

Rajasthan Public Service Commission Vs. Ramesh Chandra Pilwal

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Court : Rajasthan

Decided On : Aug-01-1997

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Judge : M.P. Singh and; Arun Madan, JJ.

Appeal No. : D.B. Civil Special Appeal Nos. 794, 837, 866, 1396 and 1412 of 1997

Appellant : Rajasthan Public Service Commission

Respondent : Ramesh Chandra Pilwal

Disposition : Appeal allowed

Judgement :

M.P. Singh, J.

1. The technique of scaling, normalisation and moderation, in evaluating the answer sheets in the competitive examinations, where candidates appear in mass, is an accepted procedure adopted by the Public Service Commission.
2. The Union Public Service Commission has already adopted this technique and is applying it in the various examination conducted by it.

3. The Rajasthan Public Service Commission has also made the same technique applicable to the examinations conducted by it since 1993 where large number of candidates are appearing and large number of examiners are involved in evaluating the answer- sheets. A Division Bench of this Court in the case reported in 1994 (1) RLR 533 (Mahesh Kumar Khandelwal v. State of Rajasthan), has already accepted the application of this technique as valid. The Supreme Court has also approved it.

4. The learned Single Judge, while allowing writ petitions No. 3272/1997 (Ramesh Chand Pilwal and Ors. v. Rajasthan Public Service Commission) and No. 3473/1997 (Niranjan Prasad v. Rajasthan Public Service Commission), has cancelled the result of the main examination in which 3490 candidates had appeared. The result of the interview has also been cancelled. The Court observed:

I am of the considered view even without entering into the controversy of 'Bias' that the application of device of moderation in the main examination is an arbitrary act on the part of the RPSC and it has affected not only the merit of the candidates who have been declared failed but also the merit of those candidates who have been shown successful and have been called for interview. The merit of a candidate should be judged on the basis of marks obtained by him in the main examination. The act of increasing and decreasing his marks by resorting to device of moderation in the main examination may be termed as an act of crushing the calibre of a meritorious candidates. Element of fairness is missing from this act. We cannot achieve accurate results by applying principles of statistics in the examination covering a few thousand candidates only. Accurate results can only be achieved by resorting the device of moderation in mass conducted examination covering more than 33000 candidates...

5. The Rajasthan Public Service Commission had issued an advertisement on 21st November, 1994 for holding the Rajasthan State & Subordinate Services Combined Competitive Examination, 1994 to fill up 310 posts.

6. The preliminary examination was held on 10.12.1995. In all 51506 candidates appeared in this Examination. On 10.4.1996 the result was declared. 4654

candidates could qualify in the preliminary examination. They became eligible to appear in the main examination which commenced on 26.12.1996 and was to end in January, 1997. In the main examination only 3490 candidates appeared. The result of the main examination was declared on 3.5.1997. In the main examination only 897 candidates could qualify for interview. Interviews were to be held from 2.6.1997 to 10.7.1997.

7. On 17.6.1997 an unsigned and undated letter was received by the Registry of this Court in the name of the Chief Justice alleging irregularities in conducting the examination by the Commission. Allegations of favouritism and bias were made against the Chairman of the Commission, paper-setters and examiners. This was listed before the Vacation Judge on 18.6.1997. Another letter signed by about 12 persons accompanied by a paper shown as an 'affidavit' containing names and roll numbers of 23 persons, is also in the record. The said 'affidavit' was neither sworn before any Oath Commissioner nor before the Public Notary. In no way, it could be treated as an affidavit. At the most, this document can be accepted as giving the names and roll numbers of certain persons who associated themselves with the letter and they can be treated as petitioners.

8. Treating these letters as writ petition in the form of Public Interest Litigation, the Court passed an order on 26.6.1997:

The Chairman, RPSC, is directed to file an affidavit as to why the scaling and moderation system has been introduced in the main examination of RAS.

9. Reply has been filed on behalf of the Commission by RS Acharya, the Section Officer. The personal affidavit of the Chairman is also on record.

10. Before the learned Single Judge, two issues to be considered were:

1. Whether the allegation of bias and favouritism alleged against the Chairman in conducting the examination and declaring the result was established;
2. Whether the Commission has committed any illegality in adopting the technique of scaling/moderation/normalisation in the examination ?

11. The learned Single Judge, while considering the matter, called upon the Chairman to reply only on the point as to way the scaling and moderation system has been introduced in the main examination. No direction was issued to file any reply regarding bias, probably on the ground that he himself was not prima facie satisfied about the allegations made against the Chairman and the members of the Commission. In our view, he rightly did not give any importance to these allegations as the petitioner failed to make out a case of bias.

