

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9987 of 2017

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Chakradhari Gupta, Son of Sri. Jawahar Lal Gupta, resident of Tapovan Colony, Rampur Road, P.O.-Mahendru, P.S.-Bahadurpur, District-Patna. Presently Posted as Inspector/GD in the Office of Commandant, 127 Battalion, C.R.P.F., Bhanjanagar, Ganjam, State-Orrisa.

... .. Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Department of Home (Police), Govt. of Bihar, Old Secretariat, Patna.
2. The Principal Secretary, Department, of (Home Police), Govt. of Bihar, Old Secretariat, Patna.
3. The Additional Secretary, Department of Home (Police), Govt. of Bihar, Old Secretariat, Patna.
4. The Deputy Secretary, Department of Home (Police), Govt. of Bihar, Old Secretariat, Patna.
5. The Bihar Public Service Commission, through its Chairman, Bailey Road, Patna.
6. The Chairman, Bihar Public Service Commission, Bailey Road, Patna.
7. The Secretary, Bihar Public Service Commission, Bailey Road, Patna.
8. The Additional Secretary, Bihar Public Service Commission, Bailey Road, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Vinod Kumar Kanth, Sr. Advocate Mr. Navjot Yesu, Advocate Mr. Aditya Abhishek, Advocate
For the State	:	Mr. Manish Kumar- GP-4 Mr. Ravi Verma, A.C. to G.P.-4
For the B.P.S.C.	:	Mr. P.N. Shahi, Sr. Advocate Mr. Sanjay Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 13-09-2018

Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for the Bihar Public



Service Commission.

2. In the present case, the petitioner has sought number of reliefs as like, deducting of the marks is illegal and he should be added 3½ marks those have been deducted by the Examiner. In alternative, he should be appointed on the vacant post which has fallen vacant due non-joining one Damodar Kumar as he has been selected in the Bihar Judicial Services and joined the post. It will be relevant to quote the relief portion, which is as follows:-

“(a) For issuance of an appropriate writ(s), order(s) or direction(s) directing the respondent authorities to hold and declare the marks of the petitioner as 340.50 which has been arbitrarily deducted without any valid and legal justification and further prepare the fresh merit list after placing the petitioner at serial no.15(i.e. after Sri Shailendra Kumar who has secured 243 marks and above Rajesh Kumar who has secured 338 marks and further as one person at Sl. No. 4 of the final merit list namely Sri Damodar Kumar did not join), as the said deductions have been done in gross violation the guidelines framed the respondent Bihar Public Service Commission, Patna (hereinafter referred to as Commission in short)

(b) for issuance of an appropriate writ(s), Order (s) or direction (s) directing the Respondent Commission



to consider the case of the petitioner and make recommendations to the post of Assistant Prosecution Officer at the Sl. No. 15 of the merit list for which he is legally and validly entitled having secured 340.50 marks under the given facts and circumstances of the present case and furthermore that as according to the petitioner one post under his category is still lying vacant and also on account of the fact that according to the petitioner he has secured much higher marks in his category than the cut-off marks fixed by the Commission which has arbitrarily and illegally been deducted.

- (c) *For issuance of an appropriate writ (s), Order (s) or direction (s) directing the Respondent authorities to consider and appoint the petitioner on the post of Assistant Prosecution Officer in pursuance to the advertisement published by the Respondent Commission in the year 2009 at Sl. No. 15 according to the final merit list published for the purposes of claiming the seniority as per his merit.*
- (d) *Alternatively, the petitioner prays that Respondent Commission may be directed to recommend the name of the petitioner for appointment as one post in EBC category is still vacant due to non-joining of one Sr Damodar Kumar who is at Sl. No. of the final merit list.*
- (d) *And/Or pass such other order (s) as your Lordships may deem fit and proper.”*



