

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15248 of 2008

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Kumari Madhuri Sinha, D/O- Sakaldev Prasad of village- Amokhar, P.O.- Khanetu,
P.S.- Paraiya, District- Gaya.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The D.G.-cum- I.G. of Police, Bihar, Patna.
3. The D.I.G. of Police, Magadh Range, Gaya.
4. The S.P. Motihari-cum- Chairman, Constable Selection Committee, Jehanabad.
5. The S.P. Jehanabad.
6. Manorma Kumari, wife of Surendra Kumar, village- Daurwa, Post- Daurwa,
P.S. Anti, District- Gaya, Pin-824126.

.... Respondents

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Appearance:

For the Petitioner/s	: Mr. Bindhyachal Singh, Advocate Mr. Umesh Kumar, Advocate Mr. Abhishek Anand, Advocate
For the State	: Mr. Prabhakar Jha, G.P.-27 Mr. Mukund Mohan Jha, A.C. to G.P.-27
For Respondent No.6	: Mr. Rajesh Kumar, Advocate Mr. Narendra Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 12-02-2018

Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for the respondent no.6.

2. In the present case, the petitioner is seeking direction of
this Court to command the respondents to appoint the petitioner on
the post of constable in Jehanabad district, Magadh Range.
Subsequently, the petitioner has filed two Interlocutory
Applications. First vide Interlocutory Application No.749 of 2015,



whereby and where-under the petitioner has made a prayer for quashing the letter no.3867 dated 31.10.2008 (Annexure-B to the counter affidavit) and also memo no.520 dated 17.12.2013 issued by the Superintendent of Police, Jehanabad during the pendency of the writ application, which is Annexure-6 to the Interlocutory Application, whereby and where-under he has assigned the reason why the petitioner's case was not considered and was not selected. Later on, another Interlocutory Application has been filed vide I.A. No.8354 of 2015, whereby and where-under the petitioner has challenged the letter no.1283 dated 30.04.2015 (Annexure-7 to the Interlocutory Application) passed by the Sergeant Major, Police Centre, Jahanabad, wherein it has given the reason for non-selection of the petitioner to the post of constable. All the three annexures are under challenge.

3. The petitioner has taken plea that all through the selection and appointment has been made in terms of the letter no.458 dated 03.09.2002 but only for five female candidates, who were from Non-Home Guard category as on account of non-availability of Home Guard female category five persons, were appointed and selected on the basis of letter no.134 dated 09.01.2008, which was issued by Deputy Secretary, Department of



Personnel and Administration Reforms Department. Basically, it has been argued that when the entire selection has been made in terms of 2002 roster system then selectively another roster system should not be applied and if it is to be applied it has to be applied for all not for only five female candidates.

4. The facts of this case are that an advertisement no.01 of 2004 was issued for appointment of 328 constables in Jehanabad and Arwal district and against that advertisement the petitioner has also applied for the post of constable in the female category. Altogether 309 candidates were selected and out of them 299 were male candidates and 10 persons were female, only 19 posts left vacant which were for the Home Guard category. Ultimately, five posts of female category of Home Guard remained vacant and five female from None-Home Guard female candidates were to be selected and adjusted in the Home Guard category. As the petitioner secured 10 points she was served the memo no.3785/ R.O. to appear on 05.10.2007 for appointment, she appeared along with the certificates, which were verified and found to be genuine but appointment letter, which was issued to her, was cancelled and the female candidates who obtained the lesser mark having been appointed.



5. The State has filed a counter affidavit, wherein in paragraph no.5 it has been stated that when the petitioner was not appointed, she made a complaint before the Director General of Police, who referred the matter vide memo no.4911/P-2 dated 22.10.2008 to the Superintendent of Police, Jehanabad, to hold the enquiry and send the report. Whereafter, the Superintendent of Police, Jehanabad, vide letter no.3867 dated 31.10.2008 explained that the petitioner falls in the Backward Category Female-2 and the post was reserved for the said category in terms of the letter no.458 dated 03.09.2002, but later on, the Deputy Secretary, Personnel and Administrative Department, vide letter no.134 dated 09.01.2008 has given instruction that the Backward Class Female will include all reserved category candidates such as, Scheduled Castes, Scheduled Tribes, Most Backward and Backward Class female, in such view of the matter, the appointment of female candidate were stayed and later on fresh seniority list was prepared. As the date of birth of the petitioner is 15.03.1985, whereas the date of birth of Manorma Kumari has been mentioned as 20.10.1983, both have secured 10 marks and on the basis of date of birth Manorma Devi, became senior and she has been appointed as constable.

6. Learned counsel for the respondent no.6 also



participated in this proceeding and filed a counter affidavit, has brought the Notification of the Bihar Reservation Act, 1991, and also drawn the attention of this Court to the Bihar Reservation Act, 1991, which speaks Women of Backward Classes means and includes women of Scheduled Castes, Scheduled Tribes, extremely Backward and Backward Classes. On the strength of this inclusion, he submits earlier only the Backward Class Female was considered for the appointment and other category of the reserved candidates were excluded for consideration for appointment. When it was brought to the notice that Backward Class Female will include all categories Reserved Female Candidates, then the respondents redrawn seniority list, included all category of candidates of reserved class of female, in which Manorma Kumari was found to be senior on account of higher age and she belongs to the category of Scheduled Caste category whereas the name of the petitioner- Kumari Madhuri, is in serial no.2 in the waiting list and that is why the respondent no.6 has been appointed.

