

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24816 of 2018

Kumari Anita wife of Sanjay Kumar Sharma, resident of village Dumahar
Khurd, P. S. Darauli, District Siwan

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Health, Government of Bihar, Patna
2. Principal Secretary, Department of Health, Government of Bihar , Patna
3. Principal Secretary, Department of General Administration, Government of Bihar, Patna.
4. Additional Secretary, Department of General Administration, Government of Bihar, Patna.
5. Director in Chief, Health Services, Government of Bihar, Patna.
6. Bihar Karamchari Chayan Ayog, through its Secretary, Veterinary College, Patna
7. Chairman, Bihar Karamchari Chayan Ayog, Veterinary College, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Thakur, Advocate Mr. Nilesh Kumar, Advocate Mr. Pravin Kumar, Advocate Mr. Shashank Shekhar, Advocate Mr. Udbhav, Advocate
For the Respondent/s	:	Mr. Satyam Shivam Sundaram, Advocate A.C. to GP-25

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
CAV ORDER

3 23-08-2021 The present writ application has been filed for a direction to the respondent- authorities to declare the petitioner selected as a reserved category candidate for the post of Auxiliary Nurse Midwifery (hereinafter referred to as “A.N.M.”) pursuant to Advertisement No. 03010216 dated 17.02.2016 (Annexure – “1” to the writ petition).

2. The brief facts giving rise to the present writ application is that the petitioner completed her Revised Auxiliary Nurse Midwifery Course from Tirhut A.N.M. Training School, Muzaffarpur and since March, 2014 she was working as



A.N.M. at Primary Health Centre, Dariyapur in the district of Saran on contract basis. The petitioner further stated that the Bihar Staff Selection Commission (hereinafter referred to as “Commission”) issued advertisement on 17.02.2016 for appointment of A.N.M. in the Department of Health, Govt. of Bihar vide Advertisement No. 03010216 examination of which was to be conducted by the Commission. The date of submission of Online application was fixed from **24.02.2016 to 18.03.2016**. According to the petitioner the petitioner was fulfilling the requisite qualification and applied for the post of A.N.M. under E.B.C. category along with requisite certificates including caste certificate of E.B.C. as in the month of February, 2016 the “LOHARA” caste of the petitioner was in the category of Extreme Backward Class. The petitioner was issued counselling – cum- interview letter dated 29/09/2016. Petitioner has annexed Annexure – 3 to the writ petition by which on 08.08.2016 the General Administration Department, Govt. of Bihar issued a letter to different functionaries including the Commission by which the State Government conveyed its approval for issuance of certificate of Scheduled Tribe in favour of the persons belonging to “LOHARA” caste. The said communication has been issued in the light of Repeal and



Amending Act, 2016 (No. 23 / 2016) whereby the Constitution (Schedule Tribes) Order Amendment Act, 2006 (No. 48/2006) has been repealed.

3. The further case of the petitioner is that as per the counselling-cum- interview letter the petitioner was required to appear on 30.11.2016 and before her appearance in the counselling she obtained caste certificate from the competent authority and since the petitioner belongs to the “LOHARA” community by virtue of the letter dated 08.08.2016 of the General Administration Department, Govt. Of Bihar, Anchal Adhikari, Barauli (Siwan) issued **caste certificate dated 11.11.2016 in the category of Schedule Tribe**. The petitioner in paragraph – 11 of the writ petition has stated that on the date of counselling / interview the petitioner produced all original certificates including the certificate of her caste which she had declared at the time of filling up of online application form as E.B.C. as well as certificate of Schedule Tribe dated 11/11/2016. The petitioner contended that in the list of the successful candidates published by the Commission the name of the petitioner did not find place either in the Scheduled Tribe or Most Backward Class category whereas the cut-off marks for Scheduled Tribe was 39.28 and Most Backward Class was



45.82.

4. Respondent nos. 6 & 7 / Commission filed a counter affidavit controverting the claim of the petitioner stating therein that petitioner had applied under Extremely Backward Category which would be evident from her application. In paragraph- 8 of the counter affidavit the respondents have stated that from perusal of **reservation clause (iii) of the advertisement it would be evident that the terms of advertisement clearly stipulated that no change in the reservation category will be allowed subsequently once a candidate has claimed a particular reservation category.** The said clause further stipulates that under no circumstances any request for correction / change in the category of reservation shall be entertained. For claiming wrong reservation category she was kept in unreserved category. The petitioner obtained 59.6667 as final marks whereas the cut-off marks for unreserved category is 65.72. Therefore, the name of the petitioner did not find place in the list of selected candidates for the post of A.N.M. The respondents have annexed Annexure –C to the counter affidavit which is letter issued by Under Secretary, Govt. of Bihar dated 16.05.2018 addressed to the Secretary, Bihar Staff Selection Commission , Patna stating therein that



once the selection process has started no amendment shall be allowed during the course of selection unless any change in the Rules / Regulations of selection has been made applicable with retrospective effect.

5. The petitioner has filed reply to the counter affidavit stating therein that from perusal of Annexure – 3 to the writ petition it would be evident that letter of State Government dated 08.08.2016 was circulated to all concerned including the Commission by which the caste of the petitioner was changed from M.B.C. / E.B.C. to Schedule Tribe and the petitioner has not made any request for change in the reservation category but has produced certificate of Schedule Tribe which was given to her on account of change in the category of caste of the petitioner by the State Government for which the petitioner cannot be put to blame. Further in paragraph- 9 of the reply to the counter affidavit referring to Annexure - B Series at page no.- 19 the petitioner has stated that while preparing Check List the Commission has given remarks that in the online application the petitioner has given reservation category as M.B.C. but the caste certificate dated 11.11.2016 of Schedule Tribe has been submitted. Therefore, she can be considered as S.T. candidate but in spite of that in the last it has been written in the Check



List- “to post the petitioner in general category”. In paragraph 10 of the reply to the counter affidavit the petitioner has stated that from Annexure- B Series at page nos. 18-19 it would be evident that candidature of the petitioner has been rejected on the ground that her caste at the time of filling of Online application was M.B.C. and at the time of counselling the petitioner declared her caste as Schedule Tribe due to which the petitioner has been placed in the general category.

6. On the basis of the pleadings of the parties the issue which requires determination is as to whether the respondent - Commission was justified in considering the petitioner’s candidature against open (unreserved category) for the post of A.N.M. denying her benefit of reservation available for M.B.C. / E.B.C. and / or Schedule Tribe.

7. Mr. Ajay Kumar Thakur, learned counsel appearing for the petitioner, Mr. Satyam Shivam Sundaram, learned counsel appearing for the Commission and learned counsel for the State advanced their arguments.

8. Learned counsel for the petitioner submits that the respondent – Commission has acted arbitrarily in not declaring the result of the petitioner for the post of A.N.M. under reserved category of Schedule Tribe inasmuch as the date of interview /



counselling was fixed by the Commission on 30.11.2016 and on the said date the petitioner produced the certificate regarding her caste category dated 11/11/2016 of Schedule Tribe which would be evident from Annexure-A Series at internal page no. - 8 to the counter affidavit filed by the Commission. Learned counsel further submits that prior to the date of interview the State Govt. came out with letter dated 08/08/2016 by which the State Govt. allowed the concerned authority to issue the caste certificate of Schedule Tribe in favour of persons belonging to "LOHARA" caste to which the petitioner belongs. Learned counsel thus submits that on the date of interview / counselling i.e. on 30.11.2016 the petitioner produced Schedule Tribe certificate because the concerned authority refused to issue non creamy layer certificate to the persons belonging to "LOHARA" caste after 08/08/2016. Learned counsel further contended that as per the terms of advertisement the caste certificate / non creamy layer certificate was required to be produced at the time of interview and since before the date of interview on 30.11.2016 the caste category of the petitioner had changed from E.B.C. / M.B.C. to Schedule Tribe as such petitioner had no option but to produce the caste certificate of Schedule Tribe on the date of interview. Learned counsel further submits that it was due to the



decision of the State Govt. that the caste of the petitioner was changed and the petitioner cannot be penalized by the respondents for not producing the non creamy layer certificate on the basis of the option of the petitioner exercised at the time of filling of the online application form because the concerned authorities refused to issue non creamy layer certificate after 08/08/2016 by which the State Govt. directed for issuance of certificate of Schedule Tribe in favour of the persons belonging to “LOHARA” caste.

9. On the other hand, learned counsel for the respondents – Commission submitted that admittedly the petitioner applied under E.B.C. which would be evident from the application form and the petitioner failed to submit the required certificate of non creamy layer at the time of interview and claimed herself as Schedule Tribe and produced the certificate of Schedule Tribe dated 11.11.2016 which is contrary to the option of reservation category exercised by the petitioner at the time of filling of her application form for the post of A.N.M. Learned counsel further submits that it is settled law that the terms of advertisement has to be followed strictly. Referring to Annexure – 1 to the writ petition i.e. copy of the advertisement dated 17.02.2016 learned counsel further submits



that clause (ii) and (iii) of the reservation clause clearly stipulate that the candidate was required to exercise his / her option of reservation category at the time of filling of application form and under no circumstances a candidate shall be allowed to change the category of reservation subsequently and in case of failure on the part of the candidate to produce the requisite certificate of caste / non creamy layer etc. on the basis of declaration made in the online application form at the time of interview such a candidate shall be treated under the unreserved / general category. Learned counsel further submits that in the entire writ application the writ petitioner has not stated that she had attempted to obtain non creamy layer certificate and that the concerned authority refused to grant non creamy layer certificate to the petitioner. According to the respondents there is no illegality and infirmity in putting the petitioner under unreserved category and since the petitioner has not secured cut off mark for unreserved category accordingly the petitioner was not selected for the post of A.N.M.

10. I have heard learned counsel for the parties and have carefully gone through the materials available on record. The terms of advertisement at Annexure -1 to the writ application relates to reservation clause, which clearly discloses



as follows:-

आरक्षण :- (i) आवेदन पत्र में, नियत प्रविष्टि के अधीन इंगित आरक्षण का दावा नहीं करने पर आरक्षण का लाभ नहीं मिलेगा। सामान्य प्रशासन विभाग के परिपत्र संख्या 70, दिनांक – 11.06.1996 एवं बिहार अधिनियम 15 / 2003 के आलोक में राज्याधीन सेवाओं में आरक्षण का लाभ राज्य के मूल वासी को ही देय है।

(ii) आरक्षित उम्मीदवारों के लिये, राज्य सरकार द्वारा अधिसूचित अंचलाधिकारी द्वारा निर्गत जाति प्रमाण पत्र / क्रीमी लेयर रहित प्रमाण पत्र मान्य होंगे। साक्षात्कार के समय ऑनलाईन आवेदन पत्र के साथ क्रीमीलेयर रहित प्रमाण पत्र / जाति प्रमाण पत्र संलग्न नहीं करनेवाले अभ्यर्थी सामान्य श्रेणी के माने जायेंगे तथा उन्हें आरक्षण का लाभ देय नहीं होगा। अभ्यर्थी आवेदन पत्र भरते समय इस बात का ध्यान रखेंगे कि वे जिस आरक्षण श्रेणी के अन्तर्गत आते हों, उसी आरक्षण श्रेणी का दावा करेंगे।

(iii) ऑनलाईन आवेदन-पत्र में दावा किये गये आरक्षण श्रेणी में किसी भी परिस्थिति में परिवर्तन नहीं किया जायेगा तथा इस संबंध में किसी भी आवेदन पर विचार नहीं किया जायेगा। गलत आरक्षण का दावा करने पर उन्हें अनारक्षित श्रेणी में माना जायेगा।

11. From perusal of the terms of advertisement it is evident that the candidate was required to make a claim of



reservation at the time of submission of online application form and the last date for submission of the online application form as per the advertisement was fixed on 18.03.2016. The advertisement further stipulated that the candidate was required to produce caste certificate / non creamy layer certificate at the time of interview failing which such a candidate would be considered as general category candidate and no benefit of reservation shall be given to the candidate. Clause (iii) of the terms of advertisement under reservation clause further clarifies that under no circumstances the reservation category once claimed at the time of submission of the online application form shall be allowed to change and the request of the candidate in this regard shall not be entertained under any circumstances. Admittedly the petitioner at the time of submission of online application form claimed her reservation category as M.B.C. / E.B.C. and not as Schedule Tribe.

12. The interview letter dated 29/09/2016 at Annexure- 2 to the writ petition also prescribed that if a candidate has claimed benefit of reservation in the Online application form in that case as per the advertisement the candidate must produce certificate of reservation / non creamy layer of caste issued by the competent authority. From a conjoint



reading of the terms of the advertisement and the terms mentioned in the interview letter it is clear that there is negative stipulation in the advertisement which prescribes that in case of non submission of requisite caste / non creamy layer certificate on the date of interview the category claimed by a candidate in the online application form would be denied and the candidate shall be treated as unreserved category candidate.

13. A Division Bench of this Court in a judgment reported in 2011 (2) PLJR 585 Vandana Govindam vs. The State of Bihar and Ors. has held that every candidate seeking employment in Public Service has to abide by the terms and conditions of the advertisement and / or selection. In paragraph nos. 11 & 14 of the said judgment the Division Bench has held as follows:-

“11. Having given our anxious consideration to the aforementioned submissions, we would find that the appellant – writ petitioner having not complied the terms of advertisement is not entitled to the benefit of reservation as an extremely backward candidate. In this context, this Court would find that in the advertisement issued by the B.P.S.C. itself, vide Annexure -A to the counter affidavit in the writ application, Clause – 3 thereof had clearly mentioned that the candidates



seeking benefit of reservation in the backward category / extremely backward category were required to furnish the caste certificate with reference to the subject of Creamy Layer in the prescribed Proforma issued by the Office of the District Magistrate or the Additional Collector authorized by him and in absence of such required caste certificate the benefit of reservation will not be extended. The appellant – writ petitioner therefore in terms of the advertisement was required to file such caste certificate by 31st May, 2005 which was the last date for filing such certificate. There would be therefore no difficulty in holding that the appellant – writ petitioner having failed to satisfy the aforesaid condition no. 3 of the advertisement could not have been given the benefit of reservation and her candidate had to be confined to general category.

14. By now it is well settled that every candidate seeking employment in public service has to abide by the terms and conditions of the advertisement and / or selection and here in this case either Clause-3 of the advertisement or Clause – 6 of the interview call letter had left for its speculation that a subsequent caste certificate could not have been entertained for giving the benefit of the extremely backward category. It is this aspect of the



matter which was decided by the Full Bench of this Court in the case of 'Braj Kishore Prasad' (supra), wherein it was held that the supporting documents cannot be received after the last date fixed by the selecting authority."

14. The terms of the advertisement prescribes the definite time schedule prescribed for submission of online application form as well as requisite certificates. It is now settled legal proposition that the last date in the advertisement or recruitment notice for submission of application form and the requisite certificates is prescribed to seek certain objectives inasmuch as the same puts all prospective candidates on notice with regard to eligibility, suitability, qualification that the selecting body desires a particular candidate to possess. The prescription of the last date also acts as an information to the prospective candidates to test and ascertain whether they are eligible to participate in the selection process. There are therefore, upon prescription of such a last date / dead line in the advertisement no shifting in the timeline will be allowed and the same must be adhered to. The prescription of such a condition in the advertisement also prevents any arbitrary action and denudes the authority from wielding a discretion which may be abused.



15. The Hon'ble Apex Court in a case reported in (2013) 11 Supreme Court Cases 58 RAKESH KUMAR SHARMA *Versus* STATE (NCT OF DELHI) AND OTHERS in paragraph nos. 12, 13, 14, 15, 17 & 19 has observed as follows:-

“12. In U.P. Public Service Commission v. Alpana, this Court, after considering a large number of its earlier judgments, held that eligibility conditions should be examined as on last date for receipt of applications by the Commission. That too was a case where the result of a candidate was declared subsequent to the last date of submission of the applications. This Court held that as the result does not relate back to the date of examination and eligibility of the candidate is to be considered on the last date of submission of applications, therefore, a candidate, whose result has not been declared up to the last date of submission of applications, would not be eligible.

