

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3825 of 2015

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Roji, Daughter of Md. Aftab Alam, Resident of Village- Dhankol, P.S.-Ariari,
District- Sheikhpura.

.... Petitioner

Versus

1. The Bihar Public Service Commission through its Secretary Bihar, Patna.
2. The Examination Controller, B.P.S.C.
3. Sushant Kumar, son of Jagvijay Kumar, Harmana Tola, Patna City, Patna.

.... Respondents

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Appearance :

For the Petitioner : Mr. Rupak Kumar, Advocate.
Mr. Nasim Mokhtar, Advocate.
For the B.P.S.C. : Mr. Lalit Kishore, Sr. Advocate.
Mr. Sanjay Pandey, Advocate.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HEMANT GUPTA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 07-09-2016

Heard learned counsel for the parties.

2. The petitioner herein is a candidate in 28th Bihar Judicial Service Competitive Examination, 2012, for appointment of Judicial Officers in the State. The Petitioner claims a writ of *mandamus* for declaring her as a successful candidate for appointment.

3. The facts, in brief, leading to the claim of the petitioner, are that Advertisement No. 01 of 2012 was published inviting applications for 118 posts (General-59, Scheduled Castes-19, Scheduled Tribes-02, Extremely Backward Class-21, Backward Class-14, Backward Class Female-3). The petitioner was successful in Preliminary Examination conducted on 27th of July, 2013, and in the

Main Examination held in April, 2014. She appeared in interview on 10th of October, 2014. The final result was published on 18th of October, 2014. The petitioner, an Extremely Backward Class category candidate, was not a successful candidate.

4. The last successful candidate of Extremely Backward Class category was Mr. Sushant Kumar, who has obtained cut off marks fixed at 503.

5. The grievance of the petitioner is that she has also obtained 503 marks, but she was not considered as successful candidate for the reason that she had obtained less mark in the written examination than the selected candidate, Sushant Kumar. The petitioner came to know that she has been awarded 438 marks in the written examination; whereas from perusal of the answer-sheets, she found that her marks have been reduced from 132 to 116 without any reason. Therefore, the marks obtained by her are more than the marks obtained by the Private Respondent No. 3.

6. In the counter affidavit, it is pointed out that the requisition for total 118 posts were sent, vide letter dated 2nd of March, 2010 (for 80 posts) and letter, dated 11th of March, 2011 (for 38 posts). Total 118 candidates were selected and recommended for appointment. The petitioner has obtained 438 marks in the written examination and 65 marks in the interview and that her Merit Serial



Number is 251 as against the candidate last selected, whose merit position is at Merit Position No. 248. It is also pointed out that evaluation of answer-sheets was done with proper care by qualified and experienced examiners. The answer-books have been properly scrutinized and tabulation of marks has been done very cautiously. It was found that there was similarity in marks noted inside the answer-book and cover page of the answer-book and no difference was found on the cover page of the answer-book. It was also found that there is no provision for re-evaluation of the answer-books. Reference was made to judgment of the Supreme Court in Civil Appeal No. 5046 of 2004 reported as Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission, Patna and others, (2004) 6 SCC 714.

7. Mr. Lalit Kishore, learned counsel for the respondents refers to Rule 19 of the Bihar Civil Service (Judicial Branch) (Recruitment) Rules, 1955 (hereinafter referred to as “the Rules”). The Rule contemplates that if two or more candidates obtain equal marks in the aggregate, the order of merit shall be determined in accordance with the marks secured at written examination. Relevant Rule reads as under:-

“19. The marks obtained at the viva voce test shall be added to the marks obtained at the written examination. The names of candidates will then be arranged by the Commission in order of merit. If two or more candidates obtain equal marks in the aggregate, the order shall be determined in accordance with the marks secured

at written examination. Should the marks secured at written examination of the candidates concerned be also equal, then the order shall be decided in accordance with the total number of marks obtained in the optional papers. From the list of candidates so arranged, the Commission shall nominate such number of candidates as may be fixed by the Governor in order to their position in the list. The nomination so made shall be submitted to the Governor by such date in each year as the Governor may fix.”

8. We have heard learned counsel for the parties and find no merit in the present writ application.

9. The argument of the learned counsel for the petitioner that her marks have been reduced is based upon some overwriting in her answer-sheets obtained by her under the Right to Information Act. However, the total of each question in the answer-sheets tallies with the total marks mentioned on the opening page of the answer-sheet. Therefore, the marking of the answers is by the examiner and that the marks given by the examiner are beyond the scope of judicial review of the Court as this Court does not sit as the Appellate Court over the marks given by the examiner. Reference is made to the case of Pramod Kumar Srivastava (supra), wherein the Court held to the following effect :-

“7. We have heard the appellant (writ petitioner) in person and learned counsel for the respondents at considerable length. The main question which arises for consideration is whether the learned Single Judge was justified in directing re-evaluation of the answer-book of the appellant in General Science paper. Under the relevant rules of



the Commission, there is no provision wherein a candidate may be entitled to ask for re-evaluation of his answer-book. There is a provision for scrutiny only wherein the answer-books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totalling of marks of each question and noting them correctly on the first cover page of the answer-book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. In the absence of any provision for re-evaluation of answer-books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re-evaluation of his marks. This question was examined in considerable detail in Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth (1984) 4 SCC 27. In this case, the relevant rules provided for verification (scrutiny of marks) on an application made to that effect by a candidate. Some of the students filed writ petitions praying that they may be allowed to inspect the answer-books and the Board be directed to conduct re-evaluation of such of the answer-books as the petitioners may demand after inspection. The High Court held that the rule providing for verification of marks gave an implied power to the examinees to demand a disclosure and inspection and also to seek re-evaluation of the answer-books. The judgment of the High Court was set aside and it was held that in absence of a specific provision conferring a right upon an examinee to have his answer-books re-evaluated, no such direction can be issued. There is no dispute that under the relevant rule of the Commission there is no provision entitling a candidate to have his answer-books re-evaluated. In such a situation, the prayer made by the appellant in the writ petition was wholly untenable and the learned Single Judge had clearly erred in having the answer-book of the appellant re-evaluated”.

10. In respect of an argument that the petitioner has obtained same marks as obtained by the last selected candidate and,

therefore, she cannot be excluded from the process of appointment is, again, not tenable in view of the specific Rule 19 of the Rules as reproduced above. Such Rule contemplates that if two or more candidates obtain equal marks in the aggregate, the order of merit shall be determined in accordance with the marks secured at written examination. The last selected candidate has obtained more marks than the petitioner in the written examination and, therefore, in terms of Rule 19, he has been offered appointment. Still further, the name of the petitioner appears at Serial No. 251; whereas the last candidate selected is at Serial No. 248. Thus, there are more than one candidate having the same marks as the petitioner and the private respondent. Therefore, the petitioner cannot be granted any indulgence in the writ application in view of the specific rule.

11. Consequently, we find no merit in the writ application. The same is accordingly dismissed.

(I.A. Ansari, CJ)

(Hemant Gupta, J)

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