

(2008) 02 PAT CK 0014
In the Patna High Court
Case No : LPA No. 1069 of 1998

The State of Bihar and Others

APPELLANT

Vs

Parwez Ahmad

RESPONDENT

Date of Decision : 08-02-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2008) 2 PLJR 660

Hon'ble Judges : Rajesh Balia, C.J.; Barin Ghosh, J

Bench : Division Bench

Advocate : Rai Shivaji Nath, for the Appellant; Md. Nadeem Seraz, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Balia, C.J. and Barin Ghosh, J.—Heard learned counsel for the parties. The respondent-petitioner had filed the writ petition raising grievances that in pursuance of the advertisement No. 1 of 1993 the petitioner had participated in the selection for appointment of constable against the vacancies advertised. The petitioner had applied in pursuance of the said advertisement against the vacancies at Patna. The petitioner having not been selected, came to know that another person, who had lesser height than the petitioner, had been appointed in Supaul District of the Bihar.

2. The minimum required height eligible for the appointment of the constable is 165 CM. The petitioner's height is 183.5 CM. At Patna the height of the person appointed at the bottom was 184.5 CM. whereas the candidate appointed at Supaul had height below 183 CM. On this premise the petitioner has raised grievances that by applying a different yardstick in the matter of height of the selected candidates in the State of Bihar he has been subjected to hostile and irrational discrimination, he has been deprived of his right to be considered and appointed in violation of Articles 14 and 16 of the Constitution.

3. Learned Single Judge has observed that he is unable to appreciate that for appointment to the same post and pursuant to the same advertisement in the State of Bihar different yardstick can be maintained in the District-wise selection. With this conclusion the learned Single Judge had directed respondent No. 3 to consider the case of the petitioner for appointment in the light of the observation made in the judgment under appeal.

4. The basic premise of the appellant, which is also noticed by the learned Single Judge, is that though single advertisement has been issued but the vacancies all over the State have been advertised District-wise. Applications have also been invited for each District to be addressed to the Superintendent of Police of the District. The appointment to the post of constable has also to be made by the concerned Superintendent of Police only. The selection centers were also notified for the different District in the said notification. These facts clearly indicate that the advertisement was really for filling up vacancies in each District by selecting candidates who were applicants against available vacancies in the District concerned and there was no competing claim with the merit of the candidates who had applied for the available vacancies in another District. Thus candidates securing appointment on merit in one District do not form a comparable class with the candidates securing appointment on merit in another District.

5. It may also be noticed that the appointing authority of the constable under the Rules is Superintendent of Police of District concerned only. Any person cannot be appointed as constable in District-A by Superintendent of Police of District-B.

6. Therefore the question of common merit list of the candidates/applicants for appointment on the post of the constable in different Districts, notwithstanding having interviewed by the same Selection Board though, existence of their inter se merit amongst the candidates for different Districts cannot arise.

7. Not appreciating these circumstances the learned Single Judge held that there being no difference between the persons/applicant for appointment to vacancies against different Districts yet by applying difference yardstick about height in different Districts has resulted in violation of fundamental rights. The appointment relates to Patna District where the petitioner was applicant and where he could not find place in the merit list amongst candidates/ applicants for Patna District, he can not seek mandamus against the vacancies in another District on the basis of his merit in Patna District. The judgment under appeal cannot be sustained.

8. Appeal is allowed and the order under appeal is set aside. Since the appeal has been pending for hearing for a long time and interim relief has been refused to the appellants-non-petitioner, and in the meantime, the petitioner-respondent herein was required to appear before the appellants to comply with the direction of the learned Single Judge so that appointment of the petitioner-respondent could be made subject to the final result of the decision. Because of this he has been deprived from participating in subsequent selections and was kept waiting.

In these circumstances it would be just and appropriate for the respondents to consider grant of relaxation in age in order to enable him participate in the next selection.