

Case relating to Revaluation:

Parties : V. Neethi Durai & Others Versus The Chairman & Others

Court : High Court of Judicature at Madras

Case No : Writ Petition Nos.28236, 28260, 28923 and 29249 of 2008 And M.P.Nos.1 to 3 of 2008 in W.P.No.28236 of 2008 and M.P.No.1 of 2008 (each cases) in W.P.Nos.28260, 28923 and 29249 of 2008

Judges: THE HONOURABLE MR. JUSTICE S.J. MUKHOPADHAYA & THE HONOURABLE MR. JUSTICE V. DHANAPALAN

Appearing Advocates : For the Petitioners: K. Venkataramani, Senior Counsel for M/s. R. Thamaraiselvan, L. Chandrakumar, D. Shivakumaran, L. Chandrakumar, R. Marudhachalamurthy, Advocates. For the Respondents: R1, R3, C.N.G. Ezhilarasi, R2, D. Sreenivasan, Addl.G.P., R4, C.T. Mohan, Advocates.

Date of Judgment :

16-12-2008 **Head**

Note :-

Constitution Of India – Article 226 - petitioners in all these Writ Petitions appeared in the Written Examinations pursuant to the Notification, issued by the Tamil Nadu Public Service Commission for appointment to the post of Civil Judge (Junior Division) in the Tamil Nadu State Judicial Service and they having not offered with letters of appointment, have preferred their respective Writ Petitions for revaluation of their respective answer books of one or other papers of the Written Examinations. As all these Writ Petitions pertain to revaluation of answer books of the respective Writ Petitioners, they were heard together, except writ petition, which was heard on a different date, but being clubbed with these batch of cases, the relief being common, and are now being disposed of by this common order -answer books, questions, key answers, the marks awarded, etc., but we are not deliberating on the issue relating to Question Nos.21 and 24, as the petitioner in W.P.No.28236 of 2008 has admittedly answered both the questions wrongly, without any objection. It is only when he was not declared successful in Law Paper-I, because of deduction of 'half' mark for each of the questions, such objection is being raised before this Court. When once negative marks were awarded for Question Nos.21 and 24, without setting aside the same, no positive mark can be awarded for those two very questions - the petitioner in W.P.No.28236 of 2008 having given wrong answer for both Question Nos.21 and 24, 'half' mark each was rightly deducted from Law Paper-I and therefore, the aforesaid plea cannot be accepted at this stage.

Judgment :-

(Writ Petition No.28236 of 2008 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondent to reevaluate the petitioner's answer paper in Law Paper-I, wholly, by rectifying the disputed question Numbers 21, 24 and 29 in the said paper, in the Civil Judge (Junior Division) 2004-2008 Examination conducted by

the Respondent on 02.08.2008 and to hold the petitioner as having qualified in the Law Paper-I, thereon the petitioner is to be allowed for further processes.

Writ Petition No.28260 of 2008 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the first respondent to order for revaluation of answer sheet of the petitioner in Law Paper-III subject (Regn.No.00106070) in the written examination conducted by the first respondent to fill up 201 vacancies to the post of the Civil Judge (Junior Division) in Tamil Nadu State Judicial Service, held on 3.8.2008.

Writ Petition No.28923 of 2008 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the first respondent to order for revaluation of answer sheet of the petitioner in Law Paper-II subject (Regn.No.02602012) in the written examination conducted by the first respondent to fill up 201 vacancies to the post of the Civil Judge (Junior Division) in Tamil Nadu State Judicial Service, held on 3.8.2008.

Writ Petition No.29249 of 2008 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the first respondent to order for revaluation of answer sheet of the petitioner in Law Paper-I subject (Regn.No.01001052) in the written examination conducted by the first respondent to fill up 201 vacancies to the post of the Civil Judge (Junior Division) in Tamil Nadu State Judicial Service, held on 3.8.2008.)

Common Order

S.J. Mukhopadhaya, J.

The petitioners in all these Writ Petitions appeared in the Written Examinations pursuant to the Notification, dated 10.5.2008 issued by the Tamil Nadu Public Service Commission (for short, 'the TNPSC') for appointment to the post of Civil Judge (Junior Division) in the Tamil Nadu State Judicial Service and they having not offered with letters of appointment, have preferred their respective Writ Petitions for revaluation of their respective answer books of one or other papers of the Written Examinations. As all these Writ Petitions pertain to revaluation of answer books of the respective Writ Petitioners, they were heard together, except W.P.No.29249 of 2008, which was heard on a different date, but being clubbed with these batch of cases, the relief being common, and are now being disposed of by this common order.

