IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.522 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 443 of 2016

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1. Udhav Kumar Mishra, Son of Late Ram Awtar Mishra, resident of village - Sakddi, P.O. Sakddi, P.S. Koilwar, District – Bhojpur.

2. Arun Kumar, Son of Sri Ram Lakhan Ram, resident of village - Suroundha, P.O. Paibigha, P.S. Belaganj, District – Gaya.

3. Suresh, Son of Sri Ramdhar, resident of village - Nagarpura, P.O. Barka Sihenpura, P.S. Simari, District – Buxar.

4. Ajay Kumar Ram, Son of Late Ramchandra Ram, resident of village - Malour, P.O. Maulour, P.S. Charpokhari, District – Arwal.

5. Ramasankar Ram, Son of Abhimanu Ram, resident of village - Barkanuao, P.O. Barkanuao, P.S. Buxar, District – Buxar.

6. Sudama Prasad Singh, Son of Late Baidnath Singh, resident of village - Kutubpur, P.O. Thathan Via Sarai, P.S. Hajipur Sadar, District – Vaishali.

7. Aanand Kishore Narayan, Son of Late Akhilish Prasad, resident of village - Dighi Kala (West), P.O. Hajipur Sadar, District – Vaishali.

.... Appellants

Versus

1. The State of Bihar through the Principal Secretary, Revenue and Land Reform Department, State of Bihar, Patna.

2. The Secretary, Revenue and Land Reform Department, State of Bihar, Patna.

3. The Bihar Staff Selection Commission, through its Secretary, Patna.

4. The Chairman, Bihar Staff Selection Commission, Patna 14.

……..Respondents-Respondents 1st Set.

5. Jainandan Prasad, Son of Sri Janki Prasad, resident of village - Rupachi, P.O. Ushari, P.S. Mahendia, District – Arwal.

6. Pankaj Kumar Singh, Son of Late Ram Shekhar Singh, resident of village - Dhamar, P.O. Dhamar, P.S. Ara Mufassil, District – Bhojpur.

7. Kishori Mohan Prasad, Son of Late Haridwar Singh, resident of village - Basanbigha, P.O. Uasari, P.S. Karpi, District – Arwal.

8. Laxman Prasad Keshari, Son of Late Basudeo Prasad, resident of village - Mahadeva Road, Ara, P.O. Nawada Ara, Town, District – Ara.

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.... Petitioner No. 2, 4, 6 & 9 in the writ petition)

…….Respondents 2nd set.

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Appearance :

For the Appellants : M/S. Pramod Mishra and Ramesh Kumar Thakur, Advocates.

For the Respondent Nos. 1 and 2 : Mrs. Namrata Mishra, G.A. 6 and Mrs. Archana Jha, A.C. to G.A. 6.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)
Date: 17-01-2017

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 29.01.2016, whereby the writ application filed by the appellants for seeking re-evaluation of the answer-sheets of all the candidates on the basis of correct answers and to quash the entire proceeding of examination as the respondents have not followed the guidelines as mentioned in an advertisement and to direct the publication of the entire results after re-evaluation of unsuccessful candidates.

The appellants are in service working as *Rajaswa Karamchari* for more than 10 years. An advertisement was published by the Bihar Staff Selection Commission for appointment to the post of Circle Inspector Limited Examination, 2014 from amongst the *Rajaswa Karamchari* The appellants applied for the post of Circle Inspector. The appellants competed for the test, but remained

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unsuccessful. Aggrieved, they invoked the writ jurisdiction of this Court wherein it was alleged that there was no condition of “cut-off marks” in the advertisement and that the appellants have been declared ineligible on the basis of incorrect model answer key of the O.M.R. questions.

In the counter-affidavit, it is pointed out that the advertisement was to fill-up 127 posts but only 100 candidates have been recommended as the minimum qualifying marks was not obtained by the candidates of different categories. In the supplementary counter-affidavit filed on 07.09.2015, it was pointed out that after the written examination, the respondents uploaded model answers on its website and after obtaining objections of the candidates, the matter was got examined through the experts and thereafter final result was published.

Learned Single Bench dismissed the writ application on the basis of the result dated 16.07.2007, issued by the Department of Personnel and Administrative Reforms, fixing the minimum cut-off marks.

Minimum cut-off marks have been fixed in order to ensure that the meritorious candidates alone are selected and appointed. Learned Single Bench quoted from the supplementary counter-affidavit filed on behalf of the Commission giving the marks obtained

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by each of the writ applicants. Therefore, it was stand of the Commission that the appellants are not meritorious candidates. Learned Single Bench found that the Commission has taken adequate measures by publishing the model questions and answers on the website inviting objections and on the recommendation of the expert, a uniform yardstick has been adopted for evaluation and declaration of the results. Therefore, no candidate may be permitted to nit-pick on the correctness or otherwise of the questions and answers after having participated and failed to succeed in the competitive examination.

We find that the reason of the Learned Single Bench is correct and in accordance with law and cannot be faulted with on any reason whatsoever. In the matter of answer key, the opinion of the experts is to be respected. This court in exercise of power of judicial review does not sit over the opinion of the experts as an appellate authority.

The appellants raised another argument in the Letters Patent Appeal that the appellants are over 50 years of age and therefore, they should be promoted without the process of competitive examination.

We do not find any merit in the said argument. Firstly, such argument was not raised before the learned Single Judge and that there cannot be any promotion contrary to Rules. Secondly, the

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advertisement was published inviting applications for the competitive test. The appellants participated in the selection process and competed for competitive test. Now after remaining unsuccessful, the appellants cannot be permitted to dispute the selection process and claim promotion *dehors* the test.

Consequently, the Letters Patent Appeal is dismissed.

(Hemant Gupta, ACJ)

(Sudhir Singh, J)

U.K./-Amit

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	23.01.2017
Transmission Date	

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