

Patna High Court

Bhupendra Kumar & Anr vs The State Of Bihar & Ors on 12 September, 2008

Author: S.K.Katriar

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CIVIL WRIT JURISDICTION CASE No.7725 OF 2005
(In the matter of applications under Article 226
of the Constitution of India)

SUNIL KR. SINHA & ORS -----Petitioners
Versus
THE STATE OF BIHAR & ORS-----Respondents

with
CWJC No.7505 of 2005
BIRENDER KUMAR TEWARI & ORS-----Petitioners
Versus
THE STATE OF BIHAR & ORS-----Respondents
With
CWJC No.7263 of 2005

SUBODH KUMAR VERMA-----Petitioner
Versus
THE CHAIRMAN,B.P.S.C. & ORS-----Respondents
With
CWJC No.8552 of 2005

SHREE KANT KUMAR-----Petitioner
Versus
THE STATE OF BIHAR & ORS-----Respondents
with
CWJC No.7041 of 2005

JAI PRAKASH YADAV & ORS-----Petitioners
Versus
THE STATE OF BIHAR & ORS-----Respondents
with
CWJC No.8032 of 2005

NIRANJAN PRASAD MANDAL & ORS-----Petitioners
Versus
THE STATE OF BIHAR & ORS-----Respondents
with
CWJC No.15412 of 2005

SARAS KUMAR-----Petitioner
Versus
THE STATE OF BIHAR & ORS-----Respondents
with
CWJC No.8573 of 2005

MAHENDRA KUMAR VERMA-----Petitioner
Versus
THE STATE OF BIHAR & ORS-----Respondents
with

CWJC No.7386 oF 2005
SHANKAR DAYAL UPADHYAY & ORS-----Petitioners
Versus
THE STATE OF BIHAR & ORS-----Respondents
with
CWJC No.7390 oF 2005
SHARMILA SINHA-----Petitioner
Versus
THE B.P.S.C. & ORS-----Respondents
With
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CWJC No.10243 oF 2005
BHUPENDRA KUMAR & ANR-----Petitioners
Versus
THE STATE OF BIHAR & ORS-----Respondents
With
CR. WJC No.583 oF 2007
PAWAN KUMAR SINGH & ANR-----Petitioners
Versus
THE STATE OF BIHAR & ORS-----Respondents
with
CWJC No.16093 oF 2007
KRISHNA NANDAN SAW & ORS-----Petitioners
Versus
THE STATE OF BIHAR & ORS-----Respondents

In CWJC No.7725 of 2005 For The Petitioners : Mr. Vikas Kumar For respondent nos.1 & 2 : Mr. S K Ghosh, AAG II : Mr. Rajesh Kumar Singh,JC For respondent nos.3 to 5, And 7 : Mr. Ashok Kumar Choudhary : Mr. Sanjay Pandey For the Vigilance : Mr. Rakesh Kumar Government Advocate No.IX For respondent nos.8 to16: Mr.Tarakant Jha,Sr.Advocate : Mr. Ravindra Priyadarshi In CWJC No.7505 of 2005 For the Petitioners : Mr.Chittaranjan Sinha, Sr. Advocate : Mr. Mr. Sanjeet Kumar For the State : Mr.Rajesh Kumar Singh,JC to AAG II For the BPSC : Mr. Sanjay Pandey For the Vigilance : Mr. Rakesh Kumar,GA IX In CWJC No.7263 of 2005 For the Petitioners : Mr. Sanjay Kumar Verma For the State : Mr. Rajesh Kumar Singh,JC to AAG II For the BPSC : Mr. Sanjay Pandey For the Vigilance : Mr. Rakesh Kumar, GA IX In CWJC No.8552 of 2005 For the Petitioner : Mr. Rajeev Kumar Singh For the State : Mr. Rajesh Kumar Singh,JC to AAG II For the BPSC : Mr. Sanjay Pandey For the Vigilance : Mr. Rakesh Kumar, GA IX In CWJC No. 7041 of 2005 For the Petitioners : Mr.Rajendra Prasad Singh Senior Advocate For the State : Mr.Rajesh Kumar Singh,JC to AAG II For the BPSC : Mr.Sanjay Pandey For the Vigilance : Mr.Rakesh Kumar, GA IX 3 In CWJC No.8032 of 2005 For the Petitioners : Mr. Rama Nand Poddar For the State : Mr. Rajesh Kumar Singh,JC to For the BPSC : Mr. Sanjay Pandey For the Vigilance : Mr. Rakesh Kumar, GA IX In CWJC No.15412 of 2005 For the Petitioner : Mr.Anil Kumar Sinha For the State : Mr.Rajesh Kumar Singh,JC to For the BPSC : Mr.Sanjay Pandey For the Vigilance : Mr.Rakesh Kumar,GA IX In CWJC No. 8573 of 2005 For the petitioner : Mrs.Neelam Kumari For the State : Mr. Rajesh Kumar,JC to AAG II For the BPSC : Mr. Sanjay Pandey For the Vigilance : Mr. Rakesh Kumar,GA IX In CWJC No.7386 of 2005 For the Petitioners : Mr. Mahesh Narayan Parbat For the State : Mr. Rajesh Kumar Singh,JC to AAG II For the BPSC : Mr. Sanjay Pandey For the Vigilance : Mr. Rakesh Kumar, GA IX

In CWJC No.7390 of 2005 For the Petitioner : None For the State : Mr. Rajesh Kumar Singh,JC to AAG II For the BPSC : Mr. Sanjay Pandey For the Vigilance : Mr. Rakesh Kumar,GA IX In CWJC No. 10243 of 2005 For the Petitioner : Mr. Vivek Prasad For the State : Mr. Rajesh Kumar Singh,JC to AAG II For the BPSC : Mr. Sanjay Pandey For the Vigilance : Mr. Rakesh Kumar,GA IX In CrWJC No.583 of 2007 For the Petitioners : None For the State : Mr.Amrendra Kumar JC to AAG IV For the Vigilance : Mr. Rakesh Kumar In CWJC No. 16093 of 2007 For the Petitioners : Mr. Rajeev Kumar Verma Senior Advocate Mr. Ranjeet Kumar For the State : Mr.Rajesh KumarSingh,JC AAG II For the Vigilance : Mr. Rakesh Kumar,GA IX ***** 4 P R E S E N T THE HON'BLE MR.JUSTICE SUDHIR KUMAR KATRIAR S K Katriar, J. This is a batch of 13 writ petitions under Article 226 of the Constitution of India, questioning the validity of the selection process of the Bihar Administrative Service First Limited Competitive Examination 2003 (hereinafter referred to as `the Selection Process`), conducted by the Bihar Public Service Commission (hereinafter referred to as `BPSC'). All the writ petitions (except Cr.WJC No.583 of 2007 and CWJC No.16093 of 2007) have been preferred by unsuccessful candidates, some of whom want cancellation of the selection process from the stage of the advertisement, some other want the selection process from the post-advertisement stage and fresh examination to be held, and still others want the selection process to be upheld and preparation of fresh merit list in accordance with law after excluding the charge-sheeted candidates. Cr.WJC No. 583 of 2007 has been preferred by the successful candidates and pray for the direction that the investigation may be concluded expeditiously. CWJC No.16093 of 2007 has been preferred by some of the successful candidates and pray that they may be appointed after eliminating the charge-sheeted candidates. The representative facts shall be taken from CWJC No.7725 of 2005 (Sunil Kumar Sinha vrs. State of Bihar & Others), except where facts by specific reference is derived from any other writ petition.

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2. In exercise of the powers conferred by Article 309 of the Constitution of India, the Bihar Government framed the Bihar Administrative Service (Appointment by Limited Competitive Examination) Rules 1991 (hereinafter referred to as the Rules) (Annexure A, at page 79), published in the Bihar Gazette, dated Patna 19 January 1994, Part II. In substance it provides that upto maximum of 25% of Class II posts filled up by the direct competitive examination held by BPSC, shall be selected from amongst the existing class III employees of the State Government on the basis of a limited competitive examination to be conducted by BPSC. In view of rule 12, eligible persons shall be entitled to appear at the examination and will be considered against the vacancies from 1982 to 1991. The period 1982 to 1991 has been substituted by the period 1982 to 1998 by Government Notification dt.27.6.2000 (Annexure D), issued in the name of the Governor of Bihar, published in the Bihar Gazette Extra-ordinary Issue, Patna, dated 8.9.2000. In other words, the Rules provide for promotion opportunities to the serving class III employees of the State Government to the gazetted ranks of the Bihar Government with detailed terms and conditions of vacancies, eligibility, mode and manner of selection process to be conducted by BPSC, etc.

