

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10376 of 2020

-
-
1. Dr. Sanjesh Mani S/o Sachhidanand Yadav, R/o Vill.- Parwaha, P.S. Gamhria, Dist.- Madhepura.
 2. Dr. Yogesh Kumar, S/o Kulanad Rai, R/o Vill.- Khutwana, P.S. Sadar Darbhanga, Dist.- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principle Secretary, Health Department, Govt. of Bihar, Patna.
2. The Secretary, Bihar Technical Services Commission, 19 Harding Road, Patna.
3. The Deputy Secretary, Bihar Technical Service Commission, 19 Harding Road, Patna.
4. The Liaising Officer, implementation of reservation policy in Health Department, Govt. of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Arun Kumar No. 1, Advocate
For the Respondent/s : Mr. Ramadhar Singh, GP 25

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 11-01-2022

This matter is heard *via* video conferencing due to
circumstances prevailing on account of the COVID-19 Pandemic.

In the instant petition, petitioners have prayed for the
following reliefs:-

*“(i) That the Respondents be
strictly directed to appoint these OBC’s
petitioners on vacant posts of Extremely
Backward Classes according to Section 4(2)
and Section 4(6)(b) and 4(6)(d) of the Bihar
Reservation of vacancies in Posts and
Services (For Schedules Castes, Scheduled
Tribes and Other Backward Classes) Act,
1991 because same Exchange reservation*



has been given to unreserved candidates against vacant posts of economically weaker sections (EWS) candidates and also it has been exchanged to male ST candidates against vacant post of women backward class under this exchange formula in the present selection process itself. The present vacancies are included vacancies of previous recruitment years 201402017.

(ii) That the Respondents be also directed to appoint these M.B.B.S. doctors forthwith on priority basis, considering this Covid-19 pandemic emergent situation in Bihar, where thousands of Doctors posts are vacant in Additional Primary Health Centers (APHC), PHC and Sadar Hoospital and Medical College of Bihar of Bihar in rural areas due to which unbearable loads on PMCH, AIIMS and IGIMS, NMCH Patna has caused thousands of deaths due to non-availability of seats in these 4 big hospitals of Patna.

(iii) That the Respondents be directed to fill up the entire vacant posts of Doctors expeditiously in Bihar in emergent situation of Covid-19 pandemic as other States of the country has did so.

(iv) That the Respondents be directed to publish waiting list also in published result, because due to non joining of some Doctors, those post will remain vacant again and innocent people will suffer an irreparable lose due to scarcity of Doctors in rural areas.

(v) That the P.G. Doctors should not be appointed because they will 3 years leave to obtain higher education, as such the seats of Doctors at APHC, PHC Sadar Hospitals & Medical Colleges will remain vacant in Bihar for further 3 years.



(vi) That the Respondents be strictly directed to provide reservation to SC, ST, EBC, BC candidates accurately in percentage fixed for them in Section 4(2) of the Bihar Reservation Act, 1991. It has not been followed in the present vacancies at all.

(vii) That the direction be issued to the Respondent No. 4 to punish those guilty Respondents u/s 12 of Reservation Act 1991 who all have violated the reservation rule willingly and knowingly.

(viii) That the Respondents be directed to pay the appropriate cost and compensation to these unemployed petitioners, for unnecessary mental, physical and economical harasses done by the illegal and unconstitutional acts of the Respondents.

(ix) That any other relief and relieves may kindly be granted to the petitioners as it may be deemed fit and proper to the facts and circumstances of this case.”

Short question for consideration is that the concerned respondent in the selection and appointment of M.B.B.S. Doctors have not adhered to the reservation policy in accordance with the Bihar Reservation of vacancies in Posts and Services (For Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1991. Therefore, the concerned respondent is hereby directed to redress the grievance of the petitioners in the light of the Hon'ble Apex Court decision in the case of **Superintending**



Engineer, Public Health U.T. Chandigarh and Ors. vs. Kuldeep

Singh and Ors. reported in (1997) 9 SCC 199. The relevant paragraphs 4 to 6 read as under:-

