**[2023] 12 S.C.R. 556 : 2023 INSC 853**

**CASE DETAILS**

SWEETY KUMARI

v.

THE STATE OF BIHAR AND OTHERS

(Civil Appeal No. 6072 of 2023)

SEPTEMBER 22, 2023

**[J.K. MAHESHWARI AND K.V. VISWANATHAN, JJ.]**

**HEADNOTES**

**Issue for consideration:** Whether the rejection of the candidatures of the appellants due to non-production of the original certificate at the time of interview by the Bihar Public Service Commission (BPSC) is justified and what relief can be granted to the appellants.

**Bihar Civil Service (Judicial Branch) (Recruitment), Rules, 1955 – rr.7(b), 9 – Non-production of original certificate at the time of interview – Rejection of candidatures – Impermissible:**

**Held:** The language of the rules makes it clear that the production of the original certificates at the time of interview was not mandatory but directory – This is apparent from the language of second note to r.9 which uses the word "may be required to produce the originals before commission at the time of viva-voce test" – Further, even going by the advertisement, the certificates of educational qualification and other required documents on the date of the submission of the online application form were to be necessarily possessed but their production was not mandatory – The factum of eligibility is different from factum of proof thereof – If a person possesses eligibility before the date of actual selection, he cannot be denied benefit because its proof is produced later – In the present case, the proof was available and true photocopies were on record – Appellants' candidature could not have been rejected merely because the original was not produced before the Commission at the time of interview in particular when such requirement was not mandatory – Further, the case of appellants is at par with the case of *Aarav Jain* and other seven candidates who were appointed

in furtherance of the judgment of this Court dated 23.05.2022 in *Aarav Jain v. The Bihar Public Service Commission and Ors.* Civil Appeal No. 4242 of 2022 wherein this Court had not accepted the plea taken by BPSC that production of original certificate was mandatory because the candidates possessed such certificates on the date of submission of the application form – No reason to deny similar benefits to the two appellants at par with Aarav Jain and seven other candidates – Thus, they cannot be discriminated by not granting relief merely because of non-availability of vacancies in the 30th Bihar Judicial Service Competitive Examination – Further, in SLP (Civil) No. 16749/2023, the appellant appeared in 31st Bihar Judicial Service Competitive Examination, and secured 501 marks, whereas cut off was 499 in EWS category therefore, the respondents to adjust one vacancy of EWS for the same examination or from the next examination and extend similar benefits to the said appellant, in view of the ratio of *Aarav Jain* – Impugned judgments set aside – Present judgment passed in the peculiar facts of the case. [Paras 14, 16-19, 22, 24, 27-29]

**LIST OF CITATIONS AND OTHER REFERENCES**

*Aarav Jain v. The Bihar Public Service Commission and Ors.* Civil Appeal No. 4242 of 2022; *Charles K. Skaria and Others vs. Dr. C. Mathew and Others* (1980) 2 SCC 752:[1980] 3 SCR 71 – relied on.

**OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES**

CIVIL APPELLATE JURISDICTION : Civil Appeal No.6072 of 2023.

From the Judgment and Order dated 03.11.2021 of the High Court of Judicature at Patna in CWJC No.18038 of 2021.

With

Civil Appeal Nos.6073 and 6074 of 2023.

**Appearances:**

Radheshyam Sharma, Dibyanshu Pandey, Harish Pandey, Mukesh Kumar, Madhup Kumar Tiwari, Rajesh Kumar, Brijesh Kumar, Ms. Neha Rai, Krishna Kumar Singh, Mridul Chakraborty, Tushar Srivastava,

Abhijeet Kumar Pandey, Aditya Singh-1, Raman Kr. Singh, Advs. for the Appellant.

Azmat Hayat Amanullah, T. G. Shahi, Navin Prakash, Gaurav Agrawal, Advs. for the Respondents.

**JUDGMENT / ORDER OF THE SUPREME COURT**

**JUDGMENT**

**J. K. MAHESHWARI, J.**

1. Leave granted.

2. In the instant three appeals, the judgments passed by the High Court of Judicature at Patna (hereinafter referred to as "**High Court**") in Sweety Kumari v. State of Bihar and Others (CWJC No. 18038/2021) dated 03.11.2021; Vikramaditya Mishra v. State of Bihar and Others (CWJC No. 3707/2020) dated 04.09.2021; and Aditi v. Bihar Public Service Commission Patna and Others. (CWJC No. 15325/2022) dated 19.04.2023 are under challenge. By the said judgments, the High Court upheld the decision of the official Respondents. The candidature of appellants was rejected by the official respondents on account of non-furnishing of original character certificates (in case of Sweety Kumari and Vikramaditya Mishra) and law degree (in case of Aditi) respectively.

