

## Utpal Kant Vs State Of Bihar

**Court:** Patna High Court

**Date of Decision:** Aug. 23, 2021

**Acts Referred:** Bihar Prosecution Manual, 2003 &" Rule 36(2)

**Hon'ble Judges:** Chakradhari Sharan Singh, J

**Bench:** Single Bench

**Advocate:** Rupesh Kumar, Lalit Kishore, Satyabir Bharti, Saroj Kumar Sharma, Rupesh Kumar, Lalit Kishore, Satyabir Bharti, Md.N.H. Khan

**Final Decision:** Allowed

### Judgement

1. This matter has been taken up for hearing online because of COVID-19 pandemic restrictions.

2. All these applications have been heard together, as they involve same issue with the consent of parties.

3. Heard Mr. Rupesh Kumar, learned counsel appearing on behalf of the petitioners. Mr. Lalit Kishore, learned Senior counsel appearing on behalf of

the Bihar Public Service Commission and learned counsel appearing on behalf of the State.

4. Mr. Rupesh Kumar, learned counsel for the petitioners, through whom these three applications have been filed states that the petitioners shall

confine their challenge to the impugned result of the preliminary test published by the Bihar Public Service Commission (in short, BPSC) on the sole

ground that B.P.S.C. could not have prescribed any minimum qualifying marks for the said preliminary test in the absence of any clear stipulation in

this regard in the advertisement.

5. The B.P.S.C. came out with an advertisement no. 01 of 2020 inviting applications for 553 posts of Assistant Prosecution Officer (in short APO).

The scheme of the process of selection as disclosed in the advertisement, in tune with the statutory rules governing the cadre, prescribed three tier

system, viz., a preliminary test, a written examination and an interview. Clause-5 of the advertisement laid down in detail, the procedure for selection.

A copy of the advertisement has been brought on record by way of Annexure-1 to the writ application. The preliminary test, according to the

advertisement, was to be held of two papers namely General Studies and Law. 100 marks was allocated for General Studies and 150 marks for the

subject of Law. It was indicated that the marks scored in the preliminary test shall not be added for the purpose of preparation of final merit list for

appointment. Only those who qualify in the preliminary test are eligible to appear in the main examination, as per the advertisement. It is evident from

the advertisement that the final merit list for appointment is to be prepared on the basis of marks scored in the written test and the interview.

6. After the headings "Main examination" and "Interview" of clause 5, four notes have been added in the advertisement. Note 1 prescribes

that only such candidates shall be invited for interview, who score minimum marks in the main examination as prescribed in the resolution issued vide

Memo No. 2374 dated 16.07.2007 and letter no. 6705 dated 01.10.2008 for different categories of candidates. Note 2 prescribes that 2.5 times the

number of vacancy shall be called for interview on the basis of written examination, having due regard to the prescriptions in the said Memo No. 2374

dated 16.07.2007 (supra) issued by the Personnel and Administrative Reforms Department, Government of Bihar. The Personnel and Administrative

Reforms Department, Government of Bihar has prescribed minimum qualifying marks for various competitive examination as under:-

a)- General category-40 percent.

b)- Backward class -36.5 percent.

c)- Backward class annexure-I(EBC)-34 percent.

d)- Scheduled caste, Schedule tribe and women's class-32 percent.

7. The petitioners participated in the preliminary test. The result of the preliminary test came to be published by the B.P.S.C. on 27.04.2021 declaring

3995 candidates successful, belonging to various categories. The roll numbers of these petitioners do not figure in the list of successful candidates.

8. There does not appear to be any dispute rather it is admitted by the B.P.S.C. that candidates, 10 times the number of vacancies advertised were

required to be invited for the written examination.

9. Subsequent to holding of preliminary test, the B.P.S.C. issued certain clarification in relation to some typographical error in the answer sheets

wherein "full marks 100" was in place of 150 for the Law paper. Subsequent to publication of result, the B.P.S.C. came out with another

clarification on 28.04.2021, which has been brought on record by way of Annexure -4 to the writ application. The said clarification refers to the

Personnel and Administrative Reforms Department resolution dated 16.07.2007 (supra), which prescribes minimum qualifying marks for any written

examination. Referring to the said resolution of the State Government, the B.P.S.C. has mentioned in the said clarification dated 28.04.2021 that

candidates, 10 times number of vacancies could not be called for the written examination, as Å, sufficient number of candidates, who secured

minimum qualifying marks as per the resolution dated 16.07.2007(supra) were not available. The cut-off marks fixed for different categories of

candidates on the basis of preliminary test has been mentioned in the said clarification dated 28.04.2021.

10. In the aforesaid background the petitioners have assailed the said part of the decision of the B.P.S.C. mainly on the ground that there was no

stipulation in the advertisement that the resolution of the State Government dated 16.07.2007(supra) shall be applicable for preliminary test also. It is

the petitionersÅçâ,~â,,ç case that though it was specifically prescribed in the advertisement that the said resolution shall apply for calling candidates for

interview on the basis of main examination but it was intentionally and rightly so excluded by the B.P.S.C., in relation to the preliminary test. It is

accordingly the petitionersÅçâ,~â,,ç case that the Commission cannot be allowed to now to alter the terms of the advertisement and deviate from the said

terms.

