

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5460 of 2014

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Dharmendra Kumar Son Of Late Anant Rai, Resident Of Village- Bhainsahi, P.S.-
Sasaram, District- Rohtas (Sasaram)

.... Petitioner/s

Versus

1. The State Bank Of India Through It'S Chairman-Cum-Managing Director,
State Bank Of India- Head Office, Nariman Point, Mumbai- 400021
2. The General Manager, State Bank Of India, Local Head Office, 7th Floor, Main
Branch, West Gandhi Maidan, Patna
3. The Deputy General Manager, State Bank Of India, Zonal Office Mahendru,
Patna
4. The General Manager, State Bank Of India, Central Recruitment And
Promotion Department, Corporate Centre, Tulsian Chamber 1st Floor (West
Wing), Free Press Journal Marg, Nariman Point Mumbai- 400021
5. The Deputy General Manager, State Bank Of India, Central Recruitment And
Promotion Department, Corporate Centre, Tulsian Chamber 1st Floor (West
Wing), Free Press Journal Marg, Nariman Point Mumbai- 400021
6. The Central Information Commission, Through It'S Chairman, Club Building
(Near Post Office) Old Jnu Campus, New Delhi- 110067

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Maya Nand Jha, Adv.
For the SBI : Mr. Kaushlendra Kumar Sinha, Adv.
Mr. Sunil Kr. Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 03-02-2015

Heard learned counsel for the parties as with regard to
the following relief prayed in this writ application:-

- "1(i) *For a Quashing of the decision of the Respondent
No.5, whereby the Respondents have cancelled the
candidature of the Petitioner and did not process his
result for his alleged involvement in unfair practice in
the written examination which was communicated to
the Petitioner vide letter bearing Memo No.
C.R.P.D./R.K./89 dated 18.4.2011.*
- (ii) *For a Direction upon the Respondents to produce the*

First Appellate Order if any by which the First Appeal of the Petitioner under the RTI Act has been rejected and the same be set aside.

- (iii) *For quashing of Second Appellate Order dated 1.4.2013, Passed by the Respondent no.6, by which the Commission refused to interfere in the matter.*
- (iv) *For a Direction upon the Respondents to provide to the Petitioner copies of all the response sheets of all the candidates whose responses on analysis showed patters of similarity with the responses of the Petitioner and the response sheet of the candidate/candidates with whom the Petitioner allegedly shared his responses and also provide a list of candidates whose candidature was cancelled along with the petitioner.*
- (v) *For a Direction upon the Respondents to disclose to the Petitioner the details of the analysis/any analysis report made while analyzing the response sheet of the Petitioner and also disclose the details of the exact scientific process involved in analyzing the response sheets of the candidates appearing in the examination.*
- (vi) *For a Direction upon the Respondent No.4 to recommend the name of the Petitioner for appointment to the post of Clerk in the light of Advertisement No. CRPD/CR/2009-10/04 dated 23.7.2009 and further direction to the Respondents No.1 to 3 to issue consequential order of appointment in favour of the Petitioner with consequential benefits."*

2. Learned counsel for the petitioner very fairly submits that now the challenge of the petitioner is confined to the correctness of the order dated 18.4.2011, as contained in Annexure-1 to this writ application.



3. Annexure-1 is an order passed by the competent authority of the Bank wherein relying on Clause-16 of the advertisement and the objective findings of the pattern of the similarity in the answer book, the candidature of the petitioner was cancelled on the ground that he was found to be involved in using unfair practice in the written examination.

4. Dr. Mayanand Jha, learned counsel for the petitioner, while assailing the aforesaid order, has submitted that such vague and sweeping conclusion drawn by the authorities in respect of the petitioner to have adopted unfair means with 12 others, who have not shared the same examination room, will be a far fetched conclusion.

5. Mr. Kaushlendra Kumar Sinha, learned counsel for the State Bank of India, on the other hand, has submitted that this very question was gone into at length by this Court pertaining to the same examination and the writ application was dismissed by order dated 5.3.2012 in CWJC No. 6521 of 2011 (Mukesh Kumar Vs. The Chairman, State Bank of India & Ors.) which reads as follows:-

"Heard learned counsel for the petitioner and learned counsel for the respondents, namely the authorities of the State Bank of India.

2. This writ petition has been filed by the petitioner for directing the respondents authorities to publish the result of the petitioner, who appeared in the examination conducted by the respondents on



08.11.2009 for selection of clerical grade employees in the State Bank of India and since the petitioner had done well in examination, he had legitimate expectation to be declared successful but the respondents withheld the result of the petitioner. A further relief is sought for directing the respondents authorities to reserve one seat vacant for the petitioner in case he was found successful and within the zone of recommended candidates for the appointments.

3. Learned counsel for the petitioner states that he had done very well in the examination and had legitimate expectations of being selected but he had been denied on the frivolous ground that he had used unfair means in the examination. Learned counsel for the petitioner also states that the petitioner was not caught in the examination hall doing any malpractice or using unfair means and only on frivolous assumptions his candidature had not been considered.

