

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

*** HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**

AND

HON'BLE SRI JUSTICE M. GANGA RAO

+ Writ Petition No.326 of 2014

% -10-2018

Between:

Dr. T. Padma, W/o K. Purnachandra Rao,
Aged 47 years, Occ: formerly Adhoc District Judge
R/o Flat No.304, Vishnu Nivas, Jaiprakash Nagar,
Yellareddyguda, Hyderabad.

... Petitioner

Vs.

The State of Andhra Pradesh, represented by its
Chief Secretary, Law (LA & J SC.F), Department,
Government of Andhra Pradesh, Secretariat,
Hyderabad and 3 others

... Respondents

! Counsel for the Petitioner : Dr. K. Lakshmi Narasimha

^ Counsel for Respondents : Mr. Y. Rama Rao, standing counsel
For the High Court

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> Head Note:

? Cases referred:

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE M. GANGA RAO

Writ Petition No.326 of 2014

ORDER: (per V. Ramasubramanian, J)

The petitioner, who was selected in the year 2003 for appointment as *Ad hoc* Judge of Fast Track Court, while she was working as Assistant Public Prosecutor, has come up with the above writ petition, seeking various reliefs.

2. Heard Dr. K. Lakshmi Narasimha, learned counsel for the petitioner and Mr. Y. Rama Rao, learned standing counsel appearing for the High Court.

3. The case of the petitioner in brief is that she got enrolled as an Advocate in March, 1993; that she got selected and appointed as Assistant Public Prosecutor in June, 1998; that while working as Assistant Public Prosecutor, she was selected and appointed as an *Ad hoc* Judge in a Fast Track Court, in October, 2003, pursuant to a Notification for selection issued in the year 2002; that all of a sudden her services were terminated by G.O.Ms.No.180 Law (LA & SC.F) Department, dated 29-12-2006; that challenging the termination, the petitioner filed a writ petition in W.P.No.1554 of 2007; that the said writ petition was allowed by this Court, as a consequence of which the petitioner was reinstated on 02-07-2009; that by 31-03-2010, the tenure of all the 108 Fast Track Court Judges came to an end and all of them including the petitioner were directed to execute an

Agreement dated 07-04-2010 to continue in service for three more months up to 30-06-2010; that however by the proceedings dated 04-05-2010, the High Court decided not to extend the tenure of appointment of the petitioner beyond 01-04-2010; that therefore, the petitioner filed a second writ petition in W.P.No.24441 of 2010, challenging the proceedings dated 04-05-2010; that when the writ petition was pending, the Registry issued a Notification dated 13-08-2012, inviting applications from working/former *Ad hoc* Fast Track Court District Judges, for absorption in the regular cadre of District Judges; that the petitioner applied in response to the said notification and participated in the written examination; that since she was not called for interview, she filed a writ petition and secured an interim order pursuant to which she was also interviewed; that eventually out of 18 candidates, who appeared in the examination, the respondents selected only 12 candidates and that therefore, the notification itself was liable to be set aside.

4. On the basis of the above pleadings, the petitioner originally sought the following reliefs:

- “(i) to issue a writ of mandamus or appropriate writ, order, direction declaring the notification dated 13-08-2012 issued by the 3rd respondent is arbitrary and illegal and direct the respondents to include all the 19 candidates selected pursuant to the written examination and oral interview conducted under A.P. Higher Judicial Service Special Rules, 2001 issued in exercise of the power under Article 233 read with Article 309 of the Constitution of India;
- (ii) and as the notification dt.13.08.2012 issued *de hors* the rules and without mentioning reservation clause for SC/ST/BC and OC and without vacancy strength in the purported exercise of the Judgment and order dated 19.04.2012 of the Hon'ble Supreme Court of India in T.C. (Civil) 22 of 2011 without considering the clarifications, where candidates are

selected as FTC Judges following written test and oral interview, and
second written test is not necessary, or
(iii) to direct the respondents to include the petitioner's name in the
selection list, and
(iv) to direct the respondents to regularize the services of the petitioner"

5. After the writ petition was admitted, the petitioner came up with a Miscellaneous Petition in WPMP.No.15355 of 2015 seeking amendment of the prayer. It was allowed on 25-11-2015, after which one more prayer was included as prayer (v). It reads as follows:

"(v) to declare the action of the respondents in evaluating the answer scripts of the petitioner bearing Roll No.119 pertaining to the examination conducted for absorption of Adhoc Fast Track Court Judges in the regular cadre of Additional District Judges as contrary to law, and consequently, direct the respondents to evaluate the answer script once again and consequently direct the respondents to absorb the petitioner in the Regular cadre of Additional Judges on par with the persons so absorbed with all consequential benefits and pass such other order or orders may deem fit and proper in the circumstances of the case."

