

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16246 of 2014

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Madhuri Kumari Daughter of Shri Ramavtar Singh Presently residing at the
Residence of Dr. Arbind Kumar Singh, Thakurbari Road, Kadamkuan, Patna -
800003

.... Petitioner/s

Versus

The Registrar General Patna High Court

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Kishore Verma
Mr. Amit Prakash
Mr. Abhishek Anand

For the Respondent/s : Mr. Bindhyachal Singh

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 27-09-2016

In exercise of powers conferred u/s 34(1) of the
Advocates Act, the Patna High Court framed Rule called the
Registration of Advocates as Advocates-on-Records of the Patna High
Court Rules (for short 'the Rules') and conducts the Advocate-on-
Records examination. Any Advocate, who wish to practise in Patna
High Court, is required to pass the said AOR examination. The
petitioner being a practising Advocate having been enrolled with the
State Bar Council appeared in the AOR examination conducted by the
High Court in 2013. Having failed to clear the said examination, the
present writ petition is filed for declaring her pass in the said
examination after ignoring the marks of paper-IV. Alternatively, she
has prayed to allow her to appear in only paper-IV in the next AOR

examination to be conducted by the respondent-High Court.

The brief facts which are not much in dispute may be noticed. On 21.10.2013, the date of AOR examination was announced. 02.11.2013 was the last date for filing application. The petitioner filed her application and was issued admit card on 26.11.2013. The examination was to be conducted on 07.12.2013 and 08.12.2013. Annexure-1 is the original syllabus which was notified. Paper-IV of the AOR examination is in two parts. The first part is Leading cases (Group-A) carrying 40 marks for 02 questions. The present controversy relates to Group-A of the IVth paper of the said AOR examination. It is stated that a list of 30 celebrated cases was notified by the respondent. On 2nd December, 2013, a change was effected in the said list of 30 leading cases whereby, 05 cases were taken out and 05 new cases were inserted. This was publicized on the website of the respondent. It is stated that questions were asked with reference to those five leading cases which were substituted on 02.12.2013. The question paper of the said subject is Annexure-5. The total marks for all subjects was 400. Any candidate obtaining 60% marks in aggregate was to be declared pass. The petitioner did not know the change in the list of leading cases made by the respondent until the date she took the examination. She, however, appeared and scored 34 marks in Group A of IVth paper. In total, she secured 221 marks. Resultantly, she was declared fail.



It has been submitted that the respondent has arbitrarily changed the syllabus which was not minor in nature. All the five questions asked pertain to those leading cases which were inserted on 2nd December, 2013. This will amount to changing the Rules of the game which is not permissible in law. In this connection, he has also drawn attention of the Court to Rule-provisions which shall be noticed in later part of the order. Alternatively, it has been submitted that to do justice to the petitioner 40% of the total marks allotted to the Group A of IVth paper be deducted in her case and the marking be made. If that is done, the petitioner having secured 34 marks in the said subject at least qualifies under the Rule-provision to appear in that paper only in the next AOR examination. Taking the path of least résistance, the same may be granted to the petitioner. In order to support the said contention, he has relied on the cases of **Akshey Lal Pandit vs. State of Bihar (2011(3) PLJR 258)** and **Manoj Kumar vs. State of Bihar (2012(1) PLJR 578)**.

Per contra, Mr. Bindhyachal Singh, appearing for the respondent High Court, would urge that under Rule (v) (a) of Rule 7 of the Rules only leading cases is provided. The Rules provide for syllabus in Paper-I and II, but does not state or disclose the syllabus for the subject-III and IV. It is, therefore, incorrect to say that the syllabus provides under the Rules was changed. True it is that initially the respondent had published a list of 30 leading cases but on



2nd December, 2013, 05 leading cases provided in the list were taken out and substituted by 05 other leading cases. The petitioner failed to obtain 50% marks in Paper-IV and hence was rightly declared fail in the examination. She could not obtain 40% marks in the said subject and as such the alternative prayer should also be not granted to the petitioner. In this connection, he has drawn attention of the Court to Rule 7(V)(a) which provides that each paper will carry 100 marks and in order to pass the examination a candidate must obtain a minimum 50% of marks in each paper and 60% in aggregate. It is also not a case that the petitioner, in aggregate, secured 60% marks in other subjects. It has not been shown with reference to the rule-provision that there is a statutory bar in altering the list of leading cases earlier provided for the convenience of the candidates. As soon as the list of leading cases was altered/changed, it was uploaded on the website of the Patna High Court for consumption of all the candidates. The cases on which the petitioner has relied relate basically to recruitment in service, but in the case at hand the candidates clearing the AOR examination are permitted to practise at the Patna High Court. It is also not a case where wrong questions were set or wrong answers given for those questions. By such change/alteration in the list of leading cases all the candidates taking the said examination were similarly affected. It applied to each and everyone taking the examination. There is no violation of Article 14

of the Constitution of India. The subtraction/addition in the list of leading cases was consciously made by the respondent with prior notice to the applicants/candidates. It is thus a case of minor change with prior notice to the candidates taking the AOR examination.

Mr. Jitendra Kishore Verma has submitted that it is a case of breach of promissory estoppel. A representation was made by publishing the list of cases, although not provided in Rule on the basis whereof the aspiring candidates prepared for taking the examination which ultimately was changed or altered to the disadvantage of the petitioner. In the midst of the examination process the respondent could not have done so. It has adversely affected the candidates as the questions were asked in relation to those 05 leading cases which were inserted in the list of leading cases on 2nd December, 2013.

