

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1835 of 2021

1. Swati Sangam Wife of Aditya Kumar Resident of Village- Shankarpuri, P.S.- Satpur, P.O.- Muzaffarpur, District- Muzaffarpur.
2. Nitu Kumari Wife of Sujeet Kumar Resident of Village- Shivraha Chaturbhuj, P.S.- Jhapaha, District- Muzaffarpur.
3. Pinki Kumari Wife of Naveen Kumar Gaurav Resident of Village- Manjhaulia, P.S.- Jhapaha, District- Muzaffarpur.
4. Vineet Kumar Son of Ramesh Chandra Sharma Resident of Swami Shajanand Nagar, P.S.- Sadar, District- Muzaffarpur.
5. Pushpanjli Kumari Daughter of Dharikshan Sah Resident of Village- Hathauri, P.S.- Hathauri, District- Muzaffarpur.
6. Vandana Kumari Wife of Avani Kumar Niraj Resident of Village- Ward No. 10 Chakdonai, P.S.- Runnisaipur, District- Sitamarhi.
7. Ram Pravesh Kumar @ Ram Pravesh Son of Kishori Sah Resident of Village- Daud Chhapra, P.S.- Minapur, District- Muzaffarpur.
8. Archana Kumari Wife of Ram Sujeet Resident of Village- West of Akhara Ghat, P.S.- Akharaghat, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The Director, Secondary Education, Department of Education, Government of Bihar, Patna.
4. The Secretary, Bihar School Examination Board, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Dinu Kumar, Advocate Ms. Ritika Rani, Advocate
For the Respondent/s	:	Mr.P. K. Shahi, Sr. Advocate Mr. Gyan Shankar, Advocate
For the State	:	Mr. Kameshwar Kumar, GP-17

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 17-03-2025

Heard Mr. Dinu Kumar along with Ms. Ritika Rani,



learned counsels appearing on behalf of the petitioners; Mr. P. K. Shahi, learned Senior Counsel along with Mr. Gyan Shankar, learned counsel for the Bihar School Examination Board and Mr. Kameshwar Kumar, learned GP-17 for the State.

Re.: I.A. No. 01 of 2024

2. Learned counsel appearing on behalf of the petitioner by filing the present interlocutory application seeks amendment in Para-1 of the writ petition by adding additional relief as stated in Para-1 of the present interlocutory application.

3. Having considered the information contained in the interlocutory application and the grounds mentioned therein and the affidavit, I find that there are sufficient reason to allow the amendment of the prayer as prayed in Para-1 of the writ petition by adding additional relief as stated in Para-1 of the interlocutory application.

4. I.A. No. 01 of 2024 is allowed.

Re.: C.W.J.C. No. 1835 of 2021

5. Petitioners have *inter alia* prayed for following reliefs in the paragraphs No.1 of the writ petition:-

"A. For commanding the respondents to award marks to the petitioners for the eight wrong multiple choice questions and answers asked in the examination of Physical Education and Health Instructor Ability Test, 2019 held on 16.12.2019 against the advertisement no. PR/373/2019 as contained in Annexure 1 for the post of Physical Education and Health Instructor.



B. For directing the respondents to take decision upon the representation made by the petitioners to the Director, Bihar School Examination Board, Patna on 22.10.2020 as contained in Annexure.9 for awarding eight marks for setting wrong questions.

C. For directing the respondents to constitute an expert committee and evaluate/ examine the question no 18,28,33,68,75,93,94 and 97 in the Question Set Code G, question no. 13,33,34,42,48,70,73 and 93 in the Question Set Code F, question no. 3,10,23,33,63,64,77 and 98 in the Question Set Code H, question no. 2,8,28,35 and 79 in the Question Set Code I, question no. 18,40,58,62,68,69,73 and 98 in the Question Set Code D, question no 33,48,55,63,78,82,98 and 99 in the Question Set Code C, question no. 7,23,38,48,49,58,73 and 95 in the Question Set Code A, question no. 3,8,13,14,27,45,83 and 88 in the Question Set Code J as the options given in multiple choice questions in the aforesaid questions were wrong in the examination of Physical Education and Health Instructor Ability Test, 2019 and award marks to the petitioners of wrong questions/ wrong multiple choice answers of eight questions.

D. Also for necessary relief/ reliefs, relief/reliefs, order/ orders, direction/directions which the petitioner is entitled in the eye of law."

Thereafter the petitioners filed I.A. No.1 of 2024 for modification of the prayer made in the writ application, *inter alia*, seeking following relief(s):

"i For quashing the final merit list dated 09/05/2022 issued under signature of Block Development Officer, Minapur, Muzaffarpur for appointment to the post of Physical Education and Health Instructor against Advertisement no. PR/373/2019 whereby 220 candidates were declared successful at Block Minapur Muzaffarpur.

ii. Also for quashing the merit list dated 13/05/2023 issued under signature of Block Development Officer, Aurai, Muzaffarpur for appointment to the post of Physical Education and Health Instructor against Advertisement no. PR/373/2019 whereby 15 candidate were declared successful at Block Aurai Muzaffarpur.



iii. Also for impleading Sujata Kumari aged about 42 years, Female, Wife of Harendra Prasad Singh, Female Resident of Village-Badhahi, P.S.-Hathauri, P.O.- Badhai District-Muzaffarpur (EWS category) as respondent no. 5

iv. Also for impleading Reena Kumari aged about 33 years, Female, Daughter of Lal Babu Rai, Female, Resident of Village- Shivraha Chaturbhuj, P.S. Jhafa, District-Muzaffarpur (BC category) as respondent no. 6

v. Also for impleading Kanchan Kumari aged about 32 years, Female, Daughter of Mahindra Singh, Female, Resident of Village-Muradpur Bangra, P.S. Khulauli, District-Muzaffarpur (BC category) as respondent no. 7.

vi. Also for impleading Kamini Kumari aged about 43 years, Female, Daughter of Nawal Kishor, Female, Resident of Village-Tara Jivar, P.S-Param Jivar, District-Muzaffarpur (UR category) merit position at sl 208 as respondent no. 8.

vii. Also for impleading Manoj Kumar aged about 37 years, Male, Son of Ram Nath Thakur, male, Resident of Village-Gangti, P.O-Jhafa, District-Muzaffarpur (EBC category) merit position at sl 213 as respondent no. 9.

viii. Also for impleading Salita Kumari aged about 31 years, Female, Wife of Pradeep Bhagat, Female, Resident of Village- Raghavpur, P.O.-Raghavpur, District-Muzaffarpur (BC category) merit position at sl no.215 as respondent no. 10.

ix. And also for necessary reliefs, order/orders, direction/directions for which Petitioner is entitled in the eye of law."

6. Mr. Dinu Kumar, learned counsel appearing on behalf of the petitioners submitted that the moot question to be decided in the present writ petition is, as to whether, the respondents, which is an examining body, is duty bound to constitute expert committee for evaluation of wrong question and wrong answers given in questions no.18, 28, 33, 68, 75, 93, 94 and 97 in the question Set Code G, questions no. 13, 33, 34,



42, 48, 70, 73 and 93 in the Question Set Code F, questions no. 3, 10, 23, 33, 63, 64 77 and 98 in the Question Set Code H, question no. 2,8,28,35 and 79 in the Question Set Code I, question no. 18,40,58,62,68,69,73 and 98 in the Question Set Code D, question no 33,48,55,63,78,82,98 and 99 in the Question Set Code C, question no. 7,23,38,48,49,58,73 and 95 in the Question Set Code A, question no. 3,8,13,14,27,45,83 and 88 in the Question Set Code J and based on the wrong question, whether the respondents authorities were justified in publishing the result on the basis of wrong answer/wrong multiple choice answer in the examination of the physical education and health Instructor Ability Test, 2019?

