

(2011) 08 JH CK 0083
In the Jharkhand High Court
Case No : Writ Petition (S) No. 5041 of 2010

Ambika Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 19-08-2011

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2013) 1 JLJR 527

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Advocate : Pandey Neeraj Rai, for the Appellant; A. Allam for State, for the Respondent

Final Decision : Allowed

Judgement

Dhirubhai Naranbhai Patel, J.—Learned counsel for the petitioner submitted that the petitioner's height having wrongly been measured by the respondents, lesser marks were given and, therefore, the petitioner could not get selected for the post of Constable. In fact, the petitioner has secured 19 marks whereas the lastly selected candidate has secured 20 marks. Learned counsel for the petitioner submitted that if the height of the present petitioner would have been measured correctly, the petitioner would have secured one mark more, because for the height 177.1 Cm. to 179 Cm. 12 marks are to be given and if the height is 179.1 Cm. to 181 Cm., then 13 marks are to be given. The respondents have measured the height of the petitioner as 178 Cm. and, therefore, the petitioner has been granted 12 marks whereas the correct height of the petitioner is 179.7 Cm., as per the petitioner as well as according to the measurement of the height done by the Civil Surgeon, Latehar, who has already filed his affidavit in pursuance of the order, passed by this Court dated 2nd August, 2011 and, therefore, the petitioner will be entitled to 13 marks towards his height. Thus, instead of total 19 marks, the petitioner will get total 20 marks, after adding one mark and, therefore, he will be in the select list for the post of Constable and,

therefore, let a suitable writ be issued upon the respondents to select the present petitioner for the post of Constable. Several counter affidavits have been filed on behalf of the respondents and one of such counter affidavits is the supplementary counter affidavit, filed on behalf of Superintendent of Police, Latehar, wherein, at paragraph No. 6 it has been stated as under:--

2. 6..... The height measured by the Respondent State has its own method and standard of measurement accordingly to which the height of the petitioner is 178 c.m. & not above. So far the measurement made by Civil Surgeon is concerned, the same is not acceptable as the criteria shall differ.

2. Having heard learned counsel for both the sides and looking to the facts and circumstances of the case, the impugned order is fit to be quashed and set aside for the following facts and reasons:--

(i) It appears that the present petitioner had applied for appointment to the post of Constable, in pursuance of an advertisement at Annexure-1 to the memo of writ petition for Latehar District.

(ii) It further appears that the petitioner has appeared in all the tests, including physical test, and has cleared the tests, taken by the respondent-State authorities.

(iii) It appears that for different qualifications of a candidate, certain marks are to be allowed and one of such qualifications is the height. The marks as per the qualifications are as under:--

In view of the aforesaid bifurcation of the marks, the petitioner's educational qualification is B.Sc. and, therefore, 7 marks are to be given for this qualification.

(iv) Now the only question left out is about his height.

The height of the petitioner has been measured by the Civil Surgeon, Latehar, in pursuance of the order, passed by this Court on 2nd August, 2011 and the Civil Surgeon, Latehar, after measurement of the height of the petitioner, has filed a detailed affidavit, wherein, it has been stated on oath by the Civil Surgeon, Latehar, that the height of the petitioner is 179.7 cm.

In view of the affidavit, filed by the Civil Surgeon, Latehar, the petitioner is entitled to 13 marks towards his height. Thus, the total marks i.e. 7 marks for his educational qualification plus 13 marks for his height will come to 20 marks and as per the counter affidavit, filed by the respondents, the lastly selected candidate has secured 20 marks. This affidavit has been filed by one Sri Panchanan Singh son of Sri S.N. Singh, Deputy Superintendent of Police (Headquarters), Bokaro, wherein, at paragraph No. 4, it has been stated that the last selected candidate has secured 20 marks.

Thus, the petitioner, by now, has also secured 20 marks.

