

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5270 of 2021

1. Roushan Kumar S/o Shashibhushan Prasad, R/o Gobal Bigha Bathan Police line Road Gaya, P.O. and P.S.-Gaya, District-Gaya. (Roll No. -228595).
2. Anurag Jha, S/o Shri Bijoy Shankar Jha, R/o-103-Kaushikalay Apartment, Yarpur, Shivaji Path, Patna. (Roll No. -208822).
3. Prashant Mishra, S/o Bipin Bihari Mishra, R/o-N8/155 A-6-A BHU Road, Newada, Varanasi.
4. Mukesh Kumar, S/o Dinanath Singh, R/o Village-Harbansa, P.O.-Lahasa, P.S.-Patuthu, District-Aurangabad.
5. Vinit Kumar, S/o Shri Satyanarayan Singh, R/o Village-Baikrampur, P.O.-Fatuha, P.S.-Fatuha, District-Patna. (Roll No. -228582).
6. Rahul Kumar, S/o Rajesh Kumar, R/o Rajendra nagar, Road no. 13/C, PO and PS-Rajendra-nagar, District-Patna. (Roll No. -216750).
7. Ravish Kumar Pandey, S/o Shri Rakesh kumar Pandey, R/o-270/99 Gallabazar, P.O TeliyarGanj, P.S.-Colonel ganj, District-Prayagraj, UP. (Roll No. -204604).
8. Purushhottam Narayan Singh, S/o-Shri Amrendra Narayan Singh, R/o-House no. 176, Sidheshwar Nagar, Mainpura, P.o-G.P.O., P.S-Patliputra, District-Patna. (Roll No. -219497).

... .. Petitioner/s

Versus

1. The state of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
4. The Chairman, Bihar Public Service Commission, Patna.
5. The Secretary, Bihar Public Service Commission, Patna.
6. The special secretary-cum-controller of Examination, Bihar Public Service Commission, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Adv. Mr.Alok Ranjan, Adv.
For the BPSC	:	Mr.Lalit Kishore, Sr. Adv. Mr. Sanjay Pandey, Adv. Mr. Nishant Kumar Jha, Adv.



CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

2 22-02-2021 Eight petitioners have filed the present writ application on the basis of the following foundational facts:

“4. That in order to appreciate the issues involved in the instant writ petition it is stated that BPSC has published an advertisement bearing advertisement no. 02/2017, for appointment to the post of Assistant Engineer (Civil), advertisement no. 03/2017 for appointment to the post of Assistant Engineer (Engineering) and advertisement no. 04/2017 for appointment on the post of Assistant Engineer (Civil Animal Fisheries, Department) in various departments of the Government of Bihar and accordingly forms were invited from the eligible candidates.

Pursuant to and compliance to the same the petitioners alongwith other candidates have filled up the forms and have submitted to the BPSC and the same was duly received in the office of BPSC, last date of submission of form was fixed for 12.4.2017.

5. That it is pertinent to mention here that some of the candidates who have had some grievances with regard to minimum age fixed have approached to the Hon’ble Court, Patna by way of filing of writ application bearing CWJC No



5799 of 2017 which was allowed by the Hon'ble High Court vide order dated 8.8.2017.

Pursuant to and compliance to the order passed by the Hon'ble High court, Patna after making necessary correction , the authorities of the BPSC have again published an advertisement in which total no. of vacancies were 1237 and the last date of filing of form was fixed for 06.12.2017 and subsequently 47 seats were enhanced and the total no. of seats now was 1284.

6. That from bare perusal of the advertisement it is clearly transpires that the advertisement was issued in contravention to the reservation guidelines issued in this regard from the Government of Bihar.

Pursuant to reservation policy 12% reservation has been granted to backward class category (BC), whereas only 91 seats were allotted for BC category and after enhancement of seats total nos. of seats reserved for BC category was 92, whereas total no. of seats for unreserved category is 50% and the seats provided to unreserved category was 735 seats.

