

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 20.06.2019

Delivered on : 08.07.2019

Coram

The Hon'ble Mr.Justice V.PARTHIBAN

W.P.No.5436 of 2019
and
W.M.P.No.6178 of 2019

S.Balachandran Petitioner
vs.

1.The Secretary to Government of Tamil Nadu,
Housing and Urban Development Department,
Fort St.Gorge, Chennai-600 009

2.The Director,
Directorate of Town and
Country Planning,
Chennai.

3.The Secretary,
Tamil Nadu Public Service Commission,
Chennai.

4.The Controller of Examination,
Tamil Nadu Public Service Examination,
Chennai

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records in proceedings No.Nil of the 4th respondent dated 13.02.2019 and quash the same and consequently direct the respondents to evaluate the marks by adopting the method of scaling in order to ensure equality among the candidates who have taken different optional subjects in Paper I for the post of Architectural Assistant/Planning Assistant in the Tamil Nadu Town and Country Planning Subordinate Service (2007-2015), in the light of the judgments by Hon'ble Apex Court.

For Petitioner	..	Mr.V.Vijay Shankar
For Respondents	..	Mr.J.Pothiraj, Spl.G.P.for R1
		Mr.V.Prabhu, Govt.Advocate
		for R2
		Dr.M.Devendran for TNPSC RR 3 & 4

ORDER

The petitioner is a holder of degree in Master of Town Planning from Anna University, Chennai. He obtained his Masters degree in Town Planning after getting basic degree in Civil Engineering. After his Post Graduation degree in Master of Town Planning, he has enrolled himself as Member of the Institute of Town Planners of India. The petitioner belongs to MBC/DC Community.

2. On 11.09.2018, the third respondent/Tamil Nadu Public Service Commission (herein after referred to as the 'Commission') issued Advertisement No.505 calling for applications from the eligible candidates for filling up the post of Architectural Assistant/Planning Assistant in the Department of Town and Country Planning. The number of vacancies notified were 13. As per the Notification, the following qualifications are prescribed as the eligibility criteria:

- "(i) Must possess a Degree of Master of Town Planning or its equivalent (or)
- (ii) Associate Membership of the Institute of Town Planning of India or Institute of Architects of India (or)
- (iii) A degree in Civil Engineering (or)
- (iv) A degree in Architecture (or)
- (v) An A.M.I.E. (Civil) (i.e.) Associate Member of the Institute of Engineers (India)."

3. As the petitioner possesses the degree in Master of Town Planning and also Member of Institute of Town Planning, coming within the categories of I & II above, applied for the post in response to the Notification dated 11.09.2018. After being applied, he appeared for the examination held on 22.12.2018. According to the Notification, the examination was to be conducted in two parts, viz., Paper I-Town Planning (PG Standard) and Paper II-General Studies (Degree Standard) and Aptitude and Mental Ability (SSLC Standard). According to the petitioner, Paper I examination was conducted in the forenoon on 22.12.2018 and Paper II examination was conducted in the afternoon.

4. The petitioner has no issue with the Paper II examination, since it is common for all the candidates, irrespective of their qualification. As far as Paper I is concerned, the candidates have to write different examinations depending upon their subject of study in their degree. Persons with Master Degree in Town Planning, will have to write a separate paper called 'Town Planning', whereas, the persons with B.E. (Civil Engineering) will have to write a Civil Engineering

examination and similarly, a person with degree in Architecture will have to write examination in Architecture as subject. The petitioner herein falls under first category and therefore, he wrote the examination in Town Planning subject. According to the petitioner, the paper was tough, but in any event, he performed well in the examination.

5. After the examination was over, the results were published and the petitioner came to know that none of the persons holding degree in Master of Town Planning and who opted to write Paper I examination in Town Planning as subject, was selected. On the other hand, the persons with degrees in Civil Engineering and Architecture have secured selection by virtue of their performance in their respective subjects. According to the petitioner, having selected the subject Town Planning, he was obviously placed under disadvantageous position than others who have selected Civil Engineering and Architecture subjects.

