

(2018) 04 PAT CK 0090

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4547, 4637, 4846, 5129, 5209, 7037, 7087, 8326, 14085, 15716, 17651 Of 2017

Pintoo Kumar Singh And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 05-04-2018

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Citation : (2018) 2 PLJR 707

Hon'ble Judges : Mohit Kumar Shah, J

Bench : Single Bench

Advocate : Rajendra Pd. Singh, Nityanand Mishra, Mukesh Kumar Singh, Rajeev Kumar Singh, Anjani Kumar Sharan, Rajesh Kumar Verma, Kalyan Shankar, S.D Sanjay

Final Decision : Allowed

Judgement

The Ld. Counsels of various writ petitions have got their cases tagged to the first case i.e. CWJC No. 4547 of 2017 on the pretext that the issue

involved in all the writ petitions are same and similar as well as all the writ petitions arise out of the same selection process. It has been agreed

amongst the learned counsels, appearing in various writ petitions, that the lead argument would be advanced by Shri Rajendra Prasad Singh, Ld.

Senior Advocate and the other counsels would adopt the same.

In view of the aforesaid, since all the writ petitions arise out of the same selection process and the issue to be adjudicated in the said batch of writ

petitions are similar, the aforesaid batch of writ petitions have been heard together with the consent of learned counsel for the parties and are being

disposed of by the present common judgment.

The learned counsel for the various writ petitioners have also prayed that the first case i.e. CWJC No. 4547 of 2017 be taken as the lead case for the purposes of adjudication of the issue involved in the aforesaid batch of writ petitions.

The short facts of the case are that the recruitment on the post of constable was initiated by the Staff Selection Commission (hereinafter referred to

as the 'S.S.C.') on the basis of the policy of the Ministry of Home Affairs. The notification for recruitment to the post of Constable Exam-2015

was published by way of an advertisement dated 24.01.2015 for appointment in the various forces like CAPFs, NIA, SSF, Rifleman (GD) in Assam

Rifle etc. Initially, advertisement was issued for recruitment to 62,390 posts of constables. After the candidates had applied, the admit cards for

57,44,100 candidates were uploaded on the concerned website on 20.04.2015 for the purposes of taking the Physical Evaluation Test (PET). The

Physical Evaluation Test was conducted with effect from 25.03.2015 to 30.07.2015. Thereafter, the successful candidates were given admit cards for

the written examination which was conducted by the S.S.C. on 04.10.2015 for those candidates who were found qualified in PST-PET. The result of

the written examination was declared by the S.S.C. on 14.03.2016 and 07.04.2016. The cut off marks of various categories for various States were

fixed. The candidates, who had qualified, were then called for the Detailed Medical Examination which was held in the month of May-June, 2016.

Subsequently, the Review Medical Examination of the candidates, who had appealed against their unfitness in the Detailed Medical Examination, were

conducted in between 23.08.2016 to 11.09.2016. Finally, the S.S.C. declared the result of the candidates selected on 02.02.2017. A total number of

51,678 male candidates and 5,336 female candidates were provisionally selected.

The Ld. Senior Counsel Shri Rajendra Prasad Singh, assisted by Shri Nityanand Mishra and Shri Rajiv Kumar Singh, advocates has submitted that

thought the initial vacancies were 62390, however, the same was increased to 64,066, out of which 57014 candidates have been appointed on the post

of Constable. It is further submitted that there are candidates who had applied under the O.B.C. category but have been recommended in the

Scheduled Caste category for the purposes of appointment. The learned senior counsel has raised various issues for the purposes of assailing the

selection process. Firstly, it has been submitted that during the course of the selection process, the cut off marks have been changed. Secondly, it is

submitted that out of the total number of selected candidates some of them have been kept under the suspected list and in some cases such candidates

have been kept under the mismatch category on account of detection of difference in signature / hand writing / L.T.I. as well as on account of various

other reasons, hence the said vacancies arising out of mismatch category should be filled up from the merit list prepared in pursuance to the aforesaid

advertisement of the year 2015, which also includes the names of the writ petitioners and the writ petitions have a fair chance of being appointed in

case such an exercise is undertaken especially since the said candidates have been declared successful and not found to have failed.

