
(2001) 04 PAT CK 0033
In the Patna High Court
Case No : L.P.A. No. 630 of 2000

President 42nd Main B.P.S.C. Examination Sangharsh Samiti	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 23-04-2001

Acts Referred:

Citation : (2001) 2 BLJR 1399 : (2001) 3 PLJR 86

Hon'ble Judges : S.K. Katriar, J; Nagendra Rai, J

Bench : Division Bench

Judgement

1. This appeal under Clause 10 of the Letters Patent of the Patna High Court is with respect to the order dated 30-3-2000, passed by a learned Single Judge of this Court in C.W.J.C. No. 10610 of 1999 (President, 42nd Main BPSC Examination Sangharsh Samittee, Patna and Ors. v. State of Bihar and Ors.), whereby the writ petition for cancellation of the result of the 42nd Main Bihar Public Service Commission Examination published on 9-10-1999, and also for declaration that the entire process of the examination was illegal, has been dismissed.

2. The Bihar Public Service Commission (hereinafter referred to as the "B.P.S.C") had published an advertisement (Annexure-1 to the writ petition), inviting applications for the 42nd combined (preliminary competitive) examination for different posts. The six writ petitioners were applicants, had appeared at the preliminary test on the scheduled date, and were declared successful. The result of the preliminary test is marked Annexure-2 to the writ petition. The candidates who figured therein appeared in the main written examination comprising of three compulsory papers and two optional papers, and the result of the examination was published on 9-10-1999 (Annexure-3 to the writ petition). The writ petitioners did not figure in the final list (Annexure-3). Hence, the writ petition for the aforesaid reliefs.

3. The writ petitioners stated before the learned Single Judge that after evaluation of the answer-books were complete and the results had been finally

prepared in the office of the B.P.S.C, but before the final result was published vide Annexure-3, B.P.S.C. took the unholy step of getting all the answer-books of eight subjects, namely, Pali, Persian, Urdu, Arabic, Physics, Public Administration & Social Welfare, History, and Geography, re-evaluated with the ulterior motive of favouring some candidates. In their submission, this vitiated the entire selection process.

4. On the other hand, B.P.S.C. stated before the learned Single Judge that the answer-books of eight papers were not re-evaluated, but steps were taken to do the job of moderation standardization of the eight papers. During the course of moderation standardization of the eight papers, marks of some of the candidates in four papers, namely, Pali, Persian, Arabic and Physics, were moderated/standardized. In discharge of its duties to ensure a proper and standardized evaluation of the answer books, B.P.S.C, and for that matter, such bodies all over the country, undertake this task, and it is an accepted step in the selection process.

5. Taking into account the grievances raised by the parties at the preliminary stage, the learned Single Judge by his order dated 3-3-2000 had constituted a Committee of three learned lawyers of this Court to examine the reasonableness and bona fide of B.P.S.C. to undertake the job of moderation/standardization of the answer-books of the eight papers. The three members submitted their separate reports, two of which are dated 27-3-2000, and the third one does not bear any date. On a consideration of the entire materials on record, the learned Single Judge dismissed the writ petition holding that the petitioners have failed to show any arbitrariness or illegality in the conduct of examination. Furthermore, the marks of none of the petitioners were reduced, and the marks of none else had been enhanced as a result of moderation. Hence the appeal.

6. Learned Counsel for the appellants has submitted before us that the writ petitioners wanted re-evaluation of the answer books, whereas B.P.S.C. stated in its counter-affidavit before the writ Court that there was no provision for re-evaluation of the answer-books, and yet B.P.S.C. has in fact and substance done the same thing. It was next contended that modification was perhaps needed in one paper, namely, Pali, in which the candidates had generally scored very high marks causing suspicion, yet the answer-books of other seven subjects were, without any justification, subjected to moderation, which was done with the ulterior motive of helping favourites. He lastly submitted that scaling down of marks should be reasonable and convincing.

7. Learned Counsel for B.P.S.C. submitted in opposition that the writ petition at the instance of the six petitioners is not maintainable because their marks were not reduced in any paper. They have, therefore, no cause of action. He next submitted that after the answer-books are received, the same pass through three different stages which are as follows:

(i) Evaluation.-This is done by the examiner under the supervisory role of the Head Examiner. All the answer-books have got to be evaluated.

(ii) Scrutiny.-This is done of all the answer-books where the mistakes of calculation or complete non-evaluation by oversight of one or the other answer is detected by the staff of the Commission. The answer-books with such mistakes/defects go to Head Examiner for the needful.

