

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18100 of 2015

Dr. Santosh Kumar, son of Gokul Chandra Das, resident of Mohalla- MTM Ghosh Road, Champa Nagar, P.S- Nath Nagar, District- Bhagalpur, at present posted as Medical Officer, Sadar Hospital, Madhepura, P.S.- Madhepura, District- Madhepura.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Health Department, Government of Bihar, Patna.
3. The Secretary, Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg, Bailey Road, Patna.
4. The Joint Secretary-cum-Examination Controller, Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg, Bailey Road, Patna.
5. The District Magistrate, Patna.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr Yogesh Chandra Verma, Sr. Advocate
Mr. Rajesh Kumar
For the State : Mr. Kumar Alok, SC 8
Mr Rikesh Sinha, AC to SC 8
For the BPSC : Mr Sanjay Pandey

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 09-03-2016

Petitioner was an applicant for the post of Medical Officer in response to Advertisement No.15 of 2014, which is Annexure-1 to the writ application. After having gone through the process of selection, his result was declared under the General Category. Keeping in view the marks he had obtained after the overall performance, he was not appointed as he did not have the requisite merit position to be appointed as a General Category candidate.

Submission of learned senior counsel for the petitioner is that the petitioner is Tanti by caste. He belonged to Extremely

Backward Caste but while the process of such selection was on, the State of Bihar in its wisdom decided to label the Tanti as Scheduled Caste instead of Extremely Backward Caste with effect from 1.7.2015.

There is no dispute, therefore, that the petitioner comes from a weaker section of the society and is entitled to the benefit of reservation. Since the respondents authorities did not extend the benefit of reservation, which would have surely given him an opening, he decides to file the present writ application seeking a mandamus or direction upon the BPSC as well as the State.

Some facts are not in dispute that the advertisement was issued on 18.7.2014. Pursuant to which petitioner responded. The last date for making applications was 20.8.2014. The results were declared on 12.10.2015. The problem now arises is that the petitioner produced a certificate of caste at the time of filing his application under the EBC Category which he himself has annexed at page 19 of the writ application but is dated 14.3.2008. In terms of clause 9 of the advertisement, such a certificate must be valid and issued within one year of the application being made by a candidate. Therefore, the respondent authorities did not treat the petitioner to be an EBC and decided to treat him in General Category. Since the petitioner did not perform well enough in the General Category, he was not appointed.

There is no mystery, there is no mischief and there is no manipulation as such why the petitioner has not been appointed.

Learned senior counsel submits that the candidates were given extended time till 24.7.2015 to produce the missing certificates or supplemental certificates, which are required for consideration for such appointment. As they say that misfortune does not strike an individual alone since the Tanti had been declared as a Scheduled Caste when the petitioner demanded a certificate of Creamy layer and Caste Certificate, the authorities issued him a certificate of Scheduled Caste. In other words, there is mismatch between declaration made by the petitioner originally in the application vis- a- vis the certificate he tried to produce.

The law is well settled that any change in status or caste will take effect prospectively and cannot relate back to a back date especially when the notification does not indicate so. In the present case there is no pleading that the notification treating Tanti as Scheduled Caste would relate back prior to 1.7.2015. In other words, petitioner will have to be treated in the category of EBC and he would continue to derive benefit of EBC. Since earlier caste certificate issued by the petitioner was dated 14.3.2008, that was no certificate in the eye of law in terms of the advertisement and requirement. The second certificate again, as already noticed, would amount to a



mismatch between declaration made by the petitioner and the change, which came about. That is the only reason why the petitioner was denied the benefit of reservation, which is attributable to the petitioner and not to the respondents. The respondents, therefore, cannot be saddled with the responsibility of a mandamus or direction to appoint the petitioner on the post of a Medical Officer merely because petitioner happens to be an EBC candidate or may be a Scheduled Caste now in the given facts and circumstances.

Learned senior counsel thereafter relies on a decision rendered by the Hon'ble Apex Court in Civil Appeal No.1691 of 2016, which was the case of Ram Kumar Gijroya v. Delhi Subordinate Services Selection Board & another that the object of providing reservation is to provide equality of opportunity and that any benefit meant for such caste must accrue to them.

There cannot be any quarrel with the proposition enunciated by the Hon'ble Apex Court but the proposition has to be applied to a given set of facts. If any indulgence is shown to the petitioner, it will surely have a fall out on already selected and appointed candidates. Another factor which compels the Court not to disturb the equilibrium and settled position is that a new requisition has already been received by the BPSC and looking at the large number of vacancies, which exists, petitioner will have an opportunity

to participate and get selected and this Court only hopes that the follies which he committed in the previous exercise is taken care of in this round of selection.

Writ application has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

sk

U			
---	--	--	--