

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2673 of 2021

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Durgesh Kumar S/o Sri Raj Kumar Gupta, R/o Mo-chaili Tal, Maharajganj,
P.S.-Alamganj, P.O.Guljarbagh, Patna City, District-Patna, Son of Resident of
P O. and P.S.-District Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary Govt. of Bihar, Patna.
2. The Secretary Human Resource Development Department, Govt. of Bihar,
Patna.
3. The Bihar Public Service Commission, through its Chairman,15 Bailey
Road, Patna.
4. The Secretary, Bihar Public Service Commission, 15 Patna.
5. The Joint Secretary-Cum-Examination Controller, Bihar Public Service
Commission, Patna.
6. Sri Kamendra Prasad, Roll Number 400473, Selected as Lecturer in Arts
and Crafts against advertisement No-04/2016, BY the BPSC, Patna Under
Disabled Category, fathers name and address not Known to the Petitioner.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shankar Kumar Thakur, Advocate Mr. Ram Kumar Singh, Advocate
For the State	:	Mr. Madanjeet Kumar, GP-20 Mr. Rajeev Ranjan, AC to GP-20
For the B.P.S.C.	:	Mr. Nikesh Kumar, Advocate
For Respondent No. 6	:	Mr. Vijay Shanker Shrivastava, Advocate Mr. Pravin Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 28-04-2025

Heard Mr. Shankar Kumar Thakur, learned counsel
appearing on behalf of the petitioner; Mr. Madanjeet Kumar,
learned GP-20 for the State; Mr. Nikesh Kumar, learned counsel



for the Bihar Public Service Commission and Mr. Vijay Shanker Shrivastava, learned counsel for the respondent no. 6.

2. In continuation of order dated 08.04.2025 and before I proceed to decide the case, the issues involved in the present writ petition are whether (i) selection based on a non-valid (expired) disability certificate is legally sustainable? (ii) Whether a candidate with permanent disability has superior claim over the temporary disabled persons under the persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as the "Act, 1995") or the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as the "Act, 2016")? (iii) Whether a court can set aside the selection of the ineligible candidate and direct appointment of the deserving candidate?

RELEVANT STATUTORY PROVISIONS:

3. Section 2(r) of the Act, 2016 defines persons with benchmark disability.

4. India being a signatory to CRPD, which is an International Human Right Treaty of United Nation, which intends to promote, protect and ensure the full and equal enjoyment of human rights and and fundamental freedoms by all persons with disability to give effect to the United Nations



Convention on the Rights of persons with disabilities and for matters connected therewith or incidental thereto, our Parliament enacted the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as 'the Act, 2016') and the Central Government made the Rights of Persons with Disabilities Rules, 2017 (hereinafter referred to as 'the Rules, 2017') in exercise of the powers conferred by sub-section (1) and (2) of section 100 of the Act of 2016.

5. The provisions of the Act of 2016 and definition contained in Rule 3 of the Rules of 2017, which are relevant for the present purposes are being reproduced as under:-

"2. Definitions.-- In this Act, unless the context otherwise requires,--

(c) "barrier" means any factor including communicational, cultural, economic, environmental, institutional, political, social, attitudinal or structural factors which hampers the full and effective participation of persons with disabilities in society;

(h) "discrimination" in relation to disability, means any distinction, exclusion, restriction on the basis of disability which is the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination and denial of reasonable accommodation;

(r) "person with benchmark disability" means a person with not less than forty per cent. of a specified disability where specified disability has not been defined in measurable terms and includes a person



with disability where specified disability has been defined in measurable terms, as certified by the certifying authority;

(s) "person with disability" means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others;

6. Section 3. Equality and non-discrimination.--

(1) The appropriate Government shall ensure (2) (3) No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.

20. Non-discrimination in employment- (1) No Government establishment shall discriminate against any person with disability in any matter relating to employment:

7. Section 33. Identification of posts for reservation --

The appropriate Government shall--

(i) identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34;

(ii) constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts; and



(iii) undertake periodic review of the identified posts at an interval not exceeding three years. Rule 3. Establishment not to discriminate on the ground of disability.-

8. Rule-3, Chapter-I of the Rights of persons with Disabilities Rules, 2017 provides as under:

(1) The head of the establishment shall ensure that the provision of sub-section (3) of section 3 of the Act are not misused to deny any right or benefit to persons with disabilities covered under the Act. (2) If the head of the Government establishment or a private establishment employing twenty or more persons receives a complaint from an aggrieved persons regarding discrimination on the ground of disability, he shall -

(a) initiate action in accordance with the provisions of the Act; or

(b) inform the aggrieved person in writing as to how the impugned act or omission is a proportionate means of achieving a legitimate aim.

