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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 272 OF 2013

The General Manager (HR and Admn. B.S.N.L.)
and anr. ... Petitioners

Vs.

Mrs. M.P. Patange, Sr. Telecom
Office Assistant (Phones) and anr. ... Respondents

Ms Martina Sapkal i/b M/s. Arun Sapkal & Co. for the Petitioners.
Ms Sharmila Deshmukh for the Respondents.

CORAM : V. M. KANADE, AND
M. S. SONAK, JJ.

Date of Reserving the Judgment : 09 June 2016.
Date of Pronouncing the Judgment : 10 August 2016.

JUDGMENT (PER M.S. SONAK, J.)

1] The petitioners challenge the judgment and order dated 22 February 2012 made by the Central Administrative Tribunal (CAT) in Original Application Nos. 823 and 824 of 2010 instituted by the respondents.

2] By the impugned judgment and order, the CAT has directed the following:

“22. The Original Applications are therefore, disposed of in the following terms.

(a) The Corporate Office of Bharat Sanchar Nigam Ltd. shall constitute a Committee of three experts in the subject to consider whether or not the applicants are entitled to get any proportionate marks for the answers given by them to Question No.1 in Paper No.V.

(b) The Committee shall also consider whether or not the applicants are entitled to be given any marks either in full or proportionately for Question No.2 since the Question Setter had himself committed the error and issued clarification/fresh key after the examination was over.

23. The Corporate Officer shall constitute the Committee of Experts expeditiously, at any rate within one month from the date of receipt of a copy of this order and the Committee shall take a final decision in the matter within two months therefrom. While undertaking the above exercise the Committee shall keep in view the principles laid down by their Lordships of the Apex Court in Sanjay Singh & another vs. U.P. Public Service Commission & Allahabad another – 2007 (1) SCC (L& S) 870.

24. The competent authority shall, depending on the outcome of the report of the Committee of Experts, work out the consequential formalities. However, we make it clear that the applicants in the event of qualifying for promotion shall not be entitled to claim seniority over those who have already been promoted as Junior Accounts Officers pursuant to the examination held in January, 2010, since the applicants have not impleaded those successful candidates in this Original Application.

25. *The OA is disposed of in the above terms. No costs.”*

3] Ms Martina Sapkal, learned counsel for the petitioners, has submitted that the CAT has clearly exceeded jurisdiction vested in it by directing revaluation of answer papers, when in fact, the rules specifically barred the revaluation of such answer papers. In any case, Ms Sapkal submitted that even on facts, no case was made out for constitution of Committee of Experts to go into the issue as to whether the respondents were entitled to get any additional or proportionate marks for the answers to Question Nos.1 and 2 in paper No.V. Ms Sapkal placed reliance upon the decisions of the Hon'ble Supreme Court in case of ***Himachal Pradesh Public Service Commission Vs. Mukesh Thakur & anr.***¹ and ***Maharashtra State Board of Secondary and Higher Secondary Education Vs. Paritosh Bhupeshkumar Sheth***².

4] Ms Sharmila Deshmukh, learned counsel for the respondents, submitted that there was ample material produced on record to demonstrate that Question No.2 was faulty and further, this position was conceded by the question setter himself. Similarly, there was no proper assessment insofar as Question No.1 is concerned. In these circumstances, the CAT was fully justified in constituting a Committee of Experts to go into such matters and there is absolutely

1 (2010) 6 SCC 759

2 (1984) 4 SCC 27

no error of jurisdiction in the exercise undertaken by the CAT. In this regard, reliance was placed upon the decision of ***President, Board of Secondary Education, Orissa and anr. Vs. D. Suvankar and anr.***³.

5] Ms Deshmukh further submitted that the relief granted by the CAT does not entail interference with the entire process of promotion. If, upon carrying out of the exercise as directed, it is found that the respondents were entitled to additional marks, the respondents will only be entitled to certain monetary benefits on the basis of deemed date of promotion. Ms Deshmukh submitted that even though there was no interim relief granted by this Court, the petitioners failed to comply with the directions issued by the CAT in the impugned judgment and order. Such conduct, dis-entitle the petitioners any relief in the petition under Articles 226 and 227 of the Constitution of India.

6] The petitioners as well as the respondents have filed written submissions, in order to elaborate the aforesaid contentions.

7] Upon due consideration of both the oral as well as written submissions, we proceed to dispose of the present petition. For this purpose, we have perused the record as also the impugned judgment and order.

3 (2007) 1 SCC 603

8] The CAT, by the impugned judgment and order has virtually directed the 'revaluation' of the answer paper No.V whilst itself conceding that such a course was not open to it, in view of the law laid down by the Hon'ble Supreme Court on the subject.

9] At paragraph 17, of the impugned judgment and order, in the context of Question No.1, the CAT has made the following observations :

“17.

*But as regards Question No.1, the case of the applicants is that they have not been awarded proportionate marks for various steps in the Answers given by them. **Strictly speaking, if we allow the above prayer, it may amount to revaluation but in the peculiar facts and circumstances of the case, we are of the view that the prayer made by the applicants may have to be considered with a little more compassion for the following reasons.***”

(emphasis supplied)

10] This is not a case of mere absence of any positive provision in the matter of revaluation of answer paper. This is a case where Rule 15 of Appendix No. 37 of P & T Vol.IV, in terms state that revaluation of answer books is not permissible in any case or under any circumstances. Such provision clearly barred any candidates from seeking or obtaining revaluation. In such circumstances, the CAT has exceeded jurisdiction in directing revaluation on the ground of “compassion”. In a matter, which is governed by rules, there was no

scope for grant of any relief contrary to such Rules, merely on the basis of compassion. Besides, the record indicates that the respondents obtained 26/150 and 31/150 marks in paper No.V, when in fact, the minimum pass percentage was 60/150. The record also indicates that several employees, who answered exams, ultimately, passed, despite the so called errors as alleged by the respondents. The petitioners had placed the material on record that the answer sheets of the examinees, including the respondents herein, had been evaluated by the high level Officers, who are Experts in the field. The respondents had not alleged any *mala fides* in the matter. In such a situation, we are satisfied that the CAT exceeded its jurisdiction in scrutinizing the answer papers or comparing the answer-sheets and finally, directing the constitution of Experts to re-value the answer-sheets of the respondents.

11] In ***Maharashtra State Board of Secondary and Higher Secondary Education Vs. Paritosh Bhupeshkumar Sheth (supra)***, the Hon'ble Supreme Court rejected the contention that in the absence of 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. At paragraph 14 and 16, the Court observed thus:

"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...

16.....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."

12] The aforesaid view was approved, relied upon and reiterated by the Hon'ble Supreme Court in case of **Pramod Kumar Srivastava Vs. Bihar Public Service Commission**⁴. At paragraph 7, it was observed thus:

" 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

4 (2004)6SCC 714

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 re- evaluation of his marks." (emphasis added)

A similar view has been reiterated in Muneeb-Ul-Rehman Haroon (Dr.) V. Govt. of J & K State - (1984) 4 SCC 24; Board of Secondary Education Vs. Pravas Ranjan Panda - (2004) 13 SCC 383; Board of Secondary Education V. D. Suvankar - (2007) 1 SCC 603; West Bengal Council of Higher Secondary Education V Ayan Das – (2007) 8 SCC 242; and Sahiti Vs. Dr. N.T.R. University of Health Sciences - (2009) 1 SCC 599."

13] In ***Himachal Pradesh Public Service Commission Vs. Mukesh Thakur & anr (supra)***, the Hon'ble Supreme Court, after taking into consideration the aforesaid legal position, has, at paragraph 26, observed thus:

"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."

14] The decision in ***President, Board of Secondary Education, Orissa and anr. Vs. D. Suvankar and anr (supra)***, relied upon by the respondents, is clearly distinguishable on facts. That was

a case where students had actually scored marks, but there was error in transcribing them in the marklist. The decision in ***Maharashtra State Board of Secondary and Higher Secondary Education Vs. Paritosh Bhupeshkumar Sheth (supra)***, was cited with approval and the Hon'ble Supreme Court has held that the scope for interference in the matters of evaluation of answer paper is very limited. For compelling reasons and apparent infirmity in evaluation, the Court steps in. The impugned judgment and order, in the present case, makes no reference to any “*compelling reasons*” and “*apparent infirmity*” possibly because the none exists. In such circumstances, therefore, there was really no scope for the CAT to have stepped in and issue the impugned directions.

15] In the original applications instituted by the respondents, the candidates who had cleared the examination, despite the so called errors in paper No.V and who had secured promotions, on the basis thereof, had not been impleaded as the respondents. For this reason, the impugned judgment and order had directed that even if the respondents herein, in pursuance of the exercise to be undertaken by the Expert Committee, qualify for the promotions, such respondents will not be entitled to claim any seniority over those who have already been promoted as Junior Accounts Officer based upon the result of examination held in January 2010. Although, moulding of reliefs, in a given situation is both permissible as well as advisable, in the present

case, the CAT has not taken into consideration the issue of availability of promotional vacancies. Besides, we were informed that even the respondents were since promoted to the next higher post, from which they have also retired on attaining the age of superannuation. This an additional circumstance, which renders it quite futile at this point of time, to require the Committee of Experts to virtually reevaluate the answer-sheets and determine whether the respondents are entitled to higher marks.

16] We were also informed that similar orders were sought in respect of Question No.2 by other candidates before Central Administrative Tribunals at Chennai and Delhi. However, such relief was denied. Learned counsel for the respondents, besides submitting that the circumstances were different, was unable to demonstrate in what manner the circumstances were different. In any case, we have independently come to the decision, in the facts and circumstances of the present case, that there was no warrant for revaluation by appointment of Committee of Experts.

17] For all the aforesaid reasons, we are satisfied that the impugned judgment and order warrants interference. The same is hereby set aside and Rule is made absolute in terms of prayer clause (a) to the petition. There shall, however, be no order as to costs.

[M. S. SONAK, J.]

[V. M. KANADE, J.]