

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 1287 of 2015

IN

Civil Writ Jurisdiction Case No. 21945 of 2014

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1. Md. Nafis Nawaz Khan, aged about 30 years, S/o Md. Shahnawaz Khan, resident of Village-Bikramganj, P.O. + P.S.-Bikramganj, District- Rohtas (Bihar).

2. Md. Shahid Akhtar, aged about 25 years, S/o Monazir Ansari, Village-Dhurubgunj, P.O. + P.S.-Kharik Bazar, District-Bhagalpur.

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resource Development Department, Govt. of Bihar, New Secretariat, Govt. of Bihar, Patna.

2. The Secretary, Department of Human Resources Development Department, Govt. of Bihar, New Secretariat, Patna.

3. The Director, Primary Education, Govt. of Bihar, New Secretariat, Patna.

4. The District Magistrate, Begusarai.

5. The District Education Officer, Begusarai.

6. The District Programme Officer (Establishment), Begusarai.

7. The Block Education Extension Officer, Sahebpur Kamal, District-Begusarai.

8. The Bihar School Examination Board through its Chairman, Budh Marg (Near Sinha Library), Patna.

9. The Secretary, Bihar School Examination Board, Patna Budh Marg (Near Sinha Library), Patna.

.... Respondent/s

WITH

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Letters Patent Appeal No. 1485 of 2015

IN

Civil Writ Jurisdiction Case No. 21945 of 2014

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1. Md. Farooque, Son of Md. Zeyauddin, resident of Village-Kusmi, P.O-Sarbela, P.S.-Salkhua, District-Saharsa.

2. Aasifuddaula, Son of Quzzatuddaula, resident of Mohalla-Millat Colony, P.O. & P.S-Phulwari Sharif, District-Patna.

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development Department, New Secretariat, Govt. of Bihar, Patna.
2. The Secretary, Department of Human Resources Development, Govt. of Bihar, New Secretariat, Patna.
3. The Director, Primary Education, Govt. of Bihar, New Secretariat, Patna.
4. The District Magistrate, Begusarai.
5. The District Education Officer, Begusarai.
6. The District Programme officer (Establishment), Begusarai.
7. The Block Education Extension Officer, Sahebpur Kamal, District-Begusarai.
8. The Bihar School Examination Board through its Chairman Budh Marg (Near Sinha Library) Patna.
9. The Secretary, Bihar Secondary School Examination Board, Patna, Budh Marg (Near Sinha Library) Patna.
10. Md. Anwar Ahmad, Son of Md. Islam, resident of Village-Kurha Masjid Tola, Police Station-Sahebpur Kamal, District-Begusarai.
11. Md. Shamshad, Son of Md. Mustafa, resident of Village-Sandalpur, Police Station- Sahebpur Kamal, District-Begusarai.

.... Respondent/s

WITH

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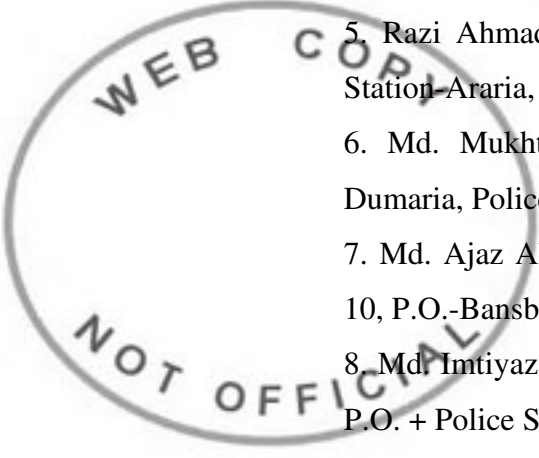
Letters Patent Appeal No. 1286 of 2015

IN

Civil Writ Jurisdiction Case No. 2650 of 2015

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1. Md. Ibnul Haque, S/o Md. Ishaque, Resident of Village-Sisauna, P.O. + Police Station-Jokihat, District-Araria.
2. Md. Maghfoor Alam, S/o Md. Salim Uddin, Resident of Village Sisauna, P.O. + Police Station-Jokihat, District-Araria.
3. Md. Imtiyaza Alam, S/o Md. Saghir Uddin, Resident of Village Nauwa Nankar, P.O. + Police Station-Jokihat, District-Araria.

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4. Md. Shahid, S/o Md. Naiyyar Alam, Resident of Village + P.O.-P.T. Dumaria, Police Station-Jokihat, District-Araria.
 5. Razi Ahmad, S/o Md. Kasim, Resident of Village-Mirzabhag, P.O. + Police Station-Araria, District-Araria.
 6. Md. Mukhtar Alam, S/o Mufti Md. Mushtaque, Resident of Village-P.T. Dumaria, Police Station-Jokihat, District-Araria.
 7. Md. Ajaz Alam, S/o Md. Qumrulhoda, Resident of Village-Jhamta, Ward No.-10, P.O.-Bansbari, Police Station-Tarabari, District-Araria.
 8. Md. Imtiyaz Alam, S/o Md. Ishaque, Resident of Village-Ajhwa Singh Mohani, P.O. + Police Station-Jokihat, District-Araria.
 9. Md. Izhar Alam, S/o Md. Kahlul Hussain, Resident of Village-Rupel Shyampur, P.O.-Balwa Deorhi, Police Station-Plasi, District-Araria.
 10. Saima Sahzadi, D/o Md. Anwarul Haque, Resident of Village-Sisauna, P.O. + Police Station-Jokihat, District-Araria.
 11. Abdul Ahad, S/o Md. Mansoor Alam, Resident of Village-Kumayia, P.O. + Police Station-Plasi, District-Araria.
 12. Md. Mahtab Alam, S/o Ziaul Haque, Resident of Village-Sisauna, P.O. + Police Station-Jokihat, District-Araria.
 13. Md. Azim Uddin, S/o Md. Ahmad, Resident of Village + P.O. -Chakai, Police Station-Jokihat, District-Araria.
 14. Md. Shahid, S/o Noor Mohamad, Resident of Village + P.O. -Jabhua, Police Station-Tarabari, District-Araria.
 15. Md. Sikander Alam, S/o Md. Tabrez Alam, Resident of Village-Kakurwa Basti, P.O. + Police Station-Araria, District-Araria.
 16. Md. Zahid Akhter, S/o Ghulam Mustafa, Resident of Village + P.O.-Chakai Hat, Police Station-Jokihat, District-Araria.
 17. Md. Zahid, S/o SK Qutub Uddin, Resident of Village + P.O.-Chakai Hat, Police Station-Jokihat, District-Araria.
 18. Gulam Sarwer, S/o Abdur Rashid, Resident of Village-Sisauna, P.O. + Police Station-Jokihat, District-Araria.
 19. Md. Minnatullah, S/o Md. Asrarul Haque, Resident of Village-Rupel Shyampur, P.O.-Balwa Deorhi, Police Station-Plasi, District-Araria.
 20. Md. Mansoor Alam, S/o Md. Kafiluddin, Resident of Village-Kowa Bhatta, P.O.- Neja Guchh, Police Station-Kurli Kot, District-Kishanganj.
 21. Md. Chand, S/o Fariduddin, Resident of Village-Jalmilik, P.O.-Gunjarmari,

Police Station-Thakurganj, District-Kishanganj.

22. Md. Abu Najim, S/o Md. Alauddin, Resident of Village-Kharha, P.O.-Taiyabpuri, Police Station-Thakurganj, District-Kishanganj.

23. Zabiha Rahmani, S/o Zahidur Rahman, Resident of Village-Adraguri, P.O. + Police Station-Thakurganj, District-Kishanganj.

24. Shabina Noorie, D/o Md. Shabbir Alam, Resident of Village-Neja Guchh, Police Station-Kurli Kot, District-Kishanganj.

25. Md. Moazzam Ali, S/o Sher Mohammad, Resident of Village-Jamniguri, P.O.-Piprithan, Police Station-Kurli Kot, District-Kishanganj.

