

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 6980 of 2007

Mrs. Vanshika Rohit Dalmia D/o Shri Bajrang Lal Bhojasia, Aged About 25 Years R/o Akaltara, District Janjgir Champa Chhattisgarh., Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Ministry Of Home Affairs Police Department Mantralay, D. K. S. Bhawan Raipur Chhattisgarh., Chhattisgarh
2. The Chairman, Chhattisgarh Public Service Commission, District - Raipur C.G., Chhattisgarh
3. The Director General Of Police Chhattisgarh, Police Headquarter, District - Raipur C.G., Chhattisgarh
4. The Director, Directorate Of Health Services, Chhattisgarh, District - Raipur C.G., Chhattisgarh
5. Suresh Kumar Choubey S/o Shri Ayodhya Nath Choubey, R/o 46/131 Rajasva Colony, Sarkanda, Bilaspur, District - Bilaspur C.G., Chhattisgarh
6. The Sports Officer, Government Arts And Science College, District - Bilaspur C.G., Chhattisgarh
7. Tahsildar, Bilaspur, Tehsil And District Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	: Shri Rajendra Mishra with Shri Rohit Dalmiya and Ms. Ruchi Nagar, Advocates
For State/Res. No.1, 3, 4, 6 & 7	: Shri Manish Nigam, Panel Lawyer for the State.
For Respondent No.2/PSC	: Shri B.D. Guru, Advocate
For Respondent No.5	: Shri Sourabh Dangi with Shri Yogendra Pandey, Advocates

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

CAV ORDER

07/02/2018

Heard.

1. This petition under Article 226 of the Constitution of India has been filed by the unsuccessful candidate in the matter of selection to the post of Deputy Superintendent of Police (DSP) in the State Police Services, calling in question, selection of respondent No.5, for quashing her selection and appointment and also for initiating enquiry against respondent No.5 on the allegation of submission of false information for procuring appointment. The petitioner has also sought direction for consideration of candidature of the petitioner for appointment to the post of DSP in place of respondent No.5 or in the alternative, to consider and give her appointment from waiting list on the post of DSP w.e.f. 17.5.2007 with all consequential benefits.
2. Facts necessary for adjudication of controversy involved in the petition are that pursuant to advertisement issued by the Public Service Commission (PSC), published in the newspaper (Rojgar Aur Niyojan) on 24.5.2006, inviting applications from eligible candidates for appointment to various posts in the State Civil Services, including 44 posts of DSP, the petitioner as well as respondent No.5 both submitted their applications and their candidature was considered for selection to the post of DSP. Twenty-four posts were earmarked for candidates belonging to unreserved category i.e. general category and horizontal reservation for two female candidates of general category was provided.
3. The allegation of the petitioner is that respondent No.5 played fraud and mischief inasmuch as in all the credentials, school/college documents, respondent No.5 presented as a male candidate in the name of "**Suresh Kumar Choubey**", however, respondent No.5 was selected as DSP by treating respondent No.5 as female candidate and respondent No.5

thereby succeeded in getting place in the merit list of unreserved female category post and secured appointment by impugned order of appointment.

4. According to learned counsel for the petitioner, respondent No.5 is a male candidate and, therefore, could not be treated as female candidate because all credentials of respondent No.5 only show him as a male candidate and not female. The petitioner has placed on record various documents viz *Dakhil Kharij* register (Annexure P-2), School Transfer Certificate (Annexure P-3), School Transfer Certificate (Annexure P-4), domicile certificate (Annexure P-5) to submit that respondent No.5 could be treated only as a male candidate on the basis of said documents. It is also submitted that in so far as domicile certificate of respondent No.5 is concerned, the document is forged because the said domicile certificate (Annexure P-5) has been issued in a particular Revenue Case, which upon enquiry made by the petitioner is found to be a Revenue Case of issuance of domicile certificate of one Sundari Bai and not respondent No.5. In this regard, revenue documents (Annexure P-12 & P-13) have been placed on record. Referring to communication dated 16.11.2007 (Annexure P-13), it has been submitted that there is no case under No.1049-B-121/2001-2002 registered in the Revenue Court of Additional Tahsildar, Bilaspur.
5. The petitioner has also sought a direction for consideration of her case of appointment against unfilled vacancy of DSP on the pleadings that one Roktima Roy who was selected and placed in the merit list for appointment against 24 vacancies of unreserved category, including two posts earmarked for unreserved female, did not join. The candidate at serial no.1 in the wait list, namely Akash Magharia, to the best of information of the petitioner, was selected to Indian Police Services in the year 2009. Therefore, in these circumstances against the available vacancy of unreserved category, advertised under advertisement (Annexure P-1) the petitioner ought to have been offered appointment.

