

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20547 of 2018

Vishwambhar Singh Son of Late Ram Bahadur Singh, Resident of Village-Sanduar, Post Office Dayalpur, Police Station- Janta Bazar, District Saran at Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Human Resources Development Department, Government of Bihar, New Secretariat Building, Bailey Road, Patna-800001.
3. The Principal Secretary, Rural Development Department, Government of Bihar, Old Secretariat Building, Patna- 800015.
4. Bihar Public Service Commission, through its Secretary, Bailey Road, Patna.
5. The Chairman, Bihar Public Service Commission, Bailey Road, Patna.
6. The Joint Secretary cum Examination Controller, Bihar Public Service Commission, Bailey Road, Patna.
7. Archana Kumari, Daughter of and wife of name not known to the petitioner Rural Development Officer, through the Principal Secretary, Rural Development Department, Government of Bihar, Old Secretariat Building, Patna- 800015.
8. Principal Secretary, General Administration Department, Bihar Government, Patna, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Vishwambhar Singh (In-Person)
For the Respondent/s	:	Mr. G.P. 20
For the BPSC	:	Mr. Lalit Kishore, Sr. Advocate Mr. Kanishka Shankar, Advocate
For the Respondent no.7:	:	Mr. Bishwa Bibhuti Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RITESH KUMAR
CAV JUDGMENT
Date : 23-06-2026

Heard the parties.

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

“(i) For issuance of a writ in the nature of writ of certiorari for quashing the part of the



result published under the signature of Joint Secretary -cum-Examination Controller, Bihar Public Service Commission, Patna by which the private respondent Archana Kumari, whose name stands at Serial No. 22 under Item No. 9, Rural Development Officer have been declared selected candidates under the disabled O.H. being Roll No. 342867, merit list serial no. 1178 against the advertisement published by Bihar Public Service Commission of 56th, 57th, 58th and 59th of combined competitive examination as contained in Annexure-2.

(ii) Also for declaring decision of selection of Archana Kumari who has got lesser mark than the petitioner under disabled quota to Item no. 9 Rural Development Officer is based on hostile discrimination and violation of Articles 14, 16 and 21 of the Constitution of India.

(iii) Also for commanding the respondents to publish the result of the petitioner as a successful candidate under most backward class and maintain the seniority of the petitioner on the basis of the marks obtained by the petitioner being total marks 820 whereas the private respondent has got 819 marks only

(iv) Also for declaring the decision of selection of private respondent having lesser



marks than the petitioner is illegal and bad in law.

(v) Also for giving the petitioner all consequential benefits of service and monitory benefit of service, seniority from the date the juniors to the petitioner have been appointed against Advertisement No. 58th Combined Competitive Examination published in daily newspaper as contained in Annexure-.

(vi) Also for commanding the Bihar Public Service Commission to recommend 4 more vacancies in general category. Only result of 18 persons has been placed in place of 22 on the ground total vacancies is 736.

(vii) Also for necessary relief/reliefs as well as necessary direction be given for the ends of justice.

Brief Facts Of Case

3. The brief facts giving rise to the present writ petition are that an advertisement was issued for 56th to 59th Combined Preliminary Competitive Examination for 22 services, having total 746 vacancies, wherein it was indicated that quota for disabled candidate will also be given as per the Government Resolution contained in memo no. 62 dated 05.01.2007 and relaxation of age of 10 years will be given in the disabled category. The petitioner having the requisite



qualification submitted his application in the prescribed performa within the cut-off date. Admit-card was issued to the petitioner for appearing in the examination, which was held on 15.03.2015 and the petitioner appeared at Motihari Centre. Results were published, wherein the petitioner was declared successful and subsequently, he appeared in the Mains Examination, which was conducted from 8th July, 2016 to 25th July 2016 and was also declared successful in the Mains Examination. Thereafter, he was called to appear for interview on 08.05.2018, in which he also appeared on the said date. The final result was published by the Bihar Public Service Commission (hereinafter referred to as BPSC), Patna, on 18.08.2018, wherein altogether 736 candidates were declared successful, to be appointed in 21 services, however, the name of the petitioner does not find place in the list of successful candidates. The petitioner came to know that he has secured 820 marks. The petitioner belongs to disabled quota of Ortho. The petitioner obtained/downloaded the marks of some other candidates namely Vikram Kumar, merit list serial no. 1042 and Umesh Kumar Das, merit list serial no. 1031. From perusal of the marks obtained by both the above-mentioned candidates, the petitioner came to know that Vikram Kumar had obtained 819