7. Learned counsel submitted that the case of the petitioners is that the respondents are duty bound to publish the result afresh after awarding 8 marks for wrong question and incorrect multiple choice question framed by the Bihar School Examination Board (hereinafter referred to as the 'Board') in examination of physical education and health Instructor Ability Test, 2019 held on 16.09.2019. In support of his contention learned counsel has relied upon paragraphs no. 39 and 40 of the judgment passed by a Division Bench of this Court in case of ***Md. Nafis Nawaz Khan & Ors. Vs. the State of Bihar and Ors.***



reported in *(2016) 1 PLJR 667*, which *inter alia* are reproduced hereinafter:

"39. Keeping in mind that there has been numerous instances, where the questions have been found to be incorrect, giving rise to several litigations, we are compelled to issue general directions to the such statutory bodies or other agencies holding tests based on multiple-choice questions for the purpose of appointment to various posts under the State within the meaning of Article 12 of the Constitution of India or for the purpose of admission to various institutions managed or controlled by the State.

40. Having considered the matters in its entirety and in the interest of justice, we, therefore, direct as follows:-

(a) Immediately after a multiple choice question test is held, it shall be obligatory for the Committee or the Body, which conducts such a test, to undertake an exercise, before evaluating the answer-sheets, to ascertain whether the questions were correctly framed having definite answers. In case any objections are invited from the candidates and such objections are received, they must be looked into by a body of the experts, who would not only be required to ascertain whether the questions were correctly framed or not, but they would also be required to examine as to whether the model answers, prepared by the question-setter, are correct or not, for the purpose of correct evaluation of answer-sheets;

(b) If the structure of a question is found to be incorrect or if the option suggested is found to be incorrect or if there is any printing mistake of such a nature that the correct answer cannot be ascertained or more than one option is found to be correct, such a question must be rejected and should not be allowed to be evaluated;

(c) If, after publication of result, despite due care, it is found that the model key answer/answers suggested was/were incorrect, leading to wrong evaluation, remedial measures must be taken and



answer-sheets must be reevaluated with correct model answers."

8. Learned counsel has further relied upon paragraphs no.15 to 22 of the judgment rendered by the Apex Court in the case of ***Rajesh Kumar & Ors. vs. the State of Bihar & Ors.*** reported in ***(2013) 4 SCC 690*** which *inter alia* are reproduced hereinafter:

"15. There is, in our view, no merit in that contention of Mr Rao. The reasons are not far to seek. It is true that the writ petitioners had not impleaded the selected candidates as party-respondents to the case. But it is wholly incorrect to say that the relief prayed for by the petitioners could not be granted to them simply because there was no prayer for the same. The writ petitioners, it is evident, on a plain reading of the writ petition questioned not only the process of evaluation of the answer scripts by the Commission but specifically averred that the "model answer key" which formed the basis for such evaluation was erroneous. One of the questions that, therefore, fell for consideration by the High Court directly was whether the "model answer key" was correct. The High Court had aptly referred that question to experts in the field who, as already noticed above, found the "model answer key" to be erroneous in regard to as many as 45 questions out of a total of 100 questions contained in 'A' series question paper. Other errors were also found to which we have referred earlier. If the key which was used for evaluating the answer sheets was itself defective the result prepared on the basis of the same could be no different. The Division Bench of the High Court was, therefore, perfectly justified in holding that the result of the examination insofar as the same pertained to 'A' series question paper was vitiated. This was bound to affect the result of the entire examination qua every candidate whether or not he was a party to the proceedings. It also goes without saying that if the result was vitiated by the application of a wrong key, any appointment made on the basis thereof would also be rendered unsustainable. The High Court was, in that view, entitled to mould the relief prayed for in



the writ petition and issue directions considered necessary not only to maintain the purity of the selection process but also to ensure that no candidate earned an undeserved advantage over others by application of an erroneous key.

