

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.727 of 2018

=====

Shashi Bhushan Yadav, son of Bholanath Yadav, resident of Village- Maharaj
Ke Tola, P.O.- Khawashpur, P.S.- Krishnagarh, District- Bhojpur at Arrah.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary, Bihar, Patna.
2. The Principal Secretary, Department of Agriculture, Government of Bihar, Patna.
3. The Principal Secretary, Department of General Administration, Government of Bihar, Patna.
4. The Agriculture Production Commission, Department of Agriculture, Government of Bihar, Patna.
5. The Director Agriculture, Department of Agriculture, Government of Bihar, Patna.
6. The District Agriculture Officer, Bhojpur, District- Bhojpur at Arrah.
7. The Bihar Staff Selection Commission, Patna through its Chairman.
8. The Chairman, the Bihar Staff Selection Commission, Veterinary College Compound, P.O.- B.V. College, Patna.
9. The Secretary, the Bihar Staff Selection Commission, Veterinary College Compound, P.O.- B.V. College, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Nityanand Mishra
For the BSSC	:	Mr. Ashok Kumar Dubey
		Ms. Mamta Vijaya
		Ms. Anu Shree
For the Respondent/s	:	Mr. Sarvesh Kr. Singh, AAG-13
		Mr. Ravi Kumar, AC to AAG-13

=====

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 17-05-2019

The present petition has been filed for quashing and setting aside the order dated 22.07.2017 issued vide Memo dated 18.08.2017 passed by the Bihar Staff Selection Commission, Patna (hereinafter referred to as the Commission) whereby and whereunder the candidature of the petitioner has been rejected on the ground that non-creamy layer certificate



has not been produced by the petitioner at the time of his counseling, as such, the candidature of the petitioner has been shown under the general category. It has further been prayed to consider the candidature of the petitioner under the BC (Backward Caste) category and publish the result of the petitioner.

2. The brief facts of the case are that the petitioner is working as Agriculture Coordinator since the date of his appointment on contractual basis. The contractual service of the petitioner has been extended from time to time and in the meantime, an advertisement was published by the Commission on 29.04.2015 for the purposes of making recruitment to the post of Agriculture Coordinator against the sanctioned and vacant 4391 posts under the Agriculture Directorate, Bihar, Patna. Clause 7 of the said advertisement prescribes the procedure for selection wherein it has been provided that the merit list shall be prepared on the basis of the percentage obtained in the graduation exam and on the basis of the work experience in the Agriculture Department, Government of Bihar. The percentage obtained in the graduation level was to be valued up to a maximum marks of 70 and 30 marks were to be given to the work experience. In Clause 4(ii), it has been



provided that the caste certificate issued by the notified Circle Officer regarding certification of the caste of the backward class and extremely backward class which states about the candidate not belonging to the Creamy Layer, shall be considered valid. Similar provision has also been made with regard to the schedule caste / scheduled tribe candidates. It has further been provided that at the time of applying online, it is not necessary to furnish caste certificate, but at the time of counseling, the candidates belonging to the backward category / extremely backward category should produce the non-creamy layer certificate and the SC/ST candidates should produce the caste certificate and in case, they fail to submit the said certificates, such candidates would be considered under the unreserved category and they will not get the benefit of reservation. It has further been provided that at the time of filling up of the form, the candidates should keep in mind that they should only claim the benefit of that reservation category under which they fall.

3. It is the further case of the petitioner that being fully eligible, the petitioner had submitted his application online whereafter, admit card was issued to the petitioner for the purposes of counseling. The petitioner had appeared before the concerned authority and counseling was conducted on



05.05.2016. The petitioner is stated to have filed his objection on the earlier result dated 05.08.2016, individually before the Secretary of the Commission and before the other authorities. It is further submitted by the petitioner that the petitioner had submitted his non-creamy layer certificate at the time of his initial selection and also at the time of his counseling. It has also been stated that the non-creamy layer certificate of the petitioner is dated 31.12.2012. It is the case of the petitioner that the petitioner was surprised when his name did not find place, when the results were declared whereafter many candidates approached this Hon'ble Court and this Hon'ble Court vide order dated 30.05.2017 passed in C.W.J.C. No. 13658 of 2016 had directed the Commission / the authority concerned to consider the objections raised by the petitioners of the said case and dispose of the same by a speaking order. The writ petition filed by the petitioner herein i.e. C.W.J.C. No. 15063 of 2016 was also disposed of along with the aforesaid writ petitions bearing C.W.J.C. No. 13658 of 2016. Although, the petitioner had filed representation dated 21.04.2017 and 29.05.2017 before the Chairman of the Commission, he had again filed his objection online before the Commission in light of the aforesaid order dated 30.05.2017 passed by this Court. Thereafter, the