26. Md. Perwej Alam, S/o Md. Jalal, Resident of Village-Jukarri Basti, P.O.-Piprithan, Police Station-Kurli Kot, District-Kishanganj.

27. Yasmin Begam, D/o Abdul Latif, Resident of Village-Gothra, P.O.-Piprithan, Police Station-Kurli Kot, District-Kishanganj.

28. Karwan Khurshid, S/o Jamaluddin, Resident of Village-Ghassikura, P.O.-Jiran Guchh, Police Station-Thakurganj, District-Kishanganj.

29. Amirul Haque, S/o Md. Ilyas, Resident of Village-Makarribasti, P.O.-Piprithan, Police Station-Kurli Kot, District-Kishanganj.

30. Md. Jabir Hussain, S/o Md. Badruddin, Resident of Village + P.O.-Pathrabari, Police Station-Jokihat, District-Araria.

.... Appellant/s

Versus

1. Abdul Majid, S/o Lal Mohammad, Resident of Village-Mornsif, P.O.-Kerma, P.S.-Maniyari, District-Muzaffarpur.

2. Afsana Perween, D/o Md. Khalique, Resident of M.P. Bagh, P.S.-Town Ara, District-Bhojpur at Ara.

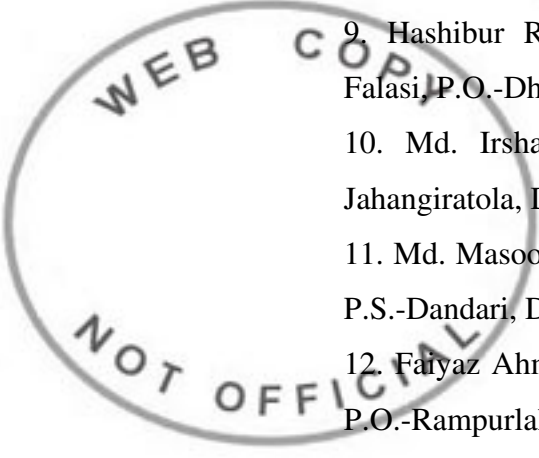
3. Abdul Hadi, S/o Lal Mohammad, Resident of Village-Mornsif, P.O.-Kerma, P.S.- Maniyari, District-Muzaffarpur.

4. Md. Qurban Ansari, S/o Md. Alihussain Ansari, Resident of Village-Baksara, P.O. + P.S.-Itarhi, District-Buxar.

5. Md. Mazhar Ansari, S/o Md. Nezamuddin Ansari, Resident of Village-Raghunathpur, P.O.-Gosaipur, P.S.-Rajpur, District-Buxar.

6. Shekh Mahtab Mosarraaf Ali, S/o Shekh Warasat Ali, Resident of Village-Pathan Toli (Ward No. 15), P.O.-Bhabua, District-Kaimur.

7. Saddam Husain Rain, S/o Quayanmuddin Rain, Resident of Village-Bhabua, P.O. + P.S.-Bhabua, District-Kaimur.

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8. Md. Irfan Ahmad, S/o Md. Murtuza Ali, Resident of Village-Mashrakh Takht, P.O. + P.S.-Mashrakh, District-Chapra (Saran).
 9. Hashibur Rahman, S/o Mohammad Yunus, Resident of Village-Bangawan Falasi, P.O.-Dharam Gunj, District-Araria.
 10. Md. Irshad Alam, S/o Md. Ilyas, Resident of Village-Shobhans, P.O.-Jahangiratola, District-Khagaria.
 11. Md. Masoom, S/o Abdul Haiyum, Resident of Village-Kathari, P.O.-Mohabba, P.S.-Dandari, District-Begusarai.
 12. Faiyaz Ahmad, S/o Md. Mojibur Rahman, Resident of Village-Jitpur (Garha), P.O.-Rampurlahi, P.S.-Shankarpur, District-Madhepura.
 13. Shekh Babar Ali, S/o Shekh Tahir Ali, Resident of Village-Bhabua, P.O. & P.S. Bhabua, District-Kaimur.
 14. Md. Salik Ansari, S/o Md. Farooq Ansari, Resident of Village + P.S.-Bhabua, District-Kaimur.
 15. Sana Naj, D/o Mazhar Husain, Resident of Village-Chitra Gupi Road, Ward No. 022, P.O. + P.S.-Bhabua, District Kaimur.
 16. Md. Kail Alam S/o manzar Hussain Resident of Village Shitr Guptroad, Ward No. 22, P.O. + P.S. Bhabua, District-Kaimur.
 17. Neshat Haider, S/o Ezaz Ahmad, Resident of Village-Mauwer, P.S.-Jalai (Mahishi), District-Saharsa.
 18. Mohammad Ali, S/o Late Ali Ibrahim, Resident of Village-Bhelahi, P.S.-Mahishi (Jalai), District-Saharsa.
 19. Shamim Ahmad, S/o Late Md. Rayees, Resident of Village-Kithram, P.S.-Jamalpur (Bargaon), District-Darbhanga.
 20. Sulaiman Ashraf, S/o Late Mohammad Safir, Resident of Village-Aranda, P.S.-M.H. Nagar (Hasanpura), District-Siwan.

.... Respondents' 1st Set/Petitioners

21. The State of Bihar through Secretary, Human Resource Development Department, Govt. of Bihar, Patna.
22. The Chairman, Bihar School Examination Board, Sinha Library Road, Patna-17.
23. The Secretary, Bihar School Examination Board, Sinha Library Road, Patna-17.

.... Respondents' 2nd Set/Respondents

WITH

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Letters Patent Appeal No. 1225 of 2015

IN

Civil Writ Jurisdiction Case No. 21945 of 2014

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1. Md. Mosawwir Alam, Son of Md. Idris, resident of Village-Jammira, P.O.-Chaukta, P.S.-Mahalgown, District-Araria.
2. Md. Jamil Akhtar, Son of Md. Tahir Hussain, resident of Village-Gurihal, P.O.-Asja Mobaiya, P.S.-Baisi, District-Purnea.

.... Appellant/s

Versus

1. The State of Bihar through the Secretary, Human Resources Development Department, Govt. of Bihar, Patna.
2. The Chairman, Bihar School Examination Board, Sinha Library Road, Patna-17.
3. The Secretary, Bihar School Examination Board, Sinha Library Road, Patna-17.
4. The Secretary, Department of Human Resources Development, Govt. of Bihar, New Secretariat, Patna.
5. The Director, Primary Education, Govt. of Bihar, New Secretariat, Patna.
6. The District Magistrate, Begusarai.
7. The District Education Officer, Begusarai.
8. The District Programmed Officer (Establishment), Begusarai.
9. The Block Education Extension Officer, Sahebpur Kamal, District-Begusarai.

.... Respondents Ist Set

10. Md. Anwar Ahamd, Son of Md. Islam, resident of Village-Kurha Masjid Tola, P.S.-Sahebpur Kamal, District-Begusarai.
11. Md. Shamshad, Son of Md. Mustafa, resident of Village-Sandalpur, P.S.-Sahebpur Kamal, District-Begusarai.

.... Respondents 2nd Set

WITH

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Letters Patent Appeal No. 1256 of 2015

IN

Civil Writ Jurisdiction Case No. 21945 of 2014

=====

Md. Hasan Reja, S/o Md. Ghulam Rasul, r/o-Sohpur, P.S.-Harlakhi, District-Madhubani.