3. In the present case, argument has been made basically on two premises; one with regard to changes of marks which were made in the answer-sheet is bereft of any signature or initial, in absence of the same, it violates the Instructions prescribed by the Bihar Public Service Commission (for short “the Commission”) for the Examiner, and as such, reduction of the marks without proper authentication should be ignored. Alternative limb of argument has been made that even presuming that the petitioner has obtained 337 marks and the persons below him all have secured less than 337 marks and one Damodar Kumar, who was selected, but did not join the post, and as such, the Commission should be directed to recommend the name of the petitioner for being appointed. But, this limb of the argument at later stage has been withdrawn when a supplementary counter affidavit has been filed by the Commission, wherein it has been averred that number of persons have secured 337 and the position of the petitioner among those persons is much below, and as such, if any direction will be given for filling up that post, the petitioner cannot be adjusted against that post. This aspect of the matter will be considered at the later stage, but the fact is that the petitioner belongs to Extremely Backward Class, has applied



against the advertisement published in the year 2009, in which 106 posts were advertised for the appointment of Assistant Prosecution Officer and break-up has been given that 53 posts were meant for the General category male candidates, 17 posts were meant for Scheduled Caste category candidates, 1 post meant for the Scheduled Tribes candidate and 20 posts were meant for the Extremely Backward category candidates, in which the petitioner belongs and 12 posts were meant for the Backward class candidates and 3 posts were earmarked for the Backward class female candidates.

4. The petitioner qualified in the preliminary test, which was conducted by the Commission in the year 2012, whereafter he appeared in the mains examination and cleared the mains examination, was called for the interview. The petitioner appeared in the interview where he has done well, but in the final select list his name was missing. The petitioner was very much shocked and shattered as to that why he was not selected, had applied for his answer book and other materials which was supplied to him including the merit list, wherein cut-off marks for different categories have also been mentioned, it has been found that upto the merit position of 151 were given the appointment letters, but the petitioner is standing at serial



no.155, on that account he has not been taken in service. When he obtained the answer-sheet, where he found that there is cutting and over-writing while giving the marks in the subject of Indian Penal Code as well as Elementary General Science. He has submitted that the questions no. 4 has two headings i.e. 4(a) and 4(b), 4(a) has different number of questions, originally the marks was given as 10, but it has been reduced to 9 by a green pen and has been rounded off. Another anomaly he has pointed out that question no.5(d) was originally given 1 ½ but the same has been reduced as 1. Further he has shown that for the question no.1 originally it was given 3½ marks, has been reduced to 2½ marks. Further he has submitted that originally he has secured 1½ marks, but it has been reduced to ½ marks and if these marks will be added, then certainly there will be an increase of 3½ marks and if that marks is added to the gross total marks of 337, it will come to 340.50 marks, his name would come in between Shailendra Kumar and Rajesh Kumar.

5. It has further stated that the Commission has framed the Important Instructions wherein it has been mentioned that in what manner the Examiner will evaluate the answer book and in the event of some cuttings and over-writings that must bear the signature or the initial of the examiner or



head examiner. Purposely they have placed Clause-9 in the Institutions, which is as follows:

“प्रत्येक प्रश्न से संबंधित प्रत्येक भाग के प्रश्नोत्तर के लिए निर्धारित अधिकतम अंक के अनुरूप प्राप्तांक पार्श्व (हाशिये) में अंकित करें। किसी भी कटिंग या सुधार को अपने लघु हस्ताक्षरों से प्रामाणित अवश्य कर दें। ”

6. So, the emphasis has been given that whenever there is a cutting or any rectification it must bear the signature or initial and further submitted that if 3½ marks is added, then certainly he will be selected as Assistant Prosecution Officer. It has been submitted that the entire action of the Commission in refusing to recommend the name is illegal and required interference by this Court.

7. Learned counsel for the Commission has produced the original answer book of the petitioner for perusal of this Court. From the answer book of the petitioner, it appears that with regard to the Indian Penal Code, after evaluation of the marks, the Head of the Examiner has further reviewed the answer book of the petitioner and somewhere he has revised the number which was granted to the petitioner as like question no.50 the Examiner had granted 16 marks, which has been reduced to 15 marks with green ink on the front page as well as in page no.10 where 10 marks was granted, reduced to 9 marks



and 9 marks has been circled by initial. The argument has been made by the petitioner that the purported initial in the revised marks does not tally with the front page of the mark-sheet where the initial of the Head of the Examiner is in green ink is quite different.

