

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13530 of 2022

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1. Anamika Kumari D/o Balindra Singh Resident of Village-Hariharpur Lalgah, P.O.-Hariharpur Lalgah, P.S.-Gautam Budh Nagar Tarwara, District-Siwan.
 2. Usha Kumari D/o Ramayan Prasad Resident of Vllage and Post-Pachlakhi, P.S.-Nautan, District-Siwan.
 3. Veena Kumari D/o Parshuram sah Resident of Village-Rukundipur, P.O.-Rukundipur, P.S.-Daraunda, District-Siwan.
 4. Minta Kumari D/o Brajesh Thakur Resident of Village-Dhobawar, P.O.-Dhanao, P.S.-Baniyapur, District-Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Chief Executive Director, State Health Committee, Bihar, Patna.
3. The Principal Secretry, Heath Deptt. Bihar, Patna.
4. The Executive Director, State Health Committee, Bihar, Patna.
5. The Deputy Secreary-Cum-Incharge, Human Resources Deptt., Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Anil Kumar Sinha, Advocate
For the State Health Society	:	Mr. K. K. Sinha, Advocate
For the State	:	Mr. Vijaya Laxmi Srivastava, AC to SC-23

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 09-10-2023

1. Heard learned counsel for the petitioner and learned counsel for the respondent-State.

2. Learned counsel for the respondent-State has raised objection regarding maintainability of the writ petition insofar as the prayer of quashing the select list is concerned, by



submitting that the petitioner has chosen not to implead any candidate. In the circumstance, the relief which is likely to adversely effect rights of all the selected candidate/s (thousand in number) is not maintainable without impleading the selected candidate/s as party respondent.

3. Learned counsel for the petitioner has also relied upon the decision in the case of *Harendra Kumar Pandey v. State of Bihar*, reported in *1995 (1) PLJR 254* to submit that where the selection process is assailed by the petitioner, the candidate/s who have been selected may not be impleaded as party respondent.

4. The brief facts are that the petitioners participated in the process of selection for Auxiliary Nurse Midwifery (for brevity 'A.N.M.') pursuant to Advertisement No. 05/2021, dated 22-06-2021. The result of the selection process was declared in three phases. The first result dated 30-07-2022, declared 8517 successful candidates. The second result dated 21-10-2022, declared 330 successful candidates. The third result dated 20-06-2023, declared 334 successful candidates. The process of selection was based on marks obtained in a Computer Based Test (CBT), wherein evaluation was to be done out of 100 marks.



5. The petitioners had approached this Court initially by filing this writ petition seeking declaration of the marks obtained by them. In the instant proceedings, the marks of the petitioners had been placed on record.

6. Petitioner No. 1, applicant in the Economically Weaker Section (for brevity 'E.W.S.') secured 49.73 marks as against the cut-off of 38.05 marks.

7. The petitioner No. 2, applicant in the Backward Classes (for brevity 'B.C.') secured 49.93 marks, as against the cut-off of 63.88 marks.

8. Petitioner Nos. 3 & 4, applicants in the Most Backward Class (for brevity 'M.B.C.'), wherein the cut-off was fixed at 44.19 marks have secured 59.12 marks and 35.9 marks respectively.

9. Based on disclosure of marks in the instant proceedings, there is no dispute that petitioner Nos. 1 & 3 are the only candidates who secured above the cut-off marks. They however have not been selected because of non-submission of valid certificates within time certifying their candidature as EWS and MBC respectively.

10. The admitted position is that certificate submitted by petitioner No. 1 is dated 27-8-2022, certifying the petitioner



to be an EWS candidate. Prior thereto in the process of selection, at the time of document verification, it is admitted that she had submitted a certificate certifying her to be EWS, but issued in the year 2019. Insofar as petitioner No. 3 is concerned, the certificate of MBC submitted by her was dated 16-04-2022, i.e., three days after the date of her document verification i.e., 13-04-2022.

11. Insofar as petitioner No. 1 is concerned, it is submitted by the learned counsel for the petitioner that she has submitted two certificates in the process of selection; one of the year 2019 and the other of August, 2022. The irresistible conclusion, therefore, would be that in between year 2019 to 2022, she has remained EWS, and therefore, rejection of her claim by the respondents is unsustainable and based on a hypertechnical approach. Insofar as petitioner No. 3 is concerned, it is submitted that the as per the stand of the respondents in the counter affidavit, petitioner No. 3 had been allowed time till 19-04-2022, for submitting the certificate. The certificate was issued/obtained and submitted within the time, still her candidature has not been considered.

12. To sustain the candidature of petitioner No. 3, learned counsel has relied upon the decision of the Apex Court



in the case of ***Ram Kumar Gijroya vs. Delhi Subordinate Services Selection Board & Anr.*** reported in ***(2016) 4 SCC 754***, to submit that mere belated submission of caste certificate would not denude the candidate of the caste status. It is submitted that these certificates have been submitted within the reasonable time, and therefore, the Authority should have considered her claim

13. Learned counsel for the respondent-State, on the other hand, has submitted that the candidature of the petitioner No. 3 is unsustainable, as there is nothing on record to show that she has submitted the certificate within the extended time i.e., upto 19-04-2022. It is only in these proceedings, that she has for the first time submitted the certificate.