3. The State Government sent its requisition to BPSC to conduct the limited examination as per the Rules. BPSC accordingly issued the advertisement (Annexure 1), which was published in the local dailies on 21.5.2003. Altogether 4364 applications were received, 1754 applications were rejected,

and the 6 remaining 2610 candidates appeared at the limited examination held on 19.10.2003. The results were published in the local dailies on 20.5.2005(Annexure 1 to CWJC No.7505 of 2005), publishing the results of 184 successful candidates. It was followed by a corrigendum published in the local dailies on 24.5.2005 (Annexure 4 of CWJC No.8573 of 2005). The State Government had received the letter of recommendation dt.24.5.2005 of BPSC on 29.5.2005.It was a list of recommendation of 184 Class III employees prepared in order of merit, for appointment to Class II service.

4. This was followed by the present writ petition lodged in this Court on 5.7.2005, followed by other writ petitions. By order dated 11.7.2005, passed in the analogous CWJC No.7041 of 2005, the appointments were to be made subject to the result of the case. This was followed by the order dated 24.10.2005, passed in CWJC No. 7725 of 2005. ".....Let it be clarified that the State Government should desist from taking any step which will render the present batch of writ petitions either infructuous or troublesome for the successful party....." The State Government has not so far made any appointment/promotion from the aforesaid merit list.

5. By the same order of 24.10.2005, learned counsel for the BPSC was directed to make available for the inspection and perusal of the learned counsel for the parties in all the writ petitions the original records relating to recommendations of the Commission in the present matter, which took place. This was followed by the order dated 21.11.2005, whereby BPSC 7 was directed to make available the answer books of all the petitioners as well as the successful candidates for inspection of the learned counsel for the parties appearing in this batch of writ petitions in the High Court on 5.12.2005 and 6.12.2005. The order was not carried out and BPSC instead filed an interlocutory application for modification of the said order dated 21.11.2005, praying therein that the Commission has no objection to production of the answer books for perusal of the Court only and the order may accordingly be modified. During the course of submissions with respect to the interlocutory application of BPSC, learned Additional Advocate General II appeared with the Deputy Superintendent of Police (Vigilance), and produced a copy of Govt. Order dated 7.12.2005, issued under the signature of the Addl. Director General of Police, Cabinet (Vigilance), constituting a team of the functionaries under him for investigation of the allegations of gross irregularities and corruption with respect to the Selection Process which is the subject matter of the present proceedings. Learned AAG II further informed the Court that the team visited the premises of the Commission that day (7.12.2005) at 12.30 p.m., and was camping there when the order dt. 7.12.2005 was being dictated at 3.08 p.m. He further submitted that the functionaries of BPSC were not allowing the team to investigate the allegations, and were not being allowed to seize the documents because of pendency of the present proceedings and the said order dated 21.11.2005. The submission of the learned counsel for BPSC in his own words was incorporated as follows in 8 the order dated 7.12.2005, and is reproduced hereinbelow:-

"The Commission will be co-

operating in the entire process of the investigation but the only request is that till the matter is sub-judice, the Vigilance Department will not seize the answer books."

(Emphasis added)

6. The submission was rejected. The Court proceeded to direct stay of operation of the aforesaid order of this Court of 21.11.2005, whereby BPSC had been directed to produce the answer books for inspection of the learned counsel for the parties. The Commission and its functionaries were directed to extend full co-operation to the Vigilance Department for the purpose of investigation, and pendency of the batch of writ petitions shall not come in its way. The team shall be entitled to seize any document or answer book that it deemed fit in exercise of its powers of investigation. This Court placed reliance on the judgment of the Supreme Court in the cases of King Emperor vs. Khwaja Nazir Ahmad (AIR 1945 Privy Council

18), as well as State of Bihar vs. J.A.C. Saldhana (1980 Vol. I SCC 554). This batch of writ petitions were placed periodically before this Court with a view to monitor the investigation. The Addl. Director General of Police (Vigilance) submitted the progress report of investigation in sealed cover on every occasion.

7. The Cabinet (Vigilance) Department of the Government of Bihar proceeded with the investigation, seized all the answer books and other documents for the purpose of investigation leading to arrest of the following persons:-

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- i) Dr. Ram Singhasan Singh
Chairman of BPSC
- ii) Dr. Sheo Balak Choudhary
Member of BPSC
- iii) Dr. Deo Nandan Sharma
Member of BPSC
- iv) Syed Masum Ali
Member of BPSC
- v) Smt. Razia Tabassum
Previous Chairman of BPSC
- vi) Six officials and staff of BPSC
- vii) 17 successful candidates
- viii) Dr. Subodh Kumar, a Doctor in Animal

Husbandry Department, Govt. of Bihar, who acted as go-between.

Altogether 29 persons were arrested during the course of investigation. Altogether 109 persons have been charge-sheeted, out of whom 97 are successful candidates, described elsewhere in the judgment as beneficiaries, and have found their way into the merit list comprising of 184 persons.

8. During the pendency of the present proceedings and ongoing investigation, some of the successful candidates preferred three Criminal Writ Petitions in this Court which were ultimately disposed of with certain directions. By the order dated 19.6.2006, passed in Cr.WJC No. 380 of 2006 (Mod.

Farooquzzaman & Others vs. State of Bihar), a learned single Judge stayed further arrests during the course of investigation. It is of immense importance to point out that the learned single Judge also observed that "... I do not find any reason to hold that investigation is being done with any malice...". By the order dated 13.10.2006, passed in Cr.WJC No. 592 of 2006 (Md. Farooquzzama & Others vs. The State of Bihar), and the analogous Cr.WJC No.608 of 2006 (Sheoyogi Singh vs. The State of Bihar), the learned single Judge finalised the questionnaire for the use 10 of the investigating agency to elicit informations from suspected persons during the course of investigation. The investigation made little progress after the orders were passed in the three criminal writ petitions and the investigation agency felt helpless. It ultimately submitted charge-sheets against 109 persons, out of whom 97 are successful candidates who have found their way into the merit list comprising of 184 persons, and is now pending trial before the learned Special Court (Vigilance), Patna. The matter now comes up for final disposal of the writ petitions. In view of the common issues involved in the writ petitions, the same are being disposed of by a common judgment.

CWJC No. 7725 of 2005

9. This writ petition has been preferred by four petitioners who had appeared in the examination but were not included in the merit list. The merit list (Annexure 1, at page 28 of CWJC No.7505 of 2005), prepared by BPSC and forwarded to the State Government, recommended appointment by promotion of 184 persons. By order dated 2.7.2008, a few successful candidates have been impleaded as respondent nos. 8 to 16 herein. Respondent nos. 1 and 2 are the State of Bihar and its functionaries, respondent nos. 3 to 5 and 7 are BPSC and its functionaries, and respondent no. 6 is the Vigilance Investigation Bureau, Govt. of Bihar, through Additional Director General of Police (Vigilance). Respondent nos. 8 to 16 are successful candidates and three of them, namely, respondent no.10 (Prem Shankar Yadav), respondent no.12 (Mohd. Sagiuddin Ahmad), and respondent no. 13 (Kapildeo 11 Prasad Yadav) are charge-sheeted employees. Though CWJC No.7725 of 2005 was initially preferred with the prayer to cancel the results and direct the respondent authorities to hold fresh examination in accordance with law, learned counsel for the petitioners during the course of oral submissions, has modified the relief prayed for and submitted that the existing selection process may not be scrapped altogether and the results may be revised after excluding the charge- sheeted employees because tainted answer books and the candidates have been identified. He submits that altogether 184 vacancies have to be filled up and 97 successful candidates have been charge-sheeted. It is submitted that the remaining candidates have been found to be unblemished and, therefore, the present results may be set aside with the direction to prepare a fresh list on the basis of the examination already conducted. He has, inter alia, submitted that the vacancies have remained unfilled since 1992, and some or many of the candidates would be retiring soon. He has relied on a number of reported judgments.

10. Learned counsel for respondent nos. 1 and 2 has submitted that the petitioners cannot be permitted to alter the reliefs prayed for in the writ petition without amendment of pleadings. He has further submitted that the examination as well as the results may be set aside. However, fresh selection process may be directed to be published as per the present advertisement (Annexure 1). He has relied on diverse circumstances, set out in detail in the supplementary counter affidavit on

behalf of respondent no. 6, that the selection process from the 12 very beginning is not in accordance with law and is vitiated.