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development Department, New Secretariat, Govt. of Bihar, Patna.
2. The Secretary, Human Resources Development Department, New Secretariat, Govt. of Bihar, Patna.
3. The Director, Primary Education, Govt. of Bihar, New Secretariat, Patna
4. The District Magistrate, Begusarai.
5. The District Education Officer, Begusarai.
6. The District Programme Officer (Establishment), Begusarai.
7. The Block Education Extension Officer, Sahabpur Kamal, District-Begusarai.
8. The Bihar School Examination Board through its Chairman, Budh Marg (Near Sinha Library), Patna.
9. The Secretary, Bihar School Examination Board, Patna, Budh Marg, (Near Sinha Library), Patna.
10. Md. Anwar Ahmad, Son of Md. Islam, resident of Village-Kurha Masjid Tola, Police Station-Sahebpur Kamal, District-Begusarai.
11. Md. Shamshad, Son of Md. Mustafa, resident of Village-Sandalpur, Police Station-Sahebpur Kamal, District-Begusarai.

.... Respondents/Petitioners

12. Abdul Majid, Son of Lal Mohammad, resident of Village-Mornsif, P.O.-Kerma, P.S.-Maniyari, District-Muzaffarpur.
13. Afsana Perween, D/o Md. Khalique, resident of M P Bagh, P.S.-Town Ara, District-Bhojpur at Ara.
14. Abdul Hadi, Son of Lal Mohammad, resident of Village-Mornsif, P.O.-Kerma, P.S.-Maniyari, District-Muzaffarpur.
15. Md. Qurban Ansari, Son of Md. Alihussain Ansari, resident of Village-Baksara, PO + P.S.-Itarhi, District-Buxar.
16. Md. Mazhar Ansari, Son of Md. Nezamuddin Ansari, resident of Village-Raghunathpur, P.O.-Gosaipur, P.S.-Rajpur, District-Buxar.
17. Shekh Mahtab Mosarraf Ali, Son of Shekh Warasat Ali, resident of Village-

Pathan Toli (Ward No. 15), P.O.-Bhabua, District-Kaimur.

18. Saddam Hussain Rain, Son of Quayanmuddin Rain, resident of Village- Bhabua P.O.+P.S.-Bhabua, District-Kaimur.

19. Md. Irfan Ahmad, Son of Md. Murtuza Ali, resident of Village-Mashrakh Takht, P.O. + P.S.-Mashrakh, District-Chapra (Saran).

20. Hashibur Rahman, Son of Mohammad Yunus, resident of Village-Bangawn Falasi, P.O.-Dharam Gunj, District-Araria.

21. Md. Irshad Alam, Son of Md. Ilyas, resident of Village-Shobhans, P.O.-Jahangiratola, District-Khagaria.

22. Md. Masoom, Son of Abdul Haiyum, resident of Village-Kathari, P.O.-Mohabba, P.S.-Dandari, District-Begusarai.

23. Faiyaz Ahmad, Son of Md. Mojibur Rahman, resident of Village-Jitpur (Garha), P.O.-Rampurlahi, P.S.-Shankarpur, District-Madhepura.

24. Shekh Babar Ali, Son of Shekh Tahir Ali, resident of Village-Bhabua, P.O. + P.S.-Bhabua, District-Kaimur.

25. Md. Salik Ansari, Son of Md. Farooq Ansari, resident of village + P.S.-Bhabua, District- Kaimur.

26. Sena Naj, daughter of Mazhar Husain, resident of Village-Chitra Gupi Road, Ward No. 022, P.O. + P.S.-Bhabua, District-Kaimur.

27. Md. Kail Alam, Son of Manzar Hussain, resident of Village-Shitr Guptroad, Ward No. 22, P.O. + P.S.-Bhabua, District-Kaimur.

28. Neshat Haider, Son of Ezaz Ahmad, resident of Village-Mauwer, P.S.-Jalia (Mahishi), District-Saharsa.

29. Mohammad Ali, Son of Late Ali Ibrahim, resident of Village-Bhelahi, P.S.-Mahishi (Jalai), District-Saharsa.

30. Shamim Ahmad, Son of late Md. Rayees, Resident of Village- Kithram, P.S.-Jamalpur (Bargaon), District-Darbhanga.

31. Sulaiman Ashraf, Son of Late Mohammad Safir, resident of Village-Aranda, P.S.-M N Nagar (Hasanpura), District-Siwan.

32. Md. Aslam @ Aalam Beg, S/o Md. Irshad, R/o Vill. + P.O.-Virnagar, P.S.-Bhargama, District-Araria.

33. Md. Prince Tousife, S/o Azizur Rahman, R/o Vill + P.O.-Manzahri Virnagar, P.S.-Bhargama, District-Araria.

34. Mumtazul Arfeen, S/o Monisul Arfin, R/o Moh-Pakki Talab, P.S.-Biharsharif, District-Nalanda.

35. Ghulam Sarwar, S/o Md. Noruddin, R/o Vill-Saren, P.S.-Makhdumpur, District-Jehanabad.
36. Md. Amjad, S/o Abdus Samad, R/o Vill + P.S.-Dinara, District-Rohtas
37. Naiyer Shaheen, S/o Md. Ehsanuddun, R/o Vill-Bhawanokhap, P.S.-Nabinagar, District-Aurangabad.
38. Ehsanul Haque, S/o Md. Anwarul Haque, R/o Vill-Nayatola Ganj No. 1, Bettia, District-West Champaran.
39. Md. Irshad Alam, S/o Abdul Hameed, R/o Vill.-Basolol, P.O.-Narhan, P.S.-Vibhutipur, District-Samastipur.
40. Asma Khatoon, D/o Muzaffar Alam, R/o Vill.-Navinagar, P.S.-Dulhin Bazar, District-Patna.
41. Md. Anwar Alam, S/o Islamuddin, R/o Vill.-Baagdarm, P.O.-Channidori, P.S.-Amor, District-Purnia.
42. Md. Rizwan Alam, S/o Abdul Hafiz, R/o Vill.- Simalwari, P.O.-Amor, P.S.-Amor, District-Purnia.
43. Salim Anzar, S/o Abdul Hafiuz, R/o Vill.- Simalwari, P.S.-Amor, District-Purnia.
44. Md. Mansur Alam, S/o Md. Shafiquddin, R/o Vill.-Ajghar, P.O.-Nima, P.S.-Chandapura, District-Begusarai.
45. Md. Javed, S/o Md. Zakaria, R/o Vill.- Saidpur Jahid, P.S.-Rupauli, District-Samastipur.
46. Raju Khan, S/o Md. Muslim Khan, R/o Vill.-Siwdi, P.O.-Manjhaul, District-Begusarai.
47. Md. Shahjehan, S/o Md. Saharyar, R/o Vill.-Alo, P.S.-Aali, District-Gaya.
48. Md. Naushad Alam, S/o Md. Irteza Alam, R/o Pakki Tsalsb, P.O.-Biharsharif, P.S.-Laheer, District-Nalanda.
49. Shahzadi Praveen, D/o Md. Sohrab, R/o Vill. + P.O. + P.S.-Garhpura, District-Begusarai.
50. Md. Yahiya Hasan, S/o Sayyed Abdul Qadir, R/o Moh-Moilawar, P.S.-Nawada, District-Nawada.
51. Pravin Khatoon, D/o Akbar Ali Qureshi, R/o Vill. + P.O.-Bellari, P.S.-Mohania, District-Kaimur.
52. Md. Shakib Alam, S/o Md. Wasim Alam, R/o Vill.-Islamganj, P.O.-Mohania, P.S.-Mohania, District-Kaimur.
53. Md. Kashif Alam, S/o Md. Wasim Alam, R/o Vill.-Islamganj, P.O.-Mohania,

District-Kaimur.

