

**Mohan Kumar Vs. the State of Bihar and ors.**

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**Court :** Patna

**Decided On :** Apr-01-2008

**Judge :** Chandramauli Kr. Prasad, A.C.J. and Sheema Ali Khan, J.

**Appeal No. :** Letters Patent Appeal No. 139 of 2008

**Appellant :** Mohan Kumar

**Respondent :** The State of Bihar and ors.

**Advocate for Def. :** Prabhat Kumar Singh, Standing Counsel No. 21

**Advocate for Pet/Ap. :** Rajendra Pd.ingh, Sr. Adv., Rajeev Kumar Singh and Niranjana Kumar Singh, Adv. P.K. Sahi, Sr. Adv. Chakradhari Saran Singh, Adv.

**Disposition :** Appeal dismissed

**Prior history :** Chandramauli Kr. Prasad, A.C.J. 1. Writ petitioner-appellant aggrieved by the order dated 18.1.2008 passed by a learned Single Judge in CWJC No. 15762 of 2007 dismissing the writ application has preferred this appeal under Clause X of the Letters Patent. 2. Shorn of unnecessary details, facts giving rise to the present application are that Bihar Staff Selection Commission issued advertisement inviting applications for appointment to the post of Sub-Inspector of Police. Said advertisement was p

**Judgement :**

Chandramauli Kr. Prasad, A.C.J.

1. Writ petitioner-appellant aggrieved by the order dated 18.1.2008 passed by a learned Single Judge in CWJC No. 15762 of 2007 dismissing the writ application has preferred this appeal under Clause X of the Letters Patent.

2. Shorn of unnecessary details, facts giving rise to the present application are that Bihar Staff Selection Commission issued advertisement inviting applications for appointment to the post of Sub-Inspector of Police. Said advertisement was published in various newspapers including the daily newspaper 'Hindustan' in its issue dated 21st of September, 2004. It is an admitted position that for appointment to the post of Sub-Inspector of Police, before a candidate is allowed to appear in the written test, he had to undergo physical test and only after succeeding in the said test he appears in the written test. The physical test is held at Range level and there are twelve Range Boards, all over the State for the purpose. It is further also not in dispute that the writ petitioner-appellant, hereinafter referred to as the petitioner, applied for consideration of his case before the Deputy Inspector General of two different Range Boards, namely, Patna and Darbhanga. According to the petitioner, although he had submitted applications to two different Range Boards, namely, Patna and Darbhanga but had appeared in the physical test only at Patna. This assertion of the petitioner has not been denied.

3. It is relevant here to state that one Pramod Kumar, whose permanent address of correspondence was Jehanabad, submitted his application to the Deputy Inspector General of Police, Central Range, Patna which Range did not fall either within his place of permanent residence or temporary residence. His candidature was cancelled and he was not allowed to appear in the physical test. He filed writ application before this Court which was registered as CWJC No. 6088 of 2006, inter alia, praying to permit him to appear in the physical test. This Court by order dated 11.6.2006 disallowed his prayer and dismissed the writ application inter alia observing as follows:

It was clearly stated in the advertisement that they had to apply in the office of the range DIG either of his permanent or present residential address and not any

where else. The petitioner himself admits that in his application form he has given his present address as the same as permanent address. In that view of the matter he had no alternative except to apply in the office of the DIG, Magadh Range and not at any other place. In fact, he was wrongly allowed to appear at Patna on the earlier occasion as his application form was not validity submitted and since the earlier process has itself been cancelled as not conforming to the norms of the process of recruitment, he cannot be permitted to now appear at the Patna Centre.

