

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9164 of 2015

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Rajesh Kumaer Singh Son of Late Satnarayan Singh Resident of Village-
Hakam, P.S.- Siwan (Muffasil), Dist- Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Human Resources Department, Govt. of Bihar, Patna.
3. The Director, Primary Education, Bihar, Patna.
4. The State Project Director, Bihar Education Project, Beltron Bhawan, Patna.
5. The District Magistrate-cum-Chairman, District Executive Committee, Sarv Shiksha Abhiyan, Siwan.
6. The District Education Officer, Siwan.
7. The District Programme Officer, Primary Education and Sarv Siksha, Siwan.
8. The District Programme Officer, Establishment (Education), Siwan.
9. Rajeev Kumar, Son of Suresh Yadav Roll no. 207172, Peon-Cum- Night Guard, Bihar Education Scheme Office, Near Mahadeva, O.P. Mission Mahadeva, District- Siwan, PIN- 841226.
10. Jalandhar Shah, Son of Bangali Shah Roll no.- 20783, Peon Prakhand Sansadhan Kendra, Siwan, Sadar Malwiya Chauk, Mahadeva, Dist- Siwan, PIN- 841226.
11. Shrawan Kumar Soni, Son of Tarkeshwar Shah Roll no.- 207321, Peon-Cum- Night Guard, Prakhand Sansadhan Kendra, Goriyakothi, Dist.- Siwan, PIN- 841434.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 16137 of 2014

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1. Rajesh Kumar Singh son of Late Satnarayan Singh, Resident of Village Hakam, P.S.- Siwan Muffasil, Dist- Siwan
 2. Jagdish Prasad, Son of Bikhari Prasad, Resident of Village- Shyampur, P.O.- Madhopur, Barhariya, Dist- Siwan

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Human Resources Development Department, Govt. of Bihar, Patna
3. The Director, Primary Education, Bihar, Patna
4. The State Project Director, Bihar Education Project, Beltron Bhawan, Patna



5. The District Magistrate-cum-Chairman District Executive Committee, Sarv Shiksha Abhiyan, Siwan
6. The District Education Officer, Siwan
7. The District Programme officer, Primary Education and Sarva Shiksha, Siwan
8. The District Programme Officer, Establishment Education, Siwan
9. Rajeev Kumar son of Suresh Yadav, Roll No. 207172 Peon-cum-Night Guard, Bihar Education Scheme Officer, Near Mahadeva, O.P. Mission Mahadeva, District Siwan, PIN-841226.
10. Jalandhar Shah son of Bangali Shah, Roll No. 20783, Peon Prakhand Sansadhan Kendra, Siwan, Sadar Malwiya Chauk, Mahadeva, Dist-Siwan, PIN-841226.
11. Shrawan Kumar Soni, son of Tarkeshwar Shah, Roll No. 207321 Peon-cum-Night Guard, Prakhand Sansadhan Kendra, Goriyakothi, Dist-Siwan, PIN-841434.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 9164 of 2015)

For the Petitioner/s : Mr. Randhir Kumar, Advocate
For the B.E.P.C. : Mr.Mr. Girijesh Kumar, Advocate
For Pvt. Respondents : Mr. Santosh Kumar Singh, Advocate
For the State : Dr. Mankeshwar Tiwari, AC to AAG 3

(In Civil Writ Jurisdiction Case No. 16137 of 2014)

For the Petitioner/s : Mr. Randhir Kumar, Advocate
For the B.E.P.C. : Mr. Girijesh Kumar, Advocate
For the Pvt. Respondents: Mr. Santosh Kumar Singh, Advocate
For the State : Mr. Kumar Kamal Nayan, AC to SC 28

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT

Date : 22-03-2024

1. Heard learned counsel for the parties concerned.
2. The petitioners have filed the present writ applications
for a direction to the respondents to hold proper enquiry in the



matter of appointment on the post of Peon -cum- Night Guard under the Bihar Education Project (Sarv Shiksha Abhiyan), Siwan inasmuch as candidates were appointed by adopting corrupt practices and contrary to the advertisement. The petitioners have also prayed for re-evaluation of the answer books of the examination held for appointment on the post of Peon -cum- Night Guard and to appoint the petitioners if they are found entitled to be appointed on the said post.

3. Learned counsel for the petitioners submits that the petitioners were denied appointment by adopting unfair means by the Selection Committee inasmuch as the respondent nos. 9 to 11 were wrongly given marks by the examiner and further they have been appointed on the basis of forged certificates.

4. The petitioners took this Court to Annexure -6 of the CWJC No. 9164 of 2015, which is the answer sheet of the examination for appointment of Peon -cum- Night Guard and submits that despite giving wrong answers to question no. 11, the private respondent no. 9 has been given one mark; whereas the petitioner, was not granted marks against the correct answer of the same question. He further submits that even the respondent no. 9 has exercised two options of multiple answers, but marks have been given in order to support the candidate by



the examiner. He also pointed out to Annexure- 9 to CWJC No. 9164 of 2015, which is the answer -sheet of respondent no. 11 and submits that evaluation of the answers were not done properly and calculation of the marks awarded to the private respondent no. 11 is also not correctly done and he should not have got 11.75 marks out of 30.

