

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1235 of 2016

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1. Ashutosh Kumar Jha, Son of Late Babu Narayan Jha, resident of At and P.O. Dwalakh, P.S. Bheja, District - Madhubani (Bihar), Pin 847408
 2. Dhiraj Kumar, Son of Shailendra Jha, resident of At and P.O. Sukhsena, P.S. B. Kothi, District Purnea (Bihar), Pin - 854203
 3. Kanhaiya Jee Pathak, Son of Rameshwar Pathak, resident of village - Barwan, P.O. Asaon, P.S. Ander, District - Siwan (Bihar), Pin 841287
 4. Dileep Kumar, Son of Ramprabhav Sharma, resident of At and P.O. Charh, P.S. Makhadumpur, District - Jehanabad (Bihar) Pin 804427
 5. Sanjay Kumar Singh, Son of Umesh Singh, resident of village - Korai, P.S. Gadhpur, District - Begusarai

.... Appellants

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna
2. The Chairman, Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg, Bailey Road, Patna
3. The Bihar Public Service Commission through its Secretary, 15, Jawahar Lal Nehru Marg, Bailey Road, Patna
4. Ajay Kumar Choudhary Son of Ram Vakil Choudhary resident of village - Sherpur, P.S. Vidyapati Nagar, District - Samastipur, Bihar

.... Respondents

WITH

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Letters Patent Appeal No.1243 of 2016

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Anuj Kumar, son of Late Sahdeo Ram, resident of Mohalla Delha Dular Ganj, Post Office Gaya R.S., Police Station Delha, District Gaya (Bihar), at present resident of c/o Maharaja Prithvee Raj, Mour Bhawan, Chandpur Bela, Dupulwa, Police Station Jakkanpur, P.O.- GPO, District Patna (Bihar)

.... Appellant

Versus

1. The State of Bihar through the Principal Secretary, Home, Government of Bihar
2. The Bihar Public Service Commission, Bailey Road, Patna, through the Chairman
3. The Joint Secretary -cum- Examination Controller, Bihar Public Service Commission, Bailey Road, Patna

.... Respondents

WITH

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Letters Patent Appeal No.1229 of 2016

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1. Rahul Diwan Son of Late Chaturbhuj Sahay Resident of village
- Manjhwari, P.O. Manjhwari, P.S. Simri, District - Buxar

.... Appellant

Versus

1. Bihar Public Service Commission through its Chairman, 15
Jawahar Lal Nehru Marg, Patna
2. The Secretary, Bihar Public Service Commission, Bailey Road,
Patna
3. The Examination Controller, B.P.S.C., Bailey Road, Patna

.... Respondents

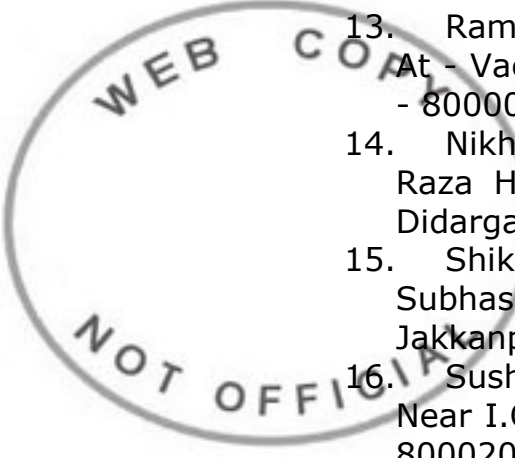
WITH

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Letters Patent Appeal No.1233 of 2016

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1. Mukul Son of Dinesh Kumar Mishra Resident of At Madhopur,
P.O. Basudeopur, Distt. - Munger, State - Bihar, Pin - 811202
2. Meera Kumari Daughter of Rupnarayan Mandal Resident of
vill. - Baraichak Patam, P.O. Patam, P.S. Nayaram Nagar,
Distt. - Munger (Bihar), Pin 811214
3. Bibhuti Anand Jha Son of Bishwanath Jha Resident of Village +
P.S. + P.O. Bahera, Distt. - Darbhanga (Bihar), Pin - 801503
4. Mahesh Kumar Son of Deo Narayan Pandit Resident of C/o
Sahdeo Prasad, Shiv Colony (Raja Bazar), P.O. B.V. College,
P.S. Shastri Nagar, Patna 800014
5. Shashi Kant Kumar Son of Shivdhar Prasad Resident C/o
Chandrika Prasad, New Yarpur, Janta Road, South of Devi
Asthan, Patna (Bihar) 800001
6. Pankaj Kumar Gupta Son of Ramakant Prasad Gupta Resident
of at Post - Sondiha Via Mahaddipur, P.S. Pasraha, District -
Khagaria
7. Rajesh Kumar Pal Son of Parshuram Pal Resident of Sector -
8H, Plot No.15, B.H. Colony, P.S. Agamkuan, Patna - 800026
8. Surendra Ram Son of Chandrika Ram Resident of vill. -
Paraspami, P.O. Parsauni, Via - Sitamarhi Bazar, P.S. Dumra,
Distt. - Sitamarhi 843301
9. Shantnu Kumar Son of Jagdeo Mandal Resident of At-
Hardimoh, P.O. Pradhan Chak, P.S. Khaira, Distt.- Jamui -
811317, State- Bihar
10. Ranjit Kumar Son of Arjun Prasad Mandal Resident of At-
Hardimoh, P.O. Pradhan Chak, P.S. Khaira, Distt.- Jamui -
811317, Distt.- Bihar
11. Dhananjay Kumar Jha Son of Shiv CHandra Jha Resident of
At + P.O. Dhankaul, Via - Parsauni, Distt. - Sheohar, Bihar -
843325