7. Learned counsel for the petitioner has submitted that if the seniority list is to be examined properly, in such circumstance, the petitioner was selected in the backward category not in the category of Backward female and if any Female Candidates will be



ousted the Backward Female Category i.e. Renu Kumari and submitted the petitioner has wrongly been deprived of being appointed as constable. Backward female will comprise all categories of Reserved category candidates that comes under 2(k) of the definition. It has further been stated that when the reservation has been given in Backward Class, now she cannot be treated to be a backward female candidate. Further submitted that the entire appointment having been made on the basis of letter no.452 date 03.09.2002 and there all the posts were considered to be belonging to the Backward Class-2 and everything has been turned turtle by invoking the letter no.134 dated 09.01.2008 wherein the roster position with respect to only five female candidates have been rearranged and if re-arrangement has been made it has to be made in entirety not selectively.

8. The State has also supported the contention of the respondents and submitted that the occasion of redrawing the merit list has arisen on account of the letter no.134 dated 09.01.2008, it is nothing but an explanatory in nature. Earlier, it was only given to the Backward Class female category-2, but it has been explained and has been given in terms of the Bihar Reservation Act, 1991.

9. Some facts are admitted as the petitioner was provided



the appointment letter and she was asked to produce her credential, which is apparently clear from letter dated 26.09.2007, further established from envelop, wherein it has been mentioned as “Niyukti Patra”. In the order passed by the Superintendent of Police, Jehanabad, dated 17.12.2013 (Annexure-6), explanation has been given that in terms of letter no.458 dated 03.09.2002, as per the roster the posts were reserved for the Female Backward Class -2, but later on another letter no.134 dated 09.01.2008 was issued by the Personnel and Administrative Department, wherein it has been explained that the Backward Class female will also include all reserved categories of female class. Out of 328 vacancies, 309 vacancies were filled up following letter no.134 dated 09.01.2008. Further stated that out of 10 vacancies five posts of Non-Home Guard female candidates, five posts were filled up earlier and only five posts of Home Guard Female category candidates were to be appointed and the roster has been rearranged in which all class of reserved categories female candidates have been taken into consideration.

10. Order containing memo no.520 dated 17.12.20013 (annexure-6) issued by the Superintendent of Police, Jehanabad and letter no. 1283 dated 30.04.2015 (Annexure-7) having been issued



by the Sergeant, Police Centre, Jehanabad, are in same wave length, having been mentioned in all the documents why the petitioner was not selected and why Manorma Kumari, respondent no.6, has been appointed as constable. If the appointment has to be made after following the Bihar Reservation Act, 1991 framed by the State of Bihar all sections of societies has been taken into consideration so that there should be a proper representation in service. But, in the present case, only consideration before this Court that if the entire selection has been made under certain roster system that roster system has to be applied in entirety, it cannot be applied selectively because the Bihar Reservation Act, 1991 is applicable to all candidates who have applied against the advertisement no.01 of 2004. If the selection has to be made it has to be made following the uniform policy and uniform roster, but cannot be applied in a truncated and manner that certain selection will be made by following a roster system and few posts would be filled up by different system in female Backward category all Reserved Categories of female will be included.

11. So far learned counsel for the respondent no.6 has tried to persuade this Court that all the rest four persons should be noticed and should be heard before passing final order. This Court is not



passing any order adverse to any person but the Court is only concerned, when a roster system of 2002 has been followed for entire selection process, it cannot be applied only for five candidates, it has to be applied in entirety for all the persons who have participated against advertisement no. 1 of 2004 and if the authorities is of the view that rests will also be effected by redrawing of the seniority list, in such circumstance, the authority will be obliged to give the notice to concerned persons and only after hearing them any adverse order would be passed. This Court, at this stage, is not interfering with the appointment of respondent no.6, but will be subject to final consideration by the competent authority i.e. Superintendent of Police, Jehanabad.

12. However, Learned counsel for the State has submitted that the Superintendent of Police does not have jurisdiction. Let the petitioner file an appropriate application annexing the copy of this order before the Superintendent of Police, Jehanabad, who will refer the matter to the Selection Board. If it is not already functioning, this Court directs to constitute a Selection Board, who will consider the issue of reservation in context of the letter no.458 dated 03.09.2002 vis-à-vis letter no.139 dated 09.01.2008, if the Selection Board finds that only selectively the roster point which has been



mentioned in letter no.134 dated 09.01.2008 has been applied, in such circumstance, they will exercise their power to examine the issue of applicability of letter no.134 dated 09.01.2008 selecting for five posts of Female Backward Class. All the exercise should be completed within six months from the date of filing of representation by the petitioner. If it is found that the petitioner is entitled, it goes without saying that her case will be considered and she should be accommodated in the Police force.

13. With the aforesaid observations and directions, this writ petition is disposed of.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	24.02.2018
Transmission Date	N/A.

