

BIHAR STAFF SELECTION COMMISSION & ORS. A

v.

ARUN KUMAR & ORS.

(Civil Appeal Nos. 2414-2416 of 2020)

MAY 06, 2020 B

[R. F. NARIMAN AND S. RAVINDRA BHAT, JJ.]

Service Law – Graduate Level Combined Examination-2010

– The Bihar Staff Selection Commission (BSSC) issued an advertisement to 1569 vacancies in Class III posts, in various departments of the State – The examinations were conducted – The successful candidates of the preliminary examination appeared for the main examinations – There were objections to some of the model answers to the main examination – The BSSC constituted a expert Committee to examine the objections; this report suggested changes with respect to 13 questions – The acceptance of the report meant consequential revision of the results – Writ petitions – The Single Judge of the High Court directed inclusion of 915 candidates as result of Expert Committee report and directed BSSC to re-evaluate the answer sheets of the candidates after deleting four other questions – The Division Bench of High Court further interfered with the judgment of the Single Judge by revising four more questions – Thereafter, the Supreme Court directed BSSC to appoint an Expert Committee in order to determine the correct answers to the questions appended – The report was submitted before the Supreme Court, the BSSC contended that complying the order of the Division Bench of the High Court would result in administrative chaos as the exercise would drastically alter the final result – Held: Given the clear declaration of law in the various Supreme Court judgments, the unilateral exercise of re-valuation undertaken by the High Court (both by the Single Judge and the Division Bench) has contributed to the chaos – No rule or regulation was shown by any party during the hearing which justified the approach that was adopted – The BSSC acted correctly in the first instance in referring the answers to a panel of experts – If there were justifiable doubts about recommendations of that panel, the least that should have been done, was to require the BSSC to refer the disputed questions to another expert panel – That was not done; The ‘corrections’ indicated by

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- A *the Single Judge were accepted by the BSSC; several candidates who made it to the select list freshly drawn up pursuant to his directions, were appointed – The Division Bench, thereafter undertook the entire exercise afresh and compounded the matter further by not referring the questions to any panel of experts – The*
- B *High Court interference has not resulted in any finality and the entire selection process is under uncertainty – The committee of experts appointed by the Supreme Court has made its recommendations and the exercise indicates that previous re-evaluations by the High Court were not correct and the said recommendations are accepted – The BSSC is directed to evaluate*
- C *and publish results afresh, in light of the recommendations and reports of the experts constituted by the Supreme Court and not to disturb appointments made previously pursuant to directions of the Single Judge of the High Court – In case the number of selected candidates exceeds the vacancies available, the State would accommodate the excess numbers in the relevant cadres as against the future vacancies – Accordingly, judgment of the Single Judge and Division Bench of the High Court set aside.*

Ran Vijay Singh v. State of UP (2018) 2 SCC 357 : [2017] 12 SCR 95; Pramod Kumar Srivastava v.

- E *Chairman, Bihar Public Service Commission, Patna & Ors. (2004) 6 SCC 714 : [2004] 3 Suppl. SCR 372; Central Board of Secondary Education Through Secretary, All India Pre-Medical/Pre-Dental Entrance Examination & Ors. v. Khushboo Srivastava & Ors (2014) 14 SCC 523 : [2011] 10 SCR 286 – relied on.*

- F *Maharashtra State Board of Secondary and Higher Secondary Education and Another v. Paritosh Bhupeshkumar Sheth & Ors. (1984) 4 SCC 27 : [1985] 1 SCR 29; Board of Secondary Education v. Pravas Ranjan Panda (2004) 13 SCC 383; Himachal Pradesh Public Service Commission v. Mukesh Thakur & Anr (2010) 6 SCC 759 : [2010] 7 SCR 189; Gangadhara Palo v. Revenue Divisional Officer & Anr. (2011) 4 SCC 602 : [2011] 3 SCR 746; Pranav Verma v. Registrar General of High Court of Punjab & Haryana (2019) SCC OnLine SC 1610 – referred to.*

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Manoj Kumar v. State of Bihar & Ors. 2012 (1) PLJR A
542 – referred to.