12. Writ petitions were allowed on the ground that the application of technique of moderation in the main examination was wholly arbitrary. In adopting this technique, the element of fairness was missing. This technique of moderation could be applied in a mass conducted examination covering 33000 candidates.

13. Aggrieved against the judgment of the learned Single Judge, both the parties have filed special appeals. The Rajasthan Public Service Commission has challenged the correctness of the order in the appeal.

14. The Respondent-Ramesh Chand Pilwal in his special appeal has prayed for modification of the order to the extent that a direction may be issued to the Central Bureau of Investigation or any other equivalent agency to investigate the whole matter effectively, completely and promptly. The Commission be directed not to finalise the selection in respect of Rajasthan State & Subordinate Combined Competitive Examination, 1994 while such investigation is pending. We do not find a single word in his special appeal challenging the application of the technique of moderation/normalisation of marks in the said examination.

15. Two more special appeals have been filed by the successful candidates of the main examination with a common prayer that the order of the learned Single Judge dated 4.7.1997 be set aside and the Commission be directed to complete further process of interview and selection. The result of the examination be declared. No order prejudicial to the interest of the successful candidates could be passed by the court without their being parties to the writ petitions. Their results could not be cancelled without hearing them. Principle of natural justice has been violated.

16. On the record of the writ petition, there is an application dated 26.6.1997 filed on behalf of the petitioner alongwith an affidavit of Ramesh Chand Pilwal, praying that the direction may be issued to Shri Hanuman Prasad, Chairman, Rajasthan Public Service Commission to file a personal affidavit. He be permitted to cross-examine the Chairman in Court. Since highly influential persons were said to be involved in the rigging of the selection process and the matter being extremely sensitive, it may be handed-over to the Central Bureau of Investigation to investigate the same to ensure fairness in the selection.

17. But, there is no order of the Court on that application. It has not even been allowed so far. There was no direction at all at any point of time directing the Chairman to file a personal affidavit on behalf of the Commission in reply to that petition, but even then the Chairman has filed the personal affidavit in the writ petition clarifying the position.

18. Thus, on the basis of the arguments raised by both the parties, issues which arise for consideration are:

1. Whether the letters could be treated as Public Interest Litigation after the regular writ petitions have been filed by the respondent on 26.6.1997 through a counsel which according to them is a compilation of the letters Does the writ petition meet the requirement of public interest litigation ?

2. Whether respondents have succeeded in establishing the allegation of bias against the Chairman and members of the Commission Could the result of the entire main examination be cancelled on the vague allegations levelled against the Chairman and that also without hearing the successful candidates whose interest have been prejudicially affected by the order and in whose favour valuable rights have accrued on being declared as successful ?

3. Whether the Rajasthan Public Service Commission has committed any illegality in applying the technique of normalisation and moderation in the examination conducted by it when the scheme has already been approved by a Division Bench of this Court in the case of Mahesh Kumar Khandelwal and the Supreme Court has also upheld the application of such techniques by the Public Service

Commissions And, could the entire result of the main examination and the interviews be cancelled on a ground that the technique could not be made applicable in the examination where the number of candidates is less than 33000 ?

19. The main ground of attack of the petitioner was that in this examination, Mool Chand, the Son-in-law of the Chairman and his two brothers-Sohan Lal and Dr. Lal Chand have appeared. The Chairman in order to favour them has committed irregularities. It is admitted that these three persons are related to the Chairman. They appeared in the examinations. Sohan Lal could not qualify. Only Mool Chand and Dr. Lal Chand have qualified in the main examination. Except those three relations, there was no other candidate who was directly or indirectly related to the Chairman as is shown in the personal affidavit filed by the Chairman. Though false allegations have been made that one Dr. Kilania and twenty other candidates related to him also appeared. But it has been denied. When a specific question was put by the Court to the learned Counsel for the respondent, as to what is the source of information regarding twenty other relatives and what are their names, then he said that it was only heard by the petitioners. Neither the source has been disclosed nor their details have been given in the petition, so this allegation has to be ignored.

20. The first question to be examined by us is whether after the fresh application in the form of a regular writ petition was filed on 26.6.1997 and a detailed reply has also been filed, could the matter be heard as a Public Interest Litigation.

21. The Public Interest Litigation is a new device by which public participation in judicial review of administrative action has increased. It is only because of this public interest litigation that the courts are reaching the poor to deliver them justice at their doors. No doubt, it is a revolutionary innovation evolved by the court. But the Court has to be very careful and vigilant in scrutinising the claims in a Public Interest Litigation, so that it does not become a tool in the hands of the so-called social activist. The persons with oblique motive and tangent designs may not succeed in their desired unfair games.

22. There is no denial that letters and telegrams can be treated as writ petitions in appropriate cases and the technicalities of the procedure are relaxed. But it does not mean that every letter should be accepted as a writ petition by the Court.

