

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.639 of 2024

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Santosh Kumar Son of Panna Lal Prasad, Resident of Village - Noneya Sakal
Dipi Tola, Ward No. - 4. Noniya, P.O. - Noniya, P.S. - Paharpur, District - East
Champanan.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Additional Chief Secretary, Department of Education, Govt. of Bihar,
Patna.
4. The Director, Secondary Education, Government of Bihar, Patna.
5. The Bihar Public Service Commission, through its Chairman, 15, Jawaharlal
Nehru Marg, Bailey Road, Patna.
6. The Chairman, Bihar Public Service Commission, Bihar, Patna.
7. The Secretary, Bihar Public Service Commission, Bihar, Patna.
8. The Additional Secretary- cum- Examination Controller (T.R.E.), Bihar
Public Service Commission, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Jagjit Roshan, Adv. Mr. Om Prakash Singh, Adv. Mr. Anjani Kumar, Adv. Mr. Jayant Kumar Raj, Adv. Mr. Apul, Adv. Mr. Shashank Shekhar, Adv.
For the State	:	Mr.Addl. Advocate General (13)
For the BPSC	:	Ms. Parul Prasad, Adv. Mr. Aditya Anand, Adv.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 08-09-2025

Heard the parties.

2. The challenge in the present writ petition is made to the Important Notice dated 12.12.2023 issued under the signature of the Additional Secretary-cum-Examination Controller (T.R.E.), Bihar Public Service Commission (hereinafter referred to as 'Commission'), whereby the objection filed by the petitioner has been rejected in a mechanical manner.



3. Without delving into the merit of the case, in pursuant to the order of this Court, a supplementary counter affidavit has been filed. A fair stand has been taken by the Commission and it has been apprised to this Court that the recruitment of teacher for Class 9 and 10, subject Social Science, TRE I consist of 03 parts. Part I, General Studies, question no. 01 to 40, Part-II & III- Social-science, question no 41 to 120. The Petitioner has opted History subject for question no. 41 to 80 (Part-II) and Political Science subject for question no. 81 to 120 (part-III). The final answer key of question no. 115 (political science) was published as option C but due to a manual error, the OMR scanning company had fed the answer as D for question no. 115. Due to this error the petitioner had obtained 71 marks in Social science paper. It has been submitted that if it is not for the manual error, the petitioner would have gotten 01 marks for question no. 115 of political science, as he has circled the right answer.

4. It is not in dispute that the cut off marks under BC category was fixed as 72 marks and after making correction in the OMR sheet, if the same would have been added, the petitioner shall also be entitled to have 72 marks, which is the last cut off marks under the BC category.



5. Mr. Jagjit Roshan, learned Advocate for the petitioner referring to the stand of the Commission has submitted that the identically situated persons, who have qualified and secured the cut off marks under BC category for the post of Assistant Teacher in terms of Advertisement No. 26/23, have already been selected and appointed against their respective posts long back in the year 2023; however, the petitioner has been deprived because of his no mistake and, as such, in all circumstances he should be also accorded all the benefits as has been extended to other identically situated persons as for the fault of OMR scanning company or the Commission, the petitioner cannot be blamed. To bolster up the aforesaid submission, reliance has also been placed on a Two-Judges decision of the Apex Court in ***State of Maharashtra vs. Jagannath Achyut Karandikar [1989 Supp (1) SCC 393]***, the relevant being at paragraph no. 10 thereof. Further reliance has been placed on a Bench decision of this Court in ***Ganpati Singh vs. The State of Bihar & Ors. [2011(4) PLJR 766]***, the relevant being at paragraph nos. 5 and 6.

6. Ms. Parul Parasad, learned Advocate for the Commission fairly submitted that a *bonafide* stand has been taken by the Commission and after proper enquiry it has been



found that on account of mistake carried out by the OMR Scanning Company, the petitioner has been deprived from one mark. Had the petitioner been given one mark he would have certainly been qualified after getting cut off marks.

7. Having heard the submissions set forth by the learned Advocates for the respective parties and taking note of the stand of the Commission as noted hereinabove, this Court directs the Commission to make proper recommendation in favour of the petitioner for appointment to the post of Assistant Teacher (Class 9 and 10) in terms with the advertisement No. 26/23, preferably within a period of four weeks.

8. On receipt of the recommendation, the respondent Nos. 3 and 4 shall take all necessary recourse to appoint the petitioner as Assistant Teacher (Class 9 and 10) and post him in any suitable School, in accordance with law, within a further period of six weeks.

9. Before proceeding further, it would be worth benefiting to observe that though an employee had no right to be appointed in pursuance of the recommendation of the Commission but simultaneously the respondents had no right to deny the same without any justification in law. In essence, the stand of the respondents is that the fault is theirs, the benefit



shall be theirs. In the case of ***Ganpati Singh*** (supra), on account of wrong application of new reservation policy which came into effect prospectively; nonetheless the appointment was sought to be denied, the Court while holding that the petitioner is deemed to be appointed on the date that the last person junior to him came to be so appointed in pursuance of the recommendation also held the services of the petitioner will be reckoned as pensionable under the old provision. The Bench of this Court held that once the Court holds that the appointment was delayed at the behest of respondents wrongly and not for any reason attributable to the petitioner, he is entitled to all the benefits as has been accorded to the last person junior to him.

10. The law is well settled that no person can put forward his own fault in defence to a right asserted by the other party. A person cannot say that the party claiming right is deprived of that right because “I have committed a default and right is lost because of that default [vide: ***All India Groundnut Syndicate Ltd. vs. Commissioner of Income Tax, 1953 SCC OnLine Bom 90***]

11. It would also be relevant to take note of the decision of the Apex Court in the case of ***State of Maharashtra*** (supra) where the Court unequivocally held that making the



employees to suffer adversely for the default or lapses on the part of the Government itself, would be unjust, unreasonable and arbitrary and in transgression of Article 14 of the Constitution of India. The Court justified the relaxation in order to avoid undue hardship to a class of employees.

12. Now coming to the case in hand, it is needless to observe that since there is no laches on the part of the petitioner and thus, in the opinion of this Court, he shall also be entitled to all notional benefits including the seniority with effect from the date when other identically situated persons were appointed subject to verification of the documents.

13. Accordingly, the impugned Important Notice dated 12.12.2023 issued under the signature of the Additional Secretary-cum-Examination Controller (T.R.E.), Bihar Public Service Commission as contained in Annexure-P/10 is hereby set aside. The writ petition stands allowed with the aforesaid observation and direction.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	
Uploading Date	12.09.2025
Transmission Date	

