

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3524 of 2024

1. Shabanam Kumari W/o Ashish Kumar, resident of Ward No. 15, Pahsara West, Pahsara Babhangama, P.S. - Nawkothe, District - Begusarai.
2. Raj Bhushan Singh, S/o Ram Naresh Singh, resident of Pachpokhari, P.S. - Baghaila, District- Rohtas.
3. Vivek Kumar, S/o Om Prakash Shah, resident of - Ward No. 28. Balua Bazar, P.O. and P.S. - Motihari, District - East Champaran.
4. Suman Kumar, S/o Mahendra Thakur, resident of Ward No. 04, Village - Alampur, P.O. and P.S.- Phesar, District - Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Education Department, Govt. of Bihar, New Secretariat, Patna.
2. The Additional Chief Secretary, Education Department, Govt. of Bihar, Patna.
3. The Chairman, Bihar Public Service Commission, Bihar, Patna.
4. The Secretary, Bihar Public Service Commission, Bihar, Patna.
5. The Examination Controller, Bihar Public Service Commission, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Shashi Bhushan Singh, Adv.
For the State	:	Mr.Additional Advocate General 13
For the BPSC	:	Mrs. Parul Prasad, Adv.
		Mr. Aditya Anand, Adv.
		Mr. Ankit Ranjan Adv.

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV JUDGMENT

Date : 29-05-2024

Heard learned counsel for the petitioners, learned counsel for the State and learned counsel for the B.P.S.C.

2. By filing the present writ application, the petitioners have prayed for the following reliefs:

(i) For issuance of an appropriate writ in the nature of Mandamus commanding and directing the respondent no.5 to publish the result of the petitioners after cross checking of OMR answer sheets, who had appeared in the examination for the post of



Teacher for Class-VI to Class-VIII pursuant to Advertisement No. 27/2023, as the petitioners applied in view of advertisement, admit cards were issued, examination was conducted but the OMR answer sheets of candidates applied for the Teacher for Class-IX to X have been cross examined, whereas the OMR answer sheets of petitioners applied for Teacher for Class-VI to VIII have not been examined, particularly when the candidates of both the categories have faced same situation after issuance of letter by the Bihar Public Service Commission Patna (hereinafter called as 'Commission') on 06.12.2023 and 07.12.2023 and further a direction to read down the instructions issued by the Commission dated 06.12.2023 by which the sequence of subjects has been instructed to change in view of law by the Hon'ble Apex Court in Civil Appeal No. 8822-8823 of 2022 dated 12.12.2022 by which it is held that after start of game, the Rules of game cannot be changed and further a direction to the respondent Commission to issue appointment letters, since all the petitioners have obtained marks above the cut-off marks in their respective category fixed by the Commission, as per final answer key issued by the Commission.

(II) For issuance of any other appropriate writ/writs, order/orders, direction/directions which the petitioners shall be found entitled under the facts and circumstances.

3. Learned counsel for the petitioners submits that an advertisement was published bearing Advertisement no.27/2023



dated 04.11.2023 by Bihar Public Service Commission Patna for appointment to the post of teacher (Class-VI to VIII) and for secondary school teacher (Class-IX to X). In clause-2 of the said advertisement, eligibility criteria has been fixed by which for class-VI to VIII, the candidates must have qualified CTET paper-II or BTET paper-II, apart from aforesaid qualification a candidate must have passed with two subject as details given in clause-2 (IV) for social science subject teacher. (Annexure-P/1)

4. Learned counsel further submits that all the petitioners have requisite qualification for the post of teacher class-VI to VIII and Class-IX to X except petitioner no.2 and they had applied as per eligibility. The Commission after due verification of the applications submitted by the petitioners issued admit card and uploaded the same on the website of the Commission. As per schedule, examination of Class- IX and X was conducted on 09.12.2023 and examination of Class- VI and VIII was conducted on 08.12.2023. The petitioners appeared in the examination. After appearing in the examination, the petitioners came to know that a notice was issued by the Commission on 01.12.2023 in which it has been informed to the candidates of Social Science category to select two subjects out of History, Geography, Economics and Political Science and out of that



atleast one subject either History or Geography was to be selected and it was also instructed to download admit card thereafter. (Annexure-P/3 of writ petition). Thereafter on 04.12.2023 another notice was uploaded on website mentioning that in selection of two subjects out of four History, Geography, Economics and Political Science, last chance is given for removal of defect. In the said notification, nothing is mentioned regarding change of serial of subject combination.

