

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20264 of 2019

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Raj Kumar Son of Srinath Singh Resident of Mohalla-Prakashpuri P.O.-
Shivganj P.S.-Ara Town, District-Bhojpur, Bihar-802301.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Bihar Public Service Commission through its Chairman, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna-800001.
4. The Chairman, Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna-800001.
5. The Secretary, Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna-800001.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Kumar Kaushik, Advocate
For the B.P.S.C.	:	Mr. Lalit Kishore, Sr. Advocate
		Mr. Satyabir Bharti, Advocate
For the State		Mr. M. Sasrul Huda Khan, S.C.-1

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT

Date : 16-01-2020

Heard Mr. Kumar Kaushik, learned counsel for the petitioner and Mr. Lalit Kishore, learned Senior Counsel appearing on behalf of the B.P.S.C.

The petitioner seeks issuance of a mandamus for declaring the result of the petitioner against Advertisement No. 3 of 2015 dated 05.02.2015 issued for the appointment to the post of Accounts Officer by adding the marks obtained by him in History Paper -I which has been rejected on the ground that the petitioner had placed a five hundred (Rs. 500/-) rupees note which was found by the examiner while evaluating his paper.



Learned counsel has further prayed for a declaration that the action of the respondents in rejecting the answer-book and the marks obtained therein by him in History-I to be illegal, arbitrary and without any basis. He has also prayed for a direction to the Respondent-B.P.S.C. to conduct special interview in his favour so that his candidature may be considered against Advertisement No. 3 of 2015. The grounds on which the petitioner has assailed the action of the respondent is that the Respondent-Commission was wholly unjustified in the absence of any power having been conferred on the authority, it was improper for the Commission to cancel the answersheet. Learned counsel for the petitioner, further, averred that the Respondent-Commission rejected the answer-book of the petitioner without any evidence to support the remark made by the examiner that the petitioner has kept a five hundred (Rs. 500/-) rupees note in the answer-book and such a statement was wholly untenable in law. He has further submitted that being contrary to the principles of natural justice, the cancellation of the candidature of the petitioner could not be sustained.

I have learned counsel for the petitioner at length and during the course of the arguments, this Court had earlier directed the Counsel for the B.P.S.C. on 6th of January, 2020 in



the following terms:-

“It appears that the only reason why the candidature of the petitioner was rejected was because the paper, namely, History-I, the petitioner is alleged to have placed a five hundred rupee note in his answer-sheet which bears the Number Serial 6EM480182 as has been noted by the examiner.

On query, made to the counsel appearing on behalf of the Bihar Public Service Commission (For short ‘B.P.S.C.’) as to whether the same was retained in the B.P.S.C. Office after having been so discovered, learned counsel for the B.P.S.C. seeks an adjournment to ascertain the same and produce it, if at all, so available with the B.P.S.C.

List this case on 13.01.2020 in the same list retaining its position.”

Learned Advocate General and Senior Counsel Shri Lalit Kishore appearing on behalf of the B.P.S.C. has produced a sealed envelope containing the answer-sheet of the petitioner with the original endorsement by the examiner who had purportedly found the five hundred (Rs. 500/-) rupees note. He has also produced the five hundred (Rs. 500/-) rupees note which squarely tallies with the number as indicated in the answer-sheet. The same has been perused by me which clearly indicates that the examiner had detected the same during the



course of evaluation of answer-sheet and sent it to the Commission for the further action.

It appears from the endorsement which is in the handwriting of examiner that he has clearly indicated that at page No. 6 of the answer-book bearing Code No. 31520273, a five hundred (Rs. 500/-) rupees note bearing No. 6EM480182 had been found. The paper-book was thus forwarded for appropriate action to the Joint Secretary-cum-Controller of Examinations, Bihar Public Service Commission. The five hundred (Rs. 500/-) rupees note which was found and which has been placed before this Court, fully tallies and is being re-sealed in this Court itself along with the answer-book to be sent back to the B.P.S.C. for being retained in its records.

Even though the matter appears to be clear from the answersheet as well as the note which has been found therein that the petitioner has, in fact, entered into an unfair practice for indicating or seeking some benefit for his candidature from the examiner in question, learned counsel for the petitioner submits that the petitioner ought to have been provided an opportunity of explaining the same after due notice to him. Learned counsel further submits that the petitioner's candidature was cancelled by the authorities though being a quasi-judicial authority was



required to place the same and provide the petitioner an opportunity of explaining the circumstances or as to proving whether or not he had placed a five hundred (Rs. 500/-) rupees note in the copy concerned. He submits that the Apex Court in the case of Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Ors. has clearly held at paragraph No. 13 and 14 in the following terms :-

