

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15182 of 2017

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Mala, Wife of Sri Anil Kumar Singh, Resident of Village & P.O. Basdila, P.S. Jalalpur, District Saran (Chapra)-841412, Bihar

.... Petitioner/s

Versus

1. Bihar State Staff Selection Commission, through its Chairman, P.O. Veterinary College, Patna-800014.
2. The Chairman, Bihar State Staff Selection Commission, P.O. Veterinary College, Patna-800014.
3. The Secretary, Bihar State Staff Selection Commission, P.O. Veterinary College, Patna-800014.
4. The State of Bihar, through the Principal Secretary-cum-Commissioner, Home Department, Govt. of Bihar, Old Secretariat, Patna.
5. The Director General of Police, Police Headquarter, Govt. of Bihar, Old Secretariat, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Ranjan

For the Respondent/s : Mr. Ajay Kumar, AC to GP-4

For the Respondent-BSSC: Mr. Satyavir Bharti, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

C.A.V. JUDGMENT

Date: 07-08-2018

The present writ petition has been filed for quashing the Memo No. 2664 dated 18.9.2017 whereby and whereunder the selection of the petitioner to the post of Assistant Sub Inspector of Police has been cancelled by the Secretary, Bihar State Staff Selection Commission, and it has been held that the petitioner is ineligible since she along with three other candidates had failed to fulfill all the criterion. The petitioner has further prayed for quashing of the letter dated 8.9.2017, so far as the same relates to the petitioner



by which the appointment of the petitioner has been kept pending.

2. The brief facts of the case are that an advertisement bearing no.704 was published in the news paper, namely, Hindustan and the Times of India on 21.9.2004 inviting applications for appointment on the post of Assistant Sub Inspector of Police in Bihar police. The petitioner had applied for the aforesaid post of Assistant Sub Inspector of Police within the stipulated period under the general category, however, on account of inadvertence, the petitioner had applied from two places i.e. one from Muzaffarpur where the petitioner was residing with her husband temporarily and second from Chapra which is her permanent residence. The Bihar Staff Selection Commission had issued a call letter to the petitioner treating her to be a candidate who had applied from Chapra and thereafter she had appeared in the physical examination and was declared successful. In fact, as far as Muzaffarpur is concerned, no call letter was issued to the petitioner. The petitioner was then issued an admit-card after passing the physical examination to appear in the written examination scheduled to be held on 23.4.2008 and 24.4.2008. The petitioner had participated in the written examination, however, though the result of the petitioner was published by the respondent commission, but her candidature was rejected finally, purportedly on the ground that she had submitted her application



from more than one place. The aforesaid appointment process had become subject matter of litigation and the matter had traveled up to the Hon'ble Supreme Court in Civil Appeal No(s). 1240-1241 of 2011 and analogous cases. The Hon'ble Apex Court vide an order dated 2.2.2011 passed in Civil Appeal No. 1240-1241 of 2011 passed the following orders:-

“ In the peculiar facts and circumstances of these cases, we direct the Bihar Staff Selection Commission to hold fresh examinations for the 299 posts of Sub-Inspectors of Police and only the appellants, who were writ petitioners before the High Court of Judicature at Patna, whose cases were adjudicated upon or are pending before the High Court (total 223 only as per the list given in Court by Mr. Ranjit Kumar, learned Senior Counsel) would be at liberty to appear in the physical and written examinations.

The schedule of examinations would be decided by the respondents and all those who pass the physical and written examinations would be appointed by the respondents and for the remaining posts of Sub-Inspectors, a fresh advertisement would be issued by the Staff Selection Commission and appointments would be made in accordance with law.”

3. After the aforesaid order was passed by the Hon'ble Apex Court, the respondent Commission had published a fresh advertisement no. 0511, however, the other unsuccessful candidates of the advertisement no. 704 had filed interlocutory applications whereupon the Hon'ble Apex Court had modified its earlier order vide order dated 28.11.2011 in the following terms:-

“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 all these 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.”

