

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.603 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 262 of 2014**

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Priya Bharti, Wife of Rajeev Ranjan, Resident of Village - Danaiawan Pendapur-
via-Ekangarsarai, P.S. Ekangarsarai, District - Nalanda - 801301, Bihar.

.... Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Bihar Public Service Commission through its Secretary, 15 Jawaharlal Nehru Marg, Bailey Road, Patna.
3. The Chairman, Bihar Public Service Commission, 15 Jawaharlal Nehru Marg, Bailey Road, Patna.
4. Officer on Special Duty, Bihar Public Service Commission, 15 Jawaharlal Nehru Marg, Baiely Road, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Kumar Kaushik, Advocate.
For the State : Mr. Indradeo Prasad, SC-27.
For the BPSC : Mr. Lalit Kishore, Senior Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 16-09-2016

Heard learned counsel for the parties.

2. The challenge in the present intra court appeal is to the order dated 20.02.2014 passed by the learned Single Bench by which C.W.J.C. No. 262 of 2014, filed by the appellant, has been dismissed.

3. The appellant was a candidate, who appeared at the 53rd to 55th Combined Mains Examination, 2012 held by the Bihar Public



Service Commission (hereinafter referred to as the “BPSC”). During evaluation, the examiner had awarded her 112 marks in the LSW-II out of 200 marks, but the head examiner had reduced it to 105. Such reduction of 07 marks in the said paper brought her total marks below the cut off in her category by 806 marks leading to her not being selected in the category. The appellant, being aggrieved by such exercise, moved before the learned Single Bench in CWJC No. 262 of 2014 and dismissal of the same has given rise to the present Letters Patent Appeal.

4. Learned counsel for the appellant submitted that though the exercise undertaken was as per the instructions issued for moderation, but the process is erroneous, as only 15% of the total number of examinees, whose answer books are randomly selected, stand the risk of their marks awarded by the particular examiner to be verified by the head examiner. It was submitted that once there has been change in the marks by the head examiner on account of the examiner showing a tendency, either to be strict or liberal, all the answer books examined by the said examiner ought to be reevaluated by the head examiner or another person and this should not be restricted to 15% only. Learned counsel submitted that earlier, with regard to the same examination, a Division Bench of this Court, in CWJC No. 3892 of 2011 (*53rd to 55th Combined Competitive*



Examination Candidates Association vs. The State of Bihar & Ors.), by order dated 26.08.2011, had issued directions to the BPSC to frame rules/supplant the existing Rules with respect to conduct of examinations, incorporating therein the system of moderation as well as the system of scaling of raw marks. He submitted that as per the direction, the scheme adopted by the BPSC is erroneous, leading to prejudice to the meritorious candidates, as only a selected few, whose answer books are randomly selected, are subjected to reevaluation by the head examiner and the majority of the candidates, whose answer books may have been evaluated by the same examiner, may get away with marks awarded to them, even though the same may not stand the test of reevaluation.

5. Learned counsel for the BPSC submitted that pursuant to the direction of the Division Bench in its order dated 26.08.2011, the BPSC has come out with instructions relating to moderation to check and detect any erratic or careless marking by any examiner or his tendency to evaluate answer sheet liberally or strictly. He submitted that as per the instructions, the head examiner is required to check all answer sheets evaluated by a particular examiner, in which marks, more than 60% or less than 30%, were awarded by him and further the head examiner was also required to check at least 15% of the answer sheets evaluated by the particular examiner. He further



submitted that the instruction also contained detailed guidelines for prior discussion for the purposes of evolving a uniform standard as well as manner and method of evaluation in detail for bringing uniformity. He submitted that pursuant to the examination, names of the successful candidates have also been recommended by the BPSC to the Government and appointments have also been made subsequent to such recommendation. He submitted that such successful candidates, who have been recommended for appointment, not being made party, the writ application as well as the present appeal is fit to be dismissed for non-joinder of parties.

6. Having considered the rival contentions, we do not find any merit in the present Appeal. The issue with regard to evolving a process to minimize the vagaries of evaluation by different examiners is basically for the body which conducted such examination subject to the condition that it should be reasonable and should reflect the nexus between the suggested modalities and the objectives. In the present case, we do not find any reasonable ground to interfere with the procedure adopted by the BPSC for evaluation and we also concur with the reasoning given by the learned Single Bench in its order dated 20.02.2014. Further, in the case of *Sunil Kumar & Ors. v. Bihar Public Service Commission & Ors.* reported as (2016) 2 SCC 495, relating to the same examination, after considering the decision



of the Division Bench of this Court in *53rd to 55th Combined Competitive Examination Candidates Association* (supra) as well as in the case of *Sanjay Singh v. U.P. Public Service Commission* reported as *(2007) 3 SCC 720*, the Hon’ble Supreme Court has rejected the plea that there should have been scaling instead of moderation and has upheld the system adopted by the BPSC of moderation instead of scaling.

7. Accordingly, the present Letters Patent Appeal stands dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Sujit/-

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