IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (S) No. 862 of 2010

Usha Kumari … … … … … … Petitioner

Versus

State of Jharkhand and others … … … Respondents

CORAM: HON'BLE MR. JUSTICE D. N. PATEL

For the Petitioner: Mr. Dr. S.N. Pathak, N.K. Pandey
For the Respondents: J.C. to A.G.

05/ Dated: June 19, 2012

1) The present petition has been preferred mainly on the ground that though the petitioner has cleared all the examinations for the post of Constable, she has not been appointed.

2) Counsel for the petitioner submitted that in pursuance of the public advertisement, petitioner applied for the post of Constable. Petitioner belongs to Gurkha Category. She belongs to general Category Non-Home Guard Lady Candidate. She has appeared in all the tests taken by the respondents and she has cleared all the examinations, but she has not been given appointment, therefore, the present petition has been preferred. It is further submitted by the counsel for the petitioner that as per Jharkhand Police Manual, Clause No.663(iii), there is no physical standard for Gurkha candidates who are residents of India and even as per the public advertisement, which is annexed as annexure-1 to the memo of petition, there is no requirement of minimum height for Indian Gurkha Candidates and despite this fact, the respondents have given the marks for the height of the petitioner and, therefore, she has not been selected as she has secured lesser marks than the lastly selected candidate. Thus, the respondents have not appreciated Rule 663(iii) of the Jharkhand Police Manual as well as the public advertisement.

3) Counsel for the State has submitted that the petitioner belongs to General Category Non-Home Guard Lady candidate and, therefore, there is no minimum requirement of the height, otherwise for general category candidates, the minimum height required is 160 cm, for Backwards/OBC candidates, that is 160 cm, for SC/ST Candidates the same is 155 cm and for female candidates the same is 148 cm for the post of Constable.

Counsel for the State has filed a detailed counter affidavit as well as supplementary counter affidavit and it has been stated in paragraph 9 of the supplementary counter affidavit that the petitioner has secured lesser marks than the lastly selected candidate in the category in which the petitioner belongs to. Petitioner has secured total 12 marks, whereas the lastly selected candidate of the same category of the petitioner has secured 18 marks. It is submitted counsel for the the respondents–State that as per Rule 663(iii) of the Jharkhand Police Manual, there is no requirement of minimum height for Indian Gurkha Candidates. Petitioner is a Indian Gurkha Candidate and, therefore, even if she would have less than minimum height, then also she is not disqualified. Thus, the petitioner has been allowed by the respondents to appear in the examination. But Rule 663(iii) of the Police Manual never prohibits the State from giving marks for the height of the candidates. Rule 663(iii) of the Manual entitles the present petitioner, being a Gurkha Category candidate, to be qualified even if she is not having minimum height. So far the State is concerned, the State has prescribed certain marks for the height and therefore, those marks have been given to the petitioner as well as other candidates. Similarly, there are marks prescribed for the Educational Qualification. Looking to the marks obtained by the petitioner which are 12 in number and looking to the marks obtained by lastly selected candidate in the same category of the petitioner, she has secured 18 marks and, therefore, the petitioner has not been appointed for the post of Constable and, therefore, this petition deserves to be dismissed.

4) Having heard both sides and looking to the facts and circumstances of the case, I see no reason to entertain this writ petition mainly for the following grounds: -

(I) In pursuance of the public advertisement issued by the respondents, which is at annexure-1 to the memo of petition, the petitioner applied for the post of Constable.

(II) Petitioner belongs to General Category Non-Home Guard Category.

(III) Petitioner is an Indian Gurkha Candidate.

(IV) Rule 663(iii) of the Jharkhand Police Manual reads as under: -

“There is no physical standard for Gurkhas, who are residents of

India and men of the best physique obtainable and at least literate shall be enlisted."

(V) In view of the aforesaid provision of the Jharkhand Police Manual, if any Indian Gurkha Candidate has applied for the post of Constable and if he/she is not having minimum height, then also he/she will not be disqualified. Thus, the petitioner being an Indian Gurkha Candidate, she is qualified to be appointed as a Constable, but this provision does not debar the State from prescribing their marks for the height as well as other educational qualification. Eligible candidates of this category have to compete with eligible candidates of other categories. There may be different criteria of selection of candidates, like General candidates, SC/ST Candidates, Backwards/OBC candidates, female candidates as well as for Gurkha candidates.

VI) Looking to the Jharkhand State Home Department Circular dated 12.11.2001 bearing No.3300, the marks for the educational qualification and height for Gukha candidates has been prescribed. This is a policy decision. Petitioner's height is 157.8 cm and therefore, she is assigned 5 marks for her height. Similarly she is having Intermediate qualification and therefore she has been assigned 7 marks. Thus, the petitioner has secured total 12 marks, whereas the lastly selected candidate, as has been mentioned in paragraph 9 of the supplementary counter affidavit of the similar category, has secured 18 marks. In view of these facts, the petitioner cannot be appointed as a constable because she has secured lesser marks than the lastly selected candidate.

VII) Counsel for the petitioner has submitted that looking to provision of Jharkhand Police Manual, no marks can be prescribed for the Gurkha candidates for their height. This contention is no accepted by this Court mainly for the reason that looking to Rule 663(iii), Gurkha candidates are eligible for the post of Constable, even though, they are having less than minimum height. This Rule 663(iii) of Jharkhand Police Manual does not prohibit the State from prescribing the marks for educational qualification and height of Gurkha candidates. If there are more than one Indian Gurkha

candidate, then such type of criteria must be prescribed to select few Indian Gurkha candidates as Constables. *Inter se*, all Indian Gurkha candidates have to compete with each other and, therefore, thus Rule 663(iii) does not prohibit the State from prescribing special criteria to be laid down for selection of Indian Gurkha candidates. But all the eligible candidates including the petitioner have to compete with each other and if others are more suitable looking to the marks obtained by them, then the candidates who have secured less than lastly selected candidates, cannot be appointed. In Rule 663(iii) does not prohibits from assigning such type of marks to a Gurkha Lady candidates. Allotment of marks for educational qualification as well as height of Indian Gurkha candidates is a policy decision, which has been taken by the circular bearing No.330 dated 12th November, 2001. This Court is not sitting in appeal against this policy decision. Thus, the marks assigned to the petitioner are 12, whereas, in the same category, the lastly selected candidate has secured 18 marks and, therefore, the petitioner cannot be appointed as a Constable by the respondents.

5) As a cumulative effect of the aforesaid facts and reasons, I see no reason to entertain this writ petition and hence the same is accordingly dismissed.

(D. N. Patel, J)

Manoj/CP.2