

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4363 of 2025

1. Ritesh Kumar Singh S/O- Late Devendra Narayan Singh resident of Village- Pahlagarh, PO- Soneli Pelagor, Sonali, PS- Kadwa, District- Katihar.
2. Md. Sohel S/O- Md. Nuruddin resident of Village- Pelapur, PS-Baliya Belown, District- Katihar.
3. Chitranjan Kumar Singh S/O- Bijendra Prasad Mehta resident of Village- Mahinathpur, PS- Kodha, District- Katihar
4. Vijay Kumar Sah S/O- Kartik Sah resident of Village Basgara, PS-Kodha, District- Katihar.
5. Pappu Kumar Chouhan S/O- Badri Chouhan resident of Village- Govindpur, PS-Rautara, District- Katihar.
6. Md. Anwar Hussain S/O- Abdul Jalil resident of Village- Parbheili, PS- Kadwa, District- Katihar.
7. Vivek Uranw S/O- Panch Lal Uranw resident of Village- Saidpur, Rajuara, PS- Rautara, District- Katihar.
8. Shailendra Kumar Paswan S/O- Surya Narayan Paswan resident of Village- Narhiya Chandpur, PS- Falka (Pothiya) District- Katihar.
9. Mukesh Kumar Yadav S/O- Kantlal Yadav resident of Village- Pothia, PS- Falka (Pothiya) District- Katihar.
10. Rohit Kumar S/O- Arvind Yadav resident of Village- Morangi, PS-Mansahi, District- Katihar.
11. Sujit Kumar Prasad S/O- Shyam Lal resident of Village- Barmasia, PS- Sahayak, District- Katihar.
12. Pradeep Kumar Poddar S/O- Trivenee Poddar resident of Village- Gorphar, PS- Dandkhora, Gorphar, Ragheli, District- Katihar
13. Sujit Kumar Singh S/O- Bivekanand Singh resident of Village Pahlagarh, PS- Kadwa District- Katihar.
14. Subhash Kumar Mandal S/O- Late Mahavir Mandal resident of Village- Manihari, High School Road, Ward No-12, PS-Manihari, District- Katihar.
15. Sandeep Kumar Choudhary S/O- Ramnath Choudhary resident of Village- Thutthi Balua Jounia, Gurumela, PS- Barari District- Kaimur (Bhabhua)
16. Jitendra Kumar Sah S/O- Khagendra Sah resident of Village- Pakariya, PS- Pranpur, Pakariya Dharhan, District- Katihar
17. Pravin Kumar S/O- Ram Bilash Mandal resident of Village Patti Pachma, PS- Kodha, District- Katihar
18. Nitesh Kumar Singh S/O- Gita Prasad Singh resident of Village- Churli Hat, PS- Galgalia, District- Kishanganj
19. Pinki Kumar D/O- Sadhu Prasad Gupta resident of Village- Indra Nagar Laliyahi, PS- Sahayak District- Katihar

... .. Petitioner/s

Versus



1. The State of Bihar through the Chief Secretary Govt. of Bihar Patna.
2. Principal Secretary Department of Home, Govt. of Bihar, Patna.
3. Additional Secretary Home Department(Special Branch), Bihar, Patna
4. Director General of Police Bihar Patna
5. Director General of Home Guard, Bihar Patna
6. Chairman Central Selection Board (Constable appointment) Patna
7. Secretary Central Selection Board (Constable appointment) Patna
8. Commandant Bihar Home Guard Headquarter Patna
9. Additional Secretary Central Selection Board (Constable appointment) Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Ms. Shruti Sinha, Adv. Mr. Ebrahim Kabir, Adv.
For the Respondent/s	:	Mr. AC to GP-23
For the CSBC	:	Mr. Sanjay Pandey, Adv. Mr. Binod Kumar Mishra, Adv. Mr. Vivek Anand Amritesh, Adv.

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 19-02-2026

The writ petition has been filed by the petitioners challenging the validity of Rule 2 of Bihar Home Guard Service (2nd Amendment) Rule, 2017 (hereinafter referred to as, “Rule, 2017”) wherein it has been laid down that for appointment on the post of Constable and Driver Constable of Home Guard, the same process will be applied as that of Constable and Driver Constable of Bihar Police with regard to physical qualification and written examination, so also Rule 4 (i) of Rule, 2017 to the extent that it provides for the same procedure to be adopted for



recruitment on the said post as Constable and Driver Constable of Bihar Police.

2. The case of the petitioners, in short, is that the Central Selection Board (Constable Recruitment) issued Advertisement No. 02/2020 for appointment of 551 Constables in constable cadre of Bihar Home Guard Force and 50 % of the seats were reserved for Home Guards, who were enrolled in Bihar and are trained and who have served for atleast five years and passed physical fitness and educational qualification, besides they have atleast ten years of service length left and their education criteria was fixed as Intermediate pass.

