IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5771 of 2013

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1. Sanjay Kumar Ranjan S/O Sri Bishwanath Prasad Ranjan Add: C/O Ram Lagan Mahto, Bhagat Lane, Mela Road, Ward No. 20, Bhavdepur, Sitamarhi, Bihar, Pin-843302.
2. Amitabh Kumar S/O Ramesh Prasad Sharma Add: Near Nagina Singh, (Ward No. 20), Mohalla- Dahiyawan, P.O.- Chapra, District- Saran, Bihar - 841301
3. Ahad Rashid S/O M. Rashidzzaman Add: Mohalla- Chota Telpa, P.O.+ District- Chapra, Saran (Bihar), Pin-841301
4. Vijay Kumar S/O Birendra Prasad Add: Bijli Dukan Shalimar Hotel Ke Samne, Shahebganj, Saran At Chapra, Bihar, Pin-841301
5. Mithilesh Kumar Madhup S/O Chandra Deo Yadav R/O Vill.+ Post- Piprahi, Via- Ladania, Distt.- Madhubani
6. Chandrakant Kumar S/O Rajandhari Prasad C/O Sri Basudeo Mehta Lodge, Sweetheart Lane, Mahendru, Patna-6
7. Ambika Nand Jha S/O Sri Prabhu Nath Jha R/O Vill.+Post- Mahrail, Via- Jhanjharpur, District- Madhubani
8. Anand Kumar S/O Yamuna Prasad R/O Vill.- Hariganj, Post- Ekangardih, District- Nalanda
9. Rajeev Ranjan Verma S/O Late Basudeo Prasad Verma R/O Vill.- Sandh, Post- Bahapar, P.S.-Kraiparsurai, District- Nalanda

.... Petitioner/s

Versus

1. The Bihar Staff Selection Commission Through Its Secretary Veterinary College, Patna-800014
2. The Chairman Bihar Staff Selection Commission, Veterinary College, Patna- 800014
3. The Secretary Bihar Staff Selection Commission, Veterinary College, Patna- 800014
4. The State Of Bihar Through Its Chief Secretary, Government Of Bihar, Patna
5. The Principal Secretary Home Department, Government Of Bihar, Patna
6. The Principal Secretary General Administration Department, Government Of Bihar, Patna
7. The Director General-Cum-Inspector Of Police, Bihar, Patna

8. Inspector General, Economic Offences Unit, Govt. of Bihar, Patna
9. Thakur Vivekanand Manoj, Son of Sri Sadanand Thakur, resident of Village and P.O.- Phulparas, P.S.- Phulparas, District- Madhubani (Roll No. 11925488 in the Auditor examination, 2007 conducted by the Bihar Staff Selection Commission)
10. Janmajay Maurya, Son of Bisheshwar Prasad, resident of Mahabirji Kirana Corner, Mussalahpur Akhara, Post- Mahendru, P.S.- Mahendru, District- Patna (Roll No. 11120440 in the Auditor examination, 2007 conducted by the Bihar Staff Selection Commission)
11. Alok Kumar, Son of Sri Umakant Prasad, resident of at and P.O.- Purnahiya Kothi, P.S.- Ghorasahan, District- East Champaran (Roll No. 11321484 in the Auditor examination, 2007 conducted by the Bihar Staff Selection Commission)
12. Kumar Samir Verma, Son of Sri Hari Shankar Prasad Verma, Resident of Hindu Chakiya, P.O. & P.S.- Bara Chakiya, District- East Champaran (Roll No. 11321437 in the Auditor examination, 2007 conducted by the Bihar Staff Selection Commission)
13. Om Prakash Prasad, Son of Panna Lal Prasad, resident of Village and P.O.- Piparpati- P.S.- Baniyapur, District- Saran at Chapra (Roll No. 12127340 in the Auditor examination, 2007 conducted by the Bihar Staff Selection Commission)
14. Surya Prakash, Son of Bal Krishna Prasad Das, resident of Gadadhar Banerjee Lane, Munnichak, P.O.- HPC Bhagalpur, District- Bhagalpur (Roll No. 11220787 in the Auditor examination, 2007 conducted by the Bihar Staff Selection Commission)
15. Ravi Shanker, Son of Gauri Shanker Thakur, resident of at & P.O.- Belwar, P.S.- Vaishali, District- Vaishali at Hazipur (Roll No. 11925828 in the Auditor examination, 2007 conducted by the Bihar Staff Selection Commission)
16. Nishant Kumar, Son of Parmeshwar Prasad, resident of Village- Dumri, P.O.- Khabra, District- Muzaffarpur (Roll No. 11422393 in the Auditor examination, 2007 conducted by the Bihar Staff Selection Commission)
17. Alok Kumar Jha, Son of Ugra Narayan Jha, resident of Bagmati Circle Colony, Shankar Chowk Dumra, P.S.- Dumra, District- Sitamarhi (Roll No. 11623569 in the Auditor examination, 2007 conducted by the Bihar Staff Selection Commission)

