

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.470 of 2023

In
Civil Writ Jurisdiction Case No.9152 of 2022

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1. Kaushik Kumar S/o Ishwaranand Singh R/o Village- Ganj Jalalpur, P.O.- Maranchi, P.S.- Punpun, District- Patna, Bihar.
 2. Gautam Govinda, S/o Umesh Prasad Mehta R/o Konipar, P.O. - Dighri, P.S.- Surajgarha, District - Lakhisarai, Bihar.
 3. Lalu Kumar, S/o Ramashish Yadav R/o Village - Bhathar, P.O.- Bhathar, P.S.- Tharthari, District- Nalanda, Bihar.

... .. Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary-cum-Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Under Secretary, General Administration Department, Government of Bihar.
4. The Bihar Staff Selection Commission through its Secretary, Veterinary College, Patna - 800014.
5. The Chairman, Bihar Staff Selection Commission, Veterinary College, Patna - 800014.
6. The Secretary, Bihar Staff Selection Commission, Veterinary College, Patna, Patna - 800014.
7. The Controller of Examination, Bihar Staff Selection Commission, Veterinary College, Patna - 800014.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mrs. Nivedita Nirvikar, Sr. Advocate Mr. Arya Achint, Advocate Ms. Supragya, Advocate
For the Respondent/s	:	Mr.P.K. Verma, AAG-3 Mr. Sanjay Kumar Ghosarvey, AC to AAG-3

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE NANI TAGIA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 05-08-2024



Re: I.A. No. 1 of 2023

The Interlocutory Application has been filed for condoning the delay of 169 days in filing the memo of appeal.

2. Having gone through the affidavit, we are satisfied that there are sufficient grounds shown to condone the delay.

3. As such, we condone the delay in filing the memo of appeal and allow the Interlocutory Application.

Re: LPA No. 470 of 2023

4. The appellants are aggrieved with the rejection of their prayer for cancellation of Non Creamy Layer Certificates ('NCL Certificates' for short) issued to almost 3500 candidates by virtue of letters of the General Administration Department of the State of Bihar, bearing Letter No. 7591 dated 20.05.2022 (Annexure-P9) and Letter No. 1928 dated 23.05.2022 (Annexure-P10).

5. By the communication dated 20.05.2022 the District Magistrates in the State were directed to take steps to issue NCL Certificates to the successful candidates under advertisement dated 01.09.2014; under the reserved category. The letter dated 23.05.2022 directed such successful candidates to apply for NCL Certificate within a period of 15 days and upload the Certificate in the website of the Commission. The



contention of the appellants, who were the writ-petitioners was that if such persons were not granted the NCL Certificates then the petitioners would have stood a chance in the selection process and would have got appointment.

6. At the outset, we have to notice that none of these persons who were granted the benefit of issuance of NCL Certificates were impleaded in the writ petition; either as party respondents or even in a representative capacity.

7. We heard Mrs. Nivedita Nirvikar, learned Senior Counsel for the appellants and Shri Sanjay Kumar Ghosarvey, AC to AAG-3 for the respondent State.

8. The learned Single Judge having examined the entire matter found that the selection which commenced in the year 2014 took a long time in finalization, due to litigations and also deficiencies noticed in the test conducted. The 3500 candidates were persons who were allowed to apply; being over-aged, but granted relaxation by a judgment of this Court, far later to the last date prescribed by the advertisement. There were two last dates for submitting applications, one as per the original advertisement and then as per the subsequent one granting relaxation in age, in compliance of the directions of this Court. This has created a situation wherein the candidates who were



later permitted to apply based on the relaxation granted, were not able to get the NCL Certificates as on the year 2013-14; which is the recruitment year. The learned Single Judge found that when the process was going on and the relaxation was granted as also further tests were conducted, there was no complaint raised by the writ-petitioners. The Government had also acted in all *bona fides* to ensure that the directions to grant relaxation in age, issued by this Court, is not frustrated. The learned Single Judge rejected the prayer, against which the present appeal is filed.

