

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.698 of 2018

In
Civil Writ Jurisdiction Case No.9382 of 2015

=====

Abhishek Kumar Son of Krishnandan lal C/o K.N. Lal, Resident of Village-
Churaman Bigha, P.O. - Bhagan Bigha, P.S. Vena, District- Nalanda.

... .. Appellant/s

Versus

1. The State Of Bihar and Ors
2. The Chairman, Bihar Public Service Commission 15 Jawahar Lal Nehru Marg, Bailey Road, Patna.
3. The Examination Controller, Bihar Public Service Commission 15 Jawahar Lal Nehru Marg, Bailey Road,
4. The Secretary, Bihar Public Service Commission 15 Jawahar Lal Nehru Marg, Bailey Road, Patna
5. The Joint Secretary-Cum-Examination Controller, Bihar Public Service Commission 15 Jawahar Lal Nehr

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr. Raja Ram Mishra, Advocate
For the State	:	Mr. Saroj Kumar Sharma, A.C. to A.A.G.3
For B.P.S.C.	:	Mr. P.N. Shahi, Sr. Advocate
		Mr. Sanjay Pandey, Advocate

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 10-04-2019

Heard learned counsel for the appellant.

The dispute centres around the marking of the OMR sheets and the marks obtained by the petitioner in the examinations for the post of Assistant held by the Bihar Public Service Commission, the examination whereof was held on 18th April, 2015 and the results were finalized and then declared on



15th of June, 2015.

The appellant contends that he had obtained 132 marks, and since 130 marks was the cut-off for the category to which he belonged, he was entitled to be selected, but the Respondent Public Service Commission came out with a case that the petitioner had obtained only 126 marks and, therefore, could not be selected. The petition was instituted with these allegations whereafter a counter affidavit has been filed by Commission and after exchange of affidavits the learned Single Judge has dismissed the writ petition accepting the contention of the Commission that the appellant had violated condition No. 10 by erasing out six questions as a result whereof six marks were deducted and the appellant was awarded 126 marks instead of 132.

Learned counsel for the appellant has invited the attention of the Court to the instructions in this regard as contained in the leaflet of the Commission. Condition Nos. 10 and 12 are extracted hereinunder:

“10. In the Answer Sheet, there are **four** circles – (A) (B) (C) and (D) against each question. To answer the questions you are to mark with Black/Blue ink ballpoint pen ONLY ONE circle of your choice for each question. Select only one response for each question and mark it in your Answer Sheet. If you mark more than one answer for one question, the answer will



be treated as wrong. **Use Black/Blue ink ballpoint pen only to make the answer in the Answer Sheet. Any eraser or change is not allowed.**

12. Failure to comply with any of the above instructions **will render you liable to such action or penalty as the Commission may decide at their discretion.**”

It is the submission of the learned counsel that Condition No. 10 only indicates that any eraser or change is not allowed, but it does not speak of any consequences, including the deduction of marks, which, if has to be taken, can be done by exercise of the authority under Clause 12. It is, therefore, submitted that the counter affidavit before the learned Single Judge did not disclose any decision having been taken as per Clause 12 and, therefore, in the absence of any consequential action having been actually taken after a decision, the deduction of marks as claimed by the Respondent Commission was unjustified. It is, therefore, submitted that the learned Single Judge erred in not accepting the aforesaid contention raised on behalf of the appellant and has erroneously dismissed the writ petition.

Learned counsel for the Commission contends that the consequences of the violation of Clause 10 are contained in the said Clause itself and even otherwise it is not correct to say that no decision had been taken. He has invited the attention of the



Court to the supplementary counter affidavit filed on behalf of the Commission in the present appeal where it has been stated that the manual scrutiny of the OMR Sheet was conducted and it was found that there were double entries and eraser was attempted for which reliance has been placed on a scrutiny sheet dated 13th of June, 2015 indicating the same. It is also stated that a meeting was conducted of the full Commission on 15th June, 2015 and in the said meeting it was resolved to accept the said scrutiny report and declare the results accordingly. It is, therefore, the contention that a decision consciously was taken after the report was submitted and, hence, the contention raised on behalf of the appellant that no decision has been taken by the Commission is not correct.

Reliance has also been placed on a Division Bench Judgement in L.P.A. No. 581 of 2015 decided on 30th March, 2016 to urge that such a condition that was imposed by the Commission in another examination has been held to be mandatory and, therefore, any action taken by the Commission to declare the results after deducting the marks in respect of erasing answers is in tune with the instructions and the law considered in the Division Bench Judgement in the case of Smt. Pushpa Kumari Vs. State of Bihar (supra).



Apart from this, the original OMR Sheet of the petitioner bearing Roll No. 310051 has been produced by the learned counsel for the Commission and it has been pointed out that whitener has been used for erasing the answers already attempted by the appellant in Question Nos. 3, 21, 28, 79, 88 and 132. It is, therefore, submitted that there was material to disallow 6 marks on account of such eraser having been utilized by the appellant in the OMR Sheet to correct his answers.

We have considered the submissions raised and we find that Clause 10 of the Instructions clearly provides that any erasure or change is not allowed. The said condition is, therefore, mandatory and the reasoning given by the Division Bench in the case of Smt. Pushpa Kumari (supra), in our opinion, also squarely applies in the present case as well.

We are, therefore, of the opinion that any eraser attempted by the candidate would result in a consequence which is qualified by the word 'not allowed'. Thus, any attempt to answer a question a second time after erasing the first answer, results in disallowing the said answer. The necessary consequence thereof is that the marks for the said answer have to be deducted.

The contention of the learned counsel for the



appellant is that this decision to disallow the marks has not been taken by the Commission nor this was the case in the counter affidavit before the writ court.

We have perused the counter affidavit. Even though these specific allegations were not there in the counter affidavit, but before us a supplementary counter affidavit has been filed categorically bringing on record the scrutiny sheet dated 13th June, 2015 which demonstrates that such erasers were found in respect of 5 candidates and the revised marks allocated upon scrutiny have been mentioned in the last column. Learned counsel submits that these entries have been made by hand and, therefore, the entire documents being with the Commission there is a possibility of such revision enabling other disqualified candidates to be favoured by the Commission.

We have not been able to gather any such material on record which may demonstrate that adapting such method of manual scrutiny has resulted in prejudice to the appellant with a corresponding advantage to any other candidate. The question of inferring any malice either on facts or in law does not arise on the facts of the case. The deduction of marks has been made in respect of several candidates upon attempt of erasing being detected by the scrutiny committee and these facts could not be



successfully disputed in the reply submitted by the appellant in his affidavit. The apprehension expressed of manipulation of result in order to provide any benefit to a favoured candidate, therefore, is a contention which does not stand substantiated by any material on record.

We, therefore, find that the consequences of eraser having been attempted by the appellant was considered and a conscious decision was taken to accept the report of the scrutiny committee which, therefore, amounts to a decision taken by the Commission that cannot be faulted with any legal or other ground.

Consequently, we do not find any merit in the appeal. The same is, accordingly, rejected. The original OMR Sheet that was produced has been returned to the learned counsel for the Commission.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

K.C.Jha/Uma/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	12.04.2019
Transmission Date	N/A

