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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 03.04.2019

+ **W.P.(C) No.925/2017**

MONU KUMARI PETITIONER

Through Mr.Rishi Vohra, Adv.

versus

STAFF SELECTION COMMISSION AND ORS. ..RESPONDENTS

Through Mr.Mohit Bhardwaj, Adv. with
Mr.Raja Pandit, Adv. or R-1 to 3.
Mr.Anuj Aggarwal, Adv. with
Mr.G.C. Shyamsundar.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J (ORAL)

1. The present petition assails the order dated 27.10.2016 passed by the Principal Bench, Central Administrative Tribunal, New Delhi ('Tribunal') in OA No.3809/2013. Vide the impugned order, the Tribunal has rejected the said Original Application preferred by the petitioner, wherein she had assailed Note II in para 10(D) of the advertisement issued for the recruitment of Sub-Inspectors in Delhi Police & Central Armed Police Forces, Assistant Sub-Inspectors in Central Industrial Security Force, and Intelligence Officers in Narcotics Control Bureau ('Recruitment Advertisement, 2013'), as bad in law. The petitioner also prayed for a direction to the respondents to treat her candidature as valid for the examinations held

in pursuance of the Recruitment Advertisement 2013, and to process her application by declaring her result for Paper II and, in case she meets the cut off marks and is placed in the merit list, she be appointed to the post of Sub-Inspector in Delhi Police, after allowing her an opportunity to qualify in the Physical Examination Test and Medical Test.

2. The impugned Note II contained in para 10(D) of the Recruitment Advertisement, 2013 ('Note II') which was assailed by the petitioner, reads as follows:-

"The candidature of female candidates who are pregnant at the time of Physical Endurance Test will be rejected as they cannot undergo PET. No appeal/representation will be entertained against such rejection."

3. While serving in the Delhi Police as a Constable since the year 2009, in pursuance to the Recruitment Advertisement, 2013, the petitioner submitted her application and appeared in the written examination. The same comprises of two papers. On the basis of her performance in the Written Examination, i.e., Paper I, vide letter dated 20.09.2013, the respondent/Staff Selection Commission (SSC) informed the petitioner that she had provisionally qualified for the Eligibility Test, Physical Endurance Test (PET) and Medical Examination (ME). She was informed that the PET and ME would be held from 09.10.2013 onwards. She was required to report to the DIG, Group Centre-1, CRPF Golf Course Road, Ajmer, Rajasthan on 28.10.2013 for the PET and on 29.10.2013 for the ME. The letter dated 20.09.2013 in para 5, stated as follows:-

*“Candidates appearing for PET/Medical Examination should satisfy himself/herself that he/she fulfils all the eligibility conditions like age, educational qualifications, and Physical and medical standards as laid down in the notice of the examination. **Candidature of female candidates who are pregnant at the time of PET will be rejected as they cannot undergo PET. No appeal/representation will be entertained against such rejection.**” (emphasis supplied)*

4. Good fortune smiled upon the petitioner, when, in the second half of the month of May, 2013, she learnt that she was pregnant. Thus, she carried in her womb, the promise for future generations of our species. This fortune of the petitioner, unfortunately, has been turned into her misfortune by the respondents, who seem to view pregnancy as a calamity; disease, or; disability. Upon learning about her pregnancy, the petitioner approached the respondent/SSC with a request to accommodate her, by postponing her PET/ME, which was scheduled to be held from 09.10.2013. Her request was turned down and she was asked to proceed to the venue for the PET. She did not appear in the PET, for obvious reasons. Consequently, she preferred the aforesaid Original Application to assail the aforesaid condition placed in the Recruitment Advertisement, 2013.

5. The Tribunal did not find favour with the petitioner’s challenge to the aforesaid Note II. The view taken by the Tribunal was that since, in the instant case, the recruitment advertisement had clearly stipulated that the candidature of female candidates who are pregnant at the time of the PET, will be rejected as they cannot undergo the

said test, and that no appeal/representation will be entertained against such rejection, the petitioner was bound by the same. The several decisions relied upon by the petitioner in support of her submission were distinguished on the ground of the aforesaid condition in the recruitment advertisement.

6. We may, at this stage, observe that the advertisement contained tabulated information in relation to vacancies, and reservations provided for different categories of applicants. Separate vacancies were clearly disclosed - both in respect of males and females, in the CISF and NCB. Reservation as per the Constitutional Scheme was also provided to candidates belonging to SC, ST & OBC categories. It may be noted that the petitioner belongs to the OBC category.

