

A.F.R.

Reserved on – 27.4.2022

Delivered on – 6.5.2022

Court No. - 34

Case :- WRIT - A No. - 16580 of 2021

Petitioner :- Preeti Malik

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Pradumn Tripathi

Counsel for Respondent :- C.S.C.

Hon'ble Saurabh Shyam Shamsbery,J.

1. Petitioner - a woman, could not participate in the Physical Efficiency Test (PET) scheduled on 23.3.2021 in pursuance of recruitment process for the post of Jail Warder's (Male, Female) and Mounted Police Constable (Male) Direct Recruitment - 2018 when she was in the family way (7th month of pregnancy). Later on, she delivered a baby on 2.6.2021. She duly communicated about her medical condition to the respondents on 23.3.2021 and subsequently on 26.3.2021 but they remained unheard and in these circumstances, petitioner has approached this Court with the prayer that respondents' authorities be directed to conduct Physical Efficiency Test by providing her an attempt.

2. Shri Pradumn Tripathi, learned counsel for petitioner has submitted only submission to grant an opportunity to the petitioner to appear for Physical Efficiency Test as she was not able to appear on date fixed due to her pregnancy and delivery of a child.

3. The above submissions are opposed by Dr. Amar Nath Singh, learned Standing Counsel that there is no provision of granting

any further opportunity to appear for the said Test. He relied upon a judgment passed by the Supreme Court in **State of Uttar Pradesh and others vs. Pankaj Kumar; (2022) 1 SCC 335** as well as judgment passed by a co-ordinate in **Writ A No.2971 of 2020 (Yogesh Kumar vs. State of U.P. and another)**, decided on **1.10.2020**, that a recruitment process would be meaningless without a time line and second chance to appear could not be provided.

4. Heard learned counsel for the parties and perused the record.

नास्ति मातृस्मा छया, नास्ति मातृस्मा गतिः।

नास्ति मातृस्मं त्राण, नास्ति मातृस्मा प्रिया।।'

(माता के स्मान कोई छया नहीं है, माता के स्मान कोई सहारा नहीं है।

माता के स्मान कोई रक्षक नहीं है माता के स्मान कोई प्रिय चीज नहीं है।).....वेदव्यास

5. To achieve above high status, a woman has to carry a life within her for about nine months, the period during which, she not only has to face different physiological changes but has to cross various psychological situations as well.

6. The petitioner has travelled journey of the motherhood and became a proud mother, but forced to pay heavy price for it, being denied permission by respondents to appear for physical efficiency test, after she gave birth to a baby.

7. Petitioner's future prospect and her legitimate right to complete all steps for recruitment process for post of Jail Warder are withheld by the respondents. She could not appear in the said test because it was scheduled during her fourth month of pregnancy and her representation for giving a chance to appear for

test after delivery of a child remained unnoticed.

8. In these circumstances, which were beyond control of the petitioner after she conceive , the Court has to weigh arguments of respondents at the anvil of constitutional powers provided under Article 226 of the Constitution. In support of contention of the respondents that there is no provision for providing a further chance to appear for Physical Efficiency Test and that entire process of recruitment is already over, heavy reliance is placed upon **Pankaj Kumar (supra)**, that recruitment process would be meaningless without a time line.

9. It is relevant to consider time line of present case that date for Physical Efficiency Test was 23.3.2021, when petitioner was in her 4th month of pregnancy, therefore she requested for other date. Thereafter, she gave birth to a baby on 2.6.2021 her request for fixing a date for aid test, remained unheard. Then she approached this Court on 9.11.2021, therefore, within 8 months she is before this Court by way of filing present writ petition. Thus, facts of **Pankaj Kumar (Supra)** where respondent therein was denied a further attempt to appear in the test because he approached belatedly, however, petitioner herein has promptly approached before Court, therefore, equity is also in favour of petitioner.

10. It is apt to mention here that power conferred on the High Court under Article 226 of the Constitution is to advance justice and not to thwart it (**State of Uttar Pradesh vs. District Judge Unnao and others; AIR 1984 SC 1401**). The very purpose of such Constitutional powers being conferred on the High Court is that no person should be subjected to injustice by violating the law.

11. In **Gujarat Steel Tubes Ltd. and others vs. Gujarat Steel Tubes Mazdoor Sabha and others; (1980) 2 SCC 593**, the Supreme Court has held that Article 226 is a sparing surgery but lancet operates where injustice suppurates. The wide words of Article 226 are designed for service of the lowly numbers in their grievances if the subject belongs to the Court's province and the remedy is appropriate to the judicial process.

12. In view of above analysis on fact and law, I am of the considered opinion that facts and circumstances of present case warrants for interference and to pass appropriate order and direction to impart justice to the petitioner by exercising powers granted to Court under Article 226 of the Constitution, therefore, this writ petition stands **disposed of** with following directions :-

i) The respondents' authorities are directed to fix a date between 16.5.2022 to 20.5.2022 for conducting Physical Efficiency Test of petitioner providing prior information to her.

ii) On the basis of outcome of Test referred above, merit of petitioner shall be declared and in case, she got more than cut off marks, she shall be appointed on the post of Jail Warder. However, if process is already completed, petitioner shall put at the bottom of merit list and her candidature will be considered if a vacancy arose due to non-joining of a selected candidate or otherwise.

Order Date :- 6.5.2022
Rishabh

[Saurabh Shyam Shamsbery, J.]