

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.604 of 2017

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1. Ishika Raj Daughter of Rajendra Mandal Resident of Village - Barihat Sabour,
Police Station - Sabour, District - Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Home Department, Government of Bihar, Patna.
2. The Chairman, Central Selection Board (Constable Appointment), Bihar, Patna.
3. The Secretary, Central Selection Board (Constable Appointment), Bihar, Patna.

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 1167 of 2017

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1. Naaj Prawin W/o Brajesh Kumar Raman, Resident of Village- Amarpur
Jayrampur @ Lattipur, P.S.- Bihpur, District- Bhagalpur - 853201.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Department of Prison through its Principal Secretary, Govt. of Bihar, Patna (Home Deptt.).
3. The Central Selection Board (Constable Appointment), Bihar, Patna.
4. O.S.D. (Officer on Special Duty), The Central Selection Board (Constable Appointment), Bihar, Patna.

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 2267 of 2017

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1. Gyatri Kumari, Daughter of Mahendra Paswan, Wife of Om Narayan Kumar,
resident of Village- Malhad, Post office + Police Station and District- Supaul.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Department of Home, Government of Bihar, Patna.
2. The Chairman, Central Selection Board, Constable Appointment, Bihar, Patna.
3. The Secretary, Central Selection Board, (Constable Appointment), Bihar, Patna.

.... Respondent/s

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Appearance :

(In CWJC No.604 of 2017)



For the Petitioner/s : Mr. Yogesh Chandra Verma, Sr. Adv.
Mr. Jitendra Kumar Roy, Adv.
Mr. Prem Sheela Pandey, Adv.

For the Respondent/s : Mr. Md. Nadeem Seraj- GP5
Mr. Sanjay Pandey, Adv.

(In CWJC No.1167 of 2017)

For the Petitioner/s : Mr. Rajesh Kumar

For the Respondent/s : Mr. Ujjawal Kumar Sinha, A.C. to AAG3
Mr. Sanjay Pandey, Adv.

(In CWJC No.2267 of 2017)

For the Petitioner/s : Mr. Yogesh Chandra Verma, Sr. Adv.
Mr. Jitendra Kumar Roy, Adv.
Mr. Prem Sheela Pandey, Adv.

For the Respondent/s : Mr. Nadeem Siraj -GP5

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 03-08-2017

Can motherhood become a bane for a woman job aspirant or is a marital bliss deserving respect and righteous consideration by the State, in matters concerning public employment.

This is the moot question raised by the petitioners who are women aspirants to the post of Jail Warder, in a selection process conducted by the Central Selection Board.

The issue which falls for consideration is whether facing such medical state, these petitioners are entitled to an accommodation by postponement of the date of physical evaluation test or they face disqualification because in between the publication of the advertisement which neither mentioned the date of written test nor the physical evaluation test which were notified more than a year later, these petitioners are blissfully in advanced stage of motherhood. It is



because these petitioners have been denied such accommodation that they are before this Court for an appropriate direction to the respondents Central Selection Board i.e respondent Nos. 2 and 3 for extending the date of physical evaluation test for a reasonable period so that they are in a position to participate in the same.

Since all these writ petitions raise common issues of interest and even the relief prayed is common that they have been heard analogous and with the consent of the parties are being disposed of at the stage of admission itself.

The facts are in a very narrow compass. An advertisement was issued by the respondent Central Selection Board on 31.7.2015, a copy of which is enclosed at Annexure-B to the counter affidavit inviting applications from intending applicants seeking appointment to the post of Jail Warders in the scale of Rs. 5200-20200 +Grade pay of 1900. The vacancies were notified at 2649 and the last date for receiving application was fixed on 24.9.2015. The mode for selection process was inclusive of a written test as well as physical evaluation test which the candidates had to pass besides the medical evaluation on height and other requirements. These petitioners conscious of the selection process applied against the same. A notice in connection with the written test was issued on 30.8.2016 i.e 13 months later, fixing the date of written examination on 18.9.2016. The petitioners



participated and were declared successful. Annexure-C is a notice declaring the result of the written test which was put up on the website and by the same notice the applicants were informed about the physical evaluation test to be held on 9.1.2017 for which the screening/medical test examination was to take place on 15.12.2016. Those who could not participate in the same on 15.12.2016 were given to participate on 6th and 7th of January, 2017. As already noted the physical evaluation test was to take place on 9.1.2017. Since these petitioners during the intervening period were well set on way to motherhood that they approached the Central Selection Board for accommodating them by postponement of date of physical evaluation test as they were in their advanced stage of pregnancy but their request was not accepted leading to the present batch of writ petitions.

