

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 19387 of 2017

Subodh Kumar Ray, son of Shri Mewa Lal Ray, resident of Village Keshopur,
 Police Station Vaishali, District Vaishali at Hajipur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Home (Police) Department, Government of Bihar, Patna.
3. The Bihar Public Service Commission, Patna through its Chairman, 15, Jawahar Lal Nehru Marg, Bailey Road, Patna.
4. The Secretary, Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg, Bailey Road, Patna.
5. The Special Secretary-cum- Examination Controller, Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg, Bailey Road, Patna.
6. Priyanka Kumari, D/O Shri Satyendra Kumar, R/O village Ekra, PO Ekadha, P.S. Ariyari, District Sheikhpura.
7. Jai Prakash Verma, S/o Sri Shiv Narayan Prasad, Vill- Bhurkunda, PO Ankuri, P.S. Goh, District Aurangabad.
8. Pooja Bharti, D/O Shri Gauri Shankar Singh, Sinha Sadan, Hanuman Path, Village- Tilkamanjhi, Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner
 For the B.P.S.C.

: Mr. Uday Prakash Sharma, Adv.
 : N. Shahi, Sr. Adv.
 anjay Pandey, Adv.



For the State : Mr. Suman Kumar Jha, AC to AAG-3
For the Respondents No. 6 & 8: Mr. Kumar Alok, Adv.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date: 06-08-2021

The instant case has been taken up for consideration through the mode of Video conferencing in view of the prevailing situation on account of COVID 19 Pandemic, requiring social distancing.

2. The present writ petition has been filed for directing the respondents to declare the petitioner as a successful candidate in the Mains (written) examination in connection with Advertisement no. 42 of 2011 on the ground that though he has secured 498 marks, three other candidates having lesser marks have been declared successful whereafter, they have been called for interview and have also been finally selected as against the post of Assistant Prosecution Officer.

3. The brief facts of the case are that the petitioner is a law graduate and is a practicing Advocate at the Civil Court, Hajipur. An advertisement no. 42 of 2011 was published by the B.P.S.C. on 19.10.2011 for making appointment on a total number of 8 instant Prosecution Officer. The



petitioner is stated to be belonging to the backward class category and as far as the backward class category is concerned, 10 posts had been earmarked for the said category and two posts had been assigned for the backward class ladies category. The petitioner is stated to have applied for the post of Assistant Prosecution Officer under the backward class category, whereafter the Admit card was issued to him and then the Preliminary competitive examination was held on 23.03.2019, in which the petitioner had qualified. The petitioner had appeared in the mains (written) examination, which was held in between 02.02.2015 to 06.02.2015 and is stated to have performed very well. However, when the result of the Assistant Prosecution Officer, Mains (Written) competitive examination was published by the competent authority of the respondent Commission on 07.04.2017, the petitioner did not find his name amongst the list of successful candidates, though he had secured 498 marks.

4. The learned counsel for the petitioner has submitted that Annexure-8 to the writ petition is the list of candidates finally selected under the backward class category, from which it is apparent that three candidates namely Puja Bharti, Jai Prakash Verma and Priyanka Kumari, though have got lesser marks than the petitioner in the Mains (written)



competitive examination, however, the petitioner has been illegally not considered successful in the main (written) examination despite having obtained 498 marks i.e. more than the marks obtained by the said three candidates, hence, the respondents are required to be directed to consider the candidature of the petitioner for appointment on the post of Assistant Prosecution Officer.

5. Per contra, the learned Senior Counsel appearing for the Bihar Public Service Commission (hereinafter referred to as “the Commission”), Shri P.N. Shahi, assisted by Shri Sanjay Pandey, Advocate, has submitted that an advertisement bearing Advertisement No. 42 of 2011 was published by the respondent Commission on 19.10.2011, pursuant to the requisition letter no. 10457 dated 27.12.2010 of the Home Department, Government of Bihar. The last date of submission of form was fixed as 17.11.2011. The learned Senior counsel for the respondent Commission, without going into the details of the case has directly sought to address the issue involved in the present case and has submitted that the petitioner could not be declared successful in the written examination because he had secured 498 marks, which is less than the cut-off marks i.e. 503, fixed for his reserv .e. the backward class category



(05), hence he was not called for interview and this fact would be apparent from Annexure-5 to the writ petition, which clearly mentions the cut-off marks for the backward class category to be 503, as far as the Mains (written) examination is concerned. The learned counsel for the respondent Commission has further submitted that the final result was published on 14.6.2017, after the interview was conducted and the final merit list was prepared, whereafter recommendations of successful candidates were sent to the department concerned, vide Commission's letter dated 19.07.2017, however, 5 vacancies (BC-03 and BCL-02) remained vacant due to unavailability of suitable candidates. Thereafter, appointments have been made and now the selection process is over. It is also submitted that all the women candidates of reserved category i.e. the backward categories are entitled to avail the benefit of reservation under the B.C. ladies category, as per the letter of the General Administration Department, Government of Bihar dated 19.8.2013. Since, the cut-off marks for the Mains (written) examination qua the B.C. ladies category had been fixed at 483, the aforesaid two ladies candidates namely Puja Bharti and Priyanka Kumari, having secured 490 and 485 marks respectively, had got the benefit of reservation un

ies category. The other candidate



namely Shri Jai Prakash Verma is a disabled category candidates (OH), who has been declared successful in the Mains (written) examination upon having got the benefit of reservation under the disability category for which the cut-off marks was fixed as 476 and he had obtained 494 marks.

6. The learned Senior Counsel appearing for the Bihar Public Service Commission, has also referred to the supplementary counter affidavit filed in the present case to further elaborate and clarify the legal and factual aspect of the matter. It is stated that the General Administrative Department, Bihar vide letter dated 19.08.2013 has clarified that all the Female (Woman) candidates of SC, ST, EBC & BC category are included in the backward class women (female) category. In fact, as per the Reservation policy of the State Government, contained in letter dated 03.09.2002 (Annexure-G to the supplementary counter affidavit), the percentage of reservation among the different reservation categories is as follows:-

Scheduled Caste (02)	16%
Scheduled Tribes (03)	1%
E.B.C. (04)	18%
B.C. (05)	12%
B. (06)	03%



Unreserved Category (01) 50%

7. It is submitted that all the Female candidates of SC, ST, EBC & BC category are entitled to exercise the benefit of their respective reservation categories including the reservation of BCL as per the circumstances during the selection in the light of the aforesaid policy of the Government and all the candidates included in the final merit list are considered to be Unreserved Category candidates first and if a candidate does not get a post under the Unreserved Category, by dint of his/her merit, then he /she is considered for reservation and allotment is made against the vacancies of his/her respective reservation category.

8. It is also submitted that letter No. 11364, dated 04.09.2017 of the General Administration Department, Bihar prescribes provision/process regarding allotment of vacancies. Clause -5(i) of this letter prescribes that the vacancies of open merit under vertical reservation of unreserved category will be filled up first and then other (horizontal) reservation like 3% of Disabled, 2% of Freedom fighter and 35% of Female. Clause 5 (ii) of letter dated 04.09.2017 prescribes that the vacancies of reserved cate; EBC, BC, BCL) under vertical



reservation of Unreserved Category will be filled up first; and then other horizontal reservation like 3% of Disabled, 2% of Freedom fighter and 35% of Female will be filled. It is stated that the qualifying marks and cut off marks are different matters. The qualifying marks which has been fixed by the State Govt. vide para-7 of its letter dated 16.07.2007 (Annexure-H to the supplementary counter affidavit) is as follows:-

Unreserved Category	40%
E.B.C (04)	34%
B.C (05)	36.5%
Schedule Caste (02), Schedule Tribe (03) and B.C.L. (06)	32%

9. The learned Senior counsel for the Commission has further submitted that the cut off marks is the marks which is fixed after reservation category wise selection of a particular examination. The cut off marks come out automatically as soon as selection for a particular reservation category is done up to the last merit position in context of vacancy of that particular reservation category in the light of the provisions made vide letter no. 2374, dated 16.07.2007. The marks of the last candidate on that particular last merit position of that reservation category becomes the cut off marks of reservation category as the selection of the last candidate in that particular examination. It is submitted



that all the selections are being made in the light of existing Reservation Policy of the State, as per the provisions contained in the Reservation in Vacancy of Posts & Services of Bihar Act (For Schedule caste, schedule Tribes and other Backward Classes), 1991 and in light of the amended rules framed by the State from time to time in this regard. Section-4(3) of the Reservation in Vacancy of Posts & Services of Bihar Act (For Schedule Caste, Schedule Tribes and other Backward Classes), 1991 provides that a candidate of reserved category, who is selected by virtue of his/her merit, will be counted under 50% vacancy of unreserved category and not against the vacancies of reserved category.

