home Department, Govt. of Bihar issued Advertisement No. 1 / 2006 inviting applications from eligible candidates for selection / nomination / enrollment on the roll of Home Guards in different districts of Bihar including the Bhojpur district, however, without completing the aforesaid selection process, the respondent- Home Department, Govt. of Bihar came out with fresh advertisement bearing Advertisement No. 02 / 2011 for selection / nomination of Home Guards in various districts including the district of Bhojpur. The total vacancies for nomination of Home Guards advertised vide Advertisement No. 02 / 2011 was 220. The age limit prescribed for selection / nomination was between 19 years to 40 years with minimum educational qualification prescribed was Standard-V. The selection / nomination process was to be conducted at the district level for which a Selection Committee was constituted in every district under Rule 5 (4) of the Bihar Home Guards Rules, 1953. The District Magistrate was nominated as the Chairman of the Selection Committee and the Superintendent of Police, District



Commandant (Home Guards) and District Welfare Officer were nominated as members of the Selection Committee.

3. The last date for submission of application was fixed as 30-07-2011 and the petitioner being fully eligible for selection / nomination submitted his application before the concerned authority within time and was given acknowledgment receipt bearing Sl. No. 815. The petitioner being aggrieved by delay in completing the process of selection / nomination filed a complaint before the District Public Grievance Redressal Officer, Bhojpur (for short "Redressal Officer") on 28/09/2018. The Redressal Officer called for a report from the concerned authority and in response thereto Sr. Deputy Collector, General Section, Bhojpur reported vide letter no. 2233 dated 01-11-2018 that necessary steps are being taken for completing the selection process. He further reported that with respect to Advertisement No. 02 / 2011 roster has been sent to the District Magistrate, Bhojpur for approval and process of nomination would be completed shortly. Taking into consideration the said reports, the Redressal Officer, Bhojpur passed the final order on 05/01/2019 (Annexure-P/5) directing the concerned public authorities to take necessary steps in this matter and to inform the Redressal Officer within thirty days, however, the respondents, particularly respondent – District Magistrate,



Bhojpur did not take any step within the aforesaid period of thirty days given by the Redressal Officer. The petitioner preferred an appeal before the Commissioner, Patna Division, Patna and taking into consideration the fact that the District Magistrate, Bhojpur has cancelled the Advertisement No. 01 / 2006 and 02 / 2011 and has directed for issuance of fresh advertisement, the Commissioner Patna Division dropped the proceedings.

4. *Per contra*, a counter affidavit as well as supplementary counter affidavits have been filed by the respondent /State stating therein that Advertisement No. 01 / 2006 was advertised for inviting applications from eligible candidates for selection and nomination of Home Guards in Bhojpur district of Bihar to fill up 301 vacancies but one Sri Bateshwar Nath Pandey (Advocate) filed Title Suit No. 24 of 2006 before the court of learned Munsif 2nd, Civil Court, Ara, Bhojpur and as such, Advertisement No. 01 / 2006 could not be finalized. It has further been stated that Advertisement No. 01 / 2006 was published for selection / nomination of the Home Guards in Bhojpur district for 301 vacancies and Advertisement No. 02 / 2011 was published for nomination of Home Guards against 220 vacancies and both the advertisements were separate and have already been cancelled by the District Magistrate vide order dated 15/02/2019 and fresh



advertisement will be published for selection / nomination on the roll of the Home Guards in Bhojpur district of Bihar. It has further been stated that the selection process for nomination of Home Guards remained pending in the district of Bhojpur due to one reason or the other and during pendency of the said nomination / selection process certain amendments in the Rules / Service Rules have been made by the State Govt. inasmuch as vide notification bearing no. 4412 dated 23-05-2017 amendment in the Bihar Home Guards Service Rules, 2005 viz Bihar Home Guards Service (Amendment) Rules, 2017 has been made substituting Rule 5 (iii) of Bihar Home Guards Service Rules, 2005, which is reproduced as under:-

“(iii) The minimum educational qualification shall be higher secondary (Intermediate/Inter) or equivalent examination pass recognised by the State Government”.

5. Further vide notification dated 30th June 2017 an amendment in Rule-5 of the Bihar Home Guards Rules, 1953 has been made whereby sub-rule (7) has been added after sub rule (6) of Rule 5 which is as quoted follows:-

“(7) All provisions related to reservation issued by Government of Bihar will be applicable to the fresh nomination of Bihar Home Guards (Women and men)”



6. Accordingly, the stand of the respondents is that the District Magistrate taking into consideration the back log vacancies, fresh vacancies accrued during the pendency of the selection / nomination process and also taking into account fresh developments /amendments in the Rule with respect to educational qualification and reservation to women candidate up to 10 %, cancelled the aforesaid advertisements vide Memo No. 383 dated 15/02/2019 and directed for publication of fresh advertisement for selection / nomination of the Home Guards in the district of Bhojpur.

7. A supplementary affidavit has been filed on behalf of the petitioner specifically stating therein that selection process for enrollment of Home Guards under the same advertisement i.e. Advertisement No. 02 / 2011 was started in Supaul district by the order issued by the District Commandant, Bihar Home Guards, Supaul as contained in Memo No. 506 dated 28/11/2019 (Annexure- P/ 10) and the selection process was concluded in the said district by publishing merit list on 23-06-2020 (Annexure -P/10A). It has further been stated that under the same advertisement i.e. Advertisement No. 02 of 2011 selection process has recently been started in Aurangabad district vide order dated 26/07/2021 issued by the District Magistrate, Aurangabad. The



selection process under the same advertisement has also been started in Banka district and the selection process in Rohtas and Buxar district was completed in the year 2017 and 2018 respectively.

