
(2010) 10 PAT CK 0109
In the Patna High Court
Case No : CWJC Nos. 6412 of 2008

Arun Dwivedi and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-10-2010

Acts Referred:

Citation : (2010) 10 PAT CK 0109

Final Decision : Dismissed

Judgement

V.N. Sinha, J.—Petitioners in these writ petitions were the applicants for appointment on the post of Lower Division Clerk in the Bihar Vidhan Sabha Secretariat pursuant to Advertisement No. 2 dated 3.5.2001, Annexure-1. Having participated in the selection process, they have questioned the Office Order No. 1 dated 25.1.2005, bearing Memo No. 104 dated 25.1.2005 issued by the Bihar Vidhan Sabha, Annexures-5, 11 in the two writ petitions respectively whereunder 89 successful candidates have been appointed pursuant to the aforesaid advertisement on the post of Lower Division Clerk.

2. It is submitted on behalf of the Petitioners that close perusal of the aforesaid advertisement would indicate that thereunder mode of selection provided for appointment on the post of Lower Division Clerk is by conducting written examination of 100 marks in General Knowledge, Hindi and Mathematics of two hours duration. The authorities deviating from the mode of selection provided in the advertisement, proceeded to conduct interview of 25 marks in order to accommodate the kith and kin of the Members of the Selection Committee and other high-ups of the Bihar Vidhan Sabha and to achieve such purpose, the Selection Committee was also reconstituted under notification of the Bihar Vidhan Sabha dated 19.5.2004, bearing Memo No. 700 dated 19.5.2004, Annexure-9 in C.W.J.C. No. 1541 of 2005 without there being any ostensible purpose for such reconstitution. In order to accommodate the kith and kin of the Members of the Selection Committee and other high-ups of the Bihar Vidhan Sabha, 2544 candidates were called for the interview against 90 vacancies.

3. With reference to the averments made in paragraph 4 of the second supplementary affidavit filed in C.W.J.C. No. 1541 of 2005 and Annexures-13 and 14 appended therewith, it is submitted that the marks shown to have been secured by 24 candidates during the aforesaid selection process for appointment on the post of Lower Division Clerk appears to have been changed during the selection process without there being any justifiable reason for such alteration. In paragraph 18 of C.W.J.C. No. 1541 of 2005, Petitioners have given the name of 8 appointees on the post of Lower Division Clerk pursuant to the aforesaid selection process indicating their connection (relationship) with the Chairman, Member of the Selection Committee and other high-ups of the Bihar Vidhan Sabha and according to the learned Counsel for the Petitioner in C.W.J.C. No. 1541 of 2005, the said allegation has been admitted in paragraphs 22 and 23 of the counter affidavit filed on behalf of the Bihar Vidhan Sabha. Annexure-8 in C.W.J.C. No. 6412 of 2005 is said to be the list of 90 candidates who have been appointed on the post of Lower Division Clerk pursuant to the aforesaid advertisement indicating their connection (relationship) with the Members of the Selection Committee and other high-ups of the Bihar Vidhan Sabha. In the background of the aforesaid facts, it is submitted that this Court under order No. 10 dated 25.7.2008, passed in these writ petitions deemed it appropriate not to proceed further in the matter until submission of the preliminary report by the Vigilance Investigation Bureau of the State Government, which has now been submitted and relying on the report of the Vigilance Investigation Bureau, this Court should annul the appointment made pursuant to the impugned Office Order dated 25.1.2005.

4. Learned Counsel for the Petitioners in C.W.J.C. No. 1541 of 2005 relied on the following judgment of the Hon"ble Supreme Court in the case of Madan Mohan Sharma and Another Vs. State of Rajasthan and Others, (paragraph 4), in the case of Hemani Malhotra Vs. High Court of Delhi, (paragraphs 9,12) and in the case of T. Nadu Computer SC B.Ed. G.T. Welf. Society Vs. Higher Sec. Scl. Computer Tech. Assn. and Others, (paragraphs 32-34) so as to buttress his submission that deviation from the mode of selection provided in the advertisement during the conduction of the selection process shall vitiate the entire selection process, as such deviation was only for the purpose of accommodating the kith and kin of the Members of the Selection Committee as also other high-ups of the Bihar Vidhan Sabha. In support of the submission that 2544 candidates ought not to have been called for the interview to fill up 90 vacancies, learned Counsel for the Petitioners in C.W.J.C. No. 1541 of 2005 relied on the judgment of the Hon"ble Supreme Court in the case of Ashok Kumar Yadav and Ors. etc. etc. v. State of Haryana and Ors. etc etc. and State of Haryana and and Ors., Subhash Chander Sharma and Ors. and Ashok Kumar Yadav and Others Vs. State of Haryana and Others, and submitted that candidates not more than 2-3 times of the number of vacancies to be filled up, should have been called for the interview. In the instant case 2544 candidates were called for the interview to fill up 90 vacancies only with a view to

