

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7752 of 2020

1. Mukesh Kumar Verma Son of Paras Nath Verma, Resident of Village - Sherpur, Ward No. 16, P.S.- Sambe, P.O.- Warisaliganj, District- Nawada.
2. Pankaj Prakash, Son of Jiwachh Mahto, Resident of Belwaganj, P.O. and P.S.- Laheriasarai, District- Darbhanga, Bihar- 846001.
3. Vinay Kumar Mishra, Son of Sarvjeet Mishra, Resident of Village - Vishunpur, P.S.- Golhaura, District- Siddhartha Nagar, Uttar Pradesh - 272153.
4. Aashpreetam Kumar, Son of Pitamber Harijan, Resident of Bori Bishahar, P.O. and P.S. Barahat, District- Banka, Bihar - 813103.
5. Prashant Raj, Son of Surendra Prasad Singh, Resident of C/51, Police Colony, Anishabad, P.S. Gardanibagh, District- Patna- 800002.
6. Sanjay Kumar Singh, Son of Umesh Singh, Resident of Village and P.O. Korai Via- Gadhpura, P.S.- Gadhpura, District - Begusarai, Bihar- 848204.
7. Pradip Kumar, Son of H.K. Rai, Resident of E- 669, Road No. 10, West Vinod Nagar, Mandawali, P.S.- Delhi, District- Delhi- 1100092.
8. Shashi Shankar Kumar, Son of Gopal Prasad, Resident of Village and P.O. - Onda, P.S. Sare, District- Nalanda, Bihar - 803107.
9. Kunal Kumar Kannaujia, Son of Ishwar Chandra, Resident of Village- Hasanpur Surat, P.O. and P.S.- Patory, District- Samastipur, Bihar- 848504.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary-cum-Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Bihar Public Service Commission through its Chairman, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna.
4. The Chairman, Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna.
5. The Secretary, Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna.
6. The Controller of Examination, Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Kumar Kaushik with Mrs.Namrata Dubey
For the State	:	Mr.Manish Kumar (GP 4)
For the Respondent/s	:	Mr.Lalit Kishore (Sr.Advocate) with
	:	Mr.Satyavir Bharti



CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT
Date : 09-11-2020

The petitioners, nine in number, have challenged the result of 64th Combined Competitive (Main) Examination, published on 16.07.2020 by the Bihar Public Service Commission (hereinafter referred to as the B.P.S.C.) and have sought for a direction to the respondent B.P.S.C. to revise the said result after adopting the method of scaling/moderation/standardization of the marks for determining *inter se* merits of candidates and publish the result afresh accordingly.

2. The process of selection on the basis of the 64th Combined Competitive Examination was initiated with the issuance of advertisement by the B.P.S.C. on 02.08.2018, for filling up of various posts under the State Government of Bihar. As per the advertisement, the selection process in question is based on a (i) preliminary test and (ii) those, who qualify in the said test, are permitted to appear in the Main Examination. Under the scheme of the advertisement, after clearing the preliminary test, a candidate was required to submit his *on-line* application form, for the Main Examination and opt one, out of the thirty four optional subjects, mentioned in Clause 10 (III) of the advertisement.

3. The petitioners had qualified in the preliminary test and after applying their *on-line* application forms for the Main Examination, they appeared in the Main Examination with the following optional subjects:-

Petitioner No.	Name	Subject
1.	Mukesh Kumar Verma	Labour and Social Welfare
2.	Pankaj Prakash	Anthropology
3.	Vinay Kumar Mishra	Sociology
4.	Aashpreetam Kumar	Geography



5.	Prashant Raj	Labour and Social Welfare
6.	Sanjay Kumar Singh	Hindi Literature
7.	Pradip Kumar	Labour and Social Welfare
8.	Shashi Shankar Kumar	History
9.	Kunal Kumar Kannaujia	Public Administration

4. The result of successful candidates was published on 16.07.2020. Roll numbers of these petitioners did not figure in the result and were, thus, unsuccessful in the Main examination. In the aforesaid factual background, the petitioners have filed the present writ application seeking relief as noted below:-

“That this is an application by which the petitioners pray for the following reliefs:

1. For issuance of an order, direction or writ of certiorari for quashing and setting aside the result of the 64th Combined Competitive (Main) Examination published on 16.07.2020 by the Bihar Public Service Commission pursuant to the advertisement issued by the Commission on 02.08.2018.

