

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9142 of 2022

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Md. Farrukh son of Md. Azamul Haque resident of Madni Manzil,
Samanpura, P.O.- B.V. College, P.S.- Shastri, District- Patna, Pin Code-
800014

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Science and Technology Department, Bihar, Patna.
2. Bihar Public Service Commission, Patna through its Secretary.
3. Chairman, Bihar Public Service Commission, Patna
4. Secretary, Bihar Public Service Commission, Patna
5. Controller of Examinations, Bihar Public Service Commission, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abhinav Srivastava, Sr. Advocate
For the Respondent/s	:	Mr. Kumar Alok, SC-7
	:	Mr. Uday Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RITESH KUMAR
CAV JUDGMENT

Date : 16-06-2026

Heard the parties.

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

“(I) Issuance of a direction, order or writ, including writ in the nature of certiorari quashing that part of the result dated 09/06/2022 published by the Bihar Public Service Commission, Patna (hereinafter referred to as "the Commission") pursuant to advertisement no. 44/2020 containing names of successful candidates for appointment against the posts of Assistant Professors in different subjects in the government engineering colleges within the State of



Bihar, by which, inter alia, while stating the roll number of the petitioner it has been indicated that he had not been extended the benefits of reservation by virtue of being a ward of being a freedom fighter for want of submission of relevant certificate in support of his claim as a ward of a freedom fighter in terms of advertisement no. 44/2020 published by the Commission.

- (ii) *Issuance of a direction, order or writ, Including writ in the nature of mandamus commanding the concerned respondent authorities to consider the petitioner to be eligible for being extended the benefits of reservation admissible in favour of the wards of freedom fighters on the basis of the certificate issued in his favour to the said effect from the office of the District Magistrate as had also been submitted by him along with his application form and while treating the same to be valid, consider the case of the petitioner for including his name in the result dated 09/06/2022 published by the Commission pursuant to the process of selection conducted in furtherance of advertisement no. 44/2020 and if the petitioner is found to be qualified otherwise, his name be included in the list of successful candidates for considering his case for appointment against the post of Assistant Professor, in question,*
- (iii) *Issuance of a declaration holding that he is eligible to be extended the benefits of*



reservation by virtue of being a ward of freedom fighter in accordance with advertisement no. 44/2020 and accordingly, subject to fulfillment of other requirements in respect of the marks secured by him in the process of selection conducted by the Commission pursuant to the advertisement no. 44/2020, is entitled for being considered for appointment against the post of Assistant Professor in the government engineering colleges within the State of Bihar;

(IV) Issuance of an interim direction upon the concerned respondent authorities to refrain from filling up all the posts of Assistant Engineer belonging to the Backward Class (05) category reserved for a candidate who is entitled for being extended the benefits admissible in favour of a ward of freedom fighter during the pendency of the instant writ petition.”

FACTS OF THE CASE

3. The brief facts, which are essential for adjudication of the present writ petition, are that the Bihar Public Service Commission came out with an Advertisement No. 44 of 2020 on 01.09.2020, inviting applications from eligible candidates for consideration of their cases for appointment against altogether 306 posts of Assistant Professor in Civil Engineering in different



Government Engineering Colleges within the State of Bihar. In the advertisement, 6 posts were reserved for grand-children of freedom fighters by way of horizontal reservation in accordance with the provisions contained in letter no. 2526 dated 18.02.2016, issued from the General Administration Department of the State of Bihar. The petitioner, being eligible in all respect, since his grand-father late Hakim Sahdul Haque was a freedom fighter, submitted his application, claiming the benefits of reservation as ward of a freedom fighter. Along with the application, the petitioner had enclosed and uploaded all the relevant documents, including the certificate issued by the competent authority i.e. certificate dated 06.07.2018 bearing serial no. 159 from the office of the District Magistrate, Patna, for consideration of his case of being a ward of the freedom fighter. Subsequently, an important notice-cum-guidelines was issued by the commission on 23.08.2021, whereby the list of eligible candidates, who have submitted their online application forms, in terms of Advertisement No. 44 of 2020, was published by the commission, wherein amongst other persons, the name of the petitioner was also included in the said list and as such, his name and registration number was found place at serial no. 1650. The petitioner was shown to be eligible for participating in the process



of selection, for consideration of his case for appointment on the post of Assistant Professor in the Government Engineering Colleges within the State of Bihar. The petitioner was issued admit card for participating in the written (objective) examination, to be conducted by the Commission, pursuant to the Advertisement No. 44 of 2020. The petitioner duly participated in the examination, which was conducted by the Commission. The result was published on 25.01.2022 by the Commission, containing roll numbers of altogether 740 candidates, who were declared to be successful on the basis of their performance in the written examination. The roll number of the petitioner was also there in the list of 740 candidates, who were declared to have been successful for appearing in the interview, to be conducted by the Commission. The date of interview was published on 07.02.2022. The petitioner was directed to appear for interview on 10.03.2022 at the prescribed time and venue. The interview letter was issued to the petitioner and accordingly, he appeared before the Commission for interview on 10.03.2022, along with the originals of the documents/certificates and credentials, which he had submitted with the online application form. During course of interview and document verification, the petitioner was informed that the certificate in support of his claim to be a ward



of a freedom fighter is not as per the requirement and it was in a different format, however the authenticity of the certificate produced by the petitioner in support of his claim, for being given the benefit of the ward of freedom fighter was not disputed by the authorities. Since the certificate, which was produced by the petitioner at the time of interview, was disputed by the respondent-Commission, the petitioner applied and got another certificate in support of his claim, to be a ward of the freedom fighter and the said certificate was issued on 16.03.2022 from the office of the District Magistrate, Patna. The petitioner submitted a representation on 17.03.2022 before the Commission, enclosing the certificate dated 16.03.2022, with a request to consider the said certificate, for considering his case under the category of wards of freedom fighter, for being appointed on the post of Assistant Professor in the Government Engineering Colleges, within the State of Bihar. He again submitted an application on 30.03.2022, before the Chairman, Bihar Public Service Commission, Patna with a request to consider his certificate issued on 16.03.2022, for giving benefits of the ward of an freedom fighter. However, no response was received by the petitioner from the Commission, even after submitting the representations on 17.03.2022 and 30.03.2022. The final result



was published by the Commission on 09.06.2022, which contained the name of the successful candidates, for being appointed as Assistant Professor in different subjects in the Government Engineering Colleges within the State of Bihar, wherein it has been stated that for want of submission of relevant certificate in support of his claim, for being a ward of a freedom fighter by the petitioner, he had not been extended the benefits of reservation admissible in favour of such candidates and in view of the said fact, he did not score adequate marks to be declared to be successful as a candidate belonging to Backward Class category, the petitioner was not found successful. The petitioner is again said to have submitted a representation before the Secretary, Bihar Public Service Commission, Patna, wherein he stated that from the final result published by the Commission, it would appear that against the 6 posts of Assistant Professor kept reserved for the ward of freedom fighters, only 5 candidates have been finally selected, therefore his case be considered, since his case had not been considered due to technical reasons. However, no action was taken on the said representation filed by the petitioner.

4. A counter affidavit has been filed on behalf of the respondent nos. 3 to 5 i.e. the Bihar Public Service Commission



and its authorities, wherein it has been stated that the Commission is the recommending body and in the matter of appointment or otherwise, it has to abide by the rules and regulations framed by the State Government. In the present case, the General Administration Department, Government of Bihar, Patna vide letter No. 3690 dated 13.03.2020 along with letter No. 686 dated 20.02.2020 of the Science and Technology Department, Government of Bihar sent a requisition, mentioning therein the necessary qualification and experiences, required for appointment on 306 posts of Assistant Professor, Civil Engineering in the Government Engineering Colleges. On the basis of the aforementioned requisition, the Commission published Advertisement No. 44 of 2020 for appointment of 306 posts of Assistant Professor, Civil Engineering in the Government Engineering Colleges, in accordance with the Bihar Engineering Education Service Rules, 2020. In Clause 6(VII) of the advertisement, it was clearly mentioned that *"in light of letter no.2526 dated 18.02.2016 of General Administrative Department, Bihar, freedom fighters of the State whose pension is sanctioned by Center, Grand Children of those Freedom Fighter will be given 2% horizontal reservation in accordance with the vacancies mentioned at Clause 1 (Kh) of this advertisement.*



Candidates claiming such reservation must have the certificate of grand children of Ex-freedom fighter issued and signed by their home district's District Magistrate or any other officer authorized by him." At Note:- 12 (16) of Clause 6 it was also mentioned that the candidates claiming themselves as grand children of freedom fighter must possess original copy of certificate issued and signed by their home District's District Magistrate or any other officer authorized by him; at the time of interview for verification." The petitioner being in the category of Backward Class candidate (05) was allotted Roll No. 441528. He also claims himself to be a grand-children of the freedom fighter. The written test was conducted on 21.09.2021, in which the petitioner also appeared. The result was published on 25.01.2022, in which altogether 740 candidates, including the petitioner were declared successful. After publication of the result for written test, the schedule and instructions for interview were published. The interview was conducted from 25.02.2022 to 16.03.2022. The petitioner appeared in the said interview on 10.03.2022. The final result was published on 09.06.2022, wherein altogether 292 candidates were declared successful, however the petitioner was not declared successful, as he could not produce the original certificate, issued and signed by the concerned District Magistrate or other officer



authorised by him, in favour of the petitioner, to establish that he is a grand-child of the freedom fighter, for verification at the time of interview. The petitioner only produced an identity card in original, however the certificate was not produced. As per Clause-4 of the interview programme and Clause-5 of the interview letter, it has clearly been mentioned that the candidates must bring original certificates for verification and in case on the date of interview, any candidate does not produce the original certificate, then no further time would be given for the same and the Commission would be free to take appropriate decision, with regard to the eligibility of such candidate. In Clause-7 of the said interview programme, it was also mentioned that the candidature of the candidate, called for interview is fully provisional. Only appearance in the interview does not confirm the candidature of the candidate and the Commission reserves its right to take necessary decision with regard to the eligibility of the candidates at the time of interview or thereafter. In spite of clear instruction issued by the Commission for interview, the petitioner failed to submit the certificate for getting reservation at the time of interview. He submitted only the identity card, which was not acceptable/considered, in view of Clause-4(XVII) of the interview letter. Therefore, the candidature of the petitioner was



cancelled by the Commission and this fact is clear from the report of the Officer In-Charge of the Commission filled up at the time of interview. The petitioner was declared successful in Written (objective) Examination on account of the horizontal reservation, available for freedom fighter category, but the petitioner secured lesser marks than the cut off marks in the Backward Class category, therefore, the result of the petitioner of Written (objective) Examination was cancelled by the Commission. The petitioner had secured 16.50 marks in Written (objective) Examination, whereas the cut off marks of Backward Class category was 18.00 marks, therefore the petitioner was declared successful under F.F.D. (Freedom Fighters Category) Category in Written (objective) Examination, wherein the cut off marks was 16.50. The petitioner failed to submit his original certificate issued and signed by the concerned District Magistrate or any other office authorised by him, to establish him as a grand child of the freedom fighter, for verification at the time of interview, therefore due to non-submission of the document/certificate, candidature of the petitioner was cancelled by the Commission by its decision dated 30.05.2022.

5. A counter affidavit has been filed on behalf of the respondent no.1, wherein it has been stated that the result was



published by the Bihar Public Service Commission and recommendation of the successful candidates have been made on 29.07.2022, to the Science and Technology Department, Government of Bihar. It has been clarified by the Bihar Public Service Commission that candidate bearing Roll No. 441528 (the petitioner) has not produced the concerned certificate to show that he is a relative of freedom fighter, in original, for verification, as such he was considered for Backward Category candidate, however he did not obtain the cut off marks in the said category, therefore his result for written examination has been cancelled. In view of the recommendation of the Bihar Public Service Commission, the Department of Science and Technology, Government of Bihar vide its notification No. 3240 dated 14.10.2022 has given appointment letter and posting in different Engineering Colleges of the State of Bihar, to the selected candidates. It has further been stated that in view of order dated 26.08.2022, passed in the present case, the Department of Science and Technology, Government of Bihar has kept one post vacant for the ward of freedom fighters.

6. A supplementary counter affidavit has been filed on behalf of the Bihar Public Service Commission, whereby certain judgments passed by this Hon'ble Court have been brought on



record to justify the stand of the Commission in not considering the case of the petitioner.

SUBMISSION ON BEHALF OF THE PETITIONER

7. The learned senior counsel for the petitioner submits that the final result was prepared, while extending the benefit of reservation in favour of such candidates, who were claiming category-wise reservation or reservation on the basis of being wards of the freedom fighters and in this manner, it would manifest that on the basis of the application form submitted by different candidates and the documents furnished by them, after having carried out necessary scrutiny, had extended the benefit of reservation in favour of such candidates, who were otherwise entitled for being extended those benefits. In view of the fact that no objection was raised with respect to the document furnished by the petitioner in support of his claim, to be treated as a ward of a freedom fighter, it is established beyond all reasonable doubts that the petitioner was treated to be eligible for being extended the benefits of reservation, as were admissible in favour of the wards of the freedom fighters, in accordance with the provisions contained in the advertisement, which has been incorporated on the basis of the instructions issued from the General Administrative Department of the State of Bihar. He submits that



from bare perusal of the certificate dated 16.03.2022 and the earlier certificate dated 06.07.2018 issued in favour of the petitioner, it would transpire that in effect all the details were just and same and there were hardly any difference, in so far as the contents of both the certificates were concerned, although the formats of said certificate are slightly different. He further submits that in so far the claim of the petitioner to be a ward of freedom fighter is concerned, the same has neither been disputed nor has been questioned by any authority, either under the State Government or the Commission and solely for want of format of the certificate issued in favour of the petitioner, certifying to the effect that his late parental grand-father was a freedom fighter, the petitioner has been denied the benefit of reservation, admissible in favour of the wards of freedom fighters. He submits that the same is arbitrary, unreasonable and in-blattant disregard and violation of Articles 14 & 16 of the Constitution of India.

