

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.902 of 2012
IN
Civil Writ Jurisdiction Case No. 7972 of 2005**

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1. Vijay Yadav S/O Sri Niras Yadav R/O MLA Club Chowk, P.S.- Kotwali,
District- Patna, At Present Working As Peon In The Bihar Legislative Assembly

.... Appellant/s

Versus

1. The State Of Bihar
2. The Secretary Department Of Personnel And Administrative Reforms, Govt. Of Bihar, Patna
3. The Bihar Legislative Assembly, Patna Through Its Secretary
4. The Secretary Bihar Legislative Assembly, Patna
5. The Under Secretary Bihar Legislative Assembly, Patna
6. Panchanand Sah (Temporary And Extended) Lower Division Clerk, Prabhari Atithi Niwas, MLA Club, Bihar Vidhan Sabha, Patna
7. Mahanand Singh (Permanent And Junior) Lower Division Clerk, Accounts Section, Bihar Legislative Assembly, Patna
8. Tapan Kumar (Permanent And Junior) Lower Division Clerk, Bihar Legislative Assembly, Patna
9. Brajesh Kumar (Permanent And Junior) Lower Division Clerk, Accounts Section, Bihar Legislative Assembly, Patna
10. Sanjay Kumar Singh (Temporary And Extended), Lower Division Clerk, Account Section, Bihar Legislative Assembly, Patna
11. Chandraweer Yadav (Temporary And Extended), Lower Division Clerk, Account Section, Bihar Legislative Assembly, Patna
12. Vinay Kumar Singh (Temporary And Extended), Lower Division Clerk, Karmik Shakha, Bihar Legislative Assembly, Patna
13. Santosh Kumar (Permanent And Junior), Lower Division Clerk, Widhayee Shakha, Bihar Vidhan Sabha, Patna
14. Arvind Kumar Amar (Permanent And Junior), Lower Division Clerk, Karyawahi Shakha, Bihar Legislative Assembly, Patna
15. Arvind Kumar Das (Temporary And Extended), Lower Division Clerk, Lok Lekha Samiti, Bihar Legislative Assembly, Patna

.... Respondent/s

with

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**Letters Patent Appeal No. 1713 of 2012
IN
Civil Writ Jurisdiction Case No. 6536 of 2005**

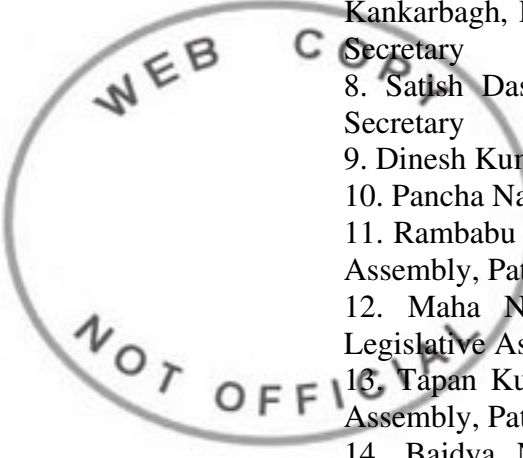
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1. Lalo Mandal S/O Late Rameshwar Mandal R/O Village- Gandaul, P.S. Maheshi,
District- Saharsa And Presently Orderly Working In The Bihar Legislative Assembly

.... Appellant/s

Versus

1. The State Of Bihar
2. The Secretary Department Of Personnel And Administrative Reforms, Government Of Bihar, Patna
3. Bihar Legislative Assembly, Patna Through Its Secretary