marks in the category of Scheduled Castes candidates and Umesh Kumar Das had secured 820 marks in the same category. Further, one another candidate namely Archana Kumari, backward-class lady (BCL) category was placed at serial no. 1178 in the merit list. It is the case of the petitioner that since Vikram Kumar and Umesh Kumar Das who have secured 819 and 820 marks respectively and the petitioner who has also secured 820 marks, must be above in the merit list, than Archana Kumari, (respondent no.07) herein, who has been finally selected to the post of Rural Development Officer. It is the case of the petitioner that since the petitioner could not obtain the marks of Archana Kumari, but from the rank i.e. 1178, it appears that the marks of Archana Kumari, who has been selected in the disabled category, must be lesser than the petitioner, only for the reason that Vikram Kumar who was placed at serial no. 1042 in the merit list has been placed in general rank. It is further case of the petitioner that as per the advertisement 3% quota was to be given to the disabled category candidates in horizontal reservation, as per the resolution of the State Government dated 05.01.2007. The circular dated 05.01.2007, prescribed for 3% quota for disabled candidate, in tune with the Disabilities Security Act, 1995 and



were to be adjusted against the respective quota, meaning thereby that at the time of selection, there will be no reservation, rather after selection they will be adjusted against their respective quota and once the petitioner has secured 820 marks and the person who had obtained 820 marks has been placed at merit list serial no. 1031 and Archana Kumari (respondent no. 07) who has been placed at merit list 1178, must have got lesser marks than the petitioner, even then she has been finally declared to be successful under the disabled O.H. category candidate, which is in violation of provisions contained in Articles 14, 16 and 21 of the Constitution of India. It is the case of the petitioner that since the petitioner has got higher marks than Archana Kumari and both belongs to the disabled quota, even then, Archana Kumari has been selected, therefore, the action of the respondent authorities in selecting Archana Kumari in place of the petitioner is not permissible. Further, as per the advertisement, total 736 vacancies were available, therefore, the total seats for disabled category candidates comes to 22, however, in the final result which has been published by the BPSC, only 18 candidates in the disabled category have been selected, which suggest that 3% horizontal reservation has not been given to the disabled category



candidates and 4 vacancies are still left for the said category, to be filled up.

4. A supplementary affidavit has been filed on behalf of the petitioner wherein it has been stated that he got information under Right to Information Act, 2005 that Archana Kumari has secured 811 marks under disabled quota (Ortho). Since the petitioner has secured 820 marks and Archana Kumari has secured 811 marks, she should have been placed below the petitioner in the merit list, but the name of the petitioner does not find figure in the merit list and respondent no. 07, despite securing 811 marks has been declared to be successful.

5. A counter affidavit has been filed on behalf of the BPSC, wherein it has been stated that 736 vacancies were advertised and thereafter, the final merit list was prepared on the basis of the marks of written examination, as well as marks obtained in interview and the selection has been done as per the merit list. The recommendation of successful candidates were sent to the concerned departments in the month of October, 2018 and the appointment process is already complete. The petitioner having reservation category general (01) and disabled (O.H.) secured 820 marks, merit serial no. 1032, could not be finally declared successful, since the vacancy of the Rural



Development Officer, against which the private respondent no. 07 has been selected, was earmarked for the female disabled candidate of B.C.L. (06) category. This fact would be evident from the requisition letter bearing letter no. 189040 dated 20.06.2014 of the Rural Development Department. The authorities of the BPSC have completed the process of selection/recommendation on the basis of the resolution of the State Government dated 05.01.2007. Further, 18 vacancies were calculated for disabled category candidates, out of 736 reported vacancies, since the vacancies of Police Service (Bihar Police Service, Dy. S.P. Vigilance and Deputy Commandant) were not included in calculation of posts, in view of the conditions prescribed in the recruitment rule, which envisaged that “ A candidate must be fit physically and mentally and free from any physical defect likely to interfere with the efficient performance of duties of a member of police service”. Six vacancies were admissible for each disabled category candidates i.e. visually impaired, deaf and dumb and orthopedically handicapped respectively, out of the 18 vacancies for disabled category candidates. The petitioner belongs to O.H. disabled category having 820 marks, merit position 1032, but he was not finally selected, since 02 vacancies out of 22 vacancies of the Rural



Development Officer was earmarked for BCL (06) and out of these 02 vacancies, 01 last remaining vacancy was earmarked for female disabled candidate of BCL category. Since the vacancies earmarked for the disabled candidates were not available in the category, therefore, the petitioner, although placed at merit position 1032, along with one another candidate namely Kumar Nirbhay (merit position 997) has not been recommended for selection. Further two persons namely Vikram Kumar and Umesh Kumar Das belongs to SC category and they have been selected against the vacancies of SC category candidates for the respective services/posts. The petitioner who is a candidate of general category, disabled cannot claim selection against the vacancies of the reserved category, although he has secured 820 marks, which is lesser than the cut-off marks of general category i.e. 848 marks. It has further been mentioned that the petitioner has taken a calculated risk by appearing in the examination, having not been selected, cannot challenge the same in view of the judicial pronouncement of the Hon'ble Supreme Court of India as well as this Hon'ble Court.