(3) If the aggrieved person submits a complaint to the Chief Commissioner or State Commissioner for Persons with Disabilities, as the case may be, the complaint shall be disposed of within a period of sixty days:

Provided that in exceptional cases, the Chief Commissioner or State Commissioner may dispose of such complaint within thirty days.

(4) No establishment shall compel a person with disability to partly or fully pay the costs incurred for reasonable accommodation."

9. A combined reading of the above provisions of Section 2(h) and Section 3(3), of the Act, reveals that the Act, 2016 casts a duty upon the commission to ensure that persons



with disability are not discriminated against.

10. It is further clarified that two distinct terms have been used by the Act, 2016 and Rules, 2017 - "persons with benchmark disability and persons with disability", duly defined in clause (r) and (s) of section 2 of the Act, 2016. A person with specified disability whose disability exceeds 40% or more is called a person with benchmark disability.

11. Chapter II of the Act of 2016 deals with special provisions for person with Benchmark disabilities of which, Sections 32, 33 and 34 are integral part. Section 32 of the Act 2016 provides for reservation in educational institutions, while sections 33 and 34 stipulate identification of posts and reservation for person with benchmark disabilities qua such posts.

12. It is pertinent to note that Section 3 of the Act is applicable to all specially abled persons, irrespective of nature and extent of their disability. Provisions of sub-section (3) of section 3 of the Act, 2016 clearly mandates that a person with disability shall not be discriminated on the ground of disability unless it is shown that impugned act or omission is a proportionate means of achieving a legitimate aim.

13. Chapter X deals with certification of specified



disability. Rule 2(1)(b) defines "certificates" to mean a certificate of disability under Section 57 of the Act shall have the meaning assigned to them in the Act.

14. Clause-4 of the advertisement prescribes for reservation. Sub-Clause C of Clause 7 prescribes for terms and conditions for the persons claiming reservation under disabled category clearly provides certificate granted by competent authority i.e. in accordance with the provisions of the Act, 2016 along with the application form.

15. Section 34 of the Act, 2016 prescribes for reservation for persons with benchmark disability in government employment. The persons, who fulfills parameter, can claim reservation if fits for the five categories, which are as follows:

- (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 such disabilities;*

16. In the opinion of this Court, the norms or criteria fixed for eyes, ears, hearing defects and gait or locomotion etc.



have to be accordingly construed or relaxed, while conducting medical examination of a person who is having a bodily challenge, if such challenge or disability has been held acceptable rather suitable for the corresponding post. To express it differently and to make it more clear, it is held that "In case a post has been held suitable for a particular type of disability and if a person suffers from such disability, he cannot be declared medically unfit, simply because he has not claimed reservation or his disability is less than the benchmark fixed for making him entitled to claim reservation.

17. If that is not done, the result would be unjust and inequitous.

18. In the present case 26 candidates with benchmark disability have been selected (who had more than 40% disability) regardless of the fact that they do not have binocular vision, but the petitioner has not been selected having marks less than respondent no. 6, who has 40 % temporary disability. Petitioner claims his fundamental right granted under Article 14 of the Constitution of India has been violated even though joint merit list of 59 candidates were prepared in which respondent no. 6 was placed at serial no. 53 of the merit list. Petitioner with permanent disability had scored total 47.25 marks, while



respondent no. 6, whose disability certificate was invalid scored 51.98 marks.

19. Ministry of Social Justice and empowerment issued guidelines for evaluation of disability certificate prescribing minimum degree of disability to be 40% in order to be eligible for any concession/benefit vide Notification No. 16-18/97. Paragraph no. 6 of the said notification prescribes that the certificate would be valid for five years for those, whose disability is temporary. For those, who acquire permanent disability, the validity can be shown as permanent. The General Administration Department had issued a resolution contained Memo No. 962 dated 22.01.2021 and Clause-7 of the said resolution prescribes that as per the provision of Section 58 of the Act, 2016, the Medical Board while issuing permanent disability certificate where there is no chance of change in disability and further mentioned the order of validity in the certificate where there is chance of change in the disability.

