

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1087 of 2018

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Bibha Kumari Wife of Dr. Suraj Prakash, Resident of V.P.S. Agriculture College, Naka Chowk, Kasba Road, Purnea-854302

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department of Agriculture, Government of Bihar, Patna.
3. The Director, Department of Agriculture, Government of Bihar, Patna.
4. The Chairman, Bihar State Staff selection Commision, P.O. Veterinary College-Patna-800014.
5. The Secretary, Bihar State Staff Selection Commission, P.O. Veterinary College, Patna-800014.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjeev Shankar, Advocate
For the Respondent/s	:	Mr. Raghwanand- GA-11
		Mr. Prabhat Kumar, AC to GA-11
For BSSC	:	Mr. Gyan Shankar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

C.A.V. Judgment

Date : 22-09-2023

Heard the parties.

2. This application has been preferred for the:-

(a) issuance of an appropriate writ in the nature of certiorari to:

(i) quash the order bearing Memo No. 2223 dated 24.08.2017 passed by the Bihar Staff Selection Commission, Patna (henceforth for short, 'the Commission') whereby and where under the objection filed by the



petitioner that she belongs to Backward Class Annexure II (Non Creamy Layer) has been rejected and she has been treated as general category candidate on the ground that she did not submitted the non Creamy layer certificate with caste certificate, with regard to belonging to Backward Class Annexure II Non Creamy Layer at the time of counseling;

(ii) to quash the entire revised result issued under Memo No. 40321 dated 29.12.2017 (uploaded on website of 'the Commission' <http://bssc.bih.nic.in>) since the name of petitioner having Roll No. 21509280 does not find place in the said result;

(iii) for quashing of the letter no. 35 dated 08.01.2018 issued under signature of the Director, Agriculture, Bihar, Patna informing therein that on the basis of recommendation received from 'the Commission' for appointment of Agriculture Coordinator pursuant to Advertisement No. 02010115 dated 29.04.2015 shall start from 11.01.2018 to 10.02.2018.

(b) for issuance of writ in the nature of Mandamus directing the respondents:

(i) to accept the candidature of the petitioner under Backward Class Annexure II Non Creamy Layer category candidate and publish her result as successful



candidate under WBC category for appointment on the post of Agriculture Coordinator;

(ii) to include the name of the petitioner in the results published vide Memo No. 2198 dated 05.08.2016, Memo No. 75 dated 24.01.2017 and Memo No. 3743 dated 24.11.2017 or in case of issuance of further revised result direct the respondents to include her name in the said revised result after rectifying the mistakes/irregularities which have been committed in preparation of aforesaid results in the light of order passed, if any by this Hon'ble Court;

(iii) for directing the respondents to come out with final result for including the name of the petitioner and recommend her name so that she may be appointed as Agriculture Coordinator in the department of Agriculture, Government of Bihar.

(c) for a direction commanding the respondents to issue appointment letter to the petitioner after following the procedures laid down in Resolution No. 2082 dated 01.04.2003 issued by General Administration Department, Government of Bihar.

3. The case in narrow compass is/are as follows:

(i) the petitioner took her



graduation degree [B.Sc.(Horticulture)] from an Agriculture University of Hyderabad;

(ii) on the basis of aforesaid qualification, petitioner was earlier selected for working as Subject Matter Specialist in District Agriculture Office, Madhubani, Govt. of Bihar on contract basis and where she worked from 17.05.2010 to 18.07.2011. Thereafter the post of Subject Matter Specialist was abolished and further those having graduation degree in Agriculture Science, were engaged as Agriculture Coordinator;

(iv) Since the petitioner was having graduation degree in B.Sc. (Horticulture), she was not engaged;

(v) the petitioner belongs to Backward Class (Annexure II Non Creamy layer category);

(v) 'the Commission' came out with an advertisement no. 02010115 dated 29.04.2015 for appointment of 4391 Agriculture coordinators. Out of aforesaid 4391 posts, while 781 posts were kept reserved for Extremely Backward Class category candidates and 131 posts were kept reserved for Women candidates of Backward Class. The requisite qualification for applying for such post was Graduate in Agriculture Science/ Animal