54. Md. Sajid, S/o Md. Kasimuddin, R/o Vill. + P.O.-Singhari, P.S.-Dulhin Bazar, District-Patna.

55. Md. Sohrab Alam, S/o Md. Nasim Ahmad, R/o Vill.-Handi Pokhar, P.S.-Dighalbank, District-Kishanganj.

56. Md. Sarfaraz Alam, S/o Md. Nasim Alam, R/o Vill.-Handi Pokhar, P.S.-Dighalbank, District-Kishanganj.

57. Md. Asjad Hasnain, S/o Irfan, R/o Vill.-Alamgeer, P.S.-Akbaragar, District-Bhagalpur.

58. Md. Jahangir Alam, S/o Shekh Qamruddin, R/o Vill. + P.O.-Piru, P.S.-Haspura, District-Aurangabad.

59. Md. Shahid, S/o Zafar Alam, R/o Vill.-Chotinaki, P.S.-Sanokhar, District-Bhagalpur.

60. Md. Shahab Akhtar, S/o Md. Ehsanuddin Haque, R/o Vill.-Dogaj Sonapur, P.S.-Sudhani, District-Katihar.

61. Md. Sagir Ahmad, S/o Mahmud Alam, R/o Vill.-Narhat, P.S.-Narhat, District-Nawada.

62. Wasim Akram, S/o Ainul Haque, R/o Vill.-Karati, P.S.-R. Pakhar, District-Kaimur.

63. Md. Razaullah, S/o Md. Faizur Rahman, R/o Vill.-Rahmatbagh, P.S.-Nathnagar, District-Bhagalpur.

64. Md. Razaul Haque, S/o Md. Faizur Rahman, R/o Vill.-Rahmatbagh, P.S.-Nathnagar, District-Bhagalpur.

65. Md. Shoaib Akhtar, S/o Md. Muslim, R/o Vill.-Pathraha, P.S.-Bhatni, District-Madhepura.

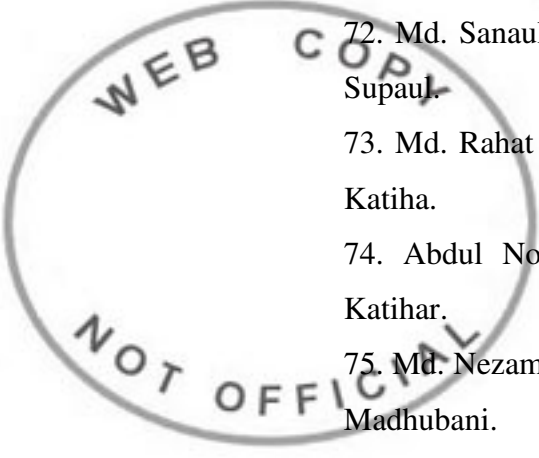
66. Md. Jawed Alam, S/o Md. Nasim Sah, R/o Vill.-Amjhar, P.S.-Amjhar Sharif, District-Aurangabad.

67. Md. Tauquir Alam, S/o Md. Nezamuddin Ansari, R/o Vill.-Amjhar, P.S.-Amjhar, District-Aurangabad.

68. Md. Shahbaz, S/o Md. Yusuf, R/o Vill.-Baghauli, P.S.-Mahrapur, District-Supaul.

69. Md. Jahangri Alam, S/o Md. Moti-ur-Rahman, R/o Vill. + P.O.-Bishunpur, P.S.-Bishanpur Bazar, District-Madhepura.

70. Md. Mushtaque Alam, S/o Md. Salauddin, R/o Vill.-Bachauli, P.S.-Maharpura, District-Supaul.

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71. Md. Sarfaraz Alam, S/o Md. Salauddin, R/o Vill-Bachauli, P.S.-Maharpura, District-Supaul.
72. Md. Sanaullah, S/o Md. Mustaquim, R/o Vill.-Phulkaha, P.S.-Jadiya, District-Supaul.
73. Md. Rahat Alam, S/o Md. Azizul, R/o Vill.- Pokharia, P.S.-Belhari, District-Katiha.
74. Abdul Noauman, S/o Siddique, R/o Vill.-Pokharia, P.S.-Belhari, District-Katihar.
75. Md. Nezam, S/o Md. Mustafa, R/o Vill.-Kamalpur, P.S. + P.O.-Lokha, District-Madhubani.
76. Shabbir Ahmad, S/o Abdul Qaiyyumn, R/o Vill.-Madhopura, P.S.- Maarhora, District-Saran
77. Parvez Akhtar, S/o Md. Shahabuddin, R/o Vill.-Garhani, P.S.-Garhani, District-Bhojpur.
78. Ahmad Raza, S/o Md. Yunus, R/o Vill.-Choski Tola, P.S.-Baisi, District-Purnia
79. Muzaffar Hussain, S/o Abdul Rashid, R/o Vill. + P.O. + P.S.-Dariyapur, District-Saran.
80. Istekhar Ahmad, S/o Alam Sah, R/o Vill. + P.O.-Dinara, P.S.-Dinara, District-Rohtas.
81. Sk. Meraj, S/o Shekh Hanif, R/o Vill.-Mednipur, P.O. + P.S.-Manihari, District-Katihar.
82. Md. Zafeer Ansari, S/o Md. Wakil Ansari, R/o Vill.-Khadda Tola, Munsahi, P.O.-Kuchlahi, P.S.-Nautan, District-West Champaran.
83. Md. Saroor Alam Ansari, S/o Mehmud Alam Ansari, R/o Vill.-Hasanpura, P.O. + P.S.-Garkha, District-Saran.
84. Md. Danish Akhtar, S/o Md. Jamil Akhtar, R/o Vill.-Arwal P.S. + P.O.-Arwal, District-Arwal.
85. Md. Shahabuddin, S/o Md. Mustaqim, R/o Vill.- Faridabad, P.O. + P.S. + District-Arwal.
86. Md. Neyaz Shamshi, S/o Md. Iftexhar Shamshi, R/o Vill.-Faridabad, P.O. + P.S.+ District-Arwal.
87. Amir Hsan, S/o Zakir Ahmad, resident of Village-Chholi Balliya Sadanchak, P.S.-Balliya, District-Begusarai.
88. Huma Sadia, W/o Zubair and daughter of Md. Azimuddin, resident of Village-

Bangla Coal, P.S.-Mahalgaon, P.S.-Bhuna and District-Araria.

89. Tapan Kumar Bhattacharya, Son of Shambhu Nath Bhattacharya, resident of Village-Manihari (Tali Para), Post Office-Manihari, P.S.-Manihari, District-Katihar.

90. Abdul Raoof, Son of Md. Kamil, resident of Village-Vishahariya, Tola Sahadat, P.O.-Akar Thapa, P.S.-Bhargama, District-Araria.

91. Shahbaj Hashimi, Son of Md. Hasuddin, resident of Mohalla-Aasi Nagar, P.O.-Chakara, P.S.-Siwan Muffassil, District-Siwan Pincode-841226.

92. Md. Anwar Ahmad, Son of Md. Islam, resident of Village-Kurha Masjid Tola, Police Station-Sahebpur Kamal, District-Begusarai.

93. Md. Shamshad, Son of Md. Mustafa, resident of Village-Sandalpur, Police Station-Sahebpur Kamal, District-Begusarai.

94. Md. Shakil Ahmad, Son of Md. Nurul Hassan, resident of Village and P.O.-Piprahi, Block and P.S.-Ladania, District-Madhubani.

95. Md. Amadduddin Ansari, Son of Maulvi Falzurab Ansari, Block-Rahika, P.S.-Rahika, District-Madhubani.

96. Moinuddin, Son of Md. Aktar Hussain, resident of Village-Ranti, P.S.-Rajnagar, Block-Rajnagar, District-Madhubani

97. Mohinddin, Son of Md. Akhtar Hussain, resident of Village-Ranti, P.S.-Rajnagar, Block-Raj Nagar, District-Madhubani.

98. Abdus Sattar Alam, Son of Md. Ihaque, resident of Village-Nishiarpur, P.O. Sonbarsa, P.S. Shakarpur, District-Madhepura.

99. Bushra Yasmin, daughter of Md. Nasim, resident of Village-Kamraon, P.S.-Dalsinghsarai, District-Samastipur.

.... Respondent/s

WITH

=====

Letters Patent Appeal No. 1276 of 2015

IN

Civil Writ Jurisdiction Case No. 4805 of 2015

=====

Shahbaj Hashimi, Son of Md. Hasuddin, aged about 20 years, Resident of Mohalla-Aasi Naagr, P.O. Chakara, P.S.- Siwan Town (Muffassil), District-Siwan, Pin Code 841226.

