

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7420 of 2023

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Ravi Raj Son of Suresh Prasad Prabhakar Resident of Swami Nagar, Road
No.1 Near BSNL Tower, Village and Post-Kolhua Paigambarpur, P.S.-
Ahiyapur, District-Muzaffarpur, Pin-843108 ... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, General Administration Department, Government of Bihar, Patna.
2. The Additional Chief Secretary, General Administration Department, Govt. of Bihar, Patna.
3. The Secretary, Science and Technology Department, Govt. of Bihar, Patna.
4. The Bihar Public Service Commission, through its Chairman, 15 Jawaharlal Nehru Marg, Bailey Road, Patna.
5. The Chairman, Bihar Public Service Commission, Bihar Public Service Commission, 15 Jawaharlal Nehtu Marg, Bailey Road, Patna.
6. The Controller of Examination, Bihar Public Service Commission, 15 Jawaharlal Nehtu Marg, Bailey Road, Patna.
7. The Secretary, Bihar Public Service Commission, 15 Jawaharlal Nehtu Marg, Bailey Road, Patna.
8. The Under Secretary, General Administration Department, Govt. of Bihar, Patna.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr.Vikas Kumar, Advocate
For the State	:	Mr.Md. N.H. Khan (SC 1)
		Mrs. Babita Kumari, AC to SC1
For the BPSC		Mr. Kmeshwar Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT

Date : 05-12-2024

Petitioner has prayed for the following reliefs :--

“(i) *For direction to the respondent authorities to allocate one more seat under Scheduled Caste reserved category candidate and same may be considered as 46 instead of 45 in Advertisement no. 11/2020 published by Bihar Public Service Commission for appointment of 287 Assistant Professor, Electrical Engineering in different Government Engineering Colleges under Science and Technology Department, Government of Bihar, Patna.*

(ii) *For direction to the respondent authorities to*



declare petitioner successful in the result published pursuant to the aforesaid Advertisement and appoint him as Assistant Professor, Electrical Engineering on 46th seat as he is the next candidate in his category in merit wise list published by Bihar Public Service Commission for Scheduled Caste (SC) candidates.

(iii) For any other relief / reliefs for which the petitioner may be deemed entitled too.”

2. Shorn of unnecessary details, facts giving rise to filing of the present writ application, are that pursuant to an Advertisement dated 09.07.2020 issued by the Bihar Public Service Commission (in short ‘the BPSC’) for appointment of 287 posts of Assistant Professor, Electrical Engineering in different Government Engineering Colleges under Science and Technology Department, Government of Bihar, the petitioner who belongs to scheduled caste category and having all requisite qualification applied for the said post. The entire selection process was categorized in three tests. The petitioner appeared in all the three tests conducted by the BPSC. On 06.03.2023, the Bihar Public Service Commission published the final result. The petitioner was placed at Serial no. 46 in the merit list of SC category and appointment has been made up to serial no. 45 under SC category.

3. Learned counsel for the petitioner submits that as per the advertisement out of 287 posts notified, 16% of the seats were allocated for the Scheduled Caste which works out to 45.92 posts but the BPSC has shown only 45 posts for the Scheduled Caste, whereas for the Backward Class, 12% of the vacancies are to be reserved which works out to 34.44 but they have been given 35 posts. Round off number of seats comes to 46, and as such, 46 seats should have been allocated under SC



category, whereas only 45 seats have been allocated in the said category. In this connection, learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of **State of U.P. and Another versus Pawan Kumar Tiwari and Others** reported in **(2005) 2 SCC 10**. Learned counsel further submits that the petitioner, in this regard, has already filed representations dated 8.4.2023 and 19.4.2023 (annexures 6 series), but his grievance was not redressed. It is also the case of the petitioner that in similar circumstances, for appointment on the post of Assistant Professor, Mechanical Engineering similar type of mistake was done in the advertisement. BPSC considered the representation and corrected the mistake in the result pursuant to Advt. No. 51/2020 by considering it as clerical mistake. Similarly, for appointment of Judicial Officers BPSC conducted 32nd BPSC examination on 31.03.2023 for which the General Administration Department and Bihar Public Service Commission has also corrected the similar mistake in allocation of percentage of reservation pursuant to Advertisement No. 23/2023. Learned counsel submits that in sum and substance as per the norms of reservations regarding its percentage, contemplated in the Constitution as also in light of decision of the Hon'ble Supreme Court in case of **Pawan Kumar Tiwari (supra)**, 46 posts should have been allocated to the SC category resulting in selection of the petitioner on the post of Assistant Professor as a last aspirant.

