

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7790 of 2020

=====

Sukesh Kumar Maurya S/o Parmanand Singh R/o- Vill.- Murlisirisiya, P.O.- Shobhepur, P.S.- Bheldi, District- Saran (Bihar), Pin- 841311 at present R/o- Room No. 09, Dr. Bhim Rao Ambedkar Hostel, Faculty of Law, Banaras Hindu University (BHU), Varanasi, U.P.- 221005.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna, Bihar.
2. Department of General Administration through Principal Secretary, Government of Bihar, Patna.
3. The Bihar Public Service Commission through its Chairman, 15, Jawaharlal Nehru Marg (Bailey Road), Patna- 800001.
4. The High Court of Judicature at Patna in its Administrative side through the Registrar General, Patna High Court, Patna.
5. Anurag Gaurav Currently posted as Civil Judge, Junior Division at Benipatti, District- Madhubani, State- Bihar and also resident of S/o- Sri Om Prakash Narayan, C/o- Late Dulli Chandra Prasad, Kishan Colony, Phase-II, Anishabad, Patna, Bihar, Pin- 800002.

... .. Respondent/s

=====

Appearance :

For the Petitioner	:	Mr. Kumar Brijnandan, Advocate
For the BPSC	:	Mr. Satyabir Bharati, Advocate
For the Patna High Court:		Mr. Piyush Lall, Advocate
For respondent no.5	:	Mr. Sanjay Singh, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)
Date : 29-09-2022

The petitioner has filed the present application
inter alia for directing the Bihar Public Service Commission
(for short 'BPSC') to re-evaluate the Elementary General
Science paper and General Knowledge paper of written
examination of 30th Bihar Judicial Services Competitive



Examination and declare him successful under BC quota.

2. The brief facts of the case are that the BPSC published Advertisement No.06 of 2018 on 23.08.2018 calling for online applications for selection of candidates to 349 posts of Civil Judge (Junior Division) under the Bihar Judicial Service. The roster of reservation category wise vacancy was General (01)-175, SC(02)-56, ST (03)-03, EBC (04)-73 and BC (05)-42, Total-349. Against posts reserved for each category, 35% were reserved for female candidates belonging to such categories. The competitive examination to be conducted by the BPSC was to comprise of a preliminary test and the candidates who would be declared successful in the preliminary test were to be allowed to participate in the mains examination. It was further stipulated in the advertisement that the candidates who would qualify in the mains examination would be required to participate in the interview of 100 marks and on the basis of performance of the candidates in the mains (written) examination and in the interview, the merit list would be prepared.

3. The petitioner being a Backward Category (BC) candidate applied in terms of advertisement. He appeared in the preliminary test held on 27.11.2018 and 28.11.2018. The BPSC



published the result of the preliminary test on 07.01.2019 in which the petitioner was declared successful. Thereafter, the BPSC made advertisement for mains (written) examination on 12.01.2019. The petitioner filled up the application form in the prescribed manner for participating in the mains (written examination) which was held from 07.06.2019 to 12.06.2019. The BPSC published the result of written examination on 05.10.2019 and amongst other persons, the petitioner was also declared successful in the mains (written) examination. She was directed to participate in the interview. Thereafter, on 29.11.2019, the final list of successful candidates was published by the BPSC, but the name of the petitioner was not included in the list of successful candidates after publication of final result. The petitioner downloaded the marksheet of the written examination and interview from the official website of the BPSC. He found that in the said marksheet the cut off marks for the BC Category was indicated 480 marks in the final examination. The marksheet of the petitioner showed that he had also secured 480 marks in the final examination.

4. The contention of the petitioner is that he downloaded the marksheet of respondent no.5- Anurag Gaurav from the official website of the BPSC on 06.01.2020. On



perusal of the same, he came to know that respondent no.5 had also secured 480 marks in the final result which was equal to the marks obtained by him. Thereafter, the petitioner filed an application under Right to Information Act before the BPSC asking for the answer sheets of Elementary General Science and General Knowledge of mains (written) examination. The answer sheets were supplied to him by the BPSC vide letter dated 17.06.2020 which was received by him on 22.06.2020. From perusal of the answer sheets, the petitioner came to know that evaluation of few questions was done wrongly resulting in denial of 5 marks to him.

