

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11556 of 2021

1. Vivek Pandey, Son of Beni Madhawa Pandey, Permanent Resident of Village- Panditpura, Post Office- Sitakund, Police Station-Haldi, District- Ballia, State-Uttar Pradesh and Present Resident of Magistrate Colony, Quarter No. 1, Hajipur, Police Station- Hajipur, District- Vaishali (Bihar).
2. Umesh Srivastava, Son of Mr. Mukesh Srivastava, Resident of Village- MIG-114, Maharishi Dayal Vihar, Police Station- Kalyanpur, Kanpur (U.P.)
3. Apoorva Jyoti, Daughter of Sri Amar Jyoti Srivastava, Resident of Village- 363, New Colony, Behind home guard Aragibagh, Police Station- Agamgarh town, District- Agamgarh (U.P.)

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The State of Bihar through Secretary cum Legal Remembrances Department of Law, Government of Bihar.
4. The Chairman, Bihar Public Service Commission, 15, Nehru Path (Bailey Road), Patna.
5. The Secretary, Bihar Public Service Commission, 15, Nehru Path (Bailey Road), Patna.
6. The Joint Secretary-cum-Examination Controller, Bihar Public Service Commission, 15, Nehru Path (Bailey Road), Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 16181 of 2021

Saurav Barial, Son of Abhay Kumar Barial, Resident of Mathura Kutir, Par Nawada, Near- Devi Sthan, Gaya Road, P.S.- Nawada, District-Nawada

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Department (Directorate of Prosecution), Government of Bihar, Patna.
2. The Bihar Public Service Commission through its Secretary, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna.
3. The Chairman, Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna.
4. The Secretary, Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna.
5. The Joint Secretary Cum Examination Controller, Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 11556 of 2021)

For the Petitioner : Mr.Niranjan Kumar, Advocate
Mr. Gaurav Bihari, Advocate
For the Respondent-BPSC: Mr.Lalit Kishore, Sr. Advocate
Mr. Sanjay Pandey, Advocate



For the State : Mr.Prashant Pratap, G.P.-2
(In Civil Writ Jurisdiction Case No. 16181 of 2021)
For the Petitioner/s : Mr. Mrigank Mauli, Sr. Advocate
Mr.Kumar Nikhil, Advocate
For the Respondent-BPSC: Mr.Lalit Kishore, Sr. Advocate
Mr. Sanjay Pandey, Advocate
For the State : Mr.Md. Nadim Seraj, G.P.-5

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 11-11-2022

Heard learned Senior Counsel Mr. Mrigank Mauli in CWJC No. 16181 of 2021. Mr. Niranjana Kumar, learned counsel has appeared for the petitioners in CWJC No. 11556 of 2021. Learned Senior Counsel Mr. Lalit Kishore has appeared on behalf of the Bihar Public Service Commission (BPSC) along with Mr. Sanjay Pandey, learned Advocate. The State is represented by Mr. Prashant Pratap, learned GP-2 in CWJC No. 11556 of 2021 and Mr. Vikash Kumar, learned SC-11 in CWJC No. 16181 of 2021.

2. In CWJC No. 11556 of 2021, petitioners seek quashing of result of the preliminary test dated 27.04.2021 published in the process of appointment of Assistant Prosecution Officer (APO), pursuant to Advertisement No. 01/2020. The result has been declared by the BPSC, Patna. The writ petition has been filed raising a grievance that only 3995 candidates have been declared successful in the preliminary test.

3. It is submitted that result should have been published in the ratio of 1:10 of total advertised seats, which has not been



done. Petitioners, therefore, have prayed for directing the respondents to issue a fresh result of preliminary test as per ratio 1:10 laid down by the Hon'ble Apex Court in a catena of judgments. The petitioners have also questioned the marks awarded for all 6 questions of Paper-II (Law), bearing Question Nos. 63, 90, 93, 94, 97 and 100. It is submitted that the modal answers of these questions are incorrect. The petitioners, in fact, had given the correct answers but relying on wrong model answers, they have been deprived of marking for these questions and therefore the result of the preliminary test is vitiated. However, during argument, having considered the stand of the respondent-Commission in the counter-affidavit that Question No.100 has been deleted, the petitioners have confined their grievance only with respect to 5 of the remaining questions, i.e., Question Nos. 63, 90, 93, 94 and 97.

4. The petitioner of CWJC No. 16181 of 2021 also seeks quashing of the final result of the preliminary test examination and for a direction to issue a fresh revised final result of preliminary test on the same ground of result being less than the established ratio, 1:10 of total advertised seats. The petitioner also seeks direction to the respondent-Commission to issue admit card for Mains Examination in favour of the petitioner to enable him to



participate in the written examination. The petitioner in this writ petition has also raised the same issue regarding the correctness of the final answer keys/modal answers for Question Nos. 19, 21, 22, 25 and 89 of Set-C question booklet.

