
(2010) 04 PAT CK 0234
In the Patna High Court
Case No : LPA No. 650 of 2010

Vandana Govindam

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-04-2010

Acts Referred:

Citation : (2011) 2 PLJR 585

Hon'ble Judges : Dipak Misra, C.J;Mihir Kr. Jha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

I.A. No. 3388 of 2010

1. Having heard counsel for the parties as also upon taking into account the facts and circumstances mentioned in this application, the delay of 11 days in filing of this appeal is condoned.

2. I.A. No. 3388 of 2010 is allowed.

LP.A. No. 650 of 2010

3. In view of the fact that we have condoned the delay in filing of this appeal, we are also inclined to dispose of this appeal on merits at the stage of admission itself.

4. We have accordingly heard Mr. Abhay Kumar Singh, learned Counsel for the Appellant-writ Petitioner and Sri Saket Tiwari, J.C. to G.P.16 for the State.

5. In this intra-court appeal the Appellant-writ Petitioner has assailed the order of the learned Single Judge dated 16.2.2010 in C.W.J.C. No. 14572 of 2007, whereby and whereunder, her prayer for quashing of the corrigendum dated 23rd October, 2007 issued by the Bihar Public Service Commission (hereinafter referred to as the B.P.S.C) cancelling her result of the Child Development Project Officer Examination, 2005, has been rejected.

6. From the materials on record, it is apparent that the Appellant-writ Petitioner had filed her application in response to the Advertisement No. 34 of 2005 issued by the B.P.S.C. for filling up 218 vacant sanctioned posts of Child Development Project Officer (C.D.P.O.). The Appellant-writ Petitioner who had filed her application as a candidate of reserved category (extremely backward category-E.B.C.) had qualified in the preliminary test as also in the written test and her result was published in the list of 579 successful candidates for being called in interview. The Appellant-writ Petitioner had also appeared in the interview on 11.9.2007, where after final result was published by the Commission in which name of the Appellant-writ Petitioner was at Serial No. 28 of 39 extremely backward category candidates. It, however, appears that the said result in the case of the Appellant-writ Petitioner was modified by the impugned corrigendum dated 23rd October, 2007 on the ground that she was not produced the required certificate of her belonging to E.B.C. category showing that she was* not amongst the creamy layer. Cancellation of such result by the impugned corrigendum had led to filing of the connected writ application.

7. The B.P.S.C. had filed an exhaustive counter affidavit, wherein terms of the advertisement was relying to show that it was in fact part of the conditions incorporated in the advertisement itself that the candidates claiming benefit of reservation of backward category/extremely backward category had to file their caste certificate with reference to Creamy Layer in the prescribed Proforma issued by the District Magistrate and/or an Additional Collector authorized by the District Magistrate. The B.P.S.C. had also explained in its counter affidavit that the caste certificate produced by the Appellant-writ Petitioner did not contend the specification of her belonging to Creamy Layer and as such her result was cancelled and the B.P.S.C. had not recommended her name for appointment. The B.P.S.C. has further explained that the last date of submission of such certificate at best could be the date of interview as was clearly indicated even in the interview letter issued to the Appellant writ Petitioner dated 22.8.2007, but the Appellant-writ Petitioner had not produced the required caste certificate even on the date of her interview and therefore the Commission could not have given any weight age to the subsequent caste certificate dated 18.9.2007. The learned Single Judge on the basis of the aforementioned pleadings has recorded the following findings:

On the own showing of the Petitioner, communications sent to her for appearing at the interview for the post of C.D.P.O. after competing successfully in the selection process, required-her to produce the necessary certificate as a backward caste candidate not belonging to the Creamy Layer at the time of interview. The Petitioner was interviewed on 11.9.2007. The Petitioner does not deny that she did not produce the necessary Creamy Layer certificate on that date, but relies on a subsequent certificate issued to her for the purpose on 18.9.2007 after the interview. That the Petitioner may have been inadvertently included in the list of selected candidates on 22.9.2007 can be of no avail to the Petitioner when the facts are otherwise not in dispute with regard to non-

production of her Creamy Layer certificate on the relevant date. In any event of the matter even the final selection list reserves the right of the commission in the note at the bottom of the list to accept only such documents as were produced on the date of interview only.

Learned Counsel for the Commission has relied upon a Full Bench decision of this Court reported in 1998 (3) P.L.J.R. 35, Braj Kishore Prasad and Ors. v. The State of Bihar and Ors., in which summing up the conclusions at paragraph-26, it has been held that documents/supporting documents cannot be received after the last date and has to be rejected by the selecting authority. The Commission could not have taken into consideration, the subsequent Creamy Layer certificate produced by her. The Petitioner has not been able on facts to make out a case of extreme hardship so as to warrant any interference by this Court as this Court cannot relax the conditions imposed by the Respondents when there is no relaxation clause in the advertisement itself....

