

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10776 of 2018

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Anjum Ara D/o Shaikh Mohammaddin Hasan and W/o Mohammad Faruque,
R/o Sabun Toli, Naya Quilla Nawalpur, Asingar, P.O. and District- Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Director, State Council of Educational Research and Training, Bihar, Mahendru, Patna.
3. The Chairman Bihar School Examination Board, Patna.
4. The Secretary Bihar School Examination Board, Patna.
5. The Controller of Examination, Bihar School Examination Board, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ravi Bhushan Verma
For the Respondent/s : Mr.Prabhakar Jha, GP-27

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

C.A.V. JUDGMENT

Date : 29.08.2019

The present writ petition has been filed for directing the respondents to make necessary correction in the result of Bihar Elementary Teachers Eligibility Test, 2017 (hereinafter referred to as the B.E.T.E.T., 2017), and thereafter republish the correct result after giving marks for the wrong printed questions in the said B.E.T.E.T., 2017 as also after adding the aforesaid marks and re-totaling the marks.

The brief facts of the case according to the petitioner is that the petitioner belongs to Muslim Mukeri caste and she had filled up the form of the aforesaid B.E.T.E.T., 2017 under the BC-I female category for Urdu Teacher in Class-VI to



VIII.

It is the case of the petitioner that she had appeared in the B.E.T.E.T., 2017 exam held on 23.07.2017 and according to her even the Bihar School Examination Board (hereinafter referred to as the Board), had accepted that there were eight wrong questions/answers out of 150 questions and when the provisional result was published, the candidate under the category BC-I who had obtained 78 marks was declared successful, however, the petitioner having 74 marks was declared fail. The petitioner is said to have also filed objections whereafter the revised result was published by the Board wherein it was accepted that 7 questions/answers had been wrongly printed, as such the female candidate of BC-I category who had obtained 79 marks were declared successful. In the said result the marks of the petitioner was shown as 78, however, she was declared to have failed. It is the allegation of the petitioner that on account of erroneous and faulty marking, marks were not given for the wrong printed questions/answers, hence the petitioner obtained only 78 marks i.e. 54.545 per cent and was declared to have failed in the aforesaid eligibility test. Thus the Board was required to treat the said marks as 55 per cent marks and declare the petitioner to have passed.



At this juncture, it would be relevant to mention that the present case was heard along with another writ petition on the same day i.e. the one bearing CWJC No. 11762 of 2018, wherein also the judgment was reserved. At the time of hearing of the present case, the learned counsel for the petitioner submitted that the issue involved in the present case is similar to the issue involved in the aforesaid writ petition bearing CWJC No. 11762 of 2018.

The learned counsel for the respondent Board has submitted that he proposes to adopt the same argument as has been advanced by him in the aforesaid writ petition bearing CWJC No. 11762 of 2018.

In reply the learned counsel for the petitioner has submitted that the petitioner would abide by the judgment to be rendered in the aforesaid writ petition bearing CWJC No. 11762 of 2018.

As far as the aforesaid writ petition bearing CWJC No. 11762 of 2018 is concerned, this Court has already delivered the judgment on 09.08.2019 and the said writ petition has been dismissed.

It would be relevant to reproduce paragraph nos. 21, 22, 23, 24(first) of the aforesaid judgment dated 09.08.2019



passed in CWJC No. 11762 of 2018 herein below:-

“21. Admittedly, the respondent-Board, upon preparation of the model answers by a team of subject experts, after the examination had been held, found that 28 questions were wrong as far as sets A, B, C and D of paper I and Paper II are concerned whereafter, all such wrong questions were deleted and the answer-sheets were evaluated and then the result was published on 22.9.2017 by lowering down the full marks corresponding to the wrong questions, corresponding to the concerned paper. This Court further finds that the process at the level of the respondent-Board did not end here inasmuch as after publication of the result of the BETET, 2017 on 22.9.2017, further complaints were received with regard to the error in questions whereupon the Respondent-Board had again appointed a committee of subject experts to deal with the fresh objections received by the respondent-Board from the appearing candidates and thereafter, the committee, after examining the objections, had submitted its recommendations to the Board along with the revised model answer key, which was uploaded on the website of the Board, inviting fresh objections thereon, vide fresh communique contained in advertisement no. 95 of 2017 dated 28.12.2017, from all the appearing candidates with request to the candidates to file their objections against the revised model answer key and then the fresh objections received from the appearing candidates were forwarded to the subject experts committee which again looked into the objections and gave its recommendations and only thereafter, considering the report of the subject experts, the final result of BETET, 2017 was published on 6.3.2018. One important aspect to be noted



