

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3898 of 2018

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Amod Kumar Singh S/o Sri Satyanarayan Singh Resident of Village- Tilai,
P.O. Andhara Thadhi, District- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The Director, Primary Education, Government of Bihar, Patna.
4. The State Appellate Authority, Education Department, 5 C.D. Niyojan Bhawan, Bailey Road, Patna.
5. The Bihar School Examination Board, Bihar, Patna.
6. The Secretary, Bihar School Examination Board, Bihar, Patna.
7. Sima Kumari W/o Harishankar Singh Resident of Village P.O. P.S. Babubarhi, District- Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bindhyachal Singh, Sr. Advocate Mr. Rana Bhupendra Narayan Singh, Ms. Babita Kumari, Advocate
For B.S.Ex. Board	:	Mr. Satyavir Bharti, Sr. Advocate Mr. Gyan Shanker, Advocate
For respondent No.7	:	Mr. D.K. Sinha, Sr. Advocate Ms. Sandhya Kumari, Advocate Mr. Kripa Nand Jha, Advocate
For the Respondent/s	:	Mr. Prabhakar Jha, GP-27 Mr. Umesh Narayan Dubey, A.C. to G.P.-27

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CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR SINHA
CAV JUDGMENT

Date: 12-02-2026

Heard the parties.

2. The present writ application has been preferred seeking issuance of an appropriate writ, order, or direction for quashing the order dated 16.02.2018 passed by the Chairperson of the State Appellate Authority in Appeal No. 162/2017, whereby the appellate authority held that the marksheet submitted by the



writ petitioner pertaining to the Intermediate Examination, issued by the then Bihar Intermediate Education Council, Patna, in the year 1994, was forged and fabricated. Consequent thereto, the appellate authority allowed the appeal preferred by the private respondent by setting aside the order dated 04.11.2011 passed by the District Teacher Employment Appellate Authority in Case No. 827/2008-2011 and further directed respondent no. 6, the Block Development Officer, Rajnagar, and respondent no. 7, the Block Education Officer, Rajnagar, to cancel the employment of the writ petitioner as Block Teacher and to consider appointing the private respondent in his place within a period of four weeks from the date of receipt of the order (Annexure-8). The petitioner has also prayed for a declaration that the certificate/marksheet issued in his favour by the then Intermediate Council, which continues to remain in existence as of date, is an authentic and valid document and for holding that the appointment of the petitioner, having been made by the Prakhand Niyojan Unit, Rajnagar, is lawful and valid in the eye of law.

3. Learned Counsel for the petitioner interalia submits that pursuant to an advertisement issued under the Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2006, as amended up to date, the petitioner applied as a general



candidate under the disability quota. On the basis of having secured 558 marks in the Intermediate Examination, he was placed at Serial No. 1 in the merit list and was accordingly appointed as Block Teacher vide appointment letter dated 28.12.2010 (Annexure-1).

It is further submitted that in compliance with the aforesaid appointment, the petitioner joined his duties on 30.12.2010 as Block Teacher at Upgraded Middle School, Barhara, Block Rajnagar, District-Madhubani (Annexure-2). Since the date of his joining, the petitioner has been discharging his duties uninterruptedly and has been receiving salary admissible to the said post without any complaint regarding his performance or eligibility.

4. Learned counsel further submits that the dispute arose subsequently when the private respondent challenged the appointment of the petitioner before the District Appellate Authority, contending that she had secured higher marks than the petitioner. It was alleged that the petitioner had, in fact, obtained only 554 marks in the Intermediate Examination, whereas his appointment was made on the basis of 558 marks. In support of such contention, the private respondent relied upon a letter issued by the Bihar School Examination Board under the Right to



Information Act indicating that the petitioner had secured 554 marks in the Intermediate Examination held in 1994. The said allegation was vehemently opposed by the petitioner through a written statement before the District Appellate Authority, wherein he asserted that he had secured a total of 558 marks, inclusive of four grace marks awarded under the applicable regulations. In support of his claim, the petitioner produced a copy of the mark-sheet issued by the then Intermediate Council reflecting 558 marks, as well as a copy of the relevant portion of the tabulation register supplied by the concerned college, which also corroborated his claim (Annexures-3 and 4). It is further submitted that the petitioner specifically contended that the information obtained under the RTI Act did not account for the four grace marks awarded to him under the regulations, thereby leading to an incorrect depiction of his total marks.

5. Learned counsel for the petitioner further submits that the District Appellate Authority called upon the Niyojan Unit to clarify the position. In response, the Secretary of the concerned Niyojan Unit appeared and produced Letter No. 227 dated 19.08.2011 issued under the signature of the Block Development Officer, Rajnagar, addressed to the Member of the District Appellate Authority, Madhubani, stating that the marks obtained



by the petitioner had been verified by the Board and were found to be true. It was further indicated that any further verification, if required, could be undertaken at the level of the District Appellate Authority (Annexure-5). After considering the materials available on record, the District Appellate Authority came to the conclusion that the claim raised by the private respondent was baseless and accordingly dismissed the appeal vide order dated 04.11.2011 passed in Appeal No. 827/08/11 (Annexure-6).

Being aggrieved thereby, the private respondent initially preferred CWJC No. 23080 of 2011 before this Hon'ble Court, which was permitted to be withdrawn with liberty to approach the State Appellate Authority within thirty days vide order dated 24.07.2017 (Annexure-7). Thereafter, the private respondent filed Appeal No. 162/2017 before the State Appellate Authority. Notices were issued to all concerned parties, including the petitioner. Learned counsel submits that the petitioner filed a detailed counter affidavit reiterating that he had secured 558 marks and enclosing the marksheet issued by the Intermediate Council. It was again clarified that four marks had been awarded as grace under the regulations and that the tabulation register available with the concerned college also reflected the same total.



