

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.704 of 2024
In
Civil Writ Jurisdiction Case No.5217 of 2023

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1. The Bihar Public Service Commission through the Secretary, 15, Jawahar Lal Nehru Marg, Bailey Road, Patna-800001.
 2. The Chairman, Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg, Bailey Road, Patna-800001.
 3. The Secretary, Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg, Bailey Road, Patna-800001.
 4. The Controller of Examination of Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg, Bailey Road, Patna-800001.

... .. Appellant/s

Versus

1. Dr. Eena Bahan D/o late Ramadhar Prasad, W/o Raj Shekhar Prasad, Resident of 8E/13, Bahadurpur Housing Colony, Kankarbagh, P.S. New Agamkuan, District- Patna, Bihar- 800026.
2. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
3. The Secretary, Department of Science and Technology, Government of Bihar, Patna.
4. The Director, Department of Science and Technology, Government of Bihar, Patna.
5. Mukesh Kumar Sinha, Son of late Ram Chandra Prasad, R/o Ramraje Road, Maripur, P.S. Kazimohamadpur, District- Muzaffarpur.
6. Biblab Goswami, Son of Tapas Kumar Goswami, R/o Arrah Bidhan Park, Malandighi, P.S. Kanksa, District- Paschim Bardhaman, West Bengal.
7. Kumar Sanjay Sinha, Son of Rabi Bhushan Prasad Srivasatava, R/o 105, Sushma Sadan, P.S. Gopalganj, District- Goaplganj.
8. Jyoti Gautam, D/o Prempal Singh, R/o..... P.S. Mundha Pandey, District- Moradabad, Uttar Pradesh.
9. Manoj Das, S/o Dharendra Nath Das, R/o Vivekanand Pally, P.s. Kulti, District- Paschim Bardhman, West Bengal.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. P.K.Shahi, A.G. Mr. Vikash Kumar, Advocate
For the Respondent No.1:		Mr. Kumar Kaushik, Advocate
For the Respondent/s	:	Mr. Government Pleader 5

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE NANI TAGIA
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)



Date: 20-12-2024

The appeal is filed by the Bihar Public Service Commission (for brevity 'Commission') against the directions of the learned Single Judge in the writ petition to constitute a fresh Committee of five subject experts of Indian Institute of Technology (I.I.T), Patna and N.I.T., Patna, who were tasked to find the definite answers to four questions in Set 'B' of the question papers; which would be placed before the Commission for considering the case of the petitioner alone and on revision of marks, if the petitioner is qualified, call her for interview. The learned Single Judge also observed that if there is no unanimity amongst the members of the Committee, the majority view should prevail.

2. Shri P.K.Shahi, learned Senior Counsel appearing for the Commission, points out that in effect, a re-evaluation is directed by the learned Single Judge; which even, according to the decision of the Hon'ble Supreme Court, relied on by the learned Single Judge, would not be permissible, if there is no stipulation for such a re-evaluation as per the rules or in the notification. It is pointed out that the Commission had constituted a Team of Experts for the purpose of evaluating the provisional answer key published by the Commission, with



reference to the objections received from the candidates, to the provisional answer key. In fact, the exercise was carried out four times; each of the earlier three times publishing a provisional answer key and inviting objections. At the fourth instance, a final answer key was published, against which also the petitioner raised an objection.

3. It is submitted that the selection process has proceeded to the stage of the interview and the writ petitioner did not qualify. The learned Senior Counsel would also rely on a judgment of a Division Bench of this Court in CWJC No. 14828 of 2023, titled as *Ashish Ranjan vs. The State of Bihar & Ors.* dated 12.03.2024.

4. Shri Kumar Kaushik, learned Counsel appearing for the 1st respondent-writ petitioner, would contend that the repetitive corrections made in the answers, would make it clear that the experts themselves were not sure about the questions and answers. In fact, the petitioner would be satisfied with the result of the first objection raised, is the submission.

