
(2020) 02 CHH CK 0133
In the Chhattisgarh High Court
Case No : Writ Appeal No. 602 Of 2019

Bhim Singh Rajput

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision : 14-02-2020

Acts Referred:

Citation : (2020) 02 CHH CK 0133

Hon'ble Judges : P.R. Ramachandra Menon, CJ; Parth Prateem Sahu, J

Bench : Division Bench

Advocate : Vinay Pandey, Chandresh Shrivastava, Ashish Shrivastava, Ranbir Singh, Aman Tamboli, Praveen Das

Final Decision : Dismissed

Judgement

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P.R. Ramachandra Menon, CJ

1. Writ Petitioner is the Appellant. Challenge is raised against the course and proceedings pursued by the Chhattisgarh Public Service Commission (for short 'the PSC') in re-evaluating the answer sheet of the Appellant in respect of one of the two papers of the main examination for selection to the post of Civil Judge, Entry Level 2004-2005 and the reduction of marks in respect of some questions, which stands repelled by the learned Single Judge, is put to challenge in this appeal.

2. We heard Shri Vinay Pandey, the learned counsel for the Appellant, Shri Chandresh Shrivastava, the learned Deputy Advocate General for the

State/Respondents No. 1, Shri Ashish Shrivastava, the learned counsel representing the Respondent-PSC, Shri Ranbir Singh Marhas, the learned

counsel representing the 3rd Respondent and Shri Praveen Das, the learned

counsel representing the Respondent-High Court of Chhattisgarh.

3. The writ petition filed in the year 2006 came to be finalised as per the judgment passed by the learned Single Judge recently in the year 2019. The

sequence of events reveals that Annexure P/1 Notification was issued by the 2nd Respondent/PSC inviting applications to fill up the notified posts of

30 (which subsequently came to be enhanced to 61) Civil Judges, Class II under the Ministry of Law and Legislative Affairs of the State. The

Appellant having satisfied all the qualifications applied for the post and was invited to participate in the preliminary examination which was of objective

type. On coming out successful in the weeding out exercise, the Appellant was let to participate in the main examination which consists of two papers;

Paper I â?" Law and Paper II â?" Essay, Translation and Judgment Writing, consisting of 3 hours duration and carrying 100 marks each. With

reference to the number of posts, the eligible candidates coming within the zone of consideration were to be invited for interview, which was to carry

25 marks and thus, the total process of selection was to carry $100+100+25 = 225$ marks, as revealed from clause 15 and elsewhere of the Annexure

P/1 Notification. The Appellant came out successful in the main written examination and he obtained 53 marks out of 100 in respect of Paper I â?

Law and 47 marks in respect of Paper II. On giving chance to participate in the interview, the Appellant scored 12 out of 25 and thus, obtained a total

of $53+47+12 = 112$. Annexure P/4 is the statement of marks as aforesaid.

4. On completion of the process of selection, the select list was published, where the Appellant could not find a place. The 3rd Respondent was stated

as the 'last selected candidate' on securing a total of 115 marks out of 225. In the course of further enquiry made by the Appellant, also resorting to

the remedy under the Right to Information Act, 2005, he obtained copies of the answer sheets; from which he came to understand that he had actually

obtained a total of 57 marks from which 4 marks were deducted by somebody, making some scores against the marks given in respect of the

answers. On the front page/tabulation sheet which did not bear the signature or initial of anybody, it is contended that it was quite unauthorised. By

virtue of the said exercise, the marks came to be reduced as '53' and had it been correctly taken as originally awarded (57), he would have obtained a

total of 116. marks, making him eligible to be appointed in preference to the 3rd

Respondent herein who bagged only a total of 115 marks. This made the Appellant to approach this Court by filing this writ petition with the following prayers (as it originally sought for):

7.1) The Hon'ble Court may kindly be pleased to call for the entire records of the case, leading to the impugned inaction on the part of the respondents, for its kind perusal.

