

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 22549 of 2009

1. Union of India rep. by its General Manager,
Southern Railway,
Headquarters Office,
Chennai - 600 003.
 2. The Chief Personal Officer,
Southern Railway,
Headquarters Office,
Personnel Branch,
Chennai - 600 003.
-Petitioners

-vs-

1. The Public Information Officer,
Right to Information Cell,
O/o Southern Railway,
Chennai - 600 003.
 2. The Appellate Authority,
Right to Information Cell,
Southern Railway,
Headquarters Office,
Chennai - 600 003.
 3. The Central Information Commissioner,
Block No. 4, 5th Floor,
JNU Complex,
New Delhi - 110 067.
 4. N.R.V.Premala Kumari
-Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the order passed by the Third Respondent in Decision No. CIC/SG/A/2009/00070/3516 dated 01.06.2009 and quash the same.

For Petitioners : Mr. M.Vijayanand, Standing Counsel
For Respondents : Mr. Venkataswamy Babu,
Central Government Standing Counsel
(for R1 to R3)
No appearance (for R4)

O R D E R
(through video conference)

Heard Mr. M.Vijayanand, Learned Counsel for the Petitioners and Mr. Venkataswamy Babu, Learned Central Government Standing Counsel appearing for the First to Third Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Fourth Respondent and one Kanakaraju were in-service candidates, who had appeared in the selection examination on 30.08.2008 and viva-voce test conducted on 29.10.2008 for the post of Assistant Law Officer in Southern Railway. Since the said Kanakaraju was ultimately appointed to the post of Assistant Law Officer on ad hoc basis, the Fourth Respondent made an application dated 03.11.2008 under Section 6(1) of the RTI Act (hereinafter referred to as the 'Act' for short) to the First Respondent to furnish certain information relating to the selection of the said Kanakaraju, which was furnished to her by order dated 15.12.2008, except that relating to the answer paper with his marks for the reason that it was personal information exempted under Section 8(1)(j) of the Act. The first appeal dated 22.12.2008 filed by the Fourth Respondent before the Appellate Authority under Section 19(1) of the Act was rejected by order dated 09.02.2009. Thereafter, the Fourth Respondent preferred second appeal in Appeal No. CIC/SG/A/2009/000790 dated 17.04.2009 before the Third Respondent under Section 19(3) of the Act, which was allowed by order dated 01.06.2009 holding as follows:-

"The PIO has refused to give the information sought by the appellant in query 2 by calling it personal information. Effectively the PIO seek to deny the information under Section 8(1)(j) of the RTI Act. The PIO has applied this section erroneously since the answer sheet sought by the appellant has come into existence during an examination conducted by the public body. An examination conducted by a public authority is clearly a public activity and by no stretch of imagination can an answer sheet be called personal information. Disclosing an answer sheet

cannot be construed as an invasion in the privacy of an individual."

The Petitioners have preferred this Writ Petition challenging the aforesaid order passed by the Third Respondent on the ground that the Third Respondent ought not to have directed the furnishing of the personal information which has been exempted under Section 8(1)(j) of the Act.

3. The question as to whether answer paper in an examination is exempted under Section 8 of the Act, had come up for consideration before the Hon'ble Supreme Court of India in Central Board of Secondary Education -vs- Aditya Bandopadhyay [(2011) 8 SCC 497] in which it has been authoritatively pronounced that no such exemption is available, in the following words:-

"47. When an examinee is permitted to examine an answer book or obtain a certified copy, the examining body is not really giving him some information which is held by it in trust or confidence, but is only giving him an opportunity to read what he had written at the time of examination or to have a copy of his answers. Therefore, in furnishing the copy of an answer book, there is no question of breach of confidentiality, privacy, secrecy or trust. The real issue, therefore, is not in regard to the answer book but in regard to the marks awarded on the evaluation of the answer book. Even here the total marks given to the examinee in regard to his answer book are already declared and known to the examinee. What the examinee actually wants to know is the break-up of marks given to him, that is, how many marks were given by the examiner to each of his answers so that he can assess how his performance has been evaluated and whether the evaluation is proper as per his hopes and expectations. Therefore, the test for finding out whether the information is exempted or not, is not in regard to the answer book but in regard to the evaluation by the examiner."

4. Learned Counsel for the Petitioners placing reliance on another decision of the Hon'ble Supreme Court of India in Girish Ramchandra Deshpande -vs- Central Information Commissioner [(2013) 1 SCC 212], vehemently contended that the information sought by the Fourth Respondent was personal information in terms of Section 8(1)(j) of the Act, disclosure of which has been exempted and the Third Respondent has erred in requiring its disclosure. It must, at once, be pointed out here that the information that had been sought in that case relates to the copies of disciplinary proceedings and assets of an employee,

which invades privacy of the individual concerned and does not have any relationship to any public activity or public interest. In this context, reference has to be made to the ruling of the Constitution Bench of the Hon'ble Supreme Court of India in Padma Sundara Rao -vs- State of T.N. [(2002) 3 SCC 533], where it has been observed as follows:-

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington -vs- British Railways Board [(1972) 2 WLR 537 [Sub nom British Railways Board -vs- Herrington (1972) 1 All ER 749 (HL)]]. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

5. In the present case, the information that had been sought by the Fourth Respondent relates to the answer paper of a competing candidate, who has been ultimately selected pursuant to the marks secured in that examination. It is axiomatic that selection in public employment is a matter which requires the highest level of transparency on assessing the inter se merits of the competing candidates in order to ward off any doubt or suspicion in carrying out that solemn process. Viewed from that perspective, the Fourth Respondent is entitled to know from the answer paper of the said Kanakaraju as to whether the answers written by him in the examination and the marks awarded for the same are correct and justified maintaining uniformity in the inter se assessment of merit of the competing candidates, which has direct relationship to public activity and public interest. There is no element of invasion of privacy involved by furnishing the existing information in the form of answer paper of the said Kanakaraju to the Petitioner so as to consider the same as personal information exempted under Section 8(1)(j) of the Act. As such, there does not appear to be any infirmity in the decision-making process of the Third Respondent requiring interference of this Court in the exercise of discretionary powers of judicial review under Article 226 of the Constitution of India.

6. The result of the foregoing discussion is that the order passed by the Third Respondent has to be confirmed and if the Petitioners have not furnished the information to the Fourth Respondent till date, the same shall be furnished and proof in

that regard shall be filed before the Third Respondent by 30.11.2020 under written acknowledgement.

7. Having due regard to the fact that the scheme devised in the Act requires the Central Information Commission to ensure compliance of its orders, the Third Respondent shall list the aforesaid Second Appeal on 03.12.2020, and the First and Fourth Respondents shall appear for that hearing without fail. If the Third Respondent is not in a position to take up the matter for hearing on that date, it shall inform to all parties concerned of the adjourned date of hearing in the prescribed manner. The Third Respondent shall verify whether its order has been complied by the Petitioner and if not, shall take further action in accordance with law following the prescribed procedure in consonance with the principles of natural justice and shall communicate the decision taken to the parties.

Accordingly, the Writ Petition is dismissed with the aforesaid observations. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vjt/msm

To

1. The General Manager,
Southern Railway,
Headquarters Office,
Chennai - 600 003.
2. The Chief Personal Officer,
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Headquarters Office, सत्यमेव जयते
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+1cc to M/s.N.Vijay Anand, Advocate, S.R.No.32924

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BP (CO)
KKV/29/10/2020



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