
(2015) 04 RAJ CK 0023

In the Rajasthan High Court

Case No : Civil Special Appeal Nos. 1695 and 1696/2014 and Civil Special Appeal (Writ) Nos. 75, 121, 122, 123, 124, 131 and 132/2015

Chandu Parihar and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2015) 3 RLW 2599 : (2015) 4 SCT 112

Hon'ble Judges : Jaishree Thakur, J.;Sunil Ambwani, J.

Bench : Division Bench

Advocate : R.N. Mathur, Senior Advocate assisted by Ankur Mathur, for the Appellant; S.P. Sharma, assisted by A.K. Choudhary, Gaurav Sharma, Mahaveer Pareek and Ankit Sethi, Advocates for the Respondent

Final Decision : Allowed

Judgement

Sunil Ambwani, C.J.—These intra-court Special Appeals are directed against the judgment of learned Single Judge dated 26th November, 2014, by which he has interfered with the moderation and scaling method adopted by the Rajasthan Public Service Commission in the selections for Rajasthan Administrative Service-2012 and has given several directions, on his own perceptions in applying the scaling method and examining the answer books and preparing the results of the RAS Examination 2012. The directions given by learned Single Judge are as follows:--

"60. In the aforesaid view of the matter, the writ petitions are disposed of with the following directions:--

(i) That the examination of RAS/RTS held for 2012 in pursuance of Advertisement dated 6/2/2012 under the Rules of 1999 are saved and are not set aside.

(ii) The cryptic and not well founded decision of the RPSC dated 24/1/2014 to

apply the scaling method to the present examination of RAS/RTS for 2012 is quashed and set aside.

(iii) The result of the said examination of 2012 declared by the RPSC on 27/1/2014 is also quashed and set aside.

(iv) The said examination of the year 2012 shall be deemed to have been taken and completed now and with the stage of raw marks available, the respondent RPSC will be free to now constitute an Expert Committee of 7 or 9 members including experts in statistics and academicians with the Chairman of RPSC and undertake the requisite and mandatory study and assessment of the need and requirement to invoke and apply the scaling and moderation techniques to the present RAS/RTS examination of 2012 also and the minutes and resolution and relevant material about subject wise determination of standard mean and standard deviation on the basis of which they arrive at such decision shall be maintained and preserved by them for scrutiny by the courts of law, in case any such occasion so arises.

(v) In case the RPSC now decides not to invoke and apply the scaling method to the present examination of the year 2012, they will be free to immediately declare the result on the basis of raw marks already published by them.

(vi) In case the RPSC now decides after the aforesaid prerequisite study into the requirement and need to invoke and apply these moderation method for compulsory papers and scaling method to optional subjects to this examination, then the said exercise should be undertaken and completed within the period of three months from today and, thereafter, the results may be declared and published giving both the raw marks and the moderated marks for compulsory papers and scaled marks for the optional papers in the mark sheets to be published by them for all the candidates.

(vii) That in case the difference or variance of marks on account of moderation and scaling method is beyond 10% of the maximum marks in a particular paper, then such scaled or moderated marks beyond 10% of the maximum marks shall be ignored and the scaling or moderation to the extent of 10% of maximum marks for that paper can only be taken into consideration and in such case, the scaled or moderated marks with 10% cap, as explained above, shall be treated as the finally awarded marks but the ignored range of marks on account of such cap or limitation need not be published and the RPSC may only maintain a record thereof.

61. With the aforesaid observations and directions, the present writ petitions are disposed of with no order as to costs.

Sd/- (DR. VINEET KOTHARI), J."

2. The results of the written examinations were declared and the interviews were in progress when the impugned judgment was delivered on 26th November, 2014, causing uncertainty with the examining body and the candidates, who had

appeared and were declared successful in the written examinations. In D.B. Civil Special Appeal No. 1695/2014 Chandu Parihar and anr. v. State of Rajasthan and ors. alongwith connected D.B. Civil Special Appeal No. 1696/2014 Lalit Kumar Bishnoi and ors. v. State of Rajasthan, a Division Bench of this Court passed an order on 11.12.2014, staying the effect and operation of the order dated 26.11.2014. It was made open to the Rajasthan Public Service Commission to take the interviews, declare the results and the State Government to give appointment, subject to the final decision of the Special Appeals.

