

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1190 of 2023

In

Civil Writ Jurisdiction Case No.8993 of 2023

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Kumar Mukesh Son of Prem Prakash Singh Resident of Village and P.O.-Amoura,
Police Station - Karakat, District-Rohtas, Bihar-802214.

... ... Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, General Administration Department, Government of Bihar, Patna.
3. The Secretary, Department of Science and Technology and Technical Education, Government of Bihar, Vishveshwarya Bhawan, Patna.
4. The Director, Department of Science and Technology and Technical Education, Government of Bihar, Patna.
5. The District Magistrate, Rohtas.
6. The Bihar Public Service Commission through the Secretary, 15, Jawaharlal Nehru Marg, Patna.
7. The Chairman, Bihar Public Service Commission, 15, Jawaharlal Nehru Marg, Patna.
8. The Secretary, Bihar Public Service Commission, 15, Jawaharlal Nehru Marg, Patna.
9. The Controller of Examination, Bihar Public Service Commission, 15, Jawaharlal Nehru Marg, Patna.
10. Atul Srivastava Son of not Known to the Petitioner Resident of not known to the petitioner, Roll No. 660028, at serial no. 33 in the final result dated 01.06.2023 Published against Advertisement no. 66/2020 through the Bihar Public Service Commission.

... ... Respondent/s

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Appeal against judgement of Single Judge of High Court—dismissal of writ application for recruitment as Assistant Professor—under category of grand children of ex-Freedom Fighter—failure to produce certificate issued by District Magistrate during interview.

Held:The appellant failed to submit certificate to get benefit of reservation under the Category of grand children of ex-freedom fighter—no error found order of Single Judge of High Court—appeal dismissed.

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Appearance :

For the Appellant/s : Mr. Kumar Kaushik, Advocate
For the BPSC : Mr. Sanjay Pandey, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJIV ROY)
Date : 07-11-2023



Heard the parties.

2. The present appeal is directed against the judgment and order dated 19.09.2023 passed in C.W.J.C. No. 8993 of 2023 whereby and whereunder the learned Single Judge dismissed the writ application filed by the appellant-petitioner for his recruitment on the post of Assistant Professor in the subject of Mathematics (*relating to the Advt. No. 66 of 2020 issued by 'the Bihar Public Service Commission'*) under the category of grand children of ex-Freedom Fighter.

3. The case in brief is/are as follows:-

4. The appellant-petitioner after completing his Post Graduation Course in Mathematics from Patna University did his Ph.D in the same subject from the Jai Prakash University, Chapra in the year 2013.

5. The Bihar Public Service Commission (henceforth for short 'the BPSC') published an advertisement vide number **66/ 2020** on **06.10.2020** for the appointment on the post of Assistant Professor in the subject of Mathematics in the Government Engineering Colleges. As per the advertisement, a total of 126 vacancies were advertised out of which two vacancies were reserved for the grand children of ex-Freedom Fighters.



6. The appellant-petitioner being eligible under the said category of ward of ex-Freedom Fighter filled up his online application form before the last date stipulated in the advertisement. In support of his claim, he enclosed the Identity Card of the year 2008 issued by the Government of Bihar under the signature of the District Magistrate, Patna.

7. Two years later, 'the BPSC' issued admit-cards for the written examination which was to take place on **23.10.2022**. The appellant-petitioner appeared in the written examination and was declared successful, result for which was published on **27.01.2023**.

8. Subsequently, 'the BPSC' published the Interview programme on **03.02.2023** according to which the appellant-petitioner was to appear on **01.03.2023**. As per the directions, the original certificates were required to be produced at the time of the interview.

9. The Interview programme so published was followed by the Interview letter in which it was clearly mentioned that the Identity Card will not be accepted. It seems only thereafter the appellant-petitioner decided to apply for a Certificate from the District Magistrate, Patna (regarding grand children of ex-Freedom Fighter) and upon information that it



has to be procured from his home district, later submitted application before the District Magistrate, Rohtas at Sasaram on **20.02.2023**.

10. As he could not procure the Certificate in time, the appellant-petitioner appeared for the interview on **01.03.2023** along with the Identity Card and informed the officials of 'the BPSC' that he has already applied for certificate and shall provide the same once it is procured.

11. He finally procured the certificate on **07.03.2023** whereafter he forwarded it to 'the BPSC' on **10.03.2023** (as the office was closed on 08.03.2023 and 09.03.2023 due to 'HOLI'). The appellant-petitioner also went to the office on **11.03.2023** and submitted the hard copy.

