

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 13.12.2022

% **Judgment delivered on: 19.12.2022**

+ **LPA 367/2022 & CM APPL. 26124/2022**

SUSHIL KUMAR Appellant

Through: Mr. Konark Tyagi, Advocate.

versus

LOK SABHA SECRETARIAT AND ORS Respondents

Through: Mr. Pramod Gupta with
Mr. Himanshu, Advocates for R-1 and
R-2.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The Present LPA is arising out of an Order dated 20.04.2022, passed by the learned Single Judge in W.P.(C.) No.6297/2022, dismissing the writ petition.
2. The facts of the case reveal that the Appellant before this Court holds a Bachelor Degree of Arts from Bundelkhand University of the year 2009, and also holds Masters Degree in Sociology. The Appellant has later

obtained qualification in the field of education by securing B.Ed Examination. The Appellant also holds a Masters degree in other subjects and he has completed a certificate course in Computer Concepts conducted by the National Institute of Electronics and Information Technology. He has successfully completed a post-graduate diploma in Translation from UP Rajarshi Tandon Open University and he was awarded the diploma in 2018. Meaning thereby, he holds requisite qualification for the post of Translator.

3. The facts of the case further reveal that an advertisement, i.e. Advertisement No. 1/2020, was issued by the Lok Sabha Secretariat for filling up 47 vacancies to the post of Translator by direct recruitment and the Appellant responded to the advertisement for the post of Translator. The Advertisement provided for a written examination to be conducted in two parts, i.e. Preliminary Examination and Main Examination.

4. The advertisement on record reveals that it was mandatory for every candidate to secure minimum cut-off percentage of marks in each component paper, and aggregate of Preliminary and Main Examination. The same is 50% for UR/EWS vacancies, 45% for OBC vacancies and 40% for SC/ST vacancies.

5. The advertisement provided that in case the total number of candidates appearing for the examination were less than 1000, the Preliminary and Main Examination were to be held simultaneously at Delhi. A condition was further provided that the answer sheets of candidates in respect of the Main Examination would be evaluated only if they scored the minimum cut-off percentage of marks in the Preliminary Examination.

6. The Appellant belongs to the OBC Category and the cut-off percentage of marks for OBC is 45%. It has further been stated by the Appellant that an examination took place for the post of Translator on 07.03.2021 and, as there were less than 1000 candidates, the Preliminary and Main Examination were held simultaneously. The Preliminary Examination was divided into three parts and each part was of 50 marks. The contention of the Appellant is that as per the advertisement, it was mandatory for OBC category candidate to secure 45%, i.e. 22.5 marks in each part and aggregate of the Preliminary Examination.

7. The Appellant has further contended that he was a member of the OBC category and secured 52% (26 marks), 58% (29 marks) and 96% (48 marks) in all the three parts (A, B & C) of the Preliminary Examination and, therefore, as per the scheme of the examination, his Main Examination answer sheet was also to be evaluated.

8. The Appellant has further stated that he scored 52% (39 marks) & 54.66% (41 marks) respectively in both the parts of Paper 1, and 64% (32 marks) & 54% (27 marks) respectively in both the parts of Paper 2 of the Main Examination and as such was entitled for selection.

9. The Appellant has further stated that one OBC Candidate, namely, Sanjeev Kumar/ Respondent No.3 (Roll No.652) scored 44% (22 marks), 46% (23 marks) and 94% (47 marks) in all the three parts of the Preliminary Examination and, therefore, as in one of the part he has received only 44% i.e. 22 marks, in his case, the Main Examination answer sheets were not required to be evaluated.

10. The Appellant's grievance is that the answer sheet of Sanjeev Kumar was evaluated and he was shortlisted for the post of Translator.