<u>Case Law Reference</u>		
[2017] 12 SCR 95	relied on	Para 18
[1985] 1 SCR 29	referred to	Para 20 B
[2004] 3 Suppl. SCR 372	relied on	Para 20
(2004) 13 SCC 383	referred to	Para 20
[2010] 7 SCR 189	referred to	Para 20
[2011] 3 SCR 746	referred to	Para 20 C
[2011] 10 SCR 286	relied on	Para 20

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2414-16 of 2020.

From the Judgment and Order dated 24.06.2015 of the High Court of Judicature at Patna in L.P.A. Nos. 1170/2013, 1174/2013 & 1352/2013. D

With

Civil Appeal Nos. 2420-2421 and 2424 of 2020

Vijay Hansaria, Ms. Vibha Datta Makhija, Kavin Gulati, Sr. Advs., Rakesh Singh, Arun K. Sinha, Vikas Singh Jangra, Amit Kumar Pathak, Abhinav Bajaj, Prasanna Mohan, Kunal Verma, Anand Shankar Jha, Arpit Gupta, Md. Ali, Priyanshi Agarwal, Arjun Garg, Saket Singh, Mrs. Niranjana Singh, Smarhar Singh, Ashutosh Thakur, Rana Prashant, Mithilesh Kumar Singh, Ms. Manju Singh, Tarun Verma, Ms. Kamakshi S. Mehlwal, Sanveer Mehlwal, Vijay Kumar, Abdul Gaffar, Gopal Singh, and Srikaanth S., Advs. for the appearing parties. E F

The Order of the Court was passed by

S. RAVINDRA BHAT, J.

1. Special leave granted. The parties were heard, with consent of their counsel.

2. These appeals are directed against a common judgment in LPA No. 1200/2013 (in CWJC No. 3640/2013), LPA No. 1170/2013 (in CWJC

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- A No. 3740/2013), LPA No. 1174/2013 (in CWJC No. 4265/2013) and LPA No. 1352/2013 in CWJC No. 3640/2013) of the Patna High Court, dated 24.06.2015.
3. One set of appeals (arising from SLP(C) Nos. 23202-23204/2015) has been preferred by the Bihar Staff Selection Commission
- B (hereafter “BSSC”) and the other set (referred to as “the aggrieved party appellants”) by several aggrieved parties, who were appellants before the Division Bench of the High Court, in four intra-court appeals, which had questioned the judgment and order of a learned single judge. The single judge set aside the results of the main examination, with consequential directions to the BSSC to prepare fresh results of the
- C Graduate Level Combined Examination-2010, in accordance with the directions of the Court in relation to deletion/modification of questions and answers as stipulated in the judgment. The aggrieved party appellants were not party to the writ proceedings, but had been declared selected in terms of the results first published, and subsequently were shown as
- D not qualified under the revised results pursuant to the directions of the Court by the learned single judge. Three appeals to the Division Bench were by candidates who were writ petitioners and had impugned the judgment of the single judge in not granting them full relief in respect of all questions that were challenged. These parties were not selected in the final results declared.
- E 4. The brief facts of the case are that on 18.06.2010, the BSSC issued an advertisement calling for applications for selection of candidates to 1569 vacancies in Class III posts, in various departments of the Government of Bihar. Examinations were conducted; on 12.04.2012, results of the preliminary examination were declared; this became the
- F subject matter of challenge before the Patna High Court. The High Court, after calling for evaluation of the questions and the results published by experts, directed fresh declaration of results. Resultantly, the fresh declaration of results was made on 29.12.2012. 27,289 candidates qualified in the examination. Meanwhile the number of vacancies
- G increased to 3285 (from the original number of 1569). On 27.10.2013, the main written examination (for selection), as part of the second phase, was held; those who had been declared successful in the preliminary examination were allowed to compete. On 28.01.2013, the model answers to the main examinations were published; the BSSC elicited comments and objections to the model answers.
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5. The BSSC constituted a committee of experts to examine the objections; their report suggested changes with respect to 13 questions. The acceptance of the report meant consequential revision of the result. This led to the filing of five writ petitions, before the Patna High Court. The results declared by the BSSC were impugned on diverse grounds, including that the original number of vacancies could not have been increased; that the increase in the number of candidates was arbitrary and that the final results were based on answers to various questions, which were wrong.

