

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.844 of 2016 Arising out of Civil Writ Jurisdiction Case No. 11850 of 2015

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Bihar Staff Selection Commission through its Secretary, Veterinary College, Patna - 800014.

2. The Secretary, Bihar Staff Selection Commission, Veterinary College, Patna - 800014.

.... Appellants/Respondents

Versus

1. The State of Bihar through the Principal Secretary, Public Health & Engineering Department, Government of Bihar, Patna.

2. The Water Resources Department, Government of Bihar, Patna through the Principal Secretary.

3. The Engineer-in-Chief (Central), Water Resources Department, Government of Bihar, Patna.

4. The Road Construction Department, Government of Bihar, Patna through the Principal Secretary.

5. The Engineer-in-Chief-Cum-Additional Secretary-cum-Special Secretary, Road Construction Department, Government of Bihar, Patna.

.....Respondents Ist Set/Respondents

6. Deepak Kumar Son of Sri Harinandan Paswan, Resident of Village - Narayan Bigha, P.O. & P.S. - Ghosi, District - Jehanabad, currently residing at C/o Murariji, Anisabad, District - Patna.

7. Rajiv Ranjan Verma, Son of Sri Ramawtar Prasad, resident of village - Mudla Bigha, P.O. - Satnag, P.S. - Chandi, District - Nalanda.

8. Tarun Kumar, Son of Late Ramchandra Singh, resident of House No. 305, Road No. 21 D, Rajiv Nagar, P.O. - Kesrinagar, District - Patna.

9. Vinay Kumar, Son of Late Raja Babu, resident of Cadbury Ice Cream factory, Behind rajapur Petro Pump, P.O. G.P.O. P.S. Budha Colony, District - Patna.

10. Arvind Kumar, Son of Raghuvansh Singh, resident of village - Sheikhpura, P.O. Bihar Veterinary College, P.S. - Hawaii Adda, District - Patna.

11. Amrendra Kumar, Son of Parmanand Ram, Resident of Village - Shastrinagar, Ward No. 16, P.O. & P.S. & District - Araria.

12. Manohar Kumar, Son of Mohan Prasad, resident of village - Samrah, P.O. & P.S. - Haveli Kharagpur, District - Munger.

13. Umesh Singh, Son of Late Shankar Singh, resident of village - Pachkhori, P.O. & P.S. - Kudra, District - Kaimur.

14. Dilip Kumar Sinha, Son of Sri Dhanesh Kumar Sinha, resident of village - Barwara, P.O. - Nasanda, P.s. - Chandi, District - Nalanda.

15. Abhishek Kumar, Son of Sri Krishna Mohan, resident of Sushila Swami sadan, Sareya, Ward No. 4, P.s. - Gopalganj, District - Gopalganj.

16. Pramod Kumar Sinha, Son of Sri Rajendra Prasad, resident of village - Bikhani Bigha, P.O. - Onda, P.S. - Sarey, District - Nalanda.

17. Dhananjay Kumar, Son of Sri Sidh Nath Prasad, resident of South Chandmari Road, Budha Nagar, Road No. 3, Kankarbagh, District - Patna.

18. Akhilesh Kumar, Son of Sri Singheshwar Singh, resident of village & P.O. Kaithil, Via - Obra, District - Aurangabad.

19. Shashi Kumar Son of Sri Jai Nandan Baitha, resident of village - Rasulpur,



- P.O. 7 P.S. - Haspura, District - Aurangabad.
20. Amitabh Bharti, Son of Sri Ashok Kumar Singh, Resident of village-
Khanpita, P.O. & P.S. - Sabour, District - Bhagalpur.
21. Sanjay Kumar Mandal, Son of Sri Jagdish Prasad Mandal, resident of village -
Santi Tola Pasia, P.O. - tingachiya, P.s. & District - Katihar.
22. Shekhar Kumar, Son of Sri Sahdev Maharana, resident of Lalbagh, Turka
Manjhi, District - Bhagalpur.
23. Pankaj Kumar Sinha, Son of Sri Dwarika Prasad Singh, resident of village -
Murli, P.O. - Bhawanipur, District - Bhagalpur.
24. Pradeep Kumar, Son of Sri Rajnandan Singh, resident of Mohalla - Nayatola,
Kumharar (Ghera), P.O. - Lohianagar, P.S. - Kankarbagh, District - Patna.

