

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9176 of 2010

Sujata Singh, D/O Late Braj Nandan Prasad Singh, R/O Chakaram, North
S.K. Nagar, P.S. - Budha Colony, District- Patna.

... .. Petitioner

Versus

1. State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. Chief Secretary, Government of Bihar, Old Secretariat, Patna.
3. Secretary, Personnel and Administrative Reforms Department, Government of Bihar, Patna.
4. Bihar Public Service Commission through Chairman, Bihar Public Service Commission, Bailey Road, Patna.
5. Chairman, Bihar Public Service Commission, Bailey Road, Patna.
6. Joint Secretary-cum-Special Executive Officer-cum-Examination Controller, Bihar Public Service Commission, Bailey Road, Patna.
7. Rozy Kumari, Roll No. 156194, D/O not known.
8. Rakhi Kumari, Roll No. 117998, D/O not known.
9. Aruna Kumari, Roll No. 127665, D/O not known.
10. Anisha Singh, Roll No. 362361, D/O not known.
11. Baby Kumari, Roll No.133027, D/O not known.
12. Suresh Kumar
13. Nidhi Raj
14. Manas Milind
15. Menka Singh
16. Poonam Keshari
17. Switi Suman
18. Reeta Singh
19. Anirudha Prasad Yadav
20. Pawan Kumar
21. Vikash Kumar
22. Vijay Kumar
23. Lovely
24. Seema Kumari
25. Sanjula Kumari
26. Punam Kumari

All through the Chairman, Bihar Public Service Commission,
Bailey Road, Patna.



... .. Respondents

with

Civil Writ Jurisdiction Case No. 15004 of 2010

Jagriti Prabhat, daughter of Awadhesh Kumar, resident of Station Road Hilsa,
P.S.Hilsa, Distt-Nalanda.

... .. Petitioner

Versus

1. The State of Bihar, through Principal Secretary, Department of General Administration, Government of Bihar, Patna.
2. The Chairman, Bihar Public Service Commission Bailey Road, Patna
3. The Secretary, Bihar Public Service Commission Bailey Road, Patna

... .. Respondents

with

Civil Writ Jurisdiction Case No. 10616 of 2011

Smt. Ratna Prasad, daughter of Sri Guru Sahay Prasad, resident of A-40,
Ashokpuri Colony, Khajpura, P.O. B.V. College, P.S.-Shastrinagar, Distt.
Patna-800014.

... .. Petitioner

Versus

1. The State of Bihar, through Chief Secretary, Government of Bihar, Patna.
2. The Chief Secretary, Govt. Of Bihar, Old Secretariat, Patna.
3. Secretary, Personnel and Administrative Reforms Department, Govt. Of Bihar, Patna.
4. Bihar Public Service Commission through its Chairman, Bailey Road, Patna.
5. Chairman, Bihar Public Service Commission, Bailey Road, Patna.
6. Joint Secretary-Cum-Officer On Special Duty-Cum-Examination Controller, Bihar Public Service Commission, Bailey Road, Patna.
7. Ms. Rozy Kumari, Roll No. 156194, D/O Name Not Known.
8. Ms. Rakhi Kumari, Roll No. 117998, D/O Name Not Known.
9. Ms. Menka Singh, Roll No. 132669 D/O Not Known.
10. Ms. Aruna Kumari, Roll No. 127665 D/O Not Known.
11. Ms. Anisha Kumari, Roll No. 362361 D/O Not Known.
12. Ms. Baby Kumari, Roll No. 133027 D/O Not Known.
13. Ms. Lovely, Roll No. 196534



14. Ms. Seema Kumari, Roll NO. 142310
15. Ms. Sanjula Kumari, Roll NO. 178301
16. Punam Kumari, Roll No. 127111
17. Mr. Suresh Kumar, Roll No. 235600
18. Ms. Nidhi Raj, Roll NO. 351049
19. Mr. Manas Milind, Roll No. 211901
20. Ms. Poonam Keshari, Roll No. 237395
21. Ms. Switi Suman, Roll No. 158146
22. Ms. Reeta Singh, Roll No. 138112
23. Mr. Vikash Kumar, Roll No. 249461 not known.

All through Chairman, Bihar Public Service Commission,
Bailey Road, Patna.