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4. The Secretary, Bihar Legislative Assembly, Patna
 5. Under Secretary, Bihar Legislative Assembly, Patna
 6. Pratima Kumari W/O Late Chandra Shekhar Prasad Singh R/O Sarempur, New Bye Pass, Ram Krishna Nagar, Shampatchak, Patna, L.D.C., Library, Bihar Legislative Assembly Through Secretary
 7. Birendra Kumar Singh S/O Ramashish Singh R/O MIG 127, Hanuman Nagar, Kankarbagh, Patna, LDC, Accounts Section, Bihar Legislative Assembly Through Secretary
 8. Satish Das, LDC, Accounts Section Bihar Legislative Assembly Through Secretary
 9. Dinesh Kumar Yadav, LDC Incharge Assembly Guest House Through Secretary
 10. Pancha Nand Shah, LDC Incharge Guest House Through Assembly Secretary
 11. Rambabu Singh LDC, Question Section, Through Secretary, Bihar Legislative Assembly, Patna
 12. Maha Nand Singh, LDC, Accounts Section Through Secretary, Bihar Legislative Assembly, Patna
 13. Tapan Kumar, LDC, Accounts Section Through Secretary, Bihar Legislative Assembly, Patna
 14. Baidya Nath Prasad, LDC, Pension Section Through Secretary, Bihar Legislative Assembly, Patna
 15. Brajesh Kumar, LDC, Accounts Section Through Secretary, Bihar Legislative Assembly, Patna
 16. Sanjay Kumar Singh, LDC, Accounts Section Through Secretary, Bihar Legislative Assembly, Patna
 17. Chandravir Yadav, LDC, Accounts Section Through Secretary, Bihar Legislative Assembly, Patna
 18. Md. Asharaf, LDC, Sc/St Welfare Committee Through Secretary, Bihar Legislative Assembly, Patna
 19. Vinay Kumar Singh, LDC, Establishment Section Through Secretary, Bihar Legislative Assembly, Patna
 20. Himanshu Kumar, LDC, Assurance Committee Through Secretary, Bihar Legislative Assembly, Patna
 21. Satyendra Kumar Yadav, LDC, Pension Section Through Secretary, Bihar Legislative Assembly, Patna
 22. Santosh Kumar, LDC, Legislative Section Through Secretary, Bihar Legislative Assembly, Patna
 23. Kailash Chaudhary, LDC, Issue Section Through Secretary, Bihar Legislative Assembly, Patna
 24. Raju Kumar, LDC, Accounts Section Through Secretary, Bihar Legislative Assembly, Patna
 25. Harendra Prasad, LDC, Residential Office Of Hon'Ble Speaker Null Through Secretary, Bihar Legislative Assembly, Patna
 26. Ramashish Yadav, LDC, Lekha Samagri Section Null Through Secretary, Bihar Legislative Assembly, Patna
 27. Md. Manzoor Alam, LDC, Estimate Section Null Through Secretary, Bihar Legislative Assembly, Patna
 28. Arbind Kumar Amar, LDC, Karwahi Section Null Through Secretary, Bihar Legislative Assembly, Patna
 29. Arbind Kumar Das, LDC, Public Accounts Section Through Secretary, Bihar Legislative Assembly, Patna
 30. Gyaneshwar Prasad S/O Sri Mundrika Prasad R/O Village- Pasaurha, P.S. Paliganj, District- Patna, At Present Peon Working In The Bihar Legislative Assembly
 31. Rohit Choudhary S/O Sri Yogendra Choudhary R/O Village- Basaitha, P.S.- Benipatti, District- Madhubani, At Present Working In The Bihar Legislative Assembly

32. Tripurari Singh S/O Late Prabhu Nath Singh R/O Village- Harpur Farida, P.S.- Taraura, District- Saran, At Present Peon Working The Bihar Legislative Assembly
33. Md. Murtaza S/O Late Md. Nabi Jan R/O Village- Padma, P.S.- Ladania, District- Madhubani, At Present Darwan, Working The Bhiar Legislative Assembly
34. Rajendra Prasad S/O Sri Tanuk Lal Yadav R/O Village- Bhagwatipur, P.S.- Ladania, District- Madhubani, At Present Working As Peon In The Bihar Legislative Assembly
35. Vinay Kumar S/O Late Ram Prasad Mandal R/O Village- Ganauli, P.S.- Andhra Tharhi, District- Madhubani, At Present Orderly Working In The Bihar Legislative Assembly
36. Sujeet Kumar S/O Late Jagdip Singh R/O Village-Purainia,P.S.- Bihta, District- Patna, At Present Working In The Bihar Legislative Assembly
37. Jai Narayan Paswan S/O Late Shyama Paswan R/O Village-Ushfa, P.S.- Gaurichak, District- Patna, At Present Working In The Bihar Legislative Assembly

.... Respondent/s

Appearance:
(In LPA No. 902 of 2012)

For the Appellant/s : M/S. Mrigank Mauli, Vinay Mistry, Samir Kumar,Sanket, Prince Kumar Mishra, Kumar Ravish & Sanjay Kumar

For the respondent nos. 3 to 5 : M/S Devendra Kumar Sinha,Sr.Adv.& Abhinay Raj.

