
(2005) 03 JH CK 0035

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1458 of 2004

Robin Tirkey

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 30-03-2005

Acts Referred:

Bihar Police Manual, 1978 — Rule 663, 666
Bihar Reorganisation Act, 2000 — Section 85
Constitution of India, 1950 — Article 14, 15, 16, 226

Citation : (2005) 3 JCR 62

Hon'ble Judges : S.J. Mukhopadhaya, J; Narendra Nath Tiwari, J

Bench : Division Bench

Advocate : Md. Sohail Anwar and Altaf Hussain and Afaq Ahmad, for the Appellant; S.K. Verma, S.C. (Mines), Nitu Sinha and Shipra Shalini and Delip Jerath, S.N. Prasad, M. Tandon, Rajesh Kumar, S.S. Kumar and R.K. Singh for the respondent No. 2, for the Respondent

Judgement

1. Although the issues sought to be raised in this PIL fall within the twilight zone of the writ jurisdiction, yet this Court took up the matter as some of the grievances of the petitioner are of serious public concern.

2. The petitioner has assailed and prayed for quashing the Notification No. 3300, dated 12.11.2001 issued by the respondent No. 1 whereby the Bihar Police Manual containing Rules relating to the recruitment of constables have been adopted with relaxations and modifications, in purported exercise of power u/s 85 of the Bihar Reorganisation Act, 2000. The petitioner has also prayed for quashing the advertisement No. 1/2004 issued by the respondent No. 3 whereby the applications have been invited for appointment of 12,741 constables in Jharkhand Police Force. The petitioner has sought to assail the modification/relaxation in recruitment rules on several grounds, and complained of :

(a) Giving undue weightage to height in the selection process.

(b) Lowering down the minimum educational qualification from 10th pass to 7th

pass in all the categories without any basis.

(c) Not providing adequate weightage to higher educational qualification and better physical fitness.

(d) Not following the norms recommended by the National Police Commission and the Committee of Police Reforms. According to the petitioner the said modifications made by the Notification No. 3300, dated 12.11.2001 as contained in Annexure-1 to the writ petition are illegal and discriminatory. The Advertisement for recruitment of the constables on the said basis, particularly dropping down the required minimum educational qualification from 10th pass to 7th pass for constables, has been also claimed to be wholly illegal and against the public interest. According to the petitioner, on comparison of the eligibility criteria for appointment of constables in police force in other states including Bihar, it would be evident that the prescribed upper age limit is lesser, minimum education qualification is higher and due weightage is given to over all physical fitness of the candidates in the selection process. Same principles are also followed in case of recruitment in Central Industrial Security Force (CISF). The petitioner has annexed copies of advertisement for appointment of constables in the State of Bihar to substantiate his point. According to the petitioner since the constables are the main strength of the police force and they are directed concerned with the maintenance of law and order and protection of law-abiding citizens, better constabling is the need of the day. It has been alleged that the law department of the Government of Jharkhand has not been consulted according to the provision of the police manual (Annexure-1) and in that view also the same is against the established procedure and is illegal.

3. The claim of the petitioner has been seriously contested by the State-respondents. A detailed counter affidavit has been filed on behalf of the respondent Nos. 2 and 3. It has been contended that the Bihar Police Manual has been adopted by the Government of Jharkhand with some amendments by its Home Department and in accordance with the same. Notification No. 3300, dated 12.11.2001 and further advertisement have been issued inviting applications for appointment of 12,741 constables. The State is a competent authority to make any amendment in the police manual, including in the procedures for appointments. Accordingly, some amendments have been made regarding height, age and educational qualification prescribed for the appointments of constables. It has been admitted that for appointment of constables, Rules 663 (a) (i) and 663 (a) (ii) of the Bihar Police Manual prescribe minimum qualification as Matriculation pass and the requirements of age for general candidates is 19-27 years; chest is 80 CM. and in case of candidates belonging to Scheduled Castes and Scheduled Tribes (S.C. and ST) age 19-35 years and chest 58 CM and 78 CM respectively. According to the respondents the said rule has nothing to do with the Government of Jharkhand which has amended the provisions after bifurcation. It has been stated that for the candidates of State of Jharkhand the criteria of height and chest has been relaxed for all categories on the basis of

comparative studies regarding the physical built of the people of Jharkhand who are generally shorter in height. The upper age limit was also enhanced by the Government of Bihar to 35 years. Regarding the minimum educational qualification for constables, it has been stated that though the required minimum educational qualification is 7th class pass, yet there is no bar for appointing the candidates with higher educational qualification. The respondents emphasized that the Government of Jharkhand is not bound to adopt the recruitment policy and procedures of the State of Bihar and it has got its own prudence and power to prescribe educational qualification for recruitments. According to the respondents, the candidates are to be selected on overall performance and extra marks are prescribed for the sports-men and players of the state/national level. Final merit list has to be prepared on the basis of marks, educational qualification and height and if two candidates get equal marks, preference is to be given to the candidates with more height in order to recruit constables of better physique. Relaxation in upper age limit has been given in order to afford more opportunity to the people of the State. Further relaxation has been given to the candidates belonging to S.C. and S.T. for the purpose of giving them more opportunities for appointment in the police force. The entire selection process thus ensures better selection on assessment of mental and physical fitness /aptitude assessed by competent officers. The said respondents thus concluded that the petitioner's writ application is wholly misconceived and misdirected and is fit to be dismissed.