.... Appellant/s

Versus

1. The State of Bihar, through the Principal Secretary, Human Resources Department (Education Department), Government of Bihar at Patna, District-Patna.
2. The Secretary, Bihar School Examination Boar, Patna-800006 (Bihar).
3. The Member Secretary, National Council for Teacher Education, 15, (Wing-2), Hans Bhawan-1, Bahadur Sah Jafar Marg, New Delhi-110002.

.... Respondents/Opposite Parties

Appearance :

(In LPA No. 1287 of 2015)

- For the Appellant/s : Mr. Rajendra Prasad Singh, Sr. Adv.
Mr. Rajeev Kumar Singh, Adv.
For the Respondent/s : Mr. Lalit Kishore, P.A.A.G.
Mr. Ashok Kumar Keshri, A.A.G.-11

(In LPA No. 1485 of 2015)

- For the Appellant/s : Mr. Md. Shahnawaz Ali, Adv.
For the Respondent/s : Mr. Ashok Kumar Keshari, A.A.G.-11

(In LPA No. 1286 of 2015)

- For the Appellant/s : Mr. Y.V. Giri, Sr. Adv.
Mr. Abinash Kumar Sinha, Adv.
For the Respondent/s : Mr. Satyendra Pandey, Adv.

(In LPA No. 1225 of 2015)

- For the Appellant/s : Ms. Anjum Perveen, Adv.
For the Respondent/s : Mr. Ashok Kumar Keshri, A.A.G.-11

(In LPA No. 1256 of 2015)

- For the Appellant/s : Mr. Rana Vikram Singh, Adv.
For the Respondent/s :

(In LPA No. 1276 of 2015)

- For the Appellant/s : Mr. Akshay Lal Pandit, Adv.
For the Respondent/s : Mr. Uma Shankar, G.P.-4

- For the BSEB (in all cases) : Mr. Purnendu Singh, Adv.
For N.C.T.E. (in all cases) : Mr. S.N. Pathak, Adv.

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 31-08-2015

What should be the mode and manner and what corrective measures would be essential for evaluation of answer sheets in a multiple choice question (MCQ) test, in the event, few questions are found to be incorrect for one reason or the other, withstanding the test of reasonableness, fairness in action and in conformity with principles of equality embodied under Articles 14 and 16 of the Constitution of India, is the foremost issue involved in the present batch of *intra*-Court appeals under Clause 10 of letters patent of this Court.

2. The appellants are aggrieved by the judgement and order of learned Single Judge, dated 06.05.2015, in CWJC No. 2650 of 2015 (*Abdul Majid and Others. Vs. State of Bihar and Others*) and other analogous matters, which arose out of publication of results by the Bihar School Examination Board (*hereinafter referred to as the "Board"*) of Bihar Primary Urdu and Bangla (Special) Teachers Eligibility Test (*hereinafter referred to as the "Test"*), whereby learned Single Judge has directed the Board to make evaluation of answer sheets of

candidates, who had participated in the Test, by deleting questions wrongly framed and declare result accordingly as against the decision of the Board, based on experts' suggestions, to award one mark for each incorrect question.

3. As common disputes based on identical set of facts and questions of law are involved in the present batch of appeals, all the appeals have been heard together and are accordingly being disposed of by the present common judgement.

4. Before we come to the core issue, we consider it apt to refer to the legal and factual background in which the Test has been held in order to appreciate and adjudicate upon the said issue.

5. With 86th Amendment in the Constitution of India, Article 21-A came to be inserted to provide free and compulsory education of all children in the age group of 6 to 14 years as a fundamental right. As envisaged by Article 21-A of the Constitution of India, the Right of Children to Free and Compulsory Education Act, 2009 (*hereinafter referred to as the "Act"*) came to be enacted by the Parliament as consequential legislation.

6. Section 23 of the Act lays down that any person possessing such minimum qualification, as laid down by an



academic authority, authorised by the Central government, by notification, shall be eligible for appointment as a teacher. This provision has apparently been made to ensure not only free and compulsory education for children, but also to ensure quality education for them thoroughly properly qualified and trained teachers. It is in order to accomplish this avowed object envisaged under Section 23 of the Act that the National Council for Teacher Education (*hereinafter referred to as the Council*), a statutory body of the Government of India, has, vide its notification, dated 23rd of August 2010, laid down the minimum qualifications for a person to be eligible for appointment as a teacher for class 1 to 8. Section 2 (n) of the Act defines “School” within the meaning of the Act as any recognised school imparting elementary education and includes:- (i) school established, owned or controlled by the appropriate government or a local authority; (ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority; (iii) a school belonging to specified category; and (iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority.

7. Clearly thus, the word “*School*” within the meaning of the Act, is wide enough to include all schools

imparting education up to class 1 to 8. One of the essential qualifications, for a person to be eligible for appointment as a teacher in any of the schools referred to in Clause (n) of Section 2 of the Act, is that he/she should have passed the *Teachers Eligibility Test* conducted by the appropriate Government.

8. The rationale for including the *Teachers Eligibility Test*, as minimum qualification for a person to be eligible for appointment as a teacher are *inter alia*, that it would bring national standards and benchmark of teacher quality in the recruitment process and it would induce teacher education institutions and students from these institutions to further improve their performance standards. It would also send a positive signal to all stakeholders that the Government lays special emphasis on a teacher's quality. The guidelines, issued by the Council under the statutory provisions, as noted above, deal with the eligibility for a person for appearing at the eligibility tests, structure and content of the test as well as the papers in which the candidates, intending to be a teacher, are required to appear. Clauses 6, 7 and 8 deal with the pattern of the eligibility tests, whereas Clause 9 deals with the minimum qualifying marks. Since the guidelines are statutory in nature and are required to be implemented as they are, we have considered it appropriate to extract the relevant provisions of the

guideline, which are as under:-

“Structure and Content of TET

6 *The structure and content of the TET is given in the following paragraphs. All questions will be Multiple choice Questions (MCQs), each carrying one mark, with four alternatives out of which one answer will be correct. There will be no negative marking. The examining body should strictly adhere to the structure and content of the TET specified below.*

7 *There will be two papers of the TET. **Paper I** will be for a person who intends to be a teacher for classes I to V. **Paper II** will be for a person who intends to be a teacher for classes VI to VIII. A person who intends to be a teacher either for classes I to V or for classes VI to VIII will have to appear in both papers (**Paper I and Paper II**).*

Paper I (for classes I to V); No. of MCQs - 150;

Duration of examination: one-and-a-half hours

Structure and content (All Compulsory)

(i) Child Development & Pedagogy	30 MCQs	30 Marks
(ii) Language I	30 ”	”
(iii) Language II	30 ”	”
(iv) Mathematics	30 ”	”
(v) Environmental Studies	30 ”	”

Nature and Standard of questions

While designing and preparing the questions for Paper I, the examining body shall take the following factors into consideration:

- The test items on Child Development and Pedagogy will focus on educational psychology of teaching and learning relevant to the age group of 6-11 years. They will focus on understanding the characteristics and needs of diverse learners, interaction with learners and the attributes and qualities of a good facilitator of learning.*
- The Test items for Language I will focus on the proficiencies related to the medium of instruction, (as chosen from list of prescribed language options in the*

application form).

- The Language II will be from among the prescribed options other than Language I. A candidate may choose any one language from the available language options and will be required to specify the same in the application form. The test items in Language II will also focus on the elements of language, communication and comprehension abilities.
- The test items in Mathematics and Environmental Studies will focus on the concepts, problem solving abilities and pedagogical understanding of the subjects. In all these subject areas, the test items shall be evenly distributed over different divisions of the syllabus of that subject prescribed for classes I-V by the appropriate Government.
- The questions in the tests for Paper I will be based on the topics of the prescribed syllabus of the State for classes I-V, but their difficulty standard, as well as linkages, could be upto the secondary stage.

