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**(1992) 07 PAT CK 0025**

**Patna High Court**

**Case No:** C.W.J.C. No. 3062 of 1991

Udai Pratap Chaudhari

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

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**Date of Decision:** July 29, 1992

**Acts Referred:**

- Evidence Act, 1872 - Section 114

**Citation:** (1992) 2 BLJR 1395

**Hon'ble Judges:** Vinod Kumar Roy, J; I.P. Singh, J

**Bench:** Division Bench

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### **Judgement**

Vinod Kumar Roy and I.P. Singh, JJ.

With the consent of the parties we proceed to dispose of this writ application on its merit at the admission stage.

2. The petitioner through this writ application, which was filed on 23rd April, 1991, after serving its copy on the Advocate General, prays for issuance of a direction to the respondents to appoint him to the posts available with the respondents.

3. The Bihar State Subordinate Service Selection Board (Respondent No. 2) by an advertisement (as contained in Annexure-1) advertised for holding teaching services competition examination for filling up 425 posts of teachers which was extended to 664.

4. The petitioner asserts that he belongs to backward class. Coming under reservation Code No. 05, for which 34 posts were reserved as item No. 2 of the advertisement shows, he filed an application along with his caste and income certificate (as contained in Annexure 2 and 2-A as required under Clause 13(5). It may be mentioned that item No. 7 of the form prescribed a condition to submit caste and income certificate too which he did. He stated the fact of enclosing them by making an entry against item No. 15 of the application. Admit card was issued to

him. He appeared in the examination, the result of which was published in February, 1991. The petitioner, however, did not find his name there. Copy of the result has been appended as Annexure-4. He applied for his mark sheet (as contained in Annexure-5) and found that he has secured 168 marks. The petitioner was surprised to find out from the office of the respondent that he has not been included in the panel list even though candidates obtaining 155 marks belonging to backward class have been included. Several representations were submitted by him but without any heed. On 22-3-1992 he came to know from the office of respondent No. 2 that he has been considered in the backward category (Code 05) due to some mistake. The petitioner again submitted his representation (as contained in Annexure-6) giving details of the matter requesting him to consider his case under Code 05 which, however, was rejected, vide Annexure-7, on the ground that he has not been claimed for reservation in his application form. A prayer has been made to quash the order as contained in Annexure-7 as well.

5. In their counter affidavit respondent Nos. 2 and 3 state, inter alia, that the petitioner was a candidate under general category and, thus, there was no question of his recommendation. He had not claimed for reservation under category of backward (Code 05) in his application (as contained in Annexure-A), He had also not mentioned the category of his reservation under item No. 7 nor has he enclosed caste and income certificates along with it but in order to make a false claim he managed to interpolate the words "Aay evam jati Pramanpatra" in column 15 at page ?. of his application with the help of menial staff who sorted out from the godown. The Board had not informed him that due to some mistake he has been placed under general category.

6. In his supplementary affidavit, the petitioner states that in the application form there was no box for filling up the caste code and as such it was not possible for him to put the caste code number in any non-existent box accordingly the claim of the respondents in regard to non-filling up the caste code number by the petitioner is erroneous and that due to slip of pen the petitioner could not fill up the column in regard to the claim for reservation.

7. By order dated 17th July, 1992, the Bihar Public Service Commission, through its Chairman, was permitted to be impleaded as respondent No. 5. After hearing learned Counsel for the parties, we have directed the learned Counsel for the respondents to produce the original records of the documents appended as Annexures to the counter affidavit to verify the authenticity and appreciate the correctness of the stand of one or the other party.

8. Learned Counsel for the petitioner, in support of the writ application, submits as follows ;

(i) The stand taken by the respondents is erroneous whereas that of the petitioner stand supported by the documents brought on the record by the respondents

themselves along with their counter affidavit. The application of the petitioner (Annexure-A to the counter affidavit) shows a right tick mark against item No. 7 which proves his case that he had appended the caste and income certificates. There is no allegation of the respondents that right tick mark against item No. 7 is an interpolation. Page 9 to the counter affidavit is a part of a chart which also shows that the petitioner had claimed himself to be under category 05 and his claim was considered but wrongly rejected. Page 9 of the counter affidavit shows that earlier it was stated in the chart that any decision can be taken only looking after his original application but later on these words were penned through and it was stated that since he has not claimed for any reservation nor has given his caste and income certificates hence rejected. All these are incorrect. He had filed the required certificates which is clear from another right mark put by the authority against item No. 15 (5) wherein he has stated that fact.

