

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.241 of 2021

=====

Neelam Kumari Wife of Sri Sunil Kumar, Resident of Village-Kapasiya, Ward
No. 13, Police Station Begusarai, District Begusarai

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Higher Education,
Education Department, New Secretariat, Vikas Bhawan, Patna.
2. The Bihar Public Service Commission through the Secretary, 15 Bailey
Road, Patna.
3. The Joint Secretary Cum-Examination Controller, Bihar Public Service
Commission, 15 bailey Road, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Rupak Kumar, Advocate Mr. Sadanand Prasad Deo, Advocate Mr. Vikrant Kumar, Advocate
For the BPSC	:	Mr. Kaushal Kumar Jha, Sr. Advocate Mr. Amish Kumar, Advocate
For the State	:	Mr. Shankar Kr. Thakur, AC to GP 27

=====

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 10-04-2025

It has jointly been informed on behalf of the parties

that facts of the present writ petition are different from facts of

CWJC No.6203 of 2020 and in view of the pleadings having

been completed, the present writ petition can be disposed of at

the time of Admission itself.

2. Heard Mr. Rupak Kumar, along with Mr.
Sadanand Prasad Deo and Mr. Vikrant Kumar, learned counsels
appearing on behalf of the petitioner; Mr. Kaushal Kumar Jha,
learned Senior counsel, along with Mr. Amish Kumar, learned
counsel appearing on behalf of the Bihar Public Service



Commission and Mr. Shankar Kr. Thakur, learned AC to GP 27 for the State.

3. The petitioner in paragraph no. 1 of the present writ petition has sought, *inter alia*, the following relief(s), which is reproduced hereinafter:-

“That this writ application is filed for issuance of writ in the nature of certiorari for quashment of part of the final result dated 27.02.2020 declaring successful candidates for appointment to the post of Assistant Professor in Government Training Colleges, Bihar whereby and whereunder the written examination of the petitioner has been cancelled and she has been treated to be a general category candidate inspite of having applied for other backward class category and having produced the caste certificate at the time of interview.”

4. Learned counsel appearing on behalf of the petitioner submitted that pursuant to the advertisement No.02/2016 for appointment to the post of Assistant Professor in Government Training College, Bihar, the petitioner applied for the said post under other backward class category candidate. She became successful in the written examination and, thereafter, she was called for interview on 11.12.2019 and on the date of interview, the petitioner had admitted that she has furnished the required document before the Section Officer and the same has been brought on record along with the counter affidavit filed on behalf of the Bihar Public Service Commission (BPSC) by way of Annexure- R 2/D. In the check list, the



petitioner at serial no. (vi) has declared that the Creamy Layer Certificate relating to income of her father of previous one year was not submitted, although, after making correction, at the time of interview, the petitioner had submitted Creamy Layer Certificate of her husband. The petitioner's father at the time of her interview was alive. Learned counsel further submitted that in para-9 of the writ petition, it has been stated that for the first time new condition was incorporated in the letter of interview three years after advertisement in mid way with regard to furnishing of caste certificate and non-creamy layer certificate of parent in case of female candidate.

5. In this regard, learned counsel has placed reliance upon the law laid down by the Apex Court in the case of **K. Manjusree v. State of Andhra Pradesh & Others, reported in (2008) 3 SCC 512**, which has been crystallized by the Apex Court in the recent judgment by the five judges bench in case of **Tej Prakash Pathak & ors. Versus Rajasthan High Court & Ors., Civil appeal no.2634 of 2013**. On these grounds, learned counsel has submitted that the action of BPSC in not considering the petitioner in Non-Creamy Layer category is not sustainable and by treating the petitioner as Unreserved (General) category candidate, the BPSC has violated the



mandate contained in Articles 14 and 16(4) of the Constitution of India. However in the said interview call letter, it has been clarified that the result would be subject to the final outcome of CWJC No.15081 of 2018 and CWJC No.13937 of 2019.

6. *Per contra*, Mr. Kaushal Kumar Jha, learned Senior counsel appearing on behalf of the BPSC submitted that the petitioner herself in column No.(vi) in the check list had declared and made correction because she was not having certificate in accordance with the terms of the advertisement, on the date of interview, which is required in respect of Creamy Layer Certificate, as per the condition contained in clause 12(ii) of the Circular No.673 dated 08.03.2011. He has placed reliance upon the judgment of the Division Bench of this Court passed in **LPA No.737 of 2016 (Dr. Santosh Kumar Vs. State of Bihar and Ors.)** reported in **2017(1) PLJR 786** which has been affirmed by the Apex Court vide order dated 13.12.2022 passed in **SLA(C) No.6934 of 2017**. On account of non-furnishing of the creamy layer certificate and caste certificate, the petitioner has been considered in unreserved category, in which she could not qualify. The selection process has already completed. The present writ petition is fit to be dismissed.

7. Heard the parties.



8. Having considered the rival submissions made on behalf of the parties and the pleadings made in the writ petition and counter affidavit, as well as, the supplementary affidavit filed on behalf of the respective parties, the main issue involved in the present writ petition is, as to whether, the condition imposed in the interview letter for furnishing Non-Creamy Layer, in respect of father of female candidate, in terms of the advertisement contained in Clause 7(ii)(B)(c) is sustainable or not?

