

(2014) 01 PAT CK 0033

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 9569 of 2013

Prem Kumar Bhakta and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) LabIC 794 : (2014) 1 PLJR 471

Hon'ble Judges : Rekha Manharlal Doshit, C.J;Ashwani Kumar Singh, J

Bench : Division Bench

Advocate : Y.V. Giri, Raju Giri, Vinod Kumar Kanth, Dinu Kumar, Shiw Kumar Prabhakar, Arvind Kumar Sharma, Rajesh Kumar Singh, Kumar Kaushik, Vivek Prasad, Om Prakash Singh, Jagjit Roshan, Ambrish Kumar, Praful Chandra Thakur, for the Appellant; Lalit Kishore Sanjay Pandey, Satyabir Bharti, Alok Chandra, Binay Kumar, A.C., P.K. Bhagat, Rakesh Kumar Samrendra, Manoj Kumar Ambastha, Sandeep Patil, Santosh Mishra, Din Bandhu Singh, Satyeshwar Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Rekha Manharlal Doshit, C.J.—Under order dated 15th July, 2013 made by the learned single Judge this group of writ petitions filed under Article 226 of the Constitution are referred to the Division Bench and are notified before us. The writ petitioners in each writ petition are the aspirants for selection and appointment to various cadres (19 in number) in class II service under the State of Bihar. The petitioners have challenged the result of the 53rd to 55th Combined (Mains) Competitive Examination, 2011 (hereinafter referred to as "the Competitive Examination, 2011") given by the Bihar Public Service Commission in the months of May-June 2012. The challenge is to the method of evaluation of the answer sheets and the marks given to each examinee.

2. According to the writ petitioners, the State of Bihar is required to make appointment to the various cadres in the State service by appointment of the persons recommended by the Bihar Public Service Commission (hereinafter

referred to as "the Commission"). Although, the recruitment is made for various cadres in the State service, the Commission holds a common selection process known as Combined Competitive Examination for appointment to the cadres where the minimum qualification required for appointment is a graduate degree. The very nature of the examination offers a variety of subjects for examination. Some subjects are common to all while for other subjects the options are offered to the applicants amongst wide variety of optional subjects. Some subjects like Maths are scoring subjects while some subjects like languages are not that scoring. Thus, the examinees who opt for scoring subjects easily steal a march over the other examinees. Further, several lakh persons make attempt at the said examination. Their answer papers are sent to the examiners who do not have the same standard of examining the answer-sheets. Thus, anomaly in the results arises. Some examiners may be liberal in giving marks whereas other may not be that liberal. The result is thus skewed up on account of the aforesaid anomalies. With a view to removing such anomalies arising from fortuitous circumstances of selecting a particular optional subject and of answer-sheets being examined by a particular examiner, the examining bodies like universities and Public Service Commissions have evolved a system of scaling down or moderation to bring the parity in the results. Both these methods are accepted and adopted by the universities worldwide. Having regard to the nature of examination and the variety of the optional subjects, the Commission also is required to moderate or scale down the results. In the present case, the Commission has failed to take necessary exercise to bring about a fair result. The petitioners, therefore, have challenged the result of the Competitive Examination 2011 and have prayed for a direction to prepare the results afresh after scaling down the results.

3. The petitions are contested by the Commission. According to the Commission, the Commission has indeed undertaken necessary exercise to bring uniformity in the results call its scaling down or moderation. In view of the exercise undertaken by the Commission, no further action is required at the end of the Commission.

