

(2006) 05 JH CK 0028

In the Jharkhand High Court

Case No : Writ Petition (S) No. 7014 of 2005

Jaichand Yadav

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 11-05-2006

Acts Referred:

Citation : (2006) 3 JCR 447

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Vijay Kumar Roy, for the Appellant; Abhishek Kumar, JC to AG, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—This application has been preferred by the petitioner for a direction on the respondents to select him as Constable in Indian Reserve Batalian, Ranchi, which is a wing of Jharkhand Armed Police-I.

2. According to the petitioner, he competed in the physical test and is having the height of 171 cm. but has not been selected, though persons, having obtained lesser marks, have been selected and appointed.

3. Earlier when the case was taken up on 18th April, 2006, learned Counsel for the petitioner submitted that though the petitioner is Intermediate, one point, to which the petitioner was entitled towards Intermediate qualification, having not been added, he was not selected. It was suggested that if one point is added, the petitioner will come within the zone of appointment against the post, reserved for other backward category.

4. The respondents were directed to file counter affidavit, enclosing copy of the application, preferred by the petitioner, and to state whether any additional mark can be given for intermediate qualification. From the application form, enclosed by the respondents, it appears that the petitioner has shown his qualification as Intermediate, having height of 172 cm. He claimed reservation as Other Backward Class and has enclosed Caste Certificate, issued by the Sub Divisional

Officer, Gopalganj dated 10th September, 1997 and the Circle Officer, Fulwaria, District-Gopalganj (Bihar). The respondents while accepted that the petitioner being Intermediate would have been given 7 marks for I.A. and 8 marks towards height i.e. total 15 marks, submits that he has obtained 14 marks. From their affidavit it appears that if the candidature of the petitioner is considered against the post, reserved for other backward category, then his name will be inserted at serial No. 214A and the persons, having lower position, (sic) been appointed he may be appointed.

5. The question as to whether a member of backward category or a candidate of other reserved category of one State can be treated to be a member of backward category or other reserved category for other State fell for consideration before a Division Bench of this Court in the case of Kavita Kumari Kandhw and Ors. v. State of Jharkhand and Ors. [W.P.(S) No. 578 of 2004 & analogous cases]. In the said case, the Court held as follows:

11. In view of the aforesaid decisions of the Supreme Court it is clear that a Backward Class of one State cannot be deemed to be so in relation to other State and the certificate, issued by one State, is not valid for other State.

6. That was also a case where the members of backward category, scheduled caste and scheduled tribe of the State of Bihar claimed for reservation in the matter of appointment in the services of the State of Jharkhand. In view of the aforesaid finding, the Court rejected their claim and dismissed the writ petitions.

7. Admittedly, the petitioner has produced a caste certificate, issued by the authorities of the State of Bihar. He being a member of reserved category of the State of Bihar, can not be treated to be a member of backward category for the State of Jharkhand and at best, his case can be considered against unreserved post as general category.

8. Counsel for the petitioner submitted that there are members of other backward category of the State of Bihar, who have been appointed against reserved posts. But in absence of any such person being a party before in this case, this Court can not give any finding. If somebody has been wrongly treated as a member of backward category of this State and has been appointed, the petitioner may bring it to the notice of the competent authority, who will act as per the decision, rendered by this Court in the case of Kavita Kumari Kandhw and ors. (supra) and may pass appropriate order after notice and hearing such party.

9. The case of the petitioner is remitted to the respondents with a direction to consider his case against unreserved post, if vacant. If the petitioner comes within the zone of appointment as a general category candidate or any person having lower marks than the petitioner i.e. less than 15 marks or same marks i.e. 15 marks has been appointed against unreserved post of Constable, they consider the case of the petitioner and will issue appropriate order within six weeks from the date of receipt/production of a copy of this order.

10. The writ petition stands disposed of with the aforesaid observations and directions.