

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7661 of 2020

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Pankaj Kumar Son of Ram Nandan Vishwakarma, Resident of Professor Colony P.G. Road, P.O. and P.S.-Jehanabad, District-Jehanabad, Bihar-804408.

... .. Petitioner

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 District Magistrate, Jehanabad.
4. The Sub Divisional Officer, Jehanabad.
5. The Circle Officer, Jehanabad Sadar, Jehanabad Block, Jehanabad.
6. The Bihar Public Service Commission through the Chairman, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna.
7. The Chairman, Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna.
8. The Secretary, Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna.
9. The Controller of Examination, Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna.
10. The Additional Chief Secretary-cum- Principal Secretary, General Administration Department, Government of Bihar, Patna.
11. Gopal Kumar, aged about 33 years, son of Sri Niranjan Mistri, Resident of Pachana Road Chandani Chowk, Naya Bazar, District-Lakhisarai, Bihar-811311.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Kumar Kaushik, Advocate
		Mrs. Namrata Dubey, Advocate
For the Respondent State:		Ms. Shilpa Singh, G.A.-12
		Ms. Abhanjali, AC to GA-12
For the Respondent BPSC:		Mr. Sanjay Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 04-01-2021

Whether the respondent Bihar Public Service Commission was justified in considering petitioner's candidature



against an open (unreserved) vacancy of the post of Lecturer in the subject of Arts and craft for various Training College in the State of Bihar and thus denying him the benefit of reservation available for Extremely Backward Class, in the facts and circumstances of the present case, is the only question which the present writ application involves.

2. The petitioner claims that he belongs to Lohar community, which was recognized as Extremely Backward Class (EBC). The Bihar Public Service Commission (BPSC) came out with an advertisement No. 04/2016 in May, 2016 inviting applications for selection for appointment to the post of Lecturers in the subject of Arts and Craft in various Government Training Colleges. A total number of 26 vacancies were advertised. Five out of 26 vacancies were reserved for EBC category. Clause 7 of the advertisement related to reservation in the matter of selection process in question. Clause 7(ii)(B) of the advertisement clearly mentioned that candidates claiming reservation against the Backward Class category and EBC category shall have to essentially submit following documents, namely : -

- (a) Caste Certificate;
- (b) Non-creamy Layer Certificate; and
- (c) Domicile Certificate.



3. It further mentioned that original certificates for claiming reservation in the matter of selection must be produced at the time of interview, else the benefit of reservation shall not be admissible. 6th June, 2016 was the last date for submission of application forms.

4. The petitioner claims that he had submitted Caste Certificate dated 07.09.2015 acknowledging his status as a member of EBC category. It is admitted fact that the petitioner did not submit the creamy layer certificate along with his caste certificate as was stipulated in the advertisement to be essentially required.

5. The petitioner participated in the examination held on 26.08.2018, result of which was published by the BPSC on 26.04.2020. The petitioner was declared successful. He participated in the interview held on 23.06.2020. In the interview letter issued by the BPSC also, it was clearly mentioned that the candidates claiming selection on the basis of reservation must submit the original 'non-creamy layer certificate', else benefit of reservation would not be admissible.

6. The final result was published on 04.07.2020. The petitioner's name did not figure in the list of selected candidates. It is not in dispute that the petitioner secured 69.48 marks, whereas



cut off marks for unreserved category was fixed at 71.766 and that for the EBC category was fixed at 64.450. It is the petitioner's case that merely because he had failed to submit non-creamy layer certificate at the time of submission of application and at the time of interview his claim of belonging to EBC category for the purpose of reservation cannot be denied.

7. Till date the petitioner does not have non-creamy layer certificate to establish his claim for reservation against a vacancy reserved for EBC.

8. It has been stated in the writ petition that the petitioner failed to submit the non-creamy layer certificate along with the application form as the said certificate could not be obtained due to paucity of time. It is noted here that there is no averment in the writ application to the effect that any step was taken to obtain the non-creamy layer certificate.

9. There are certain events which followed subsequent to submission of application form by the petitioner because of which the petitioner has not been able to obtain non-creamy layer certificate, in the background of which the petitioner has filed present writ application seeking *mandamus* to the respondents to issue in his favour a non-creamy layer certificate. Before referring to the relief which the petitioner has sought for, the said



developments subsequent to submission of application form are being taken note of.

