

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8212 of 2020

Navin Kumar son of Sri Rameshwar Prasad Resident of Village- Padrawan,
Post- Bhimpur Manjhiawan, P.S.- Konch, District- Gaya.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of General Administration, Government of Bihar, Patna.
2. The Bihar Public Service Commission, through its Secretary, 15, Jawaharlal Nehru Marg, Bailey Road, Patna.
3. The Secretary, Bihar Public Service Commission, 15, Jawaharlal Nehru Marg, Bailey Road, Patna.
4. Joint Secretary-cum- Examination Controller, Bihar Public Service Commission, 15, Jawaharlal Nehru Marg, Bailey Road, Patna.
5. Branch Officer, Bihar Public Service Commission, 15, Jawaharlal Nehru Marg, Bailey Road, Patna.

... .. Respondents

Appearance :

For the Petitioner	:	Mr.Ajay Kumar Thakur
	:	Mr.Md.Imteyaz Ahmad
	:	Ms.Vaishnavi Singh
For the State	:	Mr.Manish Kumar (GP 4)
For the B.P.S.C.	:	Mr.Sanjay Pandey

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 13-04-2021

After having been declared successful in the preliminary test, the petitioner had appeared in the main (written ‘60th to 62nd Combined Competitive Civil Services Examination’) held by the Bihar Public Service Commission (hereinafter referred to as ‘the B.P.S.C.’) as a candidate belonging to BC category. He was declared successful for the interview but his name could not figure in the final merit list for



recommendation by the B.P.S.C. in its result published on 01.02.2019 since the petitioner was found to have scored 582 marks as against the cutoff marks of 584 fixed for the BC category. The final merit list was published by the B.P.S.C. on the basis of marks obtained by respective candidates in the main (written examination) and the interview taken together.

2. The candidates declared finally selected on the basis of said examination have already been appointed. The petitioner had chosen Public Administration as his optional subject. He filed an application under the Right to Information Act, 2005 for the supply of answer sheets of both the papers of general studies as well as the optional subject namely Public Administration which were supplied to him on 05.07.2019.

3. It is the petitioner's grievance that in the Public Administration subject, in respect of the first part of question no. 11, he was initially awarded 26 marks by the examiner, which was penned through and reduced to 24. For the second part of the said question, he was awarded six marks and thus firstly 26+6 was written which was changed to 24+6 without any initials put by the examiner. It is the petitioner's case that had the alternation not been done and the petitioner's marks originally awarded against the first part of question no. 11 was not reduced to 24, the petitioner would



have been declared successful, as he would have achieved the cutoff. Similarly, in respect of question no. 7, for the second part, he was originally awarded 7 marks which too was penned through and brought down to 6 marks. He was thus awarded $22+6=28$ marks for question no. 7 instead of $22+7=29$. There are averments in the writ application of not giving full marks for some of his answers which were accurate and correct, in general studies paper 1. With the aforesaid fact asserted in the writ application, the petitioner has filed the present writ application seeking a direction to the B.P.S.C. to declare him successful after re-evaluating and recalculation his answer sheets and to recommend to the State Government his name for appointment.

4. A counter affidavit has been filed on behalf of the B.P.S.C. wherein it has been asserted that the evaluation of the petitioner's answer sheet was done with due care by qualified and experienced examiners and after evaluation, the answer books have been properly scrutinized and tabulation of marks had also been done cautiously. In relation to marking *qua* question no. 11, it has been stated that it is true that the examiner had awarded 26 marks for question no. 11 but subsequently he made the correction and awarded 24 marks instead after putting his initials over the said correction at the relevant page of the answer sheet. Similarly,



in respect of the second part of question no. 7, the examiner had initially awarded 7 marks which he had corrected and awarded 6 marks instead after putting his initials. It has also been pointed out to demonstrate *bonafide* of the B.P.S.C. that in respect of question no. 2, the petitioner was awarded 6 and 26 marks but the examiner had erroneously calculated 30 instead of 32. The head examiner, during the verification noticed the said discrepancy and rectified the error and thus the petitioner was shown to have scored 32 instead of 30 for question no. 2. In respect of the marks awarded for various answers in general studies paper 1, it has been stated in the counter affidavit that the same has been done by the examiner according to the petitioner's performance.

