

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22368 of 2019

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Manish Kumar, S/o Deo Kumar Singh R/o Village Kulharia, P.S.- Koelwar,
District- Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Prohibition, Excise and Registration Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Prohibition, Excise and Registration Department, Govt. of Bihar, Patna.
3. The Excise Commissioner, Prohibition, Excise and Registration Department, Govt. of Bihar, Patna.
4. The Bihar Police Sub-Ordinate Services Commission through its Chairman, Patna.
5. The Chairman, Bihar Police Sub-Ordinate Services Commission, Patna.
6. The Secretary, Bihar Police Sub-Ordinate Services Commission, Patna.
7. The Special Task Officer, Bihar Police Sub-Ordinate Services Commission, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shashank Chandra, Adv Mr. Vatsal Verma, Adv
For the Respondent/s	:	Mr. Kunal Tiwary, Adv.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

5 22-01-2024 Heard learned counsel for the petitioner and learned
counsel for the State.

2. The present writ petition has been filed for directing the respondent to quash the final merit list i.e. Annexure-4 published pursuant to the selection process in connection with Advertisement No. 02 of 2018 to the extent that the name of the petitioner has not been reflected in the list of candidates finally selected for the post of Excise Sub Inspector



on the ground that the petitioner did not meet the eligibility criteria of height of 165 cm. The further prayer has been made that petitioner's height be re-measured independently, the result be directed to re-publish and respondent be directed to keep one post of Excise Sub Inspector reserved in the unreserved category during the pendency of the instant writ application and lastly prayer has been made to implead the candidate in the final merit list of unreserved category.

3. Counsel for the petitioner submits that the petitioner has participated in Advertisement No. 02/2018 through the on-line mode where recruitment of 126 posts of Excise Sub Inspector in the Prohibition, Excise and Registration Department, Govt. of Bihar has been published.

4. Counsel submits that the petitioner has participated in the said examination and Admit card was issued to him bearing Roll No. 2710600187 for the preliminary examination in which he was selected and fresh Admit Card bearing Roll No. 5210020951 for the main examination was also issued.

5. Counsel submits that petitioner was found successful in 172 candidates. Petitioner has to appear for physical efficiency test (PET) which was held on 17.10.2019. The petitioner participated in the PET test where his height was



found less than that of 165 cm and he was not selected. His measurement took place before the appellate authority and his height was again found to be 164.6 cm and was not finally selected.

6. Counsel for petitioner further submits that the petitioner has appeared in the subsequent advertisement issued by the same commission bearing advertisement no. 01 of 2019 and also appeared before Central Selection Board of Constable vide Advertisement No. 05 of 2020.

7. Counsel for the petitioner submit that in these two examination, petitioner was found eligible as his height was found 165 or above. On this ground, the present writ petition has been filed by the petitioner that in the earlier advertisement i.e. Advertisement No. 02 of 2018, the measurement was wrongly done.

8. Counsel for the petitioner has filed the supplementary affidavit, he submits that Annexure P/8 and Annexure P/8/1, admit card and gate pass are the relevant document according to petitioner and he submits that gate pass has been issued only after measurement of the height which conclusively proof that on early occasion, the commission has wrongly rejected the petitioner on the ground of wrong



measurement of the height. Counsel for petitioner submits that he has filed this writ petition earlier but during the pendency of the writ petition, these developments have taken place, therefore, he has filed supplementary affidavit.

9. Counsel for the petitioner relied on Judgment in case of ***Raju Vs. State of Bihar vide order dated 09.03.2022 passed in C.W.J.C. No. 10956 of 2021.***

10. Counsel for Bihar Police Sub-Ordinate Services Commission on the other hand submits that this writ petition is not maintainable at all. He submits that selection process of the year 2018 has already been concluded in every respect and moreover the process of three subsequent advertisement has also been completed i.e. of the year 2019, 2020 and 2021.

11. Counsel further submits that Annexure P/8 and Annexure P/8/1 shall not help the petitioner in any manner due to the reason that Annexure P/8 is admit card in which roll number has been assigned and Physical Efficiency Test reporting time has been reported as 8:00 AM. Counsel further submits that the gate pass which is issued also shows same reporting time as that of P.E.T., and therefore, it is crystal clear that this gate pass has been issued prior to physical test and it is basically criteria for entering into physical test. Counsel for the



commission further submits that in admit card, different time has been assigned to different candidates for the physical eligibility test. Therefore, by virtue of Annexure P/8/1, it is impossible to ascertain that the petitioner has cleared his physical efficiency test and then only gate pass has been issued to him.

12. In the light of the submission made, this Court is of the view that by virtue of Annexure P/8 and Annexure P/8/1, it cannot be concluded that the petitioner was found fit in the physical efficiency test. So far as the judgment in which petitioner is relying it transpires to this Court that the order passed by this Court in case of ***Raju Vs. State of Bihar (Supra)*** shall not help the petitioner due to the reason that in the said case, selection process was not concluded and in the present case three subsequent selection processes have already been completed.

13. Counsel for Bihar Police Sub-Ordinate Services Commission relied on Judgment of Division Bench of this Court decided in case of ***Ritu Kumari Vs. State of Bihar vide order dated 20.11.2014 passed in L.P.A. No. 895 of 2014*** where the Hon'ble Division Bench has categorically held that: "it is clear that it would remain open to the petitioner-appellant to



challenge the findings, with regard to her height, in a civil court of competent jurisdiction and seek necessary remedy for her grievances” and Hon'ble Court has refused to entertain the dispute relating to height in the physical efficiency test.

14. In this view of the matter, this writ petition is disposed off directing the respondent that if he is not satisfied, he may file a suit before competent Civil Court and Court below which shall decide the matter expeditiously within a period of six months from the date of institution of the suit.

(Dr. Anshuman, J)

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