

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17610 of 2018

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Kiran Rani wife of Arun Sumar Resident of Village Brahmpur P.S.
Phulwarisharif, District Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Chairman, Bihar School Examination Board, Bihar, Patna.
3. The District Education Officer, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bindeshwar Prasad Singh, Adv.
For B.S.E.B.	:	Mr. Amarendra Kumar, Adv.
For the State	:	Mr. Priyadarshi Matrisharan, AC to AAG-13

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**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA**

ORAL ORDER

- 2 19-09-2022 1. This writ petition stands covered by the judgment passed by the co-ordinate Bench of this court in **2019 (3) PLJR Page 826 (Ashoke Krantti & Ors. Vrs. State of Bihar through Chief Secretary & Ors.)**, wherein it has been held as under:-

“28. Admittedly, the respondent-Board, upon preparation of the model answers by a team of subject experts, after the examination had been held, found that 28 questions were wrong as far as sets A, B, C and D of paper I and Paper II are concerned whereafter, all such wrong questions were deleted and the answer- sheets were evaluated and then the result was published on 22.9.2017 by lowering down the full marks

corresponding to the wrong questions, corresponding to the concerned paper. This Court further finds that the process at the level of the respondent-Board did not end here inasmuch as after publication of the result of the BETET, 2017 on 22.9.2017, further complaints were received with regard to the error in questions whereupon the Respondent-Board had again appointed a committee of subject experts to deal with the fresh objections received by the respondent- Board from the appearing candidates and thereafter, the committee, after examining the objections, had submitted its recommendations to the Board along with the revised model answer key, which was uploaded on the website of the Board, inviting fresh objections thereon, vide fresh communiqué contained in advertisement no. 95 of 2017 dated 28.12.2017, from all the appearing candidates with request to the candidates to file their objections against the revised model answer key and then the fresh objections received from the appearing candidates were forwarded to the subject experts committee which again looked into the objections and gave its recommendations and only thereafter, considering the report of the subject experts, the final result of BETET, 2017 was published on 6.3.2018. One important aspect to be noted here is that the writ petitioners have failed to show that in pursuance to advertisement no. 95 of 2017, issued on 28.12.2017, the writ petitioners had filed fresh

objections against the revised model answer key, hence, on this ground alone, the writ petitions are fit to be dismissed inasmuch as non-submission of such objections clearly depict that the writ petitioners had no grievances against the revised model answer key. In fact, the rejoinder affidavit filed by the writ petitioners in the first case also do not show any substantial grievances and on the contrary, it has been stated that some of the writ petitioners have already stood successful after fresh exercise was undertaken by the Respondent Board, upon considering the objections of the appearing candidates regarding their grievances to the questions-answers. This Court, thus, finds that the Board has taken full care to delete the defective questions, which is in line with the mandate of law, as enunciated in the judgment rendered by the Hon'ble Apex Court in the case of Kanpur University (supra), as also by this Court in the case of Dhananjay Kumar Mishra and Ors. (supra) and Ravindra Kumar Singh & Ors. (supra), hence this Court does not find any infirmity in the process undertaken by the respondent Board to publish the final result dated 6.3.2018.

29. Another aspect of the matter is that the Hon'be Apex Court in the case of Himachal Pradesh Public Service Commission vs. Mukesh Thakur & Anr., reported in 2010 (6) SCC 759 has

held that if there is some discrepancy in framing the questions or evaluation of the answer, it would be for all the candidates appearing for the examination and not only for the writ petitioners. In this regard, it would be relevant to reproduce paragraph no. 19 of the judgment rendered by the Hon'ble Apex Court in the Mukesh Thakur's case (supra) herein below:-

“19. In view of the above, it was not permissible for the High Court to examine the question paper and answer sheets itself, particularly, when the Commission had assessed the inter-se merit of the candidates. If there was a discrepancy in framing the questions or evaluation of the answer, it could be for all the candidates appearing for the examination and not for respondent no. 1 only. It is a matter of chance that the High Court was examining the answer sheets relating to law. Had it been other subjects like physics, chemistry and mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court.”

“30. Now, coming to the issue of the candidates whose candidature has been declared to be invalid on account of use of whitener / eraser etc., it is clear that the candidates were strictly instructed not to overwrite or use whitener vide the aforesaid advertisement contained in communiqué no. 63 of 2017 wherein under column 4, it has been

categorically provided that use of pen or eraser in the OMR Sheet, folding of OMR sheet, tearing or application of whitener on OMR Sheet are totally prohibited. Under column 5 of the said advertisement, the candidates had been cautioned to literally follow the said instructions and in case, the OMR sheets are not properly filled up then the same would be rejected by the computer resulting in invalidation of their result for which the candidate shall be solely responsible. This Court finds that since the candidates had been warned by issuing instructions by a communique contained in advertisement no. 63 of 2017 dated 13.7.2017, any disregard of the instructions contained therein is liable to result in invalidation of the candidature of such candidates using whitener, eraser, pin etc. In this regard, the judgment rendered by a coordinate Bench of this Court dated 22.12.2017 passed in CWJC No. 16359 of 2017 (Brajesh Kumar & Ors. vs. The State of Bihar & Ors.), as also the judgment rendered by the Hon'ble Apex Court in the case of A.V. Natrajan & Ors . (supra) fully covers the said issue, hence, the candidature of the writ petitioners who have used whitener, eraser, pin etc. have rightly been invalidated by the Respondent-Board since they have violated the instructions given to them which in turn amounts to misconduct, hence such candidates are liable not to be selected. It would be unfair to the writ petitioners, if the judgment rendered by the Hon'ble Apex Court in

the case of Hanuman Dutt Shukla & Others (supra), relied upon on their behalf by the learned counsels appearing for them, is not dealt with. This Court finds that the said judgment, rendered in the case of Hanuman Dutt Shukla & Others (supra), is of no help to the writ petitioners inasmuch as firstly, the said judgment was based upon a concession made by the State and secondly, the said judgment specifically states that the same will not be treated as a precedent for any other case, meaning thereby that the said judgment rendered by the Hon'ble Apex Court cannot be used as a precedence, hence, shall not bind this Court.”

2. I have considered the submissions and find that in the present case too, the petitioner is challenging the result declared after the second answer key was published.

3. Keeping in view the aforesaid aspect as already decided by the co-ordinate Bench, this court may not further dealt with the issue and dismissed the writ petition in view of the aforesaid judgment.

(Sanjeev Prakash Sharma, J)

Pravinkumar/-

Item No. 23

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