2. For issuance of an order, direction or a writ of mandamus for directing respondent Commission to revise the result after adopting the method of Scaling/Moderation/Standardization of marks for evaluation of the Answer Scripts and further for directing the Commission to publish the result afresh on the basis of merit.

3. For issuance of an order, direction or an appropriate writ for staying the further process of selection in relation to the 64th Combined Competitive Examination conducted against advertisement dated 02.08.2018, during the pendency of the instant writ petition.”

5. It is the petitioners’ case that despite their remarkable performance in the Main examination, in their own estimation, their roll numbers did not figure in the list of successful candidates. This is to be noted that against 1465 advertised vacancies, 3799 candidates have been declared



successful in the Main examination. It has been stated in paragraph 13 of the writ application that the petitioners have learnt from the office of the B.P.S.C. that method of moderation/scaling, before preparation of result of Main examination, was not followed. It has further been stated that the petitioners have also learnt that the B.P.S.C. had not prepared any model answer, before evaluation of answer books of the candidates, which had so far been the practice of the B.P.S.C., to bring uniformity in standards of evaluation.

6. It is significant to note, at this stage, that there is no assertion in the writ application that there existed a situation/circumstance before the B.P.S.C., to deal with which method of moderation/scaling of evaluation should have been adopted for alleviating subject variability and examiner variability which is one of the grounds which has been taken in the writ application for the relief sought for. Put differently for clarity, there is no pleading in the writ application that applicants with the optional subjects viz. Labour & Social Welfare, Anthropology, Sociology, Geography, Hindi Literature, History and Public Administration secured, generally scored substantially lower marks than the applicants with other optional subjects. There is no pleading that proportion of successful candidates in the Main examination with these optional subjects is substantially low, compared to other subjects/subject, if the same is worked out on the basis of total number of applicants, who had opted for different subjects.

7. The petitioners have placed heavy reliance on a Division Bench decision of this Court rendered on 26.08.2011 in C.W.J.C. No. 3892 of 2011 (*53rd to 55th Combined Competitive Examination Candidates Association v. The State of Bihar and others*) to assert that this Court had directed the B.P.S.C. to incorporate in its Rules relating to conduct of



examination, the system of ‘moderation’ as well as the system of ‘scaling down of raw marks’, in consonance with the Supreme Court’s decision in case of *Sanjay Singh v. The U.P. Public Service Commission*, reported in (2007) 3 SCC 720. The said order of the Division Bench of this Court, in case of *53rd to 55th Combined Competitive Examination Candidates Association* (supra) has been annexed as Annexure - P5 to this writ application. The Division Bench decision of this Court, in case of *53rd to 55th Combined Competitive Examination Candidates Association* (supra), was rendered in relation to 53rd to 55th Combined Competitive Examination held by the B.P.S.C. The said proceeding was in the nature of public interest litigation. After publication of result of the same 53rd to 55th Combined Competitive (Main) Examination, various writ applications were filed before this Court, challenging the correctness of the result, mainly on the ground that the direction issued by this Court in case of *53rd to 55th Combined Competitive Examination Candidates Association* (supra) was not followed by the B.P.S.C., inasmuch as the B.P.S.C. had adopted the method of moderation instead of scaling. The petitioners had asserted before this Court in those cases that in the light of the decision, in case of *53rd to 55th Combined Competitive Examination Candidates Association* (supra), the B.P.S.C. was obliged to adopt the method of scaling, since the examination consisted of different optional papers. It was contended before this Court that the method of moderation was to be adopted only where, the papers of the examination were same for all candidates but there were large number of examiners. In Civil Services Examination, there being large number of optional papers, the system of scaling was needed to be applied to alleviate ‘subject variability’. The writ applications were dismissed by a Division



Bench of this Court by a decision rendered on 03.01.2014, since reported as **2014 (1) P.L.J.R. 471** in case of ***Prem Kumar Bhakta v. The State of Bihar***.