8. The learned senior counsel for the petitioner further submits that right from the very first stage of submission of the application by the petitioner, he had claimed to be entitled for being extended the benefit of reservation, by virtue of being the grand-son of a freedom fighter and as such, in respect of his claim, he enclosed and uploaded a copy of the certificate dated



06.07.2018. He submits that no objection was raised by the authorities of the Commission with regard to his claim for being granted the benefit of ward of freedom fighter. His name was included in the list of eligible candidates for participating in the process of selection for consideration of his case for appointment, against the post of Assistant Professor in different Government Engineering Colleges, therefore, the action on the part of the authorities in rejecting his claim for being extended the benefit of reservation, at the time of final publication of the result, is impermissible in the eyes of law and the benefits of reservation, which the petitioner is otherwise entitled to in accordance with the decisions of the State Government, is being sought to be denied to him without there being any just and valid reason.

CASE LAW REFERRED ON BEHALF OF THE PETITIONER

9. The learned senior counsel for the petitioner in support of his contention refers to and relies upon a judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No. 1691 of 2016 (arising out of SLP (C) No. 27550 of 2012) and its analogues cases (Ram Kumar Gijroya versus Delhi Subordinate Services Selection Board and Ors.)***, whereby the Hon'ble Supreme Court of India vide its judgment dated 24.02.2016 in paragraph nos. 14 & 16 has held as follows:-



“14. The Division Bench of the High Court erred in not considering the decision rendered in Pushpa [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281] . In that case, the learned Single Judge of the High Court had rightly held that the petitioners therein were entitled to submit the OBC certificate before the provisional selection list was published to claim the benefit of the reservation of OBC category. The learned Single Judge correctly examined the entire situation not in a pedantic manner but in the backdrop of the object of reservations made to the reserved categories, and keeping in view the law laid down by a Constitution Bench of this Court in Indra Sawhney v. Union of India [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] as well as Valsamma Paul v. Cochin University [Valsamma Paul v. Cochin University, (1996) 3 SCC 545 : 1996 SCC (L&S) 772 : (1996) 33 ATC 713] . The learned Single Judge in Pushpa [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281] also considered another judgment of the Delhi High Court, in Tej Pal Singh [Tej Pal Singh v. Govt. (NCT of Delhi), 1999 SCC OnLine Del 1092 : ILR (2000) 1 Del 298] , wherein the Delhi High Court had already taken the view that the candidature of those candidates who belonged to the SC and ST categories could



not be rejected simply on account of the late submission of caste certificate.

16. In *Pushpa [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281]* , relevant paragraphs from *Tej Pal Singh [Tej Pal Singh v. Govt. (NCT of Delhi), 1999 SCC OnLine Del 1092 : ILR (2000) 1 Del 298]* have also been extracted, which read thus : (*Pushpa case [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281]* , SCC OnLine Del para 11)

“11. ... ‘15. The matter can be looked into from another angle also. As per the advertisement dated 11-6-1999 issued by the Board, vacancies are reserved for various categories including SC category. Thus in order to be considered for the post reserved for SC category, the requirement is that a person should belong to SC category. If a person is SC he is so by birth and not by acquisition of this category because of any other event happening at a later stage. A certificate issued by competent authority to this effect is only an affirmation of fact which is already in existence. The purpose of such certificate is to enable the authorities to believe in the assertion of the candidate that he belongs to SC category and act thereon by giving the benefit to such candidate for his belonging to SC category. It is not that petitioners did not belong to SC category prior to 30-6-1998 or that acquired the



status of being SC only on the date of issuance of the certificate. In view of this position, necessitating upon a certificate dated prior to 30-6-1998 would be clearly arbitrary and it has no rationale objective sought to be achieved.

16. While taking a particular view in such matters one has to keep in mind the objectives behind the post of SC and ST categories as per constitutional mandate prescribed in Articles 15(4) and 16(4) which are enabling provisions authorising the Government to make special provisions for the persons of SC and ST categories. Articles 14(4) and 16(4), therefore, intend to remove social and economic inequality to make equal opportunities available in reality. Social and economic justice is a right enshrined for protection of society. The right in social and economic justice envisaged in the Preamble and elongated in the fundamental rights and directive principles of the Constitution, in particular Articles 14, 15, 16, 21, 38, 39 and 46 are to make the quality of the life of the poor, disadvantaged and disabled citizens of the society meaningful.’ (Tej Pal Singh case [Tej Pal Singh v. Govt. (NCT of Delhi), 1999 SCC OnLine Del 1092 : ILR (2000) 1 Del 298] , SCC OnLine Del paras 15-16)”

10. The learned senior counsel for the petitioner further refers to and relies upon a judgment of the Hon’ble Supreme



Court of India reported in (2022) 14 SCC 35 (***Aarav Jain versus Bihar Public Service Commission and Others and its analogues cases***), whereby the Hon'ble Supreme Court of India in paragraph nos. 9 to 16 has held as follows:-

