

(2015) 05 PAT CK 0008

In the Patna High Court

Case No : Civil Writ Jurisdiction Case Nos. 5217, 21873, 21945 of 2014, 2650, 386, 1231, 615, 4805, 3241, 4043 and 5432 of 2015

Abdul Majid and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-05-2015

Acts Referred:

Citation : (2015) 4 PLJR 52

Hon'ble Judges : Ajay Kumar Tripathi, J

Bench : Single Bench

Advocate : Abdus Shakoor, for the Appellant; Harish Kumar, GP32, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Ajay Kumar Tripathi, J.

1. After the publication of the result by Bihar School Examination Board of Bihar Primary Urdu and Bangla (Special) Teachers Eligibility Test (hereinafter referred to as the eligibility test), a bagful of writ applications came to be filed seeking diverse kind of directions and relief from the Court. Some wanted the result to be quashed, some others wanted grant of grace marks across the board to each and every candidate and some others wanted a direction to appoint the qualified candidates on the basis of the result so published. On the surface such diverse kind of prayer and relief looks irreconcilable. Counsels appearing in these writ applications, therefore, have adverse and conflicting submissions to make.

2. It is important therefore to state the backgrounds under which these litigations have arisen.

3. After the Right of Children to Free and Compulsory Education Act (RTE) 2009 was notified, the National Council for Teachers Education issued guidelines for conducting Teachers Eligibility Test and made it mandatory. In furtherance to the guidelines and also to ensure implementation thereof, the Department of

Education, Government of Bihar, notified a set of rules on 3.4.2012. The rule in question is known as Bihar Panchayat Primary Teachers (Employment and Service Conditions) Rules, 2012. This rule also made passing of TET Examination by all candidates, who wanted to be appointed as teachers mandatory.

4. In view of the above statutory requirements, Bihar School Examination Board was given the responsibility of conducting the TET Examination for Urdu and Bangla teachers and an advertisement was issued in terms of Annexure-1. Large number of candidates running into tens of thousands responded. The examination was held on 1.10.2013. After the examination got over, many a candidates raised objections about the correctness of either the question or the answer provided by the Examination Board. In fact, to be fair to Bihar School Examination Board, they made the question paper and the model answer available on the Website and the objections were invited by 21.10.2013.

5. About 350 objections were received by the Board till 21.10.2013, which led to appointment of Subject Experts. The decision to appoint the Subject Experts is corroborated by the notification dated 14.11.2013, which is Annexure-B to the counter affidavit of Bihar School Examination Board.

6. The Subject Experts submitted their report and opined that there were two defective questions in Paper-I and three defective questions in Paper-II, which needed to be addressed. The Examination Board considered the report of the said experts and the Board in its meeting dated 20.11.2013 decided to delete two questions of Paper-I and three questions of Paper-II. The Computer Centre was given a direction for preparation and publication of results of the candidates by marking only 148 questions for Paper-I and 147 questions for Paper-II. In other words, evaluation was done with the reduced number of questions. This result came to be published on 29.11.2013.

7. The result was uploaded on the Website of the Examination Board along with OMR and Answer Sheets of the candidates.

8. It is said that the Board received several complaints again by candidates of Urdu subject claiming that some questions are either defective or confusing. The matter was this time taken up at the level of the Education Department on 11.2.2014 and on the basis of yet another set of Subject Experts, a kind of consensus with regard to 10 questions of Urdu language of Paper-II were said to be wrong or confusing. The questions numbers are 99, 100, 101, 110, 112, 113, 115, 125, 129 and 145. This time a decision was taken not to delete the questions but to award one marks each against 10 defective or so-called confusing questions in the said examination. The Court was also informed that initially marks was awarded and confined to the candidates who had attempted those questions and not the rest. This, obviously, led a lot of confusion and bickering. The decision, therefore, was to provide 10 marks against the defective questions to those candidates who had not been awarded marks in those questions. The decision of the State Government is Annexure-D to the counter

affidavit of Examination Board.

9. The Court is informed by the Examination Board that CWJC No. 3098 of 2014 was filed on the issue of declaration of result and award of marks, which was heard and disposed of on 13.5.2014. The order is Annexure-E to the counter affidavit.

10. The Examination Board in the light of the direction of the State Government and the High Court re-published the result.

11. The publication of result again received objections from so-called different corners with regard to Paper-I of the Eligibility Test. Yet another committee was set up and so-called special members were invited to inquire into the fresh objections raised with regard to Paper-I. This Committee, which held its meeting on 3.9.2014, came to an opinion that 13 questions of Paper-I were either wrong or confusing. The question numbers indicated are 01, 07, 17, 30, 43, 101, 103, 114, 125, 129, 131, 136 and 138.