(iii) Moderation/Standardization.-This is a standard practice all over the country and is done on a selective basis. If B.P.S.C. feels that there has been a gross under-evaluation or over-evaluation of the answer-books of a particular subject, or the answer-books examined by a particular examiner, then the same are subjected to moderation/standardization so that such candidates neither suffer in relation to the candidates of other subjects, nor do they get any undue advantage.

It was further submitted on behalf of B.P.S.C. that it has not so far framed Rules governing the aforesaid process and the same is being done by practice. He next submitted that B.P.S.C. never allows re-evaluation of answer-book at the instance of the candidate, but only allows scrutiny of the answer-book at the instance of a particular candidate. He also submitted that all the answer-books of the aforesaid eight subjects were subjected to moderation/standardization but the marks allotted to some of the candidates earlier in the four papers were scaled down. The three reports placed on record by the three learned lawyers of this Court state that the marks allotted to the six petitioners were not reduced, nor the marks of any candidate were enhanced. He, therefore, submitted that the entire process of examination was just and fair. He lastly submitted that all the successful candidates have already joined their services, except a few on account of pending litigations.

8. We have heard learned Counsel for the parties at length and discussed the matter thread-bare with them. After taking into account the entire materials on record, we feel that the appellants have not been able to discredit the process of examination. B.P.S.C. is a constitutional body and has been entrusted-by the Constitution of India with the duty of conducting examinations for recruitment to public services. In view of the position that it has not so far framed Rules on the aforesaid lines, it is entitled to devise its procedure for conducting the examinations and evaluation of answer-books as per executive instructions or executive decisions taken from time to time. It is, therefore, entitled to resort to the process of moderation/standardization of answer-books of the candidates of a particular subject, or of the answer-books examined by a particular examiner, so long the same is done bona fide and with the avowed objective of ensuring a fair conduct of examination and proper evaluation of answer books. The appellants have not been able to bring to our notice any material to discredit the moderation/standardization of the eight subjects done by B.P.S.C. On the other hand, the three reports of the learned lawyers of this Court lead to the conclusion that B.P.S.C. rightly felt that answer-books of the aforesaid eight papers needed moderation, For example, the marks allotted to the candidates of Pali were very high. The B.P.S.C. was, therefore, entitled to order for moderation/

standardization Of the answer-books of Pali. The bona fides of B.P.S.C. is further established by the fact that all the answer-books of the aforesaid eight papers were subjected to moderation.

9. Learned Counsel for B.P.S.C. is further right in his submission that the writ petition is not maintainable at least on two counts. We are in no doubt that the writ petition at the instance of six petitioners is not maintainable because the marks originally allotted to them were not reduced at all, nor the marks allotted to any other candidate was after moderation enhanced. In fact, the marks of some other candidates not before us, in the aforesaid papers have been reduced which can only improve the chances of the petitioners. Learned Counsel for B.P.S.C. is further right in his submission that all the persons appointed pursuant to the examination in question have already joined under the Bihar Government, except a few on account of pending litigations, perhaps on account of issues relating to reservation. The persons so appointed have not been impleaded as party respondents, The writ petition, or for that matter this appeal also, cannot proceed in their absence.

10. Before we part with the records, we would like to observe that the general reputation of B.P.S.C. during the past 15 years or so has severely suffered in the eyes of the general public and is discernible from the cases brought to this Court or taken in appeal to the Supreme Court. B.P.S.C. should always remind itself that the Constitution of India has conferred on it the important duty and function of conducting examinations for appointment to public services, which it must discharge sincerely and faithfully. Let its actions cause no suspicion in the minds of the people in general, and the candidates in particular. B.P.S.C. should not feel content by the position that most of its actions are upheld by the Court. Most of its actions are upheld by Courts, more often than not, on account of technical reasons and the self-imposed limitations of this Court to go into the grievances raised before it and on the ground that conduct of the examinations is the job of an expert body like B.P.S.C. created under the Constitution of India.

11. We would also like to state that the Commission would be well-advised to frame Rules for various stages of the selection process so that all its affairs are conducted strictly in conformity with the provisions thereunder, and the selection processes conducted by it are done with objectivity and transparency, eliminating chances of arbitrariness. Learned Counsel for B.P.S.C. has taken us through the Rules and procedure framed by the Maharashtra Public Service Commission. In that view of the matter, the Commission would be well-advised to frame Rules on similar lines, hopefully within a period of six months.

12. In the result, this appeal is dismissed.