

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 311 of 2020**

{Arising out of order dated 03.07.2020 passed by the learned Single Judge in Writ Petition (S) No. 2096 of 2020}

- Parvej Hasan, S/o Shri Jahir Hasan, aged about 28 years, Ward No. 01 Killapara, Dongargaon, Tahsil – Dongargaon, District – Rajnandgaon (C.G.)

---- Appellant**Versus**

1. State of Chhattisgarh, Through: Secretary Department of Law and Justice Raipur, District Raipur, Chhattisgarh.
2. The High Court of Chhattisgarh, Through: The Registrar General, High Court Campus Bodri, District Bilaspur, Chhattisgarh.
3. Chhattisgarh Public Service Commission, Through: The Secretary, Shankar Nagar Road, Bhagat Singh Square, Raipur, District Raipur, Chhattisgarh.
4. The Examination Controller, Chhattisgarh Public Service Commission, Shankar Nagar Road, Bhagat Singh Square, Raipur, District Raipur, Chhattisgarh.

---- Respondents

For Appellant	:	Shri Malay Jain, Advocate.
For Respondent No. 1/State	:	Shri Sudeep Agrawal, Deputy Advocate General.
For Respondent Nos. 3 & 4	:	Shri Ashish Shrivastava, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge
Judgment on Board

Per P. R. Ramachandra Menon, Chief Justice**15.07.2020**

1. Dismissal of the writ petition filed by the Appellant to direct the Respondents for permitting him to appear for the main examination for selection and appointment of Civil Judge Class-II published as per Annexure P/1 advertisement dated 06.02.2019 is put to challenge in this appeal. The main contention is that, the verdict passed by the learned Single Judge is against the order dated 02.03.2020 passed by the Division Bench of this Court in Writ Appeal No. 605 of 2019 and connected matters.

2. Heard Shri Malay Jain, the learned counsel appearing for the Appellant, Shri Sudeep Agrawal, the learned Deputy Advocate General for the State and Shri Ashish Shrivastava, the learned counsel representing the Respondents Nos. 3 and 4/PSC at length.
3. To appreciate the nature of grievance projected, it is necessary to have a look at the sequence of events. Annexure P/1 notification was issued by the Respondent/PSC on 06.02.2019, pursuant to the requisition for filling up of the '39 posts' of Civil Judge (entry level in the sub-ordinate judicial). As per the scheme of selection, a Preliminary Examination was to be conducted on 07.05.2019 with 100 questions carrying 1 mark each, to give the correct answers from the multiple choice answers given. There was no provision for any 'minus mark', even if the answer had gone wrong. The relatively more meritorious candidates who appeared in the Online Preliminary Examination were to be called for the Main Examination in the ratio of 1:10, which was to be followed by Viva-Voce as well. It was also specifically stipulated that the marks obtained in the Online Preliminary Examination would not be considered or added to the marks in the Main Examination, as given in the 'Appendix-A'. The various topics/subjects (15 in total) on which questions were to be set in the Online Preliminary Examination were given in 'Appendix-B'; simultaneously giving the particulars of the Main Examination/Viva-Voce in 'Appendix-C'.
4. Pursuant to the above notification, though 8588 online applications were received, only 4681 candidates appeared for the Preliminary Examination held on 07.05.2019. After holding the Preliminary Examination, the 'Model Answers' were published on the very next day *i.e.* 08.05.2019 giving 7 days' time from 14.05.2019 to 20.05.2019 to submit objections, if any. As a matter of fact, only 157 candidates raised objections in respect of a total of '49' questions, which came to be forwarded to a duly constituted Committee appointed by the PSC.

5. After considering the objections, based on the recommendation of the Committee, 12 questions were deleted because of serious mistakes. In respect of 4 questions, the answers given in the Model answer-sheet were corrected/changed; whereas no change was found necessary in respect of the remaining 33 questions. It was accordingly, that the final answer-sheet was published on 22.06.2019.
6. On publishing the final answer sheet as above, as many as 9 writ petitions came to be filed before this Court; some contending that their objections were not properly considered; some others contending that the deletion of the 12 questions was bad; some pointing out that the revised answers were not at all correct and some others contending that though they had not filed objections before the PSC, the change effected by the PSC based on the objections preferred by the others had adversely affected them and hence the challenge raised in the writ petitions.
7. In some of the writ petitions, there was a prayer to cancel the entire selection and in some other cases, as an alternative prayer, the Petitioners were sought to be permitted to participate in the Main Examination. The course and proceedings were sought to be justified by the PSC. But, after hearing both the sides, the learned Single passed the verdict on 15.11.2019, whereby the result of the Preliminary Examination was set aside and the PSC was directed to conduct the selection process afresh, holding that there were several mistakes in the questions and also the answers. This was put to challenge by the PSC by filing Writ Appeal No. 617 of 2019, while some other appeals were filed by the candidates who were declared as successful in the Preliminary Examination. They came to be aggrieved because of the setting aside of the entire selection, pointing out that they were not heard by the learned Single Judge and were not made parties to the writ petitions.

8. The above cases were taken up and heard together. The following questions were formulated by this Court:

“(i) Whether the scrutiny made by the learned Single Judge in respect of questions which were never objected by anybody including the Petitioners either before the PSC or in the writ petitions and the direction given to have them deleted is correct or not.

(ii) Whether the course of action pursued by the learned Single Judge subjecting the scrutiny of the disputed questions by the Court itself, instead of sending them to the Expert Committee constituted by the PSC is correct or proper.

(iii) Whether the direction to delete some questions for containing simple/spelling mistakes inspite of the fact that there was no difficulty in understanding the meaning; more so when the questions are available both in 'English' and 'Hindi' is correct or not.

