

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7524 of 2020

1. Mahipal Singh Jakhar Son of Shrima Jakhar Ward No. 19, Dhani Sagar Wali Krishna Nagar, Maharauli, Via Shrimadhopur, District- Sikar, Rajasthan, At present residing at G6 Ashwini Apartment, Near AIIMS, Patna.
2. Sanwar Mal Nodal Son of Babu Lal Nodal Resident of Nodala ki Dhani Asalpur, Tehsil- Phulera, District- Jaipur, at present residing at Road no. 2 Vrindavan Colony, P.S.- Phulwari Sharif, District- Patna.
3. Anil Mandal Son of Ram Chandra Mandiwal Resident of VPO Sewa Via Phagalwa, Tehsil- Dhod, District- Sikar, Rajsthan, at present residing at Parwati Palace Road No. 2 Vrinavan Colony, P.S.- Phulwari Sharif, District- Patna.
4. Dinesh Kumar Verma S/o Ramchandra Verma Resident of Village- Bhadweri Via Kanwat, Tehsil- Khandela, District- Sikar, at present residing at G6 Ashwani Apartment Near AIMS, Patna, P.S.- Phulwari Sharif, District- Patna.
5. Mahender Kumar Son of Dalip Singh Resident of VPO Dheevs Bara, Tehsil- Taranagar, District- Churu, Rajasthan, at present residing at G6 Ashwani Apartment Near AIMS, Patna, P.S.- Phulwari Sharif, District- Patna.
6. Manish Yadav Son of Hemraj Yadav Residing of Ummedpara Colony, P.S. Diged, District- Kota, at present residing at Road No. 1 Vrindavan Colony, P.S.- Phulwari Sharif, District- Patna.
7. Gaurav Mahto Son of Vijay Kumar Mahto Residing at Patel Road Khusalgarh, District- Bansbara, Rajasthan at present residing at G6 Near AIMS, Patna, P.S.- Phulwari Sharif, District- Patna.
8. Mahavir Singh Son of Kalyan Singh Residing of Village- Karni Colony, District- Nagaur, Rajasthan at present residing near Allahabad Bank, Balmi, P.S.- Phulwari Sharif, District- Patna.
9. Bhawnender Kumar Son of Pramod Kumar Residing of Village- Nathawala, Tehsil- Shahpura, District- Jaipur at present residing at G6 Ashwani Apartment Near AIMS Patna, P.S.- Phulwari Sharif, District- Patna.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Health and Family Welfare, New Delhi- 110001.
2. The Joint Secretary (PMSSY) Ministry of Health and Family Welfare, Government of India, New Delhi- 110002.
3. The Director and Member Secretary All India Institute of Medical Science, Ansari Nagar, New Delhi- 110029.
4. The Director All India Institute of Medical Science, Phulwari Sharif, Patna- 801507.

... .. Respondent/s



Appearance :

For the Petitioner/s : Mr.Rajesh Kumar Sinha, Advocate
For the Respondent/s : Mr.Dr.K. N. Singh (Asg)
Mr. Awadhesh Kumar Pandey
Mr. Binay Kumar Pandey, Advocates

**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)**

The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.

Date : 23-09-2020

Heard the parties.

Petitioners have prayed for following reliefs:-

I. "To set aside the impugned order dated 28.02.2020 passed by the Central Administrative Tribunal, Patna, Bench, Patna in O.A. No.50/00054/2020 whereby and whereunder the original application has been dismissed which is without application of judicious mind and without considering the law laid down by Hon'ble Apex Court that the reservation should not be more than 50% held in catena of judgment which will be produced at the time of argument of this case.

II Further for quashing the impugned memorandum in part dated 28.10.2019 Additional Item-16, in minutes of meeting held on 27.07.2019 issued by the pan and signature of Prof. Randeep Guleria, Director & Member Secretary which is contrary to the provision of Article 14 and 16 of the Constitution of India and also contrary to the law laid down by the Hon'ble Apex Court in catena of judgment as such the impugned Additional Item of Memorandum is not sustainable in the eye of law and fit to be set-aside.

III Further for setting aside the part of impugned advertisement no.13562/ Nursing Officer/2019 along with corrigendum dated 15.01.2020 issued by pan and signature of Deputy Director (Admn.), All India Institute Medical Science Patna. So far as 80% reservation for female category for the post of Nursing Officer (Staff Nursing Gr.II) and inserting skill test besides written test



erroneously in the selection procedure without disclosing the marks of written test & skill test which is bad in law and fit to be set aside.

IV. Further during pendency of this writ petition the further process of selection may be stayed.

V. To grant any other relief(s) for which the petitioners are entitled to get in the eye of law.”

Briefly stated the facts of the case is that an advertisement was issued by All India Institute of Medical Sciences, Patna by which applications were invited for direct recruitment on the post of Nursing Officer (Staff Nurse Grade-II) for hospital services. In said advertisement, 80% of the posts were earmarked for female candidates and 20% of the posts were earmarked for male candidates. 80% of the vacancies for female candidates were approved by the governing body of the All India Institute of Medical Sciences. The relevant part is abstracted below:-

“The CIB discussed on the issue of appropriateness and requirement of female nursing staff in a number of departments/specialised ward vis-à-vis patient comfort and care. Keeping this in view, it was decided that 80% of posts may be reserved for female nursing staff while the remaining 20% posts may be filled by male nursing staff.”

