

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.275 of 2018

In
Civil Writ Jurisdiction Case No.12197 of 2016

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Smt. Sarita Bhat @ Smt. Sarita Bhatt Wife of Late Subhash Bhat, Resident of Mohalla Bara Sheikhpura, Post Office-B.V. College, Police Station Hawaii Adda, District-Patna.

... .. Appellant/s

Versus

1. The State Of Bihar and Ors
2. The Deputy Inspector General of Police Personnel, Bihar, Old Secretariat Building, Patna.
3. That Inspector General of Police, Welfare, Bihar, Old Secretariat Building, Patna.
4. The Deputy Inspector General of Police, Central Range, Patna.
5. The District Magistrate-Cum-Chairman, District Level Compassionate Appointment Committee, Patna.
6. The Commandant, Bihar Military Police-1, Gorakha Vahini, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Amit Shrivastava, Sr. Adv.
Mr. Girish Pandey, Adv.
Mrs. Kiran Sharma Adv.

For the Respondent/s : Mr.Sanjay Ghosarvey (AC to AAG-3)

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 22-12-2022

In the instant L.P.A, appellant has assailed the order of the learned Single Judge dated 29.08.2017 passed in C.W.J.C No. 12197 of 2016. The appellant is wife of deceased Late Subhash Bhat submitted application for compassionate appointment on 31.10.2012. She had passed Matriculation as on



the date of submission of application on 31.10.2012. The prescribed education qualification for the post of Lady Constable/Sepahi was Matriculation. Her application was processed and she has been provided Class IV post. Even though, 160 vacancies of Class III Posts of Lady Constable/Sepahi was very much vacant and they were available. The appellant was compelled to accept the offer of appointment to class IV having regard to the hardship faced by her in the family. Thereafter, she had submitted representation/application that she is entitled to class III post with reference to education qualification read with the fact that class III post were available, the same was examined by the official respondents. On 03.10.2013 there is a recommendation from the Commandant to appoint appellant to the post of Lady Constable/Sepahi. Despite recommendation, for no reasons appellant has not been appointed to Class III post. In this backdrop, the appellant has filed C.W.J.C No. 12197 of 2016. The learned Single Judge has not appreciated that appellant as on the date of her application for compassionate appointment on 31.10.2012, she had passed Matriculation and she was eligible to be appointed against Class III post like Lady Constable/Sepahi read with recommendation of the Commandant dated 03.10.2013 hence the present appeal.

2. Learned counsel for the appellant vehemently



contended that appellant is entitled to be appointed against class III post as she had requisite education qualification to hold the post of Lady Constable/Sepahi as on 31.10.2012. It is submitted that as on the date of application, what ever the criteria for appointment on compassionate ground is required to be examined. It is also submitted that prescribed education qualification for the post of Lady Constable/Sepahi as on 31.10.2012 is Matriculation. Merely acceptance of Class IV post that does not prevent appellant to agitate for class III post.

3. In the light of the fact that class III post was very much available as on the date of submission of application for compassionate appointment. For about (160 vacancies of Lady Constable/Sepahi were vacant and they were available for filling) thus, it is submitted that learned Single Judge has committed error in not appreciating factual aspects of the matter.

4. *Per contra*, learned counsel for the respondent resisted the aforesaid contentions and supported the order of the learned Single Judge and submitted that appellant had accepted the Class IV employee with reference to order of appointment dated 22.07.2014. Therefore, she is not entitled to claim class III post. It is further submitted that for the post of Lady Constable 10+2 is prescribed, therefore she is not entitled to the post of Lady Constable/Sepahi. It is learned that 10+2 qualification was



acquired by appellant on 30.05.2014 therefore she is not entitled to Class III post (Lady Constable/Sepahi).

5. Heard learned counsel for the respective parties.

6. Core issue involved in the present *lis* is whether appellant is entitled to Class III or Class IV appointment on compassionate ground? The appellant had submitted application for compassionate appointment on 31.10.2012 and application was processed and recommendation has been made to appoint her against Class IV employee on 27.08.2013. Thereafter, order of appointment was issued on 22.07.2014. In the meanwhile, Commandant had recommended her name for appointing on compassionate ground to the post of Class III, the same has been ignored by the concerned authority. Question is whether as on the date of submission of application on 31.10.2012 read with recommendation dated 27.08.2013 whether 160 vacant post of Lady Constable/Sepahi were available in order to appoint petitioner to one of the post or not? The appellant has specifically taken the contention that 160 vacant post of Lady Constable/Sepahi was available and it has not been disputed by the official respondents. Insisting that appellant should have qualification of 10+2 to hold the Lady Constable post cannot be appreciated for the reasons that prior to 13.06.2013 prescribed qualification for Lady Constable post was Matriculation.



Therefore, insistence of 10+2 after 13.06.2013 the same is not acceptable.

7. Apex Court in the case of *Delhi Jal Board Vs. Nirmala Devi, 2022 (Live Law) (SC) 863/CA 7047 of 2022 decided on 19.10.2022* held that in respect of compassionate appointment of a person is required to be taken note of the date on which application is submitted, education qualification and relevant provision as on the date of application for compassionate appointment. In the present case as on 31.10.2012 the date on which appellant submitted application prescribed qualification for the post of Lady Constable was Matriculation and 160 vacant post were available. In this backdrop, the official respondent could not apprise this Court as to why the appellant was not offered Class III post with reference to education qualification prescribed for the post of Lady Constable read with 160 vacancies were available as on 27.08.2013 the date on which appellant's name was recommended for Class IV post. Further when the department official namely Commandant recommended on 03.10.2013 to consider appellant's name for compassionate appointment to the post of Lady Constable/Sepahi. The same has been side track by the concerned authority while appointing appellant to class IV on 22.07.2014.

8. In the light of these facts and circumstances of



the case the appellant has made out a *prima facie* case so as to interfere with the decision of the respondent in not providing compassionate appointment to Class III post and order of the learned Single Judge dated 29.08.2017 passed in C.W.J.C No. 12197 of 2016 is set aside.

9. Accordingly, C.W.J.C No. 12197 of 2016 filed by the appellant stands allowed. The concerned respondent is hereby directed to consider the name of appellant to appoint her on compassionate ground to Class III post.

10. In the light of these facts that she had fulfilled the requisite education qualification and other criteria including relaxation of certain criteria to such of those persons who were seeking compassionate appointment. Appellant has made out a case. The above exercise shall be completed within a period of two months from the date receipt of this order.

11. Accordingly, present L.P.A stands allowed.

(P. B. Bajanthri, J)

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(Purnendu Singh, J)

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