

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5720 of 2020

1. Nikesh Kumar Savri Son of Shashi Bhushan Tanti, R/o-Purani Bazar Bhughar Mohalla. P.S. and Distt.-Jamui.
2. Naresh Sah Son of Dahaur Sah Resident of Village- Tariyani, Via-Belsand, P.S. Belsand, District-Sheohar.
3. Mukund Kumar Son of Dinesh Kumar, Resident of Village- Sikandarpur, P.S. Bihta, District-Patna.
4. Satya Swaroop Samadarshi, Son of Motilal Paswan Resident of Village- Bouri, Post-Guthani, P.S. Guthani, District-Siwan.
5. Satya Prakash Gautam Son of Kamleshwar Prasad Singh Resident of Village- Damodar Colony, Sector-A. P.S. Hajipur, District-Hajipur.
6. Prashant Kumar Son of M.P. Singh Resident of Village- Bankey Bazar, P.S. Bankey Bazar, District-Gaya
7. Nitish Kumar Son of Narayan Sah Resident of Village- JeevachhpurBaurra Bazar, P.S. Madhepur, District-Madhepura.
8. Satish Kumar Choudhary Son of Jay Prakash Choudhary R/o-Batraha, Ward no.-25, Near Ranket, P.S.-Sahjarsa, Distt. Saharsa.
9. Subodh Kumar Son of Ishwar Dhari Rajak, At-Roopnagar, P.S. Simariya Khat, Distt.-Begusarai
10. Manoj Kumar Son of Awadhesh K Umar Singh Resident of Village- South of Law College Ganipur, P.S. Muzaffarpur, District-Muzaffarpur

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Bihar Public Service Commission, Jawahar Lal Nehru Marg, Bailey Road, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Satya Prakash Parasar, Adv.
For the Respondent/s : Mr.Lalit Kishore (AG)

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 02-06-2020

The petitioners are applicants of 65th Combined
(Preliminary) Competitive Examination held on 15.10.2019 by the
Bihar Public Service Commission (hereinafter referred to as 'the



BPSC). The test was objective type, multiple choice question based. The result of preliminary examination has been published. The petitioners have failed to succeed marginally by 01/02 marks.

2. They have filed this writ application under Article 226 of the Constitution of India seeking direction to the BPSC to correct wrong answer keys of the said preliminary test in respect of at-least eight questions, which are apparently wrong as per the available authoritative texts and government sources. They are accordingly seeking a direction to the BPSC to revise the result of the preliminary examination with correct answer keys and publish the result accordingly. Those who clear the preliminary examination only are eligible to appear for the main examination. It is asserted in the writ application that after the preliminary examination was held, provisional answer keys of the questions were published inviting objections from the applicants. The BPSC, after entertaining objections so received, published final answer key. The petitioners have a grievance that answers suggested in the final answer key in respect of eight questions mentioned in paragraph 9 are incorrect. They have referred to the sources, to justify as to how the final answer keys in respect of eight questions are incorrect.



3. It is noteworthy that the petitioners had admittedly not raised any objection when the objections were invited against provisional answer key. Out of eight questions, which have been referred to in paragraph-9 of the writ application, final answer keys of which, according to the petitioners, are incorrect, there are at-least four questions in relation to which the final answer keys are the same as they were in the provisional answer keys. For example, in respect of question No. 127, in the improvisational answer key, choice B was the correct answer. In the final answer key also choice B has been found to be the correct answer. According to the petitioners, however, choice E is the correct answer. Similar is the case with questions No. 61, 116 and 32. By questioning the correctness of final answer key in respect of these four questions, the petitioners are questioning the answers suggested in the provisional answer key, though they had admittedly not raised any objection when the objections were invited after publication of provisional answer key. The grievance of the petitioners in respect of the said four questions/ answer keys cannot be entertained for the simple reason that they had not raised any objection.

4. Further, it is settled law that the Courts, exercising writ jurisdiction under Article 226 of the Constitution of India, do



not enter into the correctness of the decisions of experts in a competitive examination. This view has been reiterated repeatedly by the Supreme Court and this Court.

5. In respect of four other answers, the petitioners have suggested the correct answers on the basis of sources. What answer they had actually given in respect of the said questions in the examinations have not been stated in the writ application. It is not stated in the writ application that they had marked the same choice in their OMR answer-sheet, which according to them, is correct answer on the basis of several texts. Further, they have not pleaded, with reference to their marking of answers in the answer-sheet as to how because of wrong model answers, their cases were prejudiced.

6. In my opinion, in the absence of specific pleading in this regard, the writ application cannot succeed in view of Division Bench decision of this Court in case of ***Ravindra Kumar Singh vs. The High Court of Judicature at Patna*** reported in ***2016(1) PLJR 865***, paragraph 54 of which reads thus :-

“54. Situated thus, having considered the facts and circumstances of the present case and the submissions advanced on behalf of the parties, we arrive at the following conclusions:-

(i) In the absence of any pleading that these petitioners raised any objection/grievance with respect to wrong framing of Question Nos. 1,



14, 39, 40, 72, 81 and 85, at any stage prior, to publication of the revised result on 4.5.2015, their plea to challenge the revised list on the basis of purported wrong framing of those questions cannot be entertained, when they have taken a chance of their success on the basis of the questions and model answers so framed. This is for the reason that the screening/preliminary test was held on 22.3.2015. Had they found those questions to be defective making them incapable to deal with the questions, while writing the test, they could have, immediately, pointed out to the Registrar General of the High Court or any other competent authority in this regard. They, however, took a chance till the result was published on 8.4.2015 and after model answers were uploaded on the website of the High Court on 4.5.2015. There is no pleading that even thereafter, these petitioners raised any objection as regards wrong framing of these questions. It was only after revised result was published by the High Court on 25.5.2015 that the petitioners, after having become unsuccessful, have challenged the revised result.

In such situation, thus, the petitioners cannot, in a proceeding under Article 226 of the Constitution of India, be permitted to do hair-splitting of the questions and model answers in



order to take a plea that the questions/model answers were wrongly framed.

(ii) There is no specific pleading as regards any prejudice having caused to petitioners as discussed above, because of wrong framing of questions/wrong model answers as asserted by them, which adversely affected the evaluation of their actual performance in the screening/preliminary test. As the multiple-choice type question papers and model answers were available to them, they could have taken the plea, with reference to particular question or questions that they were awarded less marks or no marks, because of such discrepancy, adversely affecting their rights. Pleadings, in this regard, in all writ applications, are general and vague in nature. In the absence of specific plea of real prejudice having been caused to the petitioners, their grievance to this effect is not sustainable.

(iii) In view of the Supreme Court's decision in the case of **Mukesh Thakur** (supra) and other judicial pronouncements as noted above, we are of the considered view that while exercising power of judicial review available under Article 226 of the Constitution of India, it is not permissible for this Court to take upon itself the task of Examiner/Selection Board and examine discrepancies and inconsistencies in the question paper and evaluation thereof, law



*to this effect has been laid down in most clear and unambiguous terms by the Supreme Court in the said decision, which was not brought to the notice of the Division Bench of this Court in case of **Kumod Kumar** (supra).*

(iv) No writ, in the nature of writ of mandamus, can be issued for lowering down the cut-off marks of screening/preliminary test in breach of the statutory prescription under sub-Clause (iii) of Clause 5 of Rule 5 of the Bihar Superior Judicial Service Rules, 1951.” (emphasis supplied)

7. In view of the above, I do not find any merit in this writ application, which is dismissed accordingly.

(Chakradhari Sharan Singh, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.06.2020
Transmission Date	NA

