

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14257 of 2014

Sanjay Kumar Jha, son of Shiv Narayan Jha, resident of Mohalla - Chakaram More, Devi Astan, S.K. Nagar, P.S. - Budha Colony, District - Patna At present working AND posted as Postal Assistant at G.P.O., Patna.

.... Petitioner/s

Versus

1. The Union of India through the Secretary Cum D.G. , Government of India, Minister of Communications, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. The Director (DE), Office of Director General, Govt. of India, Minister of Communications, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
3. The Assistant Director General (DE), Office of Director General, Govt. of India, Minister of Communications, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
4. The Chief Postmaster General, Bihar Circle, Patna.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Prem Kumar Jha, Advocate

For the Respondent/s : Mr. Awadhesh Kumar Pandey, ASG
Mr. Ravinder Kumar Verma, CGC

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 18-04-2016

The order dated 4th October, 2013 passed by the Central Administrative Tribunal, Patna Bench, Patna (for short, the Tribunal) in O.A.No. 978 of 2011, is under challenge in the present writ petition. By the aforesaid order, an Original Application filed by the petitioner in respect of his examination for the post of Inspector of Posts remained unsuccessful.

The petitioner has claimed the following reliefs in the said

Original Application:-

(A) The order dated 17th November, 2011, issued under the signature of Assistant Director General (DF), Government of India, Ministry of Communications & IT, Department of Posts (DE Section), Dak Bhawan, New Delhi, vide File No. A.34018/54/2011/DE, dated 17th November, 2011 as contained in Annexure-A/11, may be quashed and set aside.

(B) The answers of Paper-I Question No. 1, Question No.4, Question No.5, Question Nos. 6 and 7, as answered by the applicant, may be declared wholly correct and the respondent authorities may be directed to grant full and appropriate marks to the applicant, against all those answers.

(C) The answers of Paper- 3, question No.1, as answered by the applicant, may be declared wholly correct and the respondent authorities may be directed to grant full and appropriate marks to the applicant, against the said answer.

(D) The respondent authority may be directed to declare the applicant qualified in IPO examination and thereafter to consider his case for his promotion to the cadre of Postal Inspector, pursuant to the enhanced marks, obtained by him.

(E) The cost of litigation, incurred in filing the instant O.A., may be awarded upon the respondents.

(F) Any other relief/reliefs as the applicant is entitled and as may deem fit and proper in the ends of justice.”

The petitioner joined as Postal Assistant in the year 1997, and was working against the post of P.R.I. at Patna G.P.O. when he appeared in the departmental examination for promotion to the post of Inspector of Posts which examination was held from 05.11.2008 to 07.11.2008. As per the petitioner, he did exceptionally well in the examination and was legitimately expecting high percentage of marks.

But he was shocked, when his name was not found in the list of successful candidates. The petitioner contended that his answer sheets for Paper-I and Paper-III were not properly evaluated and he was subjected to improper evaluation and non-application of the mind by the examiner. There are glaring mistakes in the Inspector's Examination which has resulted in failure of the petitioner in his last chance to qualify in the Inspector's Examination and become an officer in the Department of Posts.

The conditions of appearing in the examination have been appended by the petitioner as Annexure-16. The relevant clause reads as under:-

14. Retotalling and verification of marks – (a) If a candidate desires the retotalling of his marks and verification of the fact that all answers written by him have been duly assessed by the examiner, he should submit an application in the prescribed form (as shown in Annexure III) and pay the prescribed fees. The fees for this purpose is Rs.5 per paper.

(b) The procedure for payment and accounting of such fees will be the same as laid down in Rule 13(b).

(c) Such applications must be submitted within six months from the date of announcement of the respective results. Any applications submitted thereafter should not be entertained.

(d) The retotalling and verification of marks should be carried out by an officer other than the one who had originally valued the answer scripts concerned. No remuneration will be payable for this work.

(e) The fee paid for retotalling of marks will not be refundable in any circumstances.

NOTE -1. It must be clearly understood that the only scrutiny intended in this Rule is as shown in clause (a) viz., whether all the answers written by a candidate (provided that they are not in excess of the number required to be attempted) have been assessed, and that there is no mistake in the totaling of the marks.