12. The final result was published on **01.06.2023** in which a total of 108 candidates were selected out of which, 45 candidates were selected under the general/unreserved category. So far as the grandchildren of Freedom Fighter category is concerned, instead of the appellant-petitioner the respondent no. 10, Atul Srivastava was selected.

13. The grievance of the appellant-petitioner is that in the case of those candidates who sought exemption having cleared their Ph.D before 01.07.2009, they were given



opportunities to produce their respective certificates as per the notice dated 06.04.2023 and 26.04.2023 issued by 'the BPSC' while his case was ignored.

14. Aggrieved by the denial of his candidature by 'the BPSC', under the said category, the appellant-petitioner preferred CWJC No. 8993 of 2023.

15. Beside the contention put forward in support of the case, certain decisions of the Hon'ble Supreme Court were also cited before the Writ Court which are as follows:

(i) **Dheerender Singh Paliwal vs. Union Public Service Commission** reported in (2017) 11 SCC 276;

(ii) **Dolly Chhanda vs. Chairman, JEE and Ors.** reported in (2005) 9 SCC 779;

(iii) **Union Public Service Commission vs. Gyan Prakash Srivastava** reported in (2012) 1 SCC 537;

16. 'The BPSC' appeared and contested the claim of the appellant-petitioner before the Writ Court stating that the Advertisement No. 66 of 2022 clearly stipulated that the grand children of ex-Freedom Fighters (who get pension from the Central Government) though are eligible to get the benefits, they were required to submit certificate issued under the



signature of the District Magistrate or any Officer so authorized by him at the time of interview. Further, the Identity Card does not come within the purview of certificate asked for. The contention of 'the BPSC' is/was that the appellant-petitioner instead of submitting the certificate enclosed his I.D. with the application and even two years later, at the time of Interview, he failed to submit Certificate.

17. The stand of 'the BPSC' is/was that the interview programme published on 03.02.2023 made it clear in paragraph 3 (xix) that the certificates of proof issued in the prescribed format has to be verified from the original and the I.D. will not be considered.

18. However, as the appellant-petitioner failed to produce the certificate at the time of Interview, he was rightly not considered in the category of grand children of Freedom Fighter and the seat went to the respondent no. 10.

19. So far as the allegation of relief granted to other candidate is/are concerned, the contention is/was that it relates to those candidates who could not submit their Exemption Certificate with regard to completing their Ph.D prior to 11.07.2009. The stand of 'the BPSC' is that those who had already obtained the said degree prior to 11.07.2009, it



wanted to produce Exemption Certificate which was to be issued by the Registrar or Dean of the concerned University as per the UGC notification dated 18.07.2018. Thus the appellant-petitioner who was claiming reservation under a particular category cannot equate himself with those candidates.

20. The Learned Single Judge took up the matter and after taking note of the facts of the case as also the decisions cited as aforesaid vide an order dated 19.09.2023 dismissed the petition and the concluding part read as follows:

*“28. At this stage, this Court is reminded of the judgment of the Hon'ble Supreme Court in the case of **Bharat Petroleum Corpn. Ltd. and Anr. Vs. N.R. Vairamani and Anr.** reported in (2004) 8 SCC 579 wherein the Hon'ble Supreme Court has observed that the judgments of the court are not to be cited like an Euclid's theorem because a slight change in the facts of the case would make a sea difference in the opinion of the court.*

29. In the present case, this Court finds that the petitioner was fully aware of what he was required to do and what is the requirement under the advertisement. Admittedly, he was not possessing the required certificate and had not uploaded the same and he was not in possession thereof at the time of interview. He claims to have sent it by post and physically few days after the interview was over.



30. In such a case, if this Court exercises its extraordinary writ jurisdiction to interfere with the result published by the Commission, it may be done only by overreaching the clear stipulation present in the advertisement. This Court will refrain itself from doing so as it is well settled that the writ courts while exercising their power under Article 226 are guided by their own code of self-restraint. To this Court, it appears that any interference in this matter may create a bad precedent.

31. For the aforesaid reasons, this writ application is dismissed.”

21. Aggrieved by the said order dated 19.09.2023 passed by the Writ Court, the present appeal has been preferred.

22. Heard learned Counsel for the parties.

23. Mr. Kumar Kaushik, learned Counsel appearing for the appellant submits that the learned Single Judge failed to take into account the fact that when opportunity was given to the candidates for submission of NET examination certificate, there was no reason for disallowing him from submitting the Certificate of Ward of Freedom Fighter at a later stage.

