

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10649 of 2021

1. Utpal Kant Son of Kaushal Kumar Pathak Resident of Babhan Toli Gali, Sampatchak, P.s.- Sultanganj, District- Patna (applied as EWS category)
2. Abhaydeep Vishwakarma S/o Vishun Ram Vishwakarma R/o and P.s.- Banvirpur, District- Azamgarh, Uttar Pradesh (General Category)
3. Avinash Kumar Pandey S/o Krishn Kant Pandey R/o Dahiyawan Brahman Toli, P.s.- Mahmood Chowk, District- Chapra, Bihar (EWS category)
4. Saima Khan Daughter of Azhar Husain Resident of Nijampur, P.s.- Gomti Nagar, District- Lucknow, Uttar Pradesh (applied as General category)
5. Sujeet Kumar S/o Virendra Kumar R/o Village- Gandhar, P.o.- Bandhuganj, P.s.- Ghosi, District- Jehanabad, Bihar (EWS category)
6. Mukesh Kumar Son of Paras Nath R/o Village and Post- Dhaurahara, P.s.- Chaubeypur, District- Varanasi (General Category)
7. Inamul Haq S/o Alimuddin R/o Moh. Qila, Dr. Sanawar wali Gali, P.s.- Deoband, District- Saharanpur, Uttar Pradesh (General Category)
8. Nishant Kumar S/o Baidya Nath Sah R/o Village and Post and P.s.- Sursand, District- Sitamarhi (Bihar)
9. Deeksha Shukla D/o Shatruaghna Prasad Shukla R/o Village- 25C, Shahjahanpur Ayodhya, P.s.- Ranopali, District- Ayodhya, Uttar Pradesh (General Category)
10. Alka Bharti D/o Om prakash R/o Village and Post- Kamhariya Bujurg, P.s.- Kolhui Bazar, District- Maharajganj, Uttar Pradesh (General Category)
11. Ashish Tripathi S/o Durga Prasad Tripathi R/o Pipra Post and P.s.- Baurbyas, District- Sant Kabir Nagar, Uttar Pradesh (General Category)
12. Pallavi Lakhera D/o Basant Kumar Lakhera R/o Village- Bamhni Banjar, P.s.- Bamhni Banjar, District- Mandla, Madhya Pradesh (General Category)
13. Siddhartha Srivastava S/o Avinash Srivastava R/o - 01./47, Virat Khand, P.o. and P.s.- Gomti Nagar, District- Lucknow (General Category)
14. Aashi Rizvi D/o Saiyyad Kallan Rizvi R/o Rahul Nagar, Ward no. 17, P.s.- Nautanwa, District- Maharajganj, Uttar Pradesh (General Category)
15. Abhishek Verma S/o Virendra Kumar R/o - 2/21, Mig Barra 7 Kanpur nagar, P.o. and P.s.- Barra, District- Kanpur Nagar, Uttar Pradesh (General Category)
16. Swetabh Kumar S/o Subhash chandra Sharma R/o Gannipur, Mishra Tola, P.s.- Kazimohammadpur, District- Muzaffarpur, Bihar (General)
17. Mukesh Upadhyay S/o Komal Upadhyay R/o Village and Post- Susuwahi, P.s.- Lanka, district- Varanasi, Uttar Pradesh (General Category)
18. Trisha Rana D/o Sube Singh Rana R/o RZF-14, Street no. 42A, Sadhnagar-2, Palam Colony, New Delhi, P.s.- Palam, District- South West Delhi (General Category)



19. Ritvik Srivastav S/o Virendra Srivastava R/o Gandhi Nagar, Post- Tetari bazar, P.s. and District- Siddharth Nagar, Uttar Pradesh (General Category)
20. Anil Kumar Gupta S/o shri Ganesh Prasad Gupta R/o Village- Dubey Pachamwa, Post and P.s.- Kateya, Distict- Gopalganj, Bihar (EBC Category)
21. Ashwini Kumar S/o Shiva Kumar Lal R/o Village- Bankat, Post and P.s.- Panwara, District- Jaunpur, Uttar Pradesh (General Category)
22. Ashit Jayswal S/o Rajendra Kumar R/o Ratansenpur, Harisenganj, P.s.- Mau Aima, District- Prayagraj, Uttar Pradesh (General Category)
23. Prabhakar Tripathi S/o Umesh Prasad Tirpathi R/o Village- Tiwaripur, P.s.- Belghat, District- Gorakhpur, Uttar Pradesh (General Category)
24. Prince Dikshit S/o Tapshi Dikshit R/o At Raghunandanpur, P.s.- Phulwaria, District- Gopalganj (Bihar)
25. Sweta Verma W/o Vikash Kumar srivastava, R/o At New Gopalpur (Old ITO Road), D. K.D. Singh Lane, P.s.- Motihari, district- East Champaran, Bihar
26. Mahindra Kumar Singh S/o Shio Mangal Singh R/o Village- Mothi Post- Rajeyan , Police Station- Piro, District- Bhojpur, State- Bihar, Pin-802159
27. Neeraj Kumar Prajapati S/o Rampal R/o Plot No. - Plot No. 23, Gomti Nagar, P.s.- Khargapur, District- Lucknow, Uttar Pradesh (General)