(iv) Whether the result of the '4681' candidates, who participated in the 'Preliminary Examination' had to be cancelled because of the objections raised by the '09' Petitioners before this Court.

(v) What is the scheme and scope of the 'Preliminary Examination'.

(vi) If the 'Preliminary Examination' is only a 'Screening Test' to consider eligibility of the candidate to participate in the 'Main Examination', will it be prejudicial to anybody, if the eligible Petitioners are also permitted to participate in the 'Main Examination', based on the merit in the objections to the questions concerned.

(vii) Since it is not a case of any malpractice in the examination and there is no grievance for 99.81% (objection having been raised only by 9 persons 0.19%) can be 'Preliminary Examination' be saved, taking a pragmatic approach and moulding the relief to the deserving Petitioner, if any, by appropriate means.”

9. After detailed deliberation on each and every question in the light of the pleadings and materials on record, they were answered giving cogent reasons, taking a pragmatic view and moulding the relief to an appropriate extent, in view of the law declared by the Apex Court in **Chandra Prakash Tiwari & Others v. Shakuntala Shukla & Others** reported in (2002) 6 SCC 127 (paragraphs 39

and 41). The records made available by the PSC in sealed covers were perused and this Court found that the prudent exercise would be to consider the eligibility of the writ Petitioners to have an entry to participate in the Main Examination with reference to their performance and objections raised, if any, as it is existed on the date of publication of the Model answers on 08.05.2019.

10. After conducting detailed scrutiny with reference to the specific objections raised by the writ Petitioners, either before the PSC or before this Court in the writ petitions, this Court found that some of the candidates (in respect of whom merit was found in their objections) were to be permitted to participate in the Main Examination and in respect of others, no interference was warranted. Such a course was pursued, also in view of the fact that by granting such permission to the persons who were successful in establishing the merits in the objections, no prejudice was to be caused to anybody else, as the marks in the Preliminary Examination were never to be counted for the selection and appointment; which was exclusively to be on the basis of the marks acquired in the Main Examination and the Viva-Voce. It was because, the Preliminary Examination was only a screening test to identify the candidates who could be given a chance to participate in the 'Main Examination and Viva-Voce'.
11. The case of the Appellant is that, only after passing the verdict by this Court in Writ Appeal No. 605 of 2019 and connected matters on 02.03.2020, the Appellant came to know that some candidates who scored lesser marks based on the Model answers published on 08.05.2019 had come to be declared as eligible to participate in the Main Examination and hence he might also be permitted to participate in the Main Examination. A representation dated 20.03.2020 was stated as sent to the 4th Respondent on 21.03.2020 and it was thereafter, that the Appellant had approached this Court by filing the writ petition on 18.05.2020, which came to be dismissed by the learned Single Judge as per

judgment dated 03.07.2020; correctness of which is sought to be challenged in this appeal.

12. After considering the pleadings and materials on record and the contents of the sealed cover made available by the PSC, the learned Single Judge observed that the records did not suggest that the writ Petitioner had approached either the PSC or filed any writ petition before this Court, when the Model answers were finalized. It was accordingly, that the relief sought for was turned down and the writ petition was dismissed, holding that there was no merit at all.
13. Despite the elaborate arguments, the Appellant could not substantiate in what way the judgment passed by the learned Single Judge is contrary to Annexure A/2 judgment dated 02.03.2020 passed by this Court in Writ Appeal No. 605 of 2019 and connected matters. It is to be noted that there is no declaration in Annexure A/2 judgment dated 02.03.2020 that the list of candidates to be called for the Main Examination had to be recast, taking the cutoff marks as '86' in the Preliminary Examination. In fact, no such marks were to be worked out on the date of publication of Model answers, as the merit rating was to be only after finalizing the answers, after considering the objections. The rating was however, sought to be made by this Court in the course of hearing, as on the date of publication of Model answers to weed out the ineligible writ Petitioners and to find out whose objections were having merit. This was done by the PSC, furnishing the facts and figures in a sealed cover, which was opened and examined in the open Court. The said exercise was pursued by this Court only to save the Preliminary Examination, instead of cancelling the same; taking a pragmatic view, in view of the law declared by the Apex Court in ***Chandra Prakah Tiwari (supra)***. It was only to decide the fate of the Petitioners who had already raised objections either before the PSC or before this Court and never to deal with the case of anybody else who did not have any grievance at any

point of time, either before the PSC or before this Court. It is revealed that the PSC is proceeding with the steps for conducting the Main Examination and the Viva-Voce. It is at this point of time, that the Appellant has turned up for the first time by filing the writ petition seeking to permit him as well to participate in the Main Examination. Admittedly, the Appellant had not raised any objection at the time of publication of the Model answers or as to the deletion of 12 questions by the PSC and finalizing the answers by publishing the same on 08.05.2019. It also a fact that the original score obtained by the Appellant came to be reduced to '84.0936', which was below the cutoff set by the PSC, to be eligible for participating in the Main Examination. Still, the Appellant did not have any grievance or objection and had not chosen to approach this Court by filing any writ petition till passing the judgment in Writ Appeal No. 605 of 2019 and connected matters. The Appellant has not suffered anything because of the Annexure A/2 judgment dated 02.03.2020 passed by this Court.

14. This being the position, the writ petition filed by the end of May 2020, without raising any objection either before the PSC or before this Court earlier was never liable to be entertained; which has been rightly decided by the learned Single Judge. The discretionary jurisdiction of this Court conferred under Article 226 of the Constitution of India is not to extend relief to such persons who were taking rest on armchair, unmindful of their rights and liberties, if any. We find support from the ruling rendered by the Apex Court in ***Rabindra Nath Bose & Others v. Union of India & Others*** reported in **AIR 1970 SC 470**.
15. The appeal is devoid of any merit. It is dismissed accordingly.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge