

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 3670 of 2019

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1. Ashish Kumar Pathak S/o Baidyanath Pathal, R/o Ramnagar Raj Compound, P.S. Bettiah, District Bettiah
 2. Pradip Kumar S/o Devnandan Singh R/o Aurai South Tola, P.O. Pakari, P.S. Barhariya, District-Siwan
 3. Aditya Aryan S/o Sadanand Singh R/o Village-Mahaddipur, P.S. Pasraha, District Khagariya
 4. Raj Gaurav Kumar S/o Arun Kumar R/o Sharifa Ganj, Patna City, P.S. Malsalami, District-Patna
 5. Abhinit Kumar S/o Upendra Kumar R/o Village Bardih, P.S. Islampur, District-Nalanda
 6. Anant Kumar S/o Akhileshwar Prasad Sharma R/o Village Bakhtiyarpur (East Tola), P.S. Bakhtiyarpur, District-Patna
 7. Md. Juned Alam S/o Md. Aminuddin R/o P.S. Sikarhatta, District-Bhojpur
- Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Govt. of Bihar, Patna
2. Additional Chief Secretary, G.A.D. Govt. of Bihar, Patna
3. Principal Secretary, Road Construction Department, Govt. of Bihar Patna
4. Principal Secretary, Public Health Engineering Department, Govt. of Bihar, Patna
5. Principal Secretary, Water Resources Department, Govt. of Bihar Patna
6. Principal Secretary, Building Construction Department, Govt. of Bihar, Patna
7. Principal Secretary, Rural Works Department, Govt. of Bihar, Patna
8. Principal Secretary, Planning and Development Department, Gvt. of Bihar Patna
9. The Bihar Public Service Commission through its Chairman
10. The Secretary, Bihar Public Service Commission
11. The Special Secretary Cum Controller of Examination, Bihar Public Service Commission

... .. Respondent/s

with



Civil Writ Jurisdiction Case No. 4663 of 2019

Vishwajeet Son of Satish Kumar R/o House No. 3 Road No. 9C Rajeev Nagar, P.S.-Rajeev Nagar, District-Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Science and Technology, Government of Bihar, Patna
2. The Bihar Public Service Commission through it's Secretary Bihar Public Service Commission, Bihar, Patna
3. The Controller of Examination cum -Joint Secretary Bihar Public Service Commission, Bihar, Patna

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 2654 of 2019

Ram Dutta Bharti S/o Basuki Nandan Roy Resident of Village- Rannuchak,P.O. Rannuchak,Makandpur,P.S. Nathnagar (Makandpur),Dist.- Bhagalpur (Bihar)-812064

... .. Petitioner/s

Versus

1. The Bihar Public Service Commission Patna-1,through its Chairman,Bailey Road,Patna-1
2. The Chairman, Bihar Public Service Commission,Bailey Road,Patna-1
3. The Joint Secretary-cum- Examination Controller,Bihar Public Service Commission,Bailey Road,Patna-1

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 3457 of 2019

Vikash Gaurav Son of Ajit Kumar Singh Resident of Village- Dakpuria, P.O. Mona Talab, P.S. Rahui, District- Nalanda.

... .. Petitioner/s



Versus

1. The Bihar Public Service Commission and Ors through its Chairman, Bailey Road, Patna-1
2. The Chairman, Bihar Public Service Commission, Baiely Road, Patna-1
3. The Joint Secretary-Cum-Examination Controller, Bihar Public Service Commission, Bailey Road, Patna-1

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 5100 of 2019

Sumit Kumar Son of Brij Mohan Prasad Singh Resident of Mohalla-Saketpuri, Bibiganj P.O.- Bhagwanpur, P.S.- Town, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The Bihar Public Service Commission Through its Chairman, Bailey Road, Patna -1.
2. The Chairman Bihar Public Service Commission Bailey Road, Patna-1
3. The Secretary Bihar Public Service Commission Bailey Road, Patna-1
4. The Joint Secretary -cum- Examination Controller Bihar Public Service Commission Bailey Road, Patna-1

