

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.551 of 2016

IN

LPA 1250 of 2016

- =====
1. Bihar Public Service Commission through its Chairman
 2. Chairman, Bihar Public Service Commission, Patna
 3. Secretary, Bihar Public Service Commission, Patna
 4. The Examination Controller, Bihar Public Service Commission, Patna.

.... Petitioner/s

Versus

1. Rajesh Chandra son of Sri Ramesh Chandra, resident of Flat No.302, Amba Residency, East Boring Canal Road, P.S. Buddha Colony, District- Patna (Bihar) 800001.
2. Prashant Kumar Jha, son of Om Prakash Jha, resident at Nebi Sahu's Building, P.S. Nagar (Begusarai), Patel Chowk, District- Begusarai (Bihar) 851101.

.... Petitioners-
Appellants-Opp.Party

3. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna
4. Rajeev Gautam son of Satyendra Sinha, resident at C/o Ramashish Mehta Lodge, R.No.6, Math Luxmanpur, Koiri Tola, P.S. Alamganj, P.O. Gulzarbagh, District- Patna-800007
5. Manoranjan Kumar, son of Ram Kishore Prasad, resident at + P.O. Paingree, P.S. Warisaliganj, District- Nawada (Bihar) 805130
6. Kripashankar Prasad son of Madhukaran Prasad, resident of Mohalla- Udrachamapur, P.O. Patna City, P.S. Mehdiganj, District- Patna (Bihar) 800008
7. Shahbaz Alam son of Md. Newsuddin, resident of village and P.O. Ramur, P.S. Forbesganj, District- Araria (Bihar) 854318
8. Raj Kumar Paswan, son of Raghunandan Paswan, resident of village- Bariyarpur, P.O. Gaispur Bariyarpur, P.S. Rajapakar, District- Vaishali (Bihar)
9. Gulshan Kumar son of Dhananjay Kumar, resident at Gulshan Sadan, Patel Road, Village- Adarsh Nagar, via + P.S. Sultanganj, District- Bhagalpur (Bihar) 813213
10. Anupam Anand son of Vijay Kumar Singh, resident of village+ P.O. Andaur, via + P.S. Mohiuddin Nagar, District- Samastipur (Bihar) 848502
11. Bipin Kumar Jha, son of Brajeshwar Jha, resident of Village+ P.O. Jogiya, via Anandpur, P.S. Bahadurpur, District- Darbhanga (Bihar)
12. The Principal Secretary, General Administrative Department, Govt. of Bihar, Patna
13. Kumud Ranjan, son of Shri Ram Pravesh Prasad, resident of village + P.O. Bardeya, P.S. Makhdumpur, District- Jehanabad (Bihar) 804422.

.... Respondents/Opposite Parties

with

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Civil Review No. 552 of 2016

IN

LPA 1235 of 2016

- =====
1. The Chairman, Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg, Bailey Road, Patna



2. The Bihar Public Service Commission through its Secretary, 15, Jawahar Lal Nehru Marg, Bailey Road, Patna

.... Petitioner/s

Versus

1. Ashutosh Kumar Jha Son of Late Babu Narayan Jha, resident of At + P.O. Dwalakh, P.S. Bheja, District - Madhubani (Bihar), Pin 847408
2. Dhiraj Kumar, Son of Shailendra Jha, resident of At + P.O. Sukhsena, P.S. B. Kothi, District Purnea (Bihar), Pin - 854203
3. Kanhaiya Jee Pathak, Son of Rameshwar Pathak, resident of village - Barwan, P.O. Asaon, P.S. Ander, District - Siwan (Bihar), Pin 841287
4. Dileep Kumar, Son of Ramprabhav Sharma, resident of At + P.O. Charh, P.S. Makhadumpur, District - Jehanabad (Bihar) Pin 804427
5. Sanjay Kumar Singh, Son of Umesh Singh, resident of village - Korai, P.S. Gadhpur, District - Begusarai
6. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna
7. Ajay Kumar Choudhary Son of Ram Vakil Choudhary resident of village - Sherpur, P.S. Vidyapati Nagar, District - Samastipur, Bihar

.... Respondent/s

with

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Civil Review No. 553 of 2016

IN

LPA 1229 of 2016

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1. Bihar Public Service Commission through its Chairman, 15 Jawahar Lal Nehru Marg, Patna
2. The Secretary, Bihar Public Service Commission, Bailey Road, Patna
3. The Examination Controller, B.P.S.C., Bailey Road, Patna

.... Petitioner/s

Versus

1. Rahul Diwan Son of Late Chaturbhuj Sahay Resident of village - Manjwari, P.O. Manjhwari, P.S. Simri, District - Buxar

.... Respondent/s

with

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Civil Review No. 554 of 2016

IN

LPA 1243 of 2016

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1. The Bihar Public Service Commission, Bailey Road, Patna Through Its Chairman.
2. The Additional Secretary-cum-Examination Controller, Bihar Public Service Commission, Bailey Road, Patna.

