SUPREME COURT OF INDIA

H.P.Public Service Commission

Vs.

Mukesh Thakur

C.A.No.907 of 2006

(Dr.B.S.Chauhan and Swatanter Kumar JJ.)

25.05.2010

JUDGEMENT

Dr.B.S.Chauhan, J.

1. Appeal No.907 of 2006 is arising out of the final judgment and order dated 26.12.2005 passed by the High Court of Himachal Pradesh at Shimla in C.W.P. No.1007 of 2005. While Civil Appeal No.897 of 2006 is against the interim order dated 22.11.2005 passed in the said writ petition. As the interim order merges into the final order, Civil Appeal No. 897 of 2006 has lost its efficacy.

2. Facts and circumstances giving rise to these appeals are that the appellant herein, H.P. Public Service Commission (hereinafter called as, "the Commission") advertised 13 vacancies of the Civil Judge (Junior Division) on 2nd April, 2005, providing the eligibility criteria and mode of selection. The respondent No.1 applied in pursuance of the said advertisement along with other candidates.

> “The result of the written papers was declared on 04.09.2005.
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> Respondent No.1 was not found eligible to be called for interview/viva-voce for the reason that he failed to secure 45% marks in the paper of Civil Law - II, though he had secured 50% marks in aggregate. Being aggrieved, the said respondent filed writ petition seeking direction for revaluation of the paper of Civil Law - II and appointment to the said post as a consequential relief. The High Court vide order dated 3rd October, 2005 directed the appellant- Commission to produce his answer sheets before it and the appellant produced the answer sheets of that paper before the High Court on 05.10.2005. The High Court passed an order dated 05.10.2005 directing the appellant to arrange for a special interview for the said respondent in view of the fact that the High Court was of the view that there had been some inconsistency in framing the Question Nos.5 and 8 and in evaluation of the answer to the said questions.”

3. However, the operation of the said interim order was stayed by this Court vide order dated 7.11.2005 in SLP (C) 21511 of 2005 and further direction was issued to the High Court to dispose of the writ petition expeditiously.

4. The appellant filed the reply before the High Court submitting that there was no provision of revaluation in the Himachal Pradesh Judicial Service Rules, 2004 (hereinafter called the "Rules 2004") as well as in Himachal Pradesh Judicial Service (Syllabus and Allocation of Marks) Regulations, 2005 (hereinafter called "Regulations 2005") and as the respondent No.1 failed to secure 90, qualifying marks in the said paper, he was not eligible to be called for interview or to be considered for appointment.

5. The High Court, on 22.11.2005, further passed an order to send the answer sheet of the said respondent to another examiner who could be in a rank of a Reader in Law in Himachal Pradesh University for revaluation. In the meanwhile, appellant also challenged the Order dated 22.11.2005 before this Court. The examiner appointed under the said order awarded him 119 marks. Thus, the High Court disposed of the writ petition on 26.12.2005 directing the Commission to issue Letter of Appointment to the respondent No.1. The court further directed that no other petition on the same and similar grounds would be entertained. The said order has also been challenged in Civil Appeal No. 907 of 2006 by the Commission.

6. Before proceeding further, it may be pertinent to mention here that this Court, vide order dated 13th January, 2006, passed an order for fresh re-valuation of the answer sheets of the respondent No.1 in Civil Law-II by the eminent Professor of Law with the consent of the counsel for the parties. In pursuance of the said order, his answer sheet was sent to an eminent Professor, who examined the same and awarded him only 82 marks in the said paper.

7. Shri Anil Nag, learned counsel for the appellant, has submitted that the Rules 2004 and Regulations, 2005 do not provide for revaluation or rechecking of the answer sheets. Comparative merit of the candidates is assessed and if there is some inconsistency in framing of the questions/marking of a particular question, it would be the same in the case of all the candidates and therefore, it is not permissible for the court to direct revaluation of the answer sheets of a particular candidate. In such an eventuality, the answer sheets of all the candidates should be revalued. The respondent No.1 admittedly failed to secure the qualifying marks in one paper, therefore, the judgment and order of the High Court is liable to be set aside.

8. On the contrary, Mr. L.N. Rao, learned Senior counsel for the respondent has submitted that as the High Court found inconsistency in question Nos.5 and 8, it was justified to direct for revaluation and as the respondent No.1 secured 119 marks, being very high in merit list i.e. at No.2, no fault could be found with the order of the High Court. Thus, appeals are liable to be dismissed.

