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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5038 OF 2013

Mr. Shashikant Chougule

... Petitioner

Vs.

Maharashtra Public Service Commission and Ors. ... Respondents

Mr. Uday P. Warunjikar, for the Petitioner.

Mrs. M.P. Thakur, AGP, for the Respondent Nos.1 and 2.

**CORAM : A.S. OKA &
A.P. BHANGALE, JJ.**

DATE : 23rd MARCH, 2015

PC.

. Heard the learned counsel appearing for the Petitioner. The Petitioner appeared for the written examination conducted by the Maharashtra Public Service Commission for the appointment to the post of Civil Judge, Junior Division cum Judicial Magistrate First Class. Admittedly, in the Rules which govern this examination, there is no provision for revaluation or reassessment of the answer sheets. However, there is a provision for moderation. Originally, the Petitioner secured 47 marks in Paper-I and 49 marks in Paper-II. After moderation, the marks have been increased to 49 and 50 respectively. As the Petitioner could not secure 50% marks in both the papers, he was held as disqualified.

2. The submission of the learned counsel appearing for the Petitioner is based on the merits of the assessment of the answer sheets. Inviting our attention to one particular answer written by the Petitioner, he urged that no examiner with ordinary prudence would have assigned zero marks to the said answer. He urged that the procedure needs a change as now the copies of the answer sheets are being made available as a matter of right. He relied upon a decision of the Apex Court in the case of *Sanjay Singh and Anr. vs. U.P. Public Service Commission, Allahabad and Anr.*¹. He also relied upon a decision of the Delhi High Court in the case of *Kapil Malik vs. Union Public Service Commission* which is dated 12th October, 2007. He submitted that there is a need to make a provision for reassessment or revaluation.

3. We have considered the submissions. It is an admitted position that the Rules of examination do not provide for reassessment or revaluation of the answer sheets. The question paper of Paper-I annexed to the Petition shows that some of the questions are of descriptive nature. There is one question on judgment writing. It is not the function of the Writ Court to reassess the answer sheets of the Petitioner which have been examined not only by the examiner but also by the moderator. As stated earlier, on moderation, the marks of the Petitioner have been increased. In short, the Petitioner wants the Writ

¹ (2007) 3 SCC 720

Court to examine whether the marks assigned to the answers are correct.

4. There is no challenge in this Petition to the Rules of examination. In this Petition under Article 226 of the Constitution of India, we decline to reassess or revalue the answer sheets of the Petitioner. As there is always an element of subjectiveness in the assessment of answers of descriptive nature, there is a system of moderation which is applied to the examination concerned.

5. As far as the decision of the Apex Court in the case of *Sanjay Singh* is concerned, the Apex Court was dealing with the issue of scaling of marks. The issue was whether scaling of marks is contrary to or prohibited by the relevant rules. As far as the decision of the Delhi High Court in the case of *Kapil Malik* is concerned, the same does not lay down any law but the same incorporates suggestions to the Public Service Commission. Hence, there is no scope to interfere in the writ jurisdiction under Article 226 of the Constitution of India. The Petition is rejected.

(A.P. BHANGALE, J)

(A.S. OKA, J)