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary Home Department (Directorate of Prosecution), Government of Bihar, Patna
3. The Principal Secretary, General Administrative and Reforms Department, Government of Bihar, patna
4. The Bihar Public Service Commission, through its Chairman, At- 15, Jawaharlal Nehru Marg, Bailey Road, Patna, Bihar
5. The Chairman, Bihar Public Service Commission, At- 15, Jawaharlal Nehru Marg, Bailey Road, Patna, Bihar
6. The Joint Secretary cum Examination Controller, Bihar Public Service Commission, At- 15, Jawaharlal Nehru Marg, Bailey Road, Patna, Bihar

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 10647 of 2021

1. Bagesh Kumar Srivastava S/o Sachchda Nand Srivastava R/o Anand Nagar Kancawa, Chitaipur, Varanasi, Uttar Pradesh- 221106. (Applied as General Category).
2. Raghvendra Pandey S/o Dadan Pandey R/o N 1/19 Nagawa, Near Dalmiya Koti, Varanasi, Hindu Vishwavidhyalaya, Uttar Pradesh 221005 (Applied as General Category).
3. Vishnu Priya D/o Srinath Modanval R/o Ranibazar, Rajatalab, Varanasi,



Uttar Pradesh 221311 (General Category).

4. Ashutosh Chand S/o Sri Dharam Chand R/o Narrey, Rajgharh, Gorakhpur, Uttar Pradesh 273411. (Gen. Category).
5. Adarsh Pratap Rao S/o Late Munni Rao R/o Kondwaliya Babu Rai, Bajaratar Mahuawa, Deoria, Uttar Pradesh 272208 (Applied as General Category).

... .. Petitioner/s

Versus

1. The State of Bihar Through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary Home Department (Directorate of Prosecution), Government of Bihar, Patna.
3. The Principal Secretary General Administrative and Reforms Department, Government of Bihar, Patna.
4. The Bihar Public Service Commission Through its Chairman, At- 15, Jawaharlal Nehru Marg, Bailey Road, Patna, Bihar.
5. The Chairman Bihar Public Service Commission, At- 15, Jawaharlal Nehru Marg, Bailey Road, Patna, Bihar.
6. The Joint Secretary cum Examination Controller Bihar Public Service Commission, through, At- 15, Jawaharlal Nehru Marg, Bailey Road, Patna, Bihar.

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 12134 of 2021

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1. Dilshad Ahamed S/o Asgar R/o 199/2, Rampur Road, Mahigran, Sapna Talkij, Roorkee, Haridwar, Uttarakhand- 247667
2. Gulsher Ali S/o Rashid R/o House No.- 539, Mohalla Jhojhagan, Pur Kazi Rurai, Muzaffarnagar, U.P. 251327.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Home Department (Directorate of Prosecution), Government of Bihar, Patna.
3. The Principal Secretary, General Administrative and Reforms Department, Government of Bihar, Patna.
4. The Bihar Public Service Commission through its Chairman, At- 15, Jawaharlal Nehru Marg, Bailey Road, Patna, Bihar.
5. The Chairman, Bihar Public Service Commission, At- 15, Jawaharlal Nehru Marg, Bailey Road, Patna, Bihar.
6. The Joint Secretary cum Examination Controller, Bihar Public Service



Commission, At- 15, Jawaharlal Nehru Marg, Bailey Road, Patna, Bihar.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 10649 of 2021)

For the Petitioners : Mr. Rupesh Kumar
For the Respondent BPSC: Mr. Lalit Kishore, Senior Advocate with
: Mr. Satyabir Bharti
For the Respondent State : Mr. Saroj Kumar Sharma, AC to AAG-3

(In Civil Writ Jurisdiction Case No. 10647 of 2021)

For the Petitioners : Mr. Rupesh Kumar
For the Respondent BPSC: Mr. Lalit Kishore, Senior Advocate with
: Mr. Satyabir Bharti
For the Respondent State : Mr. Md.N.H. Khan (SC 1)

(In Civil Writ Jurisdiction Case No. 12134 of 2021)

For the Petitioners : Mr. Rupesh Kumar
For the Respondent BPSC: Mr. Lalit Kishore, Senior Advocate with
: Mr. Satyabir Bharti
For the Respondent State : Mr. P.K. Verma (AAG 3)

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 23-08-2021

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

2. All these applications have been heard together, as they involve same issue with the consent of parties.

3. Heard Mr. Rupesh Kumar, learned counsel appearing on behalf of the petitioners. Mr. Lalit Kishore, learned Senior counsel appearing on behalf of the Bihar Public Service Commission and learned counsel appearing on behalf of the State.

