

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.869 of 2019

In

Civil Writ Jurisdiction Case No.17634 of 2017

-
1. Ajeet Kumar Shrivastva Son of Shri Girindra Kumar Shrivastva, Resident of 143, At Village- Paroraha, P.O.- Gobraura, P.S.- Sathi, District- West Champaran, Roll No. 5401175091.
 2. Balmukund Thakur, Son of Anil Kumar Thakur, Adarsh Nagar, resident of Rajopatti, Ward No. 11, District- Sitamarhi, Roll No. 5201175391.
 3. Rishu Kumari, Daughter of Vidyanand Singh, Resident of Ashok Nagar Ward 15 Thana- Chitragupt Nagar, District- Khagaria, roll No. 2504175222.
 4. Umesh Kumar, Son of Sudarshan Singh, Resident of Village- Jivpur, P.O. Manikpur, P.S. Dhanshoian, District- Buxar, Roll No. 7509175106.
 5. Aditya Kumar Singh, Son of Jay Prakash Singh, Resident of Village P.O.- Hangpur Siswan, District- Siwan, Pin code- 841210, Roll No. 9201175074.
 6. Lokesh Kumar, Son of Saroj Kumar Singh, Resident of Village- Reriya, P.O. - Doiyan, P.S.- Karghar, District- Rohtas. Roll No. 7404175990.
 7. Darwin Kumar, Son of Prabhu Dayal Prasad, Resident of Mohalla- Kazi Bazar, P.O. and P.S.- Hilsa, District- Nalanda, Bihar, Pin Code- 801302, Roll No. 7202175338.
 8. Ram Manohar Prasad Son of Raghunandan Prasad, Resident of At- Mishir Gram, P.O.- Puchharia Sangrampur, District- East Champaran, Bihar, Pin Code- 845434, Roll No. 5506175094.
 9. Pinki Kumari, Daughter of Damodar Thakur, Resident of Village P.O.- Murliganj, P.S.- Murliganj, District- Madhepura, Roll No. 430217146.
 10. Md. Zakir Hussain, Son of Md. Qayum, Resident of Village P.O.- Haspura, District- Aurangabad, Bihar, Roll No. 8304175212.
 11. Laghukant Jha, Son of Jhotan Jha, Resident of Village and P.O.- Madhesra, Via- Bhutahi, P.S.- Sonbarsa, District- Sitamarhi, Roll No. 5201175895.
 12. Mithlesh Kumar Patel, Son of Mohan Singh, Resident of Village and P.O. and P.S.- Sanjhauli, District- Rohtas, Bihar, Roll No. 7405175429.
 13. Kiran Kumari, Daughter of Chandrabhushan Singh, Resident of Shivlok Apartment, Flat No. 202, new Patliputra Colony, District- Patna, Roll No. 7111175172.
 14. Deevakar Kumar, Son of Surendra Prasad, Resident of Village- Aurwan, P.O.- Pandey Parsawan, P.S.- Magadh Medical, District- Gaya, Pin Code- 823001, Roll No. 8103175061.
 15. Sunita Kumari, Daughter of Jagdamba Bhagat, Resident of Village- Dasauti Sondhi, P.S.- Mohania, District- Kaimur, Bhabhua, Pin Code - 821109, Roll No. 7607175265.
 16. Arbind Kumar, Son of Basawan Singh, Resident of Village and P.O.- Konar, P.S.- Sheosagar, District- Rohtas, Bihar, Roll No. 7402175334.
 17. Indrajeet Kumar @ Indrajeet, Son of Awadh Kishor Singh, Resident of Village and P.O.- Mathurapur, Khajraitha Parwana, District- Khagaria,



Bihar, Pin Code- 843203, Roll No. 2502175082.

