

Sukhmati Devi and Ors Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Aug-03-2015

Appellant : Sukhmati Devi and Ors

Respondent : State of Jharkhand and Ors

Advocate for Def. : Mr. Kumar Baibhav

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 3149 of 2008 with W.P.(S) No. 3444 of 2008 With W.P.(S) No. 5840 of 2008 1. Dasmati Biruwa 2. Basmati Budiuli 3. Neelam Bari 4. Mecho Sawaiyan 5. Dayamanti Devi 6. Basmati Devi 7. Nirupama Mahto 8. Putul Devi 9. Bimla Sinku 10. Binapani Mahto 11. Bina Banra 12. Tripti Kumari Mahto 13. Anida Pradhan 14. Kunti Kumari 15. Ashamani Devi 16. Manju Purti 17. Kalpana Pramanik 18. Parul Devi Petitioners (In WPS3149 of 2008) 1. Chandrawati Boipai 2. Madhuri Gope 3. Sulochana Kumari 4. Chanda Devi 5. Sushila Devi 6. Hemanti Mahto 7. Shefali Murmu 8. Sandhya Kumari 9. Elizabeth Meri Deogam 10. Shanti Mahto 11. Sanyukta Mahto 12. Malaniti Gunduwa 13. Kumari Sumukhi 14. Sukhmati Bodra 15. Shilbanti 16. Subrakeshi Pradhan 17. Satyawati Devi 18. Saraswati Mahto 19. Mangesh Biruli Petitioners (In WPS3444 of 2008) 1. Sukhmati Devi 2. Jayanti Pingua 3. Kiran Deogam 4. Lalita Kalundia 5. Dhanmati Devi 6. Lalmati Hansda 7. Manjari Pradhan Petitioners (In WPS5840 of 2008) 2.

1. Versus

1. The State of Jharkhand through Chief Secretary, Govt. of Jharkhand, Ranchi
2. The Secretary, Department of Social Welfare, Govt. of Jharkhand, Ranchi
3. Director, Department of Social Welfare, Govt. of Jharkhand, Ranchi
4. Commissioner, Singhbhum (Kolhan) Division, Chaibasa, District West Singhbhum
5. Deputy Commissioner, West Singhbhum, Chaibasa
6. Deputy Commissioner, East Singhbhum, Chaibasa
7. Deputy Commissioner, Seraikella-Kharsawan at Seraikella
8. Suchitra Devi

9. Srimati Devi 10.Shilla Soy 11.Sabitri Hembrom 12.Raimati Hansda 13.Smt. Elizabeth Biruli 14.Jayanti Vishwakarma 15.Sumitra Munda 16.Sunita Kumari 17.Rekha Kumari 18.Maya Rani 19.Bina Kumari 20.Sunita Dungdung 21.Sushila Devi 22.Danoj Devi 23.Noorpati Mahto 24.Birang Kudada 25.Sonamai Tubid 26.Shanti Korah 27.Victoria Elizabeth 28.Sushila Hembram 29.Rasmati Sinku 30.Shakuntala Sinku 31.Lidi Baskey 32.Belmani Jonko 33.Chandrabati Alda 34.Sonamuni Sumbrui 35.Shital Pingua 36.Bhagyabati Murmu 37.Beronika Sundi 38.Sushila Kalundia 39.Lata Mukhi Respondents (In all cases) CORAM : HONBLE MR. JUSTICE RONGON MUKHOPADHYAY --- For the Petitioner s : Mr. Milan Kumar Dey, Sr. Advocate For the State : Mr. Atanu Banerjee, G.A., Mr. Jalisur Rahman , J.C. to G.P. III, For Respondents 18 & 19 (WPS No. 3149 & 5840 of 2008) : Mr. Pradip Kumar, Advocate

3. For Respondents 9,10,12,26,34 & 37 (WPS No. 3149 & 5840 of 2008) : Mr. Rahul Kumar, Advocate For Respondent 27 (WPS No. 3149 & 5840 of 2008) : Mr. Kumar Bhaibhav, Advocate For Respondents 16 (WPS No. 3149 & 3448 of 2008) : Mr. Piyush Chitresh, Advocate --- C.A.V. On 22.7.2015 Pronounced on 3 .8. 2015 Since common questions of law and fact are involved in these writ petitions, the same are disposed of by this common order. In these writ applications, the petitioners have prayed for quashing the final list dated 17.6.2008 appointing 32