... .. Respondents

Appearance :-

(In Civil Writ Jurisdiction Case No. 9176 of 2010)

For the Petitioner/s	:	Mr. Siddhartha Prasad, Advocate
For the State	:	Mr. Alok Ranjan, A.C. to A.A.G.-5
For the B.P.S.C.	:	Mr. Lalit Kishore, Senior Advocate
		Mr. Satyabir Bharti, Advocate
For Private respondents	:	Mr. Amaresh Kumar Sinha, Advocate
		Mr. Alok Choubey, Advocate
		Mr. Manikved Sen, Advocate
		Mr. Subash Chandra, Advocate
		Mr. S.K. Ranjan, Advocate

(In Civil Writ Jurisdiction Case No. 15004 of 2010)

For the Petitioner/s	:	Mr. Sanjay Kumar, Advocate
For the State	:	Mr. Suman Kumar Jha, A.C. to A.A.G.-3
For the B.P.S.C.	:	Mr. Lalit Kishore, Senior Advocate
		Mr. Satyabir Bharti, Advocate
For the private Respondents:	:	Mr. Mukesh Kumar Singh, Advocate

(In Civil Writ Jurisdiction Case No. 10616 of 2011)

For the Petitioner/s	:	Mr. Rohitabh Das, Advocate
For the State	:	Mr. Raghwendra Kumar, S.C.-22
For the B.P.S.C.	:	Mr. Lalit Kishore, Senior Advocate
		Mr. Satyabir Bharti, Advocate

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

2. In all the three cases, identical issues have been raised and as such, all these writ petitions are being disposed of by this common judgment. For convenience, the facts of C.W.J.C. No. 9176 of 2010 are taken into consideration for adjudication these cases, as and when it will be deemed necessary the facts of other cases will also be taken into consideration.

3. In the present case, the petitioner is seeking relief for giving direction to respondents to make necessary amendments / correction in the final result, published by the Bihar Public Service Commission in connection with 48th to 52nd Common Combined Competitive Examination pertaining to Advertisement No.04 of 2007. Further, sought a relief that the petitioners should be given the proper placement in terms of their respective options, accordingly, they should be allotted and adjusted in the Bihar Administrative Service instead to the post of Labour Superintendent, as the petitioners have secured better rank than the private respondents, who have been selected and allotted different posts in Bihar Administrative Service.

4. The State of Bihar sent the requisition for recruitment of candidates in different departments of the State of Bihar, accordingly, an advertisement was published on



06.11.2007, inviting applications from interested persons having requisite qualification. In pursuance of the said advertisement, all the three petitioners along with others have filed their respective applications, giving their respective options in seriatim as well as they opted for reservation in option-5 i.e. Backward Class and option-6 i.e. Backward Class Female. Preliminary examination was conducted on 25.05.2008, the result of preliminary test was published on 19.09.2008, petitioners were declared successful in the preliminary examination, accordingly, they appeared in the mains examination, which was conducted in the year 2009. The result of mains examination was published by the Bihar Public Service Commission, the petitioners secured their respective places, whereafter they were called for interview, to which they appeared on different dates, the final result was published on 10.04.2010 (Annexure-6 of C.W.J.C. No. 10616 of 2011). Smt. Ratna Prasad (Petitioner of C.W.J.C. No.10616 of 2011) secured her place at serial no.232 in the merit list (Backward Class), was appointed as Labour Superintendent, Sujata Singh (petitioner of C.W.J.C. No. 9176 of 2010) secured her place at serial no.252 in the merit list (Backward Class), was appointed as Labour Superintendent and Jagriti Prabhat (petitioner of C.W.J.C.



No.15004 of 2010) secured her place at serial no.242 in the merit list (Backward Class), was appointed as Assistant Election Officer and those who are below in rank to these petitioners, namely, Rosy Kumari, who is at Serial No. 283 (Backward Class Female), Rakhi Kumari, secured her place at serial no.346 (Backward Class Female), Menka Singh, secured her place at serial no.348 (Backward Class Female), Aruna Kumari, secured her place at serial no.361 (Backward Class Female), Anisha Singh, secured her place at serial no.372 (Backward Class Female) and Baby Kumari, secured her place at serial no.383 (Backward Class Female) in the merit list, all have been adjusted in the Bihar Administrative Service, is the cause of hurt-burning to these petitioners, claiming that their position in the merit list is superior in rank, but they have been appointed in inferior services like Labour Superintendent as well as Assistant Election Officer whereas the private respondents, who are below in merit list to these petitioners have been appointed in the Bihar Administrative Services.