6. According to the petitioner, in terms of the notification, the degree in Master of Town Planning comes first before Civil Engineering and Architecture etc, since it was felt that a person with a degree in Master of Town Planning was best suited for the post. But unfortunately, in view of the variability of questions set in different subjects, persons of Engineering and Architecture subjects were able to steal a march over the petitioner with degree in Master of Town Planning.

7. According to the petitioner, in a situation like this, where method of selection is from different subjects, there is always a procedure called 'Scaling' method to be applied. The method of Scaling is always adopted, according to the petitioner, when uneven distribution of marks caused by subjective variability among heterogeneous subjects. When candidates take examination in different subjects, their inter se merit is assessed by evolving a method known as 'scaling', so that, an equitable opportunity is given to all individuals appearing for a group of posts with different examinations, in different subjects. In the said circumstances, the petitioner is before this Court challenging the communication of the Commission calling for the selected candidates to attend the certificate verification.

8. Shri V. Vijay Shankar, learned counsel appearing for the petitioner would strenuously contend that the Hon'ble Supreme Court has recognised the method of 'scaling' as early as in 2007 in its judgment in Sanjay Singh Vs. Uttar Pradesh Public Service Commission, Allahabad [(2007) 3 SCC 720]. If only the Commission has adopted the method of 'scaling' marks among the candidates from different subjects, it would have provided a level playing field for the candidates from the discipline of

Town Planning. In the present case, the uniform assessment of marks, irrespective of subject in which examinations were written by the candidates, has resulted in complete imbalance against the more suited candidates with the qualification of degree in Master of Town Planning and in favour of the candidates with the lesser qualification of Civil Engineering, Architecture etc.

9. The learned counsel for the petitioner would therefore submit that as per the Notification, the qualification in Master of Town Planning is a preferred category than two other subjects like Civil Engineering and Architecture and therefore, it is desirable in public interest that the candidates with such qualification is selected and appointed. However, in view of the assessment of marks, irrespective of the subject across the Board, the persons with degree in Master of Town Planning like the petitioner herein were put in a disadvantageous position. Therefore, it is all the more reason that in such situation, to provide parity among various candidates, the method of 'scaling' ought to have been adopted by the Commission. In support of his contention, the learned counsel would rely on a decision of the Hon'ble Supreme Court reported in Uttar Pradesh Public Service Commission Vs. Manoj Kumar Yadav and another [(2018) 3 Supreme Court Cases Page 706]. The learned counsel would draw the attention of this Court to the observations of the Hon'ble Supreme Court of India from paragraph Nos.11 to 14, which are reproduced hereunder:

11. This Court also considered a situation where candidates have an option to take different subjects for which the scaling method is appropriate as follows:

"24. In the Judicial Service Examination, the candidates were required to take the examination in respect of all the five subjects and the candidates did not have any option in regard to the subjects. In such a situation, moderation appears to be an ideal solution. But there are examinations which have a competitive situation where candidates have the option of selecting one or few among a variety of heterogeneous subjects and the number of students taking different options also vary and it becomes necessary to prepare a common merit list in respect of such candidates. Let us assume that some candidates take Mathematics as an optional subject and some take English as the optional subject. It is well recognised that marks of 70 out of 100 in Mathematics do not mean the same thing as 70 out of 100 in English. In English 70 out of 100 may indicate an outstanding student