6. A rejoinder to the counter affidavit filed on behalf of the BPSC, has been filed by the petitioner, wherein it has been stated that out of the 746 posts, which were advertised, 341



posts was for general category candidates, 117 for SC category candidates, 12 for ST category candidates, 128 for EBC category candidates, 85 for BC category candidates and 23 for BCL category candidates. On the date of advertisement, 3% reservation was existing for handicapped persons, as per the Equal Opportunity Right Protection and Completion Act, 1945, therefore, the handicapped persons were entitled to be given their reserved quota against their category i.e. General, SC, ST, EBC, BC, and BCL. The 3% reservation has to be divided for all the three categories i.e. 1% for O.H. category, 1% for blind candidates and 1% for deaf and dumb. The vacancy advertised of any department cannot ignore 3% reservation for handicapped candidate and as such, the petitioner who is orthopedically handicapped, is entitled to be appointed against 22 vacancies, wherein 8 posts should have been meant for orthopedically handicapped, 7 posts for deaf & dumb and 7 posts for blind candidates. The petitioner is not challenging the procedure of selection, relating to advertisement, rather he is claiming his appointment against the disabled quota, as per the reservation policy, existing on the date of advertisement. He further submits that only 6 candidates have been selected and given the benefit of O.H. category, instead of 7 candidates and



as per the reservation policy dated 05.01.2007, 3% reservation was required to be given horizontally for the disabled category candidates, which has not been followed by the department.

7. A Supplementary affidavit has been filed on behalf of the petitioner wherein it has been stated that he came to know that although the petitioner has secured 820 marks, but the respondent no. 7 who has got 9 marks less than the petitioner, has been finally selected, only on the ground that the vacancy of Rural Development Officer, against which the respondent no. 07 has been selected, was earmarked for the female disabled candidate of BCL category, although as per the advertisement, no such vacancy was earmarked for the female disabled candidate. It has further been stated that as per the resolution of the State Government dated 01.02.2007, which states that selection of the candidates of person with disability will be based on general category, which clearly states that there should be no reservation within reservation, for the persons with disability category. It has further been stated that as per the judgment of the Hon'ble Supreme Court of India reported in (2017) 3 SCC 504 (**Union of India and Ors. Vs. M. Selvakumar and another**), wherein it has been observed that physically handicapped category is a category in itself and the



persons who are physically handicapped have to be treated alike in extending the relaxation and concession, regardless of the fact that whether they belong to a general category or OBC category. He further submits that similarly as per the decision of the Hon'ble Supreme Court of India reported in (2007) 8 SCC 621 **(Mahesh Gupta and Ors. Vs. Yashwant Kumar Ahirwar and Ors.)** it has been held that a disabled is a disabled and therefore, the question of making further reservation on the basis of caste, creed, and religion, would ordinarily not arise. It has further been observed that the disabled are themselves a special class and to that extent their further classification may not be justified. As per the resolution of the State Government, it is clear that, if any service deemed to be not appropriate for P.W.D. candidates, then the same should be compensated from another service, equivalent to that service (in which reservation is not permitted to PWD candidates) in which reservation is permitted. Therefore, the respondents were duty-bound to select 22 persons, as per the provisions contained in Persons with Disabilities Act.

8. A counter affidavit has been filed on behalf of the private respondent no. 07, wherein it has been stated that the respondent no. 07 being eligible, submitted her application,



pursuant to the advertisement issued by the BPSC for 56th to 59th common Combined Competitive Examination and after going through the selection process, was selected as a female disabled candidate of BCL (06) category, pursuant to the requisition for vacancy to the post of Rural Development Officer, Rural Development Department, Government of Bihar, Patna. The appointment of the respondent no. 07 has been made as a BCL category candidate, which was earmarked in view of letter dated 20.06.2014 of the Rural Development Department, therefore, the appointment of the respondent no. 07 has been made as per the vacancy, requisition for advertisement as well as the eligibility of the candidate as a BCL category candidate, therefore, there is no infirmity in selection of the respondent no. 07. After final selection and recommendation, she has been appointed as a trainee Rural Development Officer in Bhojpur District, vide memo no. 402929 dated 24.12.2018 and subsequently, has been transferred and posted at different place.

9. A counter affidavit has been filed on behalf of the Rural Development Department, wherein it has been stated that vide letter no. 3694 dated 05.04.2011, the department sent requisition for filling 534 posts of Rural Development Officer in the pay-scale of Rs. 9300-34800/- with grade pay of Rs. 4200/-



after obtaining/clearance of roaster point against each category. Again vide letter no. 135127 dated 11.01.2013, the department sent requisition for appointment of 534 posts of Rural Development Officer to the Bihar Public Service Commission, after obtaining clearance of roaster point as per the guidelines of the General Administration Department as well as the under the provisions of the Rural Development Service Cadre Rules, 2010. The BPSC conducted examination for 53rd to 55th Combined Competitive Examination and results were also published wherein recommendation was made for 533 candidates for appointment against the post of Rural Development Officer. Altogether 267 candidates were recommended in general category, 86 in SC category, 5 in ST category, 96 in MBC category, 64 in BC category and 16 posts in BC (woman category). It was mentioned by the BPSC that due to non-availability of the candidate under disabled quota (O.H.) of BC (W) category, one posts remained vacant. Finally, due to non-joining and other reasons 21 posts of Rural Development Officer remained vacant, which did not include one post of BC (W) of disabled (O.H) quota. Subsequently, vide letter dated 29.04.2014, again requisition for filling 21 posts of Rural Development Officer was sent to the BPSC, for filling the



