

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9152 of 2022

1. Rahul Kumar (Male) aged about 29 years, Son of Rajniti Yadav, Resident of Village- Bariyahi, P.O.- Simariya Ghat, P.S.- Barauni, District - Begusarai, Bihar - 851126.
2. Jintendra Kumar Singh, (Male) aged about 32 years Son of Dhanik Lal Singh, Resident of Village - Kanhauli Bairbona, P.O. and P.S. - Kanhauli, District - Madhubani, Bihar - 847228.
3. Rohit Kumar, (Male) aged about 29 years, Son of Rampravesh Prasad, Resident of Naya Bazar, P.O.+ P.S. and District - Siwan, Bihar - 841226.
4. Kaushik Kumar, (Male) aged about 34 years Son of Ishwaranand Singh, Resident of Village- Ganj Jalalpur, P.O.- Maranchi, P.S.- Punpun, District- Patna, Bihar - 804453.
5. Gautam Kumar, (Male) aged about 31 years Son of Sidheshwar Prasad, Resident of Bankipur Gorakh, P.O. and P.S.- Fatwah, District- Patna, Bihar - 803201.
6. Gautam Govinda, (Male) aged about 38 years Son of Umesh Prasad Mehta, Resident of Konipar, P.O. - Dighri, P.S.- Surajgarha, District - Lakhisarai, Bihar - 811106.
7. Lalu Kumar, (Male) aged about 28 years Son of Ramashish Yadav, Resident of Village - Bhathar, P.O.- Bhathar, P.S.- Tharthari, District- Nalanda, Bihar - 801307.
8. Ritesh Raushan, (Male) aged about 36 years Son of Satya Narayan Sah, Resident of Village and P.O.- Banchauri, P.S.- Dumra, District- Sitamarhi, Bihar - 843302.
9. Niraj Kumar, (Male) aged about 30 years Son of Munna Mahto, Resident of Mogalpura, P.O. - Jhauganj, P.S.- Khanjekalan, District - Patna, Bihar - 800008.
10. Manoranjan Kumar Singh, (Male) aged about 38 years Son of Anil Singh, Resident of At, P.O. and P.S.- Masaurhi, District- Patna, Bihar - 804452.
11. Ankit Kumar, (Male) aged about 27 years Son of Anil Thakur, Resident of Village - Chauram, P.O.- Tarari, P.S. - Daudnagar, District - Aurangabad, Bihar - 824143.
12. P. Baibhav Vishal, (Male) aged about 30 years Son of Madan Pandit, Resident of Village - Gerandi, P.O. - Baksanda, P.S.- Akbarpur, District- Nawada, Bihar - 805126.
13. Binit Kumar, (Male) aged about 33 years Son of Yogendra Prasad Yadav, Resident of Village- Madhurapur, P.O.- Narayanpur, P.S.- Bihpur, District- Bhagalpur, Bihar - 853203.
14. Deepak Kumar, (Male) aged about 30 years Son of Kapil Deo Modi, Resident of Village - Etown, P.O. - Mananpur, P.S.- Chanan, District- Lakhisarai, Bihar - 811310.
15. Ravi Kant Bharti, (Male) aged about 29 years Son of Anil Prasad, Resident of At and P.O.- Bhui, P.S. - Silao, District- Nalanda, Bihar - 803117.



16. Ashok Kumar, (Male) aged about 34 years Son of Suresh Sah, Resident of Village - Kokna, P.O. - Parmananpur, P.S.- Dumra, District- Sitamarhi, Bihar- 843302.
17. Ankit Kumar, (Male) aged about 28 years Son of Lakhandeo Thakur, Resident of Village- Champapur, P.S.- Bakhtiyarpur, District - Patna, Bihar - 803212.
18. Mukesh Pal, (Male) aged about 29 years Son of Ram Kumar Pal, Resident of Village and P.O.- Sowar, P.S.- Krishna Brahm, District - Buxar, Bihar - 80211.
19. Parwej Alam, (Male) aged about 27 years Son of Basir Ansari, Resident of At - Khaira Bhutaha, P.O. - Natwar, P.S.- Sanjhauli, District- Rohtas, Bihar - 802218.

... .. Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary-cum-Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Under Secretary, General Administration Department, Government of Bihar.
4. The Bihar Staff Selection Commission through its Secretary, Veterinary College, Patna - 800014.
5. The Chairman, Bihar Staff Selection Commission, Veterinary College, Patna - 800014.
6. The Secretary, Bihar Staff Selection Commission, Veterinary College, Patna - 800014.
7. The Controller of Examination, Bihar Staff Selection Commission, Veterinary College, Patna - 800014.

... .. Respondents

Appearance :

For the Petitioners	:	Mr. Kumar Kaushik with Mr. Pushkar Bharadwaj Ms. Namrata Dubey, Advocates
For the State	:	Mr. Harshvardhan Shivsundaram AC to SC-8
For the Respondent BSSC	:	Mr. Rana Vikram Singh Adv.

**CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
CAV JUDGMENT**

Date : 29-08-2022

Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for the respondent -Bihar
Staff Selection Commission (for short 'the Commission').



2. The writ petition has been filed seeking quashing of the order contained in letter dated 20-05-2022, bearing Memo No. 7591, whereby and whereunder the General Administration Department has instructed all the District Magistrates in the State of Bihar to take steps for issuing non Creamy Layer Certificate (NCL 'for short') to the successful candidates under the Reserved category (BC and EBC) to enable them to participate further in the selection process under Advertisement No. 06060114 dated 01-09-2014, issued by the Commission for appointment to various Intermediate level posts. The NCL has been directed to be issued on the basis of income of the candidates' parents for the financial year 2013-2014. The petitioners have also sought quashing of the notice dated 23-05-2022, under letter No. 1928, by which the successful candidates, in the said process of selection, were directed to apply for issuance of the NCL within a period of 15 days and uploaded on the website of the Commission. The petitioners, who were possessing certificates, issued contemporaneous to the Advertisement, have also sought the relief that candidates, who have been allowed to obtain NCL w.e.f. an earlier date, under the two letters dated 20-05-2022 and 23-05-2022, may be considered as disqualified for not possessing the NCL before the last date of submission of application form and



to complete the selection process to the exclusion of the beneficiaries of the two impugned letters dated 20-05-2022 and 23-05-2022.

3. The basic facts are not in dispute. The Advertisement bearing No. 06060114 dated 01-09-2014 was issued inviting applications for conducting the first Intermediate Level Combined Competitive Examination (ILCCE 'for short') for appointment to the various Intermediate Level posts in the Departments of Government of Bihar. The last date of submission of application form was 11-10-2014. The advertisement was issued for filling up of two type of posts which were categorized as Group A and Group-B, the difference being requirement of physical test for Group-A and for Group-B, there being no such requirement. The post under Group-A category were Forest Guard, Stenographer and Typist in the office of D.G.P. and Havaladar Instructor. The post under category-B included Stenographer, Assistant Urdu Translator, Stenographer in other Forums/Departments, Lower Division Clerk, Revenue Clerk etc.

4. The petitioners, who are candidates against the Reserved Category of BC and EBC, were having the requisite NCL at the time of submission of online application forms. Some desirous candidates filed CWJC No.17465 of 2014, seeking age



relaxation in the process of selection. The same was allowed on 25-06-2015. The Commission, thereafter, on 05-02-2016, vide Annexure- P/2 issued a notice shifting the cut-off-date for determination of maximum age limit from 01-08-2014 to 23-01-2006. The candidates, who became eligible to participate in the process of selection, pursuant to the notice dated 05-02-2016, were, thus, allowed to participate by filling up online application forms from 22-02-2016 to 13-03-2016. The process of selection was, thereafter, carried on and the Preliminary Examination was scheduled to commence in two stages. Thereafter, the rest of the papers and the entire Preliminary Examination was cancelled vide notice dated 08-02-2017 issued by the Commission due to unavoidable reasons. One and half years later, the Preliminary Examination was again scheduled to commence from 08-12-2018 to 10-12-2018. A total number of 63739 including the writ petitioners were declared successful against 13120 vacancies. The Mains Examination were, thereafter, notified on 28-02-2020. The last date for submission of application form was 18-03-2020. The petitioners participated in the Mains Examination and were declared successful. Thereafter, typing test and physical eligibility test was conducted. The Commission found some discrepancy in the result of earlier Preliminary Examination. Whereafter, the



result of the Preliminary Test was published on 19-09-2021, wherein, 1218 more candidates were found successful and a separate Mains Examination was conducted for these participants on 31-10-2021 in which 727 candidates were found successful in the result dated 23-10-2017. These 727 candidates were in addition to the 52784 candidates who had earlier emerged successful. The Commission, thereafter, issued a list of candidates, shortlisted for counselling, vide notice dated 04-12-2021, in which, a total number of 14,410 candidates were shortlisted for counselling. After shortlisting of the candidates, Commission issued a notice dated 07-12-2021 requiring, *inter alia*, the candidates to have NCL issued prior to the last date of submission of application form i.e. 31-10-2014/13-03-2016, whichever is earlier. This condition, laying down the requirement of NCL, prior to last date of submission of application form, was challenged in CWJC No. 20854 of 2021, wherein, this Court, vide order dated 24.12.2021, directed the counselling to continue without insisting on NCL issued prior to the last date of submission of application form. Thereafter, the writ application was dismissed as withdrawn on 28-04-2022, and as such, the interim order stood vacated. Even though, the petitioners had withdrawn their writ application an order dated 20-05-2022 was issued by the General Administration



Department vide letter no. 7591, instructing all the District Magistrates in the State of Bihar, to issue NCL to candidates under the Reserved category (BC and EBC) who were found successful. The Commission also directed the desirous candidates to apply for issuance of NCL for the year 2013-14, within a period of fifteen days and uploaded on the website of the Commission. Such direction was contained in notice dated 23-05-2022 bearing letter no. 1928.

