

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9723 of 2024

Gopal Bihari Son of Bhubneshwar Prasad, Residing at- E-41, Gaurav Apartments, I.P. Extension, Patparganj, P.O.- Krishna Nagar, P.S.- Mandawali, District- East Delhi (New Delhi).

... .. Petitioner/s

Versus

1. The Honble High Court of Judicature at Patna through its Registrar General, Veerchand Patel Road, Area, Patna, Bihar.
2. The Registrar General, The High Court of Judicature at Patna.
3. The Registrar Appointment, The High Court of Judicature at Patna.
4. The Selection Committee District Judge (Entry Level), Direct from Bar Exam. 2023, through the Deputy Registrar, The High Court of Judicature at Patna.
5. The Deputy Registrar, The High Court of Judicature at Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 9746 of 2024

1. Krishna Kumar Singh S/o Jang Bahadur Singh R/o Fatana, Katara, Bahadurganj Katara Bahadurpur, P.S. Risiya Dist- Baharaich (U.P.)
2. Malti Kumari W/o Dharmendra Kumar Singh R/o Vill.- Pathar, P.O- Garhan, P.S.- Charpokhari District- Bhojpur.
3. Dharmendri Devi D/o Bhagirath Singh R/o- 43 Jainpur, Post Office- Malagarh Jainpur, P.S.- KOTwali Dehat Dist.- Bulandshahar (U.P.).
4. Shruti Sinha D/o late Onkar Nath Sinha R/o House no.- 43, Road No.-12 East Indrapuri, Harihar Raipath, P.O- Keshari Nagar, P.S- Pataliputra, District- Patna.
5. Amlendu Mishra S/o Shri Tripti Shankar Mishra R/o Village and post and P.S.- Dubhar District- Ballia (U.P.)
6. Arun Tyagi S/o Asaram Tyagi R/o 1/2350 Gali no.-4, mandoli Road, east Ramnagar Shahdara, P.S.- Mansarovar, East Delhi.

... .. Petitioner/s

Versus

1. The High Court of Judicature at Patna through its Registrar General.
2. The Registrar General, High Court of Judicature at Patna.



3. The Registrar Appointment, High Court of Judicature at Patna.
 4. The Selection Committee District Judge (Entry Level), Direct from Bar Exam- 2023, High Judicature at Patna.
- Respondent/s

with

Civil Writ Jurisdiction Case No. 9829 of 2024

Ghanshyam Son of Late Apurb Kumar, Permanent Resident of Road no.- 3A, Adarsh Colony, KhemniChak, P.S.- Ramkrishna Nagar, District- Patna. At present residing at Om Palace, Ashok Rajpath, Opposite- PMCH Eye Hospital, P.S.- Pirbahore, District- Patna, Bihar 800004.

... .. Petitioner/s

Versus

1. The High Court of Judicature at Patna through its Registrar General.
2. The Registrar General, High Court of Judicature at Patna.
3. The Registrar, Appointement, High Court of Judicature at Patna.
4. The Selection Committee, District Judge (Entry Level), Direct from Bar Exam-2023, High Court of Judicature at Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 10023 of 2024

Rup Anand Krishn Son of Balendra Prasad Singh Resident of B-64, Sai Gali, Buddha Colony, Patna-1

... .. Petitioner/s

Versus

1. The State of Bihar through additional chief secretary government of Bihar Patna.
2. The Registrar General, Patna High Court, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 10397 of 2024



Shashi Ranjan Son of Anand Kishor Thakur Resident of Village and Post-Brahmpur, Police Station- Kamtaul and District- Darbhanga, Bihar- 847307 presently residing at Gali No.- 8, Wazirabad, Village- Burari, Police Station-Timarpur and District- North Delhi, Delhi- 110084.

... .. Petitioner/s

Versus

1. The High Court of Judicature at Patna through the Registrar General, High Court of Judicature at Patna.
2. The Registrar General, High Court of Judicature at Patna.
3. The Registrar Appointment, High Court of Judicature at Patna.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 9723 of 2024)

For the Petitioner/s : Mr. Alok Abhinav, Advocate
Mr. Nityanand Mishra, Advocate
Mr. Namam Sherstra, Advocate
Mr. Gaurav Kumar, Advocate
Ms. Dikhsa Kumar, Advocate

For the Respondent/s : Mr. Piyush Lall, Advocate

(In Civil Writ Jurisdiction Case No. 9746 of 2024)

For the Petitioner/s : Mr. Alok Kumar Jha, Advocate

For the Respondent/s : Mr. Piyush Lall, Advocate

(In Civil Writ Jurisdiction Case No. 9829 of 2024)

For the Petitioner/s : Mr. Brisketu Sharan Pandey, Advocate

For the Respondent/s : Mr. Piyush Lall, Advocate

(In Civil Writ Jurisdiction Case No. 10023 of 2024)