7. That it is further relevant to bring a relevant fact before the Hon'ble Court for kind consideration that in



connivance with the respondent authorities, some of the candidates have applied twice and as far as the petitioners could gather information, one of the candidate had applied/filed up his form thrice and above all, the candidates who have done this, they have been allotted Roll nos. accordingly twice and thrice and they participated in the PT Examination conducted by BPSC and also were declared qualified and have also participated in the main examination and were declared qualified, for eg.

(A) Rohit Kumar, father's name-Vijay Kumar, DOB-13.7.1995, Roll No. 220735.

(B) Rohit Kumar, Father's name-Vijay Kumar, DOB-13.7.1995, Roll No. 220423.

(ii) (A) Puja Kumari, Father's name-Vijay Kumar, DOB-13.11.1994, Roll no. 225678.

(B) Puja Kumari, Father's name-Vijay Kumar, DOB-13.11.1994, Roll no. 219362.

(iii) (A) Kiran Kumari, Father's name-Uma Shankar Prasad, DOB-5.2.1994, Roll No. 201481.

(B) Kiran Kumari, Father's name-Uma Shankar Prasad, DOB-5.2.1994, Roll No.221747.

(iv) (A) Shivrath Jha, Father's name- B.K. Jha,



DOB-26.1.1994, Roll No. 220783.

(B) Shivrath Jha, Father's name- B.K. Jha, DOB-26.1.1994, Roll No. 222282.

(C) Shivrath Jha, Father's name- B.K. Jha, DOB-26.1.1994, Roll No. 205213.

The aforementioned are names of some of candidates who in connivance with the respondent authorities have been allotted Roll Nos. twice and thrice and the candidates have been declared successful in PT and main examination as well, it is one of example of large scale bugling committed in selection procedure, which vitiates the entire selection process.

8. That it is further relevant to mention here that the result of PT examination was published on 30.01.2019 and subsequently it was republished on 09.02.2019 and again published on 12.02.2019 and four candidates were declared successful bearing Roll nos. 202472, 209785, 209956 and 213721 were declared successful in the main examination also.

9. That being aggrieved and dissatisfied by the PT result some of the candidates have approached before the Hon'ble High Court, Patna by way of filing writ application



bearing CWJC No. 3670 of 2019 and other analogous cases, the Hon'ble Court vide order dated 26.3.2019 was pleased to allow the writ application filed on behalf of the petitioners.

10. That being aggrieved and dissatisfied by the order passed by Hon'ble Single Judge the authorities of BPSC preferred LPA assailing the order passed by Hon'ble Single Judge, bearing LPA No. 642 of 2019 and other analogous cases and after hearing the parties the Hon'ble division bench was pleased of set aside the order passed by the Hon'ble Single Judge, vide order dated 5.1.2021.

11. That it is further relevant to mention before the Hon'ble Court for kind consideration that in the main examination in spite of there been restraining order for using electronics gazettes and mobile phones, many candidates were using mobiles phones in the examination hall, the candidates snapped (took the photograph of) main question paper and the same were sent to district places and the solved answers were received by the candidates and they pen down in their answer sheet.

The same reported to the senior authorities of the BPSC personally and through E-mail also, but no cognizance



was taken by the authorities of BPSC, the reasons best known to the authorities of the BPSC.

12. That it is relevant to mention here that the aggregate marks of the main examination was 700 marks, out of which 400 marks was for objective type question and rest 300 marks was subjective question and answer. The BPSC after main examination had published model answer sheet, in which out of 400 marks, 17 marks were deducted as some of the questions were incorrect, total marking for objective questions and answers was 383 and out of that the most of the petitioners scored more than 240 marks and the petitioners have done very well in the subjective questions and answers also, but inspite of that they were shocked and taken by surprise when the result of main examination was punished and petitioners roll nos. does not find place in the qualified list.

13. That it is relevant to mention here that petitioners on perusal of the result published came to know that large scale bugling was committed in preparation of mains result, many candidates from one examination hall were declared qualified.

14. That since large scale bugling was committed



in conducting the examination, the petitioners approached before the respondent authorities of the BPSC making a request to provide cut off marks of main examination, but the same was refused by the respondent authorities.

15. That in the above mentioned ground, when the respondent authorities are not ready to act judiciously, the petitioners have been left with no other equally efficacious and alternative remedy save and except to move to your Lordship for the relief being prayed in this writ application.”

