

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.44 of 2016

IN

Civil Writ Jurisdiction Case No. 11731 of 2015

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Avinash Kumar, Son of Shri Shankar Prasad Singh, Resident of Village/Mohalla-Ramdiri, Nakati Tola, Police Station-Matihani, District-Begusarai.

.... Petitioner/s

Versus

1. Ravindra Kumar Singh Son of Late Balram Singh, Resident of Road No. 25-D, Rajiv Nagar, P.O. - Keshri Nagar, Patna District - Patna.

..Petitioner/Respondent Ist set

2. The High Court of Judicature At Patna through its Registrar General.

3. The Registrar General, High Court of Judicature at Patna.

4. The Registrar Appointment, High Court of Judicature at Patna.

5. The Selection Committee, District Judge, Entry Level - 2015, High Court of Judicature at Patna.

----- Respondent/ 2nd set/Opposite parties

With

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Civil Review No. 47 of 2016

IN

Civil Writ Jurisdiction Case No. 11731 of 2015

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1. Mukesh Kumar, son of Sri Gopal Sharan Singh, resident of Gandhi Nagar, Ashiana Nagar, Sector-4, Police Station- Rajeev Nagar, District- Patna.

.... Petitioner/s

Versus

1. Ravindra Kumar Singh Son of Late Balram Singh, Resident of Road No. 25-D, Rajiv Nagar, P.O. - Keshri Nagar, Patna District - Patna.

2. The High Court of Judicature At Patna through its Registrar General.

3. The Registrar General, High Court of Judicature at Patna.

4. The Registrar Appointment, High Court of Judicature at Patna.

5. The Selection Committee, District Judge, Entry Level - 2015, High Court of Judicature at Patna.

.... Respondent/s

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Appearance :

(In C. REV. No. 44 of 2016)

For the Petitioner/s : Mr. Y.V. Giri, Senior Advocate

With Mr. Nikhil Kr. Agrawal

For the Respondent/s: Mr. Piyush Lall, Advocate

(In C. REV. No. 47 of 2016)

For the Petitioner/s : Mr. Chitranjan Sinha, Sr. Advocate

With Mr. Sanjeev Kumar
For the Respondent/s: Mr. Piyush Lall

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)

Date: 12-02-2016

The petitioners, in both these applications seek review of our order, dated 08.01.2016, passed in CWJC No. 11731 of 2015, and other analogous cases (Ravindra Kumar Singh & ors Vs. State of Bihar & anr), whereby we have dismissed a batch of writ applications filed under Article 226 of the Constitution of India, in relation to a challenge made to the result of *screening/preliminary test* held for the purpose of recruitment to the post of *District Judge (Entry Level)*, in the State of Bihar because both the cases are based on almost identical facts, involve identical issues and arise out of the same judgment and order of this Court under review, dated 08.01.2016, with the consent of the learned counsel for the parties have been heard together and are being disposed of by the present common judgment and order.

2. It may be pointed at the outset that the review petitioners were not parties to the writ proceedings out of which the present review applications have arisen.



3. Before we take note of the grounds for review and the circumstance leading to filing of these applications, we must point out that the appointments, in question, are governed by Bihar Superior Judicial Service Rules, 1951 (hereinafter referred to as the Rules) framed under Article 309 read with 233 of the Constitution of India. The Rules have, thus, statutory force. Sub-clause (iii) of Clause C of Rule 5 of the Rules prescribes that candidate, ten times the number of vacancies for appointment, are required to be called for *Main (written) Examination*.

4. For filling up of 99 posts of *District Judge (Entry Level)*, an advertisement, being Advertisement No. 1 of 2015, was issued inviting applications from eligible candidates for selection and appointment to the said posts. As prescribed in the advertisement and in conformity with Rules, a *screening/preliminary test* was held. There is no dispute that the petitioners fulfilled the eligibility conditions, they participated in the *screening/preliminary test* and they were declared successful at the *screening/preliminary test* to participate in the *Main (written) Examination*. The result was declared on 08.04.2015. In all, 173 marks came to be fixed as the cut-off marks in order to declare such number of candidates

successful for the *Main (written) Examination* as required in terms of the aforesaid sub-clause (iii) of Clause C of Rule 5 of the Rules.