The learned senior counsel has relied on a judgment reported in 1996 (4) SCC 319 (Prem Singh & ors. vs. Haryana State Electricity Board & ors.),

wherein the Hon^{ble} Supreme Court has held that strictly speaking excess number of candidates, beyond the number of posts advertised, selected and

appointed is not justified. It has been further held that appointments made against future vacancies, on posts which were only created are invalid. The

next case on which reliance is placed is a case reported in AIR 1990 SC 405 (P. Mahendran & ors. vs. State of Karnataka & ors.) wherein the

Hon^{ble} Apex Court has held that every statute or statutory rules is prospective unless it is expressly or by necessary implication made to have

retrospective effect. Further reliance is placed on a judgment reported in AIR 1987 SC 169 (Ms. Neelima Shangla vs. State of Haryana & ors.), to

contend that the names of all the qualified candidates has to be sent to the Government by the Public Service Commission and it cannot withhold the

names of any qualified candidates. The other case relied upon is a case reported in (1992) 1 SCC 28 (Ashok vs. State of Karnatak) wherein the

Hon^{ble} Supreme Court has dealt regarding allotment of marks for interview out of the total marks fixed for evaluation. At this stage itself it would be

relevant to state that all aforesaid judgments relied upon by the learned senior counsel for the petitioners do not concern the issues raised for

adjudication in the aforesaid batch of writ petitions, hence does not deserve any attention.

Per contra, the learned counsel for the respondents Shri Anjani Kumar Sharan, learned Assistant Solicitor General of India, assisted by Shri Rajesh

Kumar Verma, advocate has contended that the PST/PET and Medical Examination conducted was of qualifying nature and the merit list was

prepared on the basis of the marks obtained by the candidates in the written examination. The learned counsel for the respondents has also referred to

the notice issued by the S.S.C. for the purposes of recruitment of Constables (G.D.) in CAPFs, NIA & SSF and Rifleman (G.D.) in Assam Rifles of

the year 2015 in pursuance whereof the entire selection process was conducted. The relevant portion of the said notice, referred to by the learned

counsel for the respondents, is reproduced hereinbelow: -

â??The salient features of the recruitment are as under:

i) The Examination will be advertised by SSC based on vacancies intimated by MHA,

ii) Application from candidates will be accepted through ON-LINE MODE only except for the State of J&K, North-Eastern States and Left

Wing Extremism (L WE) affected districts and Border districts of the country where the candidates will have the choice to apply in on-line or

off-line mode. Candidature of candidates applying through both the modes is liable for rejection summarily.

iii) The list containing names of LWE affected districts and border districts provided by MHA are available at Annexure- XIV & XIII.

iv) Physical Standards Test (PST)/Physical Endurance Test (PET) will be scheduled and conducted by the CAPFs. Call letters to candidates

will be issued/ uploaded on their website by the coordinating CAPF i.e., CRPF.

v) The Commission will conduct written examination of candidates qualified in PST/PET in BOTH ON-LINE (Computer based) AND OFF-

LINE (Paper mode) MODE.

vi) On-Line Examination will be in English & Hindi only. Off-line Examination will be in English, Hindi and other Regional Languages

mentioned in para 8 of this Notice.

vii) The candidates will have to opt for On-line or Off-line mode of Examination in the application form. Call letters for written examination

will be uploaded on the website of the concerned SSC Regional Office. Call letter for candidates applying off-line as per sub para (ii) above

will be dispatched by post also.