- “9. We had required the Commission and the State to place on record the number of available vacancies in different categories, so as to consider in case the appellants succeed whether they could be placed in their respective categories. The information which has been placed on record by the State of Bihar reflects that there are 5 vacant posts in the General Category and that there are no vacancies in EBC, SC and BC categories as against Advertisement No. 6 of 2018.*
- 10.** *Insofar as the remaining two vacancies were concerned, they had been filled up by two candidates viz. Swati Chaturvedi (from the wait list) and Rakesh Kumar (who could not join within the time allowed) under orders passed by the High Court and this Court. The writ petition of Swati Chaturvedi being CWJC No. 3952 of 2020 was allowed by the Division Bench of the High Court vide judgment dated 1-3-2021 [Swati Chaturvedi v. State of Bihar, 2021 SCC OnLine Pat 480] and SLP (C) No. 11174 of 2021 filed by the State of Bihar was dismissed by this Court on 30-7-2021 [State of Bihar v. Swati Chaturvedi, 2021 SCC OnLine SC 3297] . Insofar as Rakesh Kumar is concerned, his petition being CWJC No. 3835 of 2021 was dismissed by the High*



Court on 26-10-2021 [Rakesh Kumar v. State of Bihar, 2021 SCC OnLine Pat 4707] . This Court, however, allowed his Civil Appeal No. 1517 of 2022 vide judgment dated 18-2-2022 [Rakesh Kumar v. State of Bihar, (2022) 14 SCC 45] .

- 11. The submission advanced on behalf of the appellants is that all the appellants had supplied attested true copies of the certificates/documents as required. However, it was only the original of the same which could not be provided in time. It is further submitted that for submission of the originals, time was sought and later on the originals have been submitted. But despite the same, the Commission proceeded to reject their candidature.*
- 12. Another submission advanced on the behalf of the appellants is that the requirement to submit the originals is neither related to qualification or eligibility and in any case before appointment or during the course of probation a verification and vigilance report is always obtained by the State. Therefore, non-furnishing of the original certificate at the time of interview cannot be held to be mandatory or in other words nothing turned upon it. Even if the original certificates/documents were not submitted at the time of interview, the Government would still be getting a vigilance/verification check carried out.*
- 13. Upon such submissions, it has been submitted that the decision of the Commission rejecting their candidature was per se illegal, unwarranted, unreasonable and too harsh. All the eight appellants who were duly qualified and duly*



selected have been deprived of their appointment as judicial officers. Admittedly, all the appellants had secured more marks than the last selected candidate in their respective category. It is further submitted that even the High Court committed an error in dismissing their petitions.

- 14. On the other hand, it has been submitted on behalf of BPSC and the State that they could not relax any of the condition which were mentioned in the advertisement or their brochure or the interview call letter at different stages. Any such relaxation would amount to not following their own prescribed procedure which was not within their domain. It is also submitted that the appellants knowing fully well the condition regarding submission of the original certificates/documents at the time of interview having failed to do so, their candidature was rightly rejected.*
- 15. Considering the facts and circumstances of the case, without entering into the respective argument we are of the considered view that the rejection of the candidates was improper, unjustified and not warranted. We have also taken note of the fact that there are vacancies available, which if filled up by meritorious candidates would only be an asset for the institution helping in disposal of cases pending in huge numbers.*
- 16. The next aspect which needs to be considered is with respect to the adjustment of eight appellants against the vacancies of Advertisement No. 6 of 2018. Insofar as the five candidates of the unreserved categories are concerned, namely,*



Mayank Kumar Pandey, Aarav Jain, Ashish Chandra, Siddharth Sharma and Sanjay Kumar Mishra (according to the State five vacancies are available), they may be adjusted against these vacancies. The issue now remains with respect to the three candidates belonging to EBC, SC and BC category. For these three candidates, in the facts and circumstances of the case, the State may either adjust them against future vacancies which we are told are available at present or the State may borrow three posts from future vacancies, one each in respective categories for Advertisement No. 06 of 2018. This would amount to varying the vacancies of the said advertisement which power always vests in the employer. We further leave it to the wisdom and discretion of the State to deal with the above aspect either in the manner mentioned above or any other mode which it may deem fit in order to accommodate the three appellants belonging to the EBC, SC and BC categories.”

11. The learned senior counsel for the petitioner further refers to and relies upon a judgment of the Hon’ble Supreme Court of India reported in 2023 SCC Online (SC) 2012 (***Sweety Kumari versus State of Bihar and Others***), whereby the Hon’ble Supreme Court of India in paragraph nos. 5, 6, 7, 17, 19 and 20 has held as follows:-

“5. The candidature of the appellants Sweety Kumari and Vikramaditya Mishra was rejected on account of not producing the



original character certificates at the time of interview. True photocopies were produced. However, while declaring the result on 27.11.2019/29.11.2019, the candidature of the present two appellants as well as of one, Aarav Jain were rejected by a common communication.