5. After publication of the result, the High Court received certain representations made by the candidates with a grievance that *model answers*, prepared in relation to certain questions, were incorrect and there were some such questions, which were incorrectly framed in such a manner that there could not be any correct and definite answer. The Selection and Appointment Committee of the High Court, upon considering such representations, found some of such grievances raised by the candidates to be correct and decided to re-evaluate the *answer-sheets* on the basis of revised *model answers*. It was also decided to delete two questions from the scope of evaluation as the questions were found to be wrongly framed and could not have a definite answer. This exercise resulted into revision of the result of the *screening/preliminary test*. The *screening/preliminary test* was based on *objective multiple choice questions*. A revised result was, accordingly, published. Applying, again, the statutory requirement as prescribed under sub-clause (iii) of Clause C of Rule 5 of the Rules, 176 came to be fixed as the cut-off marks. This exercise resulted into 79

candidates, who had earlier qualified for the *Main (written) Examination*, on the basis of *screening/preliminary test*, becoming unsuccessful as they were found to have less than 176 marks as per the revised list. The review petitioners are among such 79 candidates.

6. The revised list, thus, became the result of the *screening/preliminary test* on the basis of which a candidate could participate in the *Main (written) Examination* as prescribed under the Rules.

7. Some of the candidates, who were earlier declared successful on the basis of 173 as the cut-off marks but had scored less than 176 on the basis of the corrected result fixing 176 as the cut-off marks, approached this Court by filing several writ applications. The petitioners of the present review applications did not raise any grievance against revision of the result of *screening/preliminary test*.

8. A Division Bench of this Court, hearing the said writ applications, passed an interim order, on 26.06.2015, to the following effect:-

“Post all the writ petitions for admission on 3rd of August, 2015.

In the meanwhile, such of the candidates (a) who have secured 173 marks, before the key to the question paper was revised for 8 questions and 2 questions were deleted by the High Court; and (b) who have secured 173 marks after revision of the

scoring in the light of the revised key, shall be permitted to appear in the main examination."

9. It is on the strength of the said interim order that these petitioners participated in the *Main (written) Examination* for the said posts held on 12.07.2015.

10. For the purpose of the present adjudication, we need not go into various facts to the effect that several other writ applications were filed after the *Main (written) Examination* was held raising issues that there were several discrepancies in the *model answers/framing of questions* of the *screening/preliminary test*, which still survived and required to be rectified. Such facts have been elaborately dealt with in the judgment and order under review.

11. This Court, by the judgment and order under review, finally dismissed the batch of writ applications, *inter alia*, in the following terms:-

"59. In the result, all these writ applications are dismissed.

60. The interim orders, including the order, dated 26.06.2015, stand vacated. All interlocutory applications stand disposed of.

61. It is made clear that since we have vacated the interim order, dated 26.06.2015, candidature of such candidates for the *Main (written) Examination*, who have secured less than cut-off marks of 176, as per the revised list, shall not be considered for selection as they were allowed to appear in the *Main (written) Examination* on the basis of the said interim order."



12. The petitioners, in the present applications, are such, who were earlier declared successful for appearing at the *Main (written) Examination* on the basis of *screening/preliminary test*, when the cut-off marks was fixed as 173. However, upon revision of the result of *screening/preliminary test* as noted above, they were found to have secured less than the cut-off marks, i.e. 176, subsequently fixed by the High Court. They were allowed to participate in the *Main (written) Examination* on the basis of the interim order, dated 26.06.2015, aforementioned. The result of the *Main (written) Examination* was published by the High court on 22.02.2016. It is the case of the review petitioners that on the basis of the *Main (written) Examination* in which they had participated on the strength of interim order of this Court, dated 26.06.2015, they were declared successful in the result published on 22.01.2016/