11. Learned counsel for BPSC has submitted that they are not in a position to comment on the fairness or otherwise of the selection process and shall abide the result of the writ petitions.

12. Respondent no.6 has placed on record its counter affidavit indicating the latest position as well as the details which have emerged during the course of investigation culminating in the charge-sheets. It is submitted that the entire examination was vitiated ever since the stage of screening of the applications and, therefore, fresh examination is imperative.

13. Learned counsel for respondent nos. 8 to 16 has submitted that the tainted candidates have been identified and charge-sheeted. The rest are unblemished and, therefore, the present merit list may be set aside and a revised list may be prepared. He has submitted that respondent nos.10, 12 and 13 have been charge-sheeted and, therefore, their cases along with other charge-sheeted employees may be excluded from fresh consideration. He has relied on the order dated 11.7.2005, passed in CWJC No. 7041 of 2005, whereby it was directed that "...Meanwhile appointments made will be subject to the result of the case."

CWJC No. 7505 of 2005

14. This writ petition has been preferred by 17 unsuccessful candidates. Respondent nos.1, 2, and 3 are State of Bihar and its functionaries, respondent nos.4, 5, and 7 are BPSC and its functionaries, and 13 respondent no.6 is the Vigilance Investigation Bureau. Learned counsel for the petitioners has submitted that the present merit list may be quashed and a revised list may be prepared as per rule 5 after excluding the charge-sheeted candidates. He further submits that the results had to be published batch-wise, i.e. 25% of the total number of seats of a particular batch of direct recruits. In his submission, BPSC has committed the gross error of publishing a combined merit list which has no nexus with a particular batch. He relies on the following reported judgments:

(i) AIR 1967 SC 1910 (Sant Ram vs.State of Rajasthan)

(ii)(1999) 3 PLJR 255 (Ashok Kumar vs. The Union of Inida)

(iii)(2003) 7 SCC 285 (Para 6) (Union of India vs. Rajesh P.U.,Puthuvalnikathu & Another)

(iv)(2008) 3 PLJR 271 (Dhananjay Malik vs.State of Uttaranchal)

v) 2008(1) PLJR 623 (Paras. 3 & 4) (State of Bihar vs.Pramod Kumar) He lastly submits that rule-12 stipulates that the vacancies between 1982 to 1991 shall be filled up by the first limited competitive examination under the Rules. The same was issued in terms of Article 309 of the Constitution. He submits that the same has been amended by administrative instructions bearing Notification dated 27.6.2000,

published in the Bihar Gazette Extra-ordinary of 8.9.2000, and is ultra vires. He relies on the judgment of a Division Bench of this Court in the case of Patna High Court Ministerial Officers Association vs.State of Bihar, reported in 1990 PLJR 446.

15. Learned counsel for the official respondents have taken just the same stand as in CWJC No.7725 of 2005.

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CWJC No. 7263 of 2005

16. The sole petitioner is an unsuccessful candidate and has preferred this writ petition with the prayer to set aside the results of the limited examination and re-publish the results after excluding the charge-sheeted candidates. BPSC should not have published a combined merit list and should have instead published it having nexus with a particular batch of direct recruitment by BPSC. He also submits that the candidates who have been allocated to the State of Jharkhand should be excluded from consideration. He further submits in the alternative that a fresh selection process may commence and the non-charge sheeted employees may be allowed to appear without the age bar operating against them.

CWJC No. 8552 of 2005

17. The sole petitioner is an unsuccessful candidate and seeks cancellation of the entire selection process from the stage of advertisement, and prays for fresh advertisement in accordance with law after taking into account the provisions of reservation for handicapped persons in terms of the Persons with Disabilities (Equal opportunities, Protection of rights, and Full participation) Act 1995 (hereinafter referred to as the Disabilities Act). The petitioner claims to be a handicapped person, participated in the selection process, was unsuccessful but is not a charge-sheeted employee. He next submits that the first advertisement published on 21.5.2003, leading to the present selection process, as well as the second advertisement published in the local dailies on 25.5.2005 which has not made any 15 headway, may be set aside for the same reasons, and prays for republication of fresh advertisement in accordance with law.

18. The State of Bihar has not filed counter affidavit in this case and has not, inter alia, answered the question whether or not the second advertisement be cancelled.

19. BPSC has filed a counter affidavit wherein it is stated that the advertisements are published in accordance with the requisition made by the State Government. In view of the position that the State Government did not make any stipulation in its two requisitions for reservation for handicapped persons, such a provision was not incorporated in the two advertisements. Learned counsel for the State submitted that having participated in the selection process, he cannot challenge it on the ground of reservation. He relies on the following reported judgments:-

(i) 1986 (Supp) SCC 285 (Om Prakash Shukla vs. Akhilesh Kumar Shukla)

(ii) (1995) 3 SCC 486 (Madanlal vs. State of Jammu & Kashmir)

20. The remaining respondents have taken the same stand as in the first writ petition.

CWJC No.7041 of 2005

21. Six persons have preferred this writ petition who had participated in the selection process and could not find their way to the merit list. According to them, they have not been charge-sheeted. Learned counsel for the petitioners submits that the entire selection process from the stage of written 16 examination be set aside. He has pointed out a number of defects thereto including the requirement to write with pencil which was purposive so that the writings should be altered. He has submitted that the criminal intent had commenced soon after the advertisement was published and the very format for the written papers prescribed by the Rules was changed.

22. The respondents have taken the same stand as in the first writ petition.

CWJC No. 8032 of 2005

23. Four persons have preferred this writ petition who had participated in the selection process, could not find their way to the merit list and prayed that the same may be cancelled and a fresh revised list may be prepared after allotting 21 posts to the reserved category of Scheduled Tribe as stipulated in the advertisement. The four petitioners are members of Scheduled Tribe and complain that the same was reduced from 21 to 5 posts.

24. Learned counsel for the State of Bihar submits that the original advertisement did stipulate that 21 posts should be reserved for members of the Scheduled Tribes, whereas the merit list has allotted only 5 seats to the members of Scheduled Tribe as per the communication of the State Government without issuing the requisite corrigendum to the advertisement. In his submission, if the contention of the petitioners is upheld, then the advertisement will have to be set aside to give way to a fresh advertisement in accordance with law.

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CWJC No. 15412 of 2005

25. The sole petitioner is an unsuccessful candidate and submits that there is no need to set aside the limited examination and prays that the results may be quashed and a revised select list as per the law be published after excluding the charge- sheeted candidates. The respondents have taken the same stand as in the first writ petition.

CWJC No. 8573 of 2005

26. The sole petitioner is an unsuccessful candidate and adopted the arguments advanced by learned counsel for the petitioner in CWJC No. 7041 of 2005. Learned counsel for the respondents have opposed the writ petition on the same lines as in the first writ petition.

CWJC No. 7386 of 2005

27. The five petitioners are unsuccessful candidates and submit that the final result and the recommendation of BPSC may be quashed and a revised list on the basis of the same selection process be prepared as per law after excluding the charge-sheeted employees. He also submits that the amending notification dated 27.6.2000 (Annexure D, at page 86) is fit to be upheld. He also pointed out inclusion of invalid or ineligible candidates in the list, for example, Gopalji Mishra at sl.no.16 of the merit list (Annexure 4), who is an ineligible candidate and could not have been allowed to appear at the examination.

28. Learned counsel for the respondents have adopted the same arguments made by them in the first writ petition. It was submitted that the entire selection process is infected with deep and all- pervasive malaise of illegalities and ulterior motives and the best course is to set aside the whole of it after the stage of advertisement.

CWJC No. 7390 of 2005

29. Learned counsel for the petitioner did not appear to press this writ petition. It appears on a perusal of the same that the petitioner prays for the results to be set aside. It is also stated in paragraph 1(v) that ineligible persons like Krishna Yadav (not in Government service), and Sobha Agrawal, who has not completed ten years in regular Government service, have been selected.

30. Learned counsel for the respondents have adopted the same arguments as in the first writ petition and have submitted that the entire selection process is replete with irregularities and it is difficult to separate the regular candidates from the irregular candidates.

CWJC No. 10243 of 2005

31. The two petitioners have joined this writ petition with a prayer to quash the results and for preparation of fresh select list in accordance with law, inter alia, to be prepared batch-wise after excluding the charge-sheeted candidates.

