

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11672 of 2024

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Vidyawati Kiran Daughter of Gulab Chand and Wife of Vinod Kumar,
resident of Village-Mohamadpur Hari Bhagwanpur, Post-Bhagwanpur, P.S.-
Bhagwanpur, District-Vaishali, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, The General Administration Department, Patna.
2. The Bihar Public Service Commission through the Chairman, 15, Jawaharlal Nehru Marg, Bailey Road, Patna, Bihar-800001.
3. The Secretary, Bihar Public Service Commission, 15, Jawaharlal Nehru Marg, Bailey Road, Patna, Bihar-800001.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mrigank Mauli, Senior Advocate Mr. Prince Kumar Mishra, Advocate
For the Respondent/s	:	Mr. Santosh Chandra Bhaskar, AC to GP-11
For the B.P.S.C.	:	Mr. Sanjay Pandey, Advocate Mr. Nishant Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 06-08-2024

Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for the Bihar Public
Service Commission.

2. The present writ petition has been filed with the
following reliefs:-

(i) For issuance of a writ in the
nature of Certiorari or any other appropriate
writ for quashing the Memo No.5018 dated
07.03.2024 issued by Secretary, Bihar Public



Service Commission (hereinafter referred to as the "Commission") whereby and whereunder, representation of petitioner made pursuant to liberty granted vide order dated 08.02.2024, passed in C.W.J.C. No. 1264 of 2024, has been rejected stating inter-alia that benefit of reservation would be admissible only to the original resident of State of Bihar and since the father of petitioner is a resident of State of Uttar Pradesh, and therefore petitioner cannot be treated as original resident of State of Bihar, consequently, she would not be entitled to grant of reservation in State of Bihar.

(ii) For issuance of a writ in the nature of Certiorari or any other appropriate writ for quashing the Letter dated 26.04.2024 issued by Deputy Secretary, Bihar Public Service Commission (hereinafter referred to as the "Commission")- whereby and whereunder, representation of petitioner made pursuant to liberty granted vide order



dated 08.02.2024, passed in C.W.J.C. No. 1264 of 2024, has been rejected stating inter alia that benefit of reservation would be admissible only to the original resident of State of Bihar and since the father of petitioner is a resident of State of Uttar Pradesh, she would not be entitled to grant of reservation in state of Bihar.

(iii) For issuance of a writ in the nature of Certiorari or any other appropriate writ for quashing the Result dated 02.12.2023 in connection with Advertisement No. 01/2020 for appointment to the post of Assistant Prosecution Officer issued by Commission, - to the extent it related to the petitioner - whereby and whereunder, candidature of petitioner bearing Roll No. 100225 has been canceled on the ground that she does not have requisite certificate to claim the benefit of reservation under Schedule Caste Category in the State of Bihar.



(iv) For issuance of order, direction or writ of Mandamus or any other appropriate writ for directing the respondent commission to accept the candidature of petitioner under the Scheduled Caste category in connection with Advertisement No. 01 of 2020 for appointment to the post of Assistant Prosecution Officer issued by Commission on the strength of caste certificate produced by her in the peculiar circumstances that both her husband and father, belongs to Schedule Cast community (Dushadh Caste) and she got married on 27.02.1996 and thereafter, completed her entire education in the State of Bihar and she is permanent resident/Domicile of State of Bihar.

(v) For any other orders or direction which your Lordship may deem fit in the interest of equity, justice and good conscience.

(vi) Cost of this litigation.



3. Learned counsel for the petitioner submits that the petitioner has eligibility in terms of the advertisement No. 01 of 2020 dated 06.02.2020 for appointment on the post of Assistant Prosecution Officer in the State of Bihar. She appeared in the preliminary examination as a Scheduled Caste Category candidate. Being successful, she had participated in the mains examination wherein also she had been declared successful. The petitioner was directed to appear in the interview whereupon she appeared in the interview with all documents but when Commission published the final result of Assistant Prosecution Officer on 02.12.2023, petitioner was amongst the eight candidates declared unsuccessful on the ground that they could not furnish their requisite certificates relating to reservation etc.

4. Learned counsel for the petitioner submits that being aggrieved and dissatisfied with the decision of the Commission, the petitioner had preferred writ petition before this Hon'ble Court in CWJC No. 1264 of 2024 in which vide order dated 08.02.2024 the petitioner was given liberty to approach the respondent-authorities for ventilating her grievances. Counsel submits that in the light of the order passed by the Hon'ble Court a representation was made but his representation was rejected. Thereafter, the petitioner has filed



review application on 18.03.2024 raising all the points that both her husband and father of the petitioner belong to the Scheduled Caste community. She got married on 27.02.1996, thereafter completed her entire education in the State of Bihar. But the Bihar Public Service Commission has rejected the candidature of the petitioner. Thereafter the petitioner has filed the present writ petition challenging the order passed by the Bihar Public Service Commission, which is Annexure- P/10. Counsel submits that petitioner belongs to the Scheduled Caste category in Bihar as well as in Uttar Pradesh. Therefore, rejection of candidature of the petitioner on this ground that the petitioner is not domicile of Bihar is not correct.

