

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25349 of 2019

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Priyanka Kumari Daughter of Sri Yogendra Sah Resident of Village-Karhatia
Buzurg, P.S.-Goraul, District-Vaishali.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. Bihar Public Service Commission, through the Chairman, 15, Jawaharlal Nehru Marg, Bailey Road, Patna-800001
3. The Chairman, Bihar Public Service Commission, 15, Jawaharlal Nehru Marg, Bailey Road, Patna-800001
4. The Joint Secretary Cum Examination Controller, Bihar Public Service Commission, 15, Jawaharlal Nehru Marg, Bailey Road, Patna-800001
5. The Patna High Court, Patna, through its Registrar General, Bailey Road, Patna-800001
6. Varsha Kumari Female, Roll No.-121207 through the Chairman, Bihar Public Service Commission, 15, Jawaharlal Nehru Marg, Bailey Road, Patna-800001.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Rajnikant Singh, Advocate
For the Respondent-BPSC	:	Mr. Ratnesh Kumar Singh, Advocate
For the Respondent PHC	:	Mr. Piyush Lall, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and

HONOURABLE MR. JUSTICE SHAILENDRA SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 08-08-2022

In the present writ application, the petitioner has made a prayer to direct the respondents to declare her as a successful candidate in the final result of 30th Bihar Judicial



Services Competitive Examination, 2018 in the Extremely Backward Class (EBC).

2. The case of the petitioner is that pursuant to the Advertisement No. 06 of 2018 inviting application from eligible candidates for appointment against 349 posts of Civil Judge (Junior Division), the petitioner being eligible, applied in the EBC (Female) category. The advertisement clearly stipulated that 73 posts were reserved for candidates belonging to the EBC category. After the submission of the application, the respondents released admit card and she appeared in the 30th Bihar Judicial Services Preliminary Competitive Examination held on 27.11.2018 and qualified in the test. After qualifying the preliminary test, she received admit card for the Main (Written) Examination. She appeared in the Main (Written) Examination which was held from 07.06.2019 to 12.06.2019. Since she had obtained 443 marks in the Main (Written) Examination, she was declared qualified for interview. She appeared in the interview on 16.11.2019 and obtained 65 marks. Thus, she got 508 marks in the final cumulative result of the Main (Written) Examination and interview.

3. On the date of interview, she was informed that the caste certificate submitted by her is not in the prescribed



manner. Though she had submitted the caste certificate along with her income certificate and residence certificate issued by the State Government, the respondent-Bihar Public Service Commission (for short 'BPSC') did not consider the same to be in proper form. The petitioner also sent the EBC (Non Creamy Layer) Certificate issued for the purpose of appointment to the posts under the Government of India along with an application through e-mail on both e-mail IDs of the respondents on 16.11.2019 and 23.11.2019 respectively. After getting no response from the respondents, she sent the EBC (Non Creamy Layer) Certificate issued by the State Government for the purpose of appointment to the posts under the Government of India along with an application through speed post on 25.11.2019. She got the (Non Creamy Layer) Certificate issued by the Government of Bihar in the prescribed manner on 26.11.2019. Thereafter, she sent the same through e-mail on 26.11.2019 itself and also sent through speed post to the BPSC on 27.11.2019. The respondent-BPSC without considering the case of the petitioner and the application filed by the petitioner, published the final result of the 30th Bihar Judicial Services Competitive Examination, 2018 on 29.11.2019. In the final result, the name of the petitioner was



not found in the list of successful candidates even though she had obtained 508 marks in total and the cut off marks under the EBC category was less than 508 marks.

4. Learned counsel for the petitioner submitted that the petitioner has been discriminated by the respondents. She has wrongly been left out from the list of successful candidates. The EBC (Non Creamy Layer) Certificate produced by the petitioner was issued by the State of Bihar and should have been relied upon by the respondents. He contended that it is not the case where the petitioner was not in possession of EBC (Non Creamy Layer) Certificate. The criteria for the EBC (Non Creamy Layer) in case of Central Government and State Government is the same i.e. the income of the family of the candidates should be less than Rs. 5 lacs per annum. The respondents have illegally not accepted the certificate of the petitioner. According to him, the action of the respondents in not appointing the petitioner to the post of Civil Judge (Junior Division) in EBC category is illegal, arbitrary and violative of Article 14 of the Constitution of India.