13. Subsequently, the High Court came out with a Corrigendum ,on 01.02.2016, in following terms:-

"PATNA HIGH COURT
NOTICE
(Corrigendum)

"The Hon'ble Division Bench of the Patna High Court vide judgment dated 08.01.2016 passed in CWJC No. 11731 of 2015 (Ravindra Kumar Singh Versus the High Court of Judicature at Patna through its Registrar General

& ors.) and its analogous cases, has been pleased to observe and direct, inter alia, as under-

It is made clear that since we have vacated the interim order, dated 26.06.2015, candidature of such candidates for the main (Written) Examination, who have secured less than cut-off marks of 176, as per the revised list, shall not be considered for selection as they were allowed to appear in the main (Written) Examination on the basis of the said interim order.

In view of the aforesaid judgment of the court, it is for information to the following candidates, who have been declared successful in the main (Written) Examination held on 12.07.2015 for interview as per Court's notice dated 22.01.2016, that they are not to be called for interview as they have obtained less than 176 marks in the revised result of the Preliminary Test uploaded on the website of the Court on 25.05.2015-

Roll Nos.1111001235, 1111001480, 111002297, 1111004007, 1111005233.

By order of the Court
Sd/-

Registrar General

PATNA HIGH COURT, PATNA

Date: 01.02.2016"

14. Aggrieved by the said Corrigendum, the petitioners have approached this Court, seeking review of the order, dated 08.01.2016, of the Division Bench itself. The petitioners were, admittedly, not parties to the said proceedings and they seek review of our judgment and order only in a circumstance, where they participated in the written examination on the basis of an interim order, dated

26.06.2015, which came to be vacated, specifically, by the order under review.

15. We have heard Mr. Y.V. Giri and Mr. Chitranjan Sinha, learned Senior Advocates, representing the petitioners. We have also heard Mr. Piyush Lal, who has represented the High Court.

16. The common submission, which has been raised by learned Senior Counsel in support of the review applications, is that the review petitioners had participated in the *Main (written) Examination* on the strength of an interim order, dated 26.06.2015, passed by this Court. The said interim order did not contemplate that participation in the *Main(written) Examination* of such candidates on the basis of interim order would be subject to final result of the case. They have stretched their submissions to the extent of arguing that the order, dated 26.06.2015, cannot be said to be “*interim in nature*” inasmuch as the direction, issued by the said order for lowering down to cut-off marks, was not made subject matter of the outcome of the main writ applications and as such, the aforesaid order was final to that extent. They have, accordingly, contended that this Court, by the judgment and order under review, has



committed an error apparent on record by vacating the interim order, dated 26.06.2015, and holding that such candidates, who have secured cut-off marks of 176, as per the revised list, shall not be considered for selection inasmuch as they were permitted to appear in the *Main (written) Examination* on the basis of the said interim order. It has been further argued that considering the extraordinary situation in the facts and circumstances of the present case, where the petitioners have scored such marks in the *Main (written) Examination* by virtue of which they qualify for interview, it would be just and equitable to allow them to appear in the interview.

17. They have also submitted that the judgment and order, under review, has adversely affected the rights of these petitioner and, therefore, they ought to have been given an opportunity of hearing before passing the judgment and order under review.

18. We have given our anxious consideration to the materials on record and the submissions made on behalf of the petitioners. There are three well recognized grounds for reviewing an order passed by a Court, viz, (i) discovery of new and important matters or evidence; (ii) mistake or

error apparent on the face of the record or (iii) any other sufficient reason.

19. Neither any ground has been taken in these applications that review of the judgment and order is required because of discovery of new and important matter or evidence seeking review nor any submission to this effect has been made. In order to bring the case in the second category, it has been pleaded and argued that in the absence of any stipulation in the interim order, dated 26.06.2015, that result of the *Main (written) Examination* shall be subject to the final outcome of the main proceeding, this Court by finally disposing of the writ applications ought not to have held such candidates, who had participated in the *Main (written) Examination* only on the strength of the interim order, dated 26.06.2015, to be not eligible for being considered for selection. We outright reject the submissions so-advanced for the simple reason that the order of this Court, dated 26.06.2015, which has been quoted hereinabove, was apparently interim in nature. The word “meanwhile” in the said order, dated 26.06.2015, makes it clear that the said interim order was subject to final adjudication of the writ application, wherein the said interim

order was passed.