accommodate the kith and kin of the Members of the Selection Committee and other high-ups of the Bihar Vidhan Sabha and on such ground the selection made should be quashed.

5. Learned Counsel for the Petitioner in C.W.J.C. No. 1541 of 2005 further submitted that from perusal of the marks shown to have been secured by the successful candidates in the chart furnished by the Bihar Vidhan Sabha Secretariat, Annexures-13, 14 and Annexures-E, F to the counter affidavit filed by the Bihar Vidhan Sabha, there is no difficulty in concluding that there has been interpolation in the marks secured by the successful candidates, this Court in appreciation of such interpolation relying on the judgment of the Hon''ble Supreme Court in the case of Krishan Yadav and another Vs. State of Haryana and others, should set aside the impugned order of appointment, Annexures-5, 11. Reliance in this connection is also placed on the chart issued under letter dated 26.11.2007 and 21.7.2008, Annexures-15, 16 given to the Petitioner under the Right to Information Act indicating the marks secured by the candidates.

6. Learned Counsel for the Petitioner in C.W.J.C. No. 1541 of 2005 also submitted that the appointment letters pursuant to the impugned Office Order dated 25.1.2005 was issued while the Model Code of Conduct was in force and the joining was accepted in haste without police verification and in appreciation of such fact, this Court should quash the selection and appointment made.

7. Learned Counsel for the Petitioner in C.W.J.C. No. 1541 of 2005 then submitted that the Selection Committee could not have decided the procedure for selection and as the impugned selection has been made on the basis of the procedure evolved by the Selection Committee, such selection is vitiated in law and should be set aside by this Court. In support of the aforesaid contention, learned Counsel relied on the judgment of the Hon''ble Supreme Court in the case of Dr. Krushna Chandra Sahu and others Vs. State of Orissa and others, paragraphs 35, 36 and 37, the case of Dilip Kumar Jha and Another Vs. The State of Bihar and Others, paragraph 71.

8. Learned Counsel for the Petitioners in C.W.J.C. No. 1541 of 2005 further submitted that fixing of 100, 25 marks for the written test, interview respectively is arbitrary and contrary to the directions, of the Hon''ble Supreme Court not to provide more than 12.5% of the marks allotted for the written examination, as the present selection has been made on the basis of 25 marks for the interview, which is more than 12.5% marks allotted for the written examination, the same is vitiated and should be set aside. Reliance in this connection is placed on the judgment of the Hon''ble Supreme Court in the case of Mohinder Sain Garg Ors. Vs. State of Punjab and Others, paragraph 33, in the case of Krishan Yadav and another Vs. State of Haryana and others, paragraph 22.

9. Learped counsel for the Petitioners in C.W.J.C\\ No. 1541 of 2005 also submitted that as there is allegation of irregularities and malpractices in selection

process, Petitioners having appeared in the selection process is not barred by the principle of estoppels from challenging the selection process. Reliance in this connection is placed on the judgment of the Hon"ble Supreme Court in the case of Raj Kumar and Others Vs. Shakti Raj and Others, and of this Court in the case of Dilip Kumar Jha and Another Vs. The State of Bihar and Others, "paragraph 20.

10. Learned Counsel for the Petitioners in C.W.J.C. No. 1541 of 2005 further submitted that reliance placed by the Respondents over the orders of this Court dated 21.2.2007, passed in C.W.J.C. No. 5372 of 2005, whereunder the said writ petition challenging the present selection process was dismissed, cannot be a ground to dismiss the present writ petition as perusal of the order dated 21.2.2007 does not indicate that the malpractices, as alleged in the present writ petition about the arbitrary conduction of the selection process by reconstituting the Selection Committee, introduction of interview contrary to the terms of the advertisement, alteration in marks secured by the successful candidates was alleged and considered in the said writ petition.