10. As has been noted hereinabove, the last date for submission of application form was 06.06.2016. On 08.08.2016, the General Administration Department, Government of Bihar, issued a communication to different functionaries of the State of Bihar and State recruitment agencies including the BPSC, whereby the State Government conveyed its approval for issuance of certificate of Scheduled Tribe in favour of persons belonging to *Lohar* caste, to which the petitioner belongs. The said communication has been issued in the light of Repeal and Amending Act, 2016 (Act No. 23 of 2016), whereby the Constitution (Scheduled Tribes) Order (Amendment) Act, 2006, has been repealed. The Repeal and Amending Act, 2016 (Act No. 23 of 2016) was notified on 06.05.2016, i.e., prior to the last date fixed for submission of application.

11. This is further to be noted that by the Constitution (Scheduled Tribes) Order (Amendment) Act, 2006 (Act No. 48 of 2006), the Constitution (Scheduled Tribes) Order, 1950, list of Scheduled Tribes in the State of Bihar was modified and the caste Lohara/Lohra was placed at Item No. 21 in the Scheduled, in Part (iii) relating to State of Bihar. The effect of the repeal was that the



situation existing prior to enactment of Constitution (Scheduled Tribes) Order (Amendment) Act, 2006, stood restored. In view of the said communication dated 08.08.2016, the authorities refused to issue non-creamy layer certificate as the caste to which the petitioner belongs is being treated as Scheduled Tribes.

12. In the background of above noted facts, the petitioner, in the present writ application, as sought for following reliefs : -

“i. For issuance of an order, direction or a writ of certiorari for quashing and setting aside the result of the written examination against advertisement number 04/ 2016 issued by the respondent Bihar Public Service Commission for appointment to the post of Lecturer in the subject of Arts and Craft in various Government Training Colleges to the extent to which the petitioner has been excluded despite having secured more marks than the last selected candidate in E.B.C. Category.

ii. For issuance of an order, direction or a writ of mandamus for directing the respondent Commission to consider the petitioner for appointment to the post of Lecturer in the subject of Arts and Craft against advertisement no. 04/ 2016 since the petitioner has more marks than the last selected candidate in the E.B.C. Category.

iii. For issuance of an order, direction or a writ of mandamus for directing the respondent Authorities to keep one post vacant in the category of E.B.C. category against advertisement number 04/ 2016 until disposal of the present writ application.



iv. For issuance of an order, direction or a writ of mandamus for directing the competent authority under the State of Bihar to prepare Non-Creamy Layer Certificate in favour of the petitioner who belongs to the ‘Lohar’ community which was recognized by the Government of Bihar as EBC Category at the time of advertisement and the State of Bihar decided to issue caste certificate of ST category to the aforesaid community on 23.08.2016 apparently without competence thereby creating confusion over the status of the community due to which the authorities did not entertain the request of the petitioner to issue non Creamy Layer Certificate.”

13. Counter affidavits have been filed on behalf of the respondents State of Bihar and BPSC. It is the case of BPSC that a candidate can claim reservation against EBC category only, if he produces non-creamy layer certificate, which was categorically mentioned in the advertisement and the interview letter as well.

14. I have heard Mr. Kumar Kaushik, learned counsel appearing on behalf of the petitioner, Ms. Shilpa Singh, learned G.A.-12 for the State of Bihar and Mr. Sanjay Pandey, learned counsel for the BPSC.

15. An application has been filed, registered as I.A. No. 1 of 2020, seeking impleadment of the Additional Chief Secretary-cum- Principal Secretary, General Administration Department, Government of Bihar, as respondent No.10 and Mr. Gopal Kumar, aged about 33 years, son of Sri Niranjan Mistri, Resident of



Pachana Road Chandani Chowk, Naya Bazar, District-Lakhisarai, Bihar- 811311, the last selected candidate in EBC category as respondent No.11.

16. Considering the nature of relief, which the petitioner has sought in the main application, prayer for impleadment made in I.A. No. 1 of 2020 is allowed.

17. Let the Additional Chief Secretary-cum- Principal Secretary, General Administration Department, Government of Bihar, and Mr. Gopal Kumar, aged about 33 years, son of Sri Niranjan Mistri, Resident of Pachana Road Chandani Chowk, Naya Bazar, District-Lakhisarai, Bihar- 811311, be impleaded as respondent Nos.10 and 11 respectively.

18. Mr. Kumar Kaushik, learned counsel appearing on behalf of the petitioner has submitted that for mere non-production of the certificate at the time of submission of the application or even at the time of interview, the petitioner's claim for being considered as EBC category candidate ought not to have been turned down on mere technicality.

