

**IN THE HIGH COURT OF KARNATAKA
AT BANGALORE**

W P No. _____ of 2020
(Original Jurisdiction)

BETWEEN:

Sangama by its Director and Anr.

... PETITIONERS

AND

State of Karnataka and Ors.

... RESPONDENTS

SYNOPSIS

<i>Sl. No.</i>	<i>Date</i>	<i>Event</i>
		Respondent No. 3 issued Notification No. 15/2019-2020(referred to as 'impugned notification' calling upon 'men' and 'women' for filling up of 2467 vacancies for the post of Special Reserve constable force and Bandsmen.

BRIEF FACTS

1. It is respectfully submitted that the Petitioner No. 1 Society is a registered society working towards the upliftment and betterment of sexual minorities like hijras, kothis, homosexuals, etc for the past 20 years.

2. It is submitted that the Petitioner No. 2 belongs to the transgender community and is working toward sensitization and destigmatisation of the transgender community.
3. It is respectfully submitted that Respondent No. 3 issued a Notification No. 15/2019-2020 calling upon 'men' and 'women' for filling up of 2467 vacancies for the post of Special Reserve constable force and Bandsmen. It is submitted that the age, weight and other criteria for the two genders of 'male' and 'female' are also specified therein.
4. It is respectfully submitted that the impugned notification is in clear violation of the directions given by the Hon'ble Apex Court in *NALSA v. Union of India (2014) SCC 438*, recognising the employment, educational and other fundamental rights of the 'third gender'.
5. Hence, being aggrieved by the unconstitutionality of Notification No. 15/2019-2020, the Petitioner herein is constrained to file the present Writ Petition.

BANGALORE

DATE:

ADVOCATE FOR PETITIONER

IN THE HIGH COURT OF KARNATAKA: AT BENGALURU

(Original Jurisdiction)

W.P. No. OF 2020

BETWEEN:

1. Sangama,

,

... Petitioner No. 1

2. Nisha Gullar,

D/o _____,

Aged about ____ years,

R/o _____

... Petitioner No. 2

AND

1. State of Karnataka,

By Chief Secretary,

Vidhan Soudha,

Ambedkar Veedhi,

Bangalore - 560001

... Respondent No. 1

2. Director General of Police,

Police Headquarters,

Nrupathunga Road,

Bangalore - 560009

... Respondent No. 2

3. Director,

Karnataka State Police,
Carlton house, Palace road,
Bangalore - 560001

... Respondent No. 3

MEMORANDUM OF WRIT PETITION UNDER ARTICLE 226
& 227 OF THE CONSTITUTION OF INDIA

The Petitioners herein most respectfully submit as under:-

1. It is respectfully submitted that the Petitioner No. 1 Society was registered as a Society with 11 members under the Karnataka Society Registration Act, in Bangalore in 2001. It is submitted that the Petitioner No. 1 is an organization working for the upliftment of sexual minorities, sex workers and people living with HIV. It is a human rights organization for individuals oppressed due to their sexual preference and is tirelessly working for the oppressed sexual minorities like hijras, homosexuals, bisexuals, transgenders, kothis, etc for the last 20 years. It is submitted that the Petitioner No. 1 Society has undertaken several campaigns for sensitization and removal of stigmatization of sexual minorities, including lobbying against discriminatory laws.
2. It is respectfully submitted that Petitioner No. 2 is a member of the transgender community, dedicatedly working towards the betterment of the transgender community in all spheres of life like employment, education, health care, etc. It is submitted that Petitioner No. 2 has played an active role in improving the condition of the transgender community, both in her individual capacity as well as in collaboration with Petitioner No. 1 society.

3. It is respectfully submitted that the Respondent No. 3 issued a Notification No. 15/2019-2020 dated _____ calling for recruitment for filling up vacancies of a total of 2672 posts including 2420 vacancies to the post of Special Reserve Constable Force and 252 Bandsmen posts. A copy of the said Notification (hereinafter referred to as '*impugned notification*') is herewith produced for the kind perusal of this Hon'ble Court and marked as *Annexure 'A'*.

4. It is respectfully submitted that the impugned notification calls for filling up of the aforestated vacancies, specifies only 'Men' and 'Women' as the genders which can apply for the vacancies. It is submitted that throughout the impugned notification the age, weight, and other specifications are given pertaining separately only to 'Men' and 'Women', in total disregard of the '*Third Gender*'.

5. It is respectfully submitted that the organisation has left out the '**third gender**' category but instead restricted the applications to the binary of male and female gender.

