

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21483 of 2011

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Nilam Kumari @ Nilam Devi wife of Kamlesh Singh, D/O Sri Sumer Singh, Resident of Village + Post- Baraon, P.S.- Nokha, District- Rohtas

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Director General Of Police, Bihar, Patna
3. The Superintendent Of Police, Rohtas
4. The Chairman Central Recruitment Board-Cum-Additional Inspector General SCHE, Bihar, Patna
5. The Chairman, Central Region Board, Patna
6. The Secretary, Central Selection Board of Constable Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Subro Sanyal
Mr. Dhaneshwar Prasad Gupta

For the Respondent/s : Mr. Ratnesh Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

CAV ORDER

9 29-03-2016 The present writ petition was earlier dismissed by a bench of this court (Hon'ble Mr. Justice Navin Sinha, as he then was) vide its order dated 15.5.2012. Thereafter, the petitioner filed second writ petition vide CWJC No. 13763 of 2012 on the plea that after dismissal of the earlier writ petition some new materials were discovered. However, at the time of hearing, after some argument learned counsel for the petitioner before a bench of this court (Honb'le Mr. Justice Mihir Kumar Jha, as he then was)

withdrew the writ petition with liberty to file a review petition. Thereafter, the petitioner filed a review petition vide Civil Review No. 277 of 2013. However, a bench of this court (Hon'ble Mr. Justice Navin Sinha, as he then was) dismissed the review petition by the following order on 4.12.2013:-

“Heard learned counsel for the petitioner and the Central Selection Board.

This application seeks review of order dated 15.5.2012 dismissing C.W.J.C. No. 21483 of 2011.

It is submitted that the petitioner filed C.W.J.C. No. 13763 of 2012 afresh enclosing all relevant materials which were noticed to be missing in the earlier writ application. A Bench of this Court observed that if the petitioner had come in possession of any fresh materials he may file a review application, if he so opines.

The review jurisdiction is confined to errors apparent on the fact of the record. If the person was an applicant for a post in an uniformed service, was unmindful of her own interest, approached the Court with an incomplete writ application irresponsibly it cannot constitute fresh material to re-examine the grievance again.

The respondents cannot be vexed twice over on the same issue and neither can the petitioner consume time of the Court repeatedly on the plea that she subsequently became wiser.

The application is dismissed.”

Thereafter, the petitioner approached the Hon'ble Apex



Court by filing appeal vide Civil Appeal No(s). 6816-6817 of 2015 (arising out of S.L.P.(C) Nos. 17435 -17436 of 2014.) The Hon'ble the Apex Court by its order dated 1st September, 2015 set aside the impugned orders and remanded back the matter to the High Court for *de novo* consideration with observation to dispose of the same expeditiously but not later than four months from the date of receipt of the order. After the receipt of the order the present writ petition was restored and for the first time it was listed on 27.10.2015 for perusal of the order of the Hon'ble Apex Court. After perusing the order, which was kept at Flag - 'X' this court directed the Registry to list the matter under appropriate heading without delay. Thereafter, on 23.11.2015 while writ petition was taken up, on the prayer made on behalf of the petitioner this case was directed to be listed on 15th December 2015 as 1st case subject to part heard with an indication that no further adjournment shall be granted keeping in view the fact that in the said case the Hon'ble Apex Court has passed order to decide the case within a specified time. Thereafter, on 15th December 2015 the matter was taken up and Sri Subro Sanyal, learned counsel, assisted by Sri Dhaneshwar Prasad Gupta, learned counsel for the petitioner, informed the Court that in this case on 11.12.2015 he had filed a supplementary affidavit and Sri Sanyal



orally made a prayer for allowing him to implead Central Selection Board of Constable, Bihar, Patna through its Secretary as respondent no. 6 which, due to inadvertence, was earlier not impleaded as a party. Thereafter, with the permission of the Court the Central Selection Board of Constable, Bihar, Patna was impleaded as respondent no. 6. On the same day Sri Ratnesh Kumar Singh, learned counsel, on instruction of the newly added respondent, took notice and made a prayer for granting time for filing counter affidavit and the case was directed to be listed thereafter on 13.1.2016. On 13.1.2016 learned counsel for the petitioner intended to file reply to the counter affidavit. He was allowed to file it in Registry and case was directed to be listed on 2.2.2016 on which date after hearing Sri Subro Sanyal, learned counsel, assisted by Sri Dhaneshwar Prasad Gupta, learned counsel for the petitioner, learned State Counsel as well as Sri Ratnesh Kumar Singh, learned counsel for the respondent no. 6, the court reserved its order.