whereas in Mathematics, 70 out of 100 may merely indicate an average student. Some optional subjects may be very easy, when compared to others, resulting in wide disparity in the marks secured by equally capable students. In such a situation, candidates who have opted for the easier subjects may steal an advantage over those who opted for difficult subjects. There is another possibility. The paper-setters in regard to some optional subjects may set questions which are comparatively easier to answer when compared to some paper-setters in other subjects who set tougher questions which are difficult to answer. This may happen when for example, in Civil Service Examination, where Physics and Chemistry are optional papers, Examiner 'A' sets a paper in Physics appropriate to degree level and Examiner 'B' sets a paper in Chemistry appropriate for matriculate level. In view of these peculiarities, there is a need to bring the assessment or valuation to a common scale so that the inter se merit of candidates who have opted for different subjects, can be ascertained. The moderation procedure referred to in the earlier para will solve only the problem of examiner variability, where the examiners are many, but valuation of answer-scripts is in respect of a single subject. Moderation is no answer where the problem is to find inter se merit across several subjects, that is, where candidates take examination in different subjects. To solve the problem of inter se merit across different subjects, statistical experts have evolved a method known as scaling, that is creation of scaled score. Scaling places the scores from different tests or test forms on to a common scale. There are different methods of statistical scoring. Standard score method, linear standard score method, normalised equipercentile method are some of the recognised methods for scaling.

25. A. Edwin Harper Jr. and V. Vidya Sagar Misra in their publication Research on Examinations in India have tried to explain and define scaling. We may usefully borrow the same. A degree "Fahrenheit" is different from a degree "Centigrade". Though both express temperature in degrees, the "degree" is different for the two scales. What is 40 degrees in Centigrade scale is 104 degrees in Fahrenheit scale. Similarly, when

marks are assigned to answer-scripts in different papers, say by Examiner 'A' in Geometry and Examiner 'B' in History, the meaning or value of the "marks" is different. Scaling is the process which brings the marks awarded by Examiner 'A' in regard to Geometry scale and the marks awarded by Examiner 'B' in regard to History scale, to a common scale. Scaling is the exercise of putting the marks which are the results of different scales adopted in different subjects by different examiners onto a common scale so as to permit comparison of inter se merit. By this exercise, the raw marks awarded by the examiner in different subjects are converted to a "score" on a common scale by applying a statistical formula. The "raw marks" when converted to a common scale are known as the "scaled marks". Scaling process, whereby raw marks in different subjects are adjusted to a common scale, is a recognised method of ensuring uniformity inter se among the candidates who have taken examinations in different subjects, as, for example, the Civil Services Examination."

12. It is clear from the above that the process of scaling is a recognized method for ensuring uniformity amongst candidates who have taken examinations in different subjects. When there are a number of examiners evaluating the papers of a large number of candidates in an examination, there is a possibility of 'examiner subjectivity' or 'examiner variability'. To minimise the examiner variability, this Court in Sanjay Singh's case held that moderation would be the best method to be followed.

13. In the P.C.S. Examination, 2004 and the Backlog Examination, 2004 the candidates had to take part in the main written examinations which consisted of four compulsory subjects and two optional subjects. The compulsory subjects were common to all candidates and the two optional subjects were to be chosen from the available 33 subjects as mentioned in the advertisements. As per the judgment of this Court in Sanjay Singh's case, the Commission could have followed the scaling method only for the optional subjects and not for the compulsory subjects. However, it is clear from the submissions made on behalf of the Appellant in the High Court that scaling method was followed even for compulsory subjects. We

approve the findings of the High Court that the evaluation of P.C.S. and Backlog recruitment examinations, 2004 was contrary to the judgment of this Court in Sanjay Singh's case.

14. Though we are in agreement with the view of the High Court that the examinations were not conducted in accordance with the principles laid down in Sanjay Singh's case, we do not approve the directions given in the judgment to finalise the results afresh in accordance with the observations made therein. The exercise to be undertaken as per the said directions would result in displacement of a number of selected candidates not before this Court and alteration of the merit list causing serious prejudice to those appointed and working for the last ten years. Therefore, we are of the opinion that the appointments made pursuant to the advertisements of 2004 for the 'P.C.S.' and 'Backlog' posts should not be disturbed.

10. According to the learned counsel for the petitioner the Hon'ble Supreme Court has upheld the method of 'scaling' marks, but however, did not grant any relief in that case in view of the fact that appointments were already made in that selection. In fact, the learned counsel would say that the Hon'ble Supreme Court has also referred to its observations in Sanjay Singh's case. Therefore, the learned counsel would submit that the 'scaling' method is recognised by Courts and in order to drive parity among candidates from different subjects, such method is imperatively adopted, as otherwise it would be violative of Article 14 of the Constitution of India.

