

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 10824 of 2019**

Sarita Soyam D/o Shri Soyam Kanna Wife Of Salvam Enka Aged About 23 Years R/o Village And Post Errabor, P.S. Errabor, Tahsil Konta, District Sukma Chhattisgarh

---- Petitioner

Versus

1. Union Of India Through The Secretary, Ministry Of Home, New Delhi.
2. Inspector General Of Police Central Reserve Police Force, Govind Apartment, Jeevan Vihar Colony, Telibandha, Raipur, District Raipur Chhattisgarh
3. Commandant, Group Centre Central Reserve Police Force, Raipur, District Raipur Chhattisgarh
4. Commandant, Group Centre 241, Basteria Battalion, Central Reserve Force, Sedwa, Post Box No. 76, Main Post Office Jagdalpur, District Bastar Chhattisgarh
5. Postmaster, Post Office Post Errabor, P.S. Errabor, Tahsil Konta, District Sukma Chhattisgarh

----Respondents

For Petitioner	:	Mr. Govind Ram Miri, Sr. Advocate with Mr. Basant Kaiwartya, Advocate
For Respondents	:	Mr. Ashwini Shukla, Advocate

Hon'ble Shri Justice P. Sam Koshy
Order on Board

05/10/2021

1. Aggrieved by the impugned order Annexure P/1 dated 25.11.2019 the present writ petition has been filed. Vide the impugned order the respondents have refused to give joining to the petitioner from the post of Constable (G.D.)
2. The brief facts of the case relevant for the adjudication of the present writ petition is that the petitioner is a resident of village and post Errabor, P.S. Errabor, Tahsil Konta, District Sukma Chhattisgarh. The

said place is one of the remotest and core naxalite area in the State of Chhattisgarh. The respondents-the Department of Central Reserve Police Force initiated a recruitment process for the post of Constable (General Duty) Female. The petitioner having participated in the recruitment process qualified the written examination and was provisionally selected for appointment as Constable (GD) and was ordered to be posted in 241 Basteria Battalion in Central Reserve Police Force.

3. The recruitment process, which was meant for Bastar region and in which the petitioner had participated, an appointment order was issued vide Annexure P/4 dated 20.02.2019. The petitioner was asked to report for duty on or before the forenoon of 22.03.2019.
4. In terms of the order of appointment the petitioner gave her joining on the 22.03.2019, which stands admitted from plain reading of the impugned order Annexure P/1 itself, however when she went to report for joining, she informed the officers that she was pregnant for 5 months. Thus, when it was informed to the higher authorities that she was pregnant for 5 months, the authorities said that her matter would be referred to the higher authorities and only after the instructions from the higher authorities, a decision would be taken upon her joining.
5. Thereafter, it is said that a correspondence was issued to the petitioner on 28.03.2019 asking her to report for joining along with a new fitness certificate from the competent medical board within 6 weeks from the date of delivery. The contention of the petitioner is that this correspondence dated 28.03.2019 was never served to the petitioner. According to the petitioner, letters and correspondences from the

Department and postal department are never promptly served to that part of area, which is badly affected by the naxalite area and it is also a dense forest area.

6. Contention of the petitioner is that the letter dated 28.03.2019 was delivered to the petitioner only on 05.10.2019. The petitioner has also enclosed a certificate of the Postal Department in this regard of having been delivered with the correspondence dated 28.03.2019 only on 05.10.2019. Immediately thereafter the petitioner gave her joining along with a fresh fitness certificate on 22.10.2019, which has been refused to be accepted vide the impugned order of the respondents, which has led to the filing of the present writ petition.
7. Contention of the petitioner is that the situation prevailing was beyond her control. According to the petitioner, by virtue of her getting conceived and getting pregnant, her joining was not accepted when she gave her joining well within the time on 22.03.2019. Thereafter, the respondents themselves had asked the petitioner to wait for further instructions from the higher authorities so far as her joining is concerned. The contention of the petitioner as regards is to be believed also from the postal report showing it to be served upon the petitioner at a belated stage only on 05.10.2019. Thereafter the petitioner has promptly taken necessary steps in getting a fresh fitness certificate and a joining report was given on 22.10.2019 i.e. within a period of 15 days from the date of receipt of the copy of the letter dated 28.03.2019. According to the petitioner it is not a case, where she had deliberately avoided joining for some extraneous reason. According to the petitioner, in fact she had given her joining on 22.03.2019 itself. Thereafter the intimation of the respondents so far

as the requirement of the petitioner to report for duty within 6 weeks from the date of delivery along with a fresh fitness certificate, was received by the petitioner at a much belated stage on 05.10.2019 alone. Therefore the petitioner cannot be blamed for a non-response during the period between 22.03.2019 to 22.10.2019. Another fact, which needs to be considered is that undoubtedly the petitioner belongs to a tribal community. The place where the petitioner belongs is also a tribal area coupled with the fact that the same is a core naxalite area.