“4. Article 14 prohibits discrimination and Article 16(1) accords equality of opportunities in the matter of appointment to an office or post under the State. Article 38 read with the Preamble enjoins the State to accord socio-economic justice, the basic feature in all institutions of national life. Article 335 of the Constitution enjoins that the claims of the members of the Scheduled Castes and Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State. It is settled law that it should be read consistent with Article 46 of the Constitution to take special care of the educational and economic interests of the Scheduled Castes and the Scheduled Tribes and to protect them from injustice and all forms of exploitation. Appointment to an office or post under the State is one of the policies of the State to accord economic justice as part of social justice for integration of Scheduled Castes and Scheduled Tribes in the social mainstream, as also dignity of person and equality of status. It would be an opportunity to improve excellence which is a fundamental duty. In the light of Article 16(4-A) introduced by the Constitution (77th Amendment) Act, 1995 the claims of the Scheduled Castes and the Scheduled Tribes for promotion shall be taken into consideration in making appointment or giving promotion. It is the constitutional duty coupled with the power of the authorities implementing the rules of recruitment including promotion. In that behalf,



in Comptroller and Auditor General of India, Gian Prakash v. K.S. Jagannathan [(1986) 2 SCC 679 : 1986 SCC (L&S) 345 : (1986) 1 ATC 1] (SCC 679 at p. 693), a three-Judge Bench of this Court was to consider whether the appellant-Comptroller and Auditor General of India was under the constitutional obligation to fix the lesser standard of examination in the light of the Brochure, to inform the Scheduled Caste and Scheduled Tribe employees of the same and to conduct refresher courses before conducting examination and whether the failure to discharge the duty was unconstitutional. This Court considered the constitutional obligation on the part of the authorities in implementing the rule of reservation and pointed out in paras 21, 22 and 23 as under: (SCC pp. 693-95)

“21. It is now necessary to examine the nature of the discretion conferred by the said Office Memorandum dated 21-1-1977 — ‘Whether it is a discretionary power simpliciter or a discretionary power coupled with a duty?’ From the provisions of the Constitution referred to above, it is transparently clear that it is a discretion to be exercised in the discharge of the constitutional duty imposed by Article 335 to take into consideration the claims of the members of the Scheduled Castes and the Scheduled Tribes, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State. This duty is to be exercised in keeping with the Directive Principle laid down in Article 46 to promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and to protect them from social injustice and



all forms of exploitation. Article 37 of the Constitution provides that the Directive Principles of State Policy contained in Part IV of the Constitution, in which Article 46 occurs, are fundamental to the governance of the country and that it is the duty of the State to apply these principles in making laws. As said by Murtaza Fazal Ali, J., in State of Kerala v. N.M. Thomas [(1976) 2 SCC 310 : 1976 SCC (L&S) 227] (at p. 996 of the Reports: SCC p. 379, para 164) 'the directive principles form the fundamental feature and the social conscience of the Constitution and the Constitution enjoins upon the State to implement these directive principles'.

22. *The object of the said Office Memorandum dated 21-1-1977, is to provide an adequate opportunity of promotion to the members of the Scheduled Castes and the Scheduled Tribes. By reason of the provisions of Article 16(4) of the Constitution a treatment to the members of the Scheduled Castes and the Scheduled Tribes different from that given to others in matters relating to employment or appointment to any office under the State does not violate the Fundamental Right to equality of opportunity for all citizens in such matters guaranteed by Article 16(1) of the Constitution. It is now well settled by decisions of this Court that the reservation in favour of backward classes of citizens, including the members of the Scheduled Castes and the Scheduled Tribes, as contemplated by Article 16(4) can be made not merely in respect of initial recruitment but also in respect of posts to which promotions are to be made: (see, for instance State of Punjab v. Hira Lal [(1970) 3 SCC 567 : (1971) 3 SCR 267] and Akhil Bharatiya Soshit Karamchari Sangh (Rly.) v. Union of India [(1981) 1 SCC 246 : 1981 SCC (L&S) 50] .*



23. The question which now falls to be considered is the manner in which the Comptroller and Auditor General of India is required to exercise the discretion conferred by the said Office Memorandum dated 21-1-1977, and the manner in which he has, in fact, exercised it. The said Office Memorandum dated 21-1-1977, refers to two other office memoranda, namely, the Office Memorandum dated 23-12-1970, and the Office Memorandum dated 27-11-1972. Under the Office Memorandum dated 23-12-1970, where a sufficient number of Scheduled Caste and Scheduled Tribe candidates are not available on the basis of the general standard to fill all the vacancies reserved for them, they may also be considered for promotion provided they are not found unfit for such promotion, and to achieve this, the said office memorandum directs that the qualifying standard in such examinations can be relaxed in their favour in keeping with the above criterion. The Office Memorandum dated 27-11-1972, fixes the reservation quota for the members of the Scheduled Castes at 15% and the Scheduled Tribes at 7 1/2% in appointments filled by promotion on the basis of seniority subject to fitness. Under the said Office Memorandum dated 21-1-1977, if a sufficient number of Scheduled Caste and Scheduled Tribe candidates are not available in the qualifying examinations on the basis of the general standard to fill all the vacancies reserved for them in the promotional posts, suitable relaxation in the qualifying standard for such examinations should be made in the case of the Scheduled Caste and the Scheduled Tribe candidates bearing in mind all relevant factors including, namely, (1) the number of vacancies reserved, (2) the performance of the Scheduled Caste and the Scheduled Tribe candidates as well as the general candidates in that examination, (3) the minimum standard of fitness for



appointment to the post, and also (4) the overall strength of the cadre and that of the Scheduled Castes and the Scheduled Tribes in that cadre. The said Office Memorandum dated 21-1-1977, thus postulates two qualifying standards — one, a general qualifying standard and the other, a relaxed or lower qualifying standard for candidates belonging to the Scheduled Castes and the Scheduled Tribes. Paragraph 4 of the said Office Memorandum dated 8-2-1968, reproduced earlier, shows that in the case of direct recruitment through a qualifying examination a minimum standard is generally to be fixed and that in such cases, a lower minimum qualifying standard should be fixed for the candidates belonging to the Scheduled Castes and the Scheduled Tribes, taking into account the minimum standard necessary for the maintenance of efficiency of administration, and that if the minimum qualifying standard for general candidates is reviewed at a later date, the lower minimum qualifying standard applicable to the Scheduled Caste and Scheduled Tribe candidates should also be reviewed. The Office Memorandum No. 1/1/70-Estt. (SCT) dated 25-7-1970 which deals with examination for direct recruitment also speaks of a general standard and of a lower standard for candidates belonging to the Scheduled Castes and the Scheduled Tribes, the standard being required to be relaxed in their case to make up the deficiency in the reservation quota provided they are not found unfit for such post or posts. As seen above, a similar provision exists in the said Office Memorandum dated 23-12-1970, with respect to departmental competitive examinations for promotion and in departmental confirmation examinations.”

5. This principle of power coupled with duty was succinctly stated by Earl



Cairns, L.C. in the House of Lords in Julius v. Lord Bishop of Oxford [(1880) 5 AC 214 : (1874-80) All ER Rep 43, HL] (AC at pp. 222-23) quoted with approval therewith by this Court in Commr. of Police v. Gordhandas Bhanji [1952 SCR 135 : AIR 1952 SC 16] (SCR at p. 147) thus:

“There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so.”

6. It would thus be clear that the petitioner was under a constitutional duty coupled with power. Every public servant is a trustee of the society and in all facets of public administration, every public servant has to exhibit honesty, integrity, sincerity and faithfulness in implementation of the political, social, economic and constitutional policies to integrate the nation, to achieve excellence and efficiency in the public administration. A public servant entrusted with duty and power to implement constitutional policy under Articles 16(4), 16(4-A), 15(4) and 335 and all interrelated directive principles, should exhibit transparency in implementation and should be accountable for due effectuation of constitutional goals. Maintenance of the roster and strict adherence to it in accordance with the Brochure issued by the Government of India in that behalf to implement the rule of reservation in promotion is the charge and trust put on public servants. The Constitution has trusted the public servant as honest administrator to effectuate public policy and constitutional goals. The petitioner herein, has betrayed that trust and tended to frustrate



the public policy. It is deducible from the facts that the petitioner failed to perform that constitutional duty. The Administrator of the Union Territory of Chandigarh should look into and take appropriate action against the erring officers concerned and report compliance to the Registry of this Court within two months.

6. It would thus be clear that the petitioner was under a constitutional duty coupled with power. Every public servant is a trustee of the society and in all facets of public administration, every public servant has to exhibit honesty, integrity, sincerity and faithfulness in implementation of the political, social, economic and constitutional policies to integrate the nation, to achieve excellence and efficiency in the public administration. A public servant entrusted with duty and power to implement constitutional policy under Articles 16(4), 16(4-A), 15(4) and 335 and all interrelated directive principles, should exhibit transparency in implementation and should be accountable for due effectuation of constitutional goals. Maintenance of the roster and strict adherence to it in accordance with the Brochure issued by the Government of India in that behalf to implement the rule of reservation in promotion is the charge and trust put on public servants. The Constitution has trusted the public servant as honest administrator to effectuate public policy and constitutional goals. The petitioner herein, has betrayed that trust and tended to frustrate the public policy. It is deducible from the facts that the petitioner failed to perform that constitutional duty. The Administrator of the Union Territory of Chandigarh should look into and take appropriate action against the erring officers concerned and report compliance to the Registry of this Court within two months.”



The concerned respondent is hereby directed to take note of material information in respect of filling up of the posts of Doctors read with aforesaid decision and pass a speaking order and communicate the same to the petitioners. The above exercise shall be completed within a period of two months from the date of receipt of this order.

With the aforesaid observations, the present writ petition stands disposed off.

(P. B. Bajanthri, J)

Vikash/-

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

