
(2019) 07 PAT CK 0303

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1504 Of 2018, 16925, 17634, 16974, 18663 Of 2017

Ashoke Krantti And Ors

APPELLANT

Vs

State Of Bihar Through Chief Secretary And Ors

RESPONDENT

Date of Decision : 19-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 309, 226

Bihar Superior Judicial Service Rules, 1951 — Rule 5(c)(iii)

Citation : (2019) 07 PAT CK 0303

Hon'ble Judges : Mohit Kumar Shah, J

Bench : Single Bench

Advocate : Rajendra Prasad Singh, Y. V.Giri, Dinu Kumar, Arvind Kumar Sharma, Ritika Rani, Kumari Neha, Vijay Kumar Vimal, S.C. Mishra, Pramod Kumar Singh, Lalit Kishore, Girijesh Kumar, Sachin Kumar, Binita Singh, Rajendra Prasad Singh, Mukesh Kumar Singh, Rajeev Kumar Singh, Lalit Kishore, Gyan Prakash, Kumar Kaushik, Namrata Dubey, Prabhakar Jha, Umesh Narayan Dubey, Lalit Kishore, Purnendur Singh, Kumar Kaushik, Kameshwar Kumar

Final Decision : Dismissed

Judgement

1. All the aforesaid writ petitions have been heard at length with the consent of the learned counsels appearing for the respective writ petitioners, as also the respondents and it has been agreed that all the writ petitions be disposed of by a common judgment since the issues involved in all the aforesaid writ petitions are common.

2. On behalf of the writ petitioners, arguments have been advanced by the learned Senior Counsel/ counsels, whose appearance have been indicated hereinabove.

3. The learned Advocate General has argued on behalf of the Bihar School Examination Board (herein after referred to as the "Board").

4. For the sake of convenience, the facts of the first writ petition bearing C.W.J.C.

No. 1504 of 2018 (Ashoke Krantti & Ors. vs. The State of Bihar & Ors.) are being considered for the purposes of the present judgment. The Bihar School Examination Board has also filed counter affidavits in all the aforesaid writ petitions.

5. The present writ petition has been filed for directing the respondent-Board to reduce the qualifying marks considering the fact that the Board has deleted 28 wrong questions out of total 150 questions in the Bihar Elementary Teachers Eligibility Test (herein after referred to as the "BETET"), 2017. The petitioners have further prayed to direct the Board to award marks to those candidates, who have made corrections by whitener and to direct for inquiry by the Vigilance Department regarding wrong setting of questions and answers and not awarding marks to the candidates during the course of evaluation of the answer-sheets pertaining to the BETET, 2017. Lastly, it has been prayed to publish the result of those writ petitioners pertaining to the BETET, 2017 whose results have not been published.

6. The brief facts of the case are that an advertisement bearing advertisement no. 42 dated 6.4.2017 was issued in the daily newspaper, seeking to conduct the BETET, 2017 and the said examination was to be conducted for teaching in Class 1 to 5 in Primary School as well as for Class 6 to 8. The last date for submission of application form was fixed as 25.4.2017, but the same was extended to 30.4.2017. The writ petitioners having requisite qualifications had filled the forms. Subsequently, another advertisement bearing advertisement no. 54 of 2017 was issued whereby and whereunder one more opportunity was granted to the candidates to remove the error in the online application form which had not been removed and for the said purpose, date was fixed from 18.5.2017 to 20.5.2017. Accordingly, the date of examination was also extended and ultimately, the examination was held on 23.7.2017 wherein the writ petitioners had also appeared. After the examination was held, an advertisement no. 75 of 2017 was published wherein it was stated that the OMR sheets of the respective candidates were being uploaded on the website and in case, any candidate has any objection, such candidate can submit online objection on or before 25.10.2017. Thereafter, another advertisement bearing advertisement no. 83 of 2017 was issued by the Board wherein it was stated that those candidates, who are not satisfied with their marks, can submit their applications for scrutiny of the OMR answer- sheets and for obtaining copy of their respective OMR answer-sheets in between 23.9.2017 to 30.9.2017, after depositing the requisite fees.

7. The further case of the writ petitioners is that the Board had conducted the aforesaid BETET, 2017 and the result was published on 21.9.2017. The writ petitioners were surprised that their names did not find place amongst the list of successful candidates and most of the candidates' result had been declared invalid. Subsequently, it transpired that the result of the candidates had been declared invalid on account of use of whitener or eraser etc.

8. The learned Senior Counsel /counsels for the petitioners have argued that the

Board itself has admitted, at the time of publishing the result, that 28 questions were wrong, hence, the qualifying marks fixed for the general category as 60 %, BC as 55 %, EBC as 55 %, SC/ST as 50 % and Ladies General Category as 55 % should have been reduced. It is argued that the petitioners had filed objections with regard to marks being not given for the correct answers given by the respective candidates but no decision has been taken by the Respondent-Board. It has also been argued that since 28 questions had been deleted by the Respondent-Board in part-I and Part II, as stated in paragraph no. 22 of the writ petition, the result was published only on the basis of 132 questions, hence, the qualifying marks was bound to go down and should have been reduced by the Respondent- Board and upon such reduction, those petitioners who have been declared unsuccessful by a margin of 1, 2, 3, 4 and 5 marks, would have passed the Test.

9. The learned Senior Counsel /counsels for the petitioners have referred to paragraph no. 34 of the writ petition to show that upon receipt of the OMR sheets and the answer-sheets, the petitioners have found that there are number of questions pertaining to which the Board had provided wrong answers and the candidates have answered the correct answers which, according to them, are the right answers. In paragraph no. 25, the list of candidates, whose candidature has been held to be invalid on account of use of whitener, has been furnished. It is further urged that despite taking fees for the purposes of re-evaluation of OMR answer-sheets from various candidates, including some of the writ petitioners, nothing has been done by the Respondent-Board and in fact, they have swindled the said money for which a vigilance inquiry is required to be held. The leaned counsels for the writ petitioners have further found fault with the answers suggested by the Board to the extent that 40 answers are wrong, hence, it is submitted that the examination is required to be scraped and fresh examination is the only solution in order to maintain transparency, non- arbitrariness and non-discrimination.

10. Another line of argument has also been advanced on behalf of the candidates, whose candidature has been declared invalid on account of use of whitener / eraser etc. to the effect that though objections were filed by some of such candidates stating therein that they have not used whitener / eraser in the OMR sheets, however, no reply has been furnished whatsoever by the Respondent-Board till date, resulting in setting at knot the entire effort of the examinee on account of minor technical laches, although, upon perusal of the OMR answer-sheets, such candidates would definitely qualify, in case their candidature is not held to be invalid on account of use of whitener / eraser.