5. Respondent-BPSC has filed its counter affidavit and supplementary counter affidavit in the present matter.

6. It would appear from the counter affidavit and



supplementary counter affidavit filed by the respondent-BPSC that contention of the BPSC is that pursuant to the advertisement, the petitioner had submitted her online application in the EBC (Female) category. The BPSC initiated the process of selection and conducted the preliminary test on 27.11.2018 and 28.11.2018 in which 17610 candidates including the petitioner appeared. The BPSC published the result of preliminary test on 07.01.2019 in which 1100 candidates were declared successful including the petitioner. Thereafter, the BPSC made advertisement for the Main (Written) Examination on 12.01.2019. In Clause 8 of the said advertisement, it was clearly instructed that candidates must enclose self attested copies of the certificates including the character certificate with the hard copy of the application form. Subsequently, the BPSC published additional result of successful candidates on 27.03.2019 in the light of the order passed in W.P. (C) No. 71 of 2019 by the Hon'ble Supreme Court. Thus, the total number of successful candidates became 3704. The BPSC published an important notice on 29.03.2019 extending the date of filling of application form till 17.04.2019 for the Main (Written) Examination in view of the additional result of 2604 successful candidates. The date of filling up of application form was



further extended till 15.05.2019. Pursuant to the said advertisement, the petitioner submitted her application form for the Main (Written) Examination which was held from 07.06.2019 to 12.06.2019. She appeared in the Main (Written) Examination. The result of the examination was published on 05.10.2019. Altogether 1080 candidates including the petitioner were declared successful in the examination and were called for interview. On 15.10.2019, the BPSC published the interview programme of 1080 successful candidates which was scheduled from 21.10.2019 to 27.11.2019. The petitioner was called for interview on 16.11.2019. In Clause 3 of the interview programme, it was clearly stated that the candidates must bring original certificates for verification as stated in the original advertisement and interview letter along with two self attested copies of the same on the date of interview including the character certificate issued by the college/university where the candidate last studied and in case on the date of interview any candidate does not produce the original certificates, then no further time would be given for the same and the BPSC would be free to take appropriate decision with regard to the eligibility of such candidates. It was also mentioned in Clause 7 of the said interview programme that the candidature of the candidates



called for interview is fully provisional and only appearance in the interview does not confirm the candidature of the candidate. The aforesaid stipulations were also mentioned in Clause 6 of the interview letter.

7. The further contention of the BPSC is that when the petitioner appeared in the interview on 26.11.2019, she did not produce her original caste certificate for verification. This requirement was clearly mentioned in Clause 3(iv) of the interview programme and the interview letter but the petitioner failed to produce the same for verification. Since the petitioner failed to submit her original caste certificate for verification, her candidature was considered in unreserved category. As she had secured 508 marks, which is less than the cut off marks 517 for the unreserved category, she did not come under the zone of selection.

8. Mr. Ratnesh Kumar Singh, learned counsel appearing for the BPSC submitted that the BPSC has rightly cancelled the candidature of the petitioner in the EBC category due to non submission of the required certificate i.e. the original EBC (Non Creamy Layer) Certificate at the time of interview for verification.

9. Mr. Piyush Lal, learned counsel appearing for the



respondent no. 5 Patna High Court submitted that it would be evident from the averments made in the writ petition and the documents submitted in support thereof that the petitioner did not have the EBC (Non Creamy Layer) Certificate at the time of submission of the application form on 09.10.2018. She had filled up the date on her Non Creamy Layer Certificate (for BC & EBC) in her application as 19.09.2018, but no document was uploaded with the application. She has annexed the EBC (Non Creamy Layer) Certificate dated 26.11.2019, caste certificate dated 08.08.2017 and the caste certificate dated 19.09.2018, which were annexed as Annexure-5 series to the writ application. It would be evident from the interview letter that the petitioner was called for an interview on 16.11.2019. Clause-3 of the interview letter required the petitioner to produce original certificates for verification. It would be evident from the application dated 16.11.2019 submitted by the petitioner which has been brought as Annexure-G to the counter affidavit filed by the BPSC that she did not produce the EBC (Non Creamy Layer) Certificate along with the application dated 16.11.2019. Further, from the e-mail sent at 08:04 PM on 16.11.2019 by the petitioner which has been brought on record as Annexure-7 to the writ application, it would be evident that



the petitioner did not submit her EBC (Non Creamy Layer) Certificate earlier. Annexure-7 to the writ application would further reveal that the petitioner has clearly admitted that she had not submitted the EBC (Non Creamy Layer) Certificate on 16.11.2019, the date on which she had appeared for the interview.