5. Smt. Ratna Prasad, filed a representation dated 15.04.2010 (Annexure-8), wherein she stated that her position is better than Rakhi Kumari and others have been appointed in the Bihar Administrative Service in the category of Backward Class



Female, having stated that they too have also opted for Backward Class Female category, so she should be given the rightful place in the Bihar Administrative Service. Another representation was filed on 07.03.2011 (Annexure-9) by Smt. Ratna Prasad, reiterating the same facts and requested the authority to do justice with her by giving her rightful place in the Bihar Administrative Service in the background of fact that those who are below in merit list have been allotted plum posts, whereas they have been appointed as Labour Superintendent (inferior post). She sought an information from the Bihar Public Service Commission under the Right to Information Act, formulating the question in the shape that she secured 232 rank in the merit list, she had also applied under the category of Backward Class Female, but in the final result she has not been considered in that category, inasmuch as, she had opted for the Bihar Administrative Service, but the same has not been allotted to her. Further question was framed, whether the Bihar Public Service Commission has considered her candidature in the category of Female Backward Class candidate and as to whether she has been given reservation in the category of Backward Class Female, sought the reasons for appointing candidates, who are lower in rank to her, but appointed in the Bihar



Administrative Service. The Bihar Public Service Commission vide letter no.18.05.2011 sent the reply by attaching the letters and Resolution (Annexures - 11, 12 and 13 of C.W.J.C. No. 10616 of 2011). From perusal of the Resolution, it appears that there was no provision for migration in between the Backward Class vis-a-vis Backward Class Female and also mentioning therein that persons of Backward Caste having better marks have been adjusted against the vacancies of Backward Class Category and those female of Backward Caste candidates, who could not be selected, residuary left out in merit list, have been adjusted in the Backward Class Female category vacancies. The claim of the petitioners for migration to Backward Class Female category was entertained.

6. Learned counsel for the petitioners placed reliance on the following judgments in support of the claim of the petitioners:-

- (i) ***Rajesh Kumar Daria vs. Rajasthan Public Service Commission and Others*** reported in ***2007 (8) SCC 785***.
- (ii) ***The Controller of Examination, Bihar Combined Entrance Competitive Examination, 1999 Vs. Nidhi Sinha & Anr.,***



reported in **2016 (3) PLJR 273.**

(iii) ***Tripurari Sharan and Another vs. Ranjit Kumar Yadav and Others*** reported in **2018 (2) SCC 656.**

(iv) ***Anurag Patel vs. U.P. Public Service Commission and Others*** reported in **2005 (9) SCC 742.**

(v) ***Union of India v. Ramesh Ram and Ors.,***
reported in **(2010) 7 SCC 234.**

7. By placing reliance the above judgments, learned counsel for the petitioners submits that as the petitioners have secured better place in the merit list than to the private respondents in Backward Category candidates and as such, they should have been adjusted in the Bihar Administrative Service, but instead of giving the benefit of first option, have been appointed as Labour Superintendent as well as Assistant Election Officer, which are inferior category posts.

8. Learned counsel for the petitioners has also placed reliance on Memo no.04 of 2009-363 of the Finance Department, Government of Bihar, showing Premier Service of the State in the pay scale of Rs.8,000-13,500/-, which has been



arranged in the following seriatim; (i) Bihar Administrative Service (ii) Bihar Police Service (iii) Bihar Finance Service (iv) Bihar Health Service (v) Bihar Engineering Service and (vi) Bihar Veterinary Service, submits, those who are below in rank in merit list have been given premier services of Bihar Administrative Service, in such circumstance, in terms of the decision of the *Ramesh Ram's case (supra)* the petitioners are also entitled for migration, as per their options given in the application forms, in the Backward Class as well as Backward Class Female Category.

9. However, learned counsel for the State did not dispute the proposition raised by the petitioners and also the claim of the petitioners for their adjustment in the Bihar Administrative Service and tacitly agreed to the submission of learned counsel for the petitioners.

10. Learned counsel for the Bihar Public Service Commission accepts that there should have been first migration and second migration, which has not been done and according to the judgment of the Hon'ble Supreme Court in the case of *Ramesh Ram (supra)* the petitioners should have been granted better place in the Bihar Administrative Service, but submits that after such a long period if the petitioners will be migrated it



will bring “*tsunami*” in the sense that there will be an administrative chaos and everyone will be disturbed. If such exercise is embarked, it may lead to a situation that the private respondents, who have been working in the Bihar Administrative Service since long, on implementation of the second migration, they may lose their services, so it will not be desirable and equitable that after such a long lapse of time this second migration should be acted upon and the petitioners should be adjusted in the Bihar Administrative Service and placed reliance on the judgment reported in ***Ravindra Kumar Singh vs. High Court of Judicature at Patna*** reported in **2016 (1) PLJR 865**.