19. In support of his contention, he has placed reliance on the Supreme Court's decision in case of ***Ram Kumar Gijroya v. Delhi Subordinate Services Selection Board***, reported in **(2016) 4 SCC 754**. He has further submitted that the petitioner could not



produce the non-creamy layer certificate at the time of interview because of an illegal communication dated 08.08.2016, issued by the General Administration Department, Government of Bihar, whereby it was decided to issue Scheduled Tribe certificates to the Lohar community candidates. He has contended that because of the said illegal decision of the State Government, the authorities did not issue non-creamy layer certificate to the petitioner as the caste to which he belongs to was no longer being recognized by the State Government as EBC.

20. Reliance has also been placed by Mr. Kaushik on a coordinate Bench decision of this Court in case of ***Shashi Bhushan Yadav vs. The State of Bihar & Ors.***, reported in 2019(3) PLJR 466. He has relied on another Supreme Court decision in case of ***Dheerender Singh Paliwal v. UPSC***, reported in (2017) 11 SCC 276, to contend that on the trivial issue of non-production of certificate with application, the petitioner's candidature against posts reserved for EBC ought not to have been rejected.

21. He has relied on Supreme Court's decision in case of ***Prabhat Kumar Sharma v. Union Public Service Commission***, reported in (2006) 10 SCC 587, to contend that Lohar community



in the State of Bihar is recognized as Backward Class only and not as Scheduled Tribe.

22. Mr. Sanjay Pandey, learned counsel appearing on behalf of the BPSC, on the other hand, has relied on a Full Bench decision in case of *Braj Kishore Prasad v. State of Bihar*, reported in (1998) 3 PLJR 34 (F.B.). He has further relied on a Division Bench decision of this Court in case of *Dr. Santosh Kumar vs. The State of Bihar & Ors.*, reported in 2017(1) PLJR 786, wherein the Division Bench distinguished the case of *Ram Kumar Gijroya* (supra) since the petitioner before the Supreme Court was found to have submitted his caste certificate though after the cut off date. He has submitted that since no non-creamy layer certificate was issued in favour of the petitioner at any point of time the BPSC had no other option but to consider the petitioner's candidature against unreserved posts.

23. He has referred to law laid down by the Supreme Court in case of *Bedanga Talukdar v. Saifudaullah Khan*, reported in (2011) 12 SCC 85, and has submitted that any selection process has to be conducted strictly in accordance with the stipulated selection procedure, which needs to be scrupulously maintained.



24. Reliance has also been placed on a Division Bench decision of this Court in case of *Tar Babu Yadav v. State of Bihar*, reported in (2011) 4 PLJR 185, wherein relying on a Full Bench decision of this Court, in case of *Braj Kishore Prasad* (supra), it has been held that the applications made pursuant to a public advertisement must conform with the terms and conditions mentioned in that advertisement. Yet another Division Bench decision of this Court in case of *Harish Chandra Patel v. State of Bihar*, reported in (2012) 1 PLJR 397, has been relied on by Mr. Pandey to contend that the petitioner's claim to be considered as a candidate belonging to EBC category in the absence of submission of a non-creamy layer certificate is untenable. He has further referred to a Division Bench decision of this Court in case of *Vandana Govindam v. State of Bihar*, reported in (2011) 2 PLJR 585 at page 585 to bolster his plea that the action of BPSC in rejecting the petitioner's claim was wholly justified.

25. Ms. Shilpa Singh, learned G.A.-12, appearing for the State of Bihar, has supported the stand taken on behalf of the BPSC and has argued that the communication dated 08.08.2016 does not contain any decision of the State Government, rather it has been issued in the light of enactment of Repealing and Amending Act, 2016 (Act 23 of 2016), whereby the Constitution



(Scheduled Tribes) Order (Amendment) Act, 2006 (Act No. 48 of 2006) stood repealed. The said communication has been issued in terms of the entry in terms of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 (Act No. 108 of 1976). She has submitted that in any event since the petitioner did not possess the non-creamy layer certificate either at the stage of submission of application form or at the time of interview, rejection by the BPSC in considering the petitioner's candidature as an aspirant belonging to EBC category is wholly justified.

