

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.170 of 2023

In
Civil Writ Jurisdiction Case No.1791 of 2018

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Diwakar Yadav alias Diwakar Kumar S/o Ram Prakash Yadav, resident of village- Dalhata, Kumari Toli, Basudeopur, P.S.- Basudeopur, Distt. - Munger - 811801.

... .. Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Home, Government of Bihar, Patna.
3. The Director General of Police, Government of Bihar, Patna.
4. The Central Selection Board of Constable, Kendriya Chayan Parishad (Sipahi Bharti), Sri Sayeen Tara Complex, IAS Colony, Jawaharlal Nagar Marg, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Prashant Kashyap, Advocate
For the Respondent/s : Mr. P.K. Verma, AAG-3

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 19-03-2024

The challenge in the present Letters Patent Appeal is made to an order of this Court dated 04.01.2023 passed by the Learned Single Judge in CWJC No. 1791 of 2018, whereby the claim of the petitioner-appellant herein for selection and appointment to the post of Driver Constable has been rejected.

2. The Learned Counsel for the appellant while assailing the order of the Learned Single Judge has narrated the short facts of the case, inter-alia, that the Central Selection



Board of Constable (hereinafter referred to as Board) published an advertisement no. 1/2016 for recruitment of 1,577 Driver Constables. The appellant on being found eligible, filed his application alongwith all the educational testimonials for appointment to the post of Driver Constable and accordingly admit card was issued to him.

3. The petitioner-appellant appeared and successfully qualified the preliminary and physical test. Further verification of the educational testimonials and driving license was done and on being satisfied and finding no infirmity, he was called upon to appear for vehicle Driving Efficiency Test on 05.06.2017. It is the case of the petitioner-appellant that he successfully drove all the three types of vehicles, small car, Scorpio (jeep) and big truck.

4. The petitioner-appellant also submitted an experience certificate issued by the Chairman of the District Teachers Appellate Authority, Nalanda, Bihar Sharif disclosing his satisfactory performance as a Driver since 05.06.2011 apart from his excellent behavior and character.

5. Despite being successful in all the tests, the petitioner-appellant has not been appointed to the said post as he has secured only 30 marks out of 50, when the cut-off marks



was fixed as 31 by the authority concerned. The petitioner-appellant has obtained 10 marks for successful driving test of bus/truck, 10 marks for driving test of a small car and 10 marks in the Interview Board but despite his successful driving of Scorpio (jeep) he has not been accorded any marks, apart from no marks for his experience of the past services has been allowed.

6. The respondent Board contended that the petitioner has secured only 30 marks out of the cut off marks of 31 in his category and so far the experience certificate duly issued by the Chairman, District Teachers Appellate Authority, Nalanda, Bihar Sharif, in favour of the petitioner is concerned, since the petitioner-appellant has not been working as a driver on contract basis in any police organization, no marks for any experience has been allowed, as was the prescription in the advertisement.

7. Further submission has been made that vide memo no. 8 dated 22.08.17 the Board has already sent the recommendation of successful candidates for their appointment on the post of Driver Constable and the appointments have also been made. Thus, resultantly the selection process has already been over.



8. Learned counsel for the petitioner-appellant thus, argued that the Learned Single Judge has failed to consider that the petitioner-appellant who successfully qualified in driving of Light Motor Vehicle (car) and Heavy Motor Vehicle (truck and bus) could easily drive the jeep (Scorpio) and, in fact, he drove successfully but, was deliberately not allotted any marks in order to give undue advantage to the blue-eyed candidates, of their choice. Had the petitioner-appellant been allowed even minimum marks for driving jeep, he could have easily qualified in his applied category for the post of Constable Driver. It has further been emphasized that the petitioner-appellant has been driving official vehicle of Chairman, District Appellate Authority, Nalanda, Bihar Sharif since 05.06.2011 upto 31.05.2017 and even till date, thus, in such circumstances he was equally eligible for being awarded maximum 5 marks for his driving experience.

9. It was lastly submitted that it is the admitted fact that out of total 1,577 vacancies only 1,526 vacancies were filled up and the rest 51 vacancies of BC women category have remained unfilled due to unavailability of suitable candidates and thus, the appellant may be adjusted against the remaining vacant post.



10. After giving a conscious consideration to the rival submission of the learned counsel for the parties, this Court also perused the advertisement no. 1 of 2016 which delineates the eligibility of a candidate and process of selection. It is clearly stipulated that the merit list shall be prepared on the basis of marks obtained in the physical test, Driving Efficiency Test and marks given on the basis of the experience of a driver working on contractual basis under a police organization. The benefit of experience made applicable to the drivers who were working on contract and not to those who had worked on contract in the past, the experience certificate issued by the concerned superintendent of police/ commandant/ unit head or his representative gazetted officer were only admissible.

11. In view of the aforementioned stipulation, the contention of the petitioner that he has not been awarded any marks for experience of his driving does not arise as admittedly he has been driving the official vehicle of the Chairman, District Appellate Authority, Nalanda, Bihar Sharif.

12. Further, so far the contention regarding non awarding of any mark in driving test of (Scorpio) jeep is concerned, the advertisement in question clearly says that in case during the course of Vehicle Driving Efficiency Test any



part of the vehicle touched any pillar or the boundary lines of the track, the candidate shall be declared disqualified. Thus, in such a situation the claim of the petitioner for awarding minimum marks for driving the Scorpio (Jeep) also does not arise. It is the case of the authority that the petitioner was disqualified for having touched the boundary lines while driving the Jeep.

13. Moreover, in course of Driving Efficiency Test a CCTV camera was installed to monitor the test area activities and the conduct of examiner at every instant; to curb any irregularity in awarding the marks in a manner inconsistent to the prescription in the advertisement.

14. Now coming to the contention of the petitioner that still 51 vacancies of backward class women category have remained unfilled due to unavailability of suitable candidate, since the petitioner belongs to backward category male candidate thus, his claim against the vacancies of backward class women category does not arise and is fit to be rejected on the point of having no locus.

15. Apart from all the aspect which have been dealt with hereinabove, it is also the fact that the selection process has already been completed in the year 2017 itself and the



appointments to the post of Driver Constable has already taken place. This Court does not find any error in the order of the learned Single Judge, the present Letters Patent Appeal sans any merit, stands dismissed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

supratim/-

AFR/NAFR	NAFR
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