8. Assailing the aforementioned finding of the learned Single Judge, Mr. Abhay Kumar Singh, learned Counsel for the Appellant-writ Petitioner has submitted that once the B.P.S.C. had accepted the candidature of the Appellant-writ Petitioner either for the purpose of declaration of written test or interview as a candidate of extremely backward category and had eventually included her name in the final result published in the newspaper, it was not open to the B.P.S.C. to cancel her result on the basis of caste certificate. He has also commended for acceptance of caste certificate subsequently issued in the name of the Appellant-writ Petitioner wherein it has been shown that she did not belong to the Creamy Layer category. Mr. Singh has also impressed upon that the whole purpose of providing the scheme of reservation would be frustrated if technicalities were allowed to weigh especially when the subsequently certificate left nothing for speculation that the Appellant-writ Petitioner was the candidate of extremely backward category.

9. Per contra, counsel for the Respondents while supporting the view taken by the learned Single Judge has submitted that such benefit of reservation could not have been extended in the case of the Appellant-writ Petitioner as she did not fulfill the requisite condition as laid down in the advertisement and/or interview call letter and had in fact failed to produce the required caste certificate. He has also submitted that the B.P.S.C. as a matter of policy has been following its uniform criteria for giving the benefit of reservation to the candidates who would produce the required caste certificate on the date of interview.

10. In this regard reliance has also been placed on a Full Bench judgment of this Court in the case of "Braj Kishore Prasad and Ors. v. State of Bihar and Ors. reported in 1998 (3) P.L.J.R. 35 as also on an identical case of Amlesh Kumar v. State of Bihar and Ors. C.W.J.C. No. 9024 of 2002 disposed of on 19.10.2006.

11. Having given our anxious consideration to the aforementioned submissions, we would find that the Appellant-writ Petitioner having not complied the terms of

advertisement is not entitled to the benefit of reservation as an extremely backward candidate. In this context, this Court would find that in the advertisement issued by the B.P.S.C. itself, vide Annexure-A to the counter affidavit in the writ application, Clause-3 thereof had clearly mentioned that the candidates seeking benefit of reservation in the backward category/ extremely backward category were required to furnish the caste certificate with reference to the subject of Creamy Layer in the prescribed Proforma issued by the Office of the District Magistrate or the Additional Collector authorized by him and in absence of such required caste certificate the benefit of reservation will not be extended. The Appellant-writ Petitioner therefore in terms of the advertisement was required to file such caste certificate by 31st May, 2005 which was the last date for filing such certificate. There would be therefore no difficulty in holding that the Appellant-writ Petitioner having failed to satisfy the aforesaid condition No. 3 of the advertisement could not have been given the benefit of reservation and her candidate had to be confined to general category.

12. The B.P.S.C, however, had given yet another opportunity to the Petitioner and all other candidates who had qualified in the written test for submitting their caste certificate and in this respect Clause-6 of the interview call letter dated 22.8.2007 becomes a determining factor. In Clause-6 of the interview call letter the B.P.S.C. had made it clear that if a candidate had claimed reservation, he or she was required to produce the original copy of the caste certificate with reference to the Creamy Layer in the prescribed Performa duly issued by the office of the District Magistrate or his authorized Additional Collector. This additional opportunity at the time of interview was also not availed by the Appellant-writ Petitioner, inasmuch as, the caste certificate dated 18.9.2007 as contained in Annexure-3 is subsequent to the date of her interview, i.e. 11.9.2007.

13. It thus becomes clear that the caste certificate dated 18.7.2006 without reference to the Creamy Layer was not fit to be acted upon by the B.P.S.C. either in the terms of the advertisement or as per clause of the interview call letter.

14. By now it is well settled that every candidate seeking employment in public service has to abide by the terms and conditions of the advertisement and/or selection and here in this case either Clause-3 of the advertisement or Clause-6 of the interview call letter had left for its speculation that a subsequent caste certificate could not have been entertained for giving the benefit of the extremely backward category. It is this aspect of the matter which was decided by the Full Bench of this Court in the case of "Braj Kishore Prasad" (supra), wherein it was held that the supporting documents cannot be received after the last date fixed by the selecting authority.

15. Thus, we find no error in the order of the learned Single Judge and accordingly this appeal being devoid of any merit must be and is hereby dismissed. There would be, however, no order as to costs.