

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5627 of 2020

Veera Yadav,

... .. Petitioner/s

Versus

The Chief Secretary, Government of Bihar,

... .. Respondent/s

Appearance :

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| For the Petitioner/s | : | Mr. Deepak Kumar, (Amicus Curiae) |
| For the Respondent/s | : | Mr. Ajay, G.A.-5 |
| | | Dr. K.N. Singh, A.S.G. |
| | | Mr. Ratnesh Kumar Singh, C.G.C. |
| | | Mr. Sanjay Pandey, Adv. |

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

15 14-12-2020 The Advertisement in question, issued by the Central Selection Board of Constable, falls short of the Constitutional mandate.

From the Advertisement, it is not clear as to whether persons falling under the provisions of the Transgender Persons (Protection of Rights) Act, 2019 (hereinafter referred to as the Act) can even apply for the post or not. The Advertisement only specifies the gender of the applicants to be 'male' or 'female'. Does it imply that the persons hailing from the Transgender Community are precluded from applying at all, or should not the authorities clarify that it shall also be open for such persons to apply? Significantly the candidates are required to apply on-



line, and in the said form there is no reference of the applicants falling with the purview of the Act, enabling them even to apply.

As such, we direct the Principal Secretary, Department of Home, to immediately look into the matter and take appropriate remedial measures.

Shri Ajay, learned Government Advocate No. 5 states that in the State of Bihar, there is no separate reservation for the members of the Transgender Community, save and except that for reservation they are to be considered in the category of 'OBC'.

Well, at this point, we need not go into the aspect of reservation, but *prima facie* what we find is that the persons belonging to the Transgender Community are totally precluded from the process of applying for a post of a constable, much less, agitate their right of reservation.

We need not remind the State of the mandate of the Constitution as also the law laid down by Hon'ble the Apex Court, mandating the State to adopt a pro-active approach in pursuing the causes of persons with disabilities; and more so in the light of the Act.

We are hopeful that the State would adopt a sensitive approach and immediately take remedial measures and the last



date to invite applications, for the members of the Transgender Community, shall be extended for such time and period, the State determines it to be feasible and appropriate.

Equally, State shall ensure giving wider publicity of the action taken to reach out to the members of such community, enabling them to apply for the post in question.

Till further orders, the process of finalization of the list of candidates to appear in the examination shall not be finalized by the Central Selection Board of Constable. However, the process of preparation may continue.

The Secretary, General Administration Department, Government of Bihar, shall file his personal affidavit of the steps taken.

An affidavit filed by the State does indicate grant of benefit of reservation for certain posts, as a class to the Transgenders, in the category of OBC. If that were so, then how can such a benefit accorded, unless a person applies and not precluded from applying for the post.

It appears that either the officers are working at cross-purposes; without co-ordination; or not adequately sensitized, both of law as also the welfare measures undertaken by the State.



List on 22nd of December, 2020 when the Secretary, General Administration Department, Govt. of Bihar shall remain present through a virtual mode.

Let the link be sent to him, for which particulars supplied to the Court Master within next two working days.

Mr. Ajay, learned Government Advocate, undertakes to communicate this order to the Secretary, General Administration Department, Government of Bihar during the course of the day.

(Sanjay Karol, CJ)

(S. Kumar, J)

Amrendra/-

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