

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17951 of 2022

Swati Swarnim,

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar.
2. Chief Additional Secretary, Department of Law, Government of Bihar.
3. Chairman, Bihar Public Service Commission, Patna, Bihar.
4. Secretary, Bihar Public Service Commission, Patna, Bihar.
5. The Registrar, The High Court of Judicature at Patna, Patna, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Dr. Bipin Chandra, Adv.
For the State	:	Mr. Gyan Prakash Ojha, GA-7
For the BPSC	:	Mr. Sanjay Pandey, Adv.
For the High Court	:	Mr. Piyush Lall, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 28-06-2023

We have heard Mr. Bipin Chandra for the petitioner, Mr. Sanjay Pandey for the Bihar Public Service Commission, Mr. Piyush Lall, for the High Court and Mr. Gyan Prakash Ojha, for the State.

2. The petitioner having obtained L.L.B. degree from Babasaheb Bhimrao Ambedkar Bihar University in the year 2014, got enrolled as an advocate with the Bar Council of Bihar. In response to the Advertisement No. 4 of 2020 for



selection/appointment to the post of Civil Judge (Junior Division) by the Bihar Public Service Commission, the petitioner submitted her application. It is the case of the petitioner that she belongs to Extremely Backward Class (Female) Category, and had appeared in the Preliminary Examination of 31st Services Examination. Having been found successful in the said Preliminary Examination, she appeared in the Written Examination (Mains) and was declared successful, whereupon she was called for interview. However, when the final merit list was published by the Bihar Public Service Commission, she was disqualified in the interview along with others, who had failed to secure the minimum qualifying marks.

3. Being aggrieved, the petitioner approached this Court, seeking a direction upon the respondents to consider her candidature for the post of Civil Judge (Junior Division) and recommend her name for the said post as she has been illegally left out in the final result dated 10.10.2022. The petitioner further seeks quashing of the second proviso to Rule 15(c) of the Bihar Civil Service (Judicial Branch) (Recruitment) Rules, 1955 read with Notification No. 7/Ashta-01-4-04/2011GAD/16645 dated 03.12.2014 to the extent of fixing a cut-off marks of 35% in viva-voce examination and also for quashing the aforementioned



advertisement, more particularly condition no. 4(c) by holding it as ultra vires of Article 14 to the Constitution of India.

4. From the perusal of the final result dated 10.10.2022 as contained in Annexure-5 to the writ petition, it appears that she has been accorded only 34 marks out of total 100 marks and in the written examination, she had secured 427 marks. Even if the petitioner was securing 34 marks in the interview, it has been argued, she is eligible to be selected in the final examination as the final cut-off marks for EBC Category (female) is 447 and she has secured 461 marks in aggregate. However, only on account of the draconian rule of minimum of 35% marks in interview, she has been declared not qualified.

5. The petitioner, placing reliance of the judgment rendered by the Supreme Court in the case of **All India Judges' Association and Others vs. Union of India and Others, (2002) 4 SCC 247**, submits that the mandate of the Supreme Court is that there should not be any requirement for securing minimum marks in viva-voce, which ought to have been given effect to in the present case, notwithstanding the proviso to Rule 15(c) of the Bihar Civil Service (Judicial Branch) (Recruitment) Rules, 1955 read with Notification dated 03.12.2014, any condition, imposing 35% marks out of total 100 marks as



qualifying marks in interview which is contrary to the statutory rules, and that too when the Rule 15(c) of the Bihar Civil Service (Judicial Branch) (Recruitment) Rules, 1955, stood already deleted vide Notification No. 17283 dated 28.12.2016.

6. Be it noted that Advertisement No. 4 of 2020 was issued much after the incorporation of qualifying marks at the viva-voce test vide corrigendum dated 22.11.2017, prescribing the minimum qualifying marks of 35% in interview. The same is not contrary to rules. There is no inherent infirmity, rendering it ultra vires to the Constitution. The petitioner has appeared in the examination without protest and having been found unsuccessful, she cannot be permitted to challenge the process of selection.

7. This Court has considered the identical issue in **C.W.J.C. No. 1777 of 2020 (Nitu Kumari and Others vs. The State of Bihar and Others and other analogues cases)**, wherein the aspirants of 30th Bihar Judicial Service Competitive Examination, had questioned Rule 15(c) of the Bihar Civil Service (Judicial Branch) (Recruitment) Rules, 1955 on the same ground. The claim of the petitioner(s) of the aforementioned writ petitions have been negated.

8. In view thereof, the present writ petition is also



disposed of in terms of the judgment dated 21.06.2023 passed in
C.W.J.C. No. 1777 of 2020.

(Harish Kumar, J)

**I agree.
Ashutosh Kumar, J.**

(Ashutosh Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	24.02.2023
Uploading Date	28-06-2023
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