

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 2229 of 2013**

1. Bharat Kumar S/o Heeralal Aged About 35 Years R/o Village Khutarapara, PO Patrapali, PS Baikunthpur, Civil & Revenue Distt Korea, CG

---- Petitioner**Versus**

1. State Of Chhattisgarh, through Secretary, Department of Revenue, Mantralaya, Mahanadi Bhawan, New Raipur, PS Rakhi, Distt. Raipur, CG
2. Collector, Korea, PS City Kotwali, Baikunthpur, Civil & Revenue Distt Korea, CG
3. Superintendent Land Records, Baikunthpur, PS City Kotwali, Baikunthpur, Civil & Revenue Distt Korea, CG
4. Kanhaiyalal Goyan S/o Bhaiyalal Goyan R/o Sara, PO Mansukh, PS City Kotwali, Baikunthpur, Civil & Revenue Distt Korea, CG
5. Chandra Vijay Sahu S/o Ram Baran R/o Devadad, Tah. Khadgavan, PS City Khadgavan, Civil & Revenue Distt Korea, CG
6. Awadesh Kumar Kushwaha S/o Motichand Kushwaha R/o Patna, Tahsil Baikunthpur, PS Patna, Civil & Revenue Distt Korea, CG.

---- Respondent

For Petitioner

Shri Sushobhit Singh & Shri Syed
Majid Ali, Advocates

For Respondent/State

Shri Y.S. Thakur, Dy. Adv. General

For Respondents No.4&5

Shri A.S. Rajput, Advocate

For Respondent No.6

Shri Sanjeev Verma, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

17/08/2015

Heard learned counsel for the parties.

1. Petitioner would call in question the impugned order dated 21-2-2013 (Annexure – P/1) whereby the petitioner's representation, pursuant to the order dated 11-1-2013 passed by this Court in WPS No.70 of 2013, has been rejected and it has been informed to him that he has secured 145 marks out of 240 marks in the recruitment of Patwari wherein he had earlier obtained 155 marks.
2. The Collector, Korea, issued an advertisement on 8-10-2012 read with the advertisement dated 21-8-2012 inviting applications for filling up 27 posts of Patwari. Out of the said number of posts, 12 posts were reserved for Scheduled Tribe candidates {8 posts for ST (Open) & 4 posts for ST (Woman)}; 3 posts were reserved for Scheduled Caste candidates {2 posts for SC (Open) & 1 post for SC (Woman)}; 6 posts were reserved for the candidates of Other Backward Class {4 posts for OBC (Open) & 2 posts for OBC (Woman)}; and 6 posts were

in the open category {4 posts were open to all & 2 posts for open category woman candidates}.

3. As per the schedule of examination, the last date of submission of application was 25-10-2012 (earlier it was 10-9-2012). After completion of scrutiny, despatch of admit cards, etc. the written examination was to take place on 11-11-2012. The results were to be declared on 30-11-2012 and the entire process was to be completed on 8-12-2012.
4. Pursuant to the said advertisement, total 4687 candidates submitted their applications. On scrutiny, 4221 candidates were found eligible and out of them 3786 candidates appeared in the written examination conducted on 11-11-2012. A tentative merit list with statement of marks was published on 23-11-2012 inviting claims and objections. In the said list, the petitioner - Bharat Kumar was shown to have secured 155 marks and the respondents No.4 - Kanhaiyalal Goyan & No.5 - Chandra Vijay Sahu both secured 140 marks each. A revised merit list was published on 3-12-2012 wherein the petitioner was shown to have secured 145 marks instead of 155. Similarly, marks awarded to the respondent No.4 - Kanhaiyalal Goyan were increased from 140 to 150 and

that of respondent No.5 Chandra Vijay Sahu were increased from 140 to 147. On this basis, the petitioner failed to secure position in the final select list of OBC candidates and in his place, the respondent No.4 or the respondent No.5 were selected.

5. The petitioner obtained xerox copies of his answer sheets under the Right to Information Act, 2005 from which it became known to him that there are corrections/interpolations in the statement of marks. For the options answered by him for question Nos.15 & 45 he was earlier granted 4 marks each, however, on re-checking marks awarded to the petitioner on these 2 questions have been deleted and moreover, on the basis of wrong answers, 2 marks have been reduced from the marks secured by him on the principle of minus (-) marking. Thus, for each question 5 marks were deducted and resultantly, his marks were reduced from 155 to 145. Similarly, the marks awarded to respondent No.4 Kanhaiyalal Goyan were increased from 140 to 150 by holding that he has correctly answered 2 questions, which were not earlier counted for. Likewise, for respondent No.5 Chandra Vijay Sahu the marks were increased from 140 to 147 on the ground that earlier he was awarded '0' marks for question No.20, as he had not

attempted the said question, but later on it was found that he has correctly answered the same.

