

(1987) 03 PAT CK 0021
In the Patna High Court
Case No : C.W.J.C. No's. 3692 of 1986

Ramchandra Ojha and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 11-03-1987

Acts Referred:

Police Act, 1861 — Section 1

Citation : (1987) 35 BLJR 656

Hon'ble Judges : R.C.P. Sinha, J;N.P. Singh, J

Bench : Division Bench

Judgement

N.P. Singh, and R.C.P. Sinha, JJ.—This application has been filed on behalf of the petitioners for a writ of mandamus, directing the respondents to make the requisite declaration under Rule 2(g)(ii) of the Indian Police Service (Recruitment) Rules, 1954 (hereinafter referred to as "the 1954 Rules") that the petitioners are members of a duly constituted Police Service functioning in the State of Bihar which is equivalent to the Bihar State Police Service.

2. Petitioner No. 1 appeared at the 23rd Combined Competitive Examination of the Bihar Public Service Commission (hereinafter referred to as "the Commission") in the year 1974. On the recommendation made by the Commission, he was appointed as District Commandant, Bihar Home Guards, on 1-3-1977. Petitioner No. 1 claims to have received police training along with other Deputy Superintendents of Police of his batch, in the Police Training College, Hazaribagh including investigation etc. After completion of the training, he joined on 9-3-1978 as District Commandant, Home Guards at Ranchi. The other petitioners also claim to have appeared at different Competitive Examinations and on the basis of the recommendation of the Commission they were appointed as District Commandant, Home Guards. It is the case of the petitioners that the Bihar Home Guards Organisation is a duly constituted Police Force under the Bihar Home Guards Act, 1947 to assist the maintenance of law and order, as such the petitioners should be held to be the members of a duly

constituted Police Service functioning in the State of Bihar which ought to have been declared by the State Government to be equivalent to the Bihar State Police Service so that the cases of the petitioners could have been considered for promotion to the Indian Police Service in accordance with 1954 Rules.

3. The relevant part of Rule 2(g)(ii) while dashing "State Police Service" says as follows:

2 (g)(ii) in all other cases, the principal police service of a State, a member of which normally holds charge of a sub-division of a district for purposes of police administration and includes any other duly constituted police service functioning in a State which is declared by the State Government to be equivalent thereto.

Rule 4 prescribes the method of recruitment to the Indian Police Service, including by promotion, of substantive members of a State Police Service. Rule 9 provides the procedure for recruitment by promotion of members of a State Police Service to the Indian Police Service in accordance with such regulations which may be framed.

4. The Indian Police Service (Appointment by Promotion) Regulations, 1955 (hereinafter referred to as "the Regulations of 1955") contains the different provisions regarding the promotion of members of State Police Service to Indian Police Service. Regulations 2(j)(ii) defines State Police Service to mean as follows:

2 (j)(ii) in all other cases, the principal police service of a State, a member of which normally holds charge of a sub-division of a district for purposes of police administration and includes any other duly constituted police service functioning in a State which is declared by the State Government to be equivalent thereto.

The relevant part of Regulations 5 is as follows:-

5. Preparation of a list of Suitable Officers. (1) Each Committee shall ordinarily meet at intervals not exceeding one year and prepare a list of such members of the State Police Service as are held by them to be suitable for promotion to the Service. The number of members of the State Police Service included in the list shall not be more than twice the number of substantive vacancies anticipated In the course of the period of twelve months, commencing from the date of preparation of the list, in the posts available for them under Rule 9 of the Recruitment Rules, or 5 per cent of the senior posts shown against items 1 and 2 of the cadre schedule of each State or group of States, whichever is greater.

(2) The Committee shall consider for inclusion in the said list, the cases of members of the State Police Service in the order of seniority in that service of a member which is equal to three time the number referred to in sub-regulation (I):

Provided that such restriction shall not apply in respect of a State where the total number of eligible officers is less than three times, the maximum permissible

size of the select list and in such a case the Committee shall consider all the eligible officers:

Provided further that in computing the number for inclusion in the field of consideration, the number of officers referred to in sub-regulations (3) shall be excluded:

Provided also that the Committee shall not consider the case of a member of the State Police Service unless, on the first day of January of the year in which it meets he is substantive in the State Police Service and has completed not less than eight years of continuous service (whether officiating or substantive) in the post of Deputy Superintendent of Police or in any other post or posts declared equivalent thereto by the State Government.