6. It is respectfully submitted that the Hon'ble Supreme Court had recognised the legal rights of the third gender persons and held that they were fully entitled to Fundamental Rights under the Constitution and under International law.

7. It is respectfully submitted that a perusal of the impugned notification shows that the same is in contravention of rights of Transgender persons and the same affects the Constitutional and Fundamental Rights of the

Transgender persons under Article 14, 19 & 21 of the Constitution of India.

8. It is respectfully submitted that the Petitioner does not have any alternative efficacious remedy and thereby has approached this Hon'ble High Court of Karnataka.
9. It is respectfully submitted that, being aggrieved by the impugned notification No. 15/2019-2020 dated _____, the Petitioner herein is challenging the constitutionality of the impugned notification, on following among other grounds.

GROUND

10. It is respectfully submitted that the law is now settled regarding the legal entitlement of the transgender community to be covered within a mandatory separate category of 'Third gender' and hence equal access to all Fundamental and Constitutional rights.
11. It is respectfully submitted that the Apex Court had made provisions for legal recognition of “*third gender*” and established by way of judicial pronouncement, their legal entitlement to equality in employment, education and other spheres of life. Thus, leaving out the “third gender” in the said impugned notification amounts to a denial of Fundamental Rights to the third gender persons.
12. It is respectfully submitted that the Hon'ble Apex Court in **National Legal Services Authority (Nalsa) vs. Union of India (2014) 5 SCC 438**,

established the position of transgender community *vis a vis* Article 14 of the Constitution, as follows:

"Article 14 does not restrict the word 'person' and its application only to male or female. Hijras/transgender persons who are neither male/female fall within the expression 'person' and, hence, entitled to legal protection of laws in all spheres of State activity, including employment, healthcare, education as well as equal civil and citizenship rights, as enjoyed by any other citizen of this country."

It is submitted that the impugned notification, therefore by explicitly inviting applications only from "men" and "women" category of gender, violates the rights of the transgender community, bestowed by Article 14 of the Constitution and hence the impugned notification is ultra vires the Constitution.

13. It is respectfully submitted that the Hon'ble Apex Court in the aforesaid NALSA judgment specifically recognised the sex based discrimination faced by the Transgender Community and the resultant impact of the same in their employment, education, etc. The Apex Court observed that:

"Article 16 not only prohibits discrimination on the ground of sex in public employment, but also imposes a duty on the State to ensure that all citizens are treated equally in matters relating to employment and appointment by the State."

Thus, impugned Notification directly attacks the rights bestowed upon the transgender community by Article 16 and hence must be struck down as unconstitutional.

14. It is respectfully submitted that the impugned notification also violates the rights of the transgender community with reference to Article 19(1)(g) of the Constitution, by limiting the avenues available to the transgender communities. It is submitted that the impugned notification by omitting the 'Third person'/'others'/'transgender' category for recruitment, has seriously impaired the Constitutional freedom of the transgender community to practice any profession of their calling and hence the impugned notification must be struck down on that ground alone.

15. It is respectfully submitted that the impugned notification also violates Article 21 rights of the transgender community. Recognition of one's gender identity lies at the heart of the fundamental right to dignity. Gender constitutes the core of one's sense of being as well as an integral part of a person's identity. Legal recognition of gender identity is, therefore, part of right to dignity and freedom guaranteed under our Constitution.

16. It is respectfully submitted that the Hon'ble Apex court in aforesaid NALSA judgment have recognised the transgender as 'Socially and Economically Backward Classes (SEBCs) and therefore called upon States to provide reservation for the community in accordance with Article 16(4) of the Constitution. The Apex Court stated that:

"TGs have been systematically denied the rights under Article 15(2) that is not to be subjected to any disability, liability, restriction or condition

in regard to access to public places. TGs have also not been afforded special provisions envisaged under Article 15(4) for the advancement of the socially and educationally backward classes (SEBC) of citizens, which they are, and hence legally entitled and eligible to get the benefits of SEBC. State is bound to take some affirmative action for their advancement so that the injustice done to them for centuries could be remedied. TGs are also entitled to enjoy economic, social, cultural and political rights without discrimination, because forms of discrimination on the ground of gender are violative of fundamental freedoms and human rights. TGs have also been denied rights under Article 16(2) and discriminated against in respect of employment or office under the State on the ground of sex. TGs are also entitled to reservation in the matter of appointment, as envisaged under Article 16(4) of the Constitution. State is bound to take affirmative action to give them due representation in public services."