For the private respondents : M/S Abhay Kumar Singh,Sr.Adv, Shankar Kumar Thakur & Niranjan Kumar.

For the Vigilance : M/S Rama Kant Sharma,Sr.Adv & Santosh Kumar Pandey.

For respondent nos. 8& 12 : Mr. Niranjan Kumar.

For the respondent nos. 6, 7, 9, 11, 20, 21, 24 & 25 : M/S Binod Kanth, Sr. Adv, Rajeev Ranjan and Mrs. Bela Singh

For the State : Mr. Sanjeet Kumar Singh,A.C to A.A.G.10

(In LPA No. 1713 of 2012)

For the Appellant/s : M/S Bishnukant Dubey, Panchu Ram, Ranjit Kumar & Sanjeev Kumar

For the Respondent nos.8 and 12 :Mr.Niranjan Kumar

For respondent nos. 6,7,9,11, 20,21,24 & 25 : M/S Binod Kanth, Sr, Adv, Rajeev Ranjan & Mrs Bela Singh

For the State : Mr. Sanjeet Kumar Singh,A.C to A.A.G-10

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: **HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH**)

Date: 04-12-2015

The present intra-court Appeals arise from the judgment and order of the learned Single Judge in two writ petitions that were filed.

2. At the very outset, we may noticed that the learned Single Judge without adjudicating upon the issues that were raised in the writ petitions, dismissed the writ petitions, virtually on the finding that the matter is being investigated by the Vigilance and the FIRs have been instituted against the erstwhile Speaker of the Bihar Vidhan Sabha (Bihar Legislative Assembly).

3. The writ petitioners had challenged the result of the Limited Competitive Examination, 2004, as held by the Bihar Vidhan Sabha, for granting promotion to Class IV employees to the cadre of Class III. The two petitioners were not selected. Their basic plea was that they have been unfairly treated and by various illegal and corrupt means, the persons, who are ineligible and who could not have been permitted to take the examination, were allowed and had succeeded in getting selected at the cost of the petitioners who had been long in service and were eligible to be promoted.

4. Initially, when the writ petitions were filed, the persons whose appointments, by way of promotion, were being challenged were not made party. They intervened. Thereafter, the



Court granted leave to the writ petitioners to add them as party respondents and accordingly, they were all added as a party respondent. They filed counter affidavit. The Speaker also filed counter affidavit. The matters were heard at length. It appears from the order-sheets of the proceeding as before the learned Single Judge, in the meantime, Vigilance inquiries were ordered and pursuant thereto, after investigation in respect of these very examinations, the Vigilance then formally charged, the then, Speaker Mr. Sadanand Singh for various criminal acts and filed a formal FIR. This matter is pending. This Court is not called-upon to comment upon the correctness or otherwise of the Vigilance inquiry or findings therein. The challenge is on specific grounds on the facts pleaded and rebutted by the contesting respondents.

5. In these intra-court Appeals by the writ petitioners, all respondents, whose appointments are challenged, are parties and have been heard. It is with consent of the parties that these Appeals were heard at this stage itself for final disposal. It may also be noticed that the Vigilance Department, Government of Bihar, was also added as a party in these Appeal proceedings to bring on record the vigilance report. The Vigilance Department is also represented. Once again at the cost of repetition, we may note that we are not here to examine the correctness or otherwise of the Vigilance inquiry. They are independent authorities exercising independent jurisdiction which, we are not inclined to interfere in these proceedings.



6. There are four challenges made by the writ petitioners. The first challenge is that this limited competitive examination was open to only permanent Class IV employees of the Vidhan Sabha, permitting Class III employees to compete for appointment by way of promotion, was thus not sustainable and they have to be excluded and consequently, the seats occupied by them, by virtue of this examination, has to held to be available for the next in merit.

7. The second challenge was that 1992 Government decision, as notified for such promotions, granting extra weightage in proportion to the length of service was not adhered to. Had that been done, the people who had been working in Class IV posts for a long period would have got benefits and would have been able to get promotion. This aspect was wrongly denied to them.