Husbandry/Agriculture

Engineering/Horticulture/Forestry/Dairy

technology from the recognized university/college/institute;

(vi) further, it was mentioned in the said advertisement that maximum number for educational qualification up to graduation level will be 70 on the basis of marks calculated on percentage basis, i.e. if a candidate who is having 80% marks in graduation, he will be awarded 80×0.756 marks;

(vii) further, for the work experience the maximum marks to be allotted was 30. i.e. for 1 to 2 year experience - 10 marks, for 2 to 3 year experience - 20 marks and more than 3 year experience 30 marks;

(viii) the eligible applicant was required to register their online application on the website of 'the Commission' from 05.05.2015 to 29.05.2015. The applicants were to submit the requisite application fee through Bank Challan in any branch of State Bank of India.

(ix) it was further mentioned in the advertisement that relaxation of age up to 5 years shall be given to the applicants, who have completed three years of continuous service. Further, the applicants were required



to send the hard copy of the application form to the office of the Commission through Registered Post (Annexure-4 to the petition).

4. The petitioner having requisite educational qualification, i.e. B.Sc. (Horticulture) as also having the experience of working as Subject Matter Specialist in the Agriculture Department, submitted the requisite application fee through Bank Challan in the State Bank of India and submitted her online application on the website of 'the Commission' within the stipulated period as mentioned in the aforesaid advertisement.

5. Further, as the petitioner secured 70.70% marks in her graduation degree, as such her marks for the appointment on the post of Agriculture Coordinator as per advertisement aforesaid comes as under:

Marks for educational qualification - 70.70×0.7
=49.49

Marks for one year experience - $10 = 10.00$

Total marks = 59.49

6. After applying on line, the petitioner sent the hard copy of her application form along with requisite certificates and documents to the office of 'the Commission' through Registered Post, well within time.



7. 'The Commission' uploaded the Admit Card and letter of Counseling of the petitioner and others on its web site on 17.03.2016. Petitioner was allotted Roll No. 21509280 and was advised to participate in the Counseling on 08.04.2016 along with original copy of all the certificates/documents .

8. She accordingly participated in the counseling on 08.04.2016 as directed and also submitted the requisite certificates/documents which were verified with their respective originals.

9. 'The Commission' thereafter published the result of the successful candidates for appointment on the post of Agriculture Coordinator on 05.08.2016 vide Memo No. 2198. However, the name of the petitioner was not amongst the successful candidates though those having lesser marks than her were declared successful.

10. Being aggrieved, the petitioner represented vide dated 07.08.2016 before the respondent Chairman/ Secretary of 'the Commission' claiming herself to be considered under the Women Backward Class (WBC) and requesting therein to rectify the said result accordingly.

11. 'The Commission' received certain other complaints too regarding the irregularities committed in



conducting the counseling and publication of result. Some of them also approached Patna High Court by filing different writ applications including C.W.J.C. No. 13658/2016.

12. During the pendency of the aforesaid writ applications, Agriculture Department published results of successful candidates vide Memo No. 75 dated 24.01.2017 which was recommended for appointment on the post of Agriculture Coordinator by 'the Commission'. The petitioner was declared successful in the said result for appointment on the post of Agriculture Coordinator treating her as general category candidate. The name of the petitioner was found appearing in the result dated 24.01.2017 at Sr. No. 2001.

13. After publication of the aforesaid result, it was decided by the respondent authorities to conduct further counseling of the candidates by the Department of Agriculture and as such second counseling was conducted by Agriculture Department. Since certain candidates were left out in counseling, through a Press Release dated 14.02.2017 Agriculture Department informed that original certificates of 87 recommended candidates for Agriculture Coordinator in terms of letter no. 3583 dated 16.12.2016 of respondent Commission are to be examined by the Agriculture Department. Such



recommended candidates were advised to be present in the office of BOMETI, Patna on 15.02.2017 along with original certificates and its self attested copies as also an affidavit on 100 rupee non-judicial stamp paper. The roll number of the petitioner appeared in the said Press Release.