23. It is only where the letter is addressed by an aggrieved party or by a public spirited individual or a social group for the vindication of legal rights of persons in custody or a class or group of persons who by reason of poverty, disability or being socially and economically in a disadvantageous position find it difficult to approach the court for judicial redress that this procedure can be adopted. In other cases, the Court should be justified in not treating these letters as writ petitions. Petitioners have nowhere said that they do not have the financial capacity or belong to a socially or economically weaker section or it is being filed for the benefit of the general public.

24. The law of Public Interest Litigation has been evolved for the benefit of the deserving citizens of the country who are economically and socially backward. But now it is being misused for personal gains and other similar objects. Now a stage has come where the court should be extremely cautious in entertaining such petitions. This should not be used for making an intentional attempt to indulge in mud-slinging against the authorities, much less the Constitutional authority. In such matters the Court is not expected to be a mere spectator, but has to play a dynamic role in maintaining the image of the authority and its working. In case it finds that the rule of law was not followed, the Court can always interfere wherever the authority it might be, against whom a complaint has been made. Nobody is above law.

25. Since the contents of the letters have been compiled in the application (writ petition) we are examining the contents thereof treating it to be a regular writ petition. Greater responsibility lies on the person filing the petition and if it is found that he has made wild, reckless and impounded false allegations against the authority, the Court is always free to take serious action.

26. No doubt, the Supreme Court in the case of *Democratic Rights and Others v. Union of India and Ors.* : (1982)ILLJ454SC has said that if a legal injury or a legal wrong has been suffered by a person or class of persons, who by reason of

poverty, disability or socially or economically disadvantageous position, unable to approach the court then any member of public can come forward through a letter addressed to the Court praying for justice to aggrieved persons. But the ratio of this case will not apply in the instant case because the petitioners being aggrieved have come to the court themselves first by sending letters and then by filing writ petitions. They have nowhere said about their poverty or disability or being socially or economically backward.

27. A Division Bench of the Calcutta High Court in the case reported in AIR 1984 Calcutta 52 (West Bengal Board of Examination v. Jitendralal) has observed that the scope and extent of public interest litigation is very limited and to extend the scope of such public interest litigation beyond a limit will upset the judicial system. In that case also, the petitioner who was an unsuccessful candidate in an entrance examination for admission to medical and engineering college, challenged the result and allegations were made that the answer sheets had not been properly evaluated. The learned Single Judge had allowed the writ petition treating it to be a Public Interest Litigation, but that order was reversed by the Division Bench, exercising a clear view that he was required to give all the particulars on the basis of the allegations in support of the power. The Court took the view that this matter could not be treated as a Public Interest Litigation and the learned Single Judge should have refused to entertain such a petition.

28. The Supreme Court in the case reported in : AIR 1997 SC272 (S.P. Anand v. HD Deve Gowda), while considering the scope of Public Interest Litigation, observed as under:

Those who invoke the jurisdiction of the Court seeking a waiver of locus standi rule, should normally refrain from entering into the controversy where they are not well versed.'.. ... ' It must be remembered that a good cause can be lost if the petitions are filed on half-baked information without proper research or by persons who are not qualified and competent to raise such issues as the rejection of such a petition may affect third party rights.

29. It was further observed that this forum is not to be misused for the sake of publicity only. One who espouses a public cause should have made a complete

research of the problems which he intends to raise. Courts are also expected to be extremely careful while dealing with such Public Interest Litigations to ensure that the process of the court is not sought to be abused.

30. Applying the ratio of the decision of SP Anand's case (supra) to the instant case, it comes to surface that all these persons who have come to the Court through a Public Interest Litigation, have made a vague allegation against the Chairman of the Public Service Commission giving it a shape of 'scam', irregularities and favouritism, but no details have been given. Only one instance about the Son-in-law of the Chairman and his two relations have been specifically raised, which has been admitted in the reply.

31. In our considered opinion, the matter could not have been taken by the learned Single Judge as a Public Interest Litigation. In our view, in no way, It was a public interest. Thus the requirement of regular writ petition and the rules relating to the procedure had to be adopted in the instant case. There should have been proper pleading supported by an affidavit. They should have been strictly scrutinised by the learned Single Judge. He rightly rejected the plea of bias outright and only confined to the application of the technique of moderation and normalisation.

32. Coming to the question of 'bias' we find it is shocking to note that even in the petition false statements have been made that Shri P.C. Haliva who was associated in the selection process, has business relations with the son of the Chairman without supplying any facts about the averments. The Chairman has categorically denied this fact in his affidavit. It has been contended by the learned Counsel appearing on behalf of the respondents that the Chairman has manipulated the selection process to ensure the selection of his Son-in-law Shri Mool Chand and his two brothers. The Chairman got persons of his liking as the paper setters, examiners and arranged the answer books of certain candidates to be sent to the examiners of his choice. Examiners were approached and influenced to ensure the higher percentage of marks to his relations. All these allegations in the reply filed on behalf of the Commission as well as by the Chairman, except the fact that Mool Chand Son-in-law and his two brothers appeared in the examination, have been denied.

