

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2732 of 2013

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1. Madhuri Kumari D/O Brij Deo Choudhary R/O Mohalla- Kurji, Police Station-
Digha And District- Patna.

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Controller Of Examination, Bihar Combined Entrance Competitive Examination Board I.A.S. Association Building, Near Airport, P.S.- Airport, District- Patna
3. The Secretary Bihar Combined Entrance Competitive Examination Board, I.A.S. Association Building, Near Airport, P.S.- Airport, District- Patna
4. Officer On Special Duty Bihar Combined Entrance Competitive Examination Board, I.A.S. Association Building, Near Airport, P.S.- Airport, District- Patna
5. Information Officer Bihar Combined Entrance Competitive Examination Board, I.A.S. Association Building, Near Airport, P.S.- Airport, District- Patna
6. The State Of Bihar Through The Principal Secretary, Education Department, Govt. Of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manish Kumar No. 2

For the Respondent/s : Mr. P.K. Shahi, Sr. Advocate

Mr. Rajesh Kumar Sinha, A.C. to G.P.-25.

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 04-02-2016

In this writ petition filed under Article 226 of the Constitution of India, the petitioner has prayed for a direction upon the respondents to compensate her adequately for her illegal lodgment in jail custody in connection with Hawaii Adda P.S. Case No. 200 of 2011 without any cogent material/evidence against her causing her loss of public image besides causing her enormous harassments.

Brief facts relevant for disposal of the case shall be noticed and they are:-

The Bihar Combined Entrance Competitive Examination



Board (for short 'the Board') invited application for examination of Diploma Certificate Entrance Competitive Examination, 2011 to select students for various institutions. The petitioner applied for Para-medical Dental (PMD) course. She participated in the written examination conducted by the Board and on being declared successful was called for counseling for which she appeared before the Board on 10.11.2011. The Board in course of counseling grew suspicious about her writing in the written test. She was directed to write a paragraph before the Counselling Committee. On verification of the handwriting of the petitioner with her handwriting on the answer sheet, the Committee came to the conclusion that both of them did not match. Even the videography of the petitioner taken during the examination did not match. Finding it to be a case of impersonation and commission of fraud, an F.I.R. (Annexure-1) was lodged under sections 419, 420, 468 and 34 of the Indian Penal Code and she was taken into custody. A writ petition being C.W.J.C. No. 4875 of 2012 was filed by her for a direction upon the respondents to take her admission in the applied course pursuant to the examination conducted by the Board in the year 2011. A Bench of this Court by order dated 17.04.2012 (Annexure-2) allowed the writ petition. The learned Judge, in the said order, observed that even if the actions of the Board are not mala fide it was certainly an act in gross haste

without exercising reasonable care and caution. The respondents were admonished to act cautiously and carefully while dealing with a citizen. Having held so, the Court in the last paragraph of the judgment observed as under:-

“The petitioner deserved retribution. In absence of any challenge to the First Information Report, the Court refrains, and leaves her to pursue such remedies as she may be advised both with regard to the police report and retribution.”

It has been submitted that the criminal proceeding initiated against the petitioner was challenged before this Court which has been allowed and the prosecution has been quashed. In this factual background, the present writ petition has been filed for adequate compensation for her loss of prestige and the uncalled for humiliation she suffered due to errant acts of the respondent Board.

I have heard Mr. Manish Kumar No. 2 for the petitioner and Mr. P.K. Shahi for the respondent Board as also the Counsel for the State.

The Counsel for the petitioner would argue that the respondent Board did not act diligently and merely on suspicion lodged the F.I.R. and the petitioner was sent to Jail custody and thereby she suffered humiliation. The Writ Court in the order dated 17.04.2012 (Annexure-2) looking through diverse materials placed before it including the photograph/videography taken in the



examination hall held that the Board did not act cautiously and carefully while dealing with the ordinary citizens like the petitioner. Since the petitioner on account of such irresponsible act of the respondent Board had to suffer imprisonment in jail besides the loss of image in the Society, she is entitled to be compensated. Unrelenting respondent Board filed an intra-Court appeal against the writ Court order which was withdrawn. Strongly relying on the observations made by the learned Judge dealing with C.W.J.C. No. 4875 of 2012 (Annexure-2), it has been submitted that the petitioner is entitled to the relief. In support of his submission, he has relied on a judgment dated 17th November, 2015 passed by Hon'ble Supreme Court in ***Dr. Ram Lakhan Singh vs. State Government of Uttar Pradesh (Writ Petition (Civil) No. 933 of 2014)***.