11. Mr. Arjun Kumar, learned counsel appearing on behalf of the petitioners submits that in the absence of any such stipulation in the advertisement,

the B.P.S.C. could not have subsequently applied the prescription contained in the resolution dated 16.07.2007(supra) of the Personnel and

Administrative Reforms Department, Government of Bihar. He has drawn my attention to the rules governing the recruitment to the post in question,

which has been brought on record by way of Annexure-A/1 to the counter affidavit filed on behalf of the B.P.S.C. and has submitted that the

preliminary test is only a screening test which simply serves the purpose of screening candidates, eligible to appear in the main written examination.

He has contended that in such circumstance, without specifying clearly in the advertisement that resolution dated 16.07.2007 (supra) would apply for

preliminary test also, the B.P.S.C. could not have implemented the same for the purpose of preparation of result of the preliminary test. He has

accordingly submitted that the result published by the B.P.S.C. of the preliminary test cannot be sustained. He has placed reliance on a Supreme

CourtÅçâ,~â,,çs decision in case of Rahul Dutta. Vs State of Bihar reported in 2019 (1) PLJR (SC) 622 in support of his contentions. The said decision in

case of Rahul Dutta. Vs State of Bihar (supra), in the CourtÅçâ,~â,,çs opinion, has no application in the facts and circumstances of the present case.

12. Mr. Lalit Kishore, learned senior counsel representing the B.P.S.C has submitted that the resolution of the Personnel and Administrative Reforms

dated 16.07.2021(supra) is to be uniformly applied for all written examinations and accordingly those who do not score the minimum qualifying marks

in any written examination for selection to a post under the government, stands disqualified, in terms of the said resolution. It is his case that though the

said resolution dated 16.07.2007(supra) is not statutory, in view of clear stipulation therein, it automatically applies to all selection processes even if not

specifically mentioned in the advertisement. He has further submitted that in any event, those who have been selected are more meritorious than these

petitioners and, therefore, these petitioners do not have the locus standi to question the correctness of the result of the preliminary test published by the

B.P.S.C. He has further argued that in any case, the short fall of candidates on application of 1:10 ratio for inviting candidates for written examination

is in relation to various reserved categories and number of candidates invited for the written examination against open seats is more than ten times of

the available general seats. He has laid emphasis on the expression "अयोग्यता" in Rule 36 (2) of Bihar Prosecution Manual to contend that only

eligible/qualified candidates could be invited for the written examination on the basis of preliminary test in terms of resolution of the Personnel and

Administrative Reforms Department, Government of Bihar.

13. I have perused the pleadings on record and I have given my anxious consideration to the submission advanced on behalf of the parties. It is clear

from clause 5 of the advertisement in question that the B.P.S.C. did mention in the note under clause 5 that the said resolution of the Personnel and

Administrative Reforms Department, Government of Bihar dated 16.07.2007 (supra) would apply for candidates to be invited for interview on the

basis of a written examination. On the one hand, the B.P.S.C. specifically prescribed the said condition for the main written examination, it did not do

so in relation to preliminary test inasmuch as advertisement does not stipulate that such candidates who do not qualify in accordance with the

resolution of the State Government date 16.07.2007 (supra) shall not be called for the main examination. There being no stipulation of the said

condition in the advertisement, for the purpose of preparation of the result of preliminary test, the B.P.S.C. could not have invoked the requirement as

contained in the resolution dated 16.07.2021 (supra), subsequently. This, in Court's opinion, amounts to deviation from the terms of the

advertisement which cannot be permitted. The submission by Mr. Lalit Kishore, learned Senior counsel appearing on behalf of the B.P.S.C. that

considering the nature of the decision of the State Government, as contained in resolution dated 16.07.2007 (supra), the same was required to be

applied even in the absence of such prescription in the advertisement is not acceptable to this Court for the reason that the said resolution is not part of

the statutory rules governing the recruitment process in question. Nevertheless, it was open for the B.P.S.C. to have prescribed such requirement by

clearly mentioning it in the Advertisement, as has been done for the main written examination. Further, the fact that in the advertisement, the B.P.S.C.

made such stipulation for the main examination and excluded the same for the preliminary test, the Court is of the opinion, the same cannot be

considered to be unintentional. In any view of the matter, by not mentioning the said resolution in the advertisement for the preliminary test and

mentioning the same for the main examination, the B.P.S.C. represented to the aspirants that the said resolution was not applicable for the purpose of

preliminary test. The said resolution, deviating from the terms of advertisement, could not have been subsequently applied.

14. For the aforesaid reasons these applications succeed. These writ applications are allowed. Consequently, the respondent B.P.S.C. is directed to

publish a revised result of the preliminary test of successful candidates, without invoking the resolution of the Personnel and Administrative Reforms

Department, Government of Bihar issued vide Memo No. 2374 dated 16.07.2007, which was not mentioned in the advertisement for preliminary test.

The B.P.S.C. shall thereafter proceed accordingly, in the matter of the selection process in question.