

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13565 of 2024

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1. Bipin Kumar S/o-Ramphal Yadav R/o - At and P.O - Prahladpur, P.S - Ghoswari, Dist -Patna (Roll NO. 105161).
 2. Nikhil Kumar Singh S/o-Uday Kumar Singh R/o Vill-Ara, P.O - Anaith, P.S Nawada, Dist-Bhojpur.(Roll NO. 129766).
 3. Kumar Vivekanand S/o-Subodh Kumar Tahkur R/o Vill- Mathuriya, P.O - Biharsarif, P.S - Laheri, Dist -Nawada.(Roll NO. 131955).

... .. Petitioner/s

Versus

1. The State of Bihar through its Secretary (Agriculture Department) Govt. of Bihar, Patna.
2. The Director,Agriculture Department, Govt. of Bihar, Patna.
3. The Director Agriculture Technology Management Agency (ATMA), Bihar, Patna.
4. The Dy. Secretary-Cum-Examination Controller, Bihar Public Service Commission, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sita Ram Prasad, Advocate
For the State	:	Mr. Ajay Bihari Sinha, G.A- 8 (Sr. Adv.)
For the B.P.S.C.	:	Mr. Kameshwar Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

2 09-09-2024 Heard Learned Counsel for the petitioners, Learned Counsel for the State and Learned Counsel for the Bihar Public Service Commission.

2. The present writ petition has been filed seeking relief for cancellation/rejection of the name of other state candidates from the list and instruction letter dated 12.06.2024 by which the other state handicapped candidates have been selected in the state reserved handicapped quota and further instruction has been given for medical test for final selection



and appointment to the post of Block and Sub Divisional Agriculture Officer relating to Advertisement nos. 18/2024 and 21/2024 dated 10.01.2024 (Annexure- P/1). The other prayer has been made to not select the other state candidates on the seats reserved for home state handicapped candidates as per the rule/instruction mentioned in Circular and Advertisement. Furthermore, Respondents be directed to call petitioner No. 3 for his interview for the post of Block or Sub Divisional Agriculture Officer.

3. Learned Counsel for the petitioners submits that in the Circular dated 08.05.2023 annexed in Annexure- P/2, particularly, in Paragraph No. 13(ii) the petitioners are entitled for the relief. Counsel submits that paragraph No. 5 (i), (ii) and (iii) clearly states that the reservation shall be given to home state candidates in the light of the Advertisement (Annexure- P/3). Counsel further submits that from bare perusal of the Circular and the Advertisement the petitioners are entitled for the relief.

4. Learned Counsel for the State, on the other hand, submits that the petition is not maintainable due to the reason that in the said provision of the Circular, no statement with regard to reservation for the handicapped category has been



mentioned. Counsel submits that in clause 5(ii) of the Advertisement, it has been specifically mentioned that the consideration for the handicapped category outside the State shall be taken into consideration. In this light he advances particularly, the petitioners ought not challenge clause 5(ii) of the Advertisement and till this provision clause 5(ii) shall be in existence, there is no deficiency in the result published by the Bihar Public Service Commission and, as such, the writ petition is fit to be dismissed. Another point on which learned counsel for the State has put emphasis is that, once the petitioner has entered into the Advertisement process then at subsequent level he cannot challenge the Advertisement in view of the ratio laid down in the case of *Arun Pal Singh vs. The State of U.P.* reported in *(2020) 2 SCC 173* whose Paragraph No. 55 to 59 is very much relevant.

5. Learned counsel for the Bihar Public Service Commission fully supported the argument made by the learned counsel for the State.

6. Upon going through the provisions on which the petitioners relied in the Circular which is as follows:-

"13(ii) राज्य के मूल वासी को
ही आरक्षण का लाभ देय होगा।"



and further clause 5(ii) of the Advertisement which is
as follows :-

"5(ii) सम्प्रति राज्य के बाहर के
अभ्यर्थियों को मात्र महिला एवं दिव्यांगता
संबंधी आरक्षण का लाभ सामान्य कोटि के
अंतर्गत ही देय होगा। इन्हें अन्य कोई
आरक्षण का लाभ देय नहीं होगा।"

as well as clause 5(vi) (क) which is as follows:-

"5 (vi) (क) सामान्य प्रशासन
विभाग, बिहार की अधिसूचना संख्या-
962, दिनांक- 22.01.2021 के आलोक में
दिव्यांगो (Persons with Benchmark
Disability) को इस विज्ञापन में वर्णित
रिक्ति के अनुसार 4% क्षैतिज आरक्षण देय
होगा। ऐसे आरक्षण का दाया करने की
स्थिति में राज्य के किसी भी सरकारी
चिकित्सा महाविद्यालय एवं अस्पताल से
निर्गत अथवा परामर्शित/संपुष्ट
दिव्यांगता प्रमाण पत्र मान्य होगा।
अन्यथा दिव्यांगता प्रमाण पत्र (Civil
Surgeon/CMO द्वारा निर्गत) समर्पित
करने की स्थिति में उम्मीदवारी औपबंधिक



