

Case relating to Revaluation:

Parties : V. Parthasarathy Versus The Secretary Tamil Nadu Public Service Commission Chennai & Others

Court : High Court of Judicature at Madras

Case No : W.P.No.15644 of 2009 & M.P.Nos.1, 2, 3 & 6 of 2009

Judges: THE HONOURABLE MR. JUSTICE K. CHANDRU

Appearing Advocates : For the Petitioner: K. Venkataramani, Sr. counsel for M/s. P.K. Rajesh Praveen Kumar, Advocate. For the Respondents: C.N.G. Niraimathi, Advocate.

Date of Judgment : 27-10-2009

Head Note :-

Constitution of India - Article 226 -

Judgment :-

(Prayer: Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified mandamus calling for all relevant records regarding the impugned rejection order in memorandum No. 4867/ED-A3/2008 dated 1.7.2009 of the 2nd respondent and Memorandum No.559/ED-A1/2009 dated 4.8.2009 of the 3rd respondent in rejecting to revalue the petitioner's main examination answer papers in General studies paper I and paper II in the Group I examination 2006-2007 conducted on 16.8.2008 and 17.8.2008 herein to quash the same as arbitrary improper illegal against the rules and procedures of the respondents due to unfair valuation thereby directing the respondents to revalue the petitioners main examination answer papers in the said examination by the examiners from reputed universities outside the panel of examiners of the respondents and consequently publish the marks obtained by the petitioner).

(Prayer amended as per the order dated 21.8.2009 in M.P.No.5 of 2009)

Heard Mr.K. Venkataramani, learned senior counsel appearing for Mr.P.K. Rajesh Praveen Kumar, learned counsel for the petitioner and Mrs.C.N.G. Niraimathi, learned counsel appearing for the respondents and perused the records.

2. The writ petitioner had earlier filed a Writ Petition before this Court in W.P.No.11391 of 2009 seeking for the revaluation of the main answer papers in General Studies Paper I and Paper II in the Group I Main examination conducted by the Tamil Nadu Public Service Commission on 16.8.2008 and 17.8.2008 for the year 2006-2007 by comparing the same with the last 3 candidates selected in the vacancies reserved for Scheduled Tribe Community. This Hon'ble Court by relying upon para 5 (vii) of the Tamil Nadu Public Service Commission's instructions held that there was no legal impediment for the respondents to revalue the answer papers and

after holding so in paragraph 9, it was directed as follows:

"9. For the aforesaid reasons, this Court is constrained to consider the representation of the petitioner dated 5.6.2009 seeking the relief of revaluation of the answer papers of the petitioner relating to the Group-I Examination conducted by the respondent on 16.8.2008 and 17.8.2008 in the light of the definite assertion made by the petitioner in the affidavit filed before this Court in this Writ Petition to the effect that he is having reasonable expectation of securing more marks on the basis of his performance and the petitioner crossed the maximum age limit prescribed for competitive examinations and as a result, he may not have any more chance to compete in the Group I Examination, and dispose of the said representation dated 5.6.2009 on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order. (Emphasis added)"

3. Even while the matter was pending, the petitioner had sent a representation dated 5.6.2009 to the Tamil Nadu Public Service Commission. The Tamil Nadu Public Service Commission acting upon the said representation informed the petitioner by an order dated 1.7.2009, which is as follows:

"Thiru V. Parthasarathy, is informed that his request for revaluation of the answer papers is inadmissible and cannot be complied with as per para 19(v) of the Commission's Instructions, etc., to candidates.

He is also informed that his answer paper has already been valued twice by two different examiners.

Any further representation in this regard will receive no attention."

4. The petitioner has now come forward to challenge the said communication dated 1.7.2009 followed by the communication dated 4.8.2009 (it was passed after the direction of this Court). In the first impugned order dated 1.7.2009, the petitioner was informed that as per the Commission's Instructions contained in para 19(v), there is no scope for revaluing the answer papers. Subsequent to the direction issued by this Court, the Commission once again reiterated the same view in the subsequent order dated 4.8.2009. This time, the Commission placed reliance upon the judgment of the Supreme Court in Maharashtra State Board of Secondary and Higher Secondary Education and others vs. Paritosh Bhupeshkumar Sheth and others reported in AIR 1984 SC 1543 and stated that since the petitioner's answer papers have already been valued twice by two different groups of examiners, the request for revaluation of the answer paper again cannot be considered. Since the petitioner had already filed the Writ Petition against the earlier order dated 1.7.2009, he filed a Miscellaneous Petition in M.P.No.5 of 2009 for amendment of the prayer seeking to challenge the latest order dated 4.8.2009 and the same was ordered. By M.P.No.4 of 2009, he has also impleaded the Chairman of the Tamil Nadu

Public Service Commission.