5. The petitioners' counsel has submitted that the settled legal principle is that qualification has to be examined with reference to the last date of submission of application form, which is to be treated as the cut-off-date. The respondent- Commission, therefore, by allowing candidates in the selection process to obtain NCL w.e.f. an earlier date being 2013-2014, is arbitrary and discriminatory. By doing so, the respondent-Commission are conferring eligibility in violation of the settled legal principle requiring possessing of requisite qualifications at the time of application. Such relaxation is to the prejudice of those candidates, who were in possession of NCL at the time of submission of application form, which NCL were issued within one year. By subsequently allowing other candidates to obtain NCL w.e.f. a retrospective date, the respondent Commission have caused an



increase in the number of eligible candidates diminishing the chances of the petitioners in the process of selection. In view of clear stipulation in the Advertisement regarding possessing of the requisite documents on the date of submission of application there was no scope for any relaxation. The candidates, who have been allowed to obtain NCL with retrospective effect, were actually ineligible in terms of the Advertisement, at the time they submit their application. It is also submitted that the petitioners can claim to be members of the reserved category by birth as their caste identity is a constant. The NCL, on the other hand, is based on candidates' parents income, which is variable. Thus, the candidates were required to have in their possession a NCL at the time of their applications issued within one year.

6. The State counsel, however, submits that in the Advertisement there was an ambiguity regarding the date of submission of NCL. Even in the Advertisement dated 18-03-2020 for conducting the Mains Examination, the last date for submission of NCL was not specified. For the first time, by Annexure P7(A) dated 07-12-2021 the last date for submission of NCL was specified being the last date of submission of application form dated 31-10-2014, subsequently modified to 13-03-2016. In the process of selection, applications with reference to the two last



dates for submission of applications were invited twice, also two different dates were specified as being the cut-off-date for submission of NCL. The Respondent-Commission, therefore, took notice of the fact that 3500 candidates, who had now emerged successful based on two different last dates in the same selection process, were not in a position to produce NCL issued in the year 2013-2014. Accordingly, the Commission sought guidelines from the State Government and to consider this aspect, a High level meeting was convened on 12.05.2022 headed by the Chief Secretary, Bihar. In view of the situation that had arisen, it was considered appropriate to provide a one time measure without treating it as a precedents to direct the District Magistrates to issue NCL of the parents of the candidates with retrospective effect for the year 2013-2014. A list of such successful candidates under the BC/EBC category, to whom NCL was to be issued w.e.f. 2013-2014 was, thus, communicated to all the District Magistrates under notice dated 23-05-2022. Since NCL was required w.e.f. two different dates, whichever was applicable to the candidates; and the two different dates were about 6 to 8 years old, the candidates were genuinely facing a difficulty in obtaining the NCL with reference to the date of advertisement being 2013-2014. The Commission thus sought guidelines from the General



Administration Department vide letter dated 23-12-2021. It is in response to this query that the impugned letters have been issued by the State Government enabling issuance of NCL with a retrospective date. The entire exercise has been undertaken on a *bona fide* consideration of the genuine difficulty being faced by the candidates. In view of the fact that the process of selection procrastinated for nearly eight years till the stage of counselling, a just and *bona fide* resolution was required and, therefore, the impugned letters were necessitated under the unique circumstances.

7. This Court would consider the stand of the State authorities to be genuine and *bona fide*. The selection process from the issuance of advertisement till the stage of counselling spread over eight years or more. The petitioners have been participating in the process throughout. They have all along been aware of the fact that additional candidates were being declared successful by virtue of age relaxation having been granted after the advertisement was issued. The new candidates, who became eligible by virtue of relaxation of the age criteria, were also to the knowledge of the petitioners in the entire selection process in between issuance of notice dated 05-02-2016 Annexure P2 to issuance of notice dated 07-12-2021 Annexure P(7)A, the



petitioners have raised no objection. After granting age relaxation to the other candidates, who subsequently became eligible and emerged successful subsequent to the petitioners in the same selection process, if no opportunity was provided to obtain NCL with retrospective effect, then the entire exercise leading to their being declared successful would have become futile. Therefore, in order to avoid such a situation and also to avoid changing rules of game midway it appears to this Court to be only proper and just to allow issuance of NCL with retrospective effect so that all the candidates whether petitioners or those who, subsequently emerged successful were bound by eligibility based on NCL uniformly w.e.f. 2013-2014. The petitioners’ grievance, therefore, appears to be thoroughly misplaced.

8. The writ petition is devoid of merit and dismissed.

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	16-08-2022
Uploading Date	17-09-2022
Transmission Date	N/A

