

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6919 of 2018

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Santosh Upadhyay Son of Dinesh Upadhyay, Resident of Village- Manjhriya,
P.O.- Manjhariya, Via- Ramnagar, P.S.- Bhairoganj, District- West Champaran
Bihar.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department of Science and Technology,
Government of Bihar, Patna.
3. The Bihar Public Service Commission through its Secretary, 15 Jawahar Lal
Nehru Marg, Bailey Road,
4. The Secretary, Bihar Public Service Commission, 15 Jawahar Lal Nehru
Marg, Bailey Road, Patna- 8000
5. The Joint Secretary-Cum- Examination Controller, Bihar Public Service
Commission, 15 Jawahar Lal Ne

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dhanendra Chaubey, Adv.
For the Respondent/s	:	Mr. Madhaw Prasad Yadav -GP-23
		Mr. Arvind Kumar, AC to GP-23
For the B.P.S.C.	:	Mr. Satyabir Bharti, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA
ORAL ORDER

2 22-08-2022 Heard the parties.

The petitioner by way of this writ petition prays for
quashing the final result declared on 07.02.2018 for the post of
lecturer in chemistry subject, advertised in 2014.

Learned counsel for the petitioner submits that the
selection process consisted of written examination as well as
interview, the petitioner participated in the selection process and
appeared for the written examination, which was conducted on
31.01.2016, result of the written examination was declared on



10.02.2016 and candidates were asked to submit their objections with regard to the answer key. Learned counsel submits that the petitioner submitted his objection vide speed post dated 17.02.2016. However, the final result remained un-amended. Where after the petitioner was called for interview and he participated in the interview held on 08.09.2017.

Learned counsel submits that for the unreserved category the final cut off marks were 50.94, while the petitioner scored 49.64. The final result which was published on 07.02.2018. The objections which he had initially taken up against the model answer key of the written examination ought to have been considered and the result of the written examination was required to be modified. Accordingly, the petitioner's final result would also be modified. Learned counsel submits that the questions in the written examination were wrongly deleted and one of the questions was wrongly answered. Had the correction on made in the written examination, the petitioner would have cleared the cut off.

Counsel for the respondents submitted their counter affidavit and it is stated that once the petitioner had participated in the selection process without challenging the written examination result at the relevant time, he cannot turn back after



final the result was declared solely on the ground that he could not achieve the cut off marks. Learned counsel submits that the petitioner is stopped to challenge the result of the written examination, once he participated in the interview. It is also pointed out that an Expert Committee was constituted to evaluate the answer key given by the question setters and objections submitted by the candidates. After having considered the objections, the expert committee decided to delete the certain questions from the answer key and accordingly final result was declared. The learned counsel submits that once an expert committee submitted its report, this court would not sit up on the expert committee's report and form a different opinion.

I have considered the submissions.

This court agrees with the counsel for the respondents that neither this court has expertise nor it has any infrastructure for conducting evaluation of the question papers independently. Once the process of seeking objections has been conducted and an expert committee finds that certain questions require to be deleted, the same does not further warrant interference by this Court. Even otherwise the petitioner has already participated in the interview without any demur and objections. It is only when



he has missed the chance by some percentage that he has approached this court to challenge the original result of the written examination. He is, therefore, estopped to challenge the same in view of the law laid down in *M.C.D. Vs. Surinder Singh & Ors.*, reported in (2019) 8 SCC 74, in which is the Apex Court has held as under:-

“From a perusal of the said clause it is noticed that though under the very clause there are no cut-off marks specified, Clause 25 would, however, provide the full discretion to DSSSB to fix the minimum qualifying marks for selection. In the instant case, keeping in view that the recruitment was for the post of Assistant Teacher (Primary) and also taking note of the orders passed by the High Court in an earlier petition requiring the maintenance of minimum standards. DSSSB while preparing the select list had stopped the selection at a point which was indicated as the cut-off percentage. In a circumstance where Clause 25 was depicted in Advertisement No.1/2006, when the private respondents herein and the other petitioners before the High Court were responding to the said advertisement, if at all they had a grievance that the clause is arbitrary and might affect their right ultimately since no minimum marks that is to be obtained have been indicated therein, they were required to assail the same at that stage. On the other hand, despite being aware of the clause providing discretion to DSSSB to fix the minimum qualifying marks, they have participated in the selection process by appearing for the qualifying



examination without raising any protest. In that circumstance, the principle of approbate and reprobate would apply and the private respondents herein or any other candidate who participated in the process cannot be heard to complain in that regard.”

keeping in view the principle (supra), the writ petition is dismissed.

(Sanjeev Prakash Sharma, J)

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Item no.6

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