

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.111 of 2023

In

Civil Writ Jurisdiction Case No.17803 of 2022

-
-
1. Harshit Sharan, Son of Akhilesh Kumar Sharan, Resident of Town-Motihari, P.O. and P.S.- Town Thana, District- East Champaran, Bihar- 845401.
 2. Awadesh Kumar Chaudhary Son of Radhakant Chaudhary, Resident of Village- Gour Andhara P.O.- Andhara Tharhi, P.S.- Rudrapur, District- Madhubani, Bihar- 847401.
 3. Munni Kumari Daughter of Late Fagu Besra Resident of village- Kushmaha, P.O.- Dariyapur, P.S.- Haveli, Kharagpur, District- Munger, Bihar- 811213.
 4. Anuradha Kumari Daughter of Ajay Sharma Resident of Village- Panchmahala, P.O.- Aganda, P.S.- Belaganj Gaya, Bihar- 804403.
 5. Vivek Kumar Pandey Son of Baleshwar Nath Pandey Resident of P.S.- Agamkuan, P.O.- Lohia- Nagar, Flat No.,- 1903, Jagdish Residency, Shanti Niketan Colony, Bhoot Nath Road, in front of SBI, NMCH, Kankerbagh, B.H. Colony Patna, Bihar- 800026.
 6. Birendra Kumar S/o Kaushlendra Kumar Singh, Resident of P.S.- Bazar Samati, P.O.- Rajendar Nagar Road No.- 13B, Rajendra Nagar, Gumti, Shahpur, District- Patna, Bihar- 800016.
 7. Ashish Deo Son of Tapeswar Prasad Singh Resident of Town- P.O.- Lataura, P.S.- Triveni Nagar, District- Supaul Bihar- 852139.
 8. Ayush Chawla Son of Ramswaroop Prasad Yadav Resident of village- Bakhari, P.S.- Fatehpur, P.O.- Nagwan Tarawan District- Gaya, Bihar- 805128.
 9. Mumtaz Ali Son of Shaukat Ali Mohiuddinagar Resident of Town- Samastipur, P.S.- Mohuddin Nagar, P.O.- District Bihar- 848501.
 10. Om Prakash Son of Surendra Mishra, Resident of Village- Gandhinagar Bhuidhara, P.O.- Dhurlakh, P.S.- Musassil, District- Samastipur, Bihar- 848101.
 11. Rishi Raj Son of Tuntun Singh Resident of Village- Nakki Nagar, P.S.- Keshopur, P.O.- District- Jamalpur, Munger, Bihar- 811214.
 12. Abhishek Kumar Son of Prem Kumar P.O.- Mahatma Gandhi Nagar, P.S.- Agamkuan Samptachak Bhootnath Colony, District- Patna, Bihar- 800026.
 13. Vipul Kumar Singh Son of Umesh Singh Resident of village- Bin Bahuara, P.O.- Nagra, P.S.- Madhuara, Saran, Bihar- 841442.
 14. Digvijay Singh, Son of Mohan Singh Resident of Gadhamalpur Balia, P.S.- Pakri, P.O.- Garhmalpur, District- Ballia, Uttar Pradesh- 221709.
 15. Subhash Kumar Son of Ram Swarsth Yadav Resident of village- Harnnahi, P.S.- Phesar, P.O.- Unthu, District- North West Delhi, Delhi.



- 16. Mona Daughter of Jyoti Kumar Resident of Pipra, P.O.- and P.S.- Parsa Bazar, District- Patna, Bihar- 804453.
- 17. Neeraj Kumar Singh Son of A.K. Singh Resident of P.O. and P.S.- Manimajra, District- Chandigarh- 160101.
- 18. Nikhil Ranjan Tripathi Son of Udhao Prasad Tripathi Resident of Sikhara, P.O.- Sabarpur, P.S.- Khondare, District- Gonda, State- Uttar Pradesh, 271313.
- 19. Sarvesh Kumar Son of Shashi Bhushan Prasad, Resident of Village- Pasraila, P.S.- Rajauli, P.O.- Targir, District- Nawada, Bihar- 805125.
- 20. Amrita Kumari Daughter of Krishna Murari Sharma, Kaswan Kasain, P.O.- Kaswan, P.S.- Parasbigha, District- Jehanabad, Bihar- 804419.
- 21. Subhadra Bharti Daughter of Late Ram Barayan Singh Chowk Nagar Ward No.- 11, P.S.- and P.O.- Jainagar, District- Madhubani, Bihar- 847226.