33. The Supreme Court had an occasion to consider the allegations made against the Chairman and members of the Public Service Commission of the State of Haryana in the case reported in *Ashok Kumar Yadav v. State of Haryana* : AIR 1987 SC454 . The Haryana Public Service Commission conducted the examination to fill in 61 posts of the Haryana Civil Services (Executive) and other Allied Services. The Haryana High Court, while hearing the petition, condemned the Chairman and members of the Commission as men lacking in integrity, calibre and qualification, and found corrupt motives against them. The Court went to the extent of saying that the appointment of the Chairman and the members of the Commission were made wholly on caste considerations and political affiliations.

34. In the Special Leave Petition, the Supreme Court observed that the High Court should not have done so as the Chairman and members were not parties in the writ petition, the order could not have been passed in violation of the principles of natural justice. Their appointments could not be questioned collaterally by the High Court while considering the validity of the selection made by them. Reference was made to the earlier decision reported in : 1981 CriLJ876 (*G. Ranga Raju v. State of Andhra Pradesh*), wherein it was observed that the litigants litigating their private title cannot be permitted to bring in issue and litigate upon the title of a judge to his office. Otherwise in every case where the judgment goes against a party he can always say that the person who gave the judgment was not a judge.

35. It is true that it is a settled principle of jurisprudence that no one can be judge in his own cause and justice should not only be done but it must seem to have been done. The matter may be before the Court or before the administrative body, that does not make any difference. The administrative functions are also supposed to meet the test of fairness.

36. The word 'bias' means prejudice, show of favour or disfavor, antagonism, spite, posterity, pre-possession that sways the mind.

37. While considering the allegations of bias, the court has always been very careful about the factual foundation laid in the petition. The Supreme Court, while considering the scope of bias in the case of *Accountant-General v. S. Doraiswamy and Ors.* : [1981]2SCR155 , held:

The Comptroller and Auditor-General is a high ranking constitutional authority, and can be expected to act according to the needs of the service and without arbitrariness. He is the constitutional head of one of the most important departments of the State, and is expected to know what the department requires and how best to fulfil those requirements. The Court in normal course would not entertain allegation of bias made against a constitutional authority unless it has been expressly pleaded and established. Of course in order to prove bias no direct evidence can be led. It has to infer from the circumstances. But the circumstances have to be brought on record before the Court can arrive at a conclusion. Vague and casual allegations suggesting that a certain act was done with an ulterior motive, cannot be accepted without adequate material. The credibility of a constitutional authority should not be doubted on mere suspicion and without any cogent material. Howsoever strong a suspicion may be but it can never take the place of proof.

38. Much reliance was placed by the respondents' counsel to the case of the Supreme Court reported in : [1970]1SCR457 (A.K. Kraipak v. Union of India), wherein it has been held that inclusion of the Acting Inspector General of Forest as a Member of the Selection Board was improper as he was one of the persons to be considered for selection as Inspector General of Forest. A man could not be a judge in his own case. Even if he did not participate in the deliberations of the Committee and his name was considered, the fact that he was a member of the selection board must have its own impact of the decision of the selection board.

39. The law laid down in this case will have no application in the instant case because the Chairman himself refrained from participating in the interview board which met on 5.6.1997 in which his Son-in-law had appeared.

40. In the case of Ashok Kumar Yadav (supra), the Supreme Court had also the occasion to consider the question that if a close relative of a member of the Commission in appearing for the selection, is it obligatory on the part of the member to completely withdraw from the selection process The Supreme Court answered the question in negative and observed that it was sufficient if he did not participate in the interview of that candidate. The selection committee is

constituted to make selections on the basis of the merit. While coming to this conclusion the case of A.K. Kraipak (supra) was also considered and explained.

41. It was further observed that the principle enunciated in the case of A.K. Kraipak will not be applicable in those cases where the selection of candidates is done by the Public Service Commission and not by any selection committee constituted for that purpose. The Commission is a constitutional authority created under Article 315 of the Constitution, and it was held:

We do not think that the principle which requires that a member of a Selection Committee whose close relative is appearing for selection should decline to become a member of the selection committee or withdraw from it leaving it to the appointing authority to nominate another person in his place, need be applied in case of Constitutional Authority like the Public Service Commission, whether Central or State.

