

IN THE HIGH COURT OF JUDICATURE AT PATNA

CWJC No.16421 of 2004

RAJENDRA PRASAD, son of Sri Jagdish Prasad, resident of village – Kushwaha Nagar, Mahesh-khunt, P.O. + P.S. – Maheshkhunt, District – Khagaria.

Versus

1. THE STATE OF BIHAR through its Home Commissioner cum Secretary at Patna.
2. The Director General of Police, having its office at Secretariat Building at Patna.
3. The Commandant General, Home Guard at Patna.
4. The Assistant Inspector General, Communication at Patna.
5. The Superintendent of Police, Khagaria.

For the petitioner: M/S. A B Ojha and Mrityunjay Kumar.

For the State : Mr. Vinod Kumar, AC to SC-I.

04. 31.8.2010

Writ was filed by the petitioner for issuance of a writ of mandamus commanding the respondents to absorb him on the post of wireless operator, very high frequency sets (VHF). According to the petitioner, he has worked on that post for many a years, though admittedly he was a homeguard. Since he had the requisite qualification, work was taken from him in the capacity of a wireless operator.

The question of giving any direction for regularization of the petitioner in service does not require consideration in light of the fact that the petitioner has superannuated now, may be working as a homeguard but performing the responsibility of a VHF wireless operator. This issue therefore must come to rest.

The other submission made on behalf of the counsel representing the petitioner is that long period of work performed by the petitioner atleast entitles him for payment of the benefit of the post flowing from the responsibility which was thrust upon him, not

because of his appointment but because of the command of the superiors. This aspect, according to him, requires consideration as there are some persons who have walked away with the benefit of regularization and as consequence thereof the benefit of higher pay scale and other benefits including pension etc.

The case of the petitioner cannot be adjudicated on the basis of the primary submission or the pleadings made in the writ application in isolation in view of the light of the previous litigations which were launched by many persons on this score. The issue was not only adjudicated at the level of the High Court but even travelled to the Hon`ble Supreme Court. A reading of the apex Court's order in this regard would show that there was an obligation on behalf of those candidates, who were claiming right for regularization on the post, to appear in the examination which was allowed to be conducted by the respondents. Qualifying in the procedure laid down was a condition precedent, but it is on the record that petitioner and many others stonewalled the exercise and did not appear on one pretext or the other. If the petitioner was not willing to abide by the Supreme Court decision then it is difficult for this Court to consider his matter afresh on the ground of compassion and the work done by him on the post.

Counsel for the State is correct in taking a stand that the decision of the respondents is based not only on the direction issued by the High Court but even the Supreme Court and predicament of the petitioner is his own creation and it cannot be said that he has a right to claim the benefit which has been urged or prayed for in the writ

application.

This Court does not find any merit in the relief prayed for by the petitioner.

The writ application is dismissed.

rkp

(**Ajay Kumar Tripathi, J.**)

