

Mithun Kumar and Ors Vs. State of Jharkhand Through Secretary Home Jail and Disaster Management and Ors

Mithun Kumar and Ors Vs. State of Jharkhand Through Secretary Home Jail and Disaster Management and Ors

SooperKanoon Citation : sooperkanoon.com/110727

Court : Jharkhand

Decided On : Aug-11-2017

Appellant : Mithun Kumar and Ors

Respondent : State of Jharkhand Through Secretary Home Jail and Disaster Management and Ors

Judgement :

. IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 3239 of 2017
1. Mithun Kumar 2. Shyamalal Prasad Verma 3. Anuj Kumar Pandey 4. Pawan Kumar 5. Pankaj Kumar Prabhakar 6. Paras Nath Mahto 7. Surendra Kumar Mahto 8. Birbal Karmali 9. Ashish Kumar 10. Ravi Kant Rajwar 11. Aryan Mahanti 12. Rajnish Kumar 13. Nand Kishor 14. Govind Prasad Mahto 15. Aditya Kumar Ravi 16. Chuneswar Kumar 17. Pankaj Kumar 18. Sandeep Kumar Gope 19. Sundar Lal Mahto 20. Prithvi Choudhary 21. Diwakar Kumar 22. Mukesh Kumar 23. Bipeen Kumar 24. Pankaj Kumar 25. Urmila Kumari 26. Aalok Kumar Mahto 27. Shatrughan Rajwar 28. Dhaneshwar Rajak 29. Binod Paswan 30. Sanjit Kumar Ramani 31. Ranjeet Kumar 32. Anil Kumar Saw 33. Kumar Sanu 34. Chandrakishor Kumar 35. Sikandar Kumar 36. Mahesh Prajapati Petitioners.
Versus 1. State of Jharkhand through Secretary, Home Jail and Disaster Management having its office at 1st Floor, Project Building, P.O.&P.S. Dhurwa Dist Ranchi.

2. Secretary Personnel Administrative Reforms and Rajyabhasha Department having its office at Nepal House P.O.&P.S. Doranda Dist Ranchi. 3. Jharkhand Armed Police, through its Deputy Inspector General of Police, having its office at Forest Officers' Colony, P.O. & P.S. Doranda, Dist Ranchi.

4. The Jharkhand Staff Selection Commission through its Chairman having its office at Chaibagan, Kalinagar P.O. & P.S. Namkom, Dist Ranchi.

5. Secretary, Jharkhand Staff Selection Commission having its office at Chaibagan, Kalinagar P.O. & P.S. Namkom Dist Ranchi. .

6. Controller of Examination, Jharkhand Staff Selection Commission having its office at Chaibagan, Kalinagar P.O. & P.S. Namkom, Dist Ranchi. Respondents
CORAM: HON'BLE MR. JUSTICE ANANDA SEN For the Petitioners : Mr. Shresth Gautam, Advocate For the State Respondents : Mr. Ajit Kumar, AG Mr. Sanjay Piprawal, Advocate. Mr. Vikash Kumar, J.C. to A.G. 06/11.8.2017: Heard Mr. Shresth Gautam, learned counsel appearing on behalf of the petitioners, learned Advocate General, appearing on behalf of the State and Mr. Sanjay Piprawal, learned counsel appearing on behalf of Jharkhand Staff Selection Commission. In this writ petition, the petitioners have prayed for a direction upon the respondents to declare the 36 writ petitioners as medically fit and to be considered for appointment to the post of Constable in Jharkhand Armed Police (JAP). The petitioners claims that they have passed the preliminary test as well as the main examination and their respective roll numbers have been reflected in the merit list, which was prepared after the main examination. The petitioners thereafter, were sent for medical test and they were declared successful but their appointments were not made. The petitioner could come to know that they were found physically fit but were declared medically unfit by the Medical Board, constituted as per the Rules, as such, their names were not recommended for appointment. It is the case of the petitioners that they could come to know that on the ground of knockknee or flat feet etc., they were disqualified. The counsel for the petitioners submits and pleads that the petitioners were forced to sign on blank sheets, which were converted into their acknowledgment of the Medical Board. The petitioners then got themselves suo motu medically examined by Civil Surgeon, Sadar Hospital,

Ranchi. It was found that the petitioners do not suffer from the aforesaid infirmity and on this ground, the petitioners have moved this Court. Counter affidavit was filed by the State and also by the Jharkhand Staff Selection Commission. The medical board was constituted as per Rules for the medical examination of the petitioners. The report of the Medical Board . was brought on record in respect of these present 36 petitioners by the respondents. This report suggests that these 36 petitioners were declared medically unfit. Since, there were two divergent views; one by the Medical Board and one by the Medical Officer of the Sadar Hospital (both being the Government Servants), this Court vide order dated 7th July, 2017 requested the Assistant Solicitor General of India to assist this Court in getting these 36 petitioners examined by a Neutral Medical Board. The Assistant Solicitor General of India suggested that these 36 petitioners should be got examined by the DIG, Medical, C.R.P.F., Ranchi Composite Hospital, Sambo, Ranchi. This Court vide order dated 7th July, 2017 thus directed the petitioners to appear before the DIG, Medical, C.R.P.F., Ranchi Composite Hospital, Sambo, Ranchi, with a request to the DIG to get these petitioners medically examined and submit a report to this Court. Pursuant to the direction of this Court, 35 petitioners, appeared before the Medical Board, constituted by the DIG, Medical, C.R.P.F., Ranchi Composite Hospital, Sambo, Ranchi. The said Medical Board was constituted of three Medical Officers of C.R.P.F. presided over by Dr. M.K. Sinha, CMO(SG), (Ortho Specialist), CH, CRPF, Neemuch, Dr. Bithika Singh, CMO (SG), CH, CRPF BBSR and Dr. S.K. Parimal, Eye Specialist (Cont.), CH, CRPF, Ranchi. The Medical Board of CRPF found that 30 petitioners out of 35 petitioners were found medically fit. One petitioner i.e. petitioner No. 11 has not appeared before the Board and rest five petitioners, whose names are appearing at Sl. Nos. 18, 19, 22, 24 and 36 were found medically unfit. In view of the report of the Medical Board of the CRPF, this Court, prima facie, expressed opinion that large scale wrong/illegalities/irregularities have been committed by the Medical Board in relation to the appointment of constables and an order was passed on 28.7.2017 to this effect, as the total number of vacancies were approximately 7000 in the advertisement. Mr. Ajit Kumar, the learned AAG (as he then was) on 28.7.2017 prayed to defer the matter for seeking instructions from the State as to what action can be taken in this case and to suggest how the wrong/illegalities/irregularities