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 3670 of 2019)

For the Petitioner/s : Mr. Harsh Singh, Advocate

For the Respondent/s : Mr. P. K. Shahi, Sr. Advocate

Mr. Sanjay Pandey, Advocate

(In Civil Writ Jurisdiction Case No. 4663 of 2019)

For the Petitioner/s : Mr. Shivendra Prasad, Advocate

For the Respondent/s : Mr. P.N. Shahi, (AAG6)

(In Civil Writ Jurisdiction Case No. 2654 of 2019)

For the Petitioner/s : Mr. Ajay Kumar Sinha, Advocate

For the Respondent/s : Mr. Sanjay Pandey, Advocate

(In Civil Writ Jurisdiction Case No. 3457 of 2019)

For the Petitioner/s : Mr. Sanjay Kumar, Advocate

For the Respondent/s : Mr. Sanjay Pandey, Advocate

(In Civil Writ Jurisdiction Case No. 5100 of 2019)

For the Petitioner/s : Mr. Ganesh Prasad Singh, Advocate

For the Respondent/s : Mr. Sanjay Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR



ORAL JUDGMENT

Date : 26-03-2019

Heard the learned counsel for the parties at length.

All the aforesaid writ petitions have been taken up together as common questions of fact and law arise in all the writ petitions. They are thus being disposed off by this common order.

The petitioners have challenged the result / additional result of the preliminary examination conducted by the B.P.S.C. against an advertisement bearing Advertisement No. 2 of 2017 for appointment of candidates to the post of Assistant Engineer (Civil Engineering). The major ground of challenge is that the model key answers to four of the questions are incorrect.

The petitioners in all the writ petitions have, therefore, prayed that the Bihar Public Service Commission (hereinafter referred to as "B.P.S.C." for short) be directed to re-publish the final result of the candidates after re-evaluating the marks obtained by each of the petitioners on the basis of correct answers to the aforesaid questions and permit the



petitioners to sit in the mains examination which is to commence from tomorrow, i.e., 27th of March, 2019.

It has been brought to the notice of this Court that 4 of the questions in all the test series have not been provided with correct answers. The reference to such questions are being taken from C.W.J.C. No. 3670 of 2019, which contains questions of series "A". In other series also, answers to such questions are wrong, but only the question number is different. For the sake of convenience, therefore, the question numbers of "A" series only is being referred to and those are Question Nos. 62, 84, 100 and 123.

Question No. 62 and the options for answer reads as hereunder:

"Q. 62. The behavior of a perfect gas, undergoing any change in the variables which control physical properties, is governed by

- (A) Boyle's law
- (B) Charles' Law
- (C) Gay-Lussac Law
- (D) All of the above"



The answer provided by the Commission is "(C) Gay-Lussac law". But according to the petitioners, the correct answer would be "(D) All of the above."

In support of the aforesaid contention of the petitioners regarding the correct answer of the aforesaid question, learned counsel for the petitioners has drawn the attention of this Court to the relevant paragraph of a text book of Thermal Engineering, written by R. S. Khurmi and J. K. Gupta. In the aforesaid text book, under the heading "laws of perfect gases", it has been noted that the physical properties of a gas are controlled by following three variables:

1. Pressure exerted by the gas, 2. Volume occupied by the gas, and 3. Temperature of the gas.

It further clarifies that the behaviour of a perfect gas, undergoing any change in the above mentioned variables, is governed by the following laws which have been established from experimental results.

1. Boyle's Law 2. Charles' law, and 3. Gay-Lussac law.



Thus, it has been contended that the answer provided by the B.P.S.C. is incorrect.

Question No. 84 and the options for answer reads as hereunder:

"Q. 84. Water requirement per day per bed in a hospital is

- (A) 45 litres
- (B) 135 litres
- (C) 270 litres
- (D) 340 litres"

Learned counsel for the petitioners have submitted that the question has wrongly been framed and no answer could be given to the aforesaid question in the absence of the specification of the hospital regarding the number of beds exceeding hundred or less than hundred. Since such detail has not been provided in the question, no correct answer could be given of the aforesaid question. It may, however, be stated that the answer provided by the Commission is "(B) 135 litres".