3. The High Court in the first two cases dismissed the writ petitions relying upon the order passed in the case of a similarly situated candidate titled as Aarav Jain v. The Bihar Public Service Commission and Ors. (CWJC No. 24282/2019) decided on 04.05.2021. Whereas in the third case, the High Court while dealing with the case of the appellant Aditi and one similarly placed candidate named Ankita, through a common order found that though the appellant Aditi has her case on merits at par with Ankita, but due to non-availability of the vacancy in EWS category the relief as granted to Ankita cannot be extended to appellant Aditi.

4. The appellants Sweety Kumari, a candidate of Scheduled Caste (SC) category and Vikramaditya Mishra, unreserved category candidate, appeared in 30$^{th}$ Bihar Judicial Service Competitive Examination (hereinafter referred to as "**30$^{th}$ Examination**") conducted for selection of Civil Judge

(Junior Division) pursuant to an Advertisement No. 6 of 2018 dated 21.08.2018/23.08.2018. Both the candidates have been declared successful in the preliminary examination vide the results declared on 07.01.2019 and main examination vide result declared on 05.10.2019 after obtaining more marks than the cut-off for their respective category. Pursuant to this, they were called for interview vide letter dated 15.12.2019.

5. The candidature of the appellants Sweety Kumari and Vikramaditya Mishra was rejected on account of not producing the original character certificates at the time of interview. True photocopies were produced. However, while declaring the result on 27.11.2019/29.11.2019, the candidature of the present two appellants as well as of one, Aarav Jain were rejected by a common communication.

6. On other hand, appellant Aditi applied in the Economically Weaker Section (EWS) category in furtherance to the 31st Bihar Judicial Service Competitive Examination (hereinafter referred to as "**31st Examination**"). She secured 501 marks, whereas cut-off was 499. Her candidature was rejected on the ground of not having the law degree certificate on the date of interview. The candidature of the similarly situated candidate Ankita was also cancelled on the same ground. However, on the filing of separate writ petitions which was disposed of by a common order, Ankita was granted relief by the High Court due to availability of vacancy in SC category, but Aditi was denied relief due to non-availability of the vacancy in the EWS category.

7. In view of the foregoing factual scenario, the questions that fall for consideration before us are as under:

i) Whether the rejection of the candidatures of the appellants due to non-production of the original certificate at the time of interview by the Bihar Public Service Commission (hereinafter referred to as "**BPSC**") is justified?

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

8. Undisputed facts of the case succinctly put are that the appellants Sweety Kumari and Vikramaditya Mishra appeared in 30th Examination in furtherance to the advertisement No. 6 of 2018 published on

21.08.2018/23.08.2018 by the BPSC to fill up the 349 vacancies. The said advertisement was issued in furtherance of the Bihar Civil Service (Judicial Branch) Recruitment Rules, 1955 (hereinafter referred to as "**the Rules**"). Appellant Sweety Kumari applied in SC category while appellant Vikramaditya Mishra applied in the un-reserved category. Aarav Jain along with seven other candidates also applied in the unreserved, SC, EBC and BC categories respectively. Their candidature had also been rejected on similar grounds. On challenging the said rejection, the High Court passed a detailed order in CWJC No. 24282 of 2019 titled as 'Aarav Jain v. The Bihar Public Service Commission and others' and dismissed the said petition by upholding the rejection by the BPSC.

9. By the impugned orders dated 03.11.2021 and 04.09.2021, the writ petitions filed by Sweety Kumari and Vikramaditya Mishra respectively, have been rejected relying upon judgment dated 04.05.2021 passed in the case of Aarav Jain.

10. Aarav Jain and seven others similarly placed candidates filed their respective petitions before this Court in Civil Appeal No. 4242 of 2022 titled ***Aarav Jain v. The Bihar Public Service Commission and Ors.*** as the leading matter which were decided by a common judgment dated 23.05.2022. By the said judgment this Court repelled the contention of BPSC regarding cancellation of the candidature due to non-submission of the originals at the time of the interview as their true photocopies were on record and subsequently, the originals were also submitted before BPSC. This Court was of the opinion that the plea of non-submission of the originals at the time of interview is neither related to the qualification nor eligibility and a verification and vigilance report is anyway obtained by the State during probation. Therefore, the production of the original was not a mandatory condition. The stand of the BPSC had materially resulted in the dis-qualification of candidates who were otherwise in the merit list. Therefore, in the facts and circumstances of the case, this Court directed that the rejection of candidature was improper, unjustified and not warranted.

