

IN THE HIGH COURT OF JUDICATURE AT PATNA
CWJC No.10121 of 2008
RUPA KUMARI
Versus
THE STATE OF BIHAR & ORS
WITH

CWJC No.9446 of 2008
ARCHANA KUMARI SINHA
Versus
THE STATE OF BIHAR & ORS
WITH

CWJC No.9956 of 2008
LUSI KUMARI
Versus
THE STATE OF BIHAR & ORS
WITH

CWJC No.9677 of 2008
RANJANA SINHA @ RANJAN SINHA
Versus
THE STATE OF BIHAR & ORS
WITH

CWJC No.9682 of 2008
RAKESH KUMAR & ANR
Versus
THE STATE OF BIHAR & ORS
WITH

CWJC No.9968 of 2008
KUMARI ARCHANA SINGH
Versus
THE STATE OF BIHAR & ORS
WITH

CWJC No.10387 of 2008
SHASHI PRABHA MANI
Versus
THE STATE OF BIHAR & ORS
WITH

CWJC No.10189 of 2008
MANISH KUMAR ANAND & ORS
Versus
THE STATE OF BIHAR & ORS
WITH

CWJC No.10945 of 2008
KUNJAN PRASAD

Versus
THE STATE OF BIHAR & ORS
WITH

CWJC No.9321 of 2008
BAIKUNTH NATH
Versus
THE STATE OF BIHAR & ORS
WITH

CWJC No.11241 of 2008
SANJEEV KUMAR
Versus
THE STATE OF BIHAR & ORS
WITH

CWJC No.9331 of 2008
AMIT KUMAR
Versus
THE STATE OF BIHAR & ORS
WITH

CWJC No.10059 of 2008
RAJOO KUMAR
Versus
THE STATE OF BIHAR & ORS
WITH

CWJC No.9444 of 2008
NADIR FAISAL
Versus
THE STATE OF BIHAR & ORS
WITH

CWJC No.11260 of 2008
MITHILESH KUMAR SAH
Versus
THE STATE OF BIHAR & ORS
WITH

CWJC No.11316 of 2008
PARSHURAM SINGH
Versus
THE STATE OF BIHAR & ORS
WITH

CWJC No.12692 of 2008
MANJU KUMARI
Versus
THE STATE OF BIHAR & ORS

For the Petitioners :

M/S Rajendra Prasad Singh
Devendra Kumar Sinha
Rajendra Narain
Sunil Kumar Singh

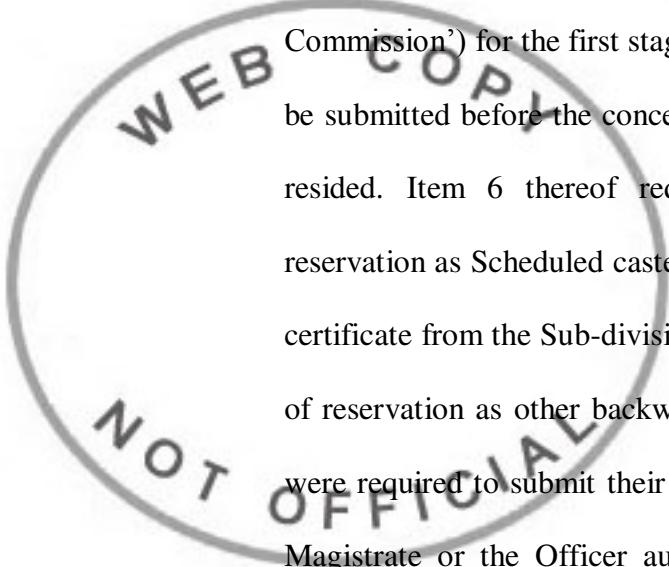
For the Staff Selection Commission : Mr. P.K. Shahi

For the State : AAG X & G.A. V.

2. 30.09.2008 The selection process for appointment on the post of Sub-Inspectors of Police was divided into two parts. The candidates were first screened to test physical fitness for appointment in the Police force. Those who competed, were then invited to appear at a written examination in which the answer sheets were in the O.M.R. (Optical Marker Reader) format.

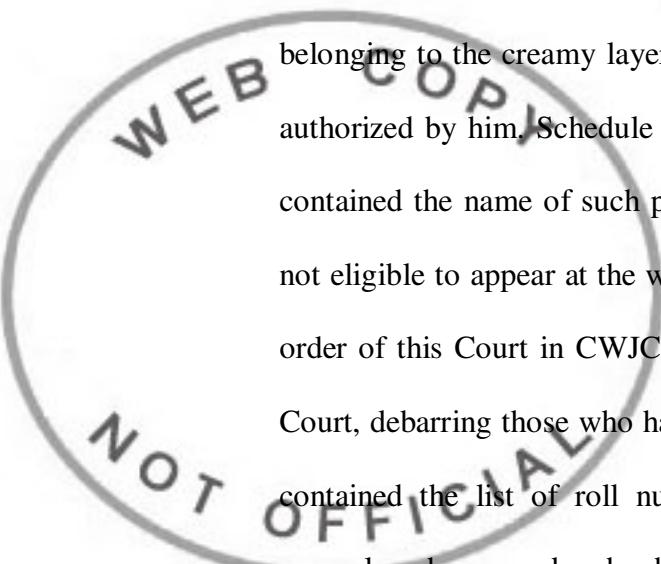
Advertisement no. 704 was published on 21.9.2004 by the Bihar Staff Selection Commission (hereinafter referred to as 'the Commission') for the first stage of screening. The applications were to be submitted before the concerned Range, within which the applicant resided. Item 6 thereof required those claiming the benefit of reservation as Scheduled castes/Scheduled tribes, to submit their caste certificate from the Sub-divisional Officer. Those claiming the benefit of reservation as other backward class or extremely backward castes were required to submit their caste certificate either from the District Magistrate or the Officer authorized by him. Clause 9 stated that incomplete and defective applications shall be rejected.

The petitioners who belonged to reserve category of other backward castes and extremely backward castes submitted their caste certificate including creamy layer certificate issued by the Sub-divisional Officer. The applications were scrutinized not by the



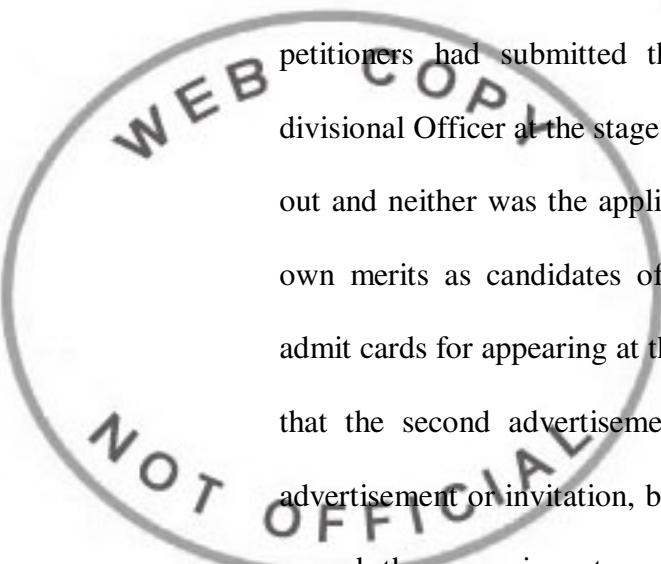
Commission but at Range level by the officials and screening by physical test held at the Range level. They competed in the screening successfully and became eligible to appear at the written examination.

