

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL REVIEW No.81 of 2020**

**In**  
**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. Satya Swaroop Samadarshi, Son of Motilal Paswan, Resident of Village-Bouri, Post Guthani, P.S. Guthani, District-Siwan.
  4. Satya Prakash Gautam, Son of Kamleshwar Prasad Singh, Resident of Village-Damodar Colony, Sector-A, P.S. Hajipur, District-Hajipur.
  5. Prashant Kumar, Son of M.P. Singh, Resident of Village-Bankey Bazar, P.S. Bankey Bazar, District-Gaya.
  6. Satish Kumar Choudhary, Son of Jay Prakash Choudhery, R/o Batraha, Ward No. 25, Near Ranket, P.S. Saharsa, Distt.-Saharsa.
  7. Subodh Kumar, Son of Ishwar Dhari Rajak, At-Roopnagar, P.S. Simariya Khat, Distt-Begusarai.
  8. Manoj Kumar, Son of Awadhesh Kumar 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.

... .. Opposite Party/s

---

---

**Appearance :**

For the Petitioner/s : Mr.Satya Prakash Parasar, Adv.

For the Opposite Party/s : Mr.Lalit Kishore (AG)

Mr.Sanjay Pandey, Adv.

---

---

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH**

**ORAL JUDGMENT**

**Date : 05-11-2020**

Eight petitioners in the present proceeding are seeking review of a judgment and order dated 02.06.2020, passed in CWJC No. 5720 of 2020 in the light of liberty granted by a Division Bench of this Court in the order dated 12.08.2020,



passed in L.P.A. No. 259 of 2020. Following is the order passed by Division Bench of this Court in L.P.A. No. 259 of 2020 :

*“This Letters Patent Appeal is directed against the judgment dated 02.06.2020 passed by a learned Single Judge of this Court in CWJC No.5720/2020 titled as Nikesh Kumar Savri Versus The State of Bihar & Ors., whereby and whereunder the writ application filed by the Appellants has been dismissed.*

*After the matter was heard for some time, learned counsel for the appellants seeks permission to withdraw the present appeal, reserving liberty to file an application seeking review/recall of the judgment placing on record the entire material, which allegedly the appellants/petitioners were precluded from placing on record before the learned Single Judge in view of the restriction with regard to number of pages to be filed in an application, so imposed by the registry.*

*Permission is granted.*

*Appeal was filed within the period of limitation.*

*Learned counsel states that an application for review shall be filed within one week.*

*As and when the same is filed, the Registry shall place the matter before the appropriate Court in accordance with law.*

*As prayed for, appeal stands disposed of with the aforesaid liberty.”*

2. I have heard Mr. Satya Prakash Parasar, learned counsel for the petitioners and Mr. Lalit Kishore, learned Senior Counsel representing the Bihar Public Service Commission



(hereinafter referred to as 'the Commission'). The petitioners were the applicant of 65<sup>th</sup> Combined (Preliminary) Competitive Examination held on 15.10.2020 by the Commission. The preliminary test was multiple choice question objective type test. The petitioners could not succeed. They filed the aforesaid CWJC No. 5720 of 2020 raising a grievance that answer keys prepared by the Commission for evaluation of the answer sheets of the preliminary test in respect of at-least eight questions were incorrect, as per authoritative texts and other referable sources. They had sought a direction from this Court to the Commission to revise the entire list of the preliminary examination on the basis of answer keys which according to the petitioners were correct. It was their further case in the writ proceeding that they had failed to succeed marginally by 01/02 mark(s). They had asserted in the writ petition that after preliminary examination was held, provisional answer keys of the questions were published inviting objections from the applicants. A final answer key was, thereafter, published by the Commission after entertaining the objections so received from various applicants in respect of correctness or otherwise of the answer keys. The petitioners, however, raised a grievance that the final answer keys in respect of eight questions, as mentioned in paragraph 9



of the writ application, were incorrect. They relied on text book/ sources to justify how the final answer keys in respect of eight questions were incorrect. This is not in dispute that when the objections were invited against provisional answer keys prepared by the Commission, none of the petitioners had raised any objection. The fact that out of eight questions, which had been referred to in paragraph 9 of the writ application, final answer keys of which, according to the petitioners, were incorrect, this Court noticed in the writ proceeding that there were at-least four questions in relation to which the final answer keys were the same as they were in the provisional answer keys. Paragraph 3 of the order under review is relevant to appreciate this aspect which is being reproduced hereinbelow :