3. The petitioners filed Petition (s) for Special Leave to Appeal (C) No. 2034-2035/2015 against the order dated 11.12.2014, in which on 19.1.2015, the Hon"ble Supreme Court while issuing notices passed an order for listing the matter on 27th January, 2015 and till then, granted an interim stay of the operation of the order (interim order dated 11.12.2014). On 27.1.2015, the Supreme Court granted leave and passed a final order as follows:--

"Heard counsel for the parties.

Applications for intervention are allowed.

Leave granted.

These appeals by way of special leave are directed against the interim order of the Division Bench of the High Court pending disposal of LPAs. The issue pertains to the appointment of various posts in State Subordinate Service called as RAS i.e. Rajasthan Administrative Service and allied posts. The grievances of the appellants are that by way of a detailed judgment the learned Single Judge found that the process of scaling down of marks for the compulsory subjects was impermissible in law, which is the subject matter of challenge at the instance of the State Government, pending before the Division Bench. Pending consideration, the Division Bench permitted Respondent No. 2 to hold the interviews and declare the results and also permitted Respondent No. 1 to issue orders of appointment. According to the appellants, if such a course is adopted by Respondent No. 1/State as well as Respondent No. 2/State Public Service Commission, it would seriously impinge the rights of the appellants whose marks in the process of scaling down materially got reduced and thereby their chance of participating in the interview was dwindled.

We find force in the submission of the learned counsel for the appellants. However, Mr. P.S. Narsimhan, learned Additional Solicitor General appearing for Respondent No. 2, brought to our notice that the posts which are sought to be filled up are about 1200 in number and that due to dearth of personnel the State Administration is seriously affected, that the process of holding the interview has already been commenced by Respondent No. 2 and that it has to interview not less than 3000 candidates, which would take considerable length of time and, therefore, the continuation of the interim order of this Court dated 19.1.2015 would cause serious dislocation in the management of the Office of Respondent No. 2 relating to the process of recruitment to the administrative service of the

State.

Considering the stand of the respondents, we are of the view that the rights of both the parties can be substantially taken care of by permitting Respondent No. 2 to hold the interviews but not to prepare the ranking list and finalize the selection, pending decision of the LPAs by the Division Bench of the High Court. They can always prepare the final select list and also issue orders of appointment, after the appeals pending before the Division Bench are disposed of and the order of the Division Bench goes in their favour.

We, therefore, dispose of these appeals by modifying that part of the order of the Division Bench contained in paragraph 19 to the effect that the order of the learned Single Judge can remain stayed. State Government and Respondent No. 2/State Public Service Commission can hold the interviews but not to prepare the select list, pending disposal of the LPAs by the Division Bench of the High Court. Depending upon the outcome of the disposal of the LPAs, the State Public Service Commission can proceed further either by preparing the select list to enable the Respondent No. 1 to issue the orders of appointments or to proceed in accordance with any decision or direction that may be issued by the Division Bench as regards the manner in which the process of selection should be proceeded.

In the light of the seriousness of the issue involved, namely, the administrative exigency in the matter of appointment to various posts of the Rajasthan Administrative Service, the appeals itself should be taken up for hearing immediately and disposed of within two months from the date of receipt of a copy of this order. We, therefore, request the Division Bench of the High Court to dispose of the appeals themselves expeditiously preferably within two months from the date of production of a copy of this order.

Needless to state that all those petitioners in the writ petitions should be allowed to be impleaded as party respondents in the LPAs and to be heard before disposing of the appeals.

These appeals are disposed of on the above terms.

The dismissal of SLP(C) Nos. 35410-35411/2014 shall have no impact on the orders now passed by us."

4. The interviews are still in progress. We are told that it will take about four to six weeks" to complete the interviews and thus, we finally heard the matter, in compliance of the directions of Hon"ble Supreme Court.

5. In the earlier writ petition in respect of the same examination, namely, RAS Examination, 2012, learned Single Judge vide his order dated 3.3.2014 had quashed the results declared by the Rajasthan Public Service Commission (for short, "the RPSC") of the examinations on 27.1.2014, holding that the scaling method could not be applied by the RPSC for evaluation of the marks of the candidates, in view of the decision of Hon"ble Supreme Court in Sanjay Singh

and Another Vs. U.P. Public Service Commission, Allahabad and Another, and directed the Commission to declare the results afresh on the basis of raw or actual marks obtained by the candidates and not on the scaled marks. Learned Single Judge also held that the increased vacancies communicated to the RPSC by the State Government vide its communication dated 11.10.2012 shall not be included in the present selection, as prior to the communication, an amendment was made in the relevant Rules of 1999 vide Notification dated 31.7.2012. The additional vacancies could only be filled up as per amended Rules and not as per the unamended Rules operating prior to the amendment dated 31.7.2012.

