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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision:- 25.07.2024

+ W.P.(C) 3732/2019

ISHA

.....Petitioner

Through: Mr. Anil Singhal, Adv.

Versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Ms. Uma Prasuna Bachu, Sr.P.C. for
UOI.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MS. JUSTICE SHALINDER KAUR

REKHA PALLI, J(ORAL)

1. The facts of this case remind us of the famous words of Ban Ki Moon, the former Secretary General of the United Nations, "*Achieving gender equality requires the engagement of women and men, girls and boys. It is everyone's responsibility*". Despite the timeless wisdom of these words, the present case reveals that meaningful progress in achieving gender equality remains limited till date.

2. The petitioner who was an aspirant for joining as a Constable in the Railway Protection Force/Railway Protection Special Force



[RPF/RPSF], having applied for the said post pursuant to the employment notice No. 01/2018 issued by the respondents has been compelled to knock at the doors of this Court as, despite her name having been placed in the merit list, she was denied appointment merely because she was unable to appear in the Physical Efficiency Test and Physical Measurement Test conducted on 20.04.2019 on account of her pregnancy.

3. Before dealing with the rival submissions of the parties, it may be apposite to note the brief factual matrix as emerging from the record.

4. Upon the respondents issuing an employment notice bearing no.01/2018 in June, 2018 inviting applications for the post of Constable (Male and Female) in the RPF/RPSF, the petitioner submitted an application for the post of Constable before the last date which was 30.06.2018. The Computer Based Test (CBT) was, as per the advertisement, required to be held in September/October, 2018, but the same was finally conducted on 05.02.2019, in which the petitioner appeared and secured 72.67 marks, which were much higher than the cutoff marks of 64.16. Pursuant thereto, she was required to appear in the Physical Efficiency Test (PET), Physical Measurement Test (PMT) and Document verification on 20.04.2019. Being in the advanced stage of her pregnancy, the petitioner approached the respondents with a request to accommodate her by postponing her PET as it included 800 meters run, a long jump and a high jump.

5. Upon being verbally informed by the respondents that her request could not be acceded to as the recruitment process was required to be completed in time, the petitioner approached this Court on



09.04.2019 i.e., much before 20.04.2019, the date on which the PET was scheduled to be conducted. On 12.04.2019 when the writ petition was taken up for preliminary consideration, learned counsel for the respondents accepted notice and was granted time to take instructions. It, however, appears that the matter was thereafter adjourned from time to time and consequently, the petitioner was unable to appear in the PET and has, therefore, been deprived of being appointed to the post of Constable in RPF/RPSF, for which post she was found meritorious in the CBT conducted way back in February, 2019.

6. In support of the petition, learned counsel for the petitioner submits that once the respondents were made aware that the petitioner could not appear in the PET on account of being in the advanced stage of her pregnancy, they ought to have postponed the PET to a suitable date, especially when the test included activities such as 800m run, high jump and long jump, which a pregnant woman could not perform. He further submits that when the petitioner applied for appointment in the said recruitment process, she was not aware as to when the PET could be conducted as even in the past, despite having invited applications for the post of Constable in 2016, the respondents did not initiate the selection process for the same till as late as 2019. In support of his plea that the petitioner being a married woman could not have been penalized merely because of her pregnancy and that too by ignoring her high marks in the CBT, he places reliance upon a decision of a Coordinate Bench in *Sharmila Yadav v Union of India & Ors., 2017 SCC OnLine Del 12680*. He, therefore, prays that the writ petition be allowed and the respondents be directed to forthwith appoint the



petitioner with all consequential benefits including retrospective seniority.

7. *Per contra*, Ms. Uma Prasuna Bachu, learned counsel for the respondents seeks dismissal of the writ petition by urging that the respondents have acted fairly as they were bound by the timelines fixed for the recruitment process and therefore, could not accede to the petitioner's request for postponement of PET under any circumstances. She further contends that now after five years, the petitioner can otherwise not be appointed as all the vacancies of Constable advertised in 2016 and 2018 stand filled. Further, a fresh notification inviting applications for the post of Constable (Male and Female) in the RPF/RPSF has already been issued on 15.04.2024, though the dates for holding the selection process are yet to be finalized. She therefore, prays that the writ petition be dismissed.

8. Having considered the submissions of the learned counsel for the parties and perused the record, we are constrained to express our anguish in the manner in which the respondents have treated the petitioner, a young meritorious lady, only because she happened to be pregnant at the time when the respondents were conducting the PET. There was no reason as to why the respondents could not have postponed the PET for a few months when the petitioner specifically informed them that she could not, in her advanced stage of pregnancy, perform high jump, long jump or undertake the 800m run, which were the essential components of the PET. As a result of the respondent's adamant stand not to postpone the date for the PET, the petitioner has been denied appointment for the last five years, even though she had



obtained much higher marks than the cut off. This approach of the respondents is undoubtedly contrary to the fundamental rights envisaged under Articles 14, 15, 16 and 21 of the Constitution of India.

9. At a time when the nation is vigorously promoting gender equality and concerted efforts are being made to ensure the higher representation of women in all services including the Armed Forces, a woman cannot be disqualified for appointment only because she, due to her pregnancy, is not in a position to participate in the PET at that stage. Pregnancy, in our view, cannot be treated as a disability but is one of the natural consequences of marriage and therefore every employer, more so the State, is expected to realize the difficulties which a woman would face during her pregnancy. We find that on one hand the parliament has enacted the Maternity Benefit Act to ensure that a pregnant woman can embrace motherhood honorably and without the fear of being victimized for her forced absence during the pre or post natal period, on the other hand the attitude adopted by the authorities not to accede to genuine requests of pregnant women for deferment of such tests which require strenuous activities, which they can, for obvious reasons, not undertake would certainly be counterproductive to achieving the goal of gender equality.