मानी जायेगी तथा चयन के पूर्व दिव्यांगता प्रमाण पत्र को सरकारी चिकित्सा महाविद्यालय एवं अस्पताल से संपुष्ट कराना अनिवार्य होगा। दिव्यांगता प्रमाण पत्र असंपुष्ट अथवा गलत पाये जाने पर उम्मीदवारी रद्द करते हुए आवश्यक कार्रवाई की जायेगी।

अस्थायी दिव्यांगता प्रमाण पत्र में निर्धारित अवधि के बाद नवीकरण (Renewal) नहीं होने की स्थिति में प्रमाण पत्र विधि मान्य नहीं होगा।

बहुदिव्यांगता का दावा करने वाले अभ्यर्थियों के पास दिव्यांगता अधिकार नियमावली, 2017 (The Rights of Persons with Disabilities Rules, 2017) में वर्णित विहित प्रपत्र फार्म VI (Form VI) में सक्षम प्राधिकार द्वारा निर्गत बहुदिव्यांगता प्रमाण पत्र की प्रति संलग्न करना आवश्यक है, अन्यथा बहुदिव्यांगता के आधार पर आरक्षण का लाभ देय नहीं होगा।"

7. This Court feels it necessary to quote the relevant



Paragraph No. 55 to 59 of the judgment rendered in the case of
Arun Pal Singh vs. The State of U.P. (supra) as under:-

55. Having participated in the interview, the private respondents cannot challenge the Office Memorandum dated 12-10-2014 and the selection. On behalf of the appellants, it was contended that after the revised Notification dated 12-10-2014, the private respondents participated in the interview without protest and only after the result was announced and finding that they were not selected, the private respondents chose to challenge the revised Notification dated 12-10-2014 and the private respondents are estopped from challenging the selection process. It is a settled law that a person having consciously participated in the interview cannot turn around and challenge the



selection process.

56. Observing that the result of the interview cannot be challenged by a candidate who has participated in the interview and has taken the chance to get selected at the said interview and ultimately, finds himself to be unsuccessful, in Madan Lal v. State of J&K¹⁴, it was held as under: (SCC p. 493, para 9)

"9.... The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at



written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted."

57. In K.H. Siraj v. High Court of Kerala¹⁵, it was held as under: (SCC p. 426, para 73)

"73. The appellant-petitioners having participated in the interview in a this background, it is not open to the appellant-petitioners to turn round thereafter when they failed at the interview and contend that the provision of a minimum mark for the interview was not



proper."

58. In Union of India v. S. Vinodh Kumar¹⁶, it was held as under: (SCC p. 107. para 19)

"19. In Chandra Prakash Tiwari v. Shakuntala Shukla¹⁷...

It was further observed: (SCC p. 149, para 34)

'34. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seem to be well settled that in the event a candidate appears at the interview. and participates therein, only because the result of the interview is not "palatable" to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process.'

59. Same principle was



reiterated in Sadananda Halo v. Momtaz Ali Sheikh¹⁸ wherein, it was held as under: (SCC pp. 645-46, para 59)

"59. It is also a settled position that the unsuccessful candidates cannot turn back and assail the selection process. There are of course the exceptions carved out by this Court to this general rule. This position was reiterated by this Court in its latest judgment in Union of India v. S. Vinodh Kumar¹⁶.... The Court also referred to the judgment in Om Prakash Shukla v. Akhilesh Kumar Shukla¹⁹, where it has been held specifically that when a candidate appears in the examination without protest and subsequently is found to be not successful in the examination, the question of entertaining the petition challenging



such examination would not arise."

8. It is also necessary to bring on record Section 34 of the Rights of Persons with Disabilities Act of 2016, which states as follows :-

***"34. Reservation.- (1)
Every appropriate Government shall appoint in every Government establishment, not less than four per cent. of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent. each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:-***

(a) blindness and low vision;

(b) deaf and hard of hearing;

(c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;

(d) autism, intellectual disability, specific learning disability



and mental illness;

(e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.

(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be



carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

(3) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit.”

9. Upon perusal of those provisions mentioned in the advertisement as well as the ratio laid down in the above mentioned judgment, it transpires to this Court that, the specific provision of the Advertisement has been made with regard to



consideration of disability reservation to the candidate of outside State. This Court after going through the Law of the Land finds that the Rights of Persons with Disabilities Rules, 2017 and its corresponding Act, namely, sub-sections (1) and (2) of Section 100 of the Rights of Persons with Disabilities Act, 2016 (49 of 2016) which is the mother of Statutes and Rules on the basis of which guidelines have been framed, do not create any discrimination between the candidates of the one State and the other so far as the consideration of candidates of disability categories are concerned, so in that view of the matter the law which has been issued i.e., the Rights of Persons with Disabilities Act, 2016 (49 of 2016) does not create any discrimination state wise. Hence, this Court finds that there is no merit in this writ petition.

10. Accordingly, the writ petition stands dismissed.

(Dr. Anshuman, J.)

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