*“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”*

3. This Court further noticed in the order under review that in respect of four other final answer keys, the petitioners though suggested as to what should have been the correct answers on the basis of text books and other materials, they did not disclose as to what answer they had, in fact, marked in respect of those questions in the preliminary test. They had not stated in the writ application that they had marked the same choice in OMR answer sheets, which, according to them, were the correct answers on the basis of several texts relied upon by them. This Court further noted in the order under review that the



petitioners had not pleaded, with reference to their marking of answers in the answer sheets as to how, because of wrong model answers suggested by the Commission, their cases were adversely prejudiced, in fact. Paragraph 5 of the order under review is being reproduced hereinbelow :

*“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.”*

4. Taking note of paragraph 54 of a Division Bench decision in case of ***Ravindra Kumar Singh vs. The High Court of Judicature at Patna reported in 2016(1) PLJR 865***, the writ petition was dismissed, in the background of admitted relevant facts noted in the said order, which have been taken note of hereinabove in the present order also. Paragraph 54 of this Court’s decision in case of ***Ravindra Kumar Singh***(supra) reads as under :

*“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 hairsplitting 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)*

5. In case of **Ravindra Kumar Singh** (supra) also a grievance was raised regarding correctness of the answer keys prepared by the Commission in an objective (multiple choice question) type test. In similar circumstance, the Court noticed that there was absence of pleadings to the effect that prior to publication of revised list, no objection was raised by the petitioners in respect of incorrect framing of questions. The Court also noticed that till final result was published after model answers were uploaded, the petitioners of that case had taken a chance and waited. The Court further took notice of the fact in case of **Ravindra Kumar Singh** (supra) that there was no specific pleading as regards any prejudice having been caused to the petitioners 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. The Division Bench finally concluded that since the petitioners of that case failed to point out, with reference to a particular question or questions, that they were awarded less marks or no marks because of discrepancy in



framing of answer keys, adversely affecting their rights, they were not entitled to any relief.

6. As has been noticed at the outset, the review petitioners preferred an appeal under the Letters Patent of this Court putting to the challenge this Court's order dated 02.06.2020 which is under review in the present case giving rise to L.P.A. No. 259 of 2020; which has been disposed of as withdrawn by an order dated 12.08.2020 by a Division Bench of this Court, which has been noted hereinabove. Accordingly the present review application has been filed.

7. In the review application, the petitioners have mentioned certain new facts to justify that certain answer keys prepared by the Commission for evaluation of answer sheets were incorrect. In paragraph 6 of the review application it has been stated that the petitioners had agitated their grievance after publication of result but the same was not heard nor the objections filed by them were ever placed before the experts committee, constituted by the Commission. Admittedly, they had not raised any objection prior to publication of result in respect of model key answers. They have relied on further materials to substantiate their case that the answer keys were incorrect in the present application seeking review. In the review



application, there is no pleading to the effect that answers marked by them during the examination were the same which are correct, according to their own assessment on the basis of the so called authoritative texts and other sources.

8. In such circumstance, it would be an exercise in futility to entertain the petitioners' claim. The petitioners have failed to make out a case for review of this Court's order.

9. In case of *Col. Avtar Singh Sekhon vs. Union of India and others*, reported in *1980(Supp) SCC 562*, it has been clearly held that review of an earlier order cannot be done unless the Court is satisfied that any material error 'manifest on the face of the order' has undermined the soundness of the result or results in miscarriage of justice. Such error must be such which is apparent on the face of record and not an error which has to be fished out and searched. It must be an error of inadvertence where the power of review can be exercised for correction of mistakes but not to substitute a view. [see *(2013)8 SCC 320 (Kamlesh Verma vs. Mayawati and others)*, paragraph-16]

10. No mistake or error, apparent on the face of record, has been pointed out in the order under review by the learned counsel for the petitioners.



11. Considering the above, I do not find any merit in this application, which is accordingly dismissed.

12. There shall be no order as to costs.

**(Chakradhari Sharan Singh, J)**

Rajesh/-

|                   |            |
|-------------------|------------|
| AFR/NAFR          | NAFR       |
| CAV DATE          | NA         |
| Uploading Date    | 12.11.2020 |
| Transmission Date | NA         |