17. It is respectfully submitted that by way of the NALSA judgment, the Hon'ble Supreme Court has provided the following directions under the heading **"The Right To Freedom Of Opinion And Expression"**:

*"Ensure that the outputs and the organisation of media that is State-regulated is pluralistic and non-discriminatory in respect of issues of sexual orientation and gender identity and that the **personnel recruitment and promotion policies of such organisations are nondiscriminatory on the basis of sexual orientation or gender identity;**"*

18. It is respectfully submitted that the Apex Court directed both Centre and the State Governments to take steps to treat the 'third-gender' as socially

and educationally backward classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments. Since, the recruitment drive for the police constables falls into the ambit of public appointments, any refusal or denial of third-gender persons from applying for such posts amounts to contempt of Hon'ble Supreme Court.

19.It is respectfully submitted that the Hon'ble Apex Court also directed that in the absence of a domestic law for protection of rights of the transgender community, international law on the same would be applicable. It is submitted that denial of including 'third gender' persons in the government recruitment amounts to a violation of the international treaties such as Universal Declaration of Human Rights, 1948 and International Covenant on Civil and Political Rights, 1966 (ICCPR). Further, Article 6 of the Universal Declaration of Human Rights, 1948 and Article 16 of the International Covenant on Civil and Political Rights, 1966 (ICCPR) recognize that every human being has the inherent right to live and this right shall be protected by law and that no one shall be arbitrarily denied that right.

20.It is respectfully submitted that in the case of **Ganga Kumari vs. the State of Rajasthan WP No. 14006/2016**, wherein the Petitioner was selected to the police force, but later her selection was cancelled after learning that the Petitioner belonged to the 'third gender'. It is submitted that the Hon'ble Rajasthan High Court had upheld the Fundamental Rights of the Petitioner by holding that

"We, therefore, conclude that discrimination on the basis of sexual orientation or gender identity includes any discrimination, exclusion,

restriction or preference, which has the effect of nullifying or transposing equality by the law or the equal protection of laws guaranteed under our Constitution, and hence we are inclined to give various directions to safeguard the constitutional rights of the members of the TG community. The TGs are also citizens of this country. They also have equal right to achieve their full potential as human beings. For this purpose, not only they are entitled to proper education, social assimilation, access to public and other places but employment opportunities as well. The discussion above while dealing with the first issue, therefore, equally applied to this issue as well."

21. It is respectfully submitted that the impugned notification not only violates the Constitutional and Fundamental rights of the Petitioner but also goes against the social welfare schemes for the community and push the community further back into the dark and hence the impugned notification is liable to be struck down on the ground of unconstitutionality.

INTERIM GROUNDS

It is respectfully submitted that the impugned notification has been issued with blatant disregard of the mandates of the Hon'ble Apex Court laid down in *NALSA v. Union of India (2014) SCC 438* and is in gross violation of Article 14, 19, 21 of the Constitution. It is submitted that the last date for filling applications for the posts called for in the impugned notification is _____, after which the process for screening applications and recruitment will commence for the aforesaid posts. Therefore, there is an urgent need to stay the operation of the impugned notification, failing which grave injustice to the transgender community would be

committed, beside wilful disobedience of the mandate of the Hon'ble Supreme Court.

PRAYER

WHEREFORE the Petitioner most humbly prays that this Hon'ble Court be pleased to:

- a. Issue a Writ in the nature of mandamus to the Respondent No. 2 & 3 to include a separate category for transgender persons for the post of Special Reserve Constable Force as well as Bandsmen, in the Notification No. 15/2019-2020 dated _____ and consider all the applications by the transgender at par with other two gender categories.

- b. Issue a Writ in the nature of mandamus directing Respondent No. 1 to frame a scheme for reservation for the transgender community in the recruitment to post of Special Reserve Constable Force as well as Bandsmen as called for in the Notification No. 15/2019-2020 dated _____.

- c. Issue any order or directions as this Hon'ble Court deems fit in the facts and circumstances of the case in the ends of justice and equity.

INTERIM PRAYER

It is most humbly and respectfully prayed that this Hon'ble Court be pleased to stay the operation of the impugned Notification No. 15/2019-20 dated _____, till the disposal of the present Writ Petition in the interest of equity and justice.

BENGALURU.

DATE:

ADVOCATE FOR PETITIONER

Address for Service:-

REACHLAW

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Kumaracot Layout

Bengaluru – 560001.