8. The third grievance was that this examination was open permanent Class IV employees, who had at least 3 years of service. As such, this would predicate that temporary or daily wager employees in Class IV were thus ineligible, as they were not substantive appointees in the cadre. Though they may be occupying a post in the cadre; they could not have been permitted to take said examination being ineligible and thus, their candidatures has to be cancelled.

9. The fourth grievance was that the State of Bihar was bifurcated with effect from 15.11.2000 and a new State of



Jharkhand was created. There was, prior to this, a single Vidhan Sabha and Vidhan Parishad for the entire State of Bihar. Upon bifurcation of the State, the cadres were bifurcated. Large number of staff of Bihar Vidhan Sabha in 2002 itself, were provisionally allotted Jharkhand cadre, but they were also allowed to take part in this limited competitive examination and upon their success here, they have been now retained in State of Bihar. It is submitted that having been allocated, even though provisionally, in the Jharkhand cadre in Bihar, they were ineligible to sit in the limited competitive examination in Bihar which was held in the year 2004.

10. The last grievance is that even in marking the answer sheets, lot of irregularities were committed. Petitioners made repeated efforts under RTI and otherwise to get the copies of the answer sheets to prove their point. They were denied the same by Bihar Vidhan Sabha on the plea that Vigilance had seized and taken away the answer sheets. This was only an excuse, in view of the counter affidavit of the Vigilance, which has taken a clear stand that they were all returned duly receipted by the Bihar Vidhan Sabha. Denial was deliberate, to conceal irregularities.

11. Coming to the first issue that people who were already in Class III cadre were wrongly permitted to appear in this limited competitive examination, we must note that the basic assertions are not controverted. What is rightly submitted by the writ petitioners-appellants is that two persons namely, Baidya Nath Prasad



and 1Satish Das, who were Respondent No. 8 and Respondent No. 14 in L.P.A. No.1713 of 2012, were Class III employees, being Abhilekh Wahak (Record Supplier). In Schedule-1 to the Bihar Vidhan Sabha Secretariat (Recruitment and Conditions of Service) Rules, 1964, which are rules made with reference to Article 187(3) of the Constitution, it is clearly stipulated that the post of Abhilekh Wahak is Class III post. The writ petitioners, then, vide Annexure-3 to the first Letters Patent Appeal, have shown that when permission to appear in examination was granted to them, both these person were at Sl. No. 1 and 2 and were shown as Abhilekh Wahak. Thus, already being in the cadre of employees of Class III, they were absolutely ineligible to sit in the examination. At the time of hearing, learned counsel for the said two persons, stated that originally these two Respondents were Peons but in the year 2002 they were appointed as Abhilekh Wahak but were at a lower pay scale. Thus, they had sought to sit in these examinations to upgrade their pay scales.

12. Having considered the matter, we have no difficulty in holding that these two Respondents were clearly ineligible to sit in these examinations and get selected as such. These examinations, as per the notice itself contained in Annexure-2 to the first Letters Patent Appeal, were open to Class IV employees of the Bihar Vidhan Sabha who had been at least in 3 years of service prior to the advertisement as Class IV employees. Surely, these two respondents were not working as Class IV employees when the



advertisement was issued. In fact on their own showing, from 2002 they had been appointed as and working as Abhilekh Wahak which is a Class III post. Permitting them was an illegality which cannot be condoned. It was lack of eligibility. Therefore, we have no option but to hold that the very fact of allowing these two respondents, being Respondent Nos. 8 and 14, to appear in the examination was wholly illegal. Consequently, their results cannot be sustained and their selection cannot be sustained. It is, however, made clear that this will not revert them to the post Peon, for it is not in dispute that they were at that time as Abhilekh Wahak in lower pay scale. They would remain thus with whatever opportunity of promotion from that position they may legitimately get, but surely they cannot be entitled to retain the benefits of the position, they had illegally, acquired by virtue of qualifying in the said limited competitive examination.

