
(1994) 04 PAT CK 0034
In the Patna High Court
Case No : C.W.J.C. No. 1045 of 1990

Mithilesh Prasad Yadav

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 12-04-1994

Acts Referred:

Citation : (1994) 04 PAT CK 0034

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this application the petitioner has prayed for issuance of a writ in the nature of writ of mandamus commanding the respondent No. 3 Superintendent of Police, Katihar to implement the direction of the Inspector-General of Police (Provision and Training), Bihar. Patna (Respondent No. 2) as contained in annexure-5, whereby the service of petitioner has been directed to be taken back from the date the order is issued by the said Superintendent of Police, Katihar.

2. In short, the case of the petitioner is that he was selected for appointment to the post of Constable after physical test at Bhagalpur in the year 1988 whereafter he received a registered letter bearing No. 3304 dated 16-7-1988 from respondent No. 3 asking him to appear before him along with original certificates in regard to the education, caste, age and home-guards with the clear understanding that the appointment shall be made only after due verification of the same. A true copy of the said letter has been annexed as annexure "1". The petitioner in response to the same appeared before respondent No. 3 along with original certificates and after due verification of the same and after having been found suitable and fit in the medical test, was appointed as constable on 1-8-1988. Thereafter, he was sent to police training in December, 1988. However, in course of training the petitioner along with one Sudhir Prasad Yadav were sent back to Katihar as they were found to be illiterate and consequently, respondent No. 3 terminated their services with effect from 15-7-1989, a true copy whereof has been annexed as annexure-3.

3. It is stated that in compliance to the letter No. 490, dated 27-5-1989 of Inspector-General of Police (Provision and Training) pursuant to which the service of the petitioner was terminated, the respondent No. 3 again conducted a test regarding the educational performance of the petitioner which was held and the petitioner was found to be able to read and write and thus, his case was again recommended for re-appointment by the Superintendent of Police, Katihar vide his letter dated 10-8-1989 to the Inspector-General of Police (Provision and Training) as contained in annexure-3. Thereafter, the Inspector General of Police (Provision and Training) Bihar, Patna, asked the Superintendent of Police, Katihar to send the copies of the petitioner which were examined in order to test his literacy through special messenger. It appears that the same was sent by the Superintendent of Police from perusal of which the Inspector-General of Police (Provision and Training) found that the petitioner possesses eligibility in reading and writing upto the standard of 7th Class. However, the Inspector-General of Police(Provision and Training), Bihar, Patna vide letter dated 22nd August, 1989 as contained in annexure 5, issued direction to the Superintendent of Police, Katihar to take them back in service under special circumstances. Thereafter, the petitioner also approached the Inspector General of Police (Provision and Training) as well as Superintendent of Police, Katihar by filing a representation on 21-11-1989, but when no further action was taken pursuant to the direction contained in annexure-5 he filed the present writ application for the reliefs mentioned above.

4. Learned Counsel for the petitioner submitted that a Bench of this Court in the case of Sakhichand Yadav Vs. State of Bihar and Others, , held that Rule 663 of the Bihar Police Manual prescribing educational qualification for appointment of Constable is only regulatory and that the Selection Board has discretion to relax the educational qualification in appropriate cases. Learned Counsel submitted that from reading of annexure 5 it would appear that it was under special circumstances, that the service of the petitioner was directed to be taken back. Thus, according to him, the qualification proscribed under Rule 663 under the Bihar Police Manual which provides that candidate must have passed Secondary, i. e. Matriculation examination for appointment of a Constable, shall be deemed to have been relaxed, On the other hand, Mr. Krishna Murari, learned G. P. 5 submitted that no order has been produced on behalf of the petitioner whereby the educational qualification has been relaxed in his favour for appointment on the post in question. However, Mr. Krishna Murari, learned G. P. 5 could not dispute the genuinences of the document contained in annexure 5 in absence of any counter-affidavit in the present case.

5. Further, it is not disputed that the Inspector-General (respondent No. 2) had the authority to relax the qualification. In that view of the matter, I am constrained to hold that under the circumstances the qualification will be deemed to have been relaxed vide annexure 5, whereby the respondent No. 2 issued direction to the Superindendent of Police, Katihar (respondent No. 3) to take the petitioner back in service from the date of order issued by him.

6. Moreover, the facts stated in paragraph 14 of the writ application that several persons, who were appointed Constables along with petitioner and were holding similar eligibility like the petitioner, have been continued in service...and his service has been terminated is also not disputed, as there is no counter-affidavit filed on behalf of the respondents. From the judgment of Sekhichand Yadav's case (supra) it appears that in a similar situation, the State Government appointed two Constables but of the four discharged constables, whose cases were also identical. This Court held the action of the authority in not giving relief to the petitioner of that cases amounted to hostile discrimination and not sustainable.

7. Accordingly, respondent No. 3 is hereby directed to issue necessary orders in the light of the order of the Inspector-General of Police (Provision and Training) respondent No. 2 as contained in annexure 5 with utmost expedition and positively within one month from the date of receipt/production of copy of this judgment/order.

8. In the result, the writ application is allowed. In the facts and circumstances of the case, there shall be no order as to costs.