32. Learned counsel for the respondents have adopted arguments advanced in the first writ petition.

CWJC No. 16093 of 2007

33. This writ petition is by 12 successful candidates all of whom belong to one or the other reserved category, and none is a charge-sheeted candidate. Learned counsel for the petitioners submit that all the successful candidates may be appointed 19 after excluding the charge-sheeted candidates. He next submits that the matter has remained pending for an unduly long time which is manifest from

the advertisement, inasmuch as the earliest cut-off date is 1.8.1986. On account of long lapse of time in such matters, minor deviation from the Rules is permissible, so long the core and the substantial part of the selection process is duly observed, also because many new candidates may in the meanwhile have become eligible. He submits in the same vein that rule-13 of the Rules vests the Government with the requisite authority to take steps for removal of defects which, inter alia, protects the validity of the amending notification. In his submission, therefore, Article 309 of the Constitution is inapplicable in the present case. He relies on the judgment reported in 1993 (3) PLJR 255 (Ashok Kumar vs. The Union of India & Ors.). He next submits that the Rules, particularly rule -12, inter alia, provide that every successful candidate has a right to be appointed. He relies on the judgment of the Supreme Court reported in (1991) 3 SCC 47 (Sankarsan Dash vs. Union of India)(para 12). He next submits that clause- 2 of the amending notification says that there shall be a combined merit list on the basis of a common limited examination. It also provides for seniority after appointment on promotion. He next submits that it is not open to a candidate to challenge a selection process after having appeared at the same. He relies on the following reported judgments:-

(i) AIR 1995 (3) 486)(Para 8) (Madanlal vs.State of Jammu & Kashmir) 20

(ii) AIR 1986 SC 1043 (Para 23) (Om Prakash vs.Akhilesh Kumar)

(iii)2008(3) PLJR 271 (SC) (Dhananjay Malik vs.State of Uttaranchal) The select list has already been approved by the Governor of Bihar. Law is well settled that in case of infirmities in a merit list, the ineligible or tainted candidates may be excluded and the rest may be appointed. He relies on the judgments of the Supreme Court reported in (2003) 7 SCC 285 (Union of India vs. Rajesh P.U.,Puthuvalnikathu), and 1999(2) SCC 573 (Asha Kaul vs. State of Jammu & Kashmir)(Para 7). He next submits on the basis of interpretation of Schedule 5 of the Rules that the prescribed syllabus was followed by BPSC. It nowhere stipulates that the Second Paper shall be of descriptive nature, known in common parlance as Subjective Test. He also submits that BPSC has followed the notification of the State Government of 5.8.1991 (Annexure C to the petitioners' rejoinder), prescribing the minimum qualifying marks for candidates of various categories. In his submission, therefore, no person having secured less than the prescribed minimum qualifying marks has been recommended for appointment. He next submits that no application was received belatedly. He lastly submits that interest of the successful candidates has already been protected by the order dated 24.10.2005, whereby it has been directed that "... let it be clarified that the State Government should desist from taking any step which will render the present batch of writ petitions either infructuous or troublesome for the successful parties..."

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Cr.WJC No.583 of 2007

34. This criminal writ petition has been preferred by two successful candidates, is of a fundamentally different nature, wherein prayer is made for direction to the Government Vigilance Department to conclude the investigation within a reasonable time. None appears to press this writ petition. With the conclusion of the investigation and submission of the charge-sheets, this writ

petition has become infructuous and is accordingly dismissed as having become infructuous.

35. We have perused the materials on record and considered the submissions of learned counsel for the parties. The entire range of possible contentions from cancellation of the advertisement to appointment of successful candidates as a matter of right have been advanced. However, the common thread of submissions on behalf of the petitioners in most of the writ petitions is that a revised list may be prepared on the basis of the present selection process after excluding the charge-sheeted candidates. We feel handicapped in disposing of a large number of contentions because of absence of up-to-date counter affidavits of State Government and BPSC. The State Government has relied on its counter affidavit sworn on 5.1.2007, and BPSC has relied on its counter affidavits sworn on 26.7.2005 and 30.5.2007. It was, inter alia, stated in the order dt. 14.5.2008, that investigation has concluded, charge-sheets have been submitted, and "... the stage seems to have reached to dispose of the writ petitions on merits. Let the parties complete their pleadings within a period of 22 six weeks. The State Government as well as the Cabinet (Vigilance) Department /Vigilance Investigation Bureau shall file separate supplementary counter affidavits. Put up on 2.7.2008 to fix a final date for disposal of the matter... ". On the next date, as jointly prayed, it was directed that it shall be posted on 4.8.2008 for final disposal. In spite of clear direction and more than adequate opportunity, the State Government and BPSC did not file supplementary counter affidavits.

36. The State Government and BPSC have failed or refused to take note of affidavits filed by other parties challenging violation of the diverse Rules in issuing the advertisements, and the defects pointed out in the post-advertisement selection process crystallizing in the merit list. According to BPSC, in so far as the allegations of non-observance of the Rules and Regulations in issuance of the advertisement is concerned, the entire responsibility rests on the State Government. It is submitted that the advertisement is issued entirely on the basis of the terms and conditions forwarded by the State Government. BPSC has not answered either in its pleadings or during the course of oral submissions as to whose statutory duty and responsibility is to prepare the merit list in a consolidated manner or batch-wise.

37. BPSC has not found fit to take note of the developments since submission of its counter affidavits till 17.6.2008, when the investigation concluded and the charge-sheets have been filed. It thought nothing of the investigation disclosing the 23 illegalities and the irregularities in the post-advertisement selection process including the merit list, and has not filed a supplementary counter affidavit taking the appropriate stand on the validity or otherwise of the selection process which is tantamount to abdication of essential duties and functions. It was not the individual and isolated act of one person, but was the organized conspiracy of two successive Chair-persons, three members, and six officials and staff of BPSC, where only money mattered. BPSC completely lost its purpose and direction. A case of institutional collapse or institutional derangement? Woe betide the massive faith reposed in them by the founding fathers of the Constitution. These observations are made in the background of the situation, as stated at the Bar, that this was the first action on the part of the State Government to cleanse the affairs of BPSC which is reeking with corruption.

38. I must state that effective disposal of this batch of writ petitions has really been possible because of the admirable investigation conducted and concluded by the team headed by Mr. Neelmani, Additional Director General of Police (Vigilance), and equally his exhaustive supplementary counter affidavit affirmed by him on 25.6.2008.

39. The advertisement (Annexure 1) was published in the local dailies on 21.5.2003, according to which the earliest eligibility as per the Rules has been indicated to be as on 1.8.1986. I am informed at the Bar that the last selection process had taken place way back in 1982. In other words, the eligible 24 candidates ever since 1982 or 1.8.1986 and thereafter have been deprived of their opportunity of promotion. Total number of 184 seats have to be filled up. The Commission prepared a merit list of 184 candidates and accordingly made recommendations to the State Government. It appears from the merit list published in the local dailies on 20.5.2005 (Annexure 1 to CWJC No.7505 of 2005), that 89 persons of the general category, 29 candidates of scheduled castes, 5 persons of the category of schedule tribes, 33 candidates of most backward classes, 22 candidates of backward classes, and 6 backward category of women have been recommended. This position is testified by the letter of recommendation of BPSC of 24.5.2005, a copy of which has been supplied by learned counsel for BPSC at the behest of the Court in a sealed cover during the course of submissions. It is a single, consolidated merit list. The State Government has not issued appointment letters to anyone of these persons. The limited examination comprising of two papers had taken place on 19.10.2003, and the results were published on 20.5.2005, followed by a corrigendum of 24.5.2005 (Annexure 4 to CWJC No.8573 of 2005).

40. By letter dated 7.12.2005, issued by the Additional Director General of Police, Cabinet Vigilance, an investigation team was constituted to investigate the illegalities and irregularities committed by BPSC and others in the selection process. This Court monitored the investigation and the matter was for that purpose placed before this Court periodically with ADGP (Vigilance) in attendance with his report in a sealed cover. The number of persons 25 arrested during the course of investigation has already been indicated hereinabove. The investigation of the case concluded in May/June 2008, and the following charge-sheets have been filed against 104 accused persons:-

(a) CS No.04/2006 dated 25.02.2006 against 9 officials of BPSC including the Ex Chairman and Member, BPSC & 3 beneficiaries.

