

Sidhik Vs. State of Kerala

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Court : Kerala

Decided On : Dec-02-2009

Reported in : 2010(1)KLT113

Judge : T.R. Ramachandran Nair, J.

Acts : [Constitution of India](#) - Articles 14, 16, 21, 226 and 315; ;Kerala Public Service Commission of Procedure Rules - Rule 15A; ;Kerala Public Service Commission of Procedure Regulations - Regulation 104(3)

Appeal No. : W.P.(C). No. 33761 of 2008

Appellant : Sidhik

Respondent : State of Kerala

Advocate for Def. : Alexander Thomas,; George Abraham, Advs. and; M.R. Sreel

Advocate for Pet/Ap. : Kaleeswaram Raj, Adv.

Disposition : Petition dismissed

Judgement :

T.R. Ramachandran Nair, J.

1. In this Writ Petition, the petitioner is aggrieved by the action taken by the Public Service Commission in altering his rank from 39 to 43 A in Ext.P1 rank list, that too

based on the result of the rechecking of the answer papers done at his instance.

2. The ranked list in question is for appointment to the post of Lecturer in Arabic. The ranked list came into force on 3.12.2008. 54 candidates have been included in the ranked list. The petitioner was originally included as rank No. 39. In the Writ Petition, the complaint raised by the petitioner was that the petitioner's ranking has been changed without any justification and without any intimation to him. The Writ Petition was amended later to declare that the appointment of respondents 4 and 5 as Lecturers in Arabic is erroneous. They are rank Nos. 41 and 42 in the list. Therefore, the substantial contention raised by the petitioner is that the changing of the rank based on the result of the rechecking of the answer papers cannot be justified. It is the further case of the petitioner that before effecting the change, no notice was issued to the petitioner and no opportunity to raise objection was also given.

3. In the counter affidavit filed by the Public Service Commission, the justification for effecting the change in the ranking has been explained. The petitioner had applied for rechecking of answer scripts on 23.1.2006. On rechecking, it was noticed that the petitioner had answered question No. 37 twice and one mark each was awarded two times. Therefore, the mistake was corrected and one mark was reduced from the petitioner's total marks and thus his rank was reassigned as 43A. An erratum notification was issued on 22.11.2006. Rule 15A of the Kerala Public Service Commission Rules of Procedure empowers the Commission to make such corrections in the ranked list. An erratum notification had been published in the official website of the Commission for public notice and therefore no separate intimation was given to the petitioner. It is also averred in the counter affidavit that a total number of 40 vacancies have been reported for the post and the petitioner was not advised as his turn did not arise as per the Rules of rotation.

4. The petitioner has filed a reply affidavit pointing out that the action of the Commission to reduce marks, alleged to be based on the rechecking, cannot be supported. He was never put to notice that if the marks are reduced, there will be change in his ranking. The petitioner also denies the averment that he had attempted question No. 37 twice.

5. Learned Counsel for the petitioner Shri Kaleeswaram Raj submitted that the reduction of one mark on the alleged plea that the petitioner had attempted question No. 37 twice, is not supported by any material. It was never informed to the petitioner. He was not heard before effecting any change in the rank. It is submitted that the same has caused adverse civil consequences to him, as his chance to obtain the appointment itself has been defeated by the illegal action taken by the Commission. It is also submitted by the learned Counsel for the petitioner that if the result of the rechecking is adverse to the candidate, that can only be ignored by the Commission and the original ranking was liable ' to be sustained. Learned Counsel relied upon the decision of a Division Bench of this Court in P.M. Unni Raja and Ors. v. Principal, Medical College, Trivandrum ILR 1983 Ker. 754, another decision of a learned Single Judge in Sajeerv v. Public Service Commission 2008 (4) KLT 691 and that of the Apex Court in Prakash Ratan Sinha v. State of Bihar and Ors. CDJ 2009 SC 396 in support of the arguments. It is submitted that there is gross violation of the principles of natural justice in the action taken by the Commission and therefore the petitioner is entitled to be retained as rank No. 39 and advice already made by the Commission should be revised.