.... Respondents 2nd Set/Petitioners

Appearance :

For the Appellant/s : Mr. Kamala Kant Upadhyay
Mr. Sanjay Kumar, Advocate
For the Private : Mr. Y.V. Giri, Sr. Advocate
Respondent nos. 6,7,9,11, : Mr. Ashish Giri, Advocate
12,13,14,15,16,18,19,22,
23 and 24
For the State : Mr. Manish Kumar, AC to AAG-6.

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 06-12-2016

The present Letters Patent Appeal is directed against an order passed by the learned Single Judge on 7.12.2015 allowing the writ application filed by the Respondent Nos. 6 to 24 whereby the recommendation for appointment on the post of Junior Engineer in Bihar State Bridge Construction Nigam Limited was reviewed and consequently, the State Government passed an order of terminating the services of the writ applicants. As a consequent to the orders passed, the writ applicants continue to work as Junior Engineers.



The facts in brief are that on 14th August, 2006 an advertisement number 1406 of 2006 was published inviting application for filling up 2268 vacancies of Junior Engineers. Pursuant to the examination based on OMR answer sheet, a list of 210 selected candidates was published on 19th November, 2006 in respect of the applicants, who responded to such an advertisement. Some of the unsuccessful candidates filed writ application before this Court bearing C.W.J.C. No. 885 of 2007, wherein the model answer keys in OMR sheets were doubted. An expert committee was constituted by this Court to examine the model answer key. Such expert committee found that 41 answers were incorrect out of the total 100. The learned Single Judge allowed the writ application on 18.12.2007 and cancelled the entire result so published in response to the above said first advertisement.

In the meantime, another advertisement number 1906 of 2006 was published on 29th November, 2006 for the remaining 2080 posts. The examination of such vacancies was held on 29th July, 2007. The learned single Bench while allowing C.W.J.C No. 885 of 2007 also set aside the second examination process advertised on 29th November, 2006 as well.

Against the order passed by the learned Single Judge on 18.12.2007, L.P.A No. 70 of 2008 was filed. The Bench passed an



order on 1.2.2008 permitting the declaration of the result of the examination held in pursuance of the second advertisement but only after selection in pursuance of the first examination was completed and also that only the examination in civil engineering is to be set aside. Against such an order, Special Leave Petition was filed before the Hon'ble Supreme Court. The Supreme Court on 30th August, 2011 directed that the result of the examination held on 29th July, 2007 in pursuance of the second advertisement be declared forthwith and if the applicants have qualified the same, they shall be given appointment forthwith but the petitioners will not be prejudiced in any manner. In pursuance of such an order, the result was declared and 392 candidates were selected including the writ applicants in C.W.J.C No. 11850 of 2015. The Special Leave Petition before the Hon'ble Supreme Court was granted and Civil Appeal No. 2525-2516 of 2013 and Civil Appeal No. 5752-5753 of 2008 were decided on 13th March, 2013. The Hon'ble Supreme Court passed an order in respect of the first advertisement and also permitted the selection pursuant to second advertisement to continue. The concluding portion of the judgment reads as follows:-

“19. In the result, we allow these appeals, set aside the order passed by the High Court and direct that –

(1) answer scripts of candidates appearing in



‘A’ series of competition examination held pursuant to advertisement No. 1406 of 2006 shall be got re-evaluated on the basis of a correct key prepared on the basis of the report of Dr. (Prof.) CN Sinha and Prof. KSP Singh and the observations made in the body of this order and a fresh merit list drawn up on that basis.

(2) Candidates who figure in the merit list but have not been appointed shall be offered appointments in their favour. Such candidates would earn their seniority from the date the applicants were first appointed in accordance with their merit position but without any back wages or other benefit whatsoever.

(3) in case writ petitioners-respondent nos. 6 to 18 also figure in the merit list after re-evaluation of the answer scripts, their appointments shall relate back to the date when the applicants were first appointed with continuity of service to them for purpose of seniority but without any back wages or other incidental benefits.

(4) such of the appellants as do not make the grade after re-evaluation shall not be ousted from service, but shall figure at the bottom of the list of selected candidates based on the first selection in terms of advertisement No. 1406 of 2006 and the second selection held pursuant to advertisement No. 1906 of 2006.

