

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.581 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 17382 of 2014**

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Smt. Pushpa Kumari, Wife of Sri Subhash Chandra Singh, Assistant Teacher,
Sikshak Niwas, Ramarani Jain Balika Uchha Vidyalaya, Dehri, District- Rohtas.

.... Appellant

Versus

1. The State of Bihar through the Principal Secretary, Department of Education,
Bihar, Patna.
2. The Director, Secondary Education, Bihar, Patna.
3. Bihar Public Service Commission, 15- Jawahar Lal Nehru Marg (Baily Road),
Patna.

.... Respondents

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Appearance :

For the Appellant	:	Mr. Awadh Bihari Ojha, Sr. Advocate. Mr. Bharat Bhushan, Advocate. Mr. Nitesh Kumar, Advocate.
For B.P.S.C.	:	Mr. P.N. Shahi, Sr. Advocate. Mr. Sanjay Pandey, Advocate.
For the State	:	Mr. Raj Nandan Prasad, S.C. 9.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 30-03-2016

The present appeal under Clause X of the Letters Patent is directed against an order passed by the learned Single Bench of this Court on 27th of January, 2015 in C.W.J.C. No. 17382 of 2014, whereby the action of the Bihar Public Service Commission (hereinafter referred to as the “Commission”) in scrapping the answer-sheet of the appellant of Education Law was not interfered with.

2. The appellant is working as Assistant Teacher of English since 12.08.1992. The appellant applied for the post of Headmaster against Advertisement No. 31/2005. On 6th of May, 2014, the appellant was informed that her answer-book of Education Law has been rejected. Subsequently, appellant was informed the reasons of

rejection of her answer sheet as that there is difference of ink used at Page Nos. 1, 3 and 5.

3. The stand of the Commission in the counter affidavit is that there were clear instructions in the answer-sheet that the instructions for answering the questions are to be complied with, failing which the candidate will be liable for punishment. The Condition No. 9 is that the candidate will not change the ink of the pen used for answering the questions.

4. The sole argument raised by learned counsel for the appellant is that Condition No. 9 is only directory and that for violation of such condition; the answer-sheets cannot be rejected. It is also contended that the stipulation in the answer-sheet will not make the condition mandatory as the punishment is not specified. Therefore, the action of the Commission in rejecting the answer-sheet is not warranted in law.

5. We have heard learned counsel for the parties and find no merit in the Letters Patent Appeal. In the sample answer-sheet (Annexure-D), attached with the counter affidavit, there are numerous conditions for the guidance of the candidates including the condition that candidate will not use different ink while answering the questions. The very first line of such conditions is that the candidate should read the conditions carefully and follow them, failing which they will be liable for punishment.

6. Such stipulation in the answer-sheet will make the conditions mandatory. Simply because the punishment is not specified in the answer-sheet will not make it directory. In a competitive test, the minimum punishment is that of rejection of the answer-sheet. The said punishment has been inflicted upon the appellant. It is not that the appellant has used different ink at one page, but as per the stand of the respondents, the appellant has used different ink at three pages. Therefore, the order of rejection of the answer-sheet cannot be said to be illegal in any manner.

7. The learned Single Bench has referred to a Supreme Court judgment

reported as (1992) 2 S.C.C. 206 Karnataka Public Service Commission and Ors. Vs. B.M. Vijaya Shankar and Ors. to dismiss the writ application. The condition therein was that if the candidate fails to abide by the instructions or indulges in disorderly or improper conduct, he will render himself liable for expulsion from the examination and or such other punishment as the Commission may deem fit to impose. The Court has not found the expression “such other punishment as the Commission may deem fit to impose” as vague and arbitrary. In the present case, the candidate was made aware of the consequences of not following the instructions. Thus, we find that such warning makes the conditions in the answer-sheet as mandatory. The necessary consequence is rejection of the answer sheet.

8. We find no error in the order passed by the learned Single Bench which may warrant interference in the present intra court appeal.

9. The Letters Patent Appeal is, thus, dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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