
(2009) 07 JH CK 0129
In the Jharkhand High Court

Sisiliay Hembram

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 21-07-2009

Acts Referred:

Citation : (2009) 07 JH CK 0129

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Judgement

D.N. Patel, J.—The present petition has been preferred mainly because of inaction on the part of the respondents, in not deciding the candidature of the present petitioner for the post of Lady Constable, despite the fact that the petitioner has cleared all the necessary required tests, which are taken by the respondents, as a selection procedure, including physical test and written test. It is also submitted vehemently by the learned Counsel for the petitioner that as per the letter dated 28th April, 2007, at Annexure 6 to the memo of petition, the Deputy Inspector General of Police is seeking instructions for the selection of the present petitioner that how many marks have been obtained by the petitioner in the written examination, because the present petitioner has already cleared physical test and the marks obtained by the present petitioner in the physical test reveals that she has secured higher marks than some other candidates. This is explicitly clear from Annexure 6.

2. It is also submitted by the learned Counsel for the petitioner that though the letter at Annexure 6 to the memo of petition is dated 28th April, 2007, the respondents are not deciding whether the petitioner is selected for the post of Constable or not. Several representations have also been filed by the present petitioner, as per Annexure series to the memo of petition, none of them has been replied or decided and, therefore, the present petition has been preferred for getting direction upon the respondents to decide the representations, in accordance with law, considering the fact that the petitioner has already cleared the physical test examination and the respondents should also consider the fact

that the present petitioner has appeared in the written test, which was only in the form of a small dictation in Hindi language as well as in Santhali language. It is also vehemently submitted by the learned Counsel for the petitioner that looking to the belated stand, taken by the respondents, as per the counter affidavit, the petitioner is given the marks in the written examination as "failed". No marks have been allotted to the petitioner in the written examination. Standard of "pass" and "fail" is never known to the petitioner. Arbitrarily, that standard is fixed in the mind of the respondents and, therefore, instead of giving marks in the written test, the respondents have assessed the marks, obtained by the petitioner in the written test, as "failed". This one word is coming in the way of the present petitioner for getting appointment as a Lady Constable and, therefore, it is contended by the learned Counsel for the petitioner that the assessment of the marks, obtained by the present petitioner in the written test, is thoroughly an arbitrary action. Passing standard is never fixed, no marks are given to the present petitioner and, therefore, the respondents can pass any candidate, to whom they like and they can give the assessment as "fail" as per their whims and caprice. Such an arbitrary assessment, therefore, deserved to be quashed and set aside and the marks of the petitioner Ought to be reassessed on some logical base. It is also submitted vehemently by the learned Counsel for the petitioner that a written test is taken of a dictation of one paragraph in Hindi language and another paragraph of Santhali language. As per the counter affidavit, highest allegation against the petitioner is that she is not knowing Hindi language and, therefore, she has been assessed as "failed" in the written test. Whenever an examination is taken for Hindi language as well as for Santhali language and where there is no grievance about the deduction in a Santhali language, then 50% marks in the written ought to be given to the petitioner, out of the total marks. Thus, if the written test is taken of 10 marks, then 5 marks minimum should be given to the present petitioner, because as a part and partial of one written test, like question 1 and 2, two dictations have been given of two different languages and looking to the counter affidavit, highest allegation is about the knowledge of Hindi language. Thus, the petitioner is entitled for 50% marks in the written test and, on the logic also, there cannot be a passing standard higher than 50% for the post of Constable. This aspect of the matter has not been properly appreciated by the respondents before giving to the petitioner as "failed" in the written test and, therefore, the assessment "fail" deserves to be quashed and set aside, so far as written test of the petitioner is concerned, and, therefore, after applying a fresh mind by the higher officer, on a written test, petitioner's representation may be ordered to be decided by respondent No. 3, after giving an adequate opportunity of being heard to the petitioner or to her representative, in accordance with law, rules, regulations, policies and enforceable government orders.

3. I have heard learned Counsel for the respondents, who has submitted that the petitioner is not having adequate knowledge of Hindi, which is necessary for a Constable and as per the counter affidavit, if she is not having proper knowledge

of Hindi, she cannot clear the written test and, therefore, she has been assessed in the written test as "failed" and once a candidate is failed in any of the two tests, the said candidate is not eligible for appointment and hence, the petitions cannot be appointed as a Constable and the writ petition, then fore, deserves to be dismissed. Nonetheless, as no final decision has been taken upon the representations, which are at Annexure 5 series to the memo of petition, respondent No. 3 may be directed to decide the same, in accordance with law, within the stipulated time, given by this Court.

4. In view of the aforesaid submissions and looking to the fact that the petitioner has already cleared the physical test, taken for the post of Constable, and also looking to the fact that the petitioner is already a matriculate certificate holder, wherein, Hindi was one of the subjects, and also looking to the arbitrary assessment of the written test by the respondents, without appreciating the fact that out of the dictations of two languages of one paragraph each, half of the written test is correct, and, therefore, the petitioner is logically entitled for 50% marks and there cannot be a passing standard of written test for a post of Constable, exceeding 50%, and also looking to the fact that no marks have been allotted to the written test and arbitrarily the word "fail" is written on the written test paper of the petitioner, and also looking to the fact that no standard has been fixed for passing or fail, I hereby quash and set aside the assessment by the respondents of the written test of the present petitioner, with a direction to reassess the marks, obtained by the petitioner at the written test. The word "fail" is used, as per the counter affidavit, upon the written test paper of the petitioner, which is absolutely an arbitrary action. "Fail" or "pass" is a consequence of the marks, obtained by a candidate. High ranking police officer, who has assessed the marks, obtained by the petitioner at the written test, ought to have given marks, so that the consequence of "pass" or "fail" can be decided. Straightway a candidate cannot be labeled as "failed" or "passed". Moreover, no standard of "pass" or "fail" having been prescribed or pronounced, in advance, such an action leads to absolute arbitrariness. Any candidate can be declared "pass" by such an arbitrary action or a deserving candidate can be declared "fail", if such an arbitrary and unguided powers are given to the assessing police officer and hence, I hereby quash and set aside such arbitrary assessment by the respondents of the written test of the present petitioner. However, looking to the contention, raised by the learned Counsel for the respondents that no final decision has yet been taken upon the representation of the petitioner, which are at Annexure 5 series to the memo of petition, I hereby direct respondent No. 3 to decide the representation of the present petitioner, which is at Annexure 5 to the memo of petition, or to treat this writ petition as a representation and I further direct that respondent No. 3 will decide the same, in accordance with law, rules, regulations, policies and looking to the enforceable government orders and also keeping in mind the aforesaid observations in the foregoing paragraphs of this order, after giving an adequate opportunity of being heard to the petitioner or to his representative, as expeditiously as possible and practicable, preferably

within a period of sixteen weeks from the date of receipt of a copy of the order of this Court.

5. This writ petition is, accordingly, allowed to the aforesaid extent, and is hereby disposed of, with the aforesaid directions and observations.