(b) Suppl. CS No.06/2006 dated 11.03.2006 against Ex Chairman (Smt. Rajiya Tabbasum).

Â© Suppl. CS No.12/2006 dated 13.04.2006 against three (Member, BPSC, a Middleman & a beneficiary).

(d) Suppl. CS No.98/2006 dated 30.12.2006 against one (FIR accused beneficiary).

(e) Suppl. CS No.114/2007 dated 10.07.2007 against 12 beneficiary.

(f) Suppl. CS No.276/2007 dated 24.12.2007 against 12 beneficiary candidates.

(g) Suppl. CS No.02/2008 dated 11.01.2008 against 39 beneficiary candidates.

(h) Suppl. CS No.30/2008 dated 12.05.2008 against 24 beneficiary candidates.

(i) Suppl. CS No.38/2008 dated 17.06.2008 against 5 beneficiary candidates.

From the merit list of 184 persons, 97 persons have been charge-sheeted, which shows the enormity of the situation. It is evident that two Chairpersons who were in office one after the other during the course of selection process commencing with the advertisement, three members, and six officers and staff of BPSC, 97 beneficiaries, and a middle-man have also been charge-sheeted. It may be clarified that we have used the expression beneficiary to mean a candidate who had appeared at the limited examination and had given money to the said functionaries to be included in the merit list which was brought about by gross interference with format of examinations and 26 interpolations in the answer books and discussed in detail hereinbelow.

41. The second aspect of the matter is that the investigating agency has found during the course of investigation that the questions were required to be answered by HB pencil capable of being removed by erasers. It is this facility conceived by the authorities of BPSC which facilitated the crime. It has been found by scientific methods that the original answers which had to be given by tick mark (....), were erased in a large number of answer books and replaced by new answers. At the time of formation of opinion for the purpose of submission of charge-sheet(s), the investigating agency formulated a rough and ready yardstick to differentiate between the beneficiaries and the rest. In other words, those with erasings of 50 answers or above have been charge-sheeted, and those of the answer books with less than 50 erasings have been given the benefit of doubt. The ADGP (Vigilance) had during the course of his appearances submitted that more persons would have been arrested and charge-sheeted but the beneficiaries and the middlemen did not cooperate, taking undue advantage of the orders passed in Cr.WJC Nos. 380 of 2006, Cr.WJC No.592 of 2006, and Cr.WJC No.608 of 2006, whereafter the investigation slowed down and further progress became very difficult. The investigating agency was able to trace the source of the money paid by the beneficiaries, and the destination of investments made by the functionaries of BPSC, and the middle-man. It was, therefore, left with the discretion of determining the yard-stick of 50 erasings. It has been 27 stated in his counter affidavit that "... many of the remaining beneficiary candidates also suffer from various infirmities which are serious in nature but the evidence gathered during investigation of the case are not sufficient enough to charge them for the criminal offence. The investigation of the criminal case, therefore, has been concluded." In other words, more of the successful candidates, and more of the middlemen, could have been arrested and charge-sheeted. All this cumulatively discloses the enormity of the gross illegalities committed in tampering the answer books.

42. The ADGP (Vigilance) in his supplementary counter affidavit has pointed out as many as 19 defects in the selection process. I can do no better than to reproduce Paragraph 6 of the supplementary counter affidavit summarizing the serious irregularities in the selection process:-

"6. It is respectfully submitted that gross irregularities, serious violations of the conditions of advertisement/requisition sent by Government for appointment, arbitrariness, discrimination, favouritism, planning of forged document, extensive tampering of answer sheets and the computer database etc. etc. detected during the course of investigation of the case vitiates the entire examination and the resultant recommendation of 184 candidates. Some of these are enumerated below:-

I. The gazette number 3 dated 19.01.1994 published by the Bihar Government, is the guideline for the conduct of the examination, Para-5 of the gazette reads as follows:-

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According to the above only the first paper was to be OBJECTIVE/ MULTIPLE CHOICE type. But the accused persons (BPSC authorities) deliberately made the second paper also OBJECTIVE/MULTIPLE CHOICE type to facilitate tampering in the answer sheets to favour the chosen ones under a well planned conspiracy.

II. Para -13 of the above mentioned Bihar Gazette and advertisement number 04/2003 mentions as follows:-

Accordingly if the Commission wanted to make the second paper objective type, permission of the State Government should have been taken. This was not done.

III. Para-8 of the above mentioned Bihar gazette and advertisement number 04/2003 prescribes a minimum cut off mark of 40% in written examination for general candidates and a provision for relaxation up to 5% in respect of SC/ST candidates. Recommendations in respect of at least three lady candidates not belonging to SC/ST category were made despite having obtained less than 40% marks or less than 35% marks in SC/ST category.

The Bihar gazette referred above is annexed as Annexure B. This finds enclosed as Annexure-28 to the FIR. The advertisement number 04/2003 is Annexure-3 to the FIR and is annexed as Annexure C.

IV. The gazette provided for two question papers for 100 marks each but the BPSC evaluated the answer sheets for a total of 280 marks.

The number of questions in each of the two question papers were 150. Four questions in paper-I and sixteen questions in paper-II were declared incorrect by the BPSC and evaluation was, therefore, done for $146+134=280$ marks.

V. It may be mentioned that large scale tamperings were done only in paper-II which was made objective/multiple choice type contrary to the Rules without taking consent of the Government. Sixteen out of 150 questions in this paper were declared incorrect by the BPSC and evaluations were confined to a maximum of 134 marks only. 29 VI. Written examination for vacancies advertised vide

ad. No. 04/2003 dated 21.05.2003 was held on 19.10.2003 and the results were published on 20.05.2005 and corrigendum published on 24.05.2005. The BPSC while sending recommendation to the Personnel and Administrative Reforms Department in respect of 184 suitable candidates on 24.05.2005, requested the department for verification of their educational qualification, date of birth, the cut-off date, reservation, period of working on class- III posts etc. etc. before appointment. VII. Advertisement no.04/2003 for the examination was published with full approval of the Commission and certain corrigendums in it were also issued with the full approval of the Commission. Last date for receipt of application form was published as 21.06.2003. Some of the accused persons, without approval of the full Commission, surreptitiously and without publishing it, extended the date for the receipt of application forms from various department upto 25.06.2003 and upto 26.06.2003 in respect of application forms received through post/courier and the Ex-Chairman Smt.Rajiya Tabassum also issued an order regarding entry of application forms in the register in such a way that it facilitated entry of the application forms received even upto 30.6.2003.

VIII. It has been established during investigation that only 4346 application forms were received till the published cut off date i.e. 21.06.2003. 1754 applications out of this were rejected. 310 application forms received as advance copies were accepted against the provisions and 153 applications were received after the extended date i.e. 26.06.2003. The Commission did not stick to the advertised cut off date (21.06.2003). All the applications which included accepted, rejected, received with delay, advance copies and even those wanting in many other respects received upto 30.06.2003 were allowed to appear in the examination. If these relaxations were published, others would also have participated in the examination but they were denied the opportunity.

IX. It has been established during investigation that out of total 184

recommended candidates, application forms in respect of 102 such candidates suffer from one or the other infirmity. The details are annexed as Annexure-9 to the FIR. If these applications were properly scrutinized in accordance with the strict conditions laid down in the advertisement, they should have been rejected at the very stage of acceptance. 30 The Commission chose to favour such candidates.

X. The BPSC while sending recommendation requested the department of Personnel for getting satisfied by verification of educational qualification, date of birth, the cut off date, reservation, period of working on class III posts etc. etc. before appointment.

XI. It has been established during investigation that four candidate having marks higher than cut off mark in their category were not recommended whereas certain candidates with less marks and defective application form were recommended indicating undue favour.

XII. The application of candidate with roll no.112455 was rejected for not depositing fee but during investigation fee deposit of Rs.150/- by postal order was found entered in the BPSC register.

XIII. Large scale tampering were detected in the answer sheets of paper-II during preliminary enquiry and investigation. The use of rubbers for correcting answers in respect of sample test

conducted by FSL in respect of unsuccessful candidates ranged from 0 to 23 only. FSL examination of the answer sheets of successful candidates has established that out of 134 correct questions, the tampering/use of eraser ranged between 50 to 158 in respect of 95 successful candidates. This can not be done because 150 questions were to be answered in 180 minutes. Therefore, on an average, only 1.2 minute is available for answering a question by properly filling the blank squares through HB pencil.