12. The opinion of the above experts was placed in the meeting of the Board on 17.11.2014, who decided to grant 13 marks against the said defective questions of Paper-1 i.e. one marks each for the so-called defective question. The rider was that this mark will not be given to those candidates who had already been awarded marks in those questions. The result was revised 4th time over.

13. Some more questions and some more confusion still persist with regard to the answers/questions. The variable kind of result and its publication also led to all kinds of confusion if not rumours amongst the candidates, who either became successful or did not become successful. It is also important to note that a minimum cut off marks for different categories of candidates was fixed, which for the general category was said to be 89 (60%) and for OBC and EBC 81 (55%%) etc. etc.

14. Some set of writ applications questions the wisdom of granting 10 marks across the board in Paper-I and 13 marks across the Board in Paper-II. It is urged on behalf of the some of the petitioners that award of such marks across the board will be detrimental to the final preparation of merit list and many a eligible candidates will be pushed in the zone of consideration because virtually every candidate starts up with 10 and 13 marks in their kitty with a basic presumption that every candidate could provide the right answer to those defective questions. Taking an extreme example, if this modality is adopted, even those candidates who may not have attempted even one question will still get 10 marks in Paper-1 and 13 marks in Paper-II. Yet another situation will be that many a candidates who may not have attempted all the questions or only part of questions, will end up with marks even beyond the attempted questions. It all will have the effect of pushing up the minimum bench mark and helping people to cross the threshold without any effort on their part. This will be a reward to the candidates because of inefficiency or incompetence of the body conducting the examination.

15. Another attack made on such a modality is that results were published and republished four times over. What was the occasion for the Examination Board to keep receiving objections after every declaration of result? Is it ever done in any other examination? The readiness to accept objections is also bewildering. The appointments of so-called experts or special invitees did not constitute the same people or common people every time. A new committee was constituted who naturally had a different opinion on different questions. If this modality was/is allowed to be continued, there will never be any end to such dispute as to which is the correct question and answer. If the matter was referred to the same body of experts, some kind of consistency would have arisen. But, obviously, there was something much more than it meets the eye by the State or the Examination Board who kept constituting committees and inviting objections after every publication of results. It is not the case of the Examination Board that even after publication of the last result, some objections have not arrived. Therefore, the whole exercise culminating into award of marks against the so-called wrong questions is fishy as well as irrational keeping in mind the object and performance in the eligibility test which has significance.

16. It was submitted on behalf of some of the petitioners that the first committee constituted by the Examination Board rightly took a view that 2-3 questions found to be incorrect should be deleted and evaluation be done on the basis of the left over questions. It was 148 and 147 respectively. Then an innovation was taken that those who had attempted a wrong question will be given marks and those who did not will not be given marks. When more hue and cry was raised, a decision was taken to award 10 to 13 marks across the board to all the candidates. There is no clear answer as to why every candidate ought to be given a head start of as many marks if it was also not done to extend the zone of consideration and allow more people who may not have otherwise qualified.

17. The Court may not have had an occasion to comment as above if the TET was only eligibility test or a qualifying test for the appointment on the post of teachers. The marks obtained by candidates even in the TET Examination carries a weightage. This is confirmed by reading 2012 Rules, specially Rule 11(Kha), which is reproduced herein below:

18. From a reading of the Rules quoted above, if the Bench mark is pushed up by award of 10 - 13 marks, then the weightage available to various candidates also gets pushed up. There is huge variance between a candidate who scores 90 per cent as well as a candidate who scores between 80-90 per cent. Those with 90 per cent and above will get 10 marks weightage for their performance in TET and those between 80-90 will get 6 marks. It can be well imagined as what will happen after 10 - 13 marks are awarded across the board. Candidates at the top will beget added weightage and those who may not be far behind will be left in the lurch which will create an imbalance in the merit list.

19. Some of the counsels of the petitioners, therefore, urge that the best option would be to delete the number of wrong questions irrespective of the

recommendation of the committees as to award of marks and evaluate the answers on the left over correct questions. There shall not be any chaos and confusion because the evaluation will be done on true merits of reduced number of questions. That will be a uniform yardstick of testing the merit of all the candidates who participated in the examination and it will not create any bias in favour of the candidates sitting at the top who will end up with more weightage or marks than they would have earned in TET examination. Reliance was placed by the counsel for some of the petitioners in a case reported in 2012 (1) PLJR 542, which is the case of Manoj Kumar Vs. State of Bihar it is the matter related to similar kind of wrong questions in an examination conducted by Bihar Public Service Commission for 52nd to 55th batch.