7.2) The Hon'ble Court may kindly be pleased to direct the Respondents to remove the illegality and call for an enquiry by an independent agency and punish the guilty person who have committed the illegality.

7.3) The Hon'ble Court may further kindly be pleased to quash the result of the Examination 2004-2005, as it appears to be tainted with mala fide action.

7.4) Cost of the petition.

7.5) Any other relief which this Hon'ble Court deems fit and proper may also kindly be granted to the petitioner, in the interest of justice.

5. When the matter was pending consideration before the learned Single Judge, about 7 years after filing of the writ petition, a petition for amendment was filed; whereby prayer at '7.3' i.e. to quash the result of the examination 2004-2005 as tainted by malafides was sought to be deleted and two new prayers were brought in as 7.3A and 7.3B; which prayers were allowed as per the order dated 19.03.2013. The above additional prayers are in the following terms.

7.3A. That, this Hon'ble Court may kindly be pleased to direct the respondent No. 2 to add the deducted 4 marks of the petitioner in subject Law and accordingly award 57 marks instead of 53.

7.3B That, this Hon'ble Court may kindly be pleased to direct the respondent No. 2 to consider the petitioner for appointment in pursuance of the marks 57 (total 116/225) which ought to have been awarded to the petitioner after putting him in merit list before the respondent No. 3 as the respondent No.3 got 115/225, with all consequential benefits.

6 Going by the pleadings and prayers, the crux of the contention was that, the writ petitioner was singled out to take him outside the field of selection consciously and his marks were reduced in respect of some questions, quite unauthorisedly and without any legal backing. It was accordingly, that a

specific prayer was made at 7.2 to cause a detailed enquiry through an independent agency and to punish the guilty persons. Subsequently, by the passage of time, the writ petitioner found that the appointments had already been effected and in the said circumstance, relief was sought for as per the amended prayers to direct the Respondent No. 2 to add the illegally deducted 4 marks to raise the total marks of Paper-I from 53 to 57 and to consider the writ petitioner for appointment with reference to 116/225 marks, instead of 112/225, after putting him in the merit list above the 3rd Respondent, as the 3rd Respondent, had obtained only 115/225 marks.

7. A detailed return was filed from the part of the PSC pointing out that there was absolutely no merit or bonafides in the writ petition and that the course pursued by the Commission was perfectly within the four walls of law. It was pointed out that the Commission had issued various directions/ instructions to all concerned as to the scheme of examination/evaluation, the necessity to conduct re-evaluation by Deputy Chief Examiner/Chief Examiner at in least 10% of the answer sheets, in exercise of the power of supervision and monitoring as to the process of evaluation and to have the uniformity attained keeping a vigil in the process and that the particulars in this regard had to be entered into 'Diary No. 21' in terms of sub-clause (4) of Clause 4 of the directions issued in this regard. It was also pointed out that, Diary No. 21 of the Chief Examiner was a confidential document which contained the names of the Examiner and that the 2nd Respondent was ready to have it presented before the Court, if so directed. It was further pointed out that deduction of marks on random re-evaluation was done by the Chief Examiner appointed for the Judicial Service, Main Examination 2004-2005. As per the norms, the Chief Examiner was supplied with answer sheets, on which code numbers were given by the Coder called from other than the PSC officials and the Chief Examiner, Checker and other Examiners were not aware of the actual Roll Numbers; which was to ensure that no question of favoritism occurred at any point of time. It has also been brought to the notice of this Court that the photocopy of the answer sheet supplied to the writ petitioner does not contain any signature of the Chief Examiner, as the same would disclose the identity of the Chief Examiner/Examiner and hence, sufficient precaution was taken before supply of the photocopy of the answer sheets; adding that the original answer

sheet contains the initials/endorsement made by the Chief Examiner. This being the position, there is no merit in the contention that the re-evaluation has been conducted unauthorisedly; that too, without any initials or endorsement of the competent authority.

