

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1250 of 2020

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J. Lalu Kumar, son of Sri Jaleshwar Sah, Resident of Village Barapaker,
Dulma, P.S. Madhuban, District East Champaran

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health,
Government of Bihar, Patna
2. The Principal Secretary, Department of Health, Government of Bihar, Patna
3. Bihar Staff Selection Commission, Patna through its Secretary.
4. The Secretary, Bihar Staff Selection Commission, Patna
5. Member-cum-Examination Controller, Bihar Staff Selection Commission,
Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Arjun Kumar, Advocate
For the State	:	Mr.Ajay Behari Sinha, GA8
		Ms.Seema Ghayala, AC to GA8
For B.S.S.C.	:	Mr.Gyan Shankar, Advocate

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

6 30-08-2022 Heard learned Counsel for the petitioner and learned

Counsel for the respondent-Commission as well as the learned

Counsel for the State.

The petitioner has filed this writ application seeking a
direction upon the respondents to consider his candidature for
appointment as Operation Theatre Assistant (for brevity 'OTA')
against the seat reserved for Most Backward Class (for brevity
'MBC') category candidates.

The facts which are not in dispute are that the
petitioner applied claiming to be a member of the MBC



category. The petitioner was subjected to the process of selection and had been forwarded to the counseling stage. At the stage of counseling the petitioner was required to submit the Non-Creamy Layer Certificate, which as per the respondent-commission has not been submitted by the petitioner. On account of failure to produce the non-creamy layer certificate the respondents, in terms of the stipulation contained in the letter dated 27.04.2016 calling the petitioner for counseling, have considered the petitioner to be a general candidate. On account of his marks being less than the cut-off prescribed for general candidates he has been excluded from consideration.

The counsel for the petitioner has made two fold submissions. One is that based on calculation of the marks as specified by the authorities in the Check List-cum-Academic Marks Details, contained in Annexure B, the petitioner has been granted total marks 30.85. Based on such marks they have forwarded him for counseling and therefore it cannot be accepted that the petitioner was not having the qualifying marks. The other submission advanced on behalf of the petitioner is that the non-creamy layer certificate was issued by the Competent Authority on 18.05.2016, just one day before the counseling of the petitioner was scheduled, therefore in view of



the delayed issuance of the certificate the non-production should have been considered leniently.

The Court has gone through the material on record and considered the rival submissions, the fact that the petitioner has been allowed or forwarded up to the counseling stage even though he did not admittedly have the requisite marks, is a mistake, if at all, based on which petitioner cannot claim any right. The fact remains that the certificate was issued one day prior to the counseling and admitted fact is that it was not produced, as non-production of the non-creamy layer certificate is recorded in the Check List-cum-Academic Marks Details duly signed by the petitioner.

Based on the facts and in view of consideration above, no case is made out for exercise of writ jurisdiction for issuance of any direction in favour of the petitioner.

Writ application is dismissed.

(Madhuresh Prasad, J)

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