

Case relating to Revaluation:

Parties : P. Jothimani Versus The Secretary, Tamilnadu Public Service Commission, Chennai & Another

Court : High Court of Judicature at Madras

Case No : W.P.No.22988 of 2010 & M.P.No.1 of 2010

Judges: THE HONOURABLE MR. JUSTICE S. MANIKUMAR

Appearing Advocates : For the Petitioner: C. Balasubramanian, Advocate. For the Respondents: R1, S. Sivashanmugam, Government Advocate & R2, C.N.G. Niraimathi, TNPSC.

Date of Judgment : 07-10-2010

Head Note :-

Constitution of India - Article 226 -

Judgment :-

(Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a writ of Mandamus, directing the 1st respondent to consider the representation dated 20.09.2010.)

1. It is the case of the petitioner that pursuant to a notification issued by the Tamil Nadu Public Service Commission on 24.02.2009 in Advertisement No.187 and Supplement Advertisement No.191, calling for applications for 76 vacancies of Motor Vehicle Inspector Grade-II posts, the petitioner applied for the post and wrote the examinations. A list of candidates provisionally selected for oral test has been published on 17.09.2010 and that the name of the petitioner has not been included, though he has answered fairly well in the written examinations. The petitioner reliably understands that the answer papers have not been properly valued, and therefore made a representation dated 20.09.2010 to the 1st respondent to re-value the answer papers. As his representation has not been considered, he has come forward with the present writ petition for a Mandamus.

2. When the matter came up for admission, Ms.C.N.G.Niraimathi, learned counsel appearing for TNPSC, submitted that there is no provision in the Tamilnadu Public Service Commission Rules or Regulations, enabling revaluation of answer sheets.

3. The relief sought for in this writ petition, is liable to be rejected, as no rule or regulation has been placed before this Court enabling the commission to reevaluate the answer sheets. A mandamus can be issued only if there is a failure on the part of the authority in discharging their statutory duties or functions.

4. In Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission, Patna and

Others reported in 2004 (6) SCC 714, the Supreme Court considered a similar issue at paragraph Nos.7 and 8, held as follows:

"7. We have heard the appellant (writ petitioner) in person and learned counsel for the respondents at considerable length. The main question which arises for consideration is whether the learned Single Judge was justified in directing re-evaluation of the answer-book of the appellant in General Science paper. Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for re-evaluation of his answer-book. There is a provision for scrutiny only wherein the answer-books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totalling of marks of each question and noting them correctly on the first cover page of the answer-book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. In the absence of any provision for re-evaluation of answer-books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re-evaluation of his marks. This question was examined in considerable detail in Maharashtra State Board of Secondary and Higher Secondary Education v. Pariotosh Bhupeshkumar Sheth reported in 1984 (4) SCC 27: AIR 1984 SC 1543. In this case, the relevant rules provided for verification (scrutiny of marks) on an application made to that effect by a candidate. Some of the students filed writ petitions praying that they may be allowed to inspect the answer-books and the Board be directed to conduct re-evaluation of such of the answer-books as the petitioners may demand after inspection. The High Court held that the rule providing for verification of marks gave an implied power to the examinees to demand a disclosure and inspection and also to seek re-evaluation of the answer-books. The judgment of the High Court was set aside and it was held that in absence of a specific provision conferring a right upon an examinee to have his answer-books re-evaluation, no such direction can be issued. There is no dispute that under the relevant rule of the Commission there is no provision entitling a candidate to have his answer-books re-evaluated. In such a situation, the prayer made by the appellant in the writ petition was wholly untenable and the learned Single Judge had clearly erred in having the answer-book of the appellant re-evaluated.

8. Adopting such a course as was done by the learned Single Judge will give rise to practical problems. Many candidates may like to take a chance and pray for re-evaluation of their answer-books. Naturally, the Court will pass orders on different dates as and when writ petitions are filed. The Commission will have to then send the copies of individual candidates to examiners for re-evaluation which is bound to take time. The examination conducted by the Commission being a competitive examination, the declaration of final result will thus be unduly delayed and the vacancies will remain unfilled for a long time. What will happen if a candidate secures lesser marks in re-evaluation? He may come forward with a plea that the marks as originally awarded to him may be taken into consideration. The absence of clear rules on the

subject may throw many problems and in the larger interest, they must be avoided."

5. In view of the submission of the learned counsel appearing for TNPSC and in the light of the decision of the Supreme Court, the writ petition is dismissed. No Costs. Consequently, the connected Miscellaneous Petition is closed.