

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 6632 of 2019

Jyoti Jaiswal wife of Ravish Kumar daughter of Prakash Chandra Jaiswal
resident of Kailash Kunj Maurya Path, P.S. Shashtri Nagar, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Government of Bihar, Main Secretariat, Patna.
2. The Principal Secretary, Department of Home, Government of Bihar, Main Secretariat, Patna.
3. The Principal Secretary Department of General Administration, Government of Bihar, Main Secretariat, Patna.
4. The Bihar Police Sub Ordinate Service Commission Santosh Mansion B Block near RP.S. Law College, Raghunath Path Danapur Patna through the Chairman.
5. The Chairman, the Bihar Police Sub Ordinate Service Commission Santosh Mansion B Block near RP.S. Law College, Raghunath Path Danapur Patna.
6. The Special Work Officer the Bihar Police Sub Ordinate Service Commission Santosh Mansion B Block near RP.S. Law College, Raghunath Path Danapur Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar Mishra

For the Respondent/s : Mr. Md. N. H. Khan (SC-1)

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date : 09-07-2021

The present writ petition has been filed for
quashing the order dated 15.03.2019 passed by



the Chairman, Bihar Police Subordinate Service Commission (hereinafter referred to as 'the BPSSC) i.e. the Respondent No. 5 herein whereby and whereunder the representation of the petitioner for selection on the post of Sub-Inspector has been rejected.

2. The brief facts of the case, according to the petitioner, are that an advertisement bearing advertisement no. 1 of 2017 was published by the Respondent-BPSSC for making appointments on the post of Sub-Inspector in the State of Bihar, pursuant whereunto, the petitioner had applied in the prescribed form, had appeared in the examination held on 22.07.2018 and had passed the same. The petitioner is stated to be belonging to the backward class i.e. Khalvar caste, however, she had submitted her application form, pursuant to the aforesaid advertisement no. 1 of 2017 under the Extremely Backward Class (EBC) category.

3. The learned counsel for the petitioner has



submitted that the Extremely Backward Class (Schedule I) caste certificate was issued to the petitioner by the Government of Bihar dated 21.10.2014 and subsequently, a non creamy layer certificate dated 29.09.2018 was issued by the Circle Officer, Patna Sadar, showing her to be falling under the backward class category (Schedule-2), hence, it is submitted that the petitioner subsequently came to know that she does not belong to the Extremely Backward Class (EBC) category, but belongs to the Backward Class (BC) category, hence, she had filed application dated 17.09.2018 for rectification of her caste status in the application form, however, the Respondent-BPSSC did not take steps leading to the petitioner filing a writ petition bearing CWJC No. 2057 of 2019, which was disposed of by a coordinate Bench of this Court, by an order dated 07.02.2019, with liberty to the petitioner to make appropriate representation before the Respondent No. 4, which was directed to be disposed of within



a period of four weeks, thereafter. The petitioner had then made a representation but the same has been rejected by the impugned order dated 15.03.2019 issued by the Officer on Special Duty, BPSSC, Bihar, Patna, which has been assailed in the present proceedings.

4. The learned counsel for the petitioner submits that on account of bonafide mistake, the petitioner had filled the application form under the EBC category inasmuch as the petitioner was not knowing earlier that she belongs to the BC category, however, as soon as she came to know that she belongs to the BC category, she had filed an application for rectifying her category in the application form, however, the same has been rejected without any rhyme and reason. In this regard, the learned counsel for the petitioner has relied upon a judgment reported in **(2016) 4 SCC 754 (Ram Kumar Gijroya vs. Delhi Subordinate Services Selection Board & Anr.)**,



to contend that failing to submit the reserved category certificate / non creamy layer certificate, issued by the appropriate authority, within the cut-off date mentioned in the advertisement would not render such candidate ineligible for selection inasmuch as rendering otherwise selected candidate ineligible only on the ground of late submission of the reserved category certificate would amount to denial of equality of opportunity contemplated under Articles 14 to 16 and 39A of the Constitution of India.

5. The learned counsel for the petitioner has further referred to a judgment dated 08.07.2019 passed by a coordinate Bench of this Court in CWJC No. 6030 of 2019 (***Prakash Chandra vs. The State of Bihar & other analogous cases***), more particularly page 40 thereof.