While the arguments on behalf of the petitioners are led by Mr. Yogesh Chandra Verma, learned Senior counsel who appears along with Ms. Prem Sheela Pandey, Mr. Jitendra Kumar Roy and Mr. Rajesh Kumar learned counsel for the petitioner, Mr. Md. Nadeem Seraj learned counsel appears for the State in C.W.J.C.No.604 of 2017 and C.W.J.C.No.2267 of 2017, while Mr. Ujjawal Kumar Sinha learned assisting counsel to AAG III appears on behalf of the State in C.W.J.C.No.1167 of 2017. The Central Selection Board (hereinafter referred to as 'the Board') is represented by Mr. Sanjay Pandey in all



the three writ petitions.

It is the argument of learned counsel for the petitioners that even though the advertisement was issued on 31.7.2015 and duly intimated the applicants about the tests they had to go through, which included the physical evaluation test but neither the date of written test was mentioned in the advertisement nor the applicants were given any information about the date of the physical evaluation test. It is jointly submitted that it is after more than 13 months delay that the respondent 'Board' notified the date of written test on 30.8.2016 and it is during this period that these petitioners took a step into motherhood and thus made a request for their accommodation on the date of physical test. It is submitted that had the date of the written and physical test been notified in the advertisement, the petitioners would have been ready for the challenge but in absence of any definite information in this regard in the advertisement, it is highly unjust for the respondents to expect that the petitioners should have avoided the situation until the selection process was over. It is submitted that the petitioners were fully qualified to participate in the two tests on the date they filed their respective application(s) and thus their change in physical/medical condition in between the date of advertisement and the date of written/physical test which was notified after a delay of 13 months should not be treated as an obstacle in their career pursuit.



It is in reference to Article 21 of the Constitution of India submitted that the refusal by the 'Board' to accommodate the petitioners in the circumstances existing, strikes at the very root of the constitutional guarantee. It is the argument of learned counsel that even though a woman's right to procreate stands recognized under Article 21 of the Constitution but even otherwise, had the respondents notified the date of written/physical test in the advertisement itself, the petitioners could have planned their family but to expect that these petitioners should have delayed their motherhood until the 'Board's' luxurious announcement came on the tests in question 13 months later, is arbitrary.

The arguments of learned counsel for the petitioners have been contested by learned State counsel and learned counsel for 'the Board' each of whom have shifted the responsibility on the petitioners to submit that since the notice at Annexure-C at paragraph 6 clearly stipulated that each of the applicants had to participate in the physical evaluation test on the date fixed otherwise they will be held ineligible for appointment and would not be given a second opportunity, the respondents could not have extended the date of physical evaluation test. It is jointly submitted that since these six petitioners were applicants to the selection process, they ought to have taken care of their physical condition so as to be able to participate in



the selection test. It is submitted that the 'Board' cannot have a different yardstick for different category of applicants and the rule applies equally to all. It is also the submission of learned counsel for the Board that there were 14 such cases before the 'Board' with each of them in different stage of pregnancy. It is submitted that accepting their request by the 'Board' would have delayed the appointment process. It is further submitted that there are no such provisions in the rule book enabling the 'Board' to give such relaxation.

I have heard learned counsel for the parties and I have perused the records.

While Article 14 of the Constitution of India clearly stipulates that the State shall not deny to any person equality before law or equal protection of law within the territory of India, Article 15 while prohibiting a discrimination on grounds of religion, race, caste, sex or place of birth at Clause 3 specifically provides that nothing in the Article would prevent the State from making any **special provision for women and children.**

Article 16 of the constitution of India again while providing for equality of opportunity in matter of appointment at Clause 2 debars any discrimination on grounds of religion, race, caste, sex, descent, place of birth, residence or any of them.

The all important article which would be relevant for the



contest at hand is Article 21, which provides that no person shall be deprived of his life or personal liberty except according to the procedure established by law.