6. Learned counsel for the State submitted that respondent No.5 declared herself as female candidate in her application dated 19.6.2006 and upon receipt of communication from PSC, raising doubt with regard to sex of respondent No.5, respondent No.5 was examined by the duly constituted Medical Board and the Medical Board upon examination of respondent No.5, found respondent No.5 as female candidate. Therefore, on the recommendations of the PSC, respondent No.5 was given appointment as DSP.
7. Learned counsel for the PSC submitted that in the application filed by respondent No.5, she declared herself to be a female candidate, however, while scrutinizing the application form and other credentials, a doubt arose with regard to gender of respondent No.5 and a letter, therefore, was issued to respondent No.5 on 29.7.2006 to clarify her status in response to which, vide letter 5.8.2006, respondent No.5 submitted reply stating her to be a candidate of female category. Respondent No.5 was called for interview on 16.4.2007 and upon successfully passing the main entrance examination, a final select list was issued along with supplementary list. As respondent No.5 was placed at serial No.4 in order of merit in the select list, keeping in view the doubt with regard to gender of respondent No.5, a letter was sent to the Government highlighting that respondent No.5 has claimed to be a female candidate in her application form and therefore, she has been treated as female candidate. According to respondent No.2/PSC, the respondent No.5 was selected on the basis of merit and she was not granted any benefit of reservation as unreserved female category. Even then, as some complaints were made, respondent No.2/PSC requested the Department to take necessary steps to carry out detailed medical examination of respondent No.5 vide letter dated 31.5.2007. Therefore, it is argued, respondent No.2 had duly taken notice on complaint and acted in accordance with law. The PSC has also placed before this Court a medical report of the Divisional Medical Board, Raipur dated 16.10.2007 declaring and certifying respondent No.5 as female

candidate and also fit for selection.

In response to petitioner's allegation that respondent No.5 has been submitted a fake domicile certificate, the stand of the PSC is that as the document was duly issued by the Additional Tahsildar, it could not be doubted by the PSC and if the petitioner had any grievance, the remedy lies in challenging the said certificate in properly constituted appeal or revenue proceedings under Land Revenue Code.

8. In so far as respondent No.5 is concerned, it has been argued, referring to the pleadings made in the return that respondent No.5 did not submit any false declaration with regard to gender. Respondent No.5 claimed herself to be a female candidate and merely because in various documents in place of "Miss (कुमारी), the word "Mr. (श्री) has been written in proforma, the candidature of respondent No.5 is not liable to be cancelled. Once the Medical Board has duly examined respondent No.5 and certified and declared her to be a female candidate, no further enquiry can be made on bald insinuation and allegation of the petitioner and respondent No.5 could not be subjected to unnecessary medical examination regarding her gender. Respondent No.5 did not take any undue advantage or benefit on account of her declaration on the basis of any false or fake information. Therefore, the petition is misconceived and is liable to be dismissed.
9. In so far as petitioner's allegation that respondent No.5 who is male candidate has falsely claimed to be a female candidate in order to get selected as DSP against the vacancy earmarked for unreserved female category, the entire case of the petitioner rests on entries made in dakhil kharij register, school transfer certificate and domicile certificate (Annexure P-2 to Annexure P-5). In so far as *dakhil kharij* register is concerned, it does not mention gender of respondent No.5. In fact, in the said document, there is no column to indicate the gender of the admitted student as to whether the student is male or female. In transfer certificate (Annexure P-3) which is in proforma, both "श्री" and "कुमारी" have been struck off and in

the sixth line. words "छोड़ती है" have been struck off to indicate as if candidate is male. In another school transfer certificate (Annexure P-4), word "कुमारी" has been struck off and word "श्री" has been retained at two places. In the domicile certificate (Annexure P-5), word "श्रीमती" and word "कुमारी" have been struck off and word "श्री" has been retained. A perusal of the document (Annexure P-3, P-4 & P-5) would definitely indicate that the person in whose favour the certificate was issued was male and not female. However, except this, there is no allegation that the petitioner did not acquire these qualifications. In the application form dated 19.6.2006 respondent No.5 has clearly declared herself to be a female candidate and she has scribed her name as "चौबे सुरेश कुमार" in Hindi and "**Suresh Kumar Choubey**" in English against column-1. Respondent No.5 has clearly declared her to be a female candidate.

10.It is also relevant to note that in the mark sheet of high school, again words "श्रीमती" & "कुमारी" have been struck off and words "श्री" has been retained. In the mark sheet issued by Guru Ghashi Das University, the gender of respondent No.5 has not been mentioned.