20. Since the first and second issues are interlinked, which relates to validity of disability certificate, to decide that same in view of the admitted position that the respondent no. 6, on the date of the advertisement and filling of his application was suffering from temporary disability, his certificate was



required to be valid and effective at the time of application and expired certificate renders his claim invalid under the Act, 2016.

21. The contention of the Commission in paragraph no. 8 of their supplementary counter affidavit that in light of the disability certificate submitted by respondent no. 6, the Commission had selected him and had advised the department concerned that disability of the respondent no. 6 is temporary in nature, so, the department would issue him appointment letter after satisfying itself after complete verification of his disability on its level. In paragraph no. 9, a statement has been made that the Commission have no role in the instant dispute and it is for the State to answer about the steps taken by them before issuing appointment letter to respondent no. 6.

22. In this regard, I find it relevant to refer to the terms and conditions of the Advertisement No. 04 of 2016 pursuant to which, the petitioner being Backward Class (BC) Code-05 (VI) Visually Impaired category candidate, had applied for the post for appointment of lecturer in the subject of Vocal Music (Arts and Craft) in Government Training College in the State of Bihar against 26 vacancies for recruitment by open competitive examination for which last date of filling of the application was 22.06.2016. Clause-7 of the advertisement



prescribes for reservation. Sub-Clause (c) prescribes for the terms and conditions for the persons claiming reservation in disabled category requiring them to file disability certificate granted by competent authority along with the application form, otherwise, the claim of reservation will not be considered.

23. The Commission has admitted in paragraph no. 5 of their counter affidavit that the Commission is recommending body in the matter of appointment and abide by the rules and regulation framed by the State Government. The respondent no. 6 was issued admit card contrary to the terms and condition contained in Clauses 9 and 10 of the advertisement and was allowed in the written examination held on 26.08.2018 and result was published on 27.04.2020. Interview was held from 23.06.2020 to 25.06.2020 and the petitioner was called for interview on 24.06.2020.

24. In paragraph no. 9 of the counter affidavit it has been stated that against 26 vacancies, merit list was prepared on the basis of marks of written examination, academic qualification and interview. Selection were as per the merit list. Total 26 candidates were declared successful and finally their result was published on 04.07.2020. The petitioner (Visually Impaired) could not be declared successful finally because she



secure 21 marks in written examination, 14.20 marks in academic qualification and 12 marks in interview, she, thus, obtained total 47.25 marks and stood at serial no. 57 in the joint merit list, whereas, the respondent no. 6 (400473) Backward Class (BC) (055) VI (Visually Impaired) category candidate secured 36 marks in the written examination, 12.980 marks in academic qualification and 03 marks in interview, respondent no. 6, thus, obtained total 51.980 marks and stood at serial no. 53 in the joint merit list. On this basis, the Commission has given information that petitioner in final result had obtained less marks than the marks obtained by the respondent no. 6, so, the petitioner was not declared successful.

25. The State in their counter affidavit, has clarified the status of the petitioner, as well as, the respondent no. 6 based on the guidelines for evaluation of various disability and procedure for certification prescribed by the Ministry of Social Justice and Empowerment. In this regard, paragraphs no. 6, 7, 8, 9 and 10 are relevant for adjudication of the present writ petition and same are reproduced hereinafter:

"6. That so far as direction to the State is concerned, it is humbly stated that as per the clause-6 of guidelines for evaluation of various disabilities and procedure for certification dated 01.06.2001, issued by the Ministry of Social Justice and Empowerment, "The certificate would be valid for a period of five years for those



whose disability is temporary. For those who acquire permanent disability, the validity can be shown as 'Permanent'.

7. That it is humbly stated that the since the details of both the petitioner as well as private respondent is with the respondent BPSC hence they are in a better position to examine the certificate vis a vis the prevalent law.

8. That it is humbly stated that the in the advertisement in question, clause 7 deals with reservation and sub clause (ii)(c) says that 'in case of disability, a disability certificate issued by the competent authority is required to be enclosed otherwise benefit of reservation will not be admissible'.

9. That it is pertinent to mention here that the General Administration department, Government has issued a resolution contained in memo no. 962 dated 22.01.2021 related with inter alia reservation in appointment in government service. Clause-7 of the said resolution prescribe that as per the provision contained in Section-58 of the Rights of Persons with Disabilities Act, 2016, the Medical Board while issuing permanent disability certificate where there is no chance of change in the disability and further mention the years of validity in the certificate where there is a chance of change in the disability. (emphasis supplied)

10. That in this connection it is further stated that Clause-17 of the said resolution contain the saving clause wherein any action taken before 12.10.2017, contrary to the provisions mentioned therein, has been directed to be treated as valid."