11. Learned Counsel for the Petitioners in C.W.J.C. No. 1541 of 2005 further submitted that malpractices alleged in the conduction of the selection process has been duly corroborated in the enquiry conducted by the Vigilance Investigation Bureau referred to in the order No. 10 dated 25.7.2008 passed in these writ petitions. In the circumstances, placing reliance on the findings recorded in the report of the Vigilance Bureau, impugned Office Order dated 25.1.2005 and the appointment letters issued in compliance thereto be quashed.

12. Learned Counsel for the Bihar Vidhan Sabha submitted that pursuant to the Advertisement, Annexures-1, 40,941 applications were received for the post of Lower Division Clerk, out of which 8,785 applications were found valid and admit card issued so as to enable the candidates to appear in the written examination. After conducting the written examination, the Speaker of the Bihar Vidhan Sabha reconstituted the Selection Committee under notification, bearing Memo No. 700 dated 19.5.2004, which is contained in Annexure-9 to the supplementary affidavit filed in C.W.J.C. No. 1541 of 2005 exercising his power under Rule 4 proviso to Rule 6 (b) of the Bihar Vidhan Sabha Secretariat (Recruitment and Conditions of Service) Rules, 1964 (hereinafter referred to as the Rules) directing the reconstituted Selection Committee to act in compliance of his directions. Under order dated 13.8.2004, Annexure-A to the counter affidavit filed on behalf of Respondents 2 to 5, the Speaker, of the Bihar Vidhan Sabha exercising his power under Rule 4 (2) (a) directed the Selection Committee to conduct interview of 25 marks and to call all such candidates for interview who obtained 50, 45, 40 marks respectively in the General, Backward/ Extremely Backward Class and Scheduled Castes/Scheduled Tribes categories. As per the cut-off marks fixed under order dated 13.8.2004, 2,544 candidates secured the cut-off marks and were called for the interview. The interview was conducted from 27.8.2004 till 16.9.2004 in which altogether 2,097 candidates appeared. The Selection Committee in its meeting dated 9.9.2004 decided to grant one more

opportunity to the candidates who could not participate in the interview held during the period between 27.8.2004 to 16.9.2004 and fixed 22-24 September, 2004 for their interview. Aforesaid decision of the Selection Committee was approved by the Speaker under orders dated 14.9.2004. After approval of the Speaker, Roll Number of the candidates who could not appear in the interview earlier was published in the daily newspaper, Hindustan and Hindustan Times, Patna edition dated 17.9.2004 calling upon the candidates who could not appear earlier in the interview to participate in the interview between 22-24.9.2004. In compliance of the aforesaid notice dated 17.9.2004, 164 candidates appeared for the interview. Subsequent introduction of interview in the selection process by the Speaker of the Bihar Vidhan Sabha is in exercise of discretion vested in him under Rule 4 (2) (a) of the Appointment Rules. It is further submitted in the counter affidavit that subsequent introduction of interview in the selection process under order dated 13.8.2004, Annexure-A was impugned in C.W.J.C. Nos. 13062 of 2004 and 5372 of 2005. Both the writ petitions were dismissed under orders dated 24.10.2005 and 21.2.2007, Annexures-B and G to the counter affidavit filed on behalf of Respondents 2 to 5. The order of the learned Single Judge dated 21.2.2007, passed in C.W.J.C. No. 5372 of 2005 was also challenged in L.P.A. No. 308 of 2007, but the same was also dismissed under orders dated 1.8.2007. As regards the alteration in the marks secured by the candidates during the selection process, it is submitted that such alteration is also evident from the list contained in Annexures-E and F to the counter affidavit.

