

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15334 of 2016

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Avinash Kumar, S/o Shankar Prasad Singh, R/o Village/Mohalla- Ramdiri Nakati
Tola, Police Station- Matihani, District- Begusarai, Bihar.

.... Petitioner/s

Versus

1. The High Court of Judicature at Patna, through its Registrar General, Patna, Bihar.
2. The Registrar General, High Court of Judicature at Patna, Patna, Bihar.
3. The Registrar Appointment, High Court of Judicature at Patna, Patna, Bihar.
4. The Selection Committee, District Judge, Entry Level - 2015, High Court of Judicature at Patna, Patna, Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate
Mr. Ashish Giri, Advocate
For the Respondent/s : Mr. Piyush Lall, Advocate

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 25-10-2016

Heard learned counsel for the parties.

2. The challenge in the present writ application is to a decision of the Selection and Appointment Committee of this Court on 19th of May, 2015 whereby, a decision was taken to delete Question Nos. 21 and 93 of the Screening Test held on 22nd of March,

2015 pursuant to Advertisement No. 1/2015 for appointment to the post of District Judge (Entry Level) Direct from Bar Examination-2015.

3. In pursuance of the advertisement issued by this Court, the petitioner appeared in the Screening Test. Initially, the petitioner was found to have answered 68 correct answers and 31 wrong answers and was given 173 marks. Thereafter, after publication of Model Answers, many representations were received. After considering the representations, the Selection and Appointment Committee in its meeting held on 19th of May, 2015 found no error in the Model Answer Key in respect of eight questions, corrected the answers of another eight questions, but found the questions and answers of Question Nos. 21 and 93 as ambiguous and resolved to omit/delete the said questions. It was also decided that consequent to omission of Question Nos. 21 and 93 and correction of eight answers, the result be revised. In such revision of result, the marks of the petitioner increased to 175 but the qualifying cut of marks were 176 in view the number of candidates i.e. 10 times of the post advertised. Since the petitioner had obtained 175 marks, he was not eligible for appearing in the Main (Written) Examination. The petitioner was permitted to appear in the Main (Written) Examination pursuant to an interim order passed by this Court on 26th of June, 2015 in the writ

petitions filed by the other candidates (Annexure-10).

4. The grievance of the petitioner is that he has obtained 138 marks in the Main (Written) Examination and, thus, has obtained more marks than the selected candidates and that his right to seek appointment has been prejudiced adversely.

5. A number of writ applications were filed challenging the screening process. Such writ Applications bearing C.W.J.C. No. 11731 of 2015 (Ravindra Kumar Singh Vs. The High Court of Judicature at Patna & Ors.) and other analogous cases were dismissed on 8th of January, 2016 (Annexure-11). The petitioner was not the writ-petitioner but filed a review petition {Civil Review No. 44 of 2016 (Avinash Kumar Vs. Ravindra Kumar Singh & Ors)} seeking review of the order passed by this Court on 8th of January, 2016. The Review Application was dismissed on 12th of February, 2016 (Annexure-14). The petitioner filed Special Leave Petition No. 14654 of 2016 and also Writ Petition (C) No. 649 of 2016 before the Hon'ble Supreme Court which were dismissed on 12th of August, 2016. On Interlocutory Applications (I.A. 2-3/2016), the Hon'ble Supreme Court passed the following order on 2nd of September, 2016 (Annexure-21):-

“Heard learned counsel for the applicant.

Instead of review petition, liberty is granted to the petitioner/applicant to file writ petition(s) before the High Court

confined to the question of deletion of two questions.

I.A. Nos. 2-3 of 2016 in SLP (C) Nos. 24056-24057 of 2016 and I.A. No. 4 in WP(C) No. 649 of 2016 are allowed accordingly.”