18. Pusplata Kumari, Wife of Manoj Kumar, At and P.O.- Dedauliya, Via- Jandaha, District- Vaishali, Bihar, Pin Code- 844505, Roll No. 5302171001.
19. Md. Niyajuddin, Son of Md. Salim, Resident of Village and P.O.- Salempur, Prakhand- Barauli, District- Gopalganj Bihar, Pin Code- 841405, Roll No. 9303175248.
20. Bhanu Pratap Gautam @ Bhanu Pratap, Son of Nakul Ram, Resident of Village and P.O. Pipariya, P.S.- Mohania, District- Kaimur, Bhabua, Pin Code- 821105, Roll No. 7602175168.
21. Manish Kumar, Son of Vijay roy, Resident of At- Shahpur, P.O.- Masudanpur, P.S.- Balia, District- Begusarai, Pin Code 851211, Roll No. 2604175111.
22. Ranjan Kumar, Son of Ram Bahadur Jha, Resident of Village- Ranipur, P.O.- Basudeopur Bira, District- Darbhanga, Pin Code- 8460005, Roll No. 6106175023.
23. Kumari Vandana Singh, Son of Ashok Kumar Singh, Resident of Village - Mangardah, P.O.- Nagar Untari, P.S.- Nagar Untari, District- Garhwa, Jharkhand Roll No. 7220175105.
24. Raju Tiwari, Son of Bairioster Tiwari, Resident of Village- Kushahan, P.O.- Sisai, District- Gopalganj, Roll No. 260117582.
25. Prashant Kumar Keshar @ Prashant, Son of Rampravesh Prasad Singh, Village and P.O.- Mahsoura, P.S.- Ramgarh Chowk, District- Lakhisarai, Bihar- 811107, Roll No. 2302175254.
26. Md. Ashad Ali, Son of Sajjak Ali, Village- Sabalpur, P.O.- Marar, P.S.- Morkahi, District- Khagaria, Roll No. 2503175081.

... .. Appellant/s

Versus

1. Bihar School Examination Board Patna through its Secretary.
2. The Chairman, Bihar School Examination Board, Patna.
.... Respondents/ Respondents (1st Set)
3. Ram Krishan Yadav, Son of Mushi Yadav, Resident of At- Ziroma, P.O.- Bharpuri, Via- Narhia, District- Madhubani, Pin- 847108, Roll No. 6209175083.
4. Kumar Sundaram, Daughter of Nwal Kishor Pandey, Resident of At- Bagwara, P.O. Laduwara, District- Begusarai, Pin code- 851129, Roll No. 2603175377.
5. Saroj Kumar, Son of Ram Vilash Sah, Resident of Village- Darwa, P.O. and P.S.- Mohania, District- Kaimur, Bhabhua, Roll No. 7606175665.
6. Upendra Kumar Yadav Son of Harish Chandra Yadav, At- Prautola, P.O. Mathia, P.S. Lauriya, District- West Champaran, Roll No. 5405175576
7. Pammy Ray, Son of Baka Lal Ray, Resident of Village- Jajirpur, P.O. Shekhpur, P.S. Ahiyapur, District- Muzaffarpur, Pin Code- 842002, Roll No. 510217344 14
8. Ram Kumar Giri Son of Sri Ravindra Giri, Resident of Village- Madhodih,