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12. Durgesh Chandra Jha Son of Sudhir Chandra Jha Resident of Village - Dumaria, P.O. Motia - Dumaria, Distt. - Gooda, State - Jharkhand, Pin - 814133
 13. Ramakant Pradeep Son of Deonandan Sharma Resident of At - Vachaspati Nagar, P.O. Mahendru, P.S. Bahadurpur, Patna - 800006
 14. Nikhat Fatma Daughter of Md. Jafer Imam Resident of C/o Raza Hussain Fatmi, Vill. - Sabalpur, Via - Begumpur, P.S. Didarganj, Patna 800009
 15. Shikha Rani Wife of Mithun Ghosh Resident of C/o Subhash Ghosh, Near Laxmi Market, Maa Tara Sweets, New Jakkampur, P.S. Gardanibagh, Post G.P.O., Patna 800001
 16. Sushil Kumar Son of Satish Chandra Prasad Resident of Near I.O.C. Main Gate, Sipara, P.O. Dhelwan, P.S. Beur, Patna 800020
 17. Kumari Khushboo Daughter of Dhanjit Singh Resident of village - Madhubani, Post - Pahunsi, P.S. Kursakanta, District - Araria, Pin - 854332

.... Appellants

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. Bihar Public Service Commission through its Chairman
3. Principal Secretary, General Administrative Department, Govt. of Bihar, Patna
4. Chairman, Bihar Public Service Commission, Patna
5. Secretary, Bihar Public Service Commission, Patna
6. Md. Nasir Son of Late Abul Hassan Resident of Vill. - Tal Sehan, P.O. Khaje Chand Chapra, Via - Baghi, P.S. Goroul (O.P. Kathara), Distt. - Vaishali, Pin - 844112
7. Bipin Kumar Son of Binod Kumar Resident of vill. - Jamheta, P.O. Fatehpur, P.S. Fatehpur, Distt. - Gaya, State Bihar, Pin - 824232
8. Sandhya Kumari Daughter of Vijay Pratap Singh Resident of House Name - Shivam, Top Floor, Behind of N.S.C.L., P.O. B.V. College, P.S. Shastri Nagar, Bailey Road, Patna 800014, Bihar
9. Rahul Deo Barman Son of Birbal Chaudhary Resident of vill. + P.O. Ganj Bharasara, P.S. Dinara, Distt. - Rohtas 802218, Bihar
10. Ravi Ranjan Son of Balmiki Ram Resident of Vill. + P.O. Kuhila, P.S. Akbarpur, Distt. - Nawada 805126, Bihar
11. Ranjan Kumar Son of Naresh Paswan Resident of Vill. + P.O. Dhurgaon, P.S. Akangar Sarai, Distt. - Nalanda (Bihar), Pin 801301
12. Md. Gulrej Ekbal Son of Gausur Rahman Resident of Purani Bazar, Ward No.2, Near New Masjid, P.S. Shikarpur, Narkatiaganj, West Champaran - 845455
13. Sunil Kumar Gupta Son of Ramnath Prasad Resident of Brahamasthan, Purani Bazar, Distt. - Sitamarhi, Pin - 843302
14. Gourav Kumar Son of Amrendra Narayan Resident of vill. -

Imadpur, P.O. Bouri Beldari, P.S. Hulasgunj, Distt. - Jehanabad, Pin 804407

15. Anjani KUMar Son of Late Sheo Kumar Prasad Resident of Moh. - Karamali CHak, Patna City, P.S. Begampur, Patna City, Near Soyabin Factory, Distt. - Patna, P.S. Bye Pass, Pin 800009
16. Santa Kumar Son of Sakaldeo Sharma Resident of vill. - Mahuar, P.O. Munjahar, P.S. Haspura, Distt. - Aurangabad, Pin - 824114
17. Kripa Shanker Prasad Son of Dinanath Prasad Resident of LL - Piperpanti, P.O. Shiwrampur, P.S. Yogapati, Distt. - West Champaran, Pin - 845452
18. Abhay Kumar Son of Subodh Prasad Mandal Resident of At Chhoti Daulatpur, P.S. + Post Jamalpur, Distt. - Munger
19. Durgesh Chandra Jha Son of Sudhir Chandra Jha Resident of Village - Dumaria, P.O. Motia - Dumaria, Distt. - Gooda, State - Jharkhand, Pin - 814133
20. Kanhaiya Jee Pathak Son of Rameshwar Pathak Resident of vill. - Barwan, P.O. Asaon, Distt. - Siwan, State - Bihar, Pin 841287
21. Dhananjay Kumar Jha Son of Shiv CHandra Jha Resident of At + P.O. Dhankaul, Via - Parsauni, Distt. - Sheohar, Bihar - 843325
22. Vikash Kumar Son of Krishna Kumar Resident of C/o Halkhori Singh, East Ashok Nagar, Road No.13, Last House Number - 14/62, Kankarbagh, Patna 800020
23. Anand Kumar Singh Son of Chandra Deep Singh Resident of Subhash Nagar, Ashok Mahal, Gali No.9, P.O. Dalmiya Nagar, District - Rohtas, Bihar 821305, P.S. Dehri - On - Sone, Bihar - 821305
24. Rajiv Kumar Son of Lakhan Lal Agrawal Resident of Rental Flat No.217, P.S. Kankarbagh, District - Patna 800020
25. Ramakbal Ram Son of Loku Ram Resident of Block - B, Qtr. No.02, Telephone Exchange, Anishabad, Patna 800002
26. Rakesh Kumar Singh Son of Bhartendu Kamlesh Kumar Singh Resident of Bajrangpath, Bajrangpuri, P.O. Gulzarbagh, P.S. Alamganj, Patna City, Bihar, Pin 800007
27. Md. Meraj Danapuri Son of Md. Seraj Danapuri Resident of Imlital, Danapur Canti, Patna 801503, Bihar
28. Deep Narayan Ram Son of Shyam Sunder Paswan Resident of vill. + P.O. Piprahi, Via - Ladania, Distt. - Madhubani (BIhar) Pin - 847232
29. Rajesh Kumar Pal Son of Parshuram Pal Resident of Sector - 8H, Plot No.15, B.H. Colony, P.S. Agamkuan, Patna - 800026
30. Shashim Saurabh Son of Y. N. Das Resident of A - 33, Magistrate Colony, Patna 800025
31. Ramadhar Kumar Son of Laxman Rai Resident of C/o Late Lakshman Raj, At - Tendua, P.O. Musehari (Khairah), Distt. - Saran, Pin - 841414
32. Sandeep Kumar Chandravanshi Son of Mahesh Prasad

