

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8000 OF 2021***

ABC

...Petitioner

Versus

1. The State of Maharashtra
2. The Superintendent of Police,
Nasik Rural, Nasik

...Respondents

Mr. Vijaykumar R. Garad for the Petitioner

Mr. A. A. Kumbhakoni, Advocate General a/w Mr. P. P. Kakade, Govt.
Pleader, Mr. Akshay Shinde, `B' Panel Counsel and Mr. R. P. Kadam, A.G.P
for the Respondent Nos. 1 & 2—State

**CORAM : REVATI MOHITE DERE &
MADHAV J. JAMDAR, JJ.
FRIDAY, 6th MAY 2022**

ORDER (Per Revati Mohite Dere, J.) :

1 We have masked the name of the petitioner in the cause-title
of this order and described the petitioner's name as `ABC'. We direct the
Registry to mask the name of the petitioner as `ABC' wherever it appears in
the proceedings.

2 By this petition preferred under Article 226 of the Constitution of India, the petitioner seeks quashing and setting aside of the impugned letters dated 8th February 2019 and 18th April 2019 passed by the respondent No.2-Superintendent of Nashik Rural, Nashik and also a direction to the said respondent to issue a joining letter to the petitioner in connection with the Nashik Rural Police Recruitment, 2018.

3 The petitioner who was aged 19 years at the relevant time, had filed an application for the Nashik Rural Police Recruitment, 2018 under the Scheduled Caste reserved category. The advertisement for the said recruitment was published in the year 2018 and the petitioner filed her application online. The petitioner appeared both, for her written examination as well as physical test and obtained 171 marks out of 200. Thereafter, the petitioner was required to undergo medical examination, which was done at Sir J.J. Group of Hospitals, Mumbai. It appears that the petitioner was informed by the Anatomy Department of Sir J.J. Group of Hospitals, Mumbai, that the medical test of Karyotyping was not done there and sent the petitioner to the National Institute of Immunohaematology for

Karyotyping test. It appears that the report given by the National Institute of Immunohaematology for Karyotyping test showed that the blood of the petitioner was found having “XY” Chromosomes. On receipt of the report, Sir J.J. Hospital of Mumbai issued a letter to the Superintendent of Police, Nashik Rural, Nashik, informing them that they were of the opinion that the petitioner was a “Male”.

4 Since the petitioner did not receive any reply despite having qualified for the post of Police in the Nashik Rural Police Recruitment, 2018, she applied under the Right to Information Act, for getting information with respect to the status of the Police Recruitment Merit List. Pursuant to the said application, the Superintendent of Police, Nashik Rural, Nashik, informed the petitioner that in the said Police Recruitment, the Merit List for Male in the SC Category had closed at 182 marks and for the Female SC Category had closed at 168 marks. The petitioner had filed an application in the Female SC Category and had obtained 171 marks.

5 The petitioner addressed a letter to the Special Inspector General of Police (‘IGP’), Nashik Region, Nashik, stating therein that she

had obtained 171 marks and that she had filed an application under the SC category; that she was living like a female right from her birth and all her educational certificates and personal documents i.e. ID proof, Birth Certificate, etc. were registered on her name as a female. The petitioner had further stated in the said letter that she was not aware about the Karyotyping Test Result. The petitioner had further stated that she had two sisters and one brother, she being the eldest in the family and that her family's financial condition was not good and that her parents were doing sugarcane cutting work.

6 Learned counsel for the petitioner submitted that the petitioner had obtained the necessary marks and had excelled in the examinations in the category in which she had applied and that she cannot be denied of the said recruitment only because of the Karyotyping Result. Learned counsel further submitted that the petitioner has no objection even if she is placed in a non-constabulary post.

7 The learned Advocate General, having regard to the peculiar facts of this case, was requested to consider the case of the petitioner

sympathetically. Pursuant thereto, the learned Advocate General interacted with the concerned Department and on 2nd May 2022 tendered the recommendations given by the Special Inspector General of Police, Training and Special Units, Maharashtra State, Mumbai. We took the said recommendation on record and after perusing the said recommendation, kept the same in a sealed envelope and accordingly, the matter was stood over to 5th May 2022 at 2:15 in the Chambers.

8 On 5th May 2022, the petitioner appeared before us in the Chambers along with her father. The Advocate General was also present and so was the advocate for the petitioner. On 5th May 2022, we were informed by the learned counsel for the petitioner that the petitioner had completed her B.A with distinction from the Savitribai Phule University, Pune and was currently pursuing her post-graduation course. Considering that the earlier recommendation was given, having regard to the fact that the petitioner had only completed her H.S.C examination, the learned Advocate General sought time to take instructions, so that, the petitioner could be given a post, commensurate with her educational qualification. Accordingly, the matter was adjourned to 6th May 2022. We interacted with

the petitioner in Chambers. The petitioner informed us that all that she wanted was a Government job, so that, she could support her family, and that she had no objection if she was placed in a non- constabulary post, however, keeping in mind her educational qualifications. She also stated that she be given all the service benefits and that she should be treated at par with other normally recruited employees. Infact, before taking up the matter on 5th May 2022, we had asked the petitioner to interact with the responsible Officials of the Home Department, who would be in a position to explain the nature of job and the service benefits that she would be entitled to, pursuant to which, the petitioner interacted with the said Officials and accordingly has decided to take up the post in the Police Department, *albeit* a non-constabulary post.

