

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 17706 of 2021

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Dip Prakash Son of Om Prakash Resident of Village- Painal, P.O.- Painal,
P.S.- Bihta, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Chief Secretary, Bihar, Patna.
2. The Director General of Police Bihar, Patna.
3. The General Commandant (Mahasamadesta) cum Director General of Police Home Guard and Fire Brigades Service, Bihar, Patna.
4. The Chairman Central Selection Board (Constable Recruitment), Shri Sai Tara Complex, IAS Colony, Jawahar Lal Nehru Marg, Patna- 801503.
5. The Deputy Secretary Department of Home, Bihar, Patna- 800001.

... .. Respondent/s

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Appearance:

For the Petitioner/s	:	Mr. Rajiv Krishna Bariar, Adv.
For the State	:	Md. N.H. Khan, SC-1
		Mr. Fazle Karim, AC to SC-1
For the CSBC	:	Mr. Sanjay Pandey, Adv.
		Mr. Binod Kumar Mishra, Adv.
		Mr. Vivek Anand Amritesh, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date: 28-02-2024

The present writ petition has been filed for directing the Respondents to issue a panel of selected candidates qua the post of Constable Driver / Police Driver against the vacancies, which have arisen on account of non-joining of the selected candidates, in pursuance to Advertisement No. 1 of 2018, dated 20.02.2018 and consequently, appoint the petitioner on the post of Constable Driver.

2. Shorn of unnecessary details, it would suffice to state that the petitioner had applied for being appointed on the post of



Constable Driver in the Bihar Police / Bihar Military Force / Fire Brigade Department, pursuant to Advertisement No. 1 of 2018, issued by the Central Selection Board (Constable Recruitment), Patna (hereinafter referred to as “the Board”). The petitioner is stated to have been declared qualified in the written test vide letter dated 20.8.2018, in the general category, whereafter he was called for physical test, which was held on 09.10.2018, wherein also he is stated to have been declared qualified and then he had appeared in the driving test, held on 08.01.2019, wherein he was expecting good score, however, his name did not find mention in the final merit list. Thereafter, the petitioner had filed an application under the RTI Act and he was intimated that he has secured 74 marks in the driving test.

3. The learned counsel for the petitioner has submitted that the cut-off marks for general category candidate in the merit list for the post of Constable Driver has been fixed as 74 marks, whereas the petitioner has also obtained 74 marks, nonetheless, one candidate having same marks, has been given preference in appointment over the petitioner, inasmuch as he is elder than the petitioner since his date of birth is 05.01.1993, whereas the date of birth of the petitioner is 04.01.1994. It is next submitted that now, the position is that many candidates have not joined,



hence, the petitioner should be accommodated as against the vacancies, arising out of non-joining of the selected candidates.

4. Per contra, the learned counsel for the Respondent-Board has submitted, by referring to the counter affidavit filed in the present case, that the petitioner has secured 74 marks and the cut-off marks in his category i.e. GEN-M is also 74 marks, however, the candidate who has been recommended, though is also having 74 marks but is senior in age to the petitioner, as aforesaid, thus, the petitioner could not be selected on the ground of being junior in age to the last recommended candidate in his category, in terms of the provisions contained in the Advertisement and the Bihar Police Driver Cadre Rules, 2017, both of which stipulate that in case of two or more candidates securing equal marks in the efficiency test relating to motor driving, their place in the merit list shall be determined on the basis of their date of birth and the candidate who is senior in age shall be placed above in order of merit. It is contended that there is no question of the petitioner being adjusted against the vacancies, arising out of non-joining of the recommended candidates, inasmuch as the Board has already published a new advertisement bearing Advt. No. 5 of 2019, on 29.11.2019, for making fresh appointment of 1722 Driver Constables, thus, the



selection process, emanating out of the aforesaid Advt. No. 1 of 2018, has already come to an end long back with the Respondent-Board having already made recommendations and the selected candidates having also been appointed.

5. I have heard the Ld. counsel for the parties and perused the materials on record from which it is clear that since the petitioner is junior in age to the last recommended candidate in his category, he could not be selected, as aforesaid and during the interregnum period, the selection process has also come to an end, whereafter, a new Advertisement dated 29.11.2019 has also been published for appointing Driver Constables. These facts have not been either controverted or disputed by the learned counsel for the petitioner, hence, I do not find any merit in the present writ petition. The law, in this regard, is no longer rest-integra, inasmuch as the Hon'ble Supreme Court of India has held in a catena of Judgments that after the selection process is over and appointments have been made, no relief can be granted by the Court. Reference, in this regard, be had to a judgment, rendered by the Hon'ble Apex Court in the case of **State of Orissa v. Rajkishore Nanda**, reported in **(2010) 6 SCC 777**, paragraph no. 16 whereof is reproduced herein below:-



“16. A select list cannot be treated as a reservoir for the purpose of appointments, that vacancy can be filled up taking the names from that list as and when it is so required. It is the settled legal proposition that no relief can be granted to the candidate if he approaches the court after the expiry of the select list. If the selection process is over, select list has expired and appointments had been made, no relief can be granted by the court at a belated stage. (Vide *J. Ashok Kumar v. State of A.P.* [(1996) 3 SCC 320], *State of Bihar v. Mohd. Kalimuddin* [(1996) 2 SCC 7], *State of U.P. v. Harish Chandra* [(1996) 9 SCC 309], *Sushma Suri v. Govt. of NCT of Delhi* [(1999) 1 SCC 330], *State of U.P. v. Ram Swarup Saroj* [(2000) 3 SCC 699], *K. Thulaseedharan v. Kerala State Public Service Commission* [(2007) 6 SCC 190], *Deepa Keyes v. Kerala SEB* [(2007) 6 SCC 194] and *Subha B. Nair* [(2008) 7 SCC 210].)

6. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, I do not find any merit in the present writ petition, hence, the same stands dismissed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	1.4.2024
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