

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 8207 of 2022

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Pappu Kumar Pandey Son of Kedar Nath Pandey Resident of Village- Jagdishpur, P.S. Pirpanti, District- Bhagalpur.

..... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of General Administration, Bihar, Patna.
2. The Principal Secretary, Department of Home (Police), Govt. of Bihar, Patna.
3. The Bihar Public Service Commission, Baily Road, Patna through its Secretary.
4. The Chairman, Bihar Public Service Commission, Bailey Road, Patna.
5. The Secretary, Bihar Public Service Commission, Bailey Road, Patna.
6. The Controller of Examination, Bihar Public Service Commission, Bailey Road, Patna.

..... Respondent/s

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**A. Constitution of India – Extraordinary Jurisdiction – Equitable Jurisdiction - Article 226 – Primary Principle – Aggrieved Person - Without adequate reason – approaches the court – at his own leisure- no indulgence required- on ground of Delay and Latches - Petition - fit to be dismissed. (Referred to:- Chennai Metropolitan Water Supply & Sewerage Board & Others Vs. T.T. Murali Babu (2014) 4 SCC 108 ; State of Uttranchal & Anr. Vs. Shiv Charan Singh Bhandari & Others 2013 AIR SCW 6627 ; C. Jacob Vs. Director of Geology & Mining & Anr. AIR 2009 SC 264 ; State of Jammu and Kashmir Vs. R.K Zalpuri & Others AIR 2016 SC 3006 ; State of Tamil Nadu Vs. Seshachalam (2007) 10 SCC**

*137 ; P.S. Sadasivaswamy Vs. State of Tamil Nadu (1975) 1 SCC 152 ; State of Orissa Vs. Rajkishore Nanda (2010) 6 SCC 777 (Para- 10 - 12).*

**B. Appointment and Selection Process – Writ – After expiry of 6 years – no relief can be granted – expiry of final select list – non- rejoinder of parties – writ fit to be dismissed. (Para-13), (Referred to:- State of Orissa Vs. Rajkishore Nanda (2010) 6 SCC 777, Para-16)**

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... .. Respondent/s

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**Appearance:**

For the Petitioner/s	:	Mr. Harsh Anuj, Advocate Mr. Ajit Kr. Singh, Advocate
For the State	:	Mr. Manish Kumar (GP-4)
For Respondent BPSC	:	Mr. Kaushal Kr. Jha, Sr. Advocate Mr. Amritesh Kumar, Advocate

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**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**

**ORAL JUDGMENT**

**Date: 06-02-2024**

1. The present writ petition has been filed for directing the respondents to revise the mark-sheet of the petitioner after adding the marks obtained by the petitioner in the subjects Hindu Law, Mohammadan Law and General Knowledge to the tune of 90 marks in connection with the Competitive Examination (Advertisement No.42 of 2011), conducted by the



Bihar Public Service Commission (herein after referred to as the “BPSC”) for recruiting Assistant Prosecution Officers and consequently allow the petitioner to appear in the interview.

2. The brief facts of the case, according to the petitioner, are that he being eligible for appointment on the post of Assistant Prosecution Officer had filled the application form, in pursuance to Advertisement No. 42 of 2011 and had appeared in the preliminary examination held on 23.03.2014, which he had qualified. The petitioner had then appeared in the mains examination in the year 2015, whereafter, the result of the written examination was published in the year 2017, however, the name of the petitioner did not find place in the merit list, thus he could not appear in the interview, since he had obtained 524 marks, as against the cut-off marks fixed as 532 for the general category candidates. It is the case of the petitioner that since he had expected more marks, he had filed a RTI application for obtaining the copies of the exam, whereafter he was supplied with the copy of written examination in the month of March 2021, from which it is apparent that he had secured 90 marks in the Hindu Law and Mohammadan Law paper, however, the same was revised to 81 marks, inasmuch as 17 marks, obtained by him against question no.2, was reduced to



14 marks, while 19 marks, obtained by him against question no.4 was reduced to 13 marks. It is also submitted that as against question no. 3 (B), the petitioner has been awarded '0' marks out of 10 marks for no reason and similarly in the General Knowledge examination also he has been awarded '0' marks as against question no.7(d) and 2(g), however, he had answered the same correctly.

3. It is thus the case of the petitioner that if the aforesaid discrepancy in marking the answer-sheet of the petitioner is rectified, the petitioner would secure more marks than the cut-off marks and consequently would become eligible for appearing in the interview, hence it is submitted that appropriate directions be issued to the respondents.

