

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Civil Writ Jurisdiction Case No.2287 of 2016

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1. Ajeet Kumar Sharma son of Sri Ram Nila Sharma, Resident of village-Hajipur, P.O. & P.S.- Hajipur, District- Vaishali
  2. Shreekant Kumar, son of Sri Suresh Prasad Gupta, Resident of village -Jafarpur, P.O. Fuladh, P.S. Paroo, Dist. Muzaffarpur
  3. Vijay Bihari, son of Sri Rajendra Prasad, Resident of village, P.O., P.S. & District- Lakhisarai
  4. Abhimanyu Kumar, son of Sri Bacha Ray, Resident of village, P.O. & P.S. Ekma, District- Chapra
  5. Digvijay Kumar Mishra, son of Sri Sheo Dayal Mishra, Resident of village Noorpur, P.O. Patna City, P.S. Malsalami, Dist. Patna
  6. Ritesh Kumar Gupta, son of Sri B.C. Gupta, Resident of village & Post Musehari, Dist. Gopalganj
  7. Harinath Kumar Paswan, son of Sri Mahendra Paswan, Resident of village Bhathadasi, Post Rajapakar, Dist. Vaishali
  8. Raghunath Paswan, son of Sri Mahendra Paswan, Resident of village Bhathadasi, Post Rajapakar, Dist. Vaishali
  9. Gaphoor Alam, son of Md. Yusuf, Resident of village + Post - Enayatnagar, P.S. Goraul, Dist. Vaishali
  10. Shrikant Kumar, son of Sri Jagdish Choudhary, Resident of Musallampur Hat, P.O. Mahendru, P.S. Pirbahore, District Patna
  11. Santosh Kumar, son of Sri Munshi Prasad, Resident of village + Post Lachhuar via Sikandra, Dist. Jamui
  12. Rajkishor Das, son of Sri Mishri Lal Das, Resident of Village + Post Bitandipur, Via- Jandaha, Dist. Vaishali
  13. Shakti Kumar Negi, son of Sri Yogendra Prasad, Resident of Mohalla Tejpratap Nagar, P.O. Anisabad, P.S. Beur, Dist. Patna, Bihar
  14. Ayaz Ahmad, son of Dr. Ghulam Mujtaba Ansari, Resident of New Azimabad Colony, Zandal Nagar, SCC-1, P.D. Mahendru, Patna
  15. Deepak Kumar Verma, son of Sri Rajnandan Prasad, Resident of village Asta Kharjama, P.S. Asta, Dist. Nalanda, Bihar
  16. Suresh Chandra Thakur, Son of Sri Bishwanath Thakur, Resident of village Chamarahra, P.O. Mahnar Road RS, P.S. Mahnar, Dist. Vaishali, Bihar
  17. Diwakar Kumar, son of Sri Dineshwar Prasad Sah, Resident of Ward No. 7, Purani Chowk, Vill. + Post Kanti, Dist. Muzaffarpur, Bihar
  18. Praveen Kumar, son of Sri Ramchandra Sinha, Resident of At Sundergarh Bhaisapur, P.O. & P.S. Biharsharif, Dist. Nalanda

.... .... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna
2. The Bihar State Food and Civil Supplies Corporation Limited through its Managing Director, Sone Bhawan, Government of Bihar, Patna
3. The Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna
4. The Nodal Officer, Bihar State Food and Civil Supplies Corporation Limited, Sone Bhawan, Government of Bihar, Patna
5. Bihar Combined Competitive Examination Board, I.S. Bhawan, Near Patna Airport, Patna through its Secretary.

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6. The Secretary, Bihar Combined Competitive Examination Board, I.S. Bhawan, Near Patna Airport, Patna
  7. Manish Kumar, son of Sri Arun Kumar through Bihar State Food and Civil Supplies Corporation Limited, Sone Bhawan, Government of Bihar, Patna
  8. Pawan Shrivastava, son of Rajesh Babu Shrivastava, through Bihar State Food and Civil Supplies Corporation Limited, Sone Bhawan, Government of Bihar, Patna
  9. Sneh Ashish, son of Sri Ajay Kumar Singh, through Bihar State Food and Civil Supplies Corporation Limited, Sone Bhawan, Government of Bihar, Patna
  10. Ravi Ranjan, son of Sri Rajendra Prasad through Bihar State Food and Civil Supplies Corporation Limited, Sone Bhawan, Government of Bihar, Patna
  11. Amresh Prakash, son of Ram Kripal Ram, through Bihar State Food and Civil Supplies Corporation Limited, Sone Bhawan, Government of Bihar, Patna

