

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13730 of 2018

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Md. Muzaffar Iqbal @ Md. Mujafafar Ikabal, son of late Md. Ali Rahman @
Md. Mannan Ali Rahamani, resident of village- Mazharpatti, P.S.-
Udakishunganj, District- Madhepura.

... .. Petitioner

Versus

1. The State of Bihar through Secretary, Department of Health and Family Welfare Government of Bihar, Patna.
2. Executive Director, State Health Society, Pariwar Kalyan, Bhawan, Sheikhpura, Patna-14.
3. The Deputy Director, Health Services-cum-State Programme Officer (Tuberculosis) Bihar, Agam Kuan, Patna.
4. The Regional Deputy Director, Health Services Koshi Division, Saharsa.
5. The District Magistrate-cum-Chairman, District Health Society, Madhepura.
6. The District Health Society, Madhepura through Civil Surgeon cum Member Secretary.
7. Md. Jubair Shafi, son of Md. Yakub Shafi, resident of Village & P.O.- Bhavni, P.S.-Gamharia, District- Madhepura.
8. Mayank, son of Naveen Kumar Singh, resident of village- Tilakpur, P.O.- Mahmooda, P.S.-Alamnagar, District- Madhepura.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Shivendra Kishore, Sr. Advocate Mr. Nafisuzzoha, Advocate
For the Respondent/s	:	Mr. Nagendra Pd. Yadav- SC-23 Vijaya Laxmi Srivastava, A.C. to S.C.-23

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 05-11-2018

Heard learned counsel for the petitioner and
learned counsel for the State.



2. In this case, the petitioner is seeking his appointment in place of Moni Kumari, who has been appointed as Senior Treatment Supervisor, claiming at least one candidate of unreserved category should be appointed out of six posts advertised for the recruitment or appointment for Senior Treatment Supervisor.

3. An advertisement dated 23.06.2016 was published for six post of Senior Treatment Supervisor; three posts were meant for unreserved category candidates, one post meant for B.C category candidate, one post for E.B.C. category candidate and one post for S.C. category candidate. The petitioner is from unreserved category candidate, claiming that one post should be meant for him for the appointment under unreserved category as under that category he has a better marks than to Moni Kumari.

4. In support of his submission, he has placed reliance on the decision rendered in the case of ***Rajesh Kumar Daria vs. Rajasthan Public Service Commission and Ors.*** reported in ***(2007) 8 S.C.c. 785***, especially paragraph nos. 6, 7 and 9, wherein the Hon'ble Supreme Court has dealt with in what manner the vertical reservation vis-a-vis horizontal reservation will be acted upon and held that the reservation on caste line emanates from Article 16(4) of the Constitution of India deals



with caste based reservation is vertical reservation and the reservation on the class as like, women and handicapped emanates from Article-16(1) of the Constitution of India. Both operate in a different manner and different field. In the matter of horizontal reservation, it has to be ensured that the number of posts meant for horizontal reservation should remain in the list of selected candidates, if already available, there is no requirement of any further addition in the list. In case of deficit in that category to that extent, candidate will be added and the last candidate will be pushed down in that category to the extent of deficit in number.

5. In the present case, the position is that one Md. Juber Saphi is E.B.C. category candidate, has obtained 67.8% marks, Mayank is B.C. category candidate, has obtained 65.0% marks, Subhash Kumar is S.C. category candidate, has obtained 62.6% marks, Rajesh Kumar Ranjan is B.C. category candidate, has obtained 62.6% marks, Rajeev Ranjan is B.C. category candidate, has obtained 62.5% marks, Md. Muzaffer, present petitioner, is U.R. category candidate, has obtained 62.0% marks and Moni Kumari is B.C. category candidate, has obtained 61.8% marks. So far the petitioner's position in the merit list is concerned, he is at serial no.6, two persons, namely



Juber Saphi and Mayank have been appointed under the reserved category, Subhash Kumar has been appointed under S.C. category, Rajesh Kumar Ranjan and Rajeev Ranjan have been appointed under B.C. category and Moni Kumari has been appointed under female unreserved category.

6. Grievance has been raised by the petitioner has Moni Kumari should not have been appointed as she has obtained lesser marks than to the present petitioner, so in her place the petitioner should have been appointed. As per the pleading, the post meant for the woman candidate (U.R.) and in unreserved post any female candidate having highest marks in that category, will be adjusted, and as such, Moni Kumari, has been appointed as female candidate naturally she is the best candidate among female category. Even presuming that the contention of the petitioner is correct that Moni Kumari has lesser marks than to the petitioner, in such circumstance, he should be adjusted under unreserved category is completely not sustainable in view of the fact that already three persons having higher marks than to the petitioner and if any person will be adjusted under unreserved category is Subhash Kumar, who has secured 62.6% marks and next persons will be Rajesh Kumar Ranjan and Rajeev Ranjan, they have better marks than to the



petitioner. So in no stretch of imagination, the petitioner could get a birth in the unreserved category as well as it is well settled principle of law that under unreserved category quota whoever has better marks falling in any category will be adjusted and appointed under unreserved category.

7. In such view of the matter, this Court does not find any merit in this writ petition. Accordingly, the same is dismissed.

(Shivaji Pandey, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
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