

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Delivered on : 06-04-2017

Coram :

The Honourable Mr. Justice V.RAMASUBRAMANIAN
and
The Honourable Ms. Justice J.UMA DEVI

Writ Petition No.13316 of 2016

S.Haraiah, S/o Mallaiah, Age: 48 years,
H.No.11-18/B, P & T Colony,
Dilsukhnagar, Hyderabad. (H.T.No.997)

... Petitioner

Vs.

1. The State of Telangana,
Rep. by its Chief Secretary to
Government of Telangana,
Secretariat, Hyderabad.
2. The State of Andhra Pradesh,
Rep. by its Chief Secretary to
Government of A.P.,
Secretariat, Hyderabad.
3. The High Court of Judicature at Hyderabad
for the State of Telangana and the State of A.P.,
Rep. by its Registrar (Recruitment), Hyderabad.
4. Sri G.Butchiah Sastry, S/o Anjaneya Sastry,
Age: 41 years, Quarter No.B-88, Patigadda,
Begumpet, Secunderabad.

... Respondents

For Petitioner : Mr. Gandra Mohan Rao

For Respondents 1to3 : Mr. P.Ravi Prasad,
Standing Counsel for High Court

For Respondent No.4 : ---

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

Writ Petition No.13316 of 2016

Order: (per V.Ramasubramanian, J.)

The petitioner has come up with the above writ petition challenging the award of zero marks to question No.4(b) of Part-A (Civil) in the examination held for selection of Civil Judges (Junior Division).

2. Heard Mr. Gandra Mohan Rao, learned counsel for the petitioner and Mr. P.Ravi Prasad, learned Standing Counsel for the High Court.

3. By a notification dated 01-02-2014, applications were invited for selection to 97 posts of Civil Judges (Junior Division). Out of the 97 posts, 19 posts were reserved to be filled up by way of recruitment by transfer from among the categories of staff employed in the Andhra Pradesh High Court Service, Andhra Pradesh Judicial Ministerial Service, Andhra Pradesh State Prosecution Service and certain other services.

4. The petitioner herein is working as a Court Master in the High Court of Andhra Pradesh ever since 2003. Therefore, he applied under the quota reserved for recruitment by transfer.

4. A written examination was held on 25-10-2015. The question paper comprised of 2 parts, the first comprising

of 7 questions in Civil Laws and the second comprising of 7 questions in Criminal Laws.

5. Question No.4 in Part-A in Civil Section comprised of 2 questions, the first asking the candidates to explain the difference between lease and licence and the second asking the candidates to explain the terms “tenant holding over” and “tenant at sufferance”.

6. It appears that the petitioner secured 43.35 marks in the written examination. The candidate selected under the category reserved for recruitment by transfer secured 43.65 marks. Thus the petitioner narrowly missed the chance of getting selected.

7. Therefore, the petitioner appears to have secured a copy of the answer sheet and found out that he was awarded zero marks for his answer to question No.4(b). Hence contending that the award of zero marks to the said question was highly arbitrary, the petitioner has come up with the above writ petition.

8. The High Court has taken a stand that there is no provision for revaluation and that therefore the award of zero marks cannot be questioned. The High Court has also taken a stand that the entire process of recruitment is now over and that the Government had also issued orders appointing candidates. The candidates have also been sent for training to the State Judicial Academy.

9. In the background of the above facts, the contentions of the learned counsel for the petitioner are (1) that when the right answer to a question has been awarded zero marks, the valuation is completely arbitrary and hence the principle applicable to cases where some marks are awarded, cannot be applied to the case on hand and (2) that in any case the last candidate provisionally selected for appointment relinquished his selection and hence the next meritorious candidate, namely, the petitioner should be accommodated irrespective of whether there can be revaluation or not.

10. Let us take up the 2nd contention of the petitioner first, as it is capable of being disposed of without much ado. It is admitted in para-9 of the counter affidavit filed by the respondents that if a provisionally selected candidate relinquishes his selection, the next meritorious candidate is required to be selected. There is also no denial of the fact that one candidate by name Sri G.Butchaiah Sastry who was provisionally selected withdrew his candidature and the same was accepted vide notification dated 08-9-2016.

11. But unfortunately for the petitioner, it appears that the final select list was approved by the Government, a Government Order was issued appointing the selected candidates and the vacancy that arose due to the withdrawal of the candidature of G.Butchaiah Sastry, was also included in the next notification for recruitment. Therefore, the vacancy is no more available. There is no practice of keeping

a waiting list and hence the 2nd contention cannot be accepted.

12. Coming to the 1st contention, it is seen that the petitioner was awarded zero marks to his answer to question No.4(b). While it is possible for the Court under Article 226 of the Constitution of India to direct the valuation of an answer that was not valued at all, it may not be possible always for a Court to direct revaluation of an answer to which some mark is awarded. While cases falling under the 1st category are cases of no valuation, the cases falling under the latter category are cases of some valuation. In the latter type of cases, the jurisdiction of the Court to sit in judgment over that of the evaluator, is extremely limited.

