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NIRBHAY KUMAR & ORS.

v.

STATE OF BIHAR & ORS.

(Writ Petition (C) No. 227 of 2019)

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JUNE 11, 2020

**[ASHOK BHUSHAN, M. R. SHAH AND
V. RAMASUBRAMANIAN, JJ.]**

Service Law – Appointment – Advertisement issued in 2004

- C *for appointment to 1510 posts of Sub-Inspector in the State of Bihar – Several rounds of litigation – Result of select list of 1510+639 (vacancies added later) i.e. 2149 was declared and the appointments were made – High Court in a writ petition issued further direction to appoint 67 candidates belonging to most backward category who were wrongly left out – State appointed those 67 and to retain those*
- D *who were to be displaced decided to appoint 186 more candidates – Appointment of 186 candidates challenged in High Court – Matter ultimately came to Supreme Court – 186 candidates were subjected only to medical fitness test in the process of appointment since they had already cleared the physical efficiency test in 2006 – Further,*
- E *133 candidates who had also cleared the physical efficiency test in 2006, were classified into a specific category and placed along with 186 candidates by Supreme Court and appointed under its orders by subjecting them only to medical test and not physical test – Writ petitioners herein claimed appointment in pursuance of advertisement dtd.28.06.11 for 299 posts of Sub-Inspector of Police*
- F *– Petitioners sought parity with the aforesaid 133 candidates claiming they were all part of list of 223 original candidates permitted to participate in selection against 299 posts by order of Supreme Court – Held: It was made very clear that the order of this Court regarding selection and appointment of 133 candidates was passed in peculiar background of litigation in exercise of jurisdiction u/Art.142 and the same shall not be treated as a precedent – Thus, no benefit can be claimed of the said order by writ petitioners especially when otherwise they are not able to satisfy this Court that when they have either not undertaken the physical test or have failed in the physical test, why they should be given appointment as*
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Sub-Inspector of Police at this stage – Petitioners not entitled for the reliefs as claimed in the writ petitions. A

Dismissing the Writ Petitions, the Court

HELD: 1.1 This Court made it very clear that order of this Court regarding selection and appointment of 133 candidates are passed in peculiar background of litigation in exercise of jurisdiction under Article 142 and the same shall not be treated as a Precedent. The petitioners are claiming that they should be extended the same benefit of not being subjected to physical test as the exemption was granted with regard to 133 candidates. There is more than one reason for not accepting the claim of the petitioner. Firstly, there has been specific order with regard to 133 candidates for not subjecting them to the physical test and directing their appointment without physical test which this Court had categorically held to be not treated as Precedent. The order when specifically held that it may not be treated as Precedent, no benefit can be claimed of the said order by the writ petitioner in the present writ petitions especially when otherwise the writ petitioners are not able to satisfy this Court that when they have either not undertaken the physical test or failed in the physical test, why they should be given appointment as Sub-Inspector of Police at this stage. [Paras 16, 17][666-G-H; 667-A-C] E

1.2 The Counter affidavit filed by the Commission categorically states that for selection against 299 posts, 2192 candidates turned up for selection and only 232 cleared the physical test. The order dated 14.09.2017 of this Court passed in C.A.Nos.2795-2797 of 2017 has also noticed the number of the candidates who were to be subjected to the process of selection for 299 posts which number was mentioned 2479 candidates. From the order dated 14.09.2017 of this Court, it is further clear that 1035 candidates did not turn up for selection, this Court directed for them also to be subjected to physical test, thus, there are large number of candidates who did not take physical test or took the physical test and failed. Directing for appointment of all those candidates which includes the petitioners also who did not take the physical test or took the physical test and failed shall be an unending process and there are more than thousand of such candidates who may claim that although they did not take physical F

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- A **test or failed in physical test in pursuance of selection of 299 posts, they should be appointed they being similarly situated to 133 candidates. [Para 18][667-C-F]**

- B **1.3 The Court by order dated 01.11.2018 clearly indicated that in event the State of Bihar does not accede to the representation of applicants claiming similar relief to 133 candidates that shall not give rise to any proceedings in any of the Courts. The Court is not persuaded to grant the said relief in these proceedings under Article 32 of the Constitution. The petitioners are not entitled for the reliefs as claimed in the writ petitions. [Paras 20-21][668-D-E]**

C CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 227 of 2019.

[Under Article 32 of the Constitution of India]

With

- D W.P.(C) No. 225/2019, 582/2019, 591/2019, 592/2019, 1451/2019, 106/2020,
273/2020, 278/2020, 345/2020, 433/2020, 419/2020 and SLP (C)
No. 4370/2020

- E Jayant Bhushan, Ms. Aishwarya Bhati, Sr. Advs., M.M. Singh, Rameshwar Prasad Goyal, Anand Nandan, Raj Kishor Choudhary, Shakeel Ahmed, Chinmoy Pradip Sharma, Puneet Taneja, Shantanu Sagar, Kundan Kumar Mishra, Akshat Shrivastava, Amit Pawan, Samir Ali Khan, Arun K. Sinha, Neeraj Shekhar, Advs. for the appearing parties.

- F The Judgment of the Court was delivered by

ASHOK BHUSHAN, J.

- G 1. This bunch of writ petitions have been filed under Article 32 of Constitution of India by the petitioners claiming appointment to the post of Sub-Inspector of Police in the State of Bihar claiming parity with 133 candidates who were appointed under Orders of this Court by subjecting them only to the Medical test and not subjecting them with the Physical test. Counter Affidavit has been filed in writ petition No.227 of 2019 by State of Bihar as well as Bihar Staff Selection Commission which writ petition is being treated as a leading writ petition. The facts and claims H made by writ petitioners in all these petitions being based on same ground,

it shall be sufficient to refer to pleadings in writ petition No.227 of 2019 A for deciding all the writ petitions. There has been a checkered history of litigation with regard to selection to the post of Sub-Inspector conducted in the State of Bihar.

2. Brief facts and sequence of the events giving rise to the writ petitions need to be noted first:- B

- i. An Advertisement No.704 of 2004 was issued by Bihar Staff Selection Commission (hereinafter referred to as 'Commission') for appointment of 1510 posts of Sub-Inspector in the State of Bihar. The Physical test and thereafter written examination were part of the process of selection. Physical Test in pursuance of 2004 selection was held in the year 2006 and those selected were permitted to take written examination in the year 2008. The result was declared on 30.05.2008. C
- ii. There were certain mistakes in model answers with regard to which writ petitions were filed in the Patna High Court challenging the result. The Commission appointed an expert Committee and re-scrutinizes the answer sheets. consequently, 160 originally selected candidates were required to be removed. The State Government decided to retain 160 originally selected candidates also. Consequently, 639 more vacancies were added to accommodate 160 originally selected candidates and to maintain the roster. D
- iii. The candidates still unsatisfied regarding correctness of some answers and increase of vacancies by 639, filed writ petitions in the High Court and ultimately the matter was carried to this Court in C.A.Nos.1240-1241 of 2011 with connected appeals. This Court noticed that requisition for appointment of 299 posts of Sub-Inspector of Police has been received to the Commission from the State Government. This Court directed the Commission to hold fresh examination for 299 posts of Sub-Inspector and only those appellants who were writ petitioners before the High Court or pending before the High Court (Total-223 as per list given in the Court) are at liberty to appear in the Physical as well as written examination. The appeals were decided on 02.02.2011 issuing the above direction to the Commission. F G H

- A iv. Subsequently, this Court vide order dated 28.11.2011 after considering various IAs filed in the decided appeals permitted all the applicants who are similarly situated to those candidates who are eligible to appear in the examination for 299 posts of Sub-Inspector. It is useful to quote following portion of the order:-
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- “...By the aforesaid order dated 2nd February, 2011, we had permitted only 223 candidates to appear in the examination. But now, after perusing the applications and hearing the counsel for the parties, we deem it appropriate to permit all these applicants who are similarly situated and also those candidates who are eligible, to appear in the examination for 299 posts of Sub-Inspector of Police. Uniform standard would be made applicable to all the candidates and all the candidates appearing for the above post will have to undergo similar physical and the written examination.”*
- v. For filling of 299 posts, advertisement No.704/511 dated 28.06.2011 was issued in pursuance of this Court’s order dated 02.02.2011. The advertisement provided for selection process which consist of: -
- a) Physical standards and examination;
- b) Written examination.
- The candidates declared successful in Physical test were required to undertake an Objective type examination.
- vi. As noted above, in pursuance of Selection of 2004, result of select list of 1510+639 i.e. 2149 was declared and the appointments were made. The High Court in a writ petition issued a further direction to appoint 67 candidates belonging to most backward category who were wrongly left out. The State appointed those 67 and to retain those who were to be displaced decided to appoint 186 more candidates. There was challenge to appointment of 186 candidates in the High Court and the matter ultimately came to this Court