6. It is further submitted by the learned counsel for the petitioner that the Bihar School Examination Board filed an affidavit before the State Appellate Authority stating that, upon verification from the Reserve Tabulation Register and the CD available with the Board, the petitioner was found to have secured 554 marks, whereas the private respondent no.7 had secured 555 marks. The Board further alleged before the State Appellate Authority that the marksheet showing 558 marks was false and fabricated.

Learned counsel, however, submits that an affidavit was also filed by the Block Education Officer, Rajnagar, categorically stating that the petitioner had been appointed on the basis of securing 558 marks out of 900 in the Intermediate Examination and that such marks had been verified from the records made available by the Board. It was further stated that the marksheet was neither forged nor fabricated and that the private respondent had been placed at Serial No. 3 in the merit list, thereby negating any claim to appointment. It is contended that the State Appellate Authority, relying primarily upon the affidavit of the Board came to the conclusion that the marksheet was forged and fabricated and also presumed that the petitioner had secured only 554 marks and consequently allowed the appeal, directing the appointment of the



private respondent in place of the petitioner by setting aside the petitioner's appointment vide order dated 16.02.2018 (Annexure-8).

7. Learned counsel for the petitioner submits that the State Appellate Authority failed to take into consideration that the marksheet issued by the then Intermediate Council is a genuine document reflecting 558 marks and continues to remain valid, having never been cancelled by any competent authority. It is further submitted that the tabulation register supplied to the concerned college also supports the petitioner's claim. It is argued that the appellate authority erred in disbelieving the marksheet without conducting any proper enquiry. There is no specific finding from the Board indicating that the signatures appearing on the marksheet were forged or that the series or serial number mentioned therein had never been issued by the Intermediate Council.

8. Learned counsel for the petitioner also submits that neither a proper enquiry was conducted regarding the genuineness of the marksheet nor was any adequate opportunity afforded to the petitioner to clarify his position, thereby violating the principles of natural justice. It is emphasized that the petitioner had passed the Intermediate Examination in 1994 and the marksheet was issued in



the same year. After a lapse of nearly twenty-four years, the Board raised doubts regarding the genuineness of the marksheet, which, according to the petitioner, was/is impermissible in law. It is also contended that such a serious issue affecting the livelihood and service career of the petitioner ought not to have been handled in such a casual manner. Before taking any action adversely affecting the petitioner's rights, a full-fledged opportunity of personal hearing ought to have been afforded to the petitioner, which was not done.

Learned counsel further submits that no decision of the Board has ever been brought on record to demonstrate that the marksheet issued to the petitioner was formally cancelled by a competent authority. Therefore, so long as the marksheet issued in favour of the petitioner by the then Intermediate Council remains in existence, any action taken contrary thereto is unsustainable in the eye of law. On the aforesaid grounds, learned counsel for the petitioner submits that the impugned order passed by the State Appellate Authority is arbitrary, illegal, and liable to be set aside by this court.

9. Learned counsel for respondent nos. 5 and 6 (B.S.E.B.) by way of counter affidavit filed in compliance with the order dated 09.03.2018 passed by this Court submits that during



the examination of the petitioner's records while filing the counter affidavit before the State Appellate Authority, it came to light that an inadvertent mistake had been committed by the erstwhile Bihar Intermediate Education Council while sending the cross list to the concerned college, wherein the aggregate marks of the petitioner were incorrectly reflected as 558.

10. Learned counsel submits that as per the official records of the Board, namely the General Tabulation Register (GTR) and the Reserve Tabulation Register (RTR), the subject-wise marks secured by the petitioner are as follows: NRB/MA – 60 marks; MAI – 143 marks; Political Science – 110 marks; Sociology – 119 marks; and Psychology – 122 marks, making a total aggregate of 554 marks out of 900 marks, thereby placing the petitioner in the First Division. It is thus asserted that a correct addition of the subject-wise marks unmistakably leads to a total of 554 and not 558 marks.

11. With respect to the petitioner's claim regarding the grant of grace marks, learned counsel submits that grace marks are awarded only under two circumstances: firstly, where an examinee has failed in one or two subjects (subject to a maximum of two), and secondly, for the limited purpose of improving the division of an examinee. In the present case, the petitioner neither failed in



any subject nor required any improvement of division, as he had already passed the examination in First Division by securing 554 marks. Consequently, there was no occasion for the erstwhile Council to award any grace marks to the petitioner. It is further submitted that the petitioner did not fall within either of the categories eligible for grant of grace marks and, in fact, no grace marks were ever awarded to him. The question as to whether grace marks ought to be added to the grand total is stated to be purely academic in the present context, as the petitioner was never granted such marks.

12. Learned counsel for the respondent B.S.E.B. further submits that insofar as the issuance of the marksheet by the erstwhile Council is concerned, the same appears to be partially incorrect. While the individual marks recorded against each subject are stated to be correct, the aggregate was erroneously entered as 558 due to inadvertence, whereas the actual total is 554 upon proper calculation. It is further contended that the marksheet relied upon by the petitioner bears the remark “U.R.” (Under Regulation), which is ordinarily applicable only in cases where a candidate has failed in one or two subjects or where the regulation is invoked for improvement of division. Since the petitioner had passed all subjects independently and had secured his division



without any concession, the application of “U.R.” in his case was wholly unwarranted. It is also submitted that the stand taken by the Board in the present counter affidavit is consistent with the position earlier adopted before the State Appellate Authority in Appeal Case No. 162/2017.

13. Learned counsel for private respondent no. 7 submits that although the petitioner has attempted to justify his marksheet and the marks allegedly obtained by him in the Intermediate Examination, a scrutiny of the relevant materials clearly establishes that the petitioner was neither entitled to any grace marks nor can the marksheet relied upon by him be treated as genuine. The petitioner relied upon a marksheet showing 558 marks out of 900, a simple arithmetical calculation of the subject-wise marks reveals that the aggregate comes to only 554 marks. The plea of the petitioner that four grace marks were awarded to him is stated to be wholly untenable, as the marksheet does not disclose that he had failed in any subject or that he required additional marks for securing First Division. It is further contended that the petitioner has neither asserted that grace marks were granted uniformly to all candidates nor has he referred to any statutory provision under which he could claim such benefit.



