

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1478 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 5495 of 2016**

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1. Prabhakar Kumar, Son of Late Lala Prasad Singh, resident of Om Jagdambike, Jyotipuram Colony, Maurya Path, House No. 89, P.O. Bihar, Veterinary College, Khajpura, P.S.- Airport, District- Patna.
 2. Prem Chand Kumar, son of Binda Prasad Yadav, resident of Village- Babani, P.O. & P.S.- Sirdala, District- Nawadah (Bihar).
 3. Nandan Kumar, Son of Sakaldeep Prasad Singh, resident of Flat No. B-42, Eden Tower, Plot No. 20, Sector- 5, New Delhi, District- South West Delhi (Delhi/NCR), Pin- 110075.
 4. Dinesh Nath Paswan, son of Dwarika Paswan, resident of Village- Nawadih, Post- Nawadih, P.S.- Rupow, District- Nawadah.
 5. Rajeev Ranjan, Son of Doma Choudhary, Resident of Boudh Vihar Colony, P.S. Agamkuan, Dist- Patna.

.... Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
3. The Principal Secretary, Water Resources Department, Govt. of Bihar, Patna.
4. The Bihar Staff Selection Commission, Patna through its Secretary
5. The Chairman, Bihar Staff Selection Commission, Patna.
6. The Secretary, Bihar Staff Selection Commission, Patna.
7. The Inspector General of Police, Economic Offence Unit, Patna.
8. The Director, Forensic Science Laboratory, Bihar, Patna.
9. Ravi Ranjan, Son of Sudhir Singh, R/o- Village- Bandhubigha, P.S. Kinjer, District- Arwal
10. Manoranjan Kumar, son of Naresh Singh, Resident At- BanSHIPur, P.S.- Kajra, Distt.- Lakhisarai

.... Respondent/s

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Appearance :

For the Appellants : Mr. Vinod Kumar Kanth, Sr. Advocate
Mr. Ashok Kumar Varma, Advocate
For the State : Mr. Sitaram Yadav, G.P.-16
For the B.S.S.C. : Mr. Kamla Kant Upadhyay, Advocate
Mr. Chandra Bhushan Das, Advocate
For Economic Offence
Unit, Respondent No.7 : Mr. Vishwanath Prasad Sinha, Sr. Advocate
Ms. Soni Shrivastava, Advocate.
For the Respondents : Mr. Dinu Kumar, Advocate
Mr. Sunil Kumar Mandal, S.C.-3

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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: 03-02-2017

Heard learned counsel for the parties.

2. The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 13th of July, 2016 in C.W.J.C. No. 5495 of 2016 whereby, the writ application filed by the appellants challenging the decision of the Bihar Staff Selection Commission (for short “the Commission”) dated 5th of February, 2016 cancelling the result of the examination held for appointment on the post of Junior Engineers, pursuant to an Advertisement No. 0411 dated 8th of June, 2011 remained unsuccessful.

3. The Commission invited applications to fill up 2030



post of Junior Engineers vide the aforesaid advertisement. The examination was conducted on 30th of September, 2012. When the process of evaluation of the answer-sheets was in progress, a raid was conducted by a team of Special Task Force of the Bihar Police in the office of the Commission on 19th of October, 2012 on the information that some persons were entering into the Strong Room of the Commission with the object of tampering with the OMR answer-sheets of the candidates. On the basis of such raid, an Economic Offence Unit P.S. Case No. 23/2012 was lodged. Subsequently, the result was published by the Commission on 19th of January, 2013. The result of some of the candidates was made subject to result of the aforesaid First Information Report. A number of writ applications were filed by the unsuccessful candidates demanding cancellation of the result whereas; some others were filed for declaration of the result.