8. Counsel for the petitioner submits that the respondent authorities ought to have considered the claim of the petitioner sympathetically, particularly taking note of the fact that firstly the petitioner at the first instance was pregnant for 5 months, secondly the petitioner was a resident of one of the remotest corner of the State and which is badly affected from the naxalite menace and under the circumstances it would have otherwise also taken some time for the petitioner to have got a medical fitness from the competent Medical Board. The further contention of the petitioner is that it is not a case where the petitioner in fact has been deliberately avoiding joining for any extraneous reasons, but for her pregnancy. This fact also should have been taken note of by the respondent authorities before passing the impugned order of cancellation of appointment.
9. The counsel for the respondents on the other hand opposing the petition drew the attention of this Court to the correspondence made by the respondents to the petitioner on 28.03.2019 asking the petitioner to produce a proper fitness certificate enabling her to give joining and the respondents submit that to this letter dated 28.03.2019

the petitioner responded only after about 6 months time. Therefore, in terms of the guidelines and circulars issued by the respondents dated 09.08.1995 those candidates who give their joining after 6 months from the date of issuance of order of appointment cannot be permitted to resume duties, Thereby the impugned order has been passed, and the same therefore cannot be said to be in any manner arbitrary or bad in law.

10. Having heard the contentions put forth on either side and on perusal of record, admittedly the petitioner had participated in the recruitment process for appointment to the post of Constable (GD). She was found meritorious and order of appointment was issued in her favour on 20.02.2019. She was asked to report for duty till 22.03.2019. However, before issuance of the appointment order itself the petitioner became pregnant for 5 months. The letter dated 28.03.2019 was delivered to the petitioner only on 05.10.2019. Immediately thereafter the petitioner gave her joining along with a fresh fitness certificate on 22.10.2019, which has been refused to be accepted vide the impugned order by the respondents.
11. The fact which needs appreciation in the instant case is the factual ground realities relating to the area which the petitioner belongs the atmosphere and the surrounding of that area. There is no dispute in respect of the said area being an area which is badly affected from naxalite menace.
12. All said and done the petitioner in fact had given a joining on 22.03.2019 as is evident from the impugned order Annexure P/1 itself. There is also an admitted factual position that the petitioner was

issued with a letter by the respondents to produce a fresh medical fitness certificate on 28.03.2019. The petitioner had produced a certificate on 22.10.2019 further the petitioner has given a joining on 22.03.2019 in terms of the order of appointment. The circular dated 09.08.1995, whereby a candidate who has been issued with an order of appointment if he does not report for duties for 6 months, it would amount to an automatic cancellation of the appointment would not be applicable in the case of the petitioner, as the respondents themselves has pleaded the fact that the petitioner has reported for duties on 22.03.2019. It is also not in dispute that before issuance of the order of appointment the respondents had subjected the petitioner to medical fitness, which further forces this Court to reach to the conclusion that except for the pregnancy, the petitioner would had been fit for reporting for duties and her joining on 22.03.2019 itself would have been accepted. The petitioner's pregnancy, should not be taken into consideration as a disqualification for the petitioner for all times to come, particularly when it is very difficult for somebody to get an employment these days. It is not a case where the petitioner has deliberately been absent from duties without any cogent or justifiable reasons and grounds. The respondents themselves are accepting the fact that the petitioner was during the intervening period was pregnant and expecting.

13. Given the said facts, this Court is of the opinion that the respondents need to reconsider the impugned order Annexure P/1 dated 25.11.2019. The impugned order to that extent therefore is set-aside and quashed and the matter is remitted back to the respondent authorities to reconsider the claim of the petitioner by sympathetically

considering the reasons and grounds raised by the petitioner, which prevented her from giving her joining earlier than 22.10.2019. In the event if the respondent authorities finds that the petitioner can be considered for appointment considering the fact that this Court on 03.01.2020 has ordered and directed the respondents to keep one post vacant, the respondent authorities may consider accommodating the petitioner against the said vacant post, which has been ordered to be kept vacant. Let this entire exercise be completed within a period of 90 days from the date of receipt of the copy of this order.

14. With the aforesaid observations, the present writ petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved