

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 8520 of 2020

1. Aditya Prakash, aged about 26 years, Male, Son of Sri Anil Kumar Tiwary, resident of Village + PO- Pauni Hasanpur, Abul Hasanpur, PS and District - Vaishali.
2. Santosh Kumar, aged about 37 years, Male, Son of Sri Suresh Prasad Singh, resident of Village - Barhatiya, PO- Majhauri, PS and District - Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. Additional Chief Secretary, Education Department, Government of Bihar, Patna.
3. Director, Secondary Education, Government of Bihar, Patna.
4. Bihar School Examination Board, through its Secretary, Patna.
5. Chairman, Bihar School Examination Board, Patna.
6. Examination Controller (Miscellaneous), Bihar School Examination Board, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rajendra Narain, Sr. Advocate with Ms. Anju Kumari @ Anju Narain and Mr. Anant Kumar Sinha, Advocates
For the State/R1-3	:	Mr. S K Ranjan, AC to GP 17
For the BSEB/R4-6	:	Mr. Lalit Kishore, Sr. Advocate with Mr. Gyan Shankar, Advocate
For Proposed Intervenor(s):		Mr. P K Shahi, Sr. Advocate with Mr. Vipin Kumar, Advocate [I] Mr. Shashank Chandra, Advocate [II] Mr. Surya Swetabh, Advocate [III]

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 04-03-2021



Heard Mr. Rajendra Narain, learned senior counsel along with Ms. Anju Kumari @ Anju Narain and Mr. Anant Kumar Sinha, learned counsel for the petitioners; Mr. S K Ranjan, learned Assistant Counsel to Government Pleader 17 for the State; Mr. Lalit Kishore, learned Advocate General along with Mr. Gyan Shankar, learned counsel for the Bihar School Examination Board (hereinafter referred to as the 'Board'); Mr. P K Shahi, learned senior counsel along with Mr. Vipin Kumar, learned counsel for a proposed intervenor; Mr. Shashank Chandra, learned counsel for another proposed intervenor and Mr. Surya Swetabh, learned counsel for one more proposed intervenor.

2. The petitioners have moved the Court for the following reliefs:

(i) Issuance of an appropriate writ including awrit in the nature of writ of certiorari quashing the respondents' letters--(a) letter no. 167 / 2020 dated 11.06.2020 (as contained in Annexure-2) issued by the respondent Examination Controller (Miscellaneous), Bihar School Examination Board (hereinafter referred to in short as the BSEB) by which it has been informed that the BSEB had decided to proceed for RE-EXAMINATION of Secondary Teachers' Eligibility Test (hereinafter referred to in short as STET), 2019 through Online method via BELTRON (an organization of the Bihar Government) though the earlier cancelled examination had been conducted through Objective method from multiple-choice answers using OMR answer sheets, and decision after cancellation of the said examination was for RE-EXAMINATION which



meant RE-EXAMINATION through the same earlier method.

(b) letter vide memo no. 360 dated 12.06.2020 (as contained in Annexure- 3) issued by the respondent Director, Secondary Education Department, Government of Bihar, by which it has been written that the RE-EXAMINATION through Online method via BELTRON has been approved.

(c) letter no. 259 / 2020 dated 29.08.2020 jointly issued by the respondents Additional Chief Secretary, Education Department, Government of Bihar, and Chairman, BSEB (as contained in Annexure-4) by which after taking the decision of holding RE-EXAMINATION of STET 2019 through Computer Based Test (Online Method), various guidelines / instructions were issued to the authorities mentioned herein.

(ii) Issuance of an appropriate writ including a writ in the nature of writ of mandamus directing/commanding the respondents not to proceed for the preparation / completion of the result of recently held RE-EXAMINATION through Online method held from 09.09.2020 to 21.09.2020 and to restrain the respondents from publishing /announcing the result of the said examination.

(iii) Issuance of any other appropriate writ(s), order(s), direction(s) as may be deemed fit and proper in the facts and circumstances of the case.”

3. In terms of earlier orders, counter affidavits and supplementary counter affidavits by the respondents and various rejoinders by the petitioners have been filed. *Vide* Order dated 26.11.2020, the Court had indicated that the basic issue which required a detailed response, by both the State and the Board was apropos no syllabus having been published prior to examination despite proposal for the same having been forwarded by the Board itself to the State Government, which approved the same.