6. When the writ petition was taken up for final hearing, Dr. K. Lakshmi Narasimha, learned counsel for the petitioner did not advance any arguments in support of the reliefs sought in column (i) and (ii). In other words, the challenge to the notification dated 13-08-2012 was not pressed. This is obviously due to the fact that these two reliefs cannot go together with the newly added relief in column (v). Therefore, we shall take it that the reliefs sought in column (i) and (ii) are given up.

7. Presenting a huge tabular column containing the questions, the answers given by the writ petitioner, the corresponding provision of law and the judgments of the Supreme Court in support of the answers given by the writ petitioner, it was contended by Dr. K.

Lakshmi Narasimha, learned counsel for the petitioner that the petitioner missed the chance only by two marks and that the answers given by her to some of the multiple choice questions were not properly evaluated and that even the answers given by her to descriptive type questions were not properly evaluated. The learned counsel for the petitioner took us through Question Nos.2, 3, 4, 6, 8, 19, 21, 25, 34, 42, 43 and 49 of the Paper in Part-I containing multiple choice questions and argued that the Registry of the High Court did not publish the key answers and that the answers provided by the petitioner were either correct or the questions themselves were wrong. Therefore, he contended that wherever questions were wrong, all candidates were entitled to full marks.

8. Similarly, drawing our attention to Question Nos.2 (a), 3 (a), 3 (b), 3 (c), 3 (d), 4 (a), 4 (b), 5 (a) and 5 (b) etc., in the Paper in Part-II containing descriptive type of questions, it is contended by the learned counsel for the petitioner that the petitioner has not been awarded appropriate marks. Therefore, the learned counsel contended that in the absence of any key answers and on account of the failure of the Registry to provide the correct answers even now, the challenge made by the petitioner to the inappropriate valuation has to be sustained.

9. In response to the above averments, Mr. Y. Rama Rao, learned standing counsel for the High Court contended that none of the answers provided by the petitioner in the tabulation sheet can be

said to be correct. In any case, there is no provision in the Rules for revaluation and that therefore, the Court cannot order revaluation.

10. We have carefully considered the above submissions.

11. Two issues, in our considered opinion, arise for consideration in this writ petition. The first is as to whether in the absence of a specific provision for revaluation, it is possible for this Court to order revaluation. The second is as to whether the petitioner has made out a case for revaluation, in case our answer to the first issue is in her favour.

12. The question as to whether a court can order revaluation, in the absence of any specific provision, has arisen quite frequently before courts, both in respect of examinations conducted in Educational Institutions and in examinations conducted for recruitment. In **Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupesh Kurmarsheth**¹, the constitutional validity of the Regulation 104 (3) of the Maharashtra Secondary and Higher Secondary Education Board Regulations, 1977, which restricted the verification only to checking whether all answers have been valued or not, was under challenge. There was an express prohibition under the Regulation for a candidate to claim revaluation of his answers books. While upholding the validity of Regulation 104 (3), the Supreme Court pointed out that the denial of the right to ask for revaluation does not

¹ AIR 1984 SC 1543

visit a candidate with adverse civil consequence, warranting compliance with the principles of natural justice.

13. The decision in ***Maharashtra State Board*** (1 supra) was cited with approval by Supreme Court in two subsequent decisions viz., (1) ***Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission ((2004) 6 SCC 714)*** and (2) ***H.P. Public Service Commission v. Mukesh Thakur ((2010) 6 SCC 759)***. In paragraph 22 of the report in ***H.P. Public Service Commission***, the Supreme Court pointed out that the issue of revaluation of answer book is no longer *res integra*. The court cited the decision in ***Maharashtra State Board*** for coming to the said conclusion.

14. A Division Bench of the Madhya Pradesh High Court in ***Pranshu Indurkha v. State of M.P. (AIR 2005 M.P. 152)*** summarized the principles to be applied in the case of revaluation, in paragraph 7 of the report. It reads as follows:

“7. The principles in regard to revaluation may therefore be summarised thus:--

(a) A student has no right to seek revaluation of an answer-script unless the rules governing the examination specifically provide for revaluation. A provision for 'scrutiny' or 're-totalling' of marks or 'rechecking the results' in the Rules does not entitle a student to seek re-Valuation.