14. As advised in the aforesaid Press Release, petitioner presented herself in the office of BOMETI, Patna on 15.02.2017 along with all requisites as asked for. Her entire certificates including the caste certificates were examined by the concerned authorities on 15.02.2017.

15. Meanwhile, the Court vide its order dated 30.05.2017 disposed of the writ application bearing C.W.J.C. No. 13658 and its analogous cases with a direction to 'the Commission' to consider the objections raised by the petitioners and dispose of the same objectively by a speaking order.

16. 'The Commission' in turn, invited objection from the all the candidates through its website between 24.05.2017 to 07.06.2017.

17. Further, vide Notice bearing Memo No. 1510 dated 14.07.2017 such candidates who had submitted certificate of Backward Class Annexure II (Non Creamy layer) at the time of counseling and were treated as general category candidate



were advised to submit a declaration in the prescribed Performa to the office of 'the Commission' from 17.07.2017 to 20.07.2017, personally. In response to the aforesaid notice, petitioner submitted such declaration in the prescribed Performa in the office of 'the Commission' on 19.07.2017.

18. However, after objections from the candidates and obtaining the aforesaid declaration, to the utter surprise of the petitioner, her objection with regard to belonging to Backward class Annexure II (Non Creamy Layer) was rejected vide an order dated 24.08.2017 (Annexure-1) and 'the Commission' came out with the third result of the successful candidates for appointment on the post of Agriculture coordinator vide Memo No. 3743 dated 24.11.2017 without declaring the result of the petitioner under BC/WBC category.

19. Being aggrieved by the result dated 24.11.2017, the petitioner submitted representation before Secretary of 'the Commission' on 29.11.2017 and before the Chairman on 04.12.2017 stating therein that she had submitted all the requisite certificates including caste certificate along with Non creamy layer certificate as also the affidavits as advised by 'the Commission'. However, even thereafter her candidature under BC/WBC category has been rejected whereas the



candidates having lesser marks than her have been declared successful in the result dated 24.11.2017. She as such requested to consider her candidature under BC/WBC category and declare her successful for appointment on the post of Agriculture Coordinator.

20. The petitioner later came to know that since some unsuccessful candidates again raised certain objection against the result dated 24.11.2017, 'the Commission' in an arbitrary and malafide manner came out with 4th result dated 29.12.2017 (Annexure-2) without seeking any objection from any candidate including the petitioner whereby and where-under though the petitioner was not declared successful, but the candidate belonging to Backward Class (woman), i.e. Manisha Kumari, Roll No. 21511951 having total score of 48.72, i.e. less than the petitioner, has been declared successful.

21. Thus, in a nutshell, the case of the petitioner as explained by the learned Counsel is/are that she has submitted her application, was to be placed under OBC category and further, at the time of the counseling, as asked for, she had submitted her non-creamy layer certificate too as also the affidavit/declaration.

22. However, it has been alleged that in the



document, deliberately under the caption non-creamy layer certificate, it was crossed by 'the Commission' and further remarks was given that non-creamy later certificate is not attached.

23. Further, learned Counsel for the petitioner submits that accordingly, she was pushed under the general category in which although she kept on appearing in the counseling, could not make it out in the final list.

24 It is the further submission of the learned Counsel for the petitioner that under OBC category, one Manisha Kumari (Roll No. 2151195) having score of 48.72, less than that of the petitioner (59.49) has been declared successful and in the process, she has been denied the post.

25. Learned Counsel further submits that having allowed her to repeatedly appear in one after another counseling under general category, rejection of her candidature under BC/WBC category needs to be interfered with.

