

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Letters Patent Appeal No.1552 of 2018**

**In**  
**Civil Writ Jurisdiction Case No.9987 of 2017**

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Chakradhari Gupta Son of Sri Jawahar Lal Gupta resident of Tapovan Colony, Rampur Road, P.O.-Mahendru, P.S.-Bahadurpur, District-Patna. Presently Posted as Inspector/GD in the Office of Commandant, 127 Battalion, CRPF, Bhanjanagar, Ganjam, State-Orrisa.

... .. Appellant/s

Versus

1. The State Of Bihar through the Principal Secretary, Department, of Home (Police), Govt. of Bihar, Old Secretariat, Patna.
2. The Principal Secretary, Department, of Home Police, Govt. of Bihar, Old Secretariat, Patna.
3. The Additional Secretary, Department of Home Police, Govt. of Bihar, Old Secretariat, Patna.
4. The Deputy Secretary, Department of Home Police, Govt. of Bihar, Old Secretariat, Patna.
5. The Bihar Public Service Commission, through its Chairman, Bailey Road, Patna.
6. The Chairman, Bihar Public Service Commission, Bailey Road, Patna.
7. The Secretary, Bihar Public Service Commission, Bailey Road, Patna.
8. The Additional Secretary, Bihar Public Service Commission, Bailey Road, Patna.

... .. Respondent/s

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**Appearance :**

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|----------------------|---|------------------------------------|
| For the Appellant/s  | : | Mr.Nawal Kishor Singh              |
| For the Respondent/s | : | Mr.Prabhat Kumar Verma -AAG 3      |
| For the BPSC         | : | Mr. Pushkar Narain Shahi, Sr. Adv. |

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**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE MR. JUSTICE DINESH KUMAR SINGH**

**ORAL ORDER**

**(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)**

2      22-11-2019                      Heard learned counsel for the parties.

The present Letters Patent Appeal has been preferred  
against the judgment dated 13.9.2018 passed in C.W.J.C. No.  
9987 of 2017 by the learned Single Judge, whereby the



appellant's prayer for declaring illegal the arbitrary the deduction of 3½ marks in the answer sheets of the examination of Assistant Prosecution Officer in pursuance to Advertisement made in 2009, has been rejected. The other prayer of the appellant in the writ application was that the appellant may be adjusted against the vacant post of Damodar Kumar since he did not join such post. However, the petitioner-appellant, subsequently, in view of the counter affidavit to the effect that there are other persons above in the merit list the petitioner to occupy the post, the said was not pressed. The prayer made in paragraph 1 of the writ application of the petitioner-appellant reads as follows:

“(a) For issuance of an appropriate writ(s), order(s) or direction(s) directing the respondent authorities to hold and declare the marks of the petitioner as 340.50 which has been arbitrarily deducted without any valid and legal justification and further prepare the fresh merit list after placing the petitioner at serial no.15 (i.e. after Sri Shailendra Kumar who has secured 243 marks and above Rajesh Kumar who has secured 338 marks and further as one person at Sl. No. 4 of the final merit list namely Sri Damodar Kumar did not join), as the said deductions have been done in gross violation the guidelines framed the respondent Bihar Public Service Commission, Patna (hereinafter referred to as Commission in short)



(b) for issuance of an appropriate writ(s), Order (s) or direction (s) directing the Respondent Commission to consider the case of the petitioner and make recommendations to the post of Assistant Prosecution Officer at the Sl. No. 15 of the merit list for which he is legally and validly entitled having secured 340.50 marks under the given facts and circumstances of the present case and furthermore that as according to the petitioner one post under his category is still lying vacant and also on account of the fact that according to the petitioner he has secured much higher marks in his category than the cut-off marks fixed by the Commission which has arbitrarily and illegally been deducted.

(c) For issuance of an appropriate writ (s), Order (s) or direction (s) directing the Respondent authorities to consider and appoint the petitioner on the post of Assistant Prosecution Officer in pursuance to the advertisement published by the Respondent Commission in the year 2009 at Sl. No. 15 according to the final merit list published for the purposes of claiming the seniority as per his merit.

(d) Alternatively, the petitioner prays that Respondent Commission may be directed to recommend the name of the petitioner for appointment as one post in EBC category is still vacant due to non-joining of one Sri Damodar Kumar who is at Sl. No. of the final merit list.

(d) And/Or pass such other order (s) as your Lordships may deem fit and proper.”

The factual matrix of the case is that in 2009, an



advertisement was published for appointment on 106 posts of Assistant Prosecution Officer, out of which 53 posts were meant for the General category male candidates, 17 posts for Scheduled Caste category candidates, 1 post for the Scheduled Tribes candidate and 20 posts for the Extremely Backward category candidates, to which the petitioner belongs, 12 posts for Backward class candidates and 3 posts were earmarked for the Backward class women candidates.

After having qualified at the preliminary test, the petitioner-appellant appeared at the Mains Examination in 2012. When the petitioner-appellant cleared the main examination, he was called for the interview and appeared but the petitioner-appellant was finally not selected whereas merit select list of 151 candidates was published. The petitioner-appellant's position in the merit list was 155. After obtaining the marks sheets, petitioner-appellant found that there is cutting and overwriting while giving the marks in the Indian Penal Code as well as Elementary General Science papers. Altogether in both the papers, altogether 3 ½ marks were reduced by the Head examiner. Hence, among Extremely Backward candidates, to which the petitioner belongs, the candidates got 337 marks and the petitioner was 5<sup>th</sup> at the serial



in the said category.

Learned counsel for the appellant submits that the marks were reduced by the Head examiner but the petitioner-appellant has doubt since some of the cuttings do not bear the initial of the head examiner and had those marks not been reduced, the petitioner-appellant would have been placed in the merit list of selected candidates.

Mr. Pushkar Narain Shahi, learned Senior counsel appearing for the Bihar Public Service Commission (hereinafter referred to as 'the Commission') submits that the learned Single Judge, in paragraph 10 of the impugned judgment, has clarified this fact that the initials of the examiner being amiss at certain places of the answer sheet which might have been due to human error. Moreover, no malafide was alleged nor any case of malice is being made out on the part of the examiner or head examiner. Hence, the learned Single Judge rightly dismissed the writ application.

In pursuance to the advertisement made in 2009, the Preliminary Test was conducted in 2012, the written examination was conducted in 2014 and results were published on 16.11.2016 whereas the writ application was registered in 2017.



Having heard learned counsels for the parties, we are of the considered opinion that the learned Single Judge has passed the impugned order after personally examining the answer sheets and found that at most places the cutting has been countersigned by the head examiner as per the prescribed instructions of the Commission. Moreover, the malafide has not been alleged by the petitioner.

However, learned counsel for the petitioner-appellant submits that he received information under the Right to Information Act, which suggests that at certain places initials of head examiner were not found where cutting of marks were done. Considering the fact that receiving of information under the Right to Information Act is subsequent to the writ application, we are not inclined to examine the same.

From perusal of records, it appears that neither the Head examiner nor the examiner has disputed the deduction of marks or any cutting/correction made in the answer sheet. This is not in dispute that the examiner or head examiner had the power to increase or reduce the marks. The writ application has been filed much after conclusion of the entire appointment process and the appellant himself not pressed his claim to be appointed against the post which fell vacant due to non-joining



of Damodar Kumar in view of the fact that there were other persons above the appellant in the merit list,

We are of the considered opinion that there is no error or perversity in the impugned judgment of the learned Single Judge.

This appeal is, accordingly, dismissed.

**(Sanjay Karol, CJ)**

**( Dinesh Kumar Singh, J)**

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