- P.O. Satanpur, P.S. Ujiyarpur, District- Samastipur, Roll No. 630217108
9. Ashutosh Kumar, Son of Subodh Prasad Yadav, Resident of Village- Bohra, P.O. Sarba, P.S. Poreyahat, District- Godda, State Jharkhand, Roll No. 7211171052.
 10. Khushboo Kumari, Daughter of Arun Thakur, Resident of Village P.O. Saraunja, P.S.- Birpur, District- Begusarai. Roll No. 2603175090
 11. Shatrughan Kumar, Son of Kamleshwari Prasad Yadav, At- Lalpatti, P.O.- Bhaghala, P.S. Via- Triveniganj, District- Supaul, Roll No. 4202171212.
 12. Rupesh Kumar, Son of Jamun Pandit, At P.O.- Rankodih, P.S. Muffasil, District Khagaria, Roll No. 2502171125.
 13. Priyanka Kumari, Daughter of Deepak Prasad, At- RatanGunj, P.O. Sukhiya Bazar, Block- Gopalpur, District- Bhagalpur, Pin Code 853205, Roll No. 3111175105
 14. Mantun Kumari, Wife of Deepak Kumar Singh, Resident of Village P.O.- Naulagarh, P.S. Bhagwanpur, District- Begusarai, Roll No. 2604175198
 15. Ram Awadh Ray, Son of Rajbir Ray, Resident of Village P.O.- Rampurwa, Mahanwa, P.S. Masualiya, District- West Champaran, Pin Code- 845454, Roll No. 5404175250.
 16. Sweta Maurya, Daughter of Hari Narayan Singh, Resident of Village- Chawariya, P.O. Rajpur, P.S. Sanjhauli, District Rohtas, Pin Code- 802219, Roll No. 7410175520
 17. Saroj Kumari Chaudhary, Daughter of Hemant Kumar Chaudhary, Lal Bahadur Shastri Path, New Paharpur, Police Station Anishabad, Patna- 2, Roll No. 7124175350
 18. Kumari Vijya Lakshmi, Daughter of Satyanaran Prasad, Resident of Bhawanipur, Rajdham, Purnea, Roll No. 1102175296.
 19. Raushan Prasad Kuswaha, Son of Kedar Prasad Kuswaha, Resident of Village- Dubaulia, P.O. Lakhanpur, P.S. Lauriya, District West Champaran, Bihar, Pin Code- 845453, Roll No. 8504175451.
 20. Mahtab Jamal, Son of Jamal, Resident of Village P.O. Hata, P.S. Chainpur, District- Kaimur, Pin Code- 821106, Roll No. 7604175060
 21. Mahapara Khatoon, Daughter of Md. Aftab Jamal, Resident of Village- Stuwarganj, Mohania, District- Kaimur, Pin Code- 821109, Roll No. 7604175059.
 22. Amrita Singh, Daughter of Paras Nath Singh, Resident of Village- Selas, P.O. Barajutikala, Chitaini, Kochas, Rohtas, Pin Code- 821112, Roll No. 7401175307
 23. Shailendra Kumar Dwivedi, Son of Bhikhari Dubey, Resident of Village- Sirsa Jalalpur, P.O. Sonauli, P.S. Masharak, District- Saran Bihar Roll No. 9110175273
 24. Mamta Kumari, Daughter of Chitranjan Prasad Ray, Shyam Sundar Singh, New Tola Bihari Near North East Jamui, Stadium, Pin Code- 811307, Roll No. 2201175221
 25. Sabita Kumari Pal, Daughter of Hiralal Pal, Resident of Bank Colony, Lane No. 10, Gola Road, Danapur, Patna, Roll No. 7123175161.