13. As regards the statement made in paragraph 18 of the writ petition that as many as 8 appointees were the wards of the Chairman, Members of the Selection Committee and other high-ups of the Bihar Vidhan Sabha, learned Counsel for the Bihar Vidhan Sabha, with reference to the averments made in paragraphs 22 and 23 of the counter affidavit, pointed out that such statement is incorrect as from the application form submitted by Sri Awadhesh Kumar Singh, one of the appointees, it does not appear that he is related to Sri Nawal Kishore Singh, the Chairman of the Selection Committee. As regards Sri Sanjay Kumar Rawat, another appointee, it is accepted in paragraph 22 of the counter affidavit that he is the Son of Sri Raj Kishore Rawat, a Member of the reconstituted Selection Committee, but it is submitted that Sri Raj Kishore Rawat did not participate in the interview conducted by the Selection Committee in the 2nd sitting from 3.00 P.M. on 16.9.2004 when his son Sanjay Kumar Rawat appeared for the interview and such fact is evident from his application form submitted to the Deputy Secretary of the Establishment Section-cum-Chairman of the Selection Committee dated 16.9.2004, which is available for perusal by this Court alongwith other records of the Selection Committee. Connection (relationship) of others named in paragraph 18 of the writ petition with the officers and employees of the Bihar Vidhan Sabha is admitted in the counter affidavit, but it is submitted that only because they are related to the officers and employees of the Bihar Vidhan Sabha, they could not have been denied the opportunity to appear and succeed in the selection process. In paragraphs of the counter

affidavit, the Bihar Vidhan Sabha has admitted the relationship of 11 appointees with the other officers and employees of the Bihar Vidhan Sabha, but it is stated that only because they are the wards of the employees of the Bihar Vidhan Sabha on such ground, could not have been disqualified from appearing and becoming successful in the selection process.

14. Learned Counsel for the appointees, on the other hand, submitted that Petitioners having not challenged the decision of the Bihar Vidhan Sabha dated 13.8.2004, Annexure-A to the counter affidavit filed on behalf of Respondents 2 to 5 fixing the cut-off marks for different categories of candidates in the written examination alongwith the decision to conduct interview of 25 marks of those who secured the cut-off marks in the written examination on the ground that such deviation was not permissible in the light of the contents of the advertisement, are stopped from challenging the said decision at this belated stage after they have failed to make the grade on the ground of waiver and on this ground alone, the writ petitions are liable to be dismissed. Reliance in this connection is placed on the judgment of the Hon''ble Supreme Court in the case of Sadananda Halo and Others Vs. Momtaz Ali Sheikh and Others, paragraph 59, in the case of Union of India (UOI) and Others Vs. S. Vinodh Kumar and Others, paragraph 18 and in the case of Dhananjay Malik and Ors. v. State of Uttaranchal and Ors. reported in 2008 (3) PLJR (SC) 271, paragraphs 7 and 8. In this connection it was also pointed out that in C.W.J.C. No. 6412 of 2005 only Petitioner No. 3 qualified for interview whereas other three Petitioners even failed to secure the qualifying marks in the written examination.

15. It was also contended on behalf of the appointees that Petitioners have alleged mala fide against the authorities of the Bihar Vidhan Sabha, but necessary facts alleging mala fide has not been pleaded in the writ petitions. Further the authorities against whom mala fide has been alleged, have not been impleaded in the writ petitions by name. In this background, it is submitted that it is well settled that the persons against whom mala fide is alleged must be made party by name, in their absence Petitioners are ill-advised to raise the allegation of mala fide. It is further submitted that in none of the writ petitions, the persons against whom mala fide has been alleged, have been made party by name, in such circumstances, the Petitioners cannot be allowed to raise the allegation of mala fide or favouritism or nepotism and submission made in that regard may be rejected. Reliance in this connection is placed on the passage from D.D. Basu-Administrative Law, 6th Edition (2004) Page 469 as also on the judgment of the Hon''ble Supreme Court in the case of All India State Bank Officers' Federation and Others Vs. Union of India (UOI) and Others,

16. Learned Counsel for the appointees further submitted that holding of the interview during the selection process was not prohibited in the advertisement. In this regard it is further submitted that issue of introducing interview in the impugned selection process came up for consideration before this Court in C.W.J.C. No. 5372 of 2005 (Dharmendra Kumar Singh and Anr. v. The State of

Bihar and Ors.), which was dismissed under orders dated 21.2.2007. Against the order dated 21.2.2007, L.P.A. No. 308 of 2007 was preferred, which was also dismissed under orders dated 1.8.2007, Annexure-2/1 to the reply affidavit filed on behalf of the intervenor. With reference to the aforesaid orders dated 21.2.2007 and 1.8.2007, it is submitted by the counsel for the appointees that the issue of introduction of interview in the selection process vide order dated 13.8.2004, Annexure-A having already been considered by this Court, the same issue cannot be reagitated in the present matters, as it is barred by the principles of constructive res-judicata.

