

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1586 of 2023

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Akash Kumar Son of Abhinash Kumar Singh, Resident of Rasai Bigha, P.S.-
Hilsa, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, General Administrative Department, Government of Bihar, Patna.
2. The Principal Secretary, General Administrative Department, Government of Bihar, Patna.
3. Bihar Public Service Commission, through the Chairman, 15, Jawaharlal Nehru Marg, Bailey Road, Patna, Bihar- 800001
4. The Secretary, Bihar Public Service Commission, 15, Jawaharlal Nehru Marg, Bailey Road, Patna, Bihar- 800001
5. The Honble High Court of Judicature at Patna, through its Registrar General.
6. Nishant Ranjan Son of not known to this petitioner, through Secretary, Bihar Public Service Commission, 15, Jawaharlal Nehru Marg, Bailey Road, Patna, Bihar- 800001

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 4680 of 2023

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Harindra Kumar Rai Son of Kamala Kant Rai Resident of Village- Paharpur,
P.S.- Mahuadih, District- Deoria.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Bihar Public Service Commission, through its Chairman.
3. The Chairman, Bihar Public Service Commission.
4. The Joint Secretary-cum-Examination Controller, Bihar Public Service Commission.
5. The High Court of Judicature of Patna in its Administrative Side, through the Registrar General, Patna High Court, Patna.
6. The Principle Secretary, General Administration Department, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 1586 of 2023)

For the Petitioner/s : Mr. Prince Kumar Mishra, Adv.

For the Commission : Mr. Sanjay Pandey, Adv.

For the Respondent/s : Mr. Sheo Shankar Prasad, SC-8.

For the High Court : Mr. Piyush Lall, Adv.



(In Civil Writ Jurisdiction Case No. 4680 of 2023)

For the Petitioner/s	:	Mr. Sanjay Singh, Sr. Adv. Mr. Sanjay Sinha. Adv. Mr. Rudrank Shivam Singh, Adv.
For the Commission	:	Mr. Sanjay Pandey, Adv.
For the Respondent/s	:	Mr. Suman Kumar Jha, AC to AAG-3.
For the High Court	:	Mr. Piyush Lall, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 18-04-2023

Both the writ petitions have been heard together and are being disposed of by this common Judgment.

CWJC No. 1586 of 2023 (Akash Kumar) has been preferred seeking quashing of the final result of 31st Bihar Judicial Services Competitive Examination dated 10.10.2022 published by the Bihar Public Service Commission (hereinafter called "the Commission") to the extent that it relates to him as even though he had obtained the cut-off marks for Backward Class Category but was denied final selection on account of selection of one Nishant Ranjan in Backward Class Category who had got marks equal to the cut-off marks meant for



Unreserved Category.

From the averments made in the writ petition and the arguments advanced on behalf of the parties viz. the Commission and the State, it was found that petitioner/Akash Kumar had secured 495 marks and was listed just below two of the Backward Category candidates, who had obtained same marks as the petitioner.

Twenty-six seats are said to have been earmarked for Reserved Category candidates which became full with two of the candidates at Sl. Nos. 243 and 244. It was further found that the candidate of the Backward Class Category who had obtained 536 marks is just below the last of the Unreserved Category, who has also obtained the same marks i.e. 536.

The learned advocate for the petitioner/ Akash Kumar has submitted that the first of the successful candidates in the Backward Class Category qualifies for being accommodated in the Unreserved Category which clearly makes room for one more person of Backward



Category in the zone of consideration for appointment and, in that case, it would be the petitioner/Akash Kumar who is next in line.

Though initially Mr. Pandey, learned advocate for the Commission came up with the plea that the entire vacancy meant for Unreserved Category has been filed because of 35 % horizontal reservation for woman but, on perusal of the records, conceded that two of the Unreserved Category candidates had not joined ultimately, making way for movement of candidates from Backward Category to Unreserved Category thereby leaving one place vacant in the Backward Category for accommodating the petitioner.