14. It is further submitted that the case of ***Ram Kumar Gijroya vs. Delhi Subordinate Services Selection Board & Anr.*** reported in ***(2016) 4 SCC 754***, relied upon by the petitioner is distinguishable in facts in the instant case. In the said case, the certificate had been produced before preparation of the provisional list. Another distinguishing feature is that in the case of ***Ram Kumar Gijroya*** (supra), the requirement of submitting a certificate issued prior to cut-off date for making application was introduced at a later stage and was not a requirement as per



the initial advertisement. In the instant case, on the other hand, the petitioner was knowing that the certificates was to be produced at the time of counseling, and therefore, reliance placed on the said case is not sustainable.

15. Insofar as the petitioner No. 1 is concerned, it is submitted that the EWS certificate which she was required to produce, as per the policy decision for such reservation dated 26-02-2019, in Order No. 2622, is valid for one year from the date of issuance of the certificate. The EWS certificate submitted by the petitioner in the process of selection is dated 03-06-2019. The same thus lapsed on 02-06-2020. The application for post in-question was invited on 01-07-2021. The petitioner was thus not having a valid EWS certificate, either at the time of filling up from, or at the stage of document verification. The second EWS certificate issued in August, 2022 is also insufficient to sustain the candidature of petitioner No. 1, since it has been issued much after the date of document verification (13-04-2022).

16. It is further submitted by the learned counsel for the respondent-State Health Society that the process of selection was based on assessment of candidature on two parameters. The first parameter was marks obtained in CBT, and the second was



verification of documents. It is only after emerging successful at both these stages that a candidate would be in a position to emerge selected. The admitted position is that both petitioner Nos. 1 & 3 did not qualify at both these stages. Insofar as the petitioner Nos. 2 & 4 are concerned, they have secured less than cut-off marks, and therefore they have no enforceable claim.

17. On consideration of rival submissions, this Court would find that petitioner Nos. 2 & 4, admittedly, have secured less than the cut-off marks. The evaluation of their candidature at the CBT was without any human intervention as the result was generated by the computer software, and therefore, in absence of any specific allegation of *mala fide*, the petitioner Nos. 2 & 4 are not in a position to allege any error in evaluation of their candidatures.

18. Insofar as the petitioner No. 1 is concerned, this Court is in agreement with submissions advanced by the learned counsel for the State Health Society. The essential requirement of being eligible for availing the reservation category EWS, was of belonging to Economically Weaker Section of the society. The economic status of an individual is a variable and not a constant. The assessment, therefore, is done on an annual basis. It is not in dispute that the policy of reservation for EWS



requires certification regarding economically weaker status of the candidate within a year prior to the cut-off date for filling up applications form. There being no certification in this regard, the petitioner No. 1 has rightly been excluded from the reservation category, EWS. This Court, therefore, finds no fault in consideration of the candidature of petitioner No. 1 as a general category candidate. The petitioner No.1 did not secure above cut-off marks (71.55%) in the unreserved category (UR), she has secured only 49.73 %.

19. Insofar as the candidature of petitioner No. 3 is concerned, this Court finds that she claims to be candidate under the reserved category (MBC). To be eligible for such reservation, she was required to produce proof that she was not a member of the creamy layer of the reservation category, which is known as Non Creamy Layer (NCL). Till such time, the petitioner establishes that she belongs to NCL, she does not become eligible for availing reservation under the category MBC. She has not placed on record the date on which she claims to have submitted the NCL certificate, issued on 16-04-2022, even though she had been allowed time during document verification on 13-04-2022, upto 19-04-2022 for submission of the NCL certificate. On the contrary, the respondent-Society has



taken a specific stand that NCL certificate was not produced by the petitioner and that it has been produced for the first time in these proceedings. The fact that she has not produced the NCL certificate itself distinguishes the petitioner's case from that falling for consideration before the Hon'ble Apex Court in the case of **Ram Kumar Gijroya** (supra). In that case, the candidate had submitted the NCL, belatedly. Other significant facts of the case of **Ram Kumar Gijroya** (supra) was that the original advertisement did not contain the cut-off for submission of such certificate, and the candidate therein had produced the certificate at the stage before preparation of the provisional list. This court, therefore, would find that the petitioner No. 4 is also not entitled to consideration of her case under the MBC reserved category. She has secured 35.92% marks, which is way below the cut-off marks fixed for UR category, that is 71.55 %.

20. Insofar as objection of the learned counsel for the respondent that the writ petition as framed is not maintainable for non joining of proper and necessary parties, i.e. the selected candidates, this Court would observe that on this score also the writ petition is fit to be rejected. Reliance placed on the case of **Harendar Kumar Pandey** (supra) by the learned counsel for the petitioner is unsustainable. The facts of the said case were



different than the present case. In the case of *Harendra Kumar Pandey* (supra), twelve selected candidates had been impleaded in a representative capacity. In this case, not a single selected candidate has been implead as a party respondent. The objection of the learned counsel for the State regarding non-maintainability of the present writ petition for non-impleadment of selected candidate/s, therefore is upheld by this Court.

21. For the reasons discussed above, writ petition is found to be devoid of merit and the same is dismissed.

(Madhuresh Prasad, J)

Raj kishore/
Mayank/-

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

