

Serial No of Order	Date of Order	ORDER WITH SIGNATURE	Office notes as to action (if any) taken on order
	07- 19.10.06	<p>IN THE HIGH COURT OF JUDICATURE AT PATNA CWJC No. 9024 of 2002 Amlesh Kumar Petitioner vrs. The State of Bihar & Others.. Respondents *****</p> <p>Heard Mr. D K Tiwary for the petitioner, Mr. Rajesh Kumar Singh, JC to AAG II for respondent nos. 1 and 2, and Mr. Mukteshwar Singh for respondent nos. 3 and 4 (Bihar Public Service Commission). This writ petition has been preferred for a direction to the respondent nos. 3 and 4 to publish the petitioner's result of the 40th Combined Civil Services Examination.</p> <p>2. According to the petitioner, the Commission had published an advertisement which had appeared in the local dailies in April 1995, inviting applications from all eligible candidates for appointment to the posts mentioned therein. The petitioner had submitted his application, a photocopy of which is on record. In his application, the petitioner claimed the benefit of reservation in the category of 04 (Most Backward Castes). He was allotted Roll No. 192061, and the written examinations had taken place in October 1995. The petitioner raises a grievance before this Court that his claim for reservation in 04 category has been ignored for mistake attributable to the Commission as a result of which persons who had scored lesser marks than him in the written papers (described by the Commission as Mains Examination), and</p>	

36

7

Serial No. of Order	Date of Order	ORDER WITH SIGNATURE	Office notes as to action (if any) taken on order.
		<p style="text-align: center;">: 2 :</p> <p>consequently the petitioner did not figure in the result of the written examination (Annexure-1). The petitioner, therefore, alleges negligence and discrimination.</p> <p>3. Respondent nos. 3 and 4 have placed their counter affidavit on record and have opposed the writ petition.</p> <p>4. I have perused the materials on record and considered the submissions of learned counsel for the parties. It appears to me that the Commission had published the advertisement for the 40th Combined Civil Services Examination in April 1995. The petitioner's application was received in the Commission's office on 17.10.1995, wherein it is stated that he belonged to the category of Most Backward community, i.e. category 04. It is relevant to state that the State Government had not till the date of the advertisement taken the decision regarding determination of the Creamy layer to exclude such candidates from the benefit of reservation. The advertisement had, therefore, called upon the applicants to file certificates showing caste certificate only, and there was no requirement to file a certificate regarding Creamy layer. It further appears to me that much before the result of the written examination was published, the State Government took the decision to identify</p>	

35

6

↓

11
1

Serial of Order	Date of Order	ORDER WITH SIGNATURE	Office notes as to action (if any) taken on order
		<p style="text-align: center;">: 3 :</p> <p>the Creamy layer and accordingly the Department of Personnel & Administrative Reforms had issued letter No.11/B.06.Nya.09/94 Ka. 14 dated 30.1.1996(Annexure E), to all the departmental Secretaries, departmental heads, Divisional Commissioners, District Magistrates and Sub-divisional Officers to take steps regarding identification of, and issuance of certificates, regarding Creamy layer. This was followed by the Commission's notice published in the local dailies calling upon the candidates to submit the requisite certificate furnishing proof of Creamy layer, and 15.2.1996 was the last date for the purpose. This was followed by the Commission's second notice which had appeared in the local dailies on 18.2.1996, described as "Mahatwputna Sochna" (Important Notice) (Annexure F), which was really in the nature of a corrigendum that the last date for furnishing the Caste-cum-Creamy layer certificate was extended upto 5 PM on 28.2.1996. It further appears to me that the petitioner did not submit the requisite caste-cum-creamy layer certificate within the stipulated time as a result of which his claim for consideration of 04 candidate was rejected, and was instead considered for the unreserved category of 01.</p>	

