

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1332 of 2018

1. Santosh Kumar Yadav Son of Satya Narayan Yadav, resident of Baijnathpur, Ward No. 6, P.O. and P.S.- Araria, District- Araria.
2. Praveen Kumar, Son of Mithilesh Kumar Ambastha, resident of Renu Niwas, Chiraiyatar, Budh Nagar, Road No. 1, Postal Park, P.S.- Kankarbagh, District- Patna.
3. Manoj Kumar, Son of Ram Prakash Rai, resident of Village- Phulwaria, Ward No. 5, P.O.- Phulwaria, P.S.- Phulwaria, District- Begusarai.
4. Md. Naque Emam, Son of Md. Razi Ahmad, resident of Nehal Lodge, C/o Nehal, at Dargah Ghera Road, P.S.- Sultanganj, District- Patna.
5. Santosh Kumar, Son of Dashrath Mandal, resident of Village- Sakraili, P.S.- Barari, District- Katihar.
6. Narendra Prasad, Son of Shankar Ram, resident of Village- Dhamar, P.S. Muffasil Ara, District- Bhojpur.
7. Sanjay Kumar Sharma, Son of Sri Prem Kumar Sharma, C/o Vijay Kumar Sharma, resident of Village- Bekapur Imli Talle, Near Shivajee Chowk, P.S.- Munger, District- Munger.
8. Suresh Chandra Thakur, Son of Bishwanath Thakur, resident of Village- Chamrahra, P.O.- Mahnar Road, District- Vaishali.
9. Sudhanshu Kumar Singh, Son of Paras Nath Singh, resident of Village- Kashipur, Post- Bidupur, P.S.- Raja Pakar, District- Vaishali.
10. Manoj Kumar, Son of Sri Pawan Kumar Singh, resident of Village- Kothia, P.S.- Bangra, District- Samastipur.
11. Raghvendra Narain, Son of Sri Ramadhar, resident of Village- Sanda Niwas, S.K. Bihar Colony, Beur, P.S.- Anisabad, District- Patna.
12. Sanjeev Kumar, Son of Umeshwar Prasad, resident of Village- Tale Buzurg, Via- Majaria, Post- Tale, District- Siwan.
13. Bijendra Pandit, Son of Ram Nihora Pandit, resident of High Tension Insulator Factory Cooperative Colony, Tetri Toli, Namkum, District- Ranchi.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
3. The Principal Secretary, Finance Department, Govt. of Bihar, Patna.
4. The Principal Secretary, Cooperative Department, Govt. of Bihar, Patna.
5. The Bihar Staff Selection Commission through its Chairman.
6. The Secretary, Bihar Staff Selection Commission, Patna.
7. The Economic Offence Unit, Govt. of Bihar through its Superintendent of Police, Patna.



... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 1909 of 2018

1. Ram Milan Thakur son of Kapil Thakur resident of C/o Deogai Singh, Near Dr. Shanti Rai, P.O. - Lohianagar, District - Patna.
2. Ranjan Kumar son of Sri Devi Prasad resident of Nala Road, Dinkar Chowk, District - Patna.
3. Raj Kumar son of Ramji Prasad Singh resident of Prakash Bhawan, South Chandmari Road, Kankarbagh, District - Patna.
4. Arbind Kumar son of Sri Chandra Deo Mahto resident of C/o Sri Rajeshwari Prasad, Village - Biyawani, P.O. - Maghra, District - Nalanda.
5. Md. Shakil Khan son of Md. Azimullah Khan resident of Village At P.O. - Thana Chowk, Bikramganj, District - Rohtas.
6. Brajesh Kumar son of Shri Bindeshwari Prasad Das resident of Village P.O. - Ishakchak Near Middle School, District - Bhagalpur.
7. Vijay Kumar Pal son of Dr. Hiralal Pal resident of Village - Lalapur, P.O. - Kudra, District - Kaimur.
8. Baljeet Singh son of Sri Kalika Singh resident of Village P.O. - Ramalihra, District - Rohtas.
9. Rahul Kumar son of Shri Ramesh Chaudhary resident of Shivalaya Mandir Road, P.O. Bairgania, District Sitamarhi.
10. Shrawan Kumar son of Sri Yogendra Singh resident of R.E. Building Bailey Road, Bihar Police Radio, P.S. - Shastrinagar, District - Patna.
11. Harinandan Prasad son of Sri Sita Ram Prasad resident of Village - Chhoti Nawada, P.O. - Khusrupur, District - Patna.
12. Bipul Kumar Mishra Prabhat son of Sri Akhileshwar Mishra resident of P.O. - Orro, P.S. Hisua, District - Nawada.
13. Vikash Chandra son of M.P. Sinha resident of C/o Usha Medico, Gupta Complex, P.S. Gardanibagh, Road No. 1, District - Patna.
14. Akhilesh Pandit son of Sri Ram Sagar Pandit resident of Village - Kodihara, P.O. - Mouri, P.S. - Paliganj, District - Patna.
15. Sheo Shankar Kumar son of Aditya Prasad Choudhary resident of village - Anti, P.O. - Kadirganj, District - Nawada.
16. Ravi Ranjan son of Sri Satendra Narayan resident of C/o S.M. Gupta, Postal Park, Road No. 3, In front of Brijbala Bhawan, District Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Bihar Staff Selection Commission , Patna through its Secretary.
3. Chairman, Bihar Staff Selection Commission, Patna.



