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IN THE HIGH COURT OF JUDICATURE AT PATNA
C.W.J.C.No.15326 of 2004
Kumar Bimal Prasad Vrs. The State of Bihar and Ors.

04/ 1.8.2005.

Heard Mr. Vinod Kumar

Kanth, Sr. Advocate for the petitioner, Mr. Binod Shanker Tiwary, for Bihar Public Service Commission and Mr. Chandra Shikhar, Sr. Advocate for respondent no.6.

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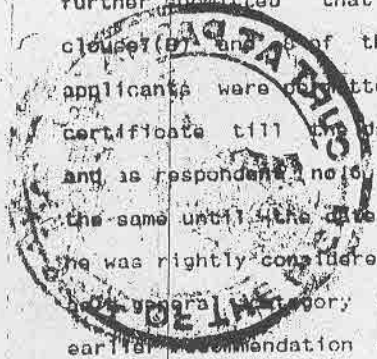
Petitioner who appeared in the competitive examination conducted by the Bihar Public Service Commission for appointment on the post of District Fisheries Officer pursuant to advertisement dated 22.12.1999(Annexure-1) and was recommended for appointment in backward class category under recommendation dated 22.1.2003(Annexure-2) has come to this court for quashing the subsequent recommendation dated 27.10.2004 Annexure-4 issued in continuation of the earlier recommendation dated 22.1.2003(Annexure-2) as thereunder petitioner has been replaced by Respondent no.6 in the backward class category with instruction to administrative department to verify the Creamy layer certificate of the said respondent no.6. Learned counsel for the

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petitioner appearing in support of this application has contended that in the earlier recommendation dated 22.1.2003 respondent no.6 was recommended as general category candidate as it appears from the subsequent recommendation of the commission dated 27.10.2004 that he failed to furnish the Creamylayer certificate until the date of interview in between 5.11.2002 to 8.11.2002. He further submitted that in terms of clause (B) and C of the advertisement applicants were permitted to furnish the certificate till the date of interview and as respondent no.6 failed to produce the same until the date of his interview he was rightly considered and recommended as general category candidate in the earlier recommendation dated 22.1.2003. Learned counsel with reference to the letter of Bihar Public Service Commission dated 24.4.2004(Annexure-3) submitted that the commission refused the request of the Secretary of the administrative department to revise the recommendation as according to the commission the recommendation dated 22.1.2003 was correct and final and required no change. He further contended that when

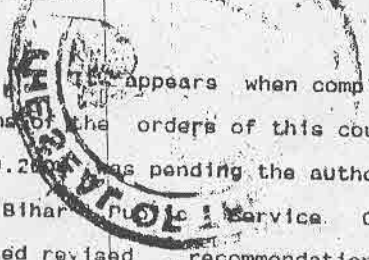


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respondent no.6 and one another Subodh Kumar could not be appointed on the basis of earlier recommendation they move this court in C.W.J.No.12527 of 2003 which was disposed of under orders dated 28.9.2004 directing the respondent authorities to proceed and make appointment in terms of the earlier recommendation dated 22.1.2003.



It appears when compliance in terms of the orders of this court dated 28.9.2004 was pending the authorities of the Bihar Public Service Commission issued revised recommendation dated 27.10.2004 whereunder they replaced the petitioner in the backward class category by recommending respondent no.6 in his place who was earlier recommended as a general category candidate in the recommendation dated 22.1.2003. In the served recommendation it was however clarified that the authorities should verify the status of respondent no.6 in regard to his creamy layer status as the Creamy layer certificate was not produced in the commission.

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The petitioner has assailed the said revised recommendation asserting that once respondent no.6 did not produce the Creamylayer certificate until the date of interview he was rightly considered and recommended as a general category candidate then at this belated stage he cannot be allowed to replace the petitioner in the backward class category. In support of the said plea learned counsel for the petitioner has relied upon a decision of this court in the case of Raynarayan Haridan V. Bihar Public Service Commission, reported in 1995(2)PLJR 72 wherein it has been held as follows:-



...ing considered these decisions without doubt that none of these decisions support the case of the petitioners that a caste certificate can be produced at any time, and certainly not after the Commission has completed the process of selection and published the Merit List."

Bihar Public Service Commission and respondent no.6 have conceded the position that till the date of interview Creamylayer Certificate was not produced by respondent no.6 and he was rightly

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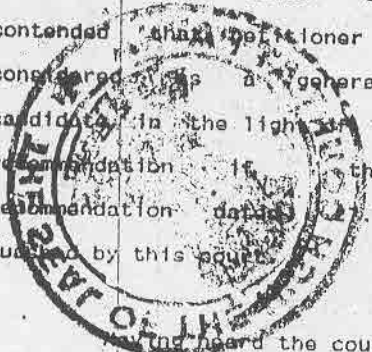
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considered and recommended as a general category candidate in the first recommendation dated 22.1.2003 and considering the said recommendation dated 22.1.2003 a direction by this court in his favour has already issued under orders dated 28.9.2004, as such according to them the revised recommendation dated 27.10.2004 recommending respondent no.6 as the sole backward class candidate even if set aside by this court he will be considered as a general category candidate in the light of his position in the earlier recommendation.

Learned state counsel has contended that petitioner shall be considered as a general category candidate in the light of the earlier recommendation. If the revised recommendation dated 27.10.2004 is quashed by this court.

After having heard the counsel for the parties, I am of the view that as respondent no.6 did not furnish the creamy layer certificate until the date of his interview which fact is evident from the subsequent recommendation of the



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commission dated 27.10.2004 he was rightly considered and recommended as general category candidate and petitioner was recommended as a backward class candidate which recommendation should be given effect to in the light of the earlier orders of this court dated 29.9.2004 and the subsequent recommendation treating respondent no.6 as a backward class category candidate is quashed to that extent.

Application allowed to the extent indicated above. No cost.

[Signature]
(V.N.Sinha, J.)

Brajesh Kumar/-



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f. A
5-8-2005

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