.... .... Respondent/s

with

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**Civil Writ Jurisdiction Case No. 11354 of 2016**

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1. Rahul Prakash S/o Sri Arjun Singh, Resident of Mohalla- Janakpuri Colony, (Gola Road) Opposite past wall St. Karens School, District- Patna.

.... .... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna.
2. The Bihar State Food and Civil Supplies Corporation Ltd. through its Managing Director, Sone Bhawan, Govt. of Bihar, Patna.
3. The Principal Secretary, Food and Consumer Protection Dept., Govt. of Bihar, Patna.
4. The Nodal Officer, Bihar State Food and Civil Supplies Corporation Ltd., through its Managing Director, Sone Bhawan, Govt. of Bihar, Patna.
5. Bihar Combined Competitive Examination Board, I.S. Bhawan, Near Patna Airport, Patna.

.... .... Respondent/s

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**Appearance :**

(In CWJC No.2287 of 2016)

|                           |   |                                                                                           |
|---------------------------|---|-------------------------------------------------------------------------------------------|
| For the Petitioner/s      | : | Mr. Dinu Kumar<br>Mr. Rajesh Kumar Singh                                                  |
| For the Respondent State: |   | Mr. NADEEM SERAJ- GP20                                                                    |
| For the Respondent Board: |   | Mr. Tej Bahadur Singh, Sr. Advocate<br>Mr. Vikas Kumar                                    |
| For the B S F C           | : | Mr. Aditya Prakash Sahay<br>Mr. Manas Prakash<br>Mr. Prabhat Kr. Singh<br>Mr. Manoj Sinha |

(In CWJC No.11354 of 2016)

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| For the Petitioner/s | : | Mr. Mithilesh Kumar Roy<br>Mr. Lakshman Lal Pandey<br>Mrs. Vandana Kishor<br>Mr. Virendra Kumar Ray |
|----------------------|---|-----------------------------------------------------------------------------------------------------|

For the Respondent State: Mr. SANJAY PANDEY- GP21  
Mr. Nishant Kumar Jha, AC to GP 21

For the Respondent Board: Mr. Vikas Kumar

For the B S F C : Mr. Shailendra Kumar Singh

**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI**  
**ORAL JUDGMENT**

**Date: 27-07-2016**

Two sets of writ applications have been filed by the petitioners, who obviously have not been recommended for appointment on the post of Assistant Manager in the examination conducted by the Bihar Combined Competitive Examination Board. They are seeking quashing of the result contained in Annexure-19 on many a grounds, which shall be noticed in subsequent part of the order.

2. By virtue of Annexure-3 an advertisement was issued for filling up 407 posts of Assistant Manager and 50 posts of Assistant Accountant. Competitive examination was held and after the conduct of the written examination the Combined Competitive Examination Board (hereinafter the Board) placed on the website the model questions and answers, inviting objections, if any, from the candidates. Objections were raised and received. The objections were collated and placed before a team of experts who did find some of the objections to be valid either as to the correctness of the questions or the answers. The final evaluation was done on the basis of the corrected and agreed questions and answers and the results have been published. After the publication of the result these petitioners have rushed to the Court on the ground that not all objections raised by the petitioners with regard to the correctness of the questions or answers have been fairly entertained. There are still some questions or answers which are wrong and because of those errors fair marking could not be done and some of these petitioners have missed out very narrowly may be by a couple of

marks.

3. In addition to the above objections, petitioners also alleged that the evaluation too has not been done fairly. The OMR sheets have not been properly corrected; therefore, the end result which has been published of various candidates does not reflect the correct position with regard to the marks so awarded. In support thereof, some samples of OMR sheets have also been brought on record.

4. Yet another line of submission is that from the result published it is evident that there are many a candidates who were allowed to participate in the said examination even without having the necessary qualification laid down for the post of Assistant Manager where the qualification is either an MBA or a PGDBM from a recognized University or an Institution having recognition from AICTE.

