



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	06.11.2023
Pronounced on	29.11.2023

CORAM:

THE HON'BLE Ms.JUSTICE. **R.N.MANJULA**W.P.No.16099 of 2020andW.M.P.Nos.20059, 20061 & 20063 of 2020

M.Sindhu

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep.by its Secretary,
Dept of E-Governance,
(Tamil Nadu Information Technology Service, 2019)
Secretariat, Fort St.George, Chennai - 9.

2.The Tamil Nadu Public Service Commission,
Rep. by its Chairman,
Frazer Bridge Road, VOC Nagar,
Park Town, Chennai - 1.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records in connection with the impugned order dated 19.10.2020 issued by the 2nd respondent in connection with the Notification 05/2019 dated 22.01.2019 in so far as only declaring 8 candidates are provisionally admitted for verification of documents instead of 120 candidates and quash the same and further direct the 2nd respondent to adopt the procedure called moderation as held by the Hon'ble



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Supreme Court of India in the case of Sanjay Singh & Anr Vs. U.P.Public Service Commission reported in (2007) 3 SCC 720 and also in Pranav Verma & Others Vs. The Registrar General of the High Court of Punjab and Haryana at Chandigarh & Anr by the Hon'ble Supreme Court of India in W.P.(Civil) No.565 of 2019 dated 13.12.2019 by awarding grace marks as stipulated by this Court to all the candidates including for the petitioner in Paper III (Descriptive) (Code-349) and thereafter proceed further for selection to the post of Assistant System Engineer and Assistant System Analyst included in Tamil Nadu Information Technology Service.

For Petitioner : Mr.V.Prakash, Senior Counsel for
Mr.K.Krishnamoorthy

For Respondents : Mr.T.Arun kumar,
Additional Government Pleader for R1
: Mr.I Abrar Mohammed Abdullah,
Standing Counsel for TNPSC

ORDER

This Writ Petition has been filed to issue a Writ of Certiorarified Mandamus to call for the records in connection with the impugned order dated 19.10.2020 issued by the 2nd respondent in connection with the Notification 05/2019 dated 22.01.2019 in so far as declaring only 8 candidates are provisionally admitted for verification of documents instead of 120 candidates and quash the same and to direct the 2nd respondent to adopt the procedure called moderation as held by the Hon'ble Supreme Court of India in the case of



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Sanjay Singh & Anr Vs. U.P.Public Service Commission reported in (2007) 3

SCC 720 and in Pranav Verma & Others Vs. The Registrar General of the High Court of Punjab and Haryana at Chandigarh & Anr, by awarding grace marks as stipulated to all the candidates including the petitioner in Paper III (Descriptive) (Code-349) and to continue the selection process.

2. Heard Mr.V.Prakash, learned Senior Counsel for the petitioner and Mr.T.Arun kumar, learned Additional Government Pleader for R1 and Mr.I.Abrar Mohammed Abdullah, learned Standing Counsel for R2.

3. The petitioner has applied for the post of Assistant System Engineer / Assistant System Analyst in the Tamil Nadu Information Technology Service on the basis of the notification of the second respondent. As per the provisional selection list dated 19.10.2020 issued by the second respondent, the candidates who secured lesser marks than the petitioner were provisionally admitted in the selection list.

4. The petitioner belonged to MBC Category and she is a meritorious



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student who secured high marks in SSLC and HSC Examination. She studied Engineering Course at PSG College of Technology affiliated to Anna University and completed the Bachelor Degree in first class with distinction. The petitioner was not selected to the post in view of the improper valuation of her paper III.

5. The recruitment was done for filling up of 36 posts of Assistant System Engineer and 24 posts of Assistant System Analyst. Though 15,000 candidates participated in the selection process only 8 candidates were declared to have been selected.

6. The following table would show the minimum qualifying marks for each of the papers and the marks secured by the petitioner.

<i>Subject</i>	<i>Maximum marks</i>	<i>Minimum qualifying marks 40%</i>	<i>Marks secured by the petitioner</i>
Paper - I	200	80	134
Paper - II	50	20	31
Paper - III	150	60	55

7. Even though the petitioner got more marks than the qualifying marks



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in paper I and II, she was awarded with only 55 marks in paper III which is short of five marks for the minimum qualifying marks of 60. Since the petitioner has reasons to believe that there is some deficiency in valuation of her paper III, she requested for the copy of her answer sheet.

8. This Court *vide* order dated 15.12.2021 called for the answer sheets of the petitioner along with the marks awarded to her and the same has been submitted to this Court in a sealed cover. On perusal of the same, especially, the valuation done on the third paper of the petitioner, it is seen that she was given with 33 marks during first valuation and in the second valuation, she had secured 66 marks. There is a glaring difference between the first valuation and the second valuation.

9. It is submitted by Mr.Abrar Mohammed Abdullah that usually fair valuation will be done and as per the rules, if the difference between two valuations is more than 50%, the paper will be subjected to a third valuation. In the instant case, the difference between the first valuation and the second valuation is 100%. In the second valuation, the petitioner had secured double the marks of the first valuation.