Chandravanshi Resident of At - Rampur, P.O. Alipur, P.S. Buniyadganj, Distt. - Gaya (Bihar), Pin 823003

33. Anuj Kumar Son of Uday Shankar Singh Resident of Post Barahiya, P.S. Barahiya, Distt. - Lakhisarai, Pin - 811302

34. Ashok Kumar Son of Ram Ekbal Yadav Resident of H.No.31/11, C.P. Thakur Path, Hanuman Nagar, New Punaichak, P.O. Shastri Nagar, P.S. Shastri Nagar, Patna 800023

35. Bishaylal Pandit Son of Banshidhar Pandit Resident of Vill. - Barkhi Singi, P.O. Ara Town, Distt. - Bhojpur 802301

.... Respondents

WITH

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Letters Patent Appeal No.1250 of 2016

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1. Rajesh Chandra Son of Sri Ramesh Chandra, Resident of Flat No.302, Amba Residency, East Boring Canal Road, P.S. Buddha Colony, District- Patna (Bihar) 800001.

2. Prashant Kumar Jha, Son of Om Prakash Jha, Resident at Nebi Sahu's Building, P.S. Nagar (Begusarai), Patel Chowk, District- Begusarai (Bihar) 851101.

.... Appellants

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.

2. The Bihar Public Service Commission through its Chairman.

3. The Principal Secretary, General Administrative Department, Govt. of Bihar Patna.

4. The Chairman, Bihar Public Service Commission, Patna

5. The Secretary, Bihar Public Service Commission, Patna.

6. The Examination Controller, Bihar Public Service Commission, Patna.

7. Rajeev Gautam, son of Satyendra Sinha, Resident at C/o Ramashish Mehta Lodge, R. No.6, Math Luxmanpur, Koiri Tola, P.S. Alamganj, P.O. Gulzarbagh, District- Patna- 800007.

8. Manoranjan Kumar, Son of Ram Kishore Prasad, Resident at + P.O. Paingree, P.S. Warisaliganj, District- Nawada (Bihar) 805130.

9. Kripashankar Prasad, Son of Madhukaran Prasad, Resident of Mohalla- Udrachamapur, P.O. Patna city, P.S. Mehdiganj, District- Patna (Bihar) 800008.

10. Shahbaz Alam, Son of Md. Newasuddin, Resident of Village and P.O. Ramur, P.S. Forbesganj, District- Araria (Bihar), 854318.

11. Raj Kumar Paswan, Son of Raghunandan Paswan, Resident of Village- Bariyarpur, P.O. Gaispur Bariyarpur, P.S. Rajapakar, District- Vaishali (Bihar).

12. Gulshan Kumar, Son of Dhananjay Kumar, Resident at Gulshan Sadan, Patel Road, Vill Adarsh Nagar, Via+P.S. Sultanganj, District- Bhagalpur (Bihar) 813213.
13. Anupam Anand Son of Vijay Kumar Singh, Resident of Village + P.O. Andaur, Via + P.S. Mohiuddin Nagar, District- Samastipur (Bihar) 848502.
14. Kumud Ranjan, Son of Sri Ram Pravesh Prasad, Resident of Village + P.O.- Bandeya, P.S. Makhdumpur, District- Jehanabad (Bihar) 804422.
15. Bipin Kumar Jha Son of Brajeshwar Jha, Resident of Village + P.O. Jogiyara, Via- Anandpur, P.S. Bahadurpur, District- Darbhanga (Bihar)

.... Respondents

Appearance :

(In all appeals)

For the Appellants : Mr. Jitendra Singh, Senior Advocate
Mr. Abhinav Srivastava, Advocate
Mr. Kishori Ram, Advocate

For the Respondents : Mr. Lalit Kishor, Senior Advocate
Mr. Satyabir Bharti, Advocate
Mr. Sanjay Pandey, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

AND

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER

C.A.V.

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 04-10-2016

Should a High Court, exercising power of judicial review under Article 226 of the Constitution of India, enter into the correctness of decision of experts in relation to framing of questions and preparation of *Model Key Answers* of competitive multiple choice objective type test, is one of the seminal issues involved in the present batch of appeals. The issue has acquired substantial significance in the present



scenario, where majority of competitive examinations for employment in public service or for admission to various educational institutions involve screening through multiple choice objective type test questioning the wisdom of experts, candidates after having been made unsuccessful approach the superior Courts, normally, raising grievance that had their answer sheets been duly evaluated on the basis of answer, which, according to them, were correct, they would have been declared successful. The present batch of appeals involves the same question to be dealt with by this Court.

2. All these appeals, filed under Clause 10 of the Letters Patent of this Court, arise out of common judgment and order, dated 05.05.2016, passed by a learned single Judge in a batch of writ applications, made under Article 226 of the Constitution of India by the appellants, whereby their writ applications, made under Article 226 of the Constitution of India, have been dismissed.

3. The dispute relates to result of *preliminary test* held in the light of an advertisement issued by the Bihar Public Service Commission (hereinafter referred to as 'the Commission'), called "56th to 59th Joint Combined (Preliminary) Competitive Examination, 2014". Only those candidates, who could clear the *preliminary test*, were to be allowed to participate in the Mains Examination. The



appellants could not qualify for the Mains Examination, on the basis of their performance in the *preliminary test*, so held, the result whereof was published on 21.11.2015. The appellants challenged the result by filing writ applications, under Article 226 of the Constitution of India, mainly on the ground of erroneous deletion of certain questions of *preliminary test* from the purview of evaluation, based on the opinion of a body of experts, constituted by the Commission, since such questions were found by the *Experts Body* to have been wrongly framed. We will be referring to the facts of the case in subsequent paragraphs, in detail.