Serial No. of Order	Date of Order	ORDER WITH SIGNATURE	Office notes as to action (if any) taken on order.
		<p style="text-align: center;">: 4 :</p> <p>5. On the own showing of the petitioner, as stated in paragraph 12 of the writ petition, he has scored the total number 662 marks in the written examination. It is thus manifest from the statement made in the counter affidavit of respondent nos. 3 and 4 that all the persons whose names figured in the result of the written examination of category 01 had scored higher marks than the petitioner." The petitioner's grievance is, therefore, wholly untenable. This disposes of the petitioner's first grievance regarding non-consideration of his case for the reserved category of 04, and equally of the Commission's negligence.</p> <p>6. I must consider one more submission advanced by learned counsel for the petitioner. The petitioner has alleged discriminatory treatment which needs consideration. It is stated in the counter affidavit that the petitioner had scored 662 marks in the written examination, whereas one Jai Shankar Singh bearing Roll No.190726, had scored 625 marks (Annexure -3), and Pramod Kumar Mandal bearing Roll No.199482 had scored 615 marks, notwithstanding which their names figured in the list of successful candidates of the written examination. The answer is to be found in the Commission's counter affidavit wherein it is stated that Jai Shankar Singh and Pramod Kumar Mandal had submitted the</p>	

Date of Order	ORDER WITH SIGNATURE	Office notes as to action (if any) taken on order
	<p style="text-align: center;">: 5 :</p> <p>requisite certificates to that effect that they did not belong to the Creamy layer, they belonged to Category 04, whereas the petitioner was considered for 01 category. The allegation of discrimination is obviously without substance.</p> <p>7. There is yet another aspect of the matter which ought to be noticed. The petitioner had earlier preferred CWJC No. 11574 of 1996 (Amlesh Kumar vs. The Bihar Public Service Commission & Others), raising just the same issues. The same was, however, dismissed in default on 22.7.97 by the following order:-</p> <p style="padding-left: 40px;">"Case called out. None has appeared to press this writ petition. It is, accordingly, dismissed in default."</p> <p>8. The petitioner had preferred restoration application bearing MJC No. 2051 of 2001 which was also dismissed on account of non-implementation of the peremptory order of the Bench dt. 27.4.2001 (Annexure 2). The petitioner has, therefore, preferred the present writ petition raising the same grievances. Learned counsel for respondent nos. 3 and 4 has submitted that the second writ petition would not be maintainable in the present situation. I do not wish to express myself about the validity of the submission, and have preferred to dispose of the matter on merits, inter alia, for the reason that it</p>	

22

13

Serial No. of Order	Date of Order	ORDER WITH SIGNATURE	Office notes as to action (if any) taken on order.
		<p style="text-align: center;">: 6 :</p> <p>involves the career and future of a young person. This should not be taken as an expression of the views of the Court as to the validity or otherwise of the contention raised by counsel for respondent nos. 3 and 4 as to the maintainability of a second writ petition in the facts and circumstances of the present case. That may be decided in an appropriate case. However, the situation gives rise to another objection against the petitioner. As stated hereinabove, the result of the written examinations were published way back on 26.9.96 (Annexure 1), whereby the entire selection process was concluded, the successful candidates have been appointed, and have taken their position. A selection process is normally circumscribed by the number of vacancies sought to be filled up thereunder. In other words, the petitioner's conduct has given rise to parallel rights and have been allowed to be entrenched by lapse of time and negligence, entirely attributable to the petitioner. The successful candidates have also not been impleaded as party respondents. In such a situation, it would not be a wise exercise of discretion to unsettle the settled affairs.</p> <p>9. Learned counsel for respondent nos. 3 and 4 has also relied on a Division Bench judgment of this Court dated 26.8.2003 (Annexure G) passed in LPA No. 729 of 1993 (Ashok Kumar</p>	

3)

2

Serial No. of Order	Date of Order	ORDER WITH SIGNATURE	Office notes as to action (if any) taken on order
		<p style="text-align: center;">: 7 :</p> <p>Vs. The State of Bihar & Ors.), which was upheld by the Supreme Court by its order dated 10.3.2006 (Annexure G/A), passed in Special Leave to Appeal (Civil) No(s). 23898 of 2003 (Ashok Kumar vs. State of Bihar & Ors). The submission is based on a complete misreading of the judgment. The Commission has rejected the case of the said Ashok Kumar for consideration to the reserved category on the ground that the prescribed authority had not issued the certificate submitted by the petitioner. The judgment is of no relevance in the present context.</p> <p>10. In the result, the writ petition has no merit. It is accordingly dismissed.</p>	

sd/-S. R. Katriar, J.

CERTIFIED TO BE TRUE PHOTO COPY

Ramesh Kumar Singh

For Joint Registrar (J) 17/11/06

Family Court

Authorised U/S 75 Act of 1979

Ramesh Kumar Singh
17/11/06

25/12/22