

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10853 of 2024

Prabhu Kumar Sah, (Male), aged about 50 years, Son of Surya Narayan Sah,
Resident of Dharmshala Road Naugachia, P.O - Naugachhia, P.S Naugachhia,
District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Education,
Government of Bihar, Patna.
2. The Chairman, Bihar State University Service Commission at Patna.
3. The Secretary, Bihar State University Service Commission, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Majid Mahboob Khan, Advocate
For the State	:	Mr. Government Pleader 3
For the BSUSC	:	Mr. Tuhin Shankar, Advocate

CORAM: HONOURABLE MR. JUSTICE NANI TAGIA
ORAL JUDGMENT

Date : 24-07-2024

Heard Mr. Majid Mahbbob Khan, learned counsel
appearing on behalf of the petitioner and Mr. Tuhin
Shankar, learned counsel for the Bihar State University
Service Commission.

2. The petitioner, who is Economically Backward
Class (EBC) candidate, has applied for the post of Assistant
Professor (Mathematics), pursuant to Advertisement dated
21.09.2020, issued by the Bihar State University Service
Commission (hereinafter referred to as 'the Commission').
The petitioner is aggrieved by Memo No. 611, dated



26.06.2024, issued by the Commission whereby the petitioner's candidature for the post of Assistant Professor (Mathematics), pursuant to Advertisement dated 21.09.2020, has been rejected on the ground of non-submission of Non Creamy Layer (NCL) certificate. The last date prescribed for submission of the application along with all other relevant documents was 02.11.2020, which was extended to 30.12.2020.

3. The case of the petitioner, as projected in the writ petition, is that though the petitioner had submitted his application within the period stipulated in the advertisement, but without Non Creamy Layer certificate. The petitioner submitted his Non Creamy Layer certificate in the year 2024. The petitioner now contends that rejection of his candidature by the Commission for non-submission of Non Creamy Layer certificate along with the application within the cut of date prescribed in the advertisement is not justified, and since he has submitted his Non Creamy Layer certificate in the year 2024, which though, beyond the cut of date prescribed by the Commission, his candidature may be accepted. In support of the contentions of the petitioner, the



learned counsel for the petitioner has relied on decision of this Court dated 17.05.2019 passed in C.W.J.C. No. 727 of 2018 and the decision rendered by the Supreme Court in the case of ***Ram Kumar Gijroya vs. Delhi Subordinate Services Selection Board and Another*** reported in **(2016) 4 SCC 754**, wherein, this Court as well as the Supreme Court have allowed submission of caste/tribe certificate by the petitioner therein after the cut of date prescribed by the selection authority.

4. I have considered the contentions raised by the petitioner.

5. Insofar as acceptance of the documents submitted after the last date of submission prescribed in the advertisement came up for consideration before this Court as early as in the year 1998 in the case of ***Braj Kishore Prasad vs. State of Bihar (F.B.)*** reported in **1998 (3) PLJR 34**, wherein, the Full Bench of this Court in paragraph no. 26, has held as under:

“26. Having regard to all these considerations, I hold that:

(a) Where the advertisement specifies the last date for filing of supporting or other



documents, that date must be given effect to, and any document received after such date shall be rejected by the selecting authority.

(b) In appropriate cases where the selecting authority is of the view that the time for furnishing of documents should be extended, it may grant such extension by issuing a public notice to this effect so that all candidates may get the benefit of such extension. In the absence of any such extension granted by the selecting authority, the date/dates mentioned in the advertisement should be treated to be the last date for filing of documents, and no document shall be accepted thereafter.

(c) No application/document shall be entertained by the Commission if the same is filed after the last date specified in the advertisement, or the extended date notified by the commission, even if the same is filed before the finalisation of the select list.

(d) In appropriate cases where this Court is satisfied that a case of extreme hardship or injustice has resulted on account of factors beyond the control of the concerned candidate, this Court in exercise of its writ jurisdiction may grant relief in deserving cases. But in doing so, the Court must be



satisfied that the candidate concerned has acted diligently, and is not guilty of delay or laches in taking necessary steps for procuring the requisite certificates, etc. However, no relief shall be granted where the requisite certificate is produced for the first time after the process of selection is complete and the selecting authority has made its recommendation.”

6. The same issue had also come up for consideration before the Supreme Court, as early as in the year 2011, wherein, in the case of ***Bedanga Talukdar vs Saifudaullah Khan & Ors*** reported in (2011) 12 SCC 85, the Supreme Court in paragraph no. 29, has held as under:

“ 29. We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the



same has to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant statutory rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised, has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India.”

7. In the decision rendered by this Court as well as the Supreme Court in the cases cited above, it has been held that the selection process has to be conducted strictly in accordance with the stipulated selection procedure. When a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the



advertisement, unless such a power is specifically reserved in the relevant statutory rules. Even if power of relaxation is provided in the Rules, it must still be mentioned in an advertisement. In the absence of such power in the Rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised, has to be given due publicity.

8. In the instant case, what has been found is that in the advertisement dated 21.09.2020, issued by the Commission, the last date for submission of application and the documents was 02.11.2020, which was extended to 30.12.2020. It is the admitted case of the petitioner that the petitioner had submitted his application within the period stipulated in the advertisement, but without Non Creamy Layer certificate which was submitted by the petitioner in the year 2024.

9. In view of the aforesaid admitted case of the petitioner that all the required documents as stipulated in the advertisement dated 21.09.2020 was not submitted by the petitioner within the time stipulated in the advertisement, by applying the ratio laid down in the case



of *Braj Kishore Prasad (supra)* as well as *Bedanga Talukdar (supra)*, the writ petitioner’s candidature cannot be accepted by the Commission as the petitioner did not submit Non Creamy Layer certificate, which was essential for claiming reservation, within the period stipulated in the advertisement. The decisions relied on by the learned counsel for the petitioner, rendered in the case of *Ram Kumar Gijroya (supra)* and *Shashi Bhushan Yadav (supra)*, are the decisions rendered by this Court and by the Supreme Court at a later in point of time which did not take into consideration the earlier decision rendered by this Court as well as by the Supreme Court in the case of *Bedanga Talukdar (supra)* as well as *Braj Kishore Prasad (supra)*.

10. For the reasons stated hereinabove, I find no merit in the writ petition and the same stands dismissed.

(Nani Tagia, J)

Nilmani/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	26.07.2024
Transmission Date	N/A