6. To examine the veracity of the allegations of corrections/ interpolations in the answer sheets of the petitioner and the respondents No.4 & 5, this Court had summoned all the answer sheets of the selected candidates, including the above-stated three persons.
7. Bare perusal of the answer sheets would reveal that there appears to be over writing, interpolations and corrections without there being any initial of the person making those corrections or over writing.
8. Apart from this, as per the schedule of examination the result was to be published on 30-11-2012, however, admittedly, the first tentative select list was published on 23-11-2012 and the corrected list was published on 3-12-2012. The original note sheet/record of the proceedings would indicate that claims and objections were invited, but the record does not include any specific complaint against the petitioner. There is no proceeding written by the Collector, who had issued the advertisement or the Additional Collector, who was heading the selection committee, directing or authorising the valuers to take

on the task of re-valuation or re-totaling. Except for these 3 answer sheets, no other answer sheets carry any endorsement nor they have appeared to have been re-checked or re-totalled. The record is discretely silent about this particular aspect as to at what level the decision was taken to have the answer sheets re-checked. It appears there was no direction from the Collector or by the Additional Collector who was head of the selection committee to initiate re-checking of the answer sheets of the petitioner and the respondents No.4 & 5.

9. In **Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, Patna and Others**¹, it has been held that in the absence of any provision for re-evaluation of answer books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re-evaluation of his marks. It is further observed that in a competitive examination where the comparative merit of a candidate has to be judged, it is absolutely necessary that a uniform standard is applied in examining the answer books of all the candidates.
10. The Supreme Court in **Central Board of Secondary Education through Secretary, All India Pre-Medical/Pre-Dental Entrance Examination and Others v. Khushboo**

¹ (2004) 6 SCC 714

Shrivastava and Others², referred to its earlier decisions in the matters of **Maharashtra State Board of Secondary and Higher Secondary Education and Another v. Paritosh Bhupeshkumar Sheth and Others**³, **Pramod Kumar Srivastava** (supra) and **Secy., W.B. Council of Higher Secondary Education v. Ayan Das and Others**⁴, to hold that in absence of any provision for the re-evaluation of answer books in the relevant rules, no candidate in an examination has any right to claim or ask for re-evaluation of his marks.

11. In the case at hand, it has not been brought before the Court that any provision for re-evaluation is available for the subject recruitment examination, therefore, it was not open for the authority to pick up answer books of only three candidates to re-evaluate them and vary the marks awarded to them to the disadvantage of the petitioner.
12. In matters concerning recruitment to a public office, though the same is essentially an administrative exercise, yet the moment valuation of answer sheets are completed the valuers or the selection committee become toothless, if not, *functus officio*, to

2 (2014) 14 SCC 523

3 (1984) 4 SCC 27

4 (2007) 8 SCC 242

initiate re-valuation or re-checking of the answer sheets, without there being any material or the appropriate proceeding on some reasons to initiate the same. It is ordinarily not permissible to do so because the same effects the very sanctity of the selection process. If this discipline is not adhered, the selection committee may take up re-valuation or re-checking of the answer sheets at any point before it is finalised to favour candidates of their choice. Once the answer sheets are checked and sealed there was no business left with the valuers to touch it again without sanction of the Collector, who had issued the advertisement.

13. In all fairness, if there was any complaint against any particular candidate, the same should have been placed before the authority who issued the advertisement i.e. Collector for obtaining appropriate orders. In absence of this, the entire proceeding of re-totaling/re-checking is vitiated.
14. It is informed to this Court that no other candidate, except the petitioner, is adversely affected by re-checking/re-valuation. The respondent No.6 has not joined on the post.
15. In view of the above, in the considered opinion of this Court, since the entire exercise of re-checking/re-valuation has no

sanction of law, the same deserves to be and is hereby quashed.

16. Resultantly, the first select list published on 23-11-2012 is held to be good and the select list be re-drawn in accordance therewith. The appointment of the respondent No.4 - Kanhaiyalal Goyan and the respondent No.5 - Chandra Vijay Sahu on the basis of revised select list, is quashed.
17. The original answer sheets of the petitioner and the respondents No.4 & 5 and the note sheet of proceedings are returned to the learned counsel for the State, after retaining xerox copies thereof.
18. As a sequel, the writ petition is allowed to the extent indicated above, leaving the parties to bear their own costs.

Sd/-

Judge

Prashant Kumar Mishra

Gowri