2. On the strength of aforesaid pleadings, the petitioners have prayed for the following relief:

“1. For initiation of an inquiry by independent agency like Central Bureau Investigation/Crime Investigation Department/Vigilance Department, or any other independent agency with regard to large scale bugling, irregularities, illegalities made in connivance with the respondent authorities, in issuance of advertisement, filing of forms, issuance of admit card of PT, in conducting Mains Examination and publication of result to Mains Examination pursuant to Advertisement no. 02/2017 by Bihar Public Service Commission, Patna (BPSC Patna) for the post of Assistant Engineer in different department of Government of



Bihar, Patna.”

3. Mr. Y.V Giri, learned Sr. counsel appearing on behalf of the petitioner has submitted that examination conducted by BPSC suffers from manifold infirmity. Additionally, the examination is also vitiated on account of mala fide and corrupt practices. He highlighted that the purity of examination is sine qua non of selection process which is totally missing in the present selection.

4. Mr. Giri in order to highlight the infirmity in the selection process pursuant to the advertisement nos. 2 of 2012, 03 of 2017 and 04 of 2017 and submitted that unfair means was practiced in the examination.

5. Referring to chronology of events, Mr. Giri submits that the last date for submission of form was 12.4.2017 and some of the candidates who were aggrieved by fixation of minimum age, approached the Hon'ble High Court in C.W.J.C. No. 5799 of 2017. The writ petition was allowed on 8.8.2017 and thereafter fresh advertisement was issued with modification. In the advertisement, the last date for submission of form was fixed as 6.12.2017 and the vacancies which was initially 1237 was enhanced to 1284.

6. Without referring to the particulars there is



averment in para-6, that there was violation of reservation policy but no such pleading is available on record that how there was violation of reservation policy and if there was any violation of reservation policy in the advertisement the proper course was to challenge the advertisement itself but since the petitioners have participated in the selection process they have neither challenged the advertisement with regard to reservation policy nor their averment made in para-6 about the departure from the quota fixed for different categories of reserved and unreserved category has been substantiated in this writ application.

7. Mr. Giri with emphasis has argued, referring to certain averments mentioned in para-7 that those mentioned in para-7 are the blue eyed candidates who were declared successful in the PT. Examination subsequently and later on in the main examination they were declared successful. With reference to roll numbers mentioned in para-7 and on the basis of aforesaid example, Mr. Giri submits that that there was large scale bugling committed in the selection process. Mr. Giri with reference to para-8 has submitted that roll nos. as given in para-8 in the revised result of 9.2.2019 and 12.2.2019 have been declared as successful in the main



examination which indicates that there is hanky panky in the selection process.

8. In all fairness, Mr. Giri has referred to the statement made in paragraphs 9 to 10 that the result of P.T. examination was challenged in C.W.J.C. No. 3670 of 2019. The High Court was pleased to allow the writ application filed on behalf of the petitioners and against that, LPA preferred by BPSC as well as the State. The LPA Court allowed the LPA and set aside the judgment of the writ court vide detailed judgment dated 5.1.2021

The conclusion of the LPA Court is quoted below:

61. In view of the aforesaid discussion, we are of the view that the interference by the learned Single in the report of the expert committee and giving direction for constitution of fresh expert committee to revisit the answer sheet and consequential direction is outside of the realm of judicial review. Accordingly, the judgment and order dated 26.3.2019 passed in CWJC No. 3670 of 2019 and other analogous cases is set aside. This Court directs the Commission to proceed further and declare the result of the main examination, if the result is ready.

62. With the aforesaid observations and directions, these appeals are allowed.



Pending Interlocutory Application, if any, stands disposed of.

9. After the decision of in LPA No. 642 of 2019, the main result was published.

10. Mr. Giri submitted that the BPSC has not acted fairly. There was large scale bugling in the selection process. Many candidates from one examination hall were declared qualified but specifies in this regard is absent in the pleading. There is statement that the petitioners approached before the respondent BPSC to provide cut off marks of the main examination but the same was refused by the BPSC. However, no document was enclosed showing such request.

