

In the matter of an application under Article 226 of the Constitution of India.

Tritiya Snatak Awar Pratiyogita Chalnit Sangh and others Petitioners

Versus

The State of Bihar and others Respondents

For the Petitioners :- M/S. Rajendra Prasad Singh, Sanjay Kumar Singh No. 1, Ajay Kumar Singh and Sunil Kumar Singh.

For the State Respondents :- M/S. Yugal Kishore, S.C. VII and Dinashwer Tiwary, J.C. to S.C. VII

For the Respondent Nos. 3 & 4 :- Mr. Swaraj Kumar Ghose.

For the Intervenor Respondents :- M/S. Ram Balak Mahto & Shivendra Kishore.

P R E S E N T

THE HON'BLE MR. JUSTICE ASOK KUMAR GANGULY.

A. K. Ganguly, J., This writ petition has been filed by an Association known as Tritiya Snatak Awar Pratiyogita Chalnit Sangh, inter alia, praying for quashing of the revised result of the examination of 3rd Graduate Standard Examination published by the Bihar Public Service Commission (hereinafter called the said Commission). The said result was published on 14-1-1997. The petitioners have also prayed for issuance of a writ of Mandamus commanding the said Commission to recommend the names of the candidates in terms of the final result published in respect of the said examination in the news paper in the State of Bihar on 16-12-1996.

2. The basic facts of this case are that on 13-2-1990 an advertisement was published by the Bihar Rajya Awar Seva Chayan Parishad which is also known as the Bihar State Subordinate Services Selection Board (hereinafter called the said Board). The said advertisement is at Annexure-2. Under the requirements of the said advertisement, the candidates who had to apply in response to the said advertisement are required to be graduate. The subjects of examination were both compulsory and optional. Subsequently in 1992 the said Board was

dissolved. After dissolution of the said Board and its merger in the said Commission, the said Commission stepped into the shoes of the said Board. The said Commission decided to take a preliminary test examination for scrutinising and holding the main examination.

3. In response to the said advertisement the petitioners and others applied and it is not in dispute that the petitioners have the requisite qualifications to apply. On or about 28-5-1995 the said Commission took the preliminary examination. Thereafter the result of such preliminary examination was published on or about 10-8-1995. The petitioners were successful in the said preliminary test examination and as such they received form for appearing in the final examination. The form for final examination was thus filled up by them. While filling up the said form, the petitioners took subjects as per the advertisement in the compulsory and optional subject each from group 'A' and 'B'. Thereafter the main examination was held on 9-12-1995. In the said examination the petitioners appeared. The Commission wrote to the Director of Personnel and Administrative Reform Department for the purpose of roster clearance and the roster clearance was obtained.

4. Then almost after one year, the Commission published on 16-12-1996 final result of successful candidates. It is not in dispute that the names of the petitioners figured in the list of successful candidates. After publication of the final result, it appears that the total number of names recommended by the respondents in terms of the said result was about 635. The Commission not only published the said result but it also published the names of the persons against different posts which will appear from the final result which is at Annexure- 3.

5. The grievance of the petitioners, as raised in the writ petition, is that one Ram Ashray Yadav, Ex-Chairman of the said Commission was going to retire on 22-1-1997 and it has been alleged in the writ petition that he was

Interested insome candidates who could not come out success-
fully in the final examination. As such a plan was hatched
to revise the result and the impugned revised result was
published by the respondent Commission on 14-1-1997 and in
the said revised result names of the petitioners have been
omitted and the names of several persons who admittedly got
lesser marks than the petitioners and whose names were not
included in the final result were included in the revised
result.

6. Challenging such exercise on the part of the
Commission in publishing the revised result, this writ petition
was filed and this was admitted on 6-3-1997 and there is an
order of stay restraining the State Government from making
any appointment of a person unless the name of the concerned
candidate is both in the earlier list as well as in the
revised list.

