

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19754 of 2015

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Bishesa Rani Daughter of Sri Sita Ram Sah, Resident of Mohallah - Bakaria Tola, Maharajganj, P.S. - Alamganj, District - Patna.

... .. Petitioner

Versus

1. The State Of Bihar through the Director General of Police, Bihar at Patna
2. The Director General of Police, Bihar at Patna.
3. The Deputy Inspector General of Police Admin., Bihar at Patna.
4. The Deputy Inspector General of Police, Bihar Military Police Central Division, Patna.
5. The Commandant, Bihar Military Police - 14, Patna.
6. The Superintendent of Police, Sitamarhi - Cum - Chairman, Selection Committee, Central Division Board No. 3

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Dhanendra Chaubey
For the Respondent/s : Mr.Gp4- Uma Shankar

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 02-04-2019

Heard learned Counsel for the petitioner as well as the learned Counsel for the respondent State.

It is submitted by petitioner's Counsel that being an applicant under the OBC category under Advertisement No. 2 of 2004 for the post of Lady Constable in the Bihar Military Police, 14 (for short, BMP 14) the petitioner in terms of order dated 13.9.2011 passed in CWJC No. 10272 of 2010 was required to be reinstated in service.



The brief background is that pursuant to the selection process initiated under Advertisement No. 2 of 2004 the petitioner was duly selected, offered appointment and she was also appointed. Subsequently the respondents realised that due to some mistake committed by Beltron in publishing the result other persons who were higher in marks than the petitioner were left out. The petitioner was accordingly made to vacate the post to accommodate the rightful claimants. The issue was agitated by the petitioner in a series of writ petitions. The order dated 13.9.2011 in CWJC No. 10272 of 2010 is the last order in a series of writ petitions.

Having considered entire aspect and the petitioner's claim that she had been removed to make way for other persons who had not submitted their certificate in respect of their claim for reserved post, this Court was pleased to direct as follows:-

“The assertion of the petitioner in para 14 of the writ application that her removal from the service, a major issue, was in violation of the principle of natural justice, has not been denied in the two counter affidavits filed by the official respondents. Perhaps if those appointed subsequently had not enclosed their original certificates with their application form, that may not have been sufficient ground to move out the petitioner to accommodate them. But those issues are no more relevant as it now transpires that



at least two vacancies in the OBC category for women are still available due to failure of Respondents 7 and 9 to join. No other illegality in the appointment of the petitioner or any ineligibility on her part has been averred by the State.”

In view of the aforesaid direction the order dated 17.2.2012 has been issued by the authority rejecting the claim of the petitioner. The same is challenged in the instant proceeding after 6 years by way of I.A. No. 3136 of 2018. The ground urged by Counsel for the petitioner is that having regard to the entire background and specifically in view of the order passed in CWJC No. 10272 of 2010 the respondents were duty bound to reinstate the petitioner. Counsel for the petitioner has laid emphasis on the direction in the order dated 13.9.2011 passed in CWJC No. 10272 of 2010 where this Court has observed as follows:-

“The Court in the facts of the present case therefore holds and directs that the petitioner is bound to be reconsidered for reinstatement from the date of her termination against the two vacant posts. Counsel for the State and the Respondent no. 8 submit that the latter has better marks than the petitioner and therefore the petitioner cannot have any claim for seniority over Respondent no. 8 on reinstatement. Learned Counsel for the petitioner submits that he is not in a position



to make any submission on that aspect without proper instruction. The issue of seniority is thus left open for the petitioner to agitate if so advised when the respondents are expected to decide the same in accordance with law after hearing all concerned.

Let this order be complied with within a maximum period of two months from the date of receipt and/or production of a copy of this order before Respondent no. 3.

The impugned orders dated 24.12.2007, 23.6.2009 and 18.3.2010 directing removal of the petitioner are set aside.

The writ application stands allowed.”

The Submission made by Counsel for the petitioner was tested by this Court in the contempt proceeding arising out of MJC No. 45 of 2012. On 7.3.2012 this Court considered validity of the order dated 17.2.2012 in light of the direction contained in CWJC No. 10272 of 2010. The contempt proceedings were disposed of by this Court under order dated 7.3.2012, relevant extract of the same is being reproduced:-

“Learned Counsel for the State from Annexure A to the supplementary show cause submits that there were total of ten vacancies. The name of the petitioner was at serial – 14 of the merit list. After the availability of two vacancies, the opposite parties filled up the same in accordance



with the merit panel and persons above the petitioner at serial Nos. 9 and 10 came to be appointed when vacancies got exhausted.

The Court considers the same as a valid defence in a contempt proceeding. The correctness of the same requiring further enquiry can be examined in the writ jurisdiction if the petitioner is aggrieved.

The contempt proceedings stand disposed.”

The submission of the petitioner’s Counsel that the order dated 17.2.2012 was not in compliance with the order passed in CWJC No. 10272 of 2010 has thus been negated by the order passed in the contempt proceeding. Stand of the respondents that persons above the petitioner at serial number 9 and 10 have been appointed against the two existing vacancies has been considered to be a valid defence. It was only correctness of the decision which was left open for the petitioner to agitate in writ jurisdiction if the petitioner is aggrieved by such decision.

In the circumstances the assertion of the petitioner that in light of the order dated 13.9.2011 passed in CWJC No. 10272 of 2010 the authorities were duty bound to reinstate the petitioner, therefore, appears to be baseless and not worthy of consideration.



The issue regarding correctness of the order dated 17.2.2012 is the issue which could have been looked into by this Court in the instant proceeding. The fact that the petitioner was to be reinstated in compliance of the order passed by this Court is not an issue left open after contempt proceeding has been disposed of by this Court. The reasons assigned for not considering the petitioner against the two posts that remained vacant as noticed in the order passed in CWJC No. 10272 of 2010 was left to be considered. Same is stated by the respondents in their counter affidavit. Specific stand has been taken that against the available vacancies the claim of the petitioner along with others, who had participated in the selection process, was considered. The specific assertion of the respondent State is that all the Lady Constables who have been appointed against the vacant posts are higher in rank than the petitioner in the merit list. The said assertion of the respondent State is not denied or disputed by the petitioner. Her specific assertion is that in view of the judgment in her favour in the proceedings arising out of CWJC No. 10272 of 2010 the respondents had no option but to reinstate the petitioner.

Such submission of the petitioner appears to be incorrect. The issue was required to be reconsidered for



reinstatement does not mean that the authorities are duty bound to appoint the petitioner as a result of such consideration. The result of the consideration is always possible in favour or against the petitioner. Since the result of consideration is against reinstatement of the petitioner at best the respondents were required to place on record the reasons in support of the decision. Reasons have been placed on record. They have made specific assertion that all the Lady Constables appointed are higher in rank than the petitioner in merit, which is taken note of above, is not denied or disputed by the petitioner.

Counsel for the petitioner has submitted that the consideration of the authorities were in excess of the direction passed in the earlier proceeding as others have been considered beyond the three persons in respect of whom rival claim was subsisting up till disposal of the writ petition (CWJC No. 10272 of 2010).

Since the stand of the State is that others who have been considered are higher in rank to the petitioner, this Court does not find any infirmity with such consideration. Apart from that, this Court would notice submission of the State Counsel that the others who have been appointed have also not been



impleaded by the petitioner, and therefore, in opinion of the Court petitioners cannot claim any relief against them.

This Court, therefore, does not find any merit in the writ petition. The same is devoid of merit and the same is dismissed.

(Madhuresh Prasad, J)

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