IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20091 of 2010

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Raj Bharti, D/O- Prabhu Prasad, resident of village - Enarwa, Shikarpur, P.O.D.K. Shikarpur, Distt. West Champaran Bettiah.

... ... 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 Champaran Range, East Champaran, Bettiah
4. The S.P. Bagaha, Distt. Bagaha
5. The Principal Secretary, General Administrative Department, Government of Bihar, Patna.

... ... Respondents

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Appearance :
For the Petitioner/s : Mr. Siya Ram Shahi, Advocate
For the Respondent/s : Mr.Yogendra Pd Sinha, A.A.G.-7
Mr. Shankar Kumar, A.C. to A.A.G.-7

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date : 25-07-2019

Heard learned counsel for the petitioner and learned counsel for the State.

2. In this case, the petitioner is challenging the memo no.1796 dated 10.08.2008, whereby and whereunder the petitioner has been removed from the service.

3. Necessary factual background has to be given for understanding the present case as the issue of recruitment of the

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petitioner is with respect to Advertisement No. 01 of 2004. The petitioner was one of the candidates, participated in the selection process and finally selected, she was sent for the training, but later on, terminated from the service by the impugned order. The reason has been assigned for termination of her service that the petitioner was appointed as Woman Backward Class candidate, for that 3% reservation has been allotted. The Administrative Department has earlier given its interpretation that it will only confine to the members of Backward Class Woman but, later on, consideration of provision of reservation for backward woman was found to be wrong interpretation, wrongly confined reservation to backward caste woman, later on, it has been interpreted, Woman Backward Class includes all the reserved category female candidates, it includes Schedule Caste, Scheduled Tribe, Extremely Backward Class and Backward Class. When fresh exercise was done, the petitioner could not secure her place in the merit list of Backward Class Woman candidate, accordingly, she has been removed from the service.

4. In the present case, the question has been raised in what manner 3% reservation for Backward Class Woman will be treated. In the counter affidavits filed by different Departments of the State Government, the respondents have taken consistent

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stand that 3% reservation for Backward Class Woman is a vertical reservation and as such, insisting that that should be accepted by this Court. It will be relevant to quote different paragraphs of the counter affidavits filed by different Departments of the State Government, which are as follows:-

> ***"Counter affidavit on behalf of respondent no.4.***
>
> ***5.*** *That prior to making parawise statement of facts it is quite relevant to submit here that the petitioner was undergoing training. While she was undergoing training a direction was given by the Inspector, General of Police (Headquarter and Administration) to the effect that vide letter no.134 dated 09.01.2008 issued by the personnel and Administrative Reforms departments it has been resolved that all the women candidates of Schedule Caste, Schedule Tribes, most backward classes and backward classes would be treated as 'Women of backward Classes' and hence there would be a fresh Merit list amongst of the women candidates who have been selected for appointment to the post of constables."*
>
> ***Counter affidavit on behalf of respondent no.2.***
>
> ***8****. That it is also important to mention here that no gender discrimination has occurred in whole selection process as this 3% seat reserve for the 'Women of Backward Classes' is a special category in which only women of four categories i.e. Schedule Caste, Schedule Tribes, extremely backward and backward classes are entitled to compete. It is pertinent to mention here that along with aforesaid four categories of women were*

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also entitled to compete in their respective reserve categories along with their male counterparts i.e. for 16% seat of Schedule Caste, 1% seat of Schedule Tribes, 18% seat of extremely Backward Class and 12% Backward Class.

Counter affidavit on behalf of Principal Secretary.

10. That in the said act, the women of Backward classes has been defined in Article 2 K of the Act, which is read as follows:-

> *"women of backward Classes means and includes women of scheduled caste, scheduled Tribe, Extremely backward Classes."*

11. That after bifurcation of the State of Bihar, the provisions of reservation was amended / modified vide Bihar Act, 17/2002 in which the percentage wise reservation for different reserved categories is as hereunder:-

1. Scheduled Caste ……..16%
2. Scheduled Tribe……01%
3. Extremely Backward Classes… 18%
4. Backward Classes…… 12%
5. Women of Backward Classes……..03%

Total 50%

(For the women of all reserved category)

12. That from the perusal of the aforesaid provision, it appears that amount of reservation for W.B.C. is very small i.e. only 3%. However that reservation in aforesaid all broad categories is open for both male and female against which male or female can get their respective reservation on the basis of merit, while in 3% reservation in women backward Classes category

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(W.B.C.) is confined to the women of all reserved categories.

13. That it is crystal clear that the reservation provided under 3% Women of Backward Classes is not confined to the reservation for women of Backward Classes (WNBC), rather under 3% reservation of Women Backward classes, the women of Extremely Backward Classes, Backward Classes, Schedule Caste and Scheduled Tribe are also included.