same through 56th to 59th Combined Competitive Examination. Subsequently, vide letter dated 03.06.2014, the BPSC requested the department to send the requisition in prescribed format. Accordingly, vide letter dated 20.06.2014, the department sent requisition for 22 posts, including one post of BC (W) category of disabled O.H. category candidate. After final publication of the result, the BPSC recommended candidate for all the 22 posts, including one post for BC (W) category candidate. Pursuant thereto, all the 22 candidates, including respondent no.-07, who has been recommended under the BCL disability O.H. category candidate, have been appointed on the post of Rural Development Officer.

10. A counter affidavit has been filed on behalf of the General Administration Department, pursuant to the order dated 24.07.2025, passed in this writ petition, whereby on the request made by the petitioner, who has appeared in person, to implead the Principal Secretary, General Administration Department, Government of Bihar as respondent no.08. In the counter affidavit, it has been stated that requisition was sent for 534 posts of Rural Development Officer for 53rd to 55th Bihar Competitive Examination, to be conducted by the BPSC. In the said advertisement the 03% reservation for virtually impaired,



deaf & dumb and orthopedically handicapped was not made available to the BPSC. After rectification, the same was again sent and 533 successful candidates were recommended by the BPSC, however, due to non-availability of suitable candidate, one post for BC (W) category under disabled category was not filled up. It has further been stated that vide letter no. 14428 dated 05.8.2025 the General Administration Department found it to be anomaly, in terms of resolution contained in memo no. 62 dated 05.01.2007. It has further been stated that as per the provision for 3% reservation for disabled candidate, only 15 disabled candidates were recommended to the Rural Development Department and due to non-availability of one candidate in the disabled category O.H. seat remained vacant. Subsequently, requisition was sent for 22 posts in the Rural Development Department for the 56th to 59th Competitive Examination. Further, so far the petitioner is concerned, he has obtained 820 marks, while respondent no. 07 has obtained 811 marks and in this context the BPSC has clarified to the department that in between the petitioner and the Respondent no. 07 in the joint merit list of the candidates of the (O.H.) category the following candidates are there:-

SL. No.	Name	Roll No.	Merit No.	Total Marks	Reservation Category
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1	Om Prakash Pandey	277260	1033	820	01 (O.H.)
2	Pankaj Kumar Jha	204482	1126	814	01 (O.H.)

11. The BPSC exclusively reported that apart from the above, in the merit list the petitioner and one Kumar Nirbhay Roll no. 271165, category O.H. had obtained 822, marks has also not been selected. It has further been stated that the department has the responsibility to make rules and regulations for providing the benefit of reservation to the persons who are in need, but it has to be implemented by the concerned department/institution dealing with the subject. It has further been mentioned that from the report of the BPSC, it is clear that Bihar Public Service Commission made a flawed report vide letter no. 152 dated 05.09.2013/11.09.2013 with its recommendation, which was contrary to the provisions of the resolution contained in memo no. 62 dated 05.01.2007, which caused the present discrepancies. It has further been mentioned that as per the clarification submitted by the BPSC, in WBC category, there was one vacancy, which was reserved for disabled woman and against that post, the respondent no. 07 has been appointed. The petitioner despite having higher marks, could not be selected. It has further been mentioned that the



BPSC has further clarified, that vide letter no. 4451568 dated 08.08.2025 of the Rural Development Department, the BPSC has been informed that requisition for total 399 posts of Rural Development Officer have been sent for 70th joint Competitive Examination, but due to different reasons, at present 6 posts of basic grade of Rural Development Officers are lying vacant. As per the reservation category, 02 posts are for unreserved category candidates, 01 for SC, 01 for EBC and 2 for WBC candidate.

12. A reply to the counter affidavit filed on behalf of the Respondent no. 08 has been filed by the petitioner in person, wherein it has been mentioned that the counter affidavit dated 27.08.2025 is not in consonance with the order dated 01.05.2025 passed in this case, wherein it has categorically been stated that in view of the judgment dated 03.12.2013 passed in C.W.J.C. No. 19127 of 2013, in the category of handicapped there cannot be any other division whether a candidate belongs to Extremely Backward-Class Category or General Category and therefore, the reservation given to the respondent no. 07 under BCL category is against the established law and is in violation of the order passed by the this Hon'ble Court. It has further been stated that in view of the judgment of this Hon'ble