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6. The single judge, after considering the contentions of the parties on merits, held that the increase in the number of vacancies to be considered for selection and appointment beyond the initially advertised number, was valid and in consonance with the law declared by this court; it was further held that the increase in the number of candidates allowed to compete for the post (i.e. 27,289 instead of the original 16,425 declared successful in the preliminary test) was justified, despite that number exceeding the *ratio* (of consideration of five candidates for one post) because of the revision in the results. The change in the result as a consequence of the expert committee's report adversely impacted 915 candidates who had been previously declared successful in the result of the preliminary test declared on 12.04.2012. By an order of the Patna High Court in *Manoj Kumar v. State of Bihar & Ors.*¹, it was held that these candidates should not be disturbed by the change in result. The BSSC, therefore, retained these 915 candidates on the list of successful candidates. Further, the change in answers caused the inclusion of several others who now obtained the same marks as these 915 candidates. This resultant increase in the number of successful candidates from 16,425 to 27,289 was held to be permissible by the single judge. After examining the merits of the answers accepted by the BSSC, the single judge was of the opinion that question numbers 82, 147, 148 and 149 were incorrect; the writ petitions were allowed, with a direction to BSSC to re-evaluate the answer sheets of the candidates after deleting the said four questions.

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7. Two appeals were preferred against that decision of the single judge. It was contended that the BSSC had wrongly assessed question nos. 61, 62, 67, 82, 98, 107, 111, 124, 125, 148 and 149. By the impugned judgment, the Division Bench partly allowed the appeals. The operative directions in the impugned judgment are extracted below:

¹ 2012 (1) PLJR 542

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- A “22. *Thus, the only change we find is with regard to question No. 69 where the correct answer is option (A). In respect of question No. 98, the correct answer is option (D). The correct answer to question No. 107 is not available and has to be deleted. In respect of question No. 111, we hold that it should not be deleted and the correct answer is option (C).*
- B *23. Thus, we are inclined to interfere with the judgment of the learned Single Judge only to the extent of these four questions in the manner indicated hereinabove.*
- C *24. Thus, the inevitable result would be, in order to ensure fairness of procedure of selection, the results which were revised and published pursuant to orders of the learned Single Judge would call for a further revision in respect of the four questions as noted in the preceding paragraphs but it would not follow that as per the fresh revised results of persons who had already been selected and appointed and have been working but who do not make the mark this time would be disqualified and dismissed. We hold that this would be highly iniquitous inasmuch as they are not guilty of any fraud, malpractice but are mere victims of mistake committed not by them. We have already noted judgments of the Apex Court in the cased Rajesh Kumar (*supra*) and Vikash Pratap Singh (*supra*) in these regards but again that does not end the matter. By change of answers of these four questions, as noted above, there may be some persons, who are now found to have made to the final merit list but, were not selected earlier leaving them out would be injustice. There would not be many such persons.*
- D *25. Having considered the matter, we would accordingly order that such persons who now come into the merit list would have to be adjusted, if vacancies were there were (sic) or there are vacancies available in cadre, for which examination were held. Their inter se seniority in the cadre to which they are allotted would be determined by inter se merit position, irrespective of their date of appointment. We order accordingly. With these observations and directions, these Letter Patent Appeals are, accordingly, disposed of.”*
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8. The appellants in civil appeals arising out of SLP(C) Nos. 29764-65/2015 are aggrieved by the impugned judgment; their complaint is that the Division Bench confined the relief in respect of only four wrong answers; according to them, there were other defective questions or wrong answers: they argue that question nos. 61, 62, 67, 82, 98, 107, 111, 124, 125, 148 and 149 should be deleted altogether (as against the interference with respect to four question nos., i.e. 69, 98, 107 and 111). The appellants in civil appeals arising out of SLP(C) 30109/2016, on the other hand, urge that answers to question nos. 61, 82, 119, 124, 125 and 135 have to be corrected, and the revised merit list should be published on the basis of such corrected result. The BSSC, in its appeal arising out of SLP(C) Nos. 23202-04/2015, on the other hand, urges that after the judgment of the learned single judge, appointments were made since the grievance of the writ petitioners had been substantially mitigated. It was in the context of appeals preferred by private respondents (some of whom are before this Court) who found that their names were out of zone of consideration, that the Division Bench delivered the impugned judgment.