This Court, in case of ***Prem Kumar Bhakta*** (supra), after taking note of the Supreme Court's decision, in case of ***Sanjay Singh*** (supra) and ***Prashant Ramesh Chakkarwar*** [Special Leave to Appeal (Civil) Nos. 11977-11978/2012 decided on 20.02.2013], finally recorded in paragraphs 12 and 13 as follows:-

“12. The State Public Service Commissions are the constitutional authorities vested with the power to make recruitment for Civil Services under the concerned State. It is the duty of the Public Service Commission to select the best brains for Civil Services of the State. The Public Service Commissions are thus authorities specialised in making recruitment for Civil Services. For that purpose they are armed with the required expertise and the man power. With the rising magnitude of their responsibilities, the Public Service Commissions have to keep abreast of the recent studies and developments. Combined with their experience the Public Service Commissions ought to be able to resolve the problems they face and to answer their calling.

13. We are alive to the anxiety suffered by the writ petitioners. We also agree that having regard to the large numbers of examinees; the large number of examiners; variety of optional subjects, it is next to impossible to maintain a uniform standard. If in the circumstances, the examining authorities have developed the schemes of scaling down the results or to moderate the evaluation, that be so. The Court, exercising power of judicial review, will not weigh the desirability of one or the other method adopted by the examining authority. We do understand, with this magnitude of work, it is next to impossible to maintain an absolute parity but the efforts should be made to remove the disparity as far as possible. In the present case, in view of the directions



issued in C.W.J.C. No. 3892 of 2011, the Commission has undertaken the exercise of moderating the evaluation as reflected in its counter affidavits and the instructions issued pursuant to the decision taken by the Commission on 15th January, 2013. We, as a court of law, will not sit in appeal over the method adopted by the Commission to ascertain its accuracy. Suffice that the Commission has taken steps to bring itself abreast of the prevalent systems and we do trust that the Commission will come out with appropriate rules to make the system uniform, transparent, effective and continuous.”

(Underlined for emphasis)

8. The aforesaid Division Bench decision of this Court was assailed before the Supreme Court. The Supreme Court refused to interfere with the Division Bench’s decision of this Court, in case of **Prem Kumar Bhakta** (supra), by a decision since reported in **(2016) 2 SCC 495** in case of **Sunil Kumar v. Bihar Public Service Commission**.

9. It is, however, the case of the petitioners that even in the 53rd to 55th Combined Competitive Examination, process of moderation was followed, as per the resolution dated 15.01.2013, inasmuch as model answers were prepared by the B.P.S.C., in accordance with Bihar Public Service Commission Rules or Procedures, 1996 (hereinafter referred to as the Rules), which describes different steps to be taken by the Head Examiner and other Examiners before the evaluation of answer sheets. In the present case, the petitioners allege, no procedure was followed to bring uniformity in the process of evaluation of answer sheets. They have alleged that the Commission has been publishing the results on the basis of raw marks or moderated marks as per its own convenience without binding itself to a specific procedure by framing Rules in this regard. It is their case that



adoption of different methods by the B.P.S.C. in different examinations is highly arbitrary and unreasonable. Reference has also been made in the pleadings to 60th to 62nd Combined Competitive Examination held by the B.P.S.C. It has been stated that an information furnished by the B.P.S.C. in response to an application under the Right To Information Act, 2005 vide letter dated 12.06.2020, with respect to two optional papers namely Political Science and Anthropology, indicates that highest marks in Political Science was 161, whereas highest marks in Anthropology was 203. Similarly, lowest marks in Political Science was 67, whereas lowest marks in Anthropology was 21. It is accordingly the case of the petitioners that these aspects denote that there is no level playing field in the examination. The petitioners have pleaded the difference of 42 marks in Political Science and Anthropology, in so far as the highest marks is concerned, clearly highlights the fact that there is no uniformity in the difficulty level of question of different optional papers.