16. The decisions of this Court in Bharat Amratlal Kothari v. Dosukhan Samadkhan Sindhi [(2010) 1 SCC 234 : (2010) 1 SCC (Cri) 757] and State of Orissa v. Mamata Mohanty [(2011) 3 SCC 436 : (2011) 2 SCC (L&S) 83] , relied upon by Mr Rao are clearly distinguishable. The power of the court to mould the relief, according to the demands of the situation, was never the subject-matter of dispute in those cases. That power is well recognised and is available to a writ court to do complete justice between the parties. The first limb of the argument advanced by Mr Rao fails and is accordingly rejected.

17. Mr Rao next argued that even if the result of the first selection process was vitiated by the use of erroneous “model answer key” the Court had the option of either directing re-evaluation of the answer scripts on the basis of a correct key or a fresh examination. Out of the two options the former was, according to Mr Rao, better and ought to have served the purpose by not only saving considerable time but money and effort also. He urged that the Court could have removed the traces of any injustice or distortions in the selection process by directing re-evaluation of the answer scripts which would not only present the true picture of the merit of the candidates concerned but prevent any further litigation or prejudice to candidates on account of long lapse of time.

18. Appearing for Respondents 6 to 18 Mr Agrawal submitted that he had no objection to the order of the High Court being modified so as to replace “a fresh examination” by “re-evaluation of the answer scripts” on the basis of a correct key. The counsel for the Staff Selection Commission also submitted, on instructions, that the answer scripts had been preserved and could be subjected to a fresh evaluation. The learned counsel for the parties were further agreeable to the key as proposed by Dr (Prof.) C.N. Sinha and Prof. K.S.P. Singh of NIT, Patna forming the basis of any such re-evaluation by a suitable modification and deletion of Questions 6 and 46 which were found to be absurd and Questions 34 and 63 which were repeated as Nos. 74 and 93. They further agreed to the deletion of Question 100 the answer to which was not correctly printed.



19. The submissions made by Mr Rao are not without merit. Given the nature of the defect in the answer key the most natural and logical way of correcting the evaluation of the scripts was to correct the key and get the answer scripts re-evaluated on the basis thereof. There was, in the circumstances, no compelling reason for directing a fresh examination to be held by the Commission especially when there was no allegation about any malpractice, fraud or corrupt motives that could possibly vitiate the earlier examination to call for a fresh attempt by all concerned. The process of re-evaluation of the answer scripts with reference to the correct key will in addition be less expensive apart from being quicker. The process would also not give any unfair advantage to anyone of the candidates on account of the time lag between the examination earlier held and the one that may have been held pursuant to the direction of the High Court. Suffice it to say that the re-evaluation was and is a better option, in the facts and circumstances of the case.

20. That brings us to the submission by Mr Rao that while re-evaluation is a good option not only to do justice to those who may have suffered on account of an erroneous key being applied to the process but also to the writ petitioners, Respondents 6 to 18 in the matter of allocating to them their rightful place in the merit list. Such evaluation need not necessarily result in the ouster of the appellants should they be found to fall below the "cut-off" mark in the merit list. Mr Rao gave two reasons in support of that submission. Firstly, he contended that the appellants are not responsible for the error committed by the parties in the matter of evaluation of the answer scripts. The position may have been different if the appellants were guilty of any fraud, misrepresentation or malpractice that would have deprived them of any sympathy from the court or justified their ouster. Secondly, he contended that the appellants have served the State efficiently and without any complaint for nearly seven years now and most of them, if not all, may have become overage for fresh recruitment within the State or outside the State. They have also lost the opportunity to appear in the subsequent examination held in the year 2007. Their ouster from service after their employment on the basis of a properly conducted competitive examination not itself affected by any malpractice or other extraneous consideration or misrepresentation will cause hardship to them and ruin their careers and



lives. The experience gained by these appellants over the years would also, according to Mr Rao, go waste as the State will not have the advantage of using valuable human resource which was found useful in the service of the people of the State of Bihar for a long time. Mr Rao, therefore, prayed for a suitable direction that while re-evaluation can determine the inter se position of the writ petitioners and the appellants in these appeals, the result of such re-evaluation may not lead to their ouster from service, if they fell below the cut-off line.