... .. Appellant/s

Versus

- 1. The State of Bihar through the Principal Secretary, General Administration Department, Government of Bihar, Ptna.
- 2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
- 3. The Special Secretary, General Administration Department, Government of Bihar, Patna.
- 4. The Bihar Public Service Commission, Bailey Road, Patna.
- 5. The Chairman, Bihar Public Service Commission, Bailey Road, Patna.
- 6. The Secretary, Bihar Public Service Commission, Bailey Road, Patna.
- 7. The Joint Secretary-cum-Controller Examination, Bihar Public Service Commission, Bailey Road, Patna.

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr.Abhinav Srivastava, Advocate
For the B.P.S.C.	:	Mr. P.K. Shahi, AG
		Mr. Lalit Kishore, Sr. Advocate
		Mr. Sanjay Pandey, Advocate
		Mr. Nishant Kumar Jha, Advocate
For the State	:	Mr.P.K. Verma (AAG-3)
		Mr. Sanjay Kumar Ghosarvey, A.C. to AAG-3

=====

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT



(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 13-09-2023

1. A massive selection and appointment exercise called the 67th Combined Competitive Examination was conducted by the Bihar Public Service Commission (for brevity “the Commission”), the 4th respondent herein. The selection is conducted for appointment to 16 different posts under 16 different services and cadre, of the State and the total vacancies advertised are 555.

2. The process of selection includes a Preliminary Examination of the MCQ type, a Main Written Examination and an Interview. The advertisement produced along with the writ petition, was dated 24.09.2021. The Prelims were conducted on 30.09.2022. After the examinations, the Model Answer Key was uploaded on 01.10.2022 calling for objections, if any, to the answers. The final Answer Key and the result of the Preliminary Examination was published on 17.11.2022. The schedule of Main Examinations was published on 25.11.2022, with examinations to be held on 29.12.2022 to 31.12.2022, as per Annexure-5. Subsequently, on 26.11.2022, a revised result was published by the respondent-Commission wherein the answer to one of the questions in the English and Hindi version were found to be under different alphabetical choices. The appellants



have challenged the final results published on the ground that there have been changes made to the correct answers for nine questions, which according to them is contrary to that coming out from the Text Books prepared by the National Council of Educational Research and Training (NCERT) and others, Encyclopedia Britannica, the news uploaded by the All India Radio, the relevant pages of the U.N. General Assembly Draft Resolutions and so on and so forth.

3. Immediately, it is to be noticed that nowhere in the writ petition there is an averment with respect to the answer marked by the individual petitioners as against the questions, the answers to which are objected to. Definitely, it cannot be the contention that all the writ-petitioners had marked the correct answer, as they discern from the various authoritative books and documents, with respect to all the nine questions identically. The attempt is for a re-evaluation, on the mere submission that the answers to nine out of the 150 questions are wrong according to the specific documents pointed out by the writ-petitioners. This is not to say that the answers projected by the appellants are definitely correct; especially when the Commission through its counter affidavit speaks of repeated evaluation made by different Expert Committees both on the objections raised and,



on the discretion exercised by the Commission. The appellants, on the aforesaid contention of nine questions having been given wrong answers seek a re-evaluation, when the main examination has already been conducted.

4. The learned Advocate General prays for an immediate hearing especially on the ground that the Commission has deferred the publication of the results only on the ground of the pendency of the appeal. The writ petition was filed on 17.12.2022 before the scheduled main examination and the matter having come up before the learned Single Judge on 22.12.2022 the writ petition stood dismissed *in limine*. The main examinations were held between 29.12.2022 to 31.12.2022. The appeal was filed on 13.01.2023 wherein there was no stay granted despite which the Commission has withheld the results, out of deference to the principle of *lis pendens*.

