

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2434 of 2021

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Hala Quamar, daughter of Shri Abrar Ahmad Quamar, resident of C/o Shri Abrar Ahmad Quamar, Umme Attiya House, Near Government Primary School, Khalilpura, PS-Phulwarisharif, District-Patna, Pin Code-801505

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. Secretary, Law Department, Bihar, Patna.
3. Bihar Public Service Commission, Patna through its Secretary
4. Chairman, Bihar Public Service Commission, Patna
5. Secretary, Bihar Public Service Commission, Patna
6. Controller of Examinations, Bihar Public Service Commission, Patna
7. Patna High Court, Patna through the Registrar, General.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Abhinav Srivastava, Advocate
For the Respondent-State:	:	Mr. G.P. Ojha, GA-7
For the BPSC	:	Mr. Sanjay Pandey, Advocate
	:	Mr. Nishant Kumar Jha, Advocate
For respondent no.7	:	Mr. Piyush Lall, Advocate

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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 praying for a declaration that she is entitled for being awarded two marks on the basis of correct answers given by her in the General Knowledge subject of the mains (written) examination of 30th Bihar Judicial Service Competitive examination held by the Bihar Public Service Commission (for short 'BPSC') for direct recruitment to the post of Civil Judge (Junior Division) in



the Bihar Judicial Service pursuant to Advertisement No.6 of 2018. The petitioner has further prayed to direct the BPSC to take necessary steps to make the said correction in the marks awarded to her on the basis of her performance in the said examination and to accordingly take steps in redrawing the merit list by including her as a successful candidate and to consider her case for appointment to the said post. She has also prayed to direct the respondents to extend her all consequential benefits, such as length of service, which she would have been entitled to had she been appointed along with other similarly situated candidates, who had been declared successful if she had not been wrongly awarded lesser marks than her entitlement in the subject of General Knowledge of the mains (written) examination.

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 submitted her application form pursuant to the Advertisement No.06 of 2018. She participated in the preliminary test conducted by the BPSC on 27.11.2018 and 28.11.2018. On 27.03.2019, when the result was published by the BPSC, she was declared to be successful. Thereafter, she filled up application form in the prescribed manner for participating in the mains (written) examination which was held from 07.06.2019 to 12.06.2019.

4. On the basis of the performance of candidates in the mains (written) examination, the BPSC published the list of successful candidates on 05.10.2019 and amongst other persons, the petitioner was also declared successful in the said



examination. She was directed to participate in the interview on 15.11.2019. 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 said list. When she obtained a copy of marksheet, she came to know that she had secured 446 marks in the mains (written) examination and 70 marks in the interview. Thus, she had secured an aggregate of 516 marks and the cut off marks for the candidates belonging to the unreserved category was 517. Thus, the petitioner had missed to be included in the list of successful candidate by a margin of 1 marks. Thereafter, she obtained her answer sheet of the subject General Knowledge under the Right to Information Act on 07.02.2020.

5. The contention of Mr. Abhinav Srivastava, learned counsel for the petitioner is that a perusal of the answers given by the petitioner with respect to question nos.10(a) and 10(e) in the General Knowledge subject revealed that despite the petitioner having given the correct answer for the said questions, she had not been awarded two marks without there being any just and valid reason or justification in the said respect. He contended that the answer given by the petitioner in relation to question nos. 10(a) was Allahabad and in relation to question



no.10(e) was New Delhi, which on the basis of reliable sources, were correct. He submitted that in view of the fact that the petitioner had secured an aggregate of 516 marks on the basis of her performance as a candidate belonging to unreserved category and the cut off marks under the said category was 517 marks, had the petitioner been awarded marks for the correct answers given by her, she would have secured a total of 518 marks, which would clearly be above the cut off marks. According to him, the petitioner has been illegally denied the marks she was entitled to as a result of which she could not be selected for appointment against the posts of Civil Judge (Junior Division).

6. He submitted that the action on the part of the respondent authorities in not awarding marks to the petitioner despite her having given correct answers has subjected her to extreme detriments.

7. On the basis of the aforesaid submissions, learned counsel for the petitioner submitted that the petitioner is entitled to the reliefs prayed for in the present application.

8. The respondent BPSC and the Patna High Court have filed their respective counter affidavits.

9. Mr. Sanjay Pandey, learned counsel for the BPSC



submitted that the writ petition is misconceived and devoid of merit. According to him, the petitioner could not be selected because she had secured less than the cut off marks of the unreserved category. He further contended that the allegation of the petitioner regarding wrong evaluation of certain questions is false and baseless. He submitted that the correct answer of question no.10(a) was Prayagraj and in relation to question no.10(e) was Delhi whereas the petitioner had given answer in relation to question no.10(a) as Allahabad and in relation to question no.10(e) as New Delhi.

10. 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 her answers to the above questions of mains (written) examination to be re-evaluated.

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

12. The disputed question nos.10(a) and 10(e) of the subject of General Knowledge are reproduced hereunder:-

“10. In which city the following places are located (any five) ?

(a) Anand Bhawan

(b) xxx xxx

(c) xxx xxx

(d) xxx xxx

(e) Humayun's Tomb

(f) xxx xxx

(g) xxx xxx”

13. In its counter affidavit, the BPSC has mentioned the correct answer of question 10(a) as Prayagraj and question no.10(e) as Delhi.

14. It is well settled that the scope of judicial review under Article 226 of the Constitution in the matter concerning evaluation of candidates for the purpose of recruitment to public service is narrow. The Supreme Court has repeatedly underscored that in absence of any provisions for re-evaluation



of answer sheets judicial review should be rarely exercised.

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 ***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.”

18. Thus, it would be evident from the aforesaid decisions 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 a 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.

19. 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.

20. It is well known that the name of Allahabad city was changed to Prayagraj in October, 2018. The mains examination in question was held by the BPSC from 07.06.2019 to 12.06.2019. Hence, the answer to question no.10(a) given by the petitioner as Allahabad was apparently wrong. In so far as



the answer to question no.10(e) is concerned, no material has been brought by the petitioner to show that answer to the said question was New Delhi and not Delhi. 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 sheet.

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

22. It is dismissed, accordingly.

(Ashwani Kumar Singh, J)

(Shailendra Singh, J)

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