Simultaneously, Mr. Pandey pointed out that another candidate Viz. Harindra Kumar Rai, who incidentally is the first candidate in the unselected Unreserved Category candidates has also filed a writ petition bearing CWJC. No. 4680 of 2023 and that should also be taken into account before finally deciding the issue.



As such, on our direction, CWJC No. 4680 of 2023 was also listed along with CWJC No. 1586 of 2023 (Akash Kumar).

It was pointed out to us by Mr. Piyush Lal, learned advocate for the High Court that 88 seats were earmarked for Unreserved Category including 33% of women candidates, out of which only 87 candidates were recommended. Out of those 87, one person viz. Ashish Chandra did not turn up whereas appointment letters were not issued to two of the candidates viz. Rohit Kumar Tripathi and Rakhi Kumari who were found to be involved in Criminal Cases, thus leaving three vacant positions.

Mr. Sheo Shankar Prasad, learned advocate for the State, however, submits that there was one vacancy for orthopaedically/ physically challenged person which was not filled up, but such vacancy has been carried over to the next examination viz. 32nd Judicial Service Examination.

Though, this decision also appears to be



questionable but, for the moment, we are not taking up any issue regarding such carry over of orthopaedically/physically challenged seats for the ensuing examination. We say so for the reason that in accord with what has been directed in ***Malik Mazhar Sultan (3) & Anr. Vs. U.P. Public Service Commission & Ors., 2008 (17) SCC 703***, the vacancy ought to be filled up in the same examination process.

Be that as it may, because of non-joining of one Ashish Chandra, one position definitely falls vacant which should go to the first of the Backward category candidate who has obtained 536 marks and in this case the candidate is one Nishant Ranjan.

There would be no necessity of seeking his consent for moving to the Unreserved Category, as the same kind of service condition is available which does not require any consent of the candidate to be placed in specific category of vacancies. This automatically results in one position in the Backward Category falling vacant and that should logically go to the petitioner/Akash



Kumar who is the first in the merit list amongst the candidates in waiting list.

There does not appear to be any difficulty regarding the induction of petitioner/ Akash Kumar within the range of consideration for being appointed on such post.

So far as the case of Harindra Kumar Rai is concerned, we do take into notice that out of two of the successful candidates, one Rohit Kumar belonging to Unreserved Category and Rakhi Kumari Extremely Backward Category have not been offered appointment letters for the reasons of their implication in criminal cases.

Mr. Sheo Shankar Prasad, learned Advocate of the State submits that their candidature have not been cancelled as yet, but it is under contemplation whether they should be given appointment letters which shall be subject to the final outcome of the criminal case. The decision is yet to be taken by the State Authorities.

A criminal case involving offences under Section



304B of the Indian Penal Code as in case of one of the candidates and case of misrepresentation for obtaining monetary benefit as is the case with another candidate, cannot be taken lightly and that also for the purposes of filling up of the posts of Judicial Officers.

Nonetheless, since matter is still pending consideration before the government, we direct that a decision to that effect be taken positively within a period of 30 days and if such vacancies have not to be left open for those two candidates, the State ought to consider the case of the other candidates waiting in the wings in respective category to be inducted in. In that case, the petitioner/ Harindra Kumar Rai, is first in the wait list, as he has also obtained as many marks which would have otherwise made his entry in the list of successful candidates but for the lateral reservation of women in the Unreserved Category.

A decision to that effect shall be taken by the State and communicated to the Commission for the needful.



So far as the case of Akash Kumar is concerned, we direct that necessary requisition be sent by the State to the Commission for the needful.

The entire process ought to be completed within a period of 30 days as the process of ensuing of examination (32nd Judicial Services Examination) has already been set in motion.

With the aforementioned direction and observation, both the writ petitions are disposed of.

(Ashutosh Kumar, J)

(Harish Kumar, J)

manoj/rishi-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.04.2023
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