

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7661 OF 2019
(Arising out of S.L.P.(Civil)No.14225 of 2019)

Khusbu Sharma

...Appellant

Vs.

Bihar Police Sub Ordinate Service
Commission and Ors.

...Respondents

O R D E R

Leave granted.

A prodding by the Supreme Court of India resulted in the Bihar Police Subordinate Service Commission issuing advertisement dated 16th September, 2017 to fill the vacancies for the post of Police Sub Inspector in the State of Bihar. The appellant before us was one of the participants in the examination and qualified initially in the preliminary examination, which was conducted on 11th March, 2018, and thereafter in the main examination conducted on 22nd July, 2018. The next stage, as per the advertisement, was to go through the Physical Evaluation Test (PET) which was scheduled for 25th September, 2018.

The appellant being in advance stage of pregnancy where the delivery was expected in the month of October, 2018 sought an extension of PET for three to six months on account of being completely on bed rest as advised by the

doctor. There was no response to this representation and the appellant thus filed a writ petition before the Patna High Court which was allowed by order dated 3rd October, 2018, directing the Commission to fix any date after two months after informing her of the date of the PET. This order of the learned Single Judge was however assailed before the Division Bench which allowed the appeal on 1st March, 2019. Hence, the appeal is before us.

On 8th July, 2019, we were persuaded to issue notice in the special leave petition on the basis of the contention of the learned counsel for the appellant as under:

“Learned counsel for the petitioner contends that; (i) there are no other candidates who approached the court; (ii) that there are apparently vacancies still available; and (iii) that in the alternative, the petitioner can be recruited in the next process of selection only after holding her physical endurance test.”

The respondents have filed a counter affidavit and what emerges is that there are 14 other candidates who have approached the Patna High Court and their cases are still pending. Apart from this, there are certain other candidates also, and the total number of ladies who claimed extension of PET on the basis of pregnancy or injuries is stated to be 78 in all, out of which 73 are on account of pregnancy.

The second question posed aforesaid is answered in the affidavit. There are no available vacancies now, other than vacancies from the SC/ST community.

The last aspect is in the fresh process of selection in which the appellant can be included and in that behalf we are informed that a fresh advertisement has been issued for which the last date is post extension.

We have heard learned counsel for the parties. We face a dilemma arising from on one hand maintaining the schedule of the examination as sacrosanct and on the other hand the difficulties faced by women candidates who could undergo the competitive test but are constrained in undergoing PET on account of pregnancy. The presence of lady members in the police force, considering the crime against women, is a prime need of the hour. Thus we feel that every endeavor should be made to ensure that there is higher representation of women in the police services. It is not as if some quota is being carved out for the women candidates but they are competing against men candidates. They have been successful in competitive examination getting higher merit.

Our attention was drawn to the advertisement in question and the modus and norms for carrying out PET in the Bihar Police Manual, 1978 (as amended from time to time) which is set out as under:

“(d) In 2nd phase candidates shall be selected six times of the existing vacancies in each category as per merit for physical eligibility test (PET) on the basis of main written examination. The Bihar Police Sub-ordinate Services Commission shall conduct the Physical Eligibility Test itself which will be qualifying only. In case of unavailability of eligible candidates for Physical Eligibility Tests, said proportion may be reduced by the

commission. For physical measurements and other required tests in PET, transparent procedure based on electronic and computerized methods based on modern technology will be adopted. Videography of the entire procedure will also be done. The Commission shall inform all the candidates regarding their success and failure in PET everyday and the unsuccessful candidates shall be required to put their signature on the Master-Chart. Any candidate, dissatisfied with the result of PET, shall place his objections before the Commission within 03 days. The Commission shall hear the representations and dispose the representations the same day." (emphasis supplied)

A reading of the aforesaid shows that PET will only be "qualifying". No specific marks are assigned to the PET to be added to the main marks so as to vary the merit. There is no doubt if having qualified, the candidates do not make it in the PET, such people cannot be appointed. In the conspectus of the aforesaid the question arises as to what directions should be passed by us, even by recourse of Article 142 of the Constitution of India, so as to ensure that the sanctity of the process of examination is maintained and yet the women candidates don't suffer a handicap on account of pregnancy.

We are of the view that not only the appellant but all such candidates who sought deferment on account of pregnancy alone should be called for PET. Since sufficient time has elapsed, we see no reason to further postpone the PET on that account for such of the candidates. Out of the candidates so called those who qualify the PET and are otherwise found in the merit for appointment alone would be eligible to be considered for appointment, subject to

verification of the factum of pregnancy. Such process should be completed within a period of two months. All such people will, however, take merit at the bottom of the current list as it is the vacancies which are now advertised against which the candidates are being adjusted. We are conscious that this would possibly reduce the number of seats available for the subsequent examination but then that is the natural corollary of the aforesaid direction. In case, in the meantime, more seats are available for candidates it may not even require the seats advertised to be reduced.

We are persuaded to do the aforesaid also for the reason that had recruitments taken place in accordance with certain pre-defined schedules, intervention of this court would not have been called for as candidates would have known as to when recruitment would take place and would have to plan their life accordingly. However that has not happened and in fact, as stated aforesaid, it is on the prodding of this court that these examinations have been held. In view of this fact, we feel it is a fit case where the benefit should be made available to the candidates who may be in the advance stage of pregnancy at the relevant stage of time but have otherwise qualified the test.

We make it clear that the aforesaid is a one time measure as we are informed that now the examinations are being held periodically. We are not inclined to open a flood gate effecting the sanctity of the future examination.

The appeal is accordingly allowed leaving the parties to bear their own costs.

.....J.
[SANJAY KISHAN KAUL]

.....J.
[KRISHNA MURARI]

New Delhi;
September 27, 2019.

ITEM NO.53

COURT NO.10

SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 14225/2019

(Arising out of impugned final judgment and order dated 01-03-2019 in LPA No. 1604/2018 passed by the High Court of Judicature at Patna)

KHUSBU SHARMA

Petitioner(s)

VERSUS

BIHAR POLICE SUB ORDINATE SERVICE COMMISSION & ORS.Respondent(s)

(IA No. 93110/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

IA No. 93111/2019 - EXEMPTION FROM FILING O.T.)

Date : 27-09-2019 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE KRISHNA MURARI

For Petitioner(s) Mr. Shivam Singh, Adv.
Mr. Jaideep Khanna, Adv.
Mr. Pramod B. Agarwala, AOR

For Respondent(s) Mr. Rajiv Bhalla, Adv.
Mr. Abhinav Ramkrishna, AOR

Mr. Samir Ali Khan, AOR
Mr. Varun Chauhan, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Heard learned counsel for the parties.

The appeal is allowed in terms of the signed order.

Pending applications shall also stand disposed of.

(ANITA MALHOTRA)
COURT MASTER

(ANITA RANI AHUJA)
COURT MASTER

(Signed order is placed on the file.)