

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3065 of 2018

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Ruby Kumari @ Ruby Sharma Wife of Ravi Bhushan Sharma, Resident of Village- Jhakhara, Police Station- Pipra Kothi, District- East Champaran, Mobile No. 9431851278, 7353439511.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Primary Education Department, Govt. of Bihar, Patna.
2. The State Appellate Authority, Education Department, Govt. of Bihar, Patna.
3. The District Teacher Appointment Appellate Authority, East Champaran, Motihari.
4. The District Education Officer, East Champaran, Motihari.
5. The District Programme Officer Establishment East Champaran, Motihari.
6. The Block Development Officer, Kalyanpur, East Champaran, Motihari.
7. The Block Education Officer, Kalyanpur, East Champaran, Motihari.
8. The Panchayat Secretary, Gram Panchayat Raj, Parsauni Wajid, Block-Kalyanpur, East Champaran, Moti
9. Amit Kumar, Son of Upendra Prasad @ Upendra Pd. Srivastava, Resident of Mohalla- Adarsh Nagar, Chilwaniya, Motihari, P.S.- Banjariya, District- East Champaran, Motihari.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Madhurendra Kumar, Adv.
For the Respondent/s	:	Mr. Hitesh Suman, AC to SC-13
For the Respondent No.9:	:	Mr. Kamlesh Kumar Pathak, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA
ORAL ORDER

5 26-07-2022

1. Heard the parties.

2. The petitioner by way of this writ petition assails the order passed by the District Appellate Authority as well as the State Appellate Authority and submits that the petitioner had efficacious right of appointment on the basis of roster as she was from female category and disabled too. The model roster



mentions the 7th post to be filled by a female category and disabled candidate.

3. Learned counsel for the petitioner submits that the appointment of the petitioner could not have been cancelled solely on the basis of an appeal preferred by the respondent. Learned counsel submits that the petitioner was not appointed on account of the respondent being ineligible but on account that she was falling in the roster reserved for female handicapped. Learned counsel has taken this court to the model roster issued by the Department of Personnel and Administration Reforms dated 30.09.2002.

4. Per contra, learned counsel appearing for the respondent submits that there was no roster applied earlier. One Saurabh Raj who possessed highest percentage, was directed to be given appointment after he approached the authority. Thereafter the concerned Saurabh Raj did not join and resigned. Resulting in the respondent no.9 being placed highest in the merit and accordingly, he alone could have been appointed. The petitioner was however given march over and above him and he therefore preferred an appeal before the District Appellate Authority and the action of the appointment of the petitioner is unjustified. Learned counsel has taken this Court to the



judgment passed by the Supreme Court in AIR 2007 (SC) 3136 to submit that reservation on the basis of caste, creed and religion would not arise for the purpose of appointing from the disabled category. Learned counsel submits that the respondent was wrongly declared ineligible on the ground of surname not being mentioned of his father and because of the age being mentioned in different affidavit and the doctor's prescription. Learned counsel submits that the respondent is a blind man and whose age is being written approximately there is no column of mention date of birth.

5. I have considered the submissions and carefully perused the order passed by the District Appellate Authority.

6. In **AIR 2007 (SC) 3136 Mahesh Gupta Vs. Yashwant Kumar Ahirwar**, it was observed as under:-

10. The State in terms of Article 16 of the Constitution of India may make two types of reservations vertical and horizontal. Article 16 (4) provides for vertical reservation; whereas Clause (1) of Article 16 provides for horizontal reservation.

11. The State adopted a policy decision for filling up the reserved posts for handicapped persons. A special drive was to be launched therefor. The circular letter was issued only for the said purpose. A bare perusal of the said circular letter dated 29.03.1993 would clearly show that the State had made 3% reservation for blinds and 2% for other physically handicapped persons. Such a reservation falling within Clause (1) of Article 16 of the



Constitution has nothing to do with the object and purport sought to be achieved by reason of Clause (4) thereof.

