

---

**(2019) 12 JH CK 0276**  
**In the Jharkhand High Court**  
**Case No : Writ Petition (S).No. 5227 Of 2018**

Pratibha Narayan

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

---

**Date of Decision :** 19-12-2019

**Acts Referred:**

Constitution Of India, 1950 — Article 14, 15(1), 15(3), 16(1), 19(1)(g), 19(6), 21, 243(d), 243(t)

**Citation :** (2019) 12 JH CK 0276

**Hon'ble Judges :** Dr. S.N. Pathak, J

**Bench :** Single Bench

**Advocate :** J.P. Jha, S.P. Jha, Aishwarya Prakash, R.K. Shahi

**Final Decision :** Allowed

---

## Judgement

1. Heard the parties.
2. Petitioner has approached this Court with a prayer for direction upon the respondents to consider her case for promotion in view of the fact that juniors to the petitioner have been considered and granted promotion.
3. As per the factual matrix, the petitioner was appointed as Medical Officer in the year 1981 in erstwhile State of Bihar. In the year 2006, after bifurcation of the State, petitioner was allocated the Jharkhand cadre. A gradation list was prepared by the State of Jharkhand in the year 2008, where the name of the petitioner is reflected at Sl. No. 387 along with other medical Officers. It is the specific case of the petitioner that at the time of consideration of her case for promotion, the cases of juniors to her were considered and they were granted promotion to the higher posts but the petitioner's case was neither considered nor she was granted the said promotion. Reasons remains unaddressed. From perusal of notification

dated 27.06.2016 as well as letter dated 20.09.2018, it appears that persons below in the gradation list under general category than the petitioner, have been granted promotion to the higher post of Chief Medical Officer or the Deputy Director, whereas, the petitioner has been denied the same.

As the petitioner has been subjected to discrimination and has not been considered for promotion to the higher post, though she was entitled for the same as her name was above in the gradation than the persons who were considered and granted promotion, the petitioner has been constrained to knock the door of this Court.

4. Mr. J.P. Jha, learned senior counsel assisted by Mr. Aiswharya Prakash, learned counsel appearing for the petitioner strenuously urges that it is a

case of glaring discrimination at the part of the respondent-authorities. With callous approach, the petitioner has been denied the benefits of promotion.

Mr. Jha demonstrates to this Court that from notification dated 27.06.2016 as well as letter dated 20.09.2018, it is crystal clear that persons below the

petitioner have been considered and granted promotion to the higher post of Chief Medical Officer or the Deputy Director, whereas the petitioner

though was deserving the same treatment has not been considered, which amounts to hostile discrimination. Learned senior counsel further submits

that a punishment order was inflicted against the petitioner in the year 2015 but the same ended with censure and effect of which lasted for a year and

as such, on the date of consideration for promotion, there was nothing against the petitioner, not even a punishment of censure. Learned senior counsel

further submits that in the year 2018, the respondent-authorities ought to have considered the case of the petitioner along with juniors, who were

granted promotion in the year 2018 and as such, a direction be given to the respondent-authorities to consider the case of the petitioner from the date,

junior to her, namely, Ezajuddin Ashraf (Sl. No. 398) was considered and granted promotion.

5. Per contra, counter-affidavit has been filed. Mr. R.K. Shahi, learned counsel appearing for the respondent-State vehemently opposes the contention

of the learned senior counsel for the petitioner and submits that promotion is not a right of an employee. However, he very fairly submits that

admittedly there is a right for consideration but as there was proceeding pending against the petitioner and punishment was awarded to her, there was

no question of consideration of her case for promotion. Learned counsel, however, admits that petitioner was much above in the gradation list than the persons who were considered and granted promotions. Further it has been argued that case of the petitioner was considered on 16.09.2019, and she was granted promotion to the post of Deputy Superintendent.

6. Be that as it may, having gone through the rival submissions of the parties, this Court is of considered view that the case of the petitioner needs

consideration. Admittedly, in catena of decisions of the Honâ??ble Apex Court as well as of this Court, it has been held that promotion is not a right

of an employee but right flows to the petitioner if her case has not been considered illegally and arbitrarily with callous motive. There is malice in law

if discrimination is found at the hands of the respondents. Consideration has to be shown uniformly and no person can be discriminated on any ground.

In instant case, as the petitioner is a female medical officer, her case has not been considered though there was nothing adverse against her. This

amounts to gender discrimination by the respondent-authorities.