Commission had published the combined Selection List of Agriculture Coordinator vide Memo dated 24.11.2017 and 25.11.2017 on its website, however, the roll number of the petitioner did not find place in the said result declared by the Commission. The Commission had also passed a speaking order dated 22.07.2017 on the online objection of the petitioner herein whereby and whereunder the claim / candidature of the petitioner has been rejected on the ground that the petitioner had not submitted the non-creamy layer certificate at the time of counseling. It was further noted in the said order that the caste certificate is dated 02.05.2016 and the petitioner did not submit the non-creamy layer certificate on the date of counselling.

4. The learned counsel for the petitioner submits that admittedly, the petitioner had submitted the non-creamy layer certificate, which is evident from the impugned order dated 22.07.2017, but still the candidature of the petitioner has not been considered. It is further submitted that the action of the Respondent-Commission in preparing the Combined Selection list / result dated 24/25.11.2017 is irrational, mala fide, arbitrary, unjustified, discriminatory and illegal as well as is based on pick and choose basis.

5. It has further been submitted that the Commission had



published necessary instructions regarding filing of online objection for the Agriculture Coordinator (Annexure-8 to the writ petition) wherein at Serial No. 4, it has been specified that if any candidate has, by mistake, wrongly filled the educational qualification, experience figure and / or has wrongly filled the reservation category, which is different from the original, information thereof can be registered in the form of objection, failing which in future the recommendation / appointment would be liable to be cancelled without giving reasons.

6. The learned counsel for the petitioner has relied on a judgment rendered by the Hon'ble Apex Court, reported in (2016) 4 SCC 754 to contend that the candidature of those candidates who belong to the SC/ST categories cannot be rejected simply on account of late submission of caste certificate since the same would amount to denial of equality of opportunity, as contemplated under Articles 14, 15, 16 and 39-A of the Constitution of India.

7. The learned counsel for the petitioner has also relied upon a judgment dated 04.10.2016 passed by the learned Division Bench of this Court in L.P.A. No. 651 of 2016 and other analogous cases, judgment dated 17.11.2016 passed in C.W.J.C. No. 6151 of 2016, judgment dated 25.05.2017 passed in



C.W.J.C. No. 3868 of 2016 and judgment dated 13.07.2017 passed in C.W.J.C. No. 1329 of 2016 to contend that the action of the authorities in cancelling the candidature of the candidates on account of non furnishing of original certificates within time is unreasonable.

8. Per contra, the learned counsel for the Commission, relying on the counter affidavit filed in this case, has stated that the petitioner had submitted online form under the BC Category for being selected on the post of Agriculture Coordinator, but during the counseling held on 05.05.2016, the petitioner had failed to submit the non-creamy layer certificate, hence, his candidature was considered under the general category on account of non-submission of the non-creamy layer certificate. It has further been submitted that though the petitioner claims to have submitted non-creamy layer certificate dated 02.05.2016 during the counseling held on 05.05.2016, but according to the records of the commission, the non-creamy layer certificate was submitted by the petitioner along with his application dated 29.05.2017 which was received by the office of the Commission only on 31.05.2017.

9. I have heard the learned counsel for the parties and perused the materials on record.



10. It is apparent from the records of this case that on the one hand, the petitioner is claiming that he had submitted the non-creamy layer caste certificate dated 02.05.2016 at the time of counseling held by the Commission on 05.05.2016 and had further submitted the same along with his representation dated 29.05.2017, however, it is the contention of the Commission that no such non-creamy layer caste certificate was submitted by the petitioner on 05.05.2016 during the course of the counseling and the same had only been submitted along with the representation of the petitioner dated 29.05.2017 which was received in the office of the Commission on 31.05.2017. Thus, the only ground for debarring the candidature of the petitioner under the BC Category and putting him in the general category is that the non-creamy layer certificate has not been submitted at the time of the counseling held by the Commission wherein the petitioner had participated and instead, the petitioner had submitted the same subsequently, along with his representation dated 29.05.2017.

