

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.3099 of 2013**

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1. Bibhash Sharma S/O Shatrughan Sharma R/O Village- Nayatola Sadhua,  
Police Station- Rangra O.P., District- Bhagalpur

.... .... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary Department Of Home, Government Of Bihar,  
Patna
3. The Director General-Cum-Inspector General Of Police (Home Guard),  
Bihar, Patna
4. The District Magistrate-Cum-Chairman Home Guard Selection  
Committee, Bhagalpur, District- Bhagalpur
5. The Superintendent Of Police Bhagalpur Cum Member, Home Guard  
Selection Committee, District- Bhagalpur
6. The District Commandant (Home Guard) Bhagalpur Cum & Member  
Secretary, Home Guard Selection Committee, Bhagalpur
7. The District Welfare Officer Cum Member Home Guard Selection  
Committee, Bhagalpur
8. The Deputy Superintendent Of Police, Home Guard, District- Bhagalpur

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Diwakar Yadav

For the Respondent/s : Mr. Reema Kumar, A.C to A.A.G.-13.

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**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY**  
**ORAL ORDER**

3      06-01-2016                      Heard learned counsel for the petitioner and the State.

In this case the petitioner is seeking the relief of mandamus giving direction to the respondents to appoint him on the post of Home Guard in pursuance of letter no. 762, dated 16.06.2011 issued by District Commandant ( Home Guard), Bhagalpur, whereby and whereunder the petitioner was enrolled as Home Guard along with others as per Advertisement No. 1 of 2006.



According to the petitioner, an advertisement was published for enrolment as Home Guard vide Advertisement No. 1 of 2006 in daily news paper dated 07.03.2006 wherein it is provided that for rural area only the male members will be taken into consideration, while females were made eligible for the urban areas, subject to fulfilment of qualifications and fitness. In pursuance of the advertisement the petitioner along with others applied for the post of Home Guard. He was selected and his name was empanelled along with seven others.

As per claim of the petitioner, all were accommodated and only the petitioner was left out. It appears that when the petitioner and few others were not appointed as Home Guard, four persons moved this Court in CWJC No. 4441 of 2010, there the State took plea that appointments have to be made against roster point nos. 35 to 42, which were meant for the female candidates. This Court took the view that if in terms of advertisement females were prohibited from consideration for appointment in the rural area, according to the vacancy position disclosed in the counter affidavit for appointment of the Home Guard in the rural area in the category of the backward class, it undisputedly stands at 42. If the petitioners stand in between roster point Nos. 35 to 42, clearly vacancies exist and they cannot be

denied appointment on an erroneous reasoning that they had been placed in the merit list against reserved female vacancies when the advertisement itself prohibited so.

Counsel for the petitioner submits that the petitioner was selected but the petitioner has not been provided any appointment as Home Guard.

A counter affidavit has been filed by the State wherein it has been stated that in pursuance of the direction of this Court in CWJC No. 4441 of 2010 (Shivkant Singh & ors –v- The State of Bihar & ors.) a meeting was called under the chairmanship of Home Secretary, Government of Bihar for implementation of the order of this Hon'ble Court where it was resolved vide decisions dated 22.09.2011 that after carrying forward the vacancies of female members of Backward Class , the candidates of same category on the basis of reservation be enrolled as per merit list and in pursuance of the same a meeting of Selection Committee was held on 29.09.2011 under the chairmanship of the District Magistrate and it was resolved and decided to enroll the suitable candidates as per roster and accordingly the matter was looked into and the petitioner did not come within the ambit of roster. It is the peculiar stand of the State when this Court in CWJC No. 4441 of 2010 has specifically



directed for appointment of the petitioners as Home Guards in the rural category why they have been denied appointment on the posts of Home Guard, when all others have been appointed. No reason has been assigned by the State Government of depriving the petitioner merely making a vague statement about the roster when letter itself shows that the petitioner after due clearance of roster was accommodated against roster point, only grievance was raised roster points standing for the female category candidate cannot be accommodated in the rural area, then in that circumstances the stand taken by the State does not conform to the direction of this Court. This Court feels that the petitioner has been discriminated in hostile manner. This Court directs the respondent, District Magistrate, Bhagalpur, to examine the case of the petitioner and pass necessary orders within a period of three weeks from today.

With the observation and directions, as above, this writ petition stands disposed of.

**(Shivaji Pandey, J)**

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