

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).9036/2009

(From the judgement and order dated 24/02/2009 in CWJC No.11886/2006 of The HIGH COURT OF PATNA)

BIHAR STAFF SELECTION COMMISSION, PATNA

Petitioner(s)

VERSUS

BINOD KUMAR & ORS.

Respondent(s)

(With appln(s) for permission to file rejoinder affidavit and with prayer for interim relief and office report)
(For final disposal)

Date: 05/03/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR. JUSTICE H.L. GOKHALE

HON'BLE MRS. JUSTICE RANJANA PRAKASH DESAI

For Petitioner(s) Ms. Susmita Lal, Adv.

For Respondent(s) Mr. Amit Pawan, Adv.

UPON hearing counsel the Court made the following
O R D E R

In response to advertisement No.704 issued by the Bihar Staff Selection Commission (for short, 'the Commission'), which was published in daily newspaper "Hindustan" dated 21.09.2004, respondent No.1 submitted an application in the office of Range DIG, Patna for recruitment as Sub Inspector of Police. In the application, respondent No.1 mentioned that he is a permanent resident of District Darbhanga but was working at Bokaro within the State of Jharkhand.

After he had successfully passed various tests, the Commission rejected the application of respondent No.1 on the ground that the same had not been submitted in accordance with Clause 11 of the advertisement. C.W.J.C.No.11886 of 2006 filed by respondent No.1 for quashing the decision of the Commission was allowed by the Division Bench of the High Court vide order dated 24.2.2009 by recording the following observations:

"As noticed earlier the relevant provisions in Clause 11 are expected to govern the cases of those who are permanent residents of Bihar which shall be governed by directive no.1 and those who are permanent residents of places outside the State of Bihar shall be governed by directive no.2 but this interpretation given by the respondents is not fully reflected by wordings in clause 2. The words actually used only indicate that the applicant is residing outside the State and not that he is a permanent resident of a place outside the State of Bihar and hence, it is found that choice of the words in clause 11 is not very happy one and it leaves sufficient scope for a bonafide different interpretation as made by the petitioner. Even the application form, unfortunately, does not contain any clause demanding information regarding temporary or present address of

the candidate nor has anything been provided in the application form to help the candidate out of difficulty created due to above noticed vagueness in clause 11 of the advertisement. The application form in column 10 requires only an address for correspondence.

We have referred to the different column of the application form only because we wanted to satisfy ourselves whether there is any material in the application form to help to dispel the ambiguity in the wordings of clause 11. The application form does not contain any such provision.

Thus, we find that a candidate like the petitioner had acted bonafide in sending his application to the Range DIG at Patna for the reason that he was residing at Bokaro, a place outside the State of Bihar. He had not made any concealment and had disclosed that his permanent residence is in the District of Darbhanga within the State of Bihar. We have found such act of the petitioner bonafide because of ambiguity and vagueness in the provisions of clause 11. The benefit of such ambiguity must go in favour of the petitioner, a young man aspiring for a future career.

In the facts of the case, we find that authorities were not justified in canceling the candidature of the petitioner on the grounds taken by them, hence the writ petition has to be allowed."

The operative portion of the order passed by the High Court reads thus:

"The writ petition is, therefore, allowed with a direction to the concerned respondents including the Commission to hold a special written examination which should be of the similar standard as the one already held and preferably by the same agency, within a period of two months from today. Since the State has not denied that petitioner qualified in the physical fitness test, it will communicate the result of physical fitness test of the petitioner which has been withheld due to cancellation of his candidature, to the Commission within two weeks. We further direct the concerned authorities to consider petitioner's candidature for appointment to the post of Sub Inspector of Police without any delay and preferably along with other persons whose appointment is said to be pending after recommendation by the Commission. It is made clear that if the petitioner scores more marks than persons appointed in the transaction then he shall not be denied appointment on any ground. It is also made clear that we have interfered with the action of the authorities in the peculiar facts of this case and this order shall not be treated as precedent for the selection process pursuant to the advertisement of 2004 because that has already made sufficient progress and we have been told that no similar writ petition is pending at the present."

We have heard Ms. Susmita Lal, learned counsel for the petitioner for some time and carefully scrutinised the record. We have also gone through the advertisement issued by the petitioner and are satisfied that the decision taken by the petitioner not to consider the candidature of respondent No.1 was ex facie illegal and the High Court did not commit any error by quashing the same. With the above observation, the special leave petition is dismissed.

The petitioner shall implement the order of the High Court within a period of four weeks from today.

Court Master

Court Master