

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14734 of 2014

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1. **Rajiv Roshan** S/o Bhogendra Thakur Resident of Village - Panapur Bateshwar
Nath, Post Office Dhandhua (Desari) P.S. - Deshari, District Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary General Administration Dept.
Govt. of Bihar, Patna.
2. The Principal Secretary, General Administration Dept. Govt. of Bihar, Patna.
3. The Bihar Public Service Commission through its Secretary, Bailey Road, Patna.
4. The Secretary, Bihar Public Service Commission, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s :	Mr Rajiv Ranjan Mr. Anirudh Kumar Sinha Dr Bipin Chandra
For the BPSC :	Mr. Lalit Kishore, Sr. Advocate Mr Satyabir Bharti
For the State :	Mr Suman Kumar Jha, AC to AAG 5

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 15-09-2015

Petitioner was one of the candidates belonging to the extremely backward class who applied for the competitive examination conducted by BPSC, which is known as 53rd-55th common combined competitive examination. He filed the present writ application when he missed the bus by two marks because the last of the candidates under his category recommended by BPSC had 803 marks whereas the petitioner has 801 marks only.

After the petitioner was supplied his answer book he has done some deliberations and analysis and came to a considered

opinion that the respondent BPSC somewhere erred, if not committed mischief, in evaluation of his history paper by reducing two marks. If those two marks are awarded to the petitioner, which was given to him, a case for his recommendation and appointment is made out.

The main thrust of the argument of the counsel representing the petitioner is that there is no set rules or standards by which such reduction of marks or alteration in the marks can be made in the answer sheet of a candidate. It is evident from perusal of Annexure-9 that the petitioner had been originally awarded 131 marks and thereafter the marks has been reduced by two and the final marks awarded is 129. If those two marks are awarded or the Court directs that 131 shall remain in favour of the petitioner, petitioner makes it to the minimum cut-off marks.

The Court has closely gone through the answer sheet. There does not seem to be a case of any mischief. This is a manifestation of an opinion and the difference thereof between the examiner and the head examiner. The two marks which have been reduced in answer no.6 is by the head examiner. The total figures and the award of marks carry the signature of the examiner and the head examiner. The total tally indicates 129.

The method of having two examiners has been in vogue for a long period of time. There could be a case where the petitioner



may have grievance against the opinion of a head examiner but there are also instances where a head examiner may decide to award higher marks to a candidate than what has been awarded by an examiner. Even though there is element of objectivity involved in such evaluation but element of subjectivity has to be present. The object and purpose of having a head examiner so long as it stands the Court has no option but to go by the opinion of such persons because the Court cannot substitute itself in place of either an examiner or a head examiner.

The evidence being what is available on record, the Court is convinced and satisfied that it is not a case of any deliberate mischief done by any authority to rob the petitioner of his right for recommendation and consideration. The answer sheets are basically reflection of what the experts have opined as to the merit of the candidate on evaluation of answer given to the question and in view of the same, the submission of the counsel that there is a case for interference is not satisfied on the given facts and the evidence available on record.

Counsel for the petitioner had many a things to say about the modality and the manner in which such evaluations or reevaluations are done putting the claim for consideration of such candidates at peril because even this petitioner seems to have missed

out by a narrow margin of two marks. Till suggestion from the counsel comes, which can substitute the present system and can prove to be a full proof system, the modality, which has been adopted by the BPSC and is adopted by most of the Service Commissions including the Union Public Service Commission will remain. This Court is not willing to tinker or tamper with the modality till a new modality is put in place.

Writ application has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

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