6. *On other hand, appellant Aditi applied in the Economically Weaker Section (EWS) category in furtherance to the 31st Bihar Judicial Service Competitive Examination (hereinafter referred to as “**31st Examination**”). She secured 501 marks, whereas cut-off was 499. Her candidature was rejected on the ground of not having the law degree certificate on the date of interview. The candidature of the similarly situated candidate Ankita was also cancelled on the same ground. However, on the filing of separate writ petitions which was disposed of by a common order, Ankita was granted relief by the High Court due to availability of vacancy in SC category, but Aditi was denied relief due to non-availability of the vacancy in the EWS category.*
7. *In view of the foregoing factual scenario, the questions that fall for consideration before us are as under:*
 - i) *Whether the rejection of the candidatures of the appellants due to non-production of the original certificate at the time of interview by the Bihar Public Service Commission*



(hereinafter referred to as “BPSC”) is justified?

ii) In the facts and circumstances of the case, what relief can be granted to the appellants?

17. In the case of Aarav Jain (supra), this Court has not accepted the plea taken by BPSC that production of original certificate was mandatory because the candidates possessed such certificates on the date of submission of the application form. This Court was of the opinion that once such a condition is not mandatory, then non-production of original copies at the time of interview would not be sufficient to reject the candidature of a candidate who was placed in the merit.

19. In the present case, the proof is available and true photocopies were on record. The appellants' candidature could not have been rejected merely because the original was not produced before the Commission at the time of interview in particular when such requirement was not mandatory, in view of the manner in which the Rules are couched.

20. Now, coming to the case of appellant Aditi in SLP (Civil) No. 16749/2023, she has passed the final examination but the certificate of law degree was not issued to her. The High Court in the impugned order dated 19.04.2023 has relied upon the judgment of Charles K. Skaria (supra) to support her contention and observed that when the



candidate possesses the required essential qualification on the date on which it was required, then there cannot be any justification in not accepting the late arrival of the certificate because of the pandemic. However, the High Court has declined to grant the relief on the pretext that she had applied under EWS category for which 23 posts were earmarked and those posts have already been filled up. The High Court also observed that though she has secured 501 marks which was 2 marks more than the cut off for the EWS category, but it was not known as to who may be the last successful candidate in the EWS category. Also at the time of passing of impugned order those posts had already been filled. Thus due to non-availability of posts, the relief was denied.”

SUBMISSION ON BEHALF OF THE RESPONDENT BPSC

12. Per contra, the learned counsel appearing on behalf of the Bihar Public Service Commission submits that the candidature of the petitioner has not been considered and finally recommended in view of the fact that at the time of submission of application form, the petitioner had not submitted the certificate issued by the District Magistrate, for declaring him to be eligible for getting reservation under the wards of freedom fighter category. The document produced/annexed with the application form by the petitioner was an identity card, issued by



the office of the District Magistrate, which cannot be said to be a certificate issued by the competent authority. He submits that the certificate has been obtained by the petitioner on 16.03.2022, i.e. after the interview was over for the petitioner on 10.03.2022. He submits that the Commission has rightly cancelled the candidature of the petitioner due to non-submission of the required certificate i.e. the original certificate issued and signed by the concerned District Magistrate or any other officer authorised by him in favour of the petitioner, to establish him to be the grand-child of the freedom fighter, for verification at the time of interview. He submits that the aforesaid stand/decision of the Commission has been affirmed by different benches of this Hon'ble Court, while dealing with the same issue *vide order dated 29.01.2020 passed in C.W.J.C. No. 23248 of 2019 (Kumari Pushpanjali Bala versus the State of Bihar & Ors.), vide order dated 04.01.2021 passed in C.W.J.C. No. 7661 of 2020 (Pankaj Kumar versus the State of Bihar & Ors.), vide order dated 21.01.2021 passed in C.W.J.C. No. 7205 of 2020 (Asha Kumari versus the State of Bihar & Ors.)* and *vide order dated 29.06.2017 passed in L.P.A. No. 11 of 2017 (Ajit Anand versus the Bihar Public Service Commission & Ors.)*, wherein this Hon'ble Court has taken a consistent view that the



candidates, who do not produce the certificate are not entitled for being given the benefit of reservation under their respective categories.

13. The learned counsel appearing on behalf of the Bihar Public Service Commission refers to and relies upon a judgment dated 07.11.2023 passed by a Hon'ble Division Bench of this Court in L.P.A. No. 1190 of 2023 (***Kumar Mukesh versus the State of Bihar & Ors***), whereby the Hon'ble Division Bench, after considering different judicial pronouncements of the Hon'ble Supreme Court of India, in paragraph nos. 43 and 44 has held as follows:-

“43. A candidate (read the appellant-petitioner) cannot be allowed to flout the guidelines issued by the authority for years, come with the document once the Interview is over and then claim consideration of his candidature which has gone to the respondent no. 10.

44. In this competitive world, the examinations that are conducted goes through the process of elimination and the best suited are picked up. The respondent No. 10, Atul Srivastava was diligent enough to fulfill all the criteria and pipped the appellant-petitioner to the post under the category of ward of Freedom Fighter.”