6. Shri Alexander Thomas, learned Standing Counsel for the Commission submitted that the Commission is having the power under Rule 15A of the Rules of Procedure to correct any clerical, typographical or arithmetical error or mistake in the ranked list. Herein, on rechecking it was found that the candidate was awarded marks for the answer to question No. 37 twice. The same is only a mistake which is liable to be corrected. It is part of the functions of the Commission while rechecking, to correct any such mistake. It need not be preceded by any hearing of the petitioner. It is submitted that the general principles governing the observance of natural justice cannot be applied as a straight jacket formula herein. Unless the ranked list was corrected, the petitioner would have obtained a higher rank based on unmerited marks which would have prejudiced other candidates in the ranked list. It is therefore submitted that the petitioner's argument cannot be accepted. Learned Standing Counsel also submitted that the answer sheets of the candidates are not available for production, as they have been destroyed after keeping them upto the statutory period; the contemporaneous records are

available with the Commission, based on which the counter affidavit has been filed. The arguments of the learned Standing Counsel for the Commission is supported by Dr. George Abraham, the learned Counsel appearing for the contesting respondents.

7. The question therefore is whether the power of the Commission under Rule 15A of the Rules of Procedure could be invoked in such cases. Rule 15A is extracted below:

15A. The Commission shall have the power to correct any clerical, typographical, arithmetical or other mistake in the ranked lists, advice lists or short lists etc. or errors arising therein from any accidental slip or omission at any time either on its own motion or on the application of any of the parties concerned.

There cannot be any dispute that the Commission has got the power to correct any clerical, typographical, arithmetical or other mistakes in the ranked list. The mistake in the award of marks has contributed to the mistake in the ranked list. Therefore, these two are inter linked. Hence, the power cannot be denied to the Commission in a matter like this wherein the correction in the marks is attempted only in terms of the marks obtained by the candidate.

8. Even though the petitioner disputes that he had attempted question No. 37 twice, in the light of the averments made by the Commission in the counter affidavit the plea cannot be accepted. The Commission had only conducted the rechecking based on the application submitted by the petitioner itself. There cannot be any dispute that rechecking enables the candidates to get higher ranks if they actually are entitled for higher marks. Automatically, the power of the Commission to correct any mistake in awarding the marks cannot also be denied, as it will only sub-serve public interest and the interest of the candidates in general. Therefore, the Commission cannot be found fault for awarding the correct marks obtained by the petitioner, since it was only as a result of the genuine attempt made by the Commission in the matter. Herein, it was found out that the petitioner was awarded, by mistake, marks wrongly twice for question No. 37 and one mark was reduced from his total marks.

9. Then, the only question is whether the petitioner ought to have been given notice and an opportunity of hearing before his ranking in the ranked list is altered from 39 to 43A which enabled rank Nos. 41 and 42 getting a higher rank and the petitioner was pushed down in it.

10. The principle that is settled by the Apex Court in Prakash Ratan Sinha's case CDJ 2009 SC 1396 as evident from para. 8 is that 'if there is a power to decide and decide detrimentally to the prejudice of a person, duty to act judicially is implicit in exercise of such a power and that the rule of natural justice operates in areas not covered by any law validly made. Corollary principles emanating from these cases are as to what particular rule of natural justice should apply to a given case must depend to an extent on the facts and circumstances of that case and that it is only where there is nothing in the statute to actually prohibit, the giving of an opportunity of being heard and on the other hand, the nature of the statutory duty imposed on the decision maker itself implies an obligation to hear before deciding. Whenever an action of public body results in civil consequences for the person against whom the action directed, the duty to act fairly can be presumed and in such a case, the administrative authority must give a proper opportunity of hearing to the affected person.'

11. The facts of the said case show that the appellant therein was appointed on daily wages and later was made permanent in the work charged establishment along with several other persons. Later, he was recommended for promotion to the post of Accounts Clerk and an order was thus issued also. This was cancelled by the superior authority as being contrary to the rules and Government Orders issued from time to time. It is in these circumstances the challenge was made by the appellant against the said order. While considering these factual aspects, the Apex Court has stated the legal position thus in para. 8 as quoted above.

12. Learned Standing Counsel for the Public Service Commission explained that the principles with regard to the observance of natural justice cannot apply on all fours to the fact situation herein, as what is involved is only assignment of rank to a person on the basis of the marks obtained in the examination and it is well settled by the decisions of the Apex Court itself that in such cases, the principles

of natural justice cannot be applied within a straight jacket formula. Learned Standing Counsel relied upon the decisions of the Apex Court in Maharashtra State Board of Secondary and Higher Secondary Education and Anr. v. Paritosh Bhupeshkumar Sheth and Ors. : (1984) KLT SN 55 (C. No. 94) SC : (1984) 4 SCC 27 and Karnataka Public Service Commission and Ors. v. B.M. Vijaya Shankar and Ors. (1992) 2 SCC 206 and the decisions of this Court in Retnamma v. Kerala Public Service Commission 1977 KLT 290, Sasidharan v. Reserve Bank of India 1990 (2) KLT 573, V.V. Prakasini v. K.P.S.C. and Ors. 1993 (1) Kar LJ 632 and Mohammed Najim v. State of Kerala 1993 (2) KLT 721. It is also explained that the decision relied upon by the learned Counsel for the petitioner in Sajeev's case 2008 (4) KLT 691 is only on the special facts of the said case.

13. In Maharashtra State Board of Secondary and Higher Secondary Education's case : 1984) KLT SN 55 (C. No. 94) SC : (1984) 4 SCC 27, the extent and scope of audi alteram partem rule in the matter of revaluation of answer papers was considered by the Apex Court. The Apex Court was of the view that the process of revaluation of answer papers or of subsequent verification of marks does not attract the principles of natural justice, as no decision making process which brings about adverse civil consequences to the examinees is involved. The Apex Court spoke thus in para 12 of the said decision:

The process of evaluation of answer papers or of subsequent verification of marks under Regulation 104(3) does not attract the principles of natural justice since no decision making process which brings about adverse civil consequences to the examinees is involved. The principles of natural justice cannot be carried to such absurd lengths as to make it necessary that candidates who have taken a public examination should be allowed to participate in the process of evaluation of their performances or to verify the correctness of the evaluation made by the examiners by themselves conducting an inspection of the answer books and determining whether there has been a proper and fair valuation of the answers by the examiners. These principles involved in the audit alferam partem rule cannot be extended beyond reasonable and rational limits so as to make it applicable to the 'twilight zone of mere expectations', however great they may be.

14. The Apex Court also examined the further contention therein that the revaluation should be done in the presence of the candidate, as otherwise there will be denial of fair play in examination. While rejecting the said argument, the legal position was explained thus in paras. 26 and 29:

What constitutes fair play depends upon the facts and circumstances relating to each particular given situation. If it is found that every possible precaution has been taken and all necessary safeguards provided to ensure that the answer books inclusive of supplements are kept in safe custody so as to eliminate the danger of their being tampered with, that the evaluation is done by the examiners applying uniform standards with checks and cross-checks at different stages and that measures for detection of malpractice, etc. have also been effectively adopted, in such cases it will not be correct on the part of the courts to strike down the provision prohibiting revaluation on the ground that it violates the rules of fair play. It appears that the procedure evolved by the Board for ensuring fairness and accuracy in evaluation of the answer books has made the system as foolproof as can be possible and is entirely satisfactory. The Board is a very responsible body. The candidates have taken the examination with full awareness of the provisions contained in the regulations and in the declaration made in the form of application for admission to the examination they have solemnly stated that they fully agree to abide by the regulations issued by the Board. In the circumstances, when all safeguards against errors and malpractices have been provided for, there cannot be any denial of fair play to the examinees by reason of the prohibition against asking for revaluation. If the revaluation of the answer papers is to be done in the presence of the candidates, that would, instead of advancing public interest and fair play to the other candidates in general, defeat the same.

15. Therefore, it can be safely concluded that once the candidate submits an application for rechecking, he will be having the awareness of the conditions also and the consequences thereof. Therefore, once the candidates avail the facility for rechecking, they cannot later complain of the result of rechecking and the procedure in correcting the errors and mistakes, even if it had resulted in the change of ranking. There cannot be any dispute that a candidate like the petitioner is entitled for a particular ranking in the ranked list only depending upon the marks

obtained in the written examination, interview, etc. Therefore, any mistake committed by the Commission in reckoning the marks will have an impact on the ranking in the ranked list, which is automatic. The question of any hearing to the candidates in such circumstances, cannot alter the position at all. As held by the Apex Court, no decision making process which brings about adverse civil consequences to the candidate is involved. The Commission is fully empowered under Rule 15A of the Rules of Procedure to correct a mistake in the ranked list also. If, even after finding that a mistake has crept in either in relation to the award of marks or in relation to the ranking, the Commission is prevented from correcting the same, that will really result in miscarriage of justice. Therefore, obviously the principles of observance of natural justice cannot be applied as a straight jacket formula in a case like this.

16. In Karnataka Public Service Commission's case : (1992) 2 SCC 206, a similar question was examined by the Apex Court. Therein, the relevant instructions to the candidates who appeared in an examination conducted by the Public Service Commission for the State Civil Service for categories 'A' and 'B' posts, obliged the candidates to write the register number and other particulars in the space provided and not to write their names or register numbers any where in the answer book or loose sheets, etc. The Commission found that in respect of certain candidates, the roll numbers had been written inside the answer book and these were not subjected to valuation, which was challenged before the Administrative Tribunal. The Tribunal was of the view that the action of the Commission is bad for non observance of the principles of natural justice, in that, the Commission had failed to afford any opportunity to the candidates to explain their bona fides and innocence. While examining, the legal position in such matters, the Apex Court considered the question whether the principles of natural justice are excluded in such a case. The Bench was of the view that the present case is one wherein the natural justice should be excluded as it did not involve any misconduct or punishment. It was held thus in para 4:

Natural justice is a concept which has succeeded in keeping the arbitrary action within limits and preserving the rule of law. But with all the religious rigidity with which it should be observed, since it is ultimately weighed in balance of fairness,

the courts have been circumspect in extending it to situations where it would cause more injustice than justice. Even though the procedure of affording hearing is as important as decision on merits yet urgency of the matter, or public interest at times require flexibility in application of the rule as the circumstances of the case and the nature of the matter required to be dealt may serve interest of justice better by denying opportunity of hearing and permitting the person concerned to challenge the order itself on merits not for lack of hearing to establish bona fide or innocence but for being otherwise arbitrary or against rules. Present is a case which, can safely be placed in a category where natural justice before taking any action stood excluded as it did not involve any misconduct or punishment.

The Apex Court was of the view that 'the Tribunal ignored a vital distinction that there may be cases where the right of hearing may be excluded by the very nature of the power or absence of any expectation that the hearing shall be afforded. The rule of hearing has been construed strictly in academic disciplines. It should be construed more strictly in such cases where an examinee is competing for Civil Service post.' It was also observed in para 5 that 'the very nature of the competition requires that it should be fair, aboveboard and must infuse confidence. If this is ignored then, as stated earlier, it is not only against public interest but it also erodes the social sense of equality'.

17. It cannot be said that when the petitioner submitted an application for rechecking, he expected a hearing in the matter and actually had a legitimate expectation that he would be informed of the further procedure to be taken by the Commission, in advance. Such being not part of the system of dealing with an application for rechecking also, it cannot be said that the petitioner was entitled to be heard in the matter and absence of an opportunity for hearing vitiates the entire thing.

18. A Division Bench of this Court in Retnamma's case 1977 KLT 290 laid down the principle that the inclusion of a candidate's name in any list of approved candidates for any service. State or Subordinate, or any class or category in a service, shall not confer on him any claim to appointment to the service, class or category. The Bench was of the view that the petitioner cannot, therefore, contend

merely on the strength of inclusion of her name in the select list, that she has a legally enforceable right to appointment to the post of Senior Language Teacher. In Sasidharan's case 1990 (2) KLT 573, the power of the appointing authority to correct a mistake was recognised. Therein, the correction effected was in respect of a confirmation given by an inadvertent mistake, on certain ad hoc appointees. The question was whether the mistaken confirmation could be allowed to stand and whether such an order which only corrected a mistake, could be said to have affected the right of the party who have benefited by the mistake. The legal position was laid down by holding it in the negative, in paras.7 and 12 in the following words:

The power is inherent in any administrative authority to correct accidental mistakes committed by it, in ignorance of, or overlooking the facts. Indeed such power should be exercised, where rights of third parties have been affected, by the mistaken proceedings, without their knowledge, and without their being heard, resulting in miscarriage of justice. If the power to correct inadvertent mistakes is not recognised and accepted, it may lead to perpetuation of injustice and to undesirable consequences. A person whose rights are so affected by an illegal order passed behind his back need not be compelled to rush to court to get it set aside, on pain of its being held binding otherwise. The authority concerned can itself remedy the mischief, on its being appraised of its mistake and the injustice flowing therefrom. Such an order does not affect any rights of the party benefiting by the mistake, as no rights legally inhered in him by virtue of the mistaken order. No question of violation of the principles of natural justice arises in this case. The petitioners had no right to cling on to the post of Statistical Assistant once the survey was over. They were liable for reversion thereafter. When no rights of theirs are affected the question of affording any opportunity of being heard does not arise. In any case, and in view of the undisputed fact that the petitioners were confirmed as Statistical Assistants only by mistake, a further opportunity of being heard is not going to be of any avail to the petitioners. Therefore, and even assuming that there was a technical violation of the principles of natural justice, there is no scope for exercising the discretion under Article 226 of the Constitution in favour of the petitioners.

In Prakasini's case 1993 (1) Kar LJ 632, the power to correct a mistake available to a public authority, was explained in para 18 in the following words;

Such a reserve power to correct mistakes committed by itself has to be located in every public authority in the interests of justice and to avoid arbitrariness. It is not uncommon - in fact it is a human failing that errors are committed in the conduct of human affairs. Infallibility is not a human virtue, that being a quality attributable only to the Almighty. Such a power to correct apparent mistakes is therefore an absolute necessity and has to be found in every authority, even without a specific provision.

Therein, the petitioner whose rank was changed after it was revised, approached this Court challenging the cancellation of the advice. Para 2 of the judgment shows that the revision was required, since on a correct tabulation of the marks of the candidates, it was found that the petitioner had obtained only 47 marks as against 49 marks obtained by the 5th respondent and therefore, the latter was entitled for first rank and the petitioner stood as second. After adverting to the observations of the Apex Court in *State of Punjab v. Jagdip Singh* : AIR 1964 SC 521, the learned Judge laid down the legal position further in para 18 in the following words:

Equally if the higher ranking given to the petitioner could have been successfully challenged as patently erroneous, why not the same result be achieved by the Commission itself rectifying what otherwise was an obvious mistake committed by it? Conferment of such a power is found in various statutes and is an essential requisite for achieving the ends of justice. It cannot be termed an arbitrary power as contended by the petitioner.

In para 19 of the judgment, it was held that 'the authority vested with the power to correct the mistake is a Constitutional functionary, namely, the Commission constituted under Article 315 of the Constitution and that the rules of procedure of the Commission should subserve the ends of justice and not defeat it enabling people profit by mistakes committed by the officers of the Commission.' It was further observed that 'if a mistake is corrected and job opportunity is provided for the rightful incumbent I do not find any violation of Articles 14 and 16 or any deprivation of the right under Article 21 of the Constitution.' The above principles

apply equally to the fact situation emerging herein and I respectfully follow the same.

19. In Mohammed Najim's case 1993 (2) KLT 721, it was held that the inclusion of the name of the candidate in a select list confers only a right to be considered for selection in accordance with the rules existed on the date of advertisement and nothing further.

20. The question considered in the decision relied upon by the learned Counsel for the petitioner in Sajeev's case 2008 (4) KLT 691 is slightly different. Therein, a candidate was advised based on his ranking. But by allowing another candidate to produce documents even after the expiry of the outer time limit provided, the Commission sought to cancel the said advice. The said procedure adopted by the Commission was not accepted by this Court as it is in violation of the norms prescribed by the Commission itself. In these circumstances, it was held that the advice of the candidate cannot be said to be a mistake as it was in terms of the rank that was assigned to him. Therefore, the factual position herein are totally different.

21. In P.M. Unni Raja's case ILR 1983 Ker. 754, the Division Bench was considering the action of the University authorities in suspending the results of various students studying for MBBS Course and further debarring them from appearing future examinations. Learned Counsel for the petitioner invited ray attention to paras. 42, 44 and 48 of the judgment. The Bench considered various decisions relied upon by the parties, wherein in certain circumstances the action taken by the authorities were set aside. In para 42 of the judgment, reference has been made to the decision reported in Kamalendu Prasad Padhi v. Sambalpur University : AIR 1976 Ori. 134 wherein, cancellation of the results of a student was quashed on the ground of violation of principles of natural justice and also on the ground that the University had no power to change the earlier decision taken at the time when the results were announced. The decision in Balakrishna Tiwari v. Registrar Awaldesh Pratap Singh University : AIR 1978 M.P. 86 is a case where the examination taken by a candidate and his admission were cancelled, on the ground that he was not eligible to take the examination. This was set aside by a

Full Bench of the High Court taking the view that the University was estopped from cancelling the examination that there had been violation of natural justice. In para 44, a decision of the Supreme Court in *Sri Krishna v. Kurukshethra University* : AIR 1976 SC 376 is referred to. In that case, the cancellation of candidature at an examination long after the results were announced, was struck down by the Court. Therein, interference was made on the principle that where a person on whom fraud was committed was in a position to discover the truth by due diligence and it was not so done in time, it should be assumed that fraud was not proved. The Division Bench distinguished the decision stating that 'to say that the discovery of fraud subsequently cannot be made use of under these circumstances, relying upon the above observation of the Supreme Court, is not correct.' It was further held in para 48 that 'we do not for a moment say that natural justice can be eschewed from consideration in matters where something is done to a person to his detriment without hearing him.' After considering various aspects, it was held thus in para 49:

In the nature of things, according to us, a hearing would be an exercise in futility. Both before the police and before the University authorities, the students will have sufficient opportunity to vindicate themselves. This is one of the rare cases where strict compliance with or adherence to the principles of natural justice will have to be deferred.

The above decision, thus, will not help the case of the petitioner, especially in the light of the decision in *Maharashtra State Board of Secondary and Higher Secondary Education's case* : (1984) KLT SN 55 (C. No. 94) SC : (1984) 4 SCC 27).

22. Herein, the petitioner cannot therefore contend that in the absence of a fair hearing and an opportunity to submit his objection, the Commission ought not have corrected the mistake in the ranking. It cannot be said that a candidate who had submitted an application for rechecking of his marks, was entitled to be heard at every stage of the process of rechecking. Actually, no decision making process is involved therein. The mistake, if any, in awarding marks alone was the zone of consideration. If any mistake in counting the total marks resulted in an

enhancement of the marks of the petitioner, it would have been advantageous to him. It cannot be said that at that point of time the candidate would have expected an opportunity of hearing in the matter. Equally so, if any mistake in awarding marks, as happened in this case, is corrected and the candidate had derived an undue advantage, it cannot be said that he was entitled for an opportunity of fair hearing before the result of the rechecking was implemented; may be adverse to him. There cannot be any violation of Articles 14 or 16 in such cases. It cannot be said that the method adopted by the Commission in exercising of its power under Rule 15A of the Rules of Procedure and as a Constitutional body under Article 315 of the [Constitution of India](#), smacks arbitrariness and is in violation of the principles of natural justice. It is not a case involving the observance of principles of natural justice. The principles stated by the Apex Court in Maharashtra State Board of Secondary and Higher Secondary Education's case : (1984) KLT SN 55 (C. No. 94) SC : (1984) 4 SCC 27) and other decisions relied upon by the learned Standing Counsel for the Commission clearly supports the above view.

23. Learned Counsel for the petitioner further submitted that herein, the petitioner disputes the correctness of the conclusions arrived at by the Public Service Commission that the petitioner had attempted question No. 37 twice and therefore it is not a case where this Court cannot take the view that by directing to comply with the principles of natural justice it will be an exercise in futility. The stand taken by the Commission as evident from the counter affidavit, clearly shows that the petitioner had attempted question No. 37 twice, resulting in awarding of marks twice. There is nothing on record to disregard the above stand taken by the Commission. The answer sheets are not available now, as they have been destroyed after the period during which the Commission is expected to keep them. As explained by the learned Standing Counsel, the Commission is dealing with lakhs of applications every year, and they cannot be expected to preserve the answer sheets for future reference, beyond a point of time. It is not a disputed fact that re-checking of the answer book pursuant to the application submitted by the petitioner, found out the irregularity in awarding the marks. The dispute now raised by the petitioner cannot therefore improve his position as there are contemporaneous records with the Commission to show the correct marks awarded to the petitioner. Learned Counsel for the petitioner further pointed out

that in respect of University examinations, normally a re-checking of marks will not be effected unless there is marked difference with the original marks. There is difficulty in accepting the said principle herein obviously, since even after finding irregularities in the award of marks if the rank obtained by the petitioner is retained, then it will cause prejudice to persons who are included in the rank list. Therefore, the yardstick adopted in the University Examinations cannot be applied straight away to the facts of this case. The decision of the Apex Court in Ashok Kumar Sonkar's case : (2007) 4 SCC 54 will therefore apply to the facts of this case. It was held in para 27 that the principles of natural justice may not be applied wherein it would be a futile exercise and finally in para. 28 it was held thus:

A court of law does not insist on compliance with useless formality. It will not issue any such direction where the result would remain the same in view of the fact situation prevailing or in terms of the legal consequences. Furthermore in this case, the selection of the appellant was illegal. He was not qualified on the cut-off date. Being ineligible to be considered for appointment, it would have been futile exercise to give him an opportunity of being heard.

In that view of the matter also, I am of the view that it will be a futile exercise to direct the Public Service Commission to consider the matter afresh after offering a hearing to the petitioner.

24. It cannot be said that any different conclusion is possible on the facts disclosed also, even though an attempt is made by the learned Counsel for the petitioner now to argue that the result of the rechecking cannot be said to be correct also. The petitioner could not establish by any reliable material that the conclusion arrived at by the Commission is wrong and unacceptable.

Therefore, the Writ Petition fails and the same is dismissed. No costs.

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