

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.20405 of 2010**

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1. Ali Akbar, S/o Md. Islam, Resident of Village- Chhitauli, P.S.- Manjhagarh, Distt.- Gopalganj
  2. Prmod Kumar, S/o Sri Gauri Shankar Prasad, Resident of Village- Barauli, P.S.- Barauli, Distt.- Gopalganj
- .... .... Petitioners.

Versus

1. The State of Bihar through the Chief Secretary Government of Bihar, Patna.
  2. Bihar Staff Selection Commission through its Secretary, Patna
  3. Secretary, Bihar Staff Selection Commission, Patna
- .... .... Respondents.
- =====

**Appearance :**

For the Petitioner/s : Mr. Ibrahim Kabir, Advocate  
For the Commission : Mr. S. S. Sundram, Advocate  
For the Respondent/s : Mr. Manoj Kumar Ambastta, GP-14  
: Mr. Tripurari Nath Ambastta, AC to GP-14

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**CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH**  
**ORAL ORDER**

6 28-02-2014

In the instant writ application, the petitioners pray for issuance of an appropriate direction to the respondents to declare them successful against Advertisement no.1606/2006 issued for appointment for the post of Block Statistical Supervisor/Junior Statistical Assistant/Anweshak in their respective reserved categories.

2. The petitioners, who belong to Most Backward Class Category and Backward Class Category, applied pursuant to Advertisement published in the year 2006 inviting application for 224 posts in the department of Statistics and Evaluation.


3. In respect of Backward Class and Most Backward



Class candidates, the Advertisement provided that application shall be accompanied by a Caste certificate and non-creamy layer certificate issued by the District Magistrate. The Advertisement stipulated that in case, the requisite certificates were not annexed to the application form, the candidature of such candidates would be considered in the general categories. It is not in dispute that the petitioners, who applied under Backward Class and Most Backward Class category annexed caste certificate and non-creamy layer certificate from the concerned Sub-Divisional Officer of the area.

4. The grievance of the petitioners is that though they secured more marks than the last candidates selected in their category, still they were not declared successful. They state that as they did not produce the caste and creamy layer certificate granted by the District Magistrate, they were treated in General category and as they secured less marks than the candidates selected in that category (General), they were not declared successful.

5. The petitioners submit that production of caste certificate issued by the Sub-Divisional Officer would form substantial compliance and in any view of the matter, the respondents ought to have given them opportunity to produce the caste certificate granted by the District Magistrate. The petitioners



in support of their submission have relied upon a Division bench order dated 21.04.2011 passed in L.P.A. No.416 of 2009 (Rakesh Kumar & Ano Vs. The State of Bihar & Ors.), heard with other analogous appeals, in which the Court directed the respondents to give opportunity to the appellants to produce the necessary Certificate by appropriate authority, which opportunities were granted to some of the candidates thereof.

6. Furthermore, the order of the LPA. Bench in case of Rakesh Kumar (supra) was assailed before the Hon'ble Apex Court unsuccessfully by the respondents. The petitioners submit that they come within the non-creamy layer block in their respective reserved category, and had admittedly secured more marks than the last candidates selected in their category. Thus, the merit should not be ignored in larger interest of the society in picking the best candidates.

7. On the other hand, counsel for the Staff Selection Commission, submits that the order of the L.P.A. Bench in case of **Rakesh Kumar & Ano. Vs. The State of Bihar** (L.P.A. No. 416 of 2009), reported in 2011(3) PLJR 682, would not be of much help to the petitioners, as by another Division Bench in the matter of Tar Babu Yadav Vs. The State of Bihar and Others, reported in 2011(4) PLJR 185, the decision in case of Rakesh Kumar (supra)

has been held to be *per incuriam* the Full Bench judgment of this Court in Braj Kishore Prasad Vs. The State of Bihar & Others, reported in 1998(3) PLJR 34.

8. He submits that rather the case of the petitioners would stand covered by a Division Bench judgment in case of Harish Chandra Patel Vs. The State of Bihar & Ors., reported in 2012(1) PLJR 397, arising from the same Advertisement no.1606/2006.


9. I have heard the counsel for the parties. The issue is whether the respondents erred in not giving the benefit of reservation to the petitioners in the matter of appointments, as the caste certificate and creamy layer certificate produced was granted by the Sub-Divisional Officer, in place of District Magistrate. I find that the Advertisement specifically provided that in order to avail benefit of reservation, the Scheduled Castes and Scheduled Tribes candidate must annex in their application, a caste certificate and non-creamy layer certificates issued by the Sub-Divisional Officer and in case of a Most Backward Class Candidate or Backward Class Candidates, the application form should be accompanied by a caste certificate and non-creamy layer certificate issued by the District Magistrate. The Advertisement also spelt the consequence that in case of failure to annex such

certificates, the candidature of such candidates would be considered in general category.