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9. It is submitted that the directions in the impugned judgment, which include those requiring the accommodation of candidates who were to come in the merit list as against the vacancies available in the cadre without disturbing appointments already made, is violative of well-established and settled principles of service law. It is highlighted that if the impugned directions are to be complied with, there would be several complications inasmuch as the recommendations for 3285 vacancies were against 21 different categories of posts many of which require additional qualifications. This, it is urged would also include creation of supernumerary post.

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10. After hearing learned counsel for the parties, this Court had issued notice on 30.10.2015. In the meanwhile, on 28.09.2015 the BSSC was asked to work out the judgment in terms of the directions contained to show the likely results.

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11. The Court had on 25.09.2019 passed the following order:

“Having heard learned Senior Counsel for the parties, we are of the view that the Bihar Public Service Commission should appoint an Expert Committee consisting of three members in order to determine what is the correct answer to

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- A *the questions which are appended as part of this order. The Expert Committee to be appointed within a period of two weeks from today. The Expert Committee will then submit its report in a sealed cover to this Court within a period of four weeks from the date on which the Committee is formed.*
- B *The Expert Committee is left with the discretion to co-opt persons of their choice in assisting them.*
- Representations of parties to be submitted within a period of two weeks from today so that the Committee may consider them as and when it is constituted.*
- C *List after six weeks.”*

12. The questions which were referred to the Committee of Experts, extracted in a Tabular Form as part of the order of 25.09.2019 is set out below:

	S.No.	QUESTIONS WITH FOUR OPTIONS
D	1.	61. The Primary Product of Photosynthesis is: (A) Citric Acid (B) Glucose (C) Starch (D) Maltose
E	2.	69. Which technique has been possible only after development of recombinant DNA Technology: (A) DNA Fingerprinting (B) Monoclonal antibody production (C) Fermentation (D) Vaccination
F	3.	82. The largest beach in India is in (A) Kerala (B) Goa (C) Tamil Nadu (D) West Bengal
	4.	98. $2 \times (3+4)$ is equal to: (A) $(3 \times 4) + 2$ (B) $(2 \times 4) + 3$ (C) $(3 \times 2) + 4$ (D) $(2 \times 3) + (2 \times 4)$
G	5.	107. Which term comes next in the series YEB, WFD, UHG, SKL? (A) QGL (B) TOL (C) QNL (D) QOL
	6.	111. If dust is called air, air is called fire, fire is called water, water is called colour, colour is called rain and rain is called dust, then where do fish live? (A) Fire (B) Water (C) Colour (D) Dust
	7.	119. Arrange in the logical sequence 1) Butterfly 2) Cocoon 3) Egg 4) Worm (A) 1,3,4,2 (B) 1,4,3,2 (C) 2,4,1,3 (D) 3,4,2,1
	8.	124. Given the statements - “No fruit is tree. All flowers are trees”, which one of the following is correct? (A) No fruit is flower (B) Some trees are flowers (C) All flowers are fruits (D) None of these