Applicants had challenged earmarking of 80% of posts for female candidates by filing O.A. in the CAT, Patna on the ground that same is violative of right to equality under Articles



14, 15 and 16 of the Constitution of India and more than 50% of posts cannot be earmarked for female.

The counsel representing the Union of India and AIIMS, Patna stated before Tribunal that it is not a reservation within meaning of Article 16(4) of the Constitution and it is a case of reasonable classification to achieve a specific objective for providing care and comfort in specialized ward and such classification is permissible under Article 14 of Constitution of India. It is a policy decision of the apex body of AIIMS which decided to recruit and fill up vacancies by more female nursing officers than male nursing officers in all AIIMS uniformly for hospital services.

The tribunal held that Article 14 of Constitution of India prohibits class legislation but permits reasonable classification, depending upon the objective and purpose of the State action and same is permissible and further held that objective of providing comfort and care in specialized wards by earmarking of 80% of vacancies for female nurses is neither discriminatory, unreasonable, unfair nor arbitrary classification and dismissed the application by impugned order.

The Apex Court in a case of **Govt of Andhra Pradesh Vs. P.B. Vijaykumar and Ors.** since reported in **AIR 1995**



SSC1648 has held in paragraph 7 as under:-

“7. The insertion of Clause (3) of Article 15 in relation to women is a recognition of the fact that for centuries, women of this country have been socially and economically handicapped. As a result, they are unable to participate in the socio-economic activities of the nation on a footing of equality. It is in order to eliminate this socio-economic backwardness of women and to empower them in a manner that would bring about effective equality between men and women that Article 15(3) is placed in Article 15. Its object is to strengthen and improve the status of women. An important limb of this concept of gender equality is creating job opportunities for women. To say that under Article 15(3), job opportunities for women cannot be created would be to cut at the very root of the underlying inspiration behind this Article. Making special provisions for women in respect of employment or posts under the State is an integral part of Article 15(3). This power conferred under Article 15(3) is not whittled down in any manner by Article 16.”

The Apex Court in the case of **Toguru Sudhakar Reddy and Ors. Vs. The Govt. of Andhra Pradesh and Ors.** since reported in **AIR 1994 SC 544** has held that reservation in excess of 50% is permissible and relevant paragraph no.3 of which is reproduced below:-

“3. The High Court rejected the main contention of the appellants-petitioners on the reasoning that Article 15(3) of the Constitution of India permits the making of special provisions for women. The High Court went into the scheme of the Andhra Pradesh Cooperative Societies Act, 1964 in detail and came to the conclusion that impugned provisions were not arbitrary. The High Court



further rejected the contention that reservation beyond 50% was not permissible. The High Court rightly held that the ratio in Balaji 's case was only confined to the reservations under Articles 15(4)' and 16(4) of the Constitution of India.”

The Apex Court in the case of **Union of India Vs. K. P. Prabhakaran** since reported in **1997 (11) SSC 635** has upheld 100% reservation in favour of women to be permissible.

The Apex Court in case of **Vijay Lakshmi Vs. Punjab University and Ors.** since reported in **AIR 2003 SSC 3331** has held in paragraph no.5 is as under:-

“5. In the light of the aforesaid principles, on the concept of equality enshrined in the Constitution, it can be stated that there could be classification between male and female for certain posts. Such classification cannot be said to be arbitrary or unjustified. If separate colleges or schools for girls are justifiable, rules providing appointment of lady principal or teacher would also be justified. The object sought to be achieved is a precautionary, preventive and protective measure based on public morals and particularly in view of the young age of the girl students to be taught. One may believe in absolute freedom, one may not believe in such freedom but in such case when a policy decision is taken by the State and rules are framed accordingly, it cannot be termed to be arbitrary or unjustified. Hence, it would be difficult to hold that rules empowering the authority to appoint only a lady Principal or a lady teacher or a lady doctor or a woman Superintendent are violative of Articles 14 or 16 of the Constitution.”



Above judgment also refers to a judgment of Bombay High Court with approval rendered in **Dattatrya Motiram More Vs. State of Bombay** since reported in AIR 1953 Bom 311 in which the Court held as under:-

"... Article 15(3) is obviously a proviso to Article 15(1) and proper effect must be given to the proviso. It is true that in construing a proviso one must not nullify the section itself. A proviso merely carves out something from the section itself but it does not and cannot destroy the whole section. The proper way to construe Article 15(3), in our opinion, is that whereas under Article 15(1) discrimination in favour of men only on the ground of sex is not permissible, by reason of Article 15(3) discrimination in favour of women is permissible, and when the State does discriminate in favour of women, it does not offend against Article 15(1). Therefore, as a result of the joint operation of Article 15(1) and Article 15(3) the State may discriminate in favour of women against men, but it may not discriminate in favour of men against women..."

After hearing the counsel for the petitioner and counsel for the Union of India as well as AIIMS and perusing the order as impugned, this Court does not find any error or infirmity in the order passed by the tribunal requiring any interference by



this Court in its writ jurisdiction, accordingly, this writ petition
is dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.10.2020
Transmission Date	NA