10. We have heard learned counsel for the parties and carefully perused the records.

11. It would be pertinent to note here that on 23.08.2018, BPSC had published the advertisement inviting online application from suitable candidates for appointment to the post of Civil Judge (Junior Division) through the 30th Bihar Judicial Services Competitive Examination. There were mandatory conditions mentioned in Clauses 5(iii) and (iv), 9, 10 and 11 of the advertisement regarding possession of all relevant certificates at the time of filling of application and production of same at the time of interview. The petitioner submitted her online application against said advertisement on 09.10.2018. At that time she did not possess the Caste-cum-Non Creamy Layer Certificate. Though, she had filled date of her EBC (Non Creamy Layer) Certificate in the application as 19.09.2018, no document was uploaded by her with the application. She has



annexed the EBC (Non Creamy Layer) Certificate dated 26.11.2019 in the writ application, which has been marked as Annexure-5.

12. Admittedly, the petitioner was called for interview on 16.11.2019. Apart from the stipulations in the advertisement, clause 3 of the interview letter required the petitioner to produce original certificates for verification. It would be evident from the application dated 16.11.2019 duly filled and signed by the petitioner, which has been brought on record as Annexure-G to the counter affidavit filed by the BPSC that she was not in possession of EBC (Non Creamy Layer) Certificate on 16.11.2019, when she appeared for interview. It would further be evident from Annexure-7 of the writ application that the petitioner did not produce the EBC (Non Creamy Layer) Certificate at the time of interview.

13. Moreover, Annexure-5 would make it clear that EBC (Non Creamy Layer) Certificate was issued to the petitioner by the State of Bihar on 26.11.2019 i.e., ten days after she appeared for interview.

14. There is no dispute to the fact that clause 3 of the interview programme clearly stipulates that the candidates must bring original certificate for verification as stated in the original



advertisement and on the date of interview if any candidate does not produce the said original certificate then no further time would be given for the same and the BPSC would be free to take appropriate decision with regard to the eligibility of such candidates. It was also clearly mentioned in Clause 7 of the said interview programme that the candidature of the candidates called for interview is fully provisional and only appearance in the interview does not confirm the candidature of the candidate. It also stands admitted from the record that when the petitioner appeared in the interview on 16.11.2019, she did not produce her original caste certificate for verification at the time of interview.

15. Having noticed the indisputable facts in the present case, we must observe that when the BPSC had issued an advertisement and prescribed that candidates must possess all relevant certificates at the time of filling of application and production of the same at the time of interview, that condition must be given effect to. Any certificate which was not in possession of the candidate at the time of the application ought to be rejected by the BPSC. If the document certifying a candidate to be in EBC (Non Creamy Layer) under the reserved category was in possession of the candidate, but the same was



not produced in original at the time of interview that would also be a ground for not considering a candidate in the reserved category. A candidate cannot claim as a matter of right relaxation of the conditions incorporated in the advertisement.

16. The Supreme Court in **Bedanga Talukdar v. Saifudaullah Khan and Others**, since reported in **AIR 2012 SC 1803** observed as under:

“It is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement; the same has to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant Statutory Rules. Even if power of relaxation is provided in the rules, it must be mentioned in the advertisement. In the absence of such powers in the Rules, it could still be provided in the advertisement: However, power of relaxation, if exercised has to be given due



publicity. This would be necessary to ensure that those candidates, who become eligible due to relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India”.

17. In the instant case, when the advertisement for the posts clearly stipulated for possession of the original caste certificate at the time of filling up the form in a proper format and the petitioner did not possess the same, it would have been sufficient ground for rejection of her candidature in the EBC category. The next illegality committed by the petitioner was a wrong information given by her in the application form dated 09.10.2018 wherein she had mentioned the date of her EBC (Non Creamy Layer) Certificate as 19.09.2018 and did not upload any document in support of it. The said certificate dated 19.09.2018 is simply a caste certificate. The candidature of the candidate in the EBC category could have been rejected on this ground also. Another ground for the rejection of the candidature of the petitioner in the EBC category is that she failed to produce the original EBC (Non Creamy Layer) Certificate at the time of interview on 16.11.2019, which was mandatorily



required in terms of the stipulations made in the advertisement for the posts as well as the interview letter. The subsequent submission of the EBC (Non Creamy Layer) Certificate dated 26.11.2019 issued by the competent authority of the State Government in the proper format cannot confer any right to the petitioner to be considered as a successful candidate in the EBC category in the absence of any provision for relaxation in this regard in the Statutory Rules.

18. For the reasons stated above, the candidature of the petitioner was rightly considered in the unreserved category by the BPSC. As she had secured 508 marks, which was far less than the cut off marks 517 in the unreserved category. Thus, she was rightly not declared as successful in the final result of 30th Bihar Judicial Services Competitive Examination, 2018.

19. Under the circumstances noted above, no relief can be granted to the petitioner in the present writ application.

20. The writ application is, accordingly, dismissed.

(Ashwani Kumar Singh, J)

(Shailendra Singh, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
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