Paper II (for classes VI to VII); No. of MCQs - 150;

Duration of examination: one-and-a-half hours

Structure and content

- | | | |
|---|---------|----------|
| (i) Child Development & Pedagogy | 30 MCQs | 30 Marks |
| (compulsory) | | |
| (ii) Language I (compulsory) | 30 " | " |
| (iii) Language II (compulsory) | 30 " | " |
| (iv) (a) For Mathematics and Science teacher : Mathematics and Science - 60 MCQs of 1 mark each | | |
| (b) For Social Studies teacher : Social Studies – 60 MCQs of 1 mark each | | |
| (c) for any other teacher – either 4(a) or 4(b) | | |

While designing and preparing the questions for Paper II, the examining body shall take the following factors into consideration:

- The test items on Child Development and Pedagogy will focus on educational psychology of teaching and learning, relevant to the age group 11-14 years.

They will focus on understanding the characteristics, needs and psychology of diverse learners, interaction with learners and the attributes and qualities of a good facilitator of learning.

- *The test items for Language I will focus on the proficiency related to the medium of instruction, as chosen from list of prescribed options in the application form.*
- *The Language II will be a language other than Language I. The person may choose any one language from among the available options and as in the specified list in the application form and attempt questions in the one indicated by the candidates in the application form by him. The Test items in Language II will also focus on the elements of language, communication and comprehension abilities.*
- *The test items in Mathematics and Science, and Social Studies will focus on the concepts, problem solving abilities and pedagogical understanding of these subjects. The test items of Mathematics and Science will be of 30 marks each. The test items shall be evenly distributed over different divisions of the syllabus of that subject as prescribed for classes VI-VIII by the appropriate government.*
- *The question in the tests for Paper II will be based on the topics of the prescribed syllabus of the State for classes VI-VIII but their difficulty standard as well as linkages could be upto the senior secondary stage.*

8. *The question paper shall be bilingual – (i) in language(s) as decided by the appropriate Government; and (ii) English language.*

Qualifying marks

9. *A person who scores 60% or more in the TET exam will*

be considered as TET pass. School management (Government, local bodies, government aided and unaided)

(a) may consider giving concessions to persons belonging to SC/ST, OBC, differently abled persons, etc. in accordance with their extant reservation policy;

(b) should give weightage to the TET scores in the recruitment process; however, qualifying the TET would not confer a right on any person for recruitment/employment as it is only one of the eligibility criteria for appointment.”

9. In the State of Bihar, the function of appointment of teachers has been assigned to the local authorities, i.e., Panchayati Raj and municipal institutions. In tune with the guidelines issued by the Council under the Right to Education Act, 2009, enacted under Article 21-A of the Constitution of India, the Education Department of Government of Bihar, in exercise of powers vested in it under Section 47 read with Section 146 of Bihar Panchayat Raj Act, 2006, has framed rules for appointment of teachers, namely, Bihar Panchayat Primary Teachers (Employment and Service Condition) Rules, 2012, and Bihar Municipal Teachers Primary Teachers (Employment and Service Condition) Rules, 2012.

10. Rule 11 of 2012 Rules provides for inclusion of score of a candidate in the eligibility test for the purpose of assessment of his merit for appointment as teacher. A careful



reading of the said Rules indicates that no person, having less than 55% of marks, in the eligibility test, can be held to be entitled for any point for the purpose of his/her assessment of merit. This is to be noted that as per the guidelines issued by the Council under Clause 9 as referred to above, a person, who scores 60% or more in the eligibility test, is to be considered as having passed the eligibility test. Sub-Clause (a), however, confers jurisdiction on the Government, local bodies, Government aided and un-aided school managements to consider giving concession to persons belonging to SC/ST, OBC, differently abled persons, etc., in accordance with their extant reservation policy.

11. It has been submitted at the bar that relaxation up to 5% has been given to persons belonging to such categories and, therefore, score, at the eligibility test, for the purpose of assessment of merit of such candidates for their appointment as teacher up-to 55%, has been mentioned under the 2012 Rules framed by the State Government, as noted above.

12. In our considered view, the guidelines, issued by the Council, having been framed under Section 23 (i) of the Act, the guidelines are statutory in nature and have force of law to be carried out and followed by all functionaries. Further, the Government of Bihar has framed Rules, in the year 2012,

following the guidelines issued by the Council. 2012 Rules, framed by the State government, does not contemplate any relaxation in qualifying marks at the eligibility test for appointment as teachers.

13. In our view, therefore, the requirement that for a person to become a teacher, he must have scored, at least, 60% marks, at the Test, which is minimum qualifying percentage, subject to relaxation, if any, permitted under Clause 9 (a) of the of the guidelines, is statutory and mandatory.

14. Coming to the facts of the present case, we notice that the Bihar School Examination Board was assigned the responsibility of conducting the Teachers Eligibility Test for appointment of Urdu and Bangla teachers. An advertisement was issued from aspiring candidates to participate in the eligibility test. It has been submitted at the bar that approximately 2,50,000 applied for the test against the vacancy of 27,800 posts of Urdu/Bangla teachers. The test was held on 1st October, 2013. As per the guidelines issued by the Council, the test consisted of multiple choice questions (MCQ) in two papers, each of 150 maximum marks. We will be dealing with the method of evaluation of a candidate through multiple choice question test, at appropriate stage, with some details. We, however, point out, at

this stage, that it is a form of assessment in which the test takers are required to select the best of the possible answers out of the choices, suggested to them, from the list.

15. The question, in such type of test, consists of two parts, namely, the main part of the question, in any form, including “*fill in the gap*” or completing the statement in the main part to be answered or completed from the choices suggested in that question and so on. The main part and also the part, suggesting options or choices, together constitute a question.

16. In such circumstances, defect, in the main part of the question, which is technically called *stem*; or defective choices suggested to the main part of the question would render the question itself incorrect for the purpose of evaluation on answer given by the test taker. Out of multiple choices suggested to the test taker, only one choice is said to be correct answer for the question, which is called *key answer*; whereas other choices are called *distractors*. Normally, the bodies, which conduct such tests, prepare model answers, which are set of key answers for the purpose of computerised evaluation of the answer sheets.

17. What happened in the present case is that after tests having been held and before publication of results, the Board, which had conducted the test, issued a Communiqué No. 62/2013,



vide Memo No. K/758, dated 10th October, 2013, published in the local daily newspapers on 11th October, 2013, for information of all concerned that the main script of the question papers and the key answers would be available on the website of the Board. Objections were invited from the candidates in this regard. Nearly 350 objections were received till 21st of October, 2013. An expert body was constituted to consider the objections. The expert body, based on such objections, pointed out 2 defective questions out of 150 in Paper-I and 3 in Paper-II. As recommended by the expert body, the questions, found to be defective, were decided to be deleted for evaluation of answer sheets and accordingly full marks in Paper-I was reduced to 148 and that in Paper-II was reduced to 147. Based on such assessment, the results were published on the 29th November, 2013. The Board, thereafter, came out with another press communiqué for information to all concerned that revised key answers and used OMR sheets of the candidates were uploaded on the website of the Board for perusal.

18. Upon subsequent complaints having been received by the Board, an expert committee, again, examined the correctness of questions of Urdu language (Paper-II) and 10 (ten) questions were found to be incorrect in this process. A decision was taken, thereafter, to provide one mark to all candidates, who



had attempted such questions. This has to be kept in mind that earlier, the expert body had found three defective questions in this paper. In the meanwhile, some test takers, with the help of writ petition, which gave rise to CWJC No. 3098 of 2014, approached this Court for republication of result of the said examination. The writ application was not pressed in view of subsequent decision of the State government to provide one mark for each question incorrectly framed.