13. The next challenge is with regard to the procedure. The writ petitioners had pleaded that 1992 Government Rules as issued by the General Administration Department, Govt. of Bihar, clearly stipulates that in matter of promotion of Class IV employees to Class III on the limited reserved post, weightage has to be given with regard to their length of service. In fact, it stipulates that in marking for merit, 4.5 marks per year of service has to be given to Class IV employees. The writ petitioners- appellants were not given this benefit. Rather, no one was given this benefit, though, there were people who had worked in the permanent post of Class IV under the

Vidhan Sabha for different and varying periods. Learned counsel for the Speaker and Bihar Vidhan Sabha pointed out that the Speaker had taken a decision in the matter and held that no such weightage should be given. He relies on rule 4 (2) (a) of the Bihar Vidhan Sabha Secretariat Rules, 1964 as referred to above which reads as follows:-

- “4. Method of Recruitment – (1) Subject to the provisions of sub-rule (a) of rule 6, recruitment to a post or class of posts may be made by any one of the following methods, namely :-
- | | | | |
|-----|------|------|------|
| (a) | xxxx | xxxx | xxxx |
| (b) | xxxx | xxxx | xxxx |
| (c) | xxxx | xxxx | xxxx |

- (2) Subject to the provisions of sub-rule (a) of rule 6, the Speaker may, by order, from time to time –
- (a) specify the method or methods by which a post or class of posts may be filled;”

14. We find that in view of the Rule 4(2)(a), the Speaker did have the authority to lay down the method by which the post may be filled-up. It is limited to method alone and we do take the view that giving weightage would be one of the consideration of the method aforesaid. But again when coming to the broad facts, the decision was taken by the Speaker on 16.10.2004; whereas the advertisement was issued on 13.09.2004 and the examinations were held on 18.09.2004. It would, thus, be seen that the rule that was otherwise available when the advertisement was issued and when examination was held, was being changed after examinations were held. It was to materially affect the parties. This could not have been



done. It is well settled principle that rules of the game cannot be changed once the game has begun. The advertisement did not specify that the rules would be anything different from the rules, as were notified by the General Administration Department, which had been always followed. Thus, we have to hold that non-grant of marks for the length of service, at least for this examination invalidated the results as published. Accordingly, the Bihar Vidhan Sabha would be obliged to recast the results giving due weightage to length of service.

15. Now, we consider the third grievance with regard to permitting temporary or daily wager employees in Class-IV to take this examination. From the results, as published on 15-3-2005, as many as 10 persons being serial nos. 4, 7, 8, 10, 11, 12, 14, 19, 24 and 26 were temporary employees who had been given advantage of being employed for the short term, which term was being extended for short terms continuously. There is no dispute that all these 10 persons who were not permanently employed in the cadre or formed a part of the cadre, their status in service was temporary and in view of second proviso to sub –section (1) of section 3 of the Rules their appointment was only for a financial year. Sri Abhay Singh, learned senior counsel appearing for this group of respondents, submits that if temporary posts are created in the cadre, then any person occupying the temporary post would be in the cadre, and if he was in the cadre, he would be entitled to take the examination. We are afraid, we are unable to accept this contention. The whole purpose of providing for



50 percent reservation in the vacancies in class III posts is for the purpose of giving opportunity of promotion to serving permanent or substantively appointed employees in Class IV, by way of reservation. It will never enure to the benefit of a person who has been appointed and whose tenure is itself limited by time. Every such appointment or extension would be a new tenure. Their position, if at all in the cadre, would itself be precarious. They have no permanent place in the cadre. Thus, allowing such temporary or ad hoc appointees to take the examination, which is meant for permanent employees in the cadre would be not only discriminatory but illegal and beyond the scope of this limited examination. A person, who has no foothold in the cadre nor a permanent place in the cadre, cannot use that opportunity to climb up the ladder to a higher cadre. We can show this by another example. Can it be even contemplated that temporary employees whose employment would otherwise end on 31st of March 2005 by virtue of succeeding in this examination suddenly became permanent employees and that too from Class IV to Class III. Surely, this cannot be permitted. If such a temporary employee of Class IV intends to enter Class III service, then he has to come through the route of direct recruitment. We have no option but to hold that such temporary employees whose future in the cadre itself was not certain and who had been permitted to take the examination, were clearly ineligible and have to be excluded from the benefits of the said limited combined competitive examination. Their promotion on

the basis of the said examination to Class III would, thus, not only be irregular but has to be held as illegal.