42. A situation may arise where in a particular examination the relatives of all the members of the Chairman may be appearing, then what procedure is to be adopted. The Supreme Court expressed the view in all fairness when a close relative of a member of the Public Service Commission is appearing for interview, such member must withdraw from participation in the interview of that candidate and must not take part in any discussion in regard to the merits of that candidate. Similar view was expressed in the case of Javed Rasool Bhatt v. State of Jammu & Kashmir : AIR 1984 SC320 the Supreme Court took the view that a Constitutional Authority could not be asked to restrain himself from participating in the examination. It was his own absolute discretion.

43. In the instant case, admittedly on 5.6.1997 when the Son-in-law of the Chairman was to be interviewed, he did not participate in the proceedings. He was not a member of the Committee on that date. There is no Material on record that any other member of that Committee was influenced in any way by the Chairman.

44. Thus, the law laid down in the case of A.K. Kraipak (supra), is not applicable to the facts of this case and is squarely covered by the ratio of the decision of Ashok Kumar Yadav's case (supra).

45. In the case reported in : (1994)ILLJ780SC (J. & K. Public Service Commission v. Dr. Narendra Mohan), the Supreme Court held that though one of the member of the selection committee is related to one of the candidates, who was his daughter and she appeared before the Board but no malafied was shown. It was held that the selection was not vitiated. In this case the earlier view expressed by the Supreme Court in 1966 SC 1942 (Naga Rajan v. State) was also considered.

46. In another case reported in (1991) Suppl. 1 SCC 313 (Jaswant Singh Nerwal v. State of Punjab and Ors.). The father of a candidate was a member of the interview in the viva-voce test but he did not participate in the deliberations when his son appeared for the viva-voce and no malafide was shown against the remaining members of the Commission. The Court held that the selection was not vitiated even by reasonable likelihood of bias. The Public Service Commission is created under Article 315 of the Constitution and the appointment of the Chairman and Members is contained in Article 316. The framers of the Constitution had taken good care to provide for the removal and suspension of the members of the Public Service Commission as contained in Article 317 of the Constitution, if the situation so arises. In order to ensure independence of the members, Article 319 provided that on ceasing to hold the office the Chairman of the Commission will not be eligible for any employment in India and the Commission has to function in accordance with the provisions of Article 320 of the Constitution.

47. If the examination conducted by the Public Service Commission can be challenged in the way in which it has been done in the instant case and the result has been cancelled, then it will make the functioning of the Commission impossible and no selection can be made. Every examination and selection will be challenged by means of a letter, and the Court will have to involve itself in a fishing and roving enquiry. Before making allegations against such authorities, one has to find out the details with material before making the irresponsible allegations of bias.

48. The contention of the counsel for the respondent, referring to Clause 1-4 of the Constitution's 15th Amendment Act, 1963, was that since the Son-in-law and his two brothers were appearing in the examination, the Chairman should have

disassociated himself completely from the very beginning and should have either informed the Commission or the Governor of the State to appoint such other person to conduct the examination. Having not done so, he has not acted fairly. In view of the law laid down by the Supreme Court in the cases of A.K. Yadav, Rasool Javed, Jaswant Singh and Naga Rajan (supra), the contention is rejected outright. It was sufficient that the Chairman did not include himself in the interview board on 5.6.1997 when his Son-in-law was to be interviewed. Being the Constitutional functionary it was expected of him that he would act fairly, which he did.

49. The next submission raised on behalf of the respondent was that even if it is believed by the Court that the Chairman did not commit any wrong but the general public will be justified in having a suspicion in the mind that the examination has not been conducted fairly and honestly, and undue favour was shown to his relations.

50. Since in this case the allegations have been made against the Chairman that he has influenced the paper-setters, examiners in helping his relations, in order to dispel the doubt which has crept in our mind we directed the counsel for the Commission to produce the record of Mool Chand and Lal Chand. It was produced before us in sealed cover. After opening the envelop, we examined the answer sheets of these two candidates. We were satisfied that in order to maintain the secrecy the first page of the answer-sheet was so stappled after giving four folds that nobody could have found out the roll number of the candidate. The learned Counsel for the respondent was also shown and he was asked to find out the number after stapling but he could not find out the same. This shows that the allegations made against the Chairman in not maintaining the secrecy in sending the answer-sheets to the examiners is devoid of merit.

51. Part from this, we examined the answer-sheets itself and nowhere we found that any interpolation in marking or totaling was done. Marking has been done in normal course by the examiners. The respondents' case was that transparency should have been maintained by the Public Service Commission in conducting the examination, in our opinion, is not permissible.