5. Mr. Kumar Brijnandan, learned counsel for the petitioner submitted that the petitioner filed representation dated 10.07.2020 enclosing the correct answer with valid references and requested the authorities of the BPSC to re-evaluate answer sheets of subjects Elementary General Science and General Knowledge and, thereafter, published the marksheet of the petitioner and declare him successful in the 30th Bihar Judicial Services Competitive Examination after adding the marks which were denied to him in spite of the fact that he had correctly answered the questions, namely, question no.7(c) of Elementary Science paper and question nos. 1(a), 10(e) and 18(k) of General



Knowledge paper. He contended that after adding marks which was wrongly denied to the petitioner, the total marks secured by the him in final examination would become 485 whereas the marks obtained by the last selected candidate (respondent no.5 Anurag Gaurav) under BC quota in final examination is only 480. He contended that incorrect evaluation of the aforesaid questions by the BPSC is not only unjust and illegal but also an arbitrary exercise of power and violative of principles enshrined in Articles 14, 15 and 16 of the Constitution of India.

6. The respondent BPSC has filed a counter affidavit wherein it has been stated that as per norms of the BPSC, in case two candidates who secured same marks, the candidate obtaining higher marks in the written examination is placed higher in the merit list; in case, marks of written examination are same, then the candidate obtaining higher marks in the optional subjects is placed higher in the merit list; in case, marks of optional subjects are also same; merit list is prepared according to date of birth of the candidates, i.e., the candidate, who is elder is placed higher in the merit list and where dates of birth are also same; the merit list is decided as per the decision taken by the BPSC according to the first letter of the name of the candidates in alphabetical order of Devnagri script.



7. It has been further pleaded in the counter affidavit that the petitioner had obtained a total 480 marks in which 430 marks was obtained by him in written examination and 50 marks was obtained by him in interview whereas last candidate selected in the Backward Category (BC-05) obtained a total 480 marks in which he obtained 443 marks in written examination and 37 marks in interview. Thus, the merit position of the petitioner is below the merit position of the last selected candidate.

8. Mr. Satyabir Bharati, learned counsel for the BPSC submitted that the allegation made by the petitioner with respect to wrong evaluation of certain questions are incorrect and baseless. He submitted that the petitioner took a calculated chance and participated in the selection process and now he is challenging the same, which cannot be allowed. He submitted that the decision of experts cannot be a subject matter of judicial review. Hence, the writ petition is not maintainable. Lastly, he contended that the details of the questions which are claimed to be wrongly evaluated were again discussed with the Head Examiner of their respective subjects and the Head Examiner also found the answers given by the petitioner to be wrong.

9. Mr. Piyush Lall, learned counsel for the Patna High



Court submitted that it would not be proper for the Court to assume the role an examiner and re-evaluate either questions or answers thereof. He submitted that a candidate has no right to seek re-evaluation of either the questions or answers thereof specially when the rules governing the said process do not provide for it because the same would amount to issuing a direction contrary to statutory provisions. He contended that Bihar Civil Service Judicial Branch (Recruitment) Rules, 1995 (for short “1995 Rules’), as amended, from time to time by the State Government do not provide for re-evaluation of answers by a candidate for direct recruitment to the post of Civil Judge (Junior Division). Thus, the petitioner has no right to claim that his answers to the above questions of mains (written) examination to be re-evaluated.

10. Mr. Sanjay Singh, learned counsel for respondent no.5 submitted that all the examines have been marked for the same questions to which there are reference answers. The petitioner, therefore, cannot claim to have been wrongly marked for such questions and claim award of marks for his wrong answers. He contended that the answer sheets were evaluated by a panel of experts and the same cannot be questioned merely on the ground that there was another possible answer which may or



may not have been correct. He submitted that the rules governing such selection process by the respondent BPSC does not permit and provide for any re-evaluation of answer sheets. He urged that selection process has to be given a finality. According to him, any indulgence given by this Court to the petitioner for re-evaluation would disturb the finality, which has already been given to the selection process.

11. We have heard learned counsel for the parties and carefully perused the record.

12. The disputed questions, which were referred to the Committee of experts by the BPSC, their answer by the petitioner and the answer of the Head Examiner of the BPSC, are extracted hereunder in tabular form :

Elementary General Science

Sl. No.	Question no. with details	Answer of the Petitioner	Answer of the Head Examiner/ Examiner/BPSC
1	Name the Scientists who discover the following (d) Fountain Pen	Waterman	Petrache Poenaru

General Knowledge

Sl. No.	Question no. with details	Answer of the Petitioner	Answer of the Head Examiner/ Examiner/BPSC
1	give the full form of the abbreviation and	Association of South East	Association of South East Asian



	also mention the head quarter: ASEAN	Asian Nation (kuallallampur)	Nations (Jakarta)
2	In which city the following places are located: (e) Humayun's Tomb	New Delhi	Delhi
3	Who established 'Gadar Party' in the USA	Lala Hardayal	Sohan Singh Bhakna

13. In the counter affidavit, the BPSC has taken a clear stand that the answers made by the petitioner to the questions for which he is seeking marks were wrong and, thus, he was not allowed any marks for these answers.