14. The learned counsel appearing on behalf of the Bihar Public Service Commission further refers to and relies upon a judgment of the Hon'ble Supreme court of India in *Special Leave to Appeal (C) No. 3577 of 2024 (arising out of Hon'ble Division Bench judgment 07.11.2023 passed in L.P.A. No. 1190 of 2023) (Kumar Mukesh versus the State of Bihar & Ors.)*, whereby vide judgment dated 16.02.2024 the Hon'ble Supreme Court of India refused to interfere with the judgment passed by the Hon'ble Division Bench of Patna High Court and dismissed the Special Leave Petition.

I.A. No. 01 of 2022

15. An intervention application bearing I.A. No. 01 of 2022 has also been filed on behalf of the intervenor, namely, Nitin Kumar, who had prayed for impleading him as a party respondent in the writ petition. The case of intervenor is that the petitioner as well as the intervenor, who belong to backward category and claim benefit of horizontal reservation on account of being wards of freedom fighters, but on account of interim order dated 26.08.2022 passed in the present writ petition, the intervenor has not been appointed.

16. The learned counsel appearing on behalf of the intervenor-respondent submits that the petitioner did not produce



the requisite certificate of being ward of freedom fighter, either till the last date of submission of application form i.e. 05.10.2020 or till the last date of receipt of the copy of the application i.e. 12.10.2020 and nor till the date of interview i.e. 10.03.2022. The intervenor submitted all the requisite certificates within the prescribed time limit and also produced the original thereof at the time of interview. In the final result, the name of the intervenor appears at serial no. 23 under the Backward Class category candidate and even though, the intervenor is going to be directly affected by the result and the outcome of the writ petition, but for the reasons best known to him, the petitioner did not implead the intervenor as a party respondent in the writ petition and therefore, the writ petition suffers from non-joinder of necessary parties.

17. The learned counsel appearing on behalf of the intervenor submits that for the persons claiming reservation under the freedom fighters quota, it was required to possess certificate, issue by the District Magistrate or his authorised officer, evidencing that he or she is a ward of a freedom fighter. In Clause 16 of Note-2, it has been provided that at the time of interview, the concerned candidate would be required to produce original copy of the certificate of being a ward of a freedom fighter, duly issued by the District Magistrate or his authorised officer. Further,



under the heading “important instructions” vide Clause-IX of the advertisement, particularly Clause 9 (i)(n), it has been provide that certificate in the manner indicated in the preceding paragraph would be required to be furnished by the candidate. The petitioner, despite being aware of the aforementioned essential requirement of producing a certificate, duly issued by the District Magistrate or his authorised officer, at the time of application and thereafter at the time of interview, chooses not to submit the same and filed an identity car issued on 06.07.2018, for claiming the said benefit. Belatedly, the said certificate was obtained on 16.03.2022. Since the same was obtained after the date of interview, therefore, the same was not considered as a certificate, which has been produced after the cut off date. He further submits that the final result was published on 09.06.2022 and the department of Science and Technology vide Notification No. 3240 dated 14.10.2022 appointed and posted the selected candidates at different places, however the intervenor has not been issued the appointment letter, presumably on the ground that one post has been kept reserved vide order dated 26.082022, passed in the present writ petition under the freedom fighters quota. Therefore, the present intervenor is a necessary party in the writ petition.

CONSIDERATION AND ANALYSIS



18. Having heard the learned counsel for the parties, including the learned counsel for the intervenor and after going through the records, it appears that pursuant to the advertisement, which was issued by the BPSC, inviting application for appointment against 306 posts of Assistant Professor in Civil Engineering in different Government Engineering Colleges within the State of Bihar, the petitioner submitted his application along with the so called certificate dated 06.07.2018 bearing serial no. 159, issued from the office of the District Magistrate, Patna. From perusal of the said document dated 06.07.2018, it would transpired that the same is not a certificate issued by the District Magistrate, Patna, rather it is an identity card in the name of the petitioner and on the top of it, it has specifically been mentioned "स्वतंत्रता संग्राम सेनानी/उत्तराधिकारी परिचय पत्र", therefore it cannot be said that it is a certificate issued by the competent authority. It is an admitted fact that based on the same, the petitioner was permitted to appear in the written examination and subsequent interview, however when the petitioner did not produce any certificate on the date of interview, his candidature was not considered under the category of ward of freedom fighter. It is further an admitted fact that subsequent to his interview, which was held on 10.03.2022, the petitioner obtained a