7. The submission of the learned counsel for the petitioner is that the condition imposed upon the candidates by the aforesaid Note II, is unconstitutional as it discriminates against women, by treating pregnancy as a disease/disability or calamity/accident. Learned counsel submits that the said Note also goes against the spirit of the law contained in the Maternity Benefits Act, and is violative of Articles 14, 16 & 21 of the Constitution of India. In support of his aforesaid contention, he places reliance on the decision of a Division Bench of the Rajasthan High Court in ***Laxmi Devi Vs. State of Rajasthan through Principal Secretary, Department of Home, Government Secretariat, Jaipur, Rajasthan & Ors. 2017 LIC 3188***. In the said decision, the Division Bench of the Rajasthan High Court considered the issue as to whether delay of two years in the PET, following the Written Examination, during which a woman candidate

became pregnant, would entitle her to seek postponement of the date of the PET, or such date cannot be postponed to the detriment and rejection of the woman candidate. Learned counsel submits that the issue considered by the Rajasthan High Court is identical to the one raised by the petitioner in the present petition. In this regard, he also places reliance on a decision of a Single Judge of the Madras High Court in ***R. Devika Vs. The Chairman Tamil Nadu Uniformed Recruitment Board Bandhiyan Road Egmore Chennai - 600008 & Ors. 2019 (2) MLJ 109 : 2019 LIC 789.***

8. Learned counsel for the petitioner further submits that in case the petitioner has cleared Paper II of the Written Examination, she should be evaluated on the basis of her overall marks/grading and she should be granted appointment and seniority according to her merit with grant of notional appointment from the date on which the candidate immediately below her in the merit list, was granted appointment. Learned counsel for the petitioner points out that during the pendency of the Original Application, under orders of the Tribunal, she was permitted to participate in the interview.

9. On the other hand, learned counsel for the respondents while supporting the impugned order, submits that in the light of the condition imposed by the impugned Note II, the petitioner is not entitled to seek deferment of the PET and ME. He further submits that the petitioner was aware of the said condition when she made the application, and she should have ensured that she did not become pregnant before her appointment, or at least before she had undergone the PET and ME. Learned counsel, therefore, prays that the present

petition be dismissed.

10. We have considered the submissions of the learned counsels for the parties as also the two decisions relied upon by the petitioner. At the very outset, it may be noted that the fundamental plea of the petitioner before the Tribunal was that the condition stipulated in Note II is unconstitutional on account of discriminating against pregnant women in matters of public employment. However, instead of appreciating the fact that the aforesaid condition was itself challenged, the Tribunal proceeded to dismiss the petitioner's OA by relying on the very same condition without analysing its constitutionality. In these circumstances, we have no hesitation in concluding that the Tribunal has passed the impugned order without appreciating the sum and substance of the petitioner's contentions and, therefore, we proceed to examine the same.

11. Before examining the petitioner's challenge to Note II on its merits, we may refer to the decision of the Rajasthan High Court in ***Laxmi Devi (supra)***, on which heavy reliance has been placed by the learned counsel for the petitioner. For the sake of ready reference, the relevant paragraphs of the said decision have been reproduced hereinbelow:-

"15. At the outset, it may be noticed that the married woman is not disqualified for appointment and the fact that she is pregnant in itself is not a disqualification for participating in the selection process nor the pregnancy can be treated as a bar for appointment under the scheme of Rules, 1960/1989 respectively. What is to be looked into is that if any unforeseen inability occurs because of pregnancy during the months before and after child birth while seeking employment

or while in service which can be taken care of by granting maternity leave for the period required or because of service hazards one has to qualify with the standards of Physical Efficiency Test/Physical Standard Test how far the right of seeking public employment of a woman candidate, for which she is eligible, can be denied to her.

16. To become a mother is the most natural phenomenon in the life of a woman. An employer has to be considerate and sympathetic towards her and must realize the physical difficulties which a woman would face at the advanced stage of her pregnancy to perform her duties while carrying a baby in the womb or while rearing up the child after birth and this what has been taken note of by the Parliament in its wisdom while enacting the Maternity Benefit Act, 1961. The object behind is to provide all the facilities to a woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear of being victimized for forced absence during the pre-or post-natal period.

17. Apart from the Art. 14 & 16 of the Constitution, which protects rights of the individual citizen, discriminatory treatment of a pregnant woman would also fall foul of Art. 42 of the Constitution which requires the State to make provision for securing just and humane conditions of work and for maternity relief and any action denying maternity benefit has to be examined on the anvil of Art. 42 which though not enforceable by law is not available for determining the legal efficacy of the action being complained of.

18. It may be noticed that pregnancy is not a disability but is one of the natural consequence of marriage and any distinction made on the ground of pregnancy be always held to be arbitrary and violative of Art. 14 of the Constitution.