10. A counter affidavit has been filed on behalf of the respondent B.P.S.C. It has been stated in the counter affidavit that after the Supreme Court's decision, in the case of **Sunil Kumar** (supra), the result of 56th of 59th Combined Competitive (Main) Examination was also assailed before this Court by filing writ application on the same ground, including the ground of absence of preparation of model answers, which were dismissed by this Court by Judgment and Order dated 09.05.2018 passed in C.W.J.C. No. 5552 of 2018 [**Nehal Ahmad and others v. Bihar Public Service Commission (SB)**] and other analogous matters. Letters Patent Appeals have also been dismissed by Judgment and Order dated 26.06.2018, passed in LPA No. 726 of 2018 (**Sanjeev Kumar v. The State of Bihar**) and other



analogous cases. It has been stated in the counter affidavit that the Commission has its own Rules or procedures for fair conduct of examination, which have been approved by the Hon'ble Supreme Court in case of ***Bihar Public Service Commission and others v. Manoj Kumar Pandey and others*** reported in (1996) 11 SCC 664.

11. Mr. Kumar Kaushik, learned counsel appearing on behalf of the petitioner, has submitted that despite subsequent Division Bench decision of this Court in case of ***Prem Kumar Bhakta*** (supra) and Supreme Court's decision in case of ***Sunil Kumar*** (supra), the effect of the direction issued by the Division Bench of this Court in case of ***53rd to 55th Combined Competitive Examination Candidates Association*** (supra) for adopting method of moderation/scaling for evaluation cannot be said to have been whittled down. The direction in case of ***53rd to 55th Combined Competitive Examination Candidates Association*** (supra) was in consonance with the Supreme Court's decision in case of ***Sanjay Singh*** (supra), which fact has been noted by the Supreme Court in its decision in case of ***Sunil Kumar*** (supra). He has accordingly contended that the direction issued by the Division Bench in case of ***53rd to 55th Combined Competitive Examination Candidates Association*** (supra) still operates with full force for the purpose of Combined Competitive (Main) Examinations, which are held by the B.P.S.C. He has argued that so as to ensure fairness in the process of selection and to allay any chance or scope of arbitrariness as also to bring uniformity in the evaluation of the answer sheets, particularly, since the examination was based on variety of optional subjects, it was imperative for the B.P.S.C. to have adopted the process of scaling. He has argued that it was incumbent upon the B.P.S.C. to have considered, before publication of



the result of the Main Examination, as to whether, there was any requirement of scaling or moderation or not. In an attempt to distinguish the present case from the cases decided by this Court in the matter of *Nehal Ahmad* (supra) and *Sanjeev Kumar* (supra), he has submitted that one of the grounds taken in the said proceeding for assailing the result of mains examination was non-preparation of model answers before the process of evaluation, which did not find favour with this Court. He has contended that the petitioners have taken specific ground in the present case that, in the light of Division Bench decision of this Court in case of *53rd to 55th Combined Competitive Examination Candidates Association* (supra), it was mandatory for the B.P.S.C. to have adopted the method of scaling before preparation of result of the Mains Examination in question.

12. Controverting the above noted arguments advanced on behalf of the petitioners, Mr. Lalit Kishore, learned Senior counsel appearing on behalf of the B.P.S.C., has urged that the direction issued in case of *53rd to 55th Combined Competitive Examination Candidates Association* (supra) has lost its relevance and significance, in view of subsequent developments, particularly in the light of Division Bench decision of this Court in case of *Prem Kumar Bhakta* (supra) and the Supreme Court's decision in case of *Sunil Kumar* (supra), in which the same *53rd to 55th Combined Competitive Examination Candidates Association* (supra) was the subject matter, which was the subject matter before the Division Bench in case of *53rd to 55th Combined Competitive Examination Candidates Association* (supra). He has placed heavy reliance on paragraphs 21 and 22 of the Supreme Court's decision in case of *Sunil Kumar* (supra) and paragraphs 6, 8 to 10 and 12 to 21 of the Division Bench decision in case of *Prem Kumar Bhakta* (supra).



