

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.450 of 2019

In
Civil Writ Jurisdiction Case No.18786 of 2010

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Md. Imtiyaz Ahmad S/o Md. Mustafa Ahsan R/o Mohalla- Shekhana Kalan,
Bihar Sharif, P.S.- Bihar, Distt.- Nalanda.

... .. Appellant/s

Versus

1. The State of Bihar,
2. The Principal Secretary Department of Health, Govt. of Bihar, Patna
3. The Additional Secretary Department of Health, Govt. of Bihar, Patna
4. The Joint Secretary Department of Health, Govt. of Bihar, Patna
5. Bihar Public Service Commission through its Secretary, Bailey Road, Patna, Bihar
6. Chairman Bihar Public Service Commission, Bailey Road, Patna, Bihar
7. Examination Controller cum Additional Secretary Bihar Public Service Commission, Bailey Road, Patna, Bihar
8. The District Magistrate Nalanda at Bihar Sharif
9. Shiv Kishore Choudhary S/o not known to the petitioner through Principal Secretary, Department of Health, Govt. of Bihar, Patna

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Sanjay Sinha, Advocate
For the Respondent/s : Mr. S.D. Yadav (AAG 9)

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 25-07-2022

I.A. No. 01 of 2019 has been filed for condonation of
delay of 246 days.

02. For the reasons stated in the application and affidavit
the delay of 246 days in filing LPA is condoned. Accordingly, I.A.
No. 01 of 2019 stands allowed.



03. In the instant appeal, appellant has questioned the validity of the learned Single Judge order dated 26.06.2018 passed in CWJC No. 18786 of 2010.

04. The appellant was a candidate for recruitment to the post of Drug Allopathic Inspector pursuant to advertisement No. 02 of 2008 *vide* Annexure-1 to the writ petition. Last date for submission of application is before 17.06.2008. Appellant was invited for interview on 28.09.2010. Appellant's candidature is required to be considered under OBC category. However, he has not furnished OBC certificate as it was not counter-signed by the District Magistrate. Thus, appellant's candidature has been considered under general category and he was not successful.

05. In the light of these facts and circumstances in the appellant's candidature for appointment has not been considered in CWJC No. 18786 of 2010. Appellant has suffered order before the learned Single Judge, thus, the present appeal.

06. Learned counsel for the appellant submitted that appellant had obtained OBC certificate issued by the Sub-divisional Office. In terms of the advertisement, one of the condition is that OBC certificate is required to be counter-signed by the District Magistrate as on 17.06.2008, i.e., the last date for submission of application and so also on the date of interview on



28.09.2010. The OBC certificate of the appellant was not counter-signed by the District Magistrate. Learned counsel for the appellant submitted that there was certain administrative difficulties in getting counter-signed by the District Magistrate at the time of interview as there were certain agitation. It is further submitted that belated OBC certificate could be accepted by the selecting and appointing authority in terms of the Hon'ble Apex Court decision in the case of **Ram Kumar Gijroya vs. Delhi Subordinate Services Selection Board and Anr.** reported in **(2016) 4 SCC 754**. It is further submitted that District Magistrate counter-signature is not mandatory as held by this Court in **LPA No. 416 of 2009 (Rakesh Kumar vs. The State of Bihar & Ors.)**. The copy of the judgment has not been made available to us.

07. *Per contra*, learned counsel for the respondents supported the decision of the selecting and appointing authority as well as order of the learned Single Judge. It is further submitted that in non-furnishing OBC certificate at the time of interview is not curable defects for the reasons that reservation policy is required to be implemented for the purpose of inviting candidates for interview and further for selection and appointment to the post of Drug Allopathic Inspector. Therefore, there is no infirmity in the



decision in not entertaining the appellant's belated OBC certificate.

08. Heard learned counsels for the respective parties.

09. Undisputed facts are that appellant was a candidate to the post of Drug Allopathic Inspector under OBC category. The last date for submission of application is 17.06.2008 and interview was held on 28.09.2010. The OBC certificate obtained by the appellant was not in terms of the condition imposed in the advertisement that it was to be counter-signed by the District Magistrate. The appellant has not questioned the validity of the condition imposed that OBC certificate is required to be counter-signed by the District Magistrate. Assigning the last date in any of the recruitment is in order to ascertain the candidature eligibility in terms of criteria. The appellant has claimed that his candidature is required to be considered under OBC category. As on 17.06.2008 the OBC certificate of the appellant was not counter-signed by the District Magistrate even on 28.09.2010, the date on which appellant was invited for interview. OBC certificate was not valid in terms of condition imposed by the advertisement as it was not counter-signed by the District Magistrate. The cited decision in the case of **Ram Kumar Gijroya** (supra) does not assist the appellant for the reasons that in the later judgment Hon'ble Apex Court has



held that the object of fixing the last date for submission of application in respect of any recruitment and its significance. In the case of **Union of India vs. Mahendra Singh** vide **C.A. No. 5807/2022, SLP No. 19886 of 2019** decided on 25.07.2022 it is held that candidature instructions are to be adhered strictly. Therefore, the cited decision do not assist the appellant. In respect of citation in LPA No. 416 of 2009 that counter-signature of the District Magistrate for OBC certificate issued by the Sub-divisional Officer is not mandatory cannot be appreciated for the reasons that as long as condition imposed in the advertisement has not been assailed by the appellant in the writ petition and it is set aside.

10. In the light of these facts and circumstances, the appellant has not made out a case. Accordingly, the appeal stands dismissed.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

