

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.249 of 2014

IN

Civil Writ Jurisdiction Case No. 5135 of 2013

- =====
1. Om Prakash S/O Sri Rajendra Prasad Resident Of Mohalla- Chandpurbela, Shivnath, P.S- Jakkanpur, P.O. G.P.O, Town And District- Patna.
 2. Amit Kumar S/O Sri Indu Bhushan Prasad Resident Of Village- Makshudupur, P.S- Fatwa, District- Patna

.... Appellants

Versus

1. The State Of Bihar through Principal Secretary, Department Of Bihar Transporation (Enforcement Branch), Government Of Bihar, Patna.
2. The Chairman of Bihar Staff Selection Commission, Veterinary College, Patna-800004.
3. The Secretary of Bihar Staff Selection Commission, Veterinary College, Patna-800004.

.... Respondents

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Appearance :

For the Appellants : Mr. S. K. Ghosh, Senior Advocate
Mr. Dharendra Narain Mallik, Advocate
For the Respondent No.1 : Mr. Alok Ranjan, A.C. to G.A.-13
For the Respondent Nos.2 & 3: Mr. Prabhat Kumar Singh, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

CAV JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 24-11-2015

Pursuant to the Advertisement No. 1004, published, on 17.12.2004, by the Bihar Staff Selection Commission, under the Bihar Transport (Enforcement Branch) Cadres Rules, 2003, inviting applications for appointment to the posts of Enforcement Sub Inspector in the Transport Department of the State Government, the appellants herein

applied.

2. The Selection process consisted of three stages, namely, *written examination*, *physical test* and *interview*. Having qualified in the *written examination* and the *physical test*, the appellants appeared in the *interview*. Though the appellants secured the minimum qualifying marks in the *interview* also, they were not finally selected inasmuch as they failed to succeed on overall merit.

3. Aggrieved by the result of the selection process, the appellants came to this Court with a writ petition, made under Article 226 of the Constitution of India, which gave rise to C.W.J.C. No. 5135 of 2013, seeking to get set aside and quashed the result, dated 30.12.2012.

4. Before we advert to the submissions advanced, on behalf of the appellants, for assailing the order, under appeal, relevant facts need to be taken note of.

5. The Bihar Staff Selection Commission (hereinafter to be referred to as "the Commission"), under the Bihar Transport (Enforcement Branch) Cadres Rules, 2003, published, on 17.12.2004, Advertisement No.1004 inviting applications from eligible candidates for appointment to altogether 47 (forty seven) posts of Enforcement Sub Inspector in the Transport Department of the State Government, which included 22 (twenty two) posts under *unreserved category*,

whereas 8 (eight) posts were reserved for the candidates of *Scheduled Caste*, 2 (two) posts were reserved for the candidates of *Scheduled Tribe*, 8 (eight) posts were reserved for the candidates of *Extremely Backward Caste*, 6 (six) posts were reserved for the candidates of *Backward Caste* and one post for female belonging to *Backward Caste*.

6. As indicated above, the selection process consisted of three stages, namely, *written examination*, *physical test* and *interview*. It was stipulated in the advertisement that, apart from qualifying in the *written examination*, passing of physical fitness test was also required. It was also mentioned in the advertisement that if the number of the candidates exceeded forty thousand, a preliminary test would, in such an event, be held prior to the main examination, which would consist of two papers, namely, first paper being General Knowledge and General Studies, the second paper being the test relating to the Motor Vehicles Act/Rule and Circulars, etc.

7. However, vide notice, contained in Memo No. 2105, dated 10.05.2012, published in the newspapers, it was indicated that there would be no preliminary test and only written examination would be held. Eventually, the written examination was held in the form of objective test, wherein the candidates were required to answer two sets of 200 questions

for both the categories, each category, i.e., General Knowledge and General Studies, as well as from Bihar Motor Vehicles Act/Rules, etc., contained 100 marks.

8. However, the Commission, on 27.09.2012, came up with a notice inviting objections from the candidates, who had appeared in the main examination with respect to the correctness of the model answers published on the website of the Commission for both the papers, i.e. General Knowledge/General Studies as well and Bihar Motor Vehicles Act/Rules and Circulars, etc.

9. Pursuant to the notice, dated 27.09.2012 aforementioned, several candidates filed their objections claiming that the model answers published by the Commission not only suffered from infirmities, but certain questions were also incorrect. The objections were filed along with the supporting documents corroborating the infirmities of the model answers as well as infirmities in the questions which had been set up.

10. The appellant No.1, too, filed his objection, on 03.10.2012, claiming that there were infirmities in altogether 12 questions and also gave documents in support of this claim.

11. Though the objections, which were invited with regard to infirmities in model answers, and incorrectness of questions were yet to be decided, the Commission published,

on 13.10.2012, the result of the main examination, which also contained the list of candidates short listed, 2.5 times the number of vacancies, for appearing at the physical fitness test and the interview.

12. The appellants, thereafter, appeared at the physical test as well as at the interview and though they passed, they did not finally get selected.

13. The specific case of the appellants before the writ Court was that there was no indication, in the advertisement, as to what would be the cut off marks for passing the interview held by the Commission and that the qualifying mark, for the interview, was fixed later on and, thus, the selection process suffered from illegality.

14. As the writ petition filed by the appellants, being C.W.J.C. No. 5135 of 2013, has been dismissed by the judgment and order, dated 13.12.2013, the appellants have preferred this appeal.

15. We have heard Mr. S. K. Ghosh, learned Senior Counsel, appearing on behalf of the appellants, and Mr. Alok Ranjan, learned Assistant Counsel to Government Advocate No.13, appearing for the respondent No.1. We have heard also Mr. Prabhat Kumar Singh, Learned Counsel, appearing for the respondent Nos. 2 and 3.