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9.	125. Given the statements: All windows are doors and no door is wall. (A) No window is wall (B) No wall is door (C) Some windows are walls (D) None of these.
10.	135. How many minimum steps are necessary to change the word 'SLEEP' into 'DREAM'? You have to change one letter at a time and all changes should result in a meaningful word. (A) 5 (B) 4 (C) 6 (D) 7

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13. The report of the Committee of four Experts - Dr. S.K. Srivastava, Professor (Retired), PG Deptt. of Zoology, Patna University, Patna & Former Vice Chancellor, Patna University, Patna; Dr. L.N. Ram, Professor (Retired) PG Deptt. of Geography, Patna University, Patna & Former Vice Chancellor, Patna University, Patna; Dr. Binod Kumar Pandey, Prof. & Head, PG Deptt. of Statistics, Patna University, Patna and Dr. Balgangadhar Prasad, Professor (Retired), PG Deptt. of Mathematics, Patna University, Patna & Co-opted Member, was set out in the common report dated 04.11.2019. The summary of the extract (of the answers to the questions) is set out below:

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"The answer to the question by the Expert Committee against the order dated 25.09.2019 passed by Hon'ble Supreme Court in the SLP (C) No. 23202-23204/2015 with SLP (C) No. 29764-29765/2015, SLP (C) No. 30109/2016 is below:

Srl. No.	Q. No.	Correct Answer	E
1.	61	B	
2.	69	A	
3.	82	C	
4.	98	D	F
5.	107	<i>No option is correct</i>	
6.	111	D	
7.	119	D	
8.	124	A	G
9.	125	<i>Two options are correct</i>	
10.	135	C	

The explanation is given on separate pages."

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- A 14. The report also contains detailed reasoning in justification of the answers, determined to be correct according to the experts. The detailed reasoning too is in a common document, prepared unanimously by four experts.
- B 15. It is argued on behalf of the BSSC that the process of selection in the present case is very complex as altogether 3285 vacancies in 21 posts requiring different qualifications under various departments were notified, and recommendations had been sent by the commission long ago in the year 2013, in compliance with the judgment passed in the writ petition. The recommendations were made on the basis of merit cum choice and suitability of a candidate for a particular post.
- C 16. It is thus argued that any modification in the result, in compliance with the order passed in the impugned judgment or in terms of the report of the committee, would result in administrative chaos as well as in "*a tsunami of litigation*". The exercise would drastically alter the final result, and not only a large number of candidates recommended, selected and appointed would be ousted but it would also result in alteration in service and *inter-se* seniority position of a large number of candidates already appointed and working for the past six years. It is stated that even confining the result to the candidates who were in litigation before the High Court or this court will not help, as candidates who had not
- D claimed revision of result will, on the principles of parity, claim appointment and those already appointed will claim change in services as per their revised merit position and /or *inter-se* seniority in the services.
- E 17. It is submitted that initially this court by order dated 28.09.2015 directed BSSC to work out the impugned judgment and show the likely result therein. Pursuant to that order, the BSSC filed additional affidavits dated 24.09.2015 and 28.10.2015. After considering them, this court by its order dated 31.10.2015 issued notice and stayed the impugned judgment. The effect of change of result could well be anticipated from the following data indicated in the two additional affidavits (with regard to only four questions):
- F (a) 249 candidates will have to be removed from service and similar number of candidates will be eligible for appointment.
- G (b) If 249 candidates are to be retained, as directed by the High Court, then to give appointment to 249 new candidates and to maintain reservation roster, 688 additional posts will be required.
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(c) It is submitted that this will further result in change of posts/services of 1162 candidates already appointed and if they have to be retained at their old posts, then a total of 3362 posts will be required.