(v) Learned counsel for the respondents has relied upon the counter affidavit,

filed by the Deputy Superintendent of Police, Latehar, wherein, at paragraph No. 6 it has stated as under:--

6. That it is stated that different criteria has been fixed for appointment like height, Long Jump, High Jump, running, written examination and physical fitness. The height measured by the Respondent State has its own method and standard of measurement accordingly to which the height of the petitioner is 178 cm. & not above. So far the measurement made by Civil Surgeon is concerned, the same is not acceptable as the criteria shall differ.

(Emphasis supplied)

(vii) The aforesaid stand of the respondent-State is not accepted by this Court, mainly for the reason that when for every centimeter of the height of a candidate if the marks are to be allowed, then the State authorities ought to have measured accurately the height of a candidate. There cannot be a lump sum, general and presumption in the measurement of the height of a candidate, because difference in centimeter will make difference of one mark in the total marks and thereby, a candidate may come in the selection zone or he may go out of the selection list. Therefore, there cannot be a different standard of measurement of the height by the State. The standard unit of measurement of height or length is one centimeter or one inch or one foot or one meter. In the aforesaid affidavit, it is stated that the State has its own method and standard of measurement. This is a wrong notion in the mind of the respondent authorities that a ruler of the State is measuring differently, than rest of the world. "One centimeter" of police cannot be different than that of others. Para 6 of affidavit filed by respondents reflects that police centimeter is different than polished centimeter. We may understand that State police has a different standard for their efficiency in maintaining law and order, but there cannot be a different standard of measurement of the height, as stated in paragraph No. 6 of the counter affidavit filed by the Deputy Superintendent of Police, Latehar. It appears that State has not measured correctly the height of the candidate and, therefore, this Court has passed a detailed order dated 2nd August, 2011 and a direction was given to the petitioner to deposit Rs. 1,000/- for his correct measurement of the height by Civil Surgeon, Latehar and if the measurement of the State is found to be correct, then this amount of Rs. 1,000/- will be counted as cost to the respondent-State. The petitioner has deposited this amount and his height was measured by the Civil Surgeon, Latehar and as per the affidavit, filed by the Civil Surgeon, Latehar, the height of the petitioner is 179.7 c.m. and, therefore, now the State is filing a counter affidavit that the standard of measurement of a height of the State is different. This is absolutely unreasonable stand, taken by the respondent-State authorities especially when every centimeter of the height gives a different marking system to the candidate. If the State would have given separate marking for every millimeter of the height, perhaps much more accuracy would have been expected from the State authority for measurement of the height. All depends upon how many marks the State is giving whether per

millimeter or per centimeter or per inch. If per centimeter marks are to be given, then more accuracy is required for measurement of the height. The Police Department cannot have different standard of measurement of a height. Method of measurement of height and width of a candidate cannot be a different for police and for some other persons. State is an ideal employer. Height remains intact. The State ought to have purchased an accurate ruler for measurement of a height of a candidate. As per Constitution of India, every candidate has right under Article 16 of the Constitution of India to get the public employment. Equality of opportunity to get the public employment is guaranteed under Article 16 of the Constitution of India, which cannot be taken away by the respondent-State. By wrong measurement and using a wrong ruler for measurement of the height for one mark, the petitioner will go out of the select list and by getting one mark more, he will be there in the select list. The measurement of the height by the Civil Surgeon, Latehar, is accepted by this Court for the present candidate, who is petitioner in this writ petition.

(viii) The State cannot have a different standard for measurement of height, width etc. There is already a fixed quantity for S.I. Unit or any other unit, for measurement of height or length.

3. I, therefore, direct respondent No. 2 to treat this petitioner's height as 179.7 c.m. and allot one mark more to the petitioner, as per the standard fixed by the State and, thereafter, if the petitioner is coming within the select list, then he will be appointed to the post of a Constable. The aforesaid decision will be taken by respondent No. 2 within a period of four weeks from the date of receipt of a copy of the order of this Court.

4. I, hereby, permit the petitioner to withdraw Rs. 1,000/-, so deposited by him, before this court. The application will be preferred to the Registrar General, Jharkhand High Court, Ranchi, who on proper verification of the identity of the petitioner will return the said amount, through account payee cheque. This writ petition is, accordingly, allowed and disposed of.