26. It is evident from the facts noted above that admittedly, the petitioner did not possess non-creamy layer certificate at the time of submission of his application. There is no gainsaying that a candidate must possess non-creamy layer certificate to claim benefit of reservation as EBC candidate. It is to be kept in mind that in the cases on which the petitioner has placed reliance, the concerned candidates had submitted the requisite certificates after due date as mentioned in the advertisement, whereas in case of the petitioner of this case, he does not have the certificate at all. There is no plea in the writ application that the petitioner had taken any step before submission of his application to obtain non-creamy layer certificate. There is one vague averment made in the writ application that the non-creamy layer



certificate could not be submitted at the time of application because of paucity of time. Absence of the non-creamy layer certificate, in the Court's opinion, disentitles the petitioner from being considered for the posts reserved for EBC category.

27. As has been noticed hereinabove, the petitioner in the present writ application is also seeking a direction to the competent authority under the State of Bihar to prepare non-creamy layer certificate in his favour as he belongs to Lohar community, which was recognized by the Government of Bihar as EBC category at the time of advertisement. The State of Bihar subsequently decided to issue caste certificate of Scheduled Tribes (ST) category to the aforesaid community on 08.08.2016, and thereby created confusion over the status of the community because of which the authorities did not entertain the petitioner's request to issue non-creamy layer certificate, the petitioner asserts.

28. This Court, in the present proceeding, does not intend to go into the correctness of the communication dated 08.08.2016 for more than one reason. Firstly, the petitioner, for the first time, raised his grievance relating to non-issuance of non-creamy layer certificate by the authorities in the present writ application filed on 08.09.2020. He knew that submission of non-creamy layer certificate was an essential requirement for the



selection process in question. He appears not to have raised any grievance questioning the correctness of the communication dated 08.08.2016 and consequent refusal by the State authorities to issue non-creamy layer certificate.

29. Secondly, the said communication dated 08.08.2016 is said to have been issued in the light of enactment of Repealing and Amending Act, 2016 (Act No. 23 of 2016). The said Act 23 of 2016 was published in Official Gazette on 06.05.2016, much before the last date fixed for submission of the application form. The communication dated 08.08.2016 is not a decision in itself, rather it is a communication in pursuance of enactment of Act 23 of 2016. No ground has been taken on behalf of the petitioner that the said communication is not in consonance with the provisions of Act 23 of 2016.

30. The question which is thus left to be determined is as to whether the petitioner's claim to be considered as EBC category candidate even in the absence of the certificate has any substance.

31. In the advertisement, in question, the BPSC had prescribed in Clause 7 in no uncertain terms that the candidates claiming reservation in EBC category must submit with their application non-creamy layer certificate along with caste certificate. In the interview letter also, it was prescribed that the



candidates must submit, in original, the documents including original non-creamy layer certificate in case they were claiming reservation against the posts reserved for EBC category candidates.

32. Adverse consequence of non-submission of non-creamy layer certificate to the effect that candidature of such candidates against EBC category vacancies shall not be considered was provided in the interview letter. In all fairness to learned counsel for the petitioner, the Supreme Court's decision in case of *Dheerender Singh Paliwal* (supra) deserves to be noted by this Court at this stage. In the said case also, adverse consequence of non-submission of certificates in the nature of rejection of application was prescribed in the advertisement as is evident from paragraph 5 thereof, which reads as under : -

“5. In Note III of the said paragraph it is specifically mentioned “in regard to educational qualifications, the marksheet in lieu of educational certificate will not be accepted by the Commission”. In the same instructions in Sl. No. 7 the requirements of *certificate to be attached*, it is mentioned at Serial (ii) “Degree or diploma certificate or other certificates in support of their educational qualifications to be attached either by way of attested copies or self-certified copies”. By way of Note III, it is mentioned that if no copies of above certificates are sent with the application, it is liable to be rejected and no appeal against its rejection would be entertained.”