- where this Court on 15.08.2005 directed to maintain status quo. A
- vii. In separate selection for 299 posts in view of the clarification dated 28.11.2011, 2479 candidates were required to undertake the selection process. This Court in C.A. Nos. 2795-2797 of 2017 and other connected matters had passed order to proceed with the Physical test vide order dated 05.05.2017. It was brought to the notice of this Court that only 2192 candidates turned up for selection for Physical test out of which only 232 qualified and in the process of selection of 299 posts ultimately only 97 candidates were finally selected. This Court had permitted appointment of those 97 candidates selected and also 186 candidates whom the State decided to appoint to accommodate 67 OBC candidates. B
- viii. The large number of candidates who had applied in pursuance of advertisement No.511 of 2011 did not appear for Physical test and most of them who appeared were declared fail. All the writ petitioners are the candidates who had applied in pursuance of Advertisement No.511 of 2011 who either did not participate in the Physical test or participated and failed. This Court on 14.09.2017 in C.A.Nos.2795-2797 of 2017 has directed that 1035 candidates who did not turn up for selection be subjected to Physical test which number also included 133 candidates if not otherwise included. C
- ix. Contempt Petitions were filed in C.A.No.2805 of 2017 and C.A. Nos.2806-2810 of 2017 which appeals were disposed of on 14.09.2017 along with C.A.Nos.2795-2797 of 2017. This Court referred to its order dated 08.05.2017 and took the view that this Court having carved out and classified 133 candidates into a specific category and placed them along with 186 candidates, there cannot be any other procedure for 133 candidates except the Medical examination. This Court took the view that 133 candidates should not be permitted to take another written test and Physical efficiency test. The said order was passed in D
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- A exercise of jurisdiction under Article 142 of the Constitution of India and was stated to be not treated as a Precedent.
- x. Certain applicants had also filed applications for impleadment in the Contempt who were permitted to make representations before the Competent Authority who was directed to decide the said representation. 133 candidates who were referred to in the order of this Court and on 24.10.2018 were not subjected to Physical test and were given appointment as Sub-Inspector of Police in pursuance of Advertisement No.511/2011. After appointment of 133 candidates who were not subjected to physical test, the petitioners in these writ petitions submitted representation to the Commission and the Government claiming that they as well as 133 candidates were all part of list of 223 original candidates who were permitted to participate in selection against 299 posts by order of this Court on 02.02.2011, the benefit of not undergoing Physical test which was extended by this Court to 133 candidates should also be extended to the petitioners and the petitioners should also have been appointed as Sub-Inspector of Police as 133 candidates have been appointed. Various representations were given by petitioners. The representations submitted by the petitioners were not acceded to. Hence the petitioners have filed these writ petitions. In W.P.No.227 of 2019 following is the prayer made by the writ petitioner: -

"PRAYER"

- F It is therefore most respectfully prayed that this Hon'ble Court may graciously be pleased to:
- (a) Issue writ in the nature of mandamus or any other appropriate writ, order or direction, directing the respondents to issue appointment letters to petitioner in parity with 133 candidates who were part of original 223 candidates/petitioners, as directed by this Hon'ble Court vide order dated 02.02.2011 I Civil Appeal No.1240-44 of 2011.
- (b) Issue writ in the nature of mandamus or any other appropriate writ, order or direction, directing the respondents to subject the petitioners to the same test i.e. medical test as has been

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undergone by 133 candidates, who have been issued A appointment letters and are now undergoing training.

- (c) Pass any further order or directions, which this Hon'ble Court deems fit and proper in the facts and circumstances of the case and in the interest of justice.

AND FOR THIS ACT OF KINDNESS THE PETITIONERS B AS ARE DUTY BOUND SHALL EVERY PRAY.

Drawn by

Filed by

M.M.Singh

Rameshwar Prasad Goyal

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Advocate

Advocate for the Petitioners

Drawn on: 15.1.2019

Filed on: 24.01.2019"

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3. In the Counter Affidavit filed by the State, it has been stated that petitioners are not entitled for appointment as Sub-inspector of Police nor they can claim any parity with 133 candidates who were treated as Special category by this Court in whose favour order was passed under Article 142 of Constitution of India specially mentioning that the Order of directing for their appointment shall not be treated as Precedent. It has been further stated that the petitioners either failed in the Physical test or have not undertaken the Physical test in pursuance of Advertisement No.511/2011, hence, they have no claim for being appointed. The exception which was carved out for 133 candidates by this Court cannot be claimed by all candidates who could not succeed in Selection against 299 posts of Sub-Inspector of Police.

