

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.723 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 21785 of 2012**

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Dinesh Kumar Singh @ Dinesh Kumar, son of Brahmdeo Singh, resident of
Village- Kathar, P.S.- Krishna Brahm, District- Buxar, at present residing at
Mohalla- Ram Nagar, Gali No. 1, Chandwa, P.S.- Ara Nawada, District- Bhojpur

.... Appellant/s

Versus

1. The State of Bihar through Principal Secretary, Human Resources Development
Department, Govt. of Bihar, Patna
2. The Bihar Intermediate Education Council, through its Secretary, Budh Marg,
Patna
3. The Secretary, Bihar School Examination Board, Patna
4. The Deputy Secretary, Bihar School Examination Board, Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anant Kumar Pandey, Advocate.

For the Respondent/s : Mr. Md. Saseem Mukhtar, AC to AAG-12

For the B.S.E.B. : Mr. Ajay Behari Sinha, 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: 28-09-2016

Heard learned counsel for the parties.

2. The challenge in the present intra court appeal is to
the order dated 24.02.2014 passed by the learned Single Bench by
which CWJC No.21785 of 2012, filed by the appellant, has been
dismissed.

3. The appellant passed his Intermediate examination,



conducted by the Bihar Intermediate Education Council, Patna in the year 2002 and secured 476 marks and was placed in the 2nd division.

4. The appellant applied for his appointment to the post of Lower Division Clerk in Navodaya Vidyalaya, Jamtara in the State of Jharkhand, but was not selected leading to filing of O.A.No. 268 of 2009 (R), which was disposed off on 15.09.2011 by the Circuit Court at Ranchi of the Central Administrative Tribunal, Patna Bench, Patna with a direction to the competent authority to treat the Original Application, alongwith its annexures, as representation of the appellant and thereafter pass a detailed and speaking order. The representation filed by the appellant was disposed off by the Commissioner, Navodaya Vidyalaya Samiti, Regional Office, Patna on 18.06.2012 directing the Deputy Commissioner, Navodaya Vidyalaya Samiti, Regional Office, Patna to seek a clarification from the Bihar Intermediate Education Council as to whether the appellant had secured 50% marks in the Intermediate examination.

5. Upon clarification being sought, the Deputy Secretary of the Bihar School Examination Board, Patna (a Body into which Bihar Intermediate Education Council has been merged) (hereinafter referred to as the 'Board') submitted its report dated 26.07.2012 stating that the examination is taken for a total 900 marks and the marks obtained by the appellant was 476, including 41 marks of the



vocational subject and, thus, the average percentage of marks of the appellant was 48.33, as he had obtained 435 marks out of 900, which was the mode of calculating the percentage for the said examination. In such view of the matter, the Deputy Commissioner, Navodaya Vidyalaya Samiti, under letter dated 30.07.2012, communicated to the appellant that since he had obtained 48.33% marks, which was less than 50%, his case for appointment on the post of Lower Division Clerk cannot be approved and accordingly, the same was rejected. The appellant, being aggrieved by such computation of his marks, moved before the learned Single Bench in CWJC No.21785 of 2012 and dismissal of the same, by order dated 24.02.2014, has given rise to the present Letters Patent Appeal.

6. Learned counsel for the appellant submitted that the mode of computation is erroneous since he had obtained 71 marks in the vocational paper and the same being over and above 900 marks, as per the Rules, after deducting 30 marks, the rest was required to be added to the total marks obtained out of 900 and on that basis, the percentage should have been computed by taking his marks to be 476 out of 900, which clearly would result in him getting more than 50%. It was submitted that the appellant has been wrongly denied such benefit, both by the Board as well as the authorities.

7. Learned counsel for the Board submitted that the



submissions of the learned counsel for the appellant are misconceived. It was submitted that the appellant had secured only 435 marks out of 900 and, thus, the percentage of the marks obtained by him in the examination would be only 48.33%. It was submitted that as per the relevant Regulation, the marks obtained by a candidate in vocational subjects, over and above 30 (theory and practical taken together), will be added in aggregate to improve his/her result and determine division. It was submitted that the appellant, thus, cannot take the benefit of entire 476 marks for improving his percentage.

8. Having considered the rival contentions, we do not find any merit in the present appeal. The admitted position is that the appellant had obtained 123 marks out of 300 in the compulsory subjects, 312 marks out of 600 in the optional subjects, 89 marks out of 200 in the additional subject and 71 marks out of 100 in the vocational subject. The relevant regulation with regard to computation of marks is as under:

“4. The result of a candidate offering an additional subject shall be determined on the basis of marks obtained by him in all the compulsory and in the three out of the four optional and additional subjects taken together in which he/she has secured higher marks.

5. If a candidate is short of the minimum aggregate marks prescribed for 1st or 2nd Division by 5 marks or less, he/she shall be given the minimum marks required to make up the deficiency and shall be placed in higher division but the position in that higher division shall be



determined on the basis of the original marks secured by him.

6. The marks obtained by a candidate in vocational subjects over and above 30 (theory and practical taken together) will be added in aggregate to improve his/her result and determine division. This advantage will be available only to such candidates who have appeared at the examination in both in theory and practical papers.

N.B.- In no case double benefit of regulation shall be allowed.”

9. Thus, it is obvious that in the case of the appellant, Regulation 6 is applicable, which provides that in vocational subject marks obtained over and above 30 (theory and practical taken together) will be added in aggregate to improve his/her result and determine division. Thus, only if there is any change in division, advantage of 41 marks (71-30) could have been added and that too, only for the purposes of determining his division, but despite addition of such 41 marks, the appellant would not get more than 60% marks so as to place him in the first division from the second division in which he has been placed. Therefore, such advantage of adding 41 marks cannot be given to him.

10. Moreover, it would be an absurd proposition that though the marks have been obtained in an additional subject for which there is additional 100 marks, but the average would be counted only with regard to total marks for the rest of the papers and



not the extra vocational paper. However, the issue not being relevant, we would not like to comment on the same in the present proceeding. Suffice is to say that even as per the existing Regulation, the benefit can only be given for the purposes of enhancing the division of the appellant, which in the facts and circumstances of the case even on addition of 41 marks does not place the appellant in the first division. Thus, we do not find that there has been any error on the part of the Board in computing the percentage of the appellant.

11. In view of the aforesaid, we do not find any ground warranting interference in the order either of the authorities or the learned Single Bench and, accordingly, the Letters Patent Appeal stands dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Sujit/-

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