4. Mr. Rupesh Kumar, learned counsel for the petitioners, through whom these three applications have been filed states that the petitioners shall confine their challenge to the



impugned result of the preliminary test published by the Bihar Public Service Commission (in short, BPSC) on the sole ground that B.P.S.C. could not have prescribed any minimum qualifying marks for the said preliminary test in the absence of any clear stipulation in this regard in the advertisement.

5. The B.P.S.C. came out with an advertisement no. 01 of 2020 inviting applications for 553 posts of Assistant Prosecution Officer (in short APO). The scheme of the process of selection as disclosed in the advertisement, in tune with the statutory rules governing the cadre, prescribed three tier system, viz., a preliminary test, a written examination and an interview. Clause-5 of the advertisement laid down in detail, the procedure for selection. A copy of the advertisement has been brought on record by way of Annexure-1 to the writ application. The preliminary test, according to the advertisement, was to be held of two papers namely General Studies and Law. 100 marks was allocated for General Studies and 150 marks for the subject of Law. It was indicated that the marks scored in the preliminary test shall not be added for the purpose of preparation of final merit list for appointment. Only those who qualify in the preliminary test are eligible to appear in the main examination, as per the advertisement. It is evident from the advertisement that the final



merit list for appointment is to be prepared on the basis of marks scored in the written test and the interview.

6. After the headings 'main examination' and 'interview' of clause 5, four notes have been added in the advertisement. Note 1 prescribes that only such candidates shall be invited for interview, who score minimum marks in the main examination as prescribed in the resolution issued vide Memo No. 2374 dated 16.07.2007 and letter no. 6705 dated 01.10.2008 for different categories of candidates. Note 2 prescribes that 2.5 times the number of vacancy shall be called for interview on the basis of written examination, having due regard to the prescriptions in the said Memo No. 2374 dated 16.07.2007 (supra) issued by the Personnel and Administrative Reforms Department, Government of Bihar. The Personnel and Administrative Reforms Department, Government of Bihar has prescribed minimum qualifying marks for various competitive examination as under:-

“a)- General category-40 percent.

b)- Backward class -36.5 percent.

c)- Backward class annexure-I(EBC)-34 percent.

*d)- Scheduled caste, Schedule tribe and women's class-
32*

percent.”



7. The petitioners participated in the preliminary test.

The result of the preliminary test came to be published by the B.P.S.C. on 27.04.2021 declaring 3995 candidates successful, belonging to various categories. The roll numbers of these petitioners do not figure in the list of successful candidates.

8. There does not appear to be any dispute rather it is admitted by the B.P.S.C. that candidates, 10 times the number of vacancies advertised were required to be invited for the written examination.

9. Subsequent to holding of preliminary test, the B.P.S.C. issued certain clarification in relation to some typographical error in the answer sheets wherein 'full marks 100' was in place of 150 for the Law paper. Subsequent to publication of result, the B.P.S.C. came out with another clarification on 28.04.2021, which has been brought on record by way of Annexure -4 to the writ application. The said clarification refers to the Personnel and Administrative Reforms Department resolution dated 16.07.2007 (supra), which prescribes minimum qualifying marks for any written examination. Referring to the said resolution of the State Government, the B.P.S.C. has mentioned in the said clarification dated 28.04.2021 that candidates, 10 times number of vacancies could not be called for the written examination, as



sufficient number of candidates, who secured minimum qualifying marks as per the resolution dated 16.07.2007(supra) were not available. The cut-off marks fixed for different categories of candidates on the basis of preliminary test has been mentioned in the said clarification dated 28.04.2021.

10. In the aforesaid background the petitioners have assailed the said part of the decision of the B.P.S.C. mainly on the ground that there was no stipulation in the advertisement that the resolution of the State Government dated 16.07.2007(supra) shall be applicable for preliminary test also. It is the petitioners' case that though it was specifically prescribed in the advertisement that the said resolution shall apply for calling candidates for interview on the basis of main examination but it was intentionally and rightly so excluded by the B.P.S.C., in relation to the preliminary test. It is accordingly the petitioners' case that the Commission cannot be allowed to now to alter the terms of the advertisement and deviate from the said terms.