19. By a restriction which has been imposed by the respondents in the standing orders that the women candidates who are pregnant, there shall be no provision for

additional/extra chance and they are required to submit a Doctor's report in this respect and it will be at their own risk, appears to be an ingenious attempt made by the respondents just to defeat the claim of the women candidates. Freedom of personal choice in matters of marriage and family life is one of the liberties protected by the mandate of law and the same is very far from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child. The Father of Nation, Mahatma Gandhi eloquently said:

"Marriage is a natural thing in life, and to consider it derogatory in any manner is wholly wrong. The idea is to look upon marriage as a sacrament and therefore, to lead a life of self restraint in the married state."

20. To say that one fears to lose employment on getting married is to forget the fact that the bloom or light of all life's happiness consists in marriage. It is nothing more than a civilized way of living. No wonder Channing Pittock Said "Marriage is the greatest educational institution on earth" and certainly protect fundamental rights conferred u/Art. 21 of the Constitution where no person shall be deprived of his life or personal liberty except according to procedure established by law and 'life' in this Article cannot be considered to be a mechanical one. It is an attendant with all that is required to make the life blossom and all enjoyment within the permissible limits of law.

21. Here is a case of a married woman who chooses to have a child, can the State or an authority like the respondents impose itself and curtail this life or personal freedom of the woman? No detailed discussion is required in the matter of appointment against such post which prescribes for Physical Standard Test/Physical Efficiency Test and it shall no longer be necessary to declare woman candidate completely unfit if she is found to be unfit during the period when she is ordinarily required to appear in the Physical Standard Test/Physical Efficiency Test for qualifying in the selection process.

22. *In the given facts & circumstances, she certainly deserves indulgence of relaxation which she has to qualify after the reasonable period which the authority in the given circumstances considers appropriate in affording her an opportunity to qualify the Physical Standard Test/Physical Efficiency Test depriving or eliminating her from the selection process for the reason that she is at the advanced stage of pregnancy on the date notified by the respondents to appear in the Physical Standard Test/Physical Efficiency Test, in our considered view, is certainly arbitrary & violative of Art. 14 of the Constitution.*

23. *The restriction which has been imposed by the respondents fundamentally does not hold good and it is certainly prejudicial & against Indian womanhood which pervades the service Rules and there is a reasonable basis for the charge of bias under the Rules and it makes an ominous indifference of the executive to bring about the banishment of discrimination in the service Rules.*

24. *It cannot be forced upon a woman to have a choice between bearing a child and employment as it interferes both - with her reproductive rights and her right to employment and such an action cannot have any place in the present modern era.*

25. *We would refer to a passage occurring at page 166 of Swamy's Complete Manual on Establishment and Administration. The said passage reads ad infra:-*

"Employment of women candidates in state of Pregnancy-

(a) For appointment against posts carrying hazardous nature of duties - Where a pregnant woman candidate is to be appointed against a post carrying hazardous nature of duties, e.g., in Police Organisations, etc., and she has to complete a period of training as a condition of service and who as a result of tests is found to be

pregnant of twelve weeks standing or over shall be declared temporarily unfit and her appointment held in abeyance until the confinement is over.

She should be re-examined for a fitness certificate six weeks after the date of confinement, subject to the production of medical certificate of fitness from a registered medical practitioner. The vacancy against which the woman candidate was selected should be 'kept reserved for her. If she is found fit, she may be appointed to the post kept reserved for her and allowed the benefit of seniority in accordance with para 4 of Annexure to MHA OM No. 9/11/55-R.S, dated the 22nd December, 1959.

(b) For appointment against posts which do not prescribe any elaborate training - It shall no longer be necessary to declare a woman candidate 'compulsorily unfit' if she is found to be pregnant during medical examination before appointment against posts which do not prescribe any elaborate training, i.e., She can be appointed straightway on the job."

26. Once it is observed & held that maternity is a human right of a woman and so longer the married woman is not disqualified from participating in the selection process and is not an impediment and after having qualified the written test, at the stage when she has to undergo the Physical Standard Test/Physical Efficiency Test became pregnant with advanced stage and the pregnancy being not a disability but one of the natural consequence of marriage, the woman candidate deserves indulgence of qualifying the physical standards after affording a reasonable time in attaining fitness which the authority may consider to be appropriate keeping in view the provisions of the Maternity Benefit Act, 1961.