11. The learned counsels for the petitioners have referred to a judgment rendered by the Hon'ble Apex Court, reported in AIR 1983 SC 1230 (Kanpur University & Ors. vs. Samir Gupta & Ors.) to contend that in case, any defect in a key answer or any ambiguity in a question set in the examination is pointed out and the attention of the University is drawn, the University should take prompt

and timely decision to declare that the suspect question will be excluded from the paper and no marks would be assigned to them. In this regard, it would be relevant to reproduce paragraph nos. 15 to 18 herein below:-

"15. The findings of the High Court raise a question of great importance to the student community. Normally, one would be inclined to the view, especially if one has been a paper setter and an examiner, that the key answer furnished by the paper setter and accepted by the University as correct, should not be allowed to be challenged. One way of achieving it is not to publish the key answer at all. If the University had not published the key answer along with the result of the test, no controversy would have arisen in this case. But that is not a correct way of looking at these matters which involve the future of hundreds of students who are aspirants for admission to professional courses. If the key answer were kept secret in this case, the remedy would have been worse than the disease because, so many students would have had to suffer the injustice in silence. The publication of the key answer has unravelled an unhappy state of affairs to which the University and the State Government must find a solution. Their sense of fairness in publishing the key answer has given them an opportunity to have a closer look at the system of examinations which they conduct. What has failed is not the computer but the human system.

16. Shri Kacker, who appears on behalf of the University, contended that no challenge should be allowed to be made to the correctness of a key answer unless, on the face of it, it is wrong. We agree that the key answer should be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by an inferential process of reasoning or by a process of rationalisation. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well versed in the particular subject would regard as correct. The contention of the University is falsified in this case by a large number of acknowledged text-books, which are commonly read by students in U. P. Those text-books leave no room for doubt that the answer given by the students is correct and the key answer is incorrect.

17. Students who have passed their Intermediate Board Examination are eligible to appear for the entrance Test for admission to the Medical Colleges in U. P. Certain books are prescribed for the Intermediate Board Examination and such knowledge of the subjects as the students have is derived from what is contained in those text-books. Those text-books support the case of the students fully. If this were a case of doubt, we would have unquestionably preferred the key answer. But if the matter is beyond the realm of doubt, it would be unfair to penalise the students for not giving an answer which accords with the key answer, that is to say, with an answer which is demonstrated to be wrong.

18. If the State Government wants to avoid a recurrence of such lapses, it should compile under its own auspices a text-book which should be prescribed for students desirous of appearing for the combined Pre-Medical Test. Education has more than its fair share of politics, which is the bane of our Universities.

Numerous problems are bound to arise in the compilation of such a text-book for, various applicants will come forward for doing the job and forces, and counter-forces will wage a battle on the question as to who should be commissioned to do the work. If the State can succeed in overcoming those difficulties, the argument will not be open to the students that the answer contained in the text-book which is prescribed for the test is not the correct answer. Secondly, a system should be devised by the State Government for moderating the key answers furnished by the paper setters. Thirdly, if English questions have to be translated into Hindi, it is not enough to appoint an expert in the Hindi language as a translator. The translator must know the meaning of the scientific terminology and the art of translation. Fourthly, in a system of 'Multiple Choice Objective-type test', care must be taken to set that questions having an ambiguous import are not set in the papers. That kind of system of examination involves merely the tick-marking of the correct answer. It leaves no scope for reasoning or argument. The answer is 'yes' or 'no'. That is why the questions have to be clear and unequivocal. Lastly, if the attention of the University is drawn to any defect in a key answer or any ambiguity in a question set in the examination, prompt and timely decision must be taken by the University to declare that the suspect question will be excluded from the paper and no marks assigned to it."

12. The learned counsels for the petitioners have next relied upon a judgment rendered by a coordinate Bench of this Court, reported in (2013) 4 PLJR 169 (Dhananjay Kumar Mishra & Ors. vs. The Bihar Staff Selection Commission & Ors.); paragraph nos. 6, 9, 49, 58, 64 and 78 are reproduced herein below:-

6. Learned counsel for the petitioners while assailing the aforesaid result of the Main Examination in these writ petitions, have raised the following pleas:-

(i) Bihar Staff Selection Commission Rules, 2003 and Bihar Staff Selection Commission Conduct of Examination Rules, 2010 framed by the State Government are not only contrary to the provisions of Bihar Staff Selection Commission Act 2002 but they in fact do away with the very concept of autonomy as well as power and functions vested in Bihar Staff Selection Commission and the decision of the State Government in its Resolution dated 25.3.2010 authorising the Commission to take assistance from Bihar State Combined Admission Competitive Examination Board, hereinafter referred to as the Board, for conducting the Graduate Level Main Examination in hand and the resultant action of the Commission of surrendering its entire power and function to the Board in respect of conducting the Main Examination as well as evaluation of answer sheets (OMR Sheets) and declaration of the impugned result by itself had vitiated the entire process of selection.

(ii) The impugned result of the Main Examination cannot and in fact does not inspire confidence in view of the findings of police which while conducting the investigation of Economic Offence Case No. 23 of 2012 had arrived at a prima facie conclusion that OMR Sheets of several examinations conducted by the

Commission including the present Graduate Level Main Examination were tampered and interpolated and in fact when the Commission had also not co-operated with the investigation leading to release of the accused persons on bail by taking benefit of Section 167(2) Cr.P.C., the complicity of the officers and employees of the Commission in tampering the answer sheets of the present Main Examination cannot be ruled out.

(iii) The Commission having conducted the preliminary test for 1569 advertised posts could not expanded the zone of consideration by declaring the result of 27289 candidates as successful for their appearing in the Main Examination for 3285 posts specially when in the Advertisement No. 110/2010 there was a clear stipulation that candidates only upto five times of the total vacancies could be screened in preliminary test for appearing in the Main Examination.

(iv) There being a large number of defective questions and wrong answers in the multiple choice objective test conducted by the Commission in the Main Examination has vitiated the entire result specially when there was a provision for negative marking for the wrong answers.

(v) The failure on the part of the Commission to declare the result of Main Examination post-wise and category-wise has even otherwise made the impugned result vulnerable inasmuch as it is contrary to the spirit of the terms and conditions of Advertisement No. 110 of 2010.

9. Mr. Singh has also submitted that the criticism of the petitioners with regard to the defect in question and answers also have no basis, inasmuch as not only the Commission had maintained a complete transparency in this regard but had also invited objection before declaration of result by publishing the question and the model answer on its Website and also by taking into consideration the objections of the candidates by referring them to a set of experts. In this regard he has referred to the pleadings in the counter affidavit showing that based on such opinion of the experts changes were made in answers of 13 out 150 questions and only on the basis of such revised model key answer the evaluation of OMR answer sheets of all the candidates including the petitioners were made leading to the declaration of the impugned result by the Commission.