17. Learned Counsel for the appointees further submitted that 2544 candidates were called upon to participate in the interview in the light of the decision dated 13.8.2004 fixing the cut-off marks and decision to call for the candidates who secured the qualifying marks in their respective categories has not prejudiced any of the candidates. In this connection, it is further pointed out that Selection Committee was fair in conducting its proceeding, its fairness is evident from the decision of the Committee to grant one more opportunity to candidates who could not appear for their interview on the date fixed for their interview by publishing notice in two newspaper. In response to the notice published in the newspaper, 164 candidates appeared for the interview, out of whom Roll No. 2428, who is neither related to the Members of the Selection Committee nor to the employee/officer/ high-ups of the Bihar Vidhan Sabha, was finally selected. In this connection, learned Counsel relied on the judgment of the Hon'ble Supreme Court in the case of All India State Bank Officers' Federation and Others Vs. Union of India (UOI) and Others,

18. As regards the decision of the Bihar Vidhan Sabha to reconstitute the Selection Committee under notification dated 19.5.2004, it is submitted by the counsel for the appointees that the reasons which persuaded the Speaker to reconstitute the Selection Committee has been indicated by Respondent No. 21 in his supplementary counter affidavit vide statements made in paragraphs 9 and 10, which has not been controverted by either the Petitioners or the Bihar Vidhan Sabha, in the circumstances, the reasons which persuaded the Speaker to reconstitute the Selection Committee and indicated in the supplementary counter affidavit of Respondent No. 21 may be taken as germane, as from paragraphs 9 and 10 of the said affidavit, it appears that the Selection Committee had to be reconstituted in view of superannuation of one of the Members of the Selection Committee, Sri Santoshi Paswan, Under Secretary who retired from the service of the Bihar Vidhan Sabha with effect from 31.1.2004 and as per the rules, it is mandatory that the Committee must have a Scheduled Caste/Tribe Member in the Committee, in order to provide for the replacement of Sri Santoshi Paswan, Speaker considered the names of M/s Raj Kishore Rawat and Jagdeo Paswan and reconstituted the Committee for providing the replacement of Sri Santoshi Paswan as also to relieve the Secretary and the Joint Secretary of their work load and impending transfer.

19. As regards the appointment of the kith and kin of the Chairman, Members of the Selection Committee and other high-ups of the Bihar Vidhan Sabha, it is submitted by the counsel for the appointees that from the contents of paragraphs 22 and 23 of the counter affidavit filed by the Bihar Vidhan Sabha itself, it will appear that none of the relatives of the Chairman, Member of the Selection Committee and other high-ups of the Bihar Vidhan Sabha was appointed on the post of Lower Division Clerk under order dated 25.1.2005 except one i.e. Son of Sri Raj Kishore Rawat, Member of the Selection Committee, but at the time of his interview, Sri Raj Kishore Rawat did not participate as Member of the Selection Committee in the interview and statement to that effect has been made in the counter affidavit of the Bihar Vidhan Sabha duly affirmed by its Secretary, which fact is also evident from the records of the proceeding of the Selection Committee produced before this Court.

20. Learned Counsel for the appointees, with reference to the Chart, Annexures-13 and 14 as also Annexures-E and F showing two different marks secured by the same candidate, submitted that no reliance can be placed by this Court on those charts as there is hardly any authenticity attached to those charts, which have been prepared on plain paper without any signature and none has taken responsibility about the correctness of the entries made in the charts.

21. Learned Counsel for the appointees further submitted that the findings recorded by the authorities of the Vigilance Investigation Bureau in the light of the enquiry made by them under the orders of the Hon'ble Speaker of the Bihar Vidhan Sabha, cannot be relied upon in these proceedings as on the basis of the findings recorded in the enquiry report, the authorities of the Vigilance Investigation Bureau are required to register a formal First Information Report and to take up the investigation and submit final report which is to be considered by the competent court and until such finding is recorded by the competent court, it shall be premature to rely on the findings contained in the internal enquiry report of the Vigilance Investigation Bureau.