11. It is apparent from the records that while the aforesaid batch of writ petitions bearing C.W.J.C. No. 13658 of 2016 and other analogous cases were pending consideration before this Court, the Commission had itself invited objections and the



petitioner had also filed his objection and re-furnished the non-creamy layer caste certificate, as has also been admitted in the impugned order dated 22.07.2017 passed by the Commission, apart from the Commission admitting the fact that the petitioner was under the Backward Category as on the date of the advertisement. In such view of the matter, the candidature of the petitioner could not have been rejected and put under the general category since not only prior to the publication of the result on 24/25.11.2017 but also as on the date of filing of objection and passing of the reasoned impugned order dated 22.07.2017, the Commission was fully aware that not only the petitioner is a backward category candidate but the Commission was also in possession of the requisite non-creamy layer caste certificate furnished by the petitioner, hence, the petitioner could not have been precluded from being granted benefit of being considered as a backward category candidate.

12. The present case is squarely covered by the law laid down by the Hon'ble Apex Court in a judgment reported in **(2016) 4 SCC 754 (Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board and Another)**, paragraph Nos. 14 to 18 whereof are reproduced hereinebelow:-

“14. The Division Bench of the High Court erred in not considering the decision rendered in Pushpa.



In that case, the learned single Judge of the High Court had rightly held that the petitioners therein were entitled to submit the O.B.C. certificate before the provisional selection list was published to claim the benefit of the reservation of O.B.C. category. The learned single judge correctly examined the entire situation not in a pedantic manner but in the backdrop of the object of reservations made to the reserved categories, and keeping in view the law laid down by a Constitution Bench of this Court in Indra Sawhney v. Union of India as well as Valsamma Paul v. Cochin University. The learned single Judge in Pushpa also considered another judgment of Delhi High Court, in Tej Pal Singh, wherein the Delhi High Court had already taken the view that the candidature of those candidates who belonged to the S.C. and S.T. categories could not be rejected simply on account of the late submission of caste certificate.

15.The relevant paragraph from the judgment of this Court in Indra Sawhney has been extracted in Pushpa along with the speech delivered by Dr Ambedkar in the constituent assembly and reads thus :(Pushpa case, SCC Online Del para 9)

“9..... ‘251. Referring to the concept of equality of opportunity in public employment, as embodied in Article 10 of the draft Constitution, which finally emerged as Article 16 of the Constitution, and the conflicting claims of various communities for representation in public administration, Dr Ambedkar emphatically declared that reservation should be confined to “a minority of seats”, lest the very concept of equality should be destroyed. In view of its great importance, the full text of his speech delivered in the Constituent Assembly on the point is appended to this judgment. But I shall now read a few passages from it. Dr Ambedkar stated:

“... firstly, that there shall be equality of opportunity, secondly, that there shall be



*reservations in favour of certain communities which have not so far had a 'proper look-in' so to say into the administration Supposing, for instance, we were to concede in full the demand of those communities who have not been so far employed in the public services to the fullest extent, what would really happen is, we shall be completely destroying the first proposition upon which we are all agreed, namely, that there shall be an equality of opportunity..... Therefore the seats to be reserved, if the reservation is to be consistent with sub-clause (1) of Article 10, *must be confined to a minority of seats*. It is then only that the first principle could find its place in the Constitution and effective in operation ... we have to safeguard two things, namely, the principle of equality of opportunity and at the same time satisfy the demand of communities which have not had so far representation in the State, ...". [Constituent Assembly Debates, Vol. 7, pp. 701-02 (1948-49).]*

These words embody the raison d'être of reservation and its limitations. Reservation is one of the measures adopted by the Constitution to remedy the continuing evil effects of prior inequities stemming from discriminatory practices against various classes of people which have resulted in their social, educational and economic backwardness. Reservation is meant to be addressed to the present social, educational and economic backwardness caused by purposeful societal discrimination. To attack the continuing ill effects and perpetuation of such injustice, the Constitution permits and empowers the State to adopt corrective devices even when they have discriminatory and exclusionary effects. Any such measure, insofar as one group is preferred to the exclusion of another, must necessarily be narrowly tailored to the achievement of the fundamental constitutional goal.' (Indra



Sawhney case, SCC pp. 433-34, para 251)”

16. *In Pushpa, relevant paragraphs from Tej Pal Singh have also been extracted, which read thus: (Pushpa case, SCC OnLine Del para 11)*

