

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10262 of 2024

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Manoj Kumar S/O Arjun Sah @ Arjun Kumar Resident of Mohalla-Near
Shitla Sthan Lalkothi, P.O.- Naya Bazar, P.S.- Tatarpur, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Principal Secretary, Education Department, Government of Bihar, Patna.
4. The Director, Higher Education, Government of Bihar, Patna.
5. The Bihar State University Service Commission, Patna through its Secretary.
6. The Chairman, Bihar State University Service Commission, Patna, Bihar.
7. The Secretary, Bihar State University Service Commission, Patna, Bihar.
8. The Tilka Manjhi Bhagalpur University, Bhagalpur through its Registrar.
9. Sri Ranjit Kumar Ranjan, S/o Not known Through the Vice Chancellor Tilka Manjhi Bhagalpur University.
10. Sri Vivekanand Kumar, S/o not known Through the Vice Chancellor Tilka Manjhi Bhagalpur University.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Y. V. Giri, Sr. Adv. Mr. Ranjan Kumar Sinha, Adv.
For the State	:	Mr. Sunil Kr. Mandal, SC 3 Ms. Neelam Kumari, AC to SC 3
For the BSUSC	:	Mr. Tuhin Shankar, Adv. Mr. Gopal Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 05-01-2026

Heard Mr. Y. V. Giri, learned Senior Advocate with
Mr. Ranjan Kumar Sinha, learned Advocate for the petitioner
and Mr. Tuhin Shankar, learned Advocate for the Bihar State



University Service Commission as well as Mr. Arjun Prasad, learned Advocate for the State.

2. The petitioner, an aspirant for the post of Assistant Professor in the subject of Psychology in connection with Advertisement No. AP-PSYC-16/20-21, has invoked the jurisdiction of this Court seeking issuance of writ in the nature of mandamus directing the respondent authorities to accommodate him under Extremely Backward Class category for his selection and appointment on the post of Assistant Professor in terms with the afore noted advertisement with respect to the subject of Psychology published by the Bihar State University Service Commission, Patna (in short 'Commission'). The petitioner also sought a direction upon the respondent authorities to admit his claim/objection dated 27.12.2022 against the provisional merit list.

3. The short facts, which led to filing of the present writ petition, are that the petitioner having degree of M.A., Ph.D. in the subject of Psychology submitted his application, in pursuant to the caption advertisement dated 21.09.2020 under the category of Extremely Backward Class. The respondent Commission after completing all the paraphernalia published a list of provisional eligible/ineligible candidates on 24.12.2022.



The name of the petitioner figured at Sl No. 408 as eligible candidate under Unreserved category for the reason stating therein that Non Creamy Layer certificate was not submitted with the caste certificate. The respondent Commission invited objection on or before 05.01.2023 against the said provisional list. In pursuance thereof, the petitioner made an application along with requisite fee of Rs.225 and NCL certificate through Speed Post on 27.12.2022. Subsequently, the Commission also came out with a notice dated 19.01.2023 where the name of the petitioner was placed at Sl No. 207 but under Unreserved category candidate. The petitioner immediately rushed to the respondent Commission with a request to consider his claim under EBC category. However, the Commission did not consider his case favourably and issued Call Letter for interview by treating him as a candidate under General category on 29.01.2023.

4. The petitioner appeared in the interview but with a further request to treat him under EBC category and submitted all the requisite certificates; however no heed was paid to the request of the petitioner and the Commission has published the result of the selected candidates. It is the specific contention of the petitioner that the cut off marks for EBC candidates was 67



whereas the petitioner has obtained more than 82.26 marks, out of 100 marks. Had the petitioner been rightly treated under EBC category, he would have certainly qualified, but on account of inaction and arbitrariness at the hands of the Commission, he has been treated as a General category candidate; notwithstanding, the fact he has submitted NCL certificate in response to the objection invited by the Commission.