NOTE -2. In cases where the results of departmental Director-General's Circular, the period of six months referred to a sub-rule (c) will be counted from the date of such a Circular."

"15. Revaluation of answer books – Revaluation of answer scripts is not permissible in any case or under any circumstances."

The learned Tribunal dismissed the Original Application filed by the petitioner relying upon the Supreme Court's order dated 25th May, 2010 in Civil Appeal Nos. 897 of 2006 and 907 of 2006 **(Himachal Pradesh State Public Service Commission vrs. Mukesh Thakur & Ors.)**. The Tribunal found that the answers are subjective in nature. Though some of the marks may not be up to the expectation of the petitioner, but in such cases it is for the examiner as to what mark has to be granted and the Court cannot interfere in such cases.

We have heard learned counsel for the parties and find no merit in this writ petition. The conditions of the examination clearly stipulated that revaluation of answer sheets is not permissible in any case or under any circumstances (see Clause 15). What the petitioner seeks is revaluation so as to say that marks have not been properly awarded. Such thing is not permissible in law. Reference may be made to *Maharashtra State Board of Secondary and Higher*

Secondary Education v. Paritosh Bhupeshkumar Sheth, (1984) 4

SCC 27, wherein it has been held to the following effect:-

“28. As pointed out by a Constitution Bench of this Court in *Fatehchand Himmatlal v. State of Maharashtra [(1977) 2 SCC 670]* “the test of reasonableness is not applied in vacuum but in the context of life’s realities”. If the principle laid down by the High Court is to be regarded as correct, its applicability cannot be restricted to examinations conducted by School Education Boards alone but would extend even to all competitive examinations conducted by the Union and State Public Service Commissions. The resultant legal position emerging from the High Court judgment is that every candidate who has appeared for any such examination and who is dissatisfied with his results would, as an inherent part of his right to “fair play” be entitled to demand a disclosure and personal inspection of his answer scripts and would have a further right to ask for revaluation of his answer papers. The inevitable consequence would be that there will be no certainty at all regarding the results of the competitive examination for an indefinite period of time until all such requests have been complied with and the results of the verification and revaluation have been brought into account.

29. Far from advancing public interest and fair play to the other candidates in general, any such interpretation of the legal position would be wholly defeasive of the same. As has been repeatedly pointed out by this Court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the

system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice. It is unfortunate that this principle has not been adequately kept in mind by the High Court while deciding the instant case.”

Similar is the view taken by the Hon’ble Supreme Court in **Himachal Pradesh State Public Service Commission** (supra) referred to by the learned Tribunal. In another judgment reported as **CBSE v. Khushboo Shrivastava, (2014) 14 SCC 523**, the Court held to the following effect:-

“9. We find that a three-Judge Bench of this Court in *Pramod Kumar Srivastava v. Bihar Public Service Commission* [(2004) 6 SCC 714] has clearly held relying on *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth* [(1984) 4 SCC 27] that in the absence of any provision for the re-evaluation of answer books in the relevant rules, no candidate in an examination has any right to claim or ask for re-evaluation of his marks. The decision in *Pramod Kumar Srivastava v. Bihar Public Service Commission* [(2004) 6 SCC 714] was followed by another three-Judge Bench of this Court in *Board of Secondary Education v. Pravas Ranjan Panda* [(2004) 13 SCC 383] in which the direction of the High Court for re-evaluation of answer books of all the examinees securing 90% or above marks was held to be unsustainable in law because the regulations of the Board of Secondary Education, Orissa, which conducted the examination, did not make any provision for re-evaluation of answer books in the rules.

11. In our considered opinion, neither the learned Single Judge nor the Division Bench of the High Court could have substituted his/its own views for that of the examiners and awarded two additional marks to Respondent 1 for the two answers in exercise of powers of judicial review under Article 226 of the Constitution as these are purely academic matters.”

It thus transpires that what is permissible is re-totalling of marks and not revaluation. Such being the condition of the examination, we do not find any error in the order passed by the learned Tribunal which may warrant any interference in the present writ petition.

The writ petition is accordingly dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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