24. His further submission is that two



different yardsticks cannot be applied to the candidates and it is clearly discrimination and violation of the Article 14 of the Constitution of India.

25. According to him, the learned Single Judge failed to consider the case of **Dheerender Singh Paliwal vs. Union Public Service Commission** (supra) **Dolly Chhanda vs Chairman, JEE and Ors.** (supra) and **Union Public Service Commission vs Gyan Prakash Srivastava** (supra) in proper perspective.

26. Learned Counsel concludes by submitting that the order passed by the learned Single Judge thus needs interference.

27. Mr. Sanjay Pandey, learned Counsel appearing for 'the BPSC' on the other hand, submits that the Advertisement No. 66 of 2020 was issued in the year 2020, the examination took place two years later in the year 2022 and the Interview took place in the month of February – March, 2023.

28. 'The BPSC' had clearly incorporated in the advertisement itself; published far earlier and then again in the Interview call information later that to get the benefit of reservation under the category of grand children of Freedom Fighter, the certificate issued by the District Magistrate, at the



time of interview is essential.

29. The appellant having failed to do so when he appeared for the Interview on 01.03.2023, he was rightly not considered under the category of the grand children of the Freedom Fighter and the seat went to Atul Srivastava (respondent no. 10). He as such, submits that the Writ Court was fully justified in passing the reasoned order which needs no interference and the appeal is fit to be dismissed.

30. Having heard the learned Counsel for the parties and perusing the records as also the order passed by the learned Single Judge, we must take note of the fact that:

(i) the advertisement no. **66/2020** was issued by '**the BPSC**' on **06.10.2020**;

(ii) the last date for submission of the application form with necessary supporting document(s) was/were **18.11.2020**;

(iii) clause 9(n) clearly stipulated that self attested copy of the certificate issued by the District Magistrate or authorized Officer relating to the claim under the grandchildren of the Freedom Fighter category has to be submitted alongwith the application;

(iv) the appellant-petitioner instead submitted



photo copy of his I.D. Card.

31. It is further to be noted that:

(i) the examination took place two years later on **23.10.2022**;

(ii) the appellant-petitioner was declared successful in the written examination;

(iii) the result was published on **27.01.2023**;

(iv) as per the schedule published on **03.02.2023**, the Interview was to take place from **28.02.2023** to **04.03.2023**;

(v) further, the candidates were directed to bring original documents relating to the qualification/claim for the reservation on the date of Interview;

(vi) it was made clear that the I.D. will not be accepted;

(vii) the appellant-petitioner appeared on **01.03.2023** for Interview without the Certificate;

(viii) 'the BPSC' in the aforesaid circumstance chose not to consider his case under the category of grand children of Freedom Fighter;

(ix) the seat under that category went to the respondent no. 10;



(x) he failed to qualify finally.

32. Learned Counsel for the appellant-petitioner has no answer to the query made as to why he took years to get hold of a certificate which was essential for him to be considered under the category of grand children of Freedom Fighter.

33. It is further not the case of the appellant-petitioner that he made any application/approached the office of the District Magistrate, Rohtas at Sasaram and/or showed any urgency for granting him the Certificate before 01.03.2023 so that he could submit it at the time of interview.

34. He received it leisurely on 07.03.2023 and submitted on 11.03.2023 i.e. ten days after his interview was over on 01.03.2023. In the said circumstances, he cannot absolve himself for the reason for the denial of the seat to him and the respondents were fully justified in not considering his claim under the Freedom Fighter ward category.

35. So far as the extension of time to those candidates who could not submit Exemption Certificates of having completed their Ph.D prior to 11.07.2009 is/are concerned, the clear stand of 'the BPSC' is that since they had already completed their Ph.D and were duly qualified to make



application, they were granted time to produce the Exemption Certificate which is different and distinct from the case of the appellant who wanted a seat under the reserved category and thus was duty bound to produce the certificate, making him eligible under that category, at the time of Interview for being considered.

