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In the matter of an application under Article  
226 of the Constitution of India;  
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1. Sanjay Kumar
  2. Manoj Kumar .....Petitioners
- Versus
- The State of Bihar & ors.....Respondents
- 

For the petitioners:-Dr.Sadanand Jha,Sr.Advocate  
With

Mr.Ashok Kumar Sinha

For the Respondents:- Mr. A.K.Singh,S.C.III

For the Commission:- Mr. K.K.Jha,Advocate

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P R E S E N T

THE HON'BLE MR. JUSTICE CHANDRAMAULI KR.PRASAD

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C.K.Prasad,J. Prayer of the petitioners in this application is for issuance of a writ in the nature of mandamus commanding the respondents particularly the respondent- Bihar Public Service Commission to declare the result of the petitioners treating them to be belonging to the most backward class.

Shorn of unnecessary details facts giving rise to the present application are that the Bihar Public Service Commission, hereinafter referred to as Commission, published an advertisement in the daily Newspaper "Aaj" dated 10th May, 1996 inviting application for appointment to the post of Assistant Teacher in the Nationalised Primary Schools in various districts of the State of Bihar including the district of Aurangabad. According to the advertisement for the purpose of selection



examination was to be held in two stages viz; the preliminary examination and the main examination. After the result of preliminary examination, successful candidates were required to submit application in prescribed proforma. ~~AND~~ Those persons claiming reservation under various category including the category of most backward class were required to submit the caste and the creamy layer certificate signed by the District Magistrate. Clause 10.2 of the advertisement, which provides for filing of such certificate reads as follows:

10.2 \* पिछड़ा वर्ग, अत्यन्त पिछड़ा वर्ग तथा पिछड़े वर्गों की महिलाओं & यथा - अनुसूचित जाति, अनुसूचित जन-जाति अत्यन्त पिछड़ा वर्ग एवं पिछड़ा वर्ग एवं पिछड़ा वर्ग की महिला & को प्रदत्त आरक्षण का लाभ उन्हीं व्यक्तियों को अनुमान्य है जो पिछड़ा वर्ग, अत्यन्त पिछड़ा वर्ग, अनुसूचित जाति एवं अनुसूचित जन-जाति के रूप में बिहार राज्य की सूची में अधिसूचित जाति के सदस्य है। इन श्रेणियों & अनुसूचित जाति एवं अनुसूचित जन-जाति की महिला को छोड़ कर & को प्रदत्त आरक्षण के लाभ हेतु उम्मीदवारों को मुख्य परीक्षा के लिए आवेदन के साथ कार्मिक एवं प्रशासनिक सुधार विभाग के पत्र संख्या-11/पी-06-न्याय-04/94 का 14 दिनांक 30 जनवरी, 1996 के अनुसार निर्धारित प्रपत्र में मात्र जिला दण्डाधिकारी द्वारा ही हस्ताक्षरित जाति प्रमाण-पत्र अनिवार्य रूप से संलग्न करना होगा।\*

किसी भी स्थिति में अत्यन्त पिछड़ा वर्ग एवं पिछड़े वर्गों के उम्मीदवारों से जिलाधिकारी द्वारा प्रतिहस्ताक्षरित तथा अनुमण्डल पदाधिकारी द्वारा हस्ताक्षरित या प्रतिहस्ताक्षरित जाति प्रमाण-पत्र मान्य नहीं होगा।\*

The result of the preliminary test was published on 2nd January, 1999 and such of the candidates who were successful in the preliminary test were required to submit application for appearing in main examination by 15.1.1999.

Petitioners in pursuance of the aforesaid advertisement offered their candidatures and annexed the caste certificate issued by the authority other than the District Magistrate. They were issued the provisional admit card and on that basis they appeared in the preliminary test, the result whereof was published on 2nd of January, 1999 in which the roll numbers of the petitioners figure as successful candidates. Petitioners submitted the application in prescribed proforma on 11.1.1999 along with the required fee in the shape of Bank draft and the caste certificate granted by the Sub-Divisional Officer. The candidatures of the petitioners were considered and the provisional admit cards were issued for appearing in the main examination. Petitioners appeared in the main examination and when the result was published on 2.7.1999 their names did not figure in the same.

It is an admitted position that petitioners did not annex the caste certificate granted by the District Magistrate either at the time of submitting application for the preliminary test, Main examination or for that

matter before publication of the result but his assertion is that he had submitted the caste certificate and the creamy layer certificate granted by the District Magistrate dated 9.7.1999 after the result of the main examination but their candidature as belonging to the most backward class has not been considered. Accordingly, the prayer of the petitioners is to direct the Commission to consider their candidatures as most backward class candidates and to make recommendations on that basis.

Counter affidavit has been filed on behalf of the Commission in which it has been stated that the petitioners did not file the caste certificate issued by the District Magistrate till the date of publication of the result on 2.7.1999 and, as such, they were not considered as candidates belonging to the most backward class and their candidatures were considered as belonging to general category and having not secured the qualifying marks in that category; they have not been recommended for appointment.

From the pleading of the party it is evident that the petitioners have not submitted the caste certificate granted by the District Magistrate prior to publication of the result on 2.7.1999 but have obtained the same on 9.7.1999 and therefore, must have filed subsequent to the said date.