26. The State has thus admitted that the respondent no. 6 has produced temporary disability certificate, which was invalid on the last date of submission of form. The various rules, circular and provisions of Act, 2016 and the terms of the advertisement has not fulfilled the terms and conditions.



27. In the facts of this case it has to be held that the cut-off date can be no other date except the last date of filing of the application in terms of the advertisement. The clause 10 prescribes that last date of submission to be 6th June, 2016 by 5 p.m.

28. The Apex Court in paragraphs 28 to 32, in the case of ***Bedanga Talukdar vs. Saifudaullah Khan & Ors.*** reported in ***(2011) 12 SCC 85*** has made following observation:

"28. Mr Bhushan, in reply, submitted that upon a thorough examination of the entire fact situation, Respondent 3 in its resolution dated 21-5-2010 has clearly observed that Respondent 1 was treated as a general candidate all along in the examination process and was not treated as physically handicapped with locomotor disability. Respondent 3 also looked into the question whether any other candidate, who had not furnished any essential document with the application or at the time of interview but submitted them after the interview were accepted or not. Upon examination of the issue, Respondent 3 has observed that in fact the candidature of one applicant, namely, Smt Anima Baishya was specifically rejected as she had submitted the application before the Chairperson of Respondent 3 on 26-2-2009, claiming herself to be an SC candidate for the first time. In the case of Respondent 1, the identity card was submitted for the first time with the letter dated 10-12-2009, much after the examination process was over.

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.

30. *A perusal of the advertisement in this case will clearly show that there was no power of relaxation. In our opinion, the High Court committed an error in directing that the condition with regard to the submission of the disability certificate either along with the application form or before appearing in the preliminary examination could be relaxed in the case of Respondent 1. Such a course would not be permissible as it would violate the mandate of Articles 14 and 16 of the Constitution of India.*

31. *In our opinion, the High Court was in error in concluding that Respondent 3 had not treated the condition with regard to the submission of the certificate along with the application or before appearing in the preliminary examination, as mandatory. The aforesaid finding, in our opinion, is contrary to the record. In its resolution dated 21-5-2010, the Commission has recorded the following conclusions:*

“Though Shri S. Khan had mentioned in his letter dated 10-12-2009 that he was resubmitting the identity card with regard to locomotor disability he, in fact, had submitted the documentary proof of his locomotor disability for the first time to the office of the APSC through his above letter dated 10-12-2009. However, after receiving the identity card the matter was placed before the full Commission to decide whether the Commission can act on an essential document not submitted earlier as per terms of advertisement but submitted after completion of entire process of selection.

The Commission while examining the matter in details observed that Shri S. Khan was treated as general candidate all along in the



examination process and was not treated as physically handicapped with locomotor disability. Prior to taking decision on Shri S. Khan it was also looked into by the Commission, whether any other candidate's any essential document relating to right/benefits, etc. not furnished with the application or at the time of interview but submitted after interview was accepted or not. From the record, it was found that prior to Shri S. Khan's case, one Smt Anima Baishya had submitted an application before the Chairperson on 26-2-2009 claiming herself to be an SC candidate for the first time. But her claim for treating herself as an SC candidate was not entertained on the grounds that she applied as a general candidate and the caste certificate in support of her claim as SC candidate was furnished long after completion of examination process."

32. In the face of such conclusions, we have little hesitation in concluding that the conclusion recorded by the High Court is contrary to the facts and materials on the record. It is settled law that there can be no relaxation in the terms and conditions contained in the advertisement unless the power of relaxation is duly reserved in the relevant rules and/or in the advertisement. Even if there is a power of relaxation in the rules, the same would still have to be specifically indicated in the advertisement. In the present case, no such rule has been brought to our notice. In such circumstances, the High Court could not have issued the impugned direction to consider the claim of Respondent 1 on the basis of identity card submitted after the selection process was over, with the publication of the select list."(Emphasis Supplied)

29. Thus, the act of the Commission has led to discriminate the petitioner, who suffered from permanent disability. The declaration of the result of respondent no. 6 is on merits of marks obtained at different stages of selection, however, the Commission committed error at the stage of scrutiny of the application form in respect of the disability certificate submitted by the respondent no. 6, which had already



became invalid in the year 2013 being issued in the year 2008 having validity for 5 years on last date of submission of application in terms of clause 10 of the advertisement i.e. 06 June, 2016, in respect of the respondent no. 6, who was suffering from "temporary disability" and as per Clause-6 of the guidelines of Ministry of Social Justice and Empowerment dated 01.06.2001, the same had expired in the year 2013 losing its validity after five years before the last date of filing of form.