Learned counsel for the petitioners, for the aforesaid proposition, has relied upon the information provided in a Text book of Water Supply Engineering, written by G. S. Birdie and J. S. Birdie. Under the heading "commercial and industrial demand of water", it has been stated that water supply requirement for hospitals with number of beds not exceeding 100 would be 340 litres per capita per day and 450 litres for such hospitals where the number of beds exceed 100. Under the Code of Basic Requirements for Water Supply, Drainage and Sanitation also, the requirement of water in hospital is dependent on the number of beds. Thus, no correct answer could be given by any candidate.

Question no. 100 and the options for answer reads as hereunder:

"Q. 100 In a Tacheometry, if intercept taken on a vertically held staff is inclined at q to horizontal, the horizontal distance is

- (A) $ks + c$
- (B) $ks \cos q + c \cos q$
- (C) $ks \cos 2q + c \cos q$



(D) $ks \sin 2q + c \sin q$

The answer to the aforesaid question as provided by the Commission is "(C) $ks \cos 2q + c \cos q$ ".

According to the learned counsel for the petitioners, all the options provided are wrong. In the text book of "Surveying and Levelling" written by R. Agor (Khanna Publishers) and in the text book of Surveying Volume - 1, written by Dr. B. Punmia, Mr. Ashok K. Jain and Mr. Arun K. Jain, respectively, it has been provided that in Tacheometry, if intercept is taken on a vertically held staff which is inclined at q to horizontal, the horizontal distance is:

$$\begin{aligned} D &= L \cos Q \\ &= [f/i s \cos Q + (f + d)] \cos Q \\ D &= f/i s \cos^2 Q + (f + d) \cos Q \\ &= A. s \cos^2 Q + B. \cos Q \end{aligned}$$

AND

$$\begin{aligned} D &= L \cos Q = (ks \cos Q + C) \cos Q \\ D &= ks \cos^2 Q + C \cos Q \end{aligned}$$

Question No. 123 with the options for answer reads as hereunder:



"Q. 123. The potable water is prepared from turbid surface water by adopting which of the following treatment sequences?

(A) Turbid surface water, coagulation, flocculation, sedimentation, filtration, disinfection, storage and supply

(B) Turbid surface water, disinfection, flocculation, sedimentation, filtration, coagulation, storage and supply

(C) Turbid surface water, filtration, sedimentation, disinfection, flocculation, coagulation, storage and supply

(D) Turbid surface water, sedimentation, flocculation, coagulation, disinfection, filtration, storage and supply"

Similarly, the answer provided by the Commission to question 123 is "D Turbid surface water, sedimentation, flocculation, coagulation, disinfection, filtration, storage and supply", which is incorrect and the correct answer is "(A) Turbid surface water, coagulation, flocculation, sedimentation, filtration, disinfection, storage and supply".

In the text book of Environmental Engineering, written by Mr. N. N. Basak (published by Tata McGraw-Hill),



the sequence of units in a flow diagram of a treatment plant of water is as under:

"Sequence of units:

1. Intake point
2. Pump house
3. Plain sedimentation tank
4. Coagulation tank
5. Filtration unit
6. Chlorination unit
7. Water softening plant
8. Overhead reservoir"

Thus, the correct answer of Question No. 123 is "(A)" and not "(D)".

The petitioners have rightly marked the answers and for questions where wrong options were given have been left untouched. It is the case of the petitioners that because of their being marked on the basis of wrong model answers, serious prejudice has been caused to them in as much as the petitioners in all the writ petitions have missed the cut-off marks by merely 1 or 2 marks. If the answers provided by the



Commission would have been correct, the petitioners would have been marked above the cut-off marks and would otherwise have become eligible for appearing in the mains examination from tomorrow.