Viii) The Commission will process and declare the result of written examination and list of candidates shortlisted for Detailed Medical

Examination (DME) will be given to MHA/Co-ordinating CAPF i.e. CRPF.

ix) MHA/CRPF will issue call letters and conduct DME and Review Medical Examination (RME).

x) Collection of documents from the candidates and their verification will be done by the CAPFs during DME.

xi) After conduct of RME/DME, the Commission will process and declare the final list of selected candidates state-wise without making

Force

xii) Based on such merit list declared by SSC, the MHA/ CRPF will make force allocation, etc. and declare the result.

xiii) Court cases/RTI/Public Grievances relating to Not ice of Examination, conduct of written examination and preparat ion of merit list

would be handled by SSC and those relating to all other issues like Scheme of Examination, vacancies, conduct of PST/PE T, Detailed

Medical Examination, Review Medical Examination, Force Allocation of selected candidates, etc . will be handled by the Co-or dinating

CAPF-CRPF.

xiv) Only candidates qualifying in Physical Standards Test and Physical Efficiency Test will be called for the Written Exam inat ion

(online/offline), scheduled to be held on 04.10.2015 and subsequent days, if necessary. Based on performance in the Written Examination,

candidates will be shortlisted for Medical Examination in a ratio as may be decided by the Commission.

Note III: As the vacancies have been allotted to the concerned States/UTs, candidates are required to submit domicile certificates of the

states indicated by them in the application at the time of medical examination/ documents verification failing which his/her candidature will

be cancelled forthright and the candidate will not be allowed to undergo medical examination. If a candidate produces domicile certificate

issued by a state other than the state mentioned in his application he will be allowed to change the state code at the time of verification of

documents.

4(C): PROCESS OF CERTIFICATION AND FORMAT OF CERTIFICATES:

Candidates who wish to be considered against vacancies reserved/or seek age-relaxation must submit requisite certificate from the competent

authority. Otherwise, their claim for SC/ST/OBC/ExS status will not be entertained and their candidature/applications will be considered under

General (UR) category. The formats of the certificates are annexed. Certificates obtained in any other format will not be accepted. Candidates

claiming OBC status may note that the OBC certificate should have been obtained within three years before the closing date i.e. 23.02.2015. The

Commission has decided to accept OBC certificate, in the prescribed format, issued after the closing date for receipt of application but issued on or

before the date of their document verification, as valid proof of belonging to OBC.

Candidates will be considered for recruitment in their respective State/ UT on production of valid "Domicile Certificate" issued by the

competent authority so authorized by the concerned State/ UT to prove their domiciliary status at the time of documents verification

failing which his/her candidature will be cancelled forthright. If a candidate produces domicile certificate issued by a state other than

the state mentioned in his/her application he/she will be considered for the state for which he/she has submitted domicile certificate

and will be allowed to change the state code at the time of medical/ verification of documents.

NOTE: The candidates applying for the examination should ensure that they fulfill all the eligibility conditions for admission to the examination.

Their admission at all the stages of examination will be purely provisional, subject to their satisfying the prescribed eligibility conditions. If, on

verification, at any time before or after the PST/PET, written examination and medical examination, it is found that they do not fulfill any of the

eligibility conditions, their candidature for the examination will be cancelled by the Commission.

11. RESOLUTION OF TIE CASES

(a) The tie is resolved by the Commission by referring to the total marks in the written examination i.e. a candidate having more marks in the written

examination gets preference over the candidate(s) with less marks.

(b) If the tie still persists then the marks in Part A are referred to i.e. a candidate having more marks in Part A is given preference.

(c) If the tie still persists, the candidate older in age gets preference.

(d) If the tie still persists, it is finally resolved by referring to the order of names i.e. a candidate whose name begins with the alphabet which comes first in the alphabetical order gets preference.

In the case of non-receipt of call letters for PST/PET and Medical Examination/ inability to download the same from the website of the concerned

CAPF, candidates should contact the co-ordinating CAPF i.e. CRPF at least one week before PST/PET or Medical Examination. The schedule of

PST/PET and Medical Examination will be placed on the website of CRPF www.crfp.nic.in along with the contact details of officers to be contacted

in case of non-receipt of ACs for PST/PET and Medical Examination.

Detailed Programme of PST/PET and Medical Examination will be available on the website of the co-ordinating CAPF, i.e., CRPF along with Roll

Number block of candidates for each day, at least two weeks before PST/PET or Medical Examination. Similarly, details of centres / sub-centres will

also be available on the website www.crfp.nic.in at least two weeks before the written examination.