7. In the counter affidavit filed by the said
Commission, the justification given in publishing the revised
list does not appear to this Court to be convincing. In
the counter affidavit the following justifications have been
offered :-

1) The names of posts to be filled in on the basis of
such Graduate Standard Examination were not
communicated to the dissolved Board ^{by the State} ~~as stated~~
^{Government} ~~above~~ and as such advertisements were made by the
dissolved Board without mentioning the names of the
posts ^{and} number of vacancies to be filled in on the
basis of the said examination.

ii) Since the names of the posts which require
specialised qualification were not known to the
said Board in the advertisement only qualifications
were laid down for general posts.

iii) Even when the Commission was conducting the
preliminary test in the year 1995, clear cut
vacancies to be filled in on the basis of the said

examination were not ~~made~~^{made} available to the Commission by the State Government.

- iv) While inviting applications from the successful candidates of the preliminary test, the said Commission also did not mention the specialised qualification required for the said posts.
- v) The said Commission received certain requisitions from some of the ^{Government} Departments quite late and as such while preparing the final list the Commission in-advertently missed the requirement of qualification in respect of those requisitions as it was not mentioned in the proper place of requisition.
- vi) In paragraph 10 of the counter affidavit it has been also stated that before sending the recommendation on the basis of the result published on 16-12-1996, the matter came to the notice of the Commission that the result published in some cases is not as per the requisition received from the concerned departments. However, no particular in this regard has been given.

8. Learned counsel for the Intervenor has also reiterated the same argument as was advanced by the learned counsel for the said Commission. He further relied on two un-reported single Bench decisions of this Court in support of his contention that the Commission is within its right to revise the result when there are mistakes and that the candidates appearing in the examination were aware of the fact that because of the subject barriers, their result in the examination may have to be subsequently revised.

9. The stand taken by the Commission cannot be upheld in view of the fact that the so called requisitions on which they have relied upon in support of the revision of result were all sent by the State Government in the year 1996 which is much after the date of holding of the final examination. According to the said Commission these requisitions are dated

14-8-1996, 27-4-1996 and 7-2-1996. This Court cannot accept the position that when final examination was admittedly held in the month of December, 1995 and ~~thereafter~~ roster clearance was also obtained soon thereafter, the result of the examination so held cannot be altered on the basis of the requisitions received by the Commission much after ~~the~~ holding of the examination. If the Commission is allowed to do so, the same would amount to permitting the Commission giving an un-fair deal to the candidates who sat in the ~~the~~ examination in the month of December, 1995. It may be noticed that the Commission took one long year to publish the result but no explanation has been offered in the counter affidavit how could even during this one year those alleged requisitions, assuming but not admitting that they can be acted upon, could escape the notice of the Commission. ^{The} ~~By~~ ^{of} pleading mere mistake or in-advertence is not enough. No plausible explanation has been offered in the counter affidavit with any particulars to inspire the confidence of the Court ^{about} ~~and~~ the bonafides of the Commission.

10. The Commission is supposed to be a responsible body discharging constitutional function. Therefore, it cannot afford to act irresponsibly and casually. So this Court is not at all satisfied with the bona fides of the Commission in its attempt to allegedly rectify the so called mistakes.

11. There is another aspect of the matter also. Learned counsel for the petitioners has relied on paragraph 18 of the writ petition which was not being disputed in the counter affidavit filed by the Commission. In paragraph 18 of the writ petition it has been stated that in the advertisement itself the subjects in the examination are mentioned. As per the advertisement 100 marks was fixed for General Hindi, 100 marks for General Knowledge and so far optional subjects were concerned, several subjects were grouped in two groups which were mentioned as Barg (ka) and Barg (Kha) along with subject code. It was open to any graduate candidate to opt for

any group of optional subjects. However, compulsory subjects were for all candidates. According to the terms of the advertisement even marks were indicated for different topics in Hindi compulsory subject and the candidates were to give the names of their optional subjects and it was also made clear that when the petitioners along with other similarly situated candidates were given proforma for filling up the same for the second time to appear in the main examination, those application forms admittedly became the admit cards and were filled in by the candidates regarding optional subjects. In the said form which was later on treated as the admit card, a note under the caption "MAHATVAPURNA TIPNI" was given wherein the details of the posts and the subjects were mentioned and it was made clear that the illustrations given in the said notes * are to be treated as examples. Therefore, this Court is of the view, on perusal of the notes mentioned in the admit card, that all the necessary items of information were made available to the candidates.

