

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9692 of 2008

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Archana Kumari, daughter of Indra Chand Prasad, resident of Vikash Colony (A.G. Colony Main Road), P.S. Shastri Nagar, District- Patna

.... Petitioner

Versus

1. The State of Bihar
2. The Secretary-cum- Commissioner, Welfare Department, Government of Bihar, Patna
3. The Bihar Public Service Commission, 15, Jawaharlal Nehru Marg, Bailey Road, Patna
4. The Secretary, Bihar Public Service Commission, 15, Jawaharlal Nehru Marg, Bailey Road, Patna
5. The Chairman, Bihar Public Service Commission, 15, Jawaharlal Nehru Marg, Bailey Road, Patna
6. The Dy. Secretary, Bihar Public Service Commission, 15, Jawaharlal Nehru Marg, Bailey Road, Patna
7. The Special Executive Officer-cum- Examination Controller, Bihar Public Service Commission, 15, Jawaharlal Nehru Marg, Bailey Road, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Madanjit Singh
Mr. Pankaj Kumar Singh

For the Respondent/s: Mr. AC to AAG-2
Mr. Sanjay Pandey

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 09-04-2015

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Heard Sri Madanjit Singh, learned counsel, who was assisted by Sri Pankaj Kumar Singh, learned counsel for the petitioner, learned AC to AAG-2 and Sri Sanjay Pandey, learned counsel for Bihar Public Service Commission.

2. The petitioner, invoking writ jurisdiction of this Court under Article-226 of the Constitution of India, has prayer for directing the Respondents to re-examine the answersheet of Optional Paper of



the Final Examination, conducted by Bihar Public Service Commission for the post of Child Development Project Officer against the Advertisement No.34 of 2005. It has been pleaded that the petitioner had applied against the vacancy of Extremely Backward Category. She qualified in the preliminary test as well as written test, however her name was not included in the select list. On enquiry, the petitioner noticed that though the petitioner was having equal marks with the last candidate in the category, in which the petitioner had claimed her appointment, but the case of the petitioner was ignored.

3. Learned counsel for the petitioner has placed reliance on Annexures 9,10 and 11 to the writ petition, which are marksheets issued by the Bihar Public Service Commission in respect of Sweta Kumari, Punam Kumari and the petitioner respectively.

4. In this case, a counter affidavit has been filed on behalf of Respondents/Bihar Public Service Commission and a categorical stand has been taken that since the petitioner had obtained lesser marks in the written examination than the last candidate, who was recommended, the case of the petitioner was ignored. It is true that the petitioner has obtained higher marks in the interview. Sri Sanjay Pandey, learned counsel for Bihar Public Service Commission has placed reliance on Annexure-B to the Counter affidavit i.e. a copy of the order passed by the Hon'ble Apex Court in Civil Appeal No.3497

of 1988. He submits that this issue has already been settled by the Apex Court. He has specifically argued that the Hon'ble Apex Court has approved the observation of this Court's Judgment of paragraph-9, which is quoted herein below:

“9. Coming to the combined examination, which is under consideration before us, it will be observed that-

(a) the marks fixed for written examination are more than eight times of those for the interview;

(b) while Rule 16(a) contemplates fixation of qualifying marks for the written examination by the Commission, Claus (C) directs in imperative terms that no qualifying marks for viva vice test shall be fixed; thus a candidate securing even zero at the interview may be selected;

(c) by the decision in Annexure-14 while reducing the marks fixed for viva voce test from 200 to 100, it was observed that for the reasons mentioned therein the oral test could not be treated to be very dependable

Which all unmistakably lead to the conclusion that the result in the written examination has to be preferred to that in the oral test, whenever two candidates secure the same aggregate marks. The recommendation of the Commission having not been made on this basis must be modified.”

5. In this case, after filing of the counter affidavit, no rejoinder has been filed nor learned counsel for the petitioner has disputed that the petitioner was having lesser marks in the written examination than the marks obtained by last candidate, who was

recommended in the extremely backward category. Moreover, this fact is accepted on perusal of Annexures 9, 10 and 11 of the writ petition. Keeping in view the fact that the proposition of law on such issue has already been set at rest by the Apex Court, there is no reason to pass any positive order in favour of the petitioner.

6. The writ petition stands dismissed.

(Rakesh Kumar, J)

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