14. COMMISSION'S DECISION FINAL

The decision of the Commission in all matters relating to eligibility, acceptance or rejection of the applications, penalty for false information, mode of

selection, conduct of examination(s) allotment of examination centres and preparation of merit list will be final and binding on the candidates and no

enquiry/correspondence will be entertained in this regard.

17. IMPORTANT INSTRUCTIONS TO CANDIDATES

2. in view of the anticipated large number of applicants, scrutiny of the eligibility and other aspects will not be undertaken before the PST/PET and

Written Examination and, therefore, the candidature will be accepted only provisionally. Candidates are advised to go through the

requirements of educational qualification, age, physical standards, etc. and satisfy themselves that they are eligible for the posts, before

applying. Copies of supporting documents will be sought only from those candidates who qualify for the medical examination. When scrutiny of

document is undertaken after the written examination, if any claim made in the application is not found substantiated, the candidature will be cancelled

and the Commission's decision in this regard shall be final.

4. Candidates seeking reservation benefits as SC/ST/OBC/ ExS must ensure that they are entitled to such reservation as per eligibility

prescribed in the Notice. They should also be in possession of the certificates in the format prescribed by Government of India in

support of their claim when the copies of the certificates will be sought after the written examination. OBC candidates should ensure

that they are in possession of OBC certificate in the prescribed format issued by the competent authority within the due date

prescribed in this Notice.

11. The admit cards for PST/PET will be issued/ uploaded on their website by the CRPF, Whereas the admit card for written examination will be

issued/ uploaded on the website of the Regional Offices of SSC. Online applicants will download their admit cards for PET/ PST online only

from CRPF website www.crpfnic.in. Admit cards of only OFFLINE applicants will be sent through post, however they may also download the same

from above mentioned website.

The learned counsel for the respondents has submitted that as far as the first issue of change of cut off marks is concerned, the same has been

answered in paragraph no. 8 of the supplementary counter affidavit filed on behalf of the respondent no. 2, which is reproduced hereinbelow:-

8. That in reply to paragraph no. 6 of Rejoinder Affidavit, it is submitted that the contents of paragraph no. 9 of Short Court Affidavit

are true and are reiterated. The Respondents have processed the result of the candidates as per the provisions laid down in the Notice of

the Examination.

It was very clearly mentioned in para 8(III) (ii) that "The Commission shall have the discretion to fix different qualifying standards for

candidates belonging to different categories in different States/UTs, taking into consideration vacancies allotted to each State/UT".

The petitioners have no right to claim that the Respondent may declare their result as per their wish. It is further submitted that Staff

Selection Commission is a recruiting agency conduct examination for Group B (Non-Gazetted) & Group C posts in different

Ministries/Departments. It is further submitted that cutoff marks in Final result

for a particular State has been fixed on the basis of vacancies intimated by the user department for that State and number of candidates available.

It is further submitted that in similar matter relying upon the decision of Hon?ble Supreme Court in the case of Sankarshan Dash vs. Union

of India, reported in AIR 1991 SC 1612 that the number of vacancies to be filled up by the respondent is a matter of discretion lying with

them. But a candidate merely because he has been empanelled has no right to ask the employer to fill up all or any of the vacancies, the

Hon?ble High Court, Kolkata dismissed the W.P. 5722(W) of 2017 vide order dated 16.05.2017 and was pleased to observe that â??The

petitioner has no right to compel the respondents either to fill up the post or to give any appointment letter to her merely she has been

empanelled.â??

It is further contended that according to the notice of the examination, since the vacancies have been allotted to the concerned States/UTs, candidates

were required to submit domicile certificates of the State in which they had opted for being considered, thus the vacancies were allotted state-wise

and the marks of the last selected candidate (cut- off) was different for different States.