4. The Commission has also filed a counter affidavit where it has been pleaded that after order of this Court dated 20.04.2017 and 08.05.2017, total 3227 candidates were found eligible to appear in Physical test and only 2192 candidates turned for selection. In paragraph 10(G), following has been pleaded: -

"10.G. That in compliance to the orders dated 20.04.2017 and 08.05.2017 passed by this Hon'ble Court total 3227 candidates were found eligible to appear in physical test and

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- A *2192 candidates turned up for selection, 232 cleared the physical test and finally 97 of them cleared the written examination. It appears that the present Writ Petitioners either had not participated in the Physical or Written Test and if they participated then they had not succeeded in the tests conducted by the Respondents."*
- B 5. Shri Jayant Bhushan, learned senior Advocate has led the arguments on behalf of the petitioner appearing for petitioner in Writ Petition No.227 of 2017. Shri Bhushan submits that under orders of this Court dated 02.02.2011 for selection against 299 posts, a list of 223 candidates was given in which list all the writ petitioners in this bunch of cases were included as well as 133 candidates who were directed to be appointed by this Court without undergoing any physical test.
- C 6. It is submitted that 133 candidates had claimed the parity with 186 candidates who were decided to be appointed by State of Bihar without subjecting to any test, same benefit ought to be extended to the petitioners also they being similarly situated to 133 candidates who were directed to be appointed as against selection for 299 posts of Sub-Inspector.
- D 7. Shri Bhushan submits that although petitioner did not appear in the Physical test in pursuance of Advertisement no.511/2011 but posts are still available on which they can be appointed. Shri Bhushan submits that there are still 67 posts vacant on which all the petitioners can be accommodated.
- E 8. Smt. Aishwarya Bhati, Senior Advocate, appearing for some of the petitioners adopting the arguments of Shri Bhushan contends that F when the exemption was granted to 133 candidates since they had cleared physical test in pursuance of 2004 selection, the petitioners in these petitions should also be given the same.
- G 9. Shri Chinmay Pratap Sharma, learned counsel, submits that petitioners were all subjected to physical test in pursuance of 2004 selection and who want to take benefit which has been extended to 133 candidates of not participating in the physical test.
- H 10. Shri Amit Pawan submits that petitioners belong to same group in 2011 selection. He submits that some of the petitioners have more marks than 133 candidates.

11. Shri Kundan Kumar Mishra, Shri Anand Nandan and other A
counsel for the petitioners adopted the same argument.

12. Learned counsel appearing for the Commission submits that B
order dated 24.10.2018 of this Court was confined to only 133 candidates
and this Court having clearly stated that the order shall not be treated as
precedent, no other person can claim same benefit. He reiterated that
the petitioners are the candidates who either did not appear in the physical
test in pursuance of 2011 selection or participated and failed. Since their
names were not included in select list of 97 which select list was prepared
after conducting the physical test and the written test.

13. We have considered the submissions of learned counsel for C
the parties and have perused the record.

14. All the writ petitioners are claiming appointment to the post of D
Sub-Inspector in pursuance of Advertisement dated 28.06.2011 for 299
posts of Sub-Inspector of Police. The Commission has categorically
pleaded that all the petitioners in this batch of writ petitions are candidates
who either did not participate in the physical test for the selection against
299 posts or they participated and failed. While hearing Contempt Petition
No.14-18 of 2018 in C.A.Nos.2806-2810 of 2017, this Court with regard
to 133 candidates has made following observations: -

*“...After hearing the persuasive arguments of Mr. Shivam E
Singh, learned counsel for the respondents, we find it difficult
to see any contumacious conduct on the part of the
respondents. However, we feel that in the interest of justice
the dispute needs a little clarification so that there can be a
quietus to the long-drawn litigation. At the paragraph 10 of
our judgment dated 14.09.2017, we made it clear that 133 F
candidates shall also form part of the 1035 candidates referred
to in the judgment at paragraph 9. The only dispute now
remains is whether those 133 candidates who had cleared
the physical efficiency test conducted in the year 2006 should
now be subjected to the physical efficiency test, for the
implementation of our judgment dated 14.09.2017. It is not G
in dispute that in respect of selection to the post of sub-
inspectors commenced in the year 2004, in the case of 186
candidates, they were subjected only to medical fitness test in
the process of appointment since they had already cleared*

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A *the physical efficiency test in the year 2006. Mr. Shivam Singh, learned counsel submits that this was only in pursuance to orders passed by the High Court and this Court.*

B *We do not find any justification in taking a different stand in the case of 133 candidates who also have cleared the physical efficiency test in the year 2006. Therefore, at the time of their process of appointment in the year 2017/2018, they need only to be subjected to the same test undergone by 186 candidates..."*