11.Entire edifice of argument built by learned counsel for the petitioner is based on use of words "श्री" and striking off word "कुमारी". But then except this, there is no other concrete material placed before the Court to doubt gender of respondent No.5. It is relevant to state that the certificate of respondent No.5, referred to herein above, indicate her to be a male, whereas respondent No.5 having declared to be a female candidate in her application form, a doubt was created by PSC also and therefore, it sought clarification from respondent No.5 vide letter dated 29.7.2006 wherein respondent No.5 endorsed that she is a female and she should be considered only as a female candidate. The PSC, therefore, treated the respondent No.5 as female candidate and after respondent No.5 was selected on the basis of her merit, the PSC vide its communication dated 31.5.2007 addressed to the Secretary Department of Home (Police) Govt. of Chhattisgarh specifically mentioned regarding the case of respondent No.5

and as there were complaints about her gender, a request was made for complete medical examination. In the considered opinion of this Court, the PSC was not required to take any other steps more than what was taken by it in the matter because the PSC did not have the expertise to decide the gender of a candidate but to only forward such a complaint for due examination of the State agency which was done by it.

12. Respondent No.5 in the affidavit made an emphatic statement that though word “कुमार” has been mentioned in various certificates, she is female and not a male. This categorical averment is also supported from the medical report (Annexure R-1) attached along with return of respondent No.5 which contain following examination results.

“uterus : Normal in size 6.7 x 3.6x 2.8 cm.

Eudomebrium : 7 mm

Rt. Ovary : 33 x 17 mm

Lt. Ovary : 29 x 19 mm

No axities, No lumphodenopathy.

F/S/o :Uterus and B/l ovaries normally visualized

Film enclosed 7 in no. ”

13. The reading of the aforesaid report clearly shows that respondent No.5 is a female and not a male. The aforesaid medical examination showing presence of uterus and ovary, in the absence of concrete material, before this Court, does not require this Court to make further enquiry into the gender aspect and therefore the petitioner's allegation that respondent No.5 could not be treated as female is liable to be rejected.

14. During the course of arguments, learned counsel for the petitioner repeatedly requested this Court to direct a fresh medical examination of respondent No.5, but in the absence of there being any specific material to order such enquiry and particularly in view of medical examination report dated 29.10.2007 (Annexure R-1), filed by respondent No.5, I am not inclined to subject respondent No.5 to unnecessary and uncalled for agony

of being again subjected to examination regarding gender as to whether respondent No.5 is male or female merely because in the certificates word “कुमारी” has been used. Respondent No.5 has placed before the Court an affidavit under which she has requested the authority to correct the certificates.

15. Respondent No.5 was selected on the basis of her merit. The modified select list dated 17.5.2007 placed on record as Annexure P-17, disclosed to the petitioner under RTI, clearly shows that respondent No.5 secured fourth position. The PSC has categorically stated that selection of respondent No.5 was not in unreserved female category. This is clear from the merit list. There were 24 posts of DSP in the unreserved category out of which, 2 posts were reserved for unreserved female. Respondent No.5 secured a very high position in merit. Therefore, there is no question of she having been selected against unreserved female category.
16. Learned counsel for the petitioner has also raised a doubt with regard to the domicile certificate of respondent No.5. According to the petitioner, the domicile certificate (Annexure P-5) records revenue case No. रा.प्र.क- 1049 बी 121 / 2001-02. According to pleadings made in the petition, the said revenue case is with regard to another revenue proceedings of one Sundari Bai. In this regard, the petitioner has filed excerpts of revenue case register as Annexure P-12. The said document, however, records the number of Revenue Case as 49 and not 1049. In the communication dated 16.11.2007 (Annexure P-13), however, the office of Tahsildar and Public Information Officer Bilaspur informed that no case under No.1049 B-121/2001-02 was found registered in the Court of Additional Tahsildar.
17. Neither the State nor respondent No.5 have come out with any specific material to satisfy the Court that the domicile certificate granted to respondent No.5 was issued in the revenue proceedings mentioned in the domicile certificate of respondent No.5. As a matter of fact, respondent No.1, 3, 5 & 7 have maintained surreptitious silent on this aspect. Once this

complaint was made, before issuing the appointment order of respondent No.5, the appointing authority i.e. State was required to make due enquiry as to whether domicile certificate submitted by the petitioner was a genuine or a fabricated one. The State respondents No.1 & 7 could have very well satisfied the Court by placing before the Court, the records of revenue proceedings of the office of Tahsildar/Additional Tahsildar, Bilaspur leading to issuance of domicile certificate of respondent No.5. The allegation of submission of a fabricated document of domicile certificate was therefore required to be duly inquired into.