5. I have heard Mr. Ajay Kumar Thakur, learned counsel for the petitioner and Mr. Sanjay Pandey for the B.P.S.C.. Mr. Thakur has taken me to the copies of the answer sheets to submit that apparently the examiner reduced the petitioner's marks, which he had originally awarded without any ostensible reason. With particular reference to page 30 of the said answer sheet, he has submitted that originally the examiner had mentioned '26+6=32' but subsequently changed it to '24+6=30' without putting his initials. He has accordingly submitted that the discrepancy in evaluation of the petitioner's answer sheet has



seriously prejudiced the petitioner's selection for appointment and, therefore, this Court, exercising power of judicial review under Article 226 of the Constitution of India should interfere and issue necessary directions, as sought for. He has further argued that the examiner has whimsically reduced the marks originally awarded by him in respect of question no. 7 also, which is suggestive of arbitrariness and irrationality.

6. Mr. Sanjay Pandey, learned counsel appearing on behalf of the B.P.S.C. on the other hand has submitted that no *malafide* has been alleged in the writ application against the examiner and merely on the ground that the examiner during the course of evaluation found less marks to be awarded than was earlier mentioned, the correctness of evaluation cannot be questioned. He has argued that a mistake, if detected, can be cured which appears to have been done by the examiner in the present case after taking due care and caution and putting his initials. He has submitted that initials were not required to be put at page 30 of the answer sheet of Public Administration paper since the examiner had, before summing the full marks for question no. 11 had, upon making corrections, displayed addition of marks awarded for part 1 and part 2 of question no. 11. He has taken me to a coordinate Bench decision of this Court dated 23.02.2015



passed in C.W.J.C. No. 1137 of 2014 (***Prabhat Kumar v. The State of Bihar and Others***) wherein, in similar circumstance, this Court refused to interfere with the evaluation of the answer sheet. The said decision was subsequently affirmed by a Division Bench of this Court by its decision dated 25.04.2016 in LPA No. 927 of 2015 (***Prabhat Kumar v. The State of Bihar and Others***). Reliance has also been placed by Mr. Pandey on another Division Bench decision of this Court dated 29.06.2017 passed in LPA No. 606 of 2017 (***Touqeer Kibria v. The State of Bihar and Others***). Another coordinate Bench decision of this Court dated 27.07.2018 passed in C.W.J.C. No. 7086 of 2017 (***Pankaj Kumar v. The Bihar Public Service Commission and Others***) has also been placed into service to contend that no interference is required by this Court in the present facts and circumstances of the case.

7. On careful assessment of the admitted facts noted above and consideration of rival submissions made on behalf of the parties, I find force in the stand taken on behalf of the Bihar Public Service Commission in the light of the decisions rendered by a coordinate Bench of this Court in case of ***Prabhat Kumar*** (supra) which was subsequently affirmed by the Division Bench of this Court. In case of ***Prabhat Kumar*** (supra), in similar circumstance, the petitioner of that case had obtained his answer



sheet under the Right to Information Act, 2005 and found that there had been overwriting on the marks initially awarded and reduced to 24 from 26 in respect of question no. 1. In that case, similar overwriting was noticed in respect of question no. 9. The ultimate result was that had originally awarded marks been taken into account, the petitioner of that case would have scored 127 but he could score 121 because of corrected marks awarded to him. In that case, the situation was worse inasmuch as the examiner had not put his initials or signature on the overwriting.

8. The Court, while refusing to interfere in case of ***Prabhat Kumar*** (supra) observed that in normal course of things, if the examiner wanted to reduce the marks so awarded, the original marks should have been scored out and initials or signature should have been given thereto and a fresh mark which was in the opinion of the examiner deserved by the petitioner in the concerned question should have been recorded separately again with a signature, if not with an initials. The Court, however, said that it was not a case of any deliberate wrongdoing to deny the petitioner benefit of selection.

9. It seems that taking a lesson from what was observed by this Court in case of ***Prabhat Kumar*** (supra), in the present case, the corrections made by the examiner bear his initials



at appropriate places. As has been noticed above, the decision of the coordinate Bench in case of ***Prabhat Kumar*** (supra) was subsequently affirmed by a Division Bench of this Court in LPA No. 927 of 2015. Similar view has been taken in case of ***Pankaj Kumar*** (supra) by a coordinate Bench of this Court. There is no allegation of *malafide* in the writ application. It is also apparent from the statement made in the counter affidavit that when computation of marks awarded to the petitioner in respect of one of the questions was found to be less than the same was actually awarded, it was corrected by the head examiner and he was thus awarded 32 in place of 30 in respect of question no. 2. The question of *malafide*, therefore, does not arise in the present facts and circumstances of the case.

10. For the reasons noted above, I do not find any merit in this application.

11. This application is accordingly dismissed.

(Chakradhari Sharan Singh, J)

AKASH/-

AFR/NAFR	N/A
CAV DATE	N/A
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