4. The learned single Judge refused to interfere with the result and to enter into the correctness of the decision of the Commission to delete such questions from the purview of evaluation, when deletion was done on the basis of opinion of a body of experts.

5. Since the dispute involved in all these appeals is identical, all the appeals, with the consent of the parties, have been heard together and are being disposed of by the present common judgment and order.

6. The facts, which are not in dispute, may be set out as follows:-

(i) The Commission came out with an advertisement, on 13.02.2014, for conducting 56th to 59th

Joint Combined (Preliminary) Competitive Examination, 2014, for appointment to various posts of civil services within the State of Bihar, pursuant to which, the appellants, along with others, had applied.

(ii) In the light of the said advertisement, a *preliminary test* was conducted on 15.03.2015. The *preliminary test* was based on objective type questions with multiple-choice answers.

(iii) After the *preliminary test* was held, the Commission published a notice in daily newspapers, on 11.04.2015, intimating the candidates that *model answer keys* to the questions booklet series 'A', 'B', 'C' and 'D' would be uploaded on the official website of the Commission by 11.04.2015 itself. The Commission also informed the candidates, who had participated in the *preliminary test*, to tender their suggestion or raise objections supported with reliable evidence with regard to the said *answer keys* published by the Commission by 30.04.2015 so that necessary corrections, if required, could be carried out before publication of the final result of the said *preliminary test*. The *model answer keys* were, accordingly, uploaded on the official website of the Commission.

(iv) There is an averment, in the counter affidavit filed on behalf of the Commission in the writ proceedings, that

the Commission received altogether 581 objections –cum-suggestions from the candidates with respect to *model keys answers* of general studies paper.

(v) It appears that an *Experts Body*, consisting of 12 experts of different subjects, was constituted to consider the objections –cum-suggestions and correctness of framing of questions. The *Experts Body* came to a conclusion that out of the 150 questions, question nos. 72, 73, 75, 82, 83, 86, 100, 118, 136, 139 and 144 (11 in number) of question booklet series 'A', needed to be deleted, the same being either ambiguous or wrongly framed. The *Experts Body*, therefore, opined that these questions should be deleted.

(vi) Acting on the opinion of the *Experts Body*, the Commission decided to delete the aforesaid 11 questions of general studies paper, in a meeting held on 12.06.2015, from the purview of evaluation. Apparently, thus, evaluation was decided to be done of only 139 questions out of 150 and the result was decided to be declared accordingly.

(vii) The answer sheets of those, who had participated in 56th to 59th Joint Combined (Preliminary) Competitive Examination, 2014, were, thereafter, evaluated on the basis of the report of the *Experts Body* and accordingly result of the *preliminary test* was published on 21.11.2015.

(viii) On the basis of the performance of the



candidates in the *preliminary test*, the Commission fixed cut off marks for different categories of candidates. The cut off marks for unreserved candidates was fixed at 87, for Extremely Backward Caste category at 76 marks, for Scheduled Castes category at 72, for Scheduled Tribes category at 70, for Backward Castes category at 82 and for Backward Castes (Female) and Disabled categories at 73. The appellants, admittedly, could not secure the cut off marks fixed by the Commission. It is, however, their case that they missed to secure the cut off marks, by a narrow margin, some of them by 1 (one) mark only.

(ix) After publication of the result of the *preliminary test*, the appellants approached this Court by filing writ applications, under Article 226 of the Constitution of India, with the central plea that the Commission had wrongly decided to delete the 11 questions as erroneously framed, on erroneous opinion of the *Experts Body*, though, according to the appellants, there was nothing wrong with the said questions and the same ought not to have been deleted from the purview of evaluation.

(x) The learned single Judge, by the judgment and order under challenge, has dismissed the writ application and accordingly the appellants have questioned the legality of the said judgment and order in the present *intra Court* appeal.

7. We have heard Mr. Jitendra Singh, learned Senior Counsel and Mr. Abhinav Shrivastava, learned Counsel for the appellants. We have also heard Mr. Lalit Kishor, learned Principal Additional Advocate General, appearing on behalf of the Commission.

8. As has been noticed above, after the *preliminary test* was held, the Commission had published a notice inviting objections from the candidates in relation to the *model key answers* framed by the Commission for evaluating respective answers of the aspirants. Some of the aspirants had submitted their objections and the *Experts Body*, constituted by the Commission, carried out the exercise and found framing of the 11 questions out of 150 questions to be erroneous and opined for deletion of the same. The *Experts Body* also found that some of the *model key answers* were incorrect and suggested correct answers to questions No.7, 101, 114, 126 and 137 of the said question booklet series 'A'.

9. We may point out here that in the *preliminary test*, question papers were printed in four different series, i.e., 'A', 'B', 'C' and 'D', and though the same questions were asked, seriatim of questions, in each of the series, was so jumbled up and arranged that sequence of questions in every series varied. This was done in order to obviate plagiarism and unfair means of similar nature. In the present judgment, we

have referred to question numbers as they appeared in question booklet series 'A'.

10. Mr. Jitendra Singh, learned Senior Counsel, and Mr. Abhinav Shrivastava, learned Counsel, representing the appellants, have vehemently argued that the deletion of questions on the basis of the opinion given by the *Experts Body* was incorrect. They have referred to certain text books and other documents in support of their contention that the deletion was incorrect. They have also argued that while advising deletion of some of the questions, the experts have assigned some logic/reasons, but if same logic and reason were to be applied uniformly, some other questions, too, deserved to be deleted, which have been left out.

