

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.3968 of 2019

In
Civil Writ Jurisdiction Case No.13719 of 2019

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Bishekha Kumari Jaiswal, D/O Late Mohan Prasad Jaiswal, Resident of
Village and Post- Ajhokopa, Trasi Tola, P.S.- Rupauli, District- Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar Bihar.
2. Sri Sanjay Kumar, the Principal Secretary, Department of Health,
Government of Bihar, Patna.
3. Sri Rabindra Kumar, Chairman, Bihar Staff Selection Commission, Patna.
4. Sri Om Prakash Pal, the Secretary, Bihar Staff Selection Commission, Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Satish Chandra Jha 3, Advocate
For the Opposite Party/s	:	Mr. Birju Prasad (GP 13)
		Ms. Shweta Anand, AC to GP 13
For the BSSC	:	Mr. Satyabir Bharti, Advocate
		Ms. Kanupriya, Advocate
		Md. Aslam Ansari, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 17-05-2023

Heard Mr. Satish Chandra Jha -3, learned

Advocate for the petitioner, Mr. Birju Prasad for the State
and Mr. Satyabir Bharti for the BSSC.

This Court had, on 03.05.2023, directed the
State to intimate as to the number of vacancies available
against the non-joining of ANMs under the last recruitment
process.



To recapitulate the facts of this case, it is required to be noted that a Bench of this Court, by order dated 11.07.2019 passed in CWJC No. 13719 of 2019 had directed the Secretary, Bihar Staff Selection Commission, Patna to pass a fresh order with respect to the petitioner in accordance with law after taking into account the facts which were stated in that order.

The petitioner hailed from *Kalwar* caste which actually fell in Backward Class category (BC). The petitioner, by mistake, referred to such caste as Most Backward Caste (MBC) in her application form as a result of which the application was rejected at the threshold.

Initially, an objection was taken by the Commission as also the State that *Kalwar* caste is not even in the list of Backward Caste category but later such objection was dropped.

It was the case of the petitioner before this Court earlier that after the filling-up of the forms, a circular was issued by the Bihar Staff Selection Commission inviting



objections from the candidates. At that stage, the petitioner had made it known that she hails from *Kalwar* caste which falls under Backward Class category (BC) and not Most Backward Class category (MBC).

The aforementioned request for rectification was never taken into account on the specious plea that such circular inviting objection was only for the purposes of the candidates intimating to the Commission any anomaly with respect to their organizing the forms and it was not meant for rectification of mistakes which would have otherwise inadvertently crept in such application form.

This Court did not accept the aforementioned plea and directed the Commission to take into consideration the aforementioned facts and pass a fresh order. Later again, the same stand was taken by the Commission as also the State to reject the claim of the petitioner.

However, this Court was not satisfied that the order passed by this Court was complied with in true letter and spirit. The State was therefore directed, as noted



above, to come out with the existing vacancies, category-wise, in the posts of ANMs throughout the State of Bihar against the last recruitment process.

Initially, only the vacancy position was intimated to this Court without indicating the category under which such vacancy existed. It was also brought to the notice of this Court that all the vacancies have now been carried over to the next recruitment process which process is already afoot.

Nonetheless, in compliance of the order passed by this Court, the vacancy position, category-wise, has been brought on record which indicates that three posts are still vacant in Backward Class category and eight positions are vacant in Backward category (females).

The contention of the Bihar Staff Selection Commission is that it has recommended as many number of candidates as the vacancies in the past.

The case of the petitioner ought to have been considered in the light of the existing vacancy in the



category of the petitioner *i.e.* Backward Class category as the mistake in stating about the category was sought to be remedied when necessary corrections were solicited in the application form and the petitioner had made it known to the Commission that there was a mistake in the filling up of the form.

It is not the case of either the Commission or the State that such application of the petitioner was rejected at any stage.

Thus, a right accrues to the petitioner for demanding that if she falls in the category of successful candidates, she ought to be accommodated, notwithstanding the fact that fresh recruitment process has been initiated against such vacancies also which have been carried over to the next recruitment process.

At this stage Mr. Satyabir Bharti, learned counsel for the Bihar Staff Selection Commission has stated that because of such anomalies in the application forms, the claim of many of the candidates were rejected and in case



the petitioner is accommodated against the existing vacancy, it would only open a floodgate for all such candidates whose application was rejected for incorrect entries in the application form at the threshold.

The aforementioned flood-gate argument is not to be readily accepted by this Court for the reason that it only reflects desperation, without realizing that the orders passed by the Courts of law normally is in personam and not in rem and only such persons who come to the Court get the benefit unless the intendment of the order is otherwise.

This Court has taken note of the fact that this litigation has been continuing since long and this is almost the fifth time that the petitioner is before this Court. This Court also realizes that under a contempt jurisdiction, such mandamus cannot be issued; nonetheless the order passed in the writ petition by this Court is required to be implemented in its true letter and spirit.



The learned counsel for the State has also objected to any positive direction by this Court for accommodating the petitioner against the existing vacancy of the last recruitment process in view of the new recruitment process having been initiated and there being a circular of the Government directing that all the unfilled vacancy shall be carried over to the fresh recruitment process.

But with this factual background, this Court directs the State to take a call with respect to the candidature of the petitioner within a period of three weeks taking into account the aforementioned facts and communicate such decision to the Commission for the needful consequent action.

The petition stands disposed of accordingly.

(Ashutosh Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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