14. The law relating to judicial interference with the result of public examination is well settled by now. The Court can interfere in evaluation of an answer sheet only in cases where there is an exceptional situation shown and to a limited extent and to a very very limited extent if a statute, Rule or Regulation governing an examination do not permit it. Further, in the event of any doubt, the benefit should go to the examination authority rather than the candidate.

15. In ***Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, (2004) 6 SCC 714***, a three-Judge Bench of the Supreme Court held as under :-

“7. ...Under the relevant rules of the



Commission, there is no provision wherein a candidate may be entitled to ask for re-evaluation of his answer-book. There is a provision for scrutiny only wherein the answer-books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totalling of marks of each question and noting them correctly on the first cover page of the answer-book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. In the absence of any provision for re-evaluation of answer-books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re-evaluation of his marks. ...”

16. In ***Central Board of Secondary Education, through, Secretary, All India Pre-medical/Pre-Dental Entrance Examination & Ors. BSE v. Khushboo Shrivastava & Ors., (2014) 14 SCC 523***, the Supreme Court held as under:

“9. We find that a three-Judge Bench of this Court in Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, Patna & Ors. [(2004) 6 SCC 714] has clearly held relying on



Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth [(1984) 4 SCC 27] that in the absence of any provision for the re-evaluation of answer books in the relevant rules, no candidate in an examination has any right to claim or ask for re-evaluation of his marks. The decision in Pramod Kumar Srivastava v. Bihar Public Service Commission [(2004) 6 SCC 714] was followed by another three-Judge Bench of this Court in Board of Secondary Education v. Pravas Ranjan Panda [(2004) 13 SCC 383] in which the direction of the High Court for re-evaluation of answer books of all the examinees securing 90% or above marks was held to be unsustainable in law because the regulations of the Board of Secondary Education, Orissa, which conducted the examination, did not make any provision for re-evaluation of answer books in the rules.

10. In the present case, the bye-laws of the All India Pre-Medical/Pre-Dental Entrance Examination, 2007 conducted by the CBSE did not provide for re-examination or re-evaluation of answer sheets. Hence, the appellants could not have allowed such re-examination or re-evaluation on the representation of Respondent no. 1 and accordingly rejected the representation of



Respondent no. 1 for re-examination/re-evaluation of her answer sheets. Respondent no.1, however, approached the High Court and the learned Single Judge of the High Court directed production of answer sheets on Respondent no. 1 depositing a sum of Rs 25,000 and when the answer sheets were produced, the learned Single Judge himself compared the answers of Respondent no.1 with the model answers produced by the CBSE and awarded two marks for answers given by Respondent no. 1 in the Chemistry and Botany papers, but declined to grant any relief to Respondent no. 1. When Respondent no.1 filed the LPA before the Division Bench of the High Court, the Division Bench also examined the two answers of Respondent no. 1 in Chemistry and Botany and agreed with the findings of the learned Single Judge that Respondent no. 1 deserved two additional marks for the two answers.

11. In our considered opinion, neither the learned Single Judge nor the Division Bench of the High Court could have substituted his/its own views for that of the examiners and awarded two additional marks to Respondent 1 for the two answers in exercise of powers of judicial review under Article 226 of the Constitution as these are purely academic matters. This Court in



Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth [(1984) 4 SCC 27] has observed: (SCC pp. 56-57, para 29)

“29. ... As has been repeatedly pointed out by this Court, the court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grassroots problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded.”

12. We, therefore, allow the appeal, set aside the impugned judgments of the learned Single Judge and the Division Bench of the High Court and dismiss the writ petition.



There shall be no order as to costs. We are informed that the first respondent was admitted to the MBBS course subsequently. If so, her admission in the MBBS course will not be affected.”