11. The question, which arose before this Court is: *Whether the correctness of the opinion of the Experts Body should be gone into, in the present facts and circumstances of the case, in a proceeding under Article 226 of the Constitution of India by High Court, exercising power of judicial review?*

12. It is noteworthy that, out of 11 (eleven) questions so deleted, the appellants have objected to deletion of 4 (four) questions in their pleadings in the writ application. The questions are: Questions No.53, 63, 98 and 124 of 'D' series of question booklet, which are equivalent to questions No.73, 83, 118 and 144 of 'A' series of question booklet. This



could be easily noticed from the pleadings in paragraph 18 of CWJC No.19328 of 2015, the leading case in the present batch of appeals. Apparently, therefore, with respect to 7 (seven) questions so deleted, the appellants have no objection and they, thus, admit that those questions deserved to be deleted. From the pleadings on record, we find that the deletion of 4 (four) questions is being objected to by the appellants on the ground that those questions were duly framed and capable of being answered by 4 (four) options/choices suggested for such questions. They have, in support of their plea, relied on certain materials/informations collected from the textbook NCERT and the State Government of Bihar publication. With reference to question No.124 of 'D' series of question booklet, the appellants have suggested solution on a separate sheet, which has been brought on record by way of annexures in order to make out a case that the question was rightly framed and there was correct answer available in the option/choices suggested and, therefore, the questions ought not to have been deleted.

13. With reference to question No.79 of 'D' series of question booklet, it has been asserted in paragraph 19 (iii) that the said question has been wrongly evaluated with option 'C' as correct answer; whereas, according to the appellants, the correct answer was option 'B'. It is the case of

the appellants that the said question ought to have been evaluated with correct answer available as option 'B'.

14. The writ application was filed on 17.12.2015. A supplementary affidavit was subsequently filed in the writ proceedings on behalf of the petitioners, nearly 2 (two) months thereafter on 09.02.2016, stating in paragraph 5 thereof that said question No.79 of 'D' series of question booklet had no correct answer and, therefore, it ought to have been deleted. Ostensibly, after having participated in the process of *preliminary test*, the appellants themselves were not sure at the time of filing of the writ application and appear to be not definite whether the *model key answers*, suggested by the *Experts Body*, was incorrect or framing of the question itself was incorrect. On the top up of all, the appellants have maintained complete silence over the question as to what did they actually do with said question No.79 of 'D' series of question booklet in the examination hall. There is no pleading that they marked option 'B', which, according to them, was the correct answer, as pleaded in the writ petition or they marked some other option. It is difficult, on the basis of pleadings on record, to rule out a situation, where the appellants might have marked option 'C' against question No.79 of 'D' series of question booklet and they might have accordingly been awarded marks for answering the said



question on the basis of *model key answers*. Only after having been declared unsuccessful in the *preliminary test*, they are raising disputes, though they are not definite about their own stand. Further, in the said supplementary affidavit, filed on 09.02.2016 in the writ proceedings, the appellants have referred to a few more questions, i.e., question nos. 134 and 137 of 'D' series of question booklet. As regards question No.134 of 'D' series of question booklet, it is their plea that correct answer is option 'C'; whereas, the Commission has wrongly provided option 'A'. They have, again, referred to some extract from NCERT textbook in support of their stand.

15. Curiously enough, there is no assertion that the appellants had or had not raised, with regard to the above, any objection in response to notice of the Commission and subsequent display of the model key answers, inviting objections. Here also, the appellants are silent as to what their answers were and whether they were, in fact, benefited, because of exercise of such option or they were disadvantaged, because of marking the option, which was correct. Similar silence has been maintained with respect to their response to question No.137 of 'D' series of question booklet.

16. On the basis of the pleadings on record, the appellants have thus, in our considered view, miserably

failed to make out a case that because of any deletion of questions, alteration of *model key answers*, any actual prejudice was caused to them.

17. In our opinion, this Court, sitting in writ jurisdiction exercising power of judicial review, should not go into the correctness or otherwise of the opinion of *Experts Body* and it is not required to sit over such judgment of *Experts Body* unless it appears to be obnoxious. This Court is not required to go deep into the correctness of answers on the basis of pleadings and counter pleadings and come to its own conclusion about the correctness or otherwise of the opinion of the *Experts Body*.

18. The learned Senior Counsel, appearing on behalf of the appellants, has placed strong reliance on Supreme Court's decision in the case of **Kanpur University and Others v. Samir Gupta and Others (AIR 1983 SC 1230)**. It has been contended that it would be unfair to penalize a student for not giving an answer which is not in accord with the *model key answers*, though the answer is demonstrably wrong.

19. In **Samir Gupta** (supra), certain questions were found to have been evaluated on the basis of, undoubtedly, wrong answers suggested in the key answers. The Supreme Court, in case of **Samir Gupta** (supra), had

considered few questions and found that answers, suggested to the questions in the key answers, were, undoubtedly, incorrect.

20. The Supreme Court observed, in **Samir Gupta** (supra), in paragraph 17 as follows:

".....If this were a case of doubt, we would have unquestionably preferred the key answer. But if the matter is beyond the realm of doubt, it would be unfair to penalise the students for not giving an answer which accords with the key answer, that is to say, with an answer which is demonstrated to be wrong."

21. In our considered view, the facts of the present appeals are entirely different from the facts of the case of **Samir Gupta** (supra). As has been noticed above, in the present case, the *model key answers* were displayed on the website of the Commission and objections were invited from the candidates. There is no pleading that the present appellants had raised objection with respect to incorrect answers before the Commission in response to the notice inviting objections, which were not duly considered by the *Experts Body*. They are completely silent as to whether they had raised objection with respect to any particular question and if so, whether because of non-consideration of their objections, they have been put to any disadvantageous

situation.

22. In the case of **Samir Gupta** (supra), the students did not have any opportunity to raise objection to the key answers, which opportunity was available to the present appellants. Further, as has been noticed above, the appellants have raised new issues with respect to framing of questions and the pleadings demonstrate uncertainty in their own minds.