49. In the light of the aforesaid explanation, this Court would find that though there may be scope for criticism for the wavering stand being taken by the Board of Examiners, inasmuch as, even according to them there were apparent thirteen mistakes in the model answers out of 150 questions and their respective answers. It has to be kept in mind that for every correct answer, four marks was to be given and for every wrong answer one mark was to be deducted as would be evident from the relevant portion of the extract of the booklet of question which reads as follows:-

"4. In the Test Booklet, there are 150 questions. Thus 150 questions in all are to be answered.

5. Each question is of 4 marks, which will be awarded for the correct answer. 1 mark will be deducted for each wrong answer. More than one Answer indicated against a Question will be declared as incorrect Answer.

6. If there is any difference between English version and the corresponding translated version in Hindi of any question, then the English version will be treated as authentic."

58. In the considered opinion of this Court, such stand taken on behalf of the learned counsel for the Commission seems to be very fair, inasmuch as, such of the questions which had incorrect answer has to be altogether deleted from the zone of consideration as was held by the Apex Court in the case of Kanpur University (supra):- "----- in a system of 'Multiple Choice Objective type test', care must be taken to see that questions having an ambiguous import are not set in the papers. That kind of system of examination involves merely the tick-marking of the correct answer. It leaves no scope for reasoning or argument. The answer is 'yes' or 'no'. That is why the questions have to be clear and unequivocal. Lastly, if the attention of the University is drawn to any defect in a key answer or any ambiguity in a question set in the examination, prompt and timely decision must be taken by the University to declare that the suspect question will be excluded from the paper and no marks assigned to it."

64. In view of the aforesaid findings of this Court as also the law laid down by the Apex Court in the case of LIC vs. Asha Ramchandra Ambekar reported in (1994)2SCC 718, in the case of A. Umarani vs. Registrar, Cooperative Societies & Ors. reported in (2004)7 SCC 112 and in the case of Himachal Pradesh Public Service Commission vs. Mukesh Thakur & Anr. reported in (2010)6 SCC 759 [: 2010(3) PLJR (SC)127], it must be held that this Court cannot take on the role of examiners or evaluators or that of the Selection Board to examine discrepancy either in the question paper or the answer sheet so as to assume the role of examiners paper setter and evaluator which is to be left to the expert body. It is with reason and purpose that courts have to assume the answer given in the key answer to be correct and any interference in a very light manner would tend this Court to take the role of the paper setter which would be clearly beyond the purview of judicial review. As is well understood and well settled, the power of judicial review generally speaking is not to be extended against the decision but is directed only against the decision making process.

78. In view of the above, it has to be held that re-evaluation after deleting the four questions i.e. question nos. 82, 147, 148 & 149 has to be made in respect of each and every 27289 declared successful in the preliminary test including 25792 who have been declared successful in the Mains Examination."

13. Another judgment referred to by the learned counsels for the petitioners is the one rendered by the Hon'ble Apex Court, reported in (2013) 4 SCC 690 (Rajesh Kumar & Ors. vs. State of Bihar & Ors.); paragraph nos. 2, 7, 20, 21 and 22 are reproduced herein below:-

"2. Application of an erroneous "model answer key" for evaluation of answer scripts of candidates appearing in a competitive examination is bound to lead to erroneous results and an equally erroneous inter se merit list of such candidates. That is precisely what appears to have happened in the present appeals which arise out of a common judgment¹ delivered by the High Court of Judicature of Patna whereby the High Court has directed the Bihar Staff Selection Commission to conduct a fresh examination and re-draw the merit list on that basis. For those who have already been appointed on the basis of the earlier examination, a fresh examination has been directed by the High Court before they are finally ousted from the posts held by them. The appellants who happen to be the beneficiaries of the erroneous evaluation of the answer scripts have assailed the order passed by the High Court in these appeals which arise in the following backdrop.

7. Aggrieved by the order of the Single Judge, the appellants filed LPA No. 70 of 2008 before the Division Bench of that High Court. By the order impugned¹ in these appeals, the High Court has partly allowed the appeal holding that model answers in respect of 45 questions out of 100 were wrong. The Division Bench modified the order passed by the learned Single Judge and declared that the entire examination need not be cancelled as there was no allegation of any corrupt motive or malpractice in regard to the other question papers. A fresh examination in Civil Engineering Paper only was, according to the Division Bench, sufficient to rectify the defect and prevent injustice to any candidate. The Division Bench further held that while those appointed on the basis of the impugned selection shall be allowed to continue until publication of the fresh result, anyone of them who failed to make the grade on the basis of the fresh examination shall be given a chance to appear in another examination to be conducted by the Staff Selection Commission. The present appeals assail the correctness of the said judgment and order of the High Court as already noticed earlier.

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

their employment on the basis of a properly conducted competitive examination not itself affected by any malpractice or other extraneous consideration or misrepresentation will cause hardship to them and ruin their careers and lives. The experience gained by these appellants over the years would also, according to Mr Rao, go waste as the State will not have the advantage of using valuable human resource which was found useful in the service of the people of the State of Bihar for a long time. Mr Rao, therefore, prayed for a suitable direction that while re- evaluation can determine the inter se position of the writ petitioners and the appellants in these appeals, the result of such re-evaluation may not lead to their ouster from service, if they fell below the cut-off line.

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

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

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

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

22.3 In case the writ petitioners, Respondents 6 to 18 also figure in the merit list after re-evaluation of the answer scripts, their appointments shall relate back to the date when the appellants were first appointed with continuity of service to them for purpose of seniority but without any back wages or other incidental benefits.

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

2006 and the second selection held pursuant to Advertisement No. 1906 of 2006.

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

14. Thus, in nutshell, the arguments advanced on behalf of the petitioners is that either the wrong questions should be excluded from the paper and no marks should be assigned to them and accordingly the OMR sheets of the candidates should be re-evaluated or in the alternative, the OMR sheets of the candidates should be re-evaluated on the basis of correct key consisting of correct answer-sheets, as has been held to be the course to be adopted in such cases as the present one.