candidates on the post of lady supervisor. A further direction has been sought for upon the respondents No. 2 not to approve the appointment of 32 candidates whose names have been published on 17.6.2008. The petitioners are working as Anganwari Sewika under the Department of Social Welfare, Govt. of Jharkhand. In terms of the policy decision of the State Govt. an advertisement was issued on 2.12.2007 for the posts of lady supervisor consisting of 32 posts from the eligible Anganwari Sewikas. The petitioners had duly applied being eligible candidates for the post of lady supervisors and altogether 130 candidates were declared successful including the petitioners for filling up the vacancies of 32 posts of lady supervisors. On 17.6.2008, a final list of 32 candidates for the post of lady supervisors was prepared, but the name of the petitioners did not figure in the said list, leading the petitioners to file the present writ applications for quashing of the final list dated 17.6.2008. Heard Mr. Milan Kumar Dey, learned senior counsel appearing for the petitioners in all the writ petitions; Mr. Jalisur Rahman, J.C. to G.P. III for the State in W.P.(S) No. 3149 of 2008; Mr. Atanu Banerjee, learned G.A., appearing in W.P.(S) No. 3444 of 2008; Mr. Pradip Kumar, learned counsel appearing for respondents No. 18 and 19 in W.P.(S) No. 3149 of 2008 and W.P.(S) No. 3444 of 2008; Mr. Rahul Kumar, learned counsel appearing for the respondents No.9, 10, 12, 26, 34 and 37 in W.P.(S) No. 3149 of 2008 and W.P.(S) No. 5840 of 2008; Mr. Kumar Baibhav learned counsel appearing for the respondent No. 8 and 27 in W.P.(S) No. 3149 of 2008 and W.P.(S) No. 3444 of 2008 and Mr. Piyush Chitresh, learned counsel appearing for the respondent No. 16 in W.P.(S) No. 3149 of 2008 and W.P.(S) No. 3444 of 2008.

4. Mr. M. K. Dey, learned senior counsel for the petitioners submits that there has been a total lack of effort on the part of the State respondents in filling up the posts of 32 lady supervisor in accordance with law, as the same has been done by giving a complete go-bye to the norms and procedures as also the criteria for reservation. It has been submitted that out of 32 posts, 16 posts were unreserved whereas the rest posts were for the reserved category and there has occurred a situation in which the reserved category candidates have filled up posts meant for the general category candidates and vice versa. It has also been submitted that from a perusal of the application form of the successful candidates it would be evident that the column with respect to the caste of the candidates has not been

filled up. Learned senior counsel has further submitted that in absence of the caste certificate issued by the Sub Divisional Officer or any other competent authority of the State of Jharkhand, benefit of reservation has been granted to the persons selected under the reserved category and in such context reference has been made to various selected candidates who did not fulfill the criteria with respect to the caste certificate for availing the benefit under the reserved category. It has also been submitted that the authorities had violated the roster inasmuch as general candidates were appointed against the posts reserved for Scheduled Tribes (S.T.) candidates, but the authorities had treated them to be general candidates and have selected them, violating all norms and procedures for such selection. Further submission was advanced that no interview was held while selecting the candidates. It has therefore been submitted that the entire select list dated 17.6.2008 should be quashed and set aside. Mr. Jalisur Rahman, learned J.C. to G.P. III, appearing for the State in W.P.(S) No. 3149 of 2008 has submitted that 385 candidates had applied for the posts of lady supervisors and only 155 applications were found to be in order and pursuant to the written examination of the candidates a merit list consisting of the names of 130 candidates were placed in seriatim. Learned J.C. to G.P. II has also referred to the notification of the Government dated 31.10.1999 in which it has been mentioned that the candidates belonging to the backward caste, Scheduled Caste (S.C.) and Scheduled Tribes (S.T.), who have qualified on account of merit shall not be considered to be under the reserved category. It has further been submitted that accordingly the candidates whose names were placed at serial No. 1 to 15 in the merit list were considered as general candidates and one handicapped candidate was selected from the general category whose name figured at serial No. 96 in the

5. merit list. Similarly the appointment committee had selected the candidates whose rank was below serial No. 15 in the merit list under the S.T. category and one candidate was selected against reserved posts of S.C. category. Mr. Rahman further submits that 32 candidates were selected as lady supervisor in terms of the roster prescribed by the State Government. He further adds that since the selected candidates were already working as Anganwari Sewikas for the last more than 10 years, there was no fresh requirement of submission of caste certificate, as there was no dispute with respect to their caste throughout their period of service as

