

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3083 of 2019

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Sarwesh kumar @ sarvesh Kumar Vijay Singh resident of Village- khalilpura,
phulwari, PS- Phulwarisarif, District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar and Ors through the Principal Secretary, Ddepartment of Health Govt. of Bihar, Patna
2. Bihar Public Service Commission, 15 Baily Road Patna through its Secretary
3. The Chairman, Bihar Public Service Commission, 15 Baily Road Patna
4. The Secretary, Bihar Public Service Commission, 15 Baily Road Patna
5. The Examination Controller-cum-joint Secretary, Bihar Public Service Commission, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Alok Choudhary, Advocate
For the Respondent/s	:	Mr.Chitranjan Sinha (Paag 2)
For BPSC	:	Mr. Sanjay Pandey, Advocate
		Mr. Nishant Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

3 05-03-2020 Heard learned counsel for the petitioner and the

counsel appearing on behalf of the State as well as learned

counsel appearing on behalf of the BPSC.

2. Petitioner is aggrieved by exclusion of the
candidature of his on the ground that he failed to produce
creamy layer certificate at the time of interview in terms of
mandatory requirement under the interview latter.

3. Mr. Alok Choudhary, learned counsel appearing on
behalf of the petitioner has relied upon the judgment of the
Apex Court reported in **2017(11) SCC 276** and the other



judgment reported in **2017(15) SCC 306** to contend that hyper technical approach should have been avoided by the respondents at the time of selection.

4. Counsel appearing on behalf of the BPSC, Mr. Sanjay Pandey placed reliance on Annexure-G to the counter affidavit.

5. Learned counsel for the BPSC with reference to interview letter submits that in most unambiguous terms the candidate was informed that he has to produce non creamy layer certificate if he belongs to backward/extremely backward category to avail the benefit of reservation. Since the petitioner has not produced the certificate of non creamy layer he was considered in general category and in the process of scrutiny he was not found in order of merit for selection against unreserved category.

6. The judgment cited by Mr. Alok Choudhary is not attracted in the facts and circumstances of the case as in the instant case interview letter is very specific and the condition was mandatory under the interview letter to produce non creamy layer certificate to avail the benefit of reservation in addition to the requirement under the advertisement to produce non creamy layer certificate. The judgment relied upon by Mr. Choudhary



is distinguishable on facts as in that case certificate was available which could have produced on mere asking but in this certificate of non creamy layer require the applicant to apply for grant of such certificate and grant of such certificate requires verification at various level thus the case referred by Mr. Choudhary is distinguishable on foundational fact of that case is not available. The facts and circumstances of that case is not attracted in the present case. So far as the judgment reported in (2017) 15 SCC 306 cited above is concerned that was rendered in the peculiar facts of the case obviously in exercising jurisdiction under Article 142 of the Constitution of India and as such the Court is unable to subscribe the view taken in that case which was decided by the Apex Court in that peculiar facts and circumstances.

7. For the reason discussed hereinabove, the Court cannot grant any indulgence. Accordingly, the present application stands dismissed.

(Anil Kumar Upadhyay, J)

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