These stipulations coming under Part III of the Constitution of India are fundamental to the rights guaranteed to every citizen of this country. There is a corresponding duty cast upon the State under the Directive Principles and while Article 38 provides that the State shall strive to promote the welfare of the people, Article 42 casts an obligation on the State to make provision for securing just and humane condition of work and for maternity leave.

There is absolutely no dispute that once a woman candidate secures an employment then she is entitled to all benefits for a secured motherhood both pre as well as at the post maternity stage together with all lawful entitlements under the Maternity Benefit Act.

What the respondents have endeavoured to contest is that even though these petitioners would be entitled to the benefits of secured motherhood after their appointment but there is no provision for grant of benefits prior thereto and certainly not at the selection stage because any such accommodation would unnecessarily delay the selection process.

May be the concern of the respondents on maintaining a time frame to conclude a selection process, is genuine and also sound on



principle but the urgency so canvassed is certainly not seen either in the action of the Board or in the advertisement which neither discloses the date of written test nor makes the applicants aware of the date of the physical test. In my opinion until such time that the advertisement so published by the respondent 'Board' would disclose the date(s) for written and physical test or carry any such warning requiring the applicants to remain in a condition of participation in the physical test or disqualifies those who have become temporarily handicapped on medical grounds including pregnancy in the meanwhile and/or until such time that these petitioners at the stage of filing their application form itself, were not in a condition to participate in the physical test, all such objections are only taken to be rejected.

The protection granted to a citizen of this country under Articles 14,16 and 21 of the Constitution has equal application to the woman folk of this country and if a woman candidate was in a fit condition to compete on the date of filing of her application form then her subsequent change in the medical condition on account of pregnancy which prevents her from participation in vigorous physical activities, certainly cannot act an impediment on her career pursuit. A married woman candidate besides performing the functions of a home maker, has equal right to establish her identity in the society and any



attempt of the State to restrict this multitasking character of a woman is anti people and antithesis to the concept of a welfare State. Simply because a woman takes upon herself the responsibility to keep the society going by bearing the pain of motherhood for nine long months, she can neither be treated as child rearing machine nor her this important facet can act adverse to her quest for identity.

The debate so generated has far reaching consequences. A motherhood is not to be treated as an issue of self satisfaction rather is to be seen as a selfless commitment by a woman towards maintaining a social order. The society needs to be indebted to this pious role of a woman for it is this important role which a woman exclusively performs which keeps the human race clock ticking and it is but for this role that the human race would come to an end.

Strange are the ways of the State in treating a married woman candidate who was fully eligible on the date when she filled up the application form with disdain only because she has developed pregnancy in between the indefiniteness of the selection process. With nothing in the advertisement to inform the married woman candidate(s), the date on which she has to participate in the physical evaluation test, a refusal by the Board from accommodating such woman candidate(s) is reprehensible because it is but for the indefinite approach of the State who have notified the written



examination after a delay of 13 months of the advertisement with the physical test notified even later, which has given rise to the present situation and which certainly cannot be permitted to act an obstacle on the way of the woman candidate. May be, if the date (s) of the written and physical test were notified in the advertisement itself, perhaps the matter would have required a different appreciation but not in the circumstances existing in present case. The indefiniteness on the part of the State to inform the dates of the written/physical test, itself stands valid ground, to permit the women candidate who have gained motherhood in the process, of their participation in the selection process.

The issue put to debate herein is not an isolated issue rather the opinion expressed by the Delhi High Court, the Kerala High Court as well as the Supreme Court on this pious role of a woman lends support to the views expressed herein.

Reference is made to a judgment of the Supreme Court since reported in **AIR 2010 SC 235 (Suchita Srivastava Vs. Chandigarh Administration)**. The Supreme Court was in consideration of the right of a woman to make reproductive choices and whether it fell in the domain of personal liberty with the meaning of Article 21 of the Constitution of India. The observation of the Supreme Court at paragraph 11 would bear a relevant consideration to the present



contest which runs under:

“11. There is no doubt that a woman's right to make reproductive choices is also a dimension of 'personal liberty' as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children. However, in the case of pregnant women there is also a 'compelling state interest' in protecting the life of the prospective child.'

