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(2019) 03 PAT CK 0004

In the Patna High Court

Case No : Letters Patent Appeal No. 1604 Of 2018, Civil Writ Jurisdiction Case No. 18454 Of 2018

Bihar Police Sub Ordinate Service Commission And Ors — APPELLANT

Vs

Khusbu Sharma And Ors — RESPONDENT

Date of Decision : 01-03-2019

Acts Referred:

Citation : (2019) 03 PAT CK 0004

Hon'ble Judges : Amreshwar Pratap Sahi, CJ;Anjana Mishra, J

Bench : Division Bench

Advocate : Pushkar Narayan Shahi, Sanjay Pandey, Binod Kumar Mishra, P.K. Shahi, Mukesh Kumar, Saroj Kumar Sharma

Final Decision : Dismissed

Judgement

1. The challenge raised in this appeal is to the impugned judgment dated 03.10.2018 whereby the learned Single Judge has given the benefit of extension in the time period for appearing in the Physical Evaluation Test to the respondent-petitioner following the ratio of the judgment of another learned Single Judge in the case of Ishika Raj vs. State of Bihar and Ors (C.W.J.C No. 604 of 2017) decided on 03.08.2017.

2. We have heard Sri Pushkar Narain Shahi, learned Additional Advocate General for the appellant and Sri P.K. Shahi, learned Senior Counsel for the respondent-petitioner no. 1.

3. Even though the legal issue raised is almost the same as in the case of Ishika Raj (supra), the judgment whereof has been reversed by us today in our judgment in LPA No. 1535 of 2017, yet since the facts of this case are slightly distinguishable and a distinction has been sought to be drawn by the learned counsel for the respondent-petitioner therefore we are delivering this judgment separately.

4. This is a case with regard to appointment on the post of a Police Sub-

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Inspector against Advertisement No. 01 of 2017 dated 16.09.2017. The preliminary examinations were held on 11th March, 2018 and 15th April, 2018. The main examinations in which the respondent qualified was held on 22nd July, 2018, the results whereof were declared on 5th August, 2018. The Physical Evaluation Test was scheduled on 25th September, 2018.

5. The respondent-petitioner moved a representation on 10th of August, 2018 stating therein that she was undergoing pregnancy and was likely to deliver her child on 3rd October, 2018 as diagnosed therefore she prayed for an extension of time for appearing in the Physical Evaluation Test.

6. The exams and the selection process have been conducted by the appellant commission and the argument raised by the respondent-petitioner is based on the judgment in the case of Ishika Raj (supra). Shri P.K. Shahi, learned Senior Counsel for the respondent-petitioner has urged that the present case is distinguishable on facts as against the case of Ishika Raj (supra) inasmuch as in this case the petitioner had moved a representation well within time immediately after having been declared successful in the written examination. The power to relax the period for appearing in the Physical Evaluation Test ought to have been exercised by the appellants in view of the delay in holding of the examinations and the test when the advertisement was of 16.09.2017 and the results of the main examination have been declared almost one year thereafter. The Commission would not be prejudiced in any way and the Physical Evaluation Test can still be allowed as a special case in the case of the respondent-petitioner even if the judgment in the case of Ishika Raj (supra) is not made applicable.

7. Learned counsel for the appellant commission has urged that on facts there is hardly any distinction and as a matter of fact in the present case the respondent-petitioner has appeared in the examination with open eyes and where there is a clear declaration required to be given that the candidate is healthy enough to undertake the Physical Evaluation Test. It has further been pointed out that the same arguments are being pressed into service as led on behalf of the Commission in LPA No. 1535 of 2017. In addition thereto, it is urged that so long as there is no relationship of employer and employee there is no occasion to extend such benefits arising out of maternity. The Commission is only a selecting body and the respondent-petitioner is a candidate. There is no infringement of any fundamental right inasmuch as the respondent-petitioner by acquiring a self-imposed incapacity of pregnancy cannot bring into existence a separate category and then claim that her rights had been infringed. It is urged that the respondent-petitioner has lost her opportunity because of her own choice to beget a child which choice was exercised in spite of having knowledge of the terms and conditions of the advertisement. It is also submitted that all statutory provisions relating to social security and schedule of maternity leaves are available post-employment. The respondent-petitioner therefore ought to have secured her employment before planning a family and not by a converse method claim her right which would otherwise affect the rights of others who did not either apply

