



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 5304 OF 2024

(Durga Sakharam Landkar vs. Superintendent of Police, Washim and another)

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Mr. Vaishnav G. Ingole, Advocate for the petitioner.
Mr. S.B.Bissa, Assistant Government Pleader for the respondents.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE : SEPTEMBER 06, 2024

Heard learned Counsel for the parties.

2) The petitioner, who was aspiring to get selected as Police Constable under the jurisdiction of Superintendent of Police, Washim, took help of Cyber Cafe for filling in her application. Instead of making her claim from Other Backward Class Female category, the application was submitted from Open category. Thereafter, she has cleared the written examination and her candidature is considered from Open category.

3) Feeling aggrieved, the petitioner approached Maharashtra Administrative Tribunal seeking directions to the Selection Authority to consider her candidature from Other Backward Class category. The learned Tribunal has issued notice, but not granted interim relief. As such, this petition.

4) The contention of Mr.Ingole, learned Counsel appearing for the petitioner, is that the issue is squarely covered by the judgment of the Apex Court in the case of **Vashist Narayan Kumar vs. State of Bihar and others** reported in

2024 SCC OnLine SC 2. He would invite our attention to paras 10, 12, 26 and 27 of the said judgment, which read thus :-

"Question for Consideration

10. *The question that arises for consideration is whether the error committed in the application form, which was uploaded is a material error or a trivial error and was the State justified in declaring the appellant as having failed on account of the same?*

11.

12. *The facts are undisputed. The appellant's application uploaded from the cyber café did mention the date of birth as 08.12.1997 while his date of birth as recorded in the educational certificate was 18.12.1997. It is also undisputed that it is the appellant who produced the educational certificates. He was oblivious of the error that had crept into his application form. It is also undisputed that the advertisement had all the clauses setting out that in case the information given by the candidates is wrong or misleading, the application form was to be rejected and necessary criminal action was also to be taken. It also had a clause that the candidates had to fill the correct date of birth, according to their 10th board certificate. The clause further stated that candidates will fill their name, father's name, address etc. correctly in the application form. It states that any discrepancy, if found, while checking the documents, the candidature of the candidate will stand cancelled. There was also a clause providing for correction of wrong/erroneously filled application forms, which stated that the errors can be corrected once by re-depositing the application fee and filling a new application. It also provided that those filling the application on the last date could correct the application till the following day.*

13 to 25.

26. *On the peculiar facts of this case, considering the background in which the error occurred, we are inclined to set aside the cancellation. We are not impressed with the finding of the Division Bench that there was no prayer*

seeking quashment of the results declared over the web. A reading of the prayer clause in the writ petition indicates that the appellant did pray for a mandamus directing the respondents to consider the candidature treating his date of birth as 18.12.1997 and also sought for a direction for issuance of an appointment letter. A Writ Court has the power to mould the relief. Justice cannot be forsaken on the altar of technicalities.

Conclusion

27. For the reasons stated above, we set aside the judgment of the Division Bench of the Patna High Court in LPA No.1271 of 2019 dated 22.08.2022 and direct the respondent-State to treat the appellant as a candidate who has “passed”, in the selection process held under the advertisement No.1 of 2017 issued by the Central Selection Board (Constable Recruitment), Patna with the date of birth as 18.12.1997. We further direct that if the appellant is otherwise not disqualified, the case of the appellant be considered and necessary appointment letter issued. We further direct that, in the event of there being no vacancy, appointment letter will still have to be issued on the special facts of this case. We make the said direction, in exercise of powers under Article 142 of the Constitution of India. We further direct that the State will be at liberty in that event to adjust the vacancy in the next recruitment that they may resort to in the coming years. We notice from the written submissions of the State that 21,391 vacancies have been notified in Advertisement No.1 of 2023 and it is stated that the procedure for selection is ongoing. We place the said statement on record. We direct compliance to be made of the aforesaid direction within a period of four weeks from today.”

5) Mr.Ingole, learned Counsel for the petitioner would claim that though the learned Tribunal has observed that the Original Application shall be taken up for final disposal at admission stage, the matter was adjourned as the provisional selection list was declared. As a sequel of which, the petitioner

is using her candidature in spite of the fact that the law mentioned above is in her favour. As such, it is claimed that it is necessary to direct the respondent Authorities to keep one post vacant from Other Backward Class Female category.

6) Mr.Bissa, learned Assistant Government Pleader opposed the prayer. According to him, this Court may be slow in showing indulgence at this stage of the proceedings as the petitioner has approached against the interim order. As such, the learned Tribunal can be requested to decide the Original Application expeditiously.

7) We have considered the submissions of the learned Counsel for the parties.

8) Having regard to the pleadings in the Original Application and the petition, we are of the view that the issue, which is sought to be canvassed in the petition, is squarely covered by the judgment in the matter of **Vashist** (cited supra).

9) Though rightly pointed out by Mr.Bissa, learned Assistant Government Pleader that the learned Tribunal is making endeavours to dispose of the Original Application at the admission stage, however, that by itself has not precluded the petitioner from approaching this Court or claiming ad interim relief before the learned Tribunal as the fact of displaying provisional select list is not in dispute. In that view of the matter, we request the learned Tribunal to decide the Original Application as expeditiously as possible and in any case by 04/10/2024. We direct the respondent No.1 to complete the

pleadings expeditiously. Till then one post of Other Backward Class Female category be not filled in.

10) The petition stands partly allowed in the above terms.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

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