can be undone. Today, the State has filed a counter affidavit suggesting remedial measures, which the State intends to take in this matter. This Court has taken note of the fact notes that the State . has not questioned the report of the medical Board of CRPF in respect of 30 petitioners, who appeared before the Board. Mr. Ajit Kumar (now the Advocate General of the State) submits that the State has got no intention to challenge the findings of the Medical Board of CRPF so far as these 36 petitioners are concerned. The learned A.G. refers to paragraph 14 of the counter affidavit, filed today, which is sworn by one Chandra Prakash Pandey, Under Secretary, Department of Home, Prisons and Disaster Management, Govt. of Jharkhand, Ranchi, and submits the measure which the State intends to take to remedy the illegalities. It is necessary to quote paragraph 14 of the said affidavit, which reads as under: 14. That it is further submitted that the office of the answering respondent also issued letter No. 4193 dated 29.7.17 to the DGP seeking a report with opinion with respect to the direction's contained in the aforementioned order of this Hon'ble Court in the captioned matter. The Chairman, JSSC and the DGP, Jharkhand, sent their response vide letter No. 1482 dated 2.8.2012 and letter No. 1074 dated 2.8.2017 respectively. In the light of the report/opinion of the Jharkhand Staff Selection Commission and the Police Head Quarters, the State Government has approved following course of action: (i) An Appellate/Apex Medical Board may be constituted comprising a specialists/Senior Medical Officer for medical test. (ii) Since this matter is related to competitive Examination conducted by Jharkhand Staff Selection Commission, remedical examination of those candidates, who secured higher marks in the merit list than that of category wise the recommended candidates, may be conducted. (iii) The candidates fulfilling the criteria at serial (ii) of the decision shall submit their earlier medical report to the appellate/Apex Medical Board and the said Board shall submit its opinion/report after examining the candidates afresh. The Appellate/Apex Medical Board shall also examine the records/medical reports issued by the earlier medical Board. The said Board shall also report as to whether any false report has been submitted by the earlier constituted medical Board. The Appellate/Apex Medical Board shall identify such medical officers submitting false report and shall forward the same to the department of Health, Medical Education and Family Welfare and the said department in turn, would proceed with

disciplinary and legal actions against the erring medical officer. (iv) For the aforementioned medical reexamination a committee may be constituted by the Department of . Health, Medical Education and Family Welfare comprising Director in Chief of Health Services with Officer of the rank of Additional Secretary/Joint Secretary in order to ensure transparent and fair medical test. (v) Digital Camera/CCTV may be installed at the place of Medical Test in order to maintain transparent and fair Medical Test. Medical Test of the candidates shall be conducted after due physical verification through Biometric System. (vi) For such type of competitive examination for appointment in different cadres to be held in future a provision may be made for appeal before the Appellate/Apex Medical Board for such candidates who fail in medical test by the medical board wherever medical test is mandatory for selection of candidates. (vii) A fresh revised merit list may be prepared after the candidates are declared fit by the Appellate/Apex Medical Board and accordingly selected candidates may be appointed against the vacancies. From perusal of paragraph 14 of the counter affidavit, this Court feels that the State has intention to correct the wrong/illegalities/irregularities committed by the Medical Board. Thus, keeping in view of paragraph 14 of the counter affidavit, I direct the State to take appropriate action in terms of their undertaking given in the said paragraph within three months from today. After completing the fresh medical examination, the State will prepare a fresh Merit list. After preparing the fresh merit list of each category, the State will also issue fresh appointment letter to the selected candidates as per the fresh merit list and the State will also take an appropriate action to remove the candidates who are found medically unfit in re examination and have been appointed. Also the persons whose name will not find place in the fresh merit list, prepared after medical re examination, if already appointed, will also be removed, as their appointment will be illegal and void. So far as fresh medical examination is concerned, the State undertakes to conduct the same in terms of paragraph 14 of the counter affidavit, filed today. This Court also directs that 30 petitioners, except the petitioners whose names are appearing at Sl. Nos. 11, 18, 19, 22, 24 and 36, will be treated to be medically fit and they will not be subject to medical reexamination. . The State will also give notice to the last selected candidates of each category to be medically reexamined because there is possibility that after conducting fresh medical reexamination, the position in the

merit list and the cut off marks may change in each category. The State is also directed to declare the marks of the last selected candidate, as per statement given in paragraph 14 of the said counter affidavit. After completing the entire process, the State will file an affidavit, which must be sworn by the Secretary of the Department. The affidavit will suggest about the action which has been taken or intended to be taken against the Medical Board, who have wrongly disqualified these 30 petitioners. Let a copy of this order be handed over to Mr. Vikash Kumar, learned J.C. to A.G. for necessary communication. List this case after three months. (Ananda Sen, J) Anu-C.P.-2

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com