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or did not appear in the subsequent examinations in spite of having applied due to their pregnancy. This would be unfair to such candidates who were never made aware of any such relaxation as claimed by the respondent-petitioner. It is further submitted that even this power of relaxation may be exercised in a given case if suitable candidates may not be available. There are no mala fides or any other illegalities or irregularities pleaded in the writ petition so as to extend any such benefit by way of relaxation. It is urged by the learned Additional Advocate General that this would jeopardize the entire selection process if candidates in this manner keep on conveniently seeking concessions and for which learned Additional Advocate General has invited the attention of this Court towards Paragraph 20 of the counter affidavit.

8. We have heard the learned counsel for the parties and we find that most of the issues stand answered by us in the decision rendered today in LPA No. 1535 of 2017 and the same are adopted by us to allow this appeal.

9. Apart from this, in the present case the preliminary examinations were held in March and April, 2018 and in quick succession the main examinations were held on 22nd July, 2018 and the results were declared on 5th August, 2018. Thus there was absolutely no delay caused at all and the examinations were concluded within a reasonable period. The Physical Evaluation Test was announced for 25th September, 2018. It is evident from the own statement of the respondent-petitioner that she had acquired the pregnancy sometime in January, 2018 itself even prior to the holding of the preliminary examinations. Thus, she very well knew about the possibility of holding of the Physical Evaluation Test that was held on 25th September, 2018. The respondent-petitioner therefore knew that she would not be able to undertake the Physical Evaluation Test and it is for this reason that she moved a representation on 10th August, 2018 only after declaration of the final results. She had not made this disclosure before or else the Commission could have taken a decision in the matter. This form of concession if granted to the respondent-petitioner would clearly jeopardize the holding of the entire Physical Evaluation Test which has been held in respect of thousands of candidates. Thus by creating her own incapacity by her own choice the respondent-petitioner cannot claim a fundamental right to seek an opportunity for employment in spite of a disqualification which is also on account of her own choice. It is the respondent-petitioner who opted for begetting a child and, therefore, it cannot be said that the Commission has acted in a manner so as to impinge her right of motherhood. In this regard, it is also apt to notice the contents of Paragraph 20 of the counter affidavit where the appellant-commission has come up with a plausible plea that if this logic is accepted then there may be many candidates with other injuries that are likely to be recovered and, therefore, they can also claim for extension of period for Physical Evaluation Test upon recovery of any injury.

10. To our mind, this cannot be a process adopted in respect of the examinations or holding selections for which we have given detail reasons in the judgment

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delivered today in LPA No. 1535 of 2017. The respondent-petitioner did not have any vested right of employment so as to jeopardize her career or social security. She was yet to be selected and for which she had to compulsorily appear in the Physical Evaluation Test. Any extension of concession to one candidate would therefore lead to a chaos in the selections which otherwise had to be concluded in terms of the judgment of the Apex Court dated 5th May, 2017 in Writ Petition (c) No. 183 of 2013 (Manish Kumar vs. Union of India and Ors.). It may also be mentioned that the respondent-petitioner does not loose her right to appear in future examinations and, therefore, none of her rights relating to opportunity of employment are infringed.

11. We have perused the aforesaid directions of the Apex Court and we are convinced that in view of the aforesaid recorded order there was no scope for the Commission to have even considered the grant of such relaxation nor the respondent-petitioner could be allowed to make any such request in the teeth of the aforesaid observations of the Supreme Court.

12. In view of what has been stated above and for the additional reasons as contained in our judgment in LPA No. 1535 of 2017, we find that the learned Single Judge without discussing these aspects has allowed the writ petition on considerations which cannot be supported in law.

13. Accordingly, the appeal is allowed and the impugned judgment dated 3rd October, 2018 is set aside. The writ petition stands accordingly dismissed.

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