21. There is considerable merit in the submission of Mr Rao. It goes without saying that the appellants were innocent parties who have not, in any manner, contributed to the preparation of the erroneous key or the distorted result. There is no mention of any fraud or malpractice against the appellants who have served the State for nearly seven years now. In the circumstances, while inter se merit position may be relevant for the appellants, the ouster of the latter need not be an inevitable and inexorable consequence of such a re-evaluation. The re-evaluation process may additionally benefit those who have lost the hope of an appointment on the basis of a wrong key applied for evaluating the answer scripts. Such of those candidates as may be ultimately found to be entitled to issue of appointment letters on the basis of their merit shall benefit by such re-evaluation and shall pick up their appointments on that basis according to their inter se position on the merit list.

22. In the result, we allow these appeals, set aside the order passed by the High Court and direct that:

22.1. Answer scripts of candidates appearing in 'A' series of competition examination held pursuant to Advertisement No. 1406 of 2006 shall be got re-evaluated on the basis of a correct key prepared on the basis of the report of Dr (Prof.) C.N. Sinha and Prof. K.S.P. Singh and the observations made in the body of this order and a fresh merit list drawn up on that basis.

22.2. Candidates who figure in the merit list but have not been appointed shall be offered appointments in their favour. Such candidates would earn their seniority from the date the appellants were first appointed in accordance with their merit position but without any back wages or other benefit whatsoever.

22.3. In case the writ petitioners, Respondents 6 to 18 also figure in the merit list after re-evaluation of the answer scripts, their



appointments shall relate back to the date when the appellants were first appointed with continuity of service to them for purpose of seniority but without any back wages or other incidental benefits.

22.4. Such of the appellants as do not make the grade after re-evaluation shall not be ousted from service, but shall figure at the bottom of the list of selected candidates based on the first selection in terms of Advertisement No. 1406 of 2006 and the second selection held pursuant to Advertisement No. 1906 of 2006.

22.5. The needful shall be done by the respondents, State and the Staff Selection Commission expeditiously but not later than three months from the date a copy of this order is made available to them."

9. On merits, learned counsel submitted that on 22.08.2019, an Advertisement No.PR/373/2019 was published inviting application for physical education and health Instructor Ability Test, 2019 for appointment of physical education and health Instructor in Middle School as per clause 14(B) of the advertisement. It was specifically stipulated that the question will be in two parts, containing 50 marks each, every question will contain 1 mark with four multiple choice option and candidates were required to opt for correct answer. The advertisement has been brought on record by way of Annexure 1 to the writ petition. The examination was held on 16.12.2019 and result was published on 11.02.2020 and Board had issued notice on 14.07.2020 regarding wrong option provided in question paper in set F, G, H, I and J. The same has been brought on record by way of Annexure 7 to the writ petition. From perusal



of the said notice, it appears that “the subject expert” based on their answer key, fresh result will be published on 16.07.2020. Learned counsel has further tried to clarify that due to inadvertence in place of subject expert, incorrectly, in paragraph no.17 it has been stated that the expert committee will publish the result and to that extent, he seeks that the same may be ignored. Learned counsel further informed that the results were published on 16.07.2020 after revision by the Bihar School Examination Board (hereinafter referred to as “the Board”). The petitioner no.1 secured 44 marks after revision 1 mark was granted. Petitioner no.2, who is of backward category class, secured 44 marks and without any corrective measure taken, despite revision petitioner no.3 scored 43 marks which included 1 mark extra deducted after revision. Petitioner no.6 who belongs to economically weaker section, scored 43 marks without any change in the mark despite revision in the said Ability Text, 2019. Petitioners being aggrieved as their results were not revised, they filed representation on 22.10.2022 before the Director of the Board for considering their case in respect of those wrong questions which have been detected above.