5. *Rajesh Kumar v. State of Bihar, (2013) 3 SCC 690* was relied on to contend that application of an erroneous answer key is sufficient to vitiate the entire results. ***Manish Ujwal v. Maharishi Dayanand Saraswati University, (2005) 13 SCC***



744 and ***Guru Nanak Dev University v. Saumil Garg, (2005)***
13 SCC749, emphasised the interest of the students and cautioned that merit should not be a casualty. The paper-setters and the experts, who evaluate the answers, have to always bear-in-mind that what is at stake is the career of young students. ***Rishal v. Rajasthan Public Service Commission, (2018) 8 SCC 81*** referred to the earlier judgments of the Hon'ble Supreme Court and directed re-examination of the answer key by the experts. ***Ran Vijay Singh v. State of Uttar Pradesh, (2018)2 SCC 357*** also cautioned that complete hands-off attitude; denying any interference, should be avoided.

6. On background facts *suffice* it to notice that the advertisement bearing No. 63/2020 was issued for appointment of Assistant Professors in the various Engineering Colleges of the Government of Bihar. Minimum marks in the OMR test was a criteria for calling the candidates for an interview.

7. The issue agitated in the present case is the recruitment process to the post of Assistant Professors (Physics). The evaluation process takes in; the objective test, which carries 40 marks; Academic Record and Research Performance carrying 20 marks and Weightage for Assistant Professors engaged on contract, carrying a maximum of 25 marks and 15



marks in the interview. The candidates were required to obtain a minimum qualifying mark for the objective test, which alone enable them to be called for the interview. The petitioner did not obtain the minimum qualifying marks and we are concerned only with the OMR test and the evaluation carried out by the Commission.

8. The provisional answer key was first published on 12.11.2022 and objections were also invited. The petitioner filed an objection on 17.11.2022, produced as Annexure-P/5 in the writ petition. The objections were scrutinised by a Committee of Five Experts in their meeting dated 05.01.2023, which is produced as Annexure-C, along with the counter affidavit filed by the respondent-Commission. The Committee of Experts changed the options of 08 questions and deleted two questions; for reason of none of the options given being correct. A further provisional answer key was published, as produced at Annexure-6B and again objections were called for. The petitioner filed her objection to this provisional answer key also by Annexure-7B, produced in the writ petition. The candidates who filed objections were called for a personal hearing at the Commission Office, when they were allowed to talk to the experts over telephone and express their views. Later, the



Committee of Experts, by minutes dated 21.01.2023, produced as Annexure-F in the counter affidavit, deleted four questions and changed the options of four other questions. Again, a provisional answer key was published, to which also objections were called and the petitioner promptly filed an objection. The Committee constituted, again met on 10.02.2023 and by Annexure-H minutes, made further evaluation of all the 80 questions and published another provisional answer key, against which also, the petitioner filed an objection along with others. Finally, the Commission published a revised final answer key, produced at Annexure-17, against which also, the petitioner filed a representation and came before this Court.

9. Before we adjudicate on the issue, we have to necessarily look at the decisions placed before us.

10. **Rajesh Kumar** (supra) was a case in which the model answer key was found to be erroneous, which prompted the High Court to direct the Bihar Staff Selection Commission to conduct a fresh examination and re-draw the merit list on that basis. Therein, on a reference made by a learned Single Judge to two experts, 41 model answers, out of 100, were found to be wrong. In addition, two questions were wrong and two others were repeated. The Division Bench order directing a re-



examination was challenged by the candidates who were already appointed. In which circumstance, the respondents, who had approached the High Court, with the writ petition, submitted before the Hon'ble Supreme Court that they have no objection to the continuance of the appellants; in which context and background, the Hon'ble Supreme Court directed the papers of Respondent Nos. 6 to 18 and candidates appearing in 'A' series of competitive examination, to be re-evaluated by the two experts for the purpose of drawing up a fresh merit list; despite the objection of the State Government for re-evaluation. We cannot, but notice that therein almost 40 per cent of the answers were wrong, two other questions were wrong and two more were repeated. There was also no calling for an objection for re-evaluation carried out by the Commission at the first stage.