6. It is in the light of liberty granted, the petitioner has filed the present writ application before this Court.

7. Argument of learned counsel for the petitioner is that the deletion of two questions is without any cogent reasons and, therefore, such questions should not have been deleted. In any case, the marks should have been allotted to the candidates who have attempted these questions. He relies upon a Division Bench Judgment of the Delhi High Court in Writ Petition (C) No. 8629 of 2016 (Anil Kumar Vs. Registrar General High Court of Delhi) decided on 30th of September, 2016.

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

9. The two questions which have been deleted, reads as under:-

“**21.** Which of the following Sections of Specific Relief Act deals with recovery of specific immovable property?

- | | |
|---------------|---------------|
| (a) Section 3 | (b) Section 4 |
| (c) Section 5 | (d) Section 6 |

93. Through how many States does river Ganga flow?

- | | |
|-------|--------|
| (a) 4 | (b) 3 |
| (c) 5 | (d) 2” |



10. Though, this Court in exercise of power of judicial review is not expected to act as an Appellate Authority to examine the decision of Selection and Appointment Committee, but even if the legality of the questions and answers are examined, we do not find that the decision of the Selection and Appointment Committee suffers from any patent illegality which may warrant interference in the writ jurisdiction of this Court.

11. Question No. 21 is that which of the following Sections of Specific Relief Act deals with recovery of specific immovable property? The question is not recovery of the immovable property in a summary manner or by way of a suit for specific performance. Therefore, the question was ambiguous and, therefore, there could not be any proper answer to such question. Therefore, we do not find that the decision of the Selection and Appointment Committee to delete the said question can be said to be incorrect in any manner.

In respect of Question No. 93, the question was that the Ganga flows through how many States. The answer was from 2 to 5. Since none of the answers was correct, it was decided to delete such questions.

12. The question as to whether the decision of the Selection and Appointment Committee can be interfered with in

exercise of judicial review has been examined in respect of the same selection process in Ravindra Kumar Singh's case (supra) wherein it has been held to the following effect:-

“28. From the pleadings on record, it is evident that the Appointment and Selection Committee, upon having received various representations on incorrect framing of questions and incorrect model answers, decided to delete two questions from the scope of evaluation and alter eight model answers for the purpose of correct evaluation of respective answer-sheets.

29. The question, which we are required to answer, in the present proceedings, in view of rival submissions made on behalf of the parties, is as to whether, while exercising power of judicial review in a proceeding under Article 226 of the Constitution of India, this Court should sit over the decision of the Selection and Appointment Committee on the aspects of framing of questions and preparation of model answers.

43. For preparation of the result of the *screening/preliminary* test, the Selection and Appointment Committee of the High Court, as has been noted above, considered the representations and took *suo motu* measures as it considered fit to rectify the errors, which had crept in, because of incorrect framing of questions or incorrect model answers, would it be justifiable in such circumstances for the High Court, exercising power of judicial review under Article 226 of the Constitution of India, to sit over the decision of the Selection and Appointment Committee on the point of framing of questions, preparation of model answers and re-evaluation of the answer sheets?

46. From what have been observed and held by the Supreme Court in **Mukesh Thakur's** case (supra), it clearly follows that if there is a discrepancy in framing of questions or evaluation of answers, it would be for all candidates appearing in

an examination and not for any particular candidate that a Court cannot take upon itself the task of a statutory authority.

49. In the case of **Rajesh Kumar** (supra), relied upon by learned counsel for the petitioners, the Supreme Court, instead of disturbing the process of selection, had directed re-evaluation of answer sheets on the basis of the correct model answers as suggested by the experts. What was ordered to be done, under the orders of the Supreme Court in case of **Rajesh Kumar** (supra), has already been done, *suo motu*, in the present case, by the Selection and Appointment Committee of the High Court. We do not find any reason to interfere with the decision taken by the Selection and Appointment Committee in the matter of correctness or otherwise of the questions and model answers, inasmuch as we cannot sit, in appeal, over such a decision in the present proceeding under Article 226 of the Constitution of India.