26. The further submission is that in similar situate matter relating to one Shashi Bhushan Yadav, the candidate appeared in the counseling on 05.05.2016, claimed his case be considered under reservation category under Backward Class/non-creamy layer, as he failed to furnish the



certificate, his case was not considered. Learned Counsel submits that he submitted objection which was rejected by 'the Commission', aggrieved, Shashi Bhushan Yadav preferred writ petition vide CWJC No. 727 of 2018 which has been allowed in his favour.

27. The last submission is that the lady has crossed her age bar applicable for the Government job and non-consideration will jeopardize her entire future. Thus, it is the case of the petitioner that the same be also considered sympathetically.

28. 'The Commission' has filed its counter affidavit and as per it, on 08.04.2016, i.e., the date of counseling, the petitioner failed to submit a non-creamy layer certificate in support of her claim to be considered under BC/WBC category.

29. Learned Counsel for 'the Commission' has drawn the attention of this Court to Clause 4 of the advertisement according to which a candidate was supposed to submit the certificate at the time of the counseling failing which they will be considered to be under general category and will not be entitled for the reservation benefits. The same is being incorporated here-in-below for proper appreciation:



“4. आरक्षण :-

(i) आनलाईन आवेदन करते समय नियत प्रविष्टि के अधीन इंगित आरक्षण का दावा नहीं करने पर किसी भी परिस्थिति में आरक्षण का लाभ देय नहीं होगा। सामान्य प्रशासन विभाग के परिपत्र संख्या – 70 दिनांक – 11.06.1996 एवं बिहार अधिनियम [15/2003](#) (मूल) के आलोक में राज्याधीन सेवाओं में आरक्षण का लाभ राज्य के मूल वासी को ही देय है।

(ii) पिछड़ा वर्ग तथा अत्यन्त पिछड़ा वर्ग श्रेणी के आरक्षित उम्मीदवारों के लिए राज्य सरकार द्वारा अधिसूचित अंचलाधिकारी द्वारा निर्गत जाति प्रमाण-पत्र जिसमें क्रीमीलेयर में नहीं होने का उल्लेख हो, मान्य होगा। अनुसूचित जाति/अनुसूचित जनजाति श्रेणी के अभ्यर्थियों के लिए अंचलाधिकारी द्वारा निर्गत जाति प्रमाण-पत्र मान्य होगा। ऑनलाईन आवेदन के समय यह प्रमाण-पत्र जमा करने की आवश्यकता नहीं है परन्तु काउंसेलिंग के समय पिछड़ा वर्ग/अत्यन्त पिछड़ा वर्ग श्रेणी के अभ्यर्थियों के द्वारा क्रीमीलेयर रहित प्रमाण-पत्र तथा अनुसूचित जाति/अनुसूचित जनजाति श्रेणी के अभ्यर्थियों के द्वारा जाति प्रमाण-पत्र समर्पित नहीं करने पर वे अनारक्षित श्रेणी के माने जायेंगे तथा उन्हें आरक्षण का लाभ देय नहीं होगा। अभ्यर्थी आवेदन-पत्र भरते समय इस बात का ध्यान रखेंगे कि वे जिस आरक्षण श्रेणी के अन्तर्गत आते हो उसी आरक्षण श्रेणी का दावा करेंगे।

(iii) ऑनलाईन आवेदन-पत्र में दावा किये गये आरक्षण श्रेणी में किसी भी परिस्थिति में परिवर्तन नहीं किया जायेगा तथा इस संबंध में किसी भी आवेदन पर विचार नहीं किया जायेगा। गलत आरक्षण का दावा करने पर उन्हें अनारक्षित श्रेणी में माना जायेगा। अभ्यर्थियों को यह निर्देश दिया जाता है कि अपनी जाति एवं संबंधित श्रेणी को भरते समय वे बिहार सरकार के अधिकृत वेबसाईट पर जा कर अपने जाति से संबंधित आरक्षण श्रेणी का पता लगाने के