33. The Supreme Court, on examining the facts and circumstances of the case, held in paragraph 15 as under : -

“15. In the first place, it must be stated that it is not a case of the appellant not possessing the required essential qualifications but was of only not enclosing the certificate in proof of the added qualification of Zoology as one of the subjects at BSc level, from a recognised University. In the application when once the appellant, marked ‘1’ against Column 9 and thereby confirmed that he possesses the essential qualification, namely, the postgraduate qualification as well as the degree level qualification, if at all there was any doubt about any of the qualification, the appellant should have been called upon to produce the required certificate in proof of such essential qualification. In fact in this context, when we refer to the interview proceedings of the appellant as well as two other candidates we find that the appellant produced the original BSc/MSc degree in Zoology and also submitted the attested photocopy of BSc Zoology degree. The outcome of the said interview was that the appellant should be cleared of his selection. Insofar as other two candidates, namely, Miss Babyto and Miss Imrana, are concerned, we find that the production of their caste certificate was not in the prescribed pro forma initially, nevertheless those candidates were allowed to produce the original caste certificate issued by the competent authority and after verifying the same by accepting the attested photocopies of such caste certificates, their cases were cleared. Therefore, when such a course was adopted by the respondent Commission in regard to those two candidates there is no reason why the candidature of the appellant alone was kept in suspension, though he also cleared interview process. Even assuming such clearance was not made awaiting the outcome of the order of the Tribunal, when the Tribunal upheld his selection and



directed the respondent to issue necessary orders for appointment, in all fairness the respondent Commission should have issued the order of appointment. We are of the view that such an approach of the respondent Commission was unfair having regard to the very trivial issue, namely, a non-production of an added qualification as part of the essential qualification at the degree level which the appellant did possess and for mere asking, the appellant could have readily produced the same through his employer.”

34. It is evincible from paragraph 15 of *Dheerender Singh Paliwal* (supra) that it was not a case where the appellant did not possess the requisite essential qualification, rather the appellant had failed to enclose the certificate in proof of the added qualification of Zoology as one of the subjects at B.Sc. level from a recognized University. Noticing the aforesaid fact and the fact that cases of two other candidates, where, though production of their caste certificate was initially not in prescribed proforma, nevertheless, those candidates were allowed to produce their original caste certificates issued by the competent authority later and after verifying the same by accepting attested photocopies of such caste certificates, their cases were cleared. Noticing this aspect, when such course was adopted by the Commission in regard to those two candidates, the Supreme Court observed that there was no reason why the candidature of the appellant alone was kept in suspension.



35. The facts of the present case are entirely different.

The certificate of non-creamy layer is essential requirement for a candidate to be considered against the posts reserved for Other Backward Classes (OBC).

36. The case of *Ram Kumar Gijroya* (supra) is clearly distinguishable on facts. In the said case, the OBC certificate was issued in favour of the candidate and submitted after the cut off date for submission of application forms. The fact remained, however, that he had possessed a certificate which had been submitted. The purpose of issuance of non-creamy layer certificate to candidates belonging to Backward Classes is to exclude top creamy layer of Backward Class or caste from the benefits of reservation. The principle enunciated by the Supreme Court in case of *Indra Sawhney v. Union of India*, reported in **1992 Supp (3) SCC 217**, that the Backward Class under Article 16(4) of the Constitution of India means the Class which has no element of creamy layer in it and that the State must identify creamy layer in a Backward Class and thereby after excluding the creamy layer extend the benefit of reservation to the class, which remains after exclusion.

37. The caste status of a person is a consistent factor but his creamy layer status varies based on numerous factors, such as,



family income, members of the family of a designated Backward Class becoming members of IAS/IPS and consequent rise of status in the Society etc.

38. The petitioner was required to submit his non-creamy layer certificate on the basis of his status as on the date of his application. Had it been a case of denial of candidature on the ground of delayed submission of caste certificate, a question of application of the principle laid down in *Ram Kumar Gijroya* (supra) would have arisen. No claim of reservation against posts under the State, reserved for Other Backward Classes (Extremely Back Class in the present case) can be accepted in the absence of a non-creamy layer certificate. The petitioner in his application, though disclosed his caste status to claim reservation, there was nothing nor there could have been anything before the BPSC to arrive at a conclusion that the petitioner was a ‘non-creamy layer’ candidate. The petitioner, thus, was not qualified to claim reservation as EBC category candidate in the absence of non-creamy layer certificate.

39. Further, in my opinion, the Full Bench decision in case of *Braj Kishore Prasad* (supra), paragraph 26 of which reads thus, holds the field : -

“26. Having regard to all these considerations, I hold that:



(a) Where the advertisement specifies the last date for filing of supporting or other documents, that date must be given effect to, and any document received after such date shall be rejected by the selecting authority.

(b) In appropriate cases where the selecting authority is of the view that the time for furnishing of documents should be extended, it may grant such extension by issuing a public notice to this effect so that all candidates may get the benefit of such extension. In the absence of any such extension granted by the selecting authority, the date/dates mentioned in the advertisement should be treated to be the last date for filing of documents, and no document shall be accepted thereafter.