The learned counsel for the respondents has also contended that the cut-off has been fixed by the S.S.C. for the various States, however, what is

relevant to be considered is the marks of the last selected candidate, state-wise. The details of the marks of last selected candidate of the

State of Bihar for various categories have been mentioned in the counter affidavit filed by the respondents and it is submitted that none of the writ

petitioners have found place in the list of selected candidates on account of their low merit in their respective categories since marks obtained by them

were less than the marks obtained by the last selected candidates of their respective categories. It is submitted that in the supplementary counter

affidavit a comparative chart showing the reason of non-selection of the writ petitioners would show that almost all the writ petitioners barring a few

(the cases whereof have been rejected on account of various other reasons as also the said candidate not qualifying according to the criteria), have

not been selected on account of having less marks than the cut off marks/the

marks obtained by the last selected candidates in the respective categories. In this regard, the Ld. Counsel refers to Paragraph No. 13 of the Counter Affidavit filed on behalf of the respondent No. 2 which reads as follows:-

13. That as per the mark obtained by Petitioner No. 1 to 4, 6, 7, 9 to 16, 18, 20, 26, 28, 29, 32 to 43, 45, 47, 48, 50 to 61, 63, 64, 66, 67, 69, 70, 73 to 76, 78 to 84, 86, 91 to 96, 98 to 104 were failed to find place in the list of selected candidates due to their low merit in their respective category as marks obtained by them were less than the marks obtained by the last selected candidate of their respective category.

As far as the second aspect of the matter is concerned i.e. regarding adjusting the writ petitioners against the mismatch categories, it is submitted that

it is a well-settled law that merely because a candidate has been empanelled, the candidate has no right to ask the employer to fill up all or any of the

vacancies. It has been contended, relying upon the judgment reported in AIR 1991 SC 1612 (Sankarshan -vs . Union of India) that the number of

vacancies to be filled up by the respondents is a matter of discretion lying with them and the candidates cannot force them to toe their lines. The

learned counsel for the respondents has also relied on some judgments passed by this Court as well as has annexed some judgments of this Court

along with the counter affidavit/supplementary counter affidavit. The first line of cases is regarding the maintainability of the writ petitions on the

ground of jurisdiction, however, the said judgments are not being referred to inasmuch as the issue of jurisdiction has not been argued. The next

judgment relied upon by the respondents is a judgment passed by the learned Division Bench of the Hon'ble Calcutta High Court in W.P. No.

5722(W) of 2017 (Pooja Bose vs. Union of India & ors.) to contend that an empanelment in a select list does not give any right to those empanelled

candidates to be appointed when no post exists or when there is a policy decision of the Government not to fill up a post as well as to contend that the

Hon'ble Supreme Court has held that there is no right to appointment merely because a vacancy exists. Lastly, reliance has been placed on judgment

dated 19.12.2017 passed in CWJC No. 5698 of 2017, a case arising out of the same examination of the year 2015 and it has been submitted that this

Hon'ble Court has held that since the action complained by the said writ petitioners is a case of grant of opportunity to the applicants for rectification of error in the application forms and not a case of irregularity as projected by the petitioners and not a case of backdoor appointments as well as the said writ petitioners having not secured their position on merit in the respective categories of OBC and SC, the writ petitioners could not indulged in adventurous litigation, as such the writ petitions were dismissed. At this juncture itself it may be stated that the said Judgment dated 19.12.2017, passed by this Hon'ble Court was dealing with a case of change of caste category midway and backdoor appointments but has not adjudicated the lis involved in the present case, hence is distinguishable in the facts and circumstances of the present case.

I have heard the learned counsel for the respective parties as well as considered the materials on record. Firstly, I find from the records that the reasons which have been furnished by the respondents for showing that the petitioners have not been selected finally for the post of Constables, the main reason being the writ petitioners having less marks than the last selected candidates in the respective categories, has not been disputed by the writ petitioners, as such to the said extent, no fault can be found with the selection process conducted by the respondents. Secondly, the issue of change of the categories etc. as has been stated hereinabove and is also apparent from the response filed by the respondents in various writ petitions, do not smack of any arbitrariness or malpractices and that is why it appears that the learned counsel for the writ petitioners has ultimately abandoned the said ground for assailing the selection process. Thirdly, the issue of fixing of cut-off marks has also been adequately explained by the respondents and the fact is that no person having lesser marks than the writ petitioners has been appointed or to put it differently the writ petitioners have obtained lesser marks than the marks obtained by the last selected candidate of the respective categories.