26. Avinash Pandey, Son of Nagendra Pandey, Resident of Village P.O. Bhagwanpur, P.O. Rampur Rudra, P.S. Panapur, District- Saran, Bihar, Pin Code- 841424, Roll No. 9101178051
27. Archana Mishra, Daughter of Umesh Chandra Mishra, Resident of Vilalge-Surwal, P.O.- Juradai, P.S. Jiradai, District- Siwan, Roll No. 9202175052.
28. Kumari Anupam Verma, Wife of Diwakar Kumar, Resident of Village-Bajitpur, P.O. Banjari, P.S. Rohtas, District Rohtas, Bihar, Roll No. 7404175760
29. Dhnanjay Kumar, Son of Radha Krishna Singh, Resident of Village-Bhagatganj, P.O. Khudru, P.S. Dinara, District- Rohtas, Bihar, Pin Code- 821112, Roll No. 7403175293
30. Anita, Daughter of Akhilendra Singh, Resident of Village- Masarakh East Tola, P.O. Masarakh, P.S. Mashrakh, District Saran, Bihar, Pin Code- 841417, Roll No. 9101158032.
31. Kumari Archana, Daughter of Bhagwanjee Dwivedi, Resident of Village-Samail Kashim, P.O. Peoli Bazar, District- Gopalganj, Roll No. 9302175639
32. Arti Kumari, Daughter of Mithilesh Prasad Singh, Resident of Village-Bishnupur Chatarbhuji, Begusarai, Roll No. 260117582
33. Kalpana Kumari, Daughter of Bairioster Tiwari, Resident of Village-Bishnupur Chatarbhuji, Begusarai, Roll No. 260117582
34. Saumit Kumar, Son of Shital Ram, Resident of Village P.O. P.S. Obra, District Aurangabad, Pin Code- 824124, Roll No. 8308175001
35. Brajesh Kumar, Son of Shital Ram, Resident of Village- Bhelma, P.O. Awarayan, P.S. Kudra, District- Kaimur Bhabua, Pin Code- 821108, Roll No. 7601178030
36. Sonal Kumari, Daughter of Madan Mohan Singh, Resident of Village-Tekanpura, P.O. Daffarpur, P.S. Nawkothe, District- Begusarai, Pin Code- 851127. Roll No. 2608175057
37. Arti Kumari, Daughter of Ram Vinay Sharma, W/o Ashesh Jyoti, Chakna Niwas, Sarai Sayed Ali Lane, Lenin Chowk, Muzaffarpur, Bihar- 842001, Roll No. 5102175427
38. Manoj Kumar, Son of Surendra Rai, Village- Hanuman Nagar, P.O. Paktala, P.S. Dumra, District Sitamarhi, Bihar, Pin Code 843301 Roll No. 5201176035.
39. Ranjana Kumari, Daughter of Ramesh Kumar, At - Sirdilpur, P.O. and P.S.- Patori, District- Samastipur. Roll No. 6309175264.

... .. Respondent/s

with
Letters Patent Appeal No. 847 of 2019
In
Civil Writ Jurisdiction Case No.18663 of 2017

Suman Kumar Son of Dilip Prasad Sah Resident of Shastri Chowk,
Madarghat, P.O. Kasba, P.S. Kasba, District- Purnia.



... .. Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Education Department, Government of Bihar, Patna
3. The Director, Higher Education, Education Department, Government of Bihar, Patna.
4. The Bihar School Examination Board through its Chairman, Sinha Library Road, Patna-800017.
5. The Chairman, Bihar School Examination Board, Sinha Library Road, Patna-800017.
6. The Secretary Bihar School Examination Board. Sinha Library Road, Patna-800017
7. The Controller of Examiner, Bihar School Examination Board, Sinha Library Road, Patna

... .. Respondent/s

with

Letters Patent Appeal No. 874 of 2019

In

Civil Writ Jurisdiction Case No.16925 of 2017

1. Anjana Rani Daughter of Sri Awadesh Prasad Singh Resident of Village- Meghaul, P.S. Khudabandarpur, District- Begusarai.
2. Sweety Kumari Daughter of Sri Sanjay Prasad Singh Resident of Village- Phulout, P.S.- Chausa, District- Madhepura.
3. Rimjhim Kumari Daughter of Sri Rajeev Singh Resident of Village- Swami Sahjanand Nagar, Hemru Road, P.S.- Mufasil, District- Begusarai.
4. Pradeep Kumar Ranjan Son of Sri Hari Nandan Paswan Resident of Village- Sonbarsa, P.S.- Khagar, District- Rohtas.
5. Ruby Kumari Daughter of Sri Harendra Singh Resident of Village- Tejpura, P.S.- Tejpura, P.O.- Obra, District- Aurangabad.
6. Kanhaiya Kumar Son of Sri Gaya Prasad Resident of Village- Haspura, P.S.- Haspura, District- Aurangabad.
7. Kumari Arpna Daughter of Sri Arvind Kumar Chaudhary Resident of Village- Nayatol, P.S.- Mansurchak, District- Begusarai.
8. Sujeet Kumar Son of Sri Krishna Nandan Prasad Singh Resident of Village- Lohanda, P.S.- Sikandra, District- Jamui.
9. Rabindra Kumar Sinha Son of Sri Dinesh Singh Resident of Village- Dindir, P.S.- Haspura, District- Aurangabad.
10. Shambhu Sharan Son of Sri Tulsi Prasad Resident of Village- Ahiyapur, P.S.- Khutan, District- Aurangabad.