4. Per contra, the learned counsel appearing for the respondents no.3 to 6 (authorities of the BPSC) has referred to the counter affidavit filed in the present case to submit that Advertisement No.42 of 2011 i.e. pertaining to Assistant Prosecution Officer Competitive Examination was published by the BPSC, pursuant to requisition dated 27.12.2010, sent by the Police (Home Department), Government of Bihar, Patna. The petitioner had applied pursuant to issuance of the aforesaid advertisement, he had appeared in the P.T. Examination on



30.03.2014 and passed the same, whereafter he had appeared in the mains examination, however, he was declared unsuccessful as he had secured 524 marks as against the cut-off marks of 532 (Unreserved Category). The final result was published on 14.06.2017, whereupon recommendations of successful candidates was sent to the concerned departments whereafter, the appointments have also been made and now the selection process is over, hence it is submitted that the present writ petition is devoid of any merit and fit to be dismissed, more so on account of delay and laches on the part of the petitioner in approaching this Court inasmuch as the present writ petition has been filed after about 5 years of publication of the result on 14.06.2017, i.e. only in the month of May 2022.

5. The learned counsel appearing for the respondent-BPSC has further submitted that after the examinations are conducted and the answer books are received in the Commission's office, a double coding system is assigned to each answer book under the direct supervision of the officer-in-charge of examination. The answer books of the aforesaid written examination is first coded by replacing the flap containing Roll Number and name of the candidates on the cover page of the answer books, by pasting a pair of randomly



numbered sticker at the specified places on the answer books. The flap containing roll number, name of the candidates is then detached and kept separately in the strong room in a sealed condition. The whole work of the first coding is done by a separate team constituted by the order of the Commission. Thereafter, second coding work is done similarly and the flap containing first code with the second code is kept separately in the strong room. The entire work of second coding is done by another team of the Commission, in a confidential manner. In this way, the answer book is left with second code only. Thus, the identity (name, sex, religion, caste, etc.) of the candidate is not known to anyone. The marks are awarded on the remaining portion of the cover page having second code only. After the completion of evaluation work, the answer books are decoded in the Commission's office and now at this stage, the roll nos. of the candidates are reflected and then a merit list is prepared. Hence, it is manifestly clear that till the stage of coding, there is no chance to reveal the answer books of the candidates.

6. The learned counsel appearing for the respondent-BPSC has contended that the Commission arranges meetings of the Head Examiner with the Examiners and in order to achieve uniformity in evaluation of papers, one or more Head



Examiners/ Examiners are appointed, who then discuss thoroughly the questions and their appropriate answers and decide clear-cut standard of evaluation before undertaking the evaluation work. The Head Examiner closely monitors the set standard of evaluation being followed by each and every examiner while evaluating the answer books and guides them if he finds any deviation on the part of any examiner, in course of examining the answer books and then he either confirms the marks awarded by the Examiners or revises it upwards or downwards and indicates the requisite marks awarded on the answer book.

7. It is next contended that the evaluation of answer books has been done with proper care by qualified and experienced examiners. After the completion of evaluation work, the answer books have been properly scrutinized and tabulation of marks has been done very cautiously. The marks have been awarded by the examiner/head examiner as per the performance of the candidates. The details pertaining to the petitioner are mentioned in paragraph No. 9 of the Counter Affidavit filed by the BPSC, which are being reproduced herein below:-

*“(a) It is pertinent to mention here that the petitioner has*





*been awarded 17 marks for question No. 2 by the Examiner which is clear from page No. 5 of his answer book of Hindu Law and Mohammadan Law. The Head Examiner has revised the marks of question No. 2 from 17 to 14. The Head Examiner had also made his initial at page No. 5 and front page. Thus, the marks changed by the Head Examiner is as per the performance of the petitioner.*

*(b) It is pertinent to mention here that the petitioner has been awarded 14 marks for question No. 4(a) and 5 marks for question No. 4(b), total  $14+5=19$  marks by the Examiner which is clear from page no. 15 to 17 of his answer book of Hindu Law and Mohammadan Law. The Head Examiner has revised the marks of question 4(a) from 14 to 10 and question 4(b) from 5 to 3, total  $10+3 = 13$  marks at page No. 15 and 17 of his answer book. The Head Examiner had also made his initial on these pages. Thus, the marks change by the Head Examiner is as per his performance.*

*(c) It is pertinent to mention here that the petitioner has been awarded 14 marks for question no. 3(a) at page no. 10 and 0 (zero) marks for question no. 3 (b) by the Examiner at page no. 33 of his answer book of Hindu Law and Mohammadan Law as per his performance.*