For the Petitioner/s : Mr. Rakesh Kumar Sharma, Advocate

For the Respondent/s : Mr. Addl. Advocate General 3

(In Civil Writ Jurisdiction Case No. 10397 of 2024)

For the Petitioner/s : Mr. Avinash Chandra, Advocate

For the Respondent/s : Mr. Piyush Lall, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 12-07-2024

A batch of four writ petitions were taken up peremptorily for hearing on 10.07.2024, only since the main examinations for selection to the post of District Judge



(Entry Level) is scheduled on 14.07.2024. C.W.J.C. No. 10397 of 2024 which too raised identical issues was heard on 11.07.2024 and reserved for judgment. The matters are disposed off by this common judgment.

2. C.W.J.C. No.9746 of 2024 is filed by six candidates who have objected to question No.9 and the answers to questions Nos.48, 58 and 94. The learned Counsel for the petitioner also contended that with respect to the second petitioner, as per the OMR mark-sheet obtained yesterday which has been uploaded by the Registry of the High Court, her total marks would go above that which was prescribed as the cut-off mark in her category. In C.W.J.C. No.9829 of 2024, in addition to the objections raised on the question & answers as hereinabove noted, the learned Counsel also argued on the basis of the tabular column extracted in the writ petition; that even persons who obtained as less marks as 14 and 18 are qualified in the preliminary test and called for the final examination. Specific reference is made to clause 6(f) of the advertisement produced as Annexure-P1, to point out that the minimum qualifying marks in screening/preliminary test



could be relaxed for reserved category candidates, including women candidates only by 5%. It is also pointed out from Rule 4-A(vi) of the Bihar Superior Judicial Service Rules, 1951 ('Rules of 1951' for brevity), that, if after carry over of vacancies, they are not filled up from the reserved categories in the third selection process, for reason of the number of suitable candidates of the reserved categories being less than the number of vacancies reserved for them even after the exchange formula being implemented in the earlier selection processes, the remaining back-log vacancies would be filled up by suitable general category candidates after de-reserving the vacancies. It is argued that inclusion of candidates with very low marks confuses eligibility with suitability. The petitioners have relied on *N.T Devin Katti and Others v. Karnataka Public Service Commission and Others: (1990) 3 SCC 157* and *Nutan Kumari v. B.R.A. Bihar University and Others; 2023 4 PLJR 373*.

3. Learned Standing Counsel for the High Court based on the counter affidavit submitted that there is no minimum qualifying mark provided for qualifying the



preliminary examination/screening test. As per clause 5(c) (iii) of the Rules of 1951 the marks obtained in the screening test is relevant only for the purpose of eligibility to appear in the written test. The purpose of a screening test is only to short-list the candidates for the main examination. The rule also provides that ten times the number of vacancies for appointment are to be called for the main examination.

4. The question of whether there is any case for conceding the reserved vacancies to the general category candidates can arise only after the selection process is over. The candidates were invited for the main examination on the basis of the marks obtained, ensuring that ten times the vacancies in each category are allowed to participate in the main examination. While ensuring sufficient number; equal to ten times, all the candidates who obtained that particular cut-off mark will have to be called for the main examination. In the case of Scheduled Caste and Scheduled Tribe candidates, no cut-off mark could be prescribed, at par with the other categories, since there were not enough candidates who got sufficient marks, to fulfill the



requirement of permitting participation of candidates ten times the vacancy in that category.

5. Insofar as question No.94 is concerned, we have already held that candidates who marked both options; ie: (c) & (d) have to be qualified, in C.W.J.C. No.9263 of 2024 *Ashutosh Kumar Mishra v. The High Court of Judicature at Patna*. There is a revision of the marks effected based on the cited case, and the revised results are also published wherein an additional 16 candidates were called for the main examination from the different categories. The cut-off marks were also revised, as is seen from the counter-affidavit. The cut-off mark provided earlier and that revised is seen from Annexure-R-2C of the counter affidavit which is extracted hereinbelow:-

Category	Cut-off marks as per the result dated 17.05.2024	Revised Cut-off marks
UR	- 230	233
UR(Female)	- 212	213
EBC	- 133	133
EBC(Female)	- 128	128
BC	- 184	187
BC(Female)	- 163	163
EWS	- 201	201
EWS(Female)	- 101	101
OH	- 154	157



6. The specific contention of the High Court, as is seen from the counter affidavit is that there was no minimum marks provided for screening test/preliminary test and in that circumstance, there was no question of any relaxation of 5%. The prescription in the Rules of calling ten times the number of vacancies for the main examination was complied with by ensuring that, candidates, ten times the vacancies in each category are qualified at the preliminary test and all the candidates obtaining the cut-off marks are also permitted to participate in the written examination. We do not think there is any anomaly in providing a far lower cut-off mark to enable the Scheduled Caste and Scheduled Tribe candidates to participate in the main examination; especially when the prescription in the rule is for calling for ten times the vacancies.

