

Manoj Kumar and ors Vs. the State of Bihar and ors

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Court : Patna

Decided On : May-16-2012

Appellant : Manoj Kumar and ors

Respondent : The State of Bihar and ors

Judgement :

IN THE HIGH COURT OF JUDICATURE AT PATNA Letters Patent Appeal No.38 of 2012 In Civil Writ Jurisdiction Case No. 13022 of 2011

===== 1. Manoj Kumar S/O Sri Chandradev Yadav, R/O Vill.- Bahora Bigha, P.O.-Newari, P.S.- Makhdumpur, Distt.-Jahanabad, at Present C/O Suman Kumar, L.D. Matiya, Patna University Road, Patna-5.

2. Abhimanyu Kumar Singh S/O Nageshwar Prasad Sinha, At Shakuntala Sadan, Mohanpur Punaichak, Patna-23.

3. Sujit Kumar Singh S/O Shriman Narayan Singh, at H. No. 10, Road No. 1, Rajpur Nagar Hajipur, Vaishali, Bihar.

4. Uday Kumar S/O Mathura Prasad, At Present C/O Suman Kumar, L.D. Bhawan, Patna University Road, Patna

5. Ram Lakhan Singh S/O Sri Ram Bilash Singh, at Present Magadh Hostel, Golakpur, Mahendru, Patna

6. Shanti Bhusan S/O Shri Yugat, at Vill.-Lakra, Post- Maha, Distt.-Jamui, Bihar

7. Manish Kumar S/O Bhuban Chandra Ghosh, at Present Sector-3, Block- Lf H/45, Bhootnath Road, Bahadurpur Housing Colony, Kankarbagh, Patna

8. Kumar Ajit Sinha S/O Sri Gopal Jee, at - 7 Hf, 5/26 H.I.G., Bahadurpur Housing Colony, Kankarbag, Patna-26 Appellants Versus

1. The State Of Bihar through Principal Secretary General Department, Patna

2. The Bihar Public Service Commission, through its Secretary 15, Jawaharlal Nehru Marg, Bailey Road, Patna-800001

3. The Chairman, Bihar Public Service Commission, 15, Jawaharlal Nehru Marg, Bailey Road, Patna-800001

4. Raj Mohan Mishra S/O Bindeshwar Mishra, at Present C/O Arun Kumar, L.I.G. 161, Lg/3, Block No.3, Bahadurpur Housing Colony, Patna-26

5. Anil Kumar Akela S/O Kalicharan Paswan, at Present C/O Late Arun Kumar Verma, Bibi Gunj, Bhattapar, Danapur Cantt., Patna, Bihar

6. Archana Kumari D/O Umesh Narayan Thakur, at Nawabganj, P.O.- Cheekmehsi, Via-Kalyanpur, Distt.- Samastipur, Bihar, at Present C/O 2 Patna High Court LPA No.38 of 2012

(2) dt.16-01-2012 2/7 Pankaj Kumar at Pappu Loudge, Golakpur, Mahendru, Patna

7. Kailash Pati Mishra S/O A.N. Mishra, at Present 5c/1, 2nd Floor, North S.K. Puri, Near New Delhi Public School, Boring Road, Patna

8. Amit Kumar S/O Dr. Suvelal Prasad, at Present New Law Hostel, Ranighat, Mahendru, Patna

9. Rashmi Kumari D/O Chandra Bhusan Prasad, at Present C/O Krishna Choudhary, Mohalla- Sheikhpura (Near Guriya Sthan), P.O.- B.N. College, Patna

