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

+ **W.P.(C) 1619/2017 & CM APPL. 7253/2017**

CENTRAL PUBLIC INFORMATION OFFICER UPSC

.....Petitioner

Through: Mr. Ravinder Agarwal and Mr. Lekh
Raj Singh, Advocates.

versus

AJIT KUMAR

.....Respondent

Through: Mr. Manav, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

18.12.2024

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1. The Respondent had filed an RTI application dated 16th August, 2011 seeking information regarding the copy of his answer sheets for Civil Services (Main) Examination, 2009.¹ The said information could not be supplied to the Respondent as the answer books of the said examination had been weeded out/ destroyed as per the retention schedule. Being aggrieved, the Respondent filed appeals and the matter reached up to the Central Information Commission,² who have passed the impugned order dated 25th July, 2016, to the following effect:

“Decision

6. The Commission notes that the matter relating to disclosure of evaluated answer sheets to the examinees is sub-judice before the Hon'ble Supreme Court. In view of this, the Commission observes that it would be expedient to await the final decision of the Hon'ble Supreme

¹ “CS Exam”

² “CIC”



Court. In view of this, it would be judicious to have the evaluated answer book of the candidate preserved till the disposal of the matter in the Hon'ble Supreme Court. The Commission directs the CPIO to have the matter placed before the Competent Authority so that the evaluated answer sheets of Shri Ajit Kumar are preserved till the matter is finally decided by the Hon'ble Supreme Court.

7. The appeal is disposed of. Copy of the decision be provided to both the parties free of cost."

2. In the aforementioned order, the CIC noted that the matter regarding the disclosure of the evaluated answer sheets is *sub-judice* before the Supreme Court. Accordingly, the CIC observed that it would be expedient to await the final decision of the Supreme Court, and accordingly, directed the Petitioner to preserve the answer sheets till the disposal of the matter before the Supreme Court.

3. The Petitioner contends that the CIC could not have issued the aforesaid interim direction, as the answer sheets for the CS Exam had already been weeded out by the time the impugned order came to be passed. This, in fact, was taken note of, on 22nd February, 2017, when the Court passed the following order:

"W.P.(C) 1619/2017

*The petitioner impugns order dated 25.07.2016, whereby, a direction has been issued to the CPIO to place the matter before the Competent Authority so that the evaluated answer sheet of the respondent is preserved till the decision of the Civil Appeal No.5924/2013, **Joint Director and CPIO & Anr. vs. T.R. Rajesh**, pending in the Supreme Court of India.*

It is contended that the respondent is seeking the evaluated answer sheet of the Civil Services (Main) Examination, 2009 and, as far as back as on 14.09.2011, the respondent was informed that the answer sheet had already been weeded out and destroyed as per the Retention Schedule of the Union Public Service Commission. It is submitted that since the answer sheet is not available, the direction passed by the CIC cannot be complied with.

Issue notice to the respondent, returnable on 15.09.2017.

CM No.7253/2017 (stay)



Since the contention of the petitioner is that the answer sheet already stands weeded out, there can be no question of the petitioner now complying with the directions of the CIC requiring preservation of answer sheet, which already stands destroyed and weeded out.

In these circumstances, there can be no interim order passed. However, this Court takes on record the statement of the petitioner that the answer sheet already stands weeded out.

Renotify on 15.09.2017”

4. In any event, the CIC had observed that it would be expedient to await the decision of the Supreme Court. The decision which was taken note of by the CIC has now been decided in the judgment passed in ***Union Public Service Commission and Others v. Angesh Kumar and Others***³ holding as follows:

“6. Thus, it is clear that in interpreting the scheme of the Act, this Court has, while adopting purposive interpretation, read inherent limitation in Sections 3 and 6 based on the Third Recital in the Preamble to the Act. While balancing the right to information, public interest including efficient working of the Government, optimum use of fiscal resources and preservation of confidentiality of sensitive information has to be balanced and can be a guiding factor to deal with a given situation dehors Sections 8, 9 and 11. The High Court has not applied the said parameters.

7. The problems in showing evaluated answer sheets in the UPSC Civil Services Examination are recorded in Prashant Ramesh Chakkarwar v. UPSC. From the counter affidavit in the said case, following extract was referred to:

“12. ... 6. ... (B) Problems in showing evaluated answer books to candidates.— (i) Final awards subsume earlier stages of evaluation. Disclosing answer books would reveal intermediate stages too, including the so-called ‘raw marks’ which would have negative implications for the integrity of the examination system, as detailed in Section (C) below.

(ii) The evaluation process involves several stages. Awards assigned initially by an examiner can be struck out and revised due to (a) totalling mistakes, portions unevaluated, extra attempts (beyond prescribed number) being later corrected as a result of clerical scrutiny, (b) The examiner changing his own awards during the course of evaluation either because he/she marked it

³ (2018) 4 SCC 530.



differently initially due to an inadvertent error or because he/she corrected himself/herself to be more in conformity with the accepted standards, after discussion with Head Examiner/colleague examiners, (c) Initial awards of the Additional Examiner being revised by the Head Examiner during the latter's check of the former's work, (d) the Additional Examiner's work having been found erratic by the Head Examiner, been rechecked entirely by another examiner, with or without the Head 1 (2013) 12 SCC 489 Examiner again rechecking this work.

(iii) The corrections made in the answer book would likely arouse doubt and perhaps even suspicion in the candidate's mind. Where such corrections lead to a lowering of earlier awards, this would not only breed representations/grievances, but would likely lead to litigation. In the only evaluated answer book that has so far been shown to a candidate (Shri Gaurav Gupta in WP No. 3683 of 2012 in Gaurav Gupta v. UPSC dated 6.7.2012) on the orders of the High Court, Delhi and that too, with the marks assigned masked; the candidate has nevertheless filed a fresh WP alleging improper evaluation.

(iv) As relative merit and not absolute merit is the criterion here (unlike academic examinations), a feeling of the initial marks/revision made being considered harsh when looking at the particular answer script in isolation could arise without appreciating that similar standards have been applied to all others in the field. Non-appreciation of this would lead to erosion of faith and credibility in the system and challenges to the integrity of the system, including through litigation.

(v) With the disclosure of evaluated answer books, the danger of coaching institutes collecting copies of these from candidates (after perhaps encouraging/inducing them to apply for copies of their answer books under the RTI Act) is real, with all its attendant implications.

(vi) With disclosure of answer books to candidates, it is likely that at least some of the relevant examiners also get access to these. Their possible resentment at their initial awards (that they would probably recognise from the fictitious code numbers and/or their markings, especially for low-candidature subjects) having been superseded (either due to inter-examiner or inter-subject moderation) would lead to bad blood between Additional Examiners and the Head Examiner on the one hand, and between examiners and the Commission, on the other hand. The free and frank manner in which Head Examiners, for instance, review the work of their colleague Additional Examiners, would likely be impacted. Quality of assessment standards would suffer.

(vii) Some of the optional papers have very low candidature



(sometimes only one), especially the literature papers. Even if all examiners' initials are masked (which too is difficult logistically, as each answer book has several pages, and examiners often record their initials and comments on several pages with revisions/corrections, where done, adding to the size of the problem), the way marks are awarded could itself be a give-away in revealing the examiner's identity. If the masking falters at any stage, then the examiner's identity is pitilessly exposed. The "catchment area" of candidates and examiners in some of these low-candidature papers is known to be limited. Any such possibility of the examiner's identity getting revealed in such a high-stakes examination would have serious implications, both for the integrity and fairness of the examination system and for the security and safety of the examiner. The matter is compounded by the fact that we have publicly stated in different contexts earlier that the paper-setter is also generally the Head Examiner.

(viii) UPSC is now able to get some of the best teachers and scholars in the country to be associated in its evaluation work. An important reason for this is no doubt the assurance of their anonymity, for which the Commission goes to great lengths. Once disclosure of answer books starts and the inevitable challenges (including litigation) from disappointed candidates starts, it is only a matter of time before these examiners who would be called upon to explain their assessment/award, decline to accept further assignments from the Commission. A resultant corollary would be that examiners who then accept this assignment would be sorely tempted to play safe in their marking, neither awarding outstanding marks nor very low marks, even where these are deserved. Mediocrity would reign supreme and not only the prestige, but the very integrity of the system would be compromised markedly."

8. This Court thereafter approved the method of moderation adopted by the UPSC relying upon earlier judgment in *Sanjay Singh v. U.P. Public Service Commission*, (2007) 3 SCC 720 and *U.P. Public Service Commission v. Subhash Chandra Dixit*, (2003) 12 SCC 701.

9. Weighing the need for transparency and accountability on the one hand and requirement of optimum use of fiscal resources and confidentiality of sensitive information on the other, we are of the view that information sought with regard to marks in Civil Services Exam cannot be directed to be furnished mechanically. Situation of exams of other academic bodies may stand on different footing. Furnishing raw marks will cause problems as pleaded by the UPSC as quoted above which will not be in public interest. However, if a case is made out where the Court finds that public interest requires furnishing of information, the Court is certainly entitled to so require in a given fact situation. If rules or practice so require,



certainly such rule or practice can be enforced. In the present case, direction has been issued without considering these parameters.

10. In view of the above, the impugned order(s) is set aside and the writ petitions filed by the writ petitioners are dismissed. This order will not debar the respondents from making out a case on above parameters and approach the appropriate forum, if so advised.”

5. In light of the aforesaid decision, the impugned order is no longer sustainable and is, in fact, rendered infructuous.
6. Accordingly, the present petition is allowed and the impugned order dated 25th July, 2016 is set aside.
7. In view of the above, the petition is disposed of, along with pending application.

SANJEEV NARULA, J

DECEMBER 18, 2024

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