There are other aspects of the case which too have been highlighted, but, for the present, only the aforesaid factual aspect of the answers to four questions being incorrect is being focused at.

The learned counsel for the Commission has, however, stated that altogether 28874 applications were received by the applicants desirous of sitting in the examination, who were provisionally allotted their enrollment numbers. The preliminary examination was held on 15.09.2018 at 46 examination centres in Patna. Out of the aforesaid 28874 applicants, 17865 candidates, including the petitioners appeared in the preliminary examination. It has further been stated on behalf of the Commission that the question paper under the general category had been set by the experts of different subjects. The question papers were printed in A, B, C and D series. Objections to the model key answers



was invited and later, a committee of experts was constituted to evaluate the key answers given by the question setters and objections / suggestions given by the candidates. 1267 objections were received by the Commission. The expert committee, after carefully considering and deliberating, found that the answers to 15 questions provided by the Commission were wrong.

It may be noted that the 4 questions whose answers have been found to be wrong by the petitioners do not find mention in the aforesaid list of the expert committee of such questions for which the Commission had provided wrong answers.

It has, therefore, been argued on behalf of the Commission that the entire selection process was conducted with complete transparency and adequate precaution at each and every stage was taken so that nobody turned out to be a sufferer.

From the averments made on behalf of the parties and after going through the records of the case, this Court has no manner of doubt that the Commission has adopted a fair



approach, in as much as the objections to the model answers were re-evaluated and deliberated upon by a committee of experts. However, what is worth taking note of is that 15 questions have been provided with a wrong answers by the Commission. This surely gives an impression that the answers provided by the question setters, which was the basis for the Commission to provide the model key answers, was not full-proof and mistakes had surely crept in the aforesaid model answers.

There is great force in the submission urged on behalf of the Commission that normally the answer provided by the examining body and that also after the same having been re-evaluated by a committee of experts should be given preference over the answer suggested by the candidates / objectors. Nonetheless, in the absence of any source or name of the text book by the body of experts to come to a definite finding about the correctness of an answer and the objectors / petitioners having demonstrated through an acclaimed / recognized text books that the answers are wrong, the model answers are required to be given a re-look. If 4 marks are



found to have been wrongly deducted from the marks obtained by the candidates / petitioners, it will and has surely spoiled the game so far as they are concerned. This Court cannot shut its eyes to the disastrous / cascading impact of the wrong answers vis a vis the petitioners who have missed the cut-off marks by less than 4 marks on the sole / lame plea of opening a flood gate for the objectors, if such wrong answers are taken note of.

The law in this regard has been amply summed up by the Supreme Court in the case of ***Ran Vijay Singh and Ors. Versus The State of Uttar Pradesh and Ors [(2018) 2 SCC 357]***.

The case referred to above related to the examination conducted by the U.P. Secondary Education Service Selection Board. In paragraphs 30 and 31, the Supreme Court has stated as hereunder:

"30. The law on the subject is, therefore, quite clear and we only propose to highlight a few significant conclusions. They are:

30.1. If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the



authority conducting the examination may permit it;

30.2. If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any "inferential process of reasoning or by a process of rationalisation" and only in rare or exceptional cases that a material error has been committed; (emphasis provided)

30.3. The court should not at all re-evaluate or scrutinise the answer sheets of a candidate – it has no expertise in the matter and academic matters are best left to academics;

30.4. The court should presume the correctness of the key answers and proceed on that assumption; and

30.5. In the even of a doubt, the benefit should go to the examination authority rather than to the candidate.

31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an



erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse – exclude the suspect or offending question.”

