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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 22.07.2013

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W.P.(C) No.4048/2012

DELHI SUBORDINATE SERVICES SELECTION BOARD..... Petitioner

Through:Ms.Zubeda Begum with Ms.Sana Ansari,
Advocates

versus

SH. PUSHPENDRA SINGH

..... Respondent

Through:Mr.Sumit Singh, Amicus Curiae with
Respondent in person.

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

The respondent before this Court appeared in the examination held by the petitioner Delhi Subordinate Services Selection Board for recruitment of TGT Physical Education teacher. The petitioner was declared unsuccessful in the said examination. Soon after declaration of the result, he submitted an application to the PIO of the petitioner, seeking a copy of his answer sheet in Part-II(Main) of the said examination. Vide communication dated 4th April, 2011, the PIO declined to make the copy of the answer sheet available to the respondent. Being aggrieved from the order passed by the PIO, the respondent filed an appeal to the First Appellate Authority. However, despite the order of the First Appellate Authority, a copy of the answer sheet was not provided to the respondent. He then filed a

second appeal before the Central Information Commission under Section 19 of the Right to Information Act. Vide impugned order dated 2nd March, 2012, the Commission directed the PIO to provide the answer sheet of the respondent to him, after deleting the name of the examiner. Though the respondent had also sought copies of the answer sheet of other candidates, that request of the respondent was declined by the Commission. Being aggrieved from the order of the Commission, the petitioner is before this Court.

2. The plea taken by the petitioner is that the direction given by the Commission is beyond the scope of RTI Act and contrary to the decision of the Supreme Court in *Central Board of Ssecondary Education and Another vs. Aditya Bandopadhyay and Others* (2011) 8 Supreme Court Cases 497. A perusal of the decision of the Apex Court in Aditya Bandopadhyay (supra) would show that the following four issues primarily arose for consideration of the Apex Court in the said case:

“(i) Whether an examinee's right to information under the RTI Act includes a right to inspect his evaluated answer books in a public examination or taking certified copies thereof?

(ii) Whether the decisions of this Court in *Maharashtra State Board of Secondary Education* and other cases referred to above, in any way affect or interfere with the right of an examinee seeking inspection of his answer books or seeking certified copies thereof?”

(iii) Whether an examining body holds the evaluated answer books "in a fiduciary relationship" and consequently has no obligation to give inspection of the evaluated answer books under Section 8(1)(e) of RTI Act?

(iv) If the examinee is entitled to inspection of the evaluated answer books or seek certified copies thereof, whether such right is subject to any limitations, conditions or safeguards?

3. After examining various provisions of the RTI Act 2005, the Apex Court, inter alia, held as under:-

“26. The examining bodies (Universities, Examination Boards, CBSE etc.) are neither security nor intelligence organizations and therefore the exemption under Section 24 will not apply to them. The disclosure of information with reference to answer-books does not also involve infringement of any copyright and therefore Section 9 will not apply. Resultantly, unless the examining bodies are able to demonstrate that the evaluated answer-books fall under any of the categories of exempted 'information' enumerated in Clauses (a) to (j) of Sub-section (1) Section 8, they will be bound to provide access to the information and any applicant can either inspect the document/record, take notes, extracts or obtain certified copies thereof.

27. The examining bodies contend that the evaluated answer-books are exempted from disclosure under Section 8(1)(e) of the RTI Act, as they are 'information' held in its

fiduciary relationship. They fairly conceded that evaluated answer-books will not fall under any other exemptions in Sub-section (1) of Section 8. Every examinee will have the right to access his evaluated answer-books, by either inspecting them or take certified copies thereof, unless the evaluated answer-books are found to be exempted under Section 8(1)(e) of the RTI Act.”

4. Dealing with the contention that the rules and regulations of the examining body may bar inspection of the answer sheet, the Apex Court held as under:-

“36. Section 22 of RTI Act provides that the provisions of the said Act will have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Therefore the provisions of the RTI Act will prevail over the provisions of the bye-laws/rules of the examining bodies in regard to examinations. As a result, unless the examining body is able to demonstrate that the answer-books fall under the exempted category of information described in Clause (e) of Section 8(1) of RTI Act, the examining body will be bound to provide access to an examinee to inspect and take copies of his evaluated answer-books, even if such inspection or taking copies is barred under the rules/bye-laws of the examining body governing the examinations. Therefore, the decision of this Court in *Maharashtra State Board* (supra) and the subsequent decisions following the same, will not affect or interfere with the right of the examinee seeking inspection of answer-books or taking certified copies thereof.

43. It cannot therefore be said that the examining body is in a fiduciary relationship either with reference to the examinee who participates in the examination and whose answer-books are evaluated by the examining body.

51. We, therefore, hold that an examining body does not hold the evaluated answer-books in a fiduciary relationship. Not being information available to an examining body in its fiduciary relationship, the exemption under Section 8(1)(e) is not available to the examining bodies with reference to evaluated answer-books. As no other exemption under Section 8 is available in respect of evaluated answer books, the examining bodies will have to permit inspection sought by the examinees.”

5. It would, therefore, be seen that the Apex Court has clearly upheld the right of the examinee to have inspection as well the copy of his answer book, even if the rules and regulations of the examining body prohibit such inspection and/or copy. It was contended by the learned counsel for the petitioner Board that in terms of the Schedule for retention/maintenance/preservation and weeding out of exam related records of Delhi Subordinate Services Selection Board, they are not required to maintain the record after the time prescribed for this purpose and therefore on expiry of the said period, the respondent is not entitled to inspection and/or copy of the answer sheet. A perusal of the said Schedule would show that answer sheet of the candidates who qualify and are selected, as per the result of Part-I (Objective)

one tier examination, are to be retained for one year from the date of announcement of the final result or till the announcement of the result of the written test of the subsequent examination, whichever is later. The OMR/Descriptive answer sheets of candidates who are not selected are to be retained for six months from the date of the declaration of the result. The case of the respondent is that he had applied to inspection of copy of his answer sheet immediately after the result was declared. In this regard, he pointed out to the communication dated 4th April, 2011, sent to him by the PIO which shows that the application under RTI Act was submitted by him on 11th March, 2011, which was well within six months of declaration of the results. In any case, what is relevant in this regard is as to whether the answer sheet sought by the respondent is available or has already been destroyed. This is nowhere the case of the petitioner in the writ petition that the answer sheet which the respondent is seeking has already been destroyed. If the answer sheet is still available, the respondent is certainly entitled to its copy. If the answer sheet has already been destroyed, there can be no direction for supplying its copy to the respondent.

5. In these circumstances, the writ petition is disposed of, with the direction that if the answer sheet, a copy of which has been sought by the respondent, has not been destroyed and is available, a copy thereof shall be supplied to the respondent within one week from today. If the said answer sheet has already been destroyed, the petitioner shall file an affidavit of the concerned Deputy Secretary to this effect

within one week from today, disclosing the date of destruction and supported by the requisite documents evidencing such destruction, after serving a copy upon the respondent and in that case the respondent can have such remedy, if any, as is available to him in law against the petitioner. In case the answer sheet has already not been destroyed, it shall not be destroyed by the petitioner till a copy is supplied to the respondent in terms of this order and for a period of four weeks thereafter.

V.K. JAIN, J

JULY 22, 2013

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