6. The learned counsel for the petitioner has also referred to a judgment rendered by the Hon'ble Apex Court, reported in **(2008) 9 SCC**



403 (T. Jayakumar vs. A. Gupu & Another),

paragraph no. 17 whereof is reproduced herein below:-

"17. This leaves us with Respondent 1 who is hopefully pursuing the matter for over eight years. The Tribunal and the High Court by interfering in his favour, naturally gave him hope and expectations that he would be harbouring for eight years. We also cannot overlook the fact he was excluded from consideration simply because he inadvertently omitted to put his signature on his application form. Having regard to the special facts of the case, the postal authorities concerned are directed to find out a suitable vacant position against which Respondent 1 may be adjusted. In case no suitable post is available at present he should be accommodated in the next vacancy of EDBPM arising in future."

7. Per contra, the learned counsel for the BPSSC has referred to the advertisement no. 01 of 2017, which had been published for making



appointments on 1717 posts of Police Sub-Inspector. The learned counsel for the BPSSC has taken this Court through the various clauses of the advertisement to contend that the last date for receiving the online application was fixed as 30.11.2017 and a candidate, who had wrongly filled in the application form, could cancel the same and fill his new application by 30.11.2017. The said advertisement no. 01 of 2017 also clearly stipulates that in case, an extremely backward Class category candidate declares him / herself to be a backward Class category candidate in the application or vice versa, then in that case, the candidature of such a candidate shall be cancelled. The learned counsel for the BPSSC has referred to the acknowledgement of the application form of the petitioner, annexed as Annexure-B to the counter affidavit, wherein the category of the petitioner has been shown to be Extremely Backward Class and at the bottom, the petitioner has given a declaration to the following effect "I



hereby declare that the information given above is true to the best of my knowledge and belief and nothing has been concealed therein. I am well aware of the fact that if the information given by me is proved not true, I will have to face the consequences as per the law. Also all the benefits availed by me shall be summarily withdrawn.”

8. The learned counsel for the BPSSC has further submitted that the prelims examination was conducted in between 11.03.2018 to 15.04.2018 and the petitioner had been declared to have passed under the Extremely Backward Class category, whereafter the mains examination was held on 22.07.2018 and again, the petitioner was shown to have passed under the Extremely Backward Class category, in the result published on 06.08.2018, whereupon, the physical test was held on 28.09.2018, however, during the course of verification of documents, the petitioner could not produce the extremely backward Class certificate,



hence, the petitioner was disqualified on account of the following reason "mismatch in application form with original documents". The learned counsel for the BPSSC has further submitted that on account of the aforesaid reason, the representation of the petitioner has stood rejected by the impugned order dated 15.03.2019. It has also been stated that the final result has already been published by the Respondent-BPSSC on 09.03.2019 wherein 1665 candidates have been declared successful out of 1717 vacancies and 52 vacancies have remained unfilled on account of non-availability of suitable scheduled caste candidates. Thereafter, the BPSSC vide memo dated 17.03.2019 has also sent the recommendation of the successful candidates to the concerned Department for appointment on the post of Police Sub-Inspector, whereafter the appointments have also been made, hence, the entire selection process has already stood over long back. It is submitted that thereafter, a fresh



selection process had also been initiated and the same has also been completed. The learned counsel for the BPSSC has also submitted that the judgment referred to by the learned counsel for the petitioner rendered in the case of **Ram Kumar Gijroya** (supra) is distinguishable in the facts and circumstances of the present case inasmuch as the case in hand before the Apex Court was with regard to non-submission of the OBC certificate within the cut-off date mentioned in the advertisement whereas in the present case, the petitioner has falsely mentioned her class/caste category as Extremely Backward Class instead of Backward Class, hence, the present case is a case of furnishing of wrong documents as well, thus, her candidature has itself been rendered invalid in view of the terms and conditions stipulated in the advertisement no. 1 of 2017. In this regard, the learned counsel for the BPSSC has referred to a judgment rendered by the Hon'ble Division Bench of this Court in the case of **Central Selection**



Board of Constable vs. Raj Kumar, reported in **2017(1) PLJR 599**, paragraph nos. 11, 12 and 14 whereof are reproduced herein below:-

"11. Sri Rajendra Prasad Singh, learned Senior Counsel, then, raised the plea that the petitioners, having been permitted, pursuant to direction, to sit in the preliminary test and participate in interview, it is not open to the Central Selection Board (Constable Recruitment) to as such cancel the candidature. The answer to this is to be found in the case of T. Jayakumar v. Gopu since reported in (2008) 9 SCC 403; and in particular paragraph 12 thereof which reads as such:

"12. We are not aware of any principle of law under which once a candidate is allowed participation in the selection process, the selection authority is precluded from examining whether his application was complete, in order, within time or otherwise acceptable. A defect in the application form that renders the candidate ineligible might be



overlooked in the initial screening and as a result he may be called for interview and may get a chance to take part in the selection process but that alone does not mean that the candidate cannot be held ineligible for selection at a later stage once the defect in the application comes to light."