5. Mr. Y. V. Giri, learned Senior Advocate for the petitioner taking this Court through the terms of the advertisement submitted that the application form was required to be filled up by the applicant, wherein it has been only asked the name of the caste in reservation category related to the candidate. The petitioner duly submitted his caste certificate of EBC issued by the competent authority. Even if, for the sake of argument, it is admitted that Non Creamy Layer certificate was not attached or downloaded along with the application form, the same would not at all render the candidature of the petitioner as defective or he shall be treated as General category candidate once the petitioner has finally submitted the NCL certificate when objection was raised with the provisional list of the candidate. Referring to the Important Notice dated 24.12.2022, Mr. Giri, learned Senior Advocate further contended that



Clause-6 thereof clearly stipulates that the objection was invited for rectification of the mistake within prescribed time. The petitioner in pursuance thereof submitted his NCL certificate and, thus, in no circumstances, the petitioner can be treated as General category candidate irrespective of the fact that he has submitted his caste certificate as well as NCL certificate within the time prescribed. Referring to the decision rendered by the Apex Court in the case of ***Ram Kumar Gijroya vs Delhi Subordinate Services Selection Board & Anr. [(2016) 4 SCC 754]***, wherein the Court ruled in favour of the candidate concerned, has submitted that the instant matter is completely covered by the said decision.

6. Reliance has also been placed on the decision of ***Ramesh Chandra Sankla Etc. vs Vikram Cement Etc.*** reported in ***(2008) 14 SCC 58*** to buttress his submission that the jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India is discretionary and equitable and it can be exercised *ex debito justitiae*, i.e. to meet the ends of justice. It is equitable in nature. While exercising supervisory jurisdiction, a High Court not only acts as a court of law but also as a court of equity. Hence, Mr. Giri, learned Senior Advocate urged that the Court ought to ensure its power and exercise the jurisdiction to



advance the ends of justice and uproot injustice.

7. On the other hand, Mr. Tuhin Shankar, learned Advocate for the Commission refuted the afore noted contention and submitted that the petitioner had admittedly not submitted the requisite Non Creamy Layer certificate along with his application form before the cut off date and, thus, he was treated as a General category in terms of the advertisement for appointment to the post of Assistant Professor. As per Clause 8.3.5 and 11.1 of the Advertisement, the applicant was required to submit various documents specified therein, including Non Creamy Layer Certificate, if claiming reservation under the Extremely Backward Class category. The last date for submission of online application along with documents prescribed was 02.11.2020, which was extended to 10.12.2020 till 5:00 pm and further by 30.12.2020 till 5:00 pm for submission of hard copy. The petitioner did not submit the NCL certificate and he faced the interview as a General category candidate. Moreover, the result in the subject of Psychology was published on 30.05.2024 and the select list has also been published and sent to the Education Department whereafter appointments of successful candidates have also undertaken.

8. Mr. Tuhin Shankar further urged that the judgments



rendered by the Full Bench of this Court in the case of **Braj Kishore Prasad vs. The State of Bihar & Ors.**, reported in **1998(3)PLJR 34 (F.B.)** and that of the Hon'ble Supreme Court in **Bedanga Talukdar vs Saifudaullah Khan & Ors** reported in **(2011) 12 SCC 85** have duly emphasized that where the advertisement specifies the last date for filing of supporting or other documents that date must be given effect to and any document received after such date shall be rejected by the selecting authority and no application/document shall be entertained by the Commission if the same is filed after the last date specified in the advertisement. It is further contended that the identical matter has come up for consideration before this Court in **Bedanand Sharma Vs. The State of Bihar** (CJWC No. 11093 of 2024) wherein this Court placing reliance upon the above referred cases as well as coordinate Bench and the Division Bench of this Court did not interfere in the writ petition as the candidate failed to submit his certificate in a detailed prescribed format within the prescribed date.