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18. It is argued that now if the recommendation of the committee of experts is implemented, then around 3000 to 6000 additional posts, in addition to those already advertised, would be required to be created to absorb the effect of alteration of result. It is urged that to avoid litigation and administrative chaos, in the light of the judgment of this court in *Ran Vijay Singh vs State of UP*², it may be directed that the result published, recommendation sent and appointments made on the basis of the judgment of the learned single judge should not be interfered with. In *Ran Vijay Singh (supra)*, this court held that:

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“31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing revaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are 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. This Court has shown one way out of an impasse — exclude the suspect or offending question.”

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19. The tabular comparative statement for the answers according to the experts appointed under directions of this court, and the relative claim of the candidates, is extracted below:

Tabular comparative statement of the results of disputed questions

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S.No.	Questions which are in issue	BSSC's opinion	SJ	DB	SC experts	Candidates claim
1.	61. The primary product of Photosynthesis is (A) Citric Acid (B) Glucose (C) Starch (D) Maltose	(B) (Pg. 255)	(B) (Pg. 2)	(B)		(C)
2.	69. Which technique has been possible only after development of recombinant DNA technology: (A) DNA Fingerprinting (B) Monoclonal antibody production (C) Fermentation (D) Vaccination	(D)	(D) (Pg. 190)	(A) (Pg. 43)	(A)	(A)

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A	3. 82. The largest beach in India is in (A) Kerala (B) Goa (C)Tamil Nadu (D) West Bengal	Delete (Pg. 248)	Delete (Pg.44)	Delete (Pg.44)	(C)	(C)
	4. 98. $2 \times (3+4)$ is equal to: (A) $(3 \times 4) + 2$ (B) $(2 \times 4) + 3$ (C) $(3 \times 2) + 4$ (D) $(2 \times 3) + (2 \times 4)$	(A&D)	(A&D) (Pg. 190 & 242)	(D) (Pg.45)	(D)	(A & D)
B	5. 107. Which term comes next in the series YEB, WFD, UHG, SKL? (A) QGL (B) TOL (C)QNL (D) QOL	(D)	(D) (Pg. 257)	Delete (Pg.46)	Delete	Delete
	6. 111. If dust is called air, air is called fire, fire is called water, water is called colour, colour is called rain and rain is called dust, then where do fish live? (A) Fire (B) Water (C)Colour (D) Dust	Delete (Pg.194, 243 & 256)	Delete (Pg.47)	(C)	(D)	(C)
C	7. 119. Arrange in logical sequence: 1) Butterfly 2) Cocoon 3) Egg 4) Worm (A) 1,3,4,2 (B) 1,4,3,2 (C) 2,4,1,3 (D) 3,4,2,1	(A&D)	A&D (Pg.242)	Not pressed	(D)	(A&D) (Pg.95 Gr.I)
	8. 124. Given the statements - "No fruit is tree. All flowers are trees", which one of the following is correct? (A) No fruit is flower (B) Some trees are flowers (C)All flowers are fruits (D) None of these.	(A)	(A) (Pg. 257)	(A) (Pg.47)	(A)	(A&B) (Pg. 95 Gr. J)
D	9. 125. Given the statements: All windows are doors and no door is wall. (A) No window is wall (B) No wall is door (C)Some windows are walls (D) None of these.	(A)	(A) (Pg.257)	(A) (Pg.48)	(A&B) Delete	(A&B) (Pg. 96 Gr.K)
E	10. 135. How many minimum steps are necessary to change the word 'SLEEP' into 'DREAM'? You have to change one letter at a time and all changes should result in a meaningful word. (A) 5 (B) 4 (C)6 (D) 7	(A)	Not pressed	Not pressed	(C)	(B)

- It is evident that the experts appointed by this court have recommended that two questions (at S. Nos. 5 and 9) should be deleted for the purpose of evaluation, because of defective or ambiguous (i.e. more than one) answers. It is a matter of record that one set of petitioners F approached the High Court, complaining of arbitrariness in the declaration of results, as a consequence of defective evaluation. Before they had approached the court, the BSSC had undertaken the exercise of submitting the results to expert evaluation, and then revised the key answers, deleting (from consideration) certain questions. The exercise was undertaken again by the BSSC, which complied with the single judge's directions. G As a result of that exercise, several candidates were appointed. The Division bench, regrettably, in the context of appeals by candidates who had been originally selected, who questioned the decision of the board to have the re-evaluation, questioned the revised merit list. Others who had approached the Division Bench were those who were excluded H from selection, after the single judge's decision.

