

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.617 of 2022

In

Civil Writ Jurisdiction Case No.2368 of 2018

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Anil Kumar S/o Late Hira Prasad, Resident of Ward No.- 12, At + P.O.- Mangalpura Via Narainpur (Bagaha-2), Police Station- Patkhauri O.P., District- West Champaran, Pin- 845105.

... .. Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Principal Secretary, Home Department, Govt. of Bihar, Patna.
4. The Bihar Public Service Commission, through its Secretary, Bailey Road, Patna.
5. The Chairman, Bihar Public Service Commission, Bailey Road, Patna.
6. Mr. Kanhaiya Prasad (Roll No. 105987), Son of not known to the appellant Presently posted as Assistant Prosecution Officer, Darbhanga.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Kumar Brijnandan, Advocate Dr. Pratyush Kumar, advocate
For the Respondent/s	:	Mr. P.K. Verma (AAG-3) Mr. Sanjay Kumar Ghosarvey, AC to AAG-3
for the BPSC	:	Mr. Sanjay Pandey, Advocate Mr. Vikash Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 04-03-2024

The appeal arises from a judgment of a learned Single Judge which rejected the writ petition seeking appointment to the post of Assistant Prosecution Officer; on the ground of discrepancies in awarding the marks in the written examination



conducted. The writ petition was dismissed both on the aspect of delay and also finding no merit in the contentions raised.

2. The recruitment commenced with Advertisement No. 39/2009 as issued by the Bihar Public Service Commission (for brevity 'the Commission'). The final result was published on 16.11.2016 and the names of successful candidates were recommended on 08.12.2016. The petitioner made an application under the Right to Information Act (for brevity 'RTI' Act') on 27.09.2017 and in response to the query answer-books were dispatched to him on 14.12.2017. It is based on the correction made in the mark awarded for one question that the petitioner approached this Court. The petitioner had a total of 337 marks and was a member of the Extremely Backward Community. The last person who got selected also had 337 marks. The petitioner submits that if he obtained that one mark, which was reduced subsequently by cutting of the mark awarded by the examiner, he would have a total of 338 marks which would have definitely secured him the post.

3. The learned Single Judge found that the writ petition was delayed since the RTI application was filed after ten months. The delay created third party rights in so far as the persons appointed. As far as the reduction of marks, there was a



specific power conferred on the Head Examiner to re-examine the marks in the process of evaluation; which was the reason for reducing one mark. The learned Single Judge hence dismissed the writ petition.

4. Before us, learned counsel for the petitioner Shri Kumar Brijnandan assailed the judgment on two grounds, one that the mark could not have been reduced by the Head Examiner and the reduction of mark was not authenticated by putting initials. It is also pointed out that the verification of the answer-sheet would show that when the total marks were reduced, there was no initial put. It is also submitted that the petitioner had immediately filed an RTI application on 08.12.2016 to which he did not get a proper reply. This was the reason for his second application.

5. Learned Standing Counsel for the Commission Shri Vikash Kumar pointed out that the instructions to the Head Examiners and Examiners specifically confer the power to correct the marks on a re-evaluation by the Head Examiner. It is also pointed out that wherever the correction was made it was initialed. The learned Standing Counsel would also apprise this Court that after the subject selection there were five selections carried out, the advertisements of which were issued in the years



2010, 2011, 2013 and 2020.

6. We called for the original answer paper which was produced before us. We also looked at the instructions to Head Examiners and the Examiners. Clause (3) of the instructions indicates that the Head Examiner has to invariably examine all answer books having more than 60% marks and less than 30% marks. Twenty per cent of the total answer books should also be examined and the Head Examiners are also empowered to make necessary corrections in the marks. There is also a provision for the Head Examiner at his discretion to examine all the answer books and make corrections therein.

7. In the present case, the petitioner has obtained 88 marks out of 100 and hence the Head Examiner was obliged to re-evaluate the answer-book. We see that for Question Nos. 4(a) and 4(b), the Examiner had given him 12+6 marks and for 4(b) the Head Examiner had reduced the 6 marks to 5. At Page No. 19 of the answer book, the marks put by the examiner in red ink was struck off and in green ink the Head Examiner has reduced 6 to 5 and 18 to 17. Both these corrections have been authenticated with due initials. Even at the place of totaling of marks when 18 was reduced to 17, it has been initialed. Eighty seven marks are entered as total in green ink after scoring off 88



put by the Examiner in red ink. The Head Examiner has also signed the document in green ink at the place the total marks are entered.

8. Learned counsel submits that there is no initial put at the place where the totaling of marks was done and that once the signature was put he could not have corrected the marks.

9. As we noticed above, the Examiner entered the marks in red ink and the Head Examiner, at the first page where the marks were totaled, reduced the mark for the 4th question to 17 after scoring off 18; both the scoring off and the new marks entered being in green ink. It was also initialed at the place where the correction was made. Then 87 was shown as the total marks after which the signature was also put. We cannot presume that the total marks were entered after the signature was put considering the power to re-evaluate. The presumption is to the contrary; that the signature was put after the correction. We find absolutely no infirmity in the marks having been reduced which is in accordance with the instructions.

10. In so far as the question of delay is concerned, as we noticed, the result was published on 16.11.2016. An RTI application was submitted by the petitioner on 08.12.2016, to which a reply was received on 20.01.2017. The petitioner's



counsel submits that it was not a proper reply; in which event the petitioner ought to have filed an appeal. The petitioner rested contend after the reply was received and again after eight months filed a fresh application under the RTI Act on 27.09.2017; in response to which query he received the copy of the answer-book. The delay also stands against the petitioner.

11. We find absolutely no reason to interfere with the judgment of the learned Single Judge and we dismiss the appeal leaving the parties to suffer their respective costs.

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

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

P.K.P./-

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