

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1278 of 2019

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Kumar Ravi Devendra Prasad Resident of Mohalla-Zekuli Ghat Road, Bichali
Kkhandak, P.s. Bihar Sharif, Dist.-Nalanda

... .. Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary, Dept of General Administration, Govt. of Bihar, Patna
2. The Chairman, Bihar Public Service Commission, 15, Jawaharlal Nehru Marg (Bailey Road, Patna)
3. The Examination Controller, Bihar Public Service Commission, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jagdhar Prasad, Adv.
For the Respondent/s : Mr. Md. Nadim Seraj (Gp5)

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 08-10-2024

Heard Learned Counsel for the petitioner and
Learned Counsel for the State.

2. Learned Counsel for the petitioner submits that the present writ petition has been filed for directing the respondent authorities to publish the result of the petitioner as successful candidate for 56th, 57th, 58th and 59th Joint Combined Competitive Examination whose final result published on 18.08.2018 in which petitioner has been declared unsuccessful due to the reason that his ten marks have been reduced in written examination using unfair means to give illegal benefits to some other persons.



3. Learned Counsel further submits that the petitioner had appeared in the competitive examination published by Bihar Public Service Commission, Bihar, Patna for 56th to 59th Joint Combined Competitive Examination for which advertisement was published in the year 2014. He further submits that the petitioner has appeared in the examination process and has been allowed Registration No.5659009591 and after scrutiny, admit case was issued and then, he appeared in the preliminary test held on 15.03.2015. He further submits that the result of the P.T. Examination was published on 21.11.2015 in which he declared successful to appear in main examination. For the main examination, the petitioner was allotted Roll No.213431 corresponding to setting code No.508793.

4. Counsel further submits that the petitioner is a sincere student and continuously dedicated to compete the competitive examination and he has every hope that his name shall come in the list of successful candidates. His result was also published in the main examination and he was declared successful. Thereafter, he was called for oral test. He further submits that as per the schedule, he appeared in the oral test, but finally, he could not be selected in the said examination.

5. Counsel further submits that the petitioner has



every confidence that he shall be selected due to the reason that he has prepared for the examination at par and it is due to this reason he has filed Right to Information (RTI) for the copy of his written examination, but the said copy has not been provided to him. Thereafter, he preferred 1st Appeal and at the level of 1st Appeal, the petitioner has obtained copy of his written examination and it has been found that the petitioner had obtained 136 marks in the Public Administration Paper-II. He further submits that on the first page of the said paper, initially total 136 marks were inserted by the examiner, but subsequently, deduction of 10 marks has been done and after deduction, total 126 marks has been provided in the said paper.

6. Counsel further submits that the petitioner had obtained total 844 marks in the said examination whereas cut-off marks of finally selected candidates is 847 only. Meaning thereby, he was just behind 3 marks in the list of successful candidates. He further submits that due to deduction of 10 marks in the written examination without any rhymes and reasons, the petitioner could not be finally selected, and therefore, he has filed the present writ petition by annexing the copy of the written examination obtained under RTI before this Hon'ble Court, with prayer that the deduction of marks in his



Public Administration Paper-II is unnecessary, illegal, without any reason, and therefore, he submits that direction may be given to BPSC to add his marks, which has been assigned to him by the examiner and he may be declared successful in the examination process of BPSC.

7. Learned Counsel for the BPSC on the other hand submits that the marking on the paper of the petitioner in the main examination has been done much prior to the main result, and therefore, the allegation of the petitioner that the said deduction is intentional, illegal or *malafide*, is absolutely not acceptable and hereby denied.

8. Counsel further submits that prior to examination, instruction has been issued to the Head Examiner and Examiners of the BPSC in which instruction has been made to maintain the uniformity of the examination as there are different examiners, who used to scrutinize the copy and since every human mind is different from other, therefore inserting uniform marks is not possible and with a view to check those discrepancies, specific instruction has been made to the Head Examiner that he shall randomly check and re-scrutinize the copy of 15% of the candidates as well as he shall mandatorily check those copies again where candidates obtained more than



60 % marks and less than 30 % marks in one paper.

9. Counsel further submits that with a view to maintain such type of standards has technically called as moderation in the copy. He specifically submits that it is due to moderation take place in the main examination, such deduction has been made and such types of deduction or enhancement used to made in the copies uniformly without any intention, but due to pattern of moderation applicable in the examination process.

10. Counsel further submits that it is apparent from the copy of the answer sheet that 10 marks has been deducted by the Head Examiner only by deducting initial marks putting his initial signature is there as well as on the top of the copy, the deducted marks have been written in the figure as well as in language, and subsequently, in the column of Head Examiner, he has put his signature also.

11. In support of his argument, Counsel for the BPSC further submits that such types of situation have arisen earlier before this Hon'ble Court in **C.W.J.C. No.9569 of 2013** in which vide order dated 03.01.2014 by the Division Bench of this Hon'ble Court in case of **Prem Kumar Bhakta & Ors. Vs. the State of Bihar & Ors.** in which this Hon'ble Court has



pleased to observe after analyzing the said matter that “*the State Public Service Commissions are the Constitutional Authorities vested with the power to make recruitment for Civil Services under the concerned State. They are armed with the required expertise and the man power with the rising magnitude of their responsibilities, the Public Service Commissions have to keep abreast of the recent studies and developments combined with their experience, the Public Service Commissions ought to be able to resolve the problems they face and to answer their calling, and assigning these reasons, this Court has refused to interfere in the moderation process.*”

12. Learned Counsel further submits that the present case has arisen for the recruitment process of 56th to 59th Joint Combined Competitive Examination. He further submits that the process of selection has already been completed and existing vacancy has been carry forwarded in the next vacancy and after this examination, other examination upto 69th has been started and completed. He also submits that in the writ petition, the deficiency of non-joinder or miss-joinder of necessary parties is also there as none of the representative of the candidate or successful candidate has been inserted in the column of the respondents.



13. After hearing the parties and particularly, after going through the rules which is annexed as Annexure-A to the supplementary counter-affidavit, it transpires to this Court that the Head Examiner has been assigned such power of moderation in three circumstances *i.e.*, random check up of 15 % of the copies, the candidates who obtained more than 60% marks and the candidates having less than 30% marks were the subject of moderation and moderation has to be made by the Head Examiner.

14. It also transpires to this Court in the light of judgment of Hon'ble Supreme Court of India in case of **Sanjay Singh & Anr. Vs. U.P. Public Service Commission, Allahabad & Anr.** Reported in (2007) 3 SCC 720 that the process of moderation has been accepted by the Hon'ble Supreme Court of India in which it has been held that each answer sheets is required to be moderated as well as in the light of the decision made by the Hon'ble Division Bench of this Hon'ble Court in case of **Prem Kumar Bhakta & Ors. Vs. the State of Bihar & Ors.** in C.W.J.C. No.9569 of 2013 in which vide order dated 03.01.2014, the stand has been taken by the BPSC that the said moderation and deduction of marks have been taken place prior to finalization of the result of main



examination and it is due to this reason, this Court finds that the deduction of marks by moderation of petitioner is not illegal, intentional or *malafide* rather it has been done in routine way.

15. It is due to this reason, this Court is not inclined to interfere in the examination process of BPSC, though sympathy is with the petitioner that he is unfortunate that in the moderation, his 10 marks has been deducted whereas he has required only 3 marks for final selection in the BPSC Examination.

16. With the aforesaid directions and observations, the present writ application stands dismissed.

(Dr. Anshuman, J.)

Prakashmani/-

AFR/NAFR	NAFR
CAV DATE	NA
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