9. We have considered the rival submissions made on behalf of the counsel for the parties and perused the record.

10. Regulations, 2005 were notified by the Himachal Pradesh High Court providing for selection on the post of Civil Judge (J.D.), providing therein three papers, namely, Civil Law - I, Civil Law - II and Criminal Law and each paper to carry 200 marks. Besides, paper-IV consisted of English Composition (200 marks), Language (100 marks) followed by Viva-Voce (100 marks). Regulation 6 (i) made it mandatory for the candidate to secure at least 45% in each paper and Regulation 6 (ii) further stipulated that the candidate must secure 50% marks in aggregate to qualify the written test. The relevant Regulations 6(i) and 6(ii) are reproduced below :- "Regulation 6(i) - No candidate shall be credited with any marks in any paper unless he obtains at least 45% in that paper, except Hindi language paper (Paper V) in which candidate should obtain at least 33% marks.

> “Regulation 6 (ii) - No candidate would be considered to have qualified the written test unless he obtains 50% marks in aggregate in all paper and at least 33% marks in Language paper i.e. Hindi in Devnagri script."
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> The advertisement clarified as under :- "Re-evaluation or Rechecking of the answer books (Scripts) is not permissible nor the Commission enters into correspondence in this behalf.”

11. Therefore, there is no dispute so far as the process of evaluation of the answer sheets is concerned under the Regulations, 2005. The Regulations do not contain any provision for revaluation.

> “Respondent No. 1 admittedly could not secure qualifying marks in one paper as required therein.”

12. In the facts and circumstances of the aforesaid case, three basic questions arise for consideration of this Court:-

> “(i) As to whether it is permissible for the court to take the task of Examiner/Selection Board upon itself and examine discrepancies and inconsistencies in the questions paper and valuation thereof.
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> (ii) Whether Court has the power to pass a general order restraining the persons aggrieved to approach the court by filing a writ petition on any ground and depriving them from their constitutional rights to approach the court, particularly, when some other candidates had secured the same marks, i.e., 89 and stood disqualified for being called for interview but could not approach the court.
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> (iii) Whether in absence of any statutory provision for revaluation, the court could direct for revaluation.”

13. In the instant case, the High Court has dealt with Question Nos.5(a) & (b) and 8(a) & (b) and made the following observations:- "We perused answer to Question No.5(a) and 5(b) and found that the petitioner has attempted both these answers correctly and the answer to Question No.5(b) was as complete as it could be. Despite the petitioner having attempted a better answer to Question No.5(b) than the answer to Question No.5(a), the petitioner has been awarded 6 marks out of 10 in answer to Question No.5(b) whereas he has been awarded 8 marks in answer to Question No.5(a). Similarly in answer to Question No.8(a) and 8(b) the petitioner has fared better in attempting an answer to Question No.8(b) rather than answer to Question No.8(a) and yet he got 4 marks out of 10 marks in answer to Question No.8(b) whereas he got 5 marks out of 10 marks in answer to Question No.8(a)."

14. It is settled legal proposition that the court cannot take upon itself the task of the *Statutory Authorities. & Ors.*[1],this Court held that in a case where the relief of regularisation is sought by employees working for a long time on ad hoc basis, it is not desirable for the Court to issue direction for regularisation straightaway. The proper relief in such cases for issuing direction to the authority concerned to constitute a Selection Committee to consider the matter of regularisation of the ad hoc employees as per the Rules for regular appointment for the reason that the regularisation is not automatic, it depends on availability of number vacancies, suitability and eligibility of the ad hoc appointee and particularly as to whether the ad hoc appointee had an eligibility for appointment on the date of initial as ad hoc and while considering the case of regularisation, the Rules have to be strictly adhered to as dispensing with the Rules is totally impermissible in law. In certain cases, even the consultation with the Public Service Commission may be required, therefore, such a direction cannot be issued.

> "This Court considered the case wherein the High Court had granted relaxation of service conditions. This Court held that the High Court could not take upon itself the task of the Statutory Authority. The only order which High Court could have passed, was to direct the Government to consider his case for relaxation forming an opinion in view of the statutory provisions as to whether the relaxation was required in the facts and circumstances of the case.
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> Issuing such a direction by the Court was illegal and impermissible."

17. Similar view has been reiterated by this Court in *Life Insurance Cooperative Societies & Ors.*[3].

> "The Constitution Bench of this Court while considering the case for grant of permits under the provisions of Motor Vehicles Act, 1939, held that High Court ought to have quashed the proceedings of the Transport Authority, but issuing the direction for grant of permits was clearly in excess of its powers and jurisdiction."

19. In view of the above, it was not permissible for the High Court to examine the question paper and answer sheets itself, particularly, when the Commission had assessed the inter-se

merit of the candidates. If there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the examination and not for respondent no.1 only. It is a matter of chance that the High Court was examining the answer sheets relating to law. Had it been other subjects like physics, chemistry and mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court.