5. When the matters are taken up today, submissions have firstly been advanced by the learned Senior Counsel appearing in CWJC No. 16181 of 2021 that the petitioner had obtained 132.265 marks as against the cut-off marks 138.750. If the petitioner's challenge to the correctness of the modal answers of the 5 questions, noted above, is accepted, then his marks will come within the cut-off marks so as to place him in the zone of successful candidates for participation in the Mains Examination.

6. Referring to provisions of the relevant bare Acts and the decisions of the Hon'ble Apex Court, learned senior counsel has emphatically submitted that the modal answers for the 5 questions are materially wrong. He has submitted that the questions are not assailed on any inferential process, but the error is apparent. It is thus submitted the petitioner's result should be revised accordingly and he be declared successful for participation in the mains written examination.



7. Learned counsel in CWJC No.16181 of 2021 has made similar submissions in support of his prayer assailing validity of the model answers for Question Nos.63, 90, 93, 94 and 97.

8. Learned Senior Counsel has relied upon paragraph nos.18 and 19 of the decision of the Apex Court in the case of ***High Court of Tripura through Registrar General Vs. Tirtha Sarathi Mukherjee & Ors.***, reported in ***2019 (2) PLJR 114 (SC)***. He thus submits that since there is no doubt or dispute about the correctness of the answers given by the petitioners, this Court should exercise jurisdiction under Article 226 of the Constitution of India in favour of the petitioners.

9. Mr. Niranjana Kumar, learned counsel has relied upon decision of the Apex Court in the case of ***Richal and Others Vs. Rajasthan Public Service Commission and Others***, reported in ***(2018) 8 SCC 81***.

10. Mr. Lalit Kishore, learned Senior Counsel representing the respondent-BPSC submits that in a matter of hours i.e., tomorrow morning, the Mains Examination is scheduled to be held. He further submits that the model answers have been examined by an Expert Committee. Relying upon the decision of the Apex Court in the case of ***Ran Vijay Singh and Others vs.***



State of Uttar Pradesh and Others, reported in (2018) 2 SCC 357, as well as the earlier decisions of this Court in the case of *Prakash Chandra vs. State of Bihar & Ors.* reported in 2019 (3) PLJR 983, affirmed by the Division Bench vide order dated 11.07.2019 passed in LPA No. 798 of 2019; as also in the case of *Bihar Public Service Commission & Ors. vs. Ashish Kumar Pathak & Ors.*, reported in 2021 (1) BLJ 673, he has submitted that the law is well settled that the writ Court should not interfere in the result of the examinations, particularly with regard to the issue of the correctness of questions and answers. He further submits that any interference in the process of selection at this stage on the issue of correctness of the model answers raised by four writ petitioners in these two writ petitions would go against the public interest, which requires the process of selection to be concluded expeditiously.

11. Having considered the rival submissions, this Court would refuse to entertain the writ petitions and interfere with the result of the examinations for following reasons.

12. Firstly, the legal position now stands settled in view of the decision of the Hon'ble Apex Court in the case of **Ran Vijay Singh** (supra). Paragraphs 30, 31 and 32 of the said judgment are considered worth reproducing in this regard:



"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.

31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible.



This Court has shown one way out of an impasse — exclude the suspect or offending question.

32. It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a classic example of the consequence of such interference where there is no finality to the result of the examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination — whether they have passed or not; whether their result will be approved or disapproved by the court; whether they will get admission in a college or university or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion being worse confounded. The overall and larger impact of all this is that public interest suffers."

13. Legal position stands settled in view of this judgment. Paragraph 32 of the judgment has categorically ruled



that it is rather unfortunate that despite several decisions of the Apex Court, there is interference by the Courts in the result of the examination, particularly with regard to the nature of correct questions and answers.

14. The second ground, which, in fact, is the preliminary issue arising for consideration, is that when these matters were listed for consideration on 30.11.2021, the Court recorded the following orders:

*"Learned counsel for the petitioner submitted that the present matter is covered by CWJC No. 10649 of 2021.
(emphasis mine)*

Per contra, learned counsel for the respondent has preferred LPA against the aforesaid order.

Ten days time is granted to apprise this court in respect of entertaining LPA by the Division Bench by granting of interim relief.

List this matter on 13.12.2021."

15. In CWJC No.10649 of 2021, this Court had directed to publish a revised result of preliminary test of successful candidates in the following terms:

"14. For the aforesaid reasons these applications succeed. These writ applications are allowed. Consequently, the respondent B.P.S.C. is directed to publish a revised result of the preliminary test of successful candidates, without invoking the resolution of the Personnel and Administrative Reforms Department, Government of Bihar issued vide Memo No. 2374 dated 16.07.2007, which was not mentioned in the advertisement for preliminary test. The B.P.S.C. shall



thereafter proceed accordingly, in the matter of the selection process in question."

16. On 09.03.2022, when the matters were listed a coordinate Bench of this Court recorded the following orders:

"Heard learned counsel for the parties.