Initially the petitioner had filed the writ petition vide CWJC No. 21483 of 2011 with a prayer to direct the respondents to appoint her as Constable, Bihar Police Force on the ground that she had qualified in the written test as well as physical examination and she had obtained 'A' Grade in the final result. In

the said writ petition in paragraph no. 5 it was stated that as per Advertisement No. 01 of 2009 the petitioner applied for the post of Constable in Bihar Police Force. The petitioner received Admit-Card with intimation to appear in the written examination which was to be held on 1.5.2010. She appeared and succeeded in the written test. Thereafter, she received call letter to appear in the physical examination. In physical test also she became successful. According to the petitioner, as stated in paragraph no. 11 of the writ petition, final result was prepared and published. However, the petitioner's name was not included in the list for appointment as Constable. On enquiry, she was informed that she had not submitted caste certificate and residential certificate. She stated in the writ petition that no information was given to her to submit her caste certificate and residential certificate. The petitioner claimed that she was under the category of Other Backward Classes (O.B.C.) being by caste 'Yadav'. She claimed that caste certificate was issued by the District Magistrate, Rohtas at Sasaram vide letter no. 847, on 28.6.2009. She claimed that post of Female Constable as well as O.B.C. was still existing in the district of Rohtas and other districts. According to the pleading in illegal manner she was denied her selection. However, a bench of this court dismissed the writ petition on 15.5.2012 recording the

following observation :-

“.....The writ petition does not enclose a copy of the advertisement. There is no assertion at what stage under the advertisement, caste certificate was required to be submitted. The Court finds it difficult to appreciate that the petitioner was an applicant in response to an advertisement claiming reserved status and was unaware of the requirement that she was to submit her caste certificate and residence certificate. Normally these are requirements incorporated in the advertisement itself. The petitioner has chosen not to bring foundational facts and documents on record. On her own showing, from the pleadings in the writ application, she failed to submit necessary certificates rendering her application and candidature incomplete for consideration. If that be so, the Court is not persuaded to start a roving inquiry.

The application is dismissed.”.

After dismissal of the writ petition, the petitioner on the ground that after dismissal of the earlier writ petition since new material was collected, filed the second writ petition vide CWJC No. 13763 of 2012 which was dismissed as withdrawn vide order dated 20.6.2013 passed by a bench of this court (Hon’ble Mr. Justice Mihir Kumar Jha, as he then was). Thereafter, Civil Review petition was filed, which stood dismissed and finally the Hon’ble Apex Court vide its order dated 1st September 2015 in Civil Appeal No(s). 6816 -6817 of 2015 set aside the orders of the High Court and remitted back the matter as indicated hereinabove. After the present writ petition was restored the petitioner filed a

supplementary affidavit. However, it was incorrectly mentioned as supplementary counter affidavit on behalf of the petitioner, which was filed on 11th December 2015.

In this case the newly added respondent i.e. Secretary, Central Selection Board of Constable, Bihar, Patna filed its consolidated counter affidavit on 5th January 2016 to which reply was also filed by the petitioner on 22nd January 2016.

Sri Subro Sanyal, learned counsel for the petitioner has argued that the petitioner had already obtained caste certificate from the office of District Magistrate. The caste certificate of the District Magistrate dated 25.6.2009 has been brought on record as Annexure – ‘4’ at page no. 14. Residential certificate has also been brought on record as Annexure - ‘4 Series’, which is at page no. – 15. It has been reiterated that the petitioner was having caste certificate and as such her candidature was not required to be rejected in absence of non-production of caste certificate. He has tried to persuade the court that once the petitioner was having caste certificate issued by the District Magistrate vide certificate dated 25.6.2009 there was no reason for the petitioner for non-production of the caste certificate before the authority concerned. According to him rejection of her claim on the ground of non-production of caste certificate is not correct and valid.