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WEB COPY **10.** In the third valuation, 54 marks was awarded to the same paper. As per the rules, the average between the two nearest marks would be considered as the marks obtained by the candidates. Since the marks given in the second and third valuation are closer than the marks awarded in the first valuation, for arriving at the final marks, the average between 66 and 54 will be taken. Even though the average difference between 66 and 54 is 60 marks, the petitioner was given with only 55 marks. Had the candidate was given with the actual 60 marks, her name would have been included in the selection list, but she was given with only 55 marks. As the minimum qualifying marks for the third paper is 60 marks, she could not secure a place in the selection list.

11. When the second respondent was asked to clarify this difference, the learned Standing Counsel for the second respondent submitted that if a candidate uses bullet marks other than hyphen symbols for highlighting the answers, a penalty of five marks will be deducted. So it is submitted that the petitioner had used rightwards arrow symbol (-->) in her answer script and hence, five marks were deducted and she was given with 55 marks.



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12. Despite 15,000 candidates have appeared for the examination and 60 posts were supposed to be filled up, only 8 candidates were found to be eligible and listed in the provisional selection list. The petitioner who has got far more marks than the minimum qualifying marks in paper I and II, could not even get the minimal qualification of 60 marks in view of the lack of uniformity in valuing the descriptive answer. As observed already, the difference between the first and second valuation is 100%.

13. When second or third valuation is done, the second / third examiner would only concentrate on those aspects which were omitted to be appreciated by the first examiner. Had the paper was valued by the second / third examiner at the very first instance, he could have done a holistic appreciation of the answers and that exercise would have even brought more than 66 marks. The petitioner's answer sheet appears to be a clean presentation. However this Court cannot play the role of an another examiner as it does not have the expertise in the specialised subjects for which the examination is conducted.

14. The paper III consisted of technical descriptive type questions from various subjects like (a) Computer Science and Engineering (b) Computer



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Engineering (c) Information Technology (d) Electronics and Communication

Engineering (e) Electrical and Electronics Engineering including Basic Electronics (ECE & EEE), Data Structures and Algorithms, Digital Electronics and Computer Organisation, Probability and Queueing Theory, Operating Systems, Database Management Systems, Programming Inc, Object oriented Programming & Object oriented Analysis and Design, Micro Processors and Embedded Systems (ECE & EEE), Web Technology, Cloud Computing, Information Security, Machine Learning, Computer Networks, Software Engineering, Software Process and Project Management, Big Data Analytics.

15. Obviously the examiner who is qualified in any one branch of Engineering could not be a person who is fully competent to value the answers given by the candidates. Probably that could be the reason why there was 100% difference between the first and second valuation of the petitioner's paper III answer sheet. Had there been an Expert Committee consisting of experts in all branches of Engineering, the answers given by the candidate to all the questions from different branches of Engineering could have been better appreciated and that would have reduced the examiner's variability to a bare minimum.



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WEB COPY 16. As rightly pointed out by Mr.V.Prakash, learned Senior Counsel for the petitioner that no moderation procedure was adopted to reduce the examiner's subjectivity or variability by having an Expert Committee. Even a well written paper if happens to go to the hands of a strict examiner, may get lesser mark and vice-versa.

17. In this regard, it is relevant to refer the observations of the Hon'ble Supreme Court made in the case of ***Sanjay Singh & Anr Vs. U.P.Public Service Commission reported in (2007) 3 SCC 720***. In the said judgment, it is observed that if the minimal answer sheet goes to the liberal examiner he would award more marks and at the end excellent answer sheet went to the hands of the strict examiner will be awarded with less marks. As this frustrates the whole object of conducting competitive examinations, a procedure called moderation to reduce the examiner's subjectivity and variability is considered to be an essential and the method of moderation has been set out as per the following terms:

"(i) The paper-setter of the subject normally acts as the Head Examiner for the subject. He is selected from



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amongst senior academicians/scholars/senior civil servants/Judges. Where the case of a large number of candidates, more than one examiner is appointed and each of them is allotted around 300 answer-scripts for valuation.

(ii) To achieve uniformity in valuation, where more than one examiner is involved, a meeting of the Head Examiner with all the examiners is held soon after the examination. They discuss thoroughly the question paper, the possible answers and the weightage to be given to various aspects of the answers. They also carry out a sample valuation in the light of their discussions. The sample valuation of scripts by each of them is reviewed by the Head Examiner and variations in assigning marks are further discussed. After such discussions, a consensus is arrived at in regard to the norms of valuation to be adopted. On that basis, the examiners are required to complete the valuation of answer scripts. But this by itself, does not bring about uniformity of assessment inter se the examiners. In spite of the norms agreed, many examiners tend to deviate from the expected or agreed norms, as their caution is overtaken by their propensity for strictness or liberality or erraticism or carelessness during the course of valuation. Therefore, certain further corrective steps become necessary.