(Emphasis is mine)

A somewhat similar situation came up for consideration before the Division Bench of the Kerala High Court in a case reported in **2014 (2) Kerala Law Times (Kerala Public Service Commission vs. Sini)**. The appeal was preferred by the Kerala Public Service Commission feeling aggrieved by the judgment and order of the Kerala Administrative Tribunal in interfering with the Public Service Commission decision in refusing to reschedule the physical efficiency test of woman candidates who were passing through different milestone of pregnancy. A somewhat similar objection was raised by the Kerala Public Service Commission as raised herein, before the Division Bench regarding finality of the selection process, which according to them could not be unduly delayed.

The Division Bench while refusing to interfere with the order



of Kerala Administrative Tribunal relied upon its earlier Division Bench judgment rendered by the court in the case of **K.P.S.C Vs. K. Jayasree** reported in **2014(1) KHC 358**, in similar circumstances to hold that a pregnant woman cannot be denied an opportunity to have adequate means of livelihood merely on account of biological reason that she was unable to appear in the physical evaluation test at a given point of time. It was held by the Division Bench that a pregnant woman cannot be compelled to undergo the endurance test at a time when it was dangerous to her life and that of the baby in the womb. In the opinion of the Division Bench, the effect of refusal on the part of Public Service Commission to give extension of time for such woman to participate in the physical evaluation test would amount to denial of opportunity to get employment.

The observation of the bench at paragraph 7 would bear a relevant consideration for the present case which reads as under

“7.....A reasonable modality has to be effectuated synchronising the fundamental rights of all the candidates as guaranteed under Articles 14, 16, 19 and 21 and having in view the constitutional values and human right values emanating out of Articles 15(3) and 42 of the Constitution of India and the aforementioned materials in the international domain as understood herein above and in *K. Jayasree's* (supra). This has to be done without ignoring the fact that the primary need is to fill up the vacancies without inordinate delay because that is the foremost requirement in public interest. In this backdrop, on the totality of the scheme of things, the competent authority has to frame clear guidelines providing the best possible measures to support the woman candidates who happen to



face different situations in relation to pregnancy and maternity during the course of the process of selection which commences with the submission of the applications following PSC's notification. The PSC has to necessarily frame regulations or guidelines to regulate this in a uniform and standardised manner, also taking note of the time frame which it would treat as a 'closed period' for the purpose of finalisation of the select list from the time when preparation of list attains definiteness and until it is vetted and finalised through the process of the PSC's machinery. We, therefore, direct the PSC to take the aforementioned facts and factors into consideration and issue regulations or guidelines as may be found necessary at the earliest.”

A lady Inspector (General Duty) in the Central Reserve Police Force faced similar situation when she was denied promotion because being in advanced stage of pregnancy, she could not fulfill the mandatory field service criteria. A writ petition was filed by the Inspector Ravina bearing **W.P.(C) No. 4525 of 2014 [Inspector (Mahila) Ravina Vs. Union of India & Ors.]**. The division bench of the Delhi High Court while taking note of the judgment of the Supreme Court rendered in the case of **Suchitra Srivastava** (supra) had the following words of advise for the Union of India, who was creating obstacle in the way of the lady candidate, which finds noted at paragraphs 9, 10 and 12 of the judgment, placed on record hereinbelow:

“9. To conclude that pregnancy amounts to mere unwillingness - as the respondents did in this case- was an indefensible. The choice to bear a child is not only a deeply personal one for a family but is also a physically taxing time for the mother. This right to reproduction and child rearing is an essential facet of Article 21 of the



Constitution; it is underscored by the commitment of the Constitution framers to ensure that circumstances conducive to the exercise of this choice are created and maintained by the State at all times. This commitment is signified by Article 42 (*“Provision for just and humane conditions of work and maternity relief- The State shall provide conditions for securing just and humane conditions of work and for maternity relief”*) and Article 45 (*“Provision for early childhood care and education to children below the age of six years- The State shall endeavour to provide for early childhood care... ”*). The Maternity Benefits Act, 1976 protects the expecting mother’s interests in employment. Provisions of the Factories Act, 1948 and the Central Civil Service (Leave) Rules, 1972 provide for post-natal care leave enabling mothers to spend time with infants who need early childhood care.

