

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18940 of 2019

Dr. Sushma Sharan, Daughter of Late M.C. Ram Resident of C/C-56, PC Colony, Kankarbagh, P.S.- Kankarbagh, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary Medical, Education and Family Welfare Department of Health, Government of Bihar, New Secretariat, Patna.
3. The Secretary Bihar Public Service Commission, Bailey Road, Patna.
4. Joint Secretary-cum- Examination Controller Bihar Public Service Commission, Bailey Road, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Y. V. Giri, Sr. Advocate Mr. Prabhu Nath Pathak, Advocate
For the Respondent/s	:	Mr. Ajay Bihari Sinha, Advocate (GA8) Mr. Lipendra Kumar Singh, Ac to GA-8
For B.P.S.C.	:	Mr. Ashok Kumar Choudhary, Sr. Advocate Mr. Akshansh Ankit, Advocate

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL JUDGMENT

Date : 14-02-2023

The petitioner by way of this writ petition assailed the action of the respondent – Commission in treating her as a general candidate and denying her appointment on the post of Assistant Professor in department of Obstetric and Gynecology under the SC category.

2. The petitioner applied under the advertisement no. 20/2017 for the post of Assistant Professor in department of Obstetric and Gynecology and was shortlisted for interview



under the SC category. She appeared for interview and as has come on record, scored 29 marks. However, the PAC in its Full Commission meeting held on 08.08.2019 rejected her candidature in the SC category and shifted her to open category on the ground that the certificate issued by the respondent – State was in the name of her husband and not in the name of her father.

3. Learned counsel appearing for the Commission has stated that the State Government vide its order dated 8.03.2011 and 06.08.2012 had directed that the reservation would be available to ST/SC candidates whose creamy lawyer certificate and ST/SC certificate is in the name of father and not in the name of husband. Accordingly, they issued a notice on 14th of July, 2018 asking the candidates to submit a fresh certificate in the name of father alone. The last date was fixed as 7th of August, 2018 for the purpose.

4. It is the case of the petitioner that she had applied for a certificate in the name of her father which was issued to her on 17th August, 2019 and she should not be deprived of her status as a ST candidate. It is also informed that there were 4 posts of SC category in the subject of Assistant Professor, Gynecology which have remained vacant in the selection



process while the petitioner was duly entitled having scored more marks than the last candidate who was selected was having 17 marks.

5. The learned counsel for the State has supported their action of issuing directions for certificate to be in the name of father/parents instead of husband of a married SC/ST candidate.

6. As pointed out by learned counsel for the petitioner a similar issue came up before the Supreme Court in *Special Leave Petition (Civil) No. 10776 of 2021 (Civil Appeal No.4242 of 2022)* titled as *Aarav Jain Vs. the Bihar Public Service Commission & Ors.* and connected civil appeals where one of the petitioner *Anita Kumar (Civil Appeal No. 4247 of 2022)* had applied under the category of SC female but at the time of interview, she submitted the cast certificate which contained the name of her husband. Later on, she submitted the cast certificate mentioning name of her father on 13.11.2019, but was not considered under the said category. The Apex Court held as under :-

“16. Considering the facts and circumstances of the case, without entering into the respective argument we are of the considered view that the rejection of the candidates was improper, unjustified and not



warranted. We have also taken note of the fact that there are vacancies available which if filled up by meritorious candidates would only be an asset for the institution helping in disposal of cases pending in huge numbers.”

7. It is to be noticed that the aforesaid judgment was considering matter relating to appointments in judicial services and as the vacancies for EBC, SC and BC category had already been fulfilled for the said year, it was directed to adjust the said candidates of SC, EBC and BC category against future vacancies by borrowing three from future vacancies.

8. Thus, this Court finds that the action of the concerned selecting bodies in denying status to a particular category candidate was found to be wrongful. In the case of *Dolly Chandra Vs. Chairman Jee and Others* reported in (2005) 9 SCC 779 wherein the Apex Court has held as under :-

“7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or marksheets. Similarly, in order to avail of the benefit of reservation or weightage, etc.



necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement to benefit or reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.”

9. Thus, status of a SC/ST and OBC candidate cannot be denied and cannot be forced to be treated as a General category candidate. The action of the BPSC in treating the petitioner as General category candidate is found to be therefore wrongful.

10. Before parting with this case, this Court notices that, it is the State Government which issues certificates to the persons belonging to SC, ST, EBC, BC and other categories. The responsibility lies with their officers to issue certificates which are acceptable to the employee units and to the selecting bodies who follow their instructions. A certificate issued wrongfully would amount to denying the said candidate from participation and consideration for appointment which itself *per se* amounts to committing atrocity on such deprived persons. Officers who issue recklessly certificates without application of



mind and without following the guidelines issued by the State Government themselves should be held personally accountable for creating unnecessary litigation before this Court. At the same time, it is to be noticed that the appointing authorities should give due weightage to a cast certificate issued by the authorities. If an earlier certificate is not in conformity with the latest guidelines, it does not mean that the candidate has lost its status of being from SC category or ST category or from EBC or other reserved categories. On account of such reasons, a candidate cannot be denied his/her rightful claim in his/her own category.

11. Accordingly, the respondents are directed to consider the case of the petitioner for appointment on the post of Assistant Professor in the department of Obstetrics and Gynecology under the SC category on the basis of her merit, if she is found otherwise suitable she shall be offered appointment from the date similarly placed persons having lower merit than her have been appointed without all consequential benefits. The salary, of course, shall not be paid for the intervening period which shall be treated notionally but her pay fixation shall be done from the date the persons junior to her have been appointed and she will also maintain her seniority as per merit.

12. Exercise to be done positively within a period of



one month from the date of submission of a copy of this order.

13. Writ petition is allowed. Cost of writ petition is
awarded of ₹ 20,000 to be paid by the State authorities.

(Sanjeev Prakash Sharma, J)

Ashwini/-
Item No. 13

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.02.2023
Transmission Date	NA

