

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10544 of 2021

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Nishant Kumar son of Late Paras Nath Verma, resident of Kasma, Dugul, Rafiganj, Aurangabad, Bihar, presently residing at Sri Krishna Gopal Sadan, Dev Nagar, Shahpur Pipra Road, Jaganpura, Patna-16, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar Main Secretariat, Patna.
2. The Chief Secretary, Government of Bihar Main Secretariat, Patna.
3. The Principal Secretary, General Administrative Department, Main Secretariat, Patna.
4. The Bihar Public Service Commission through its Chairman, 15 Jawaharlal Nehru Marg, Bailey Road, Patna.
5. The Chairman, Bihar Public Service Commission, 15 Jawaharlal Nehru Marg, Bailey Road, Patna.
6. The Examination Controller, Bihar Public Service Commission, 15 Jawaharlal Nehru Marg, Bailey Road, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sanjeev Kumar Mishra
For the Respondent/s	:	Mr.Saroj Kumar Sharma, AC to AAG
For BPSC		Mr. Sanjay Pandey,

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

3 25-06-2021 This matter has been taken up for hearing online because of COVID-19 pandemic restrictions.

2. Heard learned counsel for the parties.

3. The petitioner had participated in the preliminary test held by the Bihar Public Service Commission (hereinafter referred to as 'the Commission') for the 66th Combined Competitive Examination. The test was objective, multiple



choice question type. The preliminary test was held on 27.12.2020. The provisional model answer of the questions were made available on the *website* of the Commission on 21.01.2020 with a notice that should any candidate be having any objection with regard to provisional answers of any question, they would be at liberty to submit their objections/suggestions supported by reliable course/evidence to the Commission till 5 P.M. on 05.02.2021. It was clearly indicated that no objection/suggestion would be considered after the said date and time.

4. Admittedly, the petitioner did not submit any objection to the provisional answers within time as stipulated in the notice available on the *website* of the Commission.

5. This is to be noted, as has been stated in the counter affidavit filed on behalf of the Commission, that to allay any chance of adoption of plagiarism by the candidates, the question papers were printed in A,B,C,D series. The questions in each of the said four sets were jumbled up in the manner that the sequence of each question in one series varied from that of the of the other, so far as it concerned, their serialisms.

6. The petitioner was supplied 'D' series of the objective type question papers.



7. Pursuant to the notice inviting objections against provisional model answers, the Commission received a numerous objections which were considered and on the basis of the experts' opinion, the model answers in respect of four questions, viz, 88,89,121 and 123 of question booklet series 'A' was decided to be altered.

8. The question No.88 of series A of the question papers corresponds to question No.37 of series D whereas that of question No. 129 to question No.80. Admittedly, the cut-of marks for preliminary test is 108. The petitioner had scored 106.

9. The petitioner is said to have raised objection after the cut-of date questioning correctness of model answers in respect of question Nos. 37 and 80 of D series of the question papers. As has been noted above, provisional answer to question No.88 of series A which corresponds to question No. 37 of series D of the question papers has already been altered by the Commission and now the petitioner has no grievance in relation to the said question.

10. It is, however, the petitioner's case that answer to question No.129 of series A, which corresponds to question No.80 of series D is incorrect and the correct answer to the said



question is E and not C as suggested by the expert body and accepted by the Commission.

11. This is the background in which the present writ application has been filed seeking following relief(s):-

“(i) For direction upon the respondent authority to declare the petitioner as successful candidate in 66th BPSC Preliminary Examination and allow the petitioner to submit the application for appearing in Mains Examination for which the last date of submission of application is 10.05.2021.

(ii) For issuance of an appropriate writ directing the respondent commission to reassess and re-evaluate the answer sheet of the petitioner in accordance with law after declaring answer key of question no. 37 and question no.80 of the question booklet series D is wrong in the facts and circumstances of the case.”

12. It is evidence from the petitioner's own averment made in the writ application that the final result was published on 24.03.2021 before which the petitioner had not raised any objection in relation to question No.80 of question booklet series D, despite having an opportunity to submit his objection. The provisional model answer to the said question was available on the website of the Commission and if according to the



petitioner, the same was incorrect, he had the liberty to submit his objection. The petitioner apparently took a chance and after publication of result, he has started questioning the correctness of the said model answer.

13. Mr. Sanjeev Kumar Mishra, learned counsel for the petitioner has submitted that the answer to question No.80 of series D as relied upon by the Commission is apparently incorrect and, therefore, this Court should interfere by issuing appropriate direction to the Commission to revise petitioner's result.

14. Mr. Satyabir Bharti, learned counsel appearing on behalf of the Bihar Public Service Commission has relied on a decision of this Court dated 02.60.2020 rendered in **CWJC No. 5720 of 2020 (Nikesh Kumar Savfri and ors. Vs. State of Bihar and ors)** to submit that this Court may not enter into the question of the correctness of the expert in the competitive examination. He has also placed reliance on a Division Bench decision of this Court in case of **Ravindra Kumar Singh Vs. the High Court of Judicature at Patna** reported in **2016(1) PLJR 865**, paragraph 54 of which reads as under:-

“54. Situated thus, having considered the fact sand 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 hair-splitting 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)

15. In support of his plea that since the petitioner failed to raise any objection in respect of provisional model answer prior to publication of the result of preliminary test, the petitioner cannot raise any such claim at this stage.

16. I find substance in the submission made on behalf of the Bihar Public Service Commission. In the Court’s opinion, the controversy in the present case is squarely covered by a Division Bench of this Court in case of **Rabindra Kumar Singh** (supra).

17. In view of the aforesaid, there is no merit in the application.



18. This application is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

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