14. That at the same time, it can be clarified that under the 16%, 01%, 18% and 12% reservation admissible to the scheduled caste, scheduled tribe, Extremely Backward Classes and Backward Classes respectively is not only for the male candidates only.

15. That from the perusal of aforesaid clarification, it would be abundantly clear that besides 03% reservation for women Backward Classes, the different categories of reservation are for both male and female and hence it does not suffer from gender biassness and also not violates the Article 14 and 16 of the constitution of India.

Supplementary Counter affidavit on behalf of respondent no.5.

9. T*hat the Bihar Act 11/1993 clearly provides that Women of Backward Classes means women of schedule Castes and Schedule Tribes, Extremely Backward classes and backward Class. Meaning thereby 03% reservation for W.B.C. is not confined to the female of Backward Class alone. In this provision women of any reserved category can be appointed/ selected.*

10. *That on the other hand 12% vertical reservation has been provided for the Backward Classes in which, both*

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male and female candidates of Backward Classes get reservation in this category.

11. *that after provision of 3% vertical reservation, it was found that the representation of women in the state services an posts are negligible. Not to talk about the reserved category, even against the 50% open merit category vacancies, the representation of the female candidates are poor. Hence the Govt. has decided to make a special provision under Horizontal reservation in which 35% post has been reserved for the women in all respective category. This 35% post has been reserved for the women in all respective category. This 35% reservation has been made in 50% of open merit category also, so that the female candidates can get proper representation in the state services an post."*

5. To understand the seminal issue, it will be necessary to examine the Bihar Reservation of Vacancies in Post and Services (for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act 1991 (hereinafter referred to as "the Reservation Act"), in which reservation has been provided to the Scheduled Caste, Scheduled Tribes and other Backward Classes as it is apparently clear from Section-4 of the Reservation Act. In Section 4(2) break up of reservation has been given in the following manner; 16% will go to the Scheduled Castes, 1% will go for Scheduled Tribes, 18% for Extremely Backward Class, 12% for Backward Class and 3% for Woman Backward Class and Woman Backward Class has been defined in Section 2(k) in

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the following manner:-

> *"Woman Backward Classes" means and includes women of Scheduled Castes, Scheduled Tribes, extremely Backward and Backward Classes."*

So it is a classified compartmentalized reservation for the Woman Backward Class, has been created a separate group for grant of reservation to the woman candidates of Backward Class.

6. The issue in what manner this 3% reservation would be considered is not a virgin field, but this issue has been deliberated and decided by the Hon'ble Supreme Court in the case of ***Indra Sawhney v. Union of India*** reported in ***1992 Suppl. (3) SCC 217***, wherein the Hon'ble Supreme Court has categorized two types of reservation, first category is based on class reservation and second category of reservation is caste based reservation. Class based reservation emanates from Article 16(1) of the Constitution of India, whereas caste based reservation is conferred on the strength of Article 16(4) of the Constitution of India. Reservation for Woman cannot be classified as a caste based reservation, but it will be classified as class based reservation and it is given on the basis of Article 16(1) of the Constitution of India. The reservation on caste based has been categorized as vertical reservation whereas, class based

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reservation is horizontal reservation. The reservation for Backward Class Woman is classified compartmentalized horizontal reservation.

7. The issue, in what manner the benefit of reservation would be granted to woman, as a class, pertaining to recruitment of eligible candidate arose in the State of Rajasthan, there the Government has allotted 20% reservation for woman category candidates, they were granted additional entry to the extent of 20% reservation applying the principle of vertical reservation in the manner that those who were selected under different categories on merit, apart 20% woman candidates were added in the select list, that has created ripple, generated number of litigation filed before the Rajasthan High Court and ultimately it has reached to the Hon'ble Supreme Court in the case of ***Rajesh Kumar Daria vs. Rajasthan Public Service Commission and Others*** reported in ***(2007) 8 SCC 785***. In that case, the petitioner challenged the methodology adopted for grant of reservation to the Woman Class candidates, the Hon'ble Supreme Court in paragraph no.9 has held that Social reservations in favour of Scheduled Caste, Scheduled Tribe and OBC falls under Article 16 (4) is vertical reservation and special reservations in favour of physically handicapped, women etc., is

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the reservation under Articles 16(1) or 15(1) are horizontal reservation. The vertical reservation is made in favour of a backward class under Article 16(4), the candidates belonging to such backward class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their numbers will not be counted against the quota reserved for the respective backward class. Hence, if the number of SC candidates, who got selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said the reservation quota for SCs has been filled. The entire reservation quota will remain intact, available in addition to those selected under Open category, but the aforesaid principle of vertical reservation will not apply to horizontal reservation. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to be filled up the quota for scheduled castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of 'Scheduled Castes Women. If a number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further addition towards the special reservation for woman. Only if there is any

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shortfall, the requisite number of scheduled caste women will have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes.