5. Learned Senior Counsel for the Petitioner in response thereof has relied on the judgment in the case of **Dr. Rajesh Kumar Paswan Vs. The State of Bihar and Others** reported in **AIR 1997 Pat 31**. He submits that paragraphs 9 and 10 are relevant in this matter and considering those relevant paragraphs that the petitioner is Scheduled Caste community both in Uttar Pradesh and Bihar. Therefore, he is entitled to get the benefit in Bihar also.

6. Learned Counsel for the Bihar Public Service Commission submits that prior to entering into the examination



process the advertisement has been made and in the said advertisement it has been clearly mentioned on the line of reservation that those candidates who are not resident of Bihar shall not be granted reservation as for grant of reservation permanent resident/domicile certificate is the necessary ingredients. Learned Counsel for the Bihar Public Service Commission further submits that not only in the advertisement rather in the interview letter also it has been categorically mentioned that the resident certificate must be in the name of candidate's father and not in the name of candidate's husband. On this ground, counsel for Bihar Public Service Commission submits that rule of the game has already been fixed prior to enter into the examination process and, therefore, the decision taken by the Bihar Public Service Commission is completely in accordance with rule of which the petitioner already had knowledge.

7. Learned Counsel for State submits that the petitioner is not entitled for benefit as the Bihar Public Service Commission has framed the law in the light of the State policy and prior to advertisement this matter has been decided at the policy level and, hence, no case of the petitioner is made out.

8. In the light of the submissions made, it is



relevant to quote the relevant paragraph of the advertisement in which the petitioner had participated in examination, i.e., Columns 6 (ii) and (iii)(A) which reads as follows:-

“6(ii) जाति के आधार पर आरक्षण का लाभ उन्हीं उम्मीदवारों को मिलेगा, जिनका स्थायी निवास बिहार राज्य में है अर्थात् जो बिहार के मूलवासी हैं। बिहार राज्य के बाहर के निवासी अभ्यर्थी को आरक्षण का लाभ देय नहीं होगा। आवेदन में दिया गया स्थायी पता ही आरक्षण प्रयोजन के लिए स्थायी निवास अनुमान्य होगा।

(iii) (A) अनुसूचित जाति एवं अनुसूचित जनजाति के उम्मीदवारों को निम्नांकित प्रमाण-पत्र जमा करना अनिवार्य होगा :-

(a) जाति प्रमाण-पत्र।

(b) स्थायी निवास / मूल निवास (डोमिसाइल) प्रमाण-पत्र।”

Subsequently in the interview letter, which is Annexure-P/4, whose clause 5(ii) is relevant in this matter reads as follows:-

“5(ii) पिछड़ा वर्ग / अत्यंत पिछड़ा वर्ग की स्थिति में सामान्य प्रशासन विभाग, बिहार के पत्रांक 673, दिनांक 08.03.2011 एवं पत्रांक 704,



दिनांक 10.03.2011 के आलोक में बिहार सरकार द्वारा विनिर्दिष्ट विहित प्रपत्र में अपने स्थायी अधिवास अंचल के राज्य सरकार द्वारा अधिसूचित सक्षम प्राधिकार द्वारा निर्गत क्रीमीलेयर रहित प्रमाण-पत्र की मूल प्रति प्रस्तुत कर सत्यापन करना अनिवार्य होगा, अन्यथा आरक्षण का लाभ देय नहीं होगा। आरक्षण का दावा करने वाली विवाहित महिलाओं का जाति प्रमाण-पत्र/ क्रीमीलेयर रहित प्रमाण-पत्र/ निवास प्रमाण-पत्र उनके पिता के नाम एवं पता से निर्गत होना चाहिए न कि उनके पति के नाम एवं पता से।”

9. Upon perusal of the provisions of law, it transpires to this Court that prior to entering into the advertisement, rule was framed and since rule was framed then in that view of the matter the petitioner has no option but to follow the rule until and unless it is changed.

10. Upon going through the judgment, it transpires to this Court that the case cited by the petitioner, i.e., **Dr. Rajesh Kumar Paswan (supra)**, deals with the dispute relating to taking admission in P.G. Medical Course, whereas the present dispute is relating to entering into the service. In paragraph 11, it has been observed by the Hon'ble Court that it cannot be said that the petitioner (**Dr. Rajesh Kumar Paswan**)



wanted to settle in the Bihar and just to get admission to the P.G. Medical Course or by the said settlement in the State of Bihar, he is seeking any privilege or any special right. But in the present case by seeking service in the Government means that he wants to settle in Bihar. Therefore, in the opinion of this Court, there is distinction between the case of **Dr. Rajesh Kumar Paswan (supra)** and the present case. Hence, this Court is not inclined to grant any relief to the petitioner, particularly, till the rule framed/ advertised by the Bihar Public Service Commission remains unchanged.

11. Accordingly, this writ petition is dismissed.

(Dr. Anshuman, J.)

Mkr./Aman/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	12.08.2024
Transmission Date	NA