4. After the aforesaid decision the Bihar Staff Selection Commission published advertisement in daily newspaper 'Danik Jagran' in its issue dated 13th of October, 2007 informing that such of the candidates who had made applications before more than one Range Boards, their candidature have been cancelled. In the said advertisement candidates who have passed in the physical test were required to fulfill certain formalities. Petitioner aggrieved by the same filed the writ application before this Court, inter alia, contending that once the appellant was permitted to appear in the physical test, and he having undergone the same successfully from one place, he is entitled to appear in the written test for selection to the post of Sub-Inspector of Police. The learned Single Judge of this Court relying on Clause 9 of the advertisement that defective application shall be rejected, dismissed the writ application, inter alia, on the following ground:

Clause 9 clearly stipulated that defective applications shall be rejected. The petitioners submitted defective applications. Such a candidate inadvertently called for the physical test cannot claim a waiver of the conditions of the advertisement individually in absence of any relaxation clause so as to defend a cause of action for issuance of a mandamus.

In the facts and circumstances of the present case, this Court is unable to uphold the submission of the petitioners that the only purpose of Clause 11 of the advertisement was to prevent duality in appearance and that admittedly not being the case presently the action of the respondents in debarring the petitioners from appearing on the written examination was not justified.

5. Mr. Rajendra Prasad Singh, Senior Advocate, appearing on behalf of the appellant submits that although writ petitioner made application before two Range

Boards but appeared for the physical test before one Range Board and having succeeded in the physical test his candidature was not fit to be cancelled on the ground that he made applications before two Range Boards. According to him, the condition for submission of the application either before the Deputy Inspector General of the Range where the permanent residence is located or the temporary residence, is directory in nature.

6. Mr. P.K. Shahi, Senior Advocate appearing on behalf of the Commission submits that in terms of the advertisement a candidate was given choice to apply before the Range Board within which either he is permanent resident or temporary residence is located and the petitioner having chosen to apply before two Range Boards in teeth of the advertisement, his candidature was rightly rejected. He submits that the fact that petitioner had appeared only from one Range Board shall not make any difference. According to him, candidature of a large number of persons have been rejected on the ground that they had made applications to more than one Range Board and in case petitioner is allowed to appear in the written test only on the ground that he had appeared for physical test from only one Range it shall create a class within class, as candidatures of similarly situated persons have already been rejected. It is emphasized that merely on the ground that the petitioner was illegally allowed to appear in the physical test shall not clothe him with further right to appear in the written test.

7. In view of aforesaid submission, it is apt to reproduce Clause 9 and 11 of the advertisement, which reads as follows:

9& vkosnu djus dh fof/k & 1 vPNs lknk dkxt 65 th0 ,l0 ,e0 ij layXu vkosnu i= ds izi= ds dzekad 1 ls 10 rd vafdr lwpukvks dk LrEHkokj Vafdr dj;as vkSj dzekad 11 ls 20 dks mlh dkxt dh ihB ij Vafdr dj;sa A vkosnu ds mij v|ru ikliks VZ lkbZt dk QksVks fpidk nsa nksuks LFkkuks ij blh izdkj vU; dkxt ij mifLFkfr i=d ds layXu izi= esa vafdr lwpuk,a LrEHkokj Vafdr dj;s vkSj ml ij QksVks fpidk,a A IHkh lwpukvks dks izi= esa fn;s x;s funsZ'kks ds vuqlkj lkQ&lkQ; vaxzsth esa Hkjs A vkosnu i= esa fd;s x;s nksuks LFkkuks ij iwjk gLrk{kj djsa A

11& IHkh ek;us esa iw.kZ vkosnu i= IHkh vuqyXudksa lfgr ,d vU; fyQkQs esa can dj lacaf/kr {ks=h; vkj{kh mi egkfujh{k d dk;kZy; esa tek djsa A fyQkQs ds mij ^ voj