(iii) After the valuation is completed by the



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examiners, the Head Examiner conducts a random sample survey of the corrected answer scripts to verify whether the norms evolved in the meetings of examiner have actually been followed by the examiners. The process of random sampling usually consists of scrutiny of some top level answer scripts and some answer books selected at random from the batches of answer scripts valued by each examiner. The top level answer books of each examiner are revalued by the Head Examiner who carries out such corrections or alterations in the award of marks as he, in his judgment, considers best, to achieve uniformity. (For this purpose, if necessary certain statistics like distribution of candidates in various marks ranges, the average percentage of marks, the highest and lowest award of marks etc. may also be prepared in respect of the valuation of each examiner.)

(iv) After ascertaining or assessing the standards adopted by each examiner, the Head Examiner may confirm the award of marks without any change if the examiner has followed the agreed norms, or suggest upward or downward moderation, the quantum of moderation varying according to the degree of liberality or strictness in marking. In regard to the top level answer books revalued by the Head Examiner, his award of marks is accepted as final. As regards the other answer books below the top level, to achieve maximum measure of uniformity inter se



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the examiners, the awards are moderated as per the recommendations made by the Head Examiner.

(v) If in the opinion of the Head Examiner there has been erratic or careless marking by any examiner, for which it is not feasible to have any standard moderation, the answer scripts valued by such examiner are revalued either by the Head Examiner or any other Examiner who is found to have followed the agreed norms.

(vi) Where the number of candidates is very large and the examiners are numerous, it may be difficult for one Head Examiner to assess the work of all the Examiners. In such a situation, one more level of Examiners is introduced. For every ten or twenty examiners, there will be a Head Examiner who checks the random samples as above. The work of the Head Examiners, in turn, is checked by a Chief Examiner to ensure proper results."

18. Mr.I Abrar Mohammed Abdullah, learned Standing Counsel for the second respondent submitted that only in compliance of the above guidelines, the answer scripts of the petitioner and others were valued for two times and if the difference between two valuation exceeds 50%, the third valuation is also done.



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19. When the difference between the first and second valuation is beyond 50%, the respondents could have sent the paper for Expert Committee.

The guidelines of the Hon'ble Supreme Court would contemplate that after the valuation is completed by the examiners, the head examiner conducts a random sample survey of the corrected answer scripts to verify whether the norms evolved in the meetings of examiner have actually been followed by the examiners. The process of random sampling usually consists of scrutiny of some top-level answer scripts and some answer books selected at random from the batches of answer scripts valued by each examiner. The top-level answer books of each examiner are revalued by the head examiner who carries out such corrections or alterations in the award of marks as he, in his judgment considers best to achieve uniformity. By taking into consideration of the top level answer sheet and the valuation done by each examiners if the head examiner suggests upward or downward moderation that could have been accepted as a final one. Further the work of the head examiner in turn would be checked by the chief examiner.

20. But the respondents did not follow the above procedure and the second valuation has not been done on the basis of the top mark answer sheet



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of each of the examiners who valued the answer sheets. In such context of the facts, the answer sheet of the petitioner would require further moderation of atleast not reducing five marks towards penalty. This is also because of the fact that she would have got a better appreciation for her answer sheet, if the second examiner happened to valued her paper for the first time in a holistic manner, without having the mindset of looking into the omissions or commissions in valuation done by the first examiner during his second valuation. It is a case where the petitioner ought to have been given with atleast the eligible marks which she would get, as the average between two nearest marks but without any reduction, in view of the moderation effect which she deserves to be given with. If that exercise is done, the petitioner will get 60 marks in paper - III and come within the bracket of those candidates who got the minimum eligible marks of 60 in paper - III and found their names included in the selection list.

21. Since the petitioner's descriptive paper III after re-valuation according to the rules, found to be fit enough to secure marks qualifying her to be placed in the selected list, an order for awarding omnibus grace marks to all the candidates at this remote point of time is not possible. Hence the relief can



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be modified and limited only to in respect of the petitioner, who proved to be eligible to be accommodated in the selection list.

22. In the result, this Writ Petition is partly allowed and the second respondent is directed to include the name of the petitioner in the selection list and issue an order of appointment to her after verifying her certificates by restoring her seniority in accordance with the merit list of the recruitment for the year 2019 with notional increment from the date of the appointment of the other similar candidates till the date of joining of the petitioner and thereafter with monetary benefits and issue orders within a period of six weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed. No costs.

29.11.2023

Index : Yes

Internet : Yes

Speaking

Neutral Citation : Yes

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R.N.MANJULA, J.

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To

- 1.The Secretary,
The State of Tamil Nadu,
Dept of E-Governance,
(Tamil Nadu Information Technology Service, 2019)
Secretariat, Fort St.George, Chennai - 9.
- 2.The Chairman,
The Tamil Nadu Public Service Commission,
Frazer Bridge Road, VOC Nagar,
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