20. Therefore, we are of the considered opinion that such a course was not permissible to the High Court.

21. So far as the second issue is concerned, the court had issued a direction while disposing of the writ petition observing as under:- "Therefore, we direct that in future, under the above referred circumstances no other petition on same and similar grounds shall be entertained by this Court."

22. Such a direction has been passed apparently in view of the fact that fresh selection proceedings had commenced for the subsequent year. Thus, in such circumstances, it could be possible for the court to reject the same on the ground of delay and laches rather than issuing a direction that no such petition shall be filed, particularly, in view of the fact that candidates having roll numbers 1096 and 1476 had also secured 89 marks in the said paper. Candidate having roll number 1096 had secured 462 marks, i.e., more than 50% in aggregate. Therefore, depriving him only on the ground that he could not approach the court cannot be justified, particularly in view of the fact that Court has competence to grant equitable relief to persons *Kumari T.P. Roshana & Ors.*[4], *Ajay Hasia etc. Ors.*[5],*Thaper Institute of Engineering & Union of India & Ors.*[6] . More so, Court has also power to mould the relief in a particular fact-situation.

23. Situation will be entirely different where the court deals with the issue of admission in mid-academic session. This Court has time and again said that it is not permissible for the Courts to issue direction for admission in mid-academic session. The reason for it has been that admission to a student at a belated stage disturbs other students, who have already been pursuing the course and such a student would not be able to complete the required attendance in theory as well as in practical classes. Quality of education cannot be compromised. The students taking admission at a belated stage may not be able to complete the courses in the limited period. In this connection reference may be made to the decisions of this Court in *Madhu Singh & Ors.*[7], *and Mridul Dhar (Minor)*

24. The issue of re-evaluation of answer book is no more res integra. This issue was considered at length by this Court in *Maharashtra State Board of Secondary and Higher Secondary*[8] wherein this Court rejected the contention that in absence of provision for re-evaluation, a direction to this effect can be issued by the Court. The Court further held that even the policy decision incorporated in the Rules/Regulations not providing for rechecking/verification/re-evaluation cannot be challenged unless there are grounds to show that the policy itself is in violation of some statutory provision. The Court held as under:

> "..........It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy, how the provisions of the Statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act...
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> ....The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any draw-backs in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act........."

25. This view has been approved and relied upon and re-iterated *Public Service Commission, Patna & Ors*[8], observing as under:

> "Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for re- evaluation of his answer-book. There is a provision for scrutiny only wherein the answer-books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totalling of marks of each question and noting them correctly on the first cover page of the answer-book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. In the absence of any provision for re-evaluation of answer-books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re- evaluation of his marks."
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> (emphasis added)

26. A similar view has been reiterated in *Dr. Muneeb Ul Rehman Pravas Ranjan Panda & Anr.*[9] ,*President, Anr.*[10] *The Secretary, West Bengal Council of Health Sciences & Ors.*[11].

27. Thus, the law on the subject emerges to the effect that in absence of any provision under the Statute or Statutory Rules/Regulations, the Court should not generally direct revaluation.

28. In the instant case, undoubtedly, the High Court issued direction for revaluation and the respondent No.1 secured 119 marks in revaluation, making him eligible to be called for interview and further for appointment, in case, he succeeds in interview. But the order of the High Court was kept in abeyance by this Court for having fresh revaluation by an eminent Professor, who had revalued the answer sheets and awarded only 82 marks to the respondent No.1.

29. We have asked Mr. Nag, Ld. Counsel to take instruction from the Commission and apprise the Court as to whether any vacancy advertised in 2005 remained unfilled. After taking instruction, Shri Nag informed us that in that selection only 5 posts could be filled up though 13 vacancies had been advertised. However, remaining vacancies had been carried forward and re-advertised and had been filled in 2006 itself. Subsequent to the selection involved herein, three more selections have been held. Respondent No.1 has appeared in 2 subsequent selections but could not succeed. Now he has become over-aged also.

30. Even on any other ground, the respondent No.1 cannot be offered appointment for want of vacancy.

31. The facts and circumstances of the case, warrant review of the judgment and order of the High Court dated 26.12.2005. The appeals are allowed. Judgment and order dated 26.12.2005 is set aside. No costs.

[1] *(1996) 7 SCC 499*
[2] *(1998) 6 SCC 626*
[3] *(2004) 7 SCC 112*
[4] *AIR 1979 SC 765*
[5] *AIR 1983 SC 580*
[6] *AIR 1997 SC 3588*
[7] *(2002) 7 SCC 258*
[8] *AIR 1984 SC 1543*
[9] *AIR 2004 SC 4116*
[10] *(2004) 13 SCC 383*
[11] *(2007) 1 SCC 603*
[12] *(2009) 1 SCC 599*