20. An interim order or Interlocutory order is intended to be of limited duration and it loses its force once final order is made in the case. Such order is, by definition, an order made pending the cause before its final disposal on merits and by its term, it stands superseded by a final order. The review petitioners, therefore, cannot take any advantage of the interim order on the basis of the mere fact that they had participated in the *Main (written) Examination*, upon final adjudication of the case on merits and the interim order itself having been vacated in specific terms, the review petitioners have no ground to stand seeking review.

21. Learned Senior Counsel has vehemently argued that applying the principles of equity, since the petitioners have secured such marks in the *Main (written) Examination* that they could have been allowed to appear at the interview, they should be given a chance to participate in the interview. According to them, if the petitioners are allowed to participate in the interview, by reviewing the judgment and order, it will be to the detriment of the none.

22. We have noted in our judgment and order, under review, that the selection process, in question, has



been undertaken in accordance with the Bihar Superior Judicial Service Rules, 1951, which have been made in exercise of the powers conferred upon proviso to Article 309 read with 233 of the Constitution of India. The Rules have, thus, statutory force and the provisions contained therein are binding in nature. As has been noted, the Rules prescribe that only such candidates can participate in the *Main (written) Examination*, who have cleared the *screening/preliminary test*. The Rules also prescribe that only 10 times the number of vacancies for appointment are required to be called for the *Main (written) Examination*. In conformity with the said provisions, the result of *screening/preliminary test* was declared and subsequently revised. We have upheld the revision of the result of the *screening/preliminary test* fixing 176 as the cut-off marks. Those, who do not figure as successful candidates on the basis of revised result of the *screening/preliminary test*, cannot be said to be eligible to appear at the *Main (written) Examination*. Merely because some of them were allowed by an interim order passed by this Court to participate in the *Main (written) Examination*, it cannot be said that they acquired any indefeasible right to be considered for their selection on the

basis of the said examination.

23. It is not in dispute that the marks, scored by the petitioners at the *screening/preliminary test*, is less than the cut-off marks fixed by the High Court. The interim order passed by this Court, in any manner, does not improve the cases of these petitioners for the reason that we have finally dismissed various writ applications upholding thereby the result of the *screening/preliminary test*. The said interim order was made till disposal of the writ applications and once the writ applications came to be disposed of by the judgment and order under review, the interim order completely lost its force.

24. We do not find any force in the submissions advanced on behalf of the petitioners that before passing the judgment and order under review, they ought to have been given an opportunity of being heard as they stood adversely effected by the said judgment and order. The review petitioners did not question the revised result of the *screening/preliminary test* fixing 176 marks as the cut-off marks after re-evaluating the answer-sheets having been done on the basis of correct model answers and deleting two questions from the scope of evaluation as they were



found to have incorrectly framed. The review petitioners, thus, accepted the decision of the Appointment & Selection Committee in declaring them unsuccessful on the basis of the revised result of *screening/preliminary test*. Some of the candidates approached this Court challenging the result of the *screening/preliminary test* by filing various writ applications. This Court passed an interim order, as has been noted, giving an opportunity to such candidates, who were declared qualified, to appear at the *Main (written) Examination* on the basis of pre-revised list. These petitioners took advantage of the said interim order and participated in the *Main (written) Examination* and were fully aware of the facts that they were doing so under an interim order passed by this Court. Any interim order, passed in a proceeding, is subject to final adjudication of the proceeding, which the petitioners knew. The plea that the said order of this Court, dated 26.06.2015, was not an interim order, in the absence of any stipulation that the result of the candidates who participated in the *Main (written) Examination*, was not made subject to final adjudication of the writ proceeding, is wholly misconceived, illogical and not sustainable. In order to become a candidate eligible to

participate in the *Main (written) Examination*, he was required to have passed the *screening/preliminary test*, which the petitioners did not ,admittedly, do.