5. We heard the matter elaborately on 29.08.2023 and after hearing the learned Advocate General we were of the opinion that there should be a counter affidavit filed placing on record the arguments addressed, especially since the writ petition was dismissed *in limine*; which is now placed on record in the appeal.

6. Shri Abhinav Srivastava, learned counsel appearing



for the appellants, vehemently contended that the challenge raised is a very serious one especially considering the fact that the future of the appellants is at stake and all of them have failed to reach the minimum bench-mark of the cutoff marks in their respective categories; falling short by one or two marks. Immediately, we have to notice that even if re-evaluation is conducted, there is no guarantee that the individual appellants would get even one mark more, since as specifically noticed herein above, there is no averment as to which of the appellants marked the answers, which according to them is correct, in so far as the nine questions highlighted. There is not even a bland statement that all the appellants had marked the correct answers pointed out by them, as against the nine questions. Further, we reminded the learned counsel that no single case can be considered more serious than the other, since every litigant approaches this Court with all seriousness and in the hope that their grievances would be addressed judiciously, equitably and with deep thought and analysis. We cannot place any case on a pedestal, above others, as being more serious in nature though there could be expediency urged by reason of advancing age, irreparable injury and many other grounds; one of which would be that urged in the present case of the selections being held up



indefinitely for reason of the pending appeal.

7. The Commission has not proceeded with the selection, only since, if a reevaluation is ordered then there would be the question of a fresh conduct of Main Examinations, if more persons obtain the cutoff marks. In this context, we also have to observe that there can also be persons in the revised result being omitted; which would again bring forth the compelling objection of none of the successful candidates having been impleaded in the writ petition, even in a representative capacity. On a conspectus of the aforesaid reasoning, we reject the contention of the learned counsel, in so far as a primacy to be given to the present case, in its evaluation, which we would assert, we do in every case which comes before us, and otherwise we would be failing in our onerous duty, as enjoined upon by the Constitution of India and as expected by the citizenry of this land.

8. The learned Advocate General also raised a preliminary objection in so far as the appellants having not objected to the answer-key published when objections were invited. This was countered by the learned counsel for the appellants pointing out that many of the corrections were made even without any objections and some of the appellants had



raised objections with respect to the questions & answers. In any event, when the appellants raised the question of incorrect answers having been shown in the answer-key for the purpose of a reevaluation, this Court is bound to consider the challenge on the anvil of the larger public interest involved, especially looking into whether the defects pointed out are gross enough to interfere with a due selection process.

9. The learned Single Judge found that the writ-petitioners cannot challenge the process, much less the assessment criteria as incorrect, when they have with open eyes applied for the post and subjected themselves to the procedure of selection as detailed in the advertisement. This assumes significance, especially when the opportunity provided for raising objection was not availed by the writ-petitioners.

10. With due respect, we are unable to accept the said proposition since the appellants do not challenge the process of selection or the method of evaluation or even the assessment criteria, but merely points out that with respect to nine questions, the answer-key adopted by the Commission indicates wrong answers. It is also not correct to say that none have filed objections since some of them have raised their objections and in any event, the questions pointed out are said to be those in



which there were corrections made by the Commission *suo motu*, on an expert evaluation. The learned Single Judge also negatived the ground raised of the corrections in the answers made by the Expert Committee, having not disqualified any single person, but only made room for 15 additional candidates. The said contention alone could not have resulted in an interference being caused to the publication of results of the Preliminary Examination. We find our complete agreement with the reliance placed by the learned Single Judge on the decision of the Hon'ble Supreme Court in ***Ran Vijay Singh and Others v. State of Uttar Pradesh and Others; (2018) 2 SCC 357.*** Learned counsel for the appellants also relied on a decision of the Hon'ble Supreme Court in ***Richal and Others v. Rajasthan Public Service Commission and Others; (2018) 8 SCC 81.***

