

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.309 of 2022

In
Civil Writ Jurisdiction Case No.15520 of 2021

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1. The State of Bihar through Principal Secretary, General Administrative Department, Government of Bihar, Patna.
 2. The Additional Secretary, General Administrative Department, Government of Bihar, Patna.

... .. Appellant/s

Versus

1. Sushma Kumari Wife of Sri Pritam Kumar, Resident of Mohalla-Mayur Vihar Colony (Shyam Nagar), P.O.-Khajpur, P.S.-Rajiv Nagar, District-Patna.
2. The Bihar Public Service Commission, Patna through its Secretary.
3. The Chairman, Bihar Public Service Commission, Patna.
4. The Secretary, Bihar Public Service Commission, Patna.
5. The Joint Secretary-cum-Examination Controller Bihar Public Service Commission, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 15520 of 2021

Sushma Kumari Wife of Sri Pritam Kumar, Resident of Mohalla - Mayur Vihar Colony (Shyam Nagar), P.O. - Khajpur, P.S. - Rajiv Nagar, District - Patna.

... .. Petitioner/s

Versus

1. The Bihar Public Service Commission, Patna through its Secretary,
2. The Chairman, Bihar Public Service Commission, Patna.



3. The Secretary Bihar Public Service Commission, Patna.
4. The Joint Secretary - Cum - Examination Controller Bihar Public Service Commission, Patna.
5. The State of Bihar through Principal Secretary, General Administrative Department, Government of Bihar, Patna.
6. The Additional Secretary, General Administrative Department, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 309 of 2022)

For the Appellant/s : Mr. P.K. Shahi, (AG)
For the Respondent/s : Mr. Rajendra Narain, Senior Advocate
Mr. Bhola Kumar, Advocate
For the BPSC Mr. Sanjay Pandey, Advocate

(In Civil Writ Jurisdiction Case No. 15520 of 2021)

For the Petitioner/s : Mr. Bhola Kumar
For the Respondent/s : Mr. Sheo Shankar Prasad (Sc8)

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 17-04-2023

The appeal arises from an interim order in a writ petition. The State is in appeal and we have heard the learned Senior Counsel appearing for the appellant-State. We have also heard the learned Senior counsel Mr. Rajendra Narain, who appeared for the respondents.



2. The subject matter of the writ petition was the scrupulous adherence to the 35% reservation for women, introduced by the State itself on 15.10.2016; whether it has been complied with in the letter and spirit. The learned Single Judge directed instructions to be obtained as to the specific statement in Paragraph No. 10 of the counter affidavit regarding compliance of 35% women reservation for the purpose of selection and appointment to the post of Assistant Engineer in various departments. An Under Secretary was also directed to appear, who had sworn to the counter affidavit. An additional supplementary counter affidavit was filed in which Annexure-G was produced, which according to the learned Single Judge clearly indicated non adherence to the 35% women reservation by the respective departments. It was in the light of such alleged admission that the General Administration Department of the State was directed to rectify the classification of vacancies year marked for women reservation, to issue necessary corrigendum to the original proposal to fill up posts of Assistant Engineers in the various departments and in accordance with the undertaking, to revise the select list and place it on record.

3. The learned Advocate General, at first took umbrage insofar as the interim order having disposed of the writ petition



itself on the interim order. It is argued that there is no admission as such and the notifications for selection and appointment of Assistant Engineers are to the various departments, which total posts notified cannot be cumulatively considered for the purpose of reservation. Reservation is applied on the basis of the vacancies in each of the departments and specific roster points have been notified with respect to the various categories of candidates including reserved and un-reserved. Hence, with respect to a particular category, if there are not sufficient women candidates found, the same will be passed over for the next recruitment and the roster point at the next recruitment would commence with the passed over vacancy. It is pointed out that Annexure-G and the anomaly therein, occurred only because of the roster point assigned to the various categories for satisfying the 35% reservation from amongst women. This does not lead to an admission and there could be no revision of the select list directed, unless the assignment of roster points to various categories so as to ensure women candidates from all the communities to be appointed, is found fault with.

3. The learned Senior counsel for the respondents, however, points out that a revised select list has been placed before the learned Single Judge and that even one person was appointed



from the revised select list. The learned Advocate General, however, points out that the revised select list was only subject to the result of the writ petition and the person appointed was also with the above reservation, only to save a contempt proceeding.

4. Without any observation on the merits, we have to notice that the interim order effectively disposed of the writ petition directing revision of seniority list. The argument of the reservation not being employed on the cumulative posts available in the notification and roster points having been identified with respect to the different categories, both reserved and un-reserved, for the purpose of satisfying the horizontal reservation at the rate of 35% was not considered. The learned Advocate General also has a further submission that 3% of the posts are reserved for Scheduled Tribe women candidates and in that circumstance, applying 35% reservation can only lead to such percentage being applied on 97 vacancies which essentially would work out to 34% of the total vacancies.

5. After giving our anxious consideration to the above aspects, we are of the opinion that the order has to be set aside and all parties are left with the liberty to agitate every point before the learned Single Judge. We make it further clear that we have not made any observation on merits and what has been recorded above



is the argument of the State, the validity of which has to be considered by the learned Single Judge. We make it clear that till such time the writ petition is disposed off on merits, the person who has been appointed pursuant to the interim order will not be terminated. The revised select list now placed on record would also be subject to the result of the writ petition.

5. With the above reservations, the L.P.A is allowed leaving liberty as aforesaid to either parties to raise all contentions before the learned Single Judge.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

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