Combating the said submission, it has been argued on behalf of the respondent that even after the change in the list of leading cases made five days prior to the examination the petitioner appeared at the examination and waited till the publication of result and only thereafter the writ petition has been filed. It is thus not a case covered by the principles of promissory estoppel.

Rule 4 provides that upon coming into force these Rules, no one shall be entitled to engage an advocate to act in connection with any litigation whether pending or to be instituted in the High



Court as his/her Advocate-on-Record unless he is a registered as Advocate-on-Record. For being registered as Advocate-on-Record one has to apply and pass a test/examination to be held by the High Court. Rule 7(IV) states that the examination shall be held in 04 subjects. Item nos. 1 and 2 thereof are practice and procedures of the Patna High Court and drafting respectively which provide the syllabus. However, under item no. 3 (elementary knowledge of book keeping & Accounts and professional ethics) and item no.4 (leading cases) the syllabus is not provided. A candidate taking the examination is expected to be conversant with all the leading/celebrated cases. To facilitate the candidate the respondent had enlisted 30 such leading cases which was on 2nd December, 2013 altered by taking out 05 leading cases and inserting 05 new leading cases. There is no controversy that the questions were asked from those 05 leading cases which were made part of the list of leading cases. There is further no dispute that the altered list of leading cases was uploaded on the website of the respondent for the information to all the candidates. The case of the petitioner that she could know about such insertion of 05 new leading case only on the date of examination or a date prior thereto shall not have much relevance in deciding the matter. The fact of the matter remains that it was done at least 05 days prior to the date of examination.

In support of his contention, Mr. Verma has relied on

Akshey Lal Pandit vs. State of Bihar (2011(3) PLJR 258). One of the disputes in the said case was in respect of omission of 25 questions from consideration. Finding that those 25 questions did not have the correct option(s), the Bihar Public Service Commission (for short 'the Commission') decided to omit these 25 questions from consideration and to declare result on the basis of the remaining 225 questions only. It was a case of preliminary test/examination conducted by the Commission to declare the candidates to participate in the main examination for the recruitment to the Bihar Judicial Service. Having noted the salient feature of the case, a Division Bench of this Court, in the interest of justice, directed the Commission to extend its result or the qualifying marks by 25 marks. The lowest qualifying marks fixed by the Commission was directed to be further lowered by 25 marks. The purpose was to have more number of candidates appearing at the main examination for recruitment to the Bihar Judicial Service. The factual background in which the order was passed was quite different and distinct. On the basis of the ratio of the said case, it has been strenuously urged by the petitioner that in her case too the total marks (40) allotted to part-A of paper-IV be reduced and computation of marks be done. If such reduction is allowed then she would obtain more than 40% marks in the said (paper-IV, part A) subject and is entitled to take the examination in the said paper only in the next AOR examination in

view of Rule 7(XI(a) of the Rules. In my view, it is difficult to apply the ratio applied by the learned Division Bench in the case of **Akshey Lal Pandit** (supra) to the facts of this case and grant the relief.

Another case on which reliance has been placed by the counsel for the petitioner is the case of **Manoj Kumar vs. State of Bihar since reported in 2012 (1) PLJR 578** which also relates to the preliminary test/examination conducted by the Commission for recruitment to Class-II post under State service. Feeling aggrieved, many unsuccessful candidates challenged the result published by the Commission for the said examination on the contention that many of the questions or their answers key asked at the examination were found wrong and the examinees had adversely got affected on account of such error in setting paper and preparation of the answer key. The Commission constituted a Committee of experts and some of those questions were omitted from computation of marks. For remaining questions fresh answer key was prepared and all the answer sheets were then re-evaluated. In the process of re-evaluation, some 915 candidates who were earlier declared successful failed to pass preliminary test/examination. In the light of the order passed by the learned Single Judge the Commission scaled down the cut-off marks so as to include those 915 candidates in the list of successful candidates. The revised merit list so prepared by the Commission was approved by the learned Single Judge. The matter was carried in



appeal before the Division Bench by those who did not secure cut-off marks even after reevaluation made by the Commission. The Division Bench found a solution by directing the Commission in such contingency to omit the offending questions and to give prorata marks to the examinees. It was so done as the matter pertains to recruitment of service where large number of candidates taking the main examination was likely to throw up better candidates for selection. In the context and on the facts the said judgment was delivered would not apply to the present case. Out of 30 leading cases earlier publicized, only 05 of them were changed which was minor in ratio. Sufficient time was given to the candidates to go through those cases as well. It may be reiterated here & now that the Rule does not provide a syllabus for this paper. In order to facilitate the candidates taking examination such list of leading cases was provided in which alteration was made and publicized at least 05 days prior to the date of the examination. It affected all the candidates taking the examination uniformly. One has to keep in mind that the examination was not for the purpose of recruitment to service. The purpose of examination is to register or enlist those practising advocates as AOR to practise at the Patna High Court who are well conversant with the law, the practice and procedures. A candidate is also required to be conversant with the professional ethics for which no syllabus is prescribed under the Rules. The contention of the petitioner that the case is covered by

Rule of promissory estoppel is also not sustainable in law in the attending facts of the case discussed above. It is not a case where on a representation the petitioner materially altered the position to her disadvantage. It was all about preparing on the celebrated case laws which a candidate desirous of practising at Patna High Court should be acquainted with. Such change or alteration affected each and every candidate equally.

In what I have observed above, I am unable to find any merit in the prayer/alternative prayer made by the petitioner and grant relief.

The writ application is dismissed. There shall be no order as to cost(s).

(Kishore Kumar Mandal, J)

HR/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	