16. Mr. S. K. Ghosh, learned Senior Counsel,



appearing for the appellants, has submitted that the advertisement, whereby the applications for selection process were invited, did not mention the minimum qualifying marks for the interview to be conducted at the end of the written examination to be followed by physical test. This apart, it is also pointed out by Mr. Ghosh, learned Senior Counsel, that the learned single Judge, in the order, under appeal, has mentioned that the minimum qualifying marks for passing the interview was as follows:

"General Candidates:	40%
Backward Caste :	36%
Backward Caste(Annexure I):	34%
Scheduled Caste, Scheduled Tribe and Female Candidate	: 32 %"

17. But it has not been indicated, either in the advertisement or in the judgment, under appeal, points out Mr. Ghosh, learned Senior Counsel, as to what was the total mark fixed for the interview and, in such a situation, the learned single Judge ought to have interfered with the process of selection and set aside and quashed final declaration of result of the selection process.

18. It is further pointed out by Mr. Ghosh, learned Senior Counsel, that neither the advertisement nor the letter, inviting the candidates for the interview, mentioned that there

was minimum qualifying marks fixed for interview.

19. Resisting the appeal, Mr. Prabhat Kumar Singh, learned Counsel, appearing on behalf of the Commission, has submitted that in the advertisement, it had been mentioned that apart from the written test and the physical test, there would be an interview and, in the interview letter, dated 29.12.2012, which had been issued, it was clearly mentioned that the candidates, appearing at the interview, ought to secure minimum qualifying marks, in different reserved categories, in accordance with the Personnel and Administrative Reforms Department's Resolution No.15838, dated 22.12.1990, and Letter No.10258, dated 05.08.1991.

20. Drawing our attention to the Resolution, contained in Memo. No.3/M-73/2005/Pers,-2374, dated 16.07.2007, Mr. Prahbhat Kumar Singh, learned Counsel, has pointed out that by the Resolution No.15838, dated 22.12.1990, and Letter No.10258, dated 05.08.1991, of the Personnel and Administrative Reforms Department, Government of Bihar, minimum qualifying marks have been uniformly prescribed for different competitive examinations, which is reproduced hereinbelow:

"General Candidates	:	40%
Backward Caste	:	36.5%
Backward Caste(Annexure I)	:	34%
Scheduled Caste,		

Scheduled Tribe and
Female Candidate : 32 %"



21. It is a fact that the advertisement clearly mentions that apart from the written test and the physical test, an interview would be held. There is also no dispute that the interview letter made it clear that the interview would be held in terms of the Resolution No.15838, dated 22.12.1990, and Letter No.10258, dated 05.08.1991, of the Personnel and Administrative Reforms Department, Government of Bihar, nor is it in dispute that the Resolution, contained in Memo. No.3/M-73/2005/Pers,-2374, dated 16.07.2007, lays down that a candidate, belonging to *general category*, will have to secure minimum qualifying marks of 40 per cent, a candidate, belonging to *other backward class*, will have to secure minimum qualifying marks of 36.5 per cent, a candidate, belonging to *other backward class*, will have to secure minimum qualifying marks of 34 per cent and a candidate, belonging to *scheduled caste/scheduled tribe and female category*, will have to secure minimum qualifying marks of 32 per cent uniformly at different competitive examination.

22. It logically follows from what has been pointed out above is that a candidate, in order to qualify in the interview, was required to have secured the minimum qualifying marks.



23. We do not, therefore, find that merely because of the fact that the advertisement, in question, did not specifically mention that there would be minimum qualifying marks for the interview, the selection process called for interference, particularly, when we notice that the appellants herein did not fail in interview or, in other words, as the appellants had succeeded in the interview, the effect was that the omission to mention in the advertisement that there would be minimum qualifying marks for a candidate to succeed in the interview has not caused any prejudice to the appellants.

24. What is also not in dispute is that the total marks in the interview was 20 and the minimum qualifying marks for a candidate of *Most Backward Class* and *Backward Class* were 139 and 145 respectively.

25. What also emerges from the submissions made and the materials on record that the appellant No.1, namely, Om Prakash, who belongs to *Most Backward Class category*, had secured 142 marks, whereas the cut off marks for the candidates called for interview, under *Most Backward Class category*, was 139, and, similarly, in the case of the appellant No.2, Amit Kumar, had secured 150 marks, whereas the cut off marks for the candidates called for interview, under the *Backward Class category*, to which the appellant No.2 belongs, was 145.

26. Thus, the appellants had passed in the interview, but they failed to qualify on the basis of overall merit.

27. As a last resort it is submitted, on behalf of the appellants, that the appellants had secured higher marks than some of the candidates, who, eventually, succeeded in the selection process and this shows that the marks, in the interview, were manipulated. Merely because of the fact that the appellants did not, ultimately, succeed in securing position in the merit list, the process of selection and/or the evaluation of merit, in the interview, cannot be said to be bad in law, when there is nothing in the materials on record to indicate that the appellants were deliberately not awarded adequate marks in the interview and, consequently, failed. As a matter of fact, we do not find, from the on record, that the appellants, as writ petitioners, had even pleaded that they had done so well in the interview that they ought to have qualified in the ultimate test of merit. Far from this, the pleadings, in the writ petition as discernible from page 6 and 7, show that it was their inference that they ought to have qualified on merit, but they failed.

28. Because of what have been discussed and pointed out above, we do not find that the judgment and order under appeal suffers from any infirmity, legal or factual.

29. This appeal, therefore, fails and shall accordingly stand dismissed.

30. However, there shall be no order as to costs.

(I. A. Ansari, ACJ)

Chakradhari Sharan Singh, J : I agree.

(Chakradhari Sharan Singh, J)

A.F.R.
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