$~28,30,31&32

* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ W.P.(C) 7139/2013 & CM 15383/2013 (stay)

UNION PUBLIC SERVICE COMMISSION

..... Petitioner

Through: Mr. Naresh Kaushik, Adv.

versus

MADHULIKA KUMARI

..... Respondent

Through:

\+ W.P.(C) 7149/2013 & CM 15394/2013 (stay)

UNION PUBLIC SERVICE COMMISSION

..... Petitioner

Through: Mr. Naresh Kaushik, Adv.

versus

PRANJALYA PARTH LATHE

..... Respondent

Through:

\+ W.P.(C) 7137/2013 & CM 15381/2013 (stay)

UNION PUBLIC SERVICE COMMISSION

..... Petitioner

Through: Mr. Naresh Kaushik, Adv.

versus

ANKIT KUMAR

..... Respondent

Through:

\+ W.P.(C) 7138/2013 & CM 15382/2013 (stay)

UNION PUBLIC SERVICE COMMISSION

..... Petitioner

Through: Mr. Naresh Kaushik, Adv.

versus

RAVI KANT NIRALA

..... Respondent

Signature Not Verified

Signing Date:18.09.2024 16:57:12
Certify that the digital and physical file have been compared and the digital data is as per the physical file and no page is missing.

Through:

CORAM:
HON'BLE MR. JUSTICE V.K. JAIN

ORDER

% 19.12.2013

In view of my decision in *Union Public Service Commission* versus *Arun Kumar*, W.P(C) No.7669/2013 decided on 6.12.2013, these writ petitions are dismissed.

There shall be no orders as to costs.

All pending CMs also stand disposed of.

V.K. JAIN.

DECEMBER 19, 2013/*rd*

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Date of Decision: 06.12.2013

\+ WP(C) No.7669 of 2013 & CM No.16356 of 2013

UNION PUBLIC SERVICE COMMISSION ....Petitioner

Through: Mr. Nasir Ahmed & Mr. Mohd. Muzahir Hussain, Advs.

Versus

ARUN KUMAR ....Respondent

Through: None

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (Oral)

The respondent before this Court submitted an application to the CPIO of the petitioner – Union Public Service Commission (UPSC) seeking photocopies of the answer sheets of his Mathematics Paper-I, of Civil Services (Main) Examination, 2011, along with correct answer of the said paper with detailed solution. The CPIO vide communication dated 18.7.2012 informed the respondent that no model answers were prepared. The photocopies of the evaluated answer sheets was declined seeking exemption under Section 8(1)(d) of the Right to Information Act.

2. Feeling aggrieved from the response of the CPIO, the respondent preferred an appeal which came to be dismissed vide order dated 3.9.2012. The respondent thereupon approached the Central Information Commission (hereinafter referred to as the Commission), by way of a second appeal. Vide order dated 28.5.2012, the Commission directed the CPIO to provide attested copies of the evaluated answer-sheets to the respondent within ten (10)

working days, along with answer key. Being aggrieved of the aforesaid order, the petitioner – UPSC is before this Court.

3. The question whether copy of answer sheet can be accessed under Right to Information Act or not, came to be considered by this Court in *Delhi Subordinate Services Selection Board* versus *Pushpendra Singh,* W.P(C) No.4048/2012, decided on22.7.2013 and relying upon the decision of the Hon'ble Supreme Court in *Central Board of Secondary Education and Another vs. Aditya Bandopadhyay and Others (2011) 8 Supreme Court Cases 497*, the writ petition was disposed of with direction that if the answer sheet is available, a copy thereof shall be provided to the respondent in the said writ petition. In *Aditya Bandopadhyay and Others (supra)*, 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."\

4. It would thus be seen that in the aforesaid decision, the Hon'ble Supreme Court upheld the right of the examinee to have the inspection as well as copy of his answer-book, even if the rules and regulations of the examining body prohibits such inspection and/or copy. In view of the authoritative pronouncements of the Apex Court, no fault can be found with the directions given by the Commission to the petitioner.

5. As regards provisions of section 8(1)(d) of RTI Act, reliance thereupon, in my view, is wholly misplaced. The aforesaid clause exempts from disclosure, only such information, disclosure of which would harm the competitive position of a third party and includes commercial confidence, trade secrets or intellectual property. However, no such issue comes up in disclosing the answer sheet of the examinee to none other than the examinee himself.

For the reasons stated hereinabove, I find no merit in the petition and the same is hereby dismissed. All pending CMs also stand disposed of.

There shall be no orders as to costs.

DECEMBER 06, 2013/*rd* V.K. JAIN, J.