51. In our considered view, the decision of the Selection and Appointment Committee to consider the representations and cure the defect, as pointed out in the representations, was taken in order to maintain fairness in the process of selection and, on this ground, the High Court will not be required to act as expert of experts, in a proceeding under Article 226 of the Constitution of India, to consider the correctness of the wisdom of the Selection Committee.

54. (iii) In view of the Supreme Court's decision in the case of **Mukesh Thakur** (supra) and other judicial pronouncements as noted above, we are of the considered view that while exercising power of judicial review available under Article 226 of the Constitution of India, it is not permissible for this Court to take upon itself the task of Examiner/Selection Board and examine discrepancies and inconsistencies in the question paper and evaluation thereof, law to this effect has been laid down in most clear and unambiguous terms by the Supreme Court in the said decision, which was not

brought to the notice of the Division Bench of this Court in case of **Kumod Kumar** (supra).

(iv) No writ, in the nature of writ of *mandamus*, can be issued for lowering down the cut-off marks of *screening/preliminary* test in breach of the statutory prescription under sub-Clause (iii) of Clause 5 of Rule 5 of the Bihar Superior Judicial Service Rules, 1951.”

13. The Division Bench has referred to Supreme Court judgments reported as Himachal Pradesh Public Service Commission v. Mukesh Thakur and another, (2010) 6 SCC 759 and that reported as Rajesh Kumar and others v. State of Bihar and others, (2013) 4 SCC 690. Still further, reasoning given by the Bench in respect of the same selection process in respect of the jurisdiction of this court is binding on this Bench. Therefore, the decision to delete Question Nos. 21 and 93 cannot be said to be subject to judicial review and in any case, it cannot be said to be without any cogent reasons.

14. In respect of the argument that the candidates who attempted such questions should have been given marks is again not tenable for the reason that it was decided to delete such questions on account of ambiguous nature of questions and answers. The net result is that instead of 100 questions, the marks have been assigned for 98 questions. In fact, after revision of result, the grading of the marks of the petitioner increased from 173 to 175 though he could not cross the hurdle of cut off marks of 176. The Delhi High Court has ordered to



grant marks to all the candidates. Thus, granting of some marks or no mark does not alter the result published, as after deletion of the questions, all candidates are at par. None of the candidates stand to gain or lose by deletion of such questions as the overall marking is done on the basis of 98 questions and not 100 questions of which the candidates were expected to attempt.

15. Another argument raised by learned counsel for the petitioner is that the cut-off marks should have been relaxed, as was done in respect of the candidates appearing in the Main (Written) Examination.

16. We do not find any merit in the said argument as well. The Screening Test is not the part of examination process but a process to short-list the candidates to appear in the Main Examination. As per the rules, candidates, 10 times of the vacancies advertised, are to be called for appearing in the Main Examination. The posts advertised were 99, therefore, 990 candidates became eligible to appear in the Main Examination. 176 marks were obtained by a candidate at serial number 990, which was then fixed as the cut off marks. Such marks were obtained by many candidates; therefore, as many as 1024 candidates were called for appearing in the Main (Written) Examination. It was a large pool of the candidates who appeared for the Main (Written) Examination. Therefore, the

petitioner cannot be granted relaxation of marks for appearing in the Main (Written) Examination, as such relaxation would have no basis and the purpose. Such question has been considered by this Court in Ravindra Kumar Singh's case (supra).

17. The relaxation marks in the Main (Written) Examination was granted for the reason that only few candidates were eligible for *viva voce* in view of the marks obtained in the written examination. It was to enlarge the number of the candidates for the purposes of *viva voce*, the marks were relaxed. Therefore, relaxation of marks in the Main (Written) Examination, which is part of the examination process, cannot be claimed for relaxation of marks in the preliminary examination, which is Screening Test.

18. In view of the above, we do not find any merit in the writ application. Thus, the writ application stands dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

P.K.P.

AFR/NAFR	A.F.R.
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