52. Secrecy has to be maintained by the Commission in the matter of holding the selections as to the appointment of the paper-setters and the examiners in the larger interest of the candidates appearing in the examination. It is not desirable to follow the procedure of transparency in the examination. The secrecy in holding the preliminary examination, the main examination and scrutiny of answer-sheets by the examiners are to be maintained. If the secrecy is not maintained, the very purpose of holding the examinations will not be achieved. Otherwise, the candidates can approach the paper-setters and the examiners as well. They did not have any right to claim transparency.

53. The Commission has maintained secrecy by allotting fictitious roll numbers to each answer sheets and the original roll numbers have been folded and stapled in such a way that nobody could see them.

54. On our direction, the Chairman of the Commission filed another personal affidavit today stating that except Mool Chand and his two brothers Dr. Lal Chand and Sohan Lal, there was no other relation who appeared in the examination. He also denied that Dr. P.C. Hadiya, who is a retired Income Tax Commissioner, had any business relations with his son. Even Dr. Hadiya was not answer of the interview board on 5.6.1997 when his Son-in-law appeared before the Board.

55. However, all the respondents appeared in the preliminary examination, then in the main examination. Then they remained unsuccessful in the main examination, they filed the writ petition for cancelling the result challenging the selection process. Though the facts which they have now stated in the letter must have been in their knowledge before the examination commenced that the Commission was adopting the procedure of moderation and normalisation in conducting the examination. Even then they took the chance by appearing in the examination. Having failed to qualify, it is not open for them to challenge the same. Reference may be made to the cases of the Supreme Court reported in : [1995]1SCR908 (Madan Lal v. State of Jammu & Kashmir) and : 1996 CriLJ1369 (Om Prakash Shukla v. Akhlesh Shukla), wherein the question of estoppel was considered and held that they were estopped from challenging the process of examination and

declaration of the result after they have appeared and failed in the examination. We also follow the same views.

56. Now we will examine the question of application of the technique of moderation and normalisation in the examination.

57. The concept of moderation/normalisation and scaling has been explained in the Book 'Scaling-Techniques-What, Why and How' written by v. Natarajan and K. Gunasekaran, wherein the authors have expressed the view that the traditional system of examinations has been criticised equally by teachers, administrators, students and the public, with the result reforms have been introduced in the system of examination.

58. Through this book, an attempt has been made to introduce a procedure for scaling to deal with such misconceptions of marks and self-tradition of marks reporting. In India the scaling technique has been adopted for the first time by the Guwahati University in 1963 by Dr. H.J. Tailor, the then Vice-Chancellor. This system has been introduced whenever and wherever the situation so warrants.

59. If different sets of marks are to be added and/or to be compared, they need to be scaled to a common standard where such standard is lacking. The matter of scaling can be applied to mass-conducted public examinations whose results matter to thousand of students.

60. The word 'scaling' means the adjustment of marks to a common standard. It gives a better result where scripts are randomised, though, it has been mentioned in the book that this technique of sealine has been shown to be practicable in a major examination covering more than 33000 candidates. But, this figure was only an illustration. It does not give any reason for fixing this cut of figure of 33000. Traditional concept of scaling and various methods of scaling allowing the scientific procedure to be adopted is contained in the said book.

61. Though, the Union Public Service Commission has adopted this technique since long but the Rajasthan Public Service Commission has adopted it for the first time in the year 1993 which was challenged before a Division Bench in the case of

Mahesh Kumar Khandelwal (supra). The High Court while considering the application of that technique has expressed the view that if large number of candidates had taken various optional papers with different standards and different varieties of scorabilities the need of moderation/standardisation became a must. The concept of moderation and normalisation has already been considered and accepted in the case of Mahesh Kumar Khandelwal (supra) by this Court and, as such, it is not necessary for us to reiterate the same here and we entirely agree and follow the views expressed therein.

62. Even the Gujarat High Court has also expressed similar views which was affirmed by the Supreme Court in Special Leave Petitions No. 14000 and 15251 of 1986, decided on 11.3.1987. The Supreme Court in those Special Leave Petitions (Surjit Kumar Dass v. Chairman, U.P.S.C.) has held:

We are in agreement with the view expressed by the Division Bench of the High Court that the system of moderation of marks adopted by the UPSC in evaluation the performance of the candidates appearing in the Civil Services Examination cannot be said to be initiated by arbitrariness or with illegality of any kind.

63. In Rajasthan the practice of moderation or scaling of the marks has been adopted both for preliminary as well as the main examination. The scheme was introduced where large number of optional papers have been prescribed for the Rajasthan State & Subordinate Services (Combined Competitive Examinations) and where such subjects/papers have been drawn from various faculties comprising pure sciences, science & technology, engineering, social sciences and arts etc. The equality level of the different optional subjects may differ in magnitude from one subject to another and this can easily be considered in the computerized evaluation system by applying well accepted para-meters in the process of moderation itself.