23. Heavy reliance has been placed on behalf of the appellants on a Division Bench decision of this Court, in the case of **Kumod Kumar and Others v. The Bihar Staff Selection Commission and Others**, reported in **2015 (3) PLJR 693**, with particular reference to paragraphs 23, 24 and 25, which read thus,

"23. Thus, the only change we find is with regard to question No.69 where the correct answer is option (A). In respect of question No.98, the correct answer is option (D). The correct answer to question No.107 is not available and has to be deleted. In respect of question No.111, we hold that it should not be deleted and the correct answer is option (C).

24. Thus, we are inclined to interfere with the judgment of the learned Single Judge only to the extent of these four questions in the manner indicated hereinabove.



25. Thus, the inevitable result would be, in order to ensure fairness of procedure of selection, the results which were revised and published pursuant to orders of the learned Single Judge would call for a further revision in respect of the four questions as noted in the preceding paragraphs but it would not follow that as per the fresh revised results of persons who had already been selected and appointed and have been working but who do not make the mark this time would be disqualified and dismissed. We hold that this would be highly iniquitous inasmuch as they are not guilty of any fraud, malpractice but are mere victims of mistake committed not by them. We have already noted judgments of the Apex Court in the cases **Rajesh Kumar** (supra) and **Vikash Pratap Singh** (supra) in these regards but again that does not end the matter. By change of answers of these four questions, as noted above, there may be some persons, who are now found to have made to the final merit list but, were not selected earlier leaving them out would be injustice. There would not be many such persons."

24. Referring to the decision in the case of **Kumod Kumar** (supra), it has been argued, on behalf of the appellants, that either the Court should direct the Commission

to re-evaluate the answer sheets afresh or scrap the entire result and hold a fresh examination.

25. Another decision of Supreme Court, in the case of **Rajesh Kumar and Others v. State of Bihar and Others**, reported in **(2013) 4 SCC 690**, has been cited on behalf of the appellants, and it has been submitted that a direction should be issued for re-evaluating the answer sheets with correct answers without deleting such questions, which did not deserve to be deleted, the same having been properly framed and capable of being answered on the basis of choices suggested.

26. The decision, in **Rajesh Kumar** (supra), does not help the appellants. In the case of **Rajesh Kumar** (supra), on a plea having been raised against the correctness of the model key answers, the High Court had referred the questions to experts. The experts found 45 model key answers to be erroneous out of total of 100 questions. In that circumstance, a Division Bench of this High Court had directed the Bihar Staff Selection Commission to conduct a fresh examination and re-draw the merit list on that basis in relation to appointments to the posts of Junior Engineer (civil). On a challenge having made to the said judgment and order of this Court before the Supreme Court, the Supreme Court, instead of holding fresh examination, directed for re-evaluation of the

answer sheets on the basis of the correct answers suggested by the experts.

27. In the present case, as has been noticed, the Commission has acted on the basis of the opinion of the *Experts Body* in relation to the *Model Key Answers* and deletion of questions. In our considered view, it would not be proper for this Court, while exercising power of judicial review under Article 226 of the Constitution of India, to go into the correctness of the opinion of the *Experts Body*, unless something is shown to the Court, which is blatant and unacceptable on the very face of it.

28. Mr. Lalit Kishore, learned Senior Counsel, representing the Commission, countering the submissions advanced on behalf of the appellants, has pointed out that the Division Bench of this Court, in **Kumod Kumar** (supra), had not taken note of the Supreme Court's decision, in **H. P. Public Service Commission v. Mukesh Thakur and Another (AIR 2010 SC 2620)**, wherein the Supreme Court held that it is not permissible for the High Court to examine the question papers and answer sheets itself, particularly, when the Commission had assessed the *inter se* merits of the candidates. He has contended that the Division Bench decision, in **Kumod Kumar** (Supra), has no binding force in view of subsequent decision of a Division Bench of this Court,

in **Ravindra Kumar Singh and Others v. The High Court of Judicature at Patna and Others**, reported in **2016 (1) PLJR 865**, wherein this Court has taken note of the fact that the Supreme Court's decision, in **Mukesh Thakur** (supra), was not brought to the notice of this Court in the case of **Kumod Kumar** (supra).

29. Mr. Lalit Kishore has also placed reliance on another Division Bench decision of this Court in the case of **Md. Nafis Nawaz Khan and Another v. The State of Bihar and Others**, reported in **2016 (1) PLJR 667**.

30. Mr. Lalit Kishore, learned Senior Counsel, appears to be right in his submission while placing his reliance on the Supreme Court's decision, in **Mukesh Thakur** (supra), in order to make out a case that this Court, in exercise of power of judicial review under Article 226 of the Constitution of India, may not go into the correctness or otherwise of the wisdom of the *Experts Body*, which has been accepted by the Commission. In our considered view, it is not permissible for the High Court, in exercise of power of judicial review under Article 226 of the Constitution of India, to take upon itself the task of the constitutional/statutory bodies.

31. In the case of **Mukesh Thakur** (supra), the Supreme Court had the occasion to deal with an appeal arising out of the judgment of Himachal Pradesh High Court.



The Himachal Pradesh High Court, in a writ proceeding, had entered into the correctness of the answers suggested by the candidates and had decided as to what marks could have been awarded to the petitioners before it. The examination pertained to the selection for appointment against vacancies of Civil Judge (Junior Division). While allowing the appeal and setting aside the judgment of the Himachal Pradesh High Court, the Supreme Court held, at paragraph 14, in **Mukesh Thakur** (supra), as follows:

"14. It is settled legal proposition that the court cannot take upon itself the task of the Statutory Authorities."

32. The Supreme Court, further, held, at paragraph 27, in **Mukesh Thakur** (supra), as follows:

"27. Thus, the law on the subject emerges to the effect that in absence of any provision under the Statute or Statutory Rules/Regulations, the Court should not generally direct revaluation."