4. On the other hand, counter affidavit has been filed by the BPSC. It is stated in the counter affidavit that BPSC has limited role to the extent that after receiving the requisition from the concerned Department of the State Government, the BPSC



duly advertises the posts on the basis of the terms and conditions of the requisition/revised requisition/relevant recruitment rules and regulations sent by the State Government. It is the State Government which lays down terms and conditions as well as frames rules for recruitment in accordance with which the BPSC has to effect the selection process. On the basis of the requisition received from the Science, Technology and Technical Education Department, Government of Bihar, the BPSC published Advertisement No.11 of 2020 for appointment of 287 Assistant Professor, Electrical Engineering in different Government Engineering Colleges under the Science, Technology and Technical Education Department, Government of Bihar, Patna. It is further stated that as per the roster and requisition of the concerned Department, category wise details of the vacant posts are as follows:-

S.No	Category	Category wise total vacancy number	In these as a result of 35% horizontal reservation for women total number of estimated posts
1.	Unreserved	116	40
2.	Economically weaker sections	29	08
3.	Scheduled caste	45	17
4.	Scheduled Tribe	03	01
5.	Extremely Backward Class	50	19
6.	Backward Class	35	11
7.	Backward	09	N/A



	Class Female		
	Total	287	96

(KH)

In light of General Administration Department, Bihar's Letter INo. 2526 dated 18.02.2016, the total number of posts sanctioned under horizontal reservation (2%) reserved for the grandson, granddaughter/maternal grandson/maternal granddaughter	05
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(G)

By General Administration Department's Letter No. 13062 dated 12.10.2017, in light of the Rights of Persons with Disabilities Act, 2016, the following horizontal reservation will be given to the disabled.		
(i)	Visually impaired	03
(ii)	Deaf Mute (DD)	02
(iii)	Locomotor Disability (OH)	03
(iv)	Psychosis/Multiple Disabilities	03

5. It has further been stated in the counter affidavit that pursuant to the aforesaid Advt. No. 11/2020, petitioner being Scheduled Caste (02) category, applied for the post of Assistant Professor, Electronics & Communication Engineering and was allotted roll no.110370. It has also been stated that all together 1215 candidates appeared in the Written (Objective) Examination held on 12.04.2022 at four centers in Patna under Advt. No. 11/2020. BPSC published combined merit list and reservation wise merit list on the basis of marks obtained in Electrical Engineering subject on 19.09.2022. Merit list of 630 successful candidates was prepared for calling in interview. Interview for the appointment of 287 posts of Assistant Professor, Electrical Engineering in different Government Engineering Colleges under Science Technology and Technical



Education Department under Advertisement No. 11/2020 was scheduled to be held from 02.11.2022 to 11.11.2022. Total 630 candidates were called for the interview, out of which only 596 candidates were present in the interview. The petitioner was called for the interview. Final list was published by the BPSC on 06.03.2023 mentioning result of 280 successful candidates against 287 vacancies under Advt. No. 11/2020, due to non-availability of 07 Divyang candidates (Visually Impaired-02, Deaf Mute-02, Psychosis/ Multiple Disabilities-03), 07 posts of unreserved category has been kept vacant in light of provisions mentioned in resolution as contained in Memo No. 962 dated 22.01. 2021 issued by General Administration Department Bihar. Thereafter, the BPSC sent recommendation of finally selected candidates to the Department vide letter no. 04 dated 26.04.2023 and closed the selection process. Petitioner was not declared successful as he secured 30.795 marks and was at merit serial no. 527, whereas last recommended candidate under Scheduled Caste (02) Category secured 30.900 marks and was at merit serial no. 526. Thus, the petitioner could not have been selected on account of obtaining lesser marks than the cut off marks in his category i.e. Schedule Caste (02) Category.

6. Separate counter affidavit has been filed on behalf of the Secretary, Science and Technology department, Government of Bihar, Patna (respondent no.3). In the counter affidavit, it has been stated that the then Science and Technology Department vide its letter no-686 dated 20.02.2020 had sent requisition of 287 posts category wise for the appointment Assistant Professor in Electrical Engineering through B.P.S.C., the said requisition was sent through General Administration Department. Out of total number of 287 seats, 45 seats were reserved for scheduled



cast category and against the said requisition, BPSC published an advertisement category wise vide Advertisement No-11/2020, Finally, BPSC vide letter no-04 dated 26.04.2023 recommended 280 candidates (including all category) out of which 45 candidates were recommended under scheduled caste category. All 45 recommended candidates under scheduled caste category have already been appointed by Department of Science, Technology and Technical Education. In light of 280 recommendations, the Science, Technology and Technical Education Department has appointed 270 (including all categories) candidates against 280 recommendations made by BPSC. The General Administration Department has specified category wise number of seats of Assistant Professor in Electrical Engineering Subjects in the different colleges under Science, Technology and Technical Education Department, Government of Bihar are as follows as on dated 10.6.2024 as per current vacancy and current roster.

