

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1532 of 2023

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Anita Wife of Lal Sahab Yadav, resident of village and Post Office Nagpura,
P.S. - Simari, District - Buxar.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Education, Govt. of Bihar, New Secretariat, Patna.
2. The Chairman, Bihar State University Service Commission (BSUSC), 8th Floor, Bihar School Examination Samiti, Academic Building, Buddha Marge, Patna.
3. The Secretary, Bihar State University Service Commission (BSUSC), 8th Floor, Bihar School Examination Samiti, Academic Building, Buddha Marge, Patna.
4. The Additional Secretary, Bihar State University Service Commission (BSUSC), 8th Floor, Bihar School Examination Samiti, Academic Building, Buddha Marge, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Garg, Adv.
For the State : Mr. Subhash Chandra Mishra (Sc16)

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

2 01-02-2023

1. Heard the parties.

2. Learned counsel for the petitioner fairly admits that so far as the claim of the petitioner as a reserve category candidate, on account of getting marriage in the State of Bihar is concerned, stands denied in view of the Judgment passed by the **Apex Court in the case of 2022 SCC Online SC 524 (Bharat Sanchar Nigam Limited and Anr. Vrs. Sandeep Choudhary and Ors.)** which is as follows:-

“26. In a more recent decision this Court in the case of Saurav Yadav v. State of U.P., (2021) 4 SCC



542 after referring to all the earlier judgments on vertical reservation has observed and held that it is well settled that candidates belonging to any of the vertical reservation categories are entitled to be selected in “open or general” category and it is also further observed that if such candidates belonging to reserved categories are entitled to be selected on the basis of their own merit, their selection cannot be counted against the quota reserved for the categories that they belong.

27. Similar view has been expressed by this Court in another recent decision of this Court in the case of Sadhana Singh Dangi v. Pinki Asati, (2022) 1 Scale 534. By the said decision, it is reiterated that the reserved category candidates securing higher marks than the last of the general category candidates are entitled to get seat/post in unreserved categories. It is further observed and held that even while applying horizontal reservation, merit must be given precedence and if the candidates, who belong to SCs, STs and OBCs have secured higher marks or are more meritorious, they must be considered against the seats meant for unreserved candidates. It is further observed that the candidates belonging to reserved categories can as well stake claim to seats in unreserved categories if their merit and position in the merit list entitles them to do so.

28. Applying the law laid down by this



Court in the aforesaid decisions to the facts of the case on hand, it is noted that the aforesaid two candidates, namely, Mr. Alok Kumar Yadav and Mr. Dinesh Kumar, belonging to OBC category, were required to be adjusted against the general category as admittedly they were more meritorious than the last of the general category candidates appointed and that their appointments could not have been considered against the seats meant for reserved category. Consequently, after considering their appointments in the general category, the seats meant for reserved category were required to be filled in from and amongst the other remaining reserved category candidates on merit such as respondent No. 1 herein. If such a procedure would have been followed, the original applicant - respondent No. 1 would have got appointed on merit in the reserved category seats in the vacancy caused due to the above procedure. Therefore, as such the High Court has not committed any error in observing and holding that the aforesaid two candidates, namely, Mr. Alok Kumar Yadav and Mr. Dinesh Kumar, will have to be adjusted against the general category candidates and accordingly respondent No. 1 being a reserved category candidate and being at Sr. No. 1 in the waiting list of reserved category was to be appointed.”

3. Keeping in view the law laid down by the Apex Court as above, learned counsel prays that she should be treated



as an open category candidate, and if her name come within merit, she may be called for Interview in the open category.

4. Learned counsel for the respondents submits that during the pendency of the writ petition the Interviews are over.

5. However, taking into consideration the facts of the present case, this Court is a firm view that a candidate's candidature cannot be denied in open category, merely because she claim reservation on the basis of being married in the State of Bihar.

6. The respondents are directed to examine her case whether she falls within the merit of those who have been called for Interview, and if she comes within the same, her Interview may also be taken before declaring the final result on the post of Assistant Professor (Psychology).

7. The writ petition is partly allowed to the aforesaid extent.

(Sanjeev Prakash Sharma, J)

Pravinkumar/-

Item No. 34

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