Accordingly, the claim regarding grace marks is described as unbelievable and contrary to established norms.

14. Learned counsel for private respondent further submits that the reliance placed by the petitioner upon the marksheet and the extract of the tabulation register is misplaced, inasmuch as the official tabulation register maintained by the Bihar School Examination Board reflects that the petitioner secured only 554 marks. In this regard, reference is made to the replies furnished by the Public Information Officer of the Board under the Right to Information Act vide letters dated 07.04.2011, 06.05.2011, and 09.01.2012, all consistently indicating that the petitioner passed in First Division with 554 marks. Copies of the said letters have been annexed as Annexure-A series, and the counter affidavit of the Board filed before the State Appellate Authority has been annexed as Annexure-B.

It is further submitted that the marksheet produced by the petitioner appears forged and fabricated for the additional reason that, under the applicable regulations, whenever grace marks are awarded, a star mark is embossed against the relevant subject and the notation “U/R” is typed with a slash between the letters. The petitioner’s marksheet lacks both the star mark and the slash, thereby casting serious doubt on its authenticity. By way of



illustration, marksheets of other candidates who were granted grace marks—namely Vikas Kumar Singh and Sangita Kumari—have been annexed as Annexure-C series to demonstrate the standard format.

15. Learned counsel submits that the petitioner's reliance upon Letter No. 227 dated 19.08.2011 issued by the Block Education Officer is equally misconceived, as the said letter neither refers to any communication from the Bihar School Examination Board nor encloses any verification report. The absence of such details raises serious doubts regarding the veracity of the alleged verification and renders the statement of the Block Education Officer unreliable, particularly in light of the categorical stand taken by the Board.

It is next contended that the plea of violation of principles of natural justice is wholly unfounded. The petitioner was duly served with notice pursuant to order dated 01.05.2012 passed in CWJC No. 23080 of 2011 and was again issued notice by the State Appellate Authority. The petitioner appeared in the proceedings and filed his reply, and a copy of the counter affidavit of the Board was also served upon his counsel. Despite being granted sufficient time and several adjournments, the petitioner chose not to file any rejoinder. A copy of the order dated



01.05.2012 has been annexed as Annexure-D. In such circumstances, it is submitted that there was neither denial of opportunity nor any breach of natural justice.

16. Learned counsel for the private respondent further submits that the petitioner's contention that the marksheet was never formally cancelled is of no consequence, as the factual position regarding the marks has already been clarified from the original records of the Board. It is argued that once it is established that the petitioner secured 554 marks, whereas respondent no. 7 secured 555 marks, the latter, having higher merit, is entitled to appointment in accordance with the settled principle that selection must follow merit. It is also submitted that the Bihar School Examination Board is an autonomous body with no personal interest in the dispute and has merely placed the factual records before the authorities. The State Appellate Authority, upon consideration of the marks obtained by the respective candidates and the materials on record, rightly directed cancellation of the petitioner's appointment and to consider appointment of respondent no. 7 in his place, and the said order suffers from no illegality.

Learned counsel adds that the question of alleged forgery is a separate matter within the discretion of the competent



department, which may take appropriate action, including lodging of an FIR, if so advised.

17. It is further contended that the State Appellate Authority conducted due consideration of the materials on record and granted adequate opportunities to the petitioner to substantiate his claim. The authority passed the impugned order only after evaluating the counter affidavits and the documentary evidence; therefore, the allegation that no proper enquiry was conducted is unsustainable. Also respondent no. 7 is a handicapped woman belonging to the backward community who secured 555 marks in the Intermediate Examination and passed in First Division. In comparison, the petitioner secured only 554 marks. Consequently, respondent no. 7, being higher in merit, rightfully deserves selection. It is thus submitted that the writ petition is devoid of merit and is liable to be dismissed.

18. Learned counsel for the petitioner in his reply further submits that while reliance has been placed upon the General Tabulation Register (GTR) and Reserve Tabulation Register (RTR), the relevant extracts thereof have not been annexed. On the contrary, the tabulation register brought on record by the petitioner reflects a total of 558 marks. It is additionally pointed out that similar discrepancies appear in respect of other candidates,



including Shiv Kumar Jha and Archana Kumari, whose aggregates exceed the subject-wise totals, thereby indicating that the petitioner's case is not an isolated one. In support thereof, the petitioner has also produced the College Leaving Certificate issued by Visheshwar Singh Janta College, Rajnagar, certifying that he passed the Intermediate Examination in First Division under regulation, which has been marked as Annexure-9.

Learned counsel further submits that the petitioner legitimately relied upon the marksheet issued by the competent authority, bearing the official seal and signature, and acted upon the same while applying for the post of Block Teacher. His appointment was made after due verification by the concerned authorities, and he has continued in service to their satisfaction. It is thus urged that the petitioner had no reason to doubt the genuineness of the marksheet nor had any role in its issuance. It is further argued that the Board itself has admitted that the marksheet was issued by the erstwhile Intermediate Council and that the subject-wise marks mentioned therein are correct. In such circumstances, the responsibility to ensure accuracy lay solely with the issuing authority and not with the petitioner.

19. Learned counsel appearing for respondent nos. 5 and 6 (B.S.E.B.) by way of another counter affidavit submits that upon



becoming aware of the concerns expressed by the Court, the Chairman, Bihar School Examination Board, initiated an enquiry into the matter and constituted a three-member committee comprising the Chief Vigilance Officer, the Examination Controller (Senior Secondary), and the Additional Secretary to examine the issues involved and furnish an appropriate response. It is further submitted that the committee, upon scrutiny of the relevant records, found that the earlier counter affidavit had been prepared with reference to a connected file bearing BSEB(SS)/912/LS/2011, arising out of a prior writ petition filed by one Sima Kumari, wherein the present petitioner had been arrayed as a respondent. The notings contained in the said file, duly approved up to the level of the Deputy Secretary, were based on entries available in the G.T.R., R.T.R., and the Tabulation Register Compact Disc (TRCD) for the years 1993 and 1994.