9. As we noticed at the outset, none of the persons who would be affected, if the prayers are allowed, have been made parties in the writ petition. The learned Senior Counsel submits that the writ-petitioners were not aware of the names of the said persons. In fact, it is very clear that the list of 3500 candidates who were successful; who applied based on the relaxation of age, were supplied to the District Magistrates. No effort was made by the petitioners to get those names or at least take orders from this Court for publication of a notice of the pending writ petition regarding the challenge raised herein.

10. For completeness, we also look at the facts as coming out from the records of the case. The first advertisement



was made on 01.09.2014 and 13120 vacancies were sought to be filled up in Group-A and Group-B posts; the former requiring a physical test while the latter having no such requirement. The advertisement of 01.09.2014 invited applications for conducting the 1st Intermediate Level Combined Competitive Examination for appointment to the various Intermediate level posts in the different departments of the Government of Bihar. A writ petition was filed, numbered as CWJC No. 17465 of 2014 claiming age relaxation which was allowed on 25.06.2015. In compliance of the said judgment, a further notice was issued on 05.02.2016 granting those who were entitled to age relaxation, time till 13.03.2016 to apply afresh. The said order produced in the writ petition as Annexure-P2 dated 05.02.2016 was not challenged by any candidate who had applied under the advertisement of 01.09.2014; the last date of application of which was 31.10.2014.

11. A preliminary exam was conducted which ran into trouble, on allegations raised. The said preliminary exams were cancelled and again in two shifts preliminary exams were conducted on 8th to 10th of December, 2018; in which 63739 candidates turned out successful. The main examination was also conducted on 25.12.2020 with the results declared on



25.02.2021; wherein 52784 candidates qualified. A typing test was then carried out on 08.07.2021 and 13.07.2021 and 4634 persons were called for physical test under Group-A.

12. On 19.09.2021, finding certain discrepancies in the earlier preliminary test, 1218 candidates were additionally found to be entitled to participate in the main test. A main test was carried out, in which 727 additional candidates came out successful. Eventually, 14410 candidates were called for counselling when the issue of NCL Certificates arose.

13. A writ petition numbered as CWJC No. 20854 of 2021 was filed by the persons who did not have the NCL Certificates, which admittedly was withdrawn on 28.04.2022. The interim order granted on the admission of the said writ petition hence stood vacated. Despite this, the Government issued Annexure-P9 circular which provided for NCL Certificates to be issued in the year 2013-14. The Government in Annexure-P9 specifically found that there were two last dates for the applications to be received, one on 31.10.2014 and the other on 13.03.2016. Those who were entitled to apply on 13.03.2016 did not have the benefit of the NCL Certificates of 2013-14, for reason of the sheer passage of time. It is hence the Government granted a window of benefit, enabling such



candidates also to get NCL Certificates on the retrospective date. It is to be emphasized that the Government order does not direct grant of NCL Certificates, but only directed the District Magistrates to consider the claims of persons who apply for the same; in the time given by the Government of 15 days, and consider the grant of NCL Certificates as on 2013-14, with reference to the financial status of their parents. The appellants also do not have a case that any of these candidates were not entitled to the NCL Certificates as on 2013-14.

14. We find absolutely no anomaly in the Government having granted a window of benefit to those persons who were directed to be granted age relaxation by this Court, almost two years after the year of recruitment and the publication of the advertisement. The move of the Government was only to facilitate full advantage to those persons who were granted age relaxation by this Court and to ensure that their rights flowing from the judgment are not frustrated. There is also no prejudice caused to the other candidates in so far as the NCL Certificates were directed to be issued as on the year of recruitment and not on any subsequent date. We reiterate that there is no contention raised by the appellants as to any of the candidates who obtained such NCL Certificates by virtue of



Annexure-P9 were not so entitled to; which contention definitely cannot be raised for there being none impleaded as party respondents.

15. We find absolutely no reason to interfere with the judgment of the learned Single Judge, since we find the reasoning of the learned Single Judge to be perfectly in order. We, additionally are of the opinion that the writ petition could not have been entertained since none of the affected parties were impleaded.

16. On both these grounds, the appeal stands dismissed.

17. Interlocutory Application(s), if any, shall stand closed.

(K. Vinod Chandran, CJ)

(Nani Tagia, J)

P.K.P./-

AFR/NAFR	
CAV DATE	
Uploading Date	06.08.2024
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