(ii) Despite direction by this Court the respondents have not produced the original chart which is at page 9 of the counter affidavit and thus this Court should draw an adverse inference u/s 114(g) of the Evidence Act against the respondents.

(iii) The authorities have been recommended the candidates bearing Roll Nos. 1287, 4336, 3917 and 1925 whose caste and income certificates were not found with the application. The relevant fact stated in paragraph 23 of the writ application has not been denied.

9. Mr. Ram Suresh Roy, learned Standing Counsel No. 1 appearing on behalf of the respondents submits as follows:

(i) The petitioner has really forged certain words against column No. 15 of his application to support his case. From the chart at page 7 of the counter affidavit, it appears that the petitioner had claimed himself to be under category 01 but subsequently - he changed his claim to Code 05 which was not supported by the production of any documents. Since respondent No. 2 has abolished and succeeded by respondents 7 an inventory is being prepared of all the documents of respondent No. 2 and hence the chart which is at page 9 of the counter affidavit could not be produced and hence no adverse inference be drawn up.

(ii) The petitioner's writ application is without any merit and is liable to be dismissed.

10. Pursuant to our direction the respondents have produced only the original application of the petitioner as contained in Annexure-A but have not produced the original of the chart photostat copy of which is part of Annexure-A and which is page 9 of the counter affidavit.

Our Findings:

11. We do not find any box mentioned against item No. 7 of the application. We, however, find that a right tick mark showing submission of caste and income

certificates against the claim of reservation mentioned under item No. 7. Photostat copy of the chart filed with the counter affidavit also shows that the claim of the petitioner of being under category 05, which was backward class, was considered and rejected. It proves unequivocally that the petitioner had put such a claim. Thus we do not find any merit in the objection of the respondents that the petitioner had not put in any claim.

12. Merely because some writings against entry No. 15 are in a different pen it is difficult for us to agree with the stand taken by the respondents that those words were forged by the petitioner subsequently after bringing in collusion with the menial staff. No name of the staff has not been mentioned by the respondents in the counter affidavit. Averments made in this regard in paragraph 5 of the counter affidavit has been stated to have been derived from the records of the case. No such record has been produced before us to support this stand. Even the chart has not been produced before us. The explanation of Mr. Roy is not acceptable to us as only part of Annexure-A has been produced today even though in the counter affidavit dated 26-11-1991 annexure was stated to be of original. Thus, we draw an adverse inference against the respondents. In fact no convincing explanation has been given before us as to why if the petitioner has not claimed himself to be under category 05, his case was considered under this category but rejected, on the ground that he had not brought supporting materials. The petitioner has categorically stated in the writ petition that along with his application has appended the caste and income certificates as contained in Annexures-2 and 2/A. Even though this fact has been denied in the counter affidavit we accept the stand of the petitioner in view of the conduct of the respondents. The stand taken before us by Mr. Roy that the petitioner has subsequently claimed under category 05 is not appreciable to us. No answer has been given either in the counter affidavit or even before us in regard to the petitioner's grievance that candidates who have not submitted such certificates were also recommended. This clearly demonstrates the discriminatory attitude as well.

18. Members of the backward classes of this country are jealous children of the constitution. The Constitution guarantees them certain privilege. Simply because the petitioner has not put 05 in a box against serial No. 7, we, in the peculiar apparent facts and circumstances hold that substantial justice has not been done to him. After all rules and procedure are hand-maid of justice. We accordingly hold that the respondents were not in justified in rejecting the claim when no box was printed against item No. 7 of the application.

15. For the reasons aforementioned, we direct respondent No. 7, who is successor of respondent No. 3, to recommend the name of the petitioner for the appointment in question from the quota meant for backward classes within two months from the date of receipt of a copy of this order either from the petitioner or from the Court, whichever is earlier as considerable time has elapsed.

16. Let a writ of mandamus issue accordingly.