

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No. 23393 of 2018**

Mahtab Ahmad Mallick Son of Late Mushtaque Ahmad Mallick Resident of  
Flat 404, Samanpura Enclave, Bank of India Colony, P.O.-B.V. College, P.S.-  
Shastri Nagar, District- Patna

... .. Petitioner/s

Versus

1. The State Of Bihar through its Principal Secretary, Department of Finance,  
Government of Bihar, Patna
2. The Principal Secretary, Department of Finance, Government of Bihar, Patna
3. The Principal Secretary, General Administration Department, Government  
of Bihar, Patna
4. The Bihar Public Service Commission, through its Chairman
5. The Chairman, Bihar Public Service Commission
6. The Joint Secretary-cum-Controller of Examination, Bihar Public Service  
Commission, Patna

... .. Respondent/s

**Appearance :**

For the Petitioner/s : Mr. Brisketu Sharan Pandey, Adv.  
For the BPSC : Mr. Sanjay Pandey, Adv.

**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**

**ORAL JUDGMENT**

**Date : 30-06-2021**

The present writ petition has been filed for directing the respondents no. 4 to 6 to modify the final result published on 01.10.2018 to the extent that the result of the petitioner, which has been cancelled, be declared and upon declaration of



such result, if the petitioner is found successful / qualified in the final selection process, appropriate action be initiated by the respondents to appoint the petitioner.

2. The brief facts of the case, according to the petitioner, are that he belongs to non-creamy layer category under the backward caste. The petitioner had applied for selection on the post of Accounts Officer in pursuance to advertisement no. 03 of 2015, published by the Bihar Public Service Commission (hereinafter referred to as 'the BPSC'), whereafter admit card was issued to the petitioner for appearing in the prelims examination, which was conducted on 25.09.20216, whereupon the result was published on 10.03.2017 and the petitioner was declared to be successful. The petitioner had then appeared in the mains examination, which was held in between 11.12.2017 to 16.12.2017. Altogether 206 candidates were declared successful including the petitioner and the result was published on 05.09.2018. Subsequently, an interview letter was



sent to the petitioner, fixing the date of interview for 25.09.2018, whereafter the petitioner had appeared in the interview along with his credentials and certificates. The petitioner is stated to have produced the non-creamy layer certificate and the caste certificate, however, the petitioner was informed that the non-creamy layer certificate was defective. Ultimately, the final result was published on 01.10.2018, but the petitioner's name did not find place therein and his result was cancelled on the ground of non-verification of the certificate relating to non-creamy layer under the backward caste category, to which the petitioner belongs. Thereafter, the petitioner had initiated the process for obtaining a non-creamy layer certificate from the Circle Officer, Patna and he had applied for grant of income certificate, which was issued on 24.09.2018 and on the basis of the same, the non-creamy layer certificate was issued to the petitioner on 08.10.2018. Thereafter, the petitioner had represented before the Respondent No. 4 i.e. the BPSC for recalling its decision relating



to cancellation of his result, but no decision was taken.

3. The learned counsel for the petitioner has submitted that the petitioner belongs to the non-creamy layer category of backward caste, hence, he is entitled for reservation. In this regard, the learned counsel for the petitioner has relied on a judgment reported in **(2016) 4 SCC 754 (Ram Kumar Gijroya vs. Delhi Subordinate Services Selection Board & Anr.)** to contend that failing to submit the reserved category certificate / non creamy layer certificate issued by the appropriate authority within the cut-off date mentioned in the advertisement would not render such candidate ineligible for selection inasmuch as rendering otherwise selected candidate ineligible only on the ground of late submission of the reserved category certificate would amount to denial of equality of opportunity contemplated under Articles 14 to 16 and 39A of the Constitution of India.

4. Thus, the learned counsel for the petitioner has submitted that the petitioner could not have



been declared ineligible and his selection ought not to have been cancelled in view of the fact that he had obtained the requisite non-creamy layer certificate on 08.10.2018, whereafter he had supplied the same to the Respondent-BPSC.

5. Per contra, the learned counsel for the Respondent-BPSC, Sri Sanjay Pandey, Advocate, has submitted that according to the terms and conditions of advertisement no. 03 of 2015, more particularly column no. 4 thereof, clearly prescribes that the benefit of reservation will not be given if claim of reservation has not been made and benefit of reservation will be given only to those candidates, who are the permanent resident of the State of Bihar and produce non-creamy layer cum caste certificate issued by the Circle Officer of the permanent residence of such candidate, as notified by the State Government in case of candidates of reserved categories i.e. EBC and BC. It is further submitted that the petitioner was treated as an unreserved category candidate because he could not produce the non-creamy layer certificate at the



time of interview. The learned counsel for the Respondent-BPSC has submitted that the judgment referred to by the learned counsel for the petitioner rendered in the case of **Ram Kumar Gijroya** (supra) is distinguishable in the facts and circumstances of the present case inasmuch as in the present case, the valid non-creamy layer certificate cum caste certificate was admittedly submitted by the petitioner only on 08.10.2018 i.e. after the final result had been published by the Respondent-BPSC, hence, the petitioner cannot derive any benefit from the aforesaid judgment rendered by the Hon'ble Apex Court. In this regard, the learned counsel for the Respondent-BPSC has referred to a judgment rendered by a learned Division Bench of this Court in the case of **Dr. Santosh Kumar vs. The State of Bihar & Ors.**, reported in **2017 (1) PLJR 786**, paragraphs no. 7 and 8 whereof are reproduced herein below:-

“7. The decision relied upon by learned counsel for the appellant in the case of Ram Kumar Gijroya (supra) has no application to the facts and circumstances



of the present case inasmuch as the petitioner before the Hon'ble Supreme Court had submitted his caste certificate, though after the cutoff date. In the present case, it has not even been averred that the certificate relating to not belonging to the Creamy Layer in terms of the relevant provisions, issued within one year, was produced by the appellant before the authorities. Moreover, the reasoning given by the Hon'ble Supreme Court is in relation to the person belonging to a particular caste which fact, obviously, cannot change, as it is dependent upon his birth, whereas in the present case, the fact of not coming under the Creamy Layer is subject to change with the efflux of time as income does vary and the stipulation for submitting certificate relating to income, being issued within one year, is reasonable and justified.

8. In view thereof, we do not find any error in the order passed by the learned Single Bench which may warrant interference in the present Letters Patent Appeal, which, accordingly, stands dismissed."



6. I have heard the learned counsel for the parties and gone through the materials on record from which I find that it is an admitted position that on the date of interview i.e. on 25.09.2018, the petitioner had failed to produce a valid non creamy layer cum caste certificate and had produced the same only on 08.10.2018, prior to which the final result had already been published on 01.10.2018, hence, once the selection process had been completed, no relief can be granted to the petitioner.

7. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, I do not find any merit in the present writ petition, hence, the same stands dismissed.

**(Mohit Kumar Shah, J)**

Ajay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.07.2021
Transmission Date	NA