7. The same has been deprecated by the Honâ??ble Apex Court in case of Charu Khurana & Ors. Vrs. Union of India & Ors. reported in (2015) 1

SCC 192, relevant paras of which is reproduced herein below:

â??37. Having referred to the aforesaid provisions of the Constitution, and taking note of the submissions, we may presently refer to

Articles 14, 19(1)(g) and 21 of the Constitution of India. Article 14 provides that the State shall not deny to any person equality before the

law, or the equal protection of laws within the territory of India. Article 19(1)(g) provides that all citizens have the right to practice any

profession or to carry on any occupation, trade or business. Needless to emphasize that the said right is subject to reasonable restrictions to

be imposed, as permissible under Article 19(6) of the Constitution. Article 21 deals with the concept of life, which has been extended to a

great extent by this Court.

41. The aforesaid pronouncements clearly spells out that there cannot be any discrimination solely on the ground of gender. It is apt to note

here that reservation of seats for women in panchayats and municipalities have been provided under Articles 243(d) and 243(t) of the

Constitution of India. The purpose of the constitutional amendment is that the

women in India are required to participate more in a democratic setup especially at the grass root level. This is an affirmative step in the realm of women empowerment. The 73rd and 74th Amendments of the Constitution which deal with the reservation of women has the avowed purpose, that is, the women should become parties in the decision making process in a democracy that is governed by the rule of law. Their active participation in the decision making process has been accentuated upon and the secondary role which was historically given to women has been sought to be metamorphosed to the primary one. The sustenance of gender justice is the cultivated achievement of intrinsic human rights. Equality cannot be achieved unless there are equal opportunities and if a woman is debarred at the threshold to enter into the sphere of procession for which she is eligible and qualified, it is well-nigh impossible to conceive of equality. It also clips her capacity to earn her livelihood which affects her individual dignity.â??

8. The Constitution of India accords socio economic and political justice, equality of status and of opportunity assuring the dignity of person with stated freedoms. Article 14 guarantees equality. In other words frowns upon discrimination on any ground. Article 15(1) abolishes discrimination and removes disability, liability or restriction on the grounds of sex and ensures equality of status. Article 16(1) accords equality of opportunity in public service for an appointment or employment to an office or post under the State and prohibits gender discrimination. Article 15(3) treats women as a class, mitigates the rigour of absolute equality enshrined in Article 14 and its species Article 15(1) and 16(1) and enjoins the State to make any special provision to remedy past injustice and to advance their status, socio economic and political. Women should have adequate means of livelihood on par with men.

In case of C.B. Muthamma Vs. Union of India & Ors. reported in 1979 SCC (4) 260 the Honâ??ble Apex Court has held thus:

â??If a married man has a right, a married woman, other things being equal, stands on no worse footing. This misogynous posture is a hangover of the masculine culture of manacled the weaker sex forgetting how our struggle for national freedom was also a battle against

woman's thralldom. Freedom is indivisible, so is Justice. That our founding faith enshrined in Articles 14 and 16 should have been tragically

ignored vis-a-vis half of India's humanity, viz, our women, is a sad reflection on the distance between Constitution in the book and Law in

Action. And if the Executive as the surrogate of Parliament, makes rules in the teeth of Part III, especially when high political office, even

diplomatic assignment has been filled by women, the inference of diehard allergy to gender parity is inevitable.â??

9. Admittedly, petitionerâ??s name appeared in the gradation list at Sl. No. 387, which was much above the persons who were considered and

granted promotion. Merely because petitioner was inflicted with punishment of censure in the year 2015, the same could not have come in the way of

respondents in granting promotion to the petitioner. The effect of censure ceased to be operative after one year from the date of award of punishment

and promotion was considered in the year 2018, i.e. three years after award of the punishment and as such, her case ought to have been considered

on the date when juniors to her were considered and granted promotion to the higher posts of Chief Medical Officer or the Deputy Director.

10. Under such circumstances, petitioner is at liberty to file a fresh representation before the respondent-authorities, within a period of two weeks

from the date of receipt of a copy of this order, for consideration of her case for promotion from the date, juniors to her were considered and granted

promotion. Upon receipt of such representation, the respondents are directed to pass a reasoned order taking into account that petitioner is entitled for

promotion from the date juniors to her have been considered and granted the said promotions. Respondents are further directed to do the entire

exercise within a period of four weeks from the date of receipt of the representation and extend the benefits of promotion along with consequential

benefits, in accordance with law, from the date juniors to her have been considered and granted the said benefits.

11. With the aforesaid observations and directions, the writ petition stands allowed.