(b) Where the rules do not provide for revaluation, the High Court will not normally direct the production of the answer scripts for its scrutiny or order revaluation. But in rare and exceptional cases where malafides or tampering is made out, or where injustice has been caused on account of gross negligence, the Court may direct revaluation in exercise of its jurisdiction under [Article 226](#) of the Constitution.

(c) Ascertainment of malafides and tampering depends on facts of the case and for that purpose, if necessary, the answer script may be summoned.

(d) Ascertainment of "gross negligence resulting in injustice" is a more difficult exercise. A student who has consistently secured very high marks in a subject in the last few years examinations, is shown to have failed in such subject, the Court may consider it to be a prima facie evidence of such negligence and call for the answer scripts. The mere fact that a

student feels that he deserved more marks or alleges negligence, can not be a ground to call for answer scripts. On securing the answer-script, the Court may examine it or take the assistance of a qualified teacher to examine it. If the Court finds any gross negligence resulting in injustice which shocks its judicial conscience, it may direct revaluation.

(e) But change in marks on account of perceptual differences in assessment can not be a ground for re-valuation. Different examiners may evaluate the same answers differently resulting in lesser or higher marks being awarded. Re-valuation is not to be ordered merely because another valuer is of the view that the marks should have been different. In traditional examinations where the purpose is to test the knowledge, grammar, logic or reasoning, the perceptions about the answers may vary from examiner to examiner. (Of course where the examination is of objective type, where the student is merely to mark 'yes' or 'no', or choose one of the multiple answers, there can not be any difference in valuation.)

(f) While fairness in examinations is impliedly assured by the Board, exactness in valuation in individual cases can neither be assured nor be claimed. Certain margin of human error, over-sight, and perceptual difference is part of the valuation system, where thousands or lacs of answer scripts are evaluated by hundreds or thousands of evaluators. Therefore, even where the Court secures the answer script and examines it or gets it examined by an independent teacher, re-valuation should not be ordered merely because there is some difference in valuation or because one or two answers have not been valued or have been wrongly valued. To repeat, malafides or tampering or gross negligence (and not small or negligible errors or perceptual changes) is a condition precedent for ordering re-valuation."

15. The aforesaid decision in **Pranshu Indurkha** was followed by another Division Bench of the Madhya Pradesh High Court in **Priyanka Prandey v. Secretary, Board of Secondary Education (AIR 2007 MP235)**. Similarly, a Division Bench of the Madras High Court held in **A. Sivaranjani v. The Tamil Nadu Dr. M.G.R. Medical University (2010 (5) MLJ 746)**, that in the absence of any provision in the Rules, the Court cannot direct revaluation.

16. Therefore, it is clear that the consistent view of the Supreme Court as well as other High courts has been that the Court cannot order revaluation, in the absence of any specific provision in the statute or the rules or Regulations.

17. However, Dr. K. Lakshmi Narasimha, learned counsel for the petitioner contended that the law as laid down in the aforesaid decisions may not apply *stricto sensu* to the recruitment of Judicial Officers. According to the learned counsel, the High Court is the repository of power in so far as appointment of District Judges is concerned. Since the High Court is entitled to formulate its own methodology for appointment of District Judges, in terms of the Constitutional provisions, the absence of any specific provision in the Rules need not deter the court from exercising its inherent power as an employer. The learned counsel also pointed out that the examination in question is not one conducted by any University or Board of School Education or Public Service Commission, on a subject alien to the Hon'ble Judges. Since the examination in question is on the subject of law, the Judges, who are also experts by themselves in the field of law, can have a look at the answers and find out whether justice has been meted out to the petitioner or not.

18. We have carefully considered the above submissions.

19. It is true that the appointment of District Judges is within the exclusive domain of the High Court and it is the High Court, which frames the Rules and formulates the methodology for appointment. But once the High Court has framed the Rules or the Methodology, the High Court itself becomes bound by such Rules. Rule making power does not include rule breaking power. Authorities, which formulate rules, are also bound by rules. Therefore, even on the judicial side, we should act only in

accordance with the rules formulated by our own selves on the administrative side.

20. It is true that the questions and answers about which the petitioner has made out a grievance, are capable of being examined for their correctness by this Court, since all questions are only on different branches or subjects of law. But the issue is not about our capability to find out whether the answers given by the petitioner are right or wrong. The issue is as to whether we would exercise such a jurisdiction to find out the same, in the absence of a specific provision authorizing us to do so. Our answer to this question would be an emphatic no.

21. Therefore, we are of the considered view that no relief can be granted to the petitioner. Hence, the writ petition is dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

M. GANGA RAO, J

Date:30-10-2018

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