10. Learned counsel further submitted that the objection was made by the petitioners within time on the



website of the Board but till date grievance of the petitioners has not been redressed. Further case of the petitioners is that they had attached the details of the incorrect multiple questions with option provided in the examination of physical education and health Instructor Ability Test, 2019. Learned counsel informs that in paragraph no.12, table illustrates the details of question number, question, irregularity, correct answer suggested by the Board have been brought on record and based on the said information contained in paragraph no.12. Following statements have been made in paragraph no.13 of the writ petition:

"13. That similarly other petitioners were asked same question but with different serial number in each set which the Board prepared. The petitioner no.2 namely Nitu Kumari was given Question Set Code F with incorrect multiple choices in question no. 13,33,34,42,48,70,73 and 93, petitioner no. 3 namely Pinki Kumari was given Question Set Code H with incorrect multiple choices in question no. 3,10,23,33,63,64,77 and 98, petitioner no. 4 namely Vineet Kumar was given question Set Code I with incorrect multiple choices in question no. 2,8,28,35 and 79, petitioner no. 5 namely Pushpanjali Kumari was given question Set Code D with incorrect multiple choices in question no. 18,40,58,62,68,69,73 and 98, petitioner no. 6 namely Vandana Kumari was given question Set Code C with incorrect multiple choices in question no. 33,48,55,63,78,82,98 and 99, petitioner no. 7 namely Ram Pravesh Kumar was given question Set Code A with incorrect multiple choices in question no. 7,23,38,48,49,58,73 and 95, petitioner no. 8 namely Archana Kumari was given question Set Code J with incorrect multiple choices in question no. 3,8,13,14,27,45,83 and 88. The petitioners has been advised to bring on record the chart of wrong questions and wrong multiple choices prepared by



the Bihar School Examination Board in the examination of Physical Education and Health Instructor Ability Test, 2019."

11. Learned counsel informs that during the pendency of the writ petition, the final merit list was published on 09.05.2022 and selection list was also published on 13.05.2022, which requires interference of this Court on the above facts and governing law.

12. *Per contra*, Mr. P. K. Shahi, learned Advocate General appearing on behalf of the Board along with Gyan Shankar, learned counsel have vehemently opposed the relief as prayed for in the interlocutory application. It has been submitted that the writ petition is not maintainable in view of the fact that the petitioners no. 2 to 8, for the similar relief(s), had filed CWJC No. 8120 of 2020, which was dismissed on merits vide order dated 06.10.2020. The petitioners, thereafter, filed their representation before the Board, which relief was not granted by this Court to the petitioners no. 2 to 8. Learned Advocate General further submitted that even on merits of the case is considered, the petitioner has admitted in paragraph no. 17 of the writ petition by making specific statement that on 14.07.2020, notice was issued under the signature of Examination Controller regarding wrong options provided in



question papers in the Set Code F, G, H, I and J and the revised result would be published on 16.07.2020. He further submitted that specific statement has been made in paragraph no. 18 of the writ petition that result sheet was published after revision by the Board for Physical Education and Health Instructor Ability Test, 2019 and it has been admitted that corrective measures were taken as per the report of the "*subject experts*" in regard to petitioners no. 1, 2, 3 and 6, who belong to different categories, in light of Memo No. 227 dated 14.07.2020.

13. Referring to the statements made in paragraphs no. 14, 15, 16 and 17 of the counter affidavit filed on behalf of the Board, learned Advocate General further submitted that the results were revised on the basis of report of subject experts, which the petitioners too have admitted in paragraph no. 17 of the writ petition and the explanation given in course of argument that the expert committee mentioned in paragraph no. 17 of the writ petition is required to be corrected by subject experts, the same will hardly make any difference as the committee constitution of experts in view of petitioners admitted position in paragraphs no. 14 to 18, in which they have admitted that corrective measures were taken. In case, if the petitioners were aggrieved in any manner, they were



required to submit their objection before the date of publication of the revised result i.e. by 15.07.2020. Learned Advocate General further clarified that so far as, petitioners no. 2 to 8 are concerned, their writ petition bearing CWJC No. 8120 of 2020 for similar relief(s) was dismissed vide order dated 06.10.2020 and instead of filing Letters Patent Appeal against the said order, they chose to file representation by way of objection before the Chairman of the Board after due date on 22.10.2020 (Annexure 9 to the writ petition), which liberty was not granted by this Court. The petitioners no. 2 to 8 have no locus to prefer second writ petition for same relief, who have waived of their right to prefer appeal before the Division Bench of this Court.