With regard to the availability of the G.T.R., it is stated that a fire broke out on 16.01.2015 in the Academic Building of the Board, resulting in the destruction of records, including the G.T.R. for the period 1983 to 1995 pertaining to certain divisions. The incident was reported to the local police and was also the subject of an internal enquiry, which confirmed the loss of the records. As to the authenticity of the R.T.R. of 1994, the



committee observed that although it did not bear the signature of the tabulator, the register had been jointly certified by responsible officials of the Board. It is further stated that the entries relating to the petitioner were cross-verified with the TRCD maintained by the Board since 1983, and the particulars were found to be consistent. On such examination, the committee opined that the available R.T.R. of 1994 could be safely relied upon. The report of the committee dated 29.08.2019 has been brought on record as Annexure-A.

20. Learned counsel for respondent no. 6 (B.S.E.B.), by way of an interlocutory application, submits that paragraph-13 of the counter affidavit requires correction and ought to be substituted to clarify that the marksheet of the petitioner reflecting an aggregate of 558 marks with First Division under U/R is false and fabricated. It is contended that a conjoint reading of the counter affidavit reveals that the existing averment in paragraph-13 is not in consonance with the remaining pleadings. It is further submitted that the counter affidavit filed by the Respondent Board before the State Appellate Authority in Appeal Case No. 162/2017, appended as Annexure-A, also supports the stand that the marksheet indicating 558 marks is false and fabricated. Accordingly, prayer



has been made for permitting necessary correction/amendment in paragraph-13 of the counter affidavit.

21. Learned counsel for the petitioner, opposing the interlocutory application filed by respondent no. 6, submits that the prayer for amendment of paragraph-13 of the counter affidavit is not tenable in law and is liable to be rejected. It is further submitted that the merit list was never challenged nor set aside and the petitioner continues to hold the first position. Learned counsel argues that a necessary party, namely Jagannath Prasad, who allegedly secured second position in the merit list, was not impleaded before the State Appellate Authority. It is also urged that the State Appellate Authority lacked jurisdiction to issue directions relating to appointment.

Learned counsel highlights that in earlier proceedings this Court had directed the Board to verify the authenticity of the petitioner's marksheet, yet the Board remained inactive for several years despite being aware of the petitioner's employment, and only later raised allegations before the Appellate Authority. It is argued that a statutory body like the Board cannot be permitted to shift or improve its stand before different forums.

Learned counsel also contends that this Court had earlier expressed serious doubts regarding the Reserve Tabulation



Register and had raised specific queries which, according to the petitioner, remain inadequately answered. It is urged that the Board's earlier counter affidavits indicate that the discrepancy in aggregate marks was due to inadvertent error and that steps were being taken for correction, and such judicial admissions are binding upon the Board.

ISSUES IN QUESTION:

1. Whether, in the facts and circumstances of the present case, after the factual and legal positions of the parties had already crystallized on the basis of the affidavits on record, respondent nos. 5 and 6 (Bihar School Examination Board) can be permitted to approbate and reprobate their own pleadings by seeking amendment through the interlocutory application I.A. No. 01/26 at the fag end of the proceedings?

2. Whether the declaration of the petitioner's marksheet as "forged and fabricated" by the State Appellate Teachers Authority is sustainable in law in the absence of a duly conducted inquiry, cogent documentary evidence, and compliance with the principles of natural justice?

3. Whether an admitted or established clerical/administrative error in the recording of marks, if detected subsequently, can be permitted to subsist merely on account of



lapse of time, particularly when continuance of such error results in conferring an undue advantage upon one candidate at the expense of another who may be lawfully entitled to such benefit?

4. Whether the challenge to the petitioner's appointment is legally sustainable when Respondent No. 7 has not assailed the merit list, particularly in light of the allegation that the petitioner was aware of the erroneous award of excess marks and nevertheless derived benefit from it?

5. Whether the State Appellate Teachers Authority acted within the scope of its statutory jurisdiction in directing consideration for the appointment of a specific individual, namely the petitioner, or whether such a direction amounts to an excess of the authority vested in it under the governing rules?

6. Whether a candidate who has approached the judicial forum and established prejudice is alone entitled to consequential relief, or whether similarly situated candidates—irrespective of their participation in the litigation—are also entitled to parity of treatment in furtherance of the constitutional mandate of equality under Articles 14 and 16 of the Constitution of India?

FINDINGS:

1. Whether, in the facts and circumstances of the present case, after the factual and legal positions of the parties



had already crystallized on the basis of the affidavits on record, respondent nos. 5 and 6 (Bihar School Examination Board) can be permitted to approbate and reprobate their own pleadings by seeking amendment through the interlocutory application I.A. No. 01/26 at the fag end of the proceedings?

Upon a careful consideration of the pleadings and materials brought on record, this Court finds that the respondent Board had, in its earlier counter affidavits, taken a categorical stand that the marks-sheet issued to the petitioner by the erstwhile Bihar Intermediate Education Council was “partially wrong” on account of inadvertent error in calculation of the aggregate marks, while simultaneously admitting that the individual subject-wise marks were correct and that the document itself had been issued by the competent authority. The Board had further indicated that steps were being taken to communicate the correction to the concerned institution.

Subsequently, in compliance with the order of this Court, a detailed counter affidavit was filed explaining the basis of its earlier response with reference to available records such as the R.T.R. and the connected file, and even constituted a three-member committee to examine the matter. At no stage in these



affidavits was a conclusive plea raised that the marks-sheet itself was forged or fabricated.

However, by way of the present interlocutory application, respondent nos. 5 and 6 now seek to substitute paragraph 13 of the counter affidavit so as to introduce a materially different plea that the marks-sheet reflecting 558 marks is “false and fabricated.” Such a shift is not merely clarificatory but amounts to a fundamental alteration of the stand previously taken before this Court as well as before the State Appellate Authority.