11. In the aforesaid background, Mr. Giri submitted that the examination conducted by the BPSC does not satisfy the requirement of fair competitive examination. He submitted that the purity of examination was lacking in this case.

12. Mr. Giri has placed reliance on the judgment of the Apex Court reported in **2017(13) SCC 621 (Vipulbhai Mansingbhai Choudhary Vs. the State of Gujarat & Anr)**

18. Mr. Shelat, however, relied on the decision of Hon'ble



Supreme Court in the case of State of U.P. v. Johri Mal reported in (2004) 4 SCC 714 : AIR 2004 SC 3800 to contend that though this Court is not acting as Appellate Court, however, if the Court finds that the decision is irrational or illegal or for the reasons not germane to the exercise of powers, this Court may have judicial review of the decision under Article 226 of the Constitution of India. In the case of Johri Mal (supra), Hon'ble Supreme Court has held and observed in para 28, 29 and 30 as under:—

28. The scope and extent of power of the judicial review of the High Court contained in Article 226 of the Constitution of India would vary from case to case, the nature of the order, the relevant statute as also the other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi judicial or administrative. The power of judicial review is not intended to assume a supervisory role or done the robes of omnipresent. The power is not intended either to review governance under the rule of law nor do the Courts step into the areas exclusively reserved by the supreme lex to the other organs of



the State. Decisions and actions which do not have adjudicative disposition may not strictly fall for consideration before a judicial review Court. The limited scope of judicial review succinctly put are:

(i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies.

(ii) A petition for a judicial review would lie only on certain well-defined grounds.

(iii) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal.

(iv) A mere wrong decision without anything more is not enough to attract the power of judicial review; the supervisory jurisdiction conferred on a Court is limited to seeing that Tribunal functions within the limits of its authority and that its decisions do not occasions miscarriage of justice.

(v) The Courts cannot be called upon to undertake the Government duties and functions. The Court shall not ordinarily interfere with a policy decision of the State. Social and economic belief of a



Judge should not be invoked as a substitute for the judgment of the legislative bodies. (See *Ira Munn v. State of Illinois*, 1876 (94) US (Supreme Reports) 113).

29. In *Wade's Administrative Law*, 8th edition at pages 33-35, it is stated:

“Review, legality and discretion:

The system of judicial review is radically different from the system of appeals. When hearing an appeal the Court is concerned with the merits of a decision: is it correct “When subjecting some administrative act or order to judicial review, the Court is concerned with its legality; is it within the limits of the powers granted” On an appeal the question is ‘right or wrong’ On review the question is ‘lawful or unlawful’

Rights of appeal are always statutory. Judicial review, on the other hand, is the exercise of the Court's inherent power to determine whether action is lawful or not and to award suitable relief. For this no statutory authority is necessary; the Court is simply performing its ordinary functions in order to enforce the law. The basis of judicial review, therefore, is common law. This is none-the-less true



because nearly all cases in administrative law arise under some Act of Parliament. Where the Court quashes an order made by a minister under some Act, it typically uses its common law power to declare that the Act did not entitle the ministers to do what he did and that he was in some way exceeding or abusing his powers.

Judicial review thus is a fundamental mechanism for keeping public authorities within due bounds and for upholding the rule of law. Instead of substituting its own decision for that of some other body, as happens when on appeal, the Court on review is concerned only with the question whether the act or order under attack should be allowed to stand or not. If the Home Secretary revokes a television licence unlawfully, the Court, may simply declare that the revocation is null and void. Should the case be one involving breach of duty rather than excess of power, the question will be whether the public authority should be ordered to make good a default. Refusal to issue a television licence to someone entitled to have one would be remedied by an order of the Court requiring the issue of the licence. If administrative action is in excess of power (*ultra vires*),



the Court has only to quash it or declare it unlawful (these are in effect the same thing) and then no one need pay any attention to it. The minister or tribunal or other authority has in law done nothing, and must make a fresh decision.”