10. Hemawati W/O Md. Irshad Ahmad, at Present Phulwarisharif, Patna

11. Vikash Kumar S/O Rabindra Nath Das, at Present - House No. 537, Lane No. 29, East Nehru Nagar, Patliputra, Patna
12. Anurag Kumar S/O Manohar Rajak, at Present P.O. - Nandnama, Distt.- Lakhisarai, Bihar
13. Ravikant Kumar S/O Late Sheopujan Thakur, at Golki More, Naya Chaka, P.O.- Manoharpur, Vachuwara, Patna-16
14. Ravi Bhusan Prasad S/O Mahendra Prasad Katihar Distt.-Katihar, Bihar
15. Vidyanand Kumar Verma S/O Nageshwar Verma, at Present C/O Pawan Electricals, S.N. Parashar, Musalahpur, P.O.- Mahendru, Patna
16. Shailendra Pandey S/O Govind Pandey at Sathya Sai Niwas, Opp. S.P. Residence, Gaya, Bihar
17. Sher Bahadur Prasad S/O Shri Butan Prasad at Vill.- Shiwsagar, Distt.- Rohtas (Sasaram), Bihar
18. Santosh Kumar Keshri S/O Shambhu Prasad Keshari at Vill.- Mohana, P.O.- Mohana, Distt.-Kaimur, Bihar
19. Manoj Kumar Singh S/O Shri Rambilas Singh at Suryapur, Pandarakh, Patna, Bihar
20. Ashutosh Kumar Sinha S/O Ranjeet Prasad at Present C/O Shiv Kumar Gupta, Imlital (Arya Samaj Mandir), P.O.- Danapur Cantt., Patna
21. Krishna Nandan Prasad S/O Vishwanath Roy at Rariyahi, P.O.- Kumaiya Via Halae, Distt.- Samastipur, Bihar
22. Rajesh Kumar Srivastava S/O Rambabu Lal at Present 3, Sf 'A' 1/31 (HIG), Bahadurpur Housing Colony, Bhootnath Road, Patna-26
23. Pankaj Kumar S/O Shyam Narayan Singh at Vill. + P.O.- Govind Chak, P.S.- Sonpur, Distt.- Chapra, Bihar (Last Chance)

24. Rajpur Yadav S/O Bharat Ray at Present C/O Mahesh Rai, R/O Vill.- Banruka, P.O.- Wari Bazar, Distt.- Gopalganj (Bihar) 3 Patna High Court LPA No.38 of 2012
(2) dt.16-01-2012 3/7
25. Anju Kumari D/O Jai Lal Ramna Gali, P.O.- Bankipur, Patna, Bihar
26. Sashi Raj Bhushan S/O Jagdish Lal at Ramna Gali, P.O.- Bankipur, P.S.- Pirbhore, Patna-4, Bihar
27. Manoj Kumar S/O Lalji Prasad R/O Vill. + P.O.- Poona, Distt.- Nalanda, Bihar
28. Pratiyush Prakash S/O Krishna Bahadur Singh at R/S No. 5, A/57, 'Rama Bhawan', North S.K. Puri, Patna, Bihar
29. Sanjay Kumar S/O Late Raneshwar Prasad Singh at Present C/O Rakesh Kumar, C.D.O. Road, Post- Hajipur, Distt.- Vaishali, Bihar
30. Niraj Kumar S/O Late Prof. A. Maharaj Mig-A/49, Housing Colony, Dhanbad (Jharkhand)
31. Ratish Kumar Jha S/O Mauje Laljha at Present - A.26, Sector-2, Noida - 201301, U.P.
32. Shashi Bhushan Kumar S/O Ram Narayan Sah at Present Bairstania Lodge, Near Mehsool O.P., Mehsool Road, Sitamarhi, Bihar
33. Ajay Kumar Gupta S/O Shri Dinanath Prasad (Last Chance) at Village- Champatia, (Main Road), P.O. + P.S.- Chanpatia, Distt.- West Champaran, Bihar (Last Chance)
34. Shailendra Kumar S/O Shri Ramkrit Singh at P.O.- Musahri, Via- Fatuha, Distt.- Patna
35. Lalbabu Rajak S/O Late Kallu Rajak at Mohanpur Punaichak, Patna-23
36. Shushil Kumar Vidhyarthi S/O Shri Rajeshwar Prasad Singh at Present C/O Santosh Kumar Singh, New Kunj Colony, East Bahadurpur, P.O.- Rajendra Nagar, Patna
37. Upendra Prasad Yadav S/O Shri Dharmendra Prasad at Vill. + Post- Ramuna, P.S.- Nagarutari, Distt.- Jharkhand, Garhwa (Last Chance)
38. Sunil Kumar Sharma S/O Sri Ram Naresh Sharma at Vill.- Hasanpur, P.O.- Nayagown, Distt.- Saran, Bihar
39. Shyam Sundar Prasad Singh S/O Shri Jagdish Prasad Singh at Bagicha Railway Station Rajgir, Nalanda (Bihar)
40. Pappu Kumar S/O