पश्चात् ही आरक्षण का दावा हेतु आरक्षण श्रेणी भरना सुनिश्चित करेंगे।

(iv) ऑनलाईन आवेदन प्राप्त होने की अंतिम तिथि तक जो अभ्यर्थी जिस आरक्षण श्रेणी में होंगे, वही मान्य होगा यदि आरक्षण श्रेणी में नियुक्ति प्रक्रिया की अवधि में कोई परिवर्तन होता है, तो वह मान्य नहीं होगा।

(v) कृषि समन्वयक के कुल 4391 पदों पर नियुक्ति में विकलांग को तीन प्रतिशत (कोटिवार) के तहत एक प्रतिशत चक्षु विकलांग, एक प्रतिशत मूक वधिर विकलांग एवं एक प्रतिशत चलंत विकलांग आरक्षण देय होगा। कार्मिक एवं प्रशासनिक सुधार विभाग (वर्तमान में सामान्य प्रशासन विभाग) के संकल्प संख्या 62, दिनांक 05.01.2007 के प्रावधान के कंडिका 5 के आलोक में केवल ऐसे व्यक्ति सेवाओं अथवा पदों के लिए पात्र होंगे जो कम से कम 40 प्रतिशत संगत निःषक्तता से ग्रस्त हो।”

(underline mine)

30. It is the further submission of the learned Counsel that admittedly, the petitioner failed to submit the non-creamy layer certificate and as such she was considered under general category.

31. Learned Counsel further submits that so far as the inviting of objection by ‘the Commission’ is concerned, since in the case of non-creamy layer certificate in absence of submission of certificate at the time of counseling, her subsequent objection in this regard cannot be entertained.

32. The last submission is that so far as the case of Shashi Bhushan Yadav, is concerned, aggrieved by the order



passed in CWJC No. 727 of 2018, 'the Commission' preferred LPA No. 1311 of 2019.

33. He submits that the same was taken up on 07.11.2022 and a Division-Bench of Patna High Court allowed the appeal of 'the Commission' and set aside the order of the learned Single Judge dated 17.05.2019 in CWJC No. 727 of 2018. Thus his submission is that the writ petition is fit to be dismissed.

34. Heard the parties.

35. Having gone through the facts of the case, the submissions put forward by the respective Counsels as also the documents on record, this Court finds force in the submission put forward by the learned Counsel for 'the Commission'.

36. The advertisement issued by 'the Commission' (advertisement no. 02010115) is/was very clear. In the paragraph relating to reservation, it was clearly stated that those belonging to Backward Class and Most Backward Class category have to submit caste certificate specifying therein that they do not belong to creamy layer.

37. It was further incorporated that though it is not required at the time of submission of the application form; at the time of counseling, the candidate belonging to



Backward Class/Most Backward Class must submit the non-creamy layer certificate in support of his/her claim and in its absence, they will be considered under general category and will not be given the benefits of the reservation.

38. Further, a perusal of the document (Annexure-A) of the counter affidavit of 'the Commission' would show that although on 08.04.2016, the lady appeared for counseling and submitted other documents, she failed to submit her non-creamy layer certificate which finds incorporated therein.

39. In that backdrop, the petitioner was not considered under the Backward Class category and further was not extended the benefit of Backward Class cut off but was shifted to general category. Though she appeared in the first and second counseling in the general category; in view of the fact that the cut off marks of general category went above that the petitioner's final marks, unfortunately, she could not be accommodated.

40. The petitioner having failed to submit her non-creamy layer certificate at the time of counseling cannot agitate the matter vis-a-vis Manisha Kumari who diligently appeared and submitted her documents at the time of



counseling; was accordingly considered under the said WBC category and declared successful. The petitioner having been shifted to the general category cannot complain that the lady having lesser marks than her under the reserved category has been selected ignoring her candidature.

41. So far as the case of Shashi Bhushan Yadav is concerned, a perusal of the LPA No. 1311 of 2019 disposed of on 07.11.2022 would show that the Division Bench of the Patna High Court allowed the appeal of 'the Commission' and the writ petition vide CWJC 727/2018 was set aside.