18. Rajiv Kumar, Son of Sri Lakhan Lal Agrawal, resident of Rental Flat No. 217, Kankarbagh Colony, P.O. & P.S.- Kankarbagh, District- Patna (Roll No. 11120006 in the Auditor examination, 2007 conducted by the Bihar Staff Selection Commission)
19. Alok Kumar, Son of Shambhu Prasad Verma, resident of Village and P.O.- Pitaujhiya, Via- Rampur Hari, P.S.- Hathauri, District- Muzaffarpur (Roll No. 11723878 in the Auditor examination, 2007 conducted by the Bihar Staff Selection Commission)
20. Satish Kumar Ram, Son of Bhadai Ram, resident of Village & Post Mahuria, District- Sheohar (Roll No. 11925359 in the Auditor examination, 2007 conducted by the Bihar Staff Selection Commission)
21. Satya Prakash, Son of Gulab Chand Prasad, presently residing at Ram babu Mahto Lodge (New), Room No. 15, near river Ganga, P.S.- Sultanganj, District- Patna (Roll No. 11422663 in the Auditor examination, 2007 conducted by the Bihar Staff Selection Commission)
22. Jitendra Kumar, Son of late Brahamdev Prasad Singh, C/o Satyandra Kumar, Sipahi Tola, P.S. & District- Purnea (Roll No. 11220817in the Auditor examination, 2007 conducted by the Bihar Staff Selection Commission)
23. Santosh Kumar, Son of Dashrath Mandal, resident of Village- Sakraili, Post- Semapur, District- Katihar (Roll No. 11523156 in the Auditor examination, 2007 conducted by the Bihar Staff Selection Commission)
24. Sudhir Kumar, Son of Sri Satya Narayan Lal Das, resident of Bangali Tola, Ward No. 25, P.O. & P.S.- Farbisganj, District- Araria (Roll No. 11220719 in the Auditor examination, 2007 conducted by the Bihar Staff Selection Commission)
25. Priya Ravi Ranjan Prasad, Son of Madan Lal Prasad, resident of 4/M, 169 Bhootnath Housing Colony, near T.V. Tower, District- Patna (Roll No. 11422272 in the Auditor examination, 2007 conducted by the Bihar Staff Selection Commission)
26. Lakshman Sahni, Son of Ram Chandra Sahni, resident of Kedia Tola, P.O. & P.S.- Araria, District- Araria (Roll No. 12127195 in the Auditor examination, 2007 conducted by the Bihar Staff Selection Commission)
27. Shivesh Kumar, Son of Jaikaran Das, resident of Lalchak (Angari), Post- Ishakchak, District- Bhagalpur (Roll No. 11925119 in the Auditor examination, 2007 conducted by the Bihar Staff Selection Commission)

28. Rajendra Kumar, Son of Satya Narayan Pandey, resident of Village- Gangish, P.S.- Jiyan Bigha, Vila- Nimi, P.S. & District- Shekhpura (Roll No. 11120017 in the Auditor examination, 2007 conducted by the Bihar Staff Selection Commission)
29. Arvind Kumar, Son of Chandradeo Mahto, C/O Rajeshwari Prasad, Village- Biyawani, Post- Maghra, District- Nalanda (Roll No. 10827198 in the Auditor examination, 2007 conducted by the Bihar Staff Selection Commission)
30. Praveen Kumar Ranjan, Son of Mandareshwar Prasad Yadav, resident of Village- Ghoraiya, Via- Ghogha, District- Banka (Roll No. 11723963 in the Auditor examination, 2007 conducted by the Bihar Staff Selection Commission)
31. Pankaj Kumar Dwevedi, Son of Triloki Nath Dwevedi, presently residing at C/O Ram Kishore Singh, Choice Steel, near Mahavir Mandir, R.K. Avenue, Nala Road, P.S.- Kadamkuan, District- Patna (Roll No. 119255233 in the Auditor examination, 2007 conducted by the Bihar Staff Selection Commission)
32. Deepak Kumar Jha, Son of Narendra Jha, resident of Village & P.O.- Garh Baruari, P.S. & District- Supaul (Roll No. 11321526 in the Auditor examination, 2007 conducted by the Bihar Staff Selection Commission)
33. Ranjeet Kumar, Son of Raj Kumar Thakur, Village + Post- Barhi, P.S.- Jainagar, District- Madhubani (Roll No. 11422096 in the Auditor examination, 2007 conducted by the Bihar Staff Selection Commission)
34. Ajay Pandit, Son of Rajendra Kumhar, (Roll No. 12126879 in the Auditor examination, 2007 conducted by the Bihar Staff Selection Commission)
35. Md. Naqui Imam, Son of Md. Razi Ahmed, resident of Nehal Lodge, C/O Nehal, at Dargah Ghera Road, P.O.- Mahendru- P.S.- Sultanganj, District- Patna (Roll No. 11120215 in the Auditor examination, 2007 conducted by the Bihar Staff Selection Commission)
36. Shanker Dayal Singh, Son of Banka Singh, resident of Village- Korar, P.O.- Bagaura, District- Siwan (Roll No. 11523208 in the Auditor examination, 2007 conducted by the Bihar Staff Selection Commission)