4. Mr. Md. Sohail Anwar, learned senior counsel appearing on behalf of the petitioner, hammered much against the step of lowering down the minimum educational qualification from matriculation to class 7th pass besides his other objections/submissions regarding the changes in recruitment criteria for the constables of State of Jharkhand. Learned counsel submitted that reduction of minimum educational qualification from 10th pass to 7th pass is wholly arbitrary, irrational and against the recommendations of the police commission. According to the learned counsel, since there is no School Board Examination for 7th class, fake certificates can be easily managed even by illiterate persons and the fortunate ones having approach/resources can be able to grab the post of constables. Even in genuine cases, a constable having qualification of 7th class pass cannot have required understanding to deal with the nature of crime of the modern days and he will be practically of no use for protecting the society and maintaining law and order. Learned counsel submitted that the constables are the main strength of the police force and they have direct concern with the maintenance of law and order in the society. More efficient police force is the need of the day particularly in view of the large infestation of terrorism in more than ten districts of the Jharkhand State. The Naxal outfits/terrorists are equipped with better quality of arms, weapons and technological communication system which would be beyond the understanding of an illiterate or class 7th pass constable. Learned counsel submitted that according to the recommendation of the police commission, and the committees, the minimum qualification for appointment of constables should not be less than 10th pass and

the same is the prescribed criterion throughout the country. In the latest fitment committee report of the 6th pay revision relating to Home (Police Department), the prescribed pay scale of constables is 3050-4596 and Matriculation, the recommended minimum qualification for their recruitments. Learned counsel submitted that lowering down the minimum educational qualification is totally against the public interest and the same has been brought about with oblique motive as a political bait for getting more votes at the cost of down grading the quality of the police" force of the State ignoring the welfare of the public at large. Learned counsel cited the passage of the report of the Committee of Police Reforms, 2000 submitted under the chairmanship of Mr. K. Padmanabhaiah and urged that the said committee has recommended the minimum qualification of at least 10th standard pass for the recruitment of the constables. According to him, though the State of Jharkhand is, now, not bound to follow the procedure of appointments adopted by the State of Bihar and other States, yet any change or modification in the standard/requirement of the educational qualification and other eligibility must be reasonable, rational and in the interest of the society and the public at large and any arbitrary action in exercise of power conferred on the authorities, is liable to be struck down by this Court in exercise of jurisdiction under Article 226 of the Constitution. Learned counsel in order to fortify his submission placed reliance on the decisions of the Supreme Court rendered in the cases of State of Assam and Others Vs. Banshidhar Shewbhagavan and Company, LIC of India and Another Vs. Consumer Education and Research center and Others, Kailash Chand Sharma Vs. State of Rajasthan and Others, and in the case of Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others, Learned counsel further submitted that even the recruitment process or policy decision or the circular issued in pursuance of such policy decision has to stand the test of Articles 14, 15 and 16 of the Constitution. Learned counsel developing his argument further submitted that exercise of any power vested by the statute in a public authority, has to be always viewed in the larger public and social interest. Learned counsel relied on the decision of the Supreme Court rendered in the case of Delhi Administration (Now N.C.T. of Delhi) Vs. Manohar Lal, to emphasize his point. Mr. Anwar referred to the decision in Bihar Police Men's Association and Anr. v. The State of Bihar and Ors., reported in 2004 (1) PLJR 133 and submitted that the Patna High Court in similar circumstances quashed the modification in the recruitment rule of the constables whereby minimum educational qualification for the candidates belonging to a reserved category was reduced to class 7th pass. Learned counsel concluded that the impugned modification in the police manual and the impugned notification issued by the State-respondents, as contained in Annexures 1 and 2 to this writ application, are wholly arbitrary and tainted with oblique motive and the same being not in conformity with Articles 14 and 16 of the Constitution, are liable to be scrapped by this Court.

5. Mr. Delip Jerath and Dr. S.K. Verma, learned counsel appearing on behalf of the respondents, contradicted the said submissions of the learned counsel for the

petitioner and submitted that there is absolutely no arbitrariness, illegality or any oblique motive involved in the modification of the provisions of the police manual regarding the recruitment of the constables in police force nor there is any illegality of infirmity in the said notification, contained in Annexures 1 & 2 to the writ application. Learned counsel one after the other submitted that the modifications in the police manual, have been made as per the requirement of the State and in accordance with its own characteristic and social conditions and there is no element of any discrimination, arbitrariness or irrationality as has been alleged by the petitioner. Learned counsel submitted that Rule 666 of the Bihar Police Manual prescribes educational qualification but the said Rule is only regulatory and is open to relaxation even by the Selection Board. Learned counsel relied on the decision, *Sakhichand Yadav v. State of Bihar and Ors.*, reported in (1991) 1 BLJR 92 in support of their said submission. According to the learned counsel, the nature of amendments in the police manual regarding the recruitment procedures of the police constables is a policy matter of the State and the Court should not interfere with the same. Learned counsel placed their reliance on the decision of the Supreme Court rendered in the case of *Dr. M.C. Gupta and Others Vs. Dr. Arun Kumar Gupta and Others*, and submitted that this writ application is without any merit and is fit to be dismissed.

6. After analyzing the materials on record and considering the submissions made by the learned counsel for the parties, we are in agreement with the respondents that impugned amendment in Police manual and the impugned notification No. 3300, dated 2.11.2001 is a policy decision of the State and the Courts should be slow in interfering with the policy matter" of the State, yet no convincing ground or rationality could be pointed out for dropping down the educational qualification from Matriculation pass to 7th class pass in the eligibility criteria for the appointments of constables in Jharkhand police force. The fast technological developments have given rise to new trends and dimensions of crimes such as Cyber crimes, I.T. related crimes, e-commerce related crimes, intellectual properties related crimes, bio-ethics related crimes etc and the society is in the need of the well qualified and sophisticated policing to deal with such new breeds of crimes, it is surprising that the Government of Jharkhand has sought to drop down the minimum requisite qualification for recruitment of constables from Matriculation to 7th pass. In a State where there is a sizable number of well qualified unemployed youth, waiting for such opportunities what is the rational behind lowering down the required education eligibility from Matriculation pass to 7th class pass for appointment of constables. We have noticed the reports of the Committee of Police Reforms chaired by Mr. K. Padmanabhaiah, the relevant recommendation of which reads thus. "For a constable, we therefore, recommend that boys who have passed 10th standard and whose age is not more than 19 (with three years relaxation for SC/ST) should be eligible to sit in an entrance examination to be conducted by a Police Recruitment Board constituted by the State Government." The extract of the first report of the National Police Commission on "Recruitment, Training and Career Planning" is

worth quoting. Regarding the minimum educational qualification for the recruitment of constables, the said Commission recommended;,, "the high school examination or its equivalent should be the minimum educational qualification for the recruitment of constables both in the unarmed and the armed branches of the police uniformly throughout the country. The effort, however, should be to attract candidates with higher educational qualifications. To this end, we recommend further that suitable advance increments should be given to candidates who have passed the Intermediate or higher examination." The 5th report of National Police Commission also prescribed high school examination or its equivalent as minimum educational qualification for recruitment of constables and sub-inspectors in the armed as well as in the civil branches of the police force throughout the country. It is relevant to note that in all the said reports the recommended/prescribed minimum qualification for recruitment to the posts of constables is Matriculation/10th pass and even higher qualification has been recommended with a provision for weightage in the form of bonus marks. In view of the said recommendations and also keeping in view the need of modern society facing the phenomenal changes in the nature and trend of crimes, it can be safely concluded that reduction in the minimum educational qualification from Matriculation pass to 7th pass for appointment of police constables, is wholly irrational, illogical, arbitrary and not justified. In the nature of the controversies and in the facts and circumstances of the case, both the decisions reported in the cases of Sakhichand Yadav v. State of Bihar and Ors. and Dr. M.C. Gupta and Ors. v. Dr. Arun Kumar Gupta and Ors., supra, cited by the learned counsel for the respondents have absolutely no application and the logic supplied by them has absolutely no substance. We refrain ourselves from going into the question regarding the authority/power of issuing such notification and modification in the manner it has been done and other objections raised by the petitioner, but we are of the view that dropping down the minimum educational qualification is wholly arbitrary, irrational and against the public interest. We declare that the modification in the minimum educational qualification from Matriculation pass to 7th class pass, is wholly arbitrary and violative of Article 14 of the Constitution, the said part of modification whereby the minimum educational qualification, as laid down in the Bihar Police Manual for recruitment of the police force (armed or civil) has been lowered down from Matriculation to 7th pass, is quashed. We are, however, not inclined to interfere with the other modifications/provisions brought about by the impugned policy decision by the respondents.

7. This writ application is accordingly disposed of. There shall be no order as to costs.