4. Subsequently, the respondent Commission had clubbed the aforesaid 299 vacancies along with the fresh vacancies i.e. 841 vacancies and had issued an advertisement no. 07070114. The respondent Commission had then withdrawn the recommendation of 67 candidates, recommended/ appointed earlier and a new set of 67 candidates were recommended for appointment, as such 55 candidates who were in service were removed. Later on the Government decided to re-instate those candidates and, accordingly, it was found necessary to appoint 251 (revised 253) candidates to maintain the ratio as per the roster and reservation policy of the Government. The said decision was challenged in LPA No. 745 of 2014 and other analogous cases. Thereafter, a High Level Committee under the Chairmanship of the Chief Secretary, Bihar was convened and the said committee decided that in pursuance to the order dated 28.11.2011 passed by the Hon’ble Supreme Court, it would be proper to publish separate advertisement for 299 posts. Accordingly,



advertisement no. 0511 was separated from advertisement no. 07070114 and separate examinations were conducted.

5. Thereafter, the aforesaid advertisement no. 07070114 was amended by the corrigendum letter dated 3.2.2015 and the candidates who had applied against the advertisement no. 704 of 2004 were advised to apply afresh. The petitioner had also applied afresh and had submitted her application through registered post on 5.3.2015. The respondent Commission then came out with another notice dated 14.7.2015, advising all the candidates, who were original candidates against the advertisement no. 704, to download data base and file objections in case any discrepancy is noticed. The petitioner had then down loaded the data from the website of the Commission and had found that there is no discrepancy so far her data is concerned. The I.G. (headquarter) had then published a notice in the daily newspaper Hindustan and Dainik Bhashkar on 9.6.2016 mentioning therein the roll number of the candidates who were found eligible for physical test and the name of the petitioner was also found in the said notice. **In the foot note of the said notice, it was clearly mentioned that such candidates who had applied from two places but were allotted single roll number, their applications will be combined and thereafter such candidates were being allowed for appearing in the physical test at one place only.** The D.I.G., Saran Range,



Chapra vide letter dated 6.7.2016 had directed the petitioner to remain present at 7 a.m. on 11.7.2016 at police line, Saran, Chapra along with all requisite certificates/ documents for physical test. The petitioner had requested for another date for the purposes of appearing in the physical test whereupon the respondents had allowed her to appear in the physical test on 14.7.2016. The petitioner had then participated in the physical test on 14.7.2016 and passed the same. The respondent Commission had then issued admit card to the successful candidates to appear in the written examination to be held on 13.7.2017 and the petitioner was also issued such admit card, whereafter she had appeared in the written examination as per the schedule mentioned in her admit card. The petitioner and other candidates were declared successful in the examination vide notice bearing no. 2468 dated 1.9.2017. While the petitioner was waiting for appointment order, she received a letter dated 8.9.2017 whereby her appointment was kept pending, however, no reason was assigned. Subsequently, the impugned notice dated 18.9.2017 was issued by the respondent Commission whereby and whereunder it was stated that the petitioner and three other candidates were not fulfilling the necessary conditions concerning the qualification, hence the Commission had withdrawn the candidature of the petitioner and others.



6. The learned counsel for the petitioner has submitted that the petitioner was eligible to apply pursuant to advertisement no. 1511, in view of the judgment of the Hon'ble Apex Court and the respondent Commission had also entertained her application pursuant to the notice dated 3.2.2015 whereby and whereunder all the candidates, who had participated in the selection process against advertisement no. 704 of 2004, were advised to apply afresh. In fact, the petitioner had also appeared in the physical test and the written examination and was declared successful finally vide result published by notice dated 1.9.2017, however, the offer of appointment was not given to the petitioner in view of the respondent Commission withdrawing her recommendation, purportedly on the ground that she had applied from two places, hence her case was a case of debarred candidates and not a case of successful/ unsuccessful candidates whereas the fact is that the respondents themselves had come out with a notice in the daily newspaper dated 9.6.2016 mentioning therein the roll number of the candidates who were found eligible for physical test which also included the name of the petitioner and in the foot of the said notice, a note was appended stating that the candidates who had applied from two places but who had been allotted single roll number, their applications will be combined and they would be allowed to appear for physical test. It is submitted that in pursuance of the said notice



dated 9.6.2016, a call letter dated 6.7.2016 was issued to the petitioner, inviting her to appear in the physical examination, whereafter the petitioner had appeared in the said examination and qualified and thereupon she was issued admit card for written examination, in which also the petitioner had been found to be successful. It is, therefore, submitted that in view of the notice dated 9.6.2016 contained in Annexure-9 to the writ petition, the respondents cannot non-suit the petitioner on the ground that she had applied from two places.