20. The counsels point out the observation of the Court made in para 18 to 20, which are reproduced herein below:

"18. A controversy of similar kind had once arisen way back in the case of Ganesh Prasad Yadav vs. State of Bihar, 1995(2) PLJR 170. The Division Bench after going into the details of the said dispute had opined as under:-

"36. No doubt, there are mistakes in the alternative answers or responses to the four questions, but on that basis it cannot be said that the Commission adopted any unfair means or acted in an unfair manner, on the other hand, the aforesaid mistakes appear to have been committed by the experts to whom the work of setting of questions and their suggestive answers was entrusted. It cannot be said that there was unfair treatment to the non-selectees in particular. All the candidates including the successful candidates have answered the same set of questions and in that view of the matter either all the candidates have suffered equally or took advantages of wrong suggestive answers. In that view of the matter, in spite of the aforesaid errors, in my view, it would not be proper to quash the preliminary test for the aforesaid defects".

(emphasis mine)

19. Similar is the situation in the present case as well. The advantage or disadvantage from a wrong question or a wrong answer would be there against one and all because it cannot be said that successful candidates managed to hit the bull's eye with a correct answer even though the question was wrong or vice versa.

20. The Court therefore comes to a considered opinion that a fairer approach to the whole problem would be by permitting BPSC to carry out a fresh evaluation of all the answer sheets on the basis of their stand emerging from the opinion of the second expert group. If such an exercise is permitted then it will amount to a fair evaluation of all the candidates without giving any unfair advantage to either successful candidates or the unsuccessful ones because they will all be tested on a common platform. In fact this is one of the reasons why this Court is not willing to accept the submission of some of the counsel that as many marks should be added to all the candidates treating them as correct answers to the

incorrect questions. Such an approach will make no difference to the final standing of the successful candidates whose results have been declared."

21. Counsel representing the Bihar School Examination Board takes a stand that Bihar School Examination Board has decided to award as many marks to each and every candidates across the board, which is 10 marks for Paper-I and 13 for Paper-II. If such a position is taken then no prejudice is created either in favour or against. No doubt, it will raise the entry point or threshold because every body starts up with 10 and 13 marks. However, there are no clear answers to some of the anomalies which emerge by adopting such a procedure as noticed in the earlier part of the order.

22. There is more confusion in the evaluation as well because at one point of time marks was being awarded to only those candidates who have attempted those questions and not to others. This re-evaluation was done with a stand that as many marks is given to all the candidates but those who have already been given marks with the above procedure will not be given extra marks but all will add up to 10 or 13 for the two papers etc. etc. The evaluations having been done and results having been published four times over is bound to create serious doubt on the fairness of the final result especially when there will be variance from first publication to the latest.

23. The Court, therefore, comes to a considered opinion that the only way to restore confidence and faith in the examination so held by the Examination Board would be to delete as many questions which are said to be 10 in Paper - I and 13 in Paper - II and evaluate the answer sheet of all the candidates with reduced number of correct questions. The publication of result after the above exercise will throw up the correct merit position of all the candidates with advantage or disadvantage to none, especially when it has already been noticed that this test also will have a bearing on the final merit as weightage is required to be given on the basis of performance in TET examination.

24. The stand of the learned senior counsel representing the Examination Board and the State is neither appreciated nor it is logical. Therefore, they are fit to be rejected.

25. There was an occasion for this Court to comment in the manner objections were readily accepted and the way so-called expert committee but that would unnecessarily divert and complicate the issue.

26. The Court directs the Examination Board to make a fresh evaluation of all the answer sheets of the candidates by deleting 10 questions in Paper-I and 13 questions in Paper-II. They shall declare the results on the basis of the above direction. Based on the said declaration, further exercise for appointment on the post of teachers for Urdu and Bangla will be carried out. It will be in the interest of the State and the candidates that the matter is expedited.

27. The learned senior counsel for the Examination Board harped on the fact that

another Coordinating Bench has already given approval to the modality adopted earlier in terms of Annexure-E.

28. The Court would have appreciated the above fact provided the Examination Board or the State Government stuck to a particular mode as well as declared the result without setting up committees after committees. Since they have not been consistent and this has led to a large number of litigations and filing of writ applications, this Court has no option but to opine as above to instill confidence in the candidates and the fairness in the conduct of examination.

29. All the writ applications with the diverse kind of prayers, therefore, are disposed of with the above directive with regard to declaration of results. In view of the above, the earlier results declared by the Examination Board will be of no avail and will be treated to have been annulled. The fresh result will be declared on the basis of deleted questions. The relief to other candidates, who wanted a direction for appointment on the basis of earlier result, therefore, is refused.