IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1605 of 2022

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1. Om Prakash Sah, Son of Mahesh Sah, Resident of Tetardih, Post-Hasan Bazar, PS-Piro, District-Bhojpur.
2. Ajit Kumar Singh, Son of Jagmohan Singh, Resident of Village-Nesar, PS-Kudra, District-Kaimur.
3. Ajit Kumar, Son of Lalkishore Singh, Resident of -Dumra, PS-Haspura, District-Aurangabad.
4. Smirti Rani Wife of Ravi Shankar, Resident of Village-Srichandpur, Harnaut, PS Harnaut, District-Nalanda.
5. Aamrapali Kumari D/o Keshav Nath Mahto, Resident of Tenduni PS-Jagdishpur, District-Bhojpur.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary Government of Bihar, Patna.
2. The Principal Secretary Department of General Administration Department Government of Bihar Patna.
3. The Principal Secretary Registration and Excise and Prohibition Government of Bihar Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Majid Mahboob Khan, Advocate
For the Respondent/s	:	Mr. Sheo Shankar Prasad, SC-8
		Mr. Sanjay Kumar, AC to SC-8

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 03-05-2023

The challenge in the above writ petition is to Rule 16 of the Bihar Excise Constables Cadre (Recruitment And Service-Condition) Rules 2014 (hereinafter referred to as the ‘Rules of 2014’). By Rule 16 of the rules, the *inter se* seniority of directly recruited candidates are fixed in such a manner as to enable the Home Guards of Bihar and Ex-Army Men, who have been set apart 25% vacancies each, to be seniors in the cadre of Excise Constables appointed in a calendar year. The claim of the petitioners, who are directly recruited candidates in the 50% vacancies considered for direct recruitment from the eligible candidates is that the such classification visits them with hostile discrimination and there is no *intelligible differentia* with the object sought to be achieved.

2. The learned counsel for the petitioners argued for the position that the directly recruited candidates across the board, *dehors* such classification, has to be granted seniority in accordance with the merit in the selection process. The petitioners' counsel also points out that in the cadre of Warder of Prisons of the State wherein also there is a direct recruitment from candidates of the general public and 25% vacancies each, set apart for Home Guards and Ex-Army Men, where there is no such seniority conferred on either of the two categories. The Bihar Warder Cadre Rules, 2014, again projects the hardship occasioned insofar as those recruited to the Cadre of Excise Guards, the classification in which is violative of the principles enshrined in Article 14 of the Constitution of India.

3. The learned counsel for the petitioners to buttress his arguments relied on **Deepak Sibal v. Punjab University; (1989) 2 SCC 145, Aashirwad Films v. Union of India; (2007)**

6 SCC 624 and Union of India v. N.S. Rathnam; (2015) 10 SCC 681.

4. The learned State counsel argues that the petitioners cannot claim hostile discrimination on the basis of the rules in a totally different cadre. The functions and duties enjoined upon the persons admitted to the different cadres are different and they cannot be equated.

5. It is trite that there cannot be any equality claimed by unequals and there is *inteligible differentia* insofar as the classification effected between the direct recruits and Home Guards of Bihar and Ex-Army Men.

6. The law is very clear insofar as classification and it cannot at all be said to be anathema to the Constitution of India and the fundamental right to equality; if there is *intelligible differentia* and there is also found reasonableness in such classification.

7. **Deepak Sibal** (supra) considered the classification made insofar as admission to evening classes of three year LLB degree courses which were opened for employed persons. The classification insisted upon by the University was with respect to permitting only regular employees of Government/Semi-Government institutions/affiliated colleges, Statutory Corporations and Government Companies alone being

entitled and eligible to seek such admission. The University excluded employees of private/public establishments/institutions on grounds of (i) possibility of production of bogus certificates, (ii) the need to impart legal education to Government/Semi-Government Institutional employees, in public interest, (iii) continuity of the employment during the three year period of study and (iv) elimination of wastage of seats.

8. The Hon'ble Supreme Court found the grounds to be untenable and the rule of admission unreasonable, discriminatory and violative of Article 14 of the Constitution of India. It was held that 'regular employees' in the context in which it was used in the prospectus could only mean bonafide employees. It was found that the object itself was to enable employed persons who are unable to attend morning classes to get higher education through evening classes. The classification of Government undertakings and companies, though in certain circumstances could be a reasonable one, it would not be a valid classification insofar as determining the eligibility for admission to evening classes of three year LLB degree course. When specifying a source for the purpose of admitting them to evening classes as distinguished from a regular batch of students, the classification, if any, made should satisfy the test of reasonableness and it should also have a rational nexus to the

object sought to be achieved; which was lacking in the classification made for admission, by the University. The test was held to be the position in which the employees are placed at a disadvantage in attending regular classes for career advancement or acquiring higher qualifications. The source being identified, from employed persons, there cannot be a further classification between Government and privately employed persons merely on the speculation that there could be production of bogus certificates and there would be lack of job security in private establishments. It was hence held that any bonafide employee without reference to the nature of his employment and the character of his employer would be eligible for admission and the classification made would be discriminatory and violative of Article 14 of the Constitution of India.