22. Having considered the submission of the parties, it appears that the Bihar Vidhan Sabha published Advertisement No. 2 dated 3.5.2001, Annexure-1 for appointment on the post of Reporter in the pay-scale of Rs. 6,500/-10,500/-, Stenographer Group-D in the pay-scale of Rs. 4,000/-6,000/- and Lower Division Clerk, Typist Grade-II, Security Guard, Driver in the pay-scale of Rs. 3,050/-4,590/-. For appointment on the post of Lower Division Clerk, minimum educational qualification fixed was Intermediate or equivalent with 60, 55, 45% marks for the General, Backward Class, Scheduled Castes/Scheduled Tribes candidates respectively in the Intermediate and Matriculation Examination. In the event candidate possessed 60% marks in the Graduate and Post Graduate examination, he should have 60, 55, 45% marks in either Matriculation or Intermediate examination. The advertisement further provided that there shall be written examination for appointment on the post of Reporter, Stenographer Group-D and Typist Grade-II as per the fixed norms, yardsticks. For appointment

on the post of Lower Division Clerk, the advertisement provided that there shall be written examination of 100 marks in General Knowledge, Hindi and Mathematics of two hours duration. For appointment on the post of Security Guard/Driver, the advertisement provided for physical test/interview and practical test.

23. In the light of the advertisement, 4,0941 applications were received for the post of Lower Division Clerks, out of which 8,785 applications were found valid and admit card issued so as to enable the candidates whose application form was found valid to appear in the written examination. After conducting the written examination and before the selection process could be completed, one of the Members of the Selection Committee, Sri Santoshi Paswan, Under Secretary superannuated from the service of the Bihar Vidhan Sabha with effect from 31.1.2004. Hon"ble Speaker exercising power under Rule 4 read with proviso to Rule 6 (b) of the Rules reconstituted the Selection Committee under order dated 19.5.2004 in order to provide for the replacement of Sri Santoshi Paswan as also to relieve the then Secretary on the ground of his personal difficulty, such as, illness, work load in the Secretariat and the likelihood of the transfer of the Joint Secretary as District and Sessions Judge, keeping in view the seniority of the officers available in the Bihar Vidhan Sabha, appointed Sri Nawal Kishore Singh the then Deputy Secretary as Chairman and M/s Rameshwar Prasad Choudhary and Raj Kishore Rawat, both under Secretaries, as Members of the Selection Committee. Aforesaid facts have been stated by Respondent No. 21 in paragraphs 9 and 10 of his supplementary counter affidavit dated 21.9.2010 filed in Court on 22.9.2010, which have not been disputed by either the Petitioners or the Bihar Vidhan Sabha. In the circumstances, those facts are accepted as correct for the purpose of adjudication of these writ petitions.

24. Having reconstituted the Selection Committee, Hon"ble Speaker of the Bihar Vidhan Sabha exercising his power under Sub-rule (2) (a) of Rule 4 of the Rules issued order dated 13.8.2004, Annexure-A to the counter affidavit filed on behalf of Respondents 2 to 5 directing the Selection Committee to conduct interview of 25 marks and to call all such candidates for interview who obtained 50, 45, 40 marks respectively in the General, Backward/ Extremely Backward Class and Scheduled Castes/Tribes categories in the written test. As per the cut-off marks fixed under order dated 13.8.2004, 2544 candidates qualified and were called to appear in the inter-view. The interview continued from 27.8.2004 till 16.9.2004 in which altogether 2097 candidates appeared. The Selection Committee in its meeting, dated 9.9.2004 decided to grant one more opportunity to the candidates who could not participate in the interview held during the period between 27.8.2004 till 16.9.2004 and fixed 22-24. September, 2004 for their interview. Aforesaid decision of the Selection Committee was approved by Hon"ble Speaker under orders dated 14.9.2004. After approval of the Hon"ble Speaker, Roll Number of the candidates who could not appear in the interview earlier was published in the daily newspapers, Hindustan and Hindustan Times, both Patna Edition dated 17.9.2004 calling upon the candidates who could not