Anganwari Sewikas. In such circumstances, it has been submitted that the authorities have not committed any illegality in making the selection of 32 candidates. Mr. Atanu Banerjee, learned G.A. appearing in W.P.(S) No. 3444 of 2008 apart from what has been argued by learned J.C. to G.P. III has submitted that in terms of the Government resolution, in the unreserved category selection has been made on the basis of the merit list and even if some candidates from the S.T. community has been selected in the unreserved category, the same does not violate the process of selection, as merit is the sole criteria for such selection. Mr. Rahul Kumar, learned counsel appearing for the respondents No.9, 10, 12, 26, 34 and 37 in W.P.(S) No. 3149 of 2008 and W.P.(S) No. 5840 of 2008 has submitted that the advertisement itself prescribed for written examination and selection was to be made by the committee on the basis of the written examination and in such circumstances, the claim of the petitioners that no interview was held, which casts doubt upon the entire selection process, is wholly without any basis. It has also been submitted that once the game has started the rules of the game could not have been changed. It has thus been submitted that once the advertisement had been issued, the selection was to have been made on the basis of the terms and conditions and the eligibility criteria as envisaged in the advertisement and no subsequent change in the selection process could have been effected. It has further been submitted that the petitioners did not raise any grievance with respect to the selection process, when they undertook the written examination or when they subjected themselves to the selection process. Once the petitioners have participated in the selection process they have automatically waived their rights to challenge the said process. Mr. Rahul Kumar further reiterates what has been submitted by the learned J.C. to G.P. III with respect to the roster by submitting that the roster prescribed by the State Government had been

6. followed in its entirety . It has further been submitted that the private respondents had secured higher marks than the petitioners and were eligible in every respect to be selected/ appointed to the post of lady supervisor. Mr. Kumar Baibhav learned counsel appearing for the respondent No. 8 and 27 in W.P.(S) No. 3149 of 2008 and W.P.(S) No. 3444 of 2008 has basically reiterated what has been argued by Mr. Rahul Kumar. Similarly Mr. Piyush Chitresh, learned counsel appearing for the respondent No. 16 in W.P. (S) No. 3149 of 2008 and W.P.(S)

No. 3444 of 2008 has also supported the stand taken by the state respondents as well as the counsels appearing for some of the private respondents. Mr. M. K. Dey, learned senior counsel on being confronted with the arguments of the various counsels appearing for the State as well as the private respondents, submits that general category candidate have been appointed against the reserved quota and that one of the candidates, namely, Noorpati Mahto who is a general candidate is much more older than the age prescribed and no relaxation for age has been given to her but even then selection has been made. It is to be seen from the arguments advanced on behalf of all the sides as to whether in the selection of 32 candidates as lady supervisors there has been any violation of the rules and procedures so as to interfere in the entire selection process. The advertisement which was issued for selection of lady supervisors mentions about written examination to be held by the committee constituted for the purpose and thereafter the selection had to be made. There was no clause in the advertisement that the selected candidates were to be subjected to an interview and in such circumstances, the contention of the learned senior counsel for the petitioner gets negated. So far as the contention of the learned senior counsel for the petitioner with respect to violation of the roster is concerned, from the merit list reflecting the names of the successful candidates it appears that in the unreserved category candidates, names of the candidate under S.T. category finds place. The merit list of unreserved category, which consists of 16 posts in total was prepared on the basis of merit irrespective of the category of such candidate. So far as the merit lists of the reserved candidates are concerned, the same list reflects that all the posts have been filled up by S.C. and S.T. category candidates. So far as the selection of one Noorpati Mahto who was placed at serial No. 96 in the merit list is concerned, she was selected in the unreserved category being a handicapped person. In such circumstances, therefore, it cannot be said that

7. the respondent authorities have committed any illegality in selecting a reserved category candidate in the unreserved category. It is well entrenched principle of law that those members, falling in the reserved category gets selected in the open competition on the basis of their own merits, have a right to be included in the general list/ unreserved category and they are not to be counted against the quota reserved for the S.C./ S.T. In the case of *Samta Aandolan Samiti & another v.*

Union of India & others reported in (2014) 14 SCC745 it has been held as follows:-

"6. ... Thus, when certain persons belonging to the reserved category get selected in open competition on the basis of their merit, they are not to be counted in the reserved category against the reserved category quota. It is open to the authorities to fill the posts meant for reserved category candidates from amongst the persons in such categories after excluding those who have found their place in general merit. As a fortiori, while calculating the limit of 50% reservation, those candidates belonging to reserved category who have found their place on the basis of their merit competing with general candidates are not to be taken into consideration." It is thus seen from the various affidavits filed on behalf of the respondents that the roster prescribed by the State Government has properly been followed and the candidates who have been selected both in the unreserved as well as reserved categories were on the basis of merit and no illegality has been committed by the respondents in selecting the candidates of reserved category in unreserved category on the basis of merit. The contention of the learned senior counsel for the petitioners to the effect that the column of the caste in the application form had not been filled up by the successful candidates is negated in view of the reasonable explanation given by the respondent State to the effect that since only those persons who were working as Anganwari Sewikas were eligible to appear for the post of lady supervisor and since there was no dispute with respect to their selection as Anganwari Sewikas as and when made, the question of non mentioning of the caste is not an illegality. As a cumulative result of the discussions made above, this writ petition being devoid of any merit is accordingly dismissed. (RONGON MUKHOPADHYAY, J.) MK

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