

(2007) 03 PAT CK 0173
In the Patna High Court
Case No : CWJC No. 10027 of 2003

Amit Kumar Singh

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-03-2007

Acts Referred:

Citation : (2007) 2 PLJR 519

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—Heard counsel for the parties. Vide advertisement contained in Annexure-11 dated 13.8.2002 process for recruitment of Constables (General Duty i.e. G.D.) was initiated. The petitioner finding himself to hold the requisite qualification as well as other physical parameters laid therein applied. He was allotted Roll No. 364 for the purposes of his selection. He participated in the physical test held on 10.11.2002 and thereafter appeared in the written test on 3.12.2002. He was successful in both the tests.

2. The petitioner thereafter was placed before a Medical Board where he was found unfit. However he challenged the decision of the Medical Board and a re-medical test was conducted on him in February, 2003. The reconstituted Medical Board held the medical test on 17.2.2003 and found him to medically fit. Thereafter he was interviewed. It is stated by the petitioner that his performance was satisfactory and he produced the necessary certificates including the domicile certificate issued by the Circle Officer, Baghmara, District Dhanbad.

3. The respondents raised an objection that the domicile certificate issued by the Circle Officer was not acceptable as in terms of the advertisement the certificate ought to be of the Sub Divisional Officer or the District Magistrate concerned. The petitioner was granted two days time to produce the same. The date fixed was 24.2.2003. The petitioner contends in the writ application that he had

approached the office of Sub Divisional Officer, Dhanbad but since he was engaged in certain urgent magisterial duty the same was not issued to him by 24.2.2003. The certificate in question was issued by the Sub Divisional Officer only on 26.2.2003. The petitioner immediately rushed with the certificate and tried to produce the same before the authorities on 27.2.2003. It is alleged that the petitioner was not allowed to enter the Group Centre and, therefore, was prevented from submitting the domicile certificate in person. Left with no option he forwarded the domicile certificate with an application along with an appeal by registered post to the Inspector General of Police, C.R.P.F., Bihar Sector as well as a copy to Deputy Inspector General of Police, C.R.P.F., Group Centre, Jamshedpur. The petitioner further states that the last date for issuance of appointment letter by the Group Centre, Jamshedpur was 31.3.2003 and the requisite application along with domicile certificate was before the competent authorities by 27.3.2003. However, the domicile certificate was not accepted by the respondents and the prayer made before the superior authorities was rejected vide order dated 26.5.2003.

4. A perusal of the impugned order contained in Annexure-8 would indicate that the only ground for the said rejection is that the petitioner failed to produce the domicile certificate in time and the domicile certificate contained a date of later than the interview date. The merit or other qualification in the selection process was not an issue. The petitioner avers that he had produced a domicile certificate issued by the Circle Officer at the time of the interview but since the same was not accepted in terms of the advertisement he took steps and at the shortest possible time i.e. within 3-4 days obtained the certificate in question and tendered the same before the authorities. No doubt the authorities had granted him time till 24th February, 2003 but since the concerned Sub Divisional Officer was not available within the time fixed by the respondents, he could only obtain the same on 26th February, 2003 and produced the same on 27th February, 2003. His contention is that the basic fact that he was a domicile of the concerned district was established by the certificate issued by the Circle Officer, who is a Government functionary and that position was not altered at any stage. In fact the position stood duly fortified by the certificate issued by the Sub Divisional Officer. The authorities, therefore, have acted arbitrarily and taken too narrow a view to deny appointment to the petitioner, who was otherwise fully qualified as he had cleared all the tests and interview for the same said selection.

5. The stand of the respondents in the counter affidavit is that in terms of the advertisement domicile certificate issued by the District Magistrate or a Sub Divisional Officer would be the only proof and in this regard they have brought a letter dated 31.3.1998 addressed to the Deputy Commissioner, Singhbhum to show that the Deputy Inspector General of Police, C.R.P.F., Jamshedpur had communicated that only these two officials are the competent persons to issue domicile certificate. Since the petitioner did not produce the domicile certificate of these two competent officials, therefore, they had no option but to reject his claim.

6. One thing which is not understood by this court is that how can a letter addressed to the Deputy Commissioner, Singhbhum can be made a basis to fortify the stand of the respondents when admittedly the petitioner hails from Dhanbad district and he had produced the domicile certificate of the Circle Officer of the district at the initial stage and the same was supplemented by a certificate issued by the Sub Divisional Officer of Dhanbad. Another aspect of the matter is that in the opinion of this Court the respondent authorities have taken too narrow a view to reject the claim of the petitioner for being appointed to the post. The petitioner in this regard relies on a Division Bench decision of this Court in the case of Madhu Sudan Bari vs. State of Bihar, 1991(1) PLJR 511, where in a similar circumstance the Court held that the authorities ought to consider such cases liberally and a belated submission of a certificate in question should not come in the way of appointment specially if the candidate in question has already qualified. Counsel for the petitioner also relies on a decision of Kerala High Court reported in 1985(1) SLR 191 in the case Kuriakose vs. State of Kerala (Ker), where the Court had held that the production of the original document at the time of interview need not be such a fundamentally important condition as not to admit of any relaxation whatsoever. The petitioner states that since he produced the necessary certificate within three days of the deadline fixed by the respondents, the respondent ought to have taken a liberal view of the matter and allowed the petitioner to join. The petitioner has raised yet another question, whether insistence on domicile certificate as a precondition for appointment was valid enough in view of the fact that the Courts have frowned upon such condition keeping in view the constitutional scheme of things. He has relied upon a decision reported in AIR 2002 SC 2676 in the case of Kailash Chand Sharma v. State of Rajasthan as well as a decision rendered in AIR 2002 Jhar. 104 in the case of Laxmi Narayan v. State of Jharkhand.

7. This Court need not go into the second issue with regard to the condition laid down by the respondent authorities about the domicile but surely in so far as the first contention is concerned the decision of the respondents in denying appointment to the petitioner was surely very harsh. The authorities have taken too much of a technical view of the fact that the petitioner did not produce the domicile certificate by 24th February 2003 fixed by them but the same was produced only on 27th February, 2003. In view of the decision rendered by a Division Bench of this Court in the case of Madhu Sudan Bari (supra) as well as the Kerala High Court in the case of Kuriakose (supra), this Court is of the opinion that the order passed by the respondents "dated 26.5.2003 contained in Annexure-8 is fit to be and is accordingly quashed with a direction to the respondents to consider the case of the petitioner for appointment as a constable (G.D.).

8. This Court, however, before parting would like to indicate that since the issue relates to the year 2003, therefore, the respondent authorities would satisfy itself about the eligibility of the petitioner for such appointment considering his age as well as physical fitness as of today. This writ application is accordingly

allowed to the extent indicated above.