In contra, the Counsel for the respondent Board submitted that in view of large scale corrupt practices adopted by the examinees which is not a new phenomenon for the State of Bihar, the Board adopted the practice of asking the candidate appearing at the counseling to write a paragraph and to compare it with the writings on OMR (answer-sheets) in case they suspect it to be a case of impersonation. This was applied uniformly in cases of all such candidates/examinees. The petitioner was not the only handpicked for the same. It was a bona fide process adopted by the Board to curb the



rampant corrupt practices adopted at the written examination. Before taking further action, the photograph/videography of the petitioner taken at the examination hall/center was also seen and evaluated. Having found adequate reasons to suspect it a case of impersonation, the criminal case was lodged and the consequences thereof followed. Before taking such action, a verification team consisting of Retired Teacher of Bhagalpur College of Engineering, Retired Teacher of Bihar College of Physiotherapy and Occupational Therapy, Patna and Teacher, Government Polytechnic, Patna was constituted to examine and evaluate the two handwritings of the petitioner. The team compared the above two handwritings and gave their opinion/comment as '*require further verification*'. In order to solidify the suspicion, the two handwritings of the petitioner-examinee was referred to a senior team consisting of Retired H.O.D., Sanjay Gandhi Institute of Dairy Technology, Tutor, P.S.M., Nalanda Medical College, Patna and Lecturer, Government Women Polytechnic, Patna. The petitioner was given another chance to give specimen handwriting before the said team. On close comparison of the specimen handwriting(s), the senior team also opined that handwriting of the candidate (petitioner) taken before the team did not match with the handwriting on OMR answer sheets. The team also analysed the video clips taken during examination. He would further argue that the



judgment of the Hon'ble Apex Court on which the petitioner has relied in support of the writ petition was rendered in the peculiar facts and circumstances of the case. The salient features noticed by the Apex Court for allowing compensation are not the features of the present case. After the order passed by this Court and no interim relief granted to the respondent Board in the Writ Appeal, the petitioner was called in and offered admission in the institution wherein she was admitted and now cleared the course.

I have considered the rival contentions and perused the materials on record. Pristinely, the case of the writ petitioner is founded on some observations made by this Court in C.W.J.C. No. 4875 of 2012 (Annexure-2) wherein it was noticed that in the given facts and the conclusions of the Court thereon, the petitioner deserves retribution but left her to pursue such remedies as may be advised to her. On institution of the criminal case, the investigation commenced in which the order dated 25.01.2012 (presumably the order taking cognizance) was passed which was challenged by her in Cr. Misc. No. 36289 of 2013. A copy of the order dated 29.08.2013 passed in the said case is placed on record as Annexure-4. This Court in deference to the findings/observations made in C.W.J.C. No. 4875 of 2012 (Annexure-2) as also the other materials available on record, quashed the order dated 25.01.2012 on 29.08.2013. The present writ petition



has been filed thereafter stating that she has no other alternative and efficacious remedy available in law. In the writ petition, the Officer on Special Duty and the Information Officer of the respondent Board have been made respondents. Since the sheet anchor of the petitioner's case is the order dated 17.04.2012 (Annexure-2), I perused the judgment between the lines. The learned Judge in the said order at internal page 7 thereof dealing with the case noted as under:-

“Public power vested in public authority is meant to be exercised for the public good. A functionary of the Government/authority vested with public power is required to act cautiously and carefully while dealing with a citizen. The power inheres in the authority and not the individual. If the power is not exercised properly and prudently the answerability has to be individual and not institutional.....”

If the answerability, in the facts of the case, was found individual and not institutional then how the writ petition has been filed against the institution and not against the individuals who, constituted the Counseling Committee or the handwriting verification team who, according to the petitioner acted recklessly or malafidely with a view to penalize her or damage her public perception. The entire exercise taken by the Board may not be found, on scrutiny, rational or reasonable but the same cannot be said to be wholly malafide or completely irrational. The Writ Court dealing with the previous writ of the petitioner (Annexure-2) also found as under:-

“The Court holds that even if the actions of

the Board are not malafide, it is certainly an act of gross haste without exercising reasonable care and caution.....”

Further, the Writ Court on the strength of the conclusions and findings derived could have granted the relief prayed for in this application by moulding the relief but the same was advisedly not done and the petitioner was left to seek appropriate remedy as advised to her.

The reliance placed by the petitioner on ***Dr. Ram Lakhan Singh (supra)*** appears inappropriate. In the said judgment, the Hon’ble Apex Court noted diverse special features in detail and in view of the peculiar facts and circumstances of the case as also considering the long litigation fought by him wherein he was ever denied payment of the retiral dues for a pretty long time, the judgment was passed for payment of compensation. Those special features of the case lack in the present case. That apart, the petitioner is seeking relief of grant of compensation in the public law. The magnitude of the damage or sufferings either physical or mental or the loss of her image in the society suffered by her cannot be appraised by this Court. Normally, in such matters, the Writ Court is reluctant in determining the quantum of such damage. It is a matter of evidence. The petitioner has remedy in private law.

In the light of the observations made above, in the

considered opinion of this Court, the relief cannot be granted to the petitioner by invocation of the extraordinary and discretionary writ jurisdiction of the Court. The writ application is dismissed.

No order as to cost(s).

(Kishore Kumar Mandal, J)

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