20. This court reiterates that the scope of judicial review under Article 226 in matters concerning evaluation of candidates-particularly, for purpose of recruitment to public services is narrow. The previous decisions of the court³; have constantly underscored that in the absence of any provision for re-evaluation of answer sheets, judicial review should be rarely exercised - preferably under exceptional circumstances. A three judge Bench of this court, in *Pramod Kumar Srivastava (supra)* held as follows:

"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."

In *Khushboo Srivastava (supra)* too, a similar view was echoed:

*"7. We find that a three-Judge Bench of this Court in *Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, Patna and Ors. (supra)* has clearly held relying on *Maharashtra State Board of Secondary and Higher Secondary Education and Anr. v. Paritosh Bhupeshkumar Sheth and Ors. (supra)* that in the absence of any provision for the re-evaluation of answers books in the relevant rules,*

³ *Maharashtra State Board of Secondary and Higher Secondary Education and Another v. Paritosh Bhupeshkumar Sheth & Ors* (1984) 4 SCC 27; *Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, Patna & Ors.* (2004) 6 SCC 714; *Board of Secondary Education v. Pravas Ranjan Panda* (2004) 13 SCC 383; *Himachal Pradesh Public Service Commission v. Mukesh Thakur & Anr* (2010) 6 SCC 759; *Gangadhara Palo v. Revenue Divisional Officer & Anr.* (2011) 4 SCC 602; *Central Board of Secondary Education Through Secretary, All India Pre-Medical/Pre-Dental Entrance Examination & Ors. v. Khushboo Srivastava & Ors* (2014) 14 SCC 523 and *Ran Vijay Singh & Ors. v. State of Uttar Pradesh & Ors* (2018) 2 SCC 357.

- A *no candidate in an examination has any right to claim or ask for re-evaluation of his marks. The decision in Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, Patna and Ors. (supra) was followed by another three-Judge Bench of this Court in Board of Secondary Education v. Pravas Ranjan Panda and Anr. (2004) 13 SCC 383 in which the direction of the High Court for re-evaluation of answers books of all the examinees securing 90% or above marks was held to be unsustainable in law because the regulations of the Board of Secondary Education, Orissa, which conducted the examination, did not make any provision for re-evaluation of answers books in the rules.*
- B *8. In the present case, the bye-laws of the All India Pre-Medical/Pre-Dental Entrance Examination, 2007 conducted by the CBSE did not provide for re-examination or re-evaluation of answers sheets. Hence, the Appellants could not have allowed such re-examination or re-evaluation on the representation of the Respondent No. 1 and accordingly rejected the representation of the Respondent No. 1 for re-examination/re-evaluation of her answer sheets. The Respondent No. 1, however, approached the High Court and the learned Single Judge of the High Court directed production of answer sheets on the Respondent No. 1 depositing a sum of Rs. 25,000/- and when the answer sheets were produced, the learned Single Judge himself compared the answers of the Respondent No. 1 with the model answers produced by the CBSE and awarded two marks for answers given by the Respondent No. 1 in the Chemistry and Botany, but declined to grant any relief to the Respondent No. 1. When Respondent No. 1 filed the LPA before the Division Bench of the High Court, the Division Bench also examined the two answers of the Respondent No. 1 in Chemistry and Botany and agreed with the findings of the learned Single Judge that the Respondent No. 1 deserved two additional marks for the two answers. In our considered opinion, neither the learned Single Judge nor the Division Bench of the High Court could have substituted his/its own views for that of the examiners and awarded two additional marks to the Respondent No. 1 for the two answers in exercise of powers of judicial review*
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under Article 226 of the Constitution as these are purely academic matters. This Court in Maharashtra State Board of Secondary and Higher Secondary Education and Anr. v. Paritosh Bhupeshkumar Sheth and Ors. (supra) has observed:

... As has been repeatedly pointed out by this Court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded....