30. This Court in this regard also find support from the judgment of the Apex Court in the case of ***Ashok Kumar Sharma & ors. v. Chander Shekhar & anr.***, reported in (1997) 4 SCC 18, wherein it has been held as follows:

"The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well- established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it....."

31. The same view was taken even earlier by this Court in the case of ***Pradip Kumar vs. The State of Bihar*** (CWJC No. 6805 of 2012)

32. The State and the B.P.S.C. have admitted that respondent no. 6 submitted necessary supporting documents along with the application form including the temporary



disability certificate. The documents were verified at the time of interview on 25.06.2020, however, issued the admit card on the basis of invalid disability certificate. In view of well settled principle of law, there can be no relaxation in terms and conditions contained in the advertisement unless the power of relaxation is duly reserved in the relevant rules and/or in the advertisement. A candidate seeking his/her selection for appointment under reserve category, the terms and condition of the advertisement and the governing rules are required to be fulfilled. The Commission has failed to understand that while issuing admit card to the respondent no. 6, whose disability certificate was invalid and was allowed to participate in the selection process and declared him successful has breached the terms and conditions of the advertisement, as well as, the governing rules.

33. The B.P.S.C., thus, failed to act in accordance with its legal obligation and the explicit terms and conditions. The conduct of the Commission also shows that to cover up their mistake, misleading averments have been made in paragraphs no. 6 to 9 of their supplementary counter affidavit. The same can only amount to a willful and deliberate attempt to mislead the Court. Paragraphs no. 4 to 9 of the supplementary counter



affidavit filed on behalf of the B.P.S.C. are reproduced hereinafter:

“4. That the application form of the petitioner along with the supporting documents are attached herewith.

5. That the application form of the Respondent along with the supporting documents are attached herewith.

6. That it is again reiterated that that the Respondent No- 6, Kamendra Prasad, Roll No- 400473 got verified his disabilities certificate at the time of interview on 25.06.2020. The said certificate was issued with 40% disability and his disability was mentioned temporary in nature.

7. That It is pertinent to mention here that the Commission acts in the light of the documents furnished by the candidates and does not examine its validity because such type of verification is time taking and will affect the sooner publication of the result. In such case the Commission issued directions and advices to the three appointing departments to appoint the recommended candidates after satisfying itself by examining or verifying all the certificates.

8. That, it is pertinent to mention here that in light of the disability certificate submitted by the respondent no- 6, the Commission has selected him. It is humbly submitted that in case of temporary nature of disability of the respondent no. 6, the Commission has advised the department concerned vide para-3 of the recommendation letter no- 09, dated 21.07.2020 that the disability of the respondent no- 6 is temporary in nature. So, the department would issue him appointment letter after satisfying itself after complete verification of his disability on its level.

9. That in light of the averments made herein above, it is most respectfully submitted that the respondent commission does not have any role in the instant dispute and it is for the state to answer that what steps were taken by them before issuing the appointment letter respondent no. 6.”

34. The Rights of Persons with Disabilities Act, 2016

mandates that a person with benchmark disability will be given



reservation in the public employment but the same cannot be read to mean that a person with lesser marks will be ignored when it comes to employment in the same stream and with permanent disability.

35. According to this Court, the intention of the Act is not simply to give benefit of reservation to persons with disability, who are having 40% or more disability but also to sensitize the State and its instrumentalities towards predicament of such people.

36. The Chairman, Secretary and the employees of the B.P.S.C., who have facilitated wrongful appointment deserve censure. The petitioner has been unjustly denied employment for four years and has been placed in hardship due to B.P.S.C.

37. The Right to Reservation for Persons with Disability is a constitutional protection, which requires implementation strictly as per law but as a result of incorrect action of the B.P.S.C., *the appointment of respondent no. 6 now stands invalid.*

38. It is admitted position that the petitioner has made out a case of discrimination by the hand of B.P.S.C.

39. Examining bodies being public authorities are statutory entities on a duty of fairness. The error committed by



the examining body can be corrected judicially and candidate may be entitled to the relief. It is well settled that courts can impose cost and grant compensatory relief in exercise of power under Article 226 of the Constitution when there is proved abuse of power or malafide action.

