

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11645 of 2019

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1. Manjay Kumar Son of Jagannath Ray, Resident of Village Jhakhara Shekh, Post Karja, P.S. Karja, Block Marwan, District- Muzaffarpur.
 2. Sunil Kumar Ram, Son of Mushi Ram, Resident of Village Nawada Post Karja, P.S. Kakrja Block Marwan, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Home Secretary, Govt. of Bihar Main Secretariat, Patna.
2. The Home Secretary, Govt. of Bihar, Main Secretariat, Patna.
3. The Director General of Police, Home Guard Main Secretariat, Patna.
4. The District Magistrate, Muzaffarpur, District- Muzaffarpur.
5. The Commandant, Home Guard, Company Bagh, Red Cross, Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Arvind Kumar, Advocate
For the Respondent/s : Mr.Md. N.H. Khan (Sc1)

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

2 05-02-2021 Heard learned counsel for the petitioners and the State.

The petitioners have filed the instant writ petition for a direction to the respondents to consider the case of the petitioners for appointment on the post of Home Guard in the district of Muzaffarpur in the light of the advertisement No. 2 of 2011.

Learned counsel appearing on behalf of the petitioners has drawn the attention of this Court to the advertisement contained in Annexure-1 to the writ petition. From the



advertisement it appears that vacancies were notified district-wise. After inviting application for appointment as Home Guard, instead of selecting candidates on district-wise basis, the respondents have decided to undertake selection process block-wise.

In the counter affidavit the respondents have taken the following stands:-

“7. That with regard to the averments made in para-3 of the writ the respondents humbly state that as per advertisement No. 2/2011 the roster has been prepared by the Chairman empowered Selection Committee according to rules and regulations of reservation and has been followed in preparation of final selection list in terms of the guidelines of general administrative department and no otherwise any manner has been adopted by the authorities to ignore any competent candidate as per requirements.

8. That with regard to the averments made in the writ, the respondents humbly state that applications of both the petitioners have been received by authorities of the respondents.

9. That with regard to the averments made in paras 5,6 and 18 of the



writ, the respondents humbly submits that petitioner No. 1 Manjay Kumar belongs from backward category and for backward category there was one sit for lady category candidate which is still vacant in lack of lady candidate and petitioner no. 2 Sunil Kumar Ram belongs from SC category for which there was only one seat in his same block and he obtained only three marks and got 9th position in final merit list so the candidate of same category of same block who was on 6th position obtaining 4 marks has been selected in final selection list so in spite of qualifying in physical test, the petitioners or any candidate do not deserve to be appointed on the post of Home Guard Volunteer.

10. That with regard to averments made in para 7 and 9 of the writ, the respondents humbly states that the seats have been fulfilled by the competent bona fide candidates in all the block in Muzaffarpur district following the provisions of reservation and proper roster made by the Chairman of the Empowered Selection Committee in terms of the advertisement in spite of few seats are still vacant in lack of proper competent candidates in different categories of different blocks of the district but as per rule no unfit incompetent candidate may be selected for fulfilling up



the vacancy of Home Guard Volunteer.

11. That with regard to the averment made in para 9 & 10 of the writ the respondents humbly state that as per advertisement the Chairman of the Empowered Selection Committee prepared the proper roster As per provisions of reservation-procedure and it has been followed in terms of the Advertisement no. 02/2011.

12. That with regard to the averment made in para 11,13 & 14 of the writ the respondents humbly state that there is no violation of Constitutional Article 14, 16 of 21 which infringed the fundamental right of the petitioners and they have never been brushed aside by the authorities erroneously and has not been ignored on the ground of conjectures & surmises.

13. That with regard to averment made in para 12 of the writ the respondents humbly state that the petitioners should file the relevant final merit list & final selection lists has been concealed deliberately through Final-Merit List and Final Selection List of candidates have been filed herewith as Annexure-B, B(1) by the respondents which shows incompetency and unsuccessful of the petitioners due to availability of the proper & better candidates to them and it will also



show that petitioner no.1 is not OBC candidate he belongs from backward category.

14. That with regard to the averment made in Para- 15 of the writ the respondents humbly state that it is totally incorrect as each and every process of recruitment have been completed partially amongst all the members of Empowered Selection Committee and it is mere an allegation alleged without evidence that jurisdiction has been exceeded by authorities of the respondents.

15. That with regard to the averment made in para 16 &17 of the writ the respondents humbly state that they never acted arbitrarily without authorization and the writ petition is not bonafides because elapsing 8 years of the Advertisement and its recruitment of the candidates this writ petition has been files baselessly which should not be in th interest of justice.

16. That with regard to averment made in para 19 of the writ the respondents humbly state that the writ petition looks not considerable though it is wastage of time & should be barred by limitation and not only this but also the selected candidates have already been completed training and these days performing their duties satisfactorily.”



In this case the petitioner has filed rejoinder to the counter affidavit highlighting the infirmity in the selection in the Marwan Block, for ready reference para-4 to 8 is quoted below:-

“ 4. That it is submit that Marwan Block of Muzaffarpur District 9 sits were allotted and 9 persons were selected, in which the petitioner names comes in at no. 7(petitioner no.1) and sl. no. 9 petitioner (2) as contained in Annexure-B of the counter affidavit.

5. That it is submitted that accordion to Annexure-C of the counter affidavit in Marwan Block there is no any sits allotted for candidate belonging to Scheduled caste although there are 3 sits are still vacant.

6. That is relevant to state here that the respondents has not adopted proper procedure in following the reservation policy.

7. That is relevant to submit that in Marwan Block there are 9 sits allotted out of which only 6 sits have been filled up and 3 sits are vacant in this view of the matter the petitioner deserve to be selected.

8. That it is relevant to state here that the respondents hive not properly followed the procedure fulfilling the vacancy as per advertisement published in which no



there is clarification was made earlier as to reservation policy the said advertisements made at State level and not Block level and it is relevant to mention here that in original advertisement there was no whisper as to reservation policy or criteria.

From the pleadings it is apparent that though the respondents have advertised the vacancy district wise but in the process of selection and roster clearance they have not relied upon district wise vacancy but for their own convenience at Block level and now they are justifying the action saying that the selection process has been completed and therefore, the Court should not interfere in the matter of selection of Home Guard. The advertisement is rule of game which binds the parties. The Court finds that the terms of advertisement has not been followed by the respondents in the process of preparation of select list and instead of district wise vacancy they have adopted block wise vacancy and even in the preparation of select list block wise vacancy as is evident from the averment made in the counter affidavit there is departure.

Considering the aforesaid, although the Court finds that the entire selection process undertaken by the respondents is contrary to Advertisement and vitiates the entire selection process but for the reason that only two petitioners have



approached this Court, the respondents are directed to consider their case and accommodate them against the vacancy in the district of Muzaffarpur if they find the petitioners otherwise eligible for selection then necessary corrective measure may be taken by the respondents within a period of three months from the date of receipt/production of the copy of this order.

With the aforesaid, the writ petition stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

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