12. There is another aspect of the matter, ^{also} Learned counsel for the petitioners has relied on a gazette notification dated 16th September, 1992. A copy of the said gazette notification has been disclosed in the rejoinder affidavit filed by the petitioners. The said gazette notification was issued for removing the restriction of subjects to be taken as compulsory papers. The said gazette has been published as it was felt by the State Government that on account of subject barrier or subject restrictions various meritorious candidates are denied the benefit of equal opportunity in the competitive examination. As such it was made clear in the said gazette in clause (Ga) that no subject has been made compulsory for any post in the combined competitive examination to be conducted by the Union Public Service Commission and similarly no subject may be made compulsory by the Bihar State Subordinate ~~xx~~ Services Selection Board in other services of the State. As such in paragraph 2 of the said gazette it was made ^{very} ~~clear~~ clear

that the State Government has decided to abolish the compulsion of specific subject for particular post in the examinations to be conducted by the X said Commission.

13. Learned counsel appearing for the State Government in this proceeding has categorically stated before this Court that this gazette notification is binding on the Commission and the Commission is aware of the said gazette.

14. Learned counsel for the Commission authorities also could not controvert the said fact as obviously it was not possible for the learned counsel for the Commission to say that they are not bound by the contents of the said gazette.

15. This Court has perused the two un-reported judgments cited by the learned counsel for the Intervenor. Sitting singly, both these judgments were delivered by Hon'ble Mr. Justice B. P. Singh. One was delivered in the case of Ranvir Kumar Singh and others Vs. State of Bihar and others (C.W.J.C. No. 10393 of 1995 disposed of on 6-12-1995). The said judgment was, however, delivered in respect of the examination with which this Court is concerned in this writ petition. It appears that some of the candidates made an objection about certain conditions incorporated by the said Commission in the admit card. Those conditions have been discussed above. In the said proceeding the stand which was taken by the Commission is that the candidates will have no mis-apprehension about the instruction issued by the said Commission in the admit card. It was made clear by the Commission that all candidates with special qualification may be considered for those specified posts and in case a candidate failed to ~~xxxxxxx~~ compete with other candidates with special qualifications, in that case the candidate will be considered for other posts of general nature on the basis of their position in the merit list. In view of that stand being taken by the said Commission, the learned Single Judge did not pass any order deciding any issue but recording the said stand of the Commission disposed of the writ petition.

It was made clear in the said judgment that the general merit list will be always there and only in case of posts which require special qualification, the performance of the candidates in the additional paper relating to that subject will be given weightage but even if such candidates do not compete for selection against a particular specified post, they may still be considered for selection against any other post for which no special qualification is prescribed. It may be noted here that the said judgment was rendered on 6-12-1996 which was prior to the holding of the examination and much prior to the date of the publication of the result. Apart from that the learned Judge delivering that judgment possibly did not have any occasion to consider the gazette notification dated 16th September, 1992. This is clear from the said judgment.

16. In view of the said stand taken by the Commission the Court, if I may say so with respect, rightly refused to interfere. Here learned counsel for the petitioners is relying on this very condition in the admit card and they are not questioning the same but a different stand has been taken by the Commission not on the basis of the conditions in the admit card but on the basis of certain alleged ~~xxx~~ requisitions which were received by the said Commission much after the holding of the examination. Therefore, the issues involved in the present writ petition are not the same and the decision of the learned single Judge in that judgment does not have much bearing on the issues involved in the present writ petition.

