

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10583 of 2021

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Dolly Kumari D/o Sunil Kumar R/o Village- Alinagar Bihar Sharif, P.s.- Bihar,
Distt.- Nalanda

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary, Home department, Govt. of Bihar, Patna
2. The Director General of Police, Govt. of Bihar, Patna
3. The Inspector General of Police, (Recruitment) Govt. of Bihar, Patna
4. The Senior Superintendent of Police, Patna, Bihar, North of Gandhi Maidan
5. The Chairman Bihar Police Subordinate Service Commission, Santosh Mansion, B-Block, R.P.S. Law College, Raghunath Path, Danapur, Patna
6. The Secretary, Bihar Police Subordinate Service Commission, Santosh Mansion, B-Block, R.P.S. Law College, Raghunath Path, Danapur, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Dr. Anjani Pd. Singh, Advocate
For the Respondent/s	:	Mr. Ajay Kumar, AC to GP 4
For the BPSSC	:	Mr. Sanjay Pandey, Advocate
	:	Mr. Nishant Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 08-12-2021

In the instant petition, petitioner has sought for the following relief/reliefs:

- a) To publish the result of petitioner who qualified in written test as well as physical test in the exam conducted by Bihar Police Subordinate Service Commission Patna but the respondents rejected her only on the ground that she type "BC" in place of EBC in Category section of online application in advertise No. 01/2019 for the post of Sub Inspector.
- b) Issue a writ, order, orders or direction in nature of mandamus directing the respondents to correct the category as 'EBC' in place of 'BC' in the application form of Bihar Police Subordinate Service Commission.



c) Issue writ, order or direction in nature of mandamus directing the respondents to consider the candidature of the petitioner in Bihar Police Subordinate Service Commission adv. No. 01/2019 for the post of sub inspector and allow the petitioner for commencement of training.”

Pursuant to the advertisement dated 21.08.2019, petitioner as a female candidate submitted application for the post of Police Sub-Inspector. The advertisement is for four types of posts namely Police Sub-Inspector, Sergeant, Assistant Superintendent Jail (Direct Recruitment) and Assistant Superintendent Jail (Ex- Servicemen). The petitioner instead of claiming reservation under EBC, wrongly mentioned in the application as BC (Backward Classes). She was permitted to participate in the process of selection like written examination and physical test and she has cleared all those examinations including physical efficiency test which is stated to have been held on 06.04.2021. She was not permitted to participate for further process on the score that petitioner’s claim is under EBC category whereas she has written in the application as BC category. In the result, petitioner’s application is to be cancelled in terms of conditions stipulated in the advertisement paragraph Nos. 2, 3, 6.

Learned counsel for the petitioner submitted that there is error committed by the petitioner in filling up of application form only to the extent of BC, Backward Classes in stead of EBC. It is a curable defect, therefore, petitioner’s candidature is to be considered under EBC category while curing the defect.



Per contra, learned counsel for the respondents submitted that petitioner's candidature is rightly not considered due to error committed by the petitioner while filling up the application form and such application is to be cancelled in terms of conditions stipulated in the advertisement. In support of the rejection of the petitioner's application, counsel for the respondent relied on paragraph 12 in the case of ***Jyoti Jaiswal vs. The State of Bihar Others in CWJC No. 6632 of 2019.***

“This Court, on the contrary, finds that the present case is squarely covered by the judgments rendered by the learned Division Bench of this Court in the case of ***Central Selection Board of Constable vs. Raj Kumar*** (supra) and in the case of ***Anil Kumar*** (supra) as also by the one rendered by the Hon'ble Apex Court in the case of ***Bedanga Talukdar*** (supra). This Court, upon having considered the submissions advance by the learned counsel for the petitioner, finds that the petitioner had filled the wrong Class/caste category in the application form, thus she has engaged in suppressio veri and suggestio falsi inasmuch as if the petitioner was knowing that she has applied under the EBC category instead of the BC category, nothing had prevented her from either bringing the said fact to the notice of the authorities at the time of sitting in the prelims examination or the mains examination itself or having not at all appeared in the prelims examination or the mains as an EBC category candidate knowing fully-well that she belongs to the BC category, hence, such a person does not deserve any sympathy. In this connection, reliance is placed on a judgment rendered by the Hon'ble Apex Court in the case of A.P. Public Service Commission (supra).”