The Respondents published a fresh advertisement dated 13.10.2007, with details of the syllabus for the written examination papers and procedures requiring the successful applicants to purchase the O.M.R. forms and apply afresh in the prescribed format. Item 6 of this fresh advertisement provided that those claiming benefit of Scheduled castes and Scheduled tribes status must submit caste certificate from the Sub-divisional Officer. Those claiming the benefit of other backward castes and extremely backward castes were required to submit their caste certificate including that of not belonging to the creamy layer from the District Magistrate or Officer authorized by him. Schedule I to the advertisement dated 13.10.2007 contained the name of such persons, who were under or overage and not eligible to appear at the written examination, or for reasons of the order of this Court in CWJC No. 6088 of 2006 upheld by the Apex Court, debarring those who had applied from two places. Schedule II contained the list of roll numbers of persons from all categories, general and reserved, who had otherwise qualified at the physical screening test, but their applications were wanting in supporting papers. For want of such papers the candidate could have been disqualified at the screening stage though otherwise found physically fit. For example, in absence of requisite certificate a reserve candidate was to be treated as a general candidate when the physical parameters



for the two were different. If the caste certificate claimed in the application was made available, on his own statistics the candidate shall be declared to have cleared the screening process. This was on basis of the scrutiny now done by the Staff Selection Commission as distinct from the earlier scrutiny at the screening stage done at the Range level. The question papers and answer sheets in the OMR format were given to the candidates in the examination hall enclosed in a sealed envelope. The examination centers were under videograph surveillance. The OMR answer sheets were then screened by computerized method. The final results were published on 30.5.2008.

Leading the arguments on behalf of the petitioners, learned Senior counsel, Sri Rajendra Prasad Singh, submitted that the petitioners had submitted their O.B.C. certificate from the Sub-divisional Officer at the stage of screening. No deficiency was pointed out and neither was the application rejected. They competed on their own merits as candidates of the reserve category and were issued admit cards for appearing at the written examination. It was contended that the second advertisement dated 13.10.2007, was not a fresh advertisement or invitation, but only an information to those who had passed the screening stage. The petitioners again submitted their O.B.C. certificate including that of not belonging to the creamy layer issued by the Sub-divisional Officer. Being satisfied that their applications were in order, admit cards were issued and they appeared at the written examination commencing from 19th April, 2008. It was next emphasized that by corrigendum 28.1.2008, 30.1.2008 and



6.4.2008 the Respondents had permitted certain applicants, including the reserve category, to make up the deficiency in their applications with regard to caste and creamy layer certificates. The name of the petitioners did not figure in any of these notifications. The petitioners, therefore, presumed that all was in order. If there was a deficiency of absence of the caste and creamy layer certificate from the competent authority, the petitioners were also required to be noticed, like the others with an opportunity to remove the defect.

Referring to item 9 (distinct from clause 9 of the advertisement) of Schedule II of the 2nd advertisement dated 13.10.2007, it was submitted that the Respondents had allowed the candidates successful in the physical test to submit fresh certificate including that of creamy layer when the original applications submitted were defective as not being from competent authority. Such defective applications were required to be rejected under clause 9 of the advertisement. The petitioners were not intimated or given such opportunity at the second stage of the examination in response to the second advertisement dated 13.10.2007.

When final results were published on 30.5.2008 the name of the petitioners did not find place. Persons with lesser marks have been declared successful and were recommended for appointment. The counter affidavit only urges the absence of non-creamy layer certificate from the District Magistrate to deny the candidature of the petitioners. The petitioners were not obliged to submit the same along with the application and could have done so at the time of

appointment for which reliance was placed on a Government instruction dated 2.2.1982. The petitioners have no objection to the submission of non-creamy layer certificates from the District Magistrate. Once they have been allowed to appear at the final examination, all issues with regard to the alleged absence of any proper caste certificate with non-creamy layer declaration from the competent authority lose relevance and the Respondents themselves are deemed to have condoned it. The petitioners are, therefore, entitled to be recommended for appointment. Reliance has been placed on a Division Bench judgment of this Court reported in 2008(2) PLJR 155 (Bihar Public Service Commission & ors. v. State of Bihar & ors.).

Sri Rajendra Narain, Advocate for the petitioner, in CWJC

9321 of 2008 submitted that the caste and creamy layer certificate is issued in a printed format which bears the printed official description of the S.D.O. as the signatory. Quite naturally the petitioners presumed that the S.D.O. was competent to issue such certificate.