.... Petitioner/s

Versus

1. Anuj Kumar, son of Late Sahdeo Ram, resident of Mohalla- Delha Dular Ganj, Post Office Gaya R.S., Police Station Delha, District- Gaya (Bihar), at present resident of C/o Maharaja Prithvee Raj, Mour Bhawan, Chandpur Bela, Dupulwa, Police Station Jakkanpur, P.O.- G.P.O. District- Patna (Bihar).

.... Respondent/s



with

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Civil Review No. 555 of 2016
IN
LPA 1233 of 2016

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1. Bihar Public Service Commission through its Chairman
2. Chairman, Bihar Public Service Commission, Patna
3. Secretary, Bihar Public Service Commission, Patna

.... Petitioner/s

Versus

1. Mukul Son of Dinesh Kumar Mishra Resident of At Madhopur, P.O. Basudeopur, Distt. - Munger, State - Bihar, Pin - 811202
2. Meera Kumari Daughter of Rupnarayan Mandal Resident of vill. - Baraichak Patam, P.O. Patam, P.S. Nayaram Nagar, Distt. - Munger (Bihar), Pin 811214
3. Bibhuti Anand Jha Son of Bishwanath Jha Resident of Village + P.S. + P.O. Bahera, Distt. - Darbhanga (Bihar), Pin - 801503
4. Mahesh Kumar Son of Deo Narayan Pandit Resident of C/o Sahdeo Prasad, Shiv Colony (Raja Bazar), P.O. B.V. College, P.S. Shastri Nagar, Patna 800014
5. Shashi Kant Kumar Son of Shivdhar Prasad Resident C/o Chandrika Prasad, New Yarpur, Janta Road, South of Devi Asthan, Patna (Bihar) 800001
6. Pankaj Kumar Gupta Son of Ramakant Prasad Gupta Resident of at Post - Sondiha Via Mahaddipur, P.S. Pasraha, District - Khagaria
7. Rajesh Kumar Pal Son of Parshuram Pal Resident of Sector - 8H, Plot No. 15, B.H. Colony, P.S. Agamkuan, Patna - 800026
8. Surendra Ram Son of Chandrika Ram Resident of vill. - Paraspami, P.O. Parsauni, Via - Sitamarhi Bazar, P.S. Dumra, Distt. - Sitamarhi 843301
9. Shantnu Kumar Son of Jagdeo Mandal Resident of At- Hardimoh, P.O. Pradhan Chak, P.S. Khaira, Distt.- Jamui - 811317, State- Bihar
10. Ranjit Kumar Son of Arjun Prasad Mandal Resident of At- Hardimoh, P.O. Pradhan Chak, P.S. Khaira, Distt.- Jamui - 811317, Distt.- Bihar
11. Dhananjay Kumar Jha Son of Shiv CHandra Jha Resident of At + P.O. Dhankaul, Via - Parsauni, Distt. - Sheohar, Bihar - 843325
12. Durgesh Chandra Jha Son of Sudhir Chandra Jha Resident of Village - Dumaria, P.O. Motia - Dumaria, Distt. - Gooda, State - Jharkhand, Pin - 814133
13. Ramakant Pradeep Son of Deonandan Sharma Resident of At - Vachaspati Nagar, P.O. Mahendru, P.S. Bahadurpur, Patna - 800006
14. Nikhat Fatma Daughter of Md. Jafer Imam Resident of C/o Raza Hussain Fatmi, Vill. - Sabalpur, Via - Begumpur, P.S. Didarganj, Patna 800009
15. Shikha Rani Wife of Mithun Ghosh Resident of C/o Subhash Ghosh, Near Laxmi Market, Maa Tara Sweets, New Jakkanpur, P.S. Gardanibagh, Post G.P.O., Patna 800001
16. Sushil Kumar Son of Satish Chandra Prasad Resident of Near I.O.C. Main Gate, Sipara, P.O. Dhelwan, P.S. Beur, Patna 800020
17. Kumari Khushboo Daughter of Dhanjit Singh Resident of village - Madhubani, Post - Pahunsi, P.S. Kursakanta, District - Araria, Pin - 854332
18. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
19. Principal Secretary, General Administrative Department, Govt. of Bihar, Patna

.... Respondent/s



Appearance :

(In all cases)

For the Petitioner/s : Mr. Lalit Kishore, Advocate General
Mr. Satyabir Bharti, Adv.

For the Respondent/s : Mr. Prabhat Kumar Verma (AAG 3)

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date: 09-08-2017

Re: Civil Review No.554 of 2016

1. The defects pointed out by the Stamp Reporter are ignored.

Limitation Matter

2. Having heard Mr. Lalit Kishore, learned Advocate General and perused the interlocutory applications filed in these review applications seeking condonation of delay of 46 days, we are satisfied that sufficient cause has been shown for not preferring the review applications within the statutory period.

3. In that view of the matter, the delay caused in filing the review applications is condoned.

Admission Matter

4. These applications have been preferred by the petitioners for modification of certain observations made in para-48 of the judgment dated 04.10.2016 passed by this Court in LPA No. 1235 of 2016 and analogous cases.