18. The petitioner has also prayed for direction that her candidature ought to be considered and she ought to be offered appointment as DSP on pleadings that one Roktima Roy, who was also selected and appointed against 24 vacancies in unreserved category, did not join. Further averment is that the petitioner was placed at Sr. No.2 in supplementary/wait list. A categoric averment has also been made in the petition, as amended by the petitioner, that selected candidate placed at Sr.No.1 in the supplementary/wait list, namely, Akash Maghariya was selected and joined Indian Police Service in the year 2009. The aforesaid facts have not been disputed by the State. Moreover, in the information disclosed to the petitioner under RTI vide letter dated 15.11.2016 (Annexure P-15) discloses that in the year 2005, one post of DSP remained vacant and no appointment order was issued in favour of any of the candidate in the supplementary list. In view of disclosure of the aforesaid fact, it is clear that one of the selected candidate, Roktima Roy, did not join. From the memo dated 31.5.2007 (Annexure A-4) filed along with the return of respondent No.2/PSC, it is clear that the validity of the merit list was one year and that of the supplementary /wait list was one and half year. The modified select list was admittedly issued on 17.5.2007. Therefore, the wait list was valid up to 17.11.2008. If Roktima Roy had not joined within the joining time, the State was obliged to offer appointment to selected candidate in the wait list in order of merit. The information disclosed under RTI shows that

candidates in the wait list were not offered any appointment. No reason has been assigned by the State as to why the candidates in the wait list were not offered any appointment despite the fact that one vacancy remained unfilled on account of non- joining of Roktima Roy. Respondents have failed to satisfy this Court as to what was the operative reason for not operating the wait list which remained valid and operative for a period of one and half year w.e.f. 17.5.2007 when one vacancy remained available for being filled up. Present petition was filed by the petitioner in the year 2007 itself during the period when the wait list was in operation. It was obligatory on the part of the State to have first offered appointment to wait list No.1 candidate Akash Magharia and upon failure to join, offer appointment to the petitioner who stood second in order of merit in the supplementary select /wait list.

19.It is well settled legal position that even though by mere selection, a candidate does not get a right to be appointed, nevertheless, authorities cannot act arbitrarily. If the vacancy is available and the select list is operative, the State is bound to come out with weighty reason as to why the select list could not be operated and appointment could not be offered to the candidates placed in the supplementary list/wait list.

20.In the case of **Shankarsan Dash Vs. Union of India** (1991) 3 SCC 47, the Supreme Court held thus:

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the

relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in *State of Haryana v. Subhash Chander Marwaha and Others*, [1974] 1 SCR 165; *Miss Neelima Shangla v. State of Haryana and Others*, [1986] 4 SCC 268 and *Jitendra Kumar and Others v. State of Punjab and Others*, [1985] 1 SCR 899. “

In the case of **Union Territory of Chandigarh Vs. Dilbagh Singh & Ors.** (1993) 1 SCC 154, it was observed as under:

“11. In *Shankarasan Das v. Union of India*, a Constitution Bench of this Court which had occasion to examine the question whether a candidate seeking appointment to a civil post can be regarded to have acquired an indefeasible right to appointment in such post merely because of the appearance of his name in the merit list (select list) of candidates for such post has answered the

question in the negative by enunciating the correct legal position thus:

"it is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant Recruitment Rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in the State of Haryana v. Subbash Chander Marwaha and others. [1974] 1 SCR 165; Miss Neelima Shangla v. State of Haryana and others, [1986] 4 SCC 268, or Jitendra Kumar and others v. State of Punjab and others: [1985] 1 SCR 899."

21. Therefore, this Court is of the opinion that respondent-State acted arbitrarily in not offering appointment to the petitioner against the available vacancy though supplementary list/wait list remained operative for one and half year.

22. In the result, this petition is partly allowed. As far as challenge to selection of respondent No.5 on the ground of allegation of she having falsely stated her gender to be female is rejected.

An enquiry, however is required to be made whether respondent No.5 procured public employment by submitting a false/fabricated domicile certificate. The enquiry will be required to be made in accordance with law after affording an opportunity of hearing to respondent No.5 and depending upon results of enquiry, appropriate order may be passed.

23. Subject to petitioner fulfilling required medical and fitness standards prescribed for appointment to the post of DSP, the petitioner shall be offered appointment against one available vacancy of DSP in the State Police Service.

Sd/-
(Manindra Mohan Shrivastava)
Judge