Dr.Sada Nand Jha, appearing on behalf of the petitioners submits that petitioners cannot be permitted to suffer on account of failure on the part of the functionary of the State in not providing them the caste certificate. He submits that in similar circumstance a learned Single Judge of this Court by order dated 8.9.1999 passed in CWJC No. 2319 of 1998(R) (Prabhash Chandra Mahto Vrs. The State of Bihar & Ors.) had directed for consideration of the case by the Commission treating the candidate to be belonging to the reserved category. He has drawn my attention to the following passage from the said order:-

"Having regard to the facts and circumstances of the case and the principle of law laid down by a full Bench of this Court in the case of "Braj Kishore Prasad. vs. State of Bihar". In my opinion the Commission should consider the case of the petitioner for appointment in the post of A.P.P. if the seats under the reserved category is still lying vacant, in which petitioner was to be considered".

Learned counsel appearing on behalf of the Commission however contends that there is nothing on record to show as to on what date petitioners filed application for grant of the certificate and undisputedly petitioners having filed the certificate granted by the District Magistrate after the publication of the result, the Commission had no option than to consider the candidature of the petitioners as belonging to the general category. He points out that in

terms of the advertisement, petitioners were required to file caste certificate while submitting application for appearing in the main examination which petitioners admittedly did not do. He also highlights that petitioners even did not submit caste certificate granted by the competent authority even before the publication of the result. It has also been submitted that in terms of the advertisement as also the judgment of the Division Bench of this Court dated 26.8.2003 passed in LPA No. 729 of 2003 (Ashok Kumar Vrs. The State of Bihar & Ors.) the caste-cum- creamy layer certificate granted by the District Magistrate is sine qua non for considering persons of such category. My attention has been drawn to the following passage from the said judgment:-

"Admittedly in the case of the appellant, caste-cum-creamy layer certificate has been issued by the Sub-divisional Magistrate and not by the District Magistrate. In that view of the matter the stand of the respondents that for the said reason the case of the appellant was not considered as reserved category candidate appears to be justified".

Having appreciated the rival submission, I do not find any substance in the submission of Mr. Jha. Petitioners on their own showing had filed application for appearing in the main examination in which they have not annexed the certificate granted by the District Magistrate i.e. the competent authority but have filed certificate granted by the

Sub-divisional Officer. The advertisement in specific terms has provided that the certificate signed by the District Magistrate shall be necessary and the certificate signed or countersigned by the Subdivisional Magistrate shall not be recognised. It seems that to avoid claim by underserving person, Commission has decided to accept the caste certificate signed by the District Magistrate. Petitioners undisputedly did not submit the certificate granted by the District Magistrate with the main application and they have also not submitted the same even before the publication of the result.

Dr. Jha points out that the result was published on 2nd of January, 1999 and the last date for submission of the application for the main examination being 15.1.1999, sufficient time was not given to the petitioners to obtain the caste certificate from the District Magistrate. This submission proceeds on a fallacious assumption that a candidate can get the caste certificate from the District Magistrate only after the result of the preliminary examination. Nothing prevented the petitioners to obtain the caste-certificate from the District Magistrate earlier. Even I assume that sufficient time was not available, nothing prevented the petitioners from bringing an appropriate action for extending the time for submission of the certificates. Petitioners have admittedly not done so and pretend to be wiser after their candidatures have not been

considered under the most backward class category. Not only this, even if it is assumed in favour of the petitioners that the last date for submission of the caste certificate granted by the District Magistrate was not sufficient they should have filed it before the publication of the result which admittedly has not been done.

Dr. Jha in order to shift the responsibility on other submits that on account of strike of the non gazetted employees of the State from 11.1.1999 to 30.4.1999 petitioners did not get the certificate. There is nothing on record to show as to when the petitioners filed application for grant of certificate and on the basis of surmises and conjectures it cannot be said that it was the District Magistrate who was responsible for not giving the caste certificate within a reasonable time. In any view of the matter petitioners having not complied with the direction of the Commission in submitting the caste certificate even prior to the publication of the result, in my opinion the Commission did not err in not considering the case of the petitioners as belonging to the most backward class and treating them to be the candidate belonging to the general category.

Now reverting to the decision of this Court in the case of Prabhash Chandra Mahto (Supra) the same in no way supports the case of the petitioners. It is not known as to what



were the terms and conditions of the advertisement in the said case. Further in the said case the candidate had appeared along with the caste certificate belonging to the most backward class but what was not submitted was the creamy layer exclusion certificate given by the Deputy Commissioner at the time of interview. On the fact of the said case this Court directed for consideration of the case under reserved category. In the present case, even at the cost of repetition, I may state that the terms of the advertisement in clear words provided for submission of the caste certificate granted by the District Magistrate which the petitioners undisputedly did not furnish till the date of publication of the result. In view of the decision of this Court in the case of Ashok Kumar (supra) (LPA No. 729 of 2003) the submission of caste certificate and exclusion from creamy layer certificate granted by the District Magistrate is necessary. In the circumstance aforesaid I am of the opinion that the petitioners are not entitled to the relief claimed.

In the result, I do not find any merit in this application - which is accordingly, dismissed but without any order as to cost.

Sd/- Chandramauli K. Prasad, J.

Patna High Court  
The 25th November, 2004  
MAFR/-A. Kumar

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Ramesh Kumar S.H.  
For Joint Registrar (J) 16-12-2004  
Patna High Court

Authorized U/S 78 Act 1 of 1951

Suhil Kumar  
16-12-2004  
24-11-2004