11. Mr. Arjun Kumar, learned counsel appearing on behalf of the petitioners submits that in the absence of any such stipulation in the advertisement, the B.P.S.C. could not have subsequently applied the prescription contained in the resolution dated 16.07.2007(supra) of the Personnel and Administrative



Reforms Department, Government of Bihar. He has drawn my attention to the rules governing the recruitment to the post in question, which has been brought on record by way of Annexure-A/1 to the counter affidavit filed on behalf of the B.P.S.C. and has submitted that the preliminary test is only a screening test which simply serves the purpose of screening candidates, eligible to appear in the main written examination. He has contended that in such circumstance, without specifying clearly in the advertisement that resolution dated 16.07.2007 (supra) would apply for preliminary test also, the B.P.S.C. could not have implemented the same for the purpose of preparation of result of the preliminary test. He has accordingly submitted that the result published by the B.P.S.C. of the preliminary test cannot be sustained. He has placed reliance on a Supreme Court's decision in case of ***Rahul Dutta. Vs State of Bihar*** reported in 2019 (1) PLJR (SC) 622 in support of his contentions. The said decision in case of ***Rahul Dutta. Vs State of Bihar*** (supra), in the Court's opinion, has no application in the facts and circumstances of the present case.

12. Mr. Lalit Kishore, learned senior counsel representing the B.P.S.C has submitted that the resolution of the Personnel and Administrative Reforms dated 16.07.2021(supra) is to be uniformly applied for all written examinations and



accordingly those who do not score the minimum qualifying marks in any written examination for selection to a post under the government, stands disqualified, in terms of the said resolution. It is his case that though the said resolution dated 16.07.2007(supra) is not statutory, in view of clear stipulation therein, it automatically applies to all selection processes even if not specifically mentioned in the advertisement. He has further submitted that in any event, those who have been selected are more meritorious than these petitioners and, therefore, these petitioners do not have the *locus standi* to question the correctness of the result of the preliminary test published by the B.P.S.C. He has further argued that in any case, the short fall of candidates on application of 1:10 ratio for inviting candidates for written examination is in relation to various reserved categories and number of candidates invited for the written examination against open seats is more than ten times of the available general seats. He has laid emphasis on the expression 'yogya' in Rule 36 (2) of Bihar Prosecution Manual to contend that only eligible/qualified candidates could be invited for the written examination on the basis of preliminary test in terms of resolution of the Personnel and Administrative Reforms Department, Government of Bihar.



13. I have perused the pleadings on record and I have given my anxious consideration to the submission advanced on behalf of the parties. It is clear from clause 5 of the advertisement in question that the B.P.S.C. did mention in the note under clause 5 that the said resolution of the Personnel and Administrative Reforms Department, Government of Bihar dated 16.07.2007 (supra) would apply for candidates to be invited for interview on the basis of a written examination. On the one hand, the B.P.S.C. specifically prescribed the said condition for the main written examination, it did not do so in relation to preliminary test inasmuch as advertisement does not stipulate that such candidates who do not qualify in accordance with the resolution of the State Government date 16.07.2007 (supra) shall not be called for the main examination. There being no stipulation of the said condition in the advertisement, for the purpose of preparation of the result of preliminary test, the B.P.S.C. could not have invoked the requirement as contained in the resolution dated 16.07.2021 (supra), subsequently. This, in Court's opinion, amounts to deviation from the terms of the advertisement which cannot be permitted. The submission by Mr. Lalit Kishore, learned Senior counsel appearing on behalf of the B.P.S.C. that considering the nature of the decision of the State Government, as contained in



resolution dated 16.07.2007 (supra), the same was required to be applied even in the absence of such prescription in the advertisement is not acceptable to this Court for the reason that the said resolution is not part of the statutory rules governing the recruitment process in question. Nevertheless, it was open for the B.P.S.C. to have prescribed such requirement by clearly mentioning it in the Advertisement, as has been done for the main written examination. Further, the fact that in the advertisement, the B.P.S.C. made such stipulation for the main examination and excluded the same for the preliminary test, the Court is of the opinion, the same cannot be considered to be unintentional. In any view of the matter, by not mentioning the said resolution in the advertisement for the preliminary test and mentioning the same for the main examination, the B.P.S.C. represented to the aspirants that the said resolution was not applicable for the purpose of preliminary test. The said resolution, deviating from the terms of advertisement, could not have been subsequently applied.

14. For the aforesaid reasons these applications succeed. These writ applications are allowed. Consequently, the respondent B.P.S.C. is directed to publish a revised result of the preliminary test of successful candidates, without invoking the resolution of the Personnel and Administrative Reforms Department,



Government of Bihar issued vide Memo No. 2374 dated 16.07.2007, which was not mentioned in the advertisement for preliminary test. The B.P.S.C. shall thereafter proceed accordingly, in the matter of the selection process in question.

(Chakradhari Sharan Singh, J)

AKASH/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	23.08.2021.
Transmission Date	N/A

