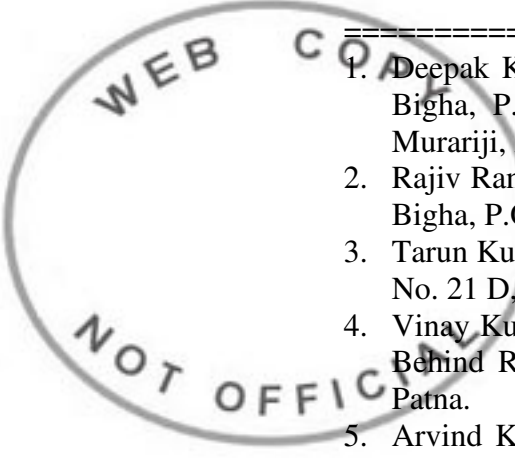


IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11850 of 2015

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1. Deepak Kumar, son of Sri Harinandan Paswan, resident of Village - Narayan Bigha, P.O. & P.S. - Ghosi, District- Jehanabad, currently residing at C/o Murariji, Anisabad, District - Patna.
 2. Rajiv Ranjan Verma, son of Sri Ramawtar Prasad, resident of village - Mudla Bigha, P.O. - Satnag, P.S. - Chandi, District - Nalanda.
 3. Tarun Kumar, son of Late Ramchandra Singh, resident of House No. 305, Road No. 21 D, Rajiv Nagar, P.O. - Kesrinagar, District - Patna.
 4. Vinay Kumar, son of Late Raja Babu, resident of Cadbury Ice Cream Factory, Behind Rajapur Petrol Pump, P.O.- G.P.O. P.S.- Budha Colony, District - Patna.
 5. Arvind Kumar, son of Raghuvansh Singh, resident of village - Sheikhpura, P.O. Bihar Veterinary College, P.S. - Hawai Adda, District - Patna.
 6. Amrendra Kumar, son of Parmanand Ram, resident of Village - Shastrinagar, Ward No. 16, P.O. & P.S. & District - Araria.
 7. Manohar Kumar, son of Mohan Prasad, resident of Village - Samrah, P.O. & P.S. - Haveli Kharagpur, District - Munger.
 8. Umesh Singh, son of Late Shankar Singh, resident of village - Pachkhor, P.O. & P.S. - Kudra, District - Kaimur.
 9. Dilip Kumar Sinha, son of Sri Dhanesh Kumar Sinha, resident of village - Barwara, P.O. - Nasanda, P.S. - Chandi, District - Nalanda.
 10. Abhishek Kumar, son of Sri Krishna Mohan, resident of Sushila Swami Sadan, Sareya, Ward No. 4, P.S. - Gopalganj, District - Gopalganj.
 11. Pramod Kumar Sinha, son of Sri Rajendra Prasad, resident of village - Bikhani Bigha, P.O. - Onda, P.S. - Sarey, District - Nalanda.
 12. Dhananjay Kumar, Son of Sri Sidh Nath Prasad, resident of South Chandmari Road, Budha Nagar, Road No. 3, Kankarbagh, District - Patna.
 13. Akhilesh Kumar, Son of Sri Singheshwar Singh, resident of village & P.O. Kaithil, Via - Obra, District - Aurangabad.
 14. Shashi Kumar, Son of Sri Jai Nandan Baitha, resident of village - Rasulpur, P.O. & P.S. - Haspura, District - Aurangabad.
 15. Amitabh Bharti, Son of Sri Ashok Kumar Singh, resident of village- Khanpita, P.O. & P.S. - Sabour, District - Bhagalpur.
 16. Sanjay Kumar Mandal, Son of Sri Jagdish Prasad Mandal, resident of village - Santi Tola Pasia, P.O. - Tingachiya, P.S. & District - Katihar.
 17. Shekhar Kumar, Son of Sri Sahdev Maharana, resident of Lalbagh, Turka Manjhi, District - Bhagalpur.
 18. Pankaj Kumar Sinha, Son of Sri Dwarika Prasad Singh, resident of village - Murli, P.O. - Bhawanipur, District - Bhagalpur.
 19. Pradeep Kumar, Son of Sri Rajnandan Singh, resident of Mohalla - Nayatola, Kumharar (Ghera), P.O. - Lohianagar, P.S. - Kankarbagh, District - Patna.

.... Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Public Health & Engineering Department, Government of Bihar, Patna.
2. Bihar Staff Selection Commission through its Secretary, Veterinary College, Patna - 800014.
3. The Secretary, Bihar Staff Selection Commission, Veterinary College, Patna - 800014.

4. The Water Resources Department, Government of Bihar, Patna through the Principal Secretary.
5. The Engineer-in-Chief (Central), Water Resources Department, Government of Bihar, Patna.
6. The Road Construction Department, Government of Bihar, Patna through the Principal Secretary.
7. The Engineer-in-Chief-Cum-Additional Secretary-cum-Special Secretary, Road Construction Department, Government of Bihar, Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate
Mr. Ashish Giri, Advocate
For the Respondent/s : Mr. Dharendra Kumar, AC to AAG10
For Bihar SSC : Mr. K. K. Upadhyaya, Advocate
Mr. C. B. Das, Advocate

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 07-12-2015

Heard learned counsel for the petitioner, Bihar Staff Selection Commission as well as learned counsel for the State.

2. The petitioners seek quashing of the order dated 20.07.2015 issued by Engineer-in-Chief-cum Additional Secretary-cum-Special Secretary, Road Construction Department, Government of Bihar, Patna, by which the appointment of the petitioner nos. 1 and 2 dated 07.09.2012 on the post of Junior Engineer, Bihar State Bridge Construction Nigam Ltd. and Road Division No. 1 Muzaffarpur have been cancelled. The petitioners other than petitioner nos. 1 and 2, seek directions upon the respondents not to implement order dated 20.07.2015 in respect of them.

3. It appears that the impugned order has been passed on the premises that the petitioners on re-verification of their OMR

sheets were found to have secured lesser marks than what they were earlier found to have secured on the basis of which they were selected and appointed.

4. Before I consider the rival submissions of the parties, it would be relevant to notice the facts in brief:

5. Pursuant to the requisition of the State Government, Bihar Staff Selection Commission (hereinafter referred to as 'the Commission') published advertisement on 14.08.2006 for appointment of 2268 posts of Junior Engineer (Civil). About 1057 posts were in the open merit category. The petitioners and many others applied.

6. Only about 210 candidates qualified from the 1st advertisement. As many posts remained unfilled, second advertisement was issued on 19.11.2006 (Annexure-1). The petitioners were also successful and were selected. The unsuccessful candidates filed C.W.J.C. No. 885 of 2007, The learned Single Judge found that a number of model answer questions, numbering over 40, out of 100, were wrong. Two of the questions were also not correct. The learned Single Judge cancelled the appointments.

7. Being aggrieved, some of the successful candidates filed Intra Court Appeal bearing L.P.A. No. 70 of 2008. The Division Bench of this Court modified the order of learned Single Judge



observing that entire examination need not be cancelled, as there was no allegation of any malpractice with respect to papers other than Civil Engineering. The Division Bench as such directed for re-examination of only Civil Engineering Paper and at the same time stayed the appointment process pursuant to second advertisement, till the selection made from the first advertisement was finalized. It appears that the Division Bench stayed the appointment from 2nd Advertisement to avoid a situation where a large number of persons may be later found to be successful from the first advertisement.

8. Being aggrieved by the stay of their appointment till the selection from the first advertisement was finalized, some of the successful candidates moved the Hon'ble Apex Court giving rise to SLP (Civil) No. 5752-5753 of 2008. The Hon'ble Apex Court, vide its interim order dated 30.08.2011 vacated the stay on the appointment of the successful candidates from second advertisement, which was made subject to the final outcome of the proceedings before it.

9. In the light of the order of the Hon'ble Apex Court, appointment letters were issued to successful candidates from second advertisement including the petitioners.