5. It is further submitted that the petitioners were not aware about the said notifications since they had focused on their potential for preparation of examination which was to be conducted on 08.12.2023 and 09.12.2023 (Annexure-P/4). It is further submitted that two days before the examination and five days after issuance of admit card again, a notice was issued by the Commission under the signature of respondent no.5 mentioning that in case a candidate selects either History or Geography can give reply in section-1 of OMR answer sheet in either of the subjects, whereas in section-II, the candidates can give answer to the subject of Geography, Economics and Political Science, in case they have not selected Geography as one of the subject for section-I. (Annexure-P/5)

6. It is further submitted that OMR answer sheet was



classified in three categories: Part-1, Part-II and Part-III. Part-1, language which was only for qualifying in nature, Part-II was general studies for all candidates, so far Part-III (Social Science) is concerned there are two sections i.e. Section-I and Section-II. The Commission by notice dated 06.12.2023, two days before examination, instructed to change the serial sequence of subjects. In section-I, in case, History is one of the subject, then the candidate had to give the answer of History subject in section-I and other subject in section-II. It is further made clear that by this notification, no difference has come in subject combination rather the serial of subject has only changed.

7. It is further submitted that the petitioner no.1 had opted section-I (Geography) and section-II (History), the petitioner no.2 had opted section-I (Geography) and section-II (History), the petitioner no.3 had opted section-I (Economics) and section -II (History) and the petitioner no.4 had opted section-I (Political Science) and section-II (History)

8. After examination, the Commission had issued answer key of all subjects including History, Geography, Economics and Political Science. Petitioner no.1, who is coming in the category of EWS Female category, checked the marks by which she had given 27 correct answers in Geography subject and 28



correct answers of History and after adding the marks of General Studies, she has scored marks 74 much above of cut-off i.e. 71 in EWS Female category, whereas the Commission has awarded only 36 marks to her, which is also evident from Annexure-P/6 of the writ application. Similarly, OMR answer sheets of petitioner nos.2, 3 and 4 have been evaluated. It so happened that the Commission has evaluated the answers of subject Geography, Economics and Political Science on the basis of answer key published by the Commission for the subject of History and answer given by all the petitioners in the subject of History has been evaluated from the answer key on different subject i.e. Geography, Economics and Political Science. All the petitioners have acquired marks as per final answer key issued by the Commission much above the cut-off marks fixed for the respective category, it can be clarified from Annexure P-7 of the writ application.

9. It is relevant to mention that the petitioners had opted Hons. Subject in section-I of Part-III and subsidiary in Section-II. It is further submitted that when the petitioners came to know that the serial of subject has changed, then they requested the Commission mentioning that they were not aware about the notice issued by the Commission since they had already



downloaded their admit cards and preparing for examination. They requested for cross evaluation for Class-VI to VIII and Class-IX to X. (Annexure-P/8 of the writ petition).

10. The first point for consideration is that after issuance of Admit Card, thereafter any change in rules by subsequent letter i.e. 06.02.2023 is fit to be quashed on the ground that after start of game, the rules of the game cannot be changed as laid down by the Hon'ble Apex Court in Civil Appeal No.8822-8823 vide Judgment dated 12.12.2022, but in the present case after issuance of admit cards, the instruction regarding change of sequence of subject is not permissible in the eye of law.

11. It is further submitted that after realising the ground reality, the Commission made cross evaluation of OMR answer sheets of the candidates for Class-IX to X (Social Science), but did not pay heed for the candidates of Class VI to VIII. Upon repeated requests, the Joint Secretary-cum-Examination Controller directed the petitioners to submit their grievances on B.P.S.C. portal and pursuant to the same, the petitioners submitted request letters within time for cross evaluation of their answer sheets and publication of result on different dates (Annexure-P/9 of the writ application).