Learned Senior counsel, Sri D.K. Sinha, in CWJC 9956 of 2008 submitted that the petitioners had submitted their caste certificate and non-creamy layer certificate from the District Magistrate at the stage of screening and, therefore, the submission of the caste certificate only at the second stage under advertisement dated 13.10.2007 shall not vitiate their application.

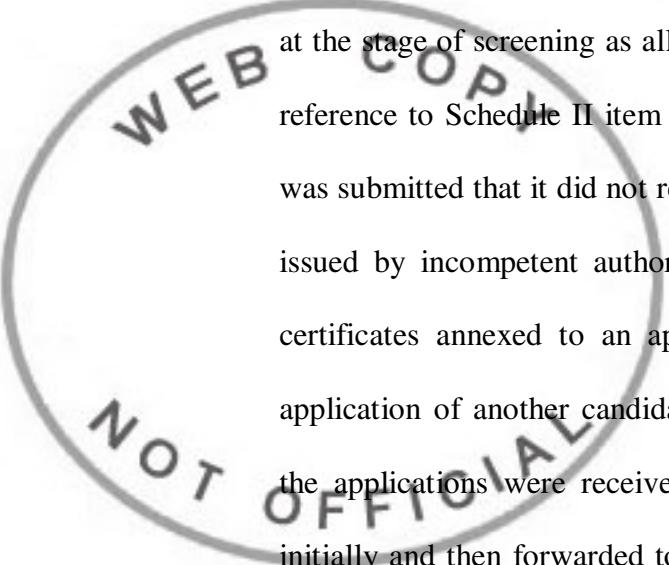
In CWJC 10945 of 2008 and 11260 of 2008 it was submitted on behalf of the petitioners that once they were allowed to appear at the main examination and results declared any issue of

deficiencies in the applications becomes irrelevant and the respondents are estopped from refusing to recognize the petitioners as valid candidates. Reliance was placed on (1992) 2 SCC 411 (Amrit Banaspati Co. Ltd. & anr. V. State of Punjab & anr.). In any event the conditions of the advertisement were directory and not mandatory. Reliance was placed on (1979) 2 SCC 196 (M/S Atlas Cycle Industries Ltd. & ors. V. The State of Haryana).

Learned Advocate General appearing for the State submitted that the issue of creamy layer certificate was extremely important at the final stage of selection as distinct from the first stage of screening. Those from other backward castes or extremely backward castes belonging to the creamy layer were not eligible for appointment.

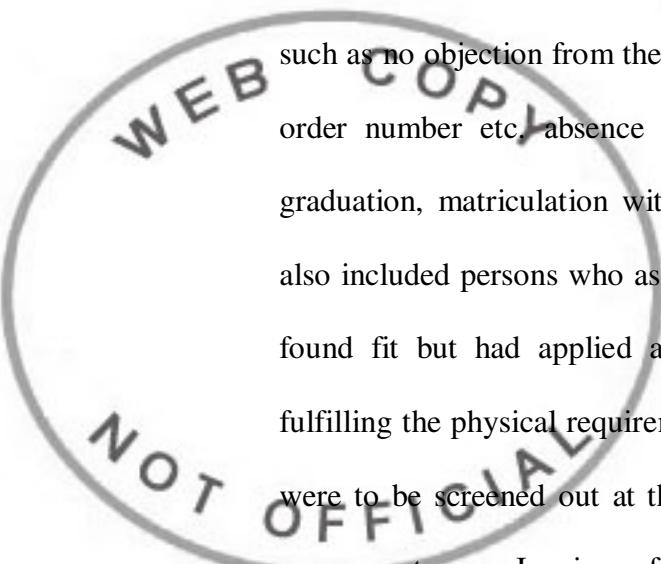
Learned Advocate General emphasized the dual process of selection and submitted that the two stages and the requirement for the two stages could not be combined and treated as one. Stage one was a screening process of physical test only. Those successful were alone to be called for the written test. The roll numbers mentioned in Schedule II of the advertisement dated 13.10.2007 contained persons from all categories, reserve and general, when opportunity was given to all to make up the deficiency in their application, who had otherwise passed in the physical test, without favour or caste. Physical fitness was an important issue for appointment in the Police. The Respondents decided to give them one more opportunity evenly since the written test still remained. In view of the large number of defects