10. The SLP No. 5752-5753 of 2008 finally came to be disposed of on 13.03.2013. The Hon'ble Apex Court in Sub-para 4 of Para 19 observed that the answer sheets of the candidates may be re-

evaluated, but if after re-evaluation the appellants should not be ousted from service if they fail to make the grade after such re-evaluation. Sub-para 4 of para 19 is quoted herein below for easy reference:

“19.(4) Such of the appellants as do not make the grade after re-evaluation shall not be ousted from service, but shall figure at the bottom of the list of selected candidates based on the first selection in terms of advertisement No. 1406 of 2006 and the second selection held pursuant to advertisement no. 1906 of 2006.”

11. The Hon'ble Apex Court further noticed that the petitioners did not contribute to the preparation of the erroneous keys or the distorted result. Furthermore, they have served for a period of '7 years'.

12. It further appears that seven of the unsuccessful candidates took their chance and filed C.W.J.C. No. 3762 of 2012 (Vinod Kumar Yadav and Others vs. Bihar Staff Selection Commission and Others), as contained in Annexure-5. After considering the case of the parties, the learned Single Judge vide order dated 17.04.2013 observed that the Commission would permit the petitioners to inspect their original OMR Sheets in presence of the Secretary of the Commission. It was further observed that the

petitioners or anyone of them found anything objectionable in course of inspection of OMR sheets, it would be open to file their individual separate representation. A copy of order dated 17.04.2013, passed in C.W.J.C. No. 3762 of 2012 is appended as Annexure-5.

13. Pursuant to the directions of the learned Single Judge in C.W.J.C. No. 3762 of 2012, the petitioners inspected the OMR Sheets in presence of the Secretary of the Commission. The inspection of OMR sheets revealed that the corrections were faulty in as much as four of the seven petitioners were given lower marks than what they deserved. The Commission, accordingly, declared four of the seven petitioners successful. It appears that as the Commission found irregularities in matching of the answers given in the OMR sheets, it decided to inspect OMR sheets of the successful candidates again. On detailed inspection, it was found that the petitioners had lower marks than what was shown in their results, on the basis of which they were declared successful.

14. In view of such position, the Commission on 27.05.2015 recommended for cancellation of the selection of 22 persons, most of whom are petitioners in this writ application. In the light of the recommendation of the Commission, the respondent no.7 cancelled the appointment of petitioner nos. 1 and 2 vide order dated 20.07.2015 by the respective departments. The respondents

apprehend, similar order of removal in respect of rest of the petitioners i.e. petitioner nos. 3 to 19.

15. The petitioners submit that once the results were announced, the Commission became *functus officio* and as such could not have re-opened/re-inspected the answer-sheets of all the candidates, particularly, on its own, when there was no direction from any Court to re-examine the papers of other candidates. Furthermore, the Hon'ble Apex Court in case of successful candidates from 2nd Advertisement. In Sub-para 4 of para 19 of order, dated 13.03.2013 passed in S.L.P. © No. 5752-53 of 2008, observed that even if the appellants do not make the grade after re-evaluation, they shall not be ousted from the service. According to the petitioners, their cases stand on same facts.

16. Counsel for the respondents submit that the impugned orders have been passed, as the writ petitioners on re-inspection of the OMR sheets were found to have secured lesser marks than the one's on the basis of which they were selected.

17. The submissions made by the learned counsel for the petitioners based on re-evaluation cannot be said to entirely without substance, but for the fact that the matter stands settled by the Hon'ble Apex Court in S.L.P. © No. 5752-53 of 2008, wherein it was observed that even if the appellants, may be the successful candidates

from the second advertisement, do not make the grade after re-evaluation, still they would not be ousted, but would be placed at the bottom of the list.

18. Since the matter has traveled to the Hon'ble Apex Court, the ambit and extent of judicial review would be circumscribed within the four corners of the observations and directions thereof. As such, the impugned order dated 20.07.2015 ousting petitioner nos.1 and 2 from service consequent to re-evaluation would not be sustainable and is set aside. The observation made hereinabove, would hold good in case of petitioner nos. 3 to 19 as well.

19. This application stands allowed.

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(Samarendra Pratap Singh, J.)

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