10. It is not in dispute that the petitioners did not produce the said certificate issued by the District Magistrate. The conditions prescribed in the Advertisement was mandatory in nature, which view further stands fortified, as it also spelt the consequence of being disentitled to be treated in the said category for favour of benefit of reservation on failure to produce or annex such certificate.

11. Apart from this, I further find that the Government has made a policy decision that in the matter of claiming benefit of reservation for appointment, the Backward Class and Most Backward Class category should produce caste certificate granted by the District Magistrate alone. However, the policy did not insist necessarily a certificate from District Magistrate for any other purpose, other than employment and such certificate granted by the Sub-Divisional Officer and other authorized officers can be considered.


12. The Government in the Department of Personnel and Administrative Reforms way back vide letter dated 09.02.1994 (Annexure-A to the Counter Affidavit filed on behalf of respondent Nos. 2 and 3) communicated its policy that for



Most Backward Class and Backward Class categories for availing benefit of reservation for the purpose of appointment, the Certificate should be issued by the District Magistrate and for any other purpose other than the employment, even the caste certificate and non-creamy layer certificate of the Sub-Divisional Officer and other authorities mentioned in Clause -3 can be considered. The letter dated 09.02.1994 is reiterated in letter dated 6<sup>th</sup> May, 1995. Annexure-B to the Counter Affidavit filed on behalf of respondent Nos. 2 and 3.


13. The reliance made by the Petitioners on the judgment of Rakesh Kumar & Another (Supra) would not be of much help, as in the said case, the Commission had granted opportunity to some of the candidates to produce the caste certificate granted by the District Magistrate in the matter of appointment to the post of Sub Inspector of Police, while denying the said opportunities to others. In such background, the Division Bench observed that the other candidates should be given similar opportunities.

14. I find that in the instant case, opportunity was given to such candidates by individual notice as well as public notice. Even assuming that individual notice was not received, still public notice issued by the respondents cannot be ignored. A



similar plea was taken by the appellants in case of Harish Chandra Patel (Supra) arising from same advertisement that they did not receive individual notice to rectify the defect to bring such caste certificate issued by the District Magistrate. The Division Bench in paragraph 11 of the judgment, repelled the contention observing that even if they had not received individual notice they cannot have any complaints as there was public notice. Paragraph 11 of the Judgment is quoted herein below:

“11. In the present matter, as we have recorded hereinabove, the advertisement expressly specified that in case of Backward Class or Extremely Backward Class the application must be supported by a caste certificate issued by the District Magistrate. After the last date of receipt of the applications the Commission could not have accepted further materials. Nevertheless, the Commission did relax the requirement and allowed the candidates to produce the relevant materials even after the last date of receiving the applications until as late as 30th November 2009. Apart from individual intimation a public notice was also given. Although the Commission was under no obligation either to relax the requirement or to send individual intimation once the public notice was issued. Presuming that the appellants did not receive the personal intimation sent to them under postal certificate the appellants were required to respond to




the public notice. In spite of the public notice the appellants failed to produce the required certificates and to remove the deficiency. The appellants, therefore, cannot have a legitimate grievance against the Commission; nor the appellants can claim, as a matter of right waiver of such requirement. Nor the appellants are entitled to a mandamus against the Commission to recommend the names of the appellants for appointment in Backward Class category.”

15. The Division Bench in paragraph 8 of the judgment observed as follows:

“8. We have in our judgment dated 8th August 2011 passed in the matter of ***Tar Babu Yadav v. The State of Bihar and others*** (Letters Patent Appeal No. 1034 of 2011 arising from C.W.J.C. No. 2743 of 2009 decided on 8th August 2011) held the above Division Bench judgment *per incurium* the Full Bench judgment in the matter of ***Braj Kishore Prasad v. The State of Bihar & Others***, [1998 (3) PLJR 34]. We are informed at the Bar that the challenge to the above judgment before the Hon’ble Supreme Court has failed. The Special Petition for Leave to Appeal filed by the State Government has been rejected.”

16. Thus, I hold that in view of the terms of the Advertisement as well as Government circular of the year 1994 and 1995 annexed as Annexures-A and B to the counter affidavit





filed by the Commission, for the purpose of availing benefit of reservation, it was incumbent upon the Most Backward Class and Backward Class category to have produced/annexed caste and non-creamy layer certificate granted by the District Magistrate for the purpose of employment. As the candidates did not produce the said certificates in spite of opportunity they have rightly been not granted benefit of reservation of belonging to Backward and Most Backward Class Category. Thus, the candidature of these candidates was considered in the General Category in terms of the Advertisement. Furthermore, as they secured less marks than the last candidate selected in the general category, they were again rightly were not declared successful for appointment to the post of Block Statistical Supervisor/Junior Statistical Assistant/Anweshak, pursuant to Advertisement no.1606/2006. I do not find any merit in this case and the writ petition is accordingly, dismissed.

**(Samarendra Pratap Singh, J)**

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