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 6541 of 2013

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1. Rajesh Kumar Singh Son Of Deo Raj Singh Resident At + P.O. - Patratu, P.S. - Patratu, District - Patratu, Jharkhand
2. Mukesh Anand Son Of Jawahar Lal Barnwal R/O - Kiran Dukan Near Kamal Cinema Hall Mahosouri Chowk Jamui, P.S. - Jamui, District - Jamui, Bihar
3. Sujeet Kumar Son Of Satya Prakash Mandal R/O - Surajgarha, P.S. - Surajgarha, District - Lakhisarai, Bihar
4. Nandan Kumar Thakur Son Of Chandrakant Thakur Resident Of M.K. College, Laheriasarai, P.S. - Jhanjharpur, District - Darbhanga
5. Mukesh Kumar Thakur Son Of Nagendra Thakur R/O - Pattitola, P.S. - Bhairabsthan, District - Madhubani, Bihar
6. Sonit Kumar Son Of Ramashish Prasad R/O - K.B. Lal Road, P.S. - Nath Nagar, District - Bhagalpur, Bihar

.... Petitioner/s

Versus

1. The State Of Bihar Through Its Secretary, Department Of Finance (Auditing), Bihar, Patna
2. The Bihar Staff Selection Commission Through Its Secretary, Bihar, Patna
3. The Inspector General Of Police, Economic Offence Cell, Bihar, Patna
4. The Superintendent Of Police, Economic Offence Cell, Patna, Bihar
5. The Sub-Inspector Of Police, Special Task Force (Here In After Referred As S.T.F.), Economic Offence Wing, Patna, Bihar

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 6947 of 2013

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1. Pramod Kumar Son Of Sri Kailash Prasad Resident Of Mohalla - Railway Hunder Road, Near Mahatma Gandhi School, East Lohanipur, Police Station - Kadamkuan, District - Patna
2. Pashupati Nath Tiwari Son Of Sriniwas Tiwari C/O Sri Vijay Mishra , Resident Of Mohalla - Sarswati Lane, East Lohanipur, Police Station - Kadamkuan, District - Patna
3. Uma Shanker Singh Son Of Sri Dhirendra Singh Resident Of Village - Dumarikalan, Police Station - Majarganj, District – Sitamarhi.

4. Mukesh Kumar Singh Son Of Sri Sadhu Sharan Singh Resident Of Village - Bhawra, Police Station - Balthar, District - West Champaran, Bettiah
5. Kunal Ranjan Son Of Ravindra Prasad Singh Resident Of Village - Kadamkuan, Chai Tola, Second Gali, Police Station - Kadamkuan, District - Patna

.... Petitioner/s

Versus

1. The State Of Bihar Through Its Secretary, Department Of Finance (Auditing), Bihar, Patna
2. The Bihar Staff Selection Commission Through Its Secretary, Bihar, Patna
3. The Inspector General Of Police, Economic Offence Cell, Bihar, Patna
4. The Superintendent Of Police, Economic Offence Cell, Bihar, Patna
5. The Sub-Inspector Of Police, Special Task Force, Economic Offence Wing, Bihar, Patna

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 10439 of 2013

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1. Ramresh Singh S/O Anirudh Singh R/O Vill.- Khurnukhur, P.S. Chenari No. 535, District- Rohtas
2. Umesh Kumar S/O Ramji Prasad Chaurasia R/O Village- Khrnu Khurd, P.S.- Chanari, District- Rohtas
3. Ajay Kumar S/O Ram Bachan Ram R/O Village- Musahebpur, P.S. Sasaram Mufassil, District- Rohtas
4. Sanjay Kumar S/O Arjun Prasad R/O Vill.- Shivpur, P.S.-Nokha, No. 410, District- Rohtas

.... Petitioner/s

Versus

1. The State Of Bihar Through The Secretary Bihar Staff Selection Commission, Bihar, Patna
2. The Chairman Bihar Staff Selection Commission, Bihar, Patna
3. The Principal Secretary General Administration Deptt., Govt. Of Bihar, Patna

.... Respondent/s

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Appearance :

(In CWJC Nos. 5771 of 2013, 6947 of 2013 and 10437 of 2013)

For the Petitioner/s : Mr. Dinu Kumar, Adv.
Mr. Shiv Kumar Prabhakar, Adv.
Mr. Rajesh Kumar Singh, Adv.
Mr. Arvind Kumar Sharma, Adv.
For the respondent- BSSC: Mr. Prabhat Kumar Singh, Adv.
Mr. Satyam Shivam Sundaram, Adv.
For the Respndent-EOU: Mr. Vishwanath Prasad Sinha, sr. Adv.
Mrs. Soni Shrivastava, Adv.
For the respondent-Interveners : Mr. Vinod Kanth, Sr. Adv.
Mr. Bindhayachal Singh, Adv.
Mr. Ashok Kumar Verma, Adv.
For the Respondent/s : Mr.