7. In fact, Rule 5(c)(iii) confers discretion on the High Court to hold a screening test with a view to short-list the candidates. The marks obtained in the screening test, as per the rule, would be relevant only for the purpose of determining the eligibility to appear in the written test. The rule is categorical insofar as such marks not being counted for



determination of comparative merit of the candidates. The rule also provides for permitting candidates approximately ten times of the vacancies for appointment, to be called for the written test on the basis of marks obtained in the screening test. It is to comply with the stipulation of calling for ten times the vacancies and also taking into account the fact that the marks obtained in the screening test would not determine the final eligibility, that, all the candidates belonging to Scheduled Caste and Scheduled Tribe were allowed to participate in the main test.

8. The number of S.C. & S.T. candidates who participated in the screening test itself was less than ten times the vacancies available to be filled up from those categories. We also agree with the learned Standing Counsel of the High Court that the question of carry forward of vacancies and conceding it to Un-Reserved categories, as per Rule 4-A(vi), is not a question to be considered at this stage. There can be no violation of the rule alleged only because all Scheduled Caste and Scheduled Tribe candidates are permitted to participate in the main examination. It is only to ensure that all such candidates are



given the opportunity to appear for the main examination. The final selection will depend only on the marks obtained at the main examination and interview, with minimum qualifying marks and relaxation; provided in tandem with the rules. There is no ground to find any confusion as to the suitability of the candidate; which will not be decided on the basis of the mere eligibility to appear for the main examination.

9. *N.T Devin Katti* and *Nutan Kumari v. B.R.A. Bihar University (both supra)* have no application since the terms and conditions set out in the advertisement have not at all been altered. The stipulation that 5% relaxation would be granted to the reserved category candidates; from the minimum marks stipulated for the general category candidates, will not be applicable in the context of there being no minimum marks prescribed even for the general candidates. The cut-off mark based on which the eligibility of candidates to appear for the main examination, is not provided by the High Court and is not determined prior to the screening test. The cut-off mark comes out of the results in the screening test and the marks



obtained by the candidates in the different categories. The cut-off mark also is a necessary consequence of the endeavor to enable ten times the number of vacancies available to be participated in the main examination.

10. Now we come to the question of the objections raised, as has been emphasized in C.W.J.C. No. 9746 of 2024 and C.W.J.C. No. 10397 of 2024.

11. *Ran Vijay and Others v. State of Uttar Pradesh and Others; (2018) 2 SCC 357* laid emphasis on the finality to the result of public examinations and speedy disposal. Any judicial interference could be only after keeping in mind the larger public interest. The approach of the High Court in that case; in evaluating the answers to various questions was found to be erroneous; especially when the matters stood delayed for 8 years. In the present case, there is no delay, but the law on the point, declared in the above case available in paragraph 30.1 to 30.5 are extracted hereunder:-

“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.”

12. Looking at the above binding declaration, specifically para 30.3, we are of the opinion that it may not be proper to look at specific questions and the answers pointed out by the different petitioners to re-evaluate each of the above petitioners. In *Ran Vijay (supra)*, the Hon’ble Supreme Court had also held that sympathy or compassion cannot be a reason to direct re-evaluation of the answer-sheet and the entire examination process cannot be derailed only because some candidates were 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. It is hence, we restrain ourselves a detailed examination of the objections raised, but for completeness, we would briefly dwell upon the specific contentions. *Ran Vijay (supra)* was followed in *Dr. NTR University of Health Sciences v. Dr. Yerra Trinadh and Others; 2022 SCC OnLine SC 1520*.

13. Insofar as question no. 94 is concerned, the High Court has come out with a fresh mark list based on the cited judgment in C.W.J.C. No. 9263 of 2024, and there need be no further consideration on the same. As far as question no. 48 is concerned, we are satisfied that option (b) is correct insofar as holding a marriage between two minors to be a voidable marriage.

14. The objection raised against question no. 58 is as to whether the right to vote is a constitutional right or a legal right. It is claimed by the petitioner on the basis of Article 326 of the Constitution of India and the decision of



the Hon'ble Supreme Court in *Anoop Barnwal v. Union of India (Election Commission Appointments); (2023) 6 SCC 161* that voting right is a constitutional right. We have to immediately notice that Article 326 provides for the elections to the house of the people and the legislative assembly to be on the basis of adult suffrage, ensuring every person who is a citizen of India and who is not less than 18 years of age, on such date as may be fixed in that behalf by or under any law made by the appropriate legislature and is not otherwise disqualified under the Constitution or any law made by the appropriate legislature on specified grounds. The cited decision only declares that even if the right to vote is treated as a statutory right, it cannot be divorced or separated from the mandate of Article 326, which right is of greater importance and forms the foundation for a free and fair election, which in turn also constitutes the right of the people to elect their representatives. The declaration of the Hon'ble Supreme Court is on the larger perspective. Hence, especially noticing the reference to the laws made by the appropriate legislature for fixing a date to determine the minimum age and also providing for specified



disqualifications, we are of the opinion that the more correct answer to the question is that approved, i.e., the right to vote in India being a legal right or a statutory right.