He has argued that in the light of the Division Bench decision in case of **Sanjeev Kumar** (supra) rendered in relation to 56th to 59th Combined Competitive Examination, the nature of dispute, which is being raised in the present proceeding, has been set at rest by this Court.

13. I have carefully examined the pleadings on record and have given my anxious consideration to rival submissions made on behalf of the parties.

14. From what has emerged on the basis of the advertisement and the pleadings on record that, a common selection process in the name of “Combined Competitive Examination” is held for appointment to different cadres (mostly of gazetted rank) under the Government of Bihar. As has been lucidly stated by this Court in case of **Prem Kumar Bhakta** (supra) by the Division Bench of this Court that the very nature of the examination offers a variety of subjects for examination, some of which are common to all, while for other subjects, the options are offered to the applicants amongst wide variety of optional subjects. The case of the petitioners is based on the premise that some of the optional subjects are highly scoring whereas some are not that scoring and such examinees, who opt for scoring subjects, easily steal a march over other examinees. Further, their answer papers are evaluated by different examiners, who do not have the same standards of examining the answer sheets. Some examiners may be liberal in giving marks, whereas, others may not be that liberal. With a view to removing such anomalies arising from fortuitous circumstances of selecting a particular optional subject, the B.P.S.C. is required to moderate or scale down the results, to bring about a fair result, the petitioners have contended.



15. Since the entire case of the petitioners is based on the Supreme Court's decision rendered in case of **Sanjay Singh** (supra), I have considered it apt to refer to and deal with the said decision first before going into other aspects of this case.

16. In case of **Sanjay Singh** (supra) the Supreme Court had the occasion to consider validity of selection held for appointments in U.P. Judicial Service on the basis of a competitive examination. The U.P.P.S.C., in that case, had 'scaled down' the marks awarded to the candidates by following 'scaling method'. The Supreme Court noted that the Rules for the said selection process, prescribed five papers, all of which were compulsory for all the candidates. After noticing that the extant Rules, governing the selection process, did not permit scaling down marks, went further into the question of correctness of adoption of the scaling method for an examination, where the papers were compulsory and common to all the candidates. The Supreme Court observed in paragraph 25 that by scaling process, raw marks in different subjects are adjusted to a common scale, which is a recognized method of ensuring uniformity, *inter se*, among the candidates, who have taken examination in different subjects, as, for example, the Civil Services Examination. The Supreme Court, while disapproving the scaling down method adopted by U.P.P.S.C in case of **Sanjay Singh** (supra), proceeded to observe in paragraph 24 as under:-

"24. In the Judicial Service Examination, the candidates were required to take the examination in respect of the all 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 heterogenous



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 a mark of 70 out of 100 in mathematics does not mean the same thing as 70 out of 100 in English. In English 70 out of 100 may indicate to 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 some paper setters in other subjects who set tougher questions difficult to answer. This may happens when for example, in a Civil Service examination, where Physics and Chemistry are optional papers, examiner 'A' sets a paper in Physics appropriate to a 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, normalized equi- percentile method are some of the recognized methods for scaling.”

17. While examining the correctness of scaling down method adopted by U.P.P.S.C in case of **Sanjay Singh** (supra), the Supreme Court summarized the position regarding scaling method in paragraph 45, which runs as under:-

“We may now summarize the position regarding scaling thus:

(i) Only certain situations warrant adoption of scaling techniques.

(ii) There are number of methods of statistical scaling, some simple and some complex. Each method or system has its merits and demerits and can be adopted only under certain conditions or making certain assumptions.

(iii) Scaling will be useful and effective only if the distribution of marks in the batch of answer scripts sent to each examiner is approximately the same as the distribution of marks in the batch of answer scripts sent to every other examiner.

(iv) In the Linear Standard Method, there is no guarantee that the range of scores at various levels will yield candidates of comparative ability.

(v) Any scaling method should be under continuous review and evaluation and improvement, if it is to be a reliable tool in the selection process.