4. This Court in C.W.J.C. No. 5771 of 2013 (Sanjay Kumar Ranjan & Ors. Vs. The State of Bihar & Ors.) directed the Commission on 28th of April, 2014 to re-verify the OMR sheets of the successful candidates to establish that whether there was some kind of discrepancy or not. On the basis of the exercise carried out, a report was submitted that out of 1706 successful candidates, only 1478 presented themselves for verification in the office of the Commission. Out of the said 1478 candidates, 96 candidates did not produce their



carbon copies, as such, their OMR answer-sheets could not be verified and that there was no discrepancy in the original and carbon copies of 1171 candidates. 174 candidates were kept in the category of minor discrepancy whereas, 37 candidates were found with major discrepancies. Thereafter, another scientific examination was ordered to be conducted in C.W.J.C. No. 2355 of 2013 (Manoj Kumar & Ors. Vs. The State of Bihar & Ors.) on Video-Spectral Comparator Machine which found that 985 OMR sheets were found without any discrepancy, 174 OMR sheets were found with minor discrepancy and 371 OMR sheets were found with major discrepancy. The learned Single Bench referred the matter to the Division Bench. But during the pendency of the matter, the Commission decided to cancel the result on 5th of February, 2016. The writ application was disposed of by the Division Bench on 26th of February, 2016 with liberty to challenge the decision of the State Government. It is at that stage, the present petition was filed claiming declaration of the result and appointment for the reason that there is no discrepancy in the answer-sheets of 1171 candidates. Therefore, the appellants who are among 1171 candidates seek quashing of the decision dated 5th of February, 2016, the subject matter of challenge in the present writ application, out of which the present appeal arises.

5. The learned Single Bench has, *inter alia*, noticed that



42% of the OMR sheets were violated/tampered in one form or the other. The Court framed an opinion that faith in such examination has to be restored and by segregating the so-called untainted from the tainted will always leave a lurking doubt in the mind of the candidates about fairness in evaluation so made. Consequently, the Court dismissed the writ application.

6. Mr. Dinu Kumar, learned counsel appearing for some of the respondents pointed out that after cancellation of the examination, another examination was conducted on 25th of September, 2016 but the question paper was leaked out and for that Ara, Nawada P.S. Case No. 569 of 2016 was registered.

7. The stand of the learned counsel appearing for the Commission is that keeping in view the allegations in the process of examination; it has been decided to conduct the re-examination of all the candidates so as to restore faith of the candidates in the examination process.

8. On the other hand, learned counsel for the appellants relies upon a judgment of the Hon'ble Supreme Court reported as Joginder Pal and others Vs. State of Punjab and others, (2014) 6 SCC 644 to contend that the untainted candidates are entitled to be appointed. The reliance is on the following observation:-

“40. In view of the above, the issue of entire selection process having been vitiated would have arisen only if



the findings of the Committee were that it was not possible to distinguish the cases of tainted from the non-tainted ones and there was a possibility that all of them would have got the benefit of wrongdoings of Mr Sidhu and his accomplices. Fortunately for these appellants, it is not so as they have been found innocent. The appellants get ensconced, earning a safe place, once they are removed from the category of nefarious persons. Though the tainted candidates have rightly received their comeuppance, but the innocent persons cannot be punished with them. Thus, it is difficult to accept the fallible conclusion of the High Court.”

9. The argument of Mr. Kanth is that the selection process was set aside only on account of the pendency of the criminal case, as the same is in the present case. Therefore, the Commission is required to give appointment to the candidates who are not tainted.

10. Further argument of Mr. Kanth is that Advertisement No. 0411 was not only in respect of Junior Engineers but in respect of Auditors and when the appointment of Auditors has not been interfered with, therefore, the cancellation of result for appointment to the post of Junior Engineers is illegal as it is discriminatory act of the Commission.

11. We do not find any merit in the said arguments.

12. We do not find that the above said judgment has any applicability to the facts of the present case. In Joginder Pal's case (supra), candidates were not only recommended by the Commission



but in fact appointed but due to the allegations of malfeasance against the then Chairman of the Commission, all the serving officers of the relevant years were removed, which selection was challenged. The High Court dismissed the writ application but in the case reported as Inderpreet Singh Kahlon v. State of Punjab, (2006) 11 SCC 356 the order passed by the Full Bench of the High Court was set aside and the matter remitted back to segregate the tainted and untainted candidates. The Committee of Judges gave an opinion that there are large scale bungling so untainted candidates cannot be segregated. The said report was accepted by Five-Judges Full Bench. It is the said order which was set aside by the Hon'ble Supreme Court.