4. Learned counsel for the petitioners submitted that the Board, after the cancellation of the previous examination i.e., the Secondary Teachers' Eligibility Test, 2019 (hereinafter referred to as the 'STET') held in January, 2020, had written to the State Government under Letter No. 167 dated 11.06.2020, seeking permission to hold the examination on-line through BELTRON and further, that the choice of questions and preparation of syllabus be done at the level of the State Government. It was submitted that the said proposal was approved by the Government and communicated to the Board under Letter No. 360 dated 12.6.2020 issued by the Director, Secondary Education, Education Department, Government of Bihar. Learned counsel submitted that despite the same, the Board has gone ahead and conducted the examination without formalizing a syllabus, which needs to be interfered with. It was submitted that the requirement of syllabus is a basic facet of any examination as the examinee is entitled to know the scope of the examination and what would be the parameters of the questions so as to prepare accordingly to take that examination. In this regard, learned counsel drew the attention of the Court to the detailed syllabus prescribed by the Central Agency which conducts the Central Teachers' Eligibility Test (hereinafter referred to as 'CTET'). Learned counsel



submitted that in the present case, the advertisement contains only the qualification and eligibility, but that would not amount to prescribing a syllabus and in the absence of the same, the STET itself would be rendered unsustainable.

5. Learned counsel submitted that the issue with regard to the petitioners being estopped from raising the present grievance before the Court, as raised in the counter affidavit of the Board, is also misconceived for the reason that after cancellation of the first examination, in the second round, the issues are still open to be canvassed before a Court of law and most importantly, in the order of this Court in an earlier proceeding, i.e., CWJC No. 5650 of 2020, where also the petitioners therein had moved Court for cancellation of the examination, by order dated 22.05.2020, the matter was disposed of in view of the Board itself having cancelled the examination. However, he submitted, that the Court had observed in the order that for the upcoming examination to be conducted, the setting of questions in the papers concerned is required to be done strictly in conformity with the terms of the advertisement published by the Board for the said examination. It was submitted that the issue of syllabus was also raised in that writ petition and, thus, the present petition cannot be said to be barred on the principle of estoppel against the petitioners.



6. *Per contra*, the learned Advocate General submitted that the Board after cancellation of the previous examination for various reasons, has undertaken the exercise of holding a re-examination for which a communication was made to the State Government, but the State Government had approved only the holding of the examination by BELTRON in the on-line mode and the second/other proposal of preparing a syllabus at the level of the State Government was not approved. It was submitted that the Board thereafter has gone ahead and held the examination strictly in terms of the initial advertisement issued on 06.09.2019. Learned counsel submitted that the petitioners had applied pursuant to the initial advertisement and had also appeared in the first examination which was held physically on 28.01.2020 and at no point of time had raised any grievance, much less, as raised in the present writ application and once having appeared at the examination, in the re-examination, that too, not at their behest or on the grounds which have been taken in the present writ application, now cannot challenge the infirmity in the advertisement at this point of time. It was submitted that there is always scope for improvement in any exercise and in that context, even if there was some internal communication between the Board and the Government, that would not occasion or give rise to a



right to the petitioners to get it enforced through the Court. Moreover, it was submitted that the State has given the go-ahead signal to the Board to conduct the examination through BELTRON on-line which has been done and the examination has already been conducted from 09.09.2020 to 21.09.2020. Learned counsel relied on the Hon'ble Supreme Court's decision in ***Ashok Kumar v State of Bihar, (2017) 4 SCC 357***, the relevant being at paragraphs no. 13 to 19, where it has been held that the law is well settled that candidates who have taken part in a selection process knowing fully well the procedure laid down therein are not entitled to question it upon being declared to be unsuccessful. Learned counsel submitted that here though the results were not declared for the first examination, the petitioners without any objection having appeared in the first examination, cannot now become wiser and challenge the very merit of the advertisement itself or any infirmity in the same. Learned counsel submitted that the Court would not embark on such an exercise, at least for the present transaction.

7. Learned counsel for the State reiterated that the request of the Board was permitted by the State Government only to the extent of holding the examination on-line through BELTRON, but the other proposal for selection of question and



preparing a syllabus was ignored. Further, it was submitted that if the State and the Board had gone for any exercise in this direction, it may have amounted to circumventing and overreaching the Order dated 22.05.2020 passed in CWJC No. 5650 of 2020, which required that the examination and setting of questions be done strictly in conformity with the terms of the advertisement already published by the Board. Learned counsel submitted that the relief prayed in that writ petition has also been quoted which would clearly indicate that in the said writ petition, the grievance was that the questions in the subjects of Mathematics, Science and Social Science were contrary to the Schedule and prescribed syllabus of the subjects and relief was also sought for commanding the respondents to conduct a fresh examination as per syllabus indicated in the Schedule by the STET for the said examination. Thus, learned counsel submitted, the Court directing the holding of re-examination to be strictly in terms of the advertisement clearly precluded the parties from making any subsequent changes in the advertisement.