In the counter affidavit filed on behalf of the newly added respondent i.e. respondent no. 6 a specific stand has been taken that the petitioner had participated in the written test and she qualified in the written test. The result of written test was published in newspaper and the candidates who qualified in the written test were asked to appear for physical test. In the result in respect of written test there is specific clause i.e. clause – 5 wherein instruction was given by the Board that on the date of their respective physical evaluation test the candidates must bring the original certificates i.e. (i) matriculation or equivalent examination pass certificate (ii) date of birth certificate (iii) caste certificate (iv) certificate of being resident of Bihar State (v) Home Guard Certificate (if being Home Guard), and (vi) certificate of being Indian Gorkha. Besides, making clear cut stipulation for bringing certificates in the result of written test which was published in newspaper, while issuing call letter for participating in the physical test, in the call letter also a specific instruction was issued to bring all the aforesaid original certificates.

Sri Ratnesh Kumar Singh, learned counsel for the respondent no. 6 by way of referring to Annexure – ‘F’ to the counter affidavit submits that in similar manner petitioner was also issued call letter to appear for physical test and in special

instruction on the back side of the Admit -Card there was second instruction that at the time of physical test the candidate must bring original education certificate, birth certificate, caste certificate, residence certificate etc. He has argued that since the petitioner at the time of physical test, though she qualified in the physical test, had not produced caste certificate she did not qualify and as such in the prescribed Form she was shown as “FAIL”. It has also been argued that at the time of physical evaluation test which was held on 24.9.2010 the petitioner had not produced caste certificate of O.B.C. category and residential certificate though she had mentioned in the application form of the written examination. Instead of producing the aforesaid certificate she had produced an affidavit duly sworn by the petitioner to show her caste as Backward – II. Learned counsel for the respondent no. 6 has referred to Annexure – ‘H’ to the counter affidavit which is dated 11.12.2009 i.e. affidavit sworn by the petitioner to show her caste. Learned counsel for the respondent no. 6 has placed heavy reliance on Annexure – ‘G’ to the counter affidavit i.e. Central Selection Board Physical Evaluation Test Sheet dated 24.9.2010 which contains the signature of the candidate, photograph and all details including details of all category and production of certificates. On perusal





of the same it is evident that in the last column i.e. Final Report of Annexure – ‘G’, there is endorsement i.e. ‘FAIL’. Similarly, regarding submission of certificate of caste, there is remark “NO”. According to learned counsel for the respondent no. 6 since the petitioner despite specific instruction had not produced all her caste certificate as well as residence certificate, she was shown as ‘FAIL’ not selected. He further submits by way of referring to the averment made in the counter affidavit that petitioner had incorrectly shown that she was given Grade ‘A’. It was stated that none of the candidates were given such endorsement. It has further been stated that incorrect statement was made in the writ petition regarding availability of vacancy. By way of replying to the statement made in paragraph no. 15 and 18 of the writ petition and statement made in paragraph no. 14 and 16 of supplementary affidavit a specific stand has been taken in paragraph no. 24 of the counter affidavit that no post of Female Constable or O.B.C. is existing in the Advertisement No. 2 of 2009 and as such made a specific averment that the writ petition is fit to be rejected on the ground that the petitioner has made several false statement in the writ petition as well as supplementary affidavit.

Besides hearing learned counsel for the parties I have also

perused the materials available on record. On perusal of the writ petition it is evident that the petitioner has approached this court in a casual manner. In the writ petition in paragraph no. – 5 it was stated that the petitioner had applied pursuant to Advertisement No. 01 of 2009 whereas fact remains that it was Advertisement No. 2 of 2009 . So far as the allegation against the petitioner regarding giving false statement is concerned, the Court is not delving into the matter due to the reason that on the material which has been brought on record, the Court is satisfied that petitioner herself had not produced caste certificate as well as residential certificate at the time for physical test. Even though as per the result of the written test published in the newspaper as well as specific instruction mentioned in the call letter for physical test, there was specific direction to come along with original certificates, the petitioner had not produced the caste certificate and as such, she was rightly not selected . Moreover, on perusal of Annexure – ‘H’ to the counter affidavit it is evident that instead of producing caste certificate the petitioner had produced her own notarized affidavit to show her caste as Backward – II. Meaning thereby, that at the time of physical test and verification of document the petitioner had not produced her caste certificate issued by competent authority. I do not find any ground to pass

any order in favour of the petitioner.

The writ petition stands dismissed.

(Rakesh Kumar, J)

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