(c) No application/document shall be entertained by the Commission if the same is filed after the last date specified in the advertisement, or the extended date notified by the commission, even if the same is filed before the finalisation of the select list.

(d) In appropriate cases where this Court is satisfied that a case of extreme hardship or injustice has resulted on account of factors beyond the control of the concerned candidate, this Court in exercise of its writ jurisdiction may grant relief in deserving cases. But in doing so, the Court must be satisfied that the candidate concerned has acted diligently, and is not guilty of delay or laches in taking necessary steps for procuring the requisite certificates, etc. However, no relief shall be granted where the requisite certificate is produced for the first time after the process of selection is complete and the selecting authority has made its recommendation.”



40. The said decision has been consistently followed by this Court in various subsequent decisions. In case of *Tar Babu Yadav* (supra), a Division Bench of this Court held in paragraph 11 as under : -

“11. For us there is no reason to take a different view. First, the Full Bench judgment is binding upon us. Second, it is settled law that the application made pursuant to the public advertisement must conform with the terms and conditions mentioned in the advertisement. The Division Bench in the aforesaid matter of *Rakesh Kumar* had no occasion to consider the above Full Bench judgment of this court. To that extent the Division Bench judgment in the matter of *Rakesh Kumar* (supra) is *per incurium*.”

41. Similar view was taken in case of *Vandana Govindam* (supra), paragraph 11 of which reads thus :-

“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.”



42. In case of *Harish Chandra Patel* (supra), a Division Bench of this Court echoed the view expressed in case of *Braj Kishore Prasad* (supra), in paragraph 11 in following terms : -

“11. In the present matter, as we have recorded hereinabove, the advertisement expressly specified that in case of *Backward Class* or *Extremely Backward Class* the application must be supported by a caste certificate issued by the District Magistrate. After the last date of receipt of the applications the Commission could not have accepted further materials. Nevertheless, the Commission did relax the requirement and allowed the candidates to produce the relevant materials even after the last date of receiving the applications until as late as 30th November, 2009. Apart from individual intimation a public notice was also given. Although the Commission was under no obligation either to relax the requirement or to send individual intimation once the public notice was issued. Presuming that the appellants did not receive the personal intimation sent to them under postal certificate the appellants were required to respond to the public notice. In spite of the public notice the appellants failed to produce the required certificates and to remove the deficiency. The appellants, therefore, can not have a legitimate grievance against the Commission; nor the appellants can claim, as a matter of right waiver of such requirement. Nor the appellants are entitled to a mandamus against the Commission to recommend the names of the appellants for appointment in Backward Class category.”

43. The Division Bench, in case of *Dr. Santosh Kumar* (supra), has held in paragraph 7 as under : -

“7. The decision relied upon by learned counsel for the appellant in the case of Ram Kumar Gijroya (supra)



has no application to the facts and circumstances of the present case inasmuch as the petitioner before the Hon'ble Supreme Court had submitted his caste certificate, though after the cut off date. In the present case, it has not even been averred that the certificate relating to not belonging to the Creamy Layer in terms of the relevant provisions, issued within one year, was produced by the appellant before the authorities. Moreover, the reasoning given by the Hon'ble Supreme Court is in relation to the person belonging to a particular caste which fact, obviously, cannot change, as it is dependent upon his birth, whereas in the present case, the fact of not coming under the Creamy Layer is subject to change with the efflux of time as income does vary and the stipulation for submitting certificate relating to income, being issued within one year, is reasonable and justified."

44. The Supreme Court, in case of *Bedanga Talukdar* (supra), has categorically held that appointments to public office have to be made in conformity with Article 14 of the Constitution of India and to ensure fairness and to obliterate arbitrariness, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. When a particular schedule is mentioned in an advertisement, the same must be scrupulously maintained and there cannot be any relaxation in terms and conditions of the advertisement unless such a power is specifically reserved. Paragraphs 29 to 32 of the aforesaid decision is being reproduced, which are useful for the present case and relevant for the controversy which has been raised in the present application : -



“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.”

45. Since admittedly the petitioner does not possess non-creamy layer certificate he cannot claim benefit of reservation against EBC category in view of clear provision made in the advertisement.

46. In view of the above noted discussions, in the background of the facts of this case, submissions advanced on behalf of the rival parties and in view of the law laid down by the



Supreme Court and this Court in various cases, referred to hereinabove, I do not find any merit in this application.

47. This application is accordingly rejected.

48. There shall, however, be no order as to costs.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	10.12.2020
Uploading Date	15.01.2021
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