Court as well as the Hon'ble Supreme Court of India, any post under the category of orthopedically handicapped cannot be reserved or kept backlog on the basis of the caste and creed. It has further been stated that 4 candidates were not selected in the category of physically handicapped, in complete violation of the provisions of the State Government issued vide resolution dated 05.01.2007, which clearly states that the number of seats cannot be reduced under handicapped category, against the quota of 3% reservation and if any post is not fit/suitable to the handicapped, then equivalent other post has to be given. The stand of the BPSC that 1 post of Rural Development Officer for orthopedically handicapped was backlog for BCL candidate, is against the established provision and in violation of the orders passed by this Hon'ble Court as well as the Hon'ble Supreme Court. Since no candidate was selected in orthopedically handicapped category on the basis of caste and creed for the 53rd to 55th Examination, therefore it was not justified to keep one post of Rural Development Officer towards backlog vacancy for BCL under Orthopedically handicapped category. Further in the notification/advertisement for 56th to 59th BPSC combined examination, it was not mentioned that any post has been kept reserved for BCL candidate, in the physically handicapped



category. Further so far the contention of the BPSC that 01 candidate, who has secured more marks than the petitioner is concerned, there might be possibility that he does not fulfill the eligibility criteria and further he did not come before this Hon'ble Court or raised any grievance, that despite him obtaining 822 marks, he has not been selected. It has been stated that the petitioner has secured 820 marks and the last selected candidate in the orthopedically handicapped category had obtained 811 marks, therefore, the petitioner should have been appointed. So far the question of the candidate having secured 822 marks is concerned, he has not come forward to raise his grievance, however, in no circumstance a candidate securing higher marks has not been selected and a candidate with lower marks has been selected.

Submission of the Petitioner in Person

13. The petitioner who is appearing in person submits that despite the fact that he got 820 marks but even then he has not been selected, whereas the respondent no.07, who has got 811, marks has been finally selected, which is in complete violation of the provisions contained in Articles 14, 16 and 21 of the Constitution of India. He submits that the action of the respondent authorities is in complete violation of the provisions



contained in the Constitution of India as well as the persons with Disabilities Act. He further submits that even the 3% quota, as per the provisions contained in persons with Disabilities Act, has not been given in as much as that out of 736 vacancies, 22 vacancies should have been reserved for persons with Disabilities Act, however, in the present case, only 18 candidates have been selected in the disabled quota. He submits that the action of the respondent authorities is contrary to the resolution of the State Government dated 05.01.2007.

14. The petitioner in person submits that since he has secured more marks than the last selected candidate in his category, he was fit to be selected, since, there cannot be reservation within reservation and this has been declared by the Hon'ble Supreme Court of India as well as this Hon'ble Court and which is also clear from the gazette notification of the State Government dated 05.01.2007. He further submits that 4 lesser candidates have been selected in the disabled category, since only 18 candidates have been recommended, instead of 22 candidates and as per the statement made by the Bihar Public Service Commission in their counter affidavit, it is clear that no reservation has been provided in the Bihar Police Service or Vigilance Department. However, in view of the circular of the



State Government dated 05.01.2007, if no reservation has been provided in the Bihar Police Service, then in other services, the same should have been provided to compensate the persons with disabilities.

15. The petitioner in person further submits that although 01 candidate namely Kumar Nirbhay has secured higher marks than the petitioner, although he has not been selected, and has not come forward to ventilate his grievance, even then he can be selected, in place the respondent no. 07, who has admittedly got lesser marks than the petitioner and said Kumar Nirbhay. Further, the Rural Development Department has informed the BPSC vide letter their dated 08.08.2025 that 6 posts of Rural Development Officer are lying vacant and therefore, the petitioner can be appointed on the said post.

Submission on behalf of the BPSC

16. Per contra, the learned Senior Counsel for the Bihar Public Service Commission submits that the BPSC being a recruiting agency, acts upon the requisition forwarded by the respective departments. As per the requisition dated 20.06.2014 of the Rural Development Department for 22 posts of Rural Development Officer, 01 post was earmarked for disabled candidate belonging to the BCL category and since the



petitioner is a male candidate, belonging to the general category orthopedically disabled, he cannot lay his claim on the vacancy specifically earmarked for female candidate of the BCL category by the requisitioning department. He further submits that the Commission's stand is neither arbitrary nor targeted against the petitioner. One another candidate namely Shri Kumar Nirbhay merit list serial no. 997, who secured 822 marks was also not selected for the same reasons i.e. due to non-availability of vacancy in the category. The petitioner was not even within the zone of consideration on his own merit, since the cut-off marks for general category was 848 and the petitioner secured 820 marks, therefore, he failed to qualify on merits. So far the contention of the petitioner that 22 vacancies ought to have been reserved for the disabled category candidates instead of 18, is concerned, the same is incorrect and flawed. As per the advertisement, which was for 736 posts across 22 services, 135 posts were for police service, which are exempted from disabled category candidates, therefore, 3% statutory reservation for the disabled candidate was calculated on the remaining 601 posts and 3% of the said 601 posts comes to 18 posts. Therefore, 18 posts were correctly and lawfully earmarked for the disabled category candidate as per the rules.