15. Further in its order dated 24.10.2018, this Court in Contempt Petition No.1711 of 2018 in Contempt Petition(C) No.22 of 2018 in C.A.No.2805 of 2017 passed following order in paragraph 4:-

“4. Therefore, we do not find any justification to reopen the order and permit the State and the Selection Commission to subject those 133 candidates to another written test and physical efficiency test, which, of course, is the normal procedure. This Court having carved out and classified 133 candidates into a specific category and placed them along with 186 candidates, there cannot be any other procedure than the medical examination. Therefore, to remove any doubt on this aspect, we make it clear that the only remaining process to be undergone by the 133 candidates is the process to which the 186 candidates were subjected to. The State and the Selection Commission are directed to complete the process positively on or before 01.11.2018 and issue the appointment orders subject, of course, to candidates passing the medical fitness test. We make it clear that this order and all the earlier orders regarding the selection and appointment of the 133 candidates are passed in the peculiar background of the litigation starting from the advertisement in the year 2004 and several rounds of litigations during the past fourteen years, in exercise of our jurisdiction under Article 142 of the Constitution of India and the same shall not be treated as a precedent.”

G 16. This Court made it very clear that order of this Court regarding selection and appointment of 133 candidates are passed in peculiar background of litigation in exercise of jurisdiction under Article 142 and the same shall not be treated as a Precedent.

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17. The petitioners are claiming that they should be extended the same benefit of not being subjected to physical test as the exemption was granted with regard to 133 candidates. There is more than one reason for not accepting the claim of the petitioner. Firstly, there has been specific order with regard to 133 candidates for not subjecting them to the physical test and directing their appointment without physical test which this Court had categorically held to be not treated as Precedent. The order when specifically held that it may not be treated as Precedent, no benefit can be claimed of the said order by the writ petitioner in the present writ petitions especially when otherwise the writ petitioners are not able to satisfy this Court that when they have either not undertaken the physical test or failed in the physical test, why they should be given appointment as Sub-Inspector of Police at this stage.

18. The Counter affidavit filed by the Commission categorically states that for selection against 299 posts, 2192 candidates turned up for selection and only 232 cleared the physical test. The order dated 14.09.2017 of this Court passed in C.A.Nos.2795-2797 of 2017 has also noticed the number of the candidates who were to be subjected to the process of selection for 299 posts which number was mentioned 2479 candidates. From the order dated 14.09.2017 of this Court, it is further clear that 1035 candidates did not turn up for selection, this Court directed for them also to be subjected to physical test, thus, there are large number of candidates who did not take physical test or took the physical test and failed. Directing for appointment of all those candidates which includes the petitioners also who did not take the physical test or took the physical test and failed shall be an unending process and there are more than thousand of such candidates who may claim that although they did not take physical test or failed in physical test in pursuance of selection of 299 posts, they should be appointed they being similarly situated to 133 candidates.

19. This Court has further passed an order on 01.11.2018. It is also relevant to notice that several candidates some of which are petitioners before us has also filed the impleadment application in Contempt Petition No.1711 of 2018 in C.A.No.2805 of 2017 which application were rejected on 01.11.2018 and in order dated 01.11.2018, it had although been observed that the applicants are free to make representation appealing to the good conscience of the State of Bihar and the State of Bihar is free to consider the same but in event if the

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- A representation are rejected, it shall not give rise to any proceeding/appeal in any of the Courts. Following observations are made in this regard: -

“...Mr. S.Nagamuthu, learned senior counsel, and other counsel appearing for some of the intervenors/applicants, pray for the same relief which is granted to 133 candidates.

- B *The said applicants are free to make representations appealing to the good conscience of the State of Bihar. The State of Bihar is free to consider the same and pass appropriate orders in accordance with law. In case such representations are made by the intervenors/applicants within one month from today, appropriate orders may be passed by the state on those representations within three months thereafter. However, we make it clear that even if their representations are rejected, it will not give rise to any proceedings/appeal in any of the Courts.”*
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- D 20. The Court thus by order dated 01.11.2018 clearly indicated that in event the State of Bihar does not accede to the representation of applicants claiming similar relief to 133 candidates that shall not give rise to any proceedings in any of the Courts. We are not persuaded to grant the said relief in these proceedings under Article 32 of the Constitution.
- E 21. In view of the foregoing discussion, we are of the view that the petitioners are not entitled for the reliefs as claimed in the writ petitions. All the writ petitions are dismissed.

Divya Pandey

Writ petitions dismissed.