2. The petitioner-R.Ezhilaran in W.P.No.28260 of 2008 has prayed for revaluation of his answer sheet of Law Paper-III subject, his Registration No.00106070, in the Written Examination conducted by the TNPSC.

The petitioner-P.T.Ramesh Raja in W.P.No.28923 of 2008 has also prayed for revaluation of his answer sheet, of Law Paper-II subject, his Registration No.02602012, in the very same Written Examination conducted by the TNPSC.

The petitioner-V.Neethi Durai in W.P.No.28236 of 2008 has also made similar prayer for revaluation of his answer paper book in Law Paper-I subject, his Registration No.00101247,

in the very same Written Examination conducted by the TNPSC.

The petitioner-S.Kameswaran in W.P.No.29249 of 2008 has also made prayer for revaluation of his answer sheet in Law Paper-I subject, his Registration No.01001052 in the very same Written Examination conducted by the TNPSC.

3. When the Writ Petitions were taken up, the learned Standing Counsel appearing for the respondent-TNPSC raised objection regarding the revaluation of the answer sheets/answer books, in the absence of any Rule/Guideline/Instruction issued either by the State or by the TNPSC. It was further submitted that no case has been made out by any of the petitioners for revaluation of any of their respective answer books.

4. Learned Senior Counsel/counsel appearing on behalf of the respective petitioners referred to the Instructions etc., supplied by the TNPSC to the candidates, along with the OMR Application Form, particularly, Clause 5(vii), quoted hereunder:

"5. Other Conditions:

....

(vii) The Commission reserves itself to get any answer book revalued if in its opinion there is sufficient/valid grounds to do so."

It was further submitted on behalf of the petitioners that such provision having been made under Clause 5(vii) of the said Instructions, the petitioners have a right to claim "revaluation" of their respective answer books.

5. We do not accept such a submission, as it is evident that it is the TNPSC which reserved itself a right to get any answer book revalued, if in its opinion there was any sufficient/valid grounds to do so. If any candidate has any doubt that the answer book has not been properly evaluated and if there is a large variation in the marks of the candidate which he expected with the marks that what was actually awarded, such candidate at best can represent before the TNPSC and if sufficient and valid grounds are shown, it is always open for the TNPSC to get any answer book revalued.

6. For example, if it is found that the candidates of a particular Examination Centre have been awarded such lesser marks that most of them failed, on the contrary, in another Examination Centre, almost all the candidates have been awarded with exceptionally higher marks, then, with respect to the very same subject, one may raise some doubt and if sufficient and valid grounds are made out, the TNPSC may enquire into the same and make revaluation of the answer books in general.

7. So far as the individual candidate is concerned, if strong and sufficient/valid grounds are not made out, on mere submission of a candidate that he performed well or he expected more marks, the question of revaluation does not arise.

8. However, with a view to satisfy ourselves as to whether the petitioners have performed well or not, we asked the learned Standing Counsel appearing for the TNPSC to produce the relevant answer books of the petitioners. On production and perusal of the same (except in case of W.P.No.29249 of 2008, where the answer books were not asked to be produced by the TNPSC), we find that the answer book of the petitioner in W.P.No.28260 of 2008--Law Paper-III and the petitioner in W.P.No.28923 of 2008--Law Paper-II, have been properly evaluated. The concerned answer books have been also shown to the respective learned counsel appearing for the petitioners, who themselves, on a perusal of the same, did not choose to make any comment. So far as the petitioner in W.P.No.28236 of 2008 is concerned, who sought for revaluation of the answer book relating to Law Paper-I, on the ground that Question Nos.21, 24 and 29 of the said paper were incorrect, as also the petitioner in W.P.No.29249 of 2008, who also sought for revaluation of the answer book relating to the very same Law Paper-I, on the ground that Question No.29 of the said paper was incorrect, prayer was made by the respective learned counsel to rectify the disputed questions and award marks for them. Learned Standing Counsel appearing for the respondent-TNPSC submitted that Question No.29 relating to Law Paper-I was accepted by the TNPSC as incorrect, and for the said reason, 'one' mark has been already awarded to all the candidates for such Question No.29. This was accepted by the learned counsel for the petitioner in W.P.No.28236 of 2008.

9. Learned counsel appearing for the petitioner in W.P.No.28236 of 2008 then highlighted the Question Nos.21 and 24 to show that they were incorrect. However, this was disputed by learned Standing Counsel appearing for the TNPSC who produced the key answers of Law Paper-I and other papers.