16. The fourth contention was with regard to those Class IV employees who were allotted Jharkhand cadre on bifurcation of the State of Bihar. Mr. D.K. Sinha, learned senior counsel appearing for the Speaker and the Vidhan Sabha submits that when the examination was announced, only a provisional cadre bifurcation/allotment list was published. Those four persons, who were, though provisionally allotted Jharkhand cadre, were still at Patna. Upon finalization of the cadre bifurcation list, they were retained in the Bihar cadre. Thus, permitting them to take the examination cannot be held to be illegal. In our view, the stand on behalf of the Speaker and the Bihar Vidhan Sabha in this regard cannot be held to be wrong or illegal. A provisional cadre bifurcation or cadre allotment would not deprive them of the rights to be treated as employees of the Bihar Vidhan Sabha till the cadre bifurcation is finalized because upon the cadre bifurcation being finalized, the master- servant relationship would come to an end and a new relationship would come into existence. The relationship of master- servant vis-à-vis the Bihar Vidhan Sabha would continue till the final bifurcation is made. When the relationship with the Bihar Vidhan Sabha would cease, a new relationship would ensue with the Jharkhand Vidhan Sabha giving due credit for past services. There is no dispute that when these four persons sat in the examination, the cadre list had not been finalised.

We are informed that ultimately when the cadre list was finalized, they have been allotted and retained in the Bihar cadre, Thus, the challenge of the writ petitioner-appellants on this ground cannot be sustained.

17. Now, we come to the 5th and the last ground of challenge. It is submitted that the writ petitioners had reasonable apprehension that even the examinations, as conducted, were not fair. In order to ascertain that the answer sheet evaluation was fair, they had sought, under R.T.I, copies of the answer sheets repeatedly. Each time, their request was negated by the Vidhan Sabha Secretariat on the ground that the answer sheets had been seized by the Vigilance Department in course of investigation. Now, when this Court made the Vigilance Department a party to the writ proceedings, they have brought on record, by way of counter- affidavit, the receipts, clearly showing that all the seized answer books had been long back returned to the Vidhan Sabha. Thus, the stand of the Vidhan Sabha stands falsified. This then raises an adverse inference as to why the Vidhan Sabha was reluctant to share the answer books. We are informed at the Bar that, in fact, the answer books that were in possession with the Vidhan Sabha Secretariate have been burnt. We would not pursue this matter, because even at the initial stage the writ petitioners did not seek a direction from this Court to the Vidhan Sabha to produce the answer sheets nor did they furnish any facts from which the Court could gather or have a reasonable apprehension that the corrections

and/or evaluations were not properly made. In absence of prima facie material or a prayer in this regard ,we cannot pursue this matter and take to its logical end, it being merely speculative.

18. Before closing, we would like to observe two things .Firstly, this is the first time , though hopefully it may be the last time, that such irregularities are alleged against constitutional authority, like the Speaker of the Legislative Assembly. It is a serious matter. There have been prosecutions launched and pending against some of them. They have to be brought at a logical end at an early date. The State, being the prosecutor, must ensure expeditious trial of all such cases in the larger public interest. Secondly, even in examination process, transparency to the extent permissible has to be maintained. It is too late in the day to say that a candidate would not be entitled to see his answer sheets. It is now a statutory right, as provided under Right to Information Act. The answer sheets cannot be destroyed if there are pending litigations in respect thereto, for that would amount to destroying evidence to conceal misdeeds. Even otherwise, if there was nothing wrong committed, the authorities would be in a very embarrassing situation, not to be able to bring on record the materials to show that nothing wrong was committed. We further clarify that nothing said in our judgment, herein above, will in any manner prejudice any party to the criminal prosecution in any manner.

19. For the reasons aforesaid, we are obliged to direct the Bihar Vidhan Sabha Secretariate to immediately re-work out the

results, first by excluding the ineligible persons and then re- publish the results. All benefits that would have been derived by the persons who was ineligible for the examination would consequently stand withdrawn, though they may not be asked to reimburse the State for the extra remuneration they have received. But, certainly the wrongful march over genuine and bonafide candidates cannot be permitted to continue. That would be travesty of justice.

20. With the aforesaid directions and observations, these Appeals are allowed. The orders of the Learned Single Judge are set aside. There will be no order as to costs. It is expected that the orders of this Court would be complied by the Vidhan Sabha within a period of three months.

(Navaniti Prasad Singh, J)

B.K.Roy/-
AFR

(Nilu Agrawal, J)

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