17. Another judgment on which reliance was placed was in respect of the Commission's right to rectify its mistake in the examination, in respect of a candidate who was admittedly barred by the age. The Commission overlooking the age bar recommended the case for appointment. The question before the Court in that case, namely, in the case of Rajesh Kumar and another Vs. State of Bihar and others (C.W.J.C. No. 3105 of 1995 disposed of on 7-3-1995) was whether in respect

of recommendation made in favour of the candidate who is admittedly barred by age, the Commission can rectify the same. The Court, in my opinion, has rightly held that the Commission has the authority to do so it but unfortunately this is not the issue in the instant case. Therefore, the ~~the~~ said decision has also no bearing on the subject.

18. In the instant case the question which has fallen for consideration is whether the Commission can, on the ~~main~~ basis of the purported requisitions received by it after holding of examination, revise the final result which was published one long year after the holding of the examination.

19. Learned counsel for the Commission has frankly admitted that it has no power under the law to revise the results once it is published. Therefore, under the law it has no such power and on the facts of this case also the Commission has not been able to make out any case on the basis of which it can revise the result which it took one year to publish. This Court has unfortunately come to the conclusion that the so called attempt by the Commission to revise the result is not based on permissible considerations.

20. Attention in this connection was drawn to paragraph 13 of the writ petition wherein it has been stated that the then Chairman of the Commission was to retire on 22-1-1997 and the said Chairman was interested in some of the candidates who could not come out successful in the main examination. As such he hatched up a plan to accommodate certain persons which resulted in the revision of the result.

21. In the counter affidavit filed by the Commission the averments made in paragraph 19 of the writ petition have not been at all specifically controverted by the Commission. This casts a serious doubt in the mind of the Court about the bonafides of the Commission in purporting to revise the result published by it previously. The impugned revised result was published on 14-1-1997 when the previous Chairman was in office. Having regard to the various

proceedings initiated against the previous Chairman of the Commission, the Court can take judicial notice of the fact that the previous Chairman of the Commission did not distinguish himself as a Chairman of the said Commission nor can it be said that in the discharge of his duties, the previous Chairman of the Commission did exactly cover himself with glory. Therefore the charge of improper motive on the part of the ^{previous} Chairman of the Commission as asserted in the writ petition cannot be said to be totally without any basis. This Court hastens to add that it has not based its conclusion merely on the basis of the allegation against the previous Chairman of the Commission inasmuch as the Court would have otherwise also quashed the impugned order at Annexure- 1 for the reasons discussed above.

22. Learned counsel for the Commission, however, relied on a Division Bench judgment of this Court in the case of Subodh Kumar and others Vs. Bihar Public Service Commission and others reported in 1996(1) P.L.J.R., page 537. In the said Division Bench judgment in Subodh Kumar (Supra) the learned Judges held that the said Commission in exercise of its plenary power is competent to modify the procedure or guidelines for holding examination so long it is not done in an arbitrary and un-reasonable manner. This ratio in the judgment of Subodh Kumar (Supra) is of no assistance to the learned counsel for the Commission inasmuch as here the examination has been held and the results have been finally published and after that the results are allegedly revised as a result of which the petitioners have suffered and this revision of the result has been done as indicated by here-in-above in an un-reasonable and arbitrary manner. Therefore, in the facts of this case, the ratio in the case of Subodh Kumar (Supra) is not of any assistance to the Commission.

23. Learned counsel for the Commission has also relied upon a Supreme Court judgment in the case of Mand Madanlal and others Vs. State of Jammu & Kashmir and others reported in

A.I.R. 1995 S.C. page 1086 for the purpose of contending that once candidates appeared in the written test and the oral interview and took calculated chance and are declared un-successful in interview, the candidates cannot challenge the said interview test subsequently as un-fair. In the instant case the question does not arise inasmuch as here the petitioners appeared in the said test and were successful in the final result. The said result was sought to be revised by the respondents and against that they are coming up.