11. It has further been submitted that the services which have been allotted to the petitioners are out of their choices, so it will not be desirable to interfere in the matter. In support of his submission, he placed reliance on the following judgments:-

- (i) ***Sudhansu Moses vs. The State of Bihar through the Chief Secretary and Ors.***
reported in **2015 (4) PLJR 521**.
- (ii) ***Rajesh Kumar and Others v. State of Bihar***



and Others reported in ***(2013) 4 SCC 690.***

12. The private respondents and possible effecting parties have also appeared and made their respective submissions by different counsel. Learned counsel for respondent nos. 23, 25 and 26 has also placed reliance on the decision rendered in the case of ***Rajesh Kumar and Others v. State of Bihar and Others*** reported in ***(2013) 4 SCC 690.***

13. Learned counsel for respondent no.16 has submitted that woman is a category of backward class and the idea of reservation is to maximize the involvement of the woman in Government service and as such, these respondents should not be disturbed as the implementation of the Policy will cause a prejudice to these respondents, in support of submission, placed reliance on the decision of the Hon'ble Supreme Court rendered in the case of ***Union of India vs. Ramesh Ram and Ors.*** reported in ***2010 SC 2691 para 44*** and submits that as there is no Rule in terms of Article 16 (1) (2) of the Constitution, inasmuch as the Policy has been framed and implemented in terms of the judgment rendered in the case of ***Chandrashekhar Azad vs. State of Bihar and Ors.*** reported in ***2007 (3) PLJR 391*** and further placed reliance on the decision rendered in the case of ***Union of India vs. M.K. Sarkar (2010)***



2 SCC 59, paras- 25 and 26 and *Union of India vs. Chaman Rana* reported in (2018) 5 SCC 798, paras 9 to 11.

14. In the present case, two questions has to be answered as to whether it was obligatory on the part of the Commission to embark the second migration in terms of the Backward Class candidate vis-a-vis Backward Class Female candidate and the petitioners should have been granted the better services as per their respective options in view of their better position in the merit list than the private respondents of these writ petitions, as explained herein-above that admittedly the petitioners are in better position in the merit list whereas the private respondents are below in the merit list, but on account of their adjustment in Backward Class Woman category they have been selected and appointed under the Bihar Administrative Service. Second, whether this Court should give a direction for adjustment of these petitioners in the Bihar Administrative Service in terms of the second migration on account of better position in the merit list in view of fact that such exercise will bring a “tsunami” i.e. administrative chaos in the whole administrative set up, inasmuch as, there is all possibility, on induction of present petitioners in the Bihar Administrative Service, the private respondents might be losing their services



and the persons who are outside the fence sitting idle would get an entry in the service, it will be nothing but a windfall to them. It will also lead to a situation that entire placement will get disturbed, in such a situation, will it be desirable for this Court to give such a direction for adjustment of these petitioners in the Bihar Administrative Service or to allow the petitioners to continue to hold same posts.

15. For giving answer to the first question, it would be necessary to consider the case of *Ramesh Ram (supra)*, there the question arose with regard to backward class candidates, who secured better rank and secured place in the unreserved category candidate, but they could not be placed at top three services, whereas those below in the merit list have been adjusted in the backward category vacancy, secured their position in the top three services and the question arose with regard to migration and the Court has held that if they have done better, which should not act as prejudice to their interest, if they do not opt for migration then they will be treated to be a general category candidate and those who have been adjusted under the reserved category candidate will remain unaffected, but in the event those who have secured better marks, have sought their migration to the Backward Class, in such circumstance, the



persons below in the merit list adjusted in the Backward Class category, will not have a precedence and the persons who are below in rank will have to vacate the place for those who have better marks and they will be pushed down.

16. It will be relevant to quote paragraph nos. 42, 56, 60, 70, 71 and 72 of the aforesaid judgment, which are as follows:-

“42. Therefore, we are of the firm opinion that MRC candidates who avail the benefit of Rule 16(2) and are eventually adjusted in the reserved category should be counted as part of the reserved pool for the purpose of computing the aggregate reservation quotas. The seats vacated by MRC candidates in the general pool will therefore be offered to general category candidates. This is the only viable solution since allotting these general category seats (vacated by MRC candidates) to relatively lower-ranked reserved category candidates would result in aggregate reservations exceeding 50% of the total number of available seats. Hence, we see no hurdle to the migration of MRC candidates to the Reserved Category.

56. The said observations are not of any assistance as no MRC candidate occupying a general category slot is being counted against the quota for the reserved category. For example those MRC candidates belonging to the OBC category



