

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 2341 of 2009

Anupam Dwivedi S/o Professor S.D.Dwivedi, aged about 31 years, R/o 4-D, Bank Road, Allahabad.

---Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Economics and Statistics Department, D.K.S. Bhawan, Raipur (C.G.).
2. Chhattisgarh State Public Service Commission, Through its Secretary, Raipur (C.G.).
3. Examination Controller, Chhattisgarh State Public Service Commission, Raipur (C.G.).
4. Suresh Kumar S/o Shri Alguram Kashyap, (Selection Category Unreserved), Through Chhattisgarh State Public Service Commission, Raipur (C.G.).
5. Prakash Kumar S/o Bhagwati Prasad Chandrakar (Selection Category Unreserved), Through Chhattisgarh State Public Service Commission, Raipur (C.G.).
6. Domar Singh S/o Shri Ramdayal Verma (Selection Category Unreserved), Through Chhattisgarh State Public Service Commission, Raipur (C.G.).
7. Dinesh Kumar S/o Shri Kedarnath Tiwari (Selection Category Unreserved), Through Chhattisgarh State Public Service Commission, Raipur (C.G.).
8. Suresh Kumar S/o Shri Ramanju Singh (Selection Category Unreserved), Through Chhattisgarh State Public Service Commission, Raipur (C.G.).

---Respondents

WPS No. 2126 of 2009

Shivshankar Lal Kaiwart S/o Shri Kanhaiya Lal Kaiwart, aged about 35 years, R/o At Post Chhuri via Jamnipali, Tahsil Katghora, District Korba (C.G.).

---Petitioner

Versus

1. Chhattisgarh State Public Service Commission, Through its Secretary, Raipur (C.G.).

2. Examination Controller, Chhattisgarh State Public Service Commission, Raipur (C.G.).
3. Suresh Kumar S/o Shri Alguram Kashyap, aged about 40 years.
4. Prakash Kumar S/o Bhagwati Prasad Chandrakar, aged about 39 years.
5. Domar Singh S/o Shri Ramdayal Verma, aged about 37 years.
6. Dinesh Kumar S/o Shri Kedarnath Tiwari, aged about 29 years.
7. Suresh Kumar S/o Shri Ramanju Singh, aged about 30 years.
8. Om Prakash Deshmukha S/o Shri Dashaman Singh Deshmukha, aged about 39 years.
9. Payal D/o Shri Ramkishore Tiwari, aged about 32 years.
10. Prachi D/o Late Shri Om Mishra, aged about 32 years.
11. Madhu D/o Shri Ashwani Kumar Sahu, aged about 31 years.
12. Mohan Singh S/o Shri Sita Ram Kanwar, aged about 29 years.
13. Saroj S/o Shri Hari Shankar Pratap Singh, aged about 26 years.

Respondents No. 3 to 13 through Additional Secretary, Chhattisgarh State Public Service Commission, Raipur (C.G.).

---Respondents

For petitioner in WPS No. : 2341/2009	Shri Anand Dadariya, Advocate.
For petitioner in WPS No. : 2126/2009	Shri Rajbahadur Singh on behalf of Shri Awadh Tripathi, Advocate.
For resp. Nos. 7 & 8 in : WPS No. 2341/2009 & For resp.Nos. 6 & 7 in WPS No. 2126/2009.	Shri Ali Asgar, Advocate.
For PSC	: Shri B.D.Guru, Advocate.
For State	: Shri Jitendra Pali, Dy.A.G.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

07/02/2019

1. These are the two Writ Petitions filed by two candidates in respect of the recruitment process initiated in the year 2007 for the post of "Assistant Director/District Planning and Statistical Officer (Economics and Statistics Department)".

2. The selection process was conducted by the Chhattisgarh Public Service Commission. The total number of posts for the unreserved category under dispute is 7 of which only 2 were reserved for female (unreserved).
3. The grievance of the petitioner is that, the last candidate who got selected has scored 248 marks and the petitioner in the instant case has scored 245 marks. That if one of the question that the petitioner has attempted is found to be correct, he would have scored more marks by which he would have got selected over the last person selected.
4. The petitioner has questioned the recruitment process on three grounds. Firstly, the questions and the model answers which were put forth in the screening test, few of them were wrong answers. The petitioner has been deprived of the marks for the said questions, though he has given correct answers.
5. The second ground of the counsel for the petitioner is that, the action on part of the respondents in calculating the marks obtained by each of the candidates in the screening test also was bad in law. The respondents infact should have only taken into account the marks scored by each of the candidates in interview. According to him, in the interview, the petitioner has scored the maximum marks.
6. The third ground which the petitioner has raised is that, the action on part of the respondents in granting pro-data marks to each of the candidates who have participated is bad for the reason that, it could have been granted

only to those candidates who have attempted the questions and could not have been granted to those persons who have not attempted.

7. The counsel for the respondents so far as the wrong answers are concerned submitted that, the petitioner having immediately raised an objection, the authorities have subjected the same for scrutinization of the objection and they have turn-down the objection which the petitioner has raised so far as the objection to question No.9 and its answer is concerned. According to the counsel for the petitioner, this finding of the respondents is bad and if the petitioner is given marks for the said question, he would find himself selected.