9. The petitioner had furnished Creamy Layer Certificate in respect of her husband as per the requirement of clause 7(ii)(B)(c) of the advertisement, on the date of interview, i.e., 11.12.2019 and in the check list at Sr. No. (V) she admitted that she has not furnished the Creamy Layer Certificate belonging to her father, who was alive on the date of her interview (Annexure- R 2/D of the counter affidavit) . The final result was published on 27.02.2020.

10. The Clause 7(ii)(B)(c) of the advertisement prescribes for furnishing of all the original certificates, including the Non-Creamy Layer Certificate at the time of interview. The petitioner has admitted in the writ petition that on the date of interview, she had furnished the Non-Creamy Layer



Certificate issued in the name of her husband and subsequently, as per the demand of the office of the BPSC, on 24.12.2019 (Annexure P7) after the date of interview, the petitioner personally furnished Non-Creamy Layer Certificate, issued in favour of her father from the place of the residence of her father, as per the requirement of the Circular No.673 dated 08.03.2011. I find that the petitioner has not challenged the circular dated 08.03.2011, in which, clause 11 prescribes for furnishing of income certificate in respect of a woman candidate of mother/father, which means that both of the parents' income or who ever is alive. The contention of the petitioner is that the terms and conditions, which has been newly added in the interview letter in mid way in respect of furnishing of the Non-Creamy Layer Certificate, in respect of father of the petitioner has been introduced for the first time, and such condition they cannot put in mid-way of the selection process.

11. From the perusal of the advertisement (Annexure P3) also, I find that clause (7), thereof, stipulates furnishing of the original certificates on the date of interview, in respect of those candidates, who are claiming reservation, under whatever category they claim. The petitioner has claimed that she had applied under Other Backward Class category and could



not furnish Non-Creamy Layer certificate of her father. I find that the petitioner has subsequently furnished the said certificate relating to the income of her father for claiming her caste under Non-Creamy Layer, under Other Backward Caste category on 24.12.2019, even though the interview process was going on and result was published on 21.08.2020. The petitioner herself is responsible for not furnishing the certificate in terms of conditions stipulated in Clause 11 of the Circular no. 673 dated 08.03.2011, subsequent to which, the advertisement was published in year 2016. In such circumstances, I don't find that any rule of game has been changed mid-way and the petitioner's case is required to be considered on the said principal, for considering her candidature under Other Backward Caste category, having not furnished the Creamy Layer Certificate, as required, as per the Circular no.673 dated 08.03.2011. I find that the law in this regard is well-settled in case of **K. K. Manjusree v. State of Andhra Pradesh & Others**, reported in (2008) 3 SCC 512 (*Supra*) and **Tej Prakash Pathak** (*Supra*) and same is not in support of the petitioner, in view of the clear terms stipulated in Clause 7(ii) (B) (c) of the advertisement.

12. The case of the petitioner cannot be allowed in light of decision of Division Bench of this Court particularly



discussions made in para-6 of **LPA No.737 of 2016 (Dr. Santosh Kumar Vs. State of Bihar and Ors.)** reported in **2017(1) PLJR 786**. I find it apt to quote paras 6 and 7 of the aforesaid judgment:

“6. Having considered the rival contentions, we do not find any merit in the present Letters Patent Appeal. The terms of the advertisement clearly disclose that the Reserved category candidate shall be required to produce the relevant caste certificate relating to not coming under the Creamy Layer in terms of the Circular No. 673 dated 08.03.2011 issued by the General Administration Department of which Clause (12) ii clearly stipulates that the certificate relating to income, is valid only for one year. In view of the aforesaid, the applicant enclosing only the certificate dated 16.04.2008 with regard to not belonging to the Creamy Layer and stating his income, lost its value after 15.04.2009 and could not have been made the basis of any claim for appointment in the present transaction. The appellant at the time of taking part in the interview on 24.06.2015 has written in his own pen that he was not producing the Creamy Layer certificate. It is also not the case of the appellant that he produced such certificate on 24.07.2015, which was the second opportunity given to such persons to produce the required certificate for verification. In absence of the same, the authorities cannot be faulted for considering the case of the appellant under the Unreserved (General) category and in that category the appellant having secured 41.61 marks was far below the last candidate selected who had 53.04 marks.

7. The decision relied upon by learned counsel for the appellant in the case of Ram Kumar Gijroya (supra) has no application to the facts and circumstances of the present case inasmuch as the petitioner before the Hon'ble Supreme Court had submitted his caste certificate, though after the cut off date. In the present case, it has not even been averred that the certificate relating to not



belonging to the Creamy Layer in terms of the relevant provisions, issued within one year, was produced by the appellant before the authorities. Moreover, the reasoning given by the Hon'ble Supreme Court is in relation to the person belonging to a particular caste which fact, obviously, cannot change, as it is dependent upon his birth, whereas in the present case, the fact of not coming under the Creamy Layer is subject to change with the efflux of time as income does vary and the stipulation for submitting certificate relating to income, being issued within one year, is reasonable and justified."

Recently, the Apex Court in the case of **Sakshi Arha Vs. The Rajasthan High Court & Ors. (Civil Appeal No. 3957 of 2023)** dealing with the said proposition that subsequent to the requirement of furnishing of such certificate, after due date, as mentioned in the advertisement, the same cannot be permitted.

13. Accordingly, the writ petition is dismissed for the reason as mentioned hereinabove.

14. There shall be no order as to cost.

(Purnendu Singh, J)

Sanjay/-
Ashishsingh/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	16.04.2025
Transmission Date	NA