(vi) Scaling may, to a limited extent, be successful in eliminating the general variation which exists from examiner to examiner, but not a solution to solve



examiner variability arising from the 'hawk-dove' effect (strict/liberal valuation)."

18. After having noticed the pre-conditions for adopting the method of scaling down in the process of evaluation, the Supreme Court in case of **Sanjay Singh** (supra) observed in paragraph 46 that the materials did not disclose that any expert body had kept the above factors in mind for deciding to introduce the system of scaling. In the aforesaid circumstance, the Supreme Court had directed in case of **Sanjay Singh** (supra) that the Commission would have to "identify" a suitable system of evaluation, **if necessary**, by appointing another committee of experts. The Court further directed that till new system was in place, the Commission might follow the moderation system set out in paragraph 24 above, with appropriate modification.

19. The decision in case of **Sanjay Singh** (supra) has been threadbare discussed in case of **Sunil Kumar** (supra), paragraphs 18 and 19 of which read as under:-

"18. In Sanjay Singh (supra) the Court was considering the validity of the declaration of the results of the examination conducted by the Public Service Commission under the U.P. Judicial Service Rules by adoption of the scaling method. This, according to this Court, ought not to have been done inasmuch as the scaling system is more appropriate to an examination in which the candidates are required to write the papers in different subjects whereas in the examination in question all the papers were common and compulsory. To come to the aforesaid conclusion, this Court had necessarily to analyze the detailed parameters inherent in the scaling method and then to reach its conclusions with regard to the impact of the adoption of the method in the examination in question before recording the consequences that had



resulted on application of the scaling method. The details in this regard have already been noticed (Sanjay Singh case, paras 45 and 46) (in paras 14 and 15 herein).

19. The entire of the discussion and conclusions in Sanjay Singh (supra) was with regard to the question of the suitability of the scaling system to an examination where the question papers were compulsory and common to all candidates. The deficiencies and shortcomings of the scaling method as pointed out and extracted above were in the above context. But did Sanjay Singh (supra) lay down any binding and inflexible requirement of law with regard to adoption of the scaling method to an examination where the candidates are tested in different subjects as in the present examination? Having regard to the context in which the conclusions were reached and opinions were expressed by the Court it is difficult to understand as to how this Court in Sanjay Singh (supra) could be understood to have laid down any binding principle of law or directions or even guidelines with regard to holding of examinations; evaluation of papers and declaration of results by the Commission. What was held, in our view, was that scaling is a method which was generally unsuitable to be adopted for evaluation of answer papers of subjects common to all candidates and that the application of the said method to the examination in question had resulted in unacceptable results. Sanjay Singh (supra) did not decide that to such an examination i.e. where the papers are common the system of moderation must be applied and to an examination where the papers/subjects are different, scaling is the only available option. We are unable to find any declaration of law or precedent or principle in Sanjay Singh (supra) to the above effect as has been canvassed before us on behalf of the appellants. The decision, therefore, has to be understood to be confined to the facts of the case, rendered upon a consideration of the relevant Service Rules prescribing a particular syllabus."

(Underlined for emphasis)



20. It can be easily discerned from ***Sunil Kumar*** (supra) and ***Sanjay Singh*** (supra), the Supreme Court had held, in the facts and circumstances of that case that scaling method ought not to have been adopted for preparation of the result by U.P.P.S.C under the U.P. Judicial Service Rules because the scaling system was more appropriate to an examination, in which, the candidates were required to write the papers in different subjects, whereas, in the examination, in question, all the papers were common and compulsory. It can be easily discerned that ***Sunil Kumar*** (supra) reiterated that in ***Sanjay Singh*** (supra), discussions and conclusion were in relation to question of the suitability of scaling system to an examination and the deficiencies and the shortcomings of scaling method, as pointed out in case of ***Sanjay Singh*** (supra) were in that context. The Supreme Court in case of ***Sunil Kumar*** (supra) framed specific question in paragraph 19 to the effect, as to whether, did ***Sanjay Singh*** (supra) lay down any binding and inflexible requirement of law, with regard to adoption of scaling method to an examination, where the candidates are tested in different subjects? Answering the questions so framed, the Supreme Court in no uncertain terms has held that having regard to the context, in which the conclusions were reached and the opinions were expressed by the Court, it cannot be said that Supreme Court in case of ***Sanjay Singh*** (supra) laid down any binding principle of law or directions or even guidelines with regard to holding of examinations; evaluation of papers and declaration of results by the Commission. As stated by the Supreme Court in case of ***Sunil Kumar*** (supra), the Supreme Court in case of ***Sanjay Singh*** (supra) had simply held that scaling is a method, which was generally unsuitable to be adopted for evaluation of answer papers of



