

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.733 of 2019

In
Civil Writ Jurisdiction Case No.4834 of 2019

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Dr. Arbind Kumar Jha S/o Shri Narnath Jha R/o Brahapur, P.S.- Phulpras,
District Madhubani.

... .. Appellant.

Versus

1. The State of Bihar through Principal Secretary, Health, New Secretariat, Patna.
2. The Principal Secretary, Health New Secretariat, Patna.
3. The Secretary, Health Department, New Secretariat, Patna.
4. The Bihar Public Service Commission through its Chairman, 15, Jawaharlal Neharu Marg, Bailey Road, Patna.
5. The Chairman, Bihar Public Service Commission, 15, Jawaharlal Neharu Marg, Bailey Road, Patna.
6. Dr. Anish Kumar, S/o Dr. A. Kumar Alok, Saraswati Nagar, near Baireya Bus Stand, Muzaffarpur, District- Muzaffarpur.

... .. Respondents.

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Appearance :

For the Appellant	:	Mr. Chandra Kant, Advocate.
For the State	:	Mr. S.D.Yadav (AAG-9).
		Mr. Anil Kumar Verna, AC to AAG-9.

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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 : 06-05-2024

In the instant L.P.A., the appellant has assailed the order of the learned Single Judge dated 14.03.2019 passed in C.W.J.C. No.4834 of 2019.

2. The appellant had sought multiple reliefs in the writ petition. Insofar as challenge to the advertisement read with reservation/classification of reservation is concerned, the appellant has waived of his right to question at the earliest point



of time in the year 2017 as and when the post was advertised with reference to reservation classification. Insofar as questioning the selection and appointment of Dr. Anish Kumar-6th respondent, whose claim was required to be considered under Scheduled Tribe category and it was considered under unreserved category with reference to the fact that he was more merited under unreserved category. It was contended that the respondents have failed to fill up the General Merit candidate against one vacancy earmarked for unreserved category.

3. It is to be noted that appellant has not assailed the selection and appointment of Dr. Anish Kumar-6th respondent with reference to selection list as well as order of appointment. Be that as it may, even though 6th respondent-Dr. Anish Kumar claim was against Scheduled Tribe category, however, having regard to the fact that he was more merited under the unreserved category, he has been accommodated against unreserved category in the light of the principle laid down by the Hon'ble Supreme Court to the extent that if reserved category person is more merited then the last cut of percentage of marks in the unreserved category in that event such of those reservation claims persons/ candidates were required to be adjusted against unreserved category with reference to their respective merit.



4. In the present case, it is learnt that Dr. Anish Kumar-6th respondent who is more merited, therefore, he has been accommodated against the unreserved category-post. The appellant was lesser merited than Dr. Anish Kumar-6th respondent, therefore, appellant was not suited for the post. The appellant has also not apprised this Court that the appellant is more merited than the 6th respondent-Dr. Anish Kumar so as to push 6th respondent under ST category and appellant is more merited.

5. Taking note of these facts and circumstances, the appellant has not made out a case so as to interfere with the order of the learned Single Judge dated 14.03.2019 passed in C.W.J.C. No.4834 of 2019 and decision is affirmed.

6. Accordingly, the present L.P.A. stands dismissed.

7. Pending Interlocutory Application(s), if any, stands disposed of.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

P.S./-

AFR/NAFR	NAFR
CAV DATE	NA
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