While coming to the aforesaid conclusion, the Supreme Court took note of several decisions of the Supreme Court and other High Courts, viz, ***H. P. Public Service Commission versus Mukesh Thakur [(2010) 6 SCC 759]; Ranjeet Kumar Singh Versus State of U.P. [(2012) SCC Online All 268]; Manish Ujwal Versus Maharishi Dayanand Saraswati University [(2005) 13 SCC 744; Kanpur University Versus Samir Gupta [(1983) 4 SCC 309]; Maharashtra State Board of Secondary and Higher Secondary Education Versus Paritosh Bhupeshkumar Seth [(1984) 4 SCC 27]; Pramod Kumar Srivastva Versus Bihar Public Service Commission [(2004) 6 SCC 714]; West Bengal Council of Higher Secondary Education Versus Ayan Das [(2007) 8 SCC 242]; and Khushboo Srivastava Versus Union of India [(2008) SCC Online Pat 1553,*** and held that a Court may permit re-evaluation or scrutiny of the answers only in the condition if it is demonstrated very clearly, without any inferential process of reasoning or by a process of rationalization and that also under rare and exceptional cases.



In the present case, the petitioners have been able to demonstrate through authoritative texts that the answers to the four questions referred to above are incorrect and the correct answers are different.

In the aforesaid circumstances, this Court is left with no other alternative, specially taking into account that the petitioners have missed on to become successful in the preliminary examination by 1 or 2 marks only, to ask the Commission to constitute an expert body of members, who were not part of the erstwhile committee, to revisit the answers to the four aforementioned questions. If it is found that the answers provided by the Commission to the aforesaid four questions are wrong, the petitioners do deserve to participate in the selection process by writing the mains examination.

The Court, therefore, asked Mr. P. K. Shahi, learned senior counsel appearing for the Commission to find out if it is possible for the Commission to allow the petitioners to appear in the mains examination, which is to commence from tomorrow, i.e., 27th of March, 2019. Mr. Shahi, after



telephonically contacting the concerned authorities in the Commission expressed that it was not possible to allow the petitioners to appear in the mains examination as all the preparations for holding the examination has already been made.

I do not wish to comment on the aforesaid response of the Commission as I also feel that the Commission would be put to serious difficulty in allowing the petitioners to appear in the mains examination from tomorrow for which all preparations have already been made. Nonetheless, such difficulty of the Commission cannot be a ground for not responding to the grounds urged by the petitioners who have clearly demonstrated through recognized / accredited / acclaimed text books of the respective fields that the answers provided by the Commission to the four questions are wrong. Allowing such a situation to pass off on the sole ground of the difficulty for the examination taking body would be doing injustice to the young generation who are yet to face the world. It cannot be denied that erroneous evaluation because of wrong answer key leads to erroneous result, which is to the



disadvantage of many and by no stretch of imagination can the same be countenanced or permitted / perpetuated, notwithstanding the fact that in such matters, one should care for the finality of the proceedings and not derail the entire process of appointment. The petitioners have applied for government job, which in reality is an instance of national wealth, for it provides employment to the unemployed and also provides man power to the State to perform its obligations. Selecting candidates who would be inferior to the petitioners/aspirants would do no good to anyone, much less the system as well as the nation.

Keeping the aforesaid aspects in mind and being consistently conscious of the fact that no direction could be given which would have the potency of derailing the process of appointment, this Court deems it appropriate to and direct the B.P.S.C. to constitute a fresh committee of experts to re-visit the four above-noted questions. If the answers provided by the Commission to the aforesaid questions are found to be wrong, and it is found by the Commission that the petitioners have attempted answering the questions correctly and have missed



the cut-off marks only because of wrong answers provided by the Commission and had objected to the correctness of the answers to such questions, then only a separate mains examination be held for such petitioners, even if it entails an additional cost, energy and time of the Commission **(Refer to Ravindra Kumar Singh V. High Court of Judicature at Patna [2016 SCC Online Pat. 260J])**. After all, it is for the benefit of the candidate as well as to the employer that such scrutiny of the most suitable candidates is made by way of examination.

The entire process be concluded within a period of 10 weeks from the date of passing of the order or from the date of production/communication of a copy of this order.

With the aforesaid observation / direction, these writ petitions stand disposed off.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	01.04.2019
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