12. It is further submitted that the candidates for Class-IX to



X were facing the same situation but their OMR answer sheets have been cross-examined resultantly they have obtained marks as per their performance in the examination, but the candidates for Class-VI to VIII have been deprived to be selected mere on the reason that their OMR answer sheets have not been cross examined with the respective answer key of concerned subject. Hence, the action of the respondent Commission is contrary to Article 14 of the Constitution.

13. A counter affidavit has been filed on behalf of the respondent nos. 3 & 4 in which it is stated that the Commission is a mere recommending body, entrusted with the role to publish the advertisements for appointment to different post, as per the requisition sent by the concerned Department of the Government, and abides by the Rules and Regulations framed by the State Government. The Commission did the same in the present case also. In pursuance of the requisition received from the Education Department, the Commission published Advertisement No. 27/2023 dated 04.11.2023 for the recruitment of 69,706 posts of School Teachers and 916 posts of Backward Class and Extremely Backward Class categories under the Welfare Department. As per the stipulations under the aforesaid Advertisement dated 04.11.2023, the last date for the



submission of online application form was 25.11.2023. Thereafter, the Commission received an additional requisition of 1401 posts under the Scheduled Caste and Scheduled Tribe Welfare Department and thus the same was supplemented under the aforesaid Advertisement No. 27/2023, and thereafter was again re-published on 10.11.2023 with certain modification and clarification. Pursuant to the publication of the aforesaid advertisement, applications were received from the applicants by the Commission, wherein the petitioners applied for Class VI to VIII in subject of Social Science. Subsequently, the selection process was initiated and recruitment competitive examinations were conducted from 07.12.2023 to 15.12.2023 at the examination centres.

14. It is further submitted that the final result of different subjects under Advertisement No. 27/2023 has already been declared and consequent thereto, district has been allocated the successful candidates and as the selection process has been completed and necessary appointment in terms of the Rules has already been made, hence the present writ application has become infructuous.

15. It is further submitted that predominantly, it is no more *res integra* that if there is no provision entitling a candidate to



have an answer sheet re-evaluated under the Recruitment Rules, the Court cannot direct for re-evaluation of the answer sheet of a candidate, unless there are glaring infirmities, and the same has been settled in catena of decisions viz-a-viz ***Pramod Kumar Srivastava vs. Chairman, Bihar Public Service Commission***, reported in (2004) 6 SCC 714, ***Secretary, West Bengal Council of Higher Secondary Education V. Ayan Das***, reported in (2007) 8 SCC 242, ***Ran Vijay Singh & Ors. Vs. State of Uttar Pradesh & Ors.***, reported in (2018) 2 SCC 357 and ***Tanya Mallick v. The Registrar General of the High Court of Delhi [Writ Petition (Civil) No. 764 of 2017]***.

16. It is further submitted that this Court vide order dated 12.03.2024 in the case of ***Ashish Ranjan Vs. The State of Bihar and Ors.*** bearing Civil Writ Jurisdiction Case No. 14828 of 2023 has been pleased to hold that in the absence of any provision for re-evaluation of the answer sheet, the individual perceptions of a candidate of what is correct and what is wrong cannot regulate a selection process, especially where the subject-experts evaluate the answer sheets (Annexure-R/1).

17. Considering the arguments of the parties and from bare perusal of record, it is admitted fact that the OMR sheets of candidates for Class-IX to X have been cross-examined,



whereas the petitioners for Class-VI to VIII have been deprived to be selected for the mere reason that their OMR sheets have not been cross examined with the respective answer key of concerned subjects, which is totally unjustifiable and not in accordance with law as well as in violation of Article 14 as the concerned Authority examined the OMR sheets of candidates of Class IX to X, but similar treatment has not been given to the candidates of Class VI to VIII.

18. In such view of the matter, I deem it proper and in the interest of justice to direct the Commission to cross-examine the OMR Sheets of the deprived petitioners, who have applied for the post of Teachers for Class-VI to VIII pursuant to the Advertisement No. 27/2023 dated 04.11.2023 (Annexure-P/1), within a period of two weeks from the date of receipt/production of a copy of this order.

19. With the aforesaid observation and direction, this writ application stands allowed.

(Anjani Kumar Sharan, J)

divyanshi/-

AFR/NAFR	NAFR
CAV DATE	14.05.2024
Uploading Date	29.05.2024
Transmission Date	NA