in the application found by the Commission, which had been earlier scrutinized at the Range level, the Commission uniformly relaxed clause 9 of the advertisement for all such candidates. The petitioners have not been denied consideration at the stage of screening as persons in the reserve category in absence of proper caste certificate who have competed successfully and have been invited to appear at the main examination. The petitioners also had full opportunity under the second advertisement dated 13.10.2007 to submit the caste and non-creamy layer certificate from the District Magistrate but again chose to submit it from the Sub-divisional Officer who was not competent under the advertisement. They did not care to read the advertisement properly. The creamy layer issue was not very relevant at the stage of screening as all and sundry could have appeared. With reference to Schedule II item 9 of advertisement dated 13.10.2007, it was submitted that it did not relate to those who had given certificates issued by incompetent authorities but it related to cases where the certificates annexed to an application were found mixed with the application of another candidate. This mix up had occurred because the applications were received at the range level, scrutinized their initially and then forwarded to the Commission. The Commission on scrutiny found deficiencies which were only pointed out.



The ever increasing world of competition has necessitated processes of screening by rejection of applications at the stage of scrutiny, at screening test and then final examination. The three stages are different and the question of treating them as one class and

demanding equality of treatment does not appeal to the Court and cannot be accepted. The selection related to appointment as Sub-Inspectors of Police. At the stage of screening whether the candidate belonged to the reserve category or the general category was not very relevant. What was relevant was the physical competence given the nature of the duties required of a Police Officer as distinct from the physical fitness required for a civilian post. Once the Respondents found physically competent persons at the screening, they then decided that those who are otherwise physically fit and would be useful to the Police, were losing out only because of absence of certain supporting documents in their application at the stage of screening. This may be either for absence of necessary documents such as no objection from the previous employer, defects in the postal order number etc, absence of passport size photograph, proof of graduation, matriculation with marks sheet, caste certificate etc. It also included persons who as general category candidates may not be found fit but had applied as reserve category candidates and are fulfilling the physical requirement as a reserve category candidate but were to be screened out at the initial stage for lack of certificate of reserve category. In view of large number of defective applications evident from Annexure II of the advertisement dated 13.10.2007, and that next stage of selection still remained to be crossed, the Respondents uniformly thought it prudent to grant an opportunity to one and all irrespective of the category to make up the deficiency. This formed one category of persons who had submitted deficient



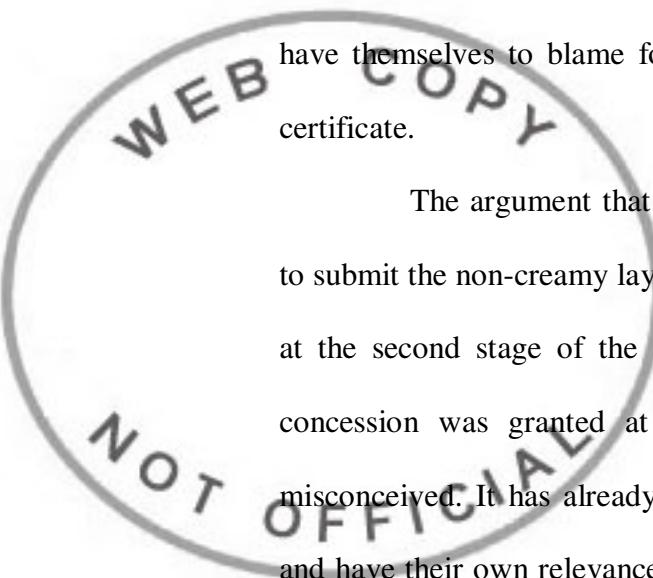
applications at the stage of screening. Persons like the petitioners, who had applied as reserve category candidates and met the physical standards of that category and had submitted certificates, formed a separate category. They were also given a second opportunity to submit certificates from the competent authority under advertisement dated 13.10.2007.