(In CWJC No. 6541 of 2013)

For the Petitioner/s : Mr. Karandeep Kumar, Adv.
For the State Mr. Gopi Jha, AC to G.P.-25

(In C.W.J. C. No. 6947 of 2013)

For the State: Mr. Sumant Kumar Singh, AC to G.A.-3

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT
Date: 19-02-2015

These four writ applications have been heard together in view of the common relief and identity of issues of fact and law. With the consent of the parties, these writ applications are disposed of by this common order.

The Bihar Staff Selection Commission, Patna by advertisement no. 2407 dated 04.08.2007 invited applications from eligible candidates for appointment to the 570 posts of Auditors. All the petitioners, in response, applied seeking their selections on the advertised posts of Auditors. The written test was held on 07.10.2012 by way of objective type questions on OMR answer sheets along with carbon copies. The answers were to be given by appropriately blackening the correct answer on the OMR Sheets. After the completion of the written test, objections were also invited from the candidates regarding the correctness of the answers as furnished and some of the petitioners claim to have submitted their objections raising doubts over the correctness of the answers as provided and suggesting the correct answers to some of the questions. The result was published on 22.02.2013 declaring 400 candidates as successful. In the result, the star mark was put against the roll numbers of 10 candidates with the noting in the last portion that their results were kept in a sealed envelope and would be subject to the outcome of the Economic Offence Wing P.S. Case No. 23 of 2012 dated 20.10.2012.

The petitioners in all the four writ applications have not been declared successful in the aforesaid published result and they have approached this Court by filing these four writ applications with common relief for cancellation of the result as well as the written test and for direction to the respondent-Commission to hold a fresh examination for selecting the candidates for appointment to the post of Auditors as advertised in advertisement no. 2407. The prayer has also been made to hand over the investigation to Central Bureau of

Investigation in view of the unfair means, malpractice and interference with the OMR Sheets and also in view of the declaration of results of the candidates whose names have figured in the investigation of the allegations of tampering of OMR Sheets. The prayer has also been made to direct the respondent-Commission not to make appointments on the basis of the result as published and in the alternative it has also been prayed to withhold the entire selection process until fair, impartial and proper investigation in Economic Offence P.S. Case No. 23 of 2012 is not completed.

The case of the petitioners, as unfurled from the four writ applications, is mainly based upon the allegations made in the First Information Report in Economic Offence P.S. Case No. 23 of 2012 which has been instituted on 20.10.2012 for the offences under Section 420, 468, 472 and 120B of the Indian Penal Code. This First Information Report has been lodged by the Sub Inspector of Police, STF, Bihar. The allegations therein, in short, are that upon confidential information about the interpolation in the OMR answer sheets of different examinations conducted by the Commission, by an organized group in night in the strong room of the Commission where OMR answer sheets were stored, a raid was conducted in the night on 19.10.2012. Eight persons were apprehended in the premises of the strong room and on their information further raid was also conducted at other places where some more persons were apprehended and the articles were also seized showing their involvement in the interpolations of the OMR answer sheets kept in the strong room with regard to the tests for different services including that of Auditor. It has further been alleged that these persons were making interpolations in the OMR answer sheets in favour of the candidates from whom they had taken money in order to make them successful in the test. The petitioners have also annexed the confessional statements of the apprehended persons disclosing that those persons used to take money from the candidates for securing their appointments in government service by making interpolations in their OMR answer sheets of the written test. The petitioners have also alleged connivance of the staff of the Commission in the said interpolations of OMR answer sheets in the strong room of the Commission.

The petitioners have also asserted that incorrect answers were given in the model answers as provided by the Commission against some of the questions and even after the suggestions of correct answers by some of the petitioners, no response regarding the decision in that regard by the Commission had been received. It has also been asserted that the publication of the results of ten candidates with star marks putting the condition that their result would be subject to the final outcome of Economic Offence P.S. Case No. 23 of 2012 was also wrong in view of the direct involvement of those candidates in the said case. The petitioners have also referred to the similar interpolations in the OMR answer sheets of the written tests with regard to the appointments to the posts of Junior Engineer, Secretariat Assistant, Enforcement Sub Inspector etc. The petitioners have also alleged that the Economic Offence Wing has not been carrying on a fair investigation in the allegations. It has also been alleged that the Commission had failed to conduct free and fair examination and the result prepared on that basis cannot therefore be sustained.