15. Per contra, the learned Advocate General appearing for the Bihar School Examination Board has submitted, by referring to the counter affidavit filed in the present case that BETET, 2017 was conducted by the Respondent-Board on 23.7.2017 consisting of two papers i.e paper I and paper II. While paper I was for such candidates who were seeking appointment as Teachers in Class 1-5 whereas paper II was for those seeking appointment as teachers in Class 6-8. Paper I consisted of three compulsory sub papers i.e. Child Development, Environmental and Mathematics. Paper I also consisted of two optional sub papers i.e. L1 and L2 which comprised of five languages namely, Hindi, English, Bangla, Urdu and Maithili out of which a candidate had to choose any two languages. Similarly, Paper II consisted of two compulsory sub-papers, namely, (i) Child Development ii) Mathematics and Science or Social Science. Two sub-papers of language (L1 and L2) comprising of option to be chosen from 9 language papers was also prescribed. In each of the aforesaid two papers i.e. Paper I and Paper II, there were four sets of questions i.e. Set A, B, C and D. The papers were set by State Council for Education Research and Training and after the examinations were held, model answers were prepared by a team of subject experts during the course whereof it came to light that six questions out of 240 questions in set A, B, C and D of Paper I were wrong and 21 questions out of 360 questions were wrong in paper II apart from 1 more question being wrong. It is the specific stand of the Respondent-Board that all the wrong questions were eliminated and thereafter, the result was published on 22.9.2017 by lowering down the full marks corresponding to the wrong questions.

16. The learned Advocate General has further submitted that after the publication of the result of BETET, 2017 on 22.9.2017, many candidates had approached the Board complaining about the errors in questions whereafter, the Board had appointed a committee of subject experts to deal with the objections received from the candidates and then model answer key was prepared and the said model answer key received from the committee of experts was uploaded on the website of the Board, inviting objections thereupon and a fresh communiqué vide advertisement no. 95 of 2017 was issued on 28.12.2017, inviting all the appearing candidates to file their objections against the revised model answer

key. The candidates had then filed their objections and the same was forwarded to the subject experts committee, comprising of experts in different subjects, who had then looked into the objections and had submitted its recommendations to the Board. The said Committee had identified ten wrong questions in set A, B, C and D of paper I, one extra wrong question in set D of paper I and in all the four sets of paper II, eighteen wrong questions were found. It is only in light of the report of the subject experts, final result of BETET, 2017 was published on 6.3.2018, after lowering down the total marks, which varied from candidate to candidate, depending upon the subjects chosen by a particular candidate. It is, thus submitted that the mandate of the judgment rendered by the Hon'ble Apex Court has been followed by the Respondent-Board in evaluating the OMR sheets of the candidates.

17. It is further submitted that as far as the use of whitener in BETET, 2017 is concerned, the learned Advocate General has referred to the specific instructions mentioned in the advertisement No. 63 of 2017 dated 13.7.2017 wherein instructions have been given to the candidates appearing in the BETET, 2017 to strictly not overwrite or use whitener during the course of attempting any question. At this juncture, it is submitted that in a challenge pertaining to the very same BETET, 2017 result wherein, OMR sheet of the said candidate could not be evaluated on account of use of whitener in the answer-sheet, a coordinate Bench of this Court by an order dated 22.12.2017 passed in CWJC No. 16359 of 2017(Brajesh Kumar vs. The State of Bihar & Ors.) has held that in case of use of whitener that since it was specifically prohibited under the instructions, no direction can be issued to publish the result for such candidates as the result has stood invalid. It is further submitted that the Respondent-Board has already supplied the OMR answer-sheets to those candidates, who had applied for supply of the same. Lastly, it is submitted that the writ petitioners have themselves prayed for lowering down the qualifying marks, which has already been granted by the Respondent-Board inasmuch as a consequence of lowering down the full marks, the qualifying marks automatically gets lowered although lowering down of qualifying marks would be only for those candidates, who had opted such subjects in which certain questions have been found to be wrong. It is also submitted that the Board has already taken a decision to refund the sum of Rs. 70/- deposited by the candidates for the purposes of scrutiny and the refund has already been processed.

18. The learned Advocate General for the respondents, regarding the issue pertaining to invalidation of the candidature of candidates who have used whitener or eraser has further submitted that the Board had published an advertisement no. 42 of 2012 dt. 04.04.2017, inviting applications from the interested eligible candidates, giving details and laying down the criteria, including as to how candidates concerned had to proceed adopting the online process while filling up and uploading their form for the purposes of the said examination through the website link of the Board. Thereafter, the Board had also published a notification contained in communiqué no. 63 of 2017 with

respect to the BETET, 2017, intimating all the candidates concerned, as to how they have to proceed in course of giving their answers in the OMR answer-sheets of the said examination. All the said OMR answer-sheets were to be examined and evaluated by the computer, thus the candidates were required to take utmost care in giving their answers, without any overwriting, cutting or using whitener in the OMR answer-sheets, with the help of either blue or black ball-pen only. The said communiqué is stated to have been published in the local newspaper, as also was posted on the web portal of the respondent Board. In fact, the said advertisement contained in communiqué no. 63 of 2017 under column 4, categorically provided that use of pen or eraser in the OMR Sheet, folding of OMR sheet, tearing or application of whitener on OMR Sheet were 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. It is, thus submitted that admittedly, some candidates of the first writ petition and other writ petitioners had used whitener / pin/eraser in their OMR answer- sheets, hence, in such cases, the result has been declared with remarks "invalid due to use of whitener".

19. The learned Advocate General for the Respondent-Board seeks to rely on various judgments, first of them being the one rendered by a coordinate Bench of this Court dated 6.5.2015 in CWJC No. 2650 of 2015 (Abdul Majid & Ors. vs. The State of Bihar & Ors. and other analogous cases), paragraph nos. 5, 6, 19, 23 and 26 whereof are quoted herein below:-

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.

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.

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.

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."

20. The learned Advocate General has further submitted that the aforesaid judgment rendered by a coordinate Bench of this Court in the case of Abdul Majid & Ors. (supra) has been upheld by the learned Division Bench by a judgment dated 31.8.2015 passed in L.P.A. No. 1287 of 2015 & Other analogous cases, as also reported in 2016 (1) PLJR 667, paragraph nos. 2, 15, 16, 17, 20, 21, 36 and 37 whereof would be relevant to be reproduced herein below:-

2. The appellants are aggrieved by the judgment and order of learned Single Judge, dated 6.5.2015, in CWJC No. 2650 of 2015* (Abdul Majid and Others vs. State of Bihar and Others) and other analogous matters, which arose out of publication of results by the Bihar School Examination Board (hereinafter referred to as the "Board") of Bihar Primary Urdu and Bangla (Special) Teachers Eligibility Test (hereinafter referred to as the "Test"), whereby learned Single Judge has directed the Board to make evaluation of answer sheets of candidates, who had participated in the Test, by deleting questions wrongly framed and declare result accordingly as against the decision of the Board, based on experts' suggestions, to award one mark for each incorrect question.

