

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7751 of 2020

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Jyoti Joshi D/o Ashok Kumar Joshi Resident of near Suj Factory, P.P.C.L. Colony, Dehri on Sone, District- Rohtas at present R/o Near Sarswati Vidyalaya, Dhanraj Singh Path, Punaichak, Bailey Road, Patna.

... .. Petitioner

Versus

1. The State of Bihar Through the Principal Secretary, General Administration Department, Bihar, Patna.
2. The High Court Judicature at Patna through its Registrar General.
3. The Bihar Public Service Commission through its Chairman.
4. The Chairman, the Bihar Public Service Commission, Patna.
5. The Secretary The Bihar Public Service Commission, Patna.
6. The Joint Secretary-cum- Examination Controller Bihar Public Service Commission, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. P. K. Shahi, Sr. Advocate Mr. Satyendra Pandey, Advocate
For the Res. No. 2	:	Mr. Piyush Lall, Advocate
For the State	:	Mr. Saroj Kumar Sharma, AC to AAG 3
For the BPSC	:	Mr. Sanjay Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 09-02-2022

Brief background of the case

The petitioner in this case is claiming appointment to the post of Civil Judge (Junior Division) in Bihar Judicial Service. She appeared in the 30th Bihar Judicial Service Competitive Examination, 2018 (hereinafter referred to as ‘the Competitive Examination’) pursuant to an Advertisement bearing no. 06 of



2018 (Annexure '1' to the writ application) published by the 3rd respondent namely the Bihar Public Service Commission, Patna (hereinafter referred to as 'the Commission') to fill up the 349 posts of Civil Judge (Junior Division).

2. The Commission has prepared a combined merit list of 351 candidates which has been made available to the petitioner on her request under Right to Information Act, 2005 (Annexure '4' to the writ application). The name of this petitioner is appearing at Serial No. 180 in the combined merit list/select list. She belongs to unreserved category of candidates. From Annexure '1' to the writ application, it would appear that out of 349 vacancies notified, 175 vacancies are for the unreserved category candidates. A 35 per cent lateral reservation is available for the female candidates, therefore, 62 vacancies in unreserved category shall go to the female candidates. The admitted position is that the Commission made recommendations to fill up all the vacancies and a final select list (hereinafter referred to as 'final select list') was sent to the General Administrative Department vide Letter No. 90 dated 02.12.2019. The last candidate in general category who found place in the final select list to fill up the notified vacancy meant for the unreserved category had obtained 517 marks and was standing at Serial No. 173 in the combined merit list. Since the petitioner had secured



516 marks (written-456 + interview- 60) was standing at merit position no. 180, she could not get a place in the final select list which was recommended for the appointment.

Reliefs prayed in the writ petition

3. In the aforementioned background the petitioner filed the present writ application praying for the following reliefs:-

“(I) To issue an appropriate order/s, direction/s including a writ preferably in the nature of CERTIORARI for quashing the Final selection list prepared for reserved category in unreserved category whereby and where under altogether 36 reserved category candidates have been considered for appointment to the post of Civil Judge (Junior) Division in pursuance of advertisement No. 06/2018 published by the respondent Bihar Public Service Commission, Patna to fill up the vacancy of 349 post of Civil Judge (Junior) Division under the Bihar Judicial Service through competitive examination (hereinafter referred to as 30th Bihar Judicial Service (Main) Competitive Examination, 2018.

(II) To direct the respondents to appoint the petitioner to the post of Civil Judge (Junior Division) who has obtained total 516 marks (456 in written examination and 60 in interview) having placed her name at serial No. 180 in the merit list by the respondent Bihar Public Service Commission, Patna (hereinafter referred to as B.P.S.C. in short.)



(III) To any other relief/s to which the petitioner may be found entitled in the facts and circumstances of the case.”

4. Initially it was the contention of the petitioner that the 3rd respondent has wrongly and illegally prepared the final select list by placing the reserved category candidates in unreserved category. This writ application seems to have been presented in the Registry on or about 11.09.2020. By filing a supplementary affidavit the petitioner contended that a person who avails the benefits of reservation system at the preliminary stage cannot be allowed the benefit of reservation for the purpose of selection while preparing the final select list.

(Swati Chaturvedi's case)

5. It, however, appears that during pendency of the writ application, a learned Co-ordinate Bench of this Court was considering a writ application being C.W.J.C. No. 3952 of 2020 filed by one Swati Chaturvedi who had secured 517 marks and was placed at Serial No. 174 in the combined merit list. She claimed her appointment on the ground that she had obtained identical marks as that of the last candidate selected on the post and certain recommended candidates did not join the post, so some of the posts had remained unfilled. The Hon'ble Division Bench vide its judgment dated 01.03.2021 held that “admitted position is that 6