XIV. The answer sheets were kept in the strong room. It has been established during investigation that, under a conspiracy, the lock of the strong room was changed on 15.05.2004 and no efforts were made for registration of a criminal case in this regard. Instead, the key of the strong room was handed over to one Assistant Secretary (an accused in the case). The same Assistant Secretary took out the answer sheets in the name of computer scanning from the strong room and kept them without proper security for about two months in the computer room. XV. Prior to the above, two locks used to be put up in the strong room and their key used to be with two different employees but by bringing allegations pertaining to change of lock, the keys were taken from the two employees and handed over to the accused Assistant Secretary. This was done under a 31 well thought out conspiracy and in gross violation of security norms.

XVI. Evaluation of answer sheets of both the papers were done in the computer room. This was to be done by OMR (optical marking report). The OMR sheets were scanned and the data kept in database file. After inserting database file in the computer, the key answer was to be fed and results were to be obtained. The entire process could have taken hardly 24 hours.

The computer scans or accepts only those answer sheets which are filled in accordance with the command given to the computer but it was detected that even those answer sheets were evaluated which violated the instructions. The computer should not have evaluated such answer sheets in which all the four questions were either answered or left blank but this was done. The candidates were to write which of the four A,B,C or D sets he was answering. Answer sheets which did not mention any of them were also evaluated by the computer whereas it should have been rejected. This could not have been possible but for the manipulations adopted during the evaluation.

XVII. It was established during investigation that computer data pertaining to question paper no.II were deliberately and under a well thought out conspiracy removed. The data for paper -I was available. It is the paper no.II in which large scale tampering had been done to favour the candidates. Sensing the matter being taken up by the Hon'ble High Court, the persons manning the computer section of the BPSC got the hard disc of the computer removed, the Server was declared inoperative and the computer was also changed. This was done without taking any formal orders from the Chairman, BPSC who is supposed to be personally responsible for it. This finds mention in the "Business to be transacted by the Chairman" contained in Rules of procedure 1996 schedule section -I (15)" which is reproduced below:-

"System Development and other works pertaining to technical aspect of data processing and electronic data processing branch."

The above rule was, therefore, blatantly violated.

XVIII. The hard disc mentioned above was recovered from CMC, S K Puri, Patna. It was revealed during investigation that the hard disc was sent to Kolkata and the company replaced it also.

XIX. The computer system of BPSC was examined by the experts of National Informatics Centre 32 (Bihar State Unit), Government of India, Ministry of Communication and Information Technology. They have found evidence of manual tampering of the computer system. Manual evaluation of OMR sheets in many a cases were detected during investigation.

7. That in the facts and circumstances detailed hereinabove it is evident that gross irregularities, serious violation of the condition of the advertisement/requisition sent by the government, arbitrariness, discrimination, favouritism, planting of forged document, extensive tampering of answer sheets and data base have been committed while making selection of candidates pursuant to advertisement no.4/03.

8. That in the circumstances referred hereinabove the Vigilance Investigation Bureau is also in favour of cancellation of the recommendations of 184 candidates made by the BPSC and for direction to the BPSC for conducting fresh selection test from amongst the candidates who have responded to advertisement no.4/03."

43. It is evident that the selection process is tainted and tarnished ever since the advertisement was issued. The last date of submission of applications was surreptitiously extended, and a large number of applications were stealthily received after the prescribed date. One candidate had deposited the fee along with the application, but his application was rejected on the non-est ground that she had not deposited the fee. The format was illegally altered and the second paper was made objective/multiple choice without permission of the State Government so that change of answers becomes possible. Descriptive answers cannot be changed. Large scale tamperings were detected in the Second Paper. Answers of both papers were required to be recorded/given by tick-mark of the pencil in the box () so that erasings could be done to be replaced by new pencil-marks with ulterior motives. Some of the questions in both the papers were 33 defective, and the total marks for evaluation were reduced. Some of the answer books should not have been accepted by the computer for evaluation but did accept because it was tampered with. The data base was tampered with and the hand disc was replaced. Manual tampering of the computer system was also detected. Under a conspiracy, locks of the store room were changed and no F.I.R. was lodged. The keys of the store room of BPSC were in the possession and custody of persons in violation of the rules. Persons having scored less than the minimum qualifying marks have been recommended for appointment. Four persons fit to be recommended were ignored and not included in the merit list, whereas persons with defects in the applications were included in the merit list. Out of a total of 184 beneficiaries, applications of 102 persons surely suffered from one or the other infirmity and all such applications were fit to be rejected at the threshold. It is thus evident that irregularities had commenced soon after the advertisement was issued till the publication of merit list, steeped in corruption, and tainted from beginning to end.

44. In this back-ground, it arises for consideration whether or not the exams. have to be preserved and a fresh merit list directed to be prepared, or the entire examination from the post-advertisement stage, or the entire selection process including the advertisement should be set aside. I shall first take up the first two issues, and, if the need arises, the third issue thereafter. 34

45. The judgment of the Supreme Court reported in (1994) 4 SCC 165 (Krishna Yadav vs. State of Haryana) may first of all be noticed. It related to selection of Taxation Inspectors by Subordinate Selection Board. In view of the allegations of fraud, nepotism favouritism and arbitrariness, the Supreme Court handed it over to CBI for investigation. CBI report revealed acts of favouritism, selection without interview as also on the basis of fake or ghost interviews, tampering with final records, fabrication of documents, forgery, keeping the selection list a secret, issuing appointment letters after calling selected candidates and obtaining joining reports from them on the spot without any medical test and verification of antecedents and destroying the original records and answer books. The entire selection process, being vitiated by fraud and arbitrariness, was set aside even though the appointees were in service for four years. It was observed that individual cases of innocence were irrelevant in dealing the entire selection process. Paragraphs 16 to 22 of the judgment are reproduced hereinbelow:-

"16. Having regard to all the above, the irresistible conclusion is "fraud has reached its crescendo". Deeds as foul as these are inconceivable much less could be perpetrated. We are reminded of the words of Shakespeare:

"Thus much of	this, will make
Black, white;	foul, fair;
wrong, right;	Base, noble;
Ha, you gods!	why this?"

(Timon of Athens, Act IV, Sc.3)

17. It may not be too much to draw an

inference that all these were motivated by extraneous considerations. Otherwise, how does one account for selection without interview, 35 fake and ghost interviews, tampering with the final records, fabricating documents, forgery?

Each of this would attract the penal provisions of Indian Penal Code. They have been done with impunity.

18. The story does not end here. From out of the "selection list" secret communications have been sent to the candidates. Selections were made without medical test or verification of antecedents.

19. It is highly regrettable that the holders of public offices both big and small have forgotten that the offices entrusted to them are sacred trusts. Such offices are meant for use and not abuse. From a minister to a menial everyone has been dishonest to gain undue advantages. The whole examination and the interview have turned out to be farcical exhibiting base character of those who have been responsible for this sordid episode. It shocks our conscience to come across such a systematic fraud.

It is somewhat surprising the High Court should have taken the path of least resistance stating, in view of the destruction of records, that it was helpless. It should have helped itself. Law is not that powerless.

20. In the above circumstances, what are we to do? The only proper course open to us is to set aside the entire selection. The plea was made that innocent candidates should not be penalized for the misdeeds of others. We are unable to accept this argument. When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place as "fraud unravels everything". To put it in other words, the entire selection is arbitrary. It is that which is faulted and not the individual candidates. Accordingly we hereby set aside the selection of Taxation Inspectors.

21. The effect of setting aside the selection would mean the appointments held by these 96 candidates (including the respondents) will have no right to go to the office. Normally speaking, we should require them to disgorge the benefit of these ill-gotten gains. That means they will have to repay the entire salary and perks which they have received from the said office. But, here we show a streak of sympathy. For more than 4 years they were enjoying the benefit of "office". The proper lesson would be learnt by them if their appointments are set aside teaching them that dishonesty could never pay.

22. The next question is what is the future course of action? It is hereby ordered: 36

(i) A fresh selection shall be made for 96 posts of Taxation Inspectors.

(ii) All candidates who had applied in response to Advertisement No.3 dated 7.7.1988 and who were found eligible will be entitled to take such an examination.

(iii) The total marks for written examination shall be 200.

(iv) The total for viva voce shall be 25 that is not more than 12 ½ per cent as has been laid down in Mohinder Sain Garg vs.State of Punjab with reference to the very post.

