

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2144 OF 2012
(@ SPECIAL LEAVE PETITION (C) NO. 26602 OF 2010)

MD. MASAUD ALAM

... APPELLANT

VERSUS

STATE OF BIHAR & ORS.

... RESPONDENTS

O R D E R

- 1) Leave granted.
- 2) A Constable, whose services are terminated from the Police Department, has filed this appeal impugning the judgment and order passed by the Division Bench of the High Court of Judicature at Patna in L.P.A. No. 583/2006 dated 30.04.2010. By the impugned judgment and order, the Division Bench has set aside the order passed by the learned Single Judge in Writ Petition No.1314/2000 dated 17.02.2006, by which the appellant was reinstated into service with full back-wages and service benefits.

3) The case has a chequered history. The appellant was appointed as police constable by the respondents in the month of October, 1992 and he served on this post till 1996. The appellant amongst others, was asked to show cause why his services should not be terminated for the reasons stated in the notice. The appellant, after receipt of the notice, had offered his explanation, inter-alia, contending that his appointment was made following the guidelines prescribed in Police Order No.202 of 1988. The respondents, not being satisfied with the explanation offered, terminated the services of the appellant. The appellant and others filed the writ petitions, inter-alia, for quashing their termination order as illegal and arbitrary.

JUDGMENT

4) The learned single Judge, while allowing the writ petition, took exception to lack of reasoning in the show cause notice and orders of termination, however, as the respondents attempted to justify the termination on the ground that the height of the writ petitioners was not in accordance with the Police Order No. 202 of 1988, the learned Single Judge

thought it fit to direct the Deputy Inspector General of Police (Headquarters), Patna [hereinafter referred to as "the DIG of police"], to measure the height of the writ petitioners (including the appellant) and file a report of the same before the Court.

- 5) Pursuant to the direction so issued, the DIG of police measured the height of the writ petitioners (including the appellant) and submitted his report before the High Court. In the report, the appellant's height was indicated as only 164 cm, falling short of 165 cm. as required by the Police Order No.202 of 1988.

- 6) Taking into consideration the report of the DIG of Police, the High Court disposed of the writ petition by its order dated 28.02.1997, ordering the reinstatement of those who met the criterion of height, while stating that appropriate orders may be passed in the case of those persons who did not have the requisite height. In view of the orders passed by the High Court, the Inspector General of

Police had issued the order dated 6.3.1997 terminating the services of the appellant as a constable in the police force.

- 7) Aggrieved by the order of termination so passed, the appellant was constrained to approach the writ court once again in C.W.J.C. No. 1314 of 2000. The appellant primarily contended and asserted that his height was 165.5 cm and not 164 cm as recorded in the report submitted by the DIG of police. Since there was a factual assertion made by the appellant and disputed by the DIG of Police, the learned Single Judge, in the ends of justice, had appointed the Civil Surgeon-cum-Chief Medical Officer, Patna [hereinafter referred to as "Chief Medical Officer"] to measure the height of the appellant and submit his report before the Court.

- 8) The Chief Medical Officer, in his report, had reported the height of the appellant as 166 cm. Taking into consideration the report so filed and the fact that the appellant was appointed against a regular vacancy and that

there was no better contender for the post at the time of the appellant's appointment, the learned Single Judge observed that the DIG of police had malafidely represented the height of the appellant to be 164 cm. As a consequence, the writ petition came to be allowed and the respondents were directed to continue the services of the appellant and also to pay the back-wages from the date of termination of his service till the date he is reinstated into service.

9) The order of the learned Single Judge was carried in appeal before the Division Bench of the High Court in L.P.A. No. 583/2006 and the same came to be allowed as observed by us earlier. It is this order which is called in question in this appeal.

10) We have heard learned counsel for the parties to the *lis*.

11) At the outset, we record that that we do not intend to comment on the performance of the

DIG of Police while measuring the height of the appellant, since this aspect of the matter has been taken note of by the learned Single Judge while disposing of the second Writ Petition.

- 12) In our view, the writ court had rightly directed the Chief Medical Officer to measure the height of the appellant in view of the factual dispute between the statement of the appellant and the DIG of police and thereafter drawing support from the report of the Chief Medical Officer had directed the respondents to continue the services of the appellant since he satisfies all the guidelines/parameters prescribed in the Police Order No.202 of 1988. The Police Order No.202 of 1988 speaks of certain qualifications that requires to be fulfilled by a candidate before being selected and appointed to the post of constable. One such qualification is that the candidate must possess at least 165 cm height. The height of the appellant has been found to be 166 cm by the Chief Medical Officer, which was accepted by the learned Single Judge and this factual aspect should have been accepted

by the Division Bench, in the Letters Patent Appeal filed before it before taking exception to the approach of the learned Single Judge and before setting aside the finding of fact recorded by the learned Single Judge with regard to the height of appellant. In view of the above narration, since the appellant has the requisite height and since he satisfies all the other conditions, in our opinion, the respondents were not justified in terminating the services of the appellant in the year 1997. Therefore, we cannot sustain the impugned judgment.

- 13) Now the only question that remains to be considered is, while directing the appellant to be reinstated in service whether the respondents should be directed to pay back wages also from the date of termination of the appellant's service till his reinstatement. Shri. Navin Prakash, learned counsel appearing for the appellant submits that in the facts and circumstances of the case and since the appellant is getting back his means of livelihood he would not press for the back wages if he is reinstated into service. In our

opinion, the suggestion so made by Shri. Navin Prakash appears to be reasonable and if it is accepted it would not prejudice the case of the respondents in any manner whatsoever.

- 14) In view of the peculiar facts and circumstance of this case, we allow this appeal, set aside the judgment and order passed by the Division Bench of the High Court of Judicature at Patna in LPA No.583/2006 dated 30.04.2010. We further direct the respondents to reinstate the appellant into service as a constable within three month's time from the date of receipt of a copy of this order. We make it clear that the appellant will not be entitled to back-wages from the date of the termination of his service till his reinstatement into service. However, the period between the date of termination and the date of reinstatement will be considered for the purpose of computing the qualifying service for payment of the pensionary benefits only.

- 15) We clarify that this order is passed by us only in the facts and circumstances of this

case and not to be read as declaration of the law by us. The question of law canvassed by Shri. Manish Kumar, learned counsel for the respondent-State is left open.



16) With this observation and direction, this appeal is disposed of. No costs.

.....J.
(H.L. DATTU)

.....J.
(ANIL R. DAVE)

NEW DELHI,
FEBRUARY 16, 2012.