After the name of members of State Police Service or any other Police Service which has been declared equivalent to the State Police Service are included in the list of suitable officers, the Union Public Service Commission has to consider the cases of such officers for the purpose of promotion to the Indian Police Service, in accordance with Regulations 7 to 9.

5. In support of the contention that the petitioners are members of a duly constituted Police Service which should be declared equivalent to the Bihar State Police Service reference was made to the orders of appointment of the petitioners as Commandants of Bihar Home Guards Organisation (hereinafter referred to as "the Home Guards Organisation"). A sample copy of the notification of appointment in respect of petitioner No. 1 has been annexed and marked Annexure "1" In the notification, it has been mentioned that petitioner No. 1 has been appointed as a Commandant of the Home Guards Organisation to an equivalent post of Deputy Superintendent of Police. It was pointed out that when in the notification of appointment itself the State Government has mentioned that the petitioners were being appointed as Commandant to an equivalent post of Deputy Superintendent of Police there should not have been any difficulty on the part of the State to treat the petitioner as a member of a duly constituted Police Force and to issue a formal declaration of equivalence, as required by Rule 2 (g)(ii). In this connection our attention was also drawn to an order, dated 13-8-1983 (Annexure "7") issued by the State Government in respect of Commandants of Home Guards. The relevant part is as follows:

I am directed to refer to Headquarters Bihar Home Guards Memo No. 89?, dated the 6th March, 1953 on the subject noted above and to say that Government after careful consideration have been pleased to accept your proposal that the officers and man of the Home Guards Force may rank as under:

1. Battalion Commanders: Assistant Commandants of B. M.P. (Deputy Superintendent of Police).

Again another order was issued on 14-10-1955 a copy whereof has been annexed and marked as Annexure "8". While posting some of the Battalion

Commanders at Muzaffarpur, Bhagalpur, Ranchi, Patna and Purnea, it was stated as follows :

In exercise of powers conferred by Section 1 of the Police Act 1861 (Act 7 1861) and the Rule made thereunder, the Governor of Bihar is pleased to appoint the Battalion Commander of the Bihar Home Guards Force mentioned in the first column of the Schedule-hereto annexed, to be Deputy Superintendent of Police in the District specified in the corresponding entries of column 2 of the said schedule and to direct that they shall perform, in addition to their own duties, such duties of the Deputy Superintendent of Police as may be delegated to them by the Superintendent of Police of the respective districts.

SCHEDULE

1. Battalion Commander, District of Muzaffarpur. Muzaffarpur. 2. Battalion Commander, District of Bhagalpur. Bhagalpur. 3. Battalion Commander, District of Ranchi. Ranchi. 4. Battalion Commander, District of Patna. Patna. 5. Battalion Commander, District of Purnea. Purnea.

Reliance was also placed on the minutes of the meeting held in the office chamber of the Chief Secretary on 18-y-1974 (Annexure "10"), the relevant part whereof is as follows:

In the meeting, the question of exploration of promotional avenue for the Homeguards Officers was considered. The various aspects of the matter were discussed in detail and there was a general consensus that the promotional avenues for the Homeguards Officers, particularly for those who were appointed as Battalion Commanders (Dy. S.P.) in 1951-52 and who have by now got chance to be promoted to the rank of Regional Commandant (Addl. S. P. only) should be opened up, in order to keep up their moral, efficiency and devotion of duty. For this purpose, the following decisions were taken:

- (1) An ex-cadre post of Commandant in the rank of S. P. may be created.
 - (2) If the implementation of the above decision is not feasible for any reason whatsoever, one of the two posts of Commandants may be declared and suitable officers from among the Regional Commandants, may be appointed thereon by promotion;
 - (3) To recruitment rules for appointment of officers and staff of various ranks in the Homeguards organisation should be drafted by the Commandant-General, Homeguards and got approved by the Government.
3. It was also indicated by the Director-General of Police Force that under the existing provision of I.P.S. Recruitment Rule Officers of any force other than that of Police may also be recruited.
6. On behalf of the petitioners it was urged that in view of the orders, proceedings and decisions, mentioned above, the State Government should have exercised its power under Rule 2(g)(ii) by declaring that the petitioners, are

members of a duly constituted Police Service which was equivalent to the Bihar State Police Service, so that the cases of the petitioners be considered according to the provisions of the 1954 Rules and Regulations of 1955 aforesaid for their promotion to the Indian Police Service. In this connection it was pointed out that the State Government by an administrative order has absorbed the senior District Prosecutors in the category of Deputy Superintendent of Police i.e. as members of the Bihar State Police Service and because of that decision names of senior District Prosecutors were included in the select list, for promotion to the Indian Police Service. It was urged that if the senior District Prosecutors could have been absorbed in the Bihar State Police Service, there should not be any difficulty in declaring the petitioners as members of a duly constituted Police Force which is equivalent to the Bihar State Police Service.

7. It appears that the decision of the State Government to absorb senior District Prosecutors in the Bihar State Police Service was challenged before this Court and heard by a Full Bench. The order was, however, upheld on consideration of the materials on record, in the case of *Md. Sulaiman v. State* 1981 B.B.C.J. 513.

8. Although a prayer had been made on behalf of the petitioners that this Court, on the materials referred to above, should hold that the petitioners are members of a duly constituted Police Service in the State fit to be declared equivalent to the Bihar State Police Service, we are of the opinion that no such declaration can be given by this Court. From a bare reference to Rule 2 (g)(ii) it is apparent that the framers of the rule have vested that power in the State Government and there is no question of its being exercised by this Court. Of course this Court has jurisdiction in appropriate case to issue a direction to the State Government to consider the question whether the persons in question are members of a duly constituted Police Service which should have been declared equivalent to the Bihar State Police Service.

9. The learned Advocate General appearing for the State submitted that the language of Rule 2(g)(ii) does not enjoin any duty on the State Government to consider the question of equivalence of the two services i.e. the Bihar State Police Service and the Bihar Home Guards Organisation. It was pointed out that the petitioners are members of a force which has been constituted under the Bihar Home Guards Act, 1947 and rules framed thereunder which does not have to perform the duties similar to the duties of the members of the Bihar State Police Service. It is true that the language of Rule 2 (g)(ii) does not impose any duty on the State Government to consider the question of equivalence of different Police Service functioning in the State of Bihar but when the framers of the rules have made a provision for declaration of a Police Service as equivalent to the State Police Service of that particular State, the power is meant to be exercised in appropriate cases. In any case, if a *prima facie* case is made out by members of a particular service that the question whether their service be declared equivalent to the Bihar State Police Service under Rule 2 (g)(ii), such writ application cannot be dismissed merely on the ground that no such duty has

been enjoined on the State Government to consider the question aforesaid. this Court may not direct the State Government to declare the members of such service as equivalent to the Bihar State Police Service but certainly this Court can direct the State Government to consider whether they are members of a duly constituted Police Service which ought to be declared equivalent to the State Police Service.

10. In the present writ application, the petitioners have produced the different orders and decisions of the State Government itself issued from time to time, on the basis of which they can claim consideration as to whether they are members of a duly constituted police force in this State which ought to be declared equivalent to the State Police Service.

11. Accordingly, this writ application is allowed to the limited extent. In other words, the State Government is directed to consider the cases of the petitioners, on the materials, referred to above, and other materials to be produced on their behalf whether the petitioners are members of a duly constituted Police Service which ought to be declared equivalent to the Bihar State Police Service. It is expected that any such decision is taken as early as possible preferably within six months from the date of production of this order.

12. This writ application is, accordingly, disposed of.