

(2020) 09 PAT CK 0278

In the Patna High Court

Case No : Letters Patent Appeal No. 869, 847, 874, 972 Of 2019, Civil Writ Jurisdiction Case No. 17634, 18663, 16925, 16974 Of 2017

Ajeet Kumar Shrivastva And Ors

APPELLANT

Vs

Bihar School Examination Board Patna And Ors

RESPONDENT

Date of Decision : 23-09-2020

Acts Referred:

Citation : (2020) 09 PAT CK 0278

Hon'ble Judges : Sanjay Karol, CJ;S. Kumar, J

Bench : Division Bench

Advocate : Raushan, Abhinav Srivastava, Lalit Kishore, Kumar Kaushik, Ashutosh Ranjan Pandey

Final Decision : Disposed Of

Judgement

These appeals have been preferred against the judgment dated 19.07.2019 passed by a learned Single Judge of this Court in CWJC No. 1504 of 2018,

titled as Ashoke Krantti & Ors. vs. The State of Bihar & Ors. and its analogous cases. Bihar Elementary Teachers Eligibility Test 2017 (hereinafter

referred to as the BETET) was conducted pursuant to Advertisement No.42 dated 6th April, 2017. The communiqué issued by the Bihar

School Examination Board, Patna vide Notification No.63/2007 dated 13.07.2017 clearly stipulated two conditions; (i) in Column-4, that no candidate is

authorised/permitted to use pen, eraser or whitener on the OMR Sheet; (ii) in Column-5, that if the OMR Sheets are not properly filled up, the same

would be rejected by the computer resulting in invalidation of their result for which the candidate alone would be responsible.

The writ applicants before us are those candidates who had, in fact, used a whitener over their OMR Sheets, in attempting the questions during the

examination which they undertook for the test in question. Consequently, the writ applicants' results were held to be invalidated.

Aggrieved thereof, writ applicants preferred writ petitions before this Court which stand adjudicated vide impugned judgment dated 19.07.2019 passed

in CWJC No. 1504 of 2018, titled as Ashoke Krantti & Ors. vs. The State of Bihar & Ors. and its analogous cases, i.e. CWJC No. 17634 of 2017,

titled as Balmukund Thakur & Ors. vs. Bihar School Examination Board, Patna & Ors.; CWJC No. 18663 of 2017, titled as Suman Kumar vs. The

State of Bihar & Ors.; CWJC No. 16925 of 2017 titled as Anjana Rani & Ors. vs. The State of Bihar & Ors. and CWJC No. 16974 of 2017 titled as

Kunal Kumar vs. The State of Bihar & Ors.

Consequently the present appeals assailing the judgement on a limited point have been filed.

The operative portion of the impugned judgment dated 19.07.2019 of which the writ applicants/appellants are aggrieved of, reads as under:-

30. Now, coming to the issue of the candidates whose candidature has been declared to be invalid on account of use of whitener / eraser etc., it is

clear that the candidates were strictly instructed not to overwrite or use whitener vide the aforesaid advertisement contained in communiqué no. 63

of 2017 wherein under column 4, it has been categorically provided that use of pen or eraser in the OMR Sheet, folding of OMR sheet, tearing or

application of whitener on OMR Sheet are totally prohibited. Under column 5 of the said advertisement, the candidates had been cautioned to literally

follow the said instructions and in case, the OMR sheets are not properly filled up then the same would be rejected by the computer resulting in

invalidation of their result for which the candidate shall be solely responsible.

This Court finds that since the candidates had been warned by issuing instructions by a communiqué contained in advertisement no. 63 of 2017

dated 13.7.2017, any disregard of the instructions contained therein is liable to result in invalidation of the candidature of such candidates using

whitener, eraser, pin etc. In this regard, the judgment rendered by a coordinate Bench of this Court dated 22.12.2017 passed in CWJC No. 16359 of

2017 (Brajesh Kumar & Ors. vs. The State of Bihar & Ors.), as also the judgment rendered by the Hon'ble Apex Court in the case of A.V.Natrajan

& Ors. (supra) fully covers the said issue, hence, the candidature of the writ

petitioners who have used whitener, eraser, pin etc. have rightly been invalidated by the Respondent-Board since they have violated the instructions given to them which in turn amounts to misconduct, hence such candidates are liable not to be selected. It would be unfair to the writ petitioners, if the judgment rendered by the Hon'ble Apex Court in the case of Hanuman Dutt Shukla & Others (supra), relied upon on their behalf by the learned counsels appearing for them, is not dealt with. This Court finds that the said judgment, rendered in the case of Hanuman Dutt Shukla & Others (supra), is of no help to the writ petitioners inasmuch as firstly, the said judgment was based upon a concession made by the State and secondly, the said judgment specifically states that the same will not be treated as a precedent for any other case, meaning thereby that the said judgment rendered by the Hon'ble Apex Court cannot be used as a precedence, hence, shall not bind this Court.â??

In fact, learned counsel fairly reiterates that the writ applicants/appellants herein are only aggrieved with that part of the order, which stands reproduced hereinabove.

We notice that the instructions issued in Column-4 of the Advertisement No.63 of 2017 dated 13.07.2021 are unambiguous. No overwriting or use of whitener on the OMR Sheets is permissible. Consequences, adverse in nature, are prescribed. Only for the reason that despite the use of whitener, OMR Sheets stand evaluated by the computer, that itself would not render the clause of rejection of result to be invalidated or nugatory.

As such, in our considered view, no case for interference is made out. The findings returned and reasoning adopted by the learned Single Judge, more so based on settled principles of law, cannot be said to be perverse or illegal.

For all the aforesaid reasons, the appeals are dismissed.

Interlocutory applications, if any, shall stand disposed of.