3. It is the further case of the petitioners that as per the said Rule, not only there would be a written test, but even if they qualify in the written test, they have to undergo physical efficiency test, in which marks are to be awarded i.e. running test of one mile (1.6 km) in maximum of 6 minutes, shot put test in which 16 pound has to be thrown to minimum 16 ft; high jump - minimum 4 ft for male candidates and similar conditions were also specified for lady candidates.

4. The contention of the petitioners is that they were Home Guards, enrolled in the State of Bihar and they had already performed their duties for more than five years and they



have passed intermediate. Accordingly, admit cards were issued and the written examination was conducted on 24.01.2021 and then the Physical Efficiency Test was held on 08.02.2022. It is stated that the conditions stipulated in passing out the physical test is unfair and arbitrary; after passing written test only, physical standard test, i.e. measurement of height, weight, medical test and character verification should be made.

5. It is further stated that in the said written test examination, out of 301 Home Guards, only 71 Home Guards passed. When this amendment was made, as per Rule, 2017; the petitioners submitted their representation, which was rejected mechanically. It is the further case of the petitioners that adopting the same procedure for the recruitment on the post of Constable and Driver Constable of Bihar Police for the Home Guards was not at all justified.

6. Counter affidavit has been filed by respondent nos. 6, 7 and 9 (Central Selection Board of Constable), wherein it is stated that the writ petition, which has been filed challenging the validity of Rule 2 of Rule, 2017 should be dismissed. The Director General-cum-Commandant General, Home Guards and Fire Services, Bihar, Patna vide its Letter No. 4545 dated 10.10.2019 sent the vacancies for appointment of Home Guard



Constables to the Board for initiating the recruitment process and on the basis of such requisition letter, a notification was issued by the Home (Special) Department and whereupon Central Selection Board of Constable was entrusted with the selection and appointment of Home Guard Constables.

7. It is further stated in the counter affidavit that there were 603 vacancies for appointment on the post of Home Guard Constables, out of which 302 posts were reserved for Non Home Guard candidates and 301 posts were reserved for Home Guards Daily Wages, including sports persons. It is the further case of the respondents that Clause-5(v) of the Bihar Home Guard Service Rules, 2005 clearly envisages that other physical qualifications will be the same, as prescribed in the police manual with respect to the Constable and the State Government amended the rules in 2017, wherein it has been indicated that the same process for physical fitness and written examination will be followed, which is prescribed for the Bihar Police Sepoy and Sepoy (Driver).

8. It is further stated in the counter affidavit that in the Notification No. 6620 dated 14.08.2019, the process of selection for the post of Constable has been incorporated, wherein it has been clearly envisaged that written examination will not be the



ground of merit list for the post of Constable and it will be only qualifying for Physical Efficiency Test and candidates securing less than 30% marks in the written examination will be declared fail for Physical Efficiency Test and the candidates should be selected five times of existing vacancies in each category, on the basis of marks obtained in the written examination. As far as possible, for the Physical Efficiency Test and the merit list for selection and appointment to the post of Constable will be prepared on the basis of marks obtained by the candidates in all the three events under the Physical Efficiency Test i.e. running, shot put and high jump.

9. It is further stated in the counter affidavit that all the petitioners were the candidates for the post of Home Guard Constable and in terms with the advertisement, they duly participated and were also declared successful in the written examination. Thereafter, the Board conducted physical evaluation test of all the successful candidates of the written examination and final result of successful candidates for the post of Home Guard Constable was published and recommendation of successful candidates were also made to the concerned authorities; thus, the selection process is over.

10. It is the further case of the respondent that there is



no provision for exemption of Home Guard candidates from Physical Efficiency Test and therefore, it is necessary for all Home Guard candidates to appear in the Physical Efficiency Test. It is the case of the respondents that the Board is recommending body and it acts on the basis of the requisition sent by the concerned department and abides by the rules and regulations framed by the State Government. The Board has published the advertisement, as per the requisition received from the concerned department and the rules prescribed by the State Government and it is not in the domain of the Board to change rules/provisions, mentioned in the requisition.

11. It is further stated that the petitioner earlier filed CWJC No. 5555/2022, seeking similar relief and that was dismissed, as not pressed with a liberty given to the petitioners to approach the respondent authorities for redressal of their grievances and when the representation was submitted by the petitioners, the same was disposed off and therefore, the writ petition is not maintainable.