30. It is well-settled that while exercising the power of judicial review the Court is more concerned with the decision making process than the merit of the decision itself. In doing so, it is often argued by the defender of an impugned decision that the Court is not competent to exercise its power when there are serious disputed questions of facts; when the decision of the Tribunal or the decision of the fact finding body or the arbitrator is given finality by the statute which governs a given situation or which, by nature of the activity the decision maker's opinion on facts is final. But while examining and scrutinizing the decision making process it becomes inevitable to also appreciate the facts of a given case as otherwise the decision cannot be tested under the grounds of illegality, irrationality or procedural impropriety. How far the Court of judicial review can reappraise the findings of facts depends on the ground of judicial review. For example, if



a decision is challenged as irrational, it would be well-nigh impossible to record a finding whether a decision is rational or irrational without first evaluating the facts of the case and coming to a plausible conclusion and then testing the decision of the authority on the touchstone of the tests laid down by the Court with special reference to a given case. This position is well settled in Indian Administrative Law. Therefore, to a limited extent of scrutinizing the decision making process, it is always open to the Court to review the evaluation of facts by the decision maker

21. Sub-Section (1) provides for power of the Registrar to remove an officer by an order after giving such officer an opportunity of being heard and to direct the society to elect or appoint a person or qualified member in the vacancy caused by such removal. However, in Sub-Section (2), no such requirement of giving an opportunity to the officer of being heard is provided but it provides for power of the Registrar to direct by an order that the officer, “so removed” shall be disqualified to hold or contest election for any office in the society from which he is removed and in any other society for



a period not exceeding four years (now six years) from the date of the order and such officer then shall stand disqualified accordingly. However, since such order of disqualification would entail civil consequences for the officer so removed, principles of natural justice are to be complied with though specific words, “after giving an opportunity of being heard” are not used, and to follow such principles, a notice for proposed action of disqualification is required to be issued to give him sufficient opportunity to represent his case against proposed action. Therefore, in the context of the provision of Section 76B of the Act, the Court needs to examine whether before the order of removal could be made, action for disqualification under sub-section (2) could be initiated and whether separate order is required for disqualification under sub-section (2) after serving the order of removal to the petitioner and whether mere reference to Section 76B(2) in the show cause notice for removal could be said to be notice for proposed action of disqualification under sub-section (2).



13. Para-18 on which Mr. Giri has placed reliance begins with caution. Normally while exercising power of judicial review the court is required to only examine error the decision making process and not the decision itself.

14. Para-21 of the judgment focus on the purity of the examination. In the present case what is highlighted by the petitioners with regard to infirmity at the PT examination that was screen test to short list the candidates and thereafter the petitioners participated in the selection process. After the PT examination, the matter was taken to the LPA Court in LPA No. 642 of 2019, the Court is affraid whether it is a forum to re-agitate the matter which should have been the subject matter of the challenge in C.W.J.C. No. 3670 of 2019 and finally decided by the LPA Court in LPA No. 642 of 2019.

15. Mr. Giri placed reliance on paragraph 15, 19 & 21 of the judgment of the Apex Court reported in **2013 (4) SCC 690 in the case of Rajesh Kumar Vs. the State of Bihar.**

Paras 15, 19 and 21 are quoted below:

15. There is, in our view, no merit in that contention of Mr Rao. The reasons are not



far to seek. It is true that the writ petitioners had not impleaded the selected candidates as party-respondents to the case. But it is wholly incorrect to say that the relief prayed for by the petitioners could not be granted to them simply because there was no prayer for the same. The writ petitioners, it is evident, on a plain reading of the writ petition questioned not only the process of evaluation of the answer scripts by the Commission but specifically averred that the “model answer key” which formed the basis for such evaluation was erroneous. One of the questions that, therefore, fell for consideration by the High Court directly was whether the “model answer key” was correct. The High Court had aptly referred that question to experts in the field who, as already noticed above, found the “model answer key” to be erroneous in regard to as many as 45 questions out of a total of 100 questions contained in ‘A’ series question paper. Other errors were also found to which we have referred earlier. If the key which was used for evaluating the answer sheets was itself defective the result prepared on the basis of the same could be no different. The Division Bench of the High Court was, therefore, perfectly justified in holding that the result of the examination insofar as the same pertained to ‘A’ series question paper was vitiated. This was bound to affect the result of the entire



examination qua every candidate whether or not he was a party to the proceedings. It also goes without saying that if the result was vitiated by the application of a wrong key, any appointment made on the basis thereof would also be rendered unsustainable. The High Court was, in that view, entitled to mould the relief prayed for in the writ petition and issue directions considered necessary not only to maintain the purity of the selection process but also to ensure that no candidate earned an undeserved advantage over others by application of an erroneous key.