8. In the writ petition, the disputed questions of fact cannot be looked into as it is always possible that in front page it is the full signature of the head of the Examiner and when he has reduced it bears his initial signature. So the instructions which has been prescribed the Head of the Examiner has followed it. Hence, the argument regarding Indian Penal Code is not sustainable in the opinion of this Court

9. Further, learned counsel for the Commission has submitted that in Elementary General Science earlier marks given has been revised bears the initial of the Examiner, has been refuted by the learned counsel for the petitioner. Learned counsel for the Commission has submitted that the marks in total has been as 5 in question no.5. Question no.5 has four sub-heads, in 5(a) 1 marks has been given in 5(b) two marks has been given, in 5(c) one marks has been given. Only dispute is with regard to 5(d), as per the petitioner it was 1½ but as per the Commission it is one mark and also says that there is no such



initial or the signature of the Examiner, but it appears that after writing the question no.5 some cutting has been done there and 'AS' has been written, whereafter, the marks obtained by the petitioner has been mentioned. At page no.14 of the answer-sheet where the petitioner has answered the question no.1 which is in two parts 1(a) and 1(b), the dispute is that he was originally granted $3\frac{1}{2}$ marks, which has been reduced to $2\frac{1}{2}$ marks and further he was granted $1\frac{1}{2}$ marks, which has reduced to 1 marks, so thereby he was deprived of the $1\frac{1}{2}$ marks. As per the Commission after the cutting signature has been given by the Examiner in the shape of his initial after circling the same. On perusal of the answer-sheet, it appears that after making correction 'E' or 'C' has been mentioned therein, may be the initial of the Examiner while making the correction, but the question no.1(b) as per the petitioner is $1\frac{1}{2}$ and it has purposely been made $0\frac{1}{2}$ marks.

10. It is very difficult to arrive to a finding in the manner it has been submitted. Even presuming that those cutting does not bear the signature whether it will give a right to the petitioner to claim that those number should be added. If the mistake is bona fide, the correction is always permissible as the error is always attached with human and human has a right to



correct his errors. The Guideline or the instructions which has been given by Commission is to be followed by the Examiner, but merely because the initial or signature is missing will not *ipso facto* give the right to claim that the marks which has been revised be added. If any act has been done with a malicious intention or with a mala fide reason, in such circumstance, the plea of the petitioner is to be accepted, but in the event of the error not loaded with any malice in the mind of a person, in such circumstance, there may be some deviation of Instruction will not make the person entitled to claim that the action taken by the Examiner is completely not sustainable. If an Examiner after revisiting finds that the marks which has been given is excess marks, he has every right to reduce it as every human has a right to correct his mistake. There is no dispute that he cannot make correction of the mistakes, but only dispute is that if the signature or the initial is not there then what will happen. As the Instruction or the Guidelines itself prescribes that the examiner can review and revisit, enhance the marks or reduced the same, both has been conferred upon the examiner. So, in my opinion, the claim of the petitioner that if the Instruction has not been followed by the Examiner then the original marks should be given is not acceptable. Only this Court hope and trusts that in



future they will not commit such mistake while making correction either they will put their signature or initial.

11. Similar dispute came before this Court in C.W.J.C. No.1137 of 2014 (Prabhat Kumar vs. State of Bihar and Ors). In the said case also identical question was raised and the Court has refused to entertain the plea of the petitioner, which has been tested in the Division Bench in L.P.A. No.927 of 2015 unsuccessfully, I myself has decided the case in C.W.J.C. No.7086 of 2017 (Pankaj Kumar vs. Bihar Public Service Commission and Others) has held that if the signature or initial are not there *per se* the petitioner cannot claim the marks which has been changed either reduced or enhance. So, this plea of the petitioner does not survive, so far this Damodar Kumar is concerned, who was selected but did not join, much argument was made by learned counsel for the petitioner, but after the supplementary counter affidavit filed by the Commission, wherein the list of candidates secured 337 marks in the E.B.C. has been mentioned in paragraph no.6, in which the position of the petitioner is at serial no.5, so if any person is to be appointed in place of Damodar Kumar, certainly the petitioner cannot be appointed as all the four persons in preferential basis will be given the appointment, but the fact is that the said post has gone



for the next recruitment year and that post has already been consumed and after looking to the supplementary counter affidavit, the point with regard to appointment in place of Damodar Kumar, was not pressed by learned counsel for the petitioner and as such, it is not required to be answered.

12. For the foregoing reason, this Court does not find any merit in this writ petition. Accordingly, this writ petition is dismissed.

13. The original answer-sheet which has been produced before this Court for perusal is being returned to learned counsel for the Bihar Public Service Commission.

(Shivaji Pandey, J)

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AFR/NAFR	N.A.F.R.
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