“We thus see that the Committee can only carry out its duties under r. 1 (1) by judging the Materials, placed before it. It is true that there is no lis in the present case, in the sense that there are not two contesting parties before the Committee and the matter rests between the Committee and the examinee; at the same time considering that materials will have to be placed before the Committee to enable it to decide whether action should be taken under r. 1 (1), it seems to us only fair that the examinee against whom the Committee is proceeding should also be heard. The effect of the decision of the Committee may in an extreme case blast the career of a young student for life and in any case will put a serious stigma on the examinee concerned which may damage him in later life. The nature of misconduct which the Committee has to find under r. 1 (1) in some cases is of a serious nature, for example, impersonation, commission of fraud, and perjury; and the Committee's decision in matters of such



seriousness may even lead in some cases to the prosecution of the examinee in courts. Considering therefore the serious effects following the decision of the Committee and the serious nature of the misconduct which may be found in some cases under r. 1 (1), it seems to us that the Committee must be held to act judicially in circumstances as these. Though therefore there is nothing express one way or the other in the Act or the Regulations casting a duty on the Committee to act judicially, the manner of the disposal, based as it must be on materials placed before it and the serious effects of the decision of the Committee on the examinee concerned, must lead to the conclusion that a duty is cast on the Committee to act judicially in this matter particularly as it has to decide objectively certain facts which may seriously affect the rights and careers of examinees, before it can take any action in the exercise of its power under r. 1 (1). We are therefore of opinion that the Committee when it exercises its powers under r. 1 (1) is acting quasi-judicially and the principles of natural justice which require that the other party, (namely, the examinee in this case) must be heard, will apply to the proceedings before the Committee. This view was taken by the Calcutta High Court in Dipa Pal v. University of Calcutta, (1) and B. C. Das Gupta v. Bijoyranjan Rakshit, in similar circumstances and is in our opinion correct.

14. It is urged on behalf of the appellant



that there are a large number of cases which come up before the Committee under r. 1 (1), and if the Committee is held to act judicially as a quasi-judicial tribunal in the matter it will find it impossible to carry on its task. This in our opinion is no criterion for deciding whether a duty is cast to act judicially in view of all the circumstances of the case. There is no doubt in our mind that considering the totality of circumstances the Committee has to act judicially when taking action under r. 1 (1). As to the manner in which it should give an opportunity to the examinee concerned to be heard, that is a matter which can be provided by Regulations or Bye-laws if necessary. As was pointed out in Local Government Board v. Alridge (1915) A.C. 120, all that is required is that the other party shall have an opportunity of adequately presenting his case. But what the procedure should be in detail will depend on the nature of the tribunal. There is no doubt that many of the powers of the Committee under Chap. VI are of administrative nature; but where quasi-judicial duties are entrusted to administrative body like this it becomes a quasi-judicial body for performing these duties and it can prescribe its own procedure so long as the principles of natural justice are followed and adequate opportunity of presenting his case is given to the examinee. It is not however necessary to pursue this matter further, for it is not in dispute that no opportunity whatsoever was given to the



respondents in this case to give an explanation and present their case before the Committee. We are therefore of opinion that though the view of the High Court that the Committee was acting merely administratively when proceeding under r. 1 (1) is not correct, its final decision allowing the writ petition on the ground that no opportunity was given to the respondents to put forward their cases before the Committee is correct. We therefore dismiss the appeal. No order as to, in the circumstances.”

Having perused the aforementioned judgments, this Court is of the considered opinion that the judgment does not apply in the present circumstances available. This Court was also compelled to look into the Rules which clearly provide under Rule 3 and Rule 8(c) of the Bihar Conduct of Examination Act, 1981 adopted by the Bihar Public Service Commission with regard to all such examinations which clearly indicates as follows:-

“3. Prohibition of the use of unfair means or cheating at examination.- No person shall take recourse to unfair means or resort to cheating at any of the examinations enumerated in the Schedule or any examination held under the authority of the State Government or by any body constituted under State enactments, or in any evaluation or tabulation work or with respect to any matter of the recognized examination.

Rule 8(c) further indicates-“indulge in such other



activity as is likely to be prejudicial to the conduct of examination or is likely to affect the secrecy thereof.”

Learned counsel for the B.P.S.C. has also drawn my attention to Instruction No. 4 of the answer-sheet which reads as follows:-

“4. उत्तर पुस्तिका के अन्दर किसी पृष्ठ पर प्रश्नोत्तर के अलावा अपना नाम, अनुक्रमांक, अन्य कोई (धार्मिक) शब्द या पहचान चिह्न नहीं लिखें अन्यथा उत्तर पुस्तिका रद्द कर दी जायेगी।”

It thus appears that there were clear-cut instructions to the candidates not to put any mark for identification of any form so as to indicate his candidature which has clearly been sought to be done by the petitioner. So far as the contention of the petitioner that he was required to be given notice before his cancellation, this Court is of the firm opinion that the principles of natural justice would not apply in the wake of clear-cut directions issued to each candidate and in the light of the relevant rules which have been placed before me. It is also clear that the authorities in their administrative capacity have taken full note of the candidature of this candidate and also other such candidate who has attempted to put any mark of identification or had resorted to adopting unfair means which was against the instructions issued by the B.P.S.C., and have taken appropriate administrative action in the wake of clear evidence available



with them. It can also be safely be deduced that there can be no element of bias available with the examiner who had been sent the answer-book of the candidate after due codification which is the normal practice adopted so as to conceal the identity of any candidate.

Having considered the entire facts and circumstances, I am of the firm view that the authorities have acted in all bonafides and have rightly rejected the candidature of the petitioner for appointment to the post of candidature in the wake of the clear finding before itself that the petitioner had adopted unfair means and had placed a five hundred (Rs. 500/-) rupees note for getting himself identified or for causing some influence on the examiner in question.

The writ application thus stands dismissed.

Let the answer-sheet as well as the five hundred (Rs. 500/-) rupees note be returned back to learned counsel Shri Satyabir Bharti in a sealed envelope.

(Anjana Mishra, J)

Saif/-

AFR/NAFR	
CAV DATE	N.A.
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