8 With regard to the deduction of marks, it is pointed out that the writ petitioner was awarded 'full marks' in respect of relevant sub-questions under question No. 9 and 10 and that on scrutiny, the Chief Examiner found that by virtue of the nature of the answers given, it was not worthy of full marks and hence reduction was made to an appropriate extent. Similar re-evaluation or deduction was done in respect of several other candidates as well, on random checking of 10% of the answer sheets as contained in the instructions. Therefore, there is no question of singling out or arbitrary/

discriminatory exercise insofar as the writ petitioner is concerned. It was also pointed out that the re-valuation on random basis was done to avoid any irregularity, mistake or wrong valuation; adding that the Chief Examiner and the Examiner were selected on the basis of their legal knowledge,

experience and standing in the respective field. It is stated further, that the relevant records can be placed before the Court, if so directed, to prove

that the exercise pursued is quite transparent in all respects. In paragraph 9 of the reply statement, the PSC submits that the officials of the

Commission has no opportunity to know the identity of the candidates, as Roll Numbers were hidden and new code numbers were allotted in the

answer sheets. It was after hiding the roll numbers, that the answer sheets were handed over to the Chief Examiner who got these answer sheets

valued and returned in a sealed cover, after completing the procedure and keeping the entries in Diary No. 21. The crux of the contentions given by

the PSC with reference to the question of awarding of the marks have been more emphasised in paragraph 16, which is reproduced below for easy

reference:

16. Reply to para 5.13 & 5.14: It is denied that there is high handed and malafide action and marks awarded to the petitioner were manipulated.

All these contents regarding allegations are denied, as the Respondent No. 2 had acted according to the norms to conduct the examination and

valuation of the answer sheets. The marks in respect of question No. 6(e) and 1(a) are not given by the Examiner as the answers were not found

correct and in respect of those answers X (Cross) and 0 (zero) were made given by the Examiner. However, it appears that the Chief Examiner has deducted 2 (two) marks in question No. 10 & 1 (one) mark each in question No. 9 and 3 but in the cover page (page No. 1) deducted marks 2 in respect of question no. 9 (nine) instead of 1 (one) mark and further deduction of 1 mark is not mentioned in respect of question No. 3 (three) in cover page (Page No. 1) though 1 (one) mark was deducted inside the answer sheet in question No. 3. After making entry by the Chief Examiner the answer sheet was given to the Examiner and entries of final marks over the answer sheet was done by the Examiner. The entries on the tabulation sheet are made by the Examiner and the Examiner has made signature on the tabulation sheet and thereafter checker and chief Examiner has put their signatures and then it was sealed and handed over. The petitioner's application supplied with answer sheet. The confidential information regarding the Chief Examiner's diary and his comments are now opened by the officials of Commission, after receiving the notice of this Hon'ble Court otherwise the answering respondent had earlier no occasion to know the actual happenings. The officials of the Respondent No. 2 are not permitted to take part in the coding, decoding and valuation of the answer sheets. Their duties and rights are only up to the supply of answer sheets and to collect the same after valuation. Further, it is apparent from rule 4 of Â that the Examiner, Checker and the Chief Examiner had done their job and while in random checking the Chief Examiner has based on his experience and expertise deducted the marks, which is permissible as per directions. Thereafter, Examiner has made separate entry of total marks obtained on the answer sheet and submitted tabulation sheet with his signature and then counter signed by checker and Chief Examiner.

9. The 3rd Respondent had filed a reply statement to the effect that, on perusal of the whole answer sheet submitted by the writ petitioner, it would indicate that the answers were written in a casual and cavalier manner and by any stretch of imagination, he ought not to have awarded 'full marks' in respect of the sub-questions under question No. 9 and 10; which hence, was rightly reduced by the Chief Examiner. It is also pointed out by the 3rd Respondent that there were many candidates who had obtained the same marks as that of the 3rd Respondent (115/225) and hence, the writ petitioner

cannot say that the answering respondent was the 'last selected candidate'.

10. After hearing both the sides, the learned Single Judge held that no malafides can be attributed to the PSC when the procedure adopted for picking

up 10% answer sheets for re-evaluation has been done in the manner prescribed in the instructions for valuation and that it was not a fit case for

interference, which led to the dismissal of the writ petition, thus leading to this appeal.