15. As far as question no. 9 is concerned, obviously the question is wrongly worded since what was intended, going by the answers, would be Section 10 of the Transfer of Property Act and not Section 70. Considering the fact that the main examination is scheduled two days here from, we are of the opinion that if at all the benefit could be granted, it can only be to those persons who have come before this Court.

16. There are six petitioners in C.W.J.C. No. 9746 of 2024 who are from the Un-Reserved category, but three of them are eligible to be considered as Un-Reserved (female) candidates. Insofar as petitioner nos. 1, 5, and 6 are concerned, they belong to the Un-Reserved (male) category. The 1st petitioner has obtained 219 marks; the 5th petitioner has obtained 224 marks; and the 6th petitioner has obtained 222 marks. In the preliminary test, every question carried three marks, and a negative answer would result in reduction of one mark. Hence, if the question was answered



and found incorrect; the petitioners now, would have to be given four marks. The marks, as indicated from the writ petition, are before the revision of the marks effected on the judgment cited above. Hence, without looking at whether the petitioner nos. 1, 5, and 6 have answered the question correctly or obtained negative marks; even if we they are granted eight marks for question no. 94 and question no. 9 they would only get 227, 232, and 230 marks, which would not permit their participation in the Un-Reserved (male) category since the cut-off mark provided for that category is 233.

17. As far as petitioner no. 2 is concerned, she has been granted four marks, and her mark as per the OMR sheet produced is 210. The OMR sheet as produced by her in Annexure-P/16 series indicates that she has not answered question no. 9, in which case there is no issue of any marks being awarded for the same. It is also pertinent that the 2nd petitioner has not filed any objection and it cannot be presumed that she did not mark the answer, realizing that the question was wrong. The 2nd petitioner having not answered the said question, would not be entitled to get any



marks.

18. There was one other contention raised that she had not been granted marks as per the answers shown in the OMR sheet, which cannot be entertained. There is no scope for re-evaluation since no such measure is mandated in the selection procedure. *Maharashtra State Board of Secondary & Higher Secondary Education Vs. Paritosh Bhupeshkumar Sheth; (1984) 4 SCC 27*, deprecated the tendency of the Courts to strike down an otherwise reasonable policy merely on the ground of it not having the court's approval with regard to the efficaciousness for implementation of the objects & purposes. If there is no provision for re-evaluation, it cannot be directed by Courts. *Vikesh Kumar Gupta Vs. State of Rajasthan; (2021) 2 SCC 309* also held against re-evaluation if it was not provided and cautioned the High Court from examining the question papers and answer sheets. The Courts were cautioned to show deference and due regard to the recommendations of an expert committee.

19. Insofar as the petitioner nos. 3 and 4 are concerned, the award of eight marks will not give them the



required 213 marks which is the cut-off mark for Un-Reserved (female) category candidates.

20. In CWJC No.10397 of 2024, the petitioner who has obtained 223 marks objects to the answer to question No.78 also. The question is as to which gas is absorbed by the plants, for which the High Court has accepted the option at (c), which is Carbon Dioxide. The petitioner has objected to the said answer on the ground that in the night plants absorb Oxygen also and release Carbon Dioxide and there are leguminous plants which absorb Nitrogen from the surroundings. We are not convinced that the exceptions would result in the answer being treated as wrong and even if 4 marks is obtained by the petitioner, he would not obtain the cut-off marks required for the general category candidates.

21. *High Court of Tripura v. Tirtha Sarathi Mukherjee an Others; (2019) 16 SCC 663*, the Hon'ble Supreme Court held that the wide power under Article 226 of the Constitution of India may be exercised only in rare and exceptional circumstances, even in absence of provision of re-evaluation, where candidates despite having



undoubtedly given correct answers is marked wrong and found dis-entitled to the marks. Such discretion should be confined to cases where there is no dispute about correctness of answer and in case of doubt, it should be resolved in favor of the examining body as against the candidate.

22. On the above reasoning, we are of the opinion that there is no reason to cause interference to the results of the screening test or the main examination scheduled on the 14th of July 2024.

23. The writ petitions stand dismissed.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree

(Partha Sarthy, J)

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AFR/NAFR	
CAV DATE	10.07.2024
Uploading Date	12.07.2024
Transmission Date	