8. Learned counsel for the petitioners submitted that there would have been no violation of any law if a syllabus could have been prescribed as the same would have facilitated the candidates for knowing exactly what should be the scope of



preparation and also would in fact prevented any confusion on that count. It was further submitted that the Court has ample power to interfere in the matter as it is in general public interest of all concerned and would also enhance the efficiency of the examination and also make it in conformity with the pattern for the CTET examination.

9. Learned counsel for the State adopted the arguments of learned counsel for the Board.

10. Mr. P K Shahi, learned senior counsel for one of the intervenors submitted that the Board was required to come up with a specific syllabus which had not done and having realized that, still going ahead with the re-examination was not proper.

11. Learned counsel for the other proposed intervenors adopted the arguments of learned counsel for the petitioners/respondents.

12. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any ground to interfere.

13. In ***Ashok Kumar v State of Bihar*, (2017) 4 SCC 357**, the Hon'ble Supreme Court has thus expressed:

'13. The law on the subject has been crystallised in several decisions of this Court. In Chandra Prakash Tiwari v. Shakuntala Shukla [Chandra Prakash Tiwari v. Shakuntala Shukla, (2002) 6 SCC 127 : 2002 SCC



(L&S) 830] , this Court laid down the principle that when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable. In Union of India v. S. Vinodh Kumar [Union of India v. S. Vinodh Kumar, (2007) 8 SCC 100 : (2007) 2 SCC (L&S) 792] , this Court held that: (SCC p. 107, para 18)

“18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same. (See Munindra Kumar v. Rajiv Govil [Munindra Kumar v. Rajiv Govil, (1991) 3 SCC 368 : 1991 SCC (L&S) 1052] and Rashmi Mishra v. M.P. Public Service Commission [Rashmi Mishra v. M.P. Public Service Commission, (2006) 12 SCC 724 : (2007) 2 SCC (L&S) 345] .)”

14. The same view was reiterated in Amlan Jyoti Borooah [Amlan Jyoti Borooah v. State of Assam, (2009) 3 SCC 227 : (2009) 1 SCC (L&S) 627] wherein it was held to be well settled that the candidates who have taken part in a selection process knowing fully well the procedure laid down therein are not entitled to question it upon being declared to be unsuccessful.

15. In Manish Kumar Shahi v. State of Bihar [Manish Kumar Shahi v. State of Bihar, (2010) 12 SCC 576 : (2011) 1 SCC (L&S) 256] , the same principle was reiterated in the following observations: (SCC p. 584, para 16)

“16. We also agree with the High Court [Manish Kumar Shahi v. State of Bihar, 2008 SCC OnLine Pat 321 : (2009) 4 SLR 272] that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226



of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition. Reference in this connection may be made to the judgments in Madan Lal v. State of J&K [Madan Lal v. State of J&K, (1995) 3 SCC 486 : 1995 SCC (L&S) 712] , Marripati Nagaraja v. State of A.P. [Marripati Nagaraja v. State of A.P., (2007) 11 SCC 522 : (2008) 1 SCC (L&S) 68] , Dhananjay Malik v. State of Uttaranchal [Dhananjay Malik v. State of Uttaranchal, (2008) 4 SCC 171 : (2008) 1 SCC (L&S) 1005 : (2008) 3 PLJR 271] , Amlan Jyoti Borooah v. State of Assam [Amlan Jyoti Borooah v. State of Assam, (2009) 3 SCC 227 : (2009) 1 SCC (L&S) 627] and K.A. Nagamani v. Indian Airlines [K.A. Nagamani v. Indian Airlines, (2009) 5 SCC 515 : (2009) 2 SCC (L&S) 57] .”

16. In Vijendra Kumar Verma v. Public Service Commission [Vijendra Kumar Verma v. Public Service Commission, (2011) 1 SCC 150 : (2011) 1 SCC (L&S) 21] , candidates who had participated in the selection process were aware that they were required to possess certain specific qualifications in computer operations. The appellants had appeared in the selection process and after participating in the interview sought to challenge the selection process as being without jurisdiction. This was held to be impermissible.

17. In Ramesh Chandra Shah v. Anil Joshi [Ramesh Chandra Shah v. Anil Joshi, (2013) 11 SCC 309 : (2011) 3 SCC (L&S) 129] , candidates who were competing for the post of Physiotherapist in the State of Uttarakhand participated in a written examination held in pursuance of an advertisement. This Court held that if they had cleared the test, the respondents would not have raised any objection to the selection process or to the methodology adopted. Having taken a chance of selection, it was held that the respondents were disentitled to seek relief under Article 226 and would be deemed to have waived their right to challenge the advertisement or the procedure of selection. This Court held that: (SCC p. 318, para 18)



“18. It is settled law that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome.”