64. The moderation of raw-marks obtained by the candidates in optional subjects has been resorted to, in order to normalise the distortions creeping in the question papers of heterogeneous optional subjects on account of difference in the difficulty levels of different question papers. The essential purpose of moderation is to rationalise the raw marks in order to find out the real, comparative merit of the

candidates competing for common posts, though offering different optional subjects.

65. This process of moderation was adopted by the Commissioner after the then Chairman Shri Y. Singh had a detailed consultation with Shri v. Natarajan, who is considered as an eminent authority of the subject.

66. Thereafter Shri Y. Singh had a number of meetings with the Chairman/Members/Secretary of the Union Public Service Commission, New Delhi, in which moderation, normalisation and scaling of results of the examinations conducted by it for recruitment to the Indian Administrative & Allied Services had already been adopted.

67. Before adopting this procedure, Shri Y. Singh had consulted other experts who were associated with the Association of Indian Universities, New Delhi. As a result of the consultation with these experts, the Rajasthan Public Service Commission adopted the formula known as linear method given on page 182 of the said Book.

68. Scaling becomes necessary where the marks obtained by the candidates in different subjects have to be compared. The candidates of Rajasthan Administrative & Allied Services have a choice of large number of subjects. How to compare the merit of the students opting a particular subject with the merit of another student opting an altogether different subject, was a real problem faced by the Rajasthan Public Service Commission in order to bring uniformity in evaluation, and as such, the process of scaling was adopted by the Commission.

69. Thus, Relying upon the Division Bench Judgment in the case of Mahesh Kumar Khandelwal and the view expressed by the Supreme Court in the Special Leave Petitions No. 14000 and 15251 of 1986, decided on 11.3.1987 (Surjit Kumar Dass v. Chairman, U.P.S.C), we are of the view that the Commission was justified in applying the technique of moderation and normalisation in conducting the examination of the Rajasthan Administrative & Allied Services and no arbitrariness or illegality has been committed. It can be made applicable in those examinations where candidates are appearing in mass i.e. must be in the thousands and this decision is always left to the discretion of the Commission

which is the expert examining body: There was no justification for cancelling the result on the ground that the number of candidates was less than 33000.

70. In a very recent case decided by the Supreme Court reported in (1997) 6 JT 97 (MP Oil Extraction v. State of MP), while considering the scope of judicial review in the policy matter of the State Government, it was observed:

The Court cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the State. This Court, in no uncertain term, has sounded a note of caution by indicating that policy decision is in the domain of the executive authority of the State and the Court should not embark on the unchartered ocean of public policy and should not question the efficacy or otherwise of such policy so long the same does not offend any provision of the statute or the Constitution of India.'... The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in out stepping its limit by unwarranted judicial activism being very often talked of in these days.'.. The decision of the State Government to extend the protection for further period cannot be held to be per se irrational, arbitrary or capricious warranting judicial review such policy decision. . .The scope of judicial review is limited and circumscribed.

71. Applying this guideline to the instant case, we are of the view that the Public Service Commission is an Expert body in conducting the examination and its decision to apply the technique of moderation and normalisation in no way can be said to be arbitrary, unless we find that its action per se was irrational or arbitrary. The Court should refrain from exercising the power of judicial review in such matters. Our views are based on the ratio of the judgment of the Supreme Court in the cases reported in : AIR 1994 SC2466 (Bihar Public Service Commission v. S.J. Thakur) : [1994]1SCR662 K. Ashok Reddy v. Government of India AIR 1992 SC 32 (Sub-Committee of Judicial Accountability v. Union of India; and, of course, the earlier case, reported in : AIR 1987 SC454 Ashok Kumar Yadav v. State of Haryana, which has already been discussed in detail.

72. The Supreme Court in the case reported in : (1997)ILLJ110SC , Secretary (Health) Department of Health v. Dr. Anita Puri), observed that if for the purpose of selection, the Public Service Commission prescribes marks for different facets and then evaluates the merit, the process of evaluation cannot be considered to be arbitrary unless marks allotted for a particular facet is on the face of it excessive. When a selection is made by an expert body like the Public Service Commission, which is also advised by the experts having technical experience and high academic qualification in the field for which the selection is made, the court is always slow to interfere with the opinion expressed by an expert unless allegations of malafide are made and established. Similar view has been expressed in the cases reported in : AIR 1996 SC2462 (Tata Iron & Steel Company Limited v. Union of India and Anr.) and (1993) SCC 184 (Medical Council of India v. Silas Nelson and Ors.).

73. In another case reported in : AIR 1996 SC2076 (Hasmatullah v. State of Madhya Pradesh) while considering the opinion of the expert it was said that every article published or a book written cannot be a reason for accepting it as correct. What is stated therein may only be a view of the author and may not be based on data which is scientifically collected from a reliable source. Thus, the writer in the Book- 'Scaling Technique What, Why and How', only expressed his views that the number of candidates should be 33000 for the application of this technique. In our view it is only an opinion. The Court is not bound by it. This figure can always be considered on the facts of each case by the expert body, which in the present case, is the Public Service Commission. Discretion (i.e. with it. Since we are satisfied that the action of the Public Service Commission is not arbitrary, we refrain to quash the result of the main examination as well as the interview.

74. In another case reported in (1995) Suppl. (1) SCC 325 (Subhash Chandra Verma v. State of Bihar), the Full Commission in its meeting held on 15th January, 1993, decided a particular procedure to be adopted in evaluating the answer sheets and the result was declared on 4.2.1993. It was challenged in the High Court on the ground of rampant corruption, the question paper had leaked out. It has become a marketable commodity even before the examination commenced. Several other allegations were made. The High Court took the view that the entire

process of selection was vitiated. On appeal to the Supreme Court, the judgment of the High Court was set aside and it was held that the selection made by the Bihar Public Service Commission for the post of Medical Officer of Ayurvedic was a valid one.

75. How the learned Single Judge has arrived at the cut off figure of 33000 candidates We do not find any material either in the Book except by way of an illustration whereby this figure was mentioned, we see no justification in disallowing the application of the technique in the main examination where 3490 candidates appeared. On that ground we do not agree with the view expressed by the learned Single Judge and the same is set aside. Fixing the figure of 33000 candidates is without any basis. There is no object sought to be achieved by doing so. The idea behind the application of this technique is that the number of candidates must be in thousands.

76. The Chairman of the Commission before taking the decision to apply this technique of moderation, scaling and normalisation had held the full commission meeting on 25.10.1990 and all the members after discussing the matter at great detail had adopted the process of scaling, moderation and normalisation of different subjects followed with the well established and reliable method of scaling of marks. This was not the individual decision of the present Chairman.

77. This practice has been made applicable both in preliminary and main examination. If this practice was not followed then there would have been wide variation in subject marks secured by the candidates and ultimately would have led to unjudicious and unacceptable distortion of the inter laced merit of the candidates. The essential purpose of moderation is to rationalise the raw marks in order to find out the real merit of the candidates competing for the common post, though offering different optional subjects.

78. The moderation and scaling techniques have been applied in the areas--(1) where large number of examiners are involved in marking the scripts relating to a subject; (2) when a script relating to different sets of students, one set answering in English and other in regional language, has to be examined; (3) when marks relating to different subjects are to be added and/or compared; (4) When internal

and external assessment marks are to be added and/or Compasped; (5) when the students' performance from different Schools, Boards or with Universities are to be compared; (6) when marks relating to objective part is to be added with that of essay part in a papers; and (7) when candidates performance in alternate forms of an alternate objective papers are to be compared.

79. Since the Public Service Commission being an expert Constitutional Authority in conducting the examinations and after considering all the aspects discussed in the proceeding paragraphs, has made the technique of moderation and normalisation applicable in the examination, we do not find any good ground to hold the action of the Commission, arbitrary or in violation of Article 14 of the Constitution, as held by the learned Single Judge. Looking to the facts of this case, the controversy should have been kept away from the power of the judicial review by the High Court. The Chairman has neither shown any favour to his three relations nor his action has affected the result of thousand of candidates who have appeared in the examination.

80. Thus we hold that:

- (1) The writ petition was not maintainable as a Public Interest Litigation;
- (2) Allegations of bias and favouritism have not been established;
- (3) The Chairman has committed no illegality in applying the technique of moderation in the examination;
- (4) The learned Single Judge was not correct in holding that the technique of moderation could be made applicable only in those examination where the number, of candidates, is 33000 or more;
- (5) The scrutiny regarding the application of the technique of moderation is beyond the power of judicial review of the High Court as the decision has been taken by an expert body conducting the examination, more so when it has been done by a Constitutional Authority against which no malafide could be established.

81. For the reasons given above, the Special Appeal No. 794/97 (filed by the Rajasthan Public Service Commission), Special Appeal No. 837/97 (filed by Jaswant and Ors.), Special Appeal No. 1396/97 (filed by Sanjay Dhariwal); and Special Appeal No. 1412/1997 (filed by Mahendra Khichi, succeed and are allowed.

82. The Special Appeal No. 866/97 (filed by Ramesh Chand Pilwal and Ors.) is accordingly rejected.

83. The order dated 4.7.1997 passed by the learned Single Judge is hereby set aside and the result of 1994 Examination shall be declared on or after 7th August, 1997. The registry is directed to issue certified copies of this judgment to the persons applying for it within twenty-four hours.

84. Parties are directed to bear their own costs.

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