*(d) It is pertinent to mention here that the petitioner has been awarded 0 (zero) marks for question No. 7(d) and 7(g) at page 7 by the Examiner in the answer book of General Knowledge.”*

8. The learned counsel appearing for the respondent-



BPSC has further contended that there is no provision of re-evaluation of answer books. Marks are awarded qua the answer books according to the performance of the candidates. The Hon'ble Supreme Court of India has decided this issue in Civil Appeal No. 5046 of 2004 and dismissed the case by a judgement dated 06.08.2004, reported in (2004) 6 SCC 714 (Pramod Kumar Srivastava Vs. Chairman, BPSC), paragraphs no. 7 to 9 whereof are reproduced herein below:-

*“7. We have heard the appellant (writ petitioner) in person and learned counsel for the respondents at considerable length. The main question which arises for consideration is whether the learned Single Judge was justified in directing re-evaluation of the answer-book of the appellant in General Science paper. Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for re-evaluation of his answer-book. There is a provision for scrutiny only wherein the answer-books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totalling of marks of each question and noting them correctly on the first cover page of the answer-book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. In the absence of any provision for re-evaluation of answer-books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re-evaluation of his marks. This question was examined in considerable detail in Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth [(1984) 4*



*SCC 27 : AIR 1984 SC 1543] . In this case, the relevant rules provided for verification (scrutiny of marks) on an application made to that effect by a candidate. Some of the students filed writ petitions praying that they may be allowed to inspect the answer-books and the Board be directed to conduct re-evaluation of such of the answer-books as the petitioners may demand after inspection. The High Court held that the rule providing for verification of marks gave an implied power to the examinees to demand a disclosure and inspection and also to seek re-evaluation of the answer-books. The judgment of the High Court was set aside and it was held that in absence of a specific provision conferring a right upon an examinee to have his answer-books re-evaluated, no such direction can be issued. There is no dispute that under the relevant rule of the Commission there is no provision entitling a candidate to have his answer-books re-evaluated. In such a situation, the prayer made by the appellant in the writ petition was wholly untenable and the learned Single Judge had clearly erred in having the answer-book of the appellant re-evaluated.*

*8. Adopting such a course as was done by the learned Single Judge will give rise to practical problems. Many candidates may like to take a chance and pray for re-evaluation of their answer-books. Naturally, the Court will pass orders on different dates as and when writ petitions are filed. The Commission will have to then send the copies of individual candidates to examiners for re-evaluation which is bound to take time. The examination conducted by the Commission being a competitive examination, the declaration of final result will thus be unduly delayed and the vacancies will remain unfilled for a long time. What will happen if a candidate secures lesser marks in re-evaluation? He may come forward with a plea that the marks as originally awarded to him may be taken into consideration. The absence of clear rules on the subject*



*may throw many problems and in the larger interest, they must be avoided.*

*9. Even otherwise, the manner in which the learned Single Judge had the answer-book of the appellant in General Science paper re-evaluated cannot be justified. The answer-book was not sent directly by the Court either to the Registrar of Patna University or to the Principal of Science College. A photocopy of the answer-book was handed over to the Standing Counsel for Patna University who returned the same to the Court after some time and a statement was made to the effect that the same had been examined by two teachers of Patna Science College. The names of the teachers were not even disclosed to the Court. The examination in question is a competitive examination where the comparative merit of a candidate has to be judged. It is, therefore, absolutely necessary that a uniform standard is applied in examining the answer-books of all the candidates. It is the specific case of the Commission that in order to achieve such an objective, a centralised system of evaluation of answer-books is adopted wherein different examiners examine the answer-books on the basis of model answers prepared by the Head Examiner with the assistance of other examiners. It was pleaded in the letters patent appeal preferred by the Commission and which fact has not been disputed that the model answer was not supplied to the two teachers of Patna Science College. There can be a variation of standard in awarding marks by different examiners. The manner in which the answer-books were got evaluated, the marks awarded therein cannot be treated as sacrosanct and consequently, the direction issued by the learned Single Judge to the Commission to treat the marks of the appellant in General Science paper as 63 cannot be justified.*

9. It is thus submitted by the learned counsel for the BPSC that even on merits, the petitioner has got no case and the



present writ petition is fit to be dismissed.

