

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5020 of 2018

Chetna Singh, Daughter of Gauri Shankar Prasad Singh, Resident of Village+
P.O.- Morsand, P.S. Runnishadpur, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The Bihar School Examination Board, Patna through its Secretary.
4. The Chairman, Bihar School Examination Board, Patna.
5. The Secretary, Bihar School Examination Board, Patna.
6. The Controller of Examination (BTET-2017), BSEB, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Brisketu Sharan Pandey
For the Respondent/s	:	Mr. S.C.MISHRA -SC16
For the Board	:	Mr. Gyan Shankar, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

3 02-04-2018 Following is the relief sought for in the present writ application:-

“A) For issuing writ/writs, order/orders, direction/directions including the writ of mandamus directing thereby the respondents/Respondent Board to determine a common cut off marks (and not the subject wise cut off) for all the subjects of BTET-2017 for which general teachers (other than Urdu, Sanskrit and Bangla Teachers) are to be selected.

B) For issuing writ/writs, order/orders, direction/directions including the writ of certiorari and quashing thereby (upon direction to bring on record the letter fixing the cut off for BTET-2017) and there after for direction upon the respondents to re-fix/re-determine, common



cut off taking into account the moderation or other process required for fixing the cut off in view of the wrong questions admittedly included in the question papers.

C) For issuing directions to the Respondents regarding declaring the results afresh and upload it on website after making necessary correction in the cut of marks a common cut off marks (and not the subject wise cut off) for all the subject of BTET-2017 for which general teachers (other than Urdu, Sanskrit and Bangla Teachers) are to be selected.

D) For holding that there has been series of lapses in the examination (BTET-2017) as there have been series of wrong answers and multiple correct answers in the questions papers of the aforesaid examination which calls for fresh process for determination of cut off upon finally deciding the modality as to how the wrong questions are to be treated inasmuch as whether the question as also marks are to be eliminated while determining cut off marks or each candidate having attempted the wrong question be given full marks so that the cut off in all subjects determined out of 150.

E) For holding that the petitioner who has secured 81 marks would be eligible for selection once the wrong question in paper of Science and Hindi are dealt with in a manner that the petitioner is given marks for the wrong questions and thereafter a common cut off is determined.

F) For holding that the process of determining the subject wise cut off for BTET-2017 is arbitrary and the respondents action for not providing a common cut off marks (and not the subject wise cut off) for all the subjects of BTET-2017 for which general teachers is borne out of whims and fancies and arbitrariness on the part of Respondents.”

2. The petitioner claims to have qualification of B.Sc.



and B.Ed. She had appeared for the Bihar Teachers Eligibility Test-2017 (BTET-2017) and she was shown to have secured 79 marks out of 148, initially in the tentative result. It appears that there were altogether 150 questions set up for 150 marks in the multiple choice question (MCQ) type test out of which two having been found to have been incorrectly framed were proposed to be deleted from the purview of evaluation. Accordingly, the evaluation was initially done on the basis of 148 total marks. The cut-off marks for backward class, extremely backward class and general (women candidates) was fixed at 81.

3. It is the petitioner's case that model answers/answer keys were thus published and uploaded on the *website* of the Board inviting objections from the candidates from which it is evident that two questions, viz, question No.62 and 77 were found to be incorrect. The petitioner claims that she applied for scrutiny of her answer-sheets. It is also her case that she represented to the Secretary of the Board through an application since according to her, she was dissatisfied with the marks allotted to her.

4. It appears that after having considered the objections received from various candidates, the Board found question



No.62 to be correctly framed. It is petitioner's case that question No.62 on the face of it, is wrong, which cannot have any of the answers suggested in the question as possible answer. This is to be noted that the petitioner had earlier scored 79 marks out of 148 questions. Once 62 was accepted as correct question, the petitioner got 81 marks out of 149. The cut-off marks finally went up at 82. It is her case that question No.62 is incorrect and if the same is deleted from the purview of evaluation, the cut-off marks will go down and she would be declared qualified.

5. Mr. Birshketu Sharan Pandey, learned counsel appearing on behalf of the petitioner, has relied on a Supreme Court's decision in case of ***Guru Nanak Dev University vs. Saumil Garg and others*** reported in ***(2005) 13 SCC 749*** and has submitted that question No.62 being demonstrably erroneous, ought not to have been treated to be a part of the question papers for the purpose of evaluation. It is his plea that if the question is vague being incapable of having a correct answer, the same cannot be treated as part of the question, in view of the Supreme Court's decision in case of ***Guru Nanak Dev University*** (supra).