5. Mr.K. Venkataramani, learned senior counsel appearing for the petitioner submitted that since this Court had already held that the petitioner's case deserves revaluation, the respondents ought to have considered the said prayer. In any event, the Chairman of the Tamil Nadu Public Service Commission had acted mala fide. Therefore, the petitioner's case should be considered in the light of the observations made in the earlier case.

6. According to the petitioner, he had earlier filed W.P.No.2088 of 2009 with reference to the question of his age being barred for consideration by the TNPSC. Since the petitioner resorted to litigations earlier, the respondents have deliberately wanted to victimise the petitioner and therefore, he has come up with the prayer that his answer papers should be revalued by the examiners from reputed Universities outside the panel of examiners of the respondents Tamil Nadu Public Service Commission and consequently publish his marks as per the said revaluation.

7. In the affidavit filed in support of the Writ Petition, except narrating the previous litigation in respect of the Group II examination taken by the petitioner, there is no specific allegation against any member of the Commission including the impleaded 3rd respondent Chairman. In fact in his sworn affidavit, he has stated that in the Group II Examination, he became successful and he has been also appointed as Assistant Commercial Tax Officer in the Commercial Tax Department where he is still working. In the absence of any specific allegation of mala fide, this Court is not inclined to consider his contention that since he had already filed a Writ Petition against the Commission, the Commission has been acting vindictively against the petitioner.

8. On the contrary, it must be stated that the State Public Service Commission is a constitutional body appointed as per Article 315 of the Constitution and the tenure of service of the members are fully protected in terms of Articles 316 and 317 of the Constitution. Therefore, when the allegation of mala fide is made in respect of the Commission, which is admittedly a multi member body, the petitioner has to make a specific allegation so that the allegation can be met by any member or Chairman or the Commission as a whole.

9. On notice from this Court, the respondents have filed a counter affidavit dated nil (2009). In the reply affidavit, apart from relying upon the Supreme Court judgment in Maharashtra State Board of Secondary and Higher Secondary Education and others vs. Paritosh Bhupeshkumar Sheth and others's case referred to above, they have also relied upon the judgment of the Division Bench of this Court in W.P.No.25622 of 2008 (Miss V. Lavanya vs. Deputy Secretary, TNPSC and 2 others), wherein the scope for revaluation by the Tamil Nadu Public Service

Commission at the instance of the examinee has been ruled out.

10. In page 2 of the counter affidavit, it is stated as follows:

"As per the existing procedure in vogue, the answer papers were dummy numbered and placed for valuation. Since question papers of both the subjects (Paper-I and Paper-II) contain questions from 10 and 13 subjects respectively, the papers were valued by the examiners of the subjects concerned. That is, Paper-I was valued by 10 examiners and Paper-II was valued by 13 examiners. The answer papers were valued twice by two different groups of examiners.

After First and Second valuations, the marks obtained by the petitioner in the General Studies Paper-I and Paper-II are as follows:

TABLE

Based on the marks obtained by the petitioner, he was summoned for oral test. In oral test, he has obtained 54 marks. He has secured 329 marks in total.

The petitioner in his representation dated 5.6.2009, addressed to the Secretary, had requested to revalue his answer papers of the above said examination, since the marks awarded is less than his performance and expectations."

11. The petitioner's reliance upon Clause 5(vii) of the Tamil Nadu Public Service Commission's instructions as a source for revaluing the answer papers cannot be countenanced by this Court. That power is vested with the Tamil Nadu Public Service Commission in case there was any suspicion over an evaluation so that they can send the answer papers to a panel of examiners of the respondent Tamil Nadu Public Service Commission. But, this power is not available to an examinee like the petitioner, who has come forward to file the present Writ Petition solely on the ground that he had reasonable expectation of securing more marks on the basis of his performance.