Since, the petitioner did not meet the general category cut-off and the sole post in the Rural Development Department for disabled candidate was reserved for BCL female, therefore, one another candidate in the O.H, category, having secured higher marks than the petitioner, has not been selected and the 3% disability quota has been wrongly calculated by the petitioner. Therefore, the appointment of the respondent no. 07 is in terms of the provisions of the advertisement and in terms of the existing rules.

Submission on Behalf of Private Respondent No. 07

17. The learned counsel for the respondent no. 07 submits that the respondent no. 07 being eligible, submitted her application and after going through all the processes, she was recommended for appointment as Rural Development Officer in the Rural Development Department under the BCL (06) category which was earmarked, while sending requisition by the Rural Development Department in 2014. Therefore, the selection of the respondent no. 07 has been made as per the vacancy, requisition for advertisement as well as eligibility of the candidate as a female disabled category candidate of the BCL. That out of total 22 posts of Rural Development Officer under the Rural Development Department, for which requisition



was sent, 12 posts were to be filled up from unreserved category candidates, 01 from SC, 4 from EBC, 3 from BC and 2 from BCL, out of which 01 was reserved for BCL (O.H.) candidate. After appointment, the respondent no. 07 has already joined and is working. Further, the petitioner is a general category candidate in the disabled quota male and as such he cannot be equated with the post earmarked for BCL (disabled category candidate). The selection has been made as per the terms and conditions of the advertisement, as well as by giving horizontal and vertical reservation and after following the roaster. Further, 01 candidate having higher marks than the petitioner has also not been selected, since no post was available under the (O.H.) category.

Case Law Relied By The Petitioner

18. The petitioner in person refers to and relies on a judgment of the Hon'ble Supreme Court of India reported in (2017) 3 SCC 504 (**Union of India and others Vs. M. Selvakumar and another**), wherein in paragraph nos. 22 and 23, the Hon'ble Supreme Court has held as follows:-

22. Article 16 of the Constitution provides for equality of opportunity in matters of public employment. The State in terms of Article 16 of the Constitution provides two



types of reservations i.e. a vertical or social reservation as provided for in Article 16 clause (4) and horizontal reservation which is referable to Article 16 clause (1). Special reservation in favour of physically handicapped, women, etc. under Article 16(1) or 15(3) of the Constitution are the instances of horizontal reservation.

23. A nine-Judge Bench in Indra Sawhney v. Union of India [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1] had elaborately considered both the concepts of reservation. In para 812 of the said judgment, Justice B.P. Jeevan Reddy, has referred to both the types of reservations. It was held that horizontal reservations cut across the vertical reservation. The following was stated : (SCC pp. 735-36)

“812. ... There are two types of reservations, which may, for the sake of convenience, be referred to as “vertical reservations” and “horizontal reservations”. The reservations in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes [under Article 16(4)] may be called vertical reservations whereas reservations in favour of physically handicapped [under clause (1) of Article 16] can be referred



to as horizontal reservations. Horizontal reservations cut across the vertical reservations—what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to clause (1) of Article 16. The persons selected against this quota will be placed in the appropriate category; if he belongs to SC category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains—and should remain—the same. This is how these reservations are worked out in several States and there is no reason not to continue that procedure.”

19. The petitioner in person further refers to and relies on a judgment of the Hon’ble Supreme Court of India reported in (2007) 8 SCC 621 (**Mahesh Gupta and Ors. Vs. Yashwant Kumar Ahirwar and Ors.**), wherein in paragraph



nos, 10 to 14, the Hon'ble Supreme Court has held as follows:

“10. The State in terms of Article 16 of the Constitution of India may make two types of reservations—vertical and horizontal. Article 16(4) provides for vertical reservation; whereas Clause (1) of Article 16 provides for horizontal reservation.

11. The State adopted a policy decision for filling up the reserved posts for handicapped persons. A special drive was to be launched therefor. The circular letter was issued only for the said purpose. A bare perusal of the said Circular Letter dated 29-3-1993 would clearly show that the State had made 3% reservation for blinds and 2% for other physically handicapped persons. Such a reservation falling within Clause (1) of Article 16 of the Constitution has nothing to do with the object and purport sought to be achieved by reason of Clause (4) thereof.

12. Disability has drawn the attention of the worldwide community. India is a signatory to various international treaties and conventions. The State, therefore, took a policy decision to have horizontal reservation with a view to fulfil its constitutional object as also its commitment to the international community. A disabled is a disabled. The question of making any



further reservation on the basis of caste, creed or religion ordinarily may not arise. They constitute a special class. The advertisement, however, failed to mention in regard to the reservation for handicapped persons at the outset, but, as noticed hereinbefore, the vacant posts were required to be filled up for two categories of candidates; one for Scheduled Caste and Scheduled Tribe candidates and other for handicapped candidates. Handicapped candidates have not been further classified as belonging to Scheduled Castes, Scheduled Tribes and general category candidates.

