

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3082 of 2019

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Dr. Sudha Kumari W/o- Ranjeet Prasad Sinha, D/O- Gajadhar Prasad R/o-
Village- Vasan Bigha, P.O and P.S.- Bain District-Nalanda Petitioner/s
Versus

1. The State of Bihar and Ors through the Chief Secretary, Govt. of Bihar, Patna
2. The Principal Secretary General Administration Department, govt. of Bihar, Patna
3. The Principal Secretary Education Department, Govt. of Bihar, Patna.
4. The Secretary, The Bihar Public Service Commission Patna
5. The Chairman Bihar Public Service Commission, Patna
6. The Joint Secretary-Cum- the Examination Controller, Bihar Public Service Commission Patna
7. The Registrar The B.R.A, Bihar University, Muzaffarpur
8. Mr. Mukul Kishore Verma, The Registrar B.R.A, Bihar University, Muzaffarpur
9. Mrs. Sudha Kumari, The Registrar, The B.R.A, Bihar University, Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Purushottam Kumar Jha
For the Respondent/s	:	Mr. Subhash Chandra Mishra (Sc16)
For BPSC	:	Mr. Ashok Kr. Choudhar
		Mr. Amit Kr. Tiwary

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

3 06-08-2019 Heard learned counsel for the petitioner and the
counsel appearing on behalf of the BPSC.

2. Petitioner is aggrieved by the decision of the BPSC
rejecting candidature on account of the fact that petitioner has
not submitted the creamy layer certificate of the father.

3. Mr. Purushottam Kumar Jha, learned counsel
appearing on behalf of the petitioner would submit that at the
time of interview the caste certificate and creamy layer
certificate was produced by the petitioner but no one objected



the submission of creamy layer certificate in the name of husband of the petitioner. He submits that others have been granted benefit in the matter of selection and appointment notwithstanding the fact that they have submitted the certificate of creamy layer issued in the name of husband by providing opportunity to rectify the mistake and submit creamy layer certificate in the name of the father for considering their candidature for appointment.

4. Mr. Jha has submitted that Annexure-6 is the indicative of the fact that respondents issued letter after completion of interview to file creamy layer certificate yet the case of the petitioner was not considered for selection and appointment.

5. Mr. Jha has also enclosed gazette notification containing the guideline for submission of creamy layer certificate dated 8.3.2011 which finds reference in the advertisement Annexure-1. The gazette notification enclosed by way of I.A. is very specific in the matter of submission caste certificate and creamy layer certificate. The gazette notification in most unambiguous terms indicate that the applicant has to submit caste certificate and creamy layer certificate in the name of father of the applicant.



6. Considering the gazette notification containing guideline of the General Administrative Departments dated 8.3.2011, the Court does not find any illegality in the decision of BPSC rejecting candidature of the petitioner as petitioner was required to submit creamy layer certificate in terms of letter no. 673 dated 8.3.2011. The opportunity granted by BPSC was only available to the candidate to file caste certificate or creamy layer on 6.8.2018 and 7.8.2011 notwithstanding the opportunity to rectify the mistake and submit creamy layer certificate on 6.8.2018 and 7.8.2018, the petitioner has not availed that opportunity and therefore, the petitioner cannot be allowed to make grievance that petitioner was not provided opportunity to submit creamy layer certificate of the father of the petitioner.

7. Mr. Jha submits that other have been granted the benefit and the action of the respondents in denying the correction amounts to discrimination. It is well settled that if others have been illegally granted the benefit then no relief can be granted to perpetuate illegality. Reference in this regard may be made in the judgment of the Apex Court reported in **2006(3) SCC 330 in Raj Kumar Sharma & Ors. vs. The State of UP & Ors.** where the Apex Court has considered the issue of perpetuating illegality in submission of creamy layer



certificate in the name of father of the applicant which is quoted below:-

“Even if in some cases appointments have been made by mistake or wrongly that does not confer any right on another person. Article 14 of the Constitution does not envisage negative equality, and if the State committed the mistake it cannot be forced to perpetuate the same mistake. (See Sneh Prabha v. State of U.P., Secy, Jaipur Development Authority v. Daulat Mal Jain, State of Haryana v. Ram Kumar Mann, Faridabad C.T. Scan Centre v. D.G., Health Services, Jalandhar Improvement Trust v. Sampuran Singh, State of Punjab v. Dr. Rajeev Sarwa, Yogesh Kumar v. Govt. of Nct, Delhi, Union of India v. International Trading Co. and Kastha Niwarak Grihnirman Sahakari Sanstha Maryadit v. President, Indore Development Authority.”

8. Mr. Purushottam Jha, learned counsel submits with reference to Annexure-C whereby opportunity to rectify the mistake granted by the BPSC was not communicated to the petitioner. It was only in the website and as such the petitioner has failed to take cognizance of Annexure-C. The aforesaid submission is recorded only for the purpose of rejecting such submission. The information of the BPSC on the website is only



for the purpose public communication and not for the purpose of individual. He submits that until publication of the result, the case of the petitioner was in the BC category. Such submission is absurd and is rejected outrightly.

9. As a last limb of argument, Mr. Jha submits that there are vacancy available in the BC category.

10. The Court in the totality of the facts situation does not find any merit in this writ application and as such no positive direction can be issued in favour of the petitioner. However, liberty shall be available to the petitioner to approach the BPSC if there exist vacancy in the BC category (female), the BPSC may consider the case of the petitioner if there is no other legal impediment.

11. With the aforesaid, the writ application stands disposed of.

(Anil Kumar Upadhyay, J)

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