5. There are other instances cited where candidates who were over-age have also been permitted to participate in the examination. The Competitive Examination Board should have ensured that all such ineligible candidates should have been prevented from participation in the examination in the very first place.

6. It was in this background that the Court restrained the respondents Bihar State Food and Civil Supplies Corporation from accepting the joining of the successful candidates which was scheduled for 29<sup>th</sup> June, 2016. However, it transpires now that 29<sup>th</sup> June, 2016 was the last date of joining and that the joining had been permitted between 24<sup>th</sup> June till 29<sup>th</sup> June, 2016 and many of those successful candidates had already given their joining before passing of the order on 28/06/2016.

7. The respondents were directed to file their affidavit in opposition and explain their stand and conduct in view of the disquiet caused with regard to

the manner in which the examination was conducted or the result declared.

8. In the counter affidavit filed on behalf of respondent No.2 i.e. the Bihar State Food and Civil Supplies Corporation, they do accept that advertisement was issued for appointment to be made in the Corporation. A requisition was sent in this regard to the Bihar Combined Competitive Examination Board to conduct the examination. The Board after conduct of examination very fairly published the model questions and answers and invited objections. The outcome of the exercise done on the objections and the position emerges as under from their counter affidavit :

**“(x) That in respect to objection as raised by the petitioners regarding answers provided by the question setters (made available on website prior to finalizing the merit list) the expert team after thorough verification of each and every questions of Question Booklet Set-A recommended correct answers and their recommended answers were used to evaluate the OMR answer sheets of each examines by the computer using standard software. The details regarding the correction as made by the expert team are given here under:-**

| Questions Nos. of Booklet (Set-A) | Answer provided by setters/ uploaded on website | Correct Answer recommended by expert team | Answer of petitioner given in writ petition |
|-----------------------------------|-------------------------------------------------|-------------------------------------------|---------------------------------------------|
| 5                                 | D                                               | C                                         | C                                           |
| 21                                | A                                               | D                                         | D                                           |
| 24                                | B                                               | A                                         | A                                           |
| 27                                | B                                               | D                                         | D                                           |
| 62                                | A                                               | B                                         | B                                           |
| 90                                | C                                               | D                                         | D                                           |
| 94                                | B                                               | A                                         | A                                           |
| 73,82 & 84                        |                                                 | Same provided as by setters               |                                             |

**In response of the objections raised by the petitioners with regard**

**to question no. 73, 82 and 84, the expert team did not recommend any change, resulting which the answers remained the same as were provided by the question setters and uploaded on the website.”**

9. After the publication of the result on the basis of the above questions and answers, objections were also received with regard to many a candidates regarding their eligibility, qualification etc.. This led to constitution of a 5-Member Committee by the Managing Director of the Bihar State Food and Civil Supplies Corporation to carefully go through the status especially with regard to eligibility etc. of all the candidates whose results had been published. On the basis of the report submitted by the 5-Member Committee, a copy of which is Annexure A and B, a notice was also published in the daily newspaper “Hindustan” dated 24/06/2016 informing all the candidates as to their status. The Corporation decided to give an opportunity of hearing to all the candidates who were put in the ineligible category for one reason or the other, whose roll numbers etc. have been clearly indicated in the newspaper advertisement, contained in Annexure-C to the counter affidavit.

10. It is evident from perusal of Annexure-A that only 291 candidates were found to be eligible in all respect for the post of Assistant Manager and only 40 candidates were found to be eligible for the post of Assistant Accountant. It is only those candidates on whom there is no controversy raised in the enquiry report that they were permitted to report and join.

11. The Combined Competitive Examination Board has also filed detailed counter affidavit which is on behalf of respondent Nos. 5 and 6. In addition to that, there is also reply to supplementary affidavit on behalf of respondents No. 5 and 6 to the second supplementary affidavit of the petitioners.

They too explain the modality and the manner in which objections were entertained and how consensus with regard to certain questions were reached and on the recommendation of the team of experts final results came to be published.