4. Learned counsel for the petitioner further states that in case of subsequent detection the use of unfair means has to be established and for that two procedures are prescribed, out of which the first is 'A' which provides that the pair of candidates had 12 or more questions with identical wrong answers in a test and/or the number of questions with different responses is small i.e. less than 5 in the test and the second is 'B' in which the pair of candidates has 5 or more questions with identical wrong answers in 50 items test or the pair of candidates has 7 or more questions with



identical wrong answers in 75 items test or mismatch of 5 or less in 50 items test or mismatch of 7 or less questions in 75 items test. Learned counsel for the petitioner avers that there is nothing to show what type of identical wrong answers or mismatches were found and if the petitioner comes within the criteria 'B' the Board/Organization has to further scrutinize such cases on the basis of performances in the descriptive paper (if any) and performance in the interview but no such step had been taken by the authorities.

5. Learned counsel for the petitioner also avers that vide Clauses in the Advertisement the candidates appearing in the examination had been warned in advance that if a candidate is found guilty of using unfair means during the examination such candidate may in addition to rendering himself/herself to criminal prosecution also be liable to be disqualified from the examination for which he/she is a candidate and he/she would be debarred either permanently or for a specified period for any examination or recruitment conducted by the Central Recruitment and Promotion Department, State Bank of India Corporate Centre, Mumbai.

6. On the other hand, learned counsel for the respondent-State Bank of India and its authorities submits that no doubt the petitioner was not caught doing malpractice or using unfair means in the examination hall, but it was subsequently detected through the prescribed procedures that the petitioner had used unfair means while writing his answer. He



also states that the petitioner's case is squarely covered under criteria 'A' and on that ground his candidature had not been considered. Hence, there was no occasion for the respondents to scrutinize the performance of the petitioner in the descriptive paper or his performance in the interview which can be done only in case when the specific case falls under criteria 'B'.

7. Learned counsel for the respondent-State Bank of India also states that petitioner was one among 976 candidates, who were found to have resorted to unfair means which was identified during evaluation of the answer sheets by IBPS in terms of Clause 16 of the Advertisement. He submits that as per the report submitted by IBPS the petitioner was found to be involved in copying with 28 other persons and having indulged in copying with 9 persons in the nature 'established beyond all reasonable doubts'. Learned counsel for the respondents have annexed as Annexure-B to their supplementary counter affidavit, the prescribed procedure for detection of use of unfair means/malpractice in objective tests by the candidates.

8. From the facts and circumstances of the case as well as from the materials on record, it is quite apparent that the case of the petitioner had come under criteria 'A' and hence his case had to be considered in accordance with steps required therein and no further scrutinizing of his case on the basis of performance in the descriptive paper or performance in the interview was required as it had to be done only for candidates

who come under the purview of criteria 'B'. This court further finds from the materials on record that the respondents authorities had considered the matter in detail and no material illegality or procedural irregularity had been committed by them while deciding the case of the petitioner.

9. Accordingly, this court does not find any merit in this writ petition nor does it find any reason to interfere. Hence, this writ petition is dismissed."

6. Having regard to the aforesaid submission, this Court would find that the order passed by the learned Single Judge in the case of Mukesh Kumar (supra) takes note of the terms and conditions of the advertisement and has held that as per the criteria laid down for evaluation, when 976 candidates were found to have used unfair means, which was identified during evaluation of answer-sheet in terms of Clause-16 of the advertisement, no material irregularity could have been found out in debarring the petitioner of that case on account of using unfair means.

7. Thus, having regard to the findings and the conclusion arrived in the case of Mukesh Kumar (supra), this Court would find it difficult to take a different view. In that view of the matter, this writ application, for the reasons indicated in the case of Mukesh Kumar (supra), fit to be similarly dismissed specially when the law in this



regard of cancellation of candidature for use of unfair means has been laid down by Apex Court in the case of Bihar School Examination Board Vs. Subhash Chandra reported in AIR 1970 SC 1269, Maharashtra State Board of Secondary Higher Secondary Education Vs. K.S. Gandhi reported in (1991) 2 SCC 716 which were also relied in the case of U.P.S.C. Vs. Jagannath Mishra reported in (2003) 9 SCC 327 wherein it was held as follows:-

"We remind ourselves that while exercising the powers, under Article 226 or Article 136 of the Constitution, by the High Court or of this Court, we are not sitting as a court of appeal on the findings of facts recorded by the Standing Committee (domestic enquiry body), nor have power to evaluate the evidence as an appellate court and to come to its own conclusion. If the conclusions reached by the Board can be fairly supported by the evidence on record then the High Court or this Court has to uphold the decision, though as appellate court of facts, may be inclined to take a different view."

8. The submission of Dr. Mayanand Jha that in the case of Mukesh Kumar (supra), the circular was not under challenge has to be only noted for its being rejected. This Court in the aforesaid case has already gone into the nitty-gritty of that circular in so many words and, therefore, irrespective of the fact whether the circular was in challenge or not, the action taken under the circular was approved which will disable this Court now to take any different view of the

matter.

9. In any event, the examination was held in the year 2009 and the result was declared in the year 2010 and writ application has been filed in the year 2014 on the ground that some wrong information was given to the petitioner. This writ application, having been filed after four years of the cause of action, being grossly over delayed is also fit to be dismissed on the ground of delay and laches.

10. This application is, accordingly, dismissed.

(Mihir Kumar Jha, J)

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