Thus the only point, now left, for consideration is as to whether the writ petitioners would be entitled to be considered against the mismatch vacancies as well as against the left over vacancies which have not been filled up. In this regard, it would be appropriate to refer to a Judgment rendered by the

Hon'ble Supreme Court in the case of Asha Kaul & ors. vs. State of Jammu & Kashmir & ors. reported in (1993) 2 SCC 57,3 paragraph no. 8

whereof is reproduced hereinbelow:-

8. It is true that mere inclusion in the select list does not confer upon the candidates included therein an indefeasible right to

appointment (State of Haryana v. Subhash Chander Marwaha¹; Mani Subrat Jain v. State of Haryana²; State of Kerala v. A.

Lakshmikutty³) but that is only one aspect of the matter. The other aspect is the obligation of the Government to act fairly. The whole

exercise cannot be reduced to a farce. Having sent a requisition/request to the Commission to select a particular number of candidates for a

particular category, " in pursuance of which the Commission issues a notification, holds a written test, conducts interviews, prepares a

select list and then communicates to the Government " the Government cannot quietly and without good and valid reasons nullify the

whole exercise and tell the candidates when they complain that they have no legal right to appointment. We do not think that any

Government can adopt such a stand with any justification today. This aspect has been dealt with by a Constitution Bench of this Court in

Shankarsan Dash v. Union of India⁴ where the earlier decisions of this Court are also noted. The following observations of the Court are

apposite: (SCC pp. 50-51, para 7)

"It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the

successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely

amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post.

Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not

mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for

appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates,

as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this

Court, and we do not find any discordant note in the decisions in State of

Haryana v. Subhash Chander Marwaha¹, Neelima Shangla v.

State of Haryana⁵ or Jatendra Kumar v. State of Punjab.⁶

In the present case no reasons have been assigned by the respondents for non-filling the vacant posts of Constable and the only reason for non-filling

the vacant post is, no person lower in merit has been appointed. It must be authoritatively held that the said ground is not a plausible reason for not

filling up the advertised post which have undisputedly been calculated after a proper exercise. I am of the opinion that the reason for denial of

appointment to the writ petitioners i.e. "no candidate with lower merit than the petitioner has been appointed", would have been a good argument

in case all the advertised posts were filled up and then the writ petitioners would have had no right to be considered for appointment. It is not the case

of the respondents that the writ petitioners have failed the examination/test/selection process inasmuch as they have qualified on each and every step,

however, since they have lesser marks than the marks obtained by the last selected candidate, they have not been appointed.

Though it is a settled legal position that mere selection does not give a candidate an indefeasible right to appointment but that principle does not hold

good in cases where the posts advertised have remained vacant. It is equally a settled law that a State cannot deny appointment to a person duly

selected without a justifiable cause. Thus following the principle laid down by the Hon^{ble} Apex Court in the case of Asha Kaul (supra) as well as in

the case of Shankarsan (supra), which are good Law till date, I am of the view that the respondents cannot quietly and without good and valid reasons

nullify the whole exercise and tell the candidates, when they complain, that they have no legal right to appointment for the reason that firstly the State

does not have the license to act in an arbitrary manner and secondly since the respondents, in the present case, have failed to show any bona fide or

appropriate reasons for not filling up the left over vacancies. Another aspect of the matter is that when such huge resources, especially the tax payers

money, are spent by the authorities/the Staff Selection Commission, for recruiting personnel's, the entire exercise is required to be taken to a logical

conclusion and the same cannot be short circuited by not filling up all the vacancies advertised and that too without any plausible or appropriate

reasons.

For the reasons mentioned hereinabove, I direct the respondents to consider the claim of the writ petitioners for appointment on the post of constable against the mismatch/left over vacancies within a period of 30 days from today, without resorting to the principle that since the writ petitioners have secured lower marks than the marks obtained by the last selected candidates, they cannot be appointed. It is needless to state that the respondents would not compromise on merits and the minimum standards so prescribed by them. It is further held that the decision taken by the Apex Body of the Central Staff Selection Commission /Staff Selection Commission shall be final and would not be amenable to challenge in writ proceedings under Article 226/227 of the Constitution of India.

The writ petitions are allowed to the aforesaid extent.