14. It has also been argued on behalf of the Board that specific statement has been made in paragraph no. 7 of the counter affidavit filed on behalf of the Board that the matter was referred to the subject experts for resolving objections so raised, accordingly, after due deliberation and after resolving the objections, the subject experts provided corrected answer keys for the answers of certain questions under Question paper Set Code, A, C, D, F, G, H, I and J and after taking into consideration, the corrected answer key result of Physical Education and Health Instructor Ability Test, 2019 was



published on 11.02.2020. Thereafter, the said result was reviewed and scrutinized after having detected that one of the questions of question Set Code No. F to Set Code J and Question Set Code A to Set Code E contained correct answers and it needed no change, the modified result was republished on 15.07.2020 and was made available on the website of the Board on 16.07.2020. The petitioners had ample opportunity to take steps to file objections but they, on their own, did not avail the opportunity. Once the final modified result has been published and follow up steps have been taken by the State Government by publishing final merit list on 09.05.2022 in which, 220 candidates were declared successful at Block Minapur, District- Muzaffarpur and the petitioner has admitted the said fact in paragraph no. 3 of the interlocutory application no. 01 of 2024. Thereafter, the steps were taken by the Block Development Officer, Aurai, Muzaffarpur for appointment of 15 candidates at Block Aurai, District- Muzaffarpur, to the post of Physical Education and Health Instructor against the Advertisement No. PR/373/2019.

15. Learned Advocate General submitted that once the selection process has come to an end, the present writ petition even for considering the representation filed on behalf



of the petitioners before the Chairman of the Board belatedly on 22.10.2020 after publication of the modified result on 15.07.2020, will serve no purpose.

16. Heard the parties.

17. It is admitted by the parties that pursuant to Advertisement No. PR/373/2019 dated 22.08.2019, the applications were invited from all the prospecting candidates by the Board to participate in examination of Physical Education and Health Instructor Ability Test, 2019 and the petitioners having applied, were issued admit card (details of which is contained in paragraph no. 7 of the writ petition) and the same has also been brought on record by way of Annexure-2 series to the writ petition. In view of the information relating to the roll number and roll code and respective set of question set code are not in dispute and the detailed chart in respect of question number, question, alleged irregularity as identified by the petitioners, correct answers, correct answers suggested by the Board have been brought in respect of questions no. 18, 28, 33, 68, 75, 93, 94 and 97 of Question Booklet Set Code G, which relates to the petitioner no. 1, in tabular form. It is also admitted that examination was held on 16.12.2019 and result was published on 11.02.2020, in which the petitioners were declared



not qualified and aggrieved by the same, the petitioners no. 2 to 8 had preferred CWJC No. 8120 of 2020 before this Court, which was dismissed on 06.10.2020 after holding that the petitioners have failed to explain, in what manner, the model answers, which according to them were incorrect and have prejudiced them. Based on the said fact, the co-ordinate Bench, in absence of specific stand, as to what were their answers in respect of such questions and because of wrong option suggested by the Board in the model answers, the petitioners suffered. The reliance has been placed upon the decision of a Division Bench of this Court in the case of ***Rabindra Kumar Singh Vs. High Court of Judicature at Patna*** reported in ***2016 (1) PLJR 865*** and the co-ordinate Bench has taken into consideration the observations made in paragraphs no. 27 to 39 of the said judgment after holding that the petitioners' case was squarely covered by the decision rendered in the case of ***Rabindra Kumar Singh (Supra)***, no interference was required on the basis of pleadings made in their writ petition and the writ petition was accordingly dismissed.