12. Disability has drawn the attention of the worldwide community. India is a signatory to various International Treaties and Conventions. The State, therefore, took a policy decision to have horizontal reservation with a view to fulfil its constitutional object as also its commitment to the international community. A disabled is a disabled. The question of making any further reservation on the basis of caste, creed or religion ordinarily may not arise. They constitute a special class.

7. However as the law has been developed further,
Union of India & Ors. Vs. N.Selvakumar & Anr. reported in (2017) 3 SCC 504, the Apex Court has held as under:-

23. Article 16 of the Constitution provides for equality of opportunity in matters of public employment. The State in terms of Article 16 of the Constitution provides two types of reservations i.e. a vertical or social reservation as provided for in Article 16 sub clause (4) and horizontal reservation which is referable to Article 16 sub clause (1). Special reservation in favour of physically handicapped, women etc. under Article 16(1) or 15(3) of the Constitution are the instances of horizontal reservation.

24. A 9-Judges Bench in Indra Sawhney and Others versus Union of India and Others 1992 Suppl. (3) SCC 217 had elaborately considered both the concepts of reservation. In Para 812 of the said judgment, Justice B. P. Jeevan Reddy, has referred to both the types of reservations. It was held that horizontal



reservations cut across the vertical reservation. Following was stated:

“812. There are two types of reservations, which may, for the sake of convenience, be referred to as ‘vertical reservations’ and ‘horizontal reservations’. The reservations in favour of Scheduled Castes, Scheduled Tribes and other backward classes [under [Article 16\(4\)](#)] may be called vertical reservations whereas reservations in favour of physically handicapped [under clause (1) of [Article 16](#)] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations – what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to clause (1) of [Article 16](#). The persons selected against this quota will be placed in the appropriate category; if he belongs to SC category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains – and should remain – the same. This is how these reservations are worked out in several States and there is no reason not to continue that procedure.”

8. Thus, the reservation for disabled category is not to be treated as vertical but as a horizontal reservation and will cut through the different vertical category. Thus, for each vertical category there would be reservation for disabled at



various roster points.

9. The question however in the present case is with regard to two horizontal reservation namely disabled as well as female. Question arises that both the said categories would cut across the vertical reservation. Meaning thereby in each vertical category namely SC, ST, OBC, there would be reservation available for a female as well as there would be reservation for a disabled category. Learned counsel submits that the petitioner has mentioned 7th post as per the roster to be of a female disabled category, while it is true that disabled is a disabled and would be granted benefit of disability without considering other factors, however if there is an another reservation for women, the disable reservation may be distributed for the roster without any particular differentiation between the different categories. In this manner, a situation may arise where at a particular roster point the post is to be filled by a female and at the same time by a disabled category person. If such is a position, the disabled female category person would have a right over and above the other disabled category person even if they are having higher merit.

10. In the present case, the petitioner has been able to point out that the post was being 7th post was of female category



as well as disabled category. Thus, a person, who is from female category and also disabled would fill the said post, even if she is having lesser merit than any other person.

11. The District Appellate Authority as well as the State Appellate Authority are found to have failed to consider the said aspect and the claim of the petitioner has wrongly been taken away. Earlier she was rightly appointed on the post and she was required to be continued.

12. As regards the question that earlier Saurabh Raj was appointed on the ground that he was having higher merit, without following roster, nothing can be said at this stage as he has already resigned and did not join. It is also to be noticed that Saurabh Raj did not implead the petitioner as a party.

13. Keeping in view above, this writ petition deserves to be allowed and is accordingly allowed.

14. The petitioner would be treated to be entitled for the 7th post in the roster reserved for general female visually handicapped.

15. Since the petitioner fulfills the said criteria she would be alone given appointment on the said post and the order of the District Appellate Authority dated 05.09.2012 and the order of the State Appellate Authority dated 03.11.2017 are set



set aside. The interpretation of the roster has been wrongly understood. Accordingly, it is now directed that the petitioner shall be reinstated on the post.

16. So far as the respondent no.9 is concerned, if there has been subsequently another post created for the disabled category, respondent's case shall be considered against the said post and shall be allowed to continue also.

17. The writ petition is accordingly allowed. No costs.

(Sanjeev Prakash Sharma, J)

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