

[2014] 7 S.C.R. 606

A ABHAY KUMAR SINGH & ORS.
v.
STATE OF BIHAR & ORS.
(Civil Appeal No. 8450 of 2014)

B SEPTEMBER 2, 2014

**[T.S. THAKUR, ADARSH KUMAR GOEL AND
R. BANUMATHI, JJ.]**

Service law: Dismissal from service - Post of constable - Appellants selected as constable on the basis of their height being more than height of last candidate in respective categories - Dismissed from service 4 years after their appointment on the ground that their height was not accurately recorded on account of manipulation and that on re-measurement their height was found to be less than the height of last person selected - Held: The allegation of manipulation was duly enquired into and a finding was recorded against the appellants - Irrespective of the question whether the criteria adopted in making the selection on the basis of more height of candidates was valid, the fact remained that the appellants were held to have manipulated and got their height wrongly recorded more than their actual height - At the same time, responsibility for correct recording of the height is of the Department and after the appellants were duly selected and appointed, and were in service for four years, their termination, in facts and circumstances, would be too harsh - In these circumstances while the appellants are not entitled to reinstatement, the respondent is directed to give fresh appointment to the appellants as constables against available vacancies within three months - Bihar Police Manual, 1978 - r.663(b) - Bihar Police Act, 2007.

The appellants applied for the post of Constable and were selected on the basis of their height being more than

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the height of the last candidate selected in respective categories. However after 4 years, they were dismissed from service after enquiry on the ground that their height was not accurately recorded on account of manipulation and on re-measurement their height was found to be less than the height of the last person selected. The High Court rejected the appellants' claim for reinstatement.

The questions for consideration in the instant appeal were whether the height can be the sole criterion for the selection of police constable and whether the appellants who had prescribed height but may not have the higher height as got recorded could have been terminated from service.

Allowing the appeal, the Court

HELD: 1. The Recruitment Rules were revised. Rule 663 (b) of the Bihar Police Manual, 1978 read with Bihar Police Act, 2007, dealing with the selection of constables to the Bihar Police was substituted by new Appendix 103 which provides for preparation of a merit list on the basis of written examination. It provided that the selected candidates have to appear for a physical test/ measurement which is mandatory, but no marks are given on that basis. The said development showed that the State itself was not satisfied that the height should be the sole criteria, for selection out of the candidates who fulfilled the requirement of the prescribed height. Thus, the question whether height alone should be a criteria for selection out of candidates who had the prescribed height has been rendered academic. Both the parties stated that in such circumstances, height cannot be sole criteria. [Paras 5 and 6] [611-F-H; 612-A-C]

2. The allegation of manipulation was duly enquired into and a finding was recorded against the appellants.

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A Irrespective of the question whether the criteria adopted in making the selection on the basis of more height of candidates was valid, the fact remained that the appellants were held to have manipulated and got their height wrongly recorded more than their actual height. At
 B the same time, responsibility for correct recording of the height was of the Department and after the appellants were duly selected and appointed, and were in service for four years, their termination, in facts and circumstances, would be too harsh. In these
 C circumstances while the appellants are not reinstated with back wages and continuity of service, the respondent is directed to give fresh appointment to the appellants as constables against available vacancies within three months. [Para 12] [613-F-H; 614-A-B]

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8450 of 2014.

From the Judgment and Order dated 16-12-2005 of the Patna High Court in L.P.A. Nos.1356/2005.,1357/2005,1358/
 E 2005,1360/2005 and 1361/2005.

S.N. Jha, Arup Banerjee, Dvnath Anand, Aparna Jha for the Appellants.

F Manish Kumar, Gopal Singh for the Respondents.

The Judgment of the Court was delivered by

ADARSH KUMAR GOEL, J. 1. Leave granted.

G 2. This matter has been placed before us in view of the dis-agreement by a Bench of Two Judges with the earlier order of this Court on the question whether the height can be the sole criteria for the selection of a police constable. Order dated 17th February, 2009, referring the matter to a larger Bench, reads as follows:-

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"The dispute relates to the selection of constables in the State of Bihar. The minimum height requirement was 1.65 cms. for general candidates and 160 cms. for scheduled castes candidates. Admittedly, the petitioners were above that minimum height. However, it seems that they were rejected because the procedure adopted by the respondents was that height was the sole criterion for selection, which, in our view, is arbitrary and violative of Article 14 of the Constitution of India.

In our opinion, once a candidate has the minimum height as required by the relevant Rules, height then becomes an irrelevant consideration and other criteria should be taken into consideration, like intelligence, physical strength, etc. In this case, the selection amongst those who had the minimum height was done by only selecting the tallest candidates for the available vacancies. We are of the opinion that this was wholly arbitrary, and police constables must also have intelligence and other requirements, apart from height.

To give an example, supposing there are twenty vacancies and 100 candidates have the minimum height as required by the Rules, in such a situation, the selection authority, in our opinion, cannot validly select the tallest twenty among these 100 candidates.

Learned counsel for the respondents, however, invited our attention to a judgment passed by a Division Bench of this Court in the case of State of Bihar & Ors. vs. Mal Babu Sharma (Civil Appeal No.2711 of 2002 arising out of S.L.P. (C) No.21688 of 2001) in which the contention of the State of Bihar has been accepted. We respectfully cannot agree with the view taken by the Division Bench and hence, we refer this matter to a larger Bench to be nominated by the Hon'ble Chief Justice."