4. Secretary, Bihar Staff Selection Commission, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 22379 of 2018

Priyatosh Kumar Bharti S/o Deo Nandan Pandit, R/o Mohalla-Pandit Nagar,
Baighabad, P.S.-Biharsharif, District-Nalanda, Bihar.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Principal Secretary, Finance Department, Government of Bihar, Patna.
4. The Principal Secretary, Cooperative Department, Government of Bihar, Patna.
5. The Bihar Staff Selection Commission through it's Secretary, Patna.
6. The Secretary, Bihar Staff Selection Commission, Patna.
7. The Economic Offence Unit, Government of Bihar through it's Superintendent of Police, Patna.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 1332 of 2018)

For the Petitioner/s : Mr.Prashant Sinha, Advocate

For the Respondent/s : Mr.Sheo Shankar Prasad -SC-8

(In Civil Writ Jurisdiction Case No. 1909 of 2018)

For the Petitioner/s : Mr.Abhinav Srivastava, Advocate

For the Respondent/s : Mr.Sarvesh Kumar -GP-24

(In Civil Writ Jurisdiction Case No. 22379 of 2018)

For the Petitioner/s : Mr.Rakesh Kumar Singh, Advocate

For the State : Mr.Ga 4

For the E.O. Unit : Mr. Vishwanath Prasad Singh, Sr. Advocate

Mrs. Soni Srivastava, Advocate

For S.S.C. : Mr. Satyam Shivam Sundaram, Advocate

**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
CAV JUDGMENT**

Date : 09-03-2021

Heard learned counsel for the petitioners and the respondents.

1. All the three writ applications have been filed by the petitioners challenging the decision dated 27.7.2016 of the Bihar Staff



Selection Commission (hereinafter referred to as 'the Commission'), whereby the Commission had decided to return back the left out vacancies of Auditor for sending fresh requisition.

2. In the year 2007 vide advertisement No. 2403, the Commission invited application for appointment on 570 posts of Auditor. The petitioners in all the three writ applications applied for the post. Their objective type examination was held on 7.10.2012. They were asked to keep carbon copy of the OMR sheets after the examination was over in terms of the instruction in the objective type examination while blackening the OMR sheets.

3. On 20.10.2012 a case was registered by the Economic Offence Unit vide Economic Offence Unit P.S. Case No. 23 of 2012 on the allegation that the lock of the strong room of the Commission in which OMR sheets were kept, was broken and OMR sheet was tampered and manipulated to extend favour to certain candidates. While the case was pending, the Commission published result of 400 candidates on 22.02.2013. The result of 10 candidates were kept in sealed cover subject to outcome of the Economic Offence Unit P.S. Case No. 23 of 2012. Aggrieved by the result of the aforesaid examination conducted by the Commission certain unsuccessful candidates filed CWJC No. 5771 of 2013 and analogous cases. On 9.4.2013 28 successful candidates intervened in the pending CWJC No. 5771 of 2013. A single Judge of this Court granted time to the respondents