10. The International Covenant on Economic, Social and Cultural Rights (ICESCR), which has been ratified by India, spells out in greater detail the various facets of the broad right to health. Article 10 of ICESCR which is relevant, reads as under:

“Article 10

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits... ”

The ruling of the Supreme Court in *Suchita Srivastava v Chandigarh Administration*, AIR 2010 SC 235 upholds the autonomy of a woman’s right to make a choice of parenting. The Court held that:

“11. ... There is no doubt that a woman's right to make reproductive choices is also a dimension of 'personal liberty' as understood under Article 21 of the Constitution of India. It is important to recognise



that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth-control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children..."

12. It would be a travesty of justice if a female public employee were forced to choose between having a child and her career. This is exactly what the CRPF's position entails. Pregnancy is a departure from an employee's "normal" condition and to equate both sets of public employees- i.e. those who do not have to make such choice and those who do (like the petitioner) and apply the same standards mechanically is discriminatory. Unlike plain unwillingness- on the part of an officer to undertake the course, which can possibly entail loss of seniority- the choice exercised by a female employee to become a parent stands on an entirely different footing. If the latter is treated as expressing unwillingness, CRPF would clearly violate Article 21. As between a male official and female official, there is no distinction, in regard to promotional avenues; none was asserted. In fact, there is a common pre-promotional programme which both have to undergo; both belong to a common cadre. In these circumstances, the denial of seniority benefit to the petitioner amounts to an infraction of Article 16 (1) and (2) of the Constitution, which guarantee equality to all in matters of public employment, regardless of religion, caste, sex, descent, place of birth, residence etc. A seemingly "neutral" reason such as inability of the employee, or unwillingness, if not probed closely, would act in a discriminatory manner, directly impacting her service rights. That is exactly what has happened here: though CRPF asserts that seniority benefit at par with the petitioner's colleagues and batchmates (who were able to clear course No. 85) cannot



be given to her because she did not attend that course, in truth, her “unwillingness” stemmed from her inability due to her pregnancy. In this present situation the course was in Coimbatore. Travelling and living in an alien area without support was not a feasible proposition for an expecting mother; besides, the CRPF had determined that her medical category was SHAPE III. Mercifully, the CRPF does not contend that its regulations imposed any restrictions on a female employee’s pregnancy at the stage of the Petitioner’s career. That the petitioner exercised her right therefore to become a parent should not operate to penalise her, and her ‘choice’ to do so was irrelevant, in the circumstances of the case; the CRPF should have taken the reasons for the unwillingness into account given the admitted fact that she was pregnant.”

In the nature of the expressions so found in the judgments referred to above, all that can be said is that the State respondents including the ‘Board’ have been rather insensitive in forcing the woman candidate(s) to chose between Motherhood and career. The decision of the ‘Board’ in not extending the date of physical test for the pregnant woman candidate runs counter to Article 14 which grants equal protection to its citizens; Article 21 which recognizes the right of a woman to procreate and Article 15(3) which enable the State to make special provision for woman. In my opinion once the right of women in public employment stands recognized then it becomes the duty of the State to frame appropriate regulations and guidelines to ensure that no woman candidate is disqualified from a selection process because she has acquired motherhood in the meanwhile. The failure of the State to take effective steps in this connection rather



asking the woman candidates to choose between a family and career would not only be a travesty of justice but as I have said, would be an antithesis to the concept of a welfare State.

For the reasons and discussions above the prayer of the petitioners for postponement of the date of physical evaluation test on grounds of being in advanced stage of pregnancy, is upheld. Since all these petitioners are now ready to face the challenge of the physical evaluation test, the Central Selection Board would fix up a date for the physical evaluation test within six weeks from the date of receipt/production of a copy of this order and give opportunity of participation therein not only to the petitioners herein but all those women candidates who could not participate in the physical evaluation test due to advanced stage of pregnancy. In case these petitioners and other participant(s), succeed in the physical evaluation test as well as the medical test the respondent State including the ‘Board’ would take appropriate steps for their appointment in accordance with law.

The writ petitions are allowed with the directions aforementioned but without any order as to costs.

(Jyoti Saran, J.)

Bibhash/-

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