

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.532 of 2021
In
Civil Writ Jurisdiction Case No.19387 of 2017**

Subodh Kumar Rai Son of Sri Mewalal Rai, Resident of Village - Kehsopur,
P.O. - Balukaram, P.S. - Vaishali, District - Vaishali.

... .. Appellant/s

Versus

1. The State of Bihar
2. The Principal Secretary Home (Police Department), Government of Bihar, Patna.
3. The Bihar Public Service Commission Patna, through its Chairman, 15 Jawaharlal Nehru Beli Road, Patna.
4. The Secretary, Bihar Public Service Commission 15 Jawaharlal Nehru Beli Road, Patna.
5. Special Secretary Cum Examination Control, Bihar Public Service Commission, 15 Jawaharlal Nehru Beli Road, Patna.
6. Priyanka Kumari, daughter of Sri Satendra Kumar, Residence of Village Ekrai, P.O. - Ekdha, P.S. - Ariyari, District - Sheikhpura.
7. Pooja Bharti, daughter of Shri Gauri Shankar Singh, Sinha Sadan Hanuman Path, Village - Tilakamanjhi, Bhagalpur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Uday Prakash Shrarma, Advocate
For the Respondent/s : Mr. Suman Kumar Jha, AC to AAG-3

**CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJIV ROY)**

Date : 12-07-2022

The present appeal has been preferred for setting aside the order dated 06.08.2021 passed in CWJC No. 19387 of 2017 by learned Single Judge (Hon'ble Mr. Justice Mohit Kumar Shah) whereby and whereunder the learned Single Judge



has been pleased to dismiss the writ application on the ground that neither any candidate having lesser marks than that of the petitioner in the Backward category nor any candidate having lesser marks than the cut-off marks in their respective category in the Mains (written) examination have been declared successful with further observation that the private respondents no. 6 and 8 namely Puja Bharti and Priyanka Kumari have qualified under their own category, i.e. backward class women category.

2. The facts relating to the present case is/are as follows:-

On 19.10.2011, the Bihar Public Service Commission (henceforth for short “the BPSC”) issued Advertisement No. 42/2011 for appointment to the post of Assistant Prosecution Officer (henceforth for short “the APO”). The appellant-petitioner was one of the applicant pursuant to the said advertisement under the OBC category.

The examination was conducted in the year 2015 and the petitioner secured 498 marks. He was thus declared not qualified as the cut-off marks



for the OBC category was 503 marks. The appellant-petitioner thereafter preferred application under Right to Information Act and it is/was his case that on perusal of the information received by him, he found marks have not been allotted in some questions which otherwise would have taken his marks above the cut-off point.

3. As stated above, the examination was conducted/result of Main examination was declared in 2015 in which the petitioner failed to qualify. On 14.06.2017, the final list was published and case of the appellant-petitioner is that he was surprised to find names of respondent nos. 6 and 7 under the OBC category having secured 485 and 490 marks respectively in the Main examination which was below the 503 marks, the cut-off set for the said category. The grievance of the appellant-petitioner is that although with 498 marks he was declared not qualified, the respondent nos. 6 and 7 despite having lesser marks were called for interview and finally made there way in the list of qualified candidates.

4. On the other hand, the case of 'the BPSC' was that the cut off marks for BC category was 503 marks and as the appellant-petitioner secured only 498 marks, he was rightly



not called for interview. It was the further case of 'the BPSC' that so far as the allegation against respondent nos. 6 and 7 are concerned, they were under Backward Class Women Category, for which the cut-off marks was 483. As they had secured 485 and 490 marks respectively, they were rightly called for interview and finally made it in the merit list. They further submitted that in the year 2017, the final list was published, appointments made and thus the selection process having been over and as such, there is no question of entertaining a fresh claim in the matter. So far as the allegation of the appellant-petitioner in the writ petition against one Jai Prakash Verma is concerned, it was the stand of 'the BPSC' that he was under disabled category for which the cut-off marks was 476 whereas he got 494 marks and thus, he too was declared qualified.

5. 'The BPSC' further disputed the claim of the appellant-petitioner that he was not granted marks in some questions. According to them, contrary to the statements made therein, the Examiner had indeed given marks for every right answer which the appellant-petitioner had attempted/written in the answer sheet and as such, the claim is fit to be dismissed. Lastly, 'the BPSC' brought on record an order of the Division Bench of this Court passed on 29.06.2017 in L.P.A. No. 606 of



2017 by which a co-ordinate Bench of the Court had held that the appellant-petitioner having not taken any action or challenged the evaluation in time; no relief can be granted after lapse of period when the selection process is over.

