

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5995 of 2016

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Rina Devi Daughter of Chhotan Mahto Resident of Village - Baughat, P.S. -
Korma, District - Sheikhpura.

.... Petitioner

Versus

1. The State of Bihar
2. The Home Secretary, Government of Bihar, Patna.
3. The District Magistrate, Sheikhpura.
4. The Superintendent of Police, Sheikhpura.
5. The District Commandant Home Guard, Sheikhpura.
6. The District Welfare Officer, Sheikhpura.

.... Respondent

with

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Civil Writ Jurisdiction Case No. 4512 of 2016

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Sunaina Devi D/o Kushmindra Choudhary Resident of Village - Chankandra Post
Chankandra P.S. Chewara District Sheikhpura.

.... Petitioner

Versus

1. The State of Bihar through Commandant General Home Guards, Bihar, Patna.
2. The District Magistrate (D.M.), Sheikhpura.
3. The Superintendent of Police (S.P.) Sheikhpura.
4. The District Commandant Bihar Home Guards, District - Sheikhpura.
5. The District Welfare Officer, Sheikhpura.

.... Respondents

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Appearance :

(In CWJC No.5995 of 2016)

For the Petitioner/s : Mr. Sanjay Prasad, Adv.

For the Respondent/s : Mr. Vivek Prasad, GP-7

(In CWJC No.4512 of 2016)

For the Petitioner/s : Mr. Uday Pratap Singh, Adv.

Mr. Raj Kumar Choudhary, Adv.

For the Respondent/s : Mr. Deepak Sahay Jamuar, AC to AAG-4

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 12-04-2018

Heard learned counsel for the parties.

The petitioners have been unnecessarily dragged to this
Court due to habitual trend which has developed in the State of not



allowing routine matters to reach its conclusion in a routine manner. The petitioner in the first case coming from Extremely Backward Class complains of her non-selection as a Homeguard, Block Ghat Kishumbha in the district of Sheikhpura following the selection process that was carried out pursuant to advertisement No. 2/2011, a copy of which is enclosed at Annexure 2 to the writ petition.

Similar is the case of the petitioner in C.W.J.C.No. 4512/2016 who seeks similar appointment in the Scheduled Caste Category but has been denied because the posts reserved in this category is exclusively earmarked for male candidates.

A copy of the advertisement is enclosed with the writ petitions and in so far as the District Sheikhpura is concerned, it is at serial no.37 and earmarks 240 posts of Homeguards for the rural area while 30 were ear-marked for urban area. There is some stipulation of reservation for women at paragraph 2 but the issue herein is different for it is on the basis of merit position in respective category to which these petitioners belong that they claim appointment but have been denied. I do not intend to enter into exhaustive discussion on the issue because the fallacy in selection lies in the result itself.

Annexure 4 to C.W.J.C.No. 5995/2016 is the merit list and the name of the petitioner Rina Devi appears at serial no.19 with 3 marks. It is not in dispute that that the petitioner comes under



Extremely Backward Category. The merit list categorywise has been placed on record very fairly by Mr. Prasad and in so far as Extremely Backward Category is concerned, the list is present with Annexure 'B' series at running page-37 which confirms that though 4 posts were earmarked for the candidates under Extremely Backward Category but none have been appointed. According to the respondents since all these 4 posts were earmarked for male candidates hence even though the petitioner made to the merit list but was not offered appointment. In my opinion, if there would be a singular instance of misconception in application of reservation stipulations, it is reflecting from the position impugned herein where even though this petitioner has qualified on her merit to secure appointment in her category, it is being denied because these four posts are reserved for male candidates. The counter affidavit does not enclose any law/ order or instruction which reserves a post exclusively for a male candidate. In absence of any instruction bearing statutory character, no such reservation can be applied to deny a meritorious lady candidate who secures a position on her merit, a right to appointment.

Similar is the position in the other case, where appointment to the petitioner Sunaina Devi coming from Scheduled Caste Category in Chewara Block in the district of Sheikhpura has been denied and the reasons can be found in the explanation given by the respondents



in paragraph 10 of the counter affidavit read alongside the list of Scheduled Caste selected candidates, a copy of which is enclosed with Annexure 'D' series at running page-33 to the 2nd writ petition. It needs to be noted that while it is the admission of the respondents that the petitioner participated in the physical test to secure 5 marks, the list of selected Scheduled Caste candidate is at running page-33 and while earmarking 5 posts for the male candidates, the Selection Committee has selected only 4 with the third selected candidate namely Ajit Rabidas securing 3 marks and the person at serial no.4 Laxman Rajak securing appointment with 1 mark. Meaning thereby, the petitioner though better placed than at least two selected candidates, yet has not been appointed because no seat was earmarked for women.

As already expressed, no such stipulation, order or instruction has been placed by the learned counsel appearing for the State which reserves a post exclusively for male candidates. It is a rather sorry state of affairs reflected from the discussions above that even where the two petitioners herein have competed in their respective category on their own merit, they are sought to be outclassed because they happen to be 'women' and no any statutory prescription is placed supporting such decision.

For the reasons discussed, the petitioners have made out a



case for indulgence and consequently the writ petitions are allowed with the direction to the Selection Committee chaired by the District Magistrate, Shekhpura to appoint the petitioners as Homeguard against the vacancies available in respective category to which these petitioners belong i.e. Extremely Backward Category and Scheduled Caste Category respectively, which exercise be completed within a period of six weeks from the date of receipt/ production of a copy of this judgment.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	26.04.2018
Transmission Date	NA