18. Under the abovementioned facts and circumstances, the law laid down by the Apex Court in the case of ***Rajesh Kumar (Supra)*** is of no help to the petitioners. In the



said case, the Hon'ble Supreme Court had directed to re-evaluate the questions and to publish fresh merit list despite objections of the State Government for re-evaluation. In the facts of the present case, the petitioners have failed to file their objections within time. The Apex Court in the case of ***Ran Vijay Singh & Ors. Vs. the State of Uttar Pradesh & Ors*** reported in **(2018) 2 SCC 357** in paragraphs no. 26 and 30 has held as follows:

"26. In Pramod Kumar Srivastava v. Bihar Public Service Commission [Pramod Kumar Srivastava v. Bihar Public Service Commission, (2004) 6 SCC 714 : 2004 SCC (L&S) 883] the question under consideration was whether the High Court [Bihar Public Service Commission v. Pramod Kumar Srivastava, 2003 SCC OnLine Pat 398 : (2003) 2 PLJR 801] was right in directing re-evaluation of the answer book of a candidate in the absence of any provision entitling the candidate to ask for re-evaluation. This Court noted that there was no provision in the Rules concerned for re-evaluation but only a provision for scrutiny of the answer book

"wherein the answer books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totalling of marks of each question and noting them correctly on the first cover page of the answer book". (Pramod Kumar Srivastava case [Pramod Kumar Srivastava v. Bihar Public Service Commission, (2004) 6 SCC 714 : 2004 SCC

This Court reiterated the conclusion in Paritosh Bhupeshkumar Sheth [Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth, (1984) 4 SCC 27] that: (SCC p. 718, para 7)

"7. ... in absence of a specific provision conferring a right upon an examinee to have his answer books re-evaluated, no such direction can be issued."

30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are:

30.1. If a statute, Rule or Regulation



governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it;

30.2. If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any “inferential process of reasoning or by a process of rationalisation” and only in rare or exceptional cases that a material error has been committed;

30.3. The court should not at all re-evaluate or scrutinise the answer sheets of a candidate—it has no expertise in the matter and academic matters are best left to academics;

30.4. The court should presume the correctness of the key answers and proceed on that assumption; and

30.5. In the event of a doubt, the benefit should go to the examination authority rather than to the candidate."

19. The petitioners no. 2 to 8, instead of preferring LPA against the order dated 06.10.2020 passed in CWJC No. 8120 of 2020, they chose to file representation before the Chairman of the Board on 22.10.2020, which liberty was not granted by this Court, after the publication of modified result on 15.07.2020 was uploaded on the web portal of the Board on 16.07.2020. The belated objection after last date i.e. 15.07.2020, cannot call for any interference.

20. Based on the aforesaid facts, as well as, the statements made in in paragraphs no. 14 to 19 of the writ petition, I find that corrective measures were taken by the Board and modified result was published on 15.07.2020. The



petitioners no. 2 to 8 are bound by the order dated 06.10.2020 passed in CWJC No. 8120 of 2020 having not challenged, the present writ petition, for the similar relief(s), cannot be entertained by this Court and the same is dismissed against them.

21. So far as, petitioner no. 1 is concerned, it has been admitted in paragraph no. 19 of the writ petition that she too had filed representation on 22.10.2020 after the publication of the modified result on 15.07.2020 as would appear from the statement made in interlocutory application no. 01 of 2024 filed on behalf of the petitioner, I find that the petitioner no. 1 can be said to be herself responsible for not having filed the objection within time and in that view, the present writ petition on behalf of petitioner no. 1 is also not maintainable and is dismissed.

22. On perusal of the Advertisement No. PR/373/2019 dated 22.08.2019, it appears that the terms and conditions don't provide for re-evaluation of an answer-sheet or scrutiny of an answer-sheet as a matter of right and in view of the law laid down by the Apex Court and in view of settled principle of law also, I am constrained to interfere in any manner with the corrective measures, which have already been taken by the Board in accordance with law and for this reason



also, the writ petition fails.

23. Accordingly, the present writ petition stands dismissed.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	30.03.2025
Transmission Date	N/A