8. At this juncture, it would be relevant to take note of the fact that, the petitioner and other candidates had raised certain complaints in respect of the questions and the model answers. After the objections were received, the department had send the matter to the experts in the field for re-examining the questions and the answers given. The experts have given an opinion in respect of 4 questions to which the petitioner had objected at the first instance. Since the experts found that the objection raised by the petitioner so far as the question No.9 is concerned, the same was turn-down. The objection to question No.19 was found to be justified and the petitioner has been granted the advantage of the same and so far as the question Nos. 29 & 73 is concerned, the objection again was found to be justified and these two questions were deleted and each of the candidates were given pro-data marks for the same.

9. The further contention of the counsel for the petitioner is that, the deletion of question No.29 again is erroneous as the options available along with the question had the correct answers which has not been properly appreciated by the expert body.

10. The respondents on the contrary opposing the Writ Petition submits that, infact, the petitioner does not have any strength in his case for the reason that, the case of the petitioner infact has been scrutinized by experts in the field and the petitioner and the other candidates have been granted the benefit of pro-data marks for the deleted question. Likewise so far as the question No.19 is concerned, since the petitioner's objection was found to be justified, he has been granted the marks for the said question. So far as question No.9 is concerned, the same was turn-down as the objection was found to be irrelevant and thus there is hardly any scope left for interference at this juncture in the Writ Petitions. The respondents further brought to the notice of this Court that, by virtue of the private respondents being found meritorious, the department in due course of time has also granted and issued an order of appointment in their favour and the respondents have joined their services and they are working with the department for almost a decade now and at this juncture it should not be interfered with which would put the private respondents to great amount of inconvenience and irreparable loss.

11. So far as the method of recruitment is concerned, clause-12 of the advertisement very clearly speaks that in the event the number of candidates

are large, the Public Service Commission would be undertaking the screening test and the candidates would be picked-up on the marks they score in the screening test as well as the marks scored in the interview.

12. Once when the advertisement itself lays-down, the method of recruitment which they have followed or adopted in the course of recruitment the same cannot be said to be bad in law.

13. Moreover, the petitioner having participated in the recruitment process knowing fully well the method of recruitment cannot now turn-down and question the same.

14. So far as the third ground that the petitioner has raised that, the pro-data marks could have been granted only to those candidates who has attempted those questions. This again is an issue which does not have sufficient force as once when the department finds the questions to be erroneous, they have decided to delete those from the selection process and all those candidates who have participated would be entitled for the advantage of the said questions which have been deleted and in the instant case, all the candidates have been granted pro-data marks including the petitioner, therefore as such no prejudice has been caused to the interest of the petitioner on this ground. For this reason also, the said objection raised by the petitioner is not sustainable.

15. Now, the only issue left is whether the decision of the respondents in turning down the objection in respect of the question No.9 is concerned is justified or not.

16. It would be relevant at this juncture to refer to the recent judgment of the Hon'ble Supreme Court in the case of U.P.P.S.C., Through its Chairman & Anr. v. Rahul Singh & Anr. [Civil Appeal No. 5838/2018 d/on 14/06/2018] wherein in paragraph Nos. 13 to 15, it has been held as under:-

“13. As far as the present case is concerned even before publishing the first list of key answers the Commission had got the key answers moderated by two expert committees. Thereafter, objections were invited and a 26 member committee was constituted to verify the objections and after this exercise the 9 Committee recommended that 5 questions be deleted and in 2 questions, key answers be changed. It can be presumed that these committees consisted of experts in various subjects for which the examinees were tested. Judges cannot take on the role of experts in academic matters. Unless, the candidate demonstrates that the key answers are patently wrong on the face of it, the courts cannot enter into the academic field, weigh the pros and cons of the arguments given by both sides and then come to the conclusion as to which of the answer is better or more correct.

14. In the present case we find that all the 3 questions needed a long process of reasoning and the High Court itself has noticed that the stand of the Commission is also supported by certain text books. When there are conflicting views, then the court must bow down to the opinion of the experts. Judges are not and cannot be experts in all fields and, therefore, they

must exercise great restraint and should not overstep their jurisdiction to upset the opinion of the experts.

15. In view of the above discussion we are clearly of the view that the High Court over stepped its jurisdiction by giving the directions which amounted to setting aside the decision of experts in the field. As far as the objection of the appellant - Rahul Singh is concerned, after going through the question on which he raised an objection, we ourselves are of the prima facie view that the answer given by the Commission is correct."

17. It is settled position of law that once when the objections are raised, the respondents are casted with the duty of considering the objections in a reasonable manner and for considering the objections in a reasonable manner, if the authorities put the matter before the experts and who based on certain cogent materials available with them give an opinion, the opinion of those experts are not to be lightly interfered, even if a different opinion could have been arrived at by itself would not be a ground to interfere with the findings of the experts unless the said findings are so perverse or blatantly contrary to the materials relied upon by the respondents.

18. Given the said facts that the case of the petitioner also was scrutinized by the subject experts and the decision of the respondents were based on the opinion of the subject experts, this Court does not find any strong case made out by the counsel for the petitioner for grant of relief as has been sought for by the petitioner.

19. Both the Writ Petitions thus fails and are accordingly dismissed.

Sumit

Sd/-
(P. Sam Koshy)
JUDGE