12. Counsel for the Competitive Examination Board submits that petitioners have unnecessarily tried to create an impression that all has not been well in the manner in which examination and evaluation have been done, which is a motivated kind of effort after they failed to qualify. Whatever has been done has been done in an open and fair manner and the evaluation has been done on the basis of the consensus reached with regard to the correctness or otherwise of some of the questions or the answers.

13. The irony of the matter is that even on those questions or answers on which objection is being raised by some of the petitioners, they have given the correct answer and they have also been awarded marks and they have derived benefit thereof. How do petitioners gain by raising such objections is not understood or appreciated. In fairness of things the Examination Board has also brought the answer sheets and the evaluation chart of each and every petitioners to show where they stand. The annexures annexed with the reply of second supplementary affidavit, which are Annexure I and J series tell all.

14. The objections with regard to the evaluation of the OMR sheets also have been explained by the respondents. Despite clear instructions given to the candidates not to overwrite, erase or modify already answered questions, many a candidates have marked the options twice over or they have tried to change the answer as an after-thought and that is where the problem has arisen in optical evaluation of the OMR sheets. All such answers will obviously throw up result against such candidates as wrong answers and now they are trying to make out as if the fault lies with the manner in which evaluation has been done.

15. The Court is also informed that the evaluation of the OMR sheets are done twice over by two different computers only to re-verify and make it doubly sure that no mechanical error has crept in evaluation of the answers and in award of marks.

16. The Court gave a very detailed hearing and examined the objections of petitioners with regard to the correct questions and answers as well as evaluation and has come to a considered opinion that this objection cannot form the basis for quashing of the results or interfering with the recommendation made for appointments. The objective and fair approach has been taken. There are many a publications floating in the market some of them are even sub-standard. Those publications obviously cannot be relied upon in coming to a conclusion about the correctness of the questions or the answers set. The opinion of the experts will have to be relied upon and this has been done. The Board has, in fact, further analyzed the recommendations of the experts and with regard to three questions they were in agreement with the answers provided by the setters which the Court opines has been correctly done.

17. No doubt, from perusal of the report of the 5-Member Committee which is Annexure A to the counter affidavit of respondent No.2, there is evidence that some of the qualified candidates whose results were initially published were either not eligible or objections were raised with regard to their qualification as to the equivalence of their degrees which they have. To be fair to the Corporation they have carried out an exercise and they did segregate such doubtful candidates and have not been recommended for appointment at this juncture. The Corporation has decided to give an opportunity to them to establish their bona fide relating to the qualification or other eligibility and steps have also been taken by seeking response from the concerned authorities including AICTE



as to the validity or equivalence of some of the degrees which those candidates claim to be equivalent to an MBA or PGDBM. That is why out of 407 vacancies advertised for the post of Assistant Manager only 291 candidates have been recommended and out of 50 posts of Assistant Accountant only 40 candidates have been recommended at this juncture.

18. In view of the above as also taking into consideration that the Examination Board does not prevent or bar candidates from participation by scrutinizing their eligibility at the threshold. They go by the declaration made by a candidate. The appointing authority, therefore, has to do a close scrutiny before making any appointment with regard to the eligibility or otherwise of a candidate. Mere recommendation by itself does not create a right in favour of any person. It is always subject to fulfilling the eligibility laid down in the advertisement.

19. The Court, therefore, only hopes that all those candidates who have been provisionally recommended or placed in the category of ineligible or those whose technical qualification, age etc. is required to be verified, will be fairly done and the Corporation will make sure that no candidate who otherwise lacks eligibility on any front finally gets appointed.

20. The Court, in fact, must express its disquiet against the petitioners since they tried to create such a big hype against the exercise so carried out for such appointment as if every thing was done with a motive and objective. The fact and evidence brought on record do not suffice in casting a doubt with regard to the above selection. They have miserably failed on close scrutiny. The materials cannot lead to quashing or annulling the selection or the result so published.

21. Writ applications, therefore, are dismissed.

22. The order of restraint passed earlier by the Court stands vacated.

23. The Corporation will go ahead with the appointment of 291

candidates recommended for Assistant Manager and 40 candidates for Assistant Accountant. For the rest it will be subject to deliberation which is contemplated.

(Ajay Kumar Tripathi, J)

R.K.Pathak/-

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