

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.296 of 2020

In

Civil Writ Jurisdiction Case No.23248 of 2019

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Kumari Pushpanjali Bala Daughter of Sri Lakshman Prasad, Resident of Mohalla- Plot No. 104A, Shyam Kutir Apartment, Siddarth Nagar, Jagdev Path, Bailey Road, P.S.- Shastri Nagar, Patna, District- Patna., At present resident of Luv Kush Apartment, Flat No. 403, Block-A, Garbhuchak Khajpura, Jagdeo Path, Bailey Road, Patna-14.

... .. Appellant/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna
2. The Bihar Public Service Commission through its Secretary, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna-1
3. The Chairman Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna-1
4. The Secretary, Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna-1
5. The Joint Secretary cum Examination Controller Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna-1
6. The Principal Secretary, Department of Administration, Bihar, Patna

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Shree Kant Pandey, Advocate
	:	Mr. Ratnesh Kumar Singh, Advocate
For the State	:	Mr. Saroj Kumar Sharma (AC to AAG-3)
For the BPSC	:	Mr.Lalit Kishore (Ag)
	:	Mr. Sanjay Pandey, Advocate
	:	Mr. Nishant Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 17-02-2024

The appellant was a candidate for recruitment to the 63rd Combined Competitive (Main) Examination, conducted by Bihar Public Service Commission, Patna (in short 'B.P.S.C.').



2. The appellant was invited for interview on 12.09.2019, but she could not produce the original degree certificate at the time of interview, in the light of candidature instruction at Item No.6 of the advertisement. Item no.12 is relating to submission of On-line application thereafter candidate was required to furnish hard copy of those documents and it has been placed on record, as is evident from the record which has been perused by us alongwith various certificates including mark-sheet and provisional degree certificate. We have summoned the original application filed on behalf of the appellant to verify whether appellant had furnished copy of the degree certificate or not? From the records, it is evident that she had produced provisional degree certificate alongwith the mark-sheet.

3. In this backdrop, in not producing degree certificate timely at the time of interview, it could be a hurdle in denial of her selection and appointment is correct or not ? The learned Single Judge has taken out of dates and events and proceed to dismiss the writ petition in non-complying one of the requirement that at the interview candidate was required to furnish degree certificate.

4. No doubt, we are also of the view that candidate was required to furnish requisite documents in terms of the candidature instruction. However, in identical matter Hon'ble Supreme Court



in the case of *Rakesh Kumar Vs. State of Bihar & ors*, reported in *(2022) 14 SCC 45* and *Sweety Kumari v. State of Bihar* reported in *AIR 2023 Supreme Court 4491: AIR Online 2023 SC 750* held that such defect is curable.

5. In the present case, the appellant had furnished provisional certificate alongwith on-line application thereafter, the candidate was required to furnish hard copy of those documents and it has been placed on record as it is evident from the record which has been perused by us and it is evident that she had a degree certificate. It is also submitted that in the writ petition she has pleaded at para 5 to the extent that she had sought 45 minutes time to produce the graduate certificate, original mark-sheet of graduation and provisional graduation certificate. The B.P.S.C. had no occasion to counter the same in C.W.J.C. proceedings, since it was decided at the time of admission itself. In the present L.P.A. they have filed supplementary counter affidavit denying the alleged fact of seeking of 45 minutes time to produce mark-sheet of the degree as well as provisional degree certificate in paras 5 and 6 of the counter affidavit.

6. No doubt oral request of the appellant was made on 12.09.2019. Such request was not made on behalf of the appellant as stated in para 5 and 6 of the counter affidavit filed on behalf of



the B.P.S.C. cannot be appreciated for the reasons that there are no material stated in paras 5 and 6 to the extent that who are all the interviewers whether was there any cross verification in respect of appellant's request for 45 minutes to produce the aforementioned material information. Therefore, the aforementioned contention of the B.P.S.C. stands rejected. We are only taking note of Hon'ble Supreme Court decision cited (supra) so as to render social justice to the litigant.

7. Be that as it may public appointment is governed by Articles 14 and 16 of the Constitution read with merited candidate. If the appellant is merited in that event on flimsy ground her candidature cannot be rejected.

8. Taking note of these facts and circumstances, order of the learned Single Judge dated 29.01.2020 passed in C.W.J.C. No. 23248 of 2019 is set aside and the appellant has made out a case accordingly C.W.J.C. No. 23248/2019 filed by the appellant stands allowed. Consequently, B.P.S.C. is hereby directed to re-visit the claim of the appellant and proceed to consider her candidature against future vacancy, since she has approached this Court in the year 2019 in the light of interview dated 12.09.2019 read with result notified on 13.10.2019. The above exercise shall be



undertaken within a period of three months from the date of receipt of this order.

9. At this stage, learned counsel for the B.P.S.C. submitted, on instruction, that insofar as accommodating the appellant is concerned. It is to be noted that the first B.P.S.C. has to recommend after due verification of the appellant eligibility read with her various documents. On recommendation of B.P.S.C. the State Government has to undertake exercise of issuance of order of appointment with reference to future vacancy, if the appellant otherwise eligible for the post. In the event of B.P.S.C. recommendation, the State shall proceed to pass orders of appointment within 2 months from the date of B.P.S.C. recommendation.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

amitkumar/-

AFR/NAFR	NAFR
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