here is that the writ petitioners have failed to show that in pursuance to advertisement no. 95 of 2017, issued on 28.12.2017, the writ petitioners had filed fresh objections against the revised model answer key, hence, on this ground alone, the writ petition is fit to be dismissed inasmuch as non submission of such objections clearly depict that the writ petitioners had no grievances against the revised model answer key. This Court, thus, finds that the Board has taken full care to delete the defective questions, which is in line with the mandate of law, as enunciated in the judgment rendered by the Hon'ble Apex Court in the case of Kanpur University (supra), as also by this Court in the case of Dhananjay Kumar Mishra and Ors. (supra), hence this Court does not find any infirmity in the process undertaken by the respondent Board to publish the final result dated 6.3.2018.

22. At this juncture, it would be relevant to also deal with the Division Bench judgment rendered in the case of Akshey Lal Pandit (supra), relied upon by the learned senior counsel for the petitioners, which first of all has been passed subject to the ultimate decision to be rendered by the Hon'ble Apex Court in the proceedings pending before it, which has not been placed before this Court and secondly the said judgment has been passed considering the facts and circumstances of the said case and in the interest of justice without laying down any law, hence this Court is of the opinion that the said judgment would not have any force by way of precedent especially in light of the authoritative pronouncements by the Hon'ble Apex Court as also this Court, on the subject matter under consideration, in the case of Kanpur University & ors. (supra), Dhananjay Kumar Mishra & Ors. (supra) and Abdul Majid & Ors. (supra).



23. Now adverting to another issue sought to be contended by the Learned Senior Counsel for the petitioners regarding the mode and manner of the examination process, conducted by the respondent Board, being in teeth of the guidelines issued by the National Council for Teacher Education for conducting Teacher Eligibility Test, is required to be noted only for the purpose of being rejected inasmuch as firstly the said guidelines are on the very face of it not mandatory and moreover the said guidelines nowhere postulates that in case of a situation as has arisen in the present selection process in question, the mode required to be followed, as prescribed by the Hon'ble Apex Court in its various judgments, referred to herein above in the preceding paragraphs, for the purposes of evaluation and declaration of results, should be given a go bye or rather should not be followed.

24. Another aspect of the matter is that the Hon'ble Apex Court in the case of **Himachal Pradesh Public Service Commission vs. Mukesh Thakur & Anr., reported in 2010 (6) SCC 759** has held that if there is some discrepancy in framing the questions or evaluation of the answer; it would be for all the candidates appearing for the examination and not only for the writ petitioners. In this regard, it would be relevant to reproduce paragraph no. 19 of the judgment rendered by the Hon'ble Apex Court in the Mukesh Thakur's case (*supra*) herein below:-

“19. In view of the above, it was not permissible for the High Court to examine the question paper and answer sheets itself, particularly, when the Commission had assessed the inter-se merit of the candidates. If there was a discrepancy in framing the questions or evaluation of the



answer, it could be for all the candidates appearing for the examination and not for respondent no. 1 only. It is a matter of chance that the High Court was examining the answer sheets relating to law. Had it been other subjects like physics, chemistry and mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court.”

Having regard to the aforesaid judgment dated 9.08.2019 passed in CWJC No. 11762 of 2018, the present writ petition is also fit to be dismissed on the same analogy, hence the present writ petition stands dismissed being devoid of any merit.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	26.09.2018
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