11. The learned counsel would further submit that the selection is still not yet over and therefore, he would urge this Court to allow the writ petition. If no relief is granted in this case, the petitioner would lose his valuable opportunity to be appointed in Public Service, despite his higher qualification and eligibility. He would at least urge this Court to earmark one post for the petitioner in the present selection process and appoint him as the Agricultural Assistant/Planning Assistant.

12. On behalf of the the Tamil Nadu Public Service Commission Mr.M.Devendran, learned Senior Counsel entered appearance and a counter affidavit has also been filed.

13. According to the counter affidavit, the selection was done in full compliance with the Notification issued by the Commission and after having participated in the selection

process and after having been unsuccessful, it is not open to the petitioner to approach this Court and challenge his selection.

14. The learned counsel for the Commission would submit that the petitioner having not secured sufficient marks to come within the zone of final selection, cannot be heard to complain about the subject he has chosen as his option in Paper I examination. The Commission, which conducted the selection, has adopted the normal selection procedure as done in other recruitments and the issue of 'scaling' method is not yet a fool proof method to be adopted in such situation. In fact, the learned counsel would rely on the same decision as learned counsel for the petitioner would rely, viz., Sanjay Singh's case [(2007) 3 SCC 706]. The learned counsel would draw the attention of this Court to Paragraph No. 48, which reads as under;

"48. S. C. Dixit, therefore, upheld scaling on two conclusions, namely (i) that the scaling formula was adopted by the Commission after an expert study and in such matters, court will not interfere unless it is proved to be arbitrary and unreasonable; and (ii) the scaling system adopted by the Commission eliminated the inconsistency arising on account of examiner variability (differences due to evaluation by strict examiners and liberal examiners). As scaling was a recognized method to bring raw marks in different subjects to a common scale and as the Commission submitted that they introduced scaling after a scientific study by experts, this Court apparently did not want to interfere. This Court was also being conscious that any new method, when introduced, required corrections and adjustments from time to time and should not be rejected at the threshold as unworkable. But we have found after an examination of the manner in which scaling system has been introduced and the effect thereof on the present examination, that the system is not suitable. We have also concluded that there was no proper or adequate study before introduction of scaling and the scaling system which is primarily intended for preparing a common merit list in regard to candidates who take examinations in different optional subjects, has been inappropriately and mechanically applied to a situation where the need is to eliminate examiner variability on account of strict/liberal valuation. We have found that the scaling system

adopted by the Commission leads to irrational results, and does not offer a solution for examiner variability arising from strict/liberal examiners. Therefore, it can be said that neither of the two assumptions made in S.C. Dixit can validly continue to apply to the type of examination with which we are concerned. We are therefore of the view that the approval of the scaling system in S.C. Dixit is no longer valid."

15. Therefore, the learned counsel for the Commission would submit that the 'scaling' method may not be fool proof and valid. Even otherwise he would submit that it requires deep study to evolve 'scaling' method depending on the different subjects the candidates choose to write in the examination, which means that a Committee of Experts must be constituted to undertake the exercise of 'scaling' method. The commission on its own cannot adopt such 'scaling' method, without the guidance of Experts in the field. Therefore, it is too late in the day for the petitioner to contend that the Commission ought to have adopted 'scaling' method. It was not within the domain of the Commission to adopt 'scaling' method, as it would lack expertise and experience. Therefore, the petitioner, after having participated in the selection and being unsuccessful, cannot turn around and seek for 'scaling' method to be adopted abruptly without fool proof system to be put in place for adopting such method. He would finally submit that the candidates are likely to be appointed at any time after the selection, so the selection as it is need not to be disturbed, since, the selected candidates have already participated and were successful. He would therefore, urge this Court to dismiss the writ petition.