subjects, common to all candidates and that application of the said method to the examination in question had resulted in unacceptable results.

21. Situated thus, it can be safely held in view of the Supreme Court's decision in case of ***Sunil Kumar*** (supra) that ***Sanjay Singh*** (supra) did not decide that to such an examination, where the papers are common, system of moderation must be applied and to an examination, where papers/subjects are different, scaling is the only available option. Adding further clarification, the Supreme Court remarked that decision in case of ***Sanjay Singh*** (supra) will have to be understood to be confined to the facts of that case rendered upon a consideration of the relevant Service Rules.

22. Mr. Lalit Kishore has rightly relied on paragraphs 20 and 21 of the Supreme Court's decision in case of ***Sunil Kumar*** (supra). Holding of public examinations involving wide and varied subjects/disciplines is a complex task, which defies an instant solution by adoption of any singular process or by straight jacket formula. The Supreme Court pointed out that not only examiner variations and variations in award of marks in different subjects are the issues to be examined but there are several other aspects that may also require to be dealt with. Variation in strictness of the question set in a multi-disciplinary examination format was one such fine issue that was noticed 'co-incidentally' in case of ***Sanjay Singh*** (supra). The Supreme Court made significant observation in paragraph 20 in case of ***Sunil Kumar*** (supra) as under:-



“20. A conscious choice of a discipline or a subject by a candidate at the time of his entry to the University thereby restricting his choice of papers in a public examination; the standards of inter subject evaluation of answer papers and issuance of appropriate directions to evaluators in different subjects are all relevant areas of consideration. All such questions and, may be, several others not identified herein are required to be considered, which questions, by their very nature should be left to the expert bodies in the field, including, the Public Service Commissions. The fact that such bodies including the Commissions have erred or have acted in less than a responsible manner in the past cannot be a reason for a free exercise of the judicial power which by its very nature will have to be understood to be, normally, limited to instances of arbitrary or mala fide exercise of power.”

23. The Supreme Court, in case of **Sunil Kumar** (supra), after having elaborately discussed the Supreme Court’s decision in case of **Sanjay Singh** (supra) and decision of this Court in case of **53rd to 55th Combined Competitive Examination Candidates Association** (supra), held in paragraph 21 as under:-

“21. To revert, in the instant case, we have noticed that the contempt proceedings against the Public Service Commission for violation of order dated 26th August, 2011 in C.W.J.C. NO.3892 of 2011 had failed. We have also noticed that the Public Service Commission made all attempts to gather relevant information from the Union Public Service Commission and other State Public Service Commissions to find out the practice followed in the other States. The information received was fully discussed in the light of the particulars of the examination in question and thereafter a conscious decision was taken by the



resolution dated 15th January, 2013, details of which have been already extracted. In the light of the above and what has been found to be the true ratio of the decision in Sanjay Singh (supra), we cannot hold that in the present case the action taken by the Bihar Public Service Commission deviates either from the directions of the High Court (dated 26th August, 2011 in C.W.J.C. No. 3892 of 2011) or the decision of this Court in Sanjay Singh (supra). Also, the absence of any plea of mala fide and the uniform application of the principles adopted by the Commission by its resolution dated 15th January, 2013 would lead us to the conclusion that the present would not be an appropriate case for exercise of the power of judicial review. The absence of reasons in the aforesaid resolution, on which much stress has been laid, by itself, cannot justify such interference when the decision, on scrutiny, does not disclose any gross or palpable unreasonableness.”