40. The respondents are directed to accord ***appointment*** to the petitioner on the post of lecturer in Vocal Music (Arts and Craft) within a period of eight weeks from the date of the communication of this order.

41. The petitioner shall be entitled for notional benefits from 21.07.2020, the date on which the B.P.S.C. sent recommendation to the department concerned pursuant to the result published on 04.07.2020 in respect of Advertisement No. 04/2016.

42. The Commission including its Chairman and Members also must not forget the pious duty which has been imposed on them by the Constitution of India as was also clearly expressed by the Apex Court in the reference made by the President of India against ***Sri Ram Ashray Yadav Chairman, Bihar Public Service Commission***, reported in ***(2000) 4 SCC 309***, wherein it was held as follows:-

"The credibility of the institution of Public Service Commission is founded upon faith of the common



man on its proper functioning. The faith would be eroded and confidence destroyed if it appears that the Chairman or the members of the Commission act subjectively and not objectively or that their actions are suspects. Society expects honesty, integrity and complete objectivity from the Chairman and members of the Commission. The Commission must act fairly, without any pressure or influence from any quarter, unbiased and impartially, so that the society does not lose confidence in the Commission. The high constitutional trustees, like the Chairman and Members of the Public Service Commission must for ever remain vigilant and conscious of these necessary adjuncts."

43. The Apex Court in the case of ***Ashok Kumar Yadav V. State of Haryana*** reported in ***AIR 1987 SC 454*** wherein it has been held as follows:-

"The values of independence, impartiality and integrity are the basic determinants of the constitutional conception of Public Service Commission and their role and functions. The Public Service Commission occupies a pivotal place of importance in the State and the integrity and efficiency of its administrative apparatus depends considerably on the quality of the selections made by the Public Service Commission....."

44. The Commission must safeguard its complete autonomy at any cost as is also envisaged in the Article 315 to 323 under Part-XIV Chapter-II of the Constitution of India. In the matter of performance of functions and in the matter of discharge of duties of the Public Service Commission, required to be performed or discharged under Article 320 or Article 321 of the Constitution, the Public Service Commission's Chairman and every member are equal participants. But, that does not mean that there is no difference between the office held by the



Chairman and the office held by member of the Public Service Commission as regards functions to be performed by each of them in respect of his respective office. When Article 316(1A) of the Constitution, expressly recognises "the office of the Chairman" and specifically refers to the duties to be performed by him as the Chairman of the Public Service Commission.

45. The Chairman of a Public Service Commission is entrusted with the discharge of administrative duties of the Public Service Commission obviously for the reason that as high constitutional functionary he could be depended upon to discharge such functions justly and fairly.

46. I find that the petitioner is liable for payment of compensation of Rs. 20,00,000/- (Rupees Twenty Lacs) and cost of Rs. 20,000 /- (Rupees Twenty Thousand) to be paid by the B.P.S.C. on account of mental agony and harassment caused to him in view of proved malicious conduct in the recruitment process in publishing the result of a person, who was not having valid disability certificate till the last date of submission of the application form.

47. The Chairman in view of the discussion made hereinabove must exercise his constitutional duty to investigate into the matter in respect of the functioning of the members and



the employees and proceed to take disciplinary action against them, who are liable to compensate the petitioner from their own pocket to protect the image of the Commission in public interest.

48. I must also observe the observation made by the Apex Court in paragraph no. 31 of the judgment passed in ***Vikash Kumar vs. Union Public Service Commission*** reported in ***AIR 2021 SC 2447***, which *inter alia* is as follows:

"31. Conflating the rights and entitlements which inhere in persons with disabilities with the notion benchmark disabilities does dis-service to the salutary purpose underlying the enactment of the RPwD Act, 2016. Worse still, to deny the rights and entitlements recognized for persons with disabilities on the ground that they do not fulfil a benchmark disability would be plainly ultra vires the RPwD Act, 2016."

49. In view of the facts and circumstances that subsequently the respondent no. 6 has been able to produce permanent disability certificate, though, after the process of selection had completed, the respondent/s may find to work out in the interest of justice to adjust him if any vacancy is left, considering that he has been allowed to work for four years but the same will be not at the cost of the employment of the petitioner.

50. The Additional Chief Secretary, Education Department, must have a strong will to take steps in this regard



without being prejudiced in any manner.

51. Accordingly, the present writ petition stands disposed of.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
Uploading Date	03.05.2025
Transmission Date	N/A