(v) The advertisement announcing the fresh examination shall be issued immediately, fixing the last date as 30.6.1994.

(vi) Intimation as to the acceptance of applications and the schedule of the examination shall be given or or before 16.8.1994.

(vii) The examination shall commence in as many centres as required from 1.9.1994.

(viii) The evaluation shall be completed before 31.10.1994.

(ix) The marks obtained shall be published in three prominent dailies having large circulation in the State of Haryana in additional to the display on the Notice Board.

(x) The number of candidates called for viva voce shall not exceed three times the number of posts to be filled.

(xi) The viva voce shall commence from 7.11.1994 and be completed by 25.11.1994. The final analysis of the tabulated results shall be submitted to this Court on or before 10.12.1994.

We shall make it clear that not one of the persons connected with the present examination shall be allowed to have anything to do with the previous examination. We expect strict compliance with this order. Under no circumstances there will be an extension of time in this regard. The State shall endeavour its best to see that the examinations are conducted fairly without giving any room for any complaint. If necessary, it could have an independent body or agency in order that it may infuse confidence and make people believe that the misdeeds complained of in this case constitute an isolated chapter and a thing of past.

(xii) Since we have accepted the CBI report we direct that necessary prosecutions be launched early against all concerned however high or low they may be in the hierarchy of officialdom. The State Government will do well to grant the necessary sanctions if so required without undue delay. The Chief Secretary of the State of Haryana shall pay his best attention to this."

37

46. The present case is fully covered by the judgment in Krishan Yadav (supra). In fact, the view taken there applies with greater force in the present case, the factual situation being more lurid here. Both are cases of systematic fraud rendering both the selection processes to be farcical. There is no knowing whether or not any person was arrested and charge-sheeted in Krishan Yadav. On the other hand, the enormity of the situation in the present case is evident from the relevant particulars indicated above with the added possibility of more of the beneficiaries being tainted and having obtained their places in the merit list on payment and malafide reasons.

47. The judgment of the Supreme Court reported in (2002) 3 SCC 146 (Union of India vs.O. Chakradhar), equally covers the present case. The Supreme Court observed that the mischief in conducting the selection was so wide-spread and all-pervasive, affecting the results, that it was difficult to identify the persons unlawfully benefited or wrongfully deprived of selection, the whole selection could be cancelled without issuing individual show-cause notice to each person selected. It has been observed as follows:-

8. In our view the nature and the extent of illegalities and irregularities committed in conducting a selection will have to be scrutinized in each case so as to come to a conclusion about future course of action to be adopted in the matter. If the mischief played is so widespread and all-pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, in such cases it will neither be possible nor necessary to issue individual show-cause notices to each selectee. The only way out would be to cancel the whole 38 selection. Motive behind the irregularities committed also has its

relevance.

9. The copy of the report of CBI has been made available to the Court by the learned Additional Solicitor-General and the same was served upon learned counsel for the respondent earlier. To find out the position in the present case, we may have to scrutinize the report of CBI.

10. It first indicates that the Railway Recruitment Board, Bangalore has not laid down any set procedure for holding of selection. The Chairman engages a printer for printing of the question paper and computer firms are given the job of scrutinizing the applications. The examination is conducted at different centres and answer-sheets are sealed and put in boxes in custody of the Chairman in his room. The answer-sheets are given to the computer firm for evaluation. The Board carries on a manual random check of the answer-sheets, and depending upon the result, further call letters are prepared by the computer firm. Since it was recruitment for the post of Junior Clerk-cum-Typist, a candidate was required to have a typing speed of 30 words per minute in English or 25 words per minute in Hindi. As per relevant circular, the typing test is to be conducted after the written test and those who qualify in the typing test also, they alone are to be called for final interview. In the present case, however, according to the report the candidates during the course of their personal interview were required to give typing test before the members of the Interview Board within the time-limit set for the purpose. No separate marks were awarded for typing nor have the typing sheets been preserved by the Board. No candidate was qualified or disqualified on the basis of the typing test. About 100 answer-sheets did not bear the signatures of Supervisor/Assistant Supervisor in the column provided for the purpose. It, however, bore the signatures of the invigilator but none from the said candidates is reported to be selected. According to the report, on scrutiny of the answer-sheets of 100 selected candidates, a clear difference of handwriting was noticed in many answer-sheets.

Out of these answer-sheets 14 were particularly were taken out for the purpose of investigation. According to the report, answer-sheet packets were stealthily opened and answers were filled up in the blank spaces left by the examinees. This happened during the period the bags of the answer-sheets were in the custody of the Chairman. So far as the interview is concerned, it is reported that the two Boards constituted for the interview did not have technical personnel as its member 39 as per requirement. Each member was required to award marks to the candidate in the individual assessment sheets provided to them, and average was to be worked out but no average was worked out. The columns for interview marks was later on filled up as per wishes of the Chairman and Member-Secretary of the Board and signatures of the non-official members were obtained on the summary sheet later on.

11. It is mentioned in the report that huge amount of money was taken for selecting the candidates but none is coming forward to indicate as to who and how much one paid for it for fear of being in trouble. It is further that non-official Chairman of the Board made payment of printing of the examination paper etc. not to any firm but to one Gaja Raja Yadav. It may also be mentioned that according to the report a large number of applications were missing and postal orders of the missing applications were encashed and misappropriated and even before the closing date of receiving the applications, it started sending applications to the computer firm for their scrutiny. CBI has named

five persons as accused in the report, namely, the Chairman of the Railway Recruitment Board, Bangalore, who is a non-official, the Member-Secretary of the Board, an officer of the Railways, one Shri Hanumanth Bhaiya, a Senior Clerk in the Railway Recruitment Board, and Gaja Raja Yadav, the private person to whom payment had been made for printing of the question paper etc.

12. As per the report of CBI the whole selection smacks of mala fides and arbitrariness. All norms are said to have been violated with impunity at each stage viz. right from the stage of entertaining applications, with answer-sheets while in the custody of the Chairman, in holding typing test, in interview and in the end while preparing the final result. In such circumstances it may not be possible to pick out or choose a few persons in respect of whom alone the selection could be cancelled and their services in pursuance thereof could be terminated. The illegality and irregularity are so intermixed with the whole process of the selection that it becomes impossible to sort out the right from the wrong or vice versa. The result of such a selection cannot be relied or acted upon. It is not a case where a question of misconduct on the part of a candidate is to be gone into but a case where those who conducted the selection have rendered it wholly unacceptable. Guilt of those who have been selected is not the question under consideration but the question is, could such selection be acted upon in the 40 matter of public employment? We are therefore of the view that it is not one of those cases where it may have been possible to issue any individual notice or misconduct to each selectee and seek his explanation and seek his explanation in regard to the large-scale, widespread and all-pervasive illegalities and irregularities committed by those who conducted the selection which may of course possibly for the benefit of those who have been selected but there may be a few who may have deserved selection otherwise, but it is difficult to separate the cases of some of the candidates from the rest even if there may be some. The decision in the case of Krishan Yadav applies to the facts of the present case. The Railway Board's decision to cancel the selection cannot be faulted with. The appeal therefore deserves to be allowed.

48. The said judgment applies to the present case with greater force. Both the cases are of all-pervasive mischief and deep malaise, such that it is difficult "to separate the grain from the chaff." In the present case, the source of money arranged by the beneficiaries, the amount of money paid to the functionaries and the go-between, and the investments made by the recipients, have been traced. It will bear repetition to emphasise the number of persons arrested, charge-sheeted, and number of beneficiaries in the doubtful category. It is not possible to disentangle and separate the unblemished candidates.

49. The judgment of the Supreme Court reported in 1993 (1) Service Law Reporter, 451 (Union Territory of Chandigarh vs. Dilbagh Singh), is also relevant in the present case.

50. In this view of the matter, the only course available to this Court is to set aside the entire limited examination. It would be extremely unsafe to rely on the same examination and be content with the revision of the merit list, inter alia, for the reason that many of the seemingly unblemished candidates have 41 escaped the dragnet. The main feature of misconduct in the present selection process are in common with those of Krishan Yadav, and Union of India v. O.Chakradhar. In fact, there are some added features in the present case which make it graver. In any view of the matter, all the three, with some variation of misdeeds, are equally sullied and base.