11. This Court granted relief to the eight candidates in the civil appeal of ***Aarav Jain (supra)*** by adjusting the available five vacancies in the unreserved category and for the other three candidates belonging to EBC, SC and BC category, it was directed to the State to either adjust them

against future vacancies which were stated to be available at that time or the State was permitted to borrow three posts from future vacancies, one each in respective categories. It was also held that the power to vary the vacancies of the said advertisement always vests in the employer under the wisdom and discretion of the State. This Court gave weight to the fact that all the candidates secured marks more than the cut-off and, therefore, such meritorious candidates would only be an asset for the institution helping in disposal of cases. This Court further directed to allow to all these eight candidates the benefits of increment and other notional benefits at par to other selected candidates as per their merits without arrears of salary.

12. In the said appeal, one Jyoti Joshi filed an application for intervention seeking directions for her appointment in implementation of judgment dated 09.02.2022 passed in CWJC No. 7751 of 2020 by the High Court and also sought clarification to the effect that the interim order dated 23.07.2021 passed in ***Aarav Jain (supra)*** has not interfered with her appointment. This Court dismissed the said intervention application vide the judgment passed in ***Aarav Jain (supra)*** and denied her the benefit because she was in the waiting list and not in the merit list. More so, the interim orders dated 23.02.2021, 08.10.2021 and 07.02.2022 passed in ***Aarav Jain (supra)***, keeping the posts vacant, being prior in time, have also not been brought to the notice of the High Court, before passing of the final order dated 09.02.2022. It is apparent that the civil appeals filed in the case of ***Aarav Jain (supra)*** have been decided in favour of the candidates and against the employer and the said order was already implemented.

13. We have heard learned counsel for the parties and have perused the Bihar Civil Service (Judicial Branch) (Recruitment), Rules, 1955 (hereinafter referred to as the '**Rules**') and the Advertisement No. 6 of 2018. Rule 7(b) of the Rules contemplates that a candidate must satisfy BPSC that his character is such as to qualify him for appointment to the service. Rule 9 prescribes that the candidate should submit evidence as to educational qualifications; certificate of character from the Heads of the Colleges, where he/she has studied; the reference of two known persons; certificate of medical practitioner in prescribed form; and the certificate of the duration of practice from the respective authorities. The second note to Rule 9 indicates that the certificates and other documents required should

be true copies of the originals and each of them should be certified by a gazetted officer, specifying that after seeing the original, he certified the true copy of the same. The candidate may be required to produce the original before BPSC at the time of *viva voce* test.

14. In view of this position in the rules it can safely be perceived that the candidate must be of good character so as to satisfy BPSC in this regard by submitting true photocopies and upon requirement by BPSC, the original may be produced at the time of *viva voce* test. Therefore, it is clear that the candidate should possess the character certificate and if required, it may be made available at the time of interview. The said language makes it clear that the production of the original certificates at the time of interview is not mandatory but directory. This is apparent from the language of second note to Rule 9 which uses the word "may be required to produce the originals before commission at the time of viva-voce test".

15. In furtherance to the Rules, the advertisement No. 6 of 2018 was issued. Clause 7(ii) of the said advertisement is regarding online applications which prescribes that for any defects in entry made by candidate in the course of filling the online application, the commission shall not be responsible, and correction and change in this regard shall not be permissible. As per Clause 8(1) of the advertisement, the documents attached to the online application form may be produced when the commission demands at the time of the interview or at any point of time. As per Clause 9, the certificates regarding qualification is required to be possessed prior to the last date. As per Clause 10, all the certificates and marksheets are required to be submitted at the time of interview and the commission shall have discretion to take a decision regarding eligibility of candidates not complying with the said directions. Clause 11 of the advertisement relates to the fact that the candidate shall ensure that he has all the required certificate in original at the time of filling of application form.

16. In view of the various clauses, as referred to hereinabove, even going by the advertisement, the certificates of educational qualification and other required documents on the date of the submission of the online application form must be necessarily possessed but its production is not mandatory. In clause 3 of the interview letter sent to the candidates, indeed it was mentioned that they shall be present with the certificates, mark-sheet

and other documents including character certificate, in original form and its self-attested photocopies in two numbers. Appellant Sweety Kumari has averred in the writ petition and the Special Leave Petition that her original character certificate was submitted in the State Bar Council and the same was not made available to her within the stipulated deadline despite her best attempts. On the other hand, appellant Vikramaditya Mishra has averred that the department of his Law College has sent the original character certificate to the Controller of Examination, BPSC by post which was dispatched on 25.11.2019 and delivered to BPSC on 27.11.2019. Despite, the same, their candidature was rejected for want of original copies of the character certificate.

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

18. The view taken by this Court is fortified by the analogy drawn in the case of ***Charles K. Skaria and Others vs. Dr. C. Mathew and Others*** **(1980) 2 SCC 752** whereby Justice Krishna Iyer speaking for the Court held that the factum of eligibility is different from factum of proof thereof. This Court held that if a person possesses eligibility before the date of actual selection, he cannot be denied benefit because its proof is produced later.

