

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.109 of 2021

Arising out of
Civil Writ Jurisdiction Case No.7595 of 2021

1. Vaibhav Gupta, Male, aged about 25 years, Son of Sri Pradeep Kumar Gupta, Resident of Milikiyana West, Post - Salon, District - Raebareli, Uttar Pradesh, 229127.
2. Apoorva Jyoti, Male, aged about 26 years, Son of Amar Jyoti Srivastava, Resident of 363, New Colony, Behind Home Guard Office, Arazibagh, Azamgarh, Uttar Pradesh - 276001.
3. Dheeresh Kumar @ Dheeresh Agnihotri, Male, aged about 29 years, Son of Brijesh Sharan Agnihotri, Resident of Pratap Nagar, Kamalganj, Farrukhabad, Uttar Pradesh - 209724.
4. Ambrish Kumar, Male, aged about 30 years, Son of Ompal Singh, Resident of Neemka Shahjahanpur, Gautam Buddha Nagar, Uttar Pradesh, 203155.
5. Pawan Kumar Saini, Male, aged about 30 years, Son of Sri Cheetan Lal Saini, Resident of Village and Post - Dhuswa Khas, Mankapur, District - Gonda, Uttar Pradesh - 271302.
6. Meenakshi Pandey, Female, aged about 37 years, Wife of PD Dwivedi, Resident of Behind Sardar Bawa Singh House, Mohaddiput North, District - Gorakhpur, Uttar Pradesh - 273008.

... .. Petitioner/s

Versus

1. Bihar Public Service Commission through its Chairman Sri R.K. Mahajan, 15, Jawaharlal Nehru Marg, Bailey Road, Patna, Bihar 800001.
2. Secretary, Bihar Public Service Commission.
3. Joint Secretary-cum-Examination Controller, Bihar Public Service Commission.
4. Pankaj Kumar Chauhan, aged about 32 years, Son of Ramagy Chauhan, Resident of Village - Shatrudhanpur, Post - Futhawa Inar, District - Gorakhpur, U.P. - 273202.
5. Rohit Kumar Srivastava, aged about 29 years, Son of Nagendra Prasad Srivastava, C/o Santosh Kumar Sinha, Resident of - Barka Gam Maan Singh Patti, Buxar, Auodoyogik, Bihar - 802101.



... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Akash Keshav, Advocate

For the State : Mr. Sanjay Kumar Ghosarvey, AC to AAG 3

For the BPSC : Mr. Sanjay Pandey, Advocate with

Mr. Nishant Kumar Jha, Advocate

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT**

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date : 04-01-2023

Heard Mr. Akash Keshav, learned counsel for the petitioners; Mr. Sanjay Kumar Ghosarvey, learned AC to AAG 3 for the State and Mr. Sanjay Pandey, learned counsel for the Bihar Public Service Commission (hereinafter referred to as the ‘BPSC’).

2. The present application has been filed seeking review of the judgment dated 18.03.2021 passed in CWJC No. 7429 of 2021.

3. The writ petition was filed for the following reliefs:

(i) For issuance of writ/writs, order/orders in the nature of Mandamus for commanding/directing the Respondent B.P.S.C. (Bihar Public Service Commission) to allow all the petitioners to appear and participate in the Mains Examination of 31st Bihar Judicial Services. They have scored more than the Cut Off marks (in



their respective categories) as per the final Answer Key published by the B.P.S.C. and are eligible and qualified to write the Mains Examination. However, all the petitioners have wrongly been awarded less marks in the results published by the B.P.S.C.

(ii) For issuance of writ in the nature of Certiorari for quashing the letter dated 25.01.2021 whereby and whereunder 23 seats have been reserved for the EWS category out of 221 seats which exceeds the limit of 10% reservation for the EWS category.

(iii) Further for directing the respondents to consider this fact and pass an appropriate direction for the same as the maximum number of reserved seats for the EWS Candidates shall be 10%, however, a total of 23 seats out of 221 seats have been reserved for the EWS category by B.P.S.C. which exceeds the maximum limit of 10% as only 22 seats should have been reserved for the EWS category as per the total number of seats i.e., 221. As per the rules, selection of candidates in the Prelims examination is done on the basis of 10 times of the total no. of the prescribed seats from each category. In the present case, the respondents have wrongly considered 10 times of 23 as the total no. of seats for the EWS category and have made selections in the Prelims accordingly.

(iv) Further for direction to B.P.S.C. to bring on the record the OMR sheets of the petitioners.

(v) Further to issue an appropriate writ in the nature of Mandamus to direct the respondents to re-evaluate the marks of the petitioners after re-correcting the answer of Questions nos. 46 and 128 of the 'B' Series booklet. That initially a provisional Answer Key was published by the B.P.S.C. on 19.12.2020, where objections were raised by some of the candidates to the B.P.S.C. regarding the wrong answers of some Questions including Question nos. 46 and 128 of the 'B' Series booklet. However, the B.P.S.C. neither considered nor



corrected the answers of the said Questions and published the final Answer Key along with the result of Prelims examination without correcting or considering Questions nos. 46 and 128 of the 'B' Series booklet.

4. The Court, not being inclined to interfere had dismissed the writ petition by order dated 18.03.2021 against which the petitioners had approached the Hon'ble Supreme Court in petition(s) for Special Leave to Appeal (C) No. 5481 of 2021 which was disposed of as withdrawn by order dated 06.04.2021 with liberty to file appropriate review petition before the High Court.

5. Learned counsel for the petitioners submitted that the challenge was two fold. Firstly on the basis of a question which was wrong which has been considered and secondly that the reservation allowed for EWS category was to be limited to 10 percent but has exceeded the said percentage. Learned counsel submitted that had there being two seats earmarked for the general category which has wrongly been given to the EWS category, the cut off marks of 164 which was fixed in the Prelims for being eligible to appear at the Mains would also have to be reduced at least by one mark and the petitioners having obtained 163 marks in the Prelims would have had a chance to appear at the Mains



examination and compete in the process which has been wrongly denied to them.

6. On a query to learned counsel for the BPSC, it was submitted that 88 seats were available for the general category in the said examination and 985 candidates were selected after the Prelims examination to appear at the Mains which is above the requirement of ten times the number of vacancies candidates who have to be called which would have been only 880 but in view of the cut off having been required to be brought down to 164, 105 more candidates had to be accommodated for the Mains thus, taking the number to 985 because they also had 164 marks in the preliminary examination. It was submitted that even if it is taken for the sake of argument that two extra seats would have come in the general category then also the number of candidates who were required to be called would have been 900 by the formula from going by ten times the number of vacancies i.e., 90 and in the present transaction till serial number 985, all persons had obtained 164 marks and thus there was no question of this cut off mark being reduced even if the number of seats in general category were increased.



7. At this juncture, learned counsel for the petitioners fairly submits that he may be permitted to withdraw the present review petition.

8. Having regard to the aforesaid, the review petition stands disposed of as withdrawn.

(Ahsanuddin Amanullah, J)

(Partha Sarthy, J)

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