to file counter affidavit to apprise the Court about the present position of the criminal case i.e. Economic Offence P.S. Case No. 23 of 2012. The Court on the undertaking of the counsel for the Commission that they will not recommend the names of the candidates for the post of Auditor till final decision of the writ application, declined to pass any interim order. On 28.4.2014 the matter was again heard and the court asked the counsel for the Economic Offence Unit to produce the materials to show that there was actual tampering with the result and outcome of the examination. The Court in most unambiguous term reminded the Economic Offence Department that suspicion can never partake the place of proof as they stand today. The Court also allowed intervention applications filed by certain successful candidates. On 8/9.5.2014 notice was published in the newspaper whereby successful candidates were asked to present themselves before the office of the Commission on 2nd and 3rd June, 2014 along with carbon copy of the OMR sheets, attested copy of the Admit Cards, etc. Similar information was also uploaded on the website of the Commission. The Commission also requested the Economic Offence Unit to associate with the Commission in the process of verification and a Senior Deputy Superintendent of Police , IO of Economic Offence Unit participated in the verification process. After investigation it was found that (a) out of 400 candidates only 355 candidates appeared in the office of the Commission for verification, (b) out of 355, 31 candidates did not produce their carbon copy of the OMR sheets for



verification, (c) out of 324 candidates minor discrepancies were found with respect to 43 candidates whereas major discrepancies were found with respect to 15 candidates. On verification the Commission and the Economic Offence Wing found the OMR sheets of 266 candidates unblemished and thereafter certain correspondences were made in connection with the suspicious candidates. In the backdrop of the aforesaid facts and circumstances, CWJC No. 5771 of 2013 and analogous cases were finally decided by oral judgment dated 19.2.2015. the relevant part of the discussions in CWJC No. 5771 of 2013 is quoted below for ready reference.

“From the above authoritative pronouncements, the preponderance of precedent is inescapable that the resort to cancellation of the entire selection process can be taken only when the impossibility to weed out the tainted from non-tainted is clearly established, and in all such cases the effort must be made not to put the non-tainted candidates at peril for the alleged misdeed of some candidates. As already taken into notice the materials brought on record by the petitioners, at the most, only demonstrate that the interpolations were attempted by the miscreants at the behest of only such candidates who paid them hefty sum. As earlier mentioned, this Court approved the proposed verification exercise of the original OMR sheets answer sheets by comparing the same with the carbon copies to be produced by the candidates, to be done jointly by the respondent-Commission and Economic Offence Unit. The result of such verification exercise, reported by the Commission and the Economic Offence Unit in their separate supplementary counter affidavits, also rules out the possibility of involvement of majority of the candidates in the



alleged act of interpolations in the OMR answer sheets. To be specific, the Economic Offence Unit has found prima facie interpolations in the OMR answer sheets of only 19 candidates whereas the Commission has found cases of 15 candidates to have major discrepancies in their OMR sheets. In this fact situation, this Court is not inclined to align with the submissions on behalf of the writ petitioners that the alleged misdeeds were all pervasive in nature and have vitiated the entire examination as well the result published on that basis. The prayer of the writ petitioners, therefore, for cancellation of the examination and the result published on that basis is held to be not sustainable.

The next submission on behalf of the petitioners is that the answers with regard to some of the objective type questions as exposited from the model answer option provided by the Commission were not correct. It is the case of the petitioners that they submitted their objections and suggestions in that regard but the commission did not respond. The Commission in its counter affidavit, however, has stated that after receiving the objections, the Commission got the matter verified by the subject experts and the decision was taken to change the model answers in accordance with the advice by the experts. The details in this regard have been mentioned in the counter affidavit question-wise. This stand of the Commission has not been controverted by the petitioners. The Apex Court has adverted to this issue in the case of H.P. Public Service Commission Vs. Mukesh Thakur [2010 (3) PLJR SC 127] and their Lordships have observed that “if there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the examination.” it is not the case of the petitioners that any discrimination in this regard has been made while evaluating the answer sheets. In this view of the



matter, this Court does not find substance in the submission on behalf of the petitioners that the written test and the result published on that basis are fit to be cancelled. Similarly, the challenge to the result by including the 10 candidates with star marks showing that their results have been kept in sealed cover and would be subject to the outcome of the Economic Offence Wing P.S. Case No. 23 of 2012, is equally devoid of merit. It is accepted position that the investigation is going on in the matter and if those candidates have secured the required marks, the Commission has committed no wrong in publishing their results making the same, at the same time, subject to the outcome of the investigation.