10. For our satisfaction, we have also seen Question Paper of Law Paper-I and answer book of Law Paper-I of the petitioner in W.P.No.28236 of 2008 and the key answer of Law Paper- I, as was produced by the learned Standing Counsel appearing for the TNPSC. The petitioner in W.P.No.28236 of 2008 has attempted to answer both Question Nos.21 and 24 and having given wrong answers, he was awarded with negative 'half' marks to each of those questions. For the said purpose, 'one' mark of the petitioner (each 'half' mark for each of the questions) had been deducted.

11. As much argument was advanced by the learned counsel appearing for the petitioner in W.P.No.28236 of 2008 relating to Question Nos.21 and 24 to show that they were wrong/incorrect questions, we have also noticed the key answers to them, which reflects only proper answers.

12. Question No.21 reads as under:

"SECTION-C

"21. 'A' was tried and convicted by the Court of the Chief Judicial Magistrate for an offence punishable under Section 325, IPC. He was sentenced to imprisonment for a period of 4 years and to a fine of Rs.5,000. Which of the following terms of imprisonment can the Court legally

impose in default of payment of fine?

- a) 1 year, 6 months
- b) 2 years
- c) 2 years, 6 months
- d) 3 years"

In the key answer, the right answer has been shown as "a", i.e. one year, six months and marks have been given by the evaluators to the candidates on the basis of the same. Many of the candidates have been provided with 'one' mark, but those who have given other answers, have been awarded negative marks. The petitioner in W.P.No.28236 of 2008 having given wrong answer, i.e. (c), i.e. two years, six months, 'half' mark had been deducted.

Learned counsel appearing for the petitioner in W.P.No.28236 of 2008 submitted that if sentence of imprisonment of four years is imposed, with fine, for default of payment of fine, maximum imprisonment of one year three months, can only be imposed under Section 325 IPC, but such answer has not been shown in any of the answers of Question No.21, and therefore, it is incorrect. On the other hand, according to the learned Standing Counsel appearing for the TNPSC, the probable answer is nearer to imprisonment of one year and six months, and the candidates who have given such answer, have been awarded with marks. The petitioner in W.P.No.28236 of 2008 having given the answer as two years six months, i.e. (c), 'half' mark was deducted.

13. Question No.24 of Law Paper-I is quoted hereunder:

"SECTION-C

24. The police produced B before the JMFC, Egmore stating that he had committed an offence of cheating in the United States of America, as defined in Section 420 of the IPC, and requested the Magistrate to frame charges and try the person on the basis of the charge sheet prepared by them. Does the Court have jurisdiction to try the offence?

- a) Yes, the Court has jurisdiction.
- b) No, the Court does not have jurisdiction. The offence was committed in the United States and hence an Indian court does not have jurisdiction to try the offence.
- c) Yes, the Court has jurisdiction. However, the Magistrate has to obtain sanction of the Central Government before trying the case.
- d) Yes, the Court has jurisdiction. However, the Magistrate has to obtain sanction of the High Court before trying the case."

It was also submitted by learned counsel appearing for the petitioner in W.P.No.28236 of 2008, that none of the answers to Question No.24 are correct, but from the key answer, it appears that "c" (i.e. "Yes, the Court has jurisdiction. However, the Magistrate has to obtain sanction of the Central Government before trying the case") is shown as the correct answer, on the basis of which, the marks have been awarded by the evaluators and many of the

candidates have obtained marks for the same.

14. Though we have noticed the aforesaid arguments, answer books, questions, key answers, the marks awarded, etc., but we are not deliberating on the issue relating to Question Nos.21 and 24, as the petitioner in W.P.No.28236 of 2008 has admittedly answered both the questions wrongly, without any objection. It is only when he was not declared successful in Law Paper-I, because of deduction of 'half' mark for each of the questions, such objection is being raised before this Court. When once negative marks were awarded for Question Nos.21 and 24, without setting aside the same, no positive mark can be awarded for those two very questions. In any case, the petitioner in W.P.No.28236 of 2008 having given wrong answer for both Question Nos.21 and 24, 'half' mark each was rightly deducted from Law Paper-I and therefore, the aforesaid plea cannot be accepted at this stage.

15. For the foregoing reasonings, we find no merits in any of the Writ Petitions, which are accordingly dismissed. No costs. The Miscellaneous Petitions are closed.

16. The Original Answer Books/Key answers, etc., are returned to the Standing Counsel appearing for the TNPSC, forthwith, with due endorsement being obtained from her, for the same.