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

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

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

21. As per the directions issued by this Court vide order dated 14.8.2023, the Registrar General of the High Court of Judicature at Patna filed an affidavit after perusing the documents produced before him by the State of Bihar and the BPSC. In the said affidavit, it is admitted that the case of the appellants Sweety Kumari and Vikramaditya Mishra is similar to the case of ***Aarav Jain (supra).*** As per the information furnished by the High Court, appellant Sweety Kumari in SC category secured 414 marks when the cut-off was 405 marks and the appellant Vikramaditya who applied under unreserved category secured 543 marks whereas the cut off under the unreserved category was 517. It is also fairly stated that in the 30th Examination, the total vacancies were 349 but after issuing of the directions by this Court, the State appointed 351 candidates deducting one post each of EWS and SC category from the future vacancies which were to be advertised under the 32nd Examination.

22. Learned counsel for the appellant Sweety Kumari has fairly stated before this Court that she got selected in the 31st Examination under the SC category and joined the service. In view of the discussion made hereinabove and the affidavit filed by the Registrar General, it is clear that the case of appellant Sweety Kumari and appellant Vikramaditya Mishra are at par with the case of Aarav Jain and other seven candidates who were appointed in furtherance of the judgment of this Court dated 23.05.2022 in ***Aarav Jain (supra).***

23. Appellants in ***Aarav Jain (supra)*** have been appointed by the State Government extending the number of vacancies advertised in the 30th Examination by borrowing those extra vacancies from the 32nd Examination. The vacancies notified for the 32nd Examination are in process of being

filled. The case of appellants Sweety Kumari and Vikramaditya Mishra were dismissed by the High Court relying upon its earlier judgment dated 04.05.2021 in *Aarav Jain v. The Bihar Public Service Commission* (CWJC No. 24282/2019). The said judgment dated 04.05.2021 was challenged by Aarav Jain and seven other candidates by filing special leave petitions. The said special leave petitions were converted into civil appeals and this Court vide judgment dated 23.05.2022 set-aside the judgment dated 04.05.2021 of the High Court.

24. Therefore, there cannot be any reason to deny similar benefits to the present two appellants at par with Aarav Jain and seven other candidates as ordered by this Court in ***Aarav Jain (supra)***. We are of the considered view that present aforesaid two appellants (Sweety Kumari, Vikramaditya Mishra) cannot be discriminated by not granting relief merely because of non-availability of vacancies in the 30th Examination.

25. Reverting to the case of appellant Aditi, which is related to the 31st Examination, as per the affidavit submitted by the Registrar General, it is apparent that out of 221 vacancies advertised, only 214 candidates were recommended for appointment and seven vacancies have been carried forward to the 32nd Examination. Thus, there are vacancies, which are yet to be filled up for the 32nd Examination. The process of selection is not yet complete. Learned counsel appearing on behalf of the State of Bihar and BPSC, in the peculiar facts of the case, have fairly stated that because of the directions issued by this Court in the case of ***Aarav Jain (supra),*** the other candidates who secured more marks than the cut-off in the merit of the respective categories, can be accommodated. However, upon issuance of directions by this Court, the State Government is ready to accommodate all the three candidates (namely Sweety Kumari, Vikramaditya Mishra and Aditi) who have also secured more marks than cut-off for their respective categories.

26. In view of the discussion made hereinabove, because Sweety Kumari secured 414 marks though cut off in SC category was 405 and Vikramaditya Mishra secured 543 marks, though cut off was 517 in the unreserved category in the 30th examination and they were candidates of merit, they be extended the benefit at par with the ***Aarav Jain (supra)*** and others.

27. The appellant Aditi appeared in 31st Examination, and secured 501 marks, whereas cut off was 499 in EWS category. Therefore, the respondents are directed to adjust one vacancy of EWS for the same examination or from the next examination and extend similar benefits to Aditi, in view of the ratio of ***Aarav Jain (supra).***

28. Accordingly, we set-aside the impugned judgments dated 03.11.2021, 04.09.2021 and 19.04.2023 passed by the High Court. The appellants Sweety Kumari and Vikramaditya Mishra be accommodated being successful candidate in the 30th Examination and appellant Aditi be accommodated being a successful candidate in the 31st Examination.

29. We clarify that this judgment is passed in the peculiar facts of the case to mitigate the plea of discrimination to candidates who are before us and who knocked the door of the court well within time. It is made clear here that similarly situated candidates would not be entitled to claim the same benefit further, because they have not come before this Court within a reasonable time.

30. In view of above, the appeals are allowed. Pending application, if any, stands disposed of. No order as to costs.

**Headnotes prepared by:**
**Divya Pandey**

**Appeals allowed.**