... .. Appellant/s



Versus

1. The State of Bihar through the Special Secretary, Department of Education, Government of Bihar, Patna.
2. The Bihar School Examination Board, Patna through its Chairman.
3. The Secretary, Bihar School Examination Board, Patna.
4. The Controller of Examination, Bihar School Examination Board, Patna.

... .. Respondent/s

with

Letters Patent Appeal No. 972 of 2019
In
Civil Writ Jurisdiction Case No.16974 of 2017

Kunal Kumar S/o Girija Nandan Singh Resident of Village P.O.,
Parshurampur, P.S., Amnour, District-Saran at Chhapra

... .. Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The Principal Secretary, Education Department, Govt. of Bihar, Patna
3. The Director, Higher Education, Education Department, Govt. of Bihar, Patna
4. The Bihar School Examination Board, through its Chairman, Sinha Library Road, Patna-800017
5. The Chairman, Bihar School Examination Board, Sinha Library Road, Patna-800017
6. The Secretary, Bihar School Examination Board, Sinha Library Road, Patna-800017
7. The Controller of Examiner, Bihar School Examination Board, Sinha Library Road, Patna

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 869 of 2019)

For the Appellant/s : Mr. Raushan, Advocate.
Mr. Abhinav Srivastava, Advocate

For the Respondent/s : Mr. Lalit Kishore, A.G.

(In Letters Patent Appeal No. 847 of 2019)

For the Appellant/s : Mr. Kumar Kaushik, Advocate

For the Respondent/s : Mr. Ashutosh Ranjan Pandey (AAG15)

(In Letters Patent Appeal No. 874 of 2019)

For the Appellant/s : Mr. Kumar Kaushik, Advocate

For the Respondent/s : Mr. Ashutosh Ranjan Pandey (AAG15)

(In Letters Patent Appeal No. 972 of 2019)

For the Appellant/s : Mr. Kumar Kaushik, Advocate

For the Respondent/s : Mr. Ashutosh Ranjan Pandey (AAG15)



**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)**

Date : 23-09-2020

These appeals have been preferred against the judgment dated 19.07.2019 passed by a learned Single Judge of this Court in CWJC No. 1504 of 2018, titled as Ashoke Krantti & Ors. vs. The State of Bihar & Ors. and its analogous cases.

Bihar Elementary Teachers Eligibility Test 2017 (hereinafter referred to as the “BETET”) was conducted pursuant to Advertisement No.42 dated 6th April, 2017. The communiqué issued by the Bihar School Examination Board, Patna vide Notification No.63/2007 dated 13.07.2017 clearly stipulated two conditions; (i) in Column-4, that no candidate is authorised/permitted to use pen, eraser or whitener on the OMR Sheet; (ii) in Column-5, that if the OMR Sheets are not properly filled up, the same would be rejected by the computer resulting in invalidation of their result for which the candidate alone would be responsible.

The writ applicants before us are those candidates who had, in fact, used a whitener over their OMR Sheets, in attempting the questions during the examination



which they undertook for the test in question. Consequently, the writ applicants' results were held to be invalidated.