Shri Rajendra Prasad at Mali Tola, Bari Kachahari, P.O.- Rajgir, Distt.- Nalanda (Bihar) 41. Ajaya Nand Thakur S/O Sri Yashoda Nand Thakur at 201, Vibha Apartment, Harihar Singh Road, Morhabadi (Ranchi) 42. Ram Milan Sahani S/O Shri Charitra Sahani at Hasanpur, Via-Rosera, Distt.- Samastipur (Bihar) 4 Patna High Court LPA No.38 of 2012 (2) dt.16-01-2012 4/7 43. Rajesh Kumar Choudhary S/O Shri Lutawan Choudhary at Ward No.6, Bhaluhee, P.O.-Katya, Distt.- Gopalganj (Bihar) 44. Sanjay Das S/O Shri Narayan Das R/O at Vill.- Barhi Khap, P.O.- Maigra, P.S.- Imamganj, Distt.- Gaya (Bihar) 45. Birjees Sher Arzoo S/O Hasan Arzoo R/O at Shahjuma, P.O.- Shasharam, Distt.- Rohtas (Bihar) 46. Anil Kumar S/O Shri Nageshwar Prasad Yadav R/O at Lakshmaniya, P.O.- Nandlali, P.S.- Bihra, Distt.- Saharsa (Bihar) 47. Dolly Sharma D/O Late P.B. Sharma C/O Shambhu Sharma, East of Brahmpur Bazar, Vill.- Phulwari Sharif, Distt.-Patna 48. Purnendu Narayan Singh S/O Krishna Deo Narayan Singh R/O at C/O R.P. Tripathi, 180/8h/9k, Shivkuti, P.O.- Telliargunj, Distt.- Allahabad - 211004 (U.P.) 49. Ritesh Kumar S/O Suresh Kumar Singh R/O at 180/8h/9k, Shivkuti, P.O.- Telliarganj, Distt.- Allahabad - 211004 Respondents

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Appearance : For the Appellant/s : Mr. Manan Kumar Mishra, Sr. Advocate Mr. Bishwajeet Kumar Mishra, Advocate. For the Respondent- BPSC and the State : Mr. Lalit Kishor AAG-1 Mr. Vikash Kumar, AC to AAG-1 Mr. Satyabir Bharti, Advocate. Mr. Sanjay Pandey, Advocate.

===== CORAM:
HONOURABLE THE CHIEF JUSTICE and HONOURABLE MR. JUSTICE
BIRENDRA PRASAD VERMA ORAL ORDER (Per: HONOURABLE THE CHIEF JUSTICE

16. 01-2012 This Appeal preferred under Clause 10 of the Letters Patent arises from the common judgment and order dated 4 th 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 53 rd to 55th Common 5 Patna High Court LPA No.38 of 2012 (2) dt.16-01-2012 5/7 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 17 th April 2011. The result was declared on 16th July 2011. 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 reevaluated. In the process of reevaluation 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 reevaluation undertaken by the Commission, the learned Single Judge has upheld the revised merit 6 Patna High Court LPA No.38 of 2012 (2) dt.16-01-2012 6/7 list. The writ petitions were accordingly disposed of. The appellants are those who did not secure the cut-off marks even under the reevaluation made by the Commission. Feeling aggrieved they have preferred this Appeal. 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 Honble Supreme Court in the matter of Pankaj Sharma & Ors. vs. State of Jammu and Kashmir and others [(2008) 4 SCC 273. and the judgment of this Court in the matter of Akshey Lal Pandit and others vs. The State of Bihar & Ors. [2011 (3) PLJR 258 . We quite appreciate the anguish felt by the appellants. True to its reputation the Commission has not been able to hold a full 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. The simplest way adopted by the Commission in such 7 Patna High Court LPA No.38 of 2012 (2) dt.16-01-2012 7/7 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. In the present case the Commission appointed a Committee of experts who prepared the answer key afresh and reevaluated all the answer sheets. In our opinion, the reevaluation of the answer sheets by the revised answer key should considerably mitigate the situation faced by the Commission. Having done the exercise of reevaluation 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 cut-off 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. (R.M. Doshit, CJ) BTiwary/Vinay (Birendra Prasad Verma, J)