

(2016) 11 PAT CK 0079

PATNA HIGH COURT

Case No: Letters Patent Appeal No.737 of 2016, Arising out of Civil Writ Jurisdiction Case No. 18100 of 2015

Dr. Santosh Kumar

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision: Nov. 9, 2016

Citation: (2017) 1 BBCJ 318 : (2017) 1 PLJR 786

Hon'ble Judges: Hemant Gupta, ACJ. and Mr. Ahsanuddin Amanullah, JJ.

Bench: Division Bench

Advocate: Mr. Yogesh Chandra Verma, Sr. Advocate, for the Appellants; Mr. Sanjay Pandey, Advocate, for the B.P.S.C.; A.C. to S.C. 3, for the State

Final Decision: Dismissed

Judgement

Mr. Ahsanuddin Amanullah, J. (Oral) - Heard learned counsel for the parties.

2. Challenge in the present intra Court appeal is to the order dated 09.03.2016 by which C.W.J.C. No. 18100 of 2015 filed by the appellant has been dismissed.

3. The appellant applied for appointment on the post of Medical Officer pursuant to advertisement no. 15 of 2014 issued on 18.07.2014 by the Bihar Public Service Commission (hereinafter referred to as the "Commission") for appointment of 2301 Medical Officers within the State of Bihar. The appellant applied under the EBC category. He was called for interview on 24.06.2015 and in the course of verification of his certificate, it was found that he did not possess the requisite certificate showing that he did not belong to the Creamy Layer in his Reserved category. The Commission, thus, treated him to be a General category candidate and because of there being a higher cut off marks, the appellant was not finally selected. Being aggrieved he preferred C.W.J.C. No. 18100 of 2015 and dismissal of the same by the learned Single Bench by order dated 09.03.2016 has given rise to the present Letters Patent Appeal.

4. Learned counsel for the appellant submitted that he had attached the certificate showing that he did not belong to the Creamy Layer, along with his application, and only during interview, on being informed that the said certificate has to be of a date not more than one year prior to the date of application, he was required to be granted time. It was submitted that the appellant cannot be made to suffer since by the time he took steps for issuance of a fresh certificate regarding not belonging to the Creamy Layer, the State Government, with effect from 01.07.2015 had included his caste, i.e., Tanti in the Scheduled Caste category after removing it from the Extremely Backward category. It was submitted that the Commission came out with another advertisement fixing 24.07.2015 for producing/verifying the original certificate with regard to Educational qualification, caste status etc. and the appellant having obtained fresh caste certificate dated 08.06.2015 showing him to be in the Extremely Backward category and another dated 20.07.2015 showing him to be in the Scheduled Caste category, but the authorities did not take the same into consideration, which is arbitrary and against the mandate of the Constitution of India with regard to the benefit of reservation conferred upon persons like the appellant. Learned counsel relied upon a judgment of the Hon"ble Supreme Court in the case of **Ram Kumar Gijroya v. Delhi Subordinate Services Selection Board reported as AIR 2016 SC 1098**, for the proposition that the candidate submitting caste certificate after cut off date mentioned in the advertisement cannot be held ineligible for selection to the post.

5. Learned counsel for the respondents submitted that in terms of the advertisement itself, the appellant had to submit certificate relating to his caste as well as to the effect that he did not belong to the Creamy Layer, which was valid only for the period of one year from the date of issuance of such certificate and in the present case, the certificate attached by the appellant, issued on 16.04.2008, lost its value after 15.04.2009. Learned counsel submitted that in the absence of such certificate the appellant became ineligible for being considered under the Reserved category, and was rightly considered under the General category, in which the cut off marks was 53.04 whereas the appellant secured only 41.61 marks. It was submitted that the appellant himself is to be blamed for not having produced the required documents at the relevant time and the authorities have neither acted against law nor discriminated against the appellant.

6. Having considered the rival contentions, we do not find any merit in the present Letters Patent Appeal. The terms of the advertisement clearly disclose that the Reserved category candidate shall be required to produce the relevant caste certificate relating to not coming under the Creamy Layer in terms of the Circular No. 673 dated 08.03.2011 issued by the General Administration Department of which Clause (12) ii clearly stipulates that the certificate relating to income, is valid only for one year. In view of the aforesaid, the applicant enclosing only the certificate dated 16.04.2008 with regard to not belonging to the Creamy Layer and stating his income, lost its value after 15.04.2009 and could not have been made the

basis of any claim for appointment in the present transaction. The appellant at the time of taking part in the interview on 24.06.2015 has written in his own pen that he was not producing the Creamy Layer certificate. It is also not the case of the appellant that he produced such certificate on 24.07.2015, which was the second opportunity given to such persons to produce the required certificate for verification. In absence of the same, the authorities cannot be faulted for considering the case of the appellant under the Unreserved (General) category and in that category the appellant having secured 41.61 marks was far below the last candidate selected who had 53.04 marks.

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 cut off 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.