13. It is a travesty of justice that despite the State clarified its own position in its order dated 1-1-2004 and stated that the posts were vacant under the handicapped quota but it completely turned turtle and took a diagonally opposite stand when a contempt petition was filed. In its reply in the said proceedings, reference was made to the aforementioned order dated 1-1-2004 but within a short time viz. on 4-2-2004 it opined on a presumption that as the word "handicapped" was not mentioned in the heading of advertisement they were meant only for Scheduled Caste and Scheduled Tribe candidates. Rule of executive construction was given a complete go-by.



Reasonableness and fairness which is the hallmark of Article 14 of the Constitution of India was completely lost sight of. The officers of the State behaved strangely. It prevaricated its stand only because a contempt proceeding was initiated. If the State was eager to accommodate the writ petitioner-respondent, it could have done so. It did not take any measure in that behalf. It chose to terminate the services of some of the employees who had already been appointed. Such a course could not have been taken either in law or in equity. The State is expected to have a constitutional vision. It must give effect to the constitutional mandate. Any act done by it should be considered to have been effected in the light of the provisions contained in Part IV of the Constitution of India. The State in terms of the provisions contained in Part IV should have given effect to the principles embodied in Article 39 of the Constitution of India. Whereas a reasonable reservation within the meaning of Article 16 of the Constitution of India should not ordinarily exist (sic exceed), 50%, as has been held by this Court in Indra Sawhney v. Union of India [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385 : AIR 1993 SC 477] , reservation for



women or handicapped persons would not come within the purview thereof.

14.Furthermore, when the decision was taken, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short “the 1995 Act”) had come into force. In terms of the 1995 Act, the States were obligated to make reservations for handicapped persons. The State completely lost sight of its commitment both under its own policy decision as also the statutory provision.”

20. The petitioner in person further refers to and relies on an unreported judgment of a learned Co-ordinate Bench of this Court dated 03.12.2013 passed in C.W.J.C. No. 19127 of 2013 (**Rakesh Kumar Vs. State of Bihar and Ors.**), wherein it has been held as follows:-

“Besides hearing learned counsel for the parties, I have also perused the materials available on record. Fact remains that the petitioner had claimed his candidature as handicap candidate. In the category of handicap, there can not be any other division, whether a candidate belongs to Extremely Backward Category or General Category as also there can not be any distinction amongst the candidates of orthopedic handicap category. Orthopedic



handicap is one class and there can not be any division in the same.”

Consideration and Analysis

21. Having heard the Petitioner in person, the learned counsel appearing on behalf of the state, the Learned Senior Counsel appearing on behalf of the Bihar Public Service Commission and after going through the documents, this court finds that an advertisement was issued for 56th to 59th Combined Preliminary Competitive Examinations for 22 services, having total 746 vacancies, wherein in view of the circular of the State Government contained in memo no. 62 dated 05.01.2007 relaxation of 10 years was given to the persons with disabilities and they were required to obtain at least 32% marks in the Preliminary test, to be eligible for further participation in the selection. The petitioner being eligible, submitted his application before the cut-off date. After going through the process prescribed i.e. Preliminary test and the Mains examination, the Petitioner was called for Interview on 08.05.2018. The petitioner appeared in the said Interview and the final result was published on 18.08.2018, wherein altogether 736 candidates were declared successful, to be appointed in total 21 services. The name of the petitioner was not there in the list of successful candidates, although he secured 820 marks. The



petitioner belongs to the Disability quota of Orthopaedics (O.H.). The petitioner started making enquiry and came to know that one Archana Kumari (Respondent no.7), who had obtained the rank 1178 i.e. below the rank of the petitioner, has been selected as Rural Development Officer in the category of BCL/disabled/OH, in the Rural Development Department, Government of Bihar. The petitioner filed an application under the Right to Information Act and thereafter he came to know, that the Respondent no.7 has got only 811 marks, even then she has been selected. Thereafter, the petitioner filed the present writ petition, wherein he arrayed Archana Kumari as party Respondent no.7. He prayed for quashing part of the result published under the signature of the Joint Secretary-cum-Examination Controller, B.P.S.C., Patna, by which the Respondent no.7, whose name stands at serial no.22 under item no.9, Rural Development Officer, in the final result, has been declared as a selected candidate under the disabled O.H. category, despite being at serial no.1178 in the final merit list, against the advertisement for 56th two 59th Combined Competitive Examination. Some other prayers were also there. A counter affidavit has been filed on behalf of the Bihar Public Service Commission, wherein a stand has been taken that since



