

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9261 of 2019

Arvind Rai Son of Surendra Rai Resident of Village-Ball Khurd, P.O.-P.S.
Chauri Chaura, District-Gorakhpur-273201, Uttar Pradesh.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Bihar Public Service Commission through its Chairman, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna-800001.
4. The Chairman, Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna-800001.
5. The Secretary, Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna-800001.
6. The Controller of Examination, Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna-800001.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 9600 of 2019

1. Mani Shankar Prasad Son of Ram Pravesh Prasad Resident of Village Nakatpura, P.S. Biharsharif, District Nalanda
2. Najmul Hoda Son of Ziaul Hoda Khan Resident of Village Raham Khan, Post Lalbagh, P.S. Darbhanga, District Darbhanga

... .. Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Govt. of Bihar, Patna
2. Chief Secretary, 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, Govt. 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

Appearance :

(In Civil Writ Jurisdiction Case No. 9261 of 2019)

For the Petitioner/s : Mr.Kumar Kaushik

For the Respondent/s : Mr.Md. Nadim Seraj (Gp5)

(In Civil Writ Jurisdiction Case No. 9600 of 2019)

For the Petitioner/s : Mr.Harsh Singh

For the Respondent/s : Mr.Vikash Kumar (Sc11)

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : Date : 02-08-2019

The petitioners, in both the writ petitions, are candidates who have appeared in the process of selection pursuant to advertisement No. 3/2017. For the purpose of appointing Assistant Engineer (Mechanical Engineering) the process of selection was conducted by the Bihar Public Service Commission (hereinafter referred as BPSC). The selection process comprised of a preliminary objective examination and written mains examination for those who emerged successful in the Preliminary examination (hereinafter referred as P.T). P.T. was conducted on 16.09.2018. Petitioners participated in the P.T. The commission put up a notice on the website on 25.09.2018 inviting objections from the participating candidates in respect of model answers for the 150 questions of the P.T. which also had been uploaded. The petitioners submitted their objections along with others.

Total 100 objections were received in the office of the



respondent/ commission within the last date i.e. 03.10.2018. Two expert committees were constituted for examining the objections submitted by the candidates. Objection in respect of 50 model answers were placed before one committee comprising of three experts from the field of Zoology, Chemistry and Physics. The other expert committee which comprised experts/academicians from the field of engineering examined the remaining 100 model answers.

This Court while hearing these matters yesterday, made a specific query from the respondent Commission as to what was the rationale for assigning 50 model answers out of 150 for screening before a committee which had no expert from the field of engineering, and 100 model answer before the committee comprising of academicians from the field of engineering.

Counsels appearing for the Commission in both the cases have handed over copies of the communication dated 16.03.2018 issued by the Road Construction Department, the minutes of the meeting of the Commission dated 11.05.2018 as well as copy of the paper publication (important notice) dated 18.05.2018, after handing over copies to counsels for petitioners. In the normal circumstance this Court would not



proceed to examine these documents. Petitioner's Counsels however have specifically admitted to the paper publication dated 18.05.2018. The Court would therefore exclude the other documents from consideration in today's proceeding and take into consideration only the paper publication dated 18.05.2018.

Counsel appearing for the Commission submits that in view of admitted fact with regard to important notice being published in the local daily on 18.05.2018, the irresistible conclusion is that petitioners were well aware of the fact that question has been segregated between 50 from general stream and 100 from Engineering. Since questions as per important notice dated 18.05.2018 were divided in the aforesaid manner, two expert committees had been constituted to examine model answers accordingly.

The report of the expert committee was placed before the Full Commission. Model answers in respect of 16 questions were found to be wrong. The model answers, therefore, were changed for 16 questions. The expert Committee was also of the opinion that 6 questions did not have any correct answers. The said six questions were, therefore, deleted from the P.T. examination. The candidates as a result were to be assessed on the basis of answers given in respect of 144 questions only.



Report of the expert committee was approved by the Full Commission on 06.12.2018.

Petitioners in both the cases are aggrieved by the model answers in respect of question no. 11 from A series which is question no. 32 in C series. The question is as follows:

When air passes through silica gel

(A) it absorbs water vapour molecules

(B) latent heat of condensation is released

(C) DBT of air increases

(D) All of the above

Counsel appearing for the petitioners in both the cases have submitted that the correct answer option for this question was (D). Expert body however, has considered the correct answer to be (A). Opinion of the expert body has been assailed by petitioners alleging that the expert body which examined this model answer did not comprise of academicians from the field of engineering. Relying upon some texts which petitioners assert are authoritative, it is submitted that the effect of Air passing through silica gel is (A), (B), and (C). In the circumstance the correct answer was (D). It is specifically submitted that if an Academician from engineering faculty examines the objections of the petitioner the conclusion cannot



be other than the correct answer being (D).

Model answer for another question i.e. question number 126 from C series is also disputed by petitioners in CWJC No. 9600 of 2019. It is submitted that none from the field of Thermo Dynamics has considered the objections. Only a person conversant with Thermo Dynamics could have properly considered the objections in respect of the said question. Question No. 126 of C series reads as follows:

A linear circuit must obey

(A) superposition theorem

(B) superposition theorem and Thevenin's theorem

(C) superposition, Thevenin's theorem and Norton's theorem

(D) superposition and Norton's theorem

The petitioners counsel submits that (A) is the correct answer to this question. The model answer (C) approved by the expert committee as well as the Commission is not the correct answer. It is submitted by the petitioners counsel that the text book of electrical technology which is written by an authority on the subject clearly show that the correct answer ought to be (C).

