

(2003) 11 PAT CK 0054
In the Patna High Court
Case No : C.W.J.C No. 1502 of 1999

Manibhushan Kumar Rao and Others	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 03-11-2003

Acts Referred:

Citation : (2003) 3 BLJR 2226 : (2005) 3 PLJR 355

Hon'ble Judges : S.N. Jha, J; B.N.P. Singh, J

Bench : Division Bench

Advocate : Sadanand Jha and S.P. Tewari, for the Appellant; S.J. Rahman, GP 7 and V.B. Ambastha, JC to GP 7, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Jha and B.N.P. Singh, JJ.—There are three petitioners in this case. They seek, in effect and substance, a direction upon the respondents to appoint them as Constables in the Bihar Police Force. They had approached this Court seeking similar direction earlier in CWJC No. 10123/92. In the light of direction in that case the claim of the petitioners was considered and rejected on 7-2-1997. They naturally also seek quashing of the said order:

2. The petitioners are trained Home Guards. Their case is that names were called for from different units for participating in the 1986 Republic Day Parade. The petitioners and others were nominated from their respective units and accordingly, they participated in the parade on 26th January, 1986. In view of their performance they along with others were deputed to the Special Battalion of the Bihar Home Guards at Bhita where they are since working. They took part in different operations such as "Black Panther" and discharged their duties satisfactorily. Considering their performance and expertise it was decided to appoint those who had participated in the Republic Day Parade as regular constable in the Bihar Police. The grievance of the petitioners is that while others have been appointed their cases have been ignored. As indicated above, they came to this Court in CWJC No. 10123/92 which was disposed of on 15-2-1996

with a direction to consider their cases. Their claim however, was rejected on 7-2-1997. Reference was made to an earlier writ petition, CWJC No. 8545/91 in which similar direction was issued by this Court and pursuant to which the petitioners concerned were appointed as regular Constables in the Bihar Police.

3. It may be mentioned here that the petitioners had moved this Court also in MJC No. 519/97 complaining non-compliance of the order in CWJC No. 10123/92, and CWJC No. 10936/98. MJC No. 519/97 was disposed of on 6-1-1999 in view of the disposal of the representation on 7-2-1997. CWJC No. 10936/98 too was dismissed as withdrawn on 4-2-1999. Though it is not known as to what relief was sought in CWJC No. 10936/98, prima facie, the relief sought in the case must be connected with appointment as Police Constables. If so, it is doubtful as to whether the order dated 4-2-1999 dismissing the writ petition as withdrawn would not bar a fresh writ petition like the present one. However, we do not want to go into that aspect of the case, for we are satisfied on merit that the desired relief cannot be granted to the petitioners.

4. Before we set out reasons we may mention that the Bihar Home Guards Act, 1947 envisages creation of a volunteer force to assist in the maintenance of peace and tranquility in the State. It is designed to serve as an auxiliary force to the Police Force in maintaining internal security as indicated in the preamble to the Act itself. Section 3 of the Act provides that the State Government shall constitute in such manner as may be prescribed a force known as Home Guards for discharging such functions in relation to the protection of persons, security of property and public safety in any area within the State, as may be assigned to them in accordance with the Act and rules made thereunder. u/s 8, a Home Guard serves the State Government for a period of twelve months (including the period spent over training), extendable for such period as may be considered necessary. The Home Guards thereafter, remain in the reserve force for a period of three years and while in reserve are liable to be called up for duty at any time. Section 13(2) confers rule making power on all matters which are required by the Act to be prescribed including the organisation, appointment, qualifications, conditions of service functions, discipline etc. of the Home Guards. Under Rule 3(3) of the Bihar Home Guards Rules, 1953 so framed, the Home Guards Force consists of gazetted and non-gazetted officers as specified in the First Schedule. Rule 4 lays down the qualifications for enrolment as a Home Guard. Section 5 lays down the procedure for appointment of officers and men of the Home Guards Force. It also confers the appointment making power on different authorities depending on the rank, from Commandant General to Sepoys.

5. It is not necessary for the purpose of this case to notice the qualifications for enrolment as Home Guard or the procedure for appointment or the appointment making power. Suffice it to say that any person possessing the requisite qualification under Rule 4 is eligible for "enrolment" as Home Guard whereas Rule 5 refers to "appointment" of officers and men of the Home Guards. The distinction between enrolment and appointment is relevant to appreciate the

status of Home Guards visa-vis the regular officers whether gazetted or non-gazetted or Sepoys comprising the Home Guards Force. Under Rule 12(1)(i) after completing the training prescribed under Rule 11 and during the period in which a Home Guard is required to serve the State Government u/s 8 (1) of the Act, he is required to be on duty for three days a month or six days every alternate month, each day being of six hours and also attend training camp for three weeks in a year. Under Rule 12 (1) (iv) a Home Guard may at any time be called up for any duty specified in Rule 13 (2) as may be allotted to him by the District Magistrate. Under Rule 12(1) (v) ordinarily a Home Guard is supposed to serve only in his own district, but in an emergency he may be asked to serve at anytime anywhere in the State. Rule 13 enumerates the duties of the Home Guards. Rule 14 provides for payment of allowance at the rates prescribed. Under Rule 7 a Home Guard has to be discharged on completion of the period of his service of three years in the reserve force.

6. From the above resume of the Home Guards Acts and the Rules it is manifest that the Act/Rules envisages a different status to the Home Guards distinct from the gazetted or non-gazetted ranks including Sepoys, comprising the Home Guards Force. This aspect is relevant in view of the admitted position in the present case that the petitioners notwithstanding their continuance all these years have remained volunteers. The claim of the petitioners was rejected primarily on the ground that they stand on different footing from the petitioners of CWJC No. 8545/ 91. There is no dispute on this point. It appears that the persons concerned were not volunteers in the Home Guard and therefore, they were given different treatment and appointed in the Bihar Police Force.

7. In Annexure A to the counter-affidavit on behalf of respondent No. 8 it has been stated that the number of Home Guards Volunteers enrolled under the Bihar Home Guards Act is more than a lakh in the "State of Bihar. These Volunteer Home Guards are called up from time to time to perform duties in the State Headquarters, CTI Bhita and different divisions and districts for which they are paid duty allowances. As against the number of Home Guards Volunteers, the number of posts in the Bihar Police Force is limited and therefore, appointment of volunteers against few permanent posts in the Police Force from the Home Guards Organisation will frustrate the scheme of voluntary service.

8. That being the undisputed position, it would follow that the relief sought by the petitioners cannot be granted to them, for, notwithstanding the period they have performed their duties in the Special Battalion, Bhita, if they cannot be absorbed on regular posts as Sepoy in the Home Guards Organisation, there is little scope to consider their case for appointment in the Bihar Police Force. The thrust of the petitioners case is that others who participated along with them in the Republic Day Parade of 1986 have been appointed as regular Constables in the Police Force. There being basic difference in the status between the two groups, they cannot complain of discrimination.

9. We thus do not find any error in the impugned decision dated 7-2-1997

rejecting the petitioners claim and, also thus do not find any merit in this writ petition, which is accordingly dismissed.