5. The facts of the case, in brief, are that the Bihar Public Service Commission (for short 'Commission') had published an advertisement dated 01.09.2014 inviting applications from suitable candidates under 56th to 59th Common Combined (Preliminary) Competitive Examination, 2014. After holding the preliminary examination, the Commission received a total number of 581 objections, which were placed before the Expert Body, which recommended deletion of 11 questions on the ground that those were either ambiguous or wrongly framed.

6. Raising grievance against wrong framing of questions or suggesting wrong model answers, several writ petitions were filed by the candidates, who had failed to qualify in the preliminary test. The writ petitions were dismissed by this Court vide judgment and order dated 05.05.2016 passed in C.W.J.C. No. 19328 of 2015 and analogous cases.

7. Being aggrieved by the aforesaid judgment and order dated 05.05.2016, intra-court appeals were preferred by the writ petitioners, which were dismissed vide judgment dated 04.10.2016 passed in LPA No. 1235 of 2016 and analogous cases.

8. The Commission has filed review applications in these intra-court appeals seeking modification/review of the part of the judgment in para-48 whereby this Court has issued a note of caution



that in the event of recurrence of error of the nature in future, this Court may come heavily on the Commission and consider imposing exemplary cost, which may be directed to be recovered individually from the persons responsible for such errors, after fixing liability.

9. For the sake of convenience, para-48 of the judgment dated 04.10.2016 is extracted hereinbelow :-

“48. We would, therefore, direct the Chairman, Bihar Public Service Commission, to take all possible measures for evolving an adequately effective system so as to avoid similar situation arising in future and to ensure that the questions are carefully framed, screened and weighed and the answers are duly prepared with the aid of experts, without compromising with the secrecy of the procedure. We issue a note of caution that in the event of recurrence of error of the nature in future, this Court may come heavily on the Commission and consider imposing exemplary cost, which may be directed to be recovered individually from the persons responsible for such errors, after fixing liability.”

(emphasis supplied)

10. Mr. Lalit Kishore, learned Advocate General appearing for the petitioners has submitted that though the intra-court appeals preferred by the writ petitioners have been dismissed, the adverse observations made against the petitioners in para-48 of the judgment, may be deleted because even if the Commission takes best of the precautions, there is always a chance of some human error occurring in framing of questions or model answers. He has submitted that



without compromising with the secrecy of the matter it is possibly not feasible to evolve an error free setting of question papers.

11. We have heard Mr. Lalit Kishore, learned Advocate General and perused the record.

12. The reason for making the aforestated observations in para-48 can be inferred from the facts stated in para-47 of the judgment, which is extracted hereunder :-

“47. We find, in the present appeals, that out of 150 questions, 11 (eleven) questions were found, by the *Experts Body*, to have been wrongly framed or not capable of being correctly answered. Further, 5 (five) *Model Key Answers*, out of the remaining 139, were also found to be incorrect, by the said *Experts Body*. For a constitutional body, constituted with the central purpose of making recommendations for appointment to civil services/civil posts on the basis of competitive examinations, cannot afford to function unless it endeavors to acquire high level of expertise in holding recruitment tests with perfection. Once in a while, a mistake can happen since ‘*to err is human*’. But, it is being noticed that such errors of wrong framing of questions and preparation of wrong *Model Key Answers* is taking place more often than not, which is a disturbing phenomenon. More disturbing is the fact that number of such questions and/or answers is sizeable. This phenomenon generates, in the minds of the participants, a sense of uncertainty. This is happening *either* because the persons concerned have not developed effective method, which is fool-proof or, at least, pretty near to it, to ensure errorless setting up of question papers and preparation of accurate *Model Key Answers* or this has not been taken up as seriously as it ought to have been taken.”

13. It would be manifest from the reading of para-48



together with para-47 of the judgment that this Court has not directed that in future in case a question is wrongly framed, this Court will definitely impose exemplary cost. The Court has simply issued a note of caution that there should not be recurrence of the error of the nature in future like wrong framing of 11 questions out of 150 and preparation of wrong Model Key Answers.

14. Moreover, the scope of an application for review is much more restricted than an appeal. The grounds on which a review can be sought under Section 114 and Order 47 Rule 1 of the Civil Procedure Code or under Article 226 of the Constitution of India are on discovery of new and important matter of evidence, or mistake or error apparent on the face of the record, or any other sufficient reason. None of the aforesaid three grounds is available to the petitioners in these applications. Mr. Lalit Kishore, learned Advocate General has failed to point out any error apparent on the face of the record. He has simply expressed doubts and concern of the petitioners in respect of the observations made by the Bench in its judgment dated 04.10.2016. Such doubt and concern cannot be made a ground for review of the order. The power of review cannot be exercised to substitute a view. It is well settled position in law that review cannot be treated like an appeal in disguise.

15. We are of the opinion that in absence of any ground



available to the petitioner review of the judgment dated 04.10.2016 is not warranted.

16. Accordingly, the applications being devoid of any merit, are dismissed.

(Ashwani Kumar Singh, J)

(Chakradhari Sharan Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	22-08-2017
Transmission Date	