7. Per contra, the learned counsel for the respondents has submitted that the case of the petitioner is a case of debarred candidate on account of her having filed application from two places i.e. from Muzaffarpur and Chapra, hence no relief can be granted to the petitioner. It is further submitted by the learned counsel for the respondent Commission that the candidature of the petitioner has been rejected since she had applied from two places. It is further submitted that advertisement no. 704 clearly provided that the applicants can submit their applications at one zonal office, falling either at their permanent address or their present place of residence, however, the applications cannot be submitted at both the zonal offices. It is further submitted that vide notice dated 10.04.2008, the respondent Commission had clarified that in case on account of



technical or human error, any candidate, who had applied from more than one place has been issued admit card, the result of such candidate would be liable to be cancelled even after publication of the final result. It is further submitted that the Hon'ble Supreme Court in its order dated 14.9.2017 had clarified that if any candidate is otherwise ineligible or she/he otherwise disqualified, no appointment will be issued to him/her. At this stage, it is relevant to point out that the Hon'ble Apex Court vide order dated 14.9.2017 had also granted liberty to the candidates having any other grievances to take recourse to any other remedy before any appropriate forum.

8. I have heard the learned counsel for the parties and gone through the materials on record and the only issue to be considered in the present case is as to whether the filing of the application by the petitioner from two places would result in her disqualification for her appointment. In this regard, the clinching document for the purposes of adjudicating the present case is the notice dated 9.6.2016 issued in compliance of the directions of the Director General of Police, Bihar, Patna, as contained in Annexure-9 to the writ petition which contains the roll number of the candidates who have been found eligible for physical test and specifically states that such candidates who had applied from two places but were allotted single roll number, their all such applications would be combined and they would be allowed to



appear in the physical test from one place. The said notice also contains the roll number of the petitioner herein. Admittedly, the respondent Commission has acted on the basis of the aforesaid notice dated 9.6.2016 and the respondents have also not denied the fact that either such notice was not issued or the aforesaid stated portion of the said notice was withdrawn subsequently, hence fair play and legal propriety demands that the mandate of the said notice dated 9.6.2016 is embraced and implemented in its totality without any abrasion. The learned counsel for the respondents have not been able to deny the fact that the aforesaid notice dated 9.6.2016 has not been withdrawn and is legally binding on the Commission as well as it has also not been denied that the Commission has in fact acted on the basis of the said notice dated 9.6.2016 and has, accordingly, held the physical test for the candidates, whose roll number had been published in the said notice dated 9.6.2016 as also has subsequently held the written examination of the successful candidates who had passed the physical test. Therefore, it is apparent that the respondents had consciously taken a decision to permit those candidates who had applied from two places after combining their applications, to appear in the physical test, as is apparent from the notice dated 9.6.2016, hence the principles of waiver, acquiescence and estoppel would apply in the present case. Nonetheless, it would be relevant to point out that the



advertisement merely mentions as follows:-

“बिहार के निवासी उम्मीदवार अपना आवेदन पत्र अपने स्थायी अथवा वर्तमान आवासीय पते के क्षेत्रीय आरक्षी उप महानिरीक्षक किसी एक के (दोनों नहीं) कार्यालय के हाथों हाथ अथवा दूत के माध्यम से जमा करेंगे।”

9. It is apparent from a bare reading of the aforesaid Clause as also from perusal of the entire advertisement that though the candidates have been advised to apply from one place i.e. either from the place of their permanent residents or from the place where they reside, but there is no conditions stipulated in the advertisement that in case any candidate applies from more than one place, then he/she shall be debarred. Therefore, the respondents vide notice dated 9.6.2016 had clarified that in case a candidate had applied from more than one places, such application would be combined and such candidate would be permitted to appear in the physical examination from one place. Thus, for the reasons stated herein above, this Court finds that the impugned decision of the Commission dated 18.9.2017, withdrawing its recommendation for the purpose of appointment of the petitioner, on the ground that the petitioner had filed application from two places is perverse, illegal and contrary to the provisions of the Advertisement as also the notice issued by the respondents dated



9.6.2016, hence is quashed.

10. The respondents are directed to consider the case of the petitioner for appointment without considering the debarment of the petitioner on the ground of her having applied from two places.

11. The writ petition is allowed.

(Mohit Kumar Shah, J)

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CAV DATE	07.05.2018
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