(5) Needful shall be done by the respondents-State and the Staff Selection Commission expeditiously but not later than three months from the date a copy of this order is made available to them.”



In terms of the said order, the result of the examination held on 29th July, 2007 was declared, in which 392 candidates were declared successful. Another writ application was filed by seven writ applicants being C.W.J.C No. 3762 of 2012 again on the ground that the model answer keys of the OMR answer sheets is not proper. This Court decided such writ application on 17th April, 2013. Though the Court has not interfered with the answer key but on the statement of the learned counsel for the Commission, the OMR sheets were offered for personal inspection. The operative part of the order reads as under :-

In view of consent of both the parties, as recorded above, this Court would fix the date of 29.04.2013 when only the petitioners themselves and none else will appear in the office of Secretary to the Commission and shall be afforded inspection of their original O.M.R sheets in presence of the Secretary of the Commission. If the petitioners or anyone of them would find any thing objectionable in course of inspection of their O.M.R sheets, it will be open to them to file their individual separate representation on the same day or till the next day as with regard to the marks allotted to them which then will be considered by the Chairman of the Commission himself who must pass a reasoned order in their such representation(s).

Let it be however made clear that this Court having not inspected individual OMR sheets of the petitioners has expressed no opinion on the merit of complaint of the petitioners that their answer



sheets(OMR sheets) were interfered by the Commission.

With the aforementioned observation and direction, this writ application is disposed of.”

It is in pursuance of such direction the OMR sheets were shown to the writ applicants of the aforesaid writ application and it was found that some of the answer sheets were not that of the writ applicants. At that stage, Commission decided to re-examine the entire answer sheets. It is so averred in the counter affidavit filed in the present petition which reads as follows:-

5. That this Hon’ble Court in C.W.J.C No. 3762 of 2012 directed to the Commission in the case of Vinod Kumar Yadav Vrs. Bihar Staff Selection Commission & Others that the petitioner will appear in the office of the Secretary to the Commission and shall be afforded inspection of their original O.M.R sheets in presence of the Secretary and if the petitioners or any one of them would find anything objectionable in course of inspection of their O.M.R sheets, it will be open to them to file their individual separate representation with regard to the marks allotted to them which then will be considered by the Chairman of the Commission himself who must pass a reasoned order on their such representation.

(6) that in the light of the aforesaid direction of this Hon’ble Court among seven petitioners only four of the petitioners appeared before the Secretary of the Commission and inspected their O.M.R sheets and after their inspection they filed their objection on the basis of their objection, their



issues, were thoroughly examined and found that there is serious error in the process of scanning of O.M.R sheet which caused incorrect evaluation of the answer sheets.

(7) That the Chairman on the finding of error in the process of scanning of O.M.R sheets in the case of the aforesaid four candidates, directed to get the entire result thoroughly reexamine and reevaluated and on reexamination it was found that the O.M.R sheets of the petitioners of this writ petition have been deliberately mismatched with the answer sheets of different bar code. And on the re-examination, when the O.M.R sheets of the petitioners were matched with their respective answer-sheets, the petitioners scored less marks and thus they got declared unsuccessful.

(9) that on the basis of the new marks obtained by the petitioners which is less than the required minimum qualifying marks, they have been declared unsuccessful and accordingly the commission recommended for their dislodgement from the services.

(10) That the Chairman of the Commission not only recommended for the dislodgment for the petitioners from the services rather he made complaints too against the responsible officers who deliberately caused anomalies in the evaluation of the OMR sheets vide his letter bearing no. 124 dated 23.12.2014.

The photo copy of the letter bearing no. 124 dated 23.12.2014 is annexed herewith and marked as Annexure-R/1 to this affidavit.

(11) That this answering respondent carves the leave of this Hon'ble Court to produce the OMR sheets of these petitioners before this Hon'ble Court as and when required which will lead to show that the OMR sheets of these petitioners have been erroneously mismatched with the



answer sheets of those candidates who have been declared successful subsequently.”

It is on the said basis, an order of cancellation of recommendation for appointment of the writ applicants was passed on 27th May, 2015. On the basis of such recommendations, the appointment of the writ applicants was recalled on 20.7.2015. It is said order which has been set aside by the learned Single Bench.