19. In the present case, regard must be had to the fact that the appellants were clearly on notice, when the fresh selection process took place that written examination would carry ninety marks and the interview, ten marks. The appellants participated in the selection process. Moreover, two other considerations weigh in balance. The High Court noted in the impugned judgment [Anurag Verma v. State of Bihar, 2011 SCC OnLine Pat 1289.] that the interpretation of Rule 6 was not free from vagueness. There was, in other words, no glaring or patent illegality in the process adopted by the High Court. There was an element of vagueness about whether Rule 6 which dealt with promotion merely incorporated the requirement of an examination provided in Rule 5 for direct recruitment to Class III posts or whether the marks and qualifying marks were also incorporated. Moreover, no prejudice was established to have been caused to the appellants by the 90:10 allocation.’

(emphasis supplied)

14. The aforesaid view, although pertaining to candidates declared unsuccessful therein, does cover the present case. In the considered opinion of the Court, the present *lis* has to be looked at in a narrow manner i.e., in context of the position of the petitioners and the relief claimed by them. The undisputed position is that the petitioners had applied for taking the STET as per the original advertisement and had also appeared in the physical examination held in January, 2020. At no point of time, did they raise any objection on any issue with regard to either the syllabus not being prescribed or there being any deficiency in the



advertisement or the mode of conduct of examination. However, once the examinations were cancelled by the Board itself and a re-examination advertisement was also published, the petitioners moved the present writ application. The Court would pause here to take notice of the fact that the grounds taken in the present application were available to the petitioners at the very first instance which is obvious from the fact that the re-examination has been held strictly in terms of the first advertisement without there any deviation whatsoever. This position is not disputed by any of the parties. Thus, to challenge the re-examination on the basis of a purported deficiency in the original advertisement itself and also basing such challenge on a communication by the Board to the Government seeking permission to hold the examination on-line through BELTRON and also for selection of answers and preparation of a syllabus at the level of the Government, will not create an enforceable light in the petitioners against the authorities.

15. The law is no longer *res integra* that any process of examination or selection which starts from publication of notification, cannot be changed at any subsequent stage thereafter, inasmuch the clock freezes in time for that particular exercise, once it is initiated.



16. In the present case, the exercise is not being held afresh and only the stage has changed, that is, the stage of holding examination, as the earlier examination for various reasons has been cancelled and re-examination has been held. Thus, any change in the scope of the advertisement would amount to modification in the advertisement, which is impermissible. In this context, plea by the respondents has rightly been taken that it could have amounted to circumventing the earlier order of the Court dated 22.05.2020 passed in CWJC No. 5650 of 2020, where, before concluding, the Court had observed that the examination and setting of questions had to be done strictly in conformity with the terms of the advertisement published by the Board.

17. Thus, once the examination has been held in terms of the advertisement, any deficiency pointed out by the petitioners at this stage, where there is only re-examination, after having voluntarily participated in the process and also having taken the first physical examination in January, 2020, the grounds taken that the initial advertisement itself did not contain the detailed syllabus or a proposal by the Board to the Government for doing so has not been complied with, cannot be sustained. Though, learned counsel for the petitioners tried to canvass that such course of action



would not have been in violation of any law, the Court would not go into that area as the same is not required to be considered once the Court finds that the petitioners may not be in a position to assail the re-examination only on the ground that there was lack of clarity on syllabus in the advertisement, after having accepted the terms of the advertisement and also appearing in the first examination which was held physically in January, 2020.

18. Accordingly, in the background of discussions made hereinabove, the writ petition stands disposed off.

19. The Court, having considered the arguments advanced on the issue, especially on behalf of the petitioners, of there being requirement of a proper prescribed syllabus, the need for which was also felt by the Board, would observe that it is open for the concerned authorities to take a considered decision in the matter, keeping in view the salutary purpose which will be served, both with regard to the object of the examination, the general parameters of competence to be tested as also the pattern which is adopted for the CTET.

20. The Court has heard learned counsel for the proposed intervenor(s) without passing any orders on their Interlocutory Application(s) and, thus, it shall not be construed that the intervention was allowed on merits. Nonetheless, learned



counsel have been heard only for assistance to the Court. Any pending Interlocutory Application(s) stand disposed of.

21. The interim direction *vide* order dated 26.11.2020, not to declare the results of the re-examination, stands vacated. It is open to the Board to proceed with the publication thereof.

(Ahsanuddin Amanullah, J.)

P. Kumar

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