It is worth while to note that both the petitioners have not



qualified P.T. on account of obtaining one mark less than the cut of marks.

Counsel appearing for the Commission submits that since 50 questions were general in nature the committee considering the said model answers in respect of said 50 questions including question number 11 from A series was comprising of academicians from Zoology, Chemistry and Physics. Remaining 100 questions including question number 126 of C series were arising out of main stream engineering and therefore the second committee was constituted comprising of academicians from the field of engineering.

Apart from the said submission counsel for the respondent Commission placed reliance on the decision of the Apex Court in the case of Ran Vijay Singh and Ors. vs. State of Uttar Pradesh, as well as recent decision of this Court in the case of Prakash Chandra vs. State of Bihar in CWJC No. 6030 of 2019, which it is submitted has been affirmed by division bench of this Court in LPA No. 798 of 2019. Placing reliance on the settled legal position Counsel submits that the circumstances do not give rise to any extra ordinary situation so as to necessitate interference in the result or to invoke jurisdiction of this Court under Article 226 in favour of the petitioners.



Counsel for the petitioners have responded to the said submission. It is their specific assertion that the model answers in respect of the questions have been shown to be incorrect on the basis of authoritative text. The Commission on the other hand has not assigned any reason to show that model answer as per their perception is the correct answer. It is submitted that the circumstances are such that in terms of the law laid down by the Apex Court in the case of Ran Vijay Singh process of evaluation in respect of the petitioner should be done by deleting the question, model answers of which are incorrect. If this exercise is undertaken then all the petitioners who have missed their chance to appear at mains examination by one mark would stand qualified in the preliminary test and would get an opportunity to appear in the mains examination.

It is strenuously urged by both counsels appearing for the petitioners that Judgment of Apex Court in the case of Ran Vijay Singh (supra) as well as recent decision of this Court in CWJC No. 6030 of 2019 does not mandate a total hands off approach. This Court having wide powers under Article 226, in the facts of the instant case would be well in its jurisdiction in exercising of powers under Article 226, having regard to the error in the model answers.



Having considered the submission of the parties, this Court would observe that model answer for question No. 11 from A series which has been assailed by petitioners of both cases is a possible answer, even as per authoritative text relied upon by petitioners counsel. From reading the text it appears that when Air passes through silica gel it absorb water as vapour molecules. Opinion of the expert that (A) is the correct answer is prima facie correct, even as per authoritative text relied upon by the petitioners.

Reading of the texts shows that the subsequent effects of Air passing through silica gel is that latent heat of conduction is released and DBT of Air increases. Question however, is not with respect to the effects of Air passing through silica gel. Answer (A) as per opinion of expert, therefore, cannot be said to be incorrect.

The other question i.e. question no. 126 of (C) series has also been considered by this court in the background of the authoritative text relied upon by the petitioners in CWJC No. 9600 of 2019. Great emphasis is laid by the petitioner on the text book of Electrical Technology by B.L.Thareja and A.K.Thareja (Annexure-9). Referring to the said text (relevant portion at page 61 of the brief), it is submitted that



superposition theorem only, could have been the correct answer. Referring to the text it is submitted that superposition theorem is applicable only to linear networks where current is linearly related to voltage as per Ohm's Law.

Question however, is as to which Theorem a linear circuit must obey. The experts from the field of engineering comprising of the committee which was considering 100 questions were of the opinion that superposition Thevenin's theorem and Norton's theorem both must be obeyed.

Bare reading of the texts referred to by the petitioner in this court's opinion does not lead to a conclusion that model answer (C) as per opinion of the experts is wrong, merely, because superposition theorem as per text relied by petitioner is applicable only to linear networks. Even if, this is accepted to be correct the same does not negate or in any way lead to a conclusion that model answer (C) as per expert opinion is wrong. This Court does not find force in submission of counsel for petitioners that the model answers are wrong.

The situation is such that there appears to be a genuine doubt in the minds of the petitioners regarding the model answers being wrong.

Paragraphs 30 and 31 of the Judgment of the Apex Court



in the case of Ran Vijay Singh and others vs. The State of Uttar Pradesh and others reported in (2018) 2 SCC 357 must be borne in mind while examining the claim of the petitioners. This court would reproduce paragraphs 30 and 31 of the Supreme Court Judgment in the case of Ran Vijay (supra);

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 reevaluation 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 reevaluate or scrutinize 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.”

Para 30.4 and 30.5 clearly lays down the law as to how claims in respect of correctness of key answers should be examined by this Court. Even if, a doubt is created as in the instant case. In the aforesaid facts and circumstances this Court does not consider it appropriate to exercise jurisdiction under Article 226 and interfere with the opinion of the experts.

Having regard to the facts and circumstances of the instant case, no extraordinary circumstances has been made out to warrant interference with the selection process. There is no basis for issuing any directions in favour of the petitioners. The writ petition is devoid on merit and the same is dismissed.

(Madhuresh Prasad, J)

Rahul/-

AFR/NAFR	NAFR
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