*In the absence of such of those persons' names reflected in the result (Preliminary Test) dated 27.04.2021 for the post of Assistant Prosecution Officer (A.P.O) pursuant to the Advertisement No. 1 of 2020, are arrayed as party respondents, the petitioners are not entitled to seek quashing of the entire re-sult (Preliminary Test). In other words, such of those persons whose names are reflected in the result (Preliminary Test) with their roll numbers, their rights would be affected. Therefore, for non joinder of necessary and proper party, the present petition stands dismissed in the light of Apex Court decision in the case of **Ranjan Kumar v. State of Bihar** reported in (2014) 16 SCC 187.*

At this stage learned counsel for the petitioners pleaded that he would make necessary application for impleading such of those persons whose rights are likely to be affected. He is permitted to make necessary application for joinder of necessary and proper parties. Petitioners are liable to pay cost of Rs. 5,000/- in the Patna High Court Legal Services Committee, Patna High Court, Patna within a period of four weeks, since the aforesaid request was made after dictating the order. In fact, petitioners' counsel was suggested initially to implead proper parties. However, suggestion was ignored.

Re-list this case on 06.04.2022. "

17. It is thus apparent that the issues raised in the instant writ proceedings have attained finality, based on submissions of the petitioner's counsel recorded in the earlier order dated



30.11.2021, wherein the petitioner's counsel submission that the matter stands covered by CWJC No. 10649 of 2021 has been recorded.

18. The matter was kept pending only because LPA No. 664 of 2021 filed by the respondents was pending consideration before the Division Bench against the order passed in CWJC No. 10649 of 2021. The LPA has subsequently been dismissed under order dated 27.07.2022 with certain positive directions in the following terms:

"51. Thus in our considered view, having defined the criteria in the advertisement for the selection of the candidates from the mains examination for the interview in line with 2007 resolution and in absence of any clarification issued till the examination held a year later, 'the BPSC' cannot be allowed to apply it on preliminary test examination.

52. We further hold that the learned Single Judge was fully justified in directing 'the BPSC' to publish the revised result of the preliminary test of successful candidates without invoking of resolution no 2374 dated 16.07.2007 issued by 'the Department'. The said order dated 23.08.2021 by the learned Single Judge is just and proper and need no interference.

53. We were told by the learned Senior Counsel for 'the BPSC that due to pendency of this appeal, no further development has taken place inasmuch as 'the BPSC' has not conducted mains examination. Due to the decision taken by 'the BPSC' to change the goalpost, the candidates who applied pursuant to the Advertisement No. 1/2020 in February, 2020 have suffered a lot. It is high time



that 'the BPSC' take immediate steps and publish the revised results of the successful candidates from the preliminary test examination for the mains examination without applying the 2007 resolution and further take steps to complete the process without any further delay and make all necessary endeavour to complete the process of selection within a period of six months.

54. The present appeals fail and are accordingly dismissed."

19. The order sheet of the instant proceedings further reveals that, in the meantime, before disposal of the LPA when the matter was listed before the Bench earlier on 09.03.2022, the nature of order that has been passed, which has been noted above, amounts to final determination of the issue raised in the instant writ petitions to the extent that the same was not maintainable due to non-joinder of necessary and proper parties. In fact, the petitioners have also agreed to this finding and sought liberty to implead the persons whose rights are likely to be affected, but on payment of costs as recorded in the order.

20. The admitted case is that costs was also deposited. However, the affected party, till date, has not been impleaded as respondent in the instant proceedings. The same having not been done, this Court would observe that there is no occasion for this Court now to proceed to consider the petitioners' case, especially when the earlier dated 09.03.2022 passed by the co-ordinate Bench has attained finality *inter partes*, *qua* the issues in the instant writ



petitions. The same was never questioned before any forum. Even in the instant proceedings, no application whatsoever has been filed seeking recall/review of the order.

21. It is also worth considering that the Division Bench in LPA No. 664 of 2021 has given a positive direction to conduct the mains examination, as noted above.

22. Another ground on which this Court is not inclined to interfere in the matter is that as a consequence of the order passed in CWJC No. 10649 of 2021, as affirmed in LPA No. 664 of 2021, the revised result of the preliminary test has admittedly been issued on 15.09.2022, in which 1475 new candidates were declared successful. In spite of said exercise, the petitioners have failed to find place in the list of successful candidates on account of their marks being less than the cut-off marks in their respective categories, which fact is also admitted. The revised result dated 15.09.2022, whereby 1475 new candidates were declared successful, has also not been assailed by the writ petitioners.

23. This Court in the above noted consideration would also observe that public interest demands that the selection process is not disturbed.



24. For the reasons indicated above, this Court would observe that no case is made out for interference with the final result of the preliminary test examination.

25. Writ petitions are dismissed.

(Madhuresh Prasad, J)

PNM

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	
Transmission Date	N.A.

