

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8104 of 2020

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Sweta Shree Daughter of Shri Krishna Kant Thakur Resident of SahniTola,
Sundapur, Lalbagh, P.S.- L.N.M.U. District- Darbhanga, Bihar- 846004.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary-cum- Principal Secretary Education Department, Government of Bihar, Patna.
3. The Bihar Public Service Commission Through the Chairman, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna.
4. The Chairman Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna.
5. The Secretary Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna.
6. The Controller of Examination Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Kumar Kaushik
For the Respondent/s	:	Mr. AC to (SC 13)
For the B.P.S.C.	:	Mr.Sanjay Pandey

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

2 05-10-2020

Heard Mr. Kumar Kaushik, learned counsel for the petitioner, learned AC to SC 13 appearing for the State of Bihar and Mr. Sanjay Pandey, appearing for Bihar Public Service Commission.

This writ application has been filed, seeking quashing of final result published by the Bihar Public Service Commission dated 27.02.2020, against an advertisement issued for appointment to the post of Lecturers in various Government



Training Colleges in the State of Bihar, to the extent, it amounts to denying the benefit of reservation under the physically handicapped category (low vision) and her candidature has been considered as a general candidate as a result of which she has been declared unsuccessful. The petitioner is seeking a direction to the respondents, to consider her case, as a candidate with physical disability (low vision) category for appointment to the said post and issue consequent direction to the respondent Commission to recommend her name for appointment under the said category.

The facts of the case for present adjudication are short. The Bihar Public Service Commission had issued the advertisement no. 2/2016 on 03.05.2016, inviting applications from eligible candidates for appointment against 478 vacancies to the post of Lecturers in various Government Training Colleges. The subject of “Foundation” was one of the subjects against which, applications were invited from eligible candidates. There were 52 vacancies in the said subject.

The petitioner applied for the post in the subject “Foundation” and participated in the written examination and after being declared successful, was invited for interview. It was specifically mentioned in the interview letter, *inter alia*, that the



candidates must produce their original certificates at the time of interview, including disability relating certificate. The petitioner participated in the interview on 14.12.2019. The result was published on 27.02.2020. The petitioner's name did not figure in the final list of successful candidates. It was mentioned in the result that twelve candidates were considered against un-reserved category on account of failure on their part to produce original caste/creamy layer/disability related certificate at the time of interview. The petitioner's roll number also figured in the list of the aforesaid twelve candidates.

It is the petitioner's case that she suffers from 60% of permanent disability of vision, in respect of which a certificate in original issued by In-charge Medical Officer, dated 05.10.2013, was produced at the time of interview. The petitioner is said to have applied under the Right to Information Act, 2005 by an application dated 01.03.2020 seeking information from the BPSC relating to reason for rejection of her candidature as physically disabled candidate and; why the disability relating certificate submitted by her was not acceptable. She received a response through letter dated 18.05.2020, to the effect that the application under the Right to Information Act, was incomplete. She filed yet another application under the Right to Information Act on



23.06.2020, seeking information regarding the marks obtained by her in the written examination and interview. The petitioner received a communication to the effect that the petitioner was declared successful in the written examination under physically handicapped (visually impaired) category but since she could not produce a disability relating certificate, issued by a three member medical board, as required under the advertisement, she was considered as a candidate against un-reserved category. Since she did not score the cut-off marks determined for open merit candidates, she was finally not declared successful. It transpires that the petitioner had again sought an information under the Right to Information Act, seeking information about the Act/provision under which, her disability relating certificate was not treated as valid. The BPSC is said to have informed the petitioner on 02.09.2020, that the said decision was based on resolution no. 13062 dated 12.10.2017 issued by the General Administration Department, Government of Bihar.

Mr. Kumar Kaushik, learned counsel appearing on behalf of the petitioner has argued that the said resolution dated 12.10.2017 of the State Government contemplates that disability certificate shall be issued by a Medical Board constituted by Central Government or State Government, in which, there shall



be a minimum of three members, who are experts for the purpose. According to him, the said resolution cannot be applied in the present selection process, which had begun on 03.05.2016 with the issuance of advertisement. He has argued that the resolution dated 12.10.2017 could not be given effect to retrospectively. He has further submitted that the certificate dated 05.10.2009, which was issued in relation to the petitioner's disability was by an authorized Medical Officer. He has referred to the Bihar Persons With Disabilities (Equal Opportunities, Protection Of Rights And Full Participation) Rules 2004 (hereinafter referred to as the Rules, framed in exercise of powers conferred by sub-Section (1) and (2) of Section 73 of The Persons With Disabilities (Equal Opportunities, Protection Of Rights And Full Participation) Act, 1995 (hereinafter referred to as the Act) to contend that the certificate, which was issued in petitioner's favour, was valid and ought to have been accepted by the Commission. He has argued that the executive instructions in the nature of resolution dated 12.10.2017, cannot override statutory provisions, framed in exercise of rule-making power under Section 73 of the Act.

I do not find any substance in the submission advanced on behalf of the petitioner in view of clear language of sub-rule (1) of Rule 4 of the Rules of which prescribes that a disability



certificate for the purpose of Rules shall be issued by the ‘medical board’ which shall consist of not less than two members out of which one shall act as the chairperson and another shall be the specialist, for assessment on the particular kind of disability, as the case may be.

In the aforesaid background, it would be apt to notice the terms of advertisement no. 2/2016, which has been brought on record by way of Annexure-P1. The advertisement clearly lays down the essential guidelines for submission of application forms. Clause 3 of the guidelines, for submission of application forms requires enclosure of copies of the self-attested certificates, in relation to educational qualification and in support of claim for reservation benefits etc. Clause 3 (viii) reads thus:-

“निःशक्त उम्मीदवारों के लिए चिकित्सा पर्षद द्वारा निर्गत निःशक्ता प्रमाण-पत्र”

It is clear from the terms of the advertisement itself that a candidate was required to submit original certificate issued by a ‘medical board’ in relation to his/her disability, at the time of interview. The original certificate, which the petitioner had submitted at the time of interview, was admittedly not issued by a medical board. It is an admitted fact that the petitioner did not have any certificate in relation to her disability, issued by a medical board. In view of the clear stipulation in the



advertisement that self-attested copies of certificates, in relation to the petitioner's physical disability, was required to be submitted at the time of filling up of her application and original thereof was required to be submitted by her at the time of interview, the claim of the petitioner cannot be sustained.

For the aforesaid reasons, I do not find any merit in this application, which is accordingly dismissed.

(Chakradhari Sharan Singh, J)

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