

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.725 of 2020

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Sagar Sourabh S/o Dinesh Prasad Chaudhary R/o-Flat No-402, 4th Floor,
Swasti Enclave, Vivekanand Marg, Boring Road, Patna, P.S.-Sri Krishnapuri,
District-Patna-800001.

... .. Petitioner/s

Versus

1. The Bihar Public Service Commission through its Secretary, 15, Nehtu Path
(Baily Road) Patna-800001.
2. The Chairman Bihar Public Service Commission, Bihar, Patna.
3. The Secretary, Bihar Public Service Commission, Bihar, Patna
4. The Examination Controller, Bihar Public Service Commission, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Raushan, Adv.
For the BPSC	:	Mr. Ashok Chaudhary, Adv. Mr. Akshansh Ankit, Adv.
For the Respondent/s	:	Mr.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 23-02-2023

1. Heard Mr. Raushan, the learned
Advocate for the petitioner and Mr. Ashok Chaudhary, the
learned Advocate assisted by Mr. Akshansh Ankit for the



Bihar Public Service Commission. Nobody appears on behalf of the State.

2. The petitioner had appeared in the 30th Judicial Service Competitive Examination (Civil Judge Junior Division) against Advertisement No. 06 of 2018 and successfully passed the Preliminary as well as as the Mains Examination. In the interview, the original character certificate of the Institution from where the petitioner had passed Law (Chanakya National Law University) was not produced.

3. Only for that reason, the candidature of the petitioner was cancelled and even his result was not published.

4. The learned counsel for the petitioner submitted that the requirement for bringing original character certificate at the time of interview was necessary but not mandatory. It has further been submitted that the character certificate had been placed with the office of the Bar Council of India, Patna Chapter, for registration of the petitioner as an Advocate and this fact was



communicated to the office of the Commission, when orally the petitioner was made to understand that such certificate could be furnished later.

5. It was only when the result was published and the petitioner did not find his name in the merit list, that he came to know on enquiry that his entire candidature has been cancelled because of non-submission of the character certificate.

6. The learned counsel for the petitioner has further submitted that under similar circumstances, in the case of **Aarav Jain v. Bihar Public Service Commission and Others, (2022) Live law SC 521**, the Supreme Court in that instance found that as per the conditions mentioned in the Advertisement for any government employment, there is always a clause that in the certificate / testimony, if the information furnished by any candidate is found to be incorrect at a later stage, during any inquiry, the candidature of such candidates is liable to be cancelled.

7. For this reason, insistence of the



Commission for bringing such certificate / testimonials on the date of interview and for failure of the candidate for whatever reason, cancellation of the candidature of such candidate was not justified.

8. The originals of such certificates, in this case the original character certificate, is neither related to qualification or eligibility and therefore, not bringing such certificate at the time of interview cannot be said to be a violation of any mandatory requirement for a candidate to follow.

9. In the case referred to above, the Supreme Court was of the view that in any view of the matter, before giving appointment to such persons, a vigilance verification can always be done.

10. The Supreme Court, therefore, found that cancelling the candidature of such candidates for not bringing original testimonials at the time of the interview as desired by the Commission is per se illegal, unwarranted, unreasonable and way too harsh.

11. In the case of **Aarav Jain** (Supra), the



Supreme Court, on finding that eight of the persons in their respective categories had obtained more marks than the successful candidates, an exercise was conducted to know as to the number of vacancies in particular categories left behind. The five of the candidates in the aforesaid case, who came from unreserved categories were accommodated against the existing vacancies. Three of the candidates of the EBC, SC and BC category were, in the absence of any vacancy in that category, were directed to be accommodated by borrowing three posts from future vacancies for each of the respective categories for the aforesaid process.

12. The Supreme Court though noted that such accommodation of the candidates would amount to varying the vacancies of the said advertisement but conceded that such a power always vests in the employer.

13. The Supreme Court, therefore, left to the wisdom and discretion of the State to deal with the aforesaid aspect of the matter in the manner suggested by the Supreme Court or by any other mode, which it



would deem fit under the circumstances to accommodate the three of the special category appellants belonging to EBC, SC and BC category.

14. Thus, on principle, the Commission was not justified in rejecting the candidature of the petitioner, who it has been informed to us, has secured more marks than many of the successful candidates in his category of SC candidates.

15. Nonetheless, what is stopping us from passing any order in favour of the petitioner is that there are now no seats vacant against the aforementioned process of appointment (30th Judicial Examination) and that while the case of **Aarav Jain** (Supra) was being decided, the Supreme Court had directed that with respect to the vacancies existing in the said process, no order be passed as stay was granted, but a candidate namely, Jyoti Joshi was allowed by the Division Bench of High Court to be accommodated in service.

16. Since such order was passed by the High Court during the period when the stay granted by the



Supreme Court had been operating for the purposes of considering the cases of Aarav Jain and others, the order in favour of aforementioned Jyoti Joshi was not found to justified.

17. Based upon the aforementioned observation in **Aarav Jain** (supra), the Division Bench of this Court in Civil Review No. 93 of 2022 recalled the aforesaid order in favour of Jyoti Joshi.

18. This leads us to no option but to reject the application of the petitioner.

19. We reiterate that the reason for doing so, even if it is reckoned that the grounds for cancelling the candidature of the petitioner was per se illegal and unjust, it is because now no post has remained vacant and after the 30th Judicial Examination, the process of 31st Judicial Examination has been concluded and the 32nd Judicial Examination is in the process.

20. We say with a sense of remorse and regret that the Commission ought to be careful in future in cancelling the candidature of candidates on such flimsy



grounds.

21. The writ application stands disposed off
accordingly.

(Ashutosh Kumar, J)

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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