51. This takes me on to the question of validity or otherwise of the advertisement. The petitioners of CWJC No.8552 of 2005 have submitted that the advertisement should be set aside because it is not consistent with the Rules, for example, it does not take into account the reservation for disabled persons in terms of Section 33 of the Disabled Persons Act 1995. The Act was enforced with effect from 7.2.96. The contention, therefore, merits serious consideration whether or not the provisions for reservation of the Disabled Persons Act are applicable in the present context. Learned counsel for the petitioners submitted that the provisions would apply to the eligible candidates covered by the advertisement for various reasons including the reason that, in case of doubt or difficulty with respect to applicability of such beneficial legislations, the Court should lean in favour of the persons sought to be benefited. The State of Bihar has not stated in its pleadings whether or not this issue was considered before sending its requisition to BPSC.

52. The petitioners of CWJC No.8032 of 2005 are members of Scheduled Tribes. It was stated in the advertisement that 21 seats shall be reserved for members of Scheduled Tribes, whereas BPSC took note of 42 the letter of the Government in the Department of Personnel & Administrative Reforms, dated 6.9.2003 (Annexure C to the counter affidavit of the State Government in CWJC No.8032 of 2005), and reduced the seats reserved for Scheduled Tribe candidates to 5 seats. As is obvious, the advertisement was published on 21.5.2003, with which the selection process commenced, and the Government issued its letter reducing the number of seats reserved for Scheduled Tribe candidates on 6.9.2003 (Annexure C). BPSC issued a corrigendum also. In any view of the matter, law is well settled that there cannot be interference with a selection process after the prospectus or the advertisement for examinations are issued. In *Anuj Gupta & Others v. State of Himachal Pradesh and others* reported in 1990, Volume 6 Service Law Reporter, page 79, it has been held that when the Prospectus for admission to Engineering Colleges laid down that the admission would be given on the basis of the results of 10+2 examinations, the same method can not subsequently be altered. It was further held that the change of policy after the issue of the prospectus was unfair to these candidates and can not be sustained in law. The super imposition of PET after the issue of the prospectus was for that reason held to be unfair and unsustainable in law. The observations of the Himachal Pradesh High Court were quoted with approval by a Division Bench of this Court in its judgment reported in 1993(1) PLJR 395 (*Namita Jayswal vs State of Bihar*). This Court had also adverted to the judgments reported in AIR 1968 Supreme Court, P.718 (Union of India vs. Anglo Afgan Agencies), AIR 1979 43 Supreme Court, P.1628 (Ramana Dayaram Shetty vs. I A Authority of India), and AIR 1984 Supreme Court, P.362 (British India Corpn. Ltd. vs. Industrial Tribunal, Punjab). I am also of the view that the number of seats reserved for members of scheduled tribes could not have been altered once the advertisement was issued.

53. It also arises for consideration whether or not those of the eligible candidates who have been allocated to the State of Jharkhand after its creation, can be considered for appointment by promotion. This issue has from one angle been discussed in the preceding paragraph hereinabove. It would repetition to state that such employees shall as a matter of right be entitled to appear at the limited competitive examination and for consideration for appointment against those of the vacancies which occurred prior to creation of the State of Jharkhand.

54. The present State of Bihar must always in such cases remind itself that the Bihar Reorganization Act 2000, was enforced with effect from 15.11.2000, the appointed day on which date the new State of Jharkhand was created comprising of the territories mentioned in Section 3 of the Act, and prior thereto formed part of the undivided State of Bihar. The benefits which accrued to the employees of the undivided State upto 15.11.2000 cannot be denied to them even though the selection process is taking place at a later date. They cannot suffer because of the inaction of the State Government. I am, therefore, clearly of the view that reservation of vacancies for Schedule Tribes shall have to be ensured as per the law and the roster 44 system in force till 15.11.2000, with respect to the vacancies which have occurred till 15.11.2000, and there can be reduction of reserved seats thereafter. Another important aspect of the matter is that the vacancies have a direct nexus with the batches of direct recruitment already conducted by BPSC. The said letter dated 6.9.2003 (Annexure -C) is hereby set aside.

55. The next question which arises for consideration is whether or not B.P.S.C. was right in preparing a consolidated list of the persons recommended for appointment. The issue is covered by the order of a Division Bench of this Court reported in (2008) 1 PLJR 623 (The State of Bihar Vs. Pramod Kumar), wherein it has been held that, in view of the provisions of the Bihar Administrative Service (Appointment through Limited Competitive Examination) Rules, 1991, different cut-off dates have been provided for different batches which has a direct nexus with the batch of direct recruits of B.P.S.C.

56. Identical issue under Indian Administrative Service (Appointment by Promotion) Regulation 1955, came up for consideration of this Court in the case of Ashok Kumar Vs. Union of India, (1999) 3 PLJR. 255. The selection Committee constituted under the Regulation prepared a consolidated list for the vacancies occurring during the period of three years as it could not meet as per Regulation during this period. The Regulation requires the committee to meet at intervals not exceeding one year and prepare the select list. The Division Bench held that if it meets after a gap of several years, it has to prepare 45 separate list for each year, keeping in view the number of vacancies of that year after considering the State Civil Service Officers who were eligible and fell within the zone of consideration for selection in that year. Hence the consolidated list was illegal. It was further observed that holding of committee meeting each year is intimately connected with and is an integral part of the scheme envisaged by the Regulations. If for any reason, the select committee is not able to meet each year, it will certainly give rise to complications. That, however, does not mean that the Regulations can not be worked. The amendment to Regulation 7(4) does not, in any manner, affect the provisions which provide for the preparation of a select list year-wise. Since the year-wise list is sought to be prepared after a lapse of several years, some minor deviations have to be permitted of necessity, so that the regulations are substantially complied with. The Division Bench, therefore, concluded that amendment to Regulation 7(4) does not touch the core question regarding preparation of the select list for each year.

57. In that view of the matter, we uphold the validity of the notification dated 27.6.2000 (Annexure D, at Page 86, of the paper book), whereby Government employees who are eligible to be considered for the vacancies occurring during 1982 to 1998 shall be entitled to appear at the first limited competitive examination. The objection that the prescribed procedure in issuing the amending

notification of 27.6.2000, as alleged, was not followed, has in the present case to be ignored. Examinations have not been held for such a large number of years although appointment of direct recruits of various batches have been held, surely seven batches if not more. Even though there may be a joint selection process, the merit-list has to be prepared year-wise /batch-wise which is an integral part of the Rules. No person will suffer any prejudice, and none will be required to compete with ineligible candidates. The emphasis is on preparation of year-wise/batch-wise list, and not on consolidated examination. Seniority of the selected candidates will depend on their position in the merit list prepared year-wise.

58. In view of the foregoing discussion, we are of the view that the advertisement dated 21.5.2003 (Annexure-1), ought to be set aside.

59. Learned counsel for the petitioners of CWJC No. 8552 of 2005 has submitted that the second advertisement published on 25.5.2005 (Annexure 1 to CWJC No.8552 of 2005) may also for identical reasons be set aside. The important feature is that, after issuance of the advertisement, even the first step has not been taken and even inchoate rights have not emerged. Both the advertisements are identical, except that the second advertisement is in relation to later batches. The first advertisement of 21.5.2003 has already been set aside. In that view of the matter, the later advertisement for subsequent batches published in the local dailies on 25.5.2005 is also set aside. It will be open to the State Government and BPSC to issue a combined advertisement and hold a combined selection process, or separate advertisement and separate selection process, in accordance with law 47 after taking into account the relevant provisions of law and the observations made herein above.

60. In the result, challenge to the advertisement of 21.5.2003, as well as the consequent selection process and the merit-list prepared by B.P.S.C., succeeds. The selection process from the inception inclusive of the advertisement, till the conclusion inclusive of the merit list prepared by BPSC, and the recommendations made by it, are hereby set aside. The second advertisement of 25.5.2005 is also set aside. Let the State Government forward fresh requisition(s) to B.P.S.C. within a period of two months. Charge- sheeted employees shall not be entitled to consideration and appointment. The writ petitions are accordingly disposed of. In the circumstances of the case, there shall be no order as to costs.

61. We place on record our deep appreciation of the work done by Mr. Neelmani, Additional Director General of Police (Vigilance), and members of his team, which we hope should go a long way in setting right the functioning of BPSC.

62. Let copies of this judgment be handed over to learned counsel for the Bihar Government and the Cabinet (Vigilance) Department, forthwith.

(S.K.Katriar,J) Patna High Court,Patna Dated 12th September 2008.

AFR / mrl.