9. At this juncture, Mr. Y. V. Giri, learned Senior Advocate for the petitioner submits that the order of this Court passed in **Bedanand Sharma** (supra) is *per incurium* as the Court has failed to consider other decisions of the Apex Court,



including the decision rendered in the case of **Ram Kumar Gijroya** (supra). It is further contended that the order of this Court is *sub silentio* and the issue as has been raised before this Court has not been considered in the case of **Bedanand Sharma** (supra), the candidate had not submitted his application in the prescribed format, inasmuch as the experience certificate was not duly countersigned by the Registrar of the University as was required under the advertisement. However, in the case at hand, the petitioner had submitted his caste certificate along with application form and subsequently also Non Creamy Layer certificate when objection was invited; hence, the case of the petitioner is on different footing. To strengthen the aforesaid contention, reliance has been placed on the decisions rendered by the Apex Court in the case of **Dr. Shah Faesal and Ors. v. Union of India and Anr.** [(2020) 4 SCC 1] and further in the case of **Municipal Corporation Of Delhi vs Gurnam Kaur** [(1989) 1 SCC 101].

10. Before parting with the present case, it would be pertinent to consider the submission of the learned Senior Advocate representing the petitioner with regard to his plea regarding the order of this Court passed in **Bedanand Sharma** (Supra) is *per incurium* as the Court has failed to consider the



other decisions of the Apex Court rendered in the case of **Ram Kumar Gijroya** (supra). The Court in a series of decisions held with unequivocal terms that the doctrine of *per incurium* is a narrow exception to Article 141 of the Constitution of India and applies only to the ratio *decidendi* not to *obiter dicta*. A judgment can be termed *per incurium* only if it is rendered in ignorance of a binding statute or precedent or where its ratio is irreconcilable with that of a coordinate or larger Bench. Mere non reference to an earlier decision does not automatically render a later judgment *per incurium*; there must be a clear and direct conflict in the ratios of the two decisions.

11. In the case of **Dr. Shah Faesal** (supra), a batch of petitions, including Dr. Shah Faesal v. Union of India, challenged the presidential orders and legislative measures relating to Article 370 and the reorganization of the former State of Jammu & Kashmir. During the proceedings, the petitioner sought a reference to a large Bench contending that the earlier Constitution Bench decision in Sampat Prakash v. State of Jammu & Kashmir was rendered *per incuriam* as it allegedly failed to consider the earlier ruling in Prem Nath Kaul v. State of Jammu & Kashmir. The Court having considered that in the decision of Prem Nath Kaul, Article 370 treated as a temporary



provision requiring the concurrence of the J & K Constituent Assembly for its continuation, whereas in Sampat Prakash held that the Article 370 continued to operate even after the Constituent Assembly ceased to exist, permitting ongoing presidential action under it. Upon a bare examination, the Court found no irreconcilable inconsistency between their *ratio decidendi* on the interpretation and operation of Article 370. Accordingly, the decision rendered in Sampat Prakash was held not *per incurium* and continued to retain its precedential value under Article 141. The Court further observed that the rule of *per incurium* given its impact on legal certainty and stability of precedent, must be applied sparingly and with caution.

12. Further in the case of **Gurnam Kaur** (supra), a subordinate Judge's unappealed decree protected pavement squatters from eviction except by due process under the Delhi Municipal Corporation Act. In the case of Jamna Das, the Hon'ble Supreme Court expressly stated that it should not be treated as precedent and with the consent of the parties, directed rehabilitation of certain squatters. Relying on Jamna Das, the High Court directed the Municipal Corporation to construct or permit construction of a stall for the respondent. The Municipal Corporation aggrieved, preferred appeal. The Hon'ble Supreme



Court held that the rights of the parties stood crystallized by the un-appealed decree of the Subordinate Judge. However, the High Court erred in relying on Jamna Das to issue a mandamus contrary to Sections 320 and 322 of the Delhi Municipal Corporation Act, as the respondent had no enforceable statutory right to rehabilitation or alternative accommodation. The Court further held that the directions in Jamna Das had no binding force under Article 141 because they were made by consent of parties, with an express reservation that they would not operate as precedent. Additionally, the Apex Court concluded that the decision given in ignorance of binding statutory provisions is *per incuriam* and lacks precedential value; the High Court's order based on such a decision could not be sustained.

13. Now coming to the case of ***Ram Kumar Gijroya*** (supra), where the question of law that arose for consideration was whether a candidate, who appears in examination under OBC category and submits certificate after the last date mentioned in the advertisement is eligible for selection to the post under OBC category or not in terms with the advertisement published in the news paper for selection to the post of Staff Nurse in the Department of Health and Family Welfare, Government of NCT of Delhi. In the afore noted case, the



appellant submitted his application form before the due date and was subsequently issued the Admit Card. After examination, he was shortlisted for selection but his name did not figure in the final list of selected candidates. On enquiry, he was informed that since he had failed to submit OBC certificate issued by the appropriate authority along with application form before the last date of submission of application form, hence his name did not figure in the final list. Aggrieved with the action of the respondents, approached before the learned Single Judge of the High Court of Delhi. The appellant also relied upon the decision dated 11.02.2009 passed in Pushpa v. Government of NCT of Delhi, whereby the High Court had granted OBC benefit to the petitioner therein. The learned Single Judge held that the respondent did not cite any other authority to distinguish the decision in Pushpa's case and thus directed the respondent to reconsider the application of the appellant and the other aggrieved candidates. The matter came up for consideration before the learned Division Bench of the Delhi High Court and the Court held that the appellant had applied for the O.B.C. certificate ten days before the cut off date, which was not the fact in Pushpa's case, where the application for the O.B.C. certificate had been filed much before the date of advertisement.



Hence, no case for grant of relief in favour of the appellant was made out. The matter has finally come up for consideration before the Apex Court. Referring to the decisions rendered in the case of *Indra Sawhney & Ors. v. Union of India & Ors. [(1992) supp 3 SCC 214]* and *Mrs. Valsamma Paul vs Cochin University and Others [(1996) 3 SCC 545]* as also the case of *Ms. Pushpa vs Government, NCT of Delhi & Ors. [2009 SCC OnLine Del 281]*, the Court held that the Division Bench of the High Court erred in reversing the judgment and the order passed by the learned Single Judge, without noticing the binding precedent on the question laid upon by the Constitution Bench of this Court.

14. Coming to the case at hand, under the caption advertisement, there is specific stipulation under Clause 8.3.5 and 11.1 of the Advertisement that the applicant was required to submit documents specified therein including Non Creamy Layer certificate by those candidates who were claiming reservation under the Extremely Backward Class category. There is no iota or confusion that for the purposes of benefit under the reservation category BC/EBC a certificate of Non Creamy Layer is *sine qua non* because it proves that the candidate belongs to economically disadvantaged section and



not in the creamy layer within the OBCs. Without production of NCL certificate, the candidate must lose his eligibility for getting his candidature considered for reserved category. It is needless to observe that the Non Creamy Layer certificate is essential to get the reservation benefit for those who genuinely needed to overcome socio-economically disadvantages, by distinguishing from more affluent within their own class. Thus, once a candidate files an application form along with caste certificate without Non Creamy Layer certificate, the selection authorities are obliged to treat him under the General Category candidate for all purposes.

15. It would be relevant to take note of Clause 15 of the Advertisement which categorically mandates that the candidate should make all entries in the online application form with due care. Any change or modification subsequently will not be acceptable and for any subsequent negative consequence, candidate will himself be responsible. Clause 8.3.2 of the advertisement in no uncertain terms stipulates that the candidates of Backward Class and Extremely Backward Class will be required to submit the following certificates, i.e., (a) Caste Certificate, (b) Domicile Certificate and (c) Non Creamy Layer Certificate. Clause 8.3.5 further mandates that the



candidates of reserved categories will mark the relevant column of the Online Application Form after fully satisfying themselves about their caste. At the time of filling the application form, the certificates relevant to the category of their reservation must be available with them. In case of any error, the claim of reservation will not be tenable. After filing the application any claim for change in reservation will not be entertained.

16. The Apex Court in the case of ***Bedanga Talukdar*** (supra) has emphasized and underscored that if a particular schedule is mentioned in the advertisement, the same has to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the advertisement unless such power is specifically reserved. It would be apt and proper to encapsulate paragraph-29 of the afore noted decision, which reads as follows:

“ 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.”