Learned counsel for the appellants vehemently argued that the second result of 392 candidates in which writ applicants were successful, was tainted with fraud in connivance of some of the officials of the Commission. Since the basis of result declared was tainted, the entire result was revised and the writ applicants were not part of the list of the successful candidates. However, it is admitted that before passing the order of withdrawal of recommendation, no opportunity of hearing was granted to the writ applicants.

On the other hand, Mr. Y.V. Giri, learned senior counsel appearing for the respondents pointed out that there was no plea of fraud raised by the Commission in its counter affidavit and that the respondents have not taken a plea of fraud even in the communication dated 27th May, 2015, therefore, the Commission can not supplement the reasoning given in the communication dated 27th May, 2015. Reliance is placed on Supreme Court Judgment in



Mohinder Singh Gill and Another versus The Chief Election Commissioner, New Delhi and Others AIR 1978 Supreme Court 851.

Mr. Giri also pointed out that the appointment of the writ applicants are protected by the Supreme Court order, particularly, the concluding direction 4, which is to the effect that such of the appellants who do not make the grade after reevaluation shall not be ousted from service but were to figure at the bottom of the select list.

We do not find that such direction is applicable to the writ applicants. Firstly, the Civil Appeal before the Supreme Court was in respect of the evaluation of answer sheet of the first advertisement number 1406. The appellants who were protected, were the candidates in the first advertisement. The writ applicant no. 1 was though a successful candidate was not appointed as per the stand of the writ applicants in the writ petition. Therefore, the first applicant Deepak Kumar will also not be protected by such direction. The only question before the Supreme Court was whether the result of the second advertisement should be published or not. Since the writ applicants are all successful candidates in pursuance of the second advertisement, the direction of the Supreme Court will not be applicable to all of them.

The fraud in the publication of result of 392 candidates pursuant to the second advertisement came to be noticed only when



C.W.J.C No. 3762 of 2012 was allowed by this Court on 17Th April, 2013 when the writ applicants in the said writ application were permitted to examine their own OMR sheets. Once the fraud has been unearthed at that stage, therefore, the writ applicants can not claim protection of their appointment if they have not made a grade in the examination held on 29th July, 2007 which led to declaration of 392 candidates as selected candidates.

Mr. Giri raised another argument that the Commission has become *functus officio* after making a recommendation of the selected candidates to the State Government. We do not find any merit in the said argument as well. The Commission is examining body. The gross irregularity in publication of the result came to the notice of the Commission after the writ application bearing C.W.J.C No. 3762 of 2012 was decided by this Court. Since the publication of result is the sole responsibility of the Commission itself, the Commission is very well in its jurisdiction to correct the result.

The averments on behalf of the Commission show that except the expression 'fraud', the facts stated shows that something serious was remiss in the conduct of the examination by the Commission. Merely because the word 'fraud' has not been used, it can not be said that there is no fraud. May be, the writ applicants are not the fraudster but the fact is that they are beneficiaries of fraud.



The order dated 27th May, 2015 was the communication to the Department at whose instance the posts were advertised. It was the communication of revising the result. *Mohinder Singh Gill* (supra) will not be applicable in the facts of the present case as it is not a speaking order passed after hearing the writ applicants, the reasons are sought to be supplemented by way of counter affidavit. It is a communication addressed to the requisitioning department; therefore, plea of wrongful declaration of result having been taken in the counter affidavit could not have been brushed aside.

Having said so, we find that in pursuance to the initial recommendation made by the Commission, the writ applicants have been appointed. Withdrawal of the recommendation has the effect on the appointment. It affects their civil rights. Such civil rights can not be interfered with without giving opportunity of being heard. Considering the same, we set aside the order passed by the learned Single Judge but we grant liberty to the Commission and/or the State Government to issue show cause notice to the writ applicants and pass an appropriate order after giving opportunity of being heard to each one of them in accordance with law.

The order passed by the State Government terminating the services of the writ applicants on 20th July, 2015 is set aside with liberty to the Commission and/or State Government to revise its result



and the State Government to pass an order keeping in view the revised result in accordance with law after hearing the parties. It will be open to the writ applicants to take a plea that their results need not be revised as they are meritorious candidates.

(Hemant Gupta, ACJ)

(Dinesh Kumar Singh, J)

Anil/-

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