At this juncture, the stand of the Commission as disclosed from paragraph-12 of the supplementary counter affidavit dated 27th June 2014 is required to be considered. The Commission has found that the OMR answer sheets of altogether 266 candidates, out of 400 successful candidates, are unblemished, and with regard to 43 candidates, minor discrepancies have been found in their OMR answer sheets whereas 15 candidates have been found to have major discrepancies in their OMR answer sheets. The Commission has proposed to make recommendations for appointment of the names of 266 candidates with no discrepancy and 43 candidates with minor discrepancies in their OMR answer sheets. However, it is required to be noticed here that the majority of the 43 candidates with regard to whom the Commission has found minor discrepancies has been included in the list of 19 candidates whose OMR answer sheets have been identified as suspicious by the Economic Offence Wing in its supplementary counter affidavit dated 01.07.2014.



It is apparent that the matter relates to appointment to the posts of Auditors for which the advertisement was published in the year 2007 itself and much delay has already occurred. In the background of the facts, as mentioned above, applying the Wednesbury principle of unreasonableness, the proposal by the Commission to recommend the names of 266 candidates with unblemished OMR answer sheets for appointment, does not appear to be reprehensible. Even adopting the proportionality as a legal test also, it appears that the Commission has struck a correct balance between individual rights and public interest in the present fact situation. Therefore, this Court finds no impediment in accepting the proposal by the Commission to recommend the names of 266 candidates whose OMR answer sheets have been found unblemished as mentioned in the supplementary counter affidavit of the Commission, for appointment to the posts of Auditor against Advertisement No. 2407. Their appointments, however, would be subject to the final outcome of the Economic Offence Wing P.S. Case No. 23 of 2012. The Commission is directed to proceed accordingly, as prayed with regard to these 266 candidates.

The cases of remaining candidates including the 31 candidates, who have failed to produce the carbon copies of their OMR answer sheets, in spite of specific direction of the Commission in that regard, to retain the same, as disclosed from the notice dated 05.10.2012 (Annexure-G to the second supplementary counter affidavit of the Commission), cannot at this stage be placed in the same category with certitude, as the trace of blemish in these cases, cannot be ruled out altogether. The Commission is therefore, directed to take appropriate decision in



these cases after the completion of investigation in Economic Offence Wing P.S. Case No. 23 of 2012 in accordance with law. The respondent-Economic Offence Unit is directed to expedite the investigation and complete the same without further delay.

These four writ applications are accordingly dismissed with aforesaid directions.”

4. From the aforesaid discussion, it is apparent that the court found 266 candidates unblemished. So far as 31 candidates are concerned, since they failed to produce carbon copy of the OMR sheets, the court held out that such candidates cannot be placed in the same category with certitude, as the trace of blemished cannot be ruled out altogether. The Court directed the Economic Offence Wing to complete investigation and the Commission was directed to take appropriate decision after completion of the investigation.

5. CWJC No. 1332 of 2018 was filed by 13 petitioners whereas CWJC No. 22379 of 2018 was filed by one Prityatosh Kumar Bharti, against whom there was report of minor discrepancy during the process of verification of OMR sheets. CWJC No. 1909 of 2018 was filed by 16 out of 31 candidates who failed to produce the carbon copy of the OMR sheets during the verification in terms of the notice of the Commission.

6. On 25.5.2017 the Court noted the submission of the Commission that on 20.5.2017 the Commission sent letter to the Economic Offence Unit to apprise the Commission about the outcome of the



investigation with regard to 43 candidates against whom there was minor discrepancy. In MJC No. 1263 of 2018 the Court held out that the present case does not fall in the category of willful disobedience and as such the contempt proceeding was dropped.

7. Learned counsel appearing on behalf of the petitioners in all the three cases have vehemently argued that the matter was investigated by the Economic Offence Unit and after completion of investigation, the Economic Offence Unit did not find material worth filing charge sheet against these petitioners and in the absence of any material constituting offence the action of the Commission in returning the vacancy for fresh requisition amounts to condemning the petitioners without material.

