

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11395 of 2023

Ashish Kumar, Male, aged about 32 years, Son of Jay Singh, Resident of Village-Chhoti Ballia, P.O.-Lakhania, P.S.-Ballia, District-Begusarai (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.
2. The Secretary-cum-Appellate Authority Food and Consumer Protection Department, Government of Bihar, Patna.
3. The Divisional Commissioner, Munger Division, District-Munger (Bihar).
4. The District Magistrate-cum-Chairman, P.D.S. License Committee, District-Begusarai (Bihar).
5. The Sub Divisional Officer-cum-Licensing Authority, Ballia, District-Begusarai (Bihar).
6. The District Supply Officer, Begusarai, District-Begusarai (Bihar).
7. The Block Supply Officer, Ballia, District-Begusarai (Bihar).
8. Neeraj Kumar, son of Late Shiv Choudhary, Resident of Ward No. 12, P.S.-Ballia, District-Begusarai (Bihar).
9. Soni Kumari Wife of Rajeev Kumar Choudhary, Resident of Village-Chhoti Ballia, Masudh Chak, P.S.-Ballia, District-Begusarai (Bihar).

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Uday Kumar, Advocate.

For the Respondent/s : Mr. Arvind Ujjwal (SC-4).

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

11 18-11-2024 Heard learned counsel for the parties.

2. The present Writ Petition has been filed for the following reliefs:-

“..... for quashing/setting aside the order dated 08.04.2023 passed in P.D.S. Appeal No. 212 of 2022 by the learned Divisional Commissioner, Munger by which the learned Divisional



Commissioner has held that the selection of Neeraj Kumar (Respondent No. 7) who belongs to scheduled Caste Category and applied under Reserved Category seems to be correct and further be pleased to remand the matter to the District Selection Committee, Begusarai to appoint the eligible candidate in Ward No. 12 in the Schedule Caste Category in place of Smt. Soni Kumari who was resident of Ward No. 13 who was selected earlier and if there is no suitable candidate under scheduled Caste Category is available only then the candidature of Smt. Soni Kumari will be considered and the order dated 03.10.2018 passed in the District Selection Committee, Begusarai under the Chairmanship of District Magistrate, Begusarai for selection of P.D.S. Shop in Block Ballia (Sahari) under Ballia Sub-Division is modified to such extent and by this order the proceeding has been concluded. And after setting aside the order dated 08.04.2023 passed in P.D.S. Appeal No. 212 of 2022 by learned Divisional Commissioner, Munger Your Honour be further pleased to grant P.D.S. Licence to the petitioner in ward No. 12 of Ballia Sub-Division in General Category who is the only suitable candidate of the Ward No. 12."

3. It is the case of the petitioner that for Ward No. 12

Ballia, there were two vacancies one is General Category and the another reserved for the Schedule Caste Category. That the petitioner has applied for the General Category, however, his



name did not find place in the selection list.

4. Learned counsel appearing on behalf of the petitioner has stated that on enquiry the petitioner has found that the Respondent No. 8, who has applied under the Reserved Category (SC) has been appointed in the vacancy shows under General Category and the Respondent No. 9 (Soni Kumari) who belongs to Ward No. 13 was appointed under the vacancy meant for the Schedule Caste Category. That the Divisional Commissioner while passing the order has found that selection of Soni Kumari was not proper, has directed for setting aside the same and the selection of the Respondent No. 9 was cancelled. That in so far as the Respondent No. 8 is concerned, the authority has failed to take into consideration that the Respondent No. 8 has applied under the Reserved Category and not in the General Category, therefore, the reasoning given by the Divisional Commissioner that the Respondent No. 8 was appointed on the basis of the merit and in accordance with the Bihar Targeted Public Distribution System (Control) Order is without any merit and contrary to the provisions of the Control order. Learned counsel has stated that had it being a case where the Respondent No. 8 had applied under the General Category then the reasoning expressed by the Divisional Commissioner



that the Respondent No. 8 being number one in the merit-list, his selection was proper and would have been correct. But in this particular case, the Respondent No. 8 applied only under the Reserved Category and should have been accommodated only in the Reserved Category vacancy but the authority has failed to appreciate the same.

5. The learned counsel appearing on behalf of the Respondent No. 8 has fairly submitted that the Respondent No. 8 has applied only under the Reserved Category and not under the General Category. Learned counsel has stated that he has no objection if his selection is shifted to the vacancy reserved for Schedule Caste Category.

6. Learned counsel appearing on behalf of the Respondent-State has prayed this Court to set aside the impugned order and remand the matter back to the authority concerned for dealing with the matter afresh. However, this Court is not inclined to accede to the said request as it is fairly stated by the learned counsel appearing on behalf of the Respondent No. 8 that he has applied only under the Reserved Category meant for Schedule Caste Category and not under the General Category no useful purpose will be achieved if the matter is remanded back to the authority. As pointed out by the



counsel for the petitioner the selection of the Respondent No. 8 who has admittedly appointed under the Reserved Category meant for Schedule Caste in the General Category was not proper and against the norms. Had the Respondent No. 8 appointed under the General Category his selection in the General Category on the basis of merit could not be faulted with. Further it is pertinent to note that the Respondent No. 9 has not challenged her cancellation of P.D.S. license and the said order of cancellation has become final.

7. Having regard to the above mentioned facts and circumstances, the impugned order dated 08.04.2023 passed by the Divisional Commissioner, Munger is modified to the extent that the selection of Respondent No. 8 shall be to the vacancy meant for Schedule Caste Category in Ward No. 12 and necessary orders shall be passed to the effect by the authority. That in so far as the other vacancy meant for General Category is concerned, the authorities are directed to verify as to whether the petitioner is the most eligible candidate under the open category and in case, the candidature of the petitioner is found to be eligible then necessary orders shall be passed in his favour otherwise any other candidate who is having more merit than the petitioner may be appointed. The entire exercise shall be



completed as expeditiously as possible preferably within a period of eight weeks from the date of receipt of this order.

8. With the above directions, the present writ petition stands allowed to the extent indicated.

(A. Abhishek Reddy, J)

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