9. *We, therefore, allow the appeal, set aside the impugned judgment of the learned Single Judge and the Division Bench of the High Court and dismiss the writ petition. There shall be no order as to costs. We are informed that the first Respondent was admitted to the MBBS Course subsequently. If so, her admission in the MBBS Course will not be affected.*

21. The decision in *Ran Vijay Singh* (supra f.n.2), after a review of all previous decisions, held as follows:

"30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are: (i) 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;

(ii) 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

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- A *of rationalisation" and only in rare or exceptional cases that a material error has been committed;*
(iii) *The Court should not at all re-evaluate or scrutinize the answer sheets of a candidate-it has no expertise in the matter and academic matters are best left to academics;*
- B (iv) *The Court should presume the correctness of the key answers and proceed on that assumption; and*
(v) *In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.*
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32. *It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the Courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the Court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a classic example of the consequence of such interference where there is no finality to the result of the examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination-whether they have passed or not; whether their result will be approved or disapproved by the Court; whether they will get admission in a college or University or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion*
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being worse confounded. The overall and larger impact of A all this is that public interest suffers.”

22. Given the clear declaration of law in the judgments of this court, we are of the opinion that the unilateral exercise of re-valuation undertaken by the High Court (both by the single judge and the Division Bench) has not solved, but rather contributed to the chaos. No rule or regulation was shown by any party during the hearing, which justified the approach that was adopted. The BSSC, in our opinion, acted correctly in the first instance, in referring the answers to a panel of experts. If there were justifiable doubts about the recommendations of that panel, the least that should have been done, was to require the BSSC to refer the disputed or doubtful questions to another expert panel. That was not done; the “corrections” indicated by the single judge were accepted by the BSSC; several candidates who made it to the select list freshly drawn up pursuant to his directions, were appointed. The Division Bench, thereafter undertook the entire exercise afresh, compounding the matter further by not referring the disputed questions to any panel of experts. We are left reiterating the lament, (made in *Ran Vijay*) that the High Court’s interference has not resulted in finality “*to the result of the examinations*” despite a long lapse of time. There is an air of uncertainty about the entire selection - nay, the entire cadre, because the *inter se* seniority of selected (and appointed) candidates is in a state of flux.

23. As noticed earlier, the committee of experts appointed by this court has made its recommendations. Since the exercise indicates that the previous re-evaluations (by the single judge and the division bench- both made in the absence of expert recommendations) are not correct or accurate, as an exceptional case, we propose to accept them. This approach of ours is in tune with a recent judgment of this court in *Pranav Verma v. Registrar General of High Court of Punjab & Haryana*⁴, where the court accepted the recommendations of a single member committee and directed revision of results in a public examination, relating to recruitment of candidates to judicial service.

24. As a result of the above discussion, the BSSC is directed to evaluate and publish the results afresh, in the light of the recommendations and report of the experts (constituted by this court) subject to care being taken by the BSSC and the Govt. of Bihar, not to disturb appointments made previously pursuant to the directions of the single judge. In case

⁴ 2019 SCC Online SC 1610

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- A the number of selected candidates (on the basis of the revised result) exceeds the vacancies available as on the last date indicated for consideration (in the concerned recruitment or recruitments), the state of Bihar would accommodate the excess numbers in the relevant cadres as against future vacancies arising till 31.12.2019. This court is hereby
 - B making these directions to put a quietus on the dispute, in exercise of its extraordinary powers under Article 142 of the Constitution of India.
- 25.** For the foregoing reasons, the impugned judgment of the Patna High Court, as well as the judgment of the single judge are hereby set aside; the appeals are disposed of in the above terms without order on costs.

Ankit Gyan

Appeals disposed of.