42. The Division Bench has taken note of Hon'ble Supreme Court's decision in a case of **Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board and Another** reported in (2016) 4 SCC 754 as also a case of Patna High Court in **Dr. Santosh Kumar Vs the State of Bihar through the Chief Secretary and Others** reported in 2017(1) PLJR 786.

43. The learned Single Judge in CWJC No. 727 of 2018 had relied upon the case of **Ram Kumar Gijroya (supra)** to allow the writ petition.

44. The Division-Bench in LPA No. 1311 of 2019 dealt with both **Ram Kumar Gijroya (supra)** as also the



case of **Dr. Santosh Kumar** which finds incorporated in paragraphs **15-16** and read as follows:

*“15. Learned single Judge has taken note of decision cited (supra) reported in **2016 4 SCC 754**, para 12 of the learned single Judge reads as under:-*

*"12. The present case is squarely covered by law laid down by the Hon'ble Apex Court in a judgment reported in **(2016) 4 SCC 754 (Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board and Another)**, paragraph Nos. 14 to 18 whereof are reproduced hereinbelow" 14. The Division Bench of the High Court erred in not considering the*

*decision rendered in Pushpa. In that case. the learned single Judge of the High Court had rightly held that the petitioners therein were entitled to submit the O.B.C. certificate before the provisional selection list was published to claim the benefit of the reservation of O.B.C. category. The learned single judge correctly examined the entire situation not in a pedantic manner but in the backdrop of the object of reservations made to the reserved categories, and keeping in view the law laid down by a Constitution Bench of this Court in **Indra Sawhney v. Union of India** as well as **Valsamma Paul v Cochin University**. The*



learned single Judge in Pushpa also considered another judgment of Delhi High Court, in Tej Pal Singh, wherein the Delhi High Court had already taken the view that the candidature of those candidates who belonged to the S.C. and ST. categories could not be rejected simply on account of the late submission of caste certificate.

15. The relevant paragraph from the judgment of this Court in Indra Sawhney has been extracted in Pushpa along with the speech delivered by Dr Ambedkar in the constituent assembly and reads thus :(Pushpa case, SCC Online Del para 9)

"9..... 251. Referring to the concept of equality of opportunity in public employment as embodied in Article 10 of the draft Constitution, which finally emerged as Article 16 of the Constitution, and the conflicting claims of various communities for representation in public administration, Dr Ambedkar emphatically declared that reservation should be confined to "a minority of seats". lest the very concept of equality should be destroyed. In view of its great importance, the full text of his speech delivered in the Constituent Assembly on the point is appended to this judgment. But I shall now read a few passages from it. Dr



Ambedkar stated:

"... firstly, that there shall be equality of opportunity, secondly that there shall be reservations in favour of certain communities which have not so far had a 'proper look-in' so to say into the administration. Supposing, for instance, we were to concede in full the demand of those communities who have not been so far employed in the public services to the fullest extent, what would really happen is, we shall be completely destroying the first proposition upon which we are all agreed, namely, that there shall be an equality of opportunity..... Therefore the seats to be reserved, if the reservation is to be consistent with sub-clause (1) of Article 10. must be confined to a minority of seats". It is then only that the first principle could find its place in the Constitution and effective in operation... we have to safeguard two things, namely, the principle of equality of opportunity and at the same time satisfy the demand of communities which have not had so far representation in the State,...."
[Constituent Assembly Debates, Vol. 7. pp. 701-02 (1948-49).]

These words embody the raison d'etre of reservation and its limitations. Reservation is one of the measures adopted



by the Constitution to remedy the continuing evil effects of prior inequities stemming from discriminatory practices against various classes of people which have resulted in their social, educational and economic backwardness. Reservation is meant to be addressed to the present social, educational and economic backwardness caused by purposeful societal discrimination. To attack the continuing ill effects and perpetuation of such injustice, the Constitution permits and empowers the State to adopt corrective devices even when they have discriminatory and exclusionary effects. Any such measure, insofar as one group is preferred to the exclusion of another must necessarily be narrowly tailored to the achievement of the fundamental constitutional goal' (Indra Sawhney case, SCC pp. 433-34, para 251)"

16. In Pushpa, relevant paragraphs from Tej Pal Singh have also been extracted, which read thus: (Pushpa case, SCC OnLine Del para 11)

"II..... 15. The matter can be looked into from another angle also. As per the advertisement dated 11-06-1999 issued by the Board, vacancies are reserved for various categories including SC category Thus in order to be considered for the post reserved for SC category, the requirement is



that a person should belong to SC category. If a person is SC his is so by birth and not by acquisition of this category because of any other event happening at a later stage. A certificate issued by competent authority to this effect is only an affirmation of fact which is already in existence. The purpose of such certificate is to enable the authorities to believe in the assertion of the candidate that he belongs to SC category and act thereon by giving the benefit to such candidate for his belonging to SC category. It is not that petitioners did not belong to SC category prior to 30-6-1998 or that acquired the status of being SC only on the date of issuance of the certificate. In view of this position, necessitating upon a certificate dated prior to 30-6-1998 would be clearly arbitrary and it has no rationale objective sought to be achieved.

16. While taking a particular view in such matters one has to keep in mind the objectives behind the post of SC and ST categories as per constitutional mandate prescribed in Articles 13(4) and 16(4) which are enabling provisions authorising the Government to make special provisions for the persons of SC and ST categories Articles 14(4) and 16(4), therefore, intend to remove social and economic inequality to make



equal opportunities available in reality Social and economic justice is a right enshrined for protection of society The right in social and economic justice envisaged in the Preamble and clongated in the Fundamental Rights and Directive Principles of the Constitution, in particular Arts. 14. 15. 16, 21, 38, 39 and 46 are to make the quality of the life of the poor. disadvantaged and disabled citizens of the society meaningful. (Tej Pal Singh case, SCC Online Del paras 15-16)"

17. Further, in Pushpa, relevant portion from the judgment of Valsamma Paul case has also been extracted, which reads as under: (Pushpa case, SCC Online Del para 11)

"11.... 17.... Constitution "21. The through its Preamble, Fundamental Rights and Directive Principles created a secular State based on the principle of equality and non- discrimination, striking a balance between the rights of the individuals and the duty and commitment of the State to establish an egalitarian social order." (Valsamma Paul case, SCC pp. 560-61. para 21) (Tej Pal Singh case, SCC OnLine Del para 17)"

18. In our considered view, the decision rendered in the case of Pushpa is in



conformity with the position of law laid down by this Court which have been referred to supra. The Division Bench of the High Court erred in reversing the judgment and order passed by the learned single Judge, without noticing the binding precedent on the question laid down by the Constitution Benches of this Court in Indra Sawhney and Valsamma Paul wherein this Court after interpretation of Articles 14,15,16 and 39A of the Directive Principles of State Policy held that the object of providing reservation to the SC/ST and educationally and socially backward classes of the society is to remove inequality in public employment, as candidates belonging to these categories are unable to compete with the candidates belonging to the general category as a result of facing centuries of oppression and deprivation of opportunity. The constitutional concept of reservation envisaged in the Preamble of the Constitution as well as Articles 14, 15, 16 and 39-A of the Directive Principles of State Policy is to achieve the concept of giving equal opportunity to all sections of the society. The Division Bench, thus, erred in reversing the judgment and order passed by the learned single Judge. Hence, the impugned judgment and order passed by the



Division Bench in the Letters Patent Appeal No. 562 of 2011 is not only erroneous but also suffers from error in law as it has failed to follow the binding precedent of the judgments of this Court in Indra Sawhney and Valsamma Paul. Therefore, the impugned judgment and order passed by the Division Bench of the High Court is liable to be set aside and accordingly set aside. The judgment and order dated 24.11.2010 passed by the learned single Judge in Ram Kumar Gijroya v Govt. (NCT of Delhi) is hereby restored."

16. Para 7 of the decision rendered in *Dr. Santosh Kumar Vs. The State of Bihar through the Chief Secretary & Ors.* reported in 2017(1) PLJR 786 reads as under:-

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".