19. Learned Single Judge of this Court, in view of the stand of the petitioner in that case, not to press the writ application, in the background of the decision of the State government, disposed of the writ petition with an observation that it was expected that the decision of the State government shall be acted upon by all concerned expeditiously. We intend to indicate here that learned Single Judge had not gone into the correctness nor any issue was raised before him as regards correctness of the decision of the Board/State government to award one mark to each candidate, who had attempted questions, which were found by the expert body to have been incorrectly framed.

20. A revised result was accordingly published. Objections were, again, raised as regards incorrectness of questions of Paper-I. An expert body was, once again, constituted, which



found that 13 questions of the said paper were incorrect. It was, then, decided that the candidates, who had attempted the incorrect questions would be entitled for one additional mark for each such question. A revised merit list was accordingly published by the Board, the effect whereof was that such candidates, who had attempted the questions, which were admittedly incorrect, were given one additional mark for attempting such questions. It is to be mentioned that as per the decision of the Board and the State government, the candidates, who had already been awarded marks against such incorrect questions, were not to be given further marks against such questions.

21. The developments, as noted above, gave rise to institution of writ applications, which came to be heard together by a learned Single Judge, the questions of law and fact being almost identical in nature, though the reliefs, sought for, were diverse. While some of the petitioners questioned the wisdom of the experts over the decision to award to the candidates one mark for each defective question, some of them alleged that there were further defective questions, which required to be dealt with. It was urged before learned Single Judge that it would have deleterious effects if final preparation of merit list, after awarding marks for defective questions, is allowed to prevail as many candidates would be

pushed in the zone of consideration on a presumption that they would have answered the defective questions correctly, had the questions been correctly framed.

22. Learned Single Judge, by the order under appeal, placing reliance on a decision of this Court reported in **2012 (1) PLJR 542 (Manoj Kumar versus state of Bihar and Others)**, came to a conclusion that the only way to restore confidence and faith in the examination, held in the manner as discussed, would be to delete as many questions, which were found to be incorrect by the expert body and evaluate the answer sheets with reduced number of correct questions. Learned Single Judge has further held that publication of result, on the basis of the exercise of deletion of incorrect questions from the purview of evaluation, would reflect correct merit position of all the candidates with no advantage or disadvantage to anyone, particularly, when the percentage, scored in the eligibility test, has bearing on the final merit list for appointment as Urdu/Bangla teacher.

23. Mr.Y.V. Giri, learned Senior counsel, appearing for some of the appellants, has contended that these appellants, who had been declared successful on the basis of the decision of the respondents to award one mark to each candidate for each



incorrect answer, were not impleaded as party respondents in the writ proceedings before learned Single Judge. According to him, the appellants were necessary parties and, in their absence, the writ applications could not have been maintained. He has further submitted that there was no legal infirmity in the decision of the Board or the State government, based on the report of an expert body, to award every candidate one mark for each question found to be incorrect. According to him, while exercising power of judicial review under Article 226 of the Constitution of India, the learned Single Judge ought not to have unsettled the decision of the expert body to award additional marks to the candidates for the questions, which were found to be incorrectly framed.

24. Mr. Rajendra Prasad Singh, learned Senior counsel, appearing for another set of the appellants, in addition to the submissions made on behalf of other set of appellants, as noted above, has submitted that it was decided, in principle, by the Board and the State respondents to award additional marks to the candidates for wrongly framed questions. The matter was considered by this Court in CWJC No. 3098 of 2014 (*Supra*) and by an order, dated 13th of May, 2014, this Court had directed the respondents to proceed further in the matter of appointment accordingly. This order, having not been challenged, attained

finality, which learned Single Judge failed to consider. He has further submitted that if his other submissions do not find favour with this Court, this Court should consider scrapping the entire result keeping in mind the magnitude of errors committed by the respondents in setting up questions.

25. Mr. Lalit Kishore, learned Senior counsel appearing for the Board, has supported the decision of the learned Single Judge and has contended that the Board does not have any grievance against the directives issued by learned Single Judge by the order under appeal as the directives issued by learned Single Judge have resolved the problem arising out of incorrect framing of questions, which is not only pragmatic, but also puts none to any disadvantage nor does it extend undue advantage to others and thereby satisfy the test of equality under Articles 14 and 16 of the Constitution of India.

26. We have also heard Mr. Aditya Narayan Singh, learned counsel, appearing for the writ-petitioners, who has submitted that the order, under appeal, is based on sound reasoning assigned in the order and it does not suffer from any infirmity requiring interference by this Court.

27. We do not find any force in submission made on behalf of the appellants that merely because their names figured in



the list of successful candidates upon decision of the State government and the Board to award additional marks for all incorrect questions, they were necessary parties to be impleaded in the writ proceeding before learned Single Judge. Merely by inclusion in the list of successful candidates, no vested right of appointment accrued to them and, therefore, the orders, passed by learned Single Judge under appeal, is not required to be interfered with on this ground, particularly, as learned Single Judge was testing the correctness of a policy decision of the State government and the Board to award additional marks for incorrectly framed questions. This apart, it could not be shown by these appellants that had they been impleaded as the writ petitions, in question, and had they been heard, the decisions which had been arrived at by the learned Single Judge, which stands impugned in these appeals, would have been different. The submission to this effect is hereby rejected.

28. The submission that this Court by an order, dated 13th of May, 2014, passed in CWJC No. 3098 of 2014 (*Supra*), had asked the respondents to go ahead with their policy to award additional marks for incorrect questions and, therefore, in the subsequent proceeding, learned Single Judge ought not to have gone into the correctness of the decision of the respondents to



award said additional marks, is, in the facts and circumstances of the present cases, not convincing to us. In the said case, the petitioner opted not to press the writ application in view of the stand of the respondents as regards the policy to award additional marks for incorrect questions. The correctness of the decision taken by the State government was, thus, neither raised before learned Single Judge by any one nor did the learned Single Judge go into the correctness or otherwise of the said decision of the respondents. Further, it has been rightly pointed out by learned Senior counsel, appearing for the Board, that the said order, which apparently does not deal with any dispute, was passed before 13 questions, in Paper-II, were found to be defective by the expert's body on 6th September, 2014.

29. It has been vehemently argued, on behalf of the appellants, that there being opinion of the expert body, this Court ought not to have interfered with such opinion, while exercising power of judicial review under Article 226 of the Constitution of India. We have perused the opinion of the expert body as brought on record on behalf of the Board through its counter affidavit filed in CWJC No. 21945 of 2014. While recording the opinion on defective questions in the said report, the expert body has also suggested to award marks to the candidates for questions



incorrectly framed. To the extent, the opinion of the expert body as regards correctness or otherwise of the questions are concerned, it is true that normally, this Court, exercising power of judicial review, would not review such opinion of the expert body unless it is found to be patently illogical. The question, in the present case before learned Single Judge, however, was as to what was required to be done, which would be reasonable and satisfy the test of Articles 14 and 16 of the Constitution of India, when the expert body found the questions to be incorrect.

30. In our opinion, it is well within the jurisdiction of this Court, exercising power of judicial review, to assess whether the action of the executive passes the test of reasonableness, fairness in action and whether the action discriminates none. This Court, while exercising such power, has a duty to see to it that in the matter of public employment, no person is disadvantaged or no person is given undue advantage, because of an executive policy, which is unfair and/or arbitrary. The well-recognised principle, that this Court should not substitute its own opinion in place of the opinion of an expert body, has no application in the present facts of the case as learned Single Judge, in the order under appeal, has not gone into the correctness of the opinion of the experts as to whether framing of questions were

correct or not.

31. As has been mentioned in the very opening paragraph of the present judgement, the cardinal issue, involved in the present appeals, is as to what the recruiting agency or any other body, holding multiple-choice question test, should do, in all fairness, if some of the questions, so framed, are found to be incorrect.