1 seat under the category of Backward Class Lady (BCL) in the Disabled Category remained vacant, in absence of suitable disabled candidate in the Rural Development Department, in terms of the advertisement for 53rd to 55th Combined Competitive Examination, therefore the same was carried forward and was kept reserved for the BCL under the disabled category of O.H. Therefore, the Respondent no.7, despite having lesser marks, than the petitioner, has been selected under the said category. Vide order dated 24.07.2025 passed in this case, the Principal Secretary, General Administration Department, Government of Bihar, Patna was impleaded as party Respondent no.8 and was directed to file his counter affidavit. Subsequent thereto a counter affidavit was filed on behalf of Respondent no.8, wherein it has been categorically stated that the Department makes certain rules and regulations to provide the benefits of reservation to persons who are basically in need, however, so far, the question of implementation is concerned, the implementation has to be carried out by the concerned institution dealing with the subject. It has further been stated that after thorough examination, it is clear that the Bihar Public Service Commission made a flawed report vide its letter no.152 dated 05.09.2013/11.09.2013 with the recommendation. It was



contrary to the provisions of Resolution contained in memo no.62 dated 05.01.2007, which caused the discrepancy, for which the Commission is accountable.

22. Further from the advertisement issued by the Bihar Public Service Commission it would transpire that although the vacancies for each category i.e. General, S.C., S.T., E.B.C., B.C. and B.C.L. were Compartmentalised, however the vacancies for Disabled Category Candidates were not compartmentalised. In the opinion of this court, the advertisement itself was issued in teeth of the Judgement of the Hon'ble Supreme Court of India in the case of Saurabh Yadav & Ors. VS The State of U.P. & Ors as reported in 2021 (4) SCC 542. Further the requisition which was sent by the Rural Development Department, to the Special Secretary-cum-Examination Controller, Bihar Public Service Commission vide letter no.189040 dated 20.06.2014 contained the details of 22 Posts. Out of the said 22 Posts 12 Posts were unreserved, 01 Post was reserved for S.C. candidate, 04 Post was reserved for S.T. category candidate, 03 Post was reserved for B.C. category candidate, 01 Post was reserved for B.C.L. category candidate and 01 Post was reserved for disabled category candidate belonging to the B.C.L. category. However, the Bihar Public



Service Commission advertised 02 Post for B.C.L. category candidate, which itself was contrary to the requisition sent by the Rural Development Department, since no post was shown in the advertisement for disabled category candidate. Further in terms of paragraph no.54 of the Judgement of the Hon'ble Supreme Court of India in the case of Saurabh Yadav (Supra) wherein, it has been categorically held that as follows:-

*“54 Horizontal reservation on the other hand, by their nature, are not inviolate pools or carved in stone. They are premised on their overlaps and are ‘interlocking’ reservations. As a sequel, they are to be calculated concurrently and along with the inviolate ‘vertical’ (or “social”) reservation quotas, by application of the various steps laid out with clarity in Paragraph 11 of Justice Lalit’s Judgement. **They cannot be carried forward.** The first rule that applies for filling horizontal reservation quota is one of adjustment, i.e. examining whether on merit any of the horizontal categories are adjusted in the merit list in the open category and then, in the quota for such horizontal category within the particular specified/social reservation”.*

23. From paragraph no.54 of the Judgement of the Hon'ble Supreme Court of India in the case of Saurabh Yadav



(Supra) it is clear that the horizontal reservation cannot be carried forward. In the present case the 01 vacancy, which remained unfilled and vacant in the 53rd to 55th Combined Competitive Examination, in the B.C.L. disabled category, was carried forward, which is in teeth of the Judgement of the Hon'ble Supreme Court of India in the case of Saurabh Yadav (Supra) and which in the opinion of this court is not permissible. The correct course would have been that the vacancy which remained unfilled in the BCL O.H. category would have been included in the advertisement for 56th to 59th combined competitive examination in the O.H. category and the candidate belonging to the said category would have been considered and selected, as per his/her merit position in the merit list in the O.H. category. In the present case no such exercise has been carried out and the Post was kept reserved for BCL category O.H. candidate and finally the respondent no.8, although, lower in the merit list, was given the benefit of both the BCL and the O.H. category, has been selected, which is contrary to the Judgement of the Hon'ble Supreme Court of India in the case of Saurabh Yadav (Supra).

24. From the consideration made above, it is directed that one vacancy meant for Disabled O.H. category



candidate is thus required to be reworked out and assessed by the B.P.S.C., after considering all the eligible candidates belonging to the said category and benefit of the same has to be extended accordingly upon its final outcome/adjudication making selection and recommendation in favour of such person. Till then the Respondent no.7 would not be disturbed and her selection and appointment shall be governed by such final outcome upon re-assessment as directed above. The entire exercise, as directed above, must be completed within a period of 4 months from the date of receipt/production of a copy of the order.

25. With the aforementioned observations and directions the present writ petition is disposed of.

26. Pending applications, if any, shall also stands disposed of.

(Ritesh Kumar, J)

krishnakant/-

AFR/NAFR	NAFR
CAV DATE	07.04.2026
Uploading Date	23.06.2026
Transmission Date	NA

