

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 1181 of 2015**

- Shivraj Singh S/O Shri Prahlad Singh, Aged About 45 years Occupation Constable, Resident Of M.I.G. 68, Nehru Nagar, Near Bhudhwari, P.S. Balco Nagar, District Korba, (Chhattisgarh)

---- Petitioner

Versus

1. State of Chhattisgarh Through The Secretary, Home And Police Affairs, Mahanadi Bhawan, New Mantralaya, Raipur, (Chhattisgarh)
2. The Director General Of Police, Police Head Quarter, District Raipur, (Chhattisgarh)
3. The Inspector General Of Police, Bilaspur Range, District Bilaspur, (Chhattisgarh)
4. The Superintendent Of Police Korba, District Korba, (Chhattisgarh)
5. Baldev Singh, Occupation- Constable No. 268,
6. Manoj Kumar Occupation- Constable No. 132,
7. Kripashankar Dubey Occupation-Constable No. 299,
8. Ishwar Singh Occupation- Constable No. 319,
9. Praveen Nardey Constable No. 308,
10. Ramkumar Pandey Occupation Constable No. 340,

The respondents No.5 to 10 are constable Posted In The Police Department Under The Office Of Superintendent Of Police, P.S. Balco, District Korba, (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri Prakash Tiwari, Advocate
For Respondent/State	:	Shri Y.S. Thakur, Dy. AG for the State.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****07/04/2015**

Heard learned counsel for the parties.

1. This petition has been preferred by an unsuccessful employee, who appeared in the promotion test for promotion from the post of Constable to Head Constable. Petitioner is seeking revaluation of the answer-sheets by an expert and in the event increase in marks, consideration of his case for promotion *w.e.f.* 26-4-2014 with all consequential benefits.
2. Learned counsel for the petitioner would submit that in the said promotion test held on 21-4-2013, result of which was declared on 26-4-2013, the petitioner appeared in the two subjective papers namely Police Regulations and Law & Procedure. The petitioner has been awarded 45/100 marks in the first paper and 39/100 in the second paper, however, as per his performance in the examination, the petitioner should have been awarded much more marks, therefore, his answer-sheets should be revalued by an expert.
3. No provision has been brought to the notice of this Court governing the said examination prescribing for revaluation of the answer-sheets of the promotion test.
4. In the matter of **Maharashtra State Board of Secondary And Higher Secondary Education And Another Vs. Paritosh Bhupeshkumar Sheth And Others**¹, it has been held by the Supreme Court that the writ Court is not entitled to direct revaluation of answer-sheets if no such provision is made in the regulation governing the examination. In the said matter, the Supreme Court, at para 12, held thus:

"12. Though the main plank of the arguments advanced on behalf of the petitioners before

¹ (1984) 4 SCC 27

the High Court appears to have been the plea of violation of principles of natural justice, the said contention did not find favour with the learned Judges of the Division Bench. The High Court rejected the contention advanced on behalf of the petitioners that non-disclosure or disallowance of the right of inspection of the answer books as well as denial of the right to ask for a revaluation to examinees who are dissatisfied with the results visits them with adverse civil consequences. The further argument that every adverse "verification" involves a condemnation of the examinees behind their back and hence constitutes a clear violation of principles of natural justice was also not accepted by the High Court. In our opinion, the High Court was perfectly right in taking this view and in holding that the "process of evaluation of answer papers or of subsequent verification of marks" under clause (3) of Regulation 104 does not attract the principles of natural justice since no decision-making process which brings about adverse civil consequences to the examinees is involved. The principles of natural justice cannot be extended beyond reasonable and rational limits and cannot be carried to such absurd lengths as to make it necessary that candidates who have taken a public examination should be allowed to participate in the process of evaluation of their performances or to verify the correctness of the evaluation made by the examiners by themselves conducting an inspection of the answer books and determining whether there has been a proper and fair valuation of the answers by the examiners. As succinctly put by Mathew, J. in his judgment in the *Union of India v. Mohan Lal Kapoor* it is not expedient to extend the horizon of natural justice involved in the audi alteram partem rule to the twilight zone of mere expectations, however great they might be. [SCC para 56, p. 863: SCC (L&S) p. 31]. The challenge levelled against the validity of clause (3) of Regulation 104 based on the plea of violation of natural justice, was therefore, rightly rejected by the High Court."

5. In the matter of ***H.P. Public Service Commission v. Mukesh Thakur***², the Supreme Court, at paras 24, 25 & 26, held thus :

“24. The issue of revaluation 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 Education v. Paritosh Bhupeshkumar Sheth, wherein this Court rejected the contention that in the absence of the provision for revaluation, 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/revaluation 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: (SCC pp. 39-40 & 42, paras 14 & 16)

“14. ... 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. ...

* * *

... 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 drawbacks 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 reiterated by this Court in *Pramod Kumar Srivastava v. Bihar Public Service Commission* observing as under: (SCC pp. 717-18, para 7)

“7. ... Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for revaluation 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 revaluation of answer books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for revaluation of his marks.”

(emphasis added)

A similar view has been reiterated in *Muneeb-Ul-Rehman Haroon (Dr.) v. Govt. of J&K State*, *Board of Secondary Education v. Pravas Ranjan Panda*, *Board of Secondary Education v. D. Suvankar*, *W.B. Council of Higher Secondary Education v. Ayan Das* and *Sahiti v. Dr. N.T.R. University of Health Sciences*.

26. Thus, the law on the subject emerges to the effect that in the absence of any provision under the statute or statutory rules/regulations, the Court should not generally direct revaluation.”

6. Even otherwise, directing revaluation of answer-sheets of a candidate who appeared in the recruitment is not made because thousands of candidates appear in a particular recruitment and it is not permissible, nor advisable to initiate issuing directions to the recruiting agency for conducting revaluation. If such orders are issued by writ Courts, a recruitment will never be concluded within time. Moreover, there is no allegation of *mala fide* against

any examiner.

7. At this juncture, learned counsel for the petitioner would submit that the respondents may be directed to decide petitioner's pending representation.
8. Any direction to the respondents to decide the petitioner's representation seeking revaluation can be issued only when the relevant rules provides for revaluation. In the garb of issuance of direction to decide representation, this Court may not create a mechanism which is not envisaged under the rules, therefore, such direction cannot be issued.
9. For the foregoing, the writ petition is dismissed.

JUDGE

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