8. Learned counsel for the petitioners further submitted that from the scrutiny of the counter affidavit the Court found that beyond suspicion nothing was found during investigation against these petitioners to conclusively held out that these petitioners are in any manner connected in the matter of tampering or manipulation in the OMR sheets. The background in which the Economic Offence Unit registered a case creates doubts about the purity in the examination as the strong room where the OMR sheets were kept was opened in a clandestine manner in dead night and persons apprehended were found with objectionable material and there was allegation that they were involved in tampering with the OMR sheets on payment of huge amount of 2 lack to 9 lacs. Learned counsel for the



petitioners submits that in such situation when the strong room was opened unauthorisedly and illegally and there was some material to raise doubt about the purity of the examination then either the Commission should have cancelled the entire examination or the Commission should have waited for report of the pending Economic Offence Unit case and result of investigation. In such a situation when the Economic Offence Unit did not find any material constituting offence then drawing distinction between the 266 candidates as unblemished and tossing blame on these petitioners as blemish is without any basis.

9. Counsel for the petitioners further submits that in CWJC No. 5771 of 2013 a Bench of this Court vide order dated 28.4.2014 reminded the Commission that suspicion can never take place of proof. The Court asked the Economic Offence Unit to produce the materials to show that there was actual tampering and such material of tampering was never brought by the Economic Offence Unit to show that any tampering was done.

10. Counsel for the petitioners relied upon the judgment of the Apex Court in the case of **Union Of India v. H.C. Goel. AIR 1964 SC 364** to contend that suspicion whatsoever strong cannot partake the character of proof. Counsel further submitted that in a situation like instant, there is no justification to treat the cases of these petitioners different from 266 candidates who were recommended for appointment as



Auditor as there is no proof of tampering with the OMR sheets of these petitioners and as such he submits that the judgment of the Apex Court in the case of **Indrapreet Singh Kahlon Vs. State of Punjab: 2006 (11) SCC 356** is not attracted.

11. In order to appreciate the outcome of the investigation in Economic Offence P.S. Case No. 23 of 2012, the relevant part of the counter affidavit of Economic Offence Unit is quoted below:-

- “7. That it is stated that the role of the answering respondent was to investigate the Economic Offences Police Station Case No. 23 of 2012 with respect to which this Hon'ble Court passed certain orders earlier in connection with CWJC No. 5771 of 2013 on 19.02.2015 and the said order has already been complied with by the answering respondent.
11. That it is stated that so far EOU is concerned, in the investigation of EOU, EOU found OMR Sheets of nineteen candidates of Auditor's examination in the doubtful category when the original OMR Sheets were compared with the carbon copies thereof.
12. That it is stated that out of the thirteen petitioners, the Petitioner No. 3 Manoj Kumar (having Roll No. 11723887) and Petitioner No. 9 Sudhanshu Kumar Singh (having Roll No. 11422468) were in the list of such 19 candidates whose OMR Sheets upon comparison with the original vis-à-vis Carbon Copy varied and anomaly was detected.
13. That is stated that since the variation was not further supported with any corroborative evidence of tampering the



examination process by the candidates including the petitioners, none of the petitioners of Auditor Examination were made as accused nor were they charge sheeted in this case by the Economic Offences Unit. It is stated that a letter clarifying the stand of the Economic Offences Unit on the points raised by the Secretary of the Commission was sent under Letter No. 1576/AA (Gaban) dated 20.03.2018.

15. That the relief sought for in Para 1 (iii) is responded to in view of the fact that Shri Amritendu Shekhar Thakur the then Senior Deputy Superintendent of Police and Shri Anup Kumar the then Inspector of Police cum Investigation Officer were present and deputed when the OMR Sheets were examined with respect to the Auditor's examination and in their report it has come that OMR Sheets of nineteen candidates were found to be in doubtful category when the original OMR Sheets were compared with the carbon copies thereof.

It is stated that out of the thirteen petitioners, the Petitioner No. 3 Manoj Kumar (having Roll No. 11723887) and Petitioner No. 9 Sudhanshu Kumar Singh (having Roll No. 11422468) were in the list of such 19 candidates whose OMR Sheets upon comparison with the original vis-à-vis Carbon Copy varied and anomaly was detected. However, since no further evidences transpire during investigation, they were not charge sheeted in this case.