17. In ***Ran Vijay Singh & Ors. v. State of Uttar Pradesh & Ors., (2018) 2 SCC 357***, the Supreme Court held as under :

“the case law developed over the years admits of interference in the results of an examination but in rare and exceptional situations and to a very limited extent. If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it.”

18. In ***High Court of Tripura v. Tirtha Sarathi Mukherjee, (2019) 16 SCC 663***, the Supreme Court has held as under :

“In the event of a doubt, the benefit should go to the examination authority rather than to the candidate. what the Court has laid down is that the Court may permit re-valuation inter alia only if it is demonstrated very clearly without any



inferential process of reasoning or by a process of rationalization and only in rare or exceptional cases on the commission of material error.”

19. In ***Vikesh Kumar Gupta & Anr. v. State of Rajasthan & Ors., (2021) 2 SCC 309***, the Supreme Court held as under:

“14. Though re-evaluation can be directed if rules permit, this Court has deprecated the practice of re-evaluation and scrutiny of the questions by the courts which lack expertise in academic matters. It is not permissible for the High Court to examine the question papers and answer sheets itself, particularly when the Commission has assessed the inter se merit of the candidates (H.P. Public Service Commission v. Mukesh Thakur [H.P. Public Service Commission v. Mukesh Thakur, (2010) 6 SCC 759]). Courts have to show deference and consideration to the recommendation of the expert committee who have the expertise to evaluate and make recommendations (see Basavaiah v. H.L. Ramesh [Basavaiah v. H.L. Ramesh, (2010) 8 SCC 372 : (2010) 2 SCC (L&S) 640]).

15. Examining the scope of judicial review with regards to re-evaluation of answer sheets, this Court in Ran Vijay Singh v. State



of U.P. [Ran Vijay Singh v. State of U.P., (2018) 2 SCC 357] held that the court should not re-evaluate or scrutinise the answer sheets of a candidate as it has no expertise in the matters and the academic matters are best left to academics. This Court in the said judgment further held as follows : (Ran Vijay Singh case [Ran Vijay Singh v. State of U.P., (2018) 2 SCC 357, SCC pp. 369-70, paras 31-32)

“31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse—exclude the suspect or offending



question.

32. *It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a classic example of the consequence of such interference where there is no*



finality to the result of the examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination—whether they have passed or not; whether their result will be approved or disapproved by the court; whether they will get admission in a college or university or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion being worse confounded. The overall and larger impact of all this is that public interest suffers.”

20. It is reiterated that the Supreme Court has consistently held that the Court should not at all re-evaluate or scrutinize the answer sheets of a candidate and academic matters should be best left to academics. It has further held that the Court should presume the correctness of key answers and proceed on that assumption and, in the event of a doubt, the benefit should go to the examination authority rather than to the candidate. It has also held that if a Statute, Rule or Regulation



governing an examination does not permit re-evaluation or scrutiny of an answer sheet, then the Court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any inferential process of reasoning or by a process of rationalization and only in rare or exception cases that a material error has been committed.

21. Admittedly, the marks obtained by the petitioner in the final examination was 480 and the marks obtained by the last selected candidate under BC quota in final examination was also 480. However, as per the provision of selection set by BPSC the last selected candidate was placed higher in the merit list as he had obtained higher marks in the written examination than the petitioner. The petitioner has not disputed the fact that he had obtained 430 marks in the written examination whereas the last selected candidate (respondent no.5) in the BC category had obtained 443 marks.

22. In the instant case, the examination in question was conducted by the BPSC for selection to the posts of Civil Judge (Junior Division) in Bihar Judicial Service under 1995 Rules. The said Rules do not provide for re-evaluation of answers or even questions. Thus, the petitioner has no right to claim that his answers to certain questions of mains (written) examination



were correct. Hence, there should be re-evaluation of his answer sheet. It has rightly been contended by the respondent no.5 that the selection process has to be given a finality and any unmerited indulgence by this Court for re-evaluation would disturb the finality.

23. Insofar as the answers to the questions over which the dispute has been raised by the petitioner are concerned, no material has been brought by the petitioner to show us that answers given by him to those questions were correct and the answers of the Examiner/Head Examiner of the BPSC were wrong. Hence, we are of the considered opinion that the case of petitioner cannot be characterized as rare or exceptional case for directing re-evaluation of the answer sheets.

24. In that view of the matter, we see no merit in this application.

25. It is dismissed, accordingly.

(Ashwani Kumar Singh, J)

kanchan/-

(Shailendra Singh, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.10.2022
Transmission Date	NA