10. We are of the view that the respondents could not have turned a blind eye and adopted such an insensitive attitude towards the challenges faced by women candidates, particularly when appointing women in the Forces. It needs to be appreciated that it is important to have adequate representation of women not only in civil employment but also in the Armed Forces/Police. It appears that the respondents



have treated pregnancy as though it were a sickness or a disability on account of which women could be ousted from the selection process. In our view, motherhood should never and can never be the basis for denying public employment opportunities to women.

11. It is time that all authorities, especially those dealing with public employment realize that it is essential to support women who are eager to contribute to the nation, and ensure that they are not denied their rights due to pregnancy or other such causes which cannot be treated as a disability or an illness. In our considered view, discrimination based on pregnancy should never hinder a woman's right to pursue her career aspirations as maternity should not be seen as a barrier but as a fundamental human right of every woman. It is crucial that every effort is made by all employers to create an inclusive environment where women can fulfill their professional aspirations without facing unjust obstacles, especially those related to pregnancy.

12. In this regard, we may also refer to the observations made by a Coordinate Bench in *Sharmila Yadav (supra)*, as contained in paragraph nos.10 and 15 thereof. The same read as under:

“10. We are of the opinion that the stand of the respondents is fallacious, unjustified and unacceptable. In fact, it reeks of discrimination and per se violates Articles 14, 15, 16 and 21 of the Constitution. Pregnancy discrimination is abhorrent and cannot be accepted as it violates the principle of equality and discriminates on the ground of gender. The petitioner, who has by choice become a mother, must be given the same opportunity and chance of promotion as others. Gender discrimination would include discrimination on ground of



pregnancy and maternity and it is unlawful to treat the petitioner unfavorably because she has exercised her right and choice to be a mother. Constitutional mandate imposes a duty and obligation on the respondents to ensure that equal opportunity for promotion is provided to all similarly situated employees including those who have exercised their right to be a mother. Same opportunity for career development, promotion etc. must be ensured. Otherwise, it will amount to gender bias virtually treating pregnancy as a disability disqualifying a person for the time being. Indeed, we have had enacted affirmative enactments in the form of Maternity Benefits Act, 1961, which may not be directly applicable in the present factual matrix, albeit promote the constitutional manifest of equal treatment and non-discrimination on the ground of gender.

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15. In view of the aforesaid discussion, we would allow the present writ petition and quash the impugned orders denying seniority to the petitioner based on her rank in the selection test. The petitioner would be granted promotion and notional seniority as per her gradation rank at Sr. No. 780 in the written examination along with her batch mates for the vacancy year 2011-12. Her pregnancy, we hold and direct, cannot be treated as a disability and disqualification as Shape-II medical category. The present pay of the petitioner would be notionally fixed as if she was promoted on the same day as her immediate junior. She will also be entitled to arrears for a period of 3 years before filing of the present writ petition on 22nd May, 2017. Arrears would be paid within three months from the date a copy of this judgment is received, failing which, the respondents would pay



interest @ 8% from the date of this order and till payment of the principal amount is made. There would be no order as to costs.”

13. What, thus, emerges is that this Court in its aforesaid decision, rendered seven years ago, while dealing with a case of a woman Assistant Sub Inspector of the CRPF who could not undertake a promotional course due to her pregnancy, categorically held that pregnancy could not be treated as a disability or a disqualification. This Court emphasized that merely because a woman employee exercises and chooses her right to be a mother, she cannot be penalized by treating pregnancy as a disability. The present case, however, demonstrates that the respondents are still oblivious to the rights and aspirations of young women and continue to deny them the opportunity of employment on the ground of pregnancy. We, therefore, have no hesitation in holding that the decision of the respondents in rejecting the petitioner's candidature is wholly unsustainable and is required to be quashed.

14. We may now deal with the respondent's plea that the vacancies of Constable in 2016 and 2018 already stand filled and therefore, the petitioner cannot now be appointed. In our view, the respondents having acted in a most illegal and arbitrary manner in rejecting the petitioner's request for deferment of PET cannot now be permitted to urge that she cannot be appointed. Even otherwise, the petitioner is seeking to be appointed only as a Constable, vacancies whereof are being regularly advertised. In fact, it is the own case of the respondents that fresh vacancies have been advertised in April 2024. We, therefore, find no reason as to why the petitioner cannot be



appointed against these available vacancies.

15. In the light of the aforesaid, we allow the writ petition with costs of Rs. 1,00,000/- by directing the respondents to permit the petitioner to appear in the PET, PMT and document verification within 6 weeks. In case she is found successful therein and fulfils all other eligibility criteria, the respondents will appoint her to post of Constable in the RPF/RPSF along with retrospective seniority and other consequential benefits. Arrears of backwages will however, as volunteered by the learned counsel for the petitioner, restricted to 50%. The costs will be paid to Ms. Arpana, a young lady who recently suffered injuries due to fall of a portion of the roof on her in the Delhi High Court premises. The costs will be paid to her within a period of 2 weeks by remitting the same to her below mentioned bank account:-

Ms. Arpana, DL7944

D/O Sh. Anand Kumar

A/C No. 0620000101639462

Bank: Punjab National Bank

Aadhar No. 578449872364

16. While allowing the writ petition with the aforesaid directions, we earnestly hope that all employers, especially the State, will in the future, ensure that no woman is deprived of an opportunity to seek employment only on account of her pregnancy. We also hope that all genuine requests for deferment of physical endurance test and other physically strenuous activities, by women candidates on account of pregnancy will be considered favorably.



17. The writ petition is allowed in the aforesaid terms.

(REKHA PALLI)
JUDGE

(SHALINDER KAUR)
JUDGE

JULY 25, 2024/akc/ar/bs