certificate from the office of the District Magistrate, Patna and submitted/sent the certificate on 17.03.2022, before the Commission, enclosing the said certificate dated 16.03.2022. It appears that the Commission did not consider the certificate issued by the petitioner, since the same was submitted after the cut off date and the same was not enclosed along with the application, submitted by the petitioner. Since, the petitioner did not produce the certificate, issued by the competent authority, his case was not considered for giving reservation under the 2% quota for the posts, reserved for grand-children of freedom fighters, by way of horizontal reservation. The learned senior counsel for the petitioner has relied upon the judgments of the Hon'ble Supreme Court of India in the case of *Ram Kumar Gijroya (supra)*, *Aarav Jain (supra)* and *Sweety Kumari (supra)*, wherein the Hon'ble Supreme Court of India directed for appointment of the respective petitioners by holding that although along with their application forms, requisite certificates/documents for claiming reservation under their respective categories were annexed/produced, however the original thereof was not produced at the time of interview. The judgment referred to by the learned senior counsel for the petitioner is not applicable in the present case, since in those



cases, the photocopies of the relevant documents were annexed with the application form, however their respective original documents were not produced at the time of interview and the petitioners therein had prayed for certain time to produce the same. This fact was not denied by the respondent authorities in those cases and based on the same, reliefs were granted by the Hon'ble Supreme Court of India. In the present case, no certificate whatsoever was annexed by the petitioner, while submitting his application form and only an identity card issued from the office of the District Magistrate, Patna was annexed, which cannot be said to be a certificate in terms of the advertisement. The certificate, issued by the competent authority, was for the first time obtained by the petitioner on 16.03.2022 and the same was brought to the notice of the Commission for the first time on 17.03.2022, i.e. after conclusion of the interview, therefore, it cannot be said that the certificate was annexed with the application form, however the original thereof was not produced at the time of interview. The case referred to by the learned senior counsel for the petitioner is not applicable in the facts of the present case. If the petitioner would have annexed the photocopy of the certificate, which he had obtained on 16.03.2022 and would not have produced the original thereof on



the date of interview, then the petitioner would have been entitled to get similar relief, as has been granted by the Hon'ble Supreme Court of India in the cases, relied upon by the learned senior counsel for the petitioner. Further, the judgment relied upon by the learned counsel for the Bihar Public Service Commission in the case of *Kumar Mukesh (supra)* is entirely applicable in the present case, since in that case also, the appellant was seeking reservation under the category of ward of ex-freedom fighter and filled up his online application form before the last date, stipulated in the advertisement. In support of his claim, he had also enclosed the identity card of the year 2008, issued by the District Magistrate, Patna. In the said case also, the petitioner qualified in the written test and was called for interview. On the date of interview, he did not produce the original certificate issued by the competent authority i.e. the District Magistrate and later on, he procured the certificate, after the date of interview and forwarded the same to the BPSC. In the said appeal, the Hon'ble Division Bench of this Court, after considering different judicial pronouncements of the Hon'ble Supreme Court of India, went on to hold that a candidate cannot be allowed to flout the guidelines issued by the authority for years, come with the document once the interview is over and then claim consideration



of his candidature, which has gone to the respondent no.10. It was further observed that in this competitive world, the examinations that are conducted, goes through the process of elimination and the best suited are picked up. The respondent no.10 was diligent enough to fulfill all the criteria and pipped the appellant-petitioner to the post under the category of ward of freedom fighter and accordingly, the appeal filed by the appellant was dismissed. Against the said order, the appellant filed a Special Leave to Appeal (C) No. 3577 of 2024, before the Hon'ble Supreme Court of India, however the same was dismissed vide order dated 16.02.2024. The case of the petitioner herein is exactly similar to the case of *Kumar Mukesh (supra)*, since the petitioner of the present case, along with his application form had annexed the identity card issued by the office of the District Magistrate, Patna on 06.07.2018 and after his interview on 10.03.2022, obtained a certificate on 16.03.2022, issued by the office of the District Magistrate, Patna and submitted the same in the office of the BPSC on 17.03.2022. Therefore, rightly so, his candidature was not considered by the BPSC under the category of the wards of freedom fighter.

19. From the consideration made above, this Court is of the considered opinion that there is no illegality in the decision



taken by the BPSC in not considering the case of the petitioner under the category of ward of freedom fighter and his candidature was rightly rejected/cancelled by the BPSC.

20. Accordingly, this Court does not find any merit in the writ petition and the same is dismissed.

21. So far the Interlocutory Application No. 01 of 2022 filed by the intervenor, namely, Nitin Kumar is concerned, it is well settled law that if any person wants to seek a relief, then he/she has to file an appropriate petition and cannot come as an intervenor. Even if, the Intervention Petition is allowed, the intervenor seeking to intervene would become a respondent, but cannot claim any relief in the petition as a petitioner. Therefore, the Interlocutory Application No. 01 of 2022 is disposed of as not maintainable. If the intervenor has any grievance of his non-selection, he can seek appropriate remedy by filing an appropriate petition.

(Ritesh Kumar, J)

AjayMishra/-

AFR/NAFR	
CAV DATE	15.04.2026
Uploading Date	16.06.2026
Transmission Date	NA