27. Based on the aforesaid discussion, we are of the view that there can be no conclusion other than to hold that action of the respondents in not granting indulgence to the petitioners in failing to qualify Physical Standard Test/Physical Efficiency Test because of their advanced stage of pregnancy

is illegal and arbitrary and the impugned provisions of the Standing Orders to the extent they lay down that pregnancy would render a candidate unfit is legally not sustainable.

28. Consequently, the instant batch of writ petitions succeed & is hereby allowed. The respondents are directed to call upon the petitioners for their Physical Standard Test/Physical Efficiency Test after giving them due notice and if they qualify with the standards laid down under the relevant scheme of Rules and find place in the order of merit in their respective category, they may be considered for appointment in terms of their advertisements dt. 20.07.2013/14.07.2013 respectively. Necessary compliance be made within four months.”

12. Similar to the factual matrix in ***Laxmi Devi (supra)***, in the present case as well, there is no condition in the recruitment advertisement that married women are not entitled to apply for the vacancies in question. Since the petitioner was married and was already serving with the Delhi Police as a Constable, her pregnancy was a natural occurrence. Therefore, debarring the petitioner from consideration of her candidature on the ground that she could not undergo the PET and ME due to her pregnancy, clearly violates her right to life and personal liberty. As noticed by the Rajasthan High Court in ***Laxmi Devi (supra)***, the constitutional scheme as well as the Maternity Benefits Act, seek to protect pregnant women from any adverse consequences which they may be faced with, on account of their being pregnant.

13. In a society such as ours – where women struggle everyday against the confines of patriarchy to seek parity with their male counterparts in all walks of life, including the professional sphere – ousting pregnant women altogether from the selection process for

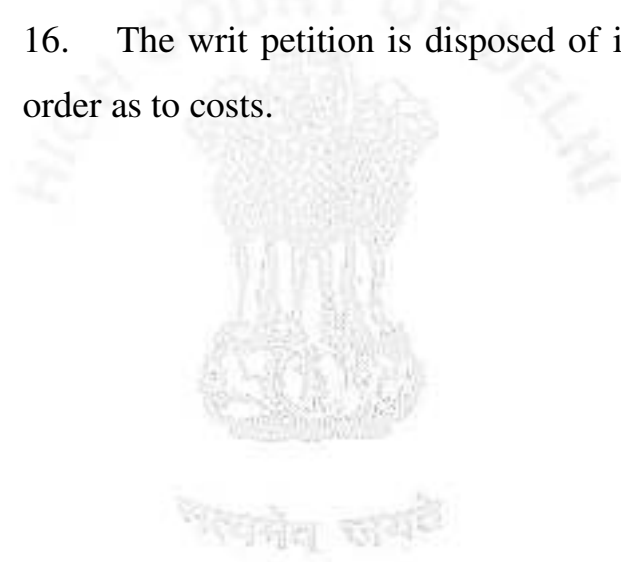
public employment amounts to discriminating against women in matters of public employment for reasons solely attributable to their sex. This is not only in violation of the constitutional mandate as embodied in Article 14, which guarantees equality as a fundamental right available to all citizens of India, irrespective of their religion, race, caste, sex or place of birth, but is also against the very fibre of Article 16, which ensures equality of opportunity to all in matters of public employment. Furthermore, the aforesaid condition essentially disadvantages women for making choices such as motherhood, that are at the epicentre of their right to life and personal liberty. It needs no gainsaying that motherhood cannot be an excuse to exclude women from public employment – whether directly or indirectly and, it is for this reason that we are of the view that the condition stipulated in Note II is violative of Articles 14, 16 and 21 of the Constitution of India.

14. We, therefore, allow this petition and quash Note II mentioned in para 10 (D) of the Recruitment Advertisement, 2013 as being violative of Articles 14, 16 and 21 of the Constitution of India. We also direct the respondents to conduct the PET of the petitioner, as well as her ME, and to compile her result on the basis of her written examination and her interview, which she has already undergone. In case the petitioner is found meritorious and to have secured more marks than the last selected candidate in the OBC category to which she belongs, she shall be appointed by the respondents to the post of Sub-Inspector in Delhi Police, which is stated to be her only option, and will also be granted seniority on notional basis from the date

candidates selected in the same process have been granted. She will also be entitled to pay fixation along with notional increments from the same date. It is, however, made clear that she shall not be entitled to any arrears of pay.

15. We further direct the respondents to ensure that no such clause, which discriminates against pregnant women, is inserted in any of their future advertisements. We also direct the respondents to comply with our aforesaid directions within eight weeks.

16. The writ petition is disposed of in the aforesaid terms with no order as to costs.



(VIPIN SANGHI)
JUDGE

(REKHA PALLI)
JUDGE

APRIL 03, 2019/aa