appear in the interview earlier to participate in the interview between 22-24.9.2004. In compliance of the notice dated 17.9.2004 published in two newspapers, 164 candidates appeared for interview during the period between 22-24.9.2004. Introduction of interview for those who secured cut-off marks in the written examination vide order dated 13.8.2004 was challenged in C.W.J.C. Nos. 12062 of 2004 and 5372 of 2005. Both the writ petitions were dismissed under orders dated 24.10.2005 and 21.2.2007, Annexures-B and C to the counter affidavit filed on behalf of Respondents 2 to 5. The order of the Single Judge dated 21.2.2007 passed in C.W.J.C. No. 5372 of 2005 was further challenged in L.P.A. No. 308 of 2007, which was also dismissed under orders dated 1.8.2007. Order dated 13.8.2004 subsequently introducing the concept of cut-off marks in the written test with further stipulation that those who succeeded in obtaining the cutoff marks were to participate in the interview of 25 marks was considered by this Court in two writ petitions, bearing C.W.J.C. Nos. 12062 of 2004 and 5372 of 2005 and both the writ petitions were dismissed under orders dated 24.10.2005 and 21.2.2007.

In view of the order of the Single Judge in the aforesaid two writ petitions as also the order of the Division Bench dated 1.8.2007, passed in L.P.A. No. 308 of 2007, this Court is of the view that the issue of subsequent introduction of the concept of cut-off marks and interview of 25 marks in the selection process pursuant to advertisement, Annexure-1, as directed by the Hon"ble Speaker under orders dated 13.8.2004 having already been considered and approved by this Court in the aforesaid two writ petitions and the L.P.A. is a question already concluded by this Court and this Court is not required to reconsider the correctness or otherwise of the selection process on the ground that selection process is vitiated on account of subsequent introduction of the concept of cut-off marks, interview of 25 marks exceeding the permissible limit of 12.5% of the total marks fixed for written examination on the ground of being contrary to the terms of the advertisement, Annexure-1. It is, however, observed that Speaker should have been well advised to provide for the cut-off marks and interview of 12.5% of the marks fixed for the written test in the advertisement itself.

25. Having considered the averments made in paragraph 18 of C.W.J.C. No. 1541 of 2005, paragraph 4 of the supplementary affidavit filed by the Petitioner dated 28.11.2007 in C.W.J.C."No. 1541 of 2005 and Annexure-8 appended in C.W.J.C. No. 6412 of 2005 asserting that kith and kin of the Members of the Selection Committee and the high-ups of the Bihar Vidhan Sabha, including examiners, who were entrusted with the evaluation of the answer-sheets, were appointed on the post of Lower Division Clerk pursuant to Employment Notice No. 2 dated 3.5.2001, Annexure-1, the averments made in paragraphs 22 and 23 of the counter affidavit filed on behalf of the Respondents 2 to 5, the authorities of the Bihar Vidhan Sabha, the records of the Selection Committee produced before this Court in compliance of the orders of this Court dated 15.9.2010, I am of the view that Sri Sanjay Kumar Rawat, Son of Sri Raj Kishore Rawat, Under Secretary and Member of the Selection Committee appeared for the interview before the

Selection Committee on 16.9.2004 in the 2nd sitting which commenced from 3.00 P.M. on 16.9.2004, but during the 2nd sitting Sri Raj Kishore Rawat did not participate in the proceedings of the Selection Committee, as is evident from his representation dated 16.9.2004 submitted before the Chairman of the Selection Committee and duly preserved in the records of the Selection Committee, as is evident from the Xeroxcopy of those records produced before this Court in compliance of the orders of this Court dated 15.9.2010. In the circumstances, the allegation as set out in paragraph 18 of C.W.J.C. No. 1541 of 2005, paragraph 4 of the supplementary affidavit filed by the Petitioners in C.W.J.C. No. 1541 of 2005 and Annexure-8 of C.W.J.C. No. 6412 of 2005 asserting that kith and kin of the Members of the Selection Committee and the high-ups of the Bihar Vidhan Sabha, including examiners who were entrusted with the evaluation of the answer-sheets were appointed on the post of Lower Division Clerk pursuant to the Employment Notice No. 2 dated 3.5.2001, Annexure-1 does not appear to be established so as to persuade this Court to set aside office order dated 25.1.2005 impugned in these writ petitions.