19. That the statement made in Para 6 relates to the institution of the EOU PS Case No. 23/12. It is stated that it is true that Strong Room of the Commission where the OMR Answer Sheets of Auditor and Junior Engineer Examinations were kept, its lock was broken in a criminal conspiracy and OMR



Answer Sheets were tampered. It is stated that after institution of the case, investigation was duly carried out and various accused persons were arrested also. It is stated that it is abundantly clear that the sanctity of the strong room where the answer sheets were kept was vitiated. It is stated that accordingly, the Inspector General of Police Economic Offences Unit, Bihar, Patna vide his Letter No. 57 dated 16.03.2016 apprised the Principal Secretary of the General Administration Department, Government of Bihar, Patna to cancel the examination of Auditors like the Junior Engineers while giving reference to a judgment passed in CWJC No. 2355 of 2013 by this Hon'ble Court.

It is stated that in the above letter, the EOU apprised the General Administration Department that the examinations of Junior Engineer and Auditors were conducted by the Bihar Staff Selection Commission, Patna on 30.09.2012 and 07.10.2012 respectively and after holding the examination, the OMR Answer Sheets for evaluation purposes were kept in the Strong Room inside the Commission's premises and based on the information furnished to the Special Task Force with respect to the examinations, on 19.10.2012, a raid was carried out and seventeen persons were nabbed from the place of occurrence and during investigation from the rented flat of named accused : Ranjit Kumar Rajak original educational certificates, admit cards and Carbon copies of OMR Sheets of various candidates were recovered.

It was also apprised to the General Administration Department that in the scientific examinations carried out by Forensic Science Laboratory, Patna it has come that



Original OMR Answer Sheets were tampered with and that the same establishes that security of the strong room was breached, with a view to help candidates illegally which affects the transparency of the examination process.

In the above report, it was also apprised that the Chief Secretary as well as the Commission in their separate counter affidavits filed in CWJC No. 2355 of 2013 have sought for cancellation of examination process of Junior Engineers and for holding the examination afresh whereafter this Hon'ble Court in CWJC No. 2355 of 2013 has been pleased to cancel the entire examination of Junior Engineer.

The EOU accordingly suggested that since in connection with EOU P.S. Case No. 23/2012 EOU has unfolded the illegalities in the examinations of Junior Engineer and Auditors and the evidences collected with respect to Junior Engineer examination are more or less same insofar as it relates to Auditors Examination, it would be appropriate on the principle of parity also that the examination of Auditor is also cancelled and fresh examination may be carried out.

20. That the statement made in Para 12 is responded to in view of the fact that Shri Amritendu Shekhar Thakur the then Senior Deputy Superintendent of Police and Shri Anup Kumar the then Inspector of Police-cum-Investigation Officer were present and deputed when the OMR Sheets were examined with respect to the Auditor's examination and in their report it has come that OMR Sheets of nineteen candidates were found to be in doubtful category when the



original OMR Sheets were compared with the carbon copies thereof.

It is stated that out of the thirteen petitioners, the Petitioner No. 3 Manoj Kumar (having Roll No. 11723887) and Petitioner No. 9 Sudhanshu Kumar Singh (having Roll No. 11422468) were in the list of such 19 candidates whose OMR Sheets upon comparison with the original vis-à-vis Carbon Copy varied and anomaly was detected. However, since no further evidences transpire during investigation, they were not charge sheeted in this case.

21. That the statement made in Para 19 is responded to in view of the fact that in EOU P.S. Case No. 23/12 one (1) main charge sheet followed by seven (7) supplementary charge sheets were submitted by the Investigating Officer and the investigation was finally concluded on 26.05.2016 and these petitioners are not sent up for trial.
22. That the statement made in Para 28 is responded to in view of the fact that in view of the order passed in CWJC No. 5771 of 2013 the successful 266 candidates of Auditor Examinations, their OMR Answer Sheets were sent to FSL, Patna for VSC Examination and report was obtained. In the said report, OMR Answer Sheets of 12 candidates were found to be tampered one and accordingly, the Special Officer of the Commission was apprised about the same vide Letter No. 5230 dated 12.11.2015.

