

(2002) 02 PAT CK 0123

In the Patna High Court

Case No : Letters Patent Appeal No. 387 of 2000

Bihar Public Service Commission and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-02-2002

Acts Referred:

Citation : (2002) 02 PAT CK 0123

Final Decision : Allowed

Judgement

1. The appeal is time-barred; After hearing learned Counsel for the Appellants and taking into consideration the averments made in the limitation petition, we find that a case for condonation of delay having occurred in filing the appeal is made out. Accordingly, the limitation petition is allowed and the delay in filing the appeal is condoned.

2. The Bihar Public Service Commission (hereinafter referred to as "the Commission") and its Deputy Secretary are the Appellants against the judgment dated 6.1.2000, passed by a learned Single Judge, whereby he has allowed the writ application being C.W.J.C. No. 2592 of 1991, of the writ Petitioner-Respondent and directed the Appellant-Commission to add the marks secured by him in ENT paper in the mark sheet and send a revised recommendation to the State Government, who on receipt of such recommendation, shall revise the gradation list of the Bihar Health Service (Basic Cadre).

3. The facts, which are not in dispute, are like these. An advertisement was issued for appointment of Medical Officers in the Bihar Health vices and in pursuance of which the writ Petitioner-Respondent and others applied and, thereafter, they appeared in the written examination known as the 2nd Bihar State Health Services (Basic Grade) Examination, 1989, which was held in the month of July, 1989. The writ Petitioner-Respondent was declared successful and, thereafter, he appeared in the interview and on the basis of his performance in the written examination and the interview, he was included in the merit list for selection, on the basis of which he was appointed on the post of Civil Assistant

Surgeon in the Bihar Health Service, a copy of which had been appended as Annexure 1 to the writ application. The Commission by order dated 22.9.1990 cancelled the answer-book of the ENT paper on the ground that the writ Petitioner-Respondent had written answers to some of the questions by pencil outside the brackets provided for answers and, thus, there was violation of Clause 9 of the Instructions issued in connection with holding of written test. The writ Petitioner-Respondent filed representations on 10.10.1990 and 23.2.1991, copies of which had been appended as Annexures 4 and 5, respectively to the writ application. It appears that the representation dated 10.10.1990 was considered and rejected and a communication about the same was made to the writ Petitioner-Respondent by letter dated 6.3.1991, a copy of which had been appended as Annexure 6 to the writ application.

4. At the time of appearing in the written test, in the admit cards, general instructions were issued, which were to be followed by the candidates. Clause 9 of the said instruction provides that the candidates shall be described by the roll number mentioned in the Admit Card. They have to mention their roll number on the cover page of the answer-books. They shall not mention their names on the cover page or on any other page of the answer book nor disclose their identities nor put any identification mark in the answer book nor put their signatures below any order, judgment etc. written in answer to any question. The candidates shall not write their roll numbers or names except the actual answer to the question on the precis sheet or graph-paper inside the answer book. If they do. so, they shall be punished.

5. The writ Petitioner-Respondent has admitted in his representations that he had written the answers by pencil outside the brackets provided for giving the answers and, thereafter he had written the answers in pen in the brackets in the ENT paper. The Appellant-Commission, while going through the answer-book of ENT paper, found that the aforesaid step taken by the writ Petitioner Respondent was made for the purpose of identification and, thus, there was violation of Clause 9 of the Instructions and, accordingly, cancelled the ENT paper and the representation filed by him was also rejected as stated above. The writ Petitioner-Respondent has been awarded zero marks in ENT paper after its cancellation but even then he has been declared successful in the examination on the basis of the marks obtained by the Commission and on the basis of the marks obtained by him. he has been appointed as the Civil Assistant Surgeon in the Bihar Health Service and he is still continuing and he filed the representations before the Commission as contained in Annexures 4 and 5 to the writ application only with a prayer to add marks of ENT paper so that his position in the seniority list might not be affected.

6. The writ Petitioner-Respondent filed the aforesaid writ application to quash the order canceling his ENT paper and the representation and for a direction to the Commission to evaluate the answer-book of ENT paper, award marks and place him in suitable position in the merit list prepared on the basis of 2nd Bihar State

Service (Basic Grade) Competitive Examination, 1989. The case of the writ Petitioner-Respondent was that the total marks for ENT subject was 25 and he did well and was expected to get a minimum of 15 "marks. He also admitted that he firstly wrote doubtful answers outside the brackets so that at the time of revision he could give second thought and finally write the answer at the specified place within brackets in ink. As he was short of time, he could not erase all the answers written by pencil. In other words, his case was that the said mistake was a bona fide one and that was not an intentional step for the purpose of identification of the answer-book.

7. The case of the Appellant-Commission is that to conduct fair examination, the general instructions for the candidates were attached with the Admit Cards. Clause 9 of the Instructions specifically provided that nothing should be written in the answer book, which will facilitate identification of the candidate. The writ Petitioner-Respondent has violated Clause 9 of the Instructions as he has himself admitted that he had written the answers by pencil outside the specified places/brackets and, thereafter, written the answers in pen. The mode of writing answers by the writ Petitioner-Respondent by pencil by the side of the specified places/brackets meant for recording the answers and subsequently writing the answers in ink in the appropriate places/brackets without erasing the answers written in pencil was sufficient for identification of the answer book. On receipt of the answer books from the examination centre, they are dispatched to the examiners for evaluation after removing the portion bearing Roll number and affixing, code number thereon and after receipt of the evaluated answer book from the examiners, they are minutely scrutinized in the office of the Commission in respect of identification mark, mistake in totaling of marks and other matters. In this examination also, after evaluation of the answer-book, while it was detected that the writ Petitioner-Respondent had put an identification mark in the answer book of ENT paper and; thereafter, the matter was placed before the Commission and the ENT paper was cancelled and the same was communicated to him. Thereafter, he filed a representation dated 10.10.1990, which was considered and rejected and the order to that effect was communicated to him. In view of the fact that the writ Petitioner Respondent has admitted of having answered the questions by pencil outside the brackets/specified places, which was a clear violation of Clause 9 of the Instructions, there was no requirement of giving an opportunity of hearing to him before taking a decision in the matter.