15. The question, in such type of test, consists of two parts, namely, the main part of the question, in any form, including "fill in the gap" or completing the statement in the main part to be answered or completed from the choices suggested in that question and so on. The main part and also the part,

suggesting options or choices, together constitute a question.

16. In such circumstances, defect, in the main part of the question, which is technically called stem; or defective choices suggested to the main part of the question would render the question itself incorrect for the purpose of evaluation on answer given by the test taker. Out of multiple choices suggested to the test taker, only one choice is said to be correct answer for the question, which is called key answer; whereas other choices are called distractors. Normally, the bodies, which conduct such tests, prepare model answers, which are set of key answers for the purpose of computerised evaluation of the answer sheets.

17. What happened in the present case is that after tests having been held and before publication of results, the Board, which had conducted the test, issued a Communiqué No. 62/2013, vide Memo No. K/758, dated 10th October, 2013, published in the local daily newspapers on 11th October, 2013, for information of all concerned that the main script of the question papers and the key answers would be available on the website of the Board. Objections were invited from the candidates in this regard. Nearly 350 objections were received till 21st of October, 2013. An expert body was constituted to consider the objections. The expert body, based on such objections, pointed out 2 defective questions out of 150 in Paper-I and 3 in Paper-II. As recommended by the expert body, the questions, found to be defective, were decided to be deleted for evaluation of answer sheets and accordingly full marks in Paper-I was reduced to 148 and that in Paper-II was reduced to 147. Based on such assessment, the results were published on the 29th November, 2013. The Board, thereafter, came out with another press communiqué for information to all concerned that revised key answers and used OMR sheets of the candidates were uploaded on the website of the Board for perusal.

20. A revised result was accordingly published. Objections were, again, raised as regards incorrectness of questions of Paper-I. An expert body was, once again, constituted, which found that 13 questions of the said paper were incorrect. It was, then, decided that the candidates, who had attempted the incorrect questions would be entitled for one additional mark for each such question. A revised merit list was accordingly published by the Board, the effect whereof was that such candidates, who had attempted the questions, which were admittedly incorrect, were given one additional mark for attempting such questions. It is to be mentioned that as per the decision of the Board and the State Government, the candidates, who had already been awarded marks against such incorrect questions, were not to be given further marks against such questions.

21. The developments, as noted above, gave rise to institution of writ applications, which came to be heard together by a learned Single Judge, the questions of law and fact being almost identical in nature, though the reliefs, sought for, were diverse. While some of the petitioners questioned the wisdom of the experts over the decision to award to the candidates one mark for each defective question, some of them alleged that there were further defective

questions, which required to be dealt with. It was urged before learned Single Judge that it would have deleterious effects if final preparation of merit list, after awarding marks for defective questions, is allowed to prevail as many candidates would be pushed in the zone of consideration on a presumption that they would have answered the defective questions correctly, had the questions been correctly framed.

36. In our considered view, the learned Single Judge has rightly held that in a situation such as the present one, wrongly framed questions should be deleted and the answer-sheets should be re-evaluated on the basis of remaining questions. The view, taken by learned Single Judge, is not only reasonable and rational view, it also ensures fair and equal treatment to all candidates, who participate in such a test, there being no disadvantage to any individual or undue advantage to the other. We do not find any infirmity in the order under appeal passed by learned Single Judge.

37. We do not think that discrepancies, in holding the eligibility test in question, as noted above, are such that the entire exercise, done by the Board, is required to be annulled. There is no allegation of any malpractice nor any irregularity of such nature warranting scrapping of the entire exercise."

21. The learned Advocate General has also relied upon a judgment rendered by the Hon'ble Apex Court reported in 2014(14) SCC 95 (Secretary, Tamil Nadu Public Service Commission vs. A.B. Natarajan & Ors.) to contend that any irregularity / malpractice committed by a candidate while writing examination in violation of the instructions given to the candidates renders candidature of such candidates to become ineligible. In this regard, it would be relevant to reproduce paragraph nos. 11, 12, 15, 16, 18 and 19 herein below:-

"11. It is an admitted fact that serious irregularities had been committed by the candidates in their answer books. If one looks at the instructions, which had been given to the candidates for writing the answer books, it is clear that they had been informed in unequivocal terms that they had to use only blue, blue-black or black ink and they were supposed to use only fountain pen, steel pen or ballpoint pen. In spite of the said instructions, several candidates had used sketch pens, pencils and pens or pencils with different colours. Use of different colours or pencil could have given some indication to the examiner about the identity of the candidate. These facts clearly show that either the candidates were absolutely careless or they wanted to give some indication with regard to themselves to the examiner. If a candidate writes in his answer book giving some indication with regard to himself with the help of a different ink or pencil-other than the prescribed writing instrument and the colour of ink, one can definitely presume that the candidate did not act in a bona fide manner.

12. There was a specific direction that the candidates had to start writing the answer books from the first page and no page should be left blank. In spite of the said clear instruction, several candidates kept several pages blank and what

is most astonishing is that some of the candidates, after keeping the entire page blank i.e. without answering the question had written some irrelevant words or names. As for example, in one case on the entire page "MANI" was written. This is nothing but some indication to the examiner, which is definitely not permitted. Many of the candidates had given some indication with regard to some religion by writing the words or signs connected with a particular religion. A candidate is not supposed to give his identity or any indication with regard to himself in the answer books. If he does so, he is violating the instructions given to him which would amount to nothing but misconduct.

15. Normally, a straightforward candidate, who does not want to indulge in any malpractice, would never make any effort to reveal his identity or make any special marking in his answer book. The purpose behind doing something abnormal or something which is not permitted, can be said to be an indication to the examiner about the identity of the candidate. Such an action on the part of the candidate cannot be tolerated if one wants clean, fair and transparent process of selection.

16. In the instant case, it is an admitted fact that there were serious violations of the instructions given to the candidates while answering the questions. Although all these details were placed before the learned Single Judge, the learned Single Judge did not give importance to these irregularities and dismissed the petitions, but when the appeals were filed, in our opinion, the Division Bench of the High Court rightly understood the importance of such irregularities and allowed the appeals by setting aside the selection of the candidates who had committed such irregularities while writing their answer books. We are of the view that if such a strict view is not taken by a constitutional body which has been entrusted with the work of selecting best candidates, the entire purpose behind having the Commission or any other such body for examining merit of candidates would be frustrated. We are, therefore, of the view that the appellate court was absolutely justified in allowing the appeals and by holding that all those candidates who had committed material irregularities could not be declared selected.