6. The matter was taken up by the learned Single Judge and vide an order dated 06.08.2021 it held as follows :-

“14. I have heard the learned counsel for the parties and gone through the materials on record from which it is apparent that neither any candidate having lesser marks than the petitioner in his category i.e. the B.C. category nor any candidate having lesser marks than the cut-off marks in their respective category in the Mains (written) examination have been declared successful so as to qualify for appearing in the interview. This Court further finds that the private respondents no. 6 and 8 namely Puja Kumar and Priyanka Kumari have qualified under their own category i.e. the B.C.L. category inasmuch as they have secured 490 and 485 marks, which is more than the cut-off marks fixed for that category i.e. 483 marks. As far as the respondent no.7, namely, Jai Prakash



Verma is concerned, he has qualified under the disabled category i.e. OH category inasmuch as he has got 494 marks in the Mains (written) examination, which is more than the cut-off marks fixed for this category i.e. 476 marks. Therefore, this Court finds that the allegation levelled by the petitioner in the writ petition as well as contention raised to the effect that since three candidates having less marks than the petitioner under the B.C. category have been declared successful in the Mains (written) examination, the petitioner should also be declared successful in the Mains (written) examination and his candidature should be considered for selection on the post of Assistant Prosecution Officer; is not only incorrect but also thoroughly misplaced, as is apparent from the facts and circumstances of the present case, stated herein above in the preceding paragraphs.

15. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, I do not find any merit in the present writ petition, hence the same stands



dismissed.”

7. Still aggrieved, the appellant-petitioner preferred an appeal against the said order dated 06.08.2021 passed in C.W.J.C. No. 19387 of 2017.

8. Heard learned counsel for the parties.

9. The crux of the matter is/are as follows :-

(i) whether any candidate under OBC category having lesser marks was declared qualified ignoring the claim of the appellant-petitioner;

(ii) whether the claim of the appellant-petitioner of having granted no marks in some cases is/are correct;

(iii) whether the appellant-petitioner having not challenged the evaluation in time after having declared disqualified can be allowed to wreck up the issue belatedly.

10. It is an admitted fact that after the PT/Mains Examination, the result was declared. The cut-off marks for the OBC category was 503 and the petitioner had secured only 498 marks and as such was rightly not called for interview. So far as the respondent nos. 6 and 7 are concerned, they were under Backward Class Ladies (BCL) Category in which the cut-off



marks was 483 whereas they had secured 490 and 485 marks respectively and thus were called for interview.

11. Further a bare perusal of 'the RTI' documents annexed by the appellant-petitioner shows that contrary to the claim made by him, he was indeed granted marks in the answers written by him and thus the claim made therein is a false statement.

12. Again, it is an admitted fact that the final result was published on 14.06.2017 and recommendation made by 'the BPSC' on 19.07.1917 and only thereafter, the writ petitioner chose to file the writ petition in December, 2017.

13. Thus, having not challenged the evaluation in time when the Main examination result was published and he was declared disqualified, the appellant-petitioner cannot be allowed to open the issue when the selection process is over and recommendation was made.

14. It is important to note here that the Apex Court has repeatedly held that the Courts cannot take upon itself the task of verifying the answer in an examination under the exercise of the judicial review.

15. The Apex Court has further held that in the case of **Pramod Kumar Srivastava v. Chairman Bihar Public**



Service Commission, Patna and Ors. reported in (2004) 6 SCC 714 wherein it was held that revaluation, if not allowed as per relevant rules, it cannot be ordered by the Courts. The Courts attributed this to delay in the selection process and decided to not venture into such a domain and it was held that :-

“8. Adopting such a course as was done by the learned Single Judge will give rise to practical problems. Many candidates may like to take a chance and pray for re-evaluation of their answer-books. Naturally, the Court will pass orders on different dates as and when writ petitions are filed. The Commission will have to then send the copies of individual candidates to examiners for re-evaluation which is bound to take time. The examination conducted by the Commission being a competitive examination, the declaration of result will thus be unduly delayed, and the vacancies will remain unfilled for a long time. What will happen if a candidate secures lesser marks in re-evaluation ? He may come forward with a plea that the marks as originally awarded to him may be taken into consideration. The absence of clear rules on the subject may throw many problems and in the larger interest, they



must be avoided.”

16. We thus hold that the claim forwarded by the appellant-petitioner is ill founded. We further hold that ‘the BPSC’ rightly recommended the names of the respondent nos. 6 & 7 and appellant-petitioner having secured lesser marks than the cut-off marks fixed for the BC category have no right to claim his consideration for the said post.

17. We are in complete agreement with the observations made by the learned Single Judge in its order dated 06.08.2021 passed in C.W.J.C. No. 19387 of 2017 and the appeal being devoid of any merit is hereby dismissed.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

Jagdish/-

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CAV DATE	
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