36. Regarding the case of **Dheerender Singh Paliwal vs UPSC** (supra) cited, the paragraph 14 of the order of the Hon'ble Apex Court read as follows:-

“14. Having considered the respective submissions and having noted the dictum of this Court as noted above, we are of the view that in the light of the prescription noted in the advertisement, the particulars furnished by the appellant in response to the said advertisement and the production of the degree certificate for having secured the BSc degree with Zoology as the subject at a later point of time there was substantial compliance with the requirement to be fulfilled in the matter of the essential qualifications possessed by the appellant. Therefore, applying the principle set down by this Court, the respondent Commission ought to have considered the application and more so when the appellant was already in the services of the Forensic Science Laboratory as Senior Scientific Assistant and his essential qualifications were very much on record in the form of résumé



and therefore pursuant to the direction of the Tribunal when the respondent Commission interviewed the appellant and found him fit to be selected and appointed for the post of Senior Scientific Officer in all fairness should have appointed the appellant.

37. In that case, for the post of Senior Scientific Officer (Biology) in the Forensic Science Laboratory, the candidate was not called for interview as from the B.Sc Certificate, it was not clear whether he studied Zoology or not. However, Hon'ble Apex Court took note of the fact that he was already working as Senior Scientific Assistant in 'the FSL' and his resume was maintained by the Department having his entire qualification from the Secondary to Post Graduation and in that background, the appeal was allowed.

38. The appellant-petitioner case is entirely different from the aforesaid case and he cannot equate himself when he was not possessing the Certificate claiming reservation under the category at the time of the interview.

39. So far as the case of **Dolly Chhanda vs Chairman, JEE and Ors.** (supra) is concerned, in that case, although the girl was having faulty certificate relating to her father, an ex Serviceman, she was however, armed with



corrected certificate on the day the second counselling took place. As the authorities failed to take note of it and did not consider her case, the prayer was allowed and the Hon'ble Apex Court held that for a mistake committed by the Zila Sainik Board, she cannot be allowed to suffer. Further, she was a rank holder and was armed with correct certificate at the time of second counselling, she ought to have been considered. The relevant paragraphs of Hon'ble Apex Court order read as follows:

“9. The appellant undoubtedly belonged to reserved MI category. She comes from a very humble background, her father was only a Naik in the armed forces. He may not have noticed the mistake which had been committed by the Zilla Sainik Board while issuing the first certificate dated 29-6-2003. But it does not mean that the appellant should be denied her due when she produced a correct certificate at the stage of second counselling. Those who secured rank lower than the appellant have already been admitted. The view taken by the authorities in denying admission to the appellant is wholly unjust and illegal.

10. The appellant had qualified in JEE-2003 but the said academic year is already over. But for this situation the fault lies with the respondents, who adopted a highly technical and rigid attitude, and not with the appellant. We are,



therefore, of the opinion that the appellant should be given admission in MBBS course in any of the State medical colleges in the current academic year.

11. The appeal is accordingly allowed with costs. The judgment and order dated 31-10-2003 of the High Court is set aside. The respondents are directed to give admission to the appellant in any one of the State medical colleges forthwith. In case the State seats have already been filled up, one extra seat shall be created for her.”

40. The case of the appellant-petitioner nowhere comes near the case of **Dolly Chhanda** (supra). Therein the candidate was having a certificate though due to wrong entry by the Zila Sainik Board, it was not considered at the time of first counselling. However, by the time the second counselling took place, she was having a corrected certificate issued by the Zila Sainik Board. In the case of the appellant-petitioner, he neither attached it alongwith his application nor submitted at the time of interview. It has to be reiterated that from the time, the advertisement was issued in the year 2020 till 01.03.2023, when the interview took place, the appellant-petitioner had more than two years to get a certificate issued but he failed to do so.



41. So far as the case of **Union Public Service Commission vs Gyan Prakash Srivastava** (supra) is concerned, in that case, the candidate though could not submit his Law Degree, the Certificate issued by the Bar Council of Uttar Pradesh indicating he had undergone three years course of study in Law from a recognized University was part of his application, the Hon'ble Apex Court considering that in the selection process, he was placed at Serial No. 1 on the basis of merit gave direction for his appointment.

42. Thus, in that case, in view of issuance of certificate by the Bar Council of Uttar Pradesh, it was clear, he was having a Law Degree. However, in the present case, the appellant wanted reservation under the Category of grand children of ex-Freedom Fighter and thus it was essential to submit a certificate to get the benefit. Thus even this case does not come to his rescue.

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.

45. We do not find any error in the order dated 19.09.2023 passed by the learned Single Judge in CWJC No. 8993 of 2023. The appeal stands dismissed.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Neha/-

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