fujh{k d lkekU; vFkok mnwZ tks ykxw gksrk gks fy[ks dh fu;qfDr ^ vo'; fy[k nsa A fcgkj ds fuoklh mEehnokj viuk vkosnu i= vius LFkk;h vFkok orZeku vkoklh; irs ds {ks=h; vkj{kh mi egkfujh{k d fdlh ,d ds nksuks ugh dk;Zky; es gkFkks gkFk vFkok fo'ks'k nwr ds ek;/e ls tek djsxs A jkT; ds ckgj ds fuoklh mEehnokj viuk vkosnu {ks=h; vkj{kh mi egkfujh{k d] dsUnzh; {ks=} iVuk dk;kZy; esa tek djsa A mEehnokj vk;skx dk;kZy; esa vkosnu i= ugh Hksts cfYd lacaf/kr {ks=h; vkj{kh mi egkfujh{k d dk;Zky; es tek djsa A ogka ls vkidks vkosnu dh izkflr jlhn feysxh] ftl ij jkSy uEcj Hkh vafdr gksxk A tks mEehnokj Mkd ls vkosnu lacaf/kr vkj{kh mi egkfujh{k d dks Hksts] os dafMdk&10 esa vafdr dkxtkrks ds lkFk Mkd?kj ls 5 :0 dk fyQkQk [kjhn dj layXu djs vkSj mlds mij viuk i=kpkj dk irk fy[k ns rkfd mlesa vkidks izkflr jlhn jkSy uEcj lfgr Hkst nh tk lds A tgka rd gks vkosnu gkFkks&gkFk; fo'ks'k nwr }kjk tek djs rkfd Mkd ls Hkstus dh t:jr ugh iM+s A Mkd ls vkosnu Hkstus dh ftEesokjh mEehnokj dh gksxh A

8. In my opinion, the issue is not as to whether Clause 11 of the advertisement is directory or mandatory. It does not put any eligibility criteria but confines the right of a candidate to apply before the Deputy Inspector General of Police of Range based on the permanent or temporary residence of the candidate. In view of aforesaid Clause of the advertisement a candidate, resident of the State of Bihar, has been given choice either to apply before the Deputy Inspector General of Police of the Range where his permanent or temporary residence is located. The advertisement has clearly stated that a candidate can apply before one of the such Range-Boards and not more than one. The Bihar Staff Selection Commission has chosen to put this condition so that a candidate may not take chance at two Range Boards or more. The Commission consciously has incorporated this Clause in the advertisement and confined the choice of the candidates in order to avoid 'Range-hunting', an expression borrowed from the law Courts of 'bench hunting'. It was reasonable for the Commission to confine the choice to one Range Board, so as to avoid multiplicity of applications. Altogether approximately one lakh eighty thousand candidates have offered their candidature at different Range-Boards and had the Commission not confined the choice, all such candidates could have applied to all Range-Boards. It would have been difficult for the Range-Boards to handle such large number of applications. Bearing in mind this also commission had limited the choice of the candidates. The Commission emphatically confined

the choice of filing the application before one Range Board and not more than one Board which discretion the Commission possesses.

9. Clause 9 of the advertisement has clearly provided that if a candidate gives wrong information or conceals information, his candidature shall be cancelled. The fact that the petitioner had applied before two Range Boards has not been disclosed in either of the application. In that view of the matter, I am of the opinion that the Commission possessed the right to cancel the candidature of such candidates who had made applications at two places in teeth of the condition laid down in Clause 11 of the advertisement. In my opinion, Clause 11 of the advertisement restricting submission of application before one Range Board being later than Clause 9 providing for rejection of the candidature at an earlier place in the advertisement shall have no bearing at all.

10. In view of what I have found, the petitioner was not entitled to submit applications to two different Range Boards and admittedly he having done so shall not clothe him with the right to appear in the written test only on the ground that he appeared in the physical test at one Range Board. Appearance of the candidates before his chosen Range Board, if considered decisive, may lead to an absurd result, not contemplated by the advertisement and a candidate may choose to apply before all the Range Boards, which I am told are 12 in number and thereafter decide to appear before one Range Board of his choice and then contend that he having appeared from one Range Board had the right to appear in the written test. Taking into account the underlying object in confining the choice of the candidate to one Range Board, I am of the opinion that any consideration other than the aforesaid shall erode the credibility of the Commission, for preservation whereof Clause 11 of the advertisement was incorporated.

11. In view of what I have found above, I am of the opinion that the learned Single Judge did not err in dismissing the writ application.

12. In the result, I do not find any error in the order of the learned Single Judge and the appeal is dismissed accordingly, but without any order as to cost.

**Sheema Ali Khan, J.**

13. I agree.

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