It is a settled principle of law that a party cannot be permitted to approbate and reprobate, nor can it be allowed to blow hot and cold in the same breath. Judicial discipline demands consistency in pleadings, particularly where admissions have already been made. An admission, unless satisfactorily explained, constitutes substantive evidence against the maker, and courts are slow to permit its withdrawal when such withdrawal would prejudice the opposite party or alter the nature of the controversy.

In the present case, the controversy had already crystallized on the basis of multiple affidavits exchanged between the parties. The petitioner has specifically asserted that he acted bona fide on the strength of a marks-sheet issued by the statutory



authority and has continued in service for a considerable period. Learned Counsel for the petitioner has also relied on *Nagubai Ammal & Ors vs. B. Shama Rao & Ors AIR 1956 SUPREME COURT 593* and *Premlata alias Sunita vs. Naseeb Bee AIR 2022 SUPREME COURT 1560* to substantiate his submissions. Permitting the respondent Board at this belated stage to substitute its earlier admission with an allegation of fabrication would not only widen the scope of the lis but would also cause manifest prejudice to the petitioner, who has structured his defence on the foundation of the Board's earlier stand.

Equally significant is the absence of any compelling explanation from the respondent justifying such a volte-face. The proposed amendment is not shown to be based on any newly discovered material nor on facts that were previously unavailable despite due diligence. Rather, it appears to be an attempt to improve the case after the pleadings have matured — a course consistently discouraged by constitutional courts.

The procedural law governing amendments is intended to advance the cause of justice, not to permit a litigant to retract admissions or fundamentally reconstruct its case at an advanced stage of adjudication. Allowing such an amendment would



undermine the certainty of judicial proceedings and run contrary to the principles of finality and fairness that guide writ jurisdiction.

In view of the foregoing, this Court is of the considered opinion that respondent nos. 5 and 6 cannot be permitted to approbate and reprobate their own pleadings by seeking amendment through Interlocutory Application No. 01/26 at the fag end of the proceedings. The application, being devoid of bonafides and likely to prejudice the adjudicatory process, does not merit acceptance.

Accordingly, for the reasons recorded herein-above, this Court finds no merit in the prayer made by respondent nos. 5 and 6 in Interlocutory Application No. 01/26 seeking substitution of the averments contained in paragraph 13 of the counter affidavit. The attempt to introduce a plea diametrically opposed to the earlier stand, after the pleadings have attained finality, cannot be countenanced in law. The interlocutory application, therefore, stands rejected.

2. Whether the declaration of the petitioner's marksheet as "forged and fabricated" by the State Appellate Teachers Authority is sustainable in law in the absence of a duly conducted inquiry, cogent documentary evidence, and compliance with the principles of natural justice?



A finding that a candidate's marksheet is "forged and fabricated" entails grave civil consequences, impacting not only his academic standing but also his continued employment and reputation. Such a conclusion, therefore, must be founded upon a thorough inquiry, supported by unimpeachable documentary evidence, and preceded by adherence to the principles of natural justice.

Upon consideration of the pleadings and materials on record, it does not appear that any regular or structured inquiry was conducted before the petitioner's marksheet was branded as fabricated. There is no indication that the document was subjected to forensic or expert verification, nor is there any categorical material to show that the issuing authority had disowned the marksheet. Mere discrepancy in the aggregate, without anything further, cannot ipso facto lead to a finding of forgery. The law draws a clear distinction between an administrative mistake and a fraudulent document, and the latter must be proved with a higher degree of certainty.

Significantly, this Court also finds that the very records on which the respondents seek to rely are not free from doubt. Questions have arisen regarding the authenticity and reliability of the Reserve Tabulation Register (RTR) and related tabulation



records. The absence of the tabulator's signature on the RTR, coupled with the admitted destruction of certain original registers in a fire and the shifting stands taken at different stages, casts a shadow over the evidentiary value of such records. When the foundational documents of the authority themselves appear questionable, it would be legally unsafe to sustain a serious charge of fabrication against the petitioner solely on their basis. Suspicion surrounding the respondents' own records necessarily weakens the conclusiveness of the allegation sought to be drawn therefrom.

Equally important is the requirement of compliance with the rule of audi alteram partem. Before arriving at a determination so prejudicial in nature, the authority was duty-bound to provide the petitioner with notice of the allegations, disclose the materials relied upon, and afford him a meaningful opportunity to respond. Any determination rendered in breach of these safeguards stands vitiated by procedural impropriety.

It is well settled that fraud must be specifically pleaded and strictly proved, and cannot be presumed from uncertain or disputed records. A quasi-judicial authority is expected to base its conclusions on cogent evidence rather than conjecture. In circumstances where the respondents' own documents are under a



cloud, the declaration of the marksheet as forged becomes all the more untenable.

It is also noteworthy that where two views are possible—one pointing to clerical error and the other to deliberate fabrication—the authority must adopt the course supported by evidence rather than presumption. A quasi-judicial determination cannot substitute suspicion for proof.

In view of the above, this Court is of the considered opinion that the declaration of the petitioner's marksheet as "forged and fabricated," having been rendered without a duly conducted inquiry, without substantiating documentary evidence, and in breach of the principles of natural justice, is unsustainable in the eye of law. Such a finding, being procedurally flawed and evidentially unsupported, cannot be allowed to stand.

3. Whether an admitted or established clerical/administrative error in the recording of marks, if detected subsequently, can be permitted to subsist merely on account of lapse of time, particularly when continuance of such error results in conferring an undue advantage upon one candidate at the expense of another who may be lawfully entitled to such benefit?



The question whether an admitted clerical or administrative error in the recording of marks can be permitted to subsist merely on account of lapse of time assumes determinative significance in the present matter, for the petitioner's claim to appointment substantially rests upon the continuance of such error. The Court must therefore examine not only the existence of the mistake but also the knowledge attributable to the beneficiary and the consequence of its continuance upon competing candidates.