This Court finds no illegality in such relaxation granted uniformly to candidates of all categories at the stage of screening. In (1998) 4 SCC 179 (Ashok Kr. Uppal & ors. V. State of J. & K. & ors.) It was held that under service jurisprudence as also administrative law power has necessarily to be conceded to the employer particularly the State Government or Central Government who have to deal with hundreds of employees, to meet situation where injustice might have been caused or is likely to be caused. Again in (1997) 10 SCC 298 (Sandip Kumar Sharma v. State of Punjab) it has been held at paragraph 14 as follows :

“The power of relaxation even if generally included in the service rules would either be for the purpose of mitigating hardships or to meet special and deserving situations. Of course, arbitrary exercise of such power must be guarded against. But a narrow construction is likely to deny benefit to the really deserving cases. We too are of the view that rule of relaxation must get a pragmatic consideration so as to achieve effective implementation of a good policy of the Government.”

This Court has no hesitation in holding that persons like the

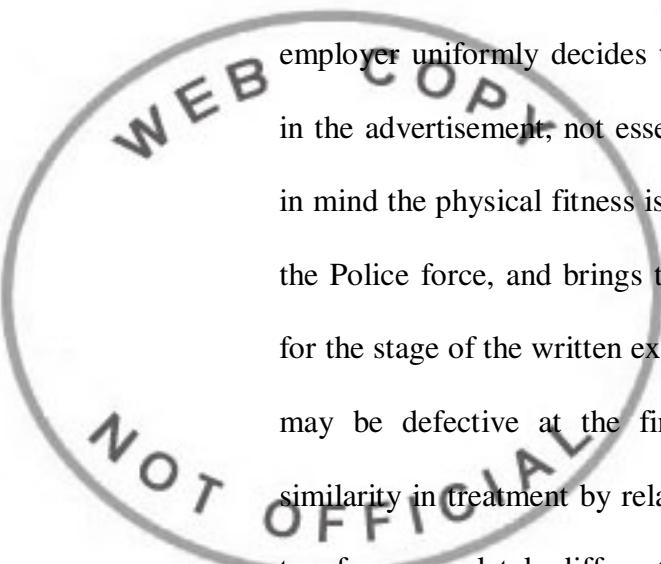
petitioners were not prejudiced in any manner by the opportunity given to those in the first category when they were permitted to make up the deficiency in the first stage of selection. Once the deficiency in the first stage of selection was made out, both the categories of persons were on a level playing field for the second stage. That those who were given the opportunity to make up the deficiency in the first stage may automatically have fulfilled the requirements of necessary certificate under clause 6, including non-creamy layer, of the advertisement dated 13.10.2007, simultaneously, is hardly of any relevance given that persons like the petitioners were also given this fresh opportunity. If the petitioners chose not to comply the advertisement dated 13.10.2007 on a mistaken assumption they only have themselves to blame for this lapses in submission of a wrong certificate.



The argument that they must also be given the opportunity to submit the non-creamy layer certificate from the District Magistrate at the second stage of the selection process on the plea that such concession was granted at the screening stage is fallacious and misconceived. It has already been held that two stages are different and have their own relevance. The argument that advertisement dated 13.10.2007 was not a fresh advertisement and required no further action or submission in addition to that given under advertisement dated 21.9.2004, i.e. S.D.O.'s certificate submitted by the petitioners cannot be accepted. The candidates at the two stages fell in two different categories. Article 14 permits class legislation but not

classification. If the authorities decided to grant certain benefits uniformly to those at the first stage of examination, there is no occasion for those at the second stage of examination to demand similar treatment by pleading equality and discrimination. The question of any parity in between them does not arise. The Court is unable to hold this to be unreasonable.