17. Further the Full Bench of this Court in the case of ***Braj Kishore Prasad*** (supra) while emphasizing the relevance of the date prescribed in the advertisement and strict adherence to the terms and conditions in its penultimate paragraph No. 26 held as follows:

“26. Having regard to all these



considerations, I hold that:

(a) Where the advertisement specifies the last date for filing of supporting or other documents, that date must be given effect to, and any document received after such date shall be rejected by the selecting authority.

(b) In appropriate cases where the selecting authority is of the view that the time for furnishing of documents should be extended, it may grant such extension by issuing a public notice to this effect so that all candidates may get the benefit of such extension. In the absence of any such extension granted by the selecting authority, the date/dates mentioned in the advertisement should be treated to be the last date for filing of documents, and no document shall be accepted thereafter.

(c) No application/ document shall be entertained by the Commission if the same is filed after the last date specified in the advertisement, or the extended date notified by the commission, even if the same is filed before the finalisation of the select list.

(d) In appropriate cases where this Court is satisfied that a case of extreme hardship or injustice has resulted on account of factors beyond the control of the concerned candidate, this Court in exercise of its writ



jurisdiction may grant relief in deserving cases. But in doing so, the Court must be satisfied that the candidate concerned has acted diligently, and is not guilty of delay or laches in taking necessary steps for procuring the requisite certificates, etc. However, no relief shall be granted where the requisite certificate is produced for the first time after the process of selection is complete and the selecting authority has made its recommendation.”

18. It would also be relevant to take note of the fact that the identical issues have also come up for consideration before the coordinate Bench of this Court in the case of ***Neetu Kumari vs. The Bihar State University Service Commission [CWJC No. 10202 of 2024]*** and further in the case of ***Prabhu Kumar vs. The State of Bihar & Ors. [CWJC No. 10853 of 2024]***, wherein the learned Court taking note of the terms of the advertisement did not find merit in the writ petition and rejected the claim of the petitioners, who had submitted their NCL certificate after the cut off date. Indubitably, the petitioner failed to submit Non Creamy Layer certificate along with his application within the stipulate time as prescribed in the advertisement. In absence thereof, the petitioner has been treated to be a candidate under General Category. Moreover, the



submission of the petitioner that in the light of the subsequent notice, the petitioner has submitted his NCL certificate would certainly not come to his rescue as the caption advertisement specifically prohibits receipt of NCL certificate after the cut off date.

19. Before concluding the *lis*, with all humility, this Court further observes that in the case of ***Ram Kumar Gijroya*** (supra), there was no stipulation in the advertisement restricting the candidates to submit the caste certificate, rather the requirement of submitting the OBC certificate before the cut off date of application was introduced by the respondent-DSSSB only while declaring the result on 15.12.2008. All the more, in similar set of facts in connection with same advertisement, others have been allowed to submit the caste certificate even after the cut off date. In the aforesaid premise, the learned Single Judge of the High Court has extended the liberty to the candidates, who have been declared non-suited because of non submission of the caste certificate. Such action of the respondent authority was found to be in violation of the Article 14 of the Constitution. In the case at hand, the term and condition of the advertisement clearly excludes the claim of the petitioner for treating him to be a candidate of reserved category



since he failed to produce the Non Creamy Layer certificate within the time prescribed.

20. In view of the aforesaid facts and discussions made hereinabove, the decision passed by this Court in ***Bedanand Sharma*** (supra), in the opinion of this Court, cannot be termed as *per incurium*, ***Ram Kumar Gijroya*** (supra). In the instant case, the submission of the caste certificate as well as the NCL certificate before the cut off date was *sine qua non* in terms with the prescription of the caption advertisement, failing which the candidate was not eligible to get the benefit of reservation. Accordingly, this Court does not find any merit in the writ petition. Hence, the present application stands dismissed.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	
Uploading Date	13 .01.2026
Transmission Date	