The counter affidavits have been filed on behalf of the respondent-Commission and the respondent-Inspector General, Economic Offence Unit denying the assertions of the petitioners. A number of intervention applications have also been filed by the candidates who have been included as successful in the result in question seeking to intervene and contest the prayer of the petitioners. Some intervention applications have been filed by unsuccessful candidates seeking to intervene and support the reliefs prayed by the petitioners. It would be pertinent to mention here that some intervention applications have been allowed by different orders of this Court and the interveners have been added as partyrespondents. However, at the time of hearing of these four writ applications, considering the nature of the matter and large number of intervention applications, the learned counsel in support of the different intervention applications have been permitted to make their respective submissions on merits also.

Before adverting to the rival submissions made on behalf of the parties, it would be apt to mention here that by order dated 09.04.2013, while considering the prayer on behalf of the petitioners for interim order restraining the Commission from making recommendation for appointment in pursuance to the result in question, this Court took notice and recorded the undertaking on behalf of the Commission that no recommendation would be made for appointment on the posts of Auditor till final disposal of the writ applications. Subsequently, some respondents (interveners) filed I.A. No. 3223 of 2014 praying for modification of the order dated 09.04.2013 and direction to the Commission to recommend the names of the successful candidates for appointment on the post of Auditors. The Commission, in the meantime, also filed counter affidavit, wherein besides other statements, the approval of this Court was sought for undertaking the process of verification of the original OMR answer sheets of the successful candidates with their carbon copies to be produced by them, in presence of the officers of the

Economic Offence Wing in order to find out the truth and extent of the interpolations as alleged. By order dated 28.04.2014, this Court while declining to accept the prayer for modification of the earlier order dated 09.04.2013, accepted the proposal of the Commission for verification of the original OMR answer sheets with the carbon copies of the same to be produced by the successful candidates in presence of the representatives of the Economic Offence Wing with the object of finding out whether there was any tampering with the original OMR answer sheets. This Court in the said order has also observed that the suspicion would never take the place of proof. This Court further directed the Commission to file affidavit indicating the outcome of the exercise so undertaken.

The respondent-Commission has filed a supplementary counter affidavit on 27.06.2014 (in C.W.J.C. No. 6541 of 2013 being heard analogously) and the respondent Economic Offence Unit has also filed its supplementary counter affidavit on 01.07.2014 (in C.W.J.C. No. 5771 of 2013 being heard analogously) making statements relating to the outcome of the exercise of verification as abovementioned. In its supplementary counter affidavit, the respondent-Commission has stated that the notice/information to the successful candidates were given regarding the proposed verification exercise, and out of total 400 candidates only 355 turned up at the venue on the fixed date. However, out of them, 31 candidates did not produce the carbon copies of their OMR answer sheets. The carbon copies of the OMR answer sheets produced by the remaining 324 candidates were compared with the original OMR answer sheets in presence of the representatives of the Economic Offences Unit. After careful scrutiny major discrepancies were found with regard to 15 candidates, minor discrepancies were found with regard to 43 candidates and no discrepancy was found in the original OMR answer sheets of the 266 candidates. The separate lists of all such candidates have been appended with the supplementary counter affidavit. In paragraph-11 of the supplementary counter affidavit, the Commission has sought permission of the court to recommend the names of the 266 candidates in whose case no discrepancy has been found and also the 43 candidates with minor discrepancies, for appointment. With regard to the remaining candidates who either did not turn up or did not produce their carbon copies, the Commission has proposed to defer the decision till the completion of the investigation in Economic Offence P.S. Case No. 23 of 2012.

In the supplementary counter affidavit filed on behalf of the Economic Offence Unit, it has been stated that the verification exercise of the original OMR sheets of the successful candidates with their respective carbon copies was done in presence of the two officers of the Economic Offence Unit and the report of the outcome of exercise, as submitted to the Superintendent of Police, Economic Offence Unit, has been attached as Annexure-D to the supplementary counter affidavit. In the report (Annexure-D) it has been mentioned that the discrepancies have been found in the original OMR answer sheets of altogether 19 candidates (details mentioned in the report) of the Auditor examination.

The perusal of the statements made in the above two supplementary counter affidavits demonstrate that after the verification of the OMR answer sheets, both the respondent-Commission and respondent- Economic Offence Unit have found major discrepancies with regard to the candidates whose number is not more than 20 as in the report of the Economic Offence Unit it is 19 and in the report of the Commission it is only 15. The Commission has, however, also categorized 43 candidates with minor discrepancies in the OMR answer sheets. On this basis, the prayer has been made to allow the Commission to make recommendation of the 266 candidates having no discrepancies and 43 candidates with minor discrepancies in the OMR answer sheets.

In the backdrop of these facts, the prayer made on behalf of the writ petitioners for cancellation of the result and also the written test for selection of candidates for the posts of Auditors and for direction to conduct fresh examination in this regard is to be considered.