12. The counter affidavit has also been filed by the respondents no.5 and 8, wherein it is stated that the writ-petitioners are not entitled to the relief sought for as they have challenged the provisions of the Act as well as the condition laid



in the advertisement for recruitment against the post advertised after having participated in the test and remained unsuccessful having failed in the test in view of the settled principle of law as decided by Hon'ble Supreme Court as well as this Court in ***University of Cochin Vs. N. S. Kanjoonjamma & Ors.: 1997 (2) PLJR (SC) 40; Ram Naresh Sharma & Ors. Vs. The State of Bihar & Ors.: 2001(4) PLJR 727 (DB); Madras Institute of Development Studies & Anr. Vs. Dr. K. Sivasubramaniyan & Ors.: 2015(4) PLJR (SC) 45 and Dr. (Major) Meeta Sahai Vs. State of Bihar & Ors.: 2020 (1) BLJ 276 (SC).***

13. It is further stated that the demand of the petitioners to put an embargo on taking any PET from the Home Guard candidates in any future advertisement for appointment on the post of constable in Bihar Police is totally misconceived. It is further stated that in view of previous enrollment as Home Guard, relaxation in age as well as 50% reservation in the advertised vacancy has been provided for eligible successful Home Guard candidates. Any compromise with the efficiency of the disciplined force, would prove to be detrimental for the force, which cannot be permitted from any angle.

The learned counsel for the State, emphatically contended that the Rule 2 of 2017 amendment is quite justified.



14. Law is well settled that when the validity of an Act or Rule is challenged, it can be only maintained on the grounds like lack of legislative competence, violation of fundamental rights, inconsistency with constitutional provision or violation of the basic structure of the Constitution or that it is quite arbitrary or irrational failing to meet the standard of Article 14 of the Constitution of India. Court presumes the laws to be valid and only strikes them down if unconstitutionality is clearly established and not just minor drafting flaws.

15. In the case at hand, the purpose for amending the rules and prescribing of competing the Physical Efficiency Test is concerned, it has got some purpose. The type of Physical Test which has been indicated in the advertisement like running test of one mile i.e. 1.6 km in a maximum of six minutes, throwing of shot put of 16 pound to a minimum of 16.5 feet, and high jump a minimum of 4 feet for the male candidates cannot be said to be unreasonable or arbitrary inasmuch as while performing the duties as a constable, physical efficiency would be of prime importance and very much necessary. Physical fitness is universally recognized as vital for police constables, as it directly impacts their ability to perform daily duties, ensures personal safety during high-risk encounters and reduces the



likelihood of on-duty injuries. Therefore, there was every justification on the part of the authorities to put such condition precedent before giving appointment in the post of constable and it has got rational nexus to the object sought to be achieved. The contention of the learned counsel that since they are Home Guards and have been discharging their duties for five years and they have passed the written test and therefore, liberal attitude should be adopted for them so far as Physical Efficiency Test is concerned, is not at all acceptable.

16. Moreover, the petitioners have never challenged the advertisement at the earliest and after appearing in the written test as well as physical test and after having been declared unsuccessful, they have challenged the same.

17. The Hon'ble Supreme Court in the case of *N. S. Kanjoonjamma* (supra) has emphasized that a person having participated in the selection process cannot be allowed to challenge its validity subsequently after being unsuccessful, as he is estopped to challenge the correctness of the procedure. The learned Division Bench of this Court also in the case of *Ram Naresh Sharma* (supra) placing reliance upon the earlier Division Bench has held that the candidates having appeared before the selection committee, having full knowledge of the



constitution of the same and taking chance of having favourable recommendation, cannot challenge the recommendation of the selection committee, after becoming unsuccessful.

18. Similarly in ***Dr. K. Sivasubramaniyan*** (supra), reiterating the aforementioned settled principle while answering the question as to whether a person, who consciously takes part in the process of selection can turn around and question the method of selection is observed that once a candidate without raising objections to the alleged variations in the contents of the advertisement and the Rules, submitted his application and participated in the selection process by appearing before the Committee of experts cannot be allowed to challenge the very selection process, once he was not selected for appointment.

19. It would also be worth benefiting to take note of the decision rendered by the Apex Court in the case of ***Dr. (Major) Meeta Sahai*** (supra), wherein the Court underscored the aforementioned principles and observed that the principle of estoppel prevents a candidate from challenging the selection process, after having failed in it and this principle has been reiterated in a plethora of judgments. However, it has further been crystallized and concluded in paragraph no. 18 as follows:-

“18. However, we must differentiate from this principle insofar as



the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. In a situation where a candidate alleges misconstruction of statutory rules and discriminating consequences arising therefrom, the same cannot be condoned merely because a candidate has partaken in it. The constitutional scheme is sacrosanct and its violation in any manner is impermissible. In fact, a candidate may not have locus to assail the incurable illegality or derogation of the provisions of the Constitution, unless he/she participates in the selection process.”

20. In view of the aforementioned facts, circumstances and the prescription of the advertisement, based upon the Rule, 2017 prescribing mandatory efficiency test, which has rational nexus to the object sought to be achieved; besides the ratio laid down in the decisions aforementioned, we are of the view that there is no merit in the writ petition, accordingly stands dismissed.

(Sangam Kumar Sahoo, CJ)

(Harish Kumar, J)

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