

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1437 of 2013
IN
Civil Writ Jurisdiction Case No. 7651 of 2012**

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1. Vivek Kumar @ Vivek Kumar Gupta Son Of Radhey Prasad Gupta Resident Of
Mohalla Misscolt, P.S. Motihari Town, District- Champaran

.... Appellant/s

Versus

1. Vinay Kumar Son Of Sri Sheet Basant Raut Resident Of Jsiwan Nagar, P.S.
Bettiah, District West Champaran
2. The High Court Of Judicature at Patna Through The Registrar General
3. The Chairman, District Legal Service Authority, West Champaran At Bettiah

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. DHANANJAY KUMAR TIWARY
For the Respondent/s : Mr. MRIGANK MAULI

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 22-02-2017

Heard learned counsel for the appellant and learned
counsel representing respondent no. 2.

2.Since the writ application filed by private respondent
no. 1 in the present Letters Patent Appeal was allowed by the learned
Single Judge vide his judgment dated 09.10.2013 setting aside the
appointment of the present appellant, the present Letters Patent
Appeal has been filed.

3. The basic facts are that an advertisement was issued on
26.02.2011 to fill up the post of Clerk-cum-Typist in the office of the



District Legal Services Authority, West Champaran, Bettiah. The applications were filed which included the present appellant and private respondent no. 1. On the basis of written test results were published on 10.11.2011. The successful candidates in the written test were called for practical typing test and interview on 22.12.2011 onwards. On the basis of the said performance, the selection committee met on 05.01.2012 and the present appellant was selected and appointed on his excellent performance in practical typing test. The recommendation of the District Selection Committee was forwarded to the Hon'ble Executive Chairman of the Bihar State Legal Services Authority to approve the panel, which was approved on 30.01.2012 and in this background the present appellant came to be appointed.

4. The private respondent no. 1 filed a writ application challenging the appointment of the present appellant on the ground that he was placed above the present appellant in the merit position and still the man at the bottom of the list was picked up and appointed ignoring the rules of the game.

5. The learned Single Judge also summoned and called for the original record and file and he has taken note of the details which are available on record. What is of significance is what he has found after examining the materials and evidence which is of



relevance. The findings are reproduced here-in-below :

“16. In any event the authorities at the district level or at the State Legal Services Authority could not have changed the criteria for selection by altogether ignoring the marks of the written test. The written test was not a qualifying or a screening test. The marks obtained in the written test were in fact also made part of the result by taking into overall aggregate and therefore, the nature of work of Clerk cum Typist involving only mostly typing work could not have been made the basis of selection and appointment as it would amount to changing the rules of game in the midstream.

17. By-now it is well settled that whenever a selection for the post is held on the basis of competitive examination the importance of written test cannot be altogether wiped off, inasmuch as the Apex Court way back in the case of Lila Dhar Vs. State of Rajasthan, reported in AIR 1981 SC 1777, had gone to hold that a written test assesses a candidate's knowledge and intellectual quality, whereas the interview test is valuable to assess a candidate to overall intellectual and personal quality. It was in that context the Apex Court had also laid down that the written examination assesses the man's intellect and the interview test the man himself and “the twain shall meet” the purpose for a proper selection. Reference in this connection may also be usefully made to the judgment of the Apex Court in the case of Praveen Singh Vs. State of Punjab, reported in (2000) 8 SCC 633, wherein it was held that the Punjab Public Service Commission had acted arbitrarily in not considering the marks secured by the candidates in the written test while determining overall merit of the candidates and that it could not have made the marks obtained in the interview the sole guideline and criteria for selection.

18. In the present case also there is almost the similar situation like in the case of Praveen Singh (supra), inasmuch as here also ten candidates had appeared in the



written test out of whom only five had qualified on the basis of cut-off marks fixed in the written test. Thus, when out of five candidates screened on the basis of performance of their written test they were called for typing test and interview, their merit could not have been evaluated only on the basis of their performance in the typing test and the interview by altogether writing of marks obtained by them in the written test.

19. It has to be noted that the consequence of this decision either of the District Legal Services Authority or the State Legal Services Authority had to be suffered by none else but the petitioner alone, inasmuch as out of four candidates the first one having the highest marks in the written test and also in aggregate was held to be disqualified in the typing test and of the rest three though the petitioner was at serial no. 2 in aggregate by taking into account his performance in the written test, typing test and interview, yet he became No. 3 in the panel, whereas respondent no. 3 at the bottom of the list was made the first candidate, which cannot be countenanced in law.”

6. The facts speak for itself. There cannot be any dispute on the proposition of law that rule of the game cannot be changed after the game has begun. The modality which was adopted in appointing the present appellant, over and above the rule, being in favour of the present private respondent, would not be justified because nowhere in the advertisement or otherwise there was any indication that the man who will perform better in typing test alone, shall be chosen for such appointment, when the panel itself was prepared on the basis of written test, typing test and also the



interview.

7. The conclusion, therefore, reached by the learned Single Judge holding the appointment of the present appellant with lesser aggregate marks as invalid, was valid and is not required to be interfered with.

8. The Letters Patent Appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Amin/-

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