19. The submissions made by Mr Rao are not without merit. Given the nature of the defect in the answer key the most natural and logical way of correcting the evaluation of the scripts was to correct the key and get the answer scripts re-evaluated on the basis thereof. There was, in the circumstances, no compelling reason for directing a fresh examination to be held by the Commission especially when there was no allegation about any malpractice, fraud or corrupt motives that could possibly vitiate the earlier examination to call for a fresh attempt by all concerned. The process of re-evaluation of the answer scripts with reference to the correct key will in addition be less expensive apart from being quicker. The process would also not



give any unfair advantage to anyone of the candidates on account of the time lag between the examination earlier held and the one that may have been held pursuant to the direction of the High Court. Suffice it to say that the re-evaluation was and is a better option, in the facts and circumstances of the case.

21. There is considerable merit in the submission of Mr Rao. It goes without saying that the appellants were innocent parties who have not, in any manner, contributed to the preparation of the erroneous key or the distorted result. There is no mention of any fraud or malpractice against the appellants who have served the State for nearly seven years now. In the circumstances, while inter se merit position may be relevant for the appellants, the ouster of the latter need not be an inevitable and inexorable consequence of such a re-evaluation. The re-evaluation process may additionally benefit those who have lost the hope of an appointment on the basis of a wrong key applied for evaluating the answer scripts. Such of those candidates as may be ultimately found to be entitled to issue of appointment letters on the basis of their merit shall benefit by such re-evaluation and shall pick up their appointments on that basis according to their inter se position on the merit list.



16. On perusal of the aforesaid discussion of the Apex Court, it appears that the judgment does not in any manner supports the writ petitioners as there was infirmity in the key answer for which the petitioners cannot be faulted and if that was the consideration which led the Apex Court to interfere, the same principle is not applicable in this case as it is not the case of the petitioners that answers were erroneous in the main examination and whatever infirmity are highlighted relates to PT examination and that PT examination issue cannot be reopened by the petitioners after participating in the final examination and publication of the result as the the petitioners with open eye participated in the main examination and they are not allowed to find fault with the PT examination to challenge the outcome of the main examination.

17. Additionally the Court finds that the writ petition suffers from vice of non joinder of the necessary party. The Apex Court has occasion to deal with the issue of impleadment for party in the case of **Pramod Verma vs. The State of U.P. reported in 1985 SCC 167** which is not satisfied in this case as person likely to be adversely affected



were not impleaded as party even in representative capacity after publication of final result.

18. In the absence of persons cited in para-7 as favoured/blue eyed people are impleaded as party, no reliance can be placed on such pleadings in view of the judgment of the Apex Court **Pramod Verma vs. The State of U.P. (supra)** in view of rule of pleadings as discussed by the Apex Court is not applicable in the present case and since they were not made party, the writ petition suffers from the vice of non joinder of the necessary party.

19. Adverting to the issue of mala fide on the facts and circumstances it has been settled by the Apex Court in the case of **Shivaji Patil Vs. Madhav Goservey AIR 1987 SCC 191** the pleading in this score is also scatchy and not based on any material.

20. It is customary to plead mala fide but necessary pleadings are frequently noticed, missing in the writ petition as noticed in this case. The High Court while exercising the power of judicial review as constitutional Court is not expected to enter into roving enquiry as suggested by the petitioner in the present case. The self impose restriction in exercise of judicial review is a sound



principle. The Court is only expected to interfere in a situation where there is gross illegality and mala fide in the selection process.

21. Since no such pleading is available on record, warranting interference, the writ petition is dismissed accordingly as there is no substance in the writ petition.

(Anil Kumar Upadhyay, J)

Ravi/-

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