11. The Appellant's sole grievance is that once Sanjeev Kumar/ Respondent No.3 has secured 44% (22 marks) in Part 1 of the Preliminary Examination, which is less than 45%, which is the qualifying percentage, then, by no stretch of imagination could his answer books for the Main Examination be evaluated, and the question of appointing him to the post of translator does not arise. The Appellant thereafter preferred representations before the authorities on 02.03.2022 and on 16.03.2022, the Appellate Authority of the Lok Sabha Secretariat dismissed the Appellant's first appeal (representation). The Appellant then preferred a writ petition which was dismissed by the learned Single Judge.

12. The Appellant has prayed for quashment of the Order passed by the learned Single Judge dated 20.04.2022 and ultimately a prayer has been made for appointment to the post of Translator and quashment of appointment of Respondent No.3.

13. The facts of the case further reveal that the Respondents before the learned Single Judge took a specific stand that Respondent No.3 has received more marks than the Appellant and, therefore, the question of setting aside the appointment of Respondent No.3 does not arise. It was brought to the notice of this Court that as per the scheme of the examination, as the number of candidates was less than 1000, the Preliminary and Main Examination were conducted on 07.03.2021. The Preliminary Examination was divided into 3 parts and each part was of 50 marks. It was also brought

to the notice of the learned Single Judge that it was mandatory for OBC category candidate to score 45% i.e. 22.5 marks in each part and also in aggregate of the Preliminary Examination. It was also brought to the notice of the learned Single Judge that the Main Examination was divided into Paper-1 (Part A & B) and Paper-2 (Part A & B). Both parts of Paper-1 were of 75 marks and both parts of Paper-2 were of 50 marks. The result of the examination was declared on 09.12.2021 and 37 candidates were selected in the said examination. It was also stated before the learned Single Judge that the minimum cut-off percentage of marks for UR, OBC and SC/ ST category were mentioned as 50%, 45% and 40% respectively and the scheme of the examination provided that the answer sheets for the Main Examination of only those candidates who had secured the minimum prescribed qualifying marks in the Preliminary Examination were to be evaluated. The Appellant further stated that he belongs to the OBC category, secured 52% (26 marks) 58% (29 marks) and 96% (48 marks) respectively in all the three parts (A, B & C) of the Preliminary Examination and as such was qualified to have its Main Examination answer sheet evaluated. The Appellant has secured 52% (39 marks) and 54.66% (41 marks) respectively in both the parts of Paper-1 and 64% (32 marks) and 54% (27 marks) respectively in both the parts of Paper-2 of the Main Examination.

14. The Respondent No.3, Sanjeev Kumar, secured 44% (22 marks), 46% (23 marks) and 94% (47 marks) in all three parts of the Preliminary Examination and his answer sheets in respect of the Main Examination were also evaluated.

15. The Respondents before the learned Single Judge submitted a decision of the competent authority which took place in the year 2014 in respect of students where the question paper was of 150 marks and 45 marks were the qualifying marks for the OBC category candidates and specially taking into account that each question carries one mark, a person who scores 22 marks will also be declared as qualified for the purpose of evaluation of the answer sheets in respect of the Main Examination.

16. It was also brought to the notice of the Court that Respondent No.3 did receive more marks than the Appellant in the Main Examination. His grand total was more than the Appellant and in those circumstances, the learned Single Judge has declined to grant any relief to the Appellant. The operative portion of the Order passed by the learned Single Judge reads as under:

“6. I may at this stage state, that the petitioner had filed certain applications under the RTI Act, 2005 with the respondent Lok Sabha. In one of the communications received under the RTI Act from the respondent Lok Sabha, it transpired that the respondent Lok Sabha had justified the action to evaluate the answer sheet of the respondent No.3 who secured 44% marks on the basis of a decision taken by the Competent Authority in the year 2014 i.e., much before the present examination. In substance, the decision of the Competent Authority was with regard to a similar eventuality, which had arisen in the year 2014. The relevant part of the decision is the following:-

“4. It may be seen that there is a difference of 5% marks which a candidate is required to secure for UR, OBC and SC/ST vacancies i.e. 50 marks out of 100 for UR vacancies,

45 marks for OBC vacancies and 40 marks for SC/ST vacancies. In case, a written paper of 100 marks consists of two parts of 50 marks each, a candidate belonging to OBC category is required to secure minimum 22.5 marks in each of the two parts. In case of a multiple choice objective type paper, generally, there are 50 questions of 01 mark each in two parts. Thus, a candidate can secure either 22 marks or 23 marks in a part and not 22.5 marks as per the minimum prescribed percentage of marks.