11. ***Richal*** (supra) was a case in which the Hon'ble Supreme Court issued directions to reevaluate the answer-sheets at least with respect to the persons who had approached the Court and who were not appointed till that date. Therein, again a massive exercise was conducted wherein more than 13,000 posts of school lecturers for various subjects were advertised. The examination consisted of two papers, one in General Studies and the other in the respective subject. The Commission



declared the result against which several writ petitions were filed, in which there was a direction to upload the revised answer-key along with report of experts on the website. A report was published deleting 18 questions in Paper-I upon which the second round of litigation commenced, which was dismissed both by the learned Single Judge and the Division Bench. An Expert Committee was appointed by the Hon'ble Supreme Court wherein over all 22 answers in all the nine subjects for which the Experts were appointed, reexamined and revised the answers. Again, objections were raised even with respect to the Expert Committee's recommendations.

12. In *Richal* (supra), a decision in *Kanpur University v. Samir Gupta; (1983) 4 SCC 309* was referred to wherein it was said that an easy way out of such controversies being raised, is not to publish the key-answers at all, which would be a remedy worse than the disease, of subjecting the applicants to grave injustice. The learned Judges agreed that the key-answers should be assumed to be correct unless it is demonstrably proved to be wrong and not by an inferential process of reasoning or by a process of rationalization. In the said case, the contention of the University was falsified by a large number of acknowledged Text Books. The subsequent



objections to the Expert Committee recommendations were negatived and *inter alia* it was directed that the Rajasthan Public Service Commission would revise the results of the candidates including all the appellants, on the basis of the report of the Expert Committee constituted by the Hon'ble Supreme Court, without affecting the result of those candidates whose names were already included in the select-list published. The persons who come out successful were directed to be appointed in the 1045 vacancies which remained out of the total 13,000.

13. In the present case, we see that there has been, not one, but re-assessment by three Expert Committees appointed by the Commission which we shall refer to from the counter affidavit. We are of the opinion that the principle that applies to the present case is that unequivocally declared in ***Ran Vijay Singh*** (supra) where emphasis was laid on finality to the result of public examinations and speedy disposal, in case of judicial interference, keeping in mind the larger public interest. The Hon'ble Supreme Court termed the approach of the High Court in evaluating some answers by itself as erroneous, especially when the matter stood delayed for eight years. The law laid down on the subject is available in Paragraphs 30.1 to 30.5, which are extracted hereunder:-



“30.1. 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;

30.2. If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) 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 rationalisation” and only in rare or exceptional cases that a material error has been committed;

30.3. The court should not at all re-evaluate or scrutinise the answer sheets of a candidate—it has no expertise in the matter and academic matters are best left to academics;

30.4. The court should presume the correctness of the key answers and proceed on that assumption; and

30.5. In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.”

14. We refuse to look into the specific questions and answers pointed out by the learned counsel for the appellants, especially keeping in mind Paragraph 30.3, as available in the above extract. We also emphasize the further finding of the Hon’ble Supreme Court in ***Ran Vijay Singh*** (supra) that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer-sheet. 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. We bow to the above propositions declared in *Ran Vijay Singh* (supra) and look at the above exercise with the above principles in the back of our minds.

15. A detailed counter affidavit has been filed by the respondents which indicates that a total of 3,20,656 candidates appeared at 1153 examination centers spread over 38 districts of Bihar on 30.09.2022 for 555 posts. The Preliminary Test had 150 objective type questions of different subjects including General Knowledge and General Science, captioned as General Studies Paper. The OMR type answer-sheets had multiple choice alternative answers for each question and there was no negative marking. The question paper of General Studies was set by the experts of different subjects and to avoid copying, the question papers were printed in four series, where the options were jumbled up and it differed in each of the different series.

16. The Commission on 01.10.2022 published a notice in the daily newspapers intimating the publication of the



question booklet, with answers in all the series, on the official website of the Commission. Objections were also called for which had to be submitted before 5:00 P.M. on 05.10.2022. An Expert Committee was constituted to evaluate the key-answers given by the question-setters and objections/suggestions submitted to the Commission. The Expert Committee was of the opinion that out of 150 questions of General Studies Paper options of 08 questions had to be changed. A copy of the report is produced as Annexure-C. Again, evaluation of the answer-sheets of the candidates were done and result was published on 17.11.2022 declaring 11607 candidates as successful. The appellants and their Roll Numbers, category, marks obtained and cut-off marks for the respective category are detailed in Paragraph 16. Many of them fall short of 1 to 5 marks.