An advertisement once issued is a notice to every intending applicant. The stipulations provided therein bind the applicant upon pain of invalidation of the application for non-fulfillment of the conditions. The issue of relaxation of the conditions is for the employer to decide. There can be no relaxation of essential conditions and there can be no relaxation for individual applicants. But, if the employer uniformly decides to grant relaxation of certain stipulation in the advertisement, not essential, at the stage of screening, keeping in mind the physical fitness issue of the candidates for appointment in the Police force, and brings them at a level playing field with others for the stage of the written examination, the others whose applications may be defective at the final stage of selection cannot demand similarity in treatment by relaxation as at the stage of screening. The two form completely different classes and cannot be put at par so as to urge hostile discrimination and a similar opportunity for removing deficiencies in applications. An advertisement shall be governed by its own conditions and no external aid by way of notification can be invoked to expand the meaning and the scope of the advertisement. The notification dated 2.2.1982 relied upon by the petitioners provides



that at the stage of application a certificate of backward status by the S.D.O. was permissible. The petitioners clearly got the benefit of the same. The very same notification then states that at the final stage the caste certificate and non-creamy layer certificate had to be that of the District Magistrate or person authorized by him and verified and countersigned by the District Magistrate. That is what advertisement dated 13.10.2007 stipulates.

There are no allegations of any illegality in the process of screening at the stage of physical test.

All the three corrigendums dated 28.1.2008, 30.1.2008 and 6.4.2008 issued after the fresh advertisement dated 13.10.2007 added certain more names to Schedule II. A bare perusal of the corrigendum reveals that it contains those names which should have been included in Schedule II but were inadvertently left out. Nothing new has been done by it. The corrigendum dated 6.4.2008 was only with regard to non-receipt of OMR form a candidate and opportunity to do so. In any event the candidate named in the corrigendum dated 6.4.2008 has not been impleaded as party Respondent.

Reliance by the petitioners on a decision of this Court in the case of Bihar Public Service Commission (supra) is of no avail to them. In the present case, advertisement dated 13.10.2007 specifically requires other backward/extremely backward caste candidates to submit caste certificate including non-creamy layer from the District Magistrate or an Officer authorized by him. In the judgment relied upon, the advertisement itself provided that the caste certificate of

O.B.C. or E.B.C. issued by the District Magistrate or counter-signed by him or issued by Additional Collector authorized by the District Magistrate or Sub-divisional Officer including that of not belonging to the creamy layer was to be produced at the time of the candidates' interview. The interview letter now restricted such certificate to that issued by the District Magistrate or counter-signed by him or by the Additional Collector authorized. The Court held that this was a deviation from the original advertisement permitting a certificate from the Sub-divisional Officer also. Therein lies the distinction.

This Court considers it appropriate to quote paragraph 11 of the said judgement.

“ 11. We find from the advertisement, Annexure-2, that it was not required that any candidate staking claim to be appointed against the vacancies reserved for members of the Other Backward Classes or extremely Backward Classes should obtain caste certificate or creamy layer certificate only from District Magistrate or authorized Additional District Magistrate only. In fact, advertisement clearly mentioned that the certificate could be issued under the signature of District Magistrate or countersigned by District Magistrate if issued by the authorized Additional District Magistrate or it has been issued by the Sub-divisional Officer. There was no other requirement that so far as certificate issued by the Sub-divisional Officer is concerned, was also required to be countersigned by the District Magistrate or the Sub-divisional Officer was required to be authorized by the Collector before he was to issue caste or creamy layer certificate required for

this purpose.”

This Court on basis of the aforesaid discussions arrives at the conclusion that the examination was in two stages. The candidates at two stages formed separate class. If certain benefits were given to those in the first category to bring them at par with the second category when equal fresh opportunity was also given to those in the second category to submit their documents, which they failed to do, no cause of action shall lie on a claim of discrimination.

There is no merit in these writ applications. They are, accordingly, dismissed.

AKS/

(Navin Sinha, J.)

