

The State of Bihar and ors. Vs. Sheikh Mohammad

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Court : Patna

Decided On : May-22-2007

Judge : J.N. Bhatt, C.J. and Shailesh Kumar Sinha, J.

Appeal No. : LPA No. 673 of 2006

Appellant : The State of Bihar and ors.

Respondent : Sheikh Mohammad

Disposition : Appeal allowed

Prior history : J.N. Bhatt C.J. And Shailesh Kumar Sinha, J. 1. The appellants have questioned the legality and validity of the judgment of the learned Single Judge in writ petition, bearing CWJC No. 1763 of 2004, dated 26.4.2005, whereby, challenge made by the respondent-original writ petitioner, against his termination from service as constable on the ground of having less than the prescribed height, came to be allowed. Hence, this Letters Patent Appeal under Clause 10 of the letters Patent of the Patna Hi

Judgement :

J.N. Bhatt C.J. And Shailesh Kumar Sinha, J.

1. The appellants have questioned the legality and validity of the judgment of the learned Single Judge in writ petition, bearing CWJC No. 1763 of 2004, dated

26.4.2005, whereby, challenge made by the respondent-original writ petitioner, against his termination from service as constable on the ground of having less than the prescribed height, came to be allowed. Hence, this Letters Patent Appeal under Clause 10 of the letters Patent of the Patna High Court.

2. Pursuant to an Advertisement No. 1/1998, dated 27.8.1998, for appointment to the post of constable in the Police Department, the respondent - original writ petitioner applied and he came to be selected by the Board and the authorities directed him to join in a different district, where his height was to be measured. However, after the lapse of almost two years, the services of the petitioner came to be terminated, mainly, on the ground that he was not eligible for the said post on the ground of having less height than that prescribed under the Rules and Advertisement and also less than those who were finally selected and were appointed during the course of recruitment process. There is no dispute about the fact of termination of services of all those, whose height on re-measurement was found less than the required height or less than that of the last person, selected and appointed for the post of constable. The learned Single Judge, while allowing the writ petition relied, on following three decisions of the Single Bench of this Court viz.:

- (i) Shambhu Kumar Singh v. State of Bihar and Ors. CWJC No. 2117 of 2004;
- (ii) Ghanshyam Yadav v. State of Bihar and Ors. CWJC No. 1762 of 2004; and
- (iii) Pramod Kumar Singh v. State of Bihar and Ors. CWJC No. 1761 of 2004 and its analogous cases.

3. The aforesaid three decisions of learned Single Judge of this Court have been overruled by decision of a Division Bench of this Court, passed in L.P.A. No. 1350 of 2005, and analogous cases decided on 16.12.2005, copy whereof has been placed as Annexure-1. The impugned judgment was pronounced on 26.4.2005, whereas, the Division Bench judgment of this Court in the above case, came to be delivered on 16.12.2005. Obviously, therefore, the learned Single Judge relied on the decisions of the Single Bench in the aforesaid cases which came to be overruled by the Division Bench of this Court. Therefore, the main decisions on

which the impugned judgment is founded stand overruled.

4. Our attention has also been invited to certain facts based on Annexure 2 to the effect that in similar cases, the Hon'ble Apex Court in the case of State of Bihar and Ors. v. Mal Babu Sharma has on April 15, 2002, rendered a judgment wherein similar claim as that of the, petitioner of that case, came to be disallowed.

5. Let it also be highlighted that selection or appointment contrary to terms and conditions of the advertisement or eligibility criteria, would not create any right or interest which should be defended or protected, much less, under the Writ Jurisdiction. At the time of recruitment, the height of the last person who came to be selected and appointed was 178 Cms., as against the height of the writ petitioner - respondent of 176.6 Cms. which he had shown to be 179 Cms. during the course of selection process. It means that the writ petitioner-respondent herein had misrepresented and wrongly stated his height which, on being measured, was found to be 176.6 Cms. Of course, the minimum height, as per the advertisement was prescribed as 165 Cms for the post of Police constable in the light of the Police Manual. However, the last person who came to be selected during the course of recruitment process was possessing the height of 178 Cms., whereas, the actual height of the original writ petitioner - respondent, on being enquired and looked into by the Board, constituted for the very purpose, was found to be 176.6 Cms.

6. It is in these contexts, the Departmental proceedings came to be initiated and the original writ petitioner - respondent was found delinquent and he was terminated from service which was confirmed in departmental appeal which came to be questioned before the learned Single Judge in the writ petition, successfully. The learned Single Judge has placed reliance, mainly, on the aforesaid three judgments which came to be reversed later on. It is in these contexts, we are of the clear opinion that the impugned judgment is illegal. Therefore, the impugned judgment, dated 26.4.2005, passed in CWJC No. 1763 of 2004, is quashed and set aside. Accordingly, it shall stand quashed and set aside. The appeal shall stand allowed with costs.