18. The candidates who had applied for Class I post, if selected, were to be Class I officers of the State of Tamil Nadu. Not following the instructions given to them while appearing in the examination, which had been conducted for their selection, would either mean that they were so careless that they did not read or bother about the instructions to be followed or they wanted to give some indication to the examiner about their identity. In either case, such a candidate cannot be selected. A candidate, who is so careless that he does not bother about his own interest, cannot be expected to become a good officer. Interest of the candidate is to get through the examination and for that purpose he has to follow the instructions. By not following the instructions, he does not take care of his own interest. So, if he has written the answer books carelessly without bothering about the instructions given to him, he is a careless person who must not be appointed as an officer and if he has done it deliberately, then also he

should not be appointed as an officer because one who plans such illegalities even before joining his service, cannot be expected to become a fair and straightforward officer. So, in either case, such a candidate cannot be selected for appointment as an officer and that too a Class I officer of any State.

19. For the reasons recorded hereinabove, we are of the view that the Division Bench of the High Court was justified in delivering the impugned common judgment¹. The law propounded in the judgments referred to by the counsel for the appellants cannot be disputed, but looking at the facts of the instant case, we are of the view that the said judgments would be of no help to them."

22. Another judgment relied upon by the learned Advocate General is the one reported in 2016 (1) PLJR 865 (Ravindra Kumar Singh & Ors. vs. The High Court of Judicature at Patna & Ors.), paragraph nos. 44, 45, 48, 52, 53 and 54 whereof are reproduced herein below:-

"44. Mr. Piyush Lal, learned counsel appearing for the High Court, has rightly placed reliance on the Supreme Court's decision in the case of H.P. Public Service Commission vs. Mukesh Thakur & Another [(2010)6 SCC 759], wherein the Supreme Court dealt, primarily, with the issue at hand and held that it was not permissible for the High Court to examine the question paper and answer sheets itself, particularly, when the Commission had assessed the inter se merit of the candidates. The Supreme Court pointed out, in Mukesh Thakur (supra), if there was a discrepancy in framing of the questions or evaluation of the answer, it would be for all the candidates appearing for the examination and not for respondent no. 1 only. The Supreme Court observed, in Mukesh Thakur (supra), that it is a matter of chance that the High Court was examining the answer sheets relating to law. Had it been other subjects like physics, chemistry and mathematics, we are unable to understand, observes the Supreme Court, as to whether such a course could have been adopted by the High Court the relevant observations, appearing in paragraph Nos. 12 to 14, of Mukesh Thakur's case (supra) as follows:- "12. In the facts and circumstances of the aforesaid case, three basic questions arise for consideration of this Court:-

(i) As to whether it is permissible for the court to take the task of Examiner/ Selection Board upon itself and examine discrepancies and inconsistencies in the question paper and evaluation thereof.

(ii) Whether Court has the power to pass a general order restraining the persons aggrieved to approach the court by filing a writ petition on any ground and depriving them from their constitutional rights to approach the court, particularly, when some other candidates had secured the same marks, i.e., 89 and stood disqualified for being called for interview but could not approach the court.

(iii) Whether in absence of any statutory provision for re-evaluation, the court could direct for re-evaluation.

"13. In the instant case, the High Court has dealt with Question Nos. 5(a) & (b)

and 8(a) & (b) and made the following observations:- "We perused answer to Question Nos. 5(a) and 5(b) and found that the petitioner has attempted both these answers correctly and the answer to Question No. 5(b) was as complete as it could be. Despite the petitioner having attempted a better answer to Question No. 5(b) than the answer to Question No. 5(a), the petitioner has been awarded 6 marks out of 10 in answer to Question No. 5 (b) whereas he has been awarded 8 marks in answer to Question No. 5(a). Similarly in answer to Question Nos. 8(a) and 8(b) the petitioner has fared better in attempting an answer to Question No. 8(b) rather than answer to Question No. 8(a) and yet he got 4 marks out of 10 marks in answer to Question No. 8(b) whereas he got 5 marks out of 10 marks in answer to Question No. 8(a)."

14. It is settled legal proposition that the court cannot take upon itself the task of the Statutory Authorities."

45. Having observed, what have been indicated above, in Mukesh Thakur (supra), the Supreme Court concluded, in paragraph 19 of Mukesh Thakur's case (supra), thus:- "19. In view of the above, it was not permissible for the High Court to examine the question paper and answer sheets itself, particularly, when the Commission had assessed the inter-se merit of the candidates. If there was a discrepancy in framing the questions or evaluation of the answer, it could be for all the candidates appearing for the examination and not for respondent no. 1 only. It is a matter of chance that the High Court was examining the answer sheets relating to law. Had it been other subjects like physics, chemistry and mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court." (Emphasis added)

48. It appears to us that the decision of the Supreme Court, in the case of Mukesh Thakur (supra), was not brought to the notice of the Division Bench of this Court in the case of Kumod Kumar (supra). This apart, the Division Bench has held, in the case of Kumod Kumar (supra), that when there is strict time schedule to be followed, upsetting the result may lead to administrative chaos, when the interference may not be made. We take judicial notice of the fact that there is large number of vacancies in the posts of District Judge in the State of Bihar since long, which has been adversely affecting the administration of justice at district level and there is urgent need to fill up the posts. In our considered view, thus, it would not be desirable to interfere with the result of screening test on such technical pleas as raised in the present batch of proceedings without showing actual prejudice having been caused to the writ petitioners.

52. Reference may also be made to the Supreme Court's decision in the case of Secretary, West Bengal Council of Higher Secondary Education vs. Ayan Das [(2007)8 SCC 242], wherein the Apex Court held that the Court should, normally, not direct re- assessment of answer sheets by another examiner in the absence of any specific statutory provision permitting such re- assessment. The relevant observations, made in the case of Ayan Das (supra), read as under:-

"9. The permissibility of reassessment in the absence of statutory provision has been dealt with by this Court in several cases. The first of such cases is Maharashtra State Board of Secondary and Higher Secondary Education vs. Paritosh Bhupeshkumar Sheth [(1984)4 SCC 27: AIR 1984 SC 1543]. It was observed in the said case that finality has to be the result of public examination and, in the absence of statutory provision, the court cannot direct reassessment/re-examination of answer scripts."