As per practice, Joint Recruitment Cell has been declaring those candidates (who require 45% marks to qualify) as qualified in a paper (both in i Multiple Choice Objective Type Paper and Descriptive Type Paper), in case she/he secures 22 marks out of 50 in one part of the paper and 23 marks in the other part(s). Otherwise, such candidates may be required to secure total 46 marks (23 marks in each of the two parts) to qualify the paper of total 100 marks. A candidate securing 22 marks in each of the two parts is not declared as qualified.

In this connection, it may be submitted that sometimes there are more than 02 parts in a paper and also sometimes the Maximum Marks for one part in a paper may be more or less than 50. For example, in case of examination for the post of Security Assistant Grade-II, the Maximum Marks for the Multiple Choice Objective Type Paper are 200 (Part A- 70 Marks; Part B - 70 Marks and Part C - 60 Marks). A candidate belonging to OBC category securing 31 marks (instead of the required 31.5 marks)

in Parts A and B is declared qualified subject to securing total minimum 90 marks in the paper.

5. It may be seen that the marks secured by the candidates are not rounded off by Joint Recruitment Cell. Only laid down criteria is implemented in such a manner as to ensure that the same is not harsh to any category of candidates.

6. In view of the position stated above, it is for consideration and orders whether we may continue to follow the practice mentioned in para no. 04 above.

7. Suffice to state that the aforesaid decision was implemented in the year 2014. Learned counsel for the petitioner, while conceding the fact that no prayer to challenge this decision has been made in the writ petition, would still state that a ground has been raised by the petitioner with regard to the decision taken by the Competent Authority in the year 2014 and would attack the same by stating that the said decision would amount to relaxing the minimum pass percentage of 45% marks, which is impermissible, in view of the law laid down by the Supreme Court in the cases of Bhanu Pratap v. State of Haryana & Others (2011) 5 SCC 304 and also Orissa Public Service Commission and another v. Rupashree Chowdhary and another (2011) 8 SCC 108.

8. In substance, it is his submission that the respondent Nos. 1 and 2 having fixed 45% as the cut-off percentage for qualifying to get the answer sheets evaluated in the main examination, the answer sheet of the respondent No.3 could not have been evaluated.

9. On the other hand, Mr. Pramod Gupta, learned counsel appearing for the respondents would justify the action on the basis of the decision as referred to above. It is his submission, that the said decision of 2014 is a policy decision and is still in vogue. That apart, he states, the intent of the Competent Authority in taking the

decision, as highlighted in paragraph 4 of the same, is that, as each question carries one mark and it is only possible to secure either 22 marks or 23 marks in one part and not 22.5 marks, which is 45%, as per the minimum prescribed percentage.

10. That apart, it is his submission that since these marks are prescribed for OBC candidates, rather than increasing the percentage to 46%, which would be harsh for the OBC candidates, the same was brought down to 44% in one part, though cumulative marks to be secured by a candidate would still remain 45%. In support of his submission that this is being implemented without any deviation, Mr. Gupta has drawn my attention to page 92 of the paperbook with Sl. No.400 against a candidate namely Nidhi Jaiswal, who had secured 19 marks, much below 45%, but cumulatively had secured 50% marks, much above 45%, but still was not selected. He states that the decision being of 2014, no malice can be imputed in the decision of the respondent Lok Sabha Secretariat to evaluate the answer sheets of the respondent No.3, in the manner they did it in the case in hand.

11. Having heard the learned counsel for the parties, the issue which need to be considered is whether the respondents could have relaxed the cut-off percentage of marks in one paper below 45%.