24. Learned counsel for the petitioners, on the other hand, relied on a judgment of the Supreme Court in the case of Dr. Krishna Chandra Sahu and others Vs. State of Orissa and others reported in (1995) 6 S.C.C. page 1. In the said case the Supreme Court came to the conclusion that the selection body or the selection committee does not have any jurisdiction to lay down criteria for selection unless they are specifically authorised in this regard by any rule framed under Article 309 of the Constitution of India. It has been made very clear in the judgment of Dr. Krishna Chandra Sahu (Supra) that it is basically the function of the rule making authority to provide the basis for selection. The said judgment has some bearing in the matter. In the instant case the gazette notification discussed above makes it very clear that there should not be any subject barrier and it is obvious that the said Commission is bound to follow the same. In that view of the matter, having regard to the gazette notification, it is not permissible for the Commission which is nothing but a selecting committee to alter the final result published by it.

25. Learned counsel for the petitioners also submitted that once the results have been published finally by the said Commission, it gives rise to a 'legitimate expectation' of the petitioners that on the basis of the said result, the Commission will make its recommendation but the subsequent

exercise by the Commission in purporting to revise the result is beyond all legitimate expectation.

26. The term 'legitimate expectation' was first used in an obiter observation of Lord Denning, Master of the Rolls, in English Law in the famous decision in the case of Schmidt Vs Secretary of State for Home Affairs reported in 1969(2) Ch. D. para 149. In the said case a foreign student sought review of the Home Secretary's decision whereby the extension of his temporary permit to stay in United Kingdom was not granted. In that context Lord Denning observed that "all depends on whether he has some right or interest, or, I would add, some legitimate expectation of which it would not be fair to deprive him without hearing what he has to say".

27. This doctrine of 'legitimate expectation' is actually a facet of ^{the} principle of legal certainty and predictability in the matters of governmental dealing ^{with} the public. This doctrine is founded upon the basic principle of fairness which prevents that an expectation which is legitimate in a dealing between the members of the public and the governmental institution, should not be thwarted. The instant case is not one of legitimate expectation only. The petitioner is entitled to contend that they have a protectable interest arising out of the final publication of result. This ~~is~~ ^{is} much stronger than ^{were} ~~the~~ legitimate expectation. When a candidate appears in an examination for his employment, there is much at ~~stake~~ ^{stake}: ^{his} ~~their~~ future career is largely dependent on the result. Here in this case the ~~the~~ candidates had appeared in the preliminary test and succeeded in it. Thereafter they appeared in the final examination and cleared it and their results have been published. Therefore, they have a protectable interest which is virtually in the nature of a right to have their names recommended on the basis of final result. They cannot be deprived of the said right

unless the authority depriving them of the said right can point out clearly some legal authority in its favour which permits it to deprive the petitioners of their right which flows from the publication of the result. In the instant case no such authority in law has been pointed out by the learned counsel for the Commission nor any such right exists in law. On the other hand the said gazette notification points to the contrary.

28. In that view of the matter, this Court holds that the entire exercise by the Commission in purporting to revise the result is un-sustainable both in the eye of law and also in the facts of the case.

29. Considering all these aspects of the matter, this Court cannot but quash the impugned revised result published on 14-1-1997. Annexure-1 is, therefore, quashed.

30. This Court directs the said Commission not to act on the basis of the impugned revised ^{result.} ~~list.~~ The Commission is to send its recommendation on the basis of the result which had already been published by it on 16-12-1996 and the State Government is also to act on the basis of the recommendation of the said Commission ^{on the basis of} the list dated 16-12-1996 in respect of the 3rd Graduate Standard Examinat^{ion}.

31. This writ petition is allowed to the extent indicated above. There will be no order as to cost. All the interim orders passed earlier are hereby dissolved.

Sd/-

(A. K. Ganguly)

Patna High Court,
The 25th July, 1997.
AMIN / (A.K.G.)

True Copy
28/7/97
Secretary