7. The issue, as to whether a year should be taken as the unit or the total strength of the cadre, for the purpose of applying the 50% rule, has been decided by the Constitution Bench of the Hon'ble Supreme Court in the case of **Indra Sawhney etc. Vs. Union of India and others**, reported in **AIR 1993 Supreme Court 477. Para 96 of the judgment reads as follows:-**

“96. The next aspect of this question is whether an year should be taken as the unit or the total strength of the cadre, for the purpose of applying the 50% rule. Balaji does not deal with this aspect but Devadasan (majority opinion) does. Mudholkar, J. speaking for the majority says:

We would like to emphasise that the guarantee contained



in Article 16(1) is for ensuring equality of opportunity for all citizens relating to employment, and to appointments to any office under the State. This means that on every occasion for recruitment the State should see that all citizens are treated equally. The guarantee is to each individual citizen and, therefore, every citizen who is seeking employment or appointment to an office under the State is entitled to be afforded an opportunity for seeking such employment or appointment whenever it is intended to be filled. In order to effectuate the guarantee each year of recruitment will have to be considered by itself and the reservation for backward communities should not be so excessive as to create a monopoly or to disturb unduly the legitimate claims of other communities.

On the other hand is the approach adopted by Ray, C.J. in Thomas. While not disputing the correctness of the 50% rule he seems to apply it to the entire service as such. In our opinion, the approach adopted by Ray, C.J. would not be consistent with Article 16. True it is that the backward classes, who are victims of historical social injustice, which has not ceased fully as yet, are not properly represented in the services under the State but it may not be possible to redress this imbalance in one go, i.e., in a year or two. The position can be better explained by taking an illustration. Take a unit/service/cadre comprising 1000 posts. The reservation in favour of Scheduled Tribes, Scheduled Castes and Other Backward Classes is 50% which means that out of the 1000 posts 500 must be held by the members of these classes i.e., 270 by other backward classes, 150 by Scheduled Castes and 80 by Scheduled Tribes. At a given point of time, let us say, the number of members of O.B.Cs. in the unit/service/category is only 50, a short fall of 220. Similarly the number of members of Scheduled Castes and Scheduled Tribes is only 20 and 5 respectively, shortfall of 130 and 75. If the entire service/cadre is taken as a unit and the backlog is sought to be made up, then the open competition channel has to be choked altogether for a number of years until the number of members of all backward classes reaches 500, i.e., till the quota meant for each of them is filled up. This may take quite a number of years because the number of vacancies arising each year are not many. Meanwhile, the members of open competition category would become age barred and ineligible. Equality of opportunity in



their case would become a mere mirage. It must be remembered that the equality of opportunity guaranteed by Clause (1) is to each individual citizen of the country while Clause (4) contemplates special provision being made in favour of socially disadvantaged classes. Both must be balanced against each other. Neither should be allowed to eclipse the other. For the above reason, we hold that for the purpose of applying the rule of 50% an year should be taken as the unit and not the entire strength of the cadre, service or the unit, as the case may be."

Paragraph 121(6)(c) of the judgment is reproduced herein below:-

"The rule of 50% should be applied to each year. It cannot be related to the total strength of the class, category, service or cadre, as the case may be."

8. Thus, it is evident that the rule of 50% should be applied to each year. It cannot be related to the total strength of the class, category, service or cadre, as the case may be. Reference is also made to the decision of the Hon 'ble Supreme Court in case of **R. K. Sabharwal and Ors Vs. State of Punjab and Ors**, reported in **(1995) 2 SCC 745**, wherein method of operating the roster came in for a challenge. Paragraphs 7 and 8 of the judgments are reproduced herein below:-

7. When all the roster-points in a cadre are filled the required percentage of reservation is achieved. Once the total cadre has full representation of the Scheduled Casts/Tribes and Backward Classes in accordance with the reservation policy then the vacancies arising thereafter in the cadre are to be filled from amongst the category of persons to whom the respective vacancies belong. Jeevan Reddy, J. speaking for the majority in Indra Sawhney vs. Union of India (AIR 1993 SC 477) observed as under:-

"Take a unit/service/cadre comprising 1000 posts. The reservation in favour of scheduled Tribes Scheduled Casts and



other Backward Classes is 50% which means that out Of the 1000 posts 500 must be held by the members of these classes i.e- 270 by Other Backward 358 Classes, 150 by Scheduled Casts and 80 by Scheduled Tribes. At a given point of time, let us say the number of members of OBC in the unit/ service/ category is only 50, a shortfall of 220. Similarly the number of members of scheduled Casts and Scheduled Tribes is only 20 and 5 respectively, shortfall of 130 and 75. If the entire service/cadre is taken as as unit and the backlog is sought to be made up, then the open competition channel has to be chocked altogether for a number of years until the number of members of all backward classes reaches 500 i.e., till the quota meant for each of them is filled up. This may take quite a number of vacancies arising each year are not many. Meanwhile, the members of open competition category would become age barred and ineligible. Equality of opportunity in their case would become a mere mirage. It must be remembered that the equality of opportunity guaranteed by clause (1) is to each individual citizen of the country while clause (4) contemplates special provision being made in favour of socially disadvantaged classes. Both must be balanced against each other. Neither should be allowed to eclipse the other. For the above reason, we hold that for the purpose of applying the rule of 50% a year should be taken as the unit and not the entire of the cadre, service or the unit as the case may be"