24. In view of the aforementioned discussion, the Division Bench decision of this Court in case of **53rd to 55th Combined Competitive Examination Candidates Association** (supra) will have to be read with and not without the Supreme Court's decision in case of **Sunil Kumar** (supra). This is for the reason that this Court's decision in **53rd to 55th Combined Competitive Examination Candidates Association** (supra) is based entirely on the Supreme Court's decision in case of **Sanjay Singh** (supra), and the Supreme Court in case of **Sunil Kumar** (supra) has elaborately dealt with, as to what had been held in case of **Sanjay Singh** (supra). The Division Bench, in case of **53rd to 55th Combined Competitive Examination Candidates Association** (supra), had disposed of the public interest litigation in following terms:-



*“16. In the result, the writ petition is allowed. Respondent nos. 2 and 3 would be well-advised to frame Rules, may be after supplanting the existing Rules with respect to conduct of examinations, incorporating therein the system of moderation, as well as the system of scaling of raw marks. The Commission shall draw guidelines from the judgment of the Supreme Court in *Sanjay Singh vs. U.P.P.S.C (supra)*, as well as the Rules of the Union Public Service Commission, and other Public Service Commissions including Maharashtra Public Service Commission, etc. This Court will be pleased if the entire process is completed within a period of six months from today. Till then, the judgment of the Supreme Court in *Sanjay Singh (supra)*, will guide the affairs of the Commission with respect to all the examinations where the candidate has the choice of optional subjects, in so far as these two concepts are concerned.”*

25. In view of the discussions noted above and the clear language used by the Supreme Court in case of ***Sunil Kumar*** (supra), in my opinion, this Court, exercising power of judicial review under Article 226 of the Constitution of India, should not direct the B.P.S.C., to essentially adopt method of scaling down, where the papers/subjects are different nor should say that the scaling is the only available option in such circumstance (See Para-19). The submission that it was imperative for the B.P.S.C. to have adopted the method of scaling is devoid of merit. In paragraph 12, the Supreme Court in case of ***Sunil Kumar*** (supra) has indicated its view with regard to this Court's order in case of ***53rd to 55th Combined Competitive Examination Candidates Association*** (supra) and has clearly held that there was no direction of this Court, which would bind the B.P.S.C. to any particular course of action. The Supreme Court pointed out that there was



sufficient discernible flexibility in the said order, leaving it open for the B.P.S.C. to modulate its action as the facts surrounding particular examination(s) that is involved, might require.

26. The B.P.S.C. is a constitutional body of experts, vested with the power to make recruitment for Civil Services. What method should be adopted in a given situation/circumstance should be generally left to the wisdom of such expert bodies. Whether the method of scaling or moderation is to be adopted for preparation of the result or the results are to be prepared on the basis of raw marks, will certainly depend on the wisdom of the Commission, unless any glaring illegality or infirmity is shown, requiring interference in a Judicial review proceeding under Article 226 of the Constitution of India. For example, in case of *Sanjay Singh* (supra), the Supreme Court did not approve the adoption of method of scaling by the U.P.S.C, in the facts or circumstances of that case, in the light of the Rules governing the process of selection.

27. Further, there is no reason why this Court should presume that the B.P.S.C. is abreast with recent researches dealing with recruitment process to select most suitable candidates for a particular post. I reject the contention made on behalf of the petitioners that the B.P.S.C. ought to have taken a decision on record that there was no requirement of adopting the method of scaling or moderation. The question of recording such decision would have arguably arisen, had there been a decision deviating from the general rule of publishing results on the basis of raw marks scored by candidates, and thereby adopting method of scaling/moderation/standardization or any other method for alleviating scope of subject variability or examiner variability.



28. In the result, this application fails and stands dismissed.
29. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

AKASH/-

AFR/NAFR	N/A
CAV DATE	09.11.2020
Uploading Date	
Transmission Date	