At the outset, it is not in serious dispute that the aggregate marks reflected in the petitioner's marksheet were shown as 558, whereas upon subsequent scrutiny by the Board, the actual total was found to be 554. The Board, in its counter affidavit, categorically stated that while the individual subject-wise marks were correctly recorded, the aggregate appears to have been erroneously entered due to an inadvertent mistake in the cross list transmitted by the erstwhile Council. More importantly, during the course of oral submissions, learned counsel for the petitioner initially sought to justify the discrepancy by suggesting that the petitioner might have been awarded grace marks. However, upon being called upon to substantiate this contention with reference to the governing regulations, counsel fairly conceded that he was



unable to demonstrate any statutory basis for the grant of such grace marks.

Respondents have brought on record the **Bihar Intermediate Education Council Regulations for the Intermediate Examination in Arts, Science and Commerce**, point 7 of which talks about moderation of result which has been quoted as under:

"7. MODERATION OF RESULT :

A candidate for the Intermediate Examination in Arts, Science or Commerce, who has appeared in all the subjects offered by him but has failed in one subject or in two subjects and the shortage from pass marks in the subject or subjects concerned is within the limit prescribed below shall be given the marks by which he is short in the subject or subjects concerned and declared to have passed the examination and his division shall be determined accordingly.

Failure in one subject - only 5% in each subject.

Failure in two subjects - only 3% in each subject.

NOTE : In a subject or group of subjects where separate passing is necessary in part of it, the shortage shall be calculated on the basis of full marks in that part. Failure in different parts of a subject shall be deemed to be failure in one subject only."



Also para 9 deals with extra grace marks in case of change of division which has been quoted as under:

"Provided that if a candidate is short of the minimum aggregate marks prescribed for first or second division by 5 marks or less, he/she shall be given minimum marks required to make up the deficiency and shall be placed in the higher division but position in that higher division shall be determined on the basis of the original marks secured by him."

A perusal of the Bihar Intermediate Education Council Regulations relating to Moderation of Results makes it evident that additional marks could only be awarded in narrowly circumscribed situations—such as marginal deficiency for passing, prevention of abnormal results, or other structured moderation exercises uniformly applied. The petitioner does not fall within any such category. This admission, coupled with the absence of any documentary proof of moderation, leads to the irresistible inference that the enhanced aggregate was not the result of a lawful academic process.

What further weighs against the petitioner is the question of knowledge. The petitioner cannot plausibly contend that the discrepancy was beyond his awareness. A candidate is presumed to know his own performance and the marks obtained in



individual subjects. When the sum of the subject-wise marks does not correspond with the declared aggregate, the anomaly is neither latent nor technical; it is apparent on the face of the record. Yet, the petitioner relied upon the inflated aggregate to secure a higher position in the merit list and ultimately obtain appointment. The plea that the Board remained inactive for several years does not dilute the petitioner's obligation to act fairly, particularly when public employment—where merit is the governing criterion—is involved.

The petitioner has placed reliance upon the judgment of the Hon'ble Supreme Court in ***Board of Secondary Education, Assam vs. Mohd. Sarifuz Zaman & Ors. (2003) 12 Supreme Court Cases 408*** to contend that a long-standing mistake ought not to be unsettled after the passage of considerable time. It therefore becomes necessary to closely examine the ratio of the said decision. The relevant paragraphs of the judgement is quoted herein:

“12. Delay defeats discretion and loss of limitation destroys the remedy itself. Delay amounting to laches results in benefit of discretionary power being denied on principles of equity. Loss of limitation resulting into depriving of the remedy, is a principle based on public policy and utility and not equity alone. There ought to be a limit of time by which human affairs stand settled



and uncertainty is lost. Regulation 8 confers a right on the applicant and a power coupled with an obligation on the Board to make correction in the date of birth subject to the ground of wrong calculation or clerical error being made out. A reasonable procedure has been prescribed for processing the application through Inspector of Schools who would verify the school records and submit report to the Board so as to exclude from consideration the claims other than those permissible within the framework of Regulation 8. Power to pass order for correction is vested on a higher functionary like Secretary of the Board. An inaccuracy creeping in at the stage of writing the certificates only, though all other prior documents are correct in all respects, is capable of being corrected within a period of three years from the date of issuance of certificate.

13. Three years period provided by the Regulation is a very reasonable period. On the very date of issuance of the certificate the concerned student is put to notice as to the entries made in the certificate. Everyone remembers his age and date of birth. The student would realize within no time that the date of birth as entered in the certificate is not correct if that be so once the certificate is placed in his hands. Based on the certificate the applicant would seek admission elsewhere in an educational institution or might seek a job or career where he will have to mention his age and date of birth. Even if he failed to notice the error on the date of issuance of the certificate, he would come to know the same shortly thereafter. Thus, the



period of three years, as prescribed by Regulation 3, is quite reasonable. It is not something like prescribing a period of limitation for filing a suit. The prescription of three years is laying down of a dividing line before which the power of the Board to make correction ought to be invoked and beyond which it may not be invoked. Belated applications, if allowed to be received, may open a Pandora's box. Records may not be available and evidence may have been lost. Such evidence-even convenient evidence- may be brought into existence as may defy scrutiny. The prescription of three years bar takes care of all such situations. The provision is neither illegal nor beyond the purview of Section 24 of the Act and also cannot be called arbitrary or unreasonable. The applicants seeking rectification within a period of three years form a class by themselves and such prescription has a reasonable nexus with the purpose sought to be achieved. No fault can be found therewith on the anvil of Article 14 of the Constitution.

14. For the foregoing reasons, the appeals are allowed. The Judgement of the Division Bench of the High Court is set aside. However as already noted and in view of the very fair concession given by the learned counsel for the appellant Board, it is directed that this judgment shall not have any effect or bearing on the relief allowed to the two respondents herein by correcting the entries as to date of birth made in their respective certificates. No order as to the costs."