Heard learned counsel for the respective parties.

Crux of the matter in the present petition are two folds namely whether the petitioner's candidature could be considered under EBC category as claimed by her instead of BC category as mentioned by her in application. Further, whether selecting authority can cancel the entire



application of the petitioner for the purpose of Police Sub Inspector for which petitioner has applied. Undisputed facts are that the petitioner is a candidate for the post of Police Sub Inspector. The age criteria for general merit for women is 20 years to 40 years. The petitioner's age is 29 years. Pursuant to the decision in the case of ***Jyoti Jaiswal vs. The State of Bihar Others in CWJC No. 6632 of 2019*** read with conditions imposed in the advertisement, the petitioner's candidature cannot be considered against EBC category for the reasons that she has written BC category and she is not entitled to consider her case under EBC category in view of the various conditions stipulated in the advertisement dated 21.08.2019.

Rejection of petitioner's application for the purpose of Police Sub Inspector in entirety is concerned it is not appropriate for the reasons that a candidate is entitled to participate under GM category (General Merit Category) as well as reservation category. If the petitioner is a candidate failed to fulfil the criteria for the purpose of claiming any reservation like BC, EBC, SC/ST, in such circumstances his/her candidature is required to be cancelled only in respect of claim to the reservation category. If he or she is otherwise eligible to be participated in selection under GM category with reference to age criteria, he or she is entitled to participate in the process of selection under GM and reservation category. In the present case petitioner's candidature has been cancelled in the light of the fact that petitioner has indicated her claim is under BC category instead of EBC category. In



the result, the selecting authority was required to consider petitioner's claim under GM category as she fulfills the eligibility criteria.

There is no reservation for posts in the general category. All candidates, in respect of whether they belong to backward classes or not, or entitled to compete for post, for the general category, on their merit the general category posts are not reserved in favour of persons other than those who belonged to the Scheduled Castes, Scheduled Tribes and the Other Backward Classes. This course are open to be filled up solely on the basis of merit, in respect of the caste status of the candidate who appeared in the process of selection to a post like in the present case Police Sub-Inspector, Sargent, Assistant Jail, Superintendent (Direct) and Assistant Jail Superintendent (Establishment).

Recently, Hon'ble Apex Court in the case of **Saurav Yadav and Ors. vs. State of Uttar Pradesh** reported in **(2021) 4 SCC 542** observed that meritorious candidates of reserved categories to migrate and get selected under general category would amount to "communal reservation" (the principle that candidate belongs to any of the vertical reservation categories are entitled to be selected in "open or general category is well settled). It is also well accepted that if such candidates belongs to reserved categories are entitled to be selected on the basis of their own merit, their selection cannot be accounted against the quota reserved in the categories for vertical reservation that they belong. It is also made an observation that "the open category is open to all, and the



only condition for candidate to be shown in it is merit, regardless of whether reservation benefit either type is available to her or him.

In view of these facts and circumstances, the concerned respondent, selecting authority is hereby directed to consider the petitioner’s candidature under GM quota/category and in permitting petitioner to participate in further process to the post of Police Sub Inspector.

Petition stands allowed in part.

At this juncture, learned counsel for the State/Service Commission submits that process of selection is completed and petitioner is required to implead last candidate as necessary and proper party. The same contention has been taken in the counter statement. Counsel has not addressed the argument when the matter is taken up. He has made such submission only after dictating the aforesaid order. Therefore, if the Commission found that there is a hurdle in implementation of the present order and third party right is likely to be affected, in such an event, the third party shall be given notice thereafter proceed in accordance with law.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	17.12.2021
Transmission Date	