10. I have heard the learned counsels for the parties and perused the materials on record from which it is apparent that the petitioner has approached this Court almost after 5 years of publication of the results on 14.06.2017. The law is well settled, inasmuch as the Hon'ble Apex Court in a catena of judgment has held that while exercising extraordinary and equitable jurisdiction under Article 226 of the Constitution of India, the Constitutional Court, while protecting the rights of citizens, should simultaneously keep itself alive to primary principle that when an aggrieved person, without adequate reason, approaches the Court belatedly, at his own leisure or pleasure, the writ Court is not required to grant any indulgence to such indolent person and on the ground of delay and laches alone, the writ Court ought to throw the petition overboard at the very threshold. In this regard, reference be had to the following judgments:-

“(i) *Chennai Metropolitan Water Supply & Sewerage Board & Others vs. T.T. Murali Babu*, reported in (2014) 4 SCC 108.

(ii) *State of Uttranchal & Anr. vs. Shiv Charan Singh Bhandari & Ors.*, reported in 2013 AIR SCW 6627.

(iii) *C. Jacob vs. Director of Geology & Mining & Anr.*, reported in AIR 2009 SC 264.



(iv) *State of Jammu & Kashmir vs. R.K. Zalpuri & Others*, reported in *AIR 2016 SC 3006*.

(v) *State of Tamil Nadu vs. Seshachalam*, reported in *(2007) 10 SCC 137*.”

11. In fact, in a judgment, rendered by the Hon’ble Apex Court in the case of *P. S. Sadasivaswamy vs. State of Tamil Nadu*, reported in *(1975) 1 SCC 152*, the Hon’ble Apex Court has held that in a service matter/promotion matter, an aggrieved person should approach the Court at least within six months or at the most a year of the arising of a cause of action and it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 of the Constitution of India, in the case of persons who do not approach it expeditiously for relief and such petitions should be dismissed in limine, inasmuch as entertaining such petitions is a waste of time of the Court, the same clogs the work of the Court and impedes the work of the Court in considering legitimate grievances.

12. In *Chennai Metropolitan Water Supply & Sewerage Board & Others* (Supra), the Hon’ble Supreme Court has held that belated challenge to the Order of dismissal from service by approaching the court after a delay of four years' does not deserve any indulgence and on the ground of delay alone, the writ court should have thrown the petition overboard at the very threshold.



13. Yet another aspect of the matter is that admittedly the respondent-BPSC has made recommendations of the successful candidates to the concerned departments, whereafter appointments have also been made and the selection process is over long back, hence this Court is of the view that at this juncture, after expiry of about more than six years, no relief can be granted to the petitioner, who has even otherwise approached this Court belatedly, more so in view of the fact that he has neither assailed the final select list nor has made the successful candidates as party respondents to the present writ petition, leading to the present writ petition being liable to be dismissed for non-joinder of necessary parties to the petition. It would be gainful to refer to a judgment, rendered by the Hon'ble Apex Court in the case of **State of Orissa vs. Rajkishore Nanda**, reported in **(2010) 6 SCC 777**, paragraph no.16 whereof is being reproduced herein below:-

*“16. A select list cannot be treated as a reservoir for the purpose of appointments, that vacancy can be filled up taking the names from that list as and when it is so required. It is the settled legal proposition that no relief can be granted to the candidate if he approaches the court after the expiry of the select list. If the selection process is over, select list has expired and appointments had been made, no relief can be granted by the court at a belated stage. (Vide J. Ashok Kumar v. State of A.P. [(1996) 3 SCC 320 : 1996 SCC*



*(L&S) 707] , State of Bihar v. Mohd. Kalimuddin [(1996) 2 SCC 7 : 1996 SCC (L&S) 389 : (1996) 32 ATC 821 : AIR 1996 SC 1145] , State of U.P. v. Harish Chandra [(1996) 9 SCC 309 : 1996 SCC (L&S) 1240 : AIR 1996 SC 2173] , Sushma Suri v. Govt. of NCT of Delhi [(1999) 1 SCC 330 : 1999 SCC (L&S) 208] , State of U.P. v. Ram Swarup Saroj [(2000) 3 SCC 699] , K. Thulaseedharan v. Kerala State Public Service Commission [(2007) 6 SCC 190 : (2007) 2 SCC (L&S) 427] , Deepa Keyes v. Kerala SEB [(2007) 6 SCC 194 : (2007) 2 SCC (L&S) 430] and Subha B. Nair [(2008) 7 SCC 210 : (2008) 2 SCC (L&S) 409] .)”*

14. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, I do not find any merit in the present writ petition, hence the same stands dismissed.

**(Mohit Kumar Shah, J)**

Saurav/-

AFR/NAFR	AFR
CAV DATE	NA
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