8. The learned Single Judge asked the Appellant-Commission to produce the answer book. The Commission informed that the answer book was not preserved and thereafter, the learned Single Judge held that due to bonafide mistake the writ Petitioner-Respondent answered some of the question by pencil outside the brackets and, thereafter, answered the questions in ink in the brackets, which was not an intentional one and as such the writ Petitioner-Respondent never intended to give any identification mark and, thus, there was no violation of Clause 9 of the Instructions and, thereafter, relying upon the statement made at

the Bar that the answer-book was called for at the stage of admission and the writ Petitioner-Respondent has secured six marks directed to include the aforesaid six marks in the mark sheet and send a revised recommendation on the basis of which the writ Petitioner-Respondent be placed in the merit list.

9. In spite of the notice having been validly served, the writ Petitioner-Respondent has not appeared in this appeal.

10. Learned Counsel appearing for the Appellant-Commission submitted that writ Petitioner-Respondent has violated Clause 9 of the Instructions and in that view of the matter the Commission rightly cancelled his ENT paper and the learned Single Judge was not justified in holding that the answers written by pencil outside the brackets by the writ Petitioner-Respondent were neither intentional nor were made with any oblique motive and, thus, he cannot be said to have used unfair means in the examination. Once there was a violation of the condition, the Commission exercised its power and acted in terms of the instructions and cancelled the answer book of ENT paper of the writ Petitioner-Respondent with a view to maintain purity in the examination and the learned Single Judge should not have interfered with the aforesaid decision of the Appellant-Commission.

11. As stated above, no body has appeared to contest the matter on behalf of the writ Petitioner Respondent. Competitive examinations are held with a view to get best talented brain. Every step is taken to conduct the examination in a way that purity of examination is maintained and no candidate is allowed to adopt unfair means. The main, purpose of Clause 9 of the Instructions is that the identity of the candidate in the answer book should not be established. A candidate should not write anything in the answer book except those things for which it is specifically provided for the simple reason that an addition or alteration beyond the requirement may be used for the purpose of identification of the candidate concerned. The writ Petitioner-Respondent admittedly violated the aforesaid Clause 9 of the Instructions as he has written answers beyond the brackets/specified places by pencil and on the basis of the same identification is possible. When there is violation of condition or instruction provided for a fair examination, the same is sufficient to cancel the examination and the intention of the candidate being bonafide is wholly immaterial in such a case.

12. The apex Court in a similar matter in the case of Karnataka Public Service Commission and others Vs. B.M. Vijaya Shankar and others, held that the Commission was justified in not evaluating the answer books of the candidates, who have violated the instructions issued by the same for Civil Service Examination. In that case, the competitive examination was held by the Karnataka Public Service Commission for the State Civil Service for categories "A" and "B". According to Clause (i) of the instructions, the candidates were required to write register number and other particulars in the space provided in the answer book. The candidates were directed not to write their names or register number or sign anywhere in the answer book or on any loose sheet,

such as pr?cis sheets, maps, graph papers, etc. Clauses (xii) and (xiii) of the General 1 Instructions, inter-alia, provided that the candidates must abide by such instructions as may be specified on the cover page of the answer book and that if the candidates fail to do so they will render themselves liable to such other punishment as the Commission may deem fit to impose. The Respondents before the Supreme Court appeared in the examination and they wrote their roll numbers not only on the cover page, in the space provided for it, but even at other places in the answer books in disregard of the instructions issued by the Commission. Their answer books were not subjected to evaluation by the Commission. The Karnataka Administrative Tribunal directed evaluation of the answer books of the Respondents and other similarly situated candidates on the ground that the said decision of the Commission was taken without affording an opportunity to the candidates to explain their bona fide and innocence. The Apex Court quashed the order of the Tribunal and held that the instructions are issued by the Commission to ensure fairness in the examination. The main purpose of such instructions was to minimize any possibility or chance of any abuse. It further held that even if the mistake is bona fide one, the same is not material. Larger public interest demands insistence to observance of instruction rather than its breach. The same view has been take by a Division Bench of this Court in the case of Sanjay Kumar Sinha v. State of Bihar and Ors. reported in 1997 B.L.J. 757.

13. As the violation of the instructions is an admitted position in this case, the Appellant-Commission was justified in canceling the marks given in the ENT paper. Even after excluding the marks of ENT paper, the writ Petitioner-Respondent was already been selected and appointed as a Civil Assistant Surgeon and he is working on the said post for more than ten years. At this stage, any direction to include/add the marks secured by the writ Petitioner-Respondent in the ENT paper and then to place him in the gradation list will affect other candidates, who are above him and who are not party before this Court. Thus, in our, view, the learned Single Judge was not justified in interfering with the decision of the Appellant-Commission, which was taken in terms of the instructions issued for holding the written examination.

14. In the result, this appeal is allowed and the judgment of the learned Single Judge is set aside.