4. Learned counsels Mr. Y.V. Giri and Mr. Vinod Kumar Kanth and the learned advocates Mr. Kumar Kaushik and Mr. Vivek Prasad have appeared for the writ petitioners. Learned counsels have explained the meaning of the process of scaling down and moderation, how do they function and why they are necessary. Mr. Y.V. Giri and Mr. Vinod Kumar Kanth have vehemently submitted that the action or steps taken by the Commission are not adequate. They have relied upon the judgment of Hon"ble Supreme Court in the matter of Sanjay Singh and Another Vs. U.P. Public Service Commission, Allahabad and Another, to buttress their submission that in the case before us the uniformity in the results could have been brought about only by scaling down the results. Mr. Kumar Kaushik has submitted that whatever efforts are made by the Commission are based on random checking and are not adequate. He has submitted that each answer-sheet is required to be moderated.

5. Learned counsels have relied upon the judgment of this Court in the matter of 53rd-55th Combined Competitive Examination Candidates Association (C.W.J.C. No. 3892 of 2011 decided on 26th August, 2011) in the same subject. In the submission of the learned counsels under the above referred judgment, this Court had issued a categorical direction to the Commission to make necessary amendment to the rules to make moderation/scaling down a matter of course. This court had also directed the Commission to act in accordance with the principles laid down by the Hon''ble Supreme Court in the matter of Sanjay Singh (supra). Nevertheless, the Commission has in utter disregard of the aforesaid directions, declared result of the aforesaid mains examination nor the Commission considered the judgment of the Supreme Court in the matter of Sanjay Singh (supra). The reliance is also placed on the judgment of Hon''ble Supreme Court in the matter of Prashant Ramesh Chakkarwar (Petition(s) for Special Leave to Appeal (Civil) Nos. 11977-11978/2012 decided on 20th February, 2013).

6. It cannot be gainsaid that this is the second attempt of the writ petitioners to challenge the result of the Competitive Examination, 2011. Earlier, the petitioners approached this Court in C.W.J.C. No. 3892 of 2011 in the form of an association through one Pankaj Tiwari, the petitioner No. 1 in C.W.J.C. No. 8331 of 2013. This Court (Coram: Hon''ble Mr. Justice S.K. Katriar & Hon''ble Mr. Justice Ahsanuddin Amanullah) did accept similar contentions raised in the said writ petition and did record a finding that with a view to bringing uniformity in the results depending upon the nature of the examination, scaling down or moderation was a necessity. In the matter of Prashant Ramesh Chakkarwar (supra) also, the Hon''ble Court did record the necessity of pruning the results of competitive examinations. The Hon''ble Court recorded that the examining authorities prefer moderation where several examiners manually evaluate answer-sheets of descriptive/conventional type question papers and the scaling is resorted to only where a common merit-list has to be prepared. Court observed, "Like UPSC, most examining authorities appear to take the view that moderation is the appropriate method to bring about uniformity in valuation where several examiners manually evaluate answer scripts of descriptive/conventional type question papers in regard to same subject; and that scaling should be resorted to only where a common merit list has to be prepared in regard to candidates who have taken examination in different subjects, in pursuance of an option given to them."

7. In the matter of Sanjay Singh and Another Vs. U.P. Public Service Commission, Allahabad and Another, a similar issue was raised in respect of the result of the competitive examination conducted by the Uttar Pradesh Public Service Commission for recruitment for the post of Civil Judge (Junior Division). The Hon''ble Court considered the process of moderation or scaling down of the evaluation and the procedure evolved by the U.P. Public Service Commission. The Court consulted the authoritative study "Research on Examinations in India" by A. Edwin Harper Jr. and V. Vidya Sagar Misra. Court held, "The-moderation

procedure referred to in the earlier para will solve only the problem of examiner variability, where the examiners are many, but valuation of answer-scripts is in respect of a single subject. Moderation is no answer where the problem is to find inter se merit across several subjects, that is, where candidates take examination in different subjects." In respect of the examination in question, the Court held, "The scaling formula is more suited and appropriate to find a common base and inter-se merit, where candidates take examinations in different subjects. As the scaling formula has no nexus or relevance to give a solution to the problem of eliminating the variation or deviation in the standard of valuation of answer-scripts by different examiners either on account of strictness or liberality, it has to be concluded that scaling is based on irrelevant considerations and ignores relevant considerations." In view of the above finding, the Hon'ble Court issued specific direction to moderate the results in the manner indicated in the direction.

8. Learned Principal Additional Advocate General, Mr. Lalit Kishor has appeared for the Bihar Public Service Commission. He has contested the writ petitions. Mr. Lalit Kishor has relied upon the counter-affidavit and the supplementary affidavit made by the Commission. He has submitted that pursuant to the directions issued by this Court in C.W.J.C. No. 3892 of 2011 the Commission, after examining the process adopted by the Union Public Service Commission and some State Public Service Commissions, did evolve a system for moderation of the results. The said exercise has benefited some 35 of the writ petitioners insofar as their marks were enhanced, whereas in some 12 cases, the moderation brought down the marks earlier allotted.

9. We have given our anxious consideration to the matter at issue and the method adopted by the Commission as indicated in the counter-affidavit. Pursuant to the public advertisement, more than two lakhs applications were received by the Commission. All applicants were allowed to take the Preliminary Competitive Examination. At the Preliminary Competitive Examination nearly 1,34,000 applicants appeared and took the examination. Out of 1,34,000 applicants who took the Preliminary examination, some 15,000 and odd applicants qualified for the Competitive Examination. More than 5,000 applicants were allowed to take the Competitive Examination pursuant to the direction issued by this Court in C.W.J.C. No. 13022 of 2011. Thus around 20,500 applicants were permitted to appear at the Competitive Examination. The successful candidates were called for interview. The interviews are conducted and the result is notified on 10th April, 2013.

10. Mr. Lalit Kishor has submitted that the process of recruitment had started in 2011 and has been completed in 2013. Although, the petitioners are aware that the result has been notified, the selected candidates have not been impleaded in the present group of writ petitions. The persons selected are the necessary parties. In absence of the selected candidates, the petition should fail for non-joinder of necessary parties.

11. The State Public Service Commissions are the constitutional authorities vested with the power to make recruitment for Civil Services under the concerned State. It is the duty of the Public Service Commission to select the best brains for Civil Services of the State. The Public Service Commissions are thus authorities specialised in making recruitment for Civil Services. For that purpose they are armed with the required expertise and the man power. With the rising magnitude of their responsibilities, the Public Service Commissions have to keep abreast of the recent studies and developments. Combined with their experience the Public Service Commissions ought to be able to resolve the problems they face and to answer their calling.

12. We are alive to the anxiety suffered by the writ petitioners. We also agree that having regard to the large number of examinees; the large number of examiners; variety of optional subjects, it is next to impossible to maintain a uniform standard. If in the circumstances, the examining authorities have developed the schemes of scaling down the results or to moderate the evaluation, that be so. The Court, exercising power of judicial review, will not weigh the desirability of one or the other method adopted by the examining authority. We do understand, with this magnitude of work, it is next to impossible to maintain an absolute parity but the efforts should be made to remove the disparity as far as possible. In the present case, in view of the directions issued in C.W.J.C. No. 3892 of 2011, the Commission has undertaken the exercise of moderating the evaluation as reflected in its counter affidavits and the instructions issued pursuant to the decision taken by the Commission on 15th January, 2013. We, as a court of law, will not sit in appeal over the method adopted by the Commission to ascertain its accuracy. Suffice that the Commission has taken steps to bring itself abreast of the prevalent systems and we do trust that the Commission will come out with appropriate rules to make the system uniform, transparent, effective and continuous.

13. We do agree with Mr. Lalit Kishor that the results having been declared and the selections having been notified, the persons selected are necessary parties to the present group of writ petitions. In absence of the selected candidates, the writ petitions should fail also for non-joinder of necessary parties.

14. For the aforesaid reasons, all these Petitions are dismissed.

15. Interlocutory Applications are disposed of.

Ashwani Kumar Singh, J.

I agree.