Aggrieved thereof, writ applicants preferred writ petitions before this Court which stand adjudicated vide impugned judgment dated 19.07.2019 passed in CWJC No. 1504 of 2018, titled as Ashoke Krantti & Ors. vs. The State of Bihar & Ors. and its analogous cases, i.e. CWJC No. 17634 of 2017, titled as Balmukund Thakur & Ors. vs. Bihar School Examination Board, Patna & Ors.; CWJC No. 18663 of 2017, titled as Suman Kumar vs. The State of Bihar & Ors.; CWJC No. 16925 of 2017 titled as Anjana Rani & Ors. vs. The State of Bihar & Ors. and CWJC No. 16974 of 2017 titled as Kunal Kumar vs. The State of Bihar & Ors.

Consequently the present appeals assailing the judgement on a limited point have been filed.

The operative portion of the impugned judgment dated 19.07.2019 of which the writ applicants/appellants are aggrieved of, reads as under:-

“30. Now, coming to the issue of the candidates whose candidature has been declared to be invalid on account of use of whitener / eraser etc., it is clear that the candidates were strictly instructed not to overwrite or use whitener vide the aforesaid advertisement contained in communiqué no. 63 of



2017 wherein under column 4, it has been categorically provided that use of pen or eraser in the OMR Sheet, folding of OMR sheet, tearing or application of whitener on OMR Sheet are totally prohibited. Under column 5 of the said advertisement, the candidates had been cautioned to literally follow the said instructions and in case, the OMR sheets are not properly filled up then the same would be rejected by the computer resulting in invalidation of their result for which the candidate shall be solely responsible.

This Court finds that since the candidates had been warned by issuing instructions by a communiqué contained in advertisement no. 63 of 2017 dated 13.7.2017, any disregard of the instructions contained therein is liable to result in invalidation of the candidature of such candidates using whitener, eraser, pin etc. In this regard, the judgment rendered by a coordinate Bench of this Court dated 22.12.2017 passed in CWJC No. 16359 of 2017 **(Brajesh Kumar & Ors. vs. The State of Bihar & Ors.)**, as also the judgment rendered by the Hon'ble Apex Court in the case of **A.V.Natrajan & Ors. (supra)** fully covers the said issue, hence, the candidature of the writ petitioners who have used whitener, eraser, pin etc. have rightly been invalidated by the Respondent-Board since they have violated the instructions given to them which in turn amounts to misconduct, hence such candidates are liable not to be selected. It would be unfair to the writ petitioners, if the judgment rendered by the Hon'ble Apex Court in the case of **Hanuman Dutt**



Shukla & Others (supra), relied upon on their behalf by the learned counsels appearing for them, is not dealt with. This Court finds that the said judgment, rendered in the case of **Hanuman Dutt Shukla & Others (supra)**, is of no help to the writ petitioners inasmuch as firstly, the said judgment was based upon a concession made by the State and secondly, the said judgment specifically states that the same will not be treated as a precedent for any other case, meaning thereby that the said judgment rendered by the Hon'ble Apex Court cannot be used as a precedence, hence, shall not bind this Court.”

In fact, learned counsel fairly reiterates that the writ applicants/appellants herein are only aggrieved with that part of the order, which stands reproduced hereinabove.

We notice that the instructions issued in Column-4 of the Advertisement No.63 of 2017 dated 13.07.2021 are unambiguous. No overwriting or use of whitener on the OMR Sheets is permissible. Consequences, adverse in nature, are prescribed. Only for the reason that despite the use of whitener, OMR Sheets stand evaluated by the computer, that itself would not render the clause of rejection of result to be invalidated or nugatory.

As such, in our considered view, no case for interference is made out. The findings returned and reasoning adopted by the learned Single Judge, more so based on settled



principles of law, cannot be said to be perverse or illegal.

For all the aforesaid reasons, the appeals are dismissed.

Interlocutory applications, if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

sujiit/-

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CAV DATE	
Uploading Date	
Transmission Date	