33. As has been noticed above, the Commission decided to seek objections, if any, from candidates, against wrong framing of questions/*Model Key Answers* in order to cure defects, if correctly pointed out in the

representations, so as to maintain fairness in the process of selection.

34. In the case of **Sahiti and Others v. Chancellor, Dr. N. T. R. University of Health Services**, reported in **(2009) 1 SCC 599**, the Supreme Court held that where the examiner is not fair or that the examiner is not careful in evaluating the answer sheets, re-evaluation may be found necessary. Once the authorities are of the opinion that re-evaluation of answer scripts is necessary, then, the Court should not substitute its own views for that of those who are experts in academic matters. Paragraphs 37 and 38 of Supreme Court's decision, in **Sahiti** (supra), are apposite and are being extracted hereinbelow:

"37. *Awards of marks by an examiner has to be fair and considering the fact that re-evaluation is not permissible under the Statutes at the instance of the candidate, the examiner has to be careful, cautious and has the duty to ensure that the answers are properly evaluated. **Therefore, where the authorities find that award of marks by an examiner is not fair or that the examiner was not careful in evaluation the answer scripts, re-evaluation may be found necessary.***

38. *There may be several instances wherein re-evaluation of the*

*answer script may be required to be ordered and this Court need not make an exhaustive catalogue of the same. However, **if the authorities are of the opinion that re-evaluation of the answer scripts is necessary then the Court should be slow to substitute its own views for that of those, who are expert in academic matters.***"

(Emphasis is supplied)

35. Reference can also be made to another Supreme Court's decision, in the case of **Secretary, West Bengal Council of High Secondary Education v. Ayan Das**, reported in **(2007) 8 SCC 242**, wherein the Supreme Court held that normally, re-assessment of answer sheets by any other examiner, in the absence of any specific provision permitting such re-assessment, should not be directed. Paragraph 9 of the said decision, in **Ayan Das** (supra), is relevant and is being re-produced hereinbelow:

"9. *The permissibility of reassessment in the absence of statutory provision has been dealt with by this Court in several cases. The first of such cases is Maharashtra State Board of Secondary and Higher Secondary Education vs. Paritosh Bhupeshkumar Sheth [(1984) 4 SCC 27: AIR 1984 SC 1543]. It was observed in the said case that finality has to be the result of public examination and, in the absence*

of statutory provision, the court cannot direct reassessment/re-examination of answer scripts."

36. In the case of **Md. Nafis Nawaz Khan** (supra), dealing with similar issue of wrong framing of questions in a multiple choice objective type examination and wrong Model Key Answers, a Division Bench of this Court issued general directions to be followed by Committees/Bodies/Commissions, holding multiple choice objective type examination, in paragraph 40, which are as follows:

"40. *Having considered the matters in its entirety and in the interest of justice, we, therefore, direct as follows:-*

(a) *Immediately after a multiple choice question test is held, it shall be obligatory for the Committee or the Body, which conducts such a test, to undertake an exercise, before evaluating the answer-sheets, to ascertain whether the questions were correctly framed having definite answers. In case any objections are invited from the candidates and such objections are received, they must be looked into by a body of the experts, who would not only be required to ascertain whether the questions were correctly framed or not, but they would also be required to examine as to whether the model answers, prepared by the*

question-setter, are correct or not, for the purpose of correct evaluation of answer-sheets;

(b) If the structure of a question is found to be incorrect or if the option suggested is found to be incorrect or if there is any printing mistake of such a nature that the correct answer cannot be ascertained or more than one option is found to be correct, such a question must be rejected and should not be allowed to be evaluated;

(c) If, after publication of result, despite due care, it is found that the model key answer/answers suggested was/were incorrect, leading to wrong evaluation, remedial measures must be taken and answer-sheets must be re-evaluated with correct model answers."

37. We have noticed, from the pleadings on record, that the procedure, which the Commission has followed, is in tune with the directions issued by the Division Bench of this Court, in the case of **Md. Nafis Nawaz Khan** (supra). The procedure of inviting objections from the candidates by the Commission has been adopted before the said directives were issued by this Court in **Md. Nafis Nawaz Khan** (supra).

38. Similar issues had arisen in the case of **Ravindra Kumar Singh** (supra). This Court held in that case

that a person seeking relief of issuance of prerogative writ under Article 226 of the Constitution of India is obliged to plead and establish that he had been prejudiced and adversely affected by an act or omission of the State or its instrumentalities. Paragraph 36 of the said decision is being re-produced hereinbelow for ready reference.

"36. In order to claim issuance of prerogative writ under Article 226 of the Constitution of India, a person, seeking such a relief, will have to plead and establish that he has been prejudicially and adversely affected by an act or omission of the State or its instrumentality. The party will have to demonstrate sufficient interest in the adjudication of the issue on the ground that because of any act or omission on the part of the authority, his rights got adversely affected."

39. We do reiterate our view, expressed in **Ravindra Kumar Singh** (supra), that a challenge to the result of an examination cannot be sustained on the ground of wrong framing of questions, erroneous answers or unnecessary deletion of questions from the purviews of evaluation unless the person, challenging the result of the test, plead and establish that such wrong done by the Selection Body/the Commission, in fact, prejudiced his case of

being declared successful/selected. Paragraph 27 of the said decision, in **Ravindra Kumar Singh** (supra), being relevant, can be appositely re-produced, which is as under:

"27. What follows from the above discussion is that the writ petitioners merely claim that the questions and the model answers are incorrect or erroneous; but it is not their pleaded case that they would have attempted the questions but for the fact that the questions were incorrect or that they had attempted the questions, but they did not receive marks, because of the fact that the model answers were incorrect. When the writ petitioners have not been prejudiced, because of incorrect or erroneous questions and/or because of incorrect or erroneous answers, they cannot sustain the writ petition merely on the ground that the questions or the model answers are incorrect, even if any question or model answer is found to be incorrect or erroneous."

