
(2014) 05 JH CK 0064
In the Jharkhand High Court
Case No : L.P.A. No. 417 of 2013

Usha Kumari

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 12-05-2014

Acts Referred:

Citation : (2014) 3 JLJR 311

Hon'ble Judges : R. Banumathi, C.J;S. Chandrashekhar, J

Bench : Division Bench

Advocate : S.N. Pathak, Sr. Advocate, Advocate for the Appellant; Kumar Vaibhav, J.C. to A.G, Advocate for the Respondent

Final Decision : Dismissed

Judgement

I.A. No. 8860 of 2013

1. This Interlocutory Application has been filed to condone the delay of 441 days in filing the Letters Patent Appeal against the judgment in W.P. (S) No. 862 of 2010 dated 19.06.2012.

2. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent-State.

3. In the supporting affidavit, it is stated that, the appellant was ill and was going through the treatment and as such, she could not approach the lawyer at proper time for filing the instant Letters Patent Appeal.

4. The learned counsel appearing for the respondent-State has no serious objection with regard to condonation of delay.

5. Having regard to the averments in supporting affidavit and also the submission of the learned counsel appearing for the appellant, the delay in filing the appeal is condoned and I.A. No. 8860 of 2013 is allowed.

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6. Being aggrieved by the order dated 19.06.2012 passed in W.P. (S) No. 862 of 2010, the appellant has approached this Court by filing the present Letters Patent Appeal.

7. Pursuant to advertisement dated 03.11.2007 being Advertisement No. 02/2007 for appointment on the post of Constable, the appellant who belongs to Non-Home Guard general female category, applied and participated in the selection process.

8. It is stated that though she qualified in the physical tests, she was not offered appointment on the post of constable and aggrieved, she approached the writ Court by filing the writ petition, which has been dismissed by the impugned order dated 19.06.2012.

9. Dr. S.N. Pathak learned Senior Counsel appearing for the appellant submitted that in terms of Rule 663(iii) since no physical criteria has been laid down for the Gorkha candidates, the appellant could not have been compared with the other general category female candidates in the matter of appointment. He further submitted that in the advertisement also it is clearly mentioned that there would not be any physical standard for the Indian Gorkha candidates.

10. The learned counsel appearing for the respondent-State of Jharkhand has submitted that since the advertisement was with respect to appointment on the post of constable and no separate category for the Indian Gorkha candidates has been indicated in the advertisement the appellant was required to compete with other general category female candidates. It is further submitted that the last selected candidate in the Non-Home Guard general category female had obtained 18 marks whereas the appellant has secured only 12 marks and, therefore, she was not offered appointment on the post of constable.

11. We have considered the submissions of Dr. S.N. Pathak the learned Senior Counsel appearing for the appellant and Mr. Kumar Vaibhav learned counsel appearing for the respondent-State and perused the documents on record.

12. A perusal of the advertisement No. 02/2007 itself would disclose that seats for scheduled caste, scheduled tribe and other backward caste categories were reserved and there was no reservation for the Gorkhas residing in India.

13. In notification No. 3300 dated 12.11.2001 at paragraph No. 10 it has been stated that if total number of successful candidates are more than the vacant post, in such a situation merit list would be prepared on the basis of marks/points obtained by the candidate on the basis of height and educational qualification. The appellant, who is a Gorkha female candidate, belongs to general Non-Home Guard category, has got 5 marks for her height of 157.8 cm as per the medical board and 7 marks for intermediate qualification and thus secured total 12 marks. The last candidate selected was one Shobha Kumari belonging to the same category i.e. general category-Non-Home Guard female candidate got 18 marks. The said candidate Shobha Kumari being a graduate got

11 marks for her educational qualification and 7 marks for her height of 168.4cm and thus secured total 18 marks, while the appellant got only 12 marks and rightly the appellant was not selected.

14. The learned Senior Counsel appearing for the appellant submitted that in terms of Rule 663(iii) a special provision has been made for the Gorkha candidates and the benefits of which ought to have been extended to the appellant in terms of her height and the appellant could not have been compared with the general category-Non-Home Guard female candidates.

15. In Rule 663(iii), it has been provided that there would not be any separate physical standard for Gorkhas residing in India. The learned Single Judge has rightly observed that even if a Gorkha residing in India does possess physical standard less than the standard prescribed for the general category candidate, he/she would be eligible for participating in the selection process. Thus, it is apparent that a benefit has been conferred upon the Gorkhas residing in India in view of their peculiar physical feature. We further find that the learned Single Judge has also held that in view of the terms of the advertisement, the appellant was required to compete with other candidates belonging to Non-Home Guard general category. Since the appellant could not secure the minimum marks which the candidate last selected had secured, she has rightly not been offered appointment. We do not find any infirmity in the order passed by the learned Single Judge and accordingly, this Letters Patent Appeal is dismissed.