12. Thus, in law, we find that the writ petitioners having given a wrong declaration in his application form, which he could not be substantiated by original document, makes their candidature itself invalid. It is a case of wrong categorization which is material for the selection process and become more material when it comes to stage of appointment.

14. Thus, we allow this Review Application and recall our judgment and order dated 26.02.2015, passed in Letters Patent Appeal No. 1221/2012, and consequently, we would not interfere with the writ courts order which dismisses the writ petition. The appeal would thus stand dismissed."



9. The learned counsel for the BPSSC has also relied on some other judgments, which are being enumerated herein below along with their relevant paragraphs:-

(i) **(2011) 12 SCC 85 (Bedanga Talukdar vs. Saifudaullah Khan & Others)**, paragraphs no. 29 to 32 whereof are reproduced herein below:-

"**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 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.”

(ii) **(2005) 7 SCC 177 (A. P. Public Service Commission vs. Koneti Venkateswrlu & Others)**, paragraph no. 7 whereof is reproduced herein below:-

“7. We are unable to accept the contention of the learned counsel for the first respondent. As to the purpose for which the information is called for, the employer is the ultimate judge. It is not open to the candidate to sit in judgment about the relevance of the information called for and decide to supply it or not. There is no doubt that the application called for full employment particulars *vide* column 11. Similarly, Annexure III contained an express declaration of not working in any public or private employment. We are also unable to accept the contention that it was inadvertence which led the first respondent to leave



the particulars in column 11 blank and make the declaration of non-employment in Annexure III to the application. The application was filled on 24-7-1999, the examination was held on 24-10-1999, and the interview call was given on 31-1-2000. At no point of time did the first respondent inform the appellant Commission that there was a *bona fide* mistake by him in filling up the application form, or that there was inadvertence on his part in doing so. It is only when the appellant Commission discovered by itself that there was *suppressio veri* and *suggestio falsi* on the part of the first respondent in the application that the respondent came forward with an excuse that it was due to inadvertence. That there has been *suppressio veri* and *suggestio falsi* is incontrovertible. The explanation that it was irrelevant or emanated from inadvertence, is unacceptable. In our view, the appellant was justified in relying upon the ratio of *Kendriya Vidyalaya Sangathan* [(2003) 3 SCC 437 : 2003 SCC (L&S) 306] and contending that a person who indulges



in such *suppressio veri* and *suggestio falsi* and obtains employment by false pretence does not deserve any public employment. We completely endorse this view."

(iii) **2013 (4) PLJR 1 (DB) (Anil Kumar vs. The State of Bihar & Ors.)**, paragraphs no. 4 to 6 whereof are reproduced herein below:-

"4. The appellant approached this Court under Article 226 of the Constitution for a direction to the respondent State of Bihar to appoint the appellant as a constable. According to the appellant, pursuant to the advertisement published on 11th December, 2009, he had applied for appointment as constable in Bihar Military Police / Bihar Police. The appellant applied for such appointment as Extremely Backward Class candidate but he could not produce the certificate of Extremely Backward Class. His candidature was, therefore, rejected. Before the learned Single Judge the appellant raised the contention that since he belonged to a Backward Class community and had



produced the certificate to that effect, the respondents should have considered his case as a Backward Class candidate. The learned Single Judge has rejected the contention and has dismissed the writ petition. Therefore, this Appeal.

5. There is no dispute that the claim made by the appellant in the application form was not supported by the requisite document. The contention that the appellant ought to have been treated as a Backward Class candidate irrespective of the contrary information given by him in the application has rightly been rejected by the learned Single Judge.

6. No case for interference is made out.”

10. I have heard the learned counsel for the parties and gone through the materials on record. The admitted fact is that the petitioner had suppressed her actual Class /caste category and had falsely filled the application form under the



EBC category instead of the BC category, to which belongs as also had failed to rectify the said mistake within the stipulated time i.e. by 30.11.2017. In fact, the petitioner had not only appeared in the prelims examination, but had also appeared in the mains examination under the EBC category and had illegally obtained a favourable result, however, during the course of physical test held on 28.09.2018, when the authorities were examining her documents, the petitioner could not produce proof regarding her belonging to the EBC category inasmuch as no caste certificate pertaining to EBC category was produced by the petitioner. This Court further finds that admittedly, though the petitioner belongs to the BC category but still she had filled the form under the EBC category. Thus, this Court finds that since the petitioner had given a wrong declaration regarding her Class /caste category, her candidature has rightly been rejected in view of the stipulations made in the advertisement no. 1 of 2017, as



narrated hereinabove in the preceding paragraphs as also in view of the fact that it has been specifically mentioned in the advertisement that in case, the caste category is wrongly mentioned in the form, the candidature of such candidate shall be cancelled, apart from the petitioner having given a declaration to the effect that in case, any information provided in the application form is proved to be not true, she would face the consequences as per the law.

11. As far as the judgment referred to by the learned counsel for the petitioner in the case of **Prakash Chandra** (supra) is concerned, the same has got no relevance in the present case inasmuch as the said case was a case regarding errors in the model answer keys and the effect thereof warranting interference in the result published by the BPSSC. As far as the judgment rendered in the case of **Ram Kumar Gijroya** (supra) is concerned, the same is distinguishable in the facts



and circumstances of the present case inasmuch as the said case deals with non-submission of the caste certificate within the cut-off date mentioned in the advertisement, however, in the present case, the issue is entirely different and the present case relates to wrong mentioning of the Class/ caste category in the application form. As far as the reliance of the learned counsel for the petitioner on the judgment rendered in the case of ***T. Jayakumar*** (supra) is concerned, the same is also distinguishable in the facts and circumstances of the present case not only on facts but even otherwise inasmuch as in the said case, the incumbent had got a favourable order from the Tribunal and the High Court resulting in giving him hope and expectation of public employment, but in the present case, neither the BPSSC nor the Courts have ever ruled in favour of the petitioner so as to create any sort of hope and expectation.

12. This Court, on the contrary, finds that the



present case is squarely covered by the judgments rendered by the learned Division Bench of this Court in the case of **Central Selection Board of Constable vs. Raj Kumar** (supra) and in the case of **Anil Kumar** (supra) as also by the one rendered by the Hon'ble Apex Court in the case of **Bedanga Talukdar** (supra). This Court, upon having considered the submissions advanced by the learned counsel for the petitioner, finds that the petitioner had filled the wrong Class/caste category in the application form, thus she has engaged in suppressio veri and suggestio falsi inasmuch as if the petitioner was knowing that she has applied under the EBC category instead of the BC category, nothing had prevented her from either bringing the said fact to the notice of the authorities at the time of sitting in the prelims examination or the mains examination itself or having not at all appeared in the prelims examination or the mains examination as an EBC category candidate knowing fully-well that she



belongs to the BC category, hence, such a person does not deserve any sympathy. In this connection, reliance is placed on a judgment rendered by the Hon'ble Apex Court in the case of **A. P. Public Service Commission** (supra).

13. Last but not the least, this Court finds that the petitioner had taken a chance and waited till the last moment i.e till the respondent-BPSSC had itself discovered that the petitioner has engaged in suppressio veri and suggestio falsi inasmuch as she had furnished the wrong class/caste category in the application form. It would be relevant to mention here that another instance of suppression and twisting of facts is apparent from the pleadings made in the writ petition to the effect that the petitioner, in her application dated 17.09.2018, annexed as Annexure-5 to the writ petition, has stated that when her certificates were examined by the respondent authorities then she came to know that the class/caste category



mentioned in the application form is not tallying with the caste certificate, but it would be apparent from paragraph no. 11 of the counter affidavit filed on behalf of the Bihar Police Subordinate Service Commission that the documents were verified only on 28.09.2018, the date on which physical evaluation test was being held, hence, obviously, the petitioner is not speaking the truth and has not approached this court with clean hands.

14. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, I do not find any merit in the present writ petition, hence, the same stands dismissed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
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