45. The Division Bench thus came to the conclusion that a non-creamy layer certificate has to be furnished depending upon the change of income of a family while the caste certificate do not change like in case of Scheduled Caste/Scheduled Tribe.

46. The relevant paragraphs of the Division-Bench order (paragraphs **17-18**) read as follows:

17. This court has distinguished the object of furnishing Non Creamy Layer certificate. Non Creamy Layer certificate is in respect of income criteria which is required to be furnished depending upon the change of income of the family. Whereas the caste certificate do not change like SC/ST. To that extent, this court has distinguished the Hon'ble Supreme Court's decision in the



*case of **Ram Kumar Gijroya** (supra). Therefore, the learned single Judge has committed error in allowing the respondent-**Shashi Bhushan Yadav's** case.*

*18. Hon'ble Supreme Court recently in the case of **Mahendra Singh Vs. Union of India & Ors.** reported in **2022 SCC Online SC 909** it is held that candidates instructions in respect of selection matter is concerned. It is to be adhered, if there is any deviation. In such circumstances, such candidature selection cannot be entertained.*

47. On the basis of the said conclusion, the Division-Bench set aside the order of the learned Single Judge in **CWJC No. 727 of 2018** which finds incorporated in paragraphs **19-21** which again read as follows:

19. Having regard to the factual aspects of the case in hand it is crystal clear that respondent-Shashi Bhushan Yadav has not furnished Non Creamy Layer certificate and he does not have Creamy Layer certificate other than Annexure A-3 issued on 31" December 2012. Non Creamy Layer certificate dated 31.12.2012 cannot be entertained in respect of selection of the year 2015/2016. In other words, income must have varied from 31"



December 2012 to 2015/2016. Therefore, even if there is Non Creamy Layer certificate beyond 05.05.2016 the same cannot be taken into consideration for the reasons that sub clause 2 of clause 4 of advertisement cited (supra) mandates candidates to furnish relevant certificate as on the date of candidates counselling. In the present case on 05.05.2016 respondent-Shashi Bhushan Yadav was subjected to counselling and he had not produced Non Creamy Layer certificate as on 05.05.2016.

20. In the light of these facts and circumstances, we uphold the decision of the authority dated 22.07.2017 vide Annexure-11 to the writ petition and set aside the order of the learned single Judge dated 17.05.2019 passed in C.W.J.C. No. 727 of 2018.

21. Accordingly the present L.P.A. stands allowed.

48. This Court also toes the order of the Division-Bench in **LPA No. 1311 of 2019 (the Bihar Staff Selection Commission, Bihar, Patna through its Chairman vs. Shashi Bhushan Yadav and Ors)**. The caste of a candidate remains the same like in the OBC/MBC/SC/ST. However, so far as the non-creamy layer is concerned, it keeps on changing depending upon the income of a family. It is in this



circumstance that clear directive was issued in the advertisement that in case that a candidate seeking reservation under the BC/MBC category has to provide the recent non-creamy layer certificate at the time of counseling showing his/her family income.

49. The petitioner failed to do so. In the circumstance, 'the Commission' was justified in considering her case under the general category. Though, treating her to be a candidate belonging to the said category, she was allowed to appear in the counseling as has been repeatedly referred by the learned Counsel for the petitioner, in view of the fact that her score was below the cut off marks required for a general category candidate, she could not be accommodated.

50. From the averments made in the writ petition as also submitted by the learned Counsel for the petitioner, the lady has crossed the age bar. This Court has all the sympathy for her as due to her misfortune, she failed to provide the necessary certificate required in time during the counseling which resulted into her exclusion from reservation category. Further, despite appearing in counseling under general category, could not finally make it in the final list.

51. This Court can only extend her good wishes



and will encourage her to search other avenues waiting for her outside the government job; she being a graduate in Horticulture from a reputed University of the Country.

52. The writ petition, however, fails and is accordingly dismissed.

(Rajiv Roy, J)

kiran/-

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