13. A three- Judge Bench of this Court in M.V. Nair v. Union of India held as under:

“9. ... It is well settled that suitability and eligibility have to be considered with reference to the last date for receiving the applications, unless, of course, the notification calling for applications itself specifies such a date.”

14. In Harpal Kaur Chahal v. Director, Punjab Instructions this Court held:

“2. ... It is to be seen that



when the recruitment is sought to be made, the last date has been fixed for receipt of the applications. Such of those candidates, who possessed of all the qualifications as on that date, alone are eligible to apply for and to be considered for recruitment according to Rules.”

15. This Court in *Rekha Chaturvedi v. University of Rajasthan* held:

“10. The contention that the required qualifications of the candidates should be examined with reference to the date of selection and not with reference to the last date for making applications has only to be stated to be rejected. The date of selection is invariably uncertain. In the absence of knowledge of such date the candidates who apply for the posts would be unable to state whether they are qualified for the posts in question or not, if they are yet to acquire the qualifications. Unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged, whether the said date is of selection or otherwise, it would not be possible for the candidates who do not possess the requisite qualifications in praesenti even to make applications for the posts. The uncertainty of the date may also lead to a contrary



consequence viz. even those candidates who do not have the qualifications in praesenti and are likely to acquire them at an uncertain future date, may apply for the posts thus swelling the number of applications. But a still worse consequence may follow, in that it may leave open a scope for malpractices. The date of selection may be so fixed or manipulated as to entertain some applicants and reject others, arbitrarily. Hence, in the absence of a fixed date indicated in the advertisement / notification inviting applications with reference to which the requisite qualifications should be judged, the only certain date for the scrutiny of the qualifications will be the last date for making the applications. ... Reference in this connection may also be made to two recent decisions of this Court in A.P. Public Service Commission v. B. Sarat Chandra and Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi.

17. A three – Judge Bench of this Court in Ashok Kumar Sharma v. Chander Shekhar reconsidered and explained the judgment of Ashok Kumar Sharma observing:

“6. The proposition that where applications are called for prescribing



a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well- established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued / published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment.

The Court in Ashok Kumar Sharma further explained that the majority view in



Ashok Kumar Sharma was not correct, rather the dissenting view by R.M. Sahai, J. was correct as the Court held as under:-

“6. ... The reasoning in the majority opinion that by allowing the 33 respondents to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible justification. It is, in our considered opinion, a clear error of law and an error apparent on the face of the record. In our opinion, R.M. Sahai, J. (and the Division Bench of the High Court) was right in holding that the 33 respondents could not have been allowed to appear for the interview.

19. In Bhupinderpal Singh v. State of Punjab this Court placing reliance on various earlier judgments of this Court held:

‘13. ...The High Court has held (i) that the cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut-off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; (ii) that if there be no



such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with.

16. The Hon'ble Supreme Court in a case reported in (2011) 12 Supreme Court Cases 85 BEDANGA TALUKDAR *Versus* SAIFUDAULLAH KHAN AND OTHERS in paragraph nos. 29, 30, 31 & 32 has held as follows:-

“29. We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the advertisement



unless such a power is specifically reserved. Such a power could be reserved in the relevant Statutory Rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the Rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised, has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India.

30. A perusal of the advertisement in this case will clearly show that there was no power of relaxation. In our opinion, the High Court committed an error in directing that the condition with regard to the submission of the disability certificate either along with the application form or before appearing in the preliminary examination could be relaxed in the case of Respondent No. 1. Such a course would not be permissible as it would violate the mandate of Articles 14 and 16 of the Constitution of India.

31. In our opinion, the High Court was in error in concluding that Respondent 3 had not treated the condition with regard to the submission of the certificate along with the



application or before appearing in the preliminary examination, as mandatory. The aforesaid finding, in our opinion, is contrary to the record. In its resolution dated 21-5-2010, the Commission has recorded the following conclusions:

“Though Shri S. Khan had mentioned in his letter dated 10-12-2009 that he was resubmitting the identity card with regard to locomotor disability he, in fact, had submitted the documentary proof of his locomotor disability for the first time to the office of the APSC through his above letter dated 10-12-2009. However, after receiving the identity card the matter was placed before the full Commission to decide whether the Commission can act on an essential document not submitted earlier as per terms of advertisement but submitted after completion of entire process of selection.

