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PRAMOD KUMAR SRIVASTAVA

v.

CHAIRMAN, BIHAR PUBLIC SERVICE COMMISSION,
PATNA AND ORS.

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AUGUST 6, 2004

[R.C. LAHOTI, CJ., G.P. MATHUR AND C.K. THAKKER, JJ.]

Service Law :

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Judicial Services (Competitive) Examination—Re-evaluation of answer-book—Writ petition for direction—No rules regarding re-evaluation—Direction for re-evaluation and direction for award of marks after fresh valuation by Single Judge of High Court—Order set aside by Division Bench—On appeal, held: In absence for provision for re-evaluation, the same not justified—Adopting such course by Court would lead to practical problems—Even in view of the manner the answer books were re-evaluated, fresh marks awarded after re-valuation could not have been directed.

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Appellant did not qualify in the written test of Judicial Services (Competitive) Examination. Through his mark-sheet he came to know that in one of the papers he secured 35 marks. He applied for scrutiny of his marks in that paper. On scrutiny no mistake was found by respondent-Commission. Appellant filed Writ Petition seeking direction to Commission to re-evaluate his performance in that particular

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paper. Plea of respondent-Commission was that in absence of any provision in the rules for revaluation of the answer-books such exercise could not be done. Commission also submitted that in order to avoid difference in standard in awarding marks model answer is provided to the examiners while examining the answer-books. Single Judge of High Court directed the Commission to produce the answer-book of

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that particular paper of the appellant. Single Judge directed the standing counsel for Patna University to have the answer-book revaluated by expert teachers. Answer-book was not sent directly by the Court to the Registrar of Patna University or the Principal of the Science College. A photocopy of the answer-book was handed over to

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the standing counsel of the University who returned the same to the

Court after sometime stating that the same was examined by two teachers. The names of the teachers were not disclosed. After fresh valuation appellant was awarded 63 marks. Single Judge directed the Commission to treat the marks of the appellant in the particular paper as 63. In Letters Patent Appeal, Division Bench of High Court, set aside the order of Single Judge. Hence the present appeal.

Dismissing the appeal, the Court

HELD : 1. Single Judge had clearly erred in having the answer-book of the appellant re-evaluated. 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. 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. [376-C-F]

2. Adopting such a course as was done by the Single Judge will give rise to practical problems. The absence of clear rules on the subject may throw many problems and in the larger interest, they must be avoided. [377-C; 377-E]

3. Even otherwise, the manner in which the 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 Registrar of the Patna University or to the Principal of the Science College. A photocopy of the answer-book was handed-over to the standing counsel for the 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. Model answer was not supplied to the two teachers of the 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

A consequently the direction issued by the Single Judge to the Bihar Public Service Commission to treat the marks of the appellant in General Science paper as 63 cannot be justified. [377-E-H; 378-A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5046 of 2004.

B From the Judgment and Order dated 16.4.2003 of the Patna High Court in L.P.A. No. 1228 of 2001.

In-person for the Appellant.

C Lakshmi Raman Singh and Chandra Prakash for the Respondents.

The Judgment of the Court was delivered by

D G.P. MATHUR, J. : Leave granted.

E 2. The writ petitioner has preferred this appeal by Special Leave against the judgment and order dated 16.4.2003 of a Division Bench of Patna High Court by which the Letters Patent Appeal preferred by Bihar Public Service Commission (hereinafter referred to as 'the Commission') was allowed and the judgment and order dated 11.9.2001 of a learned Single Judge whereby a direction was given to the Commission to reconsider the case of the appellant after treating his marks in the General Science paper as 63 was set aside.

F 3. For holding the Judicial Services (Competitive) Examination, 1999, the Commission issued an advertisement on 19.4.1999. The appellant appeared in the written examination which was held from 25th to 31st January, 2000. After the *viva voce* examination, the final result was declared on 6.8.2000. The appellant did not qualify in the written examination and was not called for interview. A copy of the mark-sheet was sent to him on 1.1.2001. He applied for scrutiny of his marks in G General Science paper wherein he had secured 35 marks. The Commission found that there was no mistake and, accordingly, intimation to that effect was sent to him on 18.7.2001. Thereafter, the appellant preferred a writ H petition in the High Court wherein the main prayer made was that a direction be issued to the Commissioner to re-evaluate his General Science

paper. It was averred in the writ petition that he had secured very good marks in all other papers, namely, General Hindi, General Knowledge, Law of Evidence & Procedure, Transfer of Property and Personal Law etc., and had also answered the questions in General Science paper correctly and, therefore, he should have been awarded much higher marks in the said paper.

4. In the counter affidavit filed by the Commission before the learned Single Judge it was pleaded that in the rules, there was only a provision for scrutiny and there was no provision for re-evaluation of the answer-books. The appellant had applied for scrutiny of his marks in General Science paper which was done and no mistake had been found and the marks remained the same, namely, 35. It was further pleaded that a centralized mode of evaluation is adopted by the Commission wherein examiners approved and selected by the Commission are required to examine the answer-book under the guidance of a Head Examiner. In order to avoid vagaries of wide difference in standard in awarding marks, the Bihar Public Service Commission follows the pattern of Union Public Service Commission wherein the Head Examiner with the assistance of other examiners prepares a model answer and this is used as guidance by all other examiners while examining the answer-books, and by this process a uniform standard in awarding marks is maintained. It was also submitted that in absence of any provision in the rules for re-evaluation of the answer-books, the said exercise cannot be done and any direction for re-evaluation will open a floodgate for other candidates to come out with similar plea which will ultimately cause a great delay in declaring the final result.

5. The learned Single Judge issued a direction to the Commission to produce the answer-book of the appellant of General Science paper after he had deposited an amount of Rs. 5000 by way of security. The answer-book was shown to the standing counsel for Patna University, who apparently had science background, and, he was of the opinion that the appellant deserved more marks. The learned Single Judge then directed the standing counsel for the Patna University to have the answer-book re-evaluated by expert teachers through the Principal, Science College, Patna. A photocopy of the answer-book (after blacking out the marks awarded by the examiner of the Commission) was handed over to the said counsel. After fresh evaluation of the answer-book by two experts, viz., a Physics

A teacher and a Biology teacher of Patna Science College, the answer-book was returned to the Court by the counsel. In that fresh evaluation, the appellant was awarded 63 marks as against 35 marks which had been awarded to him by the examiner of the Commission. The writ petition was allowed and a direction was issued to the Commission to re-consider the case of the appellant treating his marks in General Science paper as 63.

6. The Commission preferred a Letter Patent appeal against the aforesaid judgment and order of the learned Single Judge which was allowed by the Division Bench by the impugned judgment and order dated 16.4.2003 and the order of the learned Single Judge was set aside.

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 totaling 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 and Another v. Paritosh Bhupesh Kurmarsheth and Others*, 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-book 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 pry 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 the Patna University or to the Principal of the Science College. A photocopy of the answer-book was handed-over to the standing counsel for the 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 centralized system of evaluation of answer-books is adopted wherein different examiners examine the answer-books on the

- A 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 the 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.
- C 10. We are, therefore, of the opinion that the view taken by the Division Bench of the High Court is correct and calls for no interference.
11. The appeal is, accordingly, dismissed. There shall be no order as to costs.
- D K.K.T. Appeal dismissed.