8. So, in this manner the reservation for woman is to worked out, if 3% woman are already available in the select list in their compartment, in such circumstance, no need of addition or induction of woman, but in the event of short fall, to that extent induction will be made corresponding number candidates from the bottom will be pushed out. The 3% quota for Backward Class Woman will not be filled up as vertical reservation but would apply the principle of horizontal reservation.

9. In what manner the reservation for woman has to be worked out has been delineated by the Hon'ble Supreme Court in paragraph nos. 9, 10 and 11 of the aforesaid judgment. It will be useful to quote the aforesaid paragraphs, which are as follows:-

> *"9 . The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under Article 16(4) are 'vertical reservations'. Special reservations in favour of physically handicapped, women etc., under Articles 16(1) or 15(3) are 'horizontal*

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reservations'. Where a vertical reservation is made in favour of a backward class under Article 16(4), the candidates belonging to such backward class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their numbers will not be counted against the quota reserved for the respective backward class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under Open Competition category. [Vide - Indira Sawhney (Supra), R. K. Sabharwal vs. State of Punjab (1995 (2) SCC 745), Union of India vs. Virpal Singh Chauvan (1995 (6) SCC 684 and Ritesh R. Sah vs. Dr. Y. L. Yamul (1996 (3) SCC 253)]. But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for scheduled castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of 'Scheduled Castes-Women'. If the number of women in such list is equal to or more than the number of special reservation quota, then there

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is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of scheduled caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) reservation differs from vertical (social) reservation. Thus women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women. Let us illustrate by an example:

> *If 19 posts are reserved for SCs (of which the quota for women is four), 19 SC candidates shall have to be first listed in accordance with merit, from out of the successful eligible candidates. If such list of 19 candidates contains four SC women candidates, then there is no need to disturb the list by including any further SC women candidate. On the other hand, if the list of 19 SC candidates contains only two woman candidates, then the next two SC woman candidates in accordance with merit, will have to be included in the list and corresponding number of candidates from the bottom of such list shall have to be deleted, so as to ensure that the final 19 selected SC candidates contain four women SC candidates. [But if the list of 19 SC candidates contains more than four women candidates, selected on own merit, all of*

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them will continue in the list and there is no question of deleting the excess women candidate on the ground that 'SC-women' have been selected in excess of the prescribed internal quota of four.]

10. In this case, the number of candidates to be selected under general category (open competition), were 59, out of which 11 were earmarked for women. When the first 59 from among the 261 successful candidates were taken and listed as per merit, it contained 11 women candidates, which was equal to the quota for 'General Category - Women'. There was thus no need for any further selection of woman candidates under the special reservation for women. But what RPSC did was to take only the first 48 candidates in the order of merit (which contained 11 women) and thereafter, fill the next 11 posts under the general category with woman candidates. As a result, we find that among 59 general category candidates in all 22 women have been selected consisting of eleven women candidates selected on their own merit (candidates at Sl.Nos. 2, 3, 4, 5, 9, 19, 21, 25, 31, 35 & 41 of the Selection List) and another eleven (candidates at Sl.Nos.54, 61, 62, 63, 66, 74, 75, 77, 78, 79 & 80 of the Selection List) included under reservation quota for 'General Category-Women'. This is clearly impermissible. The process of selections made by RPSC amounts to treating the 20% reservation for women as a vertical reservation, instead of being a

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> *horizontal reservation within the vertical reservation.*
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> *11. Similarly, we find that in regard to 24 posts for OBC, 19 candidates were selected by RPSC in accordance with merit from among OBC candidates which included three woman candidates. Thereafter, another five women were selected under the category of 'OBC - Women', instead of adding only two which was the shortfall. Thus there were in all 8 women candidates, among the 24 OBC candidates found in the Selection List. The proper course was to list 24 OBC candidates as per the merit and then find out number of woman candidates among them, and only fill the shortfall to make up the quota of five for woman."*

10. In such view of the matter, the classified compartmentalized reservation for the woman will not be treated to be a vertical reservation, but it is a horizontal reservation to ensure 3% reservation for woman to be in the select list and only addition will be allowed in the event of short fall in the percentage, but if already on merit they have been selected, then there is no need to add further to the classified compartmentalized reservation for the woman.

11. In such view of the matter, the stand of the State that it is a vertical reservation is rejected and this Court directs

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the respondents to recast the merit list with respect to woman Backward Class candidates as per the definition stipulated in the Reservation Act, prepare a fresh merit list with respect to Woman Backward Class treating to be a horizontal reservation in terms of the judgment of the Hon'ble Supreme Court, as indicated hereinabove, and if the petitioner comes under the zone of consideration, then certainly she will be allowed to remain in the Police force, but if she does not fall under the zone of consideration, in such circumstance, the question of her induction in service would not arise. All the process must be completed by the respondents concerned within a period of three months from the date of receipt /production of a copy of this order.

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

(Shivaji Pandey, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	11.09.2019
Transmission Date	

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