11. We do not, for a moment, deviate from the binding declaration of the Hon'ble Supreme Court that merit should not be a casualty and the fault of the question setters or the examiners should not result in the candidates being deprived of a fair opportunity. We also take note of the binding declaration in *Ran Vijay Singh* (supra). The directions in which were extracted by the learned Single Judge, which we also extract, at the risk of repetition, but for more clarity:-

“30. The law on the subject is therefore, quite clear



and we only propose to highlight a few significant conclusions. They are:

30.1. If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it;

30.2. If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any "inferential process of reasoning or by a process of rationalisation" and only in rare or exceptional cases that a material error has been committed;

30.3. The court should not at all re- evaluate or scrutinise the answer sheets of a candidate-it has no expertise in the matter and academic matters are best left to academics;

30.4. The court should presume the correctness of the key answers and proceed on that assumption; and

30.5. In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.”

(emphasis underlined)

12. With the above factual position and law applied on such facts, we look at the instant case. The Commission, in the present case, had thrice published a provisional answer key and invited objections from the candidates, which was examined by the experts. The petitioner had a contention that more or less the same experts were members in the successive committee constituted. Annexuere-C of the counter affidavit indicates that



there were five experts in the Committee, who evaluated the provisional answer key with reference to the objections of the candidates. In the second constituted Committee, the minutes of which is produced at Annexure-F, three of the earlier members were included and two new members. Annexure-H, which is the third Committee Constituted had three members from the First Committee, one of whom was not a member of the Second Committee. The two new members in the Second Committee were also included in the Third Committee along with two members of the Commission; who were not experts, as submitted by the petitioner. Even after the Third Committee, again a provisional answer key was published and after considering the objections received, final answer key was published, based on which the candidates were evaluated in the OMR test. We cannot, but observe that the Commission had constituted a Committee of Experts four times, for the purpose of examining the provisional answer key published with reference to the objections submitted.

13. The petitioner submits that she has produced opinions of other experts, which runs counter to the opinion of the Expert Committee constituted by the Commission. We cannot, but observe that there cannot be an exactitude in such



matters and always opinions differ even with respect to Science subjects; given the rapid strides made by the scientific community. In a selection process of this magnitude, what we look at is whether the Commission has acted fairly; which we find, by the four attempts to examine the objections filed to have been over zealously ensured that no candidate is put to peril because of an obvious wrong answer by the examiner or by the Expert Committee. It is also to be emphasised that it is not the petitioner alone who submitted objections and the other objectors also would have raised equally valid points with respect to the questions in the OMR test and the answers in the answer key.

14. We also see that the learned Single Judge had merely directed the re-evaluation of the petitioner's answer paper by the fresh Committee directed to be constituted. Even the learned Single Judge took note of the possibility of an absence of consensus and directed the majority view of the fresh Committee to be adopted; if there were differences. We cannot, but notice that despite in **Rajesh Kumar** (supra), the respondents who succeeded before the High Court, sought for only re-evaluation of their answer papers. The Hon'ble Supreme Court directed the answer script of the candidates appearing in



‘A’ series of the competitive examination to be re-evaluated by the experts constituted by the High Court.

15. Re-evaluation of answer papers of one candidate; is not permissible. Re-evaluation of answer paper is not a provision available in the advertisement or enabled by a Statutory rule or regulation. Thus, as held in ***Ran Vijay Singh*** (supra), re-evaluation or scrutiny of an answer sheet is not a matter of right. A complete hands-off policy cannot be adopted by this Court and as has been held in ***Ran Vijay Singh*** (supra), the Court can permit re-evaluation and scrutiny, even if it is not permitted by rules or regulations, only if it is demonstrated very clearly, without any inferential process of reasoning or by a process of rationalisation and only in the rare or exceptional case of a material error having been committed.

16. In the present case, the Commission has evaluated the answers four times, with more or less the same Committee of Experts. However, the fairness of the Committee of Experts is very evident by the fact that they were willing to correct themselves, based on the objections by the candidates. At one point, one of the experts had heard the objectors personally, over telephone. Thus, bringing more clarity to the objections. We are of the definite opinion that the maximum care was bestowed by



the Commission in examining the answer key; specifically four times. We are of the opinion that the impugned judgment agreegaciously erred in having directed a re-evaluation, that too of the four questions pointed out by the petitioner by a different set of experts.

17. We hence set aside the judgment of the learned Single Judge and permit the Commission to go ahead with the selection and appointment.

18. The appeal stands allowed.

19. Interlocutory application, if any, shall stand closed.

(K. Vinod Chandran, CJ)

I agree.
Nani Tagia, J:

(Nani Tagia, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	10.12.2024
Uploading Date	20.12.2024
Transmission Date	