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A 3. The appellants applied for the posts of constables in
response to an advertisement dated 27th October, 1998, and
were selected on the basis of their height being more than the
height of the last candidate selected in the respective
categories i.e. general, backward and Schedule Castes. It later
B came to light that their height was not accurately recorded on
account of manipulation and on re-measurement their height
was found to be less than the height of the last person selected.
On that basis, after enquiry, they were dismissed from service
vide order dated 25th August, 2003. They approached the High
C Court by way of a Writ Petition. While the learned Single Judge
allowed the Writ Petition, the Division Bench held against them
and observed as under:-

".....If by resorting to wrong practices the writ petitioners
D got their height wrongly measured and entered in the
official records, they cannot subsequently defend their
selection only on the basis that their actual height even
after detection of fraud is equal to or more than the
minimum eligibility criteria governing height. Petitioners
were terminated from service not on the ground that they
E did not possess the minimum stipulated height as given
in the advertisement or in the rules but on the ground that
they succeeded in selection process by wrong
measurement and wrong entries in respect of their
heights. The other issue that the impugned order or the
F enquiry does not contain ample materials to lay down a
foundation of fraud and forgery does not merit serious
consideration in view of the fact that the controversy
related only to the measurement of the height which
could be easily be re-checked and verified by a reliable
G authority who was not involved with the initial selection
process. That having been done, there is no scope to
hold that petitioners are not beneficiaries of fraud....."

On an earlier occasion in *State of Bihar & Ors. vs. Mal*
H *Babu Sharma* [Civil Appeal No.2711 of 2002] decided on

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15.4.2002, this Court considered the issue whether a candidate having requisite minimum height could be denied appointment on the ground that other candidate had more height. It was held that if candidates with more height are available, candidates with lesser height could be rejected even if they had the requisite minimum height. It was observed as under:-

".....It has been categorically averred by the State that no person has been appointed as a Constable whose height is less than 171.5 cm. and the respondent having been found to be height of 168 cm. could not have been appointed. The assertion has not been refuted by the respondent, though a counter affidavit has been filed. It is not a case of arbitrary re-determination of height, but actually a check on impersonation. In the aforesaid premises, we are of the considered opinion that High Court committed error in issuing a Mandamus for appointment of the respondent as a Constable....."

4. When this matter earlier came up for hearing before a Bench of Two Judges, the Bench dis-agreed with the view taken above. It was observed that once the candidate had the minimum height, more height was an irrelevant consideration and the view earlier taken could not be accepted as correct. Accordingly, the matter has been placed before this Bench, on reference.

5. On the last date when the matter came up for consideration, the Court was informed that the Recruitment Rules have been revised and were proposed to be placed on record. The revised Rules have been placed on record. Rule 663 (b) of the Bihar Police Manual, 1978 read with Bihar Police Act, 2007, dealing with the selection of constables to the Bihar Police, has been substituted by new Appendix 103 which provides for preparation of a merit list on the basis of written examination. The selected candidates have to appear for a

A physical test/measurement which is mandatory, but no marks are given on that basis.

6. The above development shows that the State itself was not satisfied that the height should be the sole criteria, for selection out of the candidates who fulfilled the requirement of the prescribed height. Thus, the question whether height alone should be a criteria for selection out of candidates who had the prescribed height has been rendered academic. Learned counsel for both the parties state that in such circumstances, height cannot be the sole criteria.

7. Only question for consideration is whether the appellants who had the prescribed height, but may not have the higher height as got recorded, could have been terminated from service.

8. On behalf of the appellants, Interlocutory Application No.3 of 2014 has been filed to the effect that one of the similarly placed candidates, namely, Brij Kishore Ram made a representation to the DGP, State of Bihar, which was accepted on 24th November, 2011 and he was reinstated into service with the following observations:-

".....Nowhere in the departmental enquiry any aspect have been reflected with in connection to fraudulence. I do not find any foundation for dismissal from service. I find this order ab-Initio wrong. Therefore, the following order is being passed:-

1. *The order of dismissal is set aside.*

2. *He is re-instated into service from the date of dismissal and it shall be presumed that no dismissal has taken place. Accordingly his service period shall be counted."*

9. We have heard learned counsel for the parties.

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10. The learned counsel for the appellants submitted that having been duly selected and being not responsible for any error in wrongly recording the height, termination of services of the appellants after four years of service was arbitrary. It is pointed out that no action has been taken against officials who wrongly recorded the height. Even if the appellants allegedly got their height wrongly recorded, termination of their services was too harsh. They ought to be given opportunity to serve even without benefit of past service. The view taken by the learned Single Judge was wrongly reversed by the Division Bench when a similarly placed employee was reinstated by the department itself.

11. On the other hand, the learned counsel for the State supported the view taken by the Division Bench and submitted that for future the Rules have been revised, but the impugned order of termination of services of the appellants remains unaffected and they were guilty of manipulation in the recording of their height, but for which they could not have been given the appointment. It was submitted that the order of termination was justified and was passed eleven years ago. If the appellants are reinstated at this stage, with the continuity of service, they will be eligible to claim seniority without the requisite experience which is necessary for the higher posts in service.

12. We have given due consideration to the rival submissions. It remains undisputed that the allegation of manipulation was duly enquired into and a finding was recorded against the appellants. Irrespective of the question whether the criteria adopted in making the selection on the basis of more height of candidates was valid, the fact remains that the appellants were held to have manipulated and got their height wrongly recorded more than their actual height. At the same time, responsibility for correct recording of the height was of the Department and after the appellants were duly selected and appointed, and were in service for four years, their termination, in facts and circumstances, would be too harsh. In these

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A circumstances while we are not inclined to réinstate the appellants with back wages and continuity of service, we direct that the appellants be given fresh appointment as constables against available vacancies within three months from the date of receipt of a copy of this order.

B 13. The appeal is allowed in above terms. There will be no order as to costs.

Devika Gujral

Appeal allowed.