The Commission while examining the matter in details observed that Shri S. Khan was treated as general candidate all along in the examination process and was not treated as physically handicapped with locomotor disability. Prior to taking decision on Shri S. Khan it was also looked into by the Commission, whether any other candidate's any essential document relating to right/benefits, etc. not furnished with the application or at the time of interview but submitted after interview was accepted or not.



From the record, it was found that prior to Shri S. Khan's case, one Smt Anima Baishya had submitted an application before the Chairperson on 26-2-2009 claiming herself to be an SC candidate for the first time. But her claim for treating herself as an SC candidate was not entertained on the grounds that she applied as a general candidate and the caste certificate in support of her claim as SC candidate was furnished long after completion of examination process."

32. In the face of such conclusions, we have little hesitation in concluding that the conclusion recorded by the High Court is contrary to the facts and materials on the record. It is settled law that there can be no relaxation in the terms and conditions contained in the advertisement unless the power of relaxation is duly reserved in the relevant rules and/or in the advertisement. Even if there is a power of relaxation in the rules, the same would still have to be specifically indicated in the advertisement. In the present case, no such rule has been brought to our notice. In such circumstances, the High Court could not have issued the impugned direction to consider the claim of Respondent 1 on the basis of identity card submitted after the selection process was over, with the publication of the select list.

17. It is admitted position that at the time of



submission of application form for the post of A.N.M. the petitioner applied as E.B.C. / M.B.C. candidate and on the date of the interview on 30.11.2016 as per the advertisement the petitioner failed to produce non creamy layer certificate in consonance with the terms of the advertisement for a candidate claiming to be an E.B.C. / M.B.C. category therefore the respondent- authorities rightly did not treat the petitioner to be E.B.C. candidate and decided to treat him in general category. Since the petitioner did not secure qualifying marks for the general category she was not appointed. It is also admitted position that on the date of the interview the petitioner changed her caste category and submitted a caste certificate dated 11.11.2016 of Schedule Tribe since “LOHARA” caste had been declared as Schedule Tribe and according to the petitioner when she demanded the certificate of non creamy layer, the authorities issued her certificate of Schedule Tribe as per the Govt. letter dated 08/08/2016. In other words, there is clear mismatch between declaration made by the petitioner originally in the application form *vis a vis* the certificate she produced at the time of interview.

18. From perusal of the advertisement it is evident that last date of submission of online application form for



appointment was fixed on 18.03.2016 and admittedly the petitioner claimed reservation in the application form under E.B.C. / M.B.C. category. It is also admitted position that the Government letter was issued much after the last date of submission of the application form for appointment on 08.08.2016. There is no plea in the writ application that the petitioner had taken any step to obtain non creamy layer certificate at the time of submission of the application form or just thereafter. This shows the callous attitude of the petitioner and the petitioner was not diligent enough to obtain the requisite non-creamy layer certificate at the time of submission of the application form or just thereafter. The law is well settled that any change in status or caste will take effect prospectively and cannot relate back to a date specially when the notification does not indicate so. The Schedule Tribe certificate dated 11-11-2016 produced by the petitioner at the time of interview would amount to mismatch between declaration made by the petitioner in the online application form and the change of category which the petitioner claimed at the time of interview which is not permissible as per the terms and conditions of the advertisement.

19. In view of the discussions held hereinabove and in



the backdrop of the facts of this case, the arguments advanced by the parties and in view of the law laid down by the Hon'ble Supreme Court and this Court referred hereinabove, in my considered opinion the petitioner cannot be permitted to change her caste category which she had declared at the time of submission of online application form and admittedly the petitioner did not produce non creamy layer certificate on the date of interview and tried to change her caste category, accordingly, in my view the petitioner is not permitted to claim benefit of reservation in view of clear provision made in the advertisement and the respondent- authorities cannot be faulted for considering the case of the petitioner under unreserved / general category in which the petitioner did not secure the cut off marks of 65.72. Accordingly, I do not find any merit in the writ application and the same is dismissed.

20. There shall be no order as to cost.

(Anil Kumar Sinha, J)

Praful/- A.F.R.

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