40. Further, in paragraph 37 of the said decision, in **Ravindra Kumar Singh** (supra), this Court held as follows:

"37. In the present case, the petitioners were required to plead, demonstrate and establish that they got less marks than what they deserved on the

basis of their claim of wrong framing of questions/model answers. Unless a person is able to establish discrimination, this Court is not required to invoke its extraordinary writ jurisdiction under Article 226 of the Constitution of India merely on the pleadings of an erroneous act or omission on the part of an authority."

41. In the present case, as has been discussed above, we have noticed that the appellants have failed to establish that any of their rights got adversely affected because of the impugned action of the Commission. We, therefore, need not interfere, in exercise of power of judicial review under Article 226 of the Constitution of India, with the result of *preliminary test*, in question, held by the Commission.

42. Reference may also be made to paragraph 51 of the Division Bench decision, in **Ravindra Kumar Singh** (supra), wherein it has been held that the High Court will not be required to act as expert of experts, in a proceeding under Article 226 of the Constitution of India, to consider the correctness of wisdom of the Selection Committee. We may reiterate the said view in our present judgment too.

43. In the background of aforementioned discussions, we conclude as follows:

(i) The appellants have failed to plead and



make out a case that the action of the respondent-Commission of deletion of certain questions, which, according to them, were wrongly deleted and *Model Key Answers*, which, according to appellants, were incorrectly suggested by the *Experts Body*, in any manner, prejudiced their chance of being selected inasmuch as they have maintained silence with respect to their own response to such questions in the examination hall or at the time of availing opportunity of raising objections invited by the Commission after the *preliminary test* was held.

(ii) We have noticed conflicting stands in the pleadings on record, on behalf of the appellants, as has been noticed above. Much after having participated in the *preliminary test*, the appellants have tried to develop a case in their favour, without disclosing their understanding on the day, when they had participated in the *preliminary test* and their responses to questions in the examination hall.

(iii) The appellants, therefore, have miserably failed to make out a case of prejudice, in fact, on the basis of their pleadings on record, warranting any interference by this Court with the result of the *preliminary test*, in question, in exercise of power of judicial review under Article 226 of the Constitution of India.

(iv) In view of Supreme Court's decision, in



Mukesh Thakur (supra) and the decision of this Court, in **Ravindra Kumar Singh** (supra), we are of the considered view that it is not permissible for this Court to take upon itself the task of examiner/Selection Board and examine discrepancies and inconsistencies in the question papers and evaluation thereof. The said decision of the Supreme Court, in **Mukesh Thakur** (supra), went unnoticed by the Division Bench of this Court, in **Kumod Kumar** (supra), relied upon on behalf of the appellants.

44. In view of what has been discussed and pointed out above, we do not find any merit in these appeals. The judgment and order, under appeal, dated 05.05.2016, passed by the learned single Judge of this Court, does not warrant any interference and all the appeals, accordingly, stand dismissed.

45. However, there shall be no order as to costs.

46. But before we part with, we take judicial notice of the fact that the Commission and other Selection Bodies, enjoined with the task of recruitment for appointment to various public posts, have not learnt from their past experience in the matter of framing of questions and preparing of Model Key Answers in multiple choice objection type tests. Similar is the case with the bodies holding similar tests for



admission to various educational institution/technical institutions. The Bihar Public Service Commission is a constitutional body, which discharges constitutional duties and functions to conduct examination for appointment to the service of the State. It needs to be consulted on all matters relating to employees of recruitment to civil services and for civil posts. It is their constitutional duty to advise the Governor of the State on the principles to be followed in making appointments to civil services and posts, in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers, among other things, prescribed under Article 320 of the Constitution of India. The function of the Public Service Commission is primarily of making recruitments for appointments to various civil services and posts under the State. Apart from being fair, impartial and exhibiting impregnability in the purity and sanity of the process of selection, a very high standard of efficiency and accuracy is desirable from the Public Service Commission, which, on several occasions, have been found to be wanting. Since this body is mainly concerned with the selection through competitive examinations, it will have to improvise its system in a manner that the competitive examinations are conducted flawlessly.



47. We find, in the present appeals, that out of 150 questions, 11 (eleven) questions were found, by the *Experts Body*, to have been wrongly framed or not capable of being correctly answered. Further, 5 (five) *Model Key Answers*, out of the remaining 139, were also found to be incorrect, by the said *Experts Body*. For a constitutional body, constituted with the central purpose of making recommendations for appointment to civil services/civil posts on the basis of competitive examinations, cannot afford to function unless it endeavors to acquire high level of expertise in holding recruitment tests with perfection. Once in a while, a mistake can happen since '*to err is human*'. But, it is being noticed that such errors of wrong framing of questions and preparation of wrong *Model Key Answers* is taking place more often than not, which is a disturbing phenomenon. More disturbing is the fact that number of such questions and/or answers is sizeable. This phenomenon generates, in the minds of the participants, a sense of uncertainty. This is happening *either* because the persons concerned have not developed effective method, which is fool-proof or, at least, pretty near to it, to ensure errorless setting up of question papers and preparation of accurate *Model Key Answers* or this has not been taken up as seriously as it ought to have been taken.

48. We would, therefore, direct the Chairman,

Bihar Public Service Commission, to take all possible measures for evolving an adequately effective system so as to avoid similar situation arising in future and to ensure that the questions are carefully framed, screened and weighed and the answers are duly prepared with the aid of experts, without compromising with the secrecy of the procedure. We issue a note of caution that in the event of recurrence of error of the nature in future, this Court may come heavily on the Commission and consider imposing exemplary cost, which may be directed to be recovered individually from the persons responsible for such errors, after fixing liability.

49. With the observations and directions above, these appeals stands closed.

50. There shall be no order as to costs.

(Chakradhari Sharan Singh, J.)

I. A. Ansari, CJ.: I agree.

(I. A. Ansari, CJ.)

Prabhakar Anand/-

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