53. As has been noted above, the petitioners have also sought for a direction to lower down the cut-off marks of screening/preliminary test/preliminary test to 50%. In any event, this Court cannot issue a writ, in the nature of writ of mandamus, to lower down the cut-off marks to 50% as the selection to the post, in question, is governed by Bihar Superior Judicial Service Rules, 1951, and sub-clause (iii) of Clause (c) of Rule 5 of the Rules requires that ten times the number of vacancies for appointment should be called for Main (Written) Examination on the basis of screening/preliminary test/preliminary test. The said Rules have been framed under Article 309 of the Constitution of India and are required to be strictly adhered to. This Court, while exercising power of judicial review under Article 226 of the Constitution of India, cannot issue a writ, in the nature of writ of mandamus, to disobey law. Reference, in this regard, may be made to the case of State of Bihar & Ors. vs. Ramdeo Yadav & Ors., (1996)3 SCC 493 [: 1996(2) PLJR (SC)34].

54. Situated thus, having considered the facts and circumstances of the present case and the submissions advanced on behalf of the parties, we arrive at the following conclusions:-

(i) In the absence of any pleading that these petitioners raised any objection/grievance with respect to wrong framing of Question Nos. 1, 14, 39, 40, 72, 81 and 85, at any stage prior to publication of the revised result on 4.5.2015, their plea to challenge the revised list on the basis of purported wrong framing of those questions cannot be entertained, when they have taken a chance of their success on the basis of the questions and model answers so framed. This is for the reason that the screening/preliminary test was held on 22.3.2015. Had they found those questions to be defective making them incapable to deal with the questions, while writing the test, they could have, immediately, pointed out to the Registrar General of the High Court or any other competent authority in this regard. They, however, took a chance till the result was published on 8.4.2015 and after model answers were uploaded on the website of the High Court on 4.5.2015. There is no pleading that even thereafter, these petitioners raised any objection as regards wrong framing of these questions. It was only after revised result was published by the High Court on 25.5.2015 that the petitioners, after having become unsuccessful, have challenged the revised result.

In such situation, thus, the petitioners cannot, in a proceeding under Article 226 of the Constitution of India, be permitted to do hair- splitting of the questions and model answers in order to take a plea that the questions/model answers

were wrongly framed.

(ii) There is no specific pleading as regards any prejudice having caused to petitioners as discussed above, because of wrong framing of questions/wrong model answers as asserted by them, which adversely affected the evaluation of their actual performance in the screening/preliminary test. As the multiple-choice type question papers and model answers were available to them, they could have taken the plea, with reference to particular question or questions that they were awarded less marks or no marks, because of such discrepancy, adversely affecting their rights. Pleadings, in this regard, in all writ applications, are general and vague in nature. In the absence of specific plea of real prejudice having been caused to the petitioners, their grievance to this effect is not sustainable.

(iii) In view of the Supreme Court's decision in the case of Mukesh Thakur (supra) and other judicial pronouncements as noted above, we are of the considered view that while exercising power of judicial review available under Article 226 of the Constitution of India, it is not permissible for this Court to take upon itself the task of Examiner/Selection Board and examine discrepancies and inconsistencies in the question paper and evaluation thereof, law to this effect has been laid down in most clear and unambiguous terms by the Supreme Court in the said decision, which was not brought to the notice of the Division Bench of this Court in case of Kumod Kumar (supra).

(iv) No writ, in the nature of writ of mandamus, can be issued for lowering down the cut-off marks of screening/preliminary test in breach of the statutory prescription under sub-clause (iii) of Clause 5 of Rule 5 of the Bihar Superior Judicial Service Rules, 1951."

23. The learned Advocate General has vehemently submitted that pursuant to the objections submitted by the appearing candidates, after the result was published on 22.9.2017, the Board had constituted a committee of subject experts, which had then examined the various objections received from the appearing candidates and had then submitted its recommendations to the respondent-Board along with the fresh model answer key. The said fresh model answer key received from the committee of experts was then uploaded on the website of the Respondent-Board for inviting objections thereon and a fresh communiqué vide advertisement no. 95 of 2017 was issued on 28.12.2017, inviting all the appearing candidates to file their objections against the revised model answer key, whereafter objections were received from the appearing candidates against the revised model answer key and the same were forwarded to the subject expert committee which had then given its recommendations and accordingly, the final result of BETET, 2017 was published on 6.3.2018. It is submitted that the writ petitioners in all the cases have failed to show that they had filed any objections pursuant to the advertisement no. 95 of 2017 dated 28.12.2017, hence they cannot have any grievances as well as they do not have any locus to make any further challenge to the examination process / results.

24. In reply, the learned counsels for the writ petitioners have submitted that after the fresh results were declared by the respondent-Board, some of the writ petitioners have been declared successful, details whereof has been given in paragraph no. 5 of the rejoinder affidavit, hence, their grievances have been redressed. Nonetheless, it is submitted that there are some minor discrepancies regarding questions / answers and they are also required to be rectified. However, the main stress of the learned counsels for the writ petitioners, in their reply, is regarding the candidature of the candidates using whitener having been declared to be invalid. In this regard, a judgment of the Hon'ble Apex Court, reported in 2018(16) SCC 447 (Hanuman Datt Shukla & Others vs. State of Uttar Pradesh & Others) has been relied upon to state that candidatures using whitener or blade cannot be held to be ineligible so as to warrant non-evaluation of their answer-sheets on the basis of advisory note given by the selection Board in absence of any such provision in the recruitment rules issued by the State Government. Reliance has been placed on paragraph nos. 5 to 8, which are being reproduced herein below:-

"5. In so far as the merit list of candidates who participated in the selection process for the post of Sub-Inspectors is concerned, out of the list of 810 candidates, it is stated by the learned Advocate General, on instructions received from the Principal Secretary (Home), that 670 candidates can be taken on the post of Sub-Inspector (Civil Police), the remaining 140 candidates can be appointed on the post of Platoon Cadre (PAC), which post also is equivalent to the post of Sub-Inspector (Civil Police). Further, while giving appointment in the above manner from out of the select list, the learned Advocate General has stated that there will be no right of seniority in the candidates already in the original seniority list and a separate/fresh merit list of 810 candidates will be prepared on the basis of marks obtained by them and they will be kept below the candidates in the original seniority list. Appointments out of such select list that would be drawn on the basis of the marks secured by each one of the candidate to the post of Civil Police/PAC in terms of the fresh merit list of 810 candidates will be drawn purely on the basis of merit and preference indicated by the applicants in their application forms at the time of submission. The State will select only 810 candidates, as per the list, who were originally in the merit list, but were not selected due to use of whitener/blade in the OMR sheets. No other candidate shall have any claim over such appointment. Further, the candidates so appointed to the post of Sub-Inspector (Civil Police) and on the post of Platoon Cadre (PAC) will be sent for training only after completion of training of already selected candidates as currently there is no vacancy in training centres to impart training to the newly appointed candidates to the aforesaid posts. The appointment shall be done as an exceptional and one-time measure, this will not be treated as a precedent for any other case.