13. The decision of the Supreme Court in *Kanpur University v. Samir Gupta*¹ relied upon by the learned counsel for the petitioner, arose out of the provision a wrong key answer. The same has no application to the facts of the present case. Similarly, the decision in *Abhijit Sen v. State of U.P.*² also arose out of wrong key answers.

14. In *State of Orissa v. Prajnaparamita Samanta*³, the Supreme Court did not lay down any ratio as to whether revaluation was permissible or not. In the said case, the Supreme Court appointed experts by way of interim order to

¹ (1983) 4 SCC 309

² (1984) 2 SCC 319

³ (1996) 7 SCC 106

record an opinion. Therefore, the same cannot be taken to be laying down a law on the issue on hand.

15. In *Manish Ujwal v. Maharishi Dayanand Saraswati University*⁴, the Supreme Court was again concerned with the correctness of the key answers. Similarly, in *Guru Nanak Dev University v. Saumil Garg*⁵, the Court was again concerned with the correctness of key answers.

16. The decision in *President, Board of Secondary Education v. D.Suvankar*⁶, related to the case of a candidate who was given 65 marks upon revaluation, as against 35 marks originally given. Even then the Supreme Court merely confirmed the award of costs to the candidate while expressing displeasure at the careless and negligent act on the part of the Assistant Examiner and Scrutiniser.

17. The decision of the Delhi High Court in *D P S Chawla v. Union of India*⁷ and the decision of the Madras High Court in *K.Nirmal v. Chairman, Tamil Nadu Public Service Commission*⁸, are cases where the key answers in a multiple choice question paper were wrong. The decision of the Orissa High Court in *Arindam Chakra v. Biju Pattnaik University of Technology*⁹ arose out of a challenge to the vires of a rule which prohibited revaluation in special examinations, though

⁴ (2005) 13 SCC 744

⁵ (2005) 13 SCC 749

⁶ (2007) 1 SCC 603

⁷ 2011 Law Suit (Del) 3137

⁸ 2014 Law Suit (Mad) 363

⁹ 2014 Law Suit (Ori) 506

it provided for revaluation in other examinations. Therefore, these cases are of no assistance to the writ petitioner.

18. In *Priyanka Pandey v. Secretary, Board of Secondary Education, M.P.*¹⁰, the Division Bench of the Madhya Pradesh High Court was concerned with a question as to whether revaluation of an answer sheet in Class X examination conducted by the Board of Secondary Education was permissible or not. But the Division Bench of the Madhya Pradesh High Court followed a previous decision of the Division Bench of the very same High Court. The law laid down by the Supreme Court was not adverted to.

19. Therefore, the decisions relied upon by the learned counsel for the petitioner are of no avail to the petitioner.

20. Most of the cases relied upon by the learned counsel for the petitioner arose in respect of qualifying examinations conducted by the higher education boards or competitive examinations conducted for admission to professional courses. We may have to draw a distinction between cases of students who appear for qualifying examinations or competitive examinations for admission to higher educational courses and candidates who appear any competitive examinations for appointment to various services under the State or the Union. Without keeping this distinction in mind, the law as laid down by the Supreme Court cannot be understood.

¹⁰ AIR 2007 MP 235

21. In *Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission*¹¹, a 3-member bench of the Supreme Court made it clear that when the relevant rules of recruiting agency do not provide for revaluation, there is no scope for directing revaluation. Interestingly, the decision in *Pramodkumar Srivastava* arose out of a selection for appointment to Judicial Services in the State of Bihar. Therefore, the decision in *Pramodkumar Srivastava* settles the issue against the petitioner.

22. The above decision in *Pramodkumar Srivastava* was followed by a 2-member bench of the Supreme Court in *H. P. Public Service Commission v. Mukesh Thakur*¹². In para-27 of its decision, the Supreme Court made it clear that the law on the subject emerges to the effect that in the absence of any provision under the Statute or Statutory Rules, the Court should not generally direct evaluation. As a matter of fact, the Supreme Court found fault with the High Court for examining the question paper and answer sheets by itself. Therefore, once an examiner thought fit to award zero marks to a candidate, it would mean that the answer has been evaluated. Once it is evaluated, it is not open to this Court to look into the answer, merely because it is on the subject of law and to come to the conclusion whether the answer was correct or not.

¹¹ (2004) 6 SCC 714

¹² (2010) 6 SCC 759

23. In any event, as we have indicated earlier, the entire process of recruitment is now over and the candidates selected for appointment have started undergoing training. The next selection has also been notified. Hence, no relief can be granted to the petitioner. Therefore, the writ petition is dismissed. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

06th April, 2017.
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J.UMA DEVI, J.



HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

Writ Petition No.13316 of 2016
(per VRS, J.)



06th April, 2017.
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