

IN THE HIGH COURT OF JUDICATURE AT PATNA
C.W.J.C.No.1603 of 2001
Gyan Shila..Vs..The State of Bihar & ors

For the petitioner	: Mr. Rajendra Prasad, Senior Advocate
	Mr. Pramod Kumar
For BPSC	: Mr. Mukteshwar Singh
For the State	: Mr. Rajesh Kumar Singh JC to AAG II.

ORDER

4. 10.11.2004.

The Bihar Public Service Commission, hereinafter referred to as 'the Commission' issued advertisement No.93/98 inviting applications from the candidate desirous of appointment as Civil Assistant Surgeon under the Bihar Health Services. In pursuance of the said advertisement, petitioner offered her candidature. She was issued a provisional Admit Card and the Roll Number assigned to her was 11163. She appeared in the written examination, the result whereof was published in the daily Newspaper (Annexure-6) and the name of the petitioner finds place amongst the successful candidates in the written examination. The Commission published notice asking the successful candidates to appear in the interview and the petitioner whose Roll Number was 11163 was asked to appear for interview on 8.1.2001. But before the said date, the Commission issued a corrigendum (Annexure-8) in which it has been stated that the result of 18 candidates including the petitioner has been wrongly published and the same was accordingly cancelled. In the present application filed under Article 226 of the Constitution of India, prayer of the petitioner is to issue a writ in the nature of mandamus commanding the respondent

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Commission to conduct the interview of the petitioner and treat her to have been successful in the said written examination.

Counter affidavit has been filed on behalf of respondent nos.3 to 5 and in para-7 thereof, it has been stated that the minimum qualifying marks for the candidates belonging to the Backward Women category, was 32 % which comes to 128 marks. It has been further averred that the petitioner had secured less than the qualifying marks and as such, her result ought not to have been published as a successful candidate in the written examination. No rejoinder to the aforesaid counter affidavit has been filed.

Mr. Pramod Kumar, appearing on behalf of the petitioner submits that once the name of the petitioner was published in the list of successful candidates in the written examination, same ought not to have been rescinded without giving any opportunity to the petitioner. He submits that the action of the Commission in issuing the corrigendum is in breach of the principle of natural justice and that itself vitiates the impugned communication.

Mr. Mukteshwar Singh, appearing on behalf of the Commission, however, submits that the petitioner had not secured the minimum qualifying marks and her result was wrongly published and when the fact came to the notice of the Commission, the impugned corrigendum was issued. He submits that the facts of the present case do not justify issuance of notice to the petitioner as the result

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of the petitioner has not been cancelled on any misconduct alleged against her but on the ground that she has not secured the minimum qualifying marks.

Having considered the rival submission, I do not find any substance in the submission of Mr. Kumar. Principle of natural justice is not an unruly horse and its application depends upon the facts and circumstance of each case. Here, the petitioner was a candidate for appointment to the post of Civil Assistant Surgeon in the Bihar Health Service. It is the assertion of the contesting respondents that the minimum qualifying marks in the written examination was 128 and the petitioner had not secured the said marks, which fact has not been denied by the petitioner and the result of the petitioner was declared wrongly. When the result of a person is declared wrongly on a ground not attributable to him, there is no question of application of the principle of natural justice. The petitioner having not secured the minimum qualifying marks, she ought not to have been declared successful and when the fact came to the notice of the Commission, it has corrected the mistake which is always permissible in law.

In the result, I do not find any merit in this application and it is dismissed accordingly.
No cost.

Sd/- (Chandramauli Kr. Prasad)

T. C.
M. M. R. G.
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