11. The learned counsel for the Appellant submits that reduction of marks in the case of the Appellant/Writ Petitioner has caused much prejudice and

no relative deduction was made in the case of the 3rd Respondent herein; but for which there was a chance for the writ petitioner /Appellant to have

been rated above the 3rd Respondent and to have appointed accordingly. It is also pointed out that the entries (re-evaluated marks) given in the

answer papers produced against the questions concerned do not reconcile with the entries given in the tabulation sheet with reference to the specific

questions concerned and that the course pursued by the PSC is not liable to be sustained. It is also pointed out that, if at all reduction of marks was

necessary, it had to be applied in respect of all the candidates, to have uniformity and transparency in the selection process.

12. The primary question to be considered is whether there is anything malafide or arbitrary in the course pursued by the PSC. As mentioned already,

the writ petition was moulded by the writ petitioner mainly contending that on obtaining the copies of the answer sheets invoking the remedy under the

RTI, he came to know that some unauthorised deduction of marks had taken place, and that there was manipulation by somebody to see that the writ

petitioner was ousted from being selected. There was no signature of initial in the answer papers in this regard and hence, the prayer to conduct an

'enquiry' and to 'punish' the guilty as given under prayer No. 7.2. It was also in the said context, that the writ petitioner had prayed at prayer No. 7.3

(as it originally stood) to set aside the result of the entire selection process 2004-2005 as tainted by malafides. Subsequently, the writ petitioner filed

amendment petition (IA No. 6) to delete prayer clause 7.3 which was allowed and it was deleted, simultaneously incorporating some additional prayers

as 7.3A and 7.3B, as per order dated 19.03.2013, as it now stands. This shows that there was no prayer in the writ petition for nearly seven years

from the date of filing i.e 30.06.2006 till 10.03.2013, when the amendment was sought for and granted, to give appointment to the writ petitioner. Even at this juncture, no prayer was made by the writ petitioner to set aside the appointment of the 3rd Respondent having secured only lesser marks than the writ petitioner (if his contention is accepted) and hence the appointments already effected stand intact which cannot be altered. That apart, the Appellant, as on date has crossed the age of 48 years and since he belongs to the unreserved segment (the date of birth of the writ petitioner being 02.06.1972 as disclosed from Annexure P/2 and P/3) and by the time the writ petitioner filed the amendment petition (IA No. 6) on 10.03.2013 which was allowed on 19.03.2013 bringing in additional prayers at 7.3A and 7.3B to grant 4 more marks and to appoint him to the post in question, he had already crossed the maximum age for getting appointment in the unreserved segment. This being the position, no relief could have been granted by the learned Single Judge, even if the merit was established.

13. With regard to the revaluation, the PSC has specifically pointed out that the Commission has framed the rules of procedure in accordance with the relevant provisions of law and has also issued various instructions directions in relation to the various fields including the scheme of examination and the process of valuation, in order to maintain uniformity in valuation and to impose a regular check/monitoring upon the valuers/examiners. Provisions have been carved out to effect re-evaluate the answer sheets, on random basis, at least to an extent of 10%. The instructions issued in this regard, as adverted to specifically in paragraph 2 of the reply statement, are to the following effect:

â??2. That, the answering Respondent, Chhattisgarh Public Service Commission (hereinafter referred as the Commission for the sake of brevity) has conducted the examination without malafide or favouritism. For the purpose of valuation of the answer sheets, the Commission has issued the directions and the Chief has acted acted on the basis of those directions. According to the direction No. 4, the Chief Examiner is authorised and directed to check and do the re-valuation at least 10% of answer sheets. The direction No. 4 of the is reproduced here as under:

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It was strictly in accordance with the above directions/instructions that the re-valuation was effected by the Chief Examiner keeping the entries in a

separate diary i.e. Diary No. 21. Despite pointing out the above vital aspect, the writ petitioner did not choose to challenge the authority of the PSC in

this regard, nor has chosen to set aside the said 'instructions' by amending the writ petition and raising appropriate prayers. As such, the above

instructions/directions stand intact and the authority to have issued such instructions need not be put to scrutiny by this Court in these proceedings, as

not challenged. The Course and proceedings pursued by the PSC, as explained in the reply and also as submitted across the Bar, with specific

assertion in the reply that they are ready to produce the originals of the answer sheets/records and such other materials if so directed by this Court,

clearly show the transparency sought to be pursued. Further, no step was ever taken by the writ petitioner to cause production of such material, by

filing any IA.

14. Coming to the marks awarded to the writ petitioner and also as to the instance of reduction of the marks (by 1 or by $\hat{A}^{1/2}$, as the case may be) as

revealed from Annexure P/7 question paper in respect of Paper I $\hat{a}$?" Law, it comprises of 10 main heads/questions, all of which had to be answered

and they carried 10 marks each, so as to make it a total of 100. The time provided to answer the question paper was 3 hours. It can be seen that

question No. 1, 2, 6, 9 and 10 are sub divided into sub-questions carrying separate marks as mentioned therein (coming to a total of 10 marks for each

question). Question No. 9 is sub-divided into 3 sub questions and the maximum marks obtainable, are as as given below:

- 9 (a) What agreements are contracts and who are competent to contract? 4
- (b) What considerations and objects are unlawful? 3
- (c) What is bailment, bailor and bailee? 3

Similarly, question No. 10 is sub divided into 3, with separate marks, as extracted below:

10. Define the followings:

- (a) Sale of immovable property. 3
- (b) Agreement to sale of immovable property. 3
- (c) Principle of part performance. 4

15. On perusing the answer sheets produced by the writ petitioner as Annexure P/6, it is seen that the Appellant has been awarded the maximum of 3

marks in respect of question 10(a), maximum of 3 marks in respect of question No. 10(b) and maximum of 4 marks in respect of question No. 10(c).

It was considering the said answers that the Chief Examiner found that the given answers were not worthy of full marks and accordingly deducted

$\frac{1}{2}$ marks in respect of question No. 10(a), $\frac{1}{2}$ mark in respect of question No. 10(b) and 1 mark in respect of question No. 10(c). Similarly, in

respect of question No. 9, the Appellant/Writ petitioner has been awarded maximum of 4 marks in respect of sub-question 9(a), maximum of 3 marks

in respect of question No. 9(b) and a maximum of 3 marks in respect of 9(c) i.e. total 10 out of 10. It was considering the worth of the above answers

as not enough to have granted the full marks, that the Chief Examiner reduced it by $\frac{1}{2}$ marks each in respect of question No. 9(b) and 9(c),

respectively. Presumably, instead of reducing 1 mark in respect of question No. 9(a) (allotted full 4 marks), noting was made as to reduction of 1 mark

against the answer in respect of question No. 3, which was a single question carrying 10 marks, where the Appellant/Petitioner obtained only 4 marks.

However, while making the entries as to deduction in respect of questions No. 9 and 10, as it appears from the face/tabulation sheet of Annexure P/6,

2 marks have been reduced for question No. 9 and 2 marks for question No. 10, thus, reducing the total from 57 to 53 out of 100. The 'net result' does

not tilt the balance in any manner and the petitioner cannot be heard to say that

he is entitled to have the 'full marks' in respect of the descriptive type questions concerned in relation to subject paper 'Law', as answered by him; unlike in the case of 'one word/one choice answer' as in the case of multiple type or objective type questions. The judicial scrutiny of this Court is only to ascertain whether any arbitrary or malafide course of action has been pursued by the PSC and if not, no relief can be extended in this regard. Considering the pleadings and prayers and the submissions made across the Bar, the answer can only be in the 'negative', in the instant case.

16. In the above facts and circumstances, we are of the view that the verdict passed by the learned Single Judge is correct and proper and it does not warrant any interference. The appeal fails. It is dismissed accordingly.