“11..... ‘15. The matter can be looked into from another angle also. As per the advertisement dated 11-06-1999 issued by the Board, vacancies are reserved for various categories including SC category. Thus in order to be considered for the post reserved for SC category, the requirement is that a person should belong to SC category. If a person is SC his is so by birth and not by acquisition of this category because of any other event happening at a later stage. A certificate issued by competent authority to this effect is only an affirmation of fact which is already in existence. The purpose of such certificate is to enable the authorities to believe in the assertion of the candidate that he belongs to SC category and act thereon by giving the benefit to such candidate for his belonging to SC category. It is not that petitioners did not belong to SC category prior to 30-6-1998 or that acquired the status of being SC only on the date of issuance of the certificate. In view of this position, necessitating upon a certificate dated prior to 30-6-1998 would be clearly arbitrary and it has no rationale objective sought to be achieved.

16. While taking a particular view in such matters one has to keep in mind the objectives behind the post of SC and ST categories as per constitutional mandate prescribed in Articles 15(4) and 16(4) which are enabling provisions authorising the Government to make special provisions for the persons of SC and ST categories. Articles 14(4) and 16(4), therefore, intend to remove social and economic inequality to make equal opportunities available in reality. Social and economic justice is a



right enshrined for protection of society. The right in social and economic justice envisaged in the Preamble and elongated in the Fundamental Rights and Directive Principles of the Constitution, in particular Arts. 14, 15, 16, 21, 38, 39 and 46 are to make the quality of the life of the poor, disadvantaged and disabled citizens of the society meaningful.’ (Tej Pal Singh case, SCC Online Del paras 15-16)”

17. Further, in Pushpa, relevant portion from the judgment of Valsamma Paul case has also been extracted, which reads as under: (Pushpa case, SCC Online Del para 11)

“11 ‘17. “21. The Constitution through its Preamble, Fundamental Rights and Directive Principles created a secular State based on the principle of equality and non-discrimination, striking a balance between the rights of the individuals and the duty and commitment of the State to establish an egalitarian social order.” (Valsamma Paul case, SCC pp. 560-61, para 21)’ (Tej Pal Singh case, SCC OnLine Del para 17)”

18. In our considered view, the decision rendered in the case of Pushpa is in conformity with the position of law laid down by this Court, which have been referred to supra. The Division Bench of the High Court erred in reversing the judgment and order passed by the learned single Judge, without noticing the binding precedent on the question laid down by the Constitution Benches of this Court in Indra Sawhney and Valsamma Paul wherein this Court after interpretation of Articles 14,15,16 and 39A of the Directive Principles of State Policy held that the object of providing reservation to the SCs/STs and educationally and socially backward classes of the society is to remove inequality in public employment, as candidates belonging to these categories are unable to compete with the candidates belonging to the



general category as a result of facing centuries of oppression and deprivation of opportunity. The constitutional concept of reservation envisaged in the Preamble of the Constitution as well as Articles 14, 15, 16 and 39-A of the Directive Principles of State Policy is to achieve the concept of giving equal opportunity to all sections of the society. The Division Bench, thus, erred in reversing the judgment and order passed by the learned single Judge. Hence, the impugned judgment and order passed by the Division Bench in the Letters Patent Appeal No. 562 of 2011 is not only erroneous but also suffers from error in law as it has failed to follow the binding precedent of the judgments of this Court in Indra Sawhney and Valsamma Paul. Therefore, the impugned judgment and order passed by the Division Bench of the High Court is liable to be set aside and accordingly set aside. The judgment and order dated 24.11.2010 passed by the learned single Judge in Ram Kumar Gijroya v. Govt. (NCT of Delhi) is hereby restored.”

13. For the reasons mentioned hereinabove, I am of the considered view that the candidature of the petitioner could not have been rejected merely on account of late submission of the non-creamy layer caste certificate, though the same has been submitted admittedly much prior to the publication of the result on 24/25.11.2017.

14. In such view of the matter, the order dated 22.07.2017 passed by the Commission, as communicated to the petitioner herein vide Memo dated 18.08.2017 is set aside and the Respondent Nos. 7 to 9 are directed to reconsider the application of the petitioner herein against the BC category



and take appropriate decision within a period of one month from today.

15. The writ petition is allowed.

(Mohit Kumar Shah, J)

ajay gupta/-

AFR/NAFR	AFR
CAV DATE	14.05.2018
Uploading Date	17.05.2019
Transmission Date	NA

