

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CWJC No 15841 of 2007**

Preeti Singh, daughter of Sri Kameshwar Prasad Singh, resident of  
 Ashiana Nagar, P S – Shastrinagar, District – Patna - **Petitioner**

**Versus**

- 1 The State of Bihar through the Secretary, Personnel and Administrative Reforms Department, Government of Bihar, Patna
- 2 The Secretary/Commissioner, Personnel and Administrative Reforms Department, Government of Bihar, Patna
- 3 The Bihar Public Service Commission through its Secretary, Jawahar Lal Nehru Road, Patna
- 4 The Secretary, Bihar Public Service Commission, Jawahar Lal Nehru Road, Patna
- 5 The Special Officer –cum- Examination Controller, Bihar Public Service Commission, Jawahar Lal Nehru Road, Patna - **Respondents**

3 **07.12.2010**

The petitioner had applied for appointment to the post of Child Development Project Officer (CDPO) in the State pursuant to advertisement issued on 30<sup>th</sup> April, 2005. The advertisement provided for reservation of seats for various categories including backward class. The petitioner, claiming to be backward caste, claimed preferential appointment. It is stated that she made an application alongwith the backward class certificate. She qualified in preliminary test, final test and was called for interview by interview letter dated 22.08.2007 (Annexure-5 to the writ petition). In the interview letter, it was stated that persons, claiming benefit of reservation, must produce the original caste certificate as well as creamy layer certificate. The interview was fixed for 12<sup>th</sup> September, 2007. As per petitioner's own case, she appeared in interview but could not produce the creamy layer certificate. It is pleaded that she was asked to give an undertaking to produce the same. She applied to the Collector, Patna for grant of creamy layer certificate which was issued on

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the 08<sup>th</sup> of November, 2007 which she alleges to have sent by registered post to the Bihar Public Service Commission (BPSC) on 21<sup>st</sup> of November, 2007. She complains that inspite of this compliance, the results were published on 23<sup>rd</sup> of September, 2007 ignoring the claim of petitioner as a backward caste candidate, thus, depriving her of her Right to Employment under the State.

Counter affidavits and rejoinders have been filed. With consent of parties, the writ petition has been heard for disposal at this stage itself.

Mr Rajendra Prasad Singh, learned Senior Counsel appearing on behalf of petitioner submits that the present case is squarely covered by the Division Bench judgment of this Court in the case of *Bihar Public Service Commission and others -Versus- State of Bihar and others being LPA No 35 of 2008* which was dismissed on 08.02.2008 affirming the judgment of Single Judge of this Court which directed BPSC to revise the result of the same very recruitment to include the name of that writ petitioner. To the contra, learned counsel for the BPSC relies on another Division Bench judgment of this Court in the case of *Vandana Govindam -Versus- State of Bihar and others being LPA No 650 of 2010* which was dismissed on 07.04.2010 affirming the judgment of a Single Judge of this Court refusing to interfere in the action of BPSC of cancelling the result of the petitioner of that case by corrigendum.

In my view, it is really not necessary to discuss the said two judgments for the simple reason that upon petitioner's own showing, the interview had taken place on the 12<sup>th</sup> of September, 2007 when she was

asked to produce the creamy layer certificate of which she had already been intimated in the interview letter itself. The results were published on 23<sup>rd</sup> of September, 2007. The creamy layer certificate, for which she applied after the interview, was itself issued on 08.11.2007 and was sent to BPSC on 21<sup>st</sup> of November, 2007. Thus, upto the date of publication of result, petitioner was not in possession of creamy layer certificate. It is elementary that in absence of creamy layer certificate, mere caste certificate is of no use. It is too late in the day to contend that reservation in Government employment is only on basis of caste. If that were so then in view of the judgments of the Apex Court in the matter, it would be clearly arbitrary. As a necessary safeguard, the Apex Court and other Courts have repeatedly held that it is not mere caste but so far as other backward communities are concerned, it is creamy layer that would decide their entitlement. Thus, on petitioner's own showing, she had no creamy layer certificate to entitle her for consideration under backward caste and that being so, rightly her candidature was not considered in the reserved category.

However, as both sides have extensively relied upon the two judgments, it is better that I may note the distinctions. In the first case of *BPSC -Versus- State of Bihar (supra)*, the Division clearly found that the creamy layer certificates were produced on the date for which undertaking was given at the time of interview and long before the results were published which is not the case in the present. So far as the case of *Vandana Govindam -Versus- State of Bihar (supra)* is concerned, in that case, the Court found that petitioner could never produce the creamy layer

certificate which entitled the BPSC to cancel the result showing her selected in the reserved category. The present is not cancellation of result.

Thus, I find no merit in this writ application. It is, thus, dismissed.

M.E.H./

Sdt (Navaniti Prasad Singh), J

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