
(2012) 01 PAT CK 0121

In the Patna High Court

Case No : LPA No. 38 of 2012 in CWJC No. 13022 of 2011

Manoj Kumar and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-01-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 1 PLJR 578

Hon'ble Judges : R.M. Doshit, C.J;Birendra Pd. Verma, J

Bench : Division Bench

Advocate : Manan Kumar Mishra and Bishwajeet Kumar Mishra, for the Appellant; Lalit Kishor, Vikash Kumar, Satyabir Bharti and Sanjay Pandey for BPSC and State, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Chief Justice R.M. Doshit, CJ

1. This Appeal preferred under Clause 10 of the Letters Patent arises from the common judgment and order dated 4th January, 2012 passed by the learned Single Judge. The appellants are the writ petitioners in CWJC No. 13022 of 2011*. The matter at dispute is the preliminary examination held by the Bihar Public Service Commission (hereinafter referred to as "the Commission") in connection with the 53rd to 55th Common Combined Competitive Examination for recruitment to Class-II posts under the State service. As prelude to the said examination the Commission conducted a preliminary examination on 17th April, 2011. The result was declared on 16th July, 2011.

2. Feeling aggrieved, many unsuccessful candidates challenged the result of the examination in writ petitions filed under Article 226 of the Constitution, CWJC No. 13022 of 2011 being one of them. According to the writ petitioners the Commission had failed to conduct the preliminary examination with due care and diligence. Many of the questions asked at the examination were wrong; in

respect of some, the key supplied by the expert was wrong. Eventually many examinees were adversely affected on account of such errors in paper setting and preparation of the answer key. Pursuant to the allegations made by the writ petitioners and the order dated 9th September, 2011 made by the learned Single Judge the Commission constituted a Committee of experts to examine the question papers and the answer key in the light of the allegations made in the writ petition. After undertaking the said exercise some of the questions were omitted from computation of marks. For remaining questions a fresh answer key was prepared. All answer sheets were re-evaluated. In the process of re-evaluation as aforesaid, some 915 candidates who were earlier held to be successful failed to pass the preliminary examination. However, as they were earlier held to be successful, learned Single Judge was of the opinion that they should be allowed to appear at the competitive examination. In the circumstances the Commission scaled down the cut-off marks so as to include the said 915 candidates in the list of successful candidates. Some 5400 more candidates have been benefited by scaling down of the cut-off marks. In view of the exercise of re-evaluation undertaken by the Commission, the learned Single Judge has upheld the revised merit list. The writ petitions were accordingly disposed of.

3. The appellants are those who did not secure the cut-off marks even under the re-evaluation made by the Commission. Feeling aggrieved they have preferred this Appeal.

4. Learned Advocate Mr. Manan Kumar Mishra has appeared for the appellants. He has submitted that it is not the first time the Commission has erred in conducting the examination. On some previous occasions when the questions were required to be omitted on account of wrong answer key or for any other reason the candidates were given pro rata marks. In the present case also same principle could have been applied. He has next submitted that in case of preliminary examination for Judicial Service, this Court had directed the Commission to scale down the cut-off marks by the number of erroneous questions or the questions where the answer key was wrong. In the present case also the same procedure should have been applied to scale down the cut-off marks by eight marks as eight questions which were required to be omitted. In support thereof he has relied upon the judgment of the Hon'ble Supreme Court in the matter of Pankaj Sharma Vs. State of Jammu and Kashmir and Others, and the judgment of this Court in the matter of Akshey Lal Pandit and Others Vs. The State of Bihar and Others

5. We quite appreciate the anguish felt by the appellants. True to its reputation the Commission has not been able to hold a fool proof examination. Similar mistakes are committed in each examination conducted by the Commission. Petitions are filed and the results have to be manipulated to meet the contingency. The apathy, the indifference and the lack of will to improve the system are apparent.

6. The simplest way adopted by the Commission in such contingency is to omit the offending questions and to give pro rata marks to the examinees. In the matter of Judicial Service the Court found that the scaling down of the cut-off marks was more appropriate to meet the contingency.

7. In the present case the Commission appointed a Committee of experts who prepared the answer key afresh and re-evaluated all the answer sheets. In our opinion, the re-evaluation of the answer sheets by the revised answer key should considerably mitigate the situation faced by the Commission.

8. Having done the exercise of re-evaluation of answer sheets and in the process having reduced the cut-off marks to an extent, we see no reason to interfere with the result declared by the Commission. We see no reason for directing the Commission to reduce the cutoff marks further so as to allow few thousand more candidates to take the competitive examination. We see no merit in this Appeal. Appeal is dismissed in limine.