12. The Supreme Court vide judgment in Maharashtra State Board of Secondary and Higher Secondary Education and others vs. Paritosh Bhupeshkumar Sheth and others's case cited supra held as follows:

"The process of evaluation of answer papers or of subsequent verification of marks does not attract the principle of natural justice since no decision making process which brings about adverse evil consequence to the examiners is involved. The Principle of natural justice cannot be extended beyond reasonable and rational limits and cannot be carried to such absurd lengths as to make it necessary that candidates who have taken in public examination should be allowed to participate in the process of evaluation of their performance 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 proper and fair evaluation of the answers by the examiners.

".... Any draw back in the policy incorporation in a rule or regulation will not render it ultravires and the Court cannot strike it down on the ground that in its opinion, it is not a wise or prudent policy but is even a foolish one and that it will not really serve to effectuate the purpose of the Act."

" .. It is in public interest that the results of public examinations when published should have some finally attached to them. If inspection, verification in the presence of the candidates and revaluation are to be allowed as of right, it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking etc. of the candidates, besides leading to the utter confusion on account of the enormity of the labour and time involved in the process."

13. Therefore, in the absence of any power available to the examinee like the petitioner and there being no mala fides alleged and proved against the respondents, this Court is not inclined to entertain the Writ Petition.

14. Since the right of an examinee like the petitioner was made only on the basis of the allegation made in the affidavit, it is necessary for this Court to record that when such allegation of mala fides are pleaded, it is also essential to make the persons concerned as necessary parties to the Writ Petition for proving such allegations of mala fide. Further, the burden of proving the allegation of mala fide solely rests on the petitioner as held by the Supreme Court in *E.P. Royappa vs. State of Tamilnadu* reported in 1974 (4) SCC 3. The relevant passages found in para 91 and 92 are reproduced below:

"91. The only question before us is whether the action taken by the respondents includes any component of mala fides; whether hostility and malus animus against the petitioner were the operational cause of the transfer of the petitioner from the post of Chief Secretary.

92. Secondly, we must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. Here the petitioner, who was himself once the Chief Secretary, has flung a series of charges of oblique conduct against the Chief Minister. That is in itself a rather extraordinary and unusual occurrence and if these charges are true they are bound to shake the confidence of the people in the political custodians of power in the State, and therefore, the anxiety of the Court should be all the greater to insist on a high degree of proof. In this context it may be noted that top administrators are often required to do acts which affect others adversely but which are necessary in the execution of their duties. These acts may lend themselves to misconstruction

and suspicion as to the bona fides of their author when the full facts and surrounding circumstances are not known. The Court would, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. Such is the judicial perspective in evaluating charge of unworthy conduct against ministers and other high authorities, not because of any special status which they are supposed to enjoy, nor because they are highly placed in social life or administrative set up – these considerations are wholly irrelevant in judicial approach-but because otherwise, functioning effectively would become difficult in a democracy. It is from this standpoint that we must assess the merits of the allegations of mala fides made by the petitioner against the second respondent."

15. If the test for proving mala fide as laid down by the Supreme Court is applied, the allegation of mala fides raised in the Writ Petition does not measure up to the said test. Therefore, this Court is not inclined to accept the allegation of mala fide and no findings are required to be rendered by this Court. Even otherwise, only because the petitioner had filed the Writ Petitions earlier, that itself cannot be a ground to hold that the respondents were hostile to the petitioner.

16. The Supreme Court in more than one occasions has held that an unsuccessful candidate after participating in a selection process cannot challenge the selection process. It is necessary to refer to the latest judgment of the Supreme Court in K.A. Nagamani vs. Indian Airlines reported in (2009) 5 SCC 515 in this regard. In the present case, under the guise of asking for a reevaluation, the petitioner's contention that his answer papers should be compared with the last three candidates selected in the vacancies in the quota meant for Scheduled Tribe Community as contended in the earlier Writ Petition cannot be countenanced.

17. In the light of the above factual matrix and the legal precedents, the writ petition stands dismissed. However, there will be no order as to costs. All the Miscellaneous Petitions stand closed.