

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14431 of 2019

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Dr. Kumar Anand Son of Dr. Binod Kumar Resident of Khusrupur House,
Nanmuhiya, P.O. Guljarbag, P.S.- Alamganj, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Department of Health, Government of Bihar, Patna.
2. The Principal Secretary Department of Health, Government of Bihar, Patna.
3. The Bihar Public Service Commission, Patna Through its Chairman, 15 Jawaharlal Marg, Bailey Road, Patna.
4. The Chairman Bihar Public Service Commission, 15 Jawaharlal Marg, Bailey Road, Patna.
5. The Special Secretary-cum- Examination Controller Bihar Public Service Commission, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashhar Mustafa, Advocate
For the Respondent/s : Mr. Ramadhar Singh (GP 25)

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 30-07-2019

Heard the learned counsel for the parties.

2. The petitioner had applied against an advertisement no. 5 of 2015 for being appointed as a Dentist in the Health Department of Government of Bihar.

3. At the time of his application, with respect to his caste, he had declared that he belongs to the caste falling in EBC category. Shortly thereafter, the Government by a notification took away the aforesaid



caste of the petitioner from the list of EBC and placed it in the category of Scheduled Caste.

4. Since the petitioner had not furnished relevant certificate of EBC on the date of the interview according to the terms of the advertisement, he was treated in the general category and was not found to have secured more marks than the cut off for such category.

5. Hence the claim of the petitioner was rejected.

6. Mr. Ashhar Mustafa, learned counsel for the petitioner submits that it was not because of his wrong projection of his caste but only because of the decision of the Government to take away the caste to which the petitioner belongs from the category of EBC and take it to the list of Scheduled Castes and therefore he cannot be put to any disadvantage.

7. The next limb of argument of Mr. Mustafa, learned advocate is that on the day when the interview was to be held, a candidate was required to furnish relevant certificate with respect to his caste for taking the



advantage of reservation. Since the interview took place in the year 2018, notwithstanding the fact that the certificate of the caste for which declaration was made in the application had to be furnished, but it gave a leeway to the candidates for furnishing such certificate of the caste and category to which he belonged on the date of the interview.

8. The third argument of Mr. Mustafa, learned advocate is that without getting into the controversy of the caste having been declared a Scheduled Caste prospectively and not retrospectively, many posts earmarked for SC category candidates are still vacant and not fulfilled.

9. Under such circumstances, it has been urged that the case of the petitioner should be considered especially in view of the decision of the Supreme Court in ***Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board & Anr. 2016 (4) SCC 754*** which mandates that the advantages or disadvantages for a



particular caste attaches to a person since his birth which cannot be taken away.

10. Mr. Vikash Kumar, learned advocate for the respondent Commission submits that the aforesaid arguments on behalf of the petitioner, though on the first blush may appear to be reasonable and attractive but lacks substance.

11. The clause in the advertisement clearly refers to the requirement of a candidate to furnish certificate of creamy/non-creamy layer on the date of the interview. Any certificate which is required to be furnished on the date of advertisement has, per force to be with respect to the declaration made at the time of filling up of the form against such advertisement. The migration of the caste to which the petitioner belongs from EBC category to SC category was only later than the issuance of the advertisement and filling up the form of the petitioner. In that event, the caste of the petitioner, on the date of filling up the form, would be relevant and the petitioner cannot



be allowed to take advantage of the migration of his caste in the list of Scheduled Castes.

12. The argument with respect to the seats in the BC category remaining vacant also is not fit to be entertained for the reason that if some seats of SC category is left to be fulfilled, it can only be carried over to the next recruitment process, preferably in the same recruiting year. If it is found ultimately that candidates of SC category are not to be found, in that event, a decision could be taken for converting such earmarked posts to one under the General category but not otherwise.

13. Considering these aspects of the matter, this Court is of the view that the petitioner does not have a vested right to be considered on the ground that he now belongs to SC category and under which category, some posts have remained vacant.

14. It would be open for the petitioner, needless to say, to participate in the next recruitment process with his caste certificate, if at all such process is initiated.



15. Presently this Court does not find any reason to issue any mandamus for considering the case of the petitioner for being appointed against the same recruitment process.

16. The petition is dismissed.

17. The petitioner, if so advised, may approach the Government in the Health Department to consider the case of the petitioner as an interim measure because the petitioner claims himself to be a qualified doctor falling in SC category who could serve the department, if given the responsibility. The decision of the Health Department in that event shall be on considerations which would be within the parameters of law and within a reasonable time.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	NAFR
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