8. Learned counsel for the petitioner confines his argument with respect to Advertisement No. 02 / 2011 only and in support of the writ application he submits that the impugned letter issued by the District Magistrate dated 15-02-2019 is completely arbitrary, *malafide* and discriminatory in nature. The District Magistrate, Bhojpur has got no authority under the law to cancel the aforesaid advertisement bearing Advertisement No. 02 / 2011 inasmuch as the said advertisement was issued by the State Government in its Home Department and the Bihar Home Guards Rules, 1953 confers no such power upon the District Magistrate. Further submission of learned counsel for the petitioner is that from perusal of the impugned order of cancellation of the advertisement it would be evident that no reason / ground has been assigned in the impugned order for cancellation of the advertisement in question and the respondent authorities are trying to supplant the reasons by way of counter affidavits by taking a preposterous plea that due to pendency of selection process since 2011 certain developments have taken place and the



concerned Rules have been amended changing the criteria of educational qualification, age and reservation. Accordingly, submission is that the respondents authorities cannot be permitted to take advantage of their own laches and delay in completing the selection process and take a decision detrimental to the legitimate right of the petitioner by depriving him to be selected / nominated as Home Guard taking the plea of subsequent change in the eligibility criteria. He further vehemently submits that pursuant to the same advertisement i.e. Advertisement No. 02 / 2011 in various other districts the selection / nomination process has recently been started and completed in 2017, 2018, 2019, 2020, 2021 whereas, the District Magistrate, Bhojpur has cancelled the Advertisement No. 02 / 2011 in a discriminatory and arbitrary manner.

9. On the other hand, learned counsel for the State submits that in view of the subsequent developments, eligibility criteria for selection / nomination of Home Guards has now been changed by way of amendment in the concerned Rules and as such the District Magistrate, Bhojpur has rightly cancelled the advertisement in question and the decision to take fresh steps for selection / nomination of Home Guards is strictly in terms of the law / rules laid down in this regard. He further submits that vide letter dated 06.02.2015 (Annexure-B to the counter affidavit) the



Home (Special) Department, Government of Bihar issued direction to all District Magistrates of Bihar wherein it has been clarified that the District Magistrate happens to be a competent authority in reviewing / assessing the backlog vacancies and holds the power on the point of advertising / publishing the vacancies afresh seeking selection/ nomination of Home Guards on the basis of up-to-date / fresh vacancies accrued.

10. I have heard learned counsel for the parties and have carefully gone through the materials available on record. The only issue which requires consideration in the present writ application is that as to whether the decision of the District Magistrate, Bhojpur to cancel the advertisement in question is based upon valid or cogent reason or not. From perusal of the pleadings and other available materials on record, it appears that before the Redressal Officer stand was taken by the respondent authorities that a roster has been sent to the District Magistrate, Bhojpur for approval and enrollment / nomination process would be completed shortly and taking into account the said stand of the respondent authorities the Redressal Officer, Bhojpur passed the final order on 05.01.2019 directing the concerned public authorities to take necessary steps in this regard. It further appears that instead of completing the selection process as per the Advertisement No. 02 /



2011, the respondent authorities vide letter dated 15-02-2019 cancelled the advertisement in question and decided to publish fresh advertisement for selection / nomination of Home Guards. Though no reason for cancellation of the Advertisement No. 02 / 2011 has been assigned in the impugned letter, however, the respondent authorities tried to justify the decision of the District Magistrate, Bhojpur on the ground that during the pendency of the selection process there was change in the eligibility criteria in respect to educational qualification, age and reservation. The respondent-State failed to controvert the specific averments made in the supplementary affidavit filed by the petitioner that pursuant to the same advertisement i.e. Advertisement No. 02 / 2011 the selection / nomination process has recently been started and completed in various other districts and the decision to cancel the advertisement by the District Magistrate, Bhojpur is completely discriminatory and arbitrary.

11. In view of uncontroverted fact that the selection process for nomination of Home Guards in various other districts pursuant to the same Advertisement No. 02 / 2011 has started and completed recently between the year 2017 to 2021 and the selection process in the district of Aurangabad has recently been started on the basis of the same old eligibility criteria and as such



the decision of the District Magistrate, Bhojpur to cancel the Advertisement No. 02 / 2011 is not tenable in law as well as on facts. The respondent authorities are not permitted to take advantage of their own fault in completing the selection process within a reasonable time period and are also not permitted to take a plea of change in the eligibility criteria due to subsequent amendment as a ground for cancellation of the Advertisement No. 2 / 2011.

12. In the backdrop of the aforesaid facts and discussions, I am of the considered opinion that the impugned letter dated 15-02-2019 contained in letter No. 383 at Annexure-P/8 to the I.A. No. 1 of 2019 by which decision has been taken to cancel the Advertisement No. 02 / 2011 is not sustainable in law and fact inasmuch as the subsequent amendment in the Rules during the pendency of the selection process cannot be taken as a ground for cancellation of the advertisement. I also find the impugned decision as discriminatory in nature on the ground that similarly situated candidates of various other districts have recently participated in the selection process started and completed by the respondent authorities.

13. Accordingly, the decision to cancel the Advertisement No. 02 / 2011 vide impugned letter no. 383 dated



15/02/2019 is hereby quashed and the Selection Committee headed by District Magistrate, Bhojpur is directed to complete the selection / nomination process of Home Guards in the district of Bhojpur strictly as per the terms and conditions prescribed in the Advertisement No. 02 / 2011 within a maximum period of six months from the date of receipt / production of a copy of this order.

14. With the aforesaid observation and direction, the present writ application is allowed.

(Anil Kumar Sinha, J)

praful/-

AFR/NAFR	AFR
CAV DATE	04-10-2021
Uploading Date	26-10-2021
Transmission Date	NA