9 It is an extremely unfortunate case. The petitioner comes from a poor economic strata of the Society; her parents are doing sugarcane cutting work; the petitioner is the eldest in the family and has two younger sisters and one brother. It appears that right from the beginning, the petitioner was not aware that she was any different and was living her social life as a girl/female. The petitioner's Birth Certificate issued by the Gram

Panchayat shows her gender as female and till date, she is staying as a girl/female. All her educational certificates/ID proof, etc. are registered as a female.

10 It appears that the petitioner was not aware that her anatomy was different and she learnt of the same only when she was sent to the National Institute of Immunohaematology at K.E.M. From her educational qualification, it appears that the petitioner has excelled in her education, that she had secured 79.20% i.e. distinction in her S.S.C examination and 71.23% in her H.S.C examination. She has also passed her B.A from the Savitribai Phule Pune University in 2021 and has secured a First Class with distinction. The petitioner is presently pursuing her M.A. The petitioner's academic record is indeed commendable. It is also not in dispute that the petitioner had secured 171 marks out of 200 in the Nashik Rural Police Recruitment Examination i.e. in the written and physical test. It appears that only when the petitioner was sent for medical examination, that the doctors of Sir J.J. Hospital sent the petitioner to the National Institute of Immunohaematology at K.E.M Hospital, for Karyotyping test. The report of Sir J. J. Hospital, in particular, the USG abdomen reveal that her uterus and

ovaries were absent and that a prostate like structure was seen at the base of the bladder. The Karyotyping test opined that the petitioner was a “Male”.

11 The petitioner has seriously disputed the said report. The petitioner, having regard to her socio-economic condition, was not even aware that she was not a female. No fault can be found in the petitioner, as, throughout, she has pursued her career as a female. Infact, according to the petitioner, she has all female attributes. Be that as it may, the medical condition of the petitioner need not detain us, having regard to the sympathetic stand and the course of action proposed by the State Government. The State Government has decided to accommodate the petitioner in the Police Department, *albeit*, on a non-constabulary post and which the petitioner also accepts.

12 We appreciate the effort taken by the learned Advocate General in taking up the matter with the State Government and for considering the petitioner’s case as a special case, having regard to the peculiar facts and circumstances of the case. Mr. Kumbhakoni, the learner Advocate General states that an additional recommendation will be submitted to the

Additional Chief Secretary, Home Department, Government of Maharashtra, by the Special Inspector General, Nashik Region, Nashik, within 10 days from today, recommending that the petitioner be accommodated in the Police Department on a non-constabulary post, having regard to the educational qualifications of the petitioner i.e. she is a Graduate. Learned Advocate General assures that the terms and benefits of the proposed employment and availability of service benefits would be extended to the petitioner, as any other normally recruited employee would get i.e. the petitioner would be treated at *par* with other normally recruited employees. Learned counsel for the petitioner states, on instructions, that the petitioner has no objection in accepting the said offer made to her, which is commensurate with her educational qualifications, in the non-constabulary post.

13 Learned Advocate General informs us, that once the petitioner is appointed in the non-constabulary post based on her educational qualifications, she would be entitled for all the benefits, including promotions, etc. at *par* with other normally recruited employees. Learned Advocate General states that after receiving the additional recommendation

from the Special Inspector General, the State Government will take an appropriate decision in the right earnest, sympathetically, having regard to the special facts and circumstances of the case, within a period of two months from the date of receipt of the said additional representation from the Special Inspector General. He further states that the Police Department would also take appropriate steps, in accordance with law, for the expeditious implementation of the decision that will be taken by the State Government in regard to the representation made by the Special Inspector General, within two months from the date of this decision. He further assures that the petitioner will, all along, be kept informed with the developments that take place. We appreciate the sensitivity and alacrity shown by the learned Advocate General and the State Authorities.

14 We accept the statement made by Mr. Kumbhakoni that the Special Inspector General will send an additional recommendation to the Additional Chief Secretary, Government of Maharashtra, within one week from today, recommending that the petitioner be accommodated in the Police Department on a non-constabulary post, having regard to the educational qualifications of the petitioner.

15 As noted above, the petitioner is ready to accept a job, commensurate with her educational qualifications in the non-constabulary post. Needless to state, that the terms and conditions of the proposed employment will not only be commensurate with the petitioner's educational qualifications but the petitioner will be entitled to all the service benefits including promotions, etc. and shall be treated at *par* with other normally recruited employees in the non-constabulary post. The petitioner, though selected in 2018, is waiting for being appointed since then. The wait has already been too long. Hence, after receipt of the additional recommendation, we direct the State Government to take an appropriate decision, keeping in mind the peculiar facts of this case, as expeditiously as possible and in any event, within four weeks from the date of receipt of the said additional recommendation.

16 Needless to state, that the Police Department will take appropriate steps in implementing the said decision taken by the State Government as expeditiously as possible and in any event, within four weeks from the date of receipt of the said recommendation from the State

Government. The petitioner to be informed of all the developments that take place from time to time.

17 The petition is disposed of in the aforesaid terms. To be listed for recording compliance of this order 25th July 2022.

18 All concerned to act on the authenticated copy of this order.

MADHAV J. JAMDAR, J.

REVATI MOHITE DERE, J.