17. When a request was made by some candidates including some of the appellants to re-examine the final answer-key again of 13 questions, the Commission again arranged a meeting of subject experts on 23.11.2022 and found that out of the 13 questions answer of 12 questions require no change. One of the questions on which an objection was raised had two correct answers at its options. Further result was published wherein 15 candidates came to be additionally included. On



08.12.2022 the Commission constituted a meeting of new subject experts to re-examine the final answer key with respect to the 13 questions on which objections were raised, which committee also reiterated the opinion of the earlier committee. Obviously, re-evaluations were made at least on three instances based on the objections raised by the candidates, even beyond the time stipulated.

18. We would briefly refer to some of the questions; rather answers which were corrected by the experts, though we are not to find on their correctness or otherwise. Question number 1 was with respect to who established trade relations with the Roman Empire; for which the petitioners claim the correct answer is 'more than one above'. In Annexure C to the counter-affidavit it is explained by the Expert Committee that though individual traders had connections earlier, it was the Kushanas who established organized trade between the empires. Question number 6 was on the social reforms of William Bentick and the petitioners claim abolition of slavery by the Act of 1843, was after his death in 1839. However, the experts are of the opinion that The Charter Act of 1833 provided for relief to slaves and ultimately led to the Act, which abolished slavery and hence the correction was made. Question number 97 was



the resultant weight of iron when it rusts; which the petitioners claim increases initially and then decreases; but the experts assert that it goes on increasing due to the formation of rust in the long run. Question number 147 is about the State/Union Territory chosen to host G20 Summit in 2023, which the petitioners say is the Union Territory of National Capital Territory of Delhi; but the experts say it is Delhi. The question itself is, which State/Union Territory is chosen, and from the options given 'Delhi' is the correct answer. The question numbers referred to hereinabove are those from D series of the OMR sheets which are respectively question numbers 64, 69, 15 and 36 in A series, as referred to in Annexure-C to the counter affidavit. Insofar as Question numbers 2, 38, 125 & 143 in D series, the provisional answer key and the final are the same and the petitioners did not object to it at the provisional stage. As far as Question number 20 is concerned; the only one remaining out of the nine objected to, Pushyabhuti is said to be the founder of Vardhana dynasty though Prabhakaravardhana is the first notable king. We find absolutely no reason to interfere with the evaluation at the preliminary stage.

19. We also keep in mind the larger public interest involved in so far as the selection being derailed only for reason



of the present complaint regarding nine questions out of a total of 150 questions; which objections we found not to be sustainable or tenable. We are quite conscious of the fact that many of these appellants have fallen short by 1 to 5 marks. Without prejudice to our findings on the objections raised, it is not clear in which of the nine questions the appellants answered correctly; individually or collectively, in accordance with their assertion of the correct answers. Further, as we noticed, none of the candidates who were selected are impleaded even in the representative capacity. The Main Examination is also over and there is prejudice caused in so far as the candidates selected for the mains being kept waiting indefinitely. The expert committee report evidences an analysis of the answers, against which untenable objections are raised.

20. We find absolutely no reason to interfere with the judgment of the learned Single Judge though on the different reasoning as stated herein above. We dismiss the Letters Patent Appeal leaving the parties to suffer their respective costs.

21. We notice that the Letters Patent Appeal arises from one of the writ petitions which was disposed by a common judgment in two writ petitions. The consideration was separate as seen from the impugned common judgment and in such



circumstance, we are of the opinion that the appellants were not required to file two appeals from the common judgment which would have been the normal practice though they were not parties to the other writ petition filed by a similarly placed candidate.

22. The Letters Patent Appeal stands dismissed affirming the judgment of the learned Single Judge rejecting the writ petition.

23. Interlocutory Application(s), if any, shall stand closed.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree.

(Partha Sarthy, J)

P.K.P./-.

AFR/NAFR	
CAV DATE	05.09.2023
Uploading Date	13.09.2023
Transmission Date	

