

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.53 of 2024

In

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. Veena Kumari, D/o Parshuram Sah, Resident of Village-Rukundipur, P.O. Rukundipur, P.S. Daraunda, District-Siwan.
 3. Minta Kumari, D/o Brajesh Thakur, Resident of Village-Dhobawar, P.O. Dhanao, P.S. Baniyapur, District-Siwan.

... .. Appellant/s

Versus

1. The State of Bihar
2. The Chief Executive Director, State Health Committee, Bihar, Patna.
3. The Principal Secretary, Health Department, Bihar, Patna.
4. The Executive Director, State Health Committee, Bihar, Patna.
5. The Deputy Secretary cum Incharge, Human Resources Department, Bihar, Patna.
6. Usha Kumari, D/o Ramayan Prasad, Resident of Village and Post-Pachlakhi, P.S. Nautan, District-Siwan.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Anil Kumar Sinha, Advocate
For the Respondent/s : AAG 9

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

- 3 16-07-2024 1. Heard learned counsel for the appellant, learned counsel for the State of Bihar and learned counsel for the State Health Society.
2. The appellants have preferred this appeal against the judgment dated 9.10.2023 passed in CWJC no.13530 of



2022 whereby the learned Single Judge was pleased to dismiss the writ application filed by the appellants.

Re: I.A. no.1 of 2024

3 This interlocutory application has been filed on behalf of the appellants praying for condonation of delay of about 69 days in filing of the instant appeal.

4. Having heard learned counsel for the parties and having perused the contents of the petition filed for condonation of delay, for the reasons mentioned therein, the delay in filing of the appeal is condoned.

5. I.A. no.2 of 2024 stands allowed.

Re:L.P.A no.53 of 2024

6. The case of the appellants in brief is that pursuant to the respondents coming out with Advertisement no. 5 of 2021 on 22.6.2021 for selection of Auxiliary Nurse Midwifery ('ANM' in short), the appellants applied for the same. The result of the selection process was declared on 30.7.2022 followed by 21.10.2022 and 20.6.2023.

7. It was the case of the appellants that the appellant no.1 who belongs to the Economically Weaker Section (EWS in short) applied for the same and against the cut off mark 38.05 marks, she had secured 49.73 marks.



8. The appellant nos. 2 and 3 who belong to the Most Backward Class (MBC in short) category had obtained 59.12 marks and 35.9 marks against the cut off for this category being 44.19 marks.

9. With respect to appellant no.1 it was submitted by learned counsel for the appellants that she had submitted two certificates with respect to her EWS category, one of the year 2019 and another of August, 2022. It was thus submitted that the appellant no.1 fulfilled the requirement of belonging to EWS category in between 2019 and August, 2022. The learned Single Judge considering the case of the appellant no.1 observed that the candidate was required to produce the EWS certificate as per the policy decision for such reservation which vide order no.2699 dated 22.9.2019 provided that the validity of such certificate was 1 year from the date of its issuance. The EWS certificate having been submitted by the appellant, dated 3.6.2019 lapsed on 2.6.2020. The application for appointment as ANM was invited on 1.7.2021 thus the appellant was not having a valid EWS certificate at the time of application or at the stage of document verification i.e 13.4.2022. Even the second EWS certificate produced by the appellant no.1 was of August, 2022. Thus in no case did the appellant no.1 have a valid EWS



certificate.

10. With respect to appellant no.2 learned counsel submitted that she claimed to be under the reserved category of MBC. For such reservation, the appellant no.2 was required to produce proof that she was not a member of the Creamy Layer i.e she was required to produce a Non-Creamy Layer (NCL) certificate. The appellant no.2 has not given the date on which she claimed to have submitted the NCL certificate which is said to have been issued on 16.4.2022.

11. The stand of the State Health Society in the writ application was that no NCL certificate was produced by the appellant no.2. No material has been produced by the appellant no.2 to contradict the said stand.

12. So far as the appellant no.3 is concerned, she also was an applicant under the MBC category for which the cut off was 44.19 marks. The appellant no.3 having secured 35.9 marks, there is no dispute that her marks were below the cut off marks and thus she was not entitled for any relief.

13. It was lastly submitted by learned counsel for the appellant that as per instructions received, the case of some persons similar to the appellant no.3 who had also secured less than the cut off marks in her category was considered by the



respondents. So far as this contention of learned counsel for the appellant is concerned it may only be stated that the Hon’ble Supreme Court in the case of *State of Bihar versus Upendra Narayan Singh [(2009) 4 PLJR SC 95]* has held that if an illegality has been committed in favour of individual or order passed by the judicial forum, others cannot approach the higher forum for multiplying the same irregularity or illegality or passing the wrong order.

14. In view of the facts and circumstances of the case, this Court is of the opinion that the appellants have not been able to show any illegality in the order of the learned Single Judge. There is no merit in the instant application.

15. The appeal is dismissed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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