12. Noting the peculiar facts of this case and also the fact that a policy decision was taken in 2014 and that decision has been implemented in the case of the respondent No.3, I do not see any illegality in the decision, more so when the decision is with regard to an OBC's candidature. Instead of going above 45% marks, the requisite cut off has been brought down to 44% for the larger good of the OBC candidates. The petitioner who also belongs to OBC category, the decision in a given eventuality may enure to his benefit as well.

13. Mr. Gupta is also justified to contend that if the submission of the learned counsel for the petitioner that the threshold marks must be increased to 23 is accepted,

then the same shall increase the pass percentage from 45% to 46%, that is above 45%, which was not considered appropriate by the Competent Authority.

14. That apart, the fact remains that a decision has been taken in 2014, no malice can be imputed on the respondents to have acted for the benefit of respondent No.3. Further, the decision is in place for the last eight years.

15. The judgments relied upon by learned counsel for the petitioner are in the facts of those cases and the same are not applicable in the peculiar facts of this case, which arise for consideration. 16. I do not see any reason to interfere with the decision making process. The petition is without any merit and the same is dismissed. No costs.

CM APPL. 18974/2022 (for stay)

Dismissed as infructuous.”

17. This Court has carefully gone through the documents on record and the Learned Counsel for the Appellant has relied upon the following judgments:

- i.) ***Bhanu Pratap v. State of Haryana and Ors.*** (2011) 15 SCC 304;
- ii.) ***Orissa Public Service Commission and Anr v. Rupashree Chowdhary & Anr***, (2011) 8 SCC 108;
- iii.) ***Registrar, Rajiv Gandhi University of Health Sciences, Bangalore v. G. Hemlatha and Ors.***, (2012) 8 SCC 568; and
- iv.) ***Golakiya Aayush Parshottambhai v. National Board of Examination***, 2014 SCC Online Del 2770.

18. Having heard learned counsel for the parties, we are of the view that in the present case, the only controversy involved is whether the Respondent

Nos. 1 and 2 could have evaluated the answer book of Respondent No.3 in respect of the Main Examination in the peculiar facts and circumstances of the case. The Respondent No.3 Sanjeev Kumar with Roll no.652 has secured 44% (22 marks), 46% (23 marks) and 94% (47 marks) in all the three parts of the Preliminary Examination. It is true that he has secured 44% (22 marks) in the first part of Preliminary Examination against the minimum qualifying percentage of marks, i.e. 45% (22.5 marks.) The decision of the competent authority of the Lok Sabha in the year 2014 resolves the controversy involved in the present case. In the present case, all the three parts in the Preliminary Examination were of 50 marks and each question was carrying one mark. A candidate was required to score 45% marks in each part and the Respondent No.3 has undisputedly scored 22 marks. One needs to score 45% marks to qualify the Preliminary Examination means 22.5 marks in each part. As already stated earlier, each question was carrying one mark and in nobody's case a candidate could have obtained 22.5 marks in each part and, therefore, to resolve such a controversy, the competent authority way back in 2014 when a similar controversy arose, took a conscious policy decision to treat a candidate who received 22 marks as a qualified candidate for the purpose of evaluation of his Main Examination answer sheets.

19. The policy decision which was taken in the year 2014 was implemented earlier and has been implemented in the case of Respondent No.3 bringing down the requisite cut-off marks to 44% in the larger interest of OBC Candidates.

20. This Court does not find any reason to interfere with the policy decision of the competent authority of the Lok Sabha and the same practice is being followed for the past 8 years. Otherwise also, the Respondent No.3 in aggregate has secured more marks than the Appellant in the Main Examination and the candidature of a meritorious candidate cannot be crushed on the ground of hyper-technicalities.

21. The Judgments relied upon by learned Counsel for the Appellant are not applicable in the peculiar facts and circumstances of the present case especially in the light of the policy decision taken by the competent authority of the Lok Sabha in the year 2014. This Court does not find any reason to interfere with the order passed by the learned Single Judge and the LPA is dismissed accordingly

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

DECEMBER 19, 2022

N.Khanna