Mr. Dinu Kumar, the learned counsel for the petitioners has strenuously argued that the facts are speaking for themselves where the seal and lock of the strong room of the Commission has been found broken and the miscreants have been apprehended on the spot. It has also been submitted that the materials recovered from the possession of the miscreants and their confessional statements are sufficient to indicate that the OMR answer sheets kept in the strong room had been tampered with and the interpolations were made therein for the oblique purpose. It has further been submitted that even the outcome of the verification exercise done by the respondent-Commission and the Economic Offence Wing has also established the interpolations in the OMR answer sheets when major discrepancies have been found with regard to a number of candidates. Elaborating further, the learned counsel has submitted that the appointment to the Government posts must be made in fair and transparent manner but the Commission has manifestly failed to maintain the required standard, and the connivance of the employees of the Commission is also clearly established and therefore in the fitness of things in order to preserve the faith of the public in the system, the result and the written test in question be cancelled and fresh examination be ordered.

The learned counsel for the respondents as well as the intervener-respondents has however seriously contested the prayer made in the writ applications and has submitted that there is no material on record to justify the cancellation of the written test as well as the result published thereafter as the allegations made in the First Information report and the confessional statement only suggest that the alleged interpolations were individual centric and not all pervasive. It has also been submitted that this aspect is very much prominent from the outcome of the verification exercise of the OMR answer sheets. Mr. Prabhat Kumar Singh, the learned counsel for the Commission has further made the prayer to permit the Commission to proceed with the recommendations for appointment as prayed in the supplementary counter affidavit.

The learned counsel for the parties have also referred to and relied upon several decisions of the Apex Court and the High Courts which shall be considered appropriately hereinafter.

After careful consideration of the facts and the rival submissions on behalf of the parties, it is limpid that the main plank of the case of the petitioners rests on the allegations made in the First Information Report leading to institution of Economic Offence Wing P.S. Case No. 23 of 2014. From the statements made in the First

Information Report and the confessional statements of the accused persons it appears that a group of miscreants in an organized manner used to enter the strong room of the Commission after breaking open the lock and seal and thereafter indulge in interpolations of the answer sheets of the candidates who had paid money to them to secure their success in the tests conducted by the Commission for selection to the various services. The materials on record do not suggest nor there is any whisper of allegation on behalf of the petitioners that the OMR answer sheets of the candidates other than the candidates who might have hired the miscreants have been interpolated. The individual centric nature of interpolations is thus manifest. The outcome of the verification exercise of the original OMR answer sheets jointly undertaken by the Commission and the Economic Offence Unit, after the approval of this Court, also suggests that the alleged malady was not all pervasive and rampant. The Commission and Economic Offence Unit in their respective supplementary counter affidavits have put 15 candidates and 19 candidates within the periphery of suspicion in view of the major discrepancies found after comparison of their OMR answer sheets with the carbon copies produced by them. The Commission has further come out with a category of 43 candidates with minor discrepancies in their OMR answer sheets. However, some of these

43 candidates also find place in the list of 19 candidates with regard to whom discrepancies have been found in their OMR answer sheets by the Economic Offence Unit in its report. These facts therefore lead to the inevitable interference that this is not a case of "all" or "none".

The legal conundrum posed by the writ petitioners in this fact situation is also not on virgin ground. The Apex Court in the case of **Union of India Vs. Rajesh P.U. Puthuvalnikathu, 2003 (3) SCC 285,** while considering the sustainability of the cancellation of the recruitment process enbloc has ruled that there is no justification to cancel the entire selection when the impact of irregularities and lapses, which crept into evaluation on merits, could be identified specifically. It has been held as follows:-

> *"……… In the light of the above and in the absence of any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of an all-pervasive nature, which could be really said to have undermined the very process itself in its entirety or as a whole and it was impossible to weed out the beneficiaries of one or the other irregularities, or illegalities, if any, there was hardly any justification in law to deny appointment to the other selected candidates whole selections were not found to be, in any manner, vitiated for any*

one or the other reasons…….”

In the case of **Inderpreet Singh Kahlon Vs. State of Punjab, 2006 (11) SCC 356,** the legality and propriety of cancellation of appointment on the basis of recommendation made by the Punjab Public Service Commission during the tenure of Mr. R.S. Sidhu as its chairman came up for consideration in view of the allegations of corrupt practices leading to lodging of First Information Report against him. After considering several earlier decisions relating to the principle governing enmasse cancellation of the selection process in cases of allegation of corrupt practices, it has been laid down as follows:-

> *“43………Apart from inferences drawn on certain facts and in particular the circumstances enumerated by the High Court which have been repeated by the learned counsel for the State before us, it is difficult to accept that it was demonstrated by the State that it was absolutely impossible for it to separate the innocent people from the tainted ones.*
>
> *44……. It is also not a case where all the relevant records have been destroyed. The Vigilance Bureau does not say so. Question papers, answer sheets and other documents are available. ……..It cannot, therefore, be said that a fair investigation into the whole affair was an impossible task or despite availability of all such records a thorough*

investigation had been made so as to arrive at a satisfaction that the entire selection process suffered from a large-scale fraud. It has also not been found that all appointments were made on extraneous considerations including monetary consideration.

46……… A distinction moreover exists between a proven case of mass cheating for a board examination and an unproven imputed charge of corruption where the appointment of a civil servant is involved.

50……….. In those cases also tainted cases were separated from the non-tainted cases. Only, thus, in the event it is found to be impossible or highly improbable, could en masse orders of termination have been issued.

51……… Both the State Government as also the High Court in that view of the matter should have made all endeavours to segregate the tainted from the non-tainted candidates.

59………. In a case of this nature, thus, the question which requires serious consideration is as to whether due to the misdeed of some candidates, honest and meritorious candidates should also suffer…….”

The aforesaid principle that clubbing together of equals with unequals is violative of Article 14 of the Constitution has also earlier been highlighted by the Apex Court in the case of **Onkar Lal Bajaj**

Vs. Union of India 2003 (2) SCC 673 as follows:-

> *"……The solution by resorting to cancellation of all was worse than the problem. Cure was worse than the disease. Equal treatment to unequals is nothing but inequality. To put both the categories-tainted and the rest-on a par is wholly unjustified, arbitrary, unconstitutional being violative of Article 14 of the Constitution…."*

Recently in **Joginder Pal Vs. State of Punjab, 2014 (6) SCC 644,** the emphasis on segregating the non-tainted candidates from tainted candidates has been reiterated while considering the quashment of entire selection process/all appointments on the allegation of purported manipulations, forgery and fraud. This case was the second round of litigation relating to the legality of the cancellation of appointments made on the basis of recommendation by Punjab Public Service Commission under the Chairmanship of Mr. R.S. Sidhu. Without going into the details of the facts of that case, it would be apposite to notice the broad principles relevant in the present fact situation, as laid down by the Apex Court as follows:-

> *"…….It becomes crystal clear that the concern of the Court was that for the misdeeds of some candidates, honest and meritorious candidates should not suffer. Therefore, endeavour should be made to segregate the tainted candidates from those who were without any stigma and*

had been selected because of their sheer merit and not on account of any illegal considerations. We would also like to reproduce some of the parts of the concurring judgment authored by Delveer Bhandari, J. (as His Lordship then was) with the aforesaid message, eloquently and impeccably:

"118. Undoubtedly, in the selection process, there have been manipulations and irregularities at the behest of R. S. Sidhu, the then Chairman, Punjab Public Service Commission. On a careful scrutiny of the facts and circumstances of the case, in my considered opinion, the High Court ought to have made a serious endeavour to segregate the tainted from the non-tainted candidates. Though the task was certainly difficult, but by no stretch of imagination, was it an impossible task.

124. The High Court has not considered the case in the proper perspective. The consequences of en masse cancellation would carry a big stigma particularly on cancellation of the selections which took place because of serious charges of corruption. The question arises whether for the misdeeds of some candidates, honest and good candidates should also suffer on en masse cancellation leading to termination of their services? Should those honest candidates be compelled to suffer without *there being any fault on their part just because the respondents find it difficult to segregate the cases of tainted candidates from the other candidates? The task may be difficult for the respondents, but in my considered view, in the interest of all concerned and particularly in the interest of honest candidates, the State must undertake this task. The unscrupulous candidates should not be allowed to damage the entire system in such a manner where innocent people also suffer great ignominy and stigma.*

125. This Court had an occasion to examine a similar controversy in Onkar Lal Bajaj case. In that case, there was serious allegations of political patronage in allotment of retail outlets of petroleum products (LPG distributorship and SKO-LDO dealerships). This Court laid down that how could a large number of candidates against whom there was not even insinuation be clubbed with a handful of those who were said to have been allotted dealerships/distributorships on account of political connection and patronage? This Court clearly stated that the two were clearly unequals. Equal treatment to unequals is nothing but inequality. This is the most important principle which has been laid down in this case by this Court. The Court further observed that to put both the categories, tainted *and the rest, on a par is wholly unjustified, arbitrary and unconstitutional, being violative of Article 14 of the Constitution. In somewhat similar circumstances, in this case, the Government, instead of discharging its obligation, unjustly resorted to the cancellation of all the allotments en masse by treating unequals as equals without even prima facie examining their cases. Those officers whose services were affected because of en masse cancellation have not been given an opportunity to represent before the authorities concerned. In Onkar Lal Bajaj, there were 413 cases and the task was indeed difficult to segregate the cases of political connection and patronage with other cases. But, even then, this Court, while setting aside the order of the Government cancelling the allotment, appointed a committee of two retired Judges, one of this Court and another from the Delhi High Court, and they were requested to examine all 413 cases and decide the matter after getting the report from that committee appointed by the Court………"*

From the above authoritative pronouncements, the preponderance of precedent is inescapable that the resort to cancellation of the entire selection process can be taken only when the impossibility to weed out the tainted from non-tainted is clearly established, and in all such cases the effort must be made not to put the non-tainted candidates at peril for the alleged misdeed of some candidates. As already taken into notice the materials brought on record by the petitioners, at the most, only demonstrate that the interpolations were attempted by the miscreants at the behest of only such candidates who paid them hefty sum. As earlier mentioned, this Court approved the proposed verification exercise of the original OMR sheets answer sheets by comparing the same with the carbon copies to be produced by the candidates, to be done jointly by the respondent-Commission and Economic Offence Unit. The result of such verification exercise, reported by the Commission and the Economic Offence Unite in their separate supplementary counter affidavits, also rules out the possibility of involvement of majority of the candidates in the alleged act of interpolations in the OMR answer sheets. To be specific, the Economic Offence Unit has found prima facie interpolations in the OMR answer sheets of only 19 candidates whereas the Commission has found cases of 15 candidates to have major discrepancies in their OMR sheets. In this fact situation, this Court is not inclined to align with the submissions on behalf of the writ petitioners that the alleged misdeeds were all pervasive in nature and have vitiated the entire examination as well the result published on that basis. The prayer of the writ petitioners, therefore, for cancellation of the examination and the result published on that basis is held to be not sustainable.

The next submission on behalf of the petitioners is that the answers with regard to some of the objective type questions as exposited from the model answer option provided by the Commission were not correct. It is the case of the petitioners that they submitted their objections and suggestions in that regard but the commission did not respond. The Commission in its counter affidavit, however, has stated that after receiving the objections, the Commission got the matter verified by the subject experts and the decision was taken to change the model answers in accordance with the advice by the experts. The details in this regard have been mentioned in the counter affidavit question-wise. This stand of the Commission has not been controverted by the petitioners. The Apex Court has adverted to this issue in the case of **H.P. Public Service Commission Vs. Mukesh Thakur [2010 (3) PLJR SC 127]** and their Lordships have observed that "if there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the examination." it is not the case of the petitioners that any discrimination in this regard has been made while evaluating the answer sheets. In this view of the matter, this Court does not find substance in the submission on behalf of the petitioners that the written test and the result published on that basis are fit to be cancelled. Similarly, the challenge to the result by including the 10 candidates with star marks showing that their results have been kept in sealed cover and would be subject to the outcome of the Economic Offence Wing P.S. Case No. 23 of 2012, is equally devoid of merit. It is accepted position that the investigation is going on in the matter and if those candidates have secured the required marks, the Commission has committed no wrong in publishing their results making the same, at the same time, subject to the outcome of the investigation.

At this juncture, the stand of the Commission as disclosed from paragraph-12 of the supplementary counter affidavit dated 27th June 2014 is required to be considered. The Commission has found that the OMR answer sheets of altogether 266 candidates, out of 400 successful candidates, are unblemished, and with regard to 43 candidates, minor discrepancies have been found in their OMR answer sheets whereas 15 candidates have been found to have major discrepancies in their OMR answer sheets. The Commission has proposed to make recommendations for appointment of the names of 266 candidates with no discrepancy and 43 candidates with minor discrepancies in their OMR answer sheets. However, it is required to be noticed here that the majority of the 43 candidates with regard to whom the Commission has found minor discrepancies has been included in the list of 19 candidates whose OMR answer sheets have been identified as suspicious by the Economic Offence Wing in its supplementary counter affidavit dated 01.07.2014.

It is apparent that the matter relates to appointment to the posts of Auditors for which the advertisement was published in the year 2007 itself and much delay has already occurred. In the background of the facts, as mentioned above, applying the *Wednesbury principle of unreasonableness*, the proposal by the Commission to recommend the names of 266 candidates with unblemished OMR answer sheets for appointment, does not appear to be reprehensible. Even adopting the *proportionality* as a legal test also, it appears that the Commission has struck a correct balance between individual rights and public interest in the present fact situation. Therefore, this Court finds no impediment in accepting the proposal by the Commission to recommend the names of 266 candidates whose OMR answer sheets have been found unblemished as mentioned in the supplementary counter affidavit of the Commission, for appointment to the posts of Auditor against Advertisement No. 2407. Their appointments, however, would be subject to the final outcome of the Economic Offence Wing P.S. Case No. 23 of 2012. The Commission is directed to proceed accordingly, as prayed with regard to these 266 candidates.

The cases of remaining candidates including the 31 candidates, who have failed to produce the carbon copies of their OMR answer sheets, in spite of specific direction of the Commission in that regard, to retain the same, as disclosed from the notice dated 05.10.2012 (Annexure-G to the second supplementary counter affidavit of the Commission), cannot at this stage be placed in the same category with certitude, as the trace of blemish in these cases, cannot be ruled out altogether. The Commission is therefore, directed to take appropriate decision in these cases after the completion of investigation in Economic Offence Wing P.S. Case No. 23 of 2012 in accordance with law. The respondent-Economic Offence Unit is directed to expedite the investigation and complete the same without further delay.

These four writ applications are accordingly dismissed with aforesaid directions.

(V. Nath, J)

Devendra/-

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