6. As regards the selection of Constables, the learned Advocate General stated that the State can accommodate only those candidates who could have been selected, had they not been excluded from the final result for having used

whitener/blade in OMR sheets. For this purpose, Board will prepare notional result as per notified vacancies (41, 610), after including all candidates who had used whitener/blade. Thereafter, separate list of all such candidates will be prepared who have found place in notional result, but could not find place in the result declared on 16-7-2015. After preparation of separate list of all such candidates, State will take steps to accommodate them, out of which 2500 candidates can be appointed as Constables in PAC, 1000 candidates can be appointed as Constables in Fire Service and rest of the candidates can be appointed in civil police. A separate list will be prepared on the basis of marks obtained by them and such candidates will be kept below the already selected candidates. State will appoint only those candidates who are in the fresh notional result to be prepared by the Board, who could not be selected due to use of whitener/blade. None other will have any claim to appointment. All new candidates will be sent for training after completion of training of already selected candidates, as there is no vacancy in training centres at present. Appointments will be done as an exceptional and one-time measure. This will not be treated as a precedent for any other case.

7. It is submitted by Mr P.P. Rao, learned Senior Counsel and other learned Senior Counsel/counsel appearing for the parties that as per the Recruitment Rules framed by the State Government to appoint the eligible candidates to the posts, referred to supra, there is no prohibition to disentitle a candidate from evaluating the answer sheets, who used whitener or blade in the relevant blocks in the OMR sheet (answer sheet). The said advisory note given by the Selection Board cannot be treated as a rule to declare such candidates who have used whitener or blade in the relevant blocks in the OMR/answer sheet as ineligible for evaluating their answer sheets. This statement is in conformity with the Recruitment Rules and it would further support the stand taken by the learned Advocate General, representing the respondent State of U.P. in making submission on the basis of written suggestions.

8. The appeals are disposed of in the aforesaid terms on the basis of the statement made by the learned Advocate General on the instructions received from the Principal Secretary (Home) and the legal submissions referred to supra."

25. The learned counsel for the petitioners have also relied upon a judgment rendered by the learned Division bench of the Hon'ble Allahabad High Court rendered in Public Interest Litigation No. 35375 of 2015 dated 7.9.2015, however, the same is of no use in the present case inasmuch as the said case dealt with a writ petition seeking a writ of quo-warranto on the ground that the appointments of the 3rd, 4th and 5th respondents as members of the Uttar Pradesh, Higher Education Services Commission are contrary to the statutory provisions.

26. Another judgment relied upon by the learned counsel for the petitioners is the one rendered by a coordinate Bench of this Court dated 25.1.2018, passed in CWJC No. 6411 of 2017, which is also of no use to the petitioners inasmuch as

the same pertains to wrong evaluation of the answer-sheets as well as the evaluator having skipped evaluating certain answers, but in the present case, there is no such allegation. The learned counsels for the petitioners have also referred to some judgments rendered by this Court to attack the credibility of the Bihar School Examination Board, however, this Court feels that the said judgments are of no worth as far as the issue involved in the present case is concerned.

27. I have heard the learned Sr. Counsels / Ld. Counsels for the petitioners, as also the learned Advocate General appearing for the Respondent- Board and have also perused the materials on record.

28. Admittedly, the respondent-Board, upon preparation of the model answers by a team of subject experts, after the examination had been held, found that 28 questions were wrong as far as sets A, B, C and D of paper I and Paper II are concerned whereafter, all such wrong questions were deleted and the answer-sheets were evaluated and then the result was published on 22.9.2017 by lowering down the full marks corresponding to the wrong questions, corresponding to the concerned paper. This Court further finds that the process at the level of the respondent-Board did not end here inasmuch as after publication of the result of the BETET, 2017 on 22.9.2017, further complaints were received with regard to the error in questions whereupon the Respondent-Board had again appointed a committee of subject experts to deal with the fresh objections received by the respondent-Board from the appearing candidates and thereafter, the committee, after examining the objections, had submitted its recommendations to the Board along with the revised model answer key, which was uploaded on the website of the Board, inviting fresh objections thereon, vide fresh communiqué contained in advertisement no. 95 of 2017 dated 28.12.2017, from all the appearing candidates with request to the candidates to file their objections against the revised model answer key and then the fresh objections received from the appearing candidates were forwarded to the subject experts committee which again looked into the objections and gave its recommendations and only thereafter, considering the report of the subject experts, the final result of BETET, 2017 was published on 6.3.2018. One important aspect to be noted here is that the writ petitioners have failed to show that in pursuance to advertisement no. 95 of 2017, issued on 28.12.2017, the writ petitioners had filed fresh objections against the revised model answer key, hence, on this ground alone, the writ petitions are fit to be dismissed inasmuch as non-submission of such objections clearly depict that the writ petitioners had no grievances against the revised model answer key. In fact, the rejoinder affidavit filed by the writ petitioners in the first case also do not show any substantial grievances and on the contrary, it has been stated that some of the writ petitioners have already stood successful after fresh exercise was undertaken by the Respondent Board, upon considering the objections of the appearing candidates regarding their grievances to the questions-answers. This Court, thus, finds that the Board has taken full care to delete the defective questions, which

is in line with the mandate of law, as enunciated in the judgment rendered by the Hon'ble Apex Court in the case of Kanpur University (supra), as also by this Court in the case of Dhananjay Kumar Mishra and Ors. (supra) and Ravindra Kumar Singh & Ors. (supra), hence this Court does not find any infirmity in the process undertaken by the respondent Board to publish the final result dated 6.3.2018.

29. Another aspect of the matter is that the Hon'ble Apex Court in the case of Himachal Pradesh Public Service Commission vs. Mukesh Thakur & Anr., reported in 2010 (6) SCC 759 has held that if there is some discrepancy in framing the questions or evaluation of the answer, it would be for all the candidates appearing for the examination and not only for the writ petitioners. In this regard, it would be relevant to reproduce paragraph no. 19 of the judgment rendered by the Hon'ble Apex Court in the Mukesh Thakur's case (supra) herein below:-

"19. In view of the above, it was not permissible for the High Court to examine the question paper and answer sheets itself, particularly, when the Commission had assessed the inter-se merit of the candidates. If there was a discrepancy in framing the questions or evaluation of the answer, it could be for all the candidates appearing for the examination and not for respondent no. 1 only. It is a matter of chance that the High Court was examining the answer sheets relating to law. Had it been other subjects like physics, chemistry and mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court."

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.

31. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, I do not find any merit in the present batch of writ petitions, hence, all the writ petitions are dismissed.