26. The allegation set out in C.W.J.C. No. 1541 of 2005 that the marks obtained by the successful candidates was subsequently altered to their advantage, as is evident from the chart, Annexures-13 and 14 duly accepted by the authorities of the Bihar Vidhan Sabha in their counter affidavit vide chart Annexures-E and F does not inspire confidence in this Court to hold that the marks obtained by the successful candidates was subsequently altered to their advantage as the charts, Annexures-13, 14 and Annexures-E, F does not bear the signature of any of the authorities of the Bihar Vidhan Sabha under whose supervision the same were drawn up. In the circumstances, this Court is of the opinion that no reliance can be placed on the aforesaid charts for setting aside the impugned appointment order. dated 25.1.2005, which prima facie appears to have been drawn up on the basis of the marks obtained by the successful candidates in the written test as also interview, copy whereof was also supplied to one of the Petitioners when he applied for the same under the Right to Information Act vide letter dated 26.11.2007, Annexure-15 in C.W.J.C. 1541 of 2005.

27. This Court under orders dated 28.4.2008 noticed the alteration in marks obtained by the successful candidates vide charts Annexures-E and F and called for the entire original records which were produced before this Court on 25.7.2008 and statement was made on behalf of Respondents 2 to 5 that Hon"ble Speaker has already recommended a Cabinet Vigilance enquiry into the matter. Counsel for the Vigilance Bureau also confirmed that the Vigilance Bureau is already seized with the enquiry. This Court having noticed the aforesaid development under orders dated 25.7.2008 decided not to proceed further in the matter and directed the Secretary of the Bihar Vidhan Sabha to ensure that the entire records of the selection in question are handed over to the Additional Director, Vigilance Investigation Bureau for proceeding with the enquiry. Under orders dated 7.8.2008, these writ petitions were adjourned by four months so as to enable the Vigilance Bureau to submit preliminary report. The writ petitions

were adjourned from time to time awaiting submission of the preliminary report by the Vigilance Bureau. The Vigilance Bureau submitted the preliminary enquiry report in a sealed cover to the Secretary, Bihar Vidhan Sabha on 2.7.2010 and information to that effect was given to this Court on 7.7.2010 whereafter this Court under orders dated 7.7.2010 desired to know the reaction of the Hon''ble Speaker towards the findings recorded by the Vigilance Bureau in the preliminary enquiry report submitted to the Secretary of Bihar Vidhan Sabha in a sealed cover on 2.7.2010. In compliance of the orders of this Court dated 7.7.2010, the Deputy Secretary, Bihar Vidhan Sabha has filed affidavit dated 4.8.2010 in which the order of the Hon''ble Speaker passed on the preliminary enquiry report of the Vigilance Bureau has been quoted in extenso, perusal whereof indicates that Hon''ble Speaker is awaiting the directions of this Court on the findings recorded by the Vigilance Bureau in its preliminary enquiry report and the effect thereof on the validity of the appointments made pursuant to office order dated 25.1.2005. The enquiry report of the Vigilance Bureau submitted to the Secretary of the Bihar Vidhan Sabha in sealed cover dated 2.7.2010 is an internal enquiry report of the Vigilance Bureau on the basis of which Bureau has to register a First Information Report if commission of cognizable offence is disclosed in the report. After registration of the First Information Report, matter has to be further investigated by the Vigilance Bureau and on completion of the investigation, report in terms of Section 173 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code of Criminal Procedure .) has to be submitted by the Vigilance Bureau to the Magistrate empowered to take cognizance of the offence found in the police report. Until report in terms of Section 173 Code of Criminal Procedure is not submitted and the matter taken to its logical end, the findings recorded in the preliminary enquiry report of the Vigilance Bureau can be acted upon only after giving opportunity to the candidates against whom the same has been submitted by drawing up a charge-sheet and initiating a proceeding against them as per the procedure envisaged under the Rules. Till date neither the Vigilance Bureau has registered the First Information Report nor submitted report in terms of Section 173 Code of Criminal Procedure and matter taken to its logical end, nor the authorities of the Bihar Vidhan Sabha have drawn up any charge-sheet on the basis of the findings recorded in the internal report of the Vigilance Bureau. In the circumstances, the findings recorded in the internal report of the Vigilance Bureau cannot be relied upon by this Court for setting aside the impugned appointment order dated 25.1.2005.

28. In the result, the writ petitions are dismissed in view of my findings and observations above.