16. Considered the submissions of Mr.V.Vijay Shankar, learned counsel appearing for the petitioner and Mr.J.Pothiraj, learned Special Government Pleader appearing for the first respondent, Mr.V.Prabhu, learned Government Advocate, appearing for the second respondent and Mr.M.Devendran, learned counsel appearing for the third and fourth respondents.

17. Though this Court finds that there is force in the contention on behalf of the Commission that in order to evolve 'scaling' method, a Committee of Experts must be appointed to assess marks to be granted to candidates writing examination in different subjects, yet, when a selection of this nature is undertaken by the Commission, it ought to have foreseen such disparity in award of marks to candidates writing examination in various subjects.

18. As rightly contended by the learned counsel for the petitioner that when candidates are expected to write the

examination in different subjects, the pattern of examination and the evaluation must be commensurate with different subjects opted by the candidates writing the examination. Otherwise, it would only result in apportionment of marks uniformly to all the candidates regardless of the subjects they have chosen. Such apportionment will eventually result in disparity depending on the subjects chosen by the candidates concerned.

19. Although this Court is not sure as to whether the 'scaling' method is a solution for such selection where candidates are required to participate in the examination in different subjects, at the same time, there must be some method, in which, level playing field is introduced for all the candidates opting for different subjects. Only then, the Commission would be able to achieve parity in treatment. As of now, it appears that the Hon'ble Supreme Court has recognized the 'scaling' method and such method is being evolved and recognized to bring in parity of treatment.

20. The Commission, which is entrusted with the job of recruiting persons for all services for the public employment in the State of Tamil Nadu, must equip itself to meet such demands and challenges in future. Only then, the Commission can enhance its credibility in future selection when the selection of the present nature is involved.

21. Be that as it may. As far as the present selection is concerned, no doubt the same is finalized and the selected candidates are likely to be appointed. At the same time, this Court is unable to reject the contention of the petitioner outright on the ground that the 'scaling' method was not adopted by the Public Commission in the present selection. This is more so, when the petitioner appears to be better qualified by having a degree in Master of Town Planning than the others, who have Civil Engineering or Architecture. Therefore, public interest demands that more meritorious candidate is to be preferred in public employment and that would serve larger public interest in the long run. Having this in mind, this Court directs the Public Service Commission to appoint a Committee of Experts and explore the possibility of adopting 'scaling' method in respect of the performance of the petitioner herein viz-a-vis the others, who are selected candidates and the Commission shall act upon the advise and recommendations of such Committee. This view is necessitated because of the circumstances of the case and also with a view to stimulate the Commission to adapt itself to the changing times with new challenges and demands in its future recruitment.

22. In the above circumstances, the Commission is directed to constitute a Committee of Experts to evaluate the

performance of the petitioner vis-a-vis the selected candidates and the Commission shall constitute a Committee within a period of eight weeks from the date of receipt of copy of this order. The Commission is also directed to instruct the Committee to submit its report within a reasonable time and the Commission shall act upon the Committee's recommendation and in case, the Committee was in favour of the selection of the petitioner, on the basis of the assessment, by adopting 'scaling' method, the Commission may consider accommodating the petitioner in the present selection without disturbing the select list already prepared in respect of other candidates.

23. The entire exercise shall be initiated and completed by the Commission within a period of three months from the date of receipt of a copy of this order.

The writ petition stands disposed of accordingly. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

msk/mrm

To

- 1.The Secretary to Government of Tamil Nadu,
Housing and Urban Development Department,
Fort St.Gorge, Chennai-600 009
- 2.The Director,
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Country Planning, Chennai.
- 3.The Secretary,
Tamil Nadu Public Service Commission,
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- 4.The Controller of Examination,
Tamil Nadu Public Service Examination,
Chennai

+lcc to Mr.M.Devendran, Advocate, S.R.No. 56811

+lcc to Mr.V.Vijay Shankar, Advocate, S.R.No. 56771

W.P.No. 5436 of 2019

GN(11/07/2019)