32. As has been noted above, in the present case, 60% minimum qualifying marks, in eligibility test, has been prescribed under the guidelines, which are statutory in nature issued by the National Council of Teachers Education. This is certainly a mandatory requirement for a person to become a teacher subject to relaxation as mentioned therein. Percentage of score, in the eligibility test, as per the said guideline, is the benchmark to assess whether a person is fit to be appointed as a teacher or not. Addition of marks in the name of incorrect answers will certainly raise the percentages of someone's score as he'll be receiving additional marks for questions, which themselves were not correct. On the other hand, if his assessment is done after deleting wrongly framed questions, it will certainly not adversely affect his overall percentages, which are to be calculated on the basis of correctly framed questions and which will reflect his



actual performance at the eligibility test. Any policy, contrary to what we have indicated hereinabove, would amount to compromising with the statutory guideline inasmuch as a person, having not secured the minimum percentages of marks, will get a push to come within the zone of consideration since he will be getting full marks for such questions, which could not have been answered, the questions being defective.

33. There is yet another aspect, which demonstrates the adverse effect of the process, which the Board and the State government had earlier decided to adopt. Rule 11 (b) of 2012 Rules lays down the method of preparation of a merit list for appointment as Panchayat teachers/block teachers. Score of a candidate, in terms of percentage in Teachers Eligibility Test, is a factor for determining his merit. In a multiple-choice question test, a candidate will be getting full marks for attempting wrongly framed question by the sheer luck and, thus, stealing a march over others by getting higher percentage and, accordingly, better merit point for his appointment as a teacher.

34. It has been argued, on behalf of the appellants, that they would have cleared the eligibility test, had they been awarded additional marks in *lieu* of incorrect framing of questions and now since, in the light of the order of the learned Single Judge,



under appeal, they would not be qualifying for the purpose of appointment as an Urdu teacher, a sympathetic approach may be adopted by the State government and the Board by relaxing the minimum qualifying marks so that all persons, who were declared pass prior to the decision of the learned Single Judge under appeal, may be accommodated as a large number of posts of Urdu teachers are lying vacant and if such a relaxation is granted, in the peculiar facts of the present case, all such candidates can be appointed against the said posts. We are afraid this can be done either by the appointing authorities by taking a policy decision to this effect or any like direction can be issued by this Court in the present proceedings. We have already expressed our view, that fixing of minimum qualifying marks in the eligibility test is under guideline which are statutory in nature. As has also been mentioned above, the said guidelines have been incorporated at appropriate place in statutory Rules framed by the State government in the year 2012. The statutory Rules, framed by the State government, do not contemplate relaxation of minimum qualifying marks. The minimum percentage of marks, in the eligibility test, is the eligibility criteria under the rules. In our considered view, in the absence of any specific provision for grant of relaxation, no relaxation can be given. This view finds support from the Supreme

Court's decision, in case of *Orissa Public Service Commission Vs. Rupashree Chowdhary*, reported in (2011) 8 Supreme Court Cases 108. Paragraph 10 of this decision, being relevant for the present purpose, is, accordingly, being extracted hereinbelow:-

“10. A bare reading of the aforesaid Rule would make it crystal clear that in order to qualify in the written examination a candidate has to obtain a minimum of 33% marks in each of the papers and not less than 45% of marks in the aggregate in all the written papers in the main examination. When emphasis is given in the Rule itself to the minimum marks to be obtained making it clear that at least the said minimum marks have to be obtained by the candidate concerned there cannot be a question of relaxation or rounding off. There is no power provided in the statute/Rules permitting any such rounding off or giving grace marks so as to bring up a candidate to the minimum requirement. In our considered opinion, no such rounding off or relaxation was permissible. The Rules are statutory in nature and no dilution or amendment to such Rules is permissible or possible by adding some words to the said statutory rules for giving the benefit of rounding off or relaxation.”

35. Our attention has been drawn by learned Senior



counsel, appearing for the Board, to the effect that the decision of this Court in case of Manoj Kumar (*Supra*), which has been relied upon by learned Single Judge, in his order under appeal, has been affirmed by a Division Bench decision of this Court reported in **2012 (1) PLJR 578 (Manoj Kumar Vs. State of Bihar and Ors.)**. Those cases had arisen out of preliminary test held by the Bihar Public Service Commission. In the said preliminary test, certain questions were found to have been incorrectly framed, which were decided to be weeded out for the purpose of re-evaluation of the mark sheets. On going through the said decisions, we find that on many occasions, situations had arisen, where, in a multiple-choice question type test, framing of incorrect questions came to be detected after the examination had been held by statutory bodies, sometimes *suo motu* and sometimes after objections having been raised by the test takers, giving rise to several litigations. In order to remedy such a situation, the bodies, holding such tests, adopt different ways and means, of which the present case is a living example. Initially, when the Board had detected certain questions to be wrong, it had decided to delete such questions and re-evaluate the answer sheets on the basis of the remaining questions on *pro rata* basis. Subsequently, when more questions were detected to be incorrect by the expert body, they decided to give

additional marks for each such incorrect question across the Board.

36. In our considered view, the learned Single Judge has rightly held that in a situation such as the present one, wrongly framed questions should be deleted and the answer sheets should be re-evaluated on the basis of remaining questions. The view, taken by learned Single Judge, is not only reasonable and rational view, it also ensures fair and equal treatment to all candidates, who participate in such a test, there being no disadvantage to any individual or undue advantage to the other. We do not find any infirmity in the order under appeal passed by learned Single Judge.

37. We do not think that discrepancies, in holding the eligibility test in question, as noted above, are such that the entire exercise, done by the Board, is required to be annulled. There is no allegation of any malpractice nor any irregularity of such nature warranting scrapping of the entire exercise.

38. Before we part with the present judgment, we consider it appropriate to issue certain directives to be followed in future. It would have been ideal situation that utmost care is taken, while setting multiple choice questions leaving no scope of uncertainty in assessing individual merits of the test takers. However, there can be a situation, where despite due care taken,



mistakes may occur in preparing such questions, because of human error. This Court is of the view that the agencies/authorities, responsible for setting such questions, should carry out the exercise with utmost care as even a small flaw leads to series of litigations, creates lot of confusion and, at times, puts question mark on the sanctity of selection process itself.

39. Keeping in mind that there has been numerous instances, where the questions have been found to be incorrect, giving rise to several litigations, we are compelled to issue general directions to the such statutory bodies or other agencies holding tests based on multiple-choice questions for the purpose of appointment to various posts under the State within the meaning of Article 12 of the Constitution of India or for the purpose of admission to various institutions managed or controlled by the State.

40. Having considered the matters in its entirety and in the interest of justice, we, therefore, direct as follows:-

(a) Immediately after a multiple choice question test is held, it shall be obligatory for the Committee or the Body, which conducts such a test, to undertake an exercise, before evaluating the answer-sheets, to ascertain whether the



questions were correctly framed having definite answers. In case any objections are invited from the candidates and such objections are received, they must be looked into by a body of the experts, who would not only be required to ascertain whether the questions were correctly framed or not, but they would also be required to examine as to whether the model answers, prepared by the question-setter, are correct or not, for the purpose of correct evaluation of answer-sheets;

(b) If the structure of a question is found to be incorrect or if the option suggested is found to be incorrect or if there is any printing mistake of such a nature that the correct answer cannot be ascertained or more than one option is found to be correct, such a question must be rejected and should not be allowed to be evaluated;

(c) If, after publication of result, despite due care, it is found that the model key answer/answers suggested was/were incorrect, leading to wrong evaluation, remedial measures

must be taken and answer-sheets must be re-evaluated with correct model answers.

41. In view of the discussions held as above, we do not find any merit in these appeals. These appeals are, accordingly, dismissed with the directions and observations as noted above.

42. There shall be no order as to costs.

(I. A. Ansari, ACJ.)

(Chakradhari Sharan Singh, J.)

Praveen-II/AFR

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