

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17382 of 2014

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1. Smt. Pushpa Kumari W/o Sri Subhash Chandra Singh Assistant Teacher,
Shikshak Niwas, Ramarani Jain Balika Uchha Vidyalaya, Dehri, Distrit-Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education,
Bihar, Patna.
2. The Director, Secondary Education, Bihar, Patna.
3. Bihar Public Service Commissioner, 15-Jawahar Lal Nehru Marg (Bailey Road),
Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr A. B. Ojha, Sr. Advocate
Mr. Nitesh Kumar
Mr Bharat Bhushan

For the State : Mr. Raj Nandan Prasad, SC 9
For the BPSC : Mr Sanjay Pandey

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 27-01-2015

The writ application is dismissed on verification of the original answer-sheet, which has been produced by the Bihar Public Service Commission in a sealed cover. There is a clear violation of the guidelines issued by the BPSC not to change the ink of the pen in the answer-sheets. This has been done repeatedly and consistently. Obviously, petitioner may have motive behind it. The guideline has to be followed by all the examinees. This Court is not required to interfere in the matter selectively what be the explanation or legal argument as an afterthought.

The original answer- sheets are returned to the counsel

for the BPSC for safe custody.

The submission of the learned senior counsel that such a direction is not mandatory and only directory, is not tenable and acceptable because with all kinds of efforts being made by examinees to overcome the rigours of the examination. It is not for this Court to decide as to why the petitioner chose to do a thing of this kind in clear breach of direction issued to all the examinees, who sat in the examination in question.

Counsel for the BPSC presses into service a decision of the Hon'ble Apex Court in the case of *Karnataka Public Service Commission v. B.M.Vijaya Shankar,, reported in AIR 1992 SC 952*, especially paragraphs 2 and 3, which are reproduced herein below :-

2. Power and authority of the Commission to hold examinations, regulate its working and functioning, take action against erring candidates guilty of misconduct are all provided for by the rules and instructions issued in exercise of power conferred by the Statutes. The claim of the candidates that they did not vest any right in the Commission to take such action was negated by the tribunal. But it faulted in inferring that no penalty was provided for breach of instructions requiring a candidate not to write his roll number inside the answer book. Relevant clause (1) of the Instructions to Candidates is extracted below:

"Before commencing your answers please write your register number and other particulars in the space provided above. Do not write your name or register number or sign anywhere in the answer book or on any loose sheets, such as précis sheets, maps, graph papers, etc.'

It is not disputed and it was found, even by the Tribunal that it was printed on the first page of ever, answer book. Its observance was mandatory and its disregard was punishable is clear from instruction (xii) and (xiii) of General Instructions to the candidates which are extracted below:

"(xii) The candidates must abide by such instructions as may be specified on the cover of the answer book or any further instructions which may be given by the Supervisor/Invigilator of the Examination.

(xiii) If the candidates fail to do so or indulge in disorderly or improper conduct, they will render themselves liable to expulsion from examination and or such other punishment as the Commission may deem fit to impose."

Is the expression, 'such other punishment as the commission may deem fit to impose' vague and thus arbitrary? We do not think so. Read with clause (xii) it presents no difficulty. It provides action for breach of that which is, clearly, specified. It cannot be characterised as vague. And then any capricious exercise of power can always be assailed. More important than this is that provisions attempting to infuse discipline in competitive to be conducted by the Commission cannot be construed with same yardstick as a provision in penal statutes. Moreover the Commission did not impose any penalty on the candidates. Their examination was not cancelled nor they were debarred from taking any examination conducted by the Commission for that year or any year, in future. Their marks in papers, other than those in which they were found to have acted in disregard of instructions were declared. The only action taken was that those answer books in which roll numbers had been written inside were not subjected to evaluation. In our opinion there was nothing, basically, wrong in it. The Commission did not treat it as misconduct. The action could not be termed as arbitrary. Nor it was abuse of power which could be corrected by judicial review.

3. Such instructions are issued to ensure fairness in the examination. In the fast deteriorating standards of honesty and morality in the society the insistence by the Commission that no attempt should be made of identification of the candidate by writing his roll number anywhere is in the larger public interest. It is well known that the first page of the answer book on which roll number is written is removed and a fictitious code number is provided to rule out any effort of any approach to the examiner. Not that a candidate who has written his roll number would have approached the examiner. He may have committed a bonafide mistake. But that is not material. What was attempted to be achieved by the instruction was to minimise any possibility or chance of any abuse. Larger public interest demands of observance of instruction rather than its breach.”

The Court opines that the present case falls within the parameters of the ratio and yardsticks of what the Hon’ble Apex Court has said in the case of Karnataka Public Service Commission (supra).

The Court is satisfied that the action of BPSC was warranted in the given facts of this case especially when petitioner has no answer/ explanation for her repeated breach.

Writ has no merit and is dismissed.

(Ajay Kumar Tripathi, J)

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