9. **Aashirwad Films** (supra) imposed a higher entertainment tax in respect of non- Telugu films which was also sought to be sustained on the ground that Article 351 of the Constitution of India had no application, the State enjoyed a greater latitude of imposing different type of taxes on different classes of people and the writ petition did not contain any ground on which the plea of discrimination could be sustained. The Hon'ble Supreme Court while finding that a taxing statute

enjoys a greater latitude and that Article 351 of the Constitution of India has no application; all the same interfered with the classification finding it to be in contravention of Article 14 of the Constitution of India. The taxing event in the Andhra Pradesh Entertainments Tax Act was found to be the entertainment of a person and the classification was only on the ground of language of the film. While considering the issue from a social angle it was held that there cannot be any object emanating from a statute which would result in divisive trends within society; which would fall foul of the broad constitutional scheme enshrined under Articles 19 and 21 as also the Preamble of the Constitution. A classification made taking refuge of the exception of reasonable differentia, under Article 14 of the Constitution of India should stay clear from the broad constitutional mandate, was the binding declaration. The classification was found to be arbitrary, since it was made solely on the basis of the language of the film, the entertainment quotient of which would be similar insofar as the viewers who voluntarily purchased tickets to see the movies; which entertainment quotient leads to the measure of tax.

10. **N.S. Rathnam** (supra) again raised the question of an unreasonable classification insofar as assessees being entitled to exemptions on the basis of the method adopted for

payment of customs duty. The test of reasonable classification and aspects therein were reiterated and two conditions were highlighted, 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 the differentia must have a rational relation to the objects sought to be achieved by the statute in question.

11. It is hence, we observed at the outset, that classification is not anathema to the Constitution of India and insofar as it is reasonable, definitely it can be upheld. A hostile discrimination can be successfully urged only as amongst equals and not unequals. In the present case the first classification challenged is insofar as the persons, who are directly recruited as Excise Constables on the strength of the Recruitment Rules of 2014. The recruitment to the vacant posts are to be made from the general public to 50% posts and 25% each from trained Home Guards of the Bihar State and Ex-Army Men. Home Guards and Ex-Army Men are persons, who are a part of a disciplined uniformed force familiar with the rigors of such employment with constant engagement with the public. Excise Constables also are uniformed cadre subject to strict discipline, with ramifications of public interaction, for implementation of the excise policy of the State. It cannot at all be said that the

candidates recruited from the general public to the 50% posts are equal to the trained Home Guards and Ex-Army Men; who already are familiar with the rigors and discipline of a uniformed force. There is hence an *intelligible differentia* between the directly recruited candidates; i.e. those from the general candidates and those recruited from the source of trained Home Guards and Ex-Army Men. We also find that in appointments made to the Excise Department there is a reasonable object sought to be achieved by giving seniority to the trained Home Guards and Ex-Army Men.

12. The further ground urged is, insofar as a similar seniority having not been conferred on Ex-service men and Home Guards in the Bihar Warder Cadre Rules, 2014 wherein also a similar reservation of posts is specified. The Bihar Warder Cadre Rules, 2014 is to a totally different service under the State Government and it is for the State to fix the seniority among the directly recruited candidates as it deems fit; which is also a policy decision of the State. There is no rule that every cadre under the State Government should have the same rules and in any way the functions and duties of Excise Constables are quite distinct and separate from the Warder appointed to a prison. The State in its wisdom grants seniority on the basis of merit or based on preferences to the persons recruited from different

sources. It cannot be urged that the same seniority rule should apply across the board to all State Government employees. The Excise Constable Cadre Recruitment Rules and the Warder in Prisons Rules being distinct and separate there can be no claim of hostile discrimination between the two cadres and the persons appointed to the said distinct cadres.

13. It is also pertinent that the notification under which the petitioners were appointed which is produced as Annexure-3 specifically referred to the Rules of 2014 applicable to the recruitment and service conditions of Excise Constable. The petitioners applied under Annexure-3 notification and having been successful in the recruitment process was selected to the 50% posts reserved for recruitment from the general public; having been thus appointed on the basis of a notification brought out under the Rules of 2014. The petitioners cannot turn around and challenge the rules; as discriminatory and arbitrary, under which they applied, got selected and obtained appointment. In this context it is also to be noticed that there are trained Home Guards and Ex-Service Men recruited along with the petitioners to the 25% vacancies set apart for each of them. None of these persons have been impleaded in the writ petition which seeks revision of seniority in the cadre on the basis of merit, which is against the stipulation in the rules.

14. For all the above reasons, we find absolutely no sustainable reason to uphold the ground of unreasonable classification. We hold that Rule 16 in the Rules of 2014 applicable for the Recruitment and Service Conditions of Excise Constable, where it confers a seniority to trained Home Guards and Ex-Service Men recruited in a calendar year along with persons recruited from the general public, to be perfectly valid, reasonable and having an *intelligible differentia* with the object sought to be achieved.

15. We reject the writ petition for the other grounds also stated hereinabove. The parties shall suffer their respective costs.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

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AFR/NAFR	NAFR
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