6. A Division Bench of this Court heard and allowed D.B. Civil Special Appeal (Writ) No. 513/2014 Rajasthan Public Service Commission v. Bhanwarlal and ors. vide its judgment dated 28.7.2014. It held that the judgment of Hon'ble Supreme Court in Sanjay Singh's case (supra) did not completely ban the application of scaling method for evaluation of the marks and though such method could be applied in certain situations, the same was fraught with certain pitfalls and discrepancies and since these were not examined by learned Single Judge earlier, the matter was required to be remanded. The Division Bench followed the previous Division Bench judgment of this Court in Jai Singh and ors. v. State of Rajasthan (2011(2) WLC Raj. 46) concerning the RAS Examination of 2007 held under the provisions of the Rajasthan State and Subordinate Services (Direct Recruitment by Combined Competitive Examination) Rules, 1999 (for short, "the Rules of 1999"), in which application of scaling method was approved.

7. Under the Rules of 1999, the RAS/RTS Examination is provided to be held in three phases, namely, preliminary examination of objective type; main examination in which the eligible candidates, who have qualified the preliminary examination, are allowed to appear; and interviews in which the candidates three times the number of vacancies are called for interviews and in which separate marks are allocated. The final results are prepared by combining the marks of the main examination and the interviews by preparing a merit for making recommendations to the State Government for appointment.

8. Before proceeding to consider the challenge to the judgment of learned Single Judge, in which he has found several deficiencies in the scaling method adopted by the RPSC in the RAS Examination, 2012, it will be useful to refer to the judgments of the Division Benches of this Court, which have approved the applicability of scaling method consistently in the RAS Examinations since 1993, and have upheld the rational evaluation of results by applying scaling method in a multiple choice of subjects in RAS Examinations. In Mahesh Kumar Khandelwal and Ors. v. State of Rajasthan and Ors. (1994(1) RLW 533), Rajasthan Public Service Commission Vs. Ramesh Chandra Pilwal, , Manish Sinsinwar and Ors. v. Rajasthan Public Service Commission and anr. (D.B. Civil Writ Petition (PIL) No. 268/2004) decided on 14.6.2004 and Jai Singh and ors. v. State of Rajasthan and anr. (supra), the scaling method adopted by the RPSC in RAS Examinations were upheld. The law in this regard was settled and crystallized by the Courts as

aforesaid approving the scaling system adopted by the RPSC in the RAS Examinations since the year 1993. In Jai Singh's case, the Division Bench had held as follows:--

"35. The object to be achieved was to bring all the candidates opting optional subjects to a common score. Object is not to test the subject proficiency of the candidate, but is to observe general ability of a candidate. Thus, the scaling has been applied uniformly in optional subjects, without any deviation.

36. Learned counsel submitted that the Commission placed all the subjects on the same scale by applying scaling formula not only to optional subjects, but also to the compulsory subjects, which resulted in scaling of marks even for those subjects which could not be offered in combination. Similarly, scaling with reference to marks obtained in Statistics and Mathematics has also been applied, which could not have been done otherwise. Management and Public Administration also could not have been applied at the same scale as that combination was not allowed. The submission is not at all tenable as when there are optional subjects, even when they could not be offered in group together in order to arrive at just mean of standard deviation of all subjects, it was necessary to resort to the method of scaling even in such papers. Scaling could not have been left out as suggested in a group of some papers which cannot be offered at same time, there has to be scaling of all optional subjects, otherwise subjects which have variations could not have been scaled and that would have resulted into anomalies. Scaling has to be applied equally to all cases and in case it was not done would have resulted into discriminatory action violating the principles enshrined under Article 14 of the Constitution and the scaling would have been rendered illegal and arbitrary."

9. Defending the adoption of scaling method, an additional affidavit was filed by the Rajasthan Public Service Commission before the Division Bench in D.B. Civil Special Appeal (Writ) No. 513/2014, which was allowed and the matter was remanded to learned Single Judge. In the additional affidavit, it was clearly stated that considering the variation of marks in the compulsory papers, the Addl. Head Examiner decided to make a random inspection of 15% answer sheets and it was decided to adopt the method of subject-wise scaling for the optional papers by the statistical analysis which was programmed by the computer. Paras-6 to 10 of the additional affidavit are quoted below:--

"6. That to minimize the examiner variability and to ensure uniformity for the evaluation of the scripts at the time of evaluation, upon 5