25. Mr. Y. V. Giri, learned Senior Counsel, has placed reliance on Supreme Court's decision in the case of ***Karnataka Rare Earth and another Vs. Senior Geologist, Department of Mines and Geology and another***, reported in ***(2004) 2 SCC 783***, in support of a plea that no act of Court should prejudice any person in whose favour legitimate expectation has been created applying the doctrine of *actus curiae neminem gravabit*. We fail to appreciate as to how the decision in ***Karnataka Rare Earth*** (supra), supports the case of the review petitioners by invoking the doctrine of *actus curiae neminem gravabit* in the present facts and circumstances of the case. On the contrary, the Supreme Court's decision, in ***Karnataka Rare Earth*** (supra), demolishes the very contention advanced on behalf of the review petitioners. Paragraph 11 of the said decision is being extracted hereinbelow, which deals with the consequence of final adjudication on the advantages derived by a party on the strength of interim orders passed by a Court in a case:-

"In the facts of this case, in spite of



the judgment of the High Court, if the appellants would not have persuaded this Court to pass the interim orders, they would not have been entitled to operate the mining leases and to raise and remove and dispose of the minerals extracted. But for the interim orders passed by this Court, there is no difference between the appellants and any person raising, without any lawful authority, any mineral from any land, attracting applicability of sub-section (5) of Section 21. As the appellants have lost from the Court, they cannot be allowed to retain the benefit earned by them under the interim orders of the Court. The High Court has rightly held the appellants liable to be placed in the same position in which they would have been if this Court would not have protected them by issuing interim orders. All that the State Government is demanding from the appellants is the price of the minor minerals. Rent, royalty or tax has already been recovered by the State Government, and, therefore, there is no demand under that head. No penal proceedings, much less any criminal proceedings have been initiated against the appellants. It is absolutely incorrect to contend that the appellants are being asked to pay any penalty or are being subjected to any penal action. It is not the case of the appellants that they are being asked to pay a price more than what they have realized from the exports or that the price appointed by the respondent State is in any manner arbitrary or unreasonable."

26. Applying the *ratio* of the Supreme Court's decision in case of ***Karnataka Rare Earth and another*** (supra), the review petitioners are liable to be placed and have rightly been placed in the same position in which they would have been, had the Court not allowed them to participate in the *Main (written) Examination* by issuing the interim order, dated 26.06.2015, aforementioned.



27. The other Supreme Court's decision, namely, ***Board of Control for Cricket in India and another vs. Netaji Cricket club and others***, reported in ***(2005) 4 SCC 741***, relied upon, on behalf of the review petitioners, is equally inapplicable in the facts and circumstances of the present case and it does not, in any manner, support the case of the petitioners seeking review of our order.

28. Mr. Y. V. Giri, learned Senior Counsel, has finally relied on a Supreme Court's decision in the case of ***Ramesh Chandra Sankla and others vs. Vikram Cement and others***, reported in ***(2008) 14 SCC 58***, to submit that in order to meet the ends of justice, the review petitioners should be allowed to participate in the process of interview in the peculiar facts and circumstances of the case, which, according to him, would be just and equitable. We need not elaborate the well accepted principles that equity operates only when the law is silent. The equity cannot operate against law. Under the Rules, only such candidates could be allowed to participate in the *Main (written) Examination*, who had successfully cleared the *preliminary test*. The review petitioners cannot be said to have cleared the *preliminary test*. They can, therefore, not be held to be

eligible to appear in the *Main (written) Examination*, though they had participated in the *Main (written) Examination* on the basis of an interim order.

29. In view of the discussions as above, we do not find any merit in these applications, which are, accordingly, dismissed.

30. There shall, however, be no costs.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

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