6. Mr. Pandey has attempted to convince this Court



with reference to the said question No.62 that this Court, exercising power of judicial review under Article 226 of the Constitution of India, should hold the question to be incorrect for the purpose of same being deleted from the question paper.

7. Mr. Gyan Shankar, learned Counsel appearing on behalf of the Bihar School Examination Board, has relied on a Division Bench decision of this Court in case of ***Md. Nafis Nawaz Kan Vs. State of Bihar and anr*** reported in ***2016(1) PLJR 667*** to submit that all steps were taken by the Board with the aid of the expert body for fair evaluation of the answer-sheets after giving due opportunity to the candidates to ensure reasonableness and fairness in the process of examination and evaluation.

8. He has relied on another Division Bench decision of this Court in case of ***Ravindra Kumar Singh Vs. High Court of Judicature at Patna***, reported in ***2016(1) PLJR 865*** and has contended that since the petitioner has not been able to make out any case of prejudice even if the contention is accepted for the sake of argument, she was not entitled to the relief, which is being claimed in the present proceeding.

9. Reliance has also been placed on another Division Bench decision of this Court in case of ***Ashutosh Kumar Jha***



and ors. Vs. State of Bihar and ors passed in ***LPA No. 1235 of 2016*** and other analogous cases.

10. The petitioner has not stated as to how the wrong framing of question No.62 has adversely affected her case. She has not stated as to what was her answer to question No.62 in the examination hall on her OMR-sheet. There is no pleading, thus, to show prejudice caused to the petitioner. On the other hand, it appears that initially the Board had treated the said question No.62 as incorrectly framed and accordingly on the *website* of the Board, the said question was shown to be incorrect for inviting objections from the candidates. The petitioner's score was initially 79 when question No.62 was found to be wrongly framed and was proposed to be deleted from the purview of evaluation. After having received objections, the expert body found the question to be correctly framed having choice-B as the correct answer. It is not the petitioner's case that she had not answered the question No.62 because the question No.62 was incorrect. This is also not her case that she had not marked Choice-B as her answer to the question on her OMR-sheet. It may be possible that she might have improved her situation because of the choice of answer given by her in respect of question No.62. In my view,



therefore, learned counsel for the Board is correct in his submission while relying on the Division Bench decision in case of ***Ravindra Kumar Singh Vs. High Court of Judicature at Patna*** (supra), paragraphs 27,36 and 37 of which read thus:-

“27. What follows from the above discussion is that the writ petitioners merely claim that the questions and the model answers are incorrect or erroneous; but it is not their pleaded cases that they would have attempted the questions but for the fact that the questions were incorrect or that they had attempted the questions, but they did not receive marks, because of the fact that the model answers were incorrect. When the writ petitioners have not been prejudiced, because of incorrect or erroneous questions and/or because of incorrect or erroneous answers, they cannot sustain the writ petition merely on the ground that the questions or the model answers are incorrect, when if any question or model answer is found to be incorrect or erroneous.

36. In order to claim issuance of prerogative writ under Article 226 of the Constitution of India, a person, seeking such a relief, will have to plead and establish that he has been prejudicially and adversely affected by an act or omission of the State or its instrumentality. The party will have to demonstrate the issue on the ground that because of any act or omission on the part of the authority, his rights got adversely affected.

37. In the present case, the petitioners were required to plead, demonstrate and establish that they got less marks than what they deserved on the basis of their claim of wrong framing of questions/model answers. Unless a person is able to establish discrimination, this Court is not required to invoke its extraordinary writ jurisdiction under Article 226 of the Constitution of India merely on the pleadings of an erroneous act or omission on the part of an authority.”

11. The view taken in the case of ***Ravindra Kumar***



Singh Vs. High Court of Judicature at Patna (supra), has been reiterated subsequently in case of *Ashutosh Kumar Jha and ors. Vs. State of Bihar and ors*, (supra) by a Division Bench of this Court.

12. In view of the above, I do not find any merit in this application.

13. This application is, accordingly, dismissed.

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(Chakradhari Sharan Singh, J)

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