5. It is an admitted position that the petitioner has got 29.00 marks against the marks of selected candidates of 35.70, 34.20, 29.70, 29.35 & 29.25. The difference between the marks obtained by the petitioner and the selected candidates is very narrow.

6. It is also the contention of the petitioners that if marking had been done properly by the examiner and marks upon wrong answer(s) had not been given to the selected candidates, the petitioner would have been selected on the advertised post.

7. On the other hand, learned Counsel for the Bihar Education Project and the private respondent nos. 9 to 11 argued that the petitioners fall under Backward Class category, whereas, two of the private respondents were appointed under general category. As such, the petitioners cannot raise a grievance regarding marks awarded to general category candidates vis-a-vis reserved category candidates.



8. Learned counsel for the respondent next submits that the post in question upon which appointment was made was not a statutory post and appointment was made on contract basis under time bound scheme, as such, the writ applications are not maintainable. He further submits that answer - sheets of the appointed candidates have not been preserved, as such, it would be difficult to verify the answers given by the candidates and marks awarded.

9. In reply, learned counsel for the petitioners submits that the respondent nos. 9 to 11 have applied under Backward Class category, but respondent nos. 9 and 10 have been given wrong marks during the course of evaluation of their answer sheets, as such, they have been appointed under general category and respondent no. 11 has been appointed under Backward Class category.

10. Learned counsel further submits that appointment process was initiated in the year 2014 and completed in the year 2014 itself. Referring to Annexure -D to the counter affidavit, learned counsel submits that as per resolution of the Government in General Administration Department dated: 17-09-2018 the services of the appointed employees have been extended up to sixty years subject to other conditions mentioned



in the appointment letter.

11. I have heard learned counsel for the parties and perused the materials on record. The present writ applications are pending before this court since 2014-2015. The petitioners have highlighted irregularity in the process of appointment and examination, more particularly, the contention of the petitioners is that evaluation was not done properly by the respondents in order to favour certain candidates including the private respondent nos. 9, 10 & 11. The petitioners have attached the answer sheets of the respondent nos. 9, 10 & 11 including the answer-sheet of the petitioners obtained under the Right to Information Act in the year 2014.

12. The Hon'ble Supreme Court in a judgment rendered in Civil Appeal No. 9872 of 2014 (Chief General Manager, B.S.N.L. & Ors. versus M.J. Paul and Ors.) dated 26th April, 2023 has observed that directions interfering with the examination process and mandating the process of re-evaluation or sample evaluation and then recasting of merits, could not have been issued.

13. In paragraph no. -7 of the aforesaid judgment the Hon'ble Supreme Court has quoted the case of Dr. NTR University of Health Sciences vs. Dr. Yerra Trinadh & Ors.



(2022 SCC OnLine SC 1520) in which the Apex Court after referring to various previous decisions, thoroughly disapproved the process of the Court calling for answer sheets for satisfying as to whether there was a need for re-evaluation or not and thereafter, issuing directions for re-evaluation”. Paragraph no. – 9 of the Dr. NTR University Case (Supra) has been quoted which is re-produced hereunder:-

“9. Applying the law laid down by this Court in the aforesaid decisions to the facts and circumstances of the case on hand, we are of the opinion that the High Court was not at all justified in calling the record of the answer scripts and then to satisfy whether there was a need for re-evaluation or not. As reported, the High Courts are calling for the answer scripts / sheets for satisfying whether there is a need for re-evaluation or not and thereafter orders / directs re-evaluation, which is wholly / impermissible. Such a practice of calling for answer scripts / answer sheets and thereafter to order re-evaluation and that too in absence of any specific provision in the relevant rules for re-evaluation and that too while exercising power under Article 226 of the Constitution of India is disapproved.”

14. The Apex Court has held that if at all anything of such a nature is to be examined with reference to the instructions said to have been issued by the Government, the only appropriate course for the High Court was to leave it for the authorities



concerned to examine the issue.

15. The petitioners have highlighted the discrepancy in the examination process in reference to the answer- sheets brought on record by them by way of Annexure – 4 of the main writ petition; in the rejoinder paragraph no. 10 (page no. -85), paragraph no. 11 (page no. 86), Annexure – 6 (page no. 91 - 92) and Annexure - 9 (page nos. 100 & 101) of the I.A. No. 2 of 2023.

16. Since the complaints of the petitioners are regarding illegality, favouritism and nepotism in the process of examination and the examination for selection was conducted by the district authorities including the District Magistrate, Siwan and the District Magistrate, Siwan is the Chairman of the District Executive Committee of Sarv Shiksha Abhiyan, Siwan, as such, this Court feels it expedient and appropriate to direct the District Magistrate- cum- Chairman, District Executive Committee, Sarv Shiksha Abhiyan, Siwan to examine the contention of the petitioners at least in reference to the answer sheets available on record and other records / answer sheets available in the Establishment Section of the district and take appropriate decision within a reasonable time frame in accordance with law.



17. With the aforesaid observation and direction, both the applications stand disposed of.

(Anil Kumar Sinha, J)

Prabhakar Anand /
praful /-AFR

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	02-04-2024
Transmission Date	NA