8. The quoted observations clearly illustrate that the rule of 50 % a year as unit and not entire strength of the cadre has been adopted to protect the rights of the general category under clause (1) of Article 16 of the Constitution of India. These observations in Indra Sawhney's case, arc only in relation to posts which are filled initially in a cadre. 'The operation of a roster, for filling the cadre strength, by itself ensures that the-reservation remains within the 50 % limit. Indra Sawhney's case is not the authority for the point that the roster survives after the cadre-strength is full and the percentage of reservation is achieved."

9. In the present case, it is not in dispute that total number of seats, notified under Advertisement No. 11/2020 was 287 and 16% of 287 seats comes to 45.92. Therefore, round off number of seats comes to 46, and as such, 46 seats should have



been allocated under SC category, whereas only 45 seats have been allocated in the said category. In this connection, learned counsel for the petitioner has rightly relied upon the judgment of the Hon'ble Supreme Court in the case of **Pawan Kumar Tiwari (supra)**, in which Hon'ble Supreme Court has made following observations:-

“We do not find fault with any of the two reasonings adopted by the High Court. The rule of rounding off based on logic and common sense is: if part is one-half or more, its value shall be increased to one and if part is less than half then its value shall be ignored. 46.50 should have been rounded off to 47 and not to 46 as has been done. If 47 candidates would have been considered for selection in general category, the respondent was sure to find a place in the list of selected meritorious candidates and hence entitled to appointment.”

10. From perusal of the decision of the Hon'ble Supreme Court, it is crystal clear that the rule of rounding off is based on logic and common sense. In case, part is one-half or more, its value shall be increased to one and if part is less than half, in that case its value shall be ignored. The Hon'ble Supreme Court, in the said case, affirmed the judgment of the High Court which held that 46.50 should have been rounded off to 47 and not to 46. It is pertinent to mention here that examination of total 287 posts had been conducted, whereas result of 280 seats have been published. Therefore, 7 seats are remained vacant. In the case in hand, petitioner is confining his prayer for only 1 seat as he is the next person under the SC male category who has been last appointed from the combined merit list of the SC category.

11. That apart, the State, in its counter affidavit, has



not clarified as to how 5 persons, who are working and belonging to SC category from before, were appointed against the post of reserved category or against the post of general category by dint of their own merit. In case, they were appointed against general seats by dint of their own merit, they cannot form any part of such percentage and can not be given advantage of reservation by utilization of roster in their favour.

12. Pursuant to order of this Court dated 30.11.2023, a supplementary counter affidavit has been filed on behalf of respondent no.3. In paragraph 10 of the counter affidavit, it has been stated that *“the General Administration Department has specified category wise number of seats the of Assistant Professor in Electrical Engineering Subjects in the different colleges under Science, Technology and Technical Education Department, Government of Bihar are as follows as on dated 10.6.2024 as per current vacancy and current roster.”*

S.No	Category	No. of seats
1.	Scheduled Caste	5
2.	Scheduled Tribes	1
3.	Extremely Backward class	9
4.	Backward class	5
5.	Economically weaker section Class	1
6.	Non reserved category	0
	Total	21

13. In view of the aforesaid facts and circumstances and the law laid down by the Hon’ble Supreme Court in the aforesaid cases, respondent authorities are directed that as per reservation percentage under SC category, 46 seats has to be



allocated as round off figure of 45.92 and not 45, as 1(one) seat has erroneously been deducted from this category.

14. Alternatively, respondent authorities are also at liberty to take steps for appointment of the petitioner against 5 vacant seats for scheduled caste category as on dated 10.6.2024, which has vividly been reflected in the tabular chart mentioned in paragraph 10 of the supplementary counter affidavit, filed on behalf of the Secretary, Science and Technology Department, Government of Bihar, Patna (respondent no.3) in compliance of order and direction of this Court dated 30.11.2023.

15. Accordingly, this Court directs the respondent authorities to consider the case of this petitioner for his appointment on the post of Assistant Professor, Electrical Engineering, treating the vacancy as 46 in stead of 45 as he is the next candidate in his SC category in merit wise list published by the BPSC or against the current vacant post as indicate above.

16. The entire exercise must be completed within a period of three months from today.

17. With the aforesaid observation and direction this writ application is allowed.

Prakash

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	
Transmission Date	

(Prabhat Kumar Singh, J)

