

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22609 of 2019

=====

Karnika Shekhar, W/o Shri Rajesh Kumar, Resident of House No. 132,
C.D.A. Colony, Near Shiv Mandir, Shastri Nagar, Phulwari, Patna-800023
Police station Shastri Nagar and District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna
3. The Secretary, Bihar Public Service Commission, Patna
4. The Secretary, Bihar Staff Selection Commission, Patna

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	None
For the Respondent/s	:	Mr. P. K. Shahi, AG
For the BPSC	:	Mr. Sanjay Pandey, Advocate
		Mr. Nishant Kumar Jha, Advocate
For the BSSC	:	Mr. S. S. Sundram, Advocate

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 26-02-2024

When the matter was called, none appeared on behalf of the petitioner and, thus the matter was kept aside, but again when the matter is called out, there is none to represent the petitioner.

2. The present writ petition has been filed under Article 226 of the Constitution of India by way of Public Interest Litigation for improvement of representation of women of State of Bihar by implementing the domicile system while



selecting the women in women category in government service of the State of Bihar and for such relief the petitioner seeks a direction to take effective measures and steps for controlling/monitoring/curbing the uncontrolled and irrational entry of women who are not the residents of Bihar, but enjoying the quota which should have been reserved only for women of Bihar in general (open) category for reserved quotas for women. The petitioner further sought a direction to provide horizontal reservation to the women of Bihar in general (open) category in the way of such horizontal reservation as provided to the grand children of freedom fighters of the State of Bihar, as it is implemented in other States of Union of India.

3. The writ petition avers that because of there being serious ambiguity in the policy of the State of Bihar regarding horizontal reservation for women, there is not only a loss for the women of unreserved category of the State of Bihar, but it is big loss for the meritorious girls of other reserved category also, because if the quota of women of unreserved category would have been reserved for the women of Bihar only, the meritorious women of all other classes would have been made their space in open category, but due to excessively high competition of the women of other States, women of this



State found themselves standing with empty hands. The writ petition further discloses that because of ambiguity, the basic purpose for which 35% horizontal reservation was given to the women is being frustrated and on one hand where all States have clearly prohibited the women of other State to enter into their women quotas reserved to the women of the respective States and on another hand State of Bihar is generous enough to distribute the reserved seats for women among the women of other States.

4. Learned Government Advocate referring to the Resolution No. 963 dated 20.01.2016 issued by the General Administration Department, Government of Bihar submitted that the representation of the women of this State in the different reserved categories is admissible to the candidate, who is the permanent resident of the State of Bihar. He next contended that while making the amendment of Section 4 of the Bihar Reservation of Vacancies in Posts and Services for Scheduled Castes, Scheduled Tribes and Other Backward Classes (Amendment) Act, 2003 by incorporating proviso to Sub-Section 2 of Section 4 of the said Act, it has been provided that the candidates residing out of the State of Bihar shall not claim for benefits of reservation under this Act.



5. Adverting to the aforesaid decision of the State Government, it is also stated that 40% reservation for unreserved category and an open merit category against which a candidate from the State of Bihar or any State may be selected against 40% seats/vacancies of open merit categories, so that merit may not be denied.

6. We cannot but notice **Kailash Chand Sharma Vs. State of Rajasthan & Ors.; (2002) 6 SCC 562** from which para 13 and 14 are extracted hereunder:

“13. Before proceeding further we should steer clear of a misconception that surfaced in the course of arguments advanced on behalf of the State and some of the parties. Based on the decisions which countenanced geographical classification for certain weighty reasons such as socio-economic backwardness of the area for the purpose of admissions to professional colleges, it has been suggested that residence within a district or rural areas of that district could be a valid basis for classification for the purpose of public employment as well. We have no doubt that such a sweeping argument which has the overtones of parochialism is liable to be rejected on the plain terms of Article 16(2) and in the light of Article 16(3). An argument of this nature flies in the face of the peremptory language of Article 16(2) and



runs counter to our constitutional ethos founded on unity and integrity of the nation. Attempts to prefer candidates of a local area in the State were nipped in the bud by this Court since long past. We would like to reiterate that residence by itself — be it within a State, region, district or lesser area within a district cannot be a ground to accord preferential treatment or reservation, save as provided in Article 16(3). It is not possible to compartmentalize the State into districts with a view to offer employment to the residents of that district on a preferential basis. At this juncture it is appropriate to undertake a brief analysis of Article 16.

14. Article 16 which under clause (1) guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State reinforces that guarantee by prohibiting under clause (2) discrimination on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them. Be it noted that in the allied article — Article 15 — the word “residence” is omitted from the opening clause prohibiting discrimination on specified grounds. Clauses (3) and (4) of Article 16 dilute the rigour of clause (2) by (i) conferring an enabling power on Parliament to make a law prescribing the residential requirement within the State in regard to a class or classes of employment or



appointment to an office under the State, and (ii) by enabling the State to make a provision for the reservation of appointments or posts in favour of any backward class of citizens which is not adequately represented in the services under the State. The newly introduced clauses (4-A) and (4-B), apart from clause (5) of Article 16 are the other provisions by which the embargo laid down in Article 16(2) in somewhat absolute terms is lifted to meet certain specific situations with a view to promote the overall objective underlying the article. Here, we should make note of two things : firstly, discrimination only on the ground of residence (or place of birth) insofar as public employment is concerned, is prohibited; secondly, Parliament is empowered to make the law prescribing residential requirement within a State or Union Territory, as the case may be, in relation to a class or classes of employment. That means, in the absence of parliamentary law, even the prescription of requirement as to residence within the State is a taboo. Coming to the first aspect, it must be noticed that the prohibitory mandate under Article 16(2) is not attracted if the alleged discrimination is on grounds not merely related to residence, but the factum of residence is only taken into account in addition to other relevant factors. This, in effect, is the import of the expression “only”.



7. Considering the response of the State counsel justifying their stand for reservation of women in the State of Bihar and allowing 40% reservation for unreserved category through a candidate of open merit category, this Court does not find any merit in the present writ petition and the same stands dismissed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.02.2024
Transmission Date	NA