10. It is further submitted that the selection has been made taking into consideration the respective merit of the candidates and availability of reservation category wise vacancies in the concerned categories. If a candidate is having higher merit position and vacancy is available at that particular merit position of a candidate in the Unreserved Category, then his/her candidature will be allotted against that vacancy of the post but if he/ she does not get a post in the Unreserved Category with respect to his/her merit position under the general category then

e of such a candidate will be



considered against the vacancy of his/her respective reservation category, in which vacancy is available. If vacancy is available in their respective reservation category, then the candidate is allotted against this vacancy.

11. The Ld. Sr. Counsel for the respondent Commission has also contended that all the Woman candidates of reserved categories come under the BCL (06) category as per the Letter of the General Administration Department, Bihar dated 19.08.2013. Now coming back to the present case, it has been submitted that the respondents no. 6 and 8 are the woman candidates of Backward Class (05) Category who are entitled to exercise the benefit of reservation under the BCL (06) category, as per the provision laid down in the aforesaid letter. Both the aforesaid female candidates have been declared successful in the Mains (written) Examination since they secured more marks than the cut off marks of BCL (06) category. As far as Sri Jai Prakash Verma, is concerned, he is a disabled candidate (OH category), who has been declared successful in the Mains (written) Examination getting the benefit of reservation under the disability quota and having secured more marks than the cut off marks, fixed for the disabled category (OH). It is stated that all the aforesaid candidates found place in the final merit



list prepared after interview and got selected against the vacancy of BC (05) by dint of their merit. On the contrary, the petitioner could not be declared successful in the Mains (written) examination since he secured lesser marks than the cut off marks fixed for his reservation category i.e. BC (05).

12. It is thus the submission of the Ld. Sr. Counsel for the respondent Commission that all the aforesaid three candidates, regarding whom the petitioner has alleged that they were having less marks than the petitioner but had still qualified in the Mains (written) examination, have found place in the final merit list and have been selected by virtue of their merit which is also clear from Annexure-P 8 to the writ petition. Thus, it is evident that no candidate has been declared successful who has obtained lesser marks than the cut-off marks, in their respective categories, either in the written examination or at the time of final selection and moreover, no candidate having lesser marks than the petitioner, in the respective category, has found place in the final merit list.

13. The learned counsel for the private respondents no. 6 and 8, Shri Kumar Alok has though adopted the arguments advanced by the learned Senior counsel appearing for the



respondent Commission, but has further submitted that the cut-off marks fixed for succeeding in the Mains (written) examination was 503 marks and admittedly the petitioner has secured 498 marks, as such he failed to compete for the purposes of appearing in the interview. It is further submitted that as far as the respondents no. 6 and 8 are concerned, they belong to the backward class ladies category i.e. the B.C.L. Category, for which the cut-off marks, for being successful in the Mains (written) examination, was fixed as 483 and they had secured 490 and 485 marks respectively, hence, they had qualified for being called for interview.

14. I have heard the learned counsel for the parties and gone through the materials on record from which it is apparent that neither any candidate having lesser marks than the petitioner in his category i.e. the B.C. category nor any candidate having lesser marks than the cut-off marks in their respective category in the Mains (written) examination have been declared successful so as to qualify for appearing in the interview. This Court further finds that the private respondents no. 6 and 8 namely Puja Kumar and Priyanka Kumari have qualified under their own category i.e. the B.C.L. category inasmuch as they have secured 490 and 485 marks, which is more than the cut-off marks fixed for that category i.e. 483 marks. As far as the respondent no. 7, namely, Jai Prakash Verma is concerned, he has qualified under the reserved category i.e. OH category



inasmuch as he has got 494 marks in the Mains (written) examination, which is more than the cut-off marks fixed for this category i.e. 476 marks. Therefore, this Court finds that the allegation levelled by the petitioner in the writ petition as well as contention raised to the effect that since three candidates having less marks than the petitioner under the B.C. category have been declared successful in the Mains (written) examination, the petitioner should also be declared successful in the Mains (written) examination and his candidature should be considered for selection on the post of Assistant Prosecution Officer, is not only incorrect but also thoroughly misplaced, as is apparent from the facts and circumstances of the present case, stated herein above in the preceding paragraphs.

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

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	NAFR
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