It is stated that in this case in the eight (8) charge sheets so filed, fifty nine (59) persons were sent up for trial both named and not-named and this fact was also apprised to the Commission as stated above vide Letter dated 20.03.2018.”



12. After conclusion of the hearing when the case was posted for orders, Mr. Vishwanath Prasad Singh, learned senior counsel appearing on behalf of the Economic Offence Unit submitted that he wants to file supplementary counter affidavit and at his request the case was adjourned to 2nd of March, 2021. Thereafter a supplementary counter affidavit has been filed by the Economic Offence Unit on 4.3.2021 highlighting the issue of tampering in OMR sheets. In paragraph 16 thereof the Economic Offence Unit has noted that during the course of investigation names of 12 candidates were found suspicious. However, during the course of investigation no substantive corroborative evidence was found to make them accused in the case and as such no charge sheet was submitted against them. On 5.3.2021 Mr. Vishwanath Prasad Singh, learned senior counsel made submission with responsibility that except suspicion there was no material found against the candidates for tampering the OMR sheets. In other words, Mr. Singh admitted that the decision to return the vacancies is not the outcome of the investigation of the Economic Offence Unit. The submission of Mr. Singh was recorded in the order dated 5.3.2021 which is quoted below for ready reference:-

“(i) These petitioners were suspected and nothing was found against them during the course of investigation involving criminal conspiracy warranting submission of charge-sheet against them.



(ii) So far as verification of OMR sheets was concerned, that was done by the Officers of the Economic Offence Unit as well as officers of the Staff Selection Commission. It is their decision to return the remaining vacancies to the requisitioning department, instead of taking action for filling up the vacancies, although beyond suspicion nothing was found against them during course of investigation.”

13. The advertisement made in 2007 and the objective type examination was held in 2012. The Economic Offence Unit has registered case in 2012 itself when it noticed breaking of seal of strong room where the OMR Sheets were kept by the Commission. In all fairness the Commission should have cancelled the entire results but the Commission on its own decided to publish the result of 266 Candidates during the pendency of the investigation of Economic Offence Case No. 23 of 2012 on the basis of verification of OMR Sheets. There is difference between tempering and discrepancy. Discrepancy cannot be treated as tempering. In a system where Commission conducted the examination to the public post purity of the examination, public faith and confidence in fairness of competitive examination is most important factor which is totally lacking in the conduct of examination in the instant case. However, during the course of argument nobody has questioned the selection of 266 Candidates and they are not even party in the instant case and as such, the Court is not in a position to pass any comment on the recommendation of 266 Candidates who were selected out of the same selection process in which seal of strong room was



found broken at dead night in a clandestine manner by unauthorized persons and in the examination of Junior Engineer certain materials were collected during investigation that tempering was actually done. Publication of result of part and leveling the result of others as suspicious does not appeal to reason. Once this Court directed the Commission to take final decision after the outcome of the investigation, the Commission was required to take final decision on the candidature of those case against whom there was allegation of minor discrepancy or major discrepancy or failed to produce the carbon copy of the OMR Sheet for verification but instead of taking such decision, the Commission on the basis of the recommendation of the Chief Minister decided to return the Vacancy. The action is not found to be a contempt but during scrutiny of the material, the Court finds that the Commission has not acted fairly and without recording a finding based on the result of investigation of the case registered by the Economic Offence Unit. The decision to return vacancy is unsustainable.

14. However, on scrutiny of the materials, no positive direction can be issued in favour of the petitioners for appointment against the post of Auditor. But for authentic decision in the selection of Auditor, the Commission is directed to take appropriate decision about the candidature of the petitioners based on the investigation of the Economic Offence Unit as in the absence of taking any such decision returning the vacancy for requisition afresh is illegal and arbitrary exercise of power. Accordingly, the



decision dated 27.7.2016, returning back the left out vacancies of Auditor for sending fresh requisition is quashed. The matter is remanded back to the Commission for decision afresh about the candidature of these petitioners within a maximum period of three months from the date of receipt/production of a copy of this order.

16. In the result, all the three writ applications are allowed and disposed of in the manner as indicated above.

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
CAV DATE	05.03.2021
Uploading Date	09.03.2021
Transmission Date	NA