In this case, the dispute pertained to the correction of the candidate's date of birth recorded in educational certificates. The Supreme Court, while considering the equities involved, observed that where an entry has remained unchallenged for a long duration and is supported by institutional records, interference at a belated stage may not be warranted. The Court emphasized the importance of certainty in service matters and cautioned against reopening settled positions unless compelling reasons exist. However, the reliance placed upon the aforesaid judgment is misplaced, for the factual matrix therein is fundamentally distinguishable from the present case.

Firstly, the correction in **Sarifuz Zaman Case (supra)** concerned a personal service detail and did not operate to the detriment of any rival candidate. The Supreme Court's reasoning was significantly influenced by the absence of third-party prejudice. In contrast, the error in the present case directly impacts the inter se merit of candidates. The inflated aggregate enabled the petitioner to occupy a higher rank, thereby potentially displacing candidates who were legitimately entitled to consideration.

Secondly, the Supreme Court stressed that the entry sought to be relied upon must be borne out from authentic institutional records. Here, the situation is markedly different. The



credibility of the Board's tabulation records themselves came under judicial scrutiny, and this Court had earlier expressed reservations regarding the reliability of the Reserve Tabulation Register, particularly in light of missing signatures and unexplained discrepancies. Thus, this is not a case where unimpeachable records uniformly support the petitioner's position.

Thirdly, and most crucially, the doctrine protecting long-standing entries cannot be invoked by a party who had knowledge of the mistake and nevertheless elected to benefit from it. Equity aids the vigilant, not those who knowingly capitalize on an error. The petitioner's inability to establish any lawful grant of grace marks, coupled with the apparent mathematical inconsistency, militates against the argument of innocent reliance.

The Court must also remain mindful that public employment is governed by constitutional mandates of fairness and equality under Articles 14 and 16. Permitting a demonstrably erroneous aggregate to continue merely because it went undetected for some time would amount to perpetuating an illegality. The principle is well settled that there can be no estoppel against law, and administrative lapses cannot ripen into enforceable rights when they infringe upon the legitimate claims of others.



It is equally relevant that the continuance of the mistake is not a neutral act; it actively confers an undue advantage upon the petitioner at the expense of candidates placed below him in the merit hierarchy. A court of equity cannot sanction a situation where an error distorting merit is allowed to survive simply due to the efflux of time. Stability in administration is desirable, but not at the cost of fairness in selection.

Viewed from this perspective, the present case is not one of a harmless clerical irregularity but of a mistake that strikes at the very foundation of the selection process. The petitioner's argument, if accepted, would effectively legitimize an appointment grounded upon an incorrect merit position. Such a course would erode public confidence in recruitment mechanisms and defeat the principle that selection must reflect true academic performance.

Accordingly, this Court holds that an admitted error in the recording of aggregate marks cannot be permitted to subsist merely on account of lapse of time, particularly when:

1. the beneficiary was aware, or reasonably ought to have been aware, of the discrepancy;
2. no statutory provision justifies the excess marks; and
3. the continuance of the error results in tangible prejudice to other candidates.



The decision in **Board of Secondary Education of Assam vs. Mohd. Sarifuz Zaman (supra)** does not advance the petitioner's case, being clearly distinguishable on facts as well as on principle. Rather than supporting the petitioner, it reinforces the broader proposition that belated corrections must be evaluated in light of equity, authenticity of records, and absence of prejudice—conditions that are conspicuously lacking here.

In such circumstances, the petitioner cannot invoke the doctrine of long-standing mistake as a shield to retain a benefit that was never lawfully due. The balance of equity tilts decisively in favour of preserving the integrity of the merit process rather than protecting an advantage founded upon an admitted error. The issue is, therefore, answered against the petitioner, and it is held that the petitioner is not entitled to claim continuation in service or any consequential benefit on the strength of an erroneous aggregate that materially affected the merit list.

4. Whether the challenge to the petitioner's appointment is legally sustainable when Respondent No. 7 has not assailed the merit list, particularly in light of the allegation that the petitioner was aware of the erroneous award of excess marks and nevertheless derived benefit from it?



The issue that arises for determination is whether the challenge to the petitioner's appointment can be regarded as legally sustainable when Respondent No. 7 has not specifically assailed the merit list, particularly in the backdrop of the allegation that the petitioner was aware of the erroneous grant of excess marks and yet continued to derive advantage therefrom.

Ordinarily, the merit list constitutes the foundation of any public selection process, and a challenge to an appointment is often accompanied by a corresponding challenge to the merit list from which such appointment flows. However, this principle cannot be applied in a rigid or mechanical manner so as to defeat the larger mandate of fairness in public employment. Where the very basis of an individual's placement in the merit list is alleged to be vitiated by a patent error — especially one resulting in undue enrichment — the absence of a formal challenge to the entire merit list does not, by itself, render the objection untenable.

Public appointments must conform not only to procedural regularity but also to substantive fairness. If it is demonstrated that a candidate secured placement on the strength of marks erroneously awarded, the appointment becomes vulnerable, as no person can claim a vested right on the basis of a mistake. The law is equally clear that an error which strikes at the root of merit



cannot be permitted to perpetuate merely because it remained unchallenged at an earlier stage.

Of particular significance is the allegation that the petitioner was aware, from the inception, of the excess marks reflected in the marksheet and nonetheless chose to rely upon the same. A candidate who knowingly benefits from an apparent irregularity cannot later invoke technical pleas to shield such advantage. The doctrine that one must approach the process with clean hands applies with equal force to matters of public selection. Acceptance of a benefit, despite awareness of its erroneous origin, cannot be equated with an innocent or bona fide mistake; rather, it raises serious doubts regarding the fairness of the claim itself.

In such circumstances, the challenge mounted by Respondent No. 7 cannot be dismissed solely on the ground that the merit list was not independently questioned. When the legality of an appointment is itself under cloud due to an alleged foundational error, the Court is duty-bound to examine the validity of the appointment rather than be constrained by technical omissions in the manner of challenge. To hold otherwise would amount to allowing a manifest irregularity to attain legitimacy through procedural silence.



Accordingly, this Court is of the considered opinion that the challenge to the petitioner's appointment remains legally sustainable notwithstanding the absence of a direct challenge to the merit list. If the appointment is shown to have been secured on the basis of excess marks known to the petitioner, the same cannot be protected in law. The issue is therefore answered in the affirmative.

5. Whether the State Appellate Teachers Authority acted within the scope of its statutory jurisdiction in directing consideration for the appointment of a specific individual, namely the private respondent no. 7, or whether such a direction amounts to an excess of the authority vested in it under the governing rules?

The question that falls for consideration is whether the State Appellate Teachers Authority acted within the confines of its statutory jurisdiction while directing consideration for the appointment of a specific individual, namely the private respondent no. 7, or whether such direction transgresses the limits of the authority vested in it under the governing framework.

It is a settled principle of administrative law that every statutory authority is a creature of the statute and must operate strictly within the bounds of the powers expressly conferred upon



it. Any action taken beyond such delegated authority is liable to be regarded as ultra vires and therefore unsustainable in law. The role of an appellate authority, particularly in matters relating to public employment, is ordinarily supervisory and corrective in nature — to examine the legality of the process, ensure adherence to prescribed rules, and remedy procedural irregularities where established. However, such authority does not extend to substituting the statutory selection mechanism by directing the appointment or consideration of a particular candidate.

The governing rules contemplate that appointments to public posts must be carried out through a transparent and merit-based selection process by the competent appointing body. Where an appellate forum proceeds to single out an individual for consideration, it risks encroaching upon the domain reserved for the recruiting authority. Such a course not only disturbs the institutional balance envisaged under the statutory scheme but also raises legitimate concerns regarding fairness and equal opportunity among all eligible candidates who may have participated in the selection process.

In the present case, the direction issued by the State Appellate Teachers Authority is not confined to rectifying a procedural defect or ordering reconsideration in accordance with



law; rather, it tends toward favoring a specific individual for appointment. Even if the authority perceived some irregularity warranting interference, the legally permissible course would have been to remit the matter to the competent authority for fresh consideration in accordance with the applicable rules, without indicating or preferring any particular candidate.

Judicial discipline demands that statutory bodies refrain from assuming powers that the legislature has consciously withheld. When an authority travels beyond its jurisdiction, the legitimacy of its decision becomes vulnerable, irrespective of the intention behind such exercise of power. The emphasis must always remain on preserving the integrity of the selection process rather than advancing the claim of any one individual.

Accordingly, this Court is of the considered view that the State Appellate Teachers Authority exceeded the scope of its statutory jurisdiction in directing consideration for the appointment of the private respondent no. 7. Such a direction cannot be sustained, as it amounts to an impermissible expansion of appellate power and intrudes upon the functions of the appointing authority. The issue is therefore answered in the negative.



6. Whether a candidate who has approached the judicial forum and established prejudice is alone entitled to consequential relief, or whether similarly situated candidates—irrespective of their participation in the litigation—are also entitled to parity of treatment in furtherance of the constitutional mandate of equality under Articles 14 and 16 of the Constitution of India?

The issue that arises for determination is whether the consequential relief flowing from the present adjudication should be confined to the contesting respondent alone, or whether the benefit must also extend to other candidates who stand similarly placed in the merit list.

From the materials on record, it emerges that the petitioner was placed at Serial No. 1 in the merit list, whose eligibility now stands seriously questioned in view of the discrepancy relating to the award of marks. Respondent No. 7, who has raised the challenge, is placed at Serial No. 3. Significantly, the candidate placed at Serial No. 2 was neither impleaded before the State Appellate Teachers Authority nor before this Court. The explanation offered is that the said candidate is presently employed elsewhere and is allegedly not



interested in pursuing the appointment; however, such a submission remains unsupported by any cogent material on record.

In matters concerning public employment, the principle of fairness demands that no candidate who stands higher in the order of merit be bypassed merely on the basis of assumptions regarding his disinterest. The right flowing from placement in a merit list is not liable to be defeated unless the candidate expressly relinquishes the claim or is otherwise found ineligible in accordance with law. Any direction that ignores a higher-ranked candidate without affording an opportunity of consideration would fall short of the requirements of Articles 14 and 16 of the Constitution.

Accordingly, this Court is of the considered view that the consequence of the present determination cannot be confined exclusively to Respondent No. 7 without first extending due consideration to the candidate placed higher in the merit list. The competent authority shall, therefore, be at liberty to verify the willingness and eligibility of the candidate placed at Serial No. 2 and thereafter proceed in accordance with the applicable rules and governing framework. In the event the said candidate is found unwilling, ineligible, or otherwise unavailable, it shall be open to the authority to take such further steps as may be permissible in



law with respect to the next eligible candidate in the order of merit, that being private respondent no. 7.

21. In light of the foregoing discussion and the findings recorded on the issues framed herein above, this Court is of the considered opinion that the impugned order passed by the State Appellate Teachers Authority warrants partial affirmation. The Tribunal was justified in examining the legality of the petitioner's selection and in directing corrective measures where irregularities were found to have affected the sanctity of the selection process. However, the declaration of the petitioner's marksheet as "forged and fabricated," having been rendered in the absence of a duly conducted inquiry and unsupported by cogent evidence, cannot be sustained in law and it is accordingly set aside to that extent.

22. Consequently, in order to restore fairness and transparency in the matter of public appointment, the competent authority is directed to undertake a fresh preparation of the merit list on the basis of verified and legally admissible records, and thereafter carry the process of appointment to its logical conclusion strictly in accordance with the applicable rules. While doing so, the authority shall also take into consideration the claim of all eligible candidates in the order of merit. Since the candidate placed at Serial No. 2 was not a party to the proceedings, the



authority shall first ascertain his willingness and eligibility before proceeding further, and thereafter adopt such course as may be permissible under law.

Accordingly, the present writ petition stands dismissed in the aforesaid terms and directions. All pending Interlocutory Applications, if any, shall also stand disposed of. No order as to costs.

(Alok Kumar Sinha, J)

Prakash Narayan

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