13. Before appointment, a candidate has no right to seek appointment only on the basis of a result declared. Reference may be made to the Supreme Court judgment in the case reported as The State of Haryana Vs. Subash Chander Marwaha and others, AIR 1973 Supreme Court 2216, Shankarsan Dash Vs. Union of India, (1991) 3 SCC 47 and later in Kulwinder Pal Singh and another Vs. State of Punjab and others, AIR 2016 Supreme Court 2281. It has been held that even if the name appears in the merit-list of the selected candidates, that does not confer any right to seek appointment. For good and sufficient reasons, the State may take a decision not to appoint the candidates. In Kulwinder Pal Singh's case the Court said



to the following effect:-

“11. It is fairly well-settled that merely because the name of a candidate finds place in the select list, it would not give him indefeasible right to get an appointment as well. The name of a candidate may appear in the merit list but he has no indefeasible right to an appointment (vide Food Corporation of India and Ors. V. Bhanu Lodh and Ors., (2005) 3 SCC 618:(AIR 2005 SC 2775): All India SC & ST Employees’ Association & Anr. v. A. Arthur Jeen & Ors. (2001) 6 SCC 380: (AIR 2001 SC 1851) and Union of Public Service Commission v. Gaurav Dwivedi and Ors. (1999) 5 SCC 180: (AIR 1999 SC 2137).

12. This Court again in the case of State of Orissa & Anr. v. Rajkishore Nanda and Ors. (2010) 6 SCC 777:(AIR 2010 SC 2100, paras 13,15), held as under:

“14. A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for the purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. The vacancies have to be filled up as per the statutory rules and in conformity with the constitutional mandate.....

16. A select list cannot be treated as a reservoir for the purpose of appointments, that vacancy can be filled up taking the names from that list as and when it is so required....”

13. In Manoj Manu and Anr. v. Union of India & Ors. 2013 (10) SCALE 204: (2013) 12 SCC 171: (AIR 2014 SC (Supp) 927), it was held that merely because the name of a candidate finds place in the select list, it would not give the candidate an indefeasible right to get an appointment as well. It is always open to the Government not to fill up the vacancies, however, such decision should not be arbitrary or unreasonable.



Once the decision is found to be based on some valid reason, the Court would not issue any mandamus to Government to fill up the vacancies. As noticed earlier, because twenty two other candidates were declared successful by the Supreme Court pertaining to the selection of the years 1998, 1999, 2000 and 2001 as Civil Judges (Junior Division), they were to be accommodated, as rightly resolved by the Administrative Committee in the meeting dated 06.07.2011. The three resultant vacancies of the year 2007-2008 stood consumed with the joining of the said seventeen candidates and the same could not be filled up from the select list of that year. The decision of the Administrative Committee observing that the three resultant vacancies stood consumed is based on factual situation arising there and cannot be said to be arbitrary.”

14. In the present case, the Commission has formed opinion on the basis of the reports received by it that its examination process has not been fair and it will not inspire confidence in the mind of the candidates. Therefore, to bring transparency, probity and fairness in the selection process, the Commission has decided to conduct fresh examination. Such action cannot be said to be arbitrary, irrational and unjustified which may warrant interference in exercise of power of judicial review by this Court. In fact, even if the answer sheet of one candidate has been tampered with, it is good cause for cancellation of the examination process as exclusion of such candidate would be unfair action of the Commission.

15. Mr. Mandal states that there will be fresh examination process in pursuance to the advertisement published on



8th of June, 2011 after cancellation of the examination conducted after on 25th of September, 2016 as well. The fresh examination process shall be completed within a period of four months.

16. In view of the statement given to the Court, the present Letters Patent Appeal is dismissed.

(Hemant Gupta, ACJ)

(Sudhir Singh, J)

P.K.P.

AFR/NAFR	N.A.F.R.
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