

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.995 of 2019

In

Civil Writ Jurisdiction Case No.3082 of 2019

Dr. Sudha Kumari W/o Ranjeet Prasad Sinha D/o Gajadhar Prasad, R/o-
Village- Vasan Bigha, P.O and P.S.- Bain, District- Nalanda

... .. Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The Principal Secretary General Administration Department, Govt. of Bihar, Patna
3. The Principal Secretary Education Department, Govt. of Bihar, Patna
4. The Bihar Public Service Commission Patna, through its Secretary
5. The Chairman Bihar Public Service Commission, Patna
6. The Joint Secretary-cum-Examination Controller the Bihar Public Service Commission, Patna
7. The B.R.A. the Bihar University Muzaffarpur, through its Registrar
8. Mr. Mukul Kishore Verma S/o not known to the petitioner through the Registrar, B.R.A. Bihar University, Muzaffarpur
9. Mrs. Sudha Kumari D/o Not known to the petitioner through the Registrar, B.R.A. Bihar University, Muzaffarpur

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Purushottam Kumar Jha, Advocate Mr. Avanindra Kumar Jha, Advocate
For the Respondent/s	:	Mr. Shashi Shekhar Tiwary, AC to AAG 15
For the BPSC	:	Mr. Sanjay Pandey, Advocate Mr. Nishant Kumar Jha, Advocate
For the BRABU	:	Mr. Sanjeev Kumar, Advocate
For the Respondent No. 9:	:	Mr. Surendra Mishra, Advocate Ms. Rachna Shukla, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 22-06-2022

Heard Mr. Purushottam Kumar Jha, learned Advocate

for the appellant, Mr. Sanjay Pandey for the BPSC, Mr. Sanjeev

Kumar for Bhim Rao Ambedkar, Bihar University and Mr.



Surendra Mishra for the respondent no. 9. The State is represented by Mr. Shashi Shekhar Tiwary, learned AC to AAG-15.

The appellant has challenged the order dated 06.08.2019 passed by the learned single Judge in C.W.J.C. No. 3082 of 2019, whereby the prayer made on behalf of the appellant for being inducted as an Assistant Professor in the Department of Zoology has been rejected on the sole ground that on the relevant date, the appellant was not in possession of the requisite non-creamy layer certificate so as to entitle her for being granted reservation in job.

It had so happened that the appellant had furnished a caste certificate/OBC certificate in the name of her husband, which according to the appellant was a mistake of the office of the issuing authority as the appellant had furnished the name of her father as well.

Mr. Jha has assailed the aforesaid judgment on several grounds; but primarily on the ground that a person takes birth in a caste and a class which cannot be diluted post-marriage. Secondly, it has been urged that in the advertisement, there was no requirement of furnishing such non-creamy layer/OBC certificate on particular dates. The two dates that were provided later by the Bihar Public Service Commission for furnishing such certificate could not be utilized by the appellant for some reason which was beyond her control. Lastly, it has been submitted that in the



appointment process, one post has remained unfilled and therefore, the appellant would have legitimate expectation of being considered for appointment. Additionally, it has been argued that respondents no. 8 and 9, who were appointed in the process have lesser marks than the appellant.

During the course of argument, it came to light that respondent no. 8 has chosen not to join the service of the University and therefore, if that post has not yet been filled up, two posts under the same discipline are still vacant.

In response to the aforesaid, Mr. Sanjay Pandey, learned counsel for the BPSC has submitted that only on the requisition of the State Government, such selection process was initiated way-back in the year 2014, which stands completed by now. The Commission has become *functus officio* thereafter and can give no assurance with respect to induction of the appellant in the service of the University after the selection process is over.

He further submits that today the process of filling up the vacancy of Assistant Professors in the Universities of Bihar is being done by the Bihar State University Service Commission, which has not been impleaded as a party-respondent in the present appeal.

Mr. Sanjeev Kumar, learned counsel for the Bhim Rao Ambedkar, Bihar University, however, has taken a fair stand and



has submitted that he would take instructions from the University administration whether posts are still vacant and whether the University contemplates of filling up those posts even on an adhoc basis and whether the University is ready to make such requisition to the State Government for the needful.

Mr. Kumar has further argued that if the posts are vacant and the University does not have any cavil in accepting the candidature of a person, who is entitled to reservation and who has better marks than persons who are appointed as Assistant Professors, there would be no difficulty in accepting the proposition of the appellant, who does not claim appointment as a matter of right but only on grounds of equity.

This Court has explored such possibility for the simple reason that the appellant has been able to demonstrate that he hails from a category, who is entitled to reservation. Except for furnishing the requisite certificate regarding non-creamy layer entitlement of the appellant, the candidature of the appellant was fit enough to be considered by the Commission and the University.

It has long been well settled and not in the realm of *cadit quaestio* that the caste does not get diluted by any future event in the life of a person. There is nothing on record also to indicate that the husband of the appellant does not belonged to a non-creamy layer/OBC.



On the contrary, the learned counsel for the appellant has drawn the attention of this Court to a certificate issued by the relevant authority, demonstrating that the appellant is a person of the backward class and hails from non-creamy layer category, who is entitled for reservation.

Under the aforesaid circumstances, we deem it appropriate to conclude the present proceedings by directing that on an application so made by the appellant before the University, annexing a copy of this order within a period of three weeks, the University shall explore and find out whether the claim of the petitioner for being accommodated against the vacant seats in the respective department could be considered and if it be so, the University shall take a decision to make necessary requisition to the State Government for further sequel action.

It is expected that the University shall not sit over the matter and shall take a decision with utmost promptitude, for it concerns the life of an aspirant, who may be at the thresh-hold of loosing such opportunity because of his advancing age. It is further expected of the University that in case no such appointment process for filling up the vacancies has begun, appropriate decision be taken so that nobody is put to disadvantage and the academic environment in the University is also not made nugatory in the absence of Teachers against the sanctioned vacant positions. The



decision by the University shall be taken within a period of six weeks to be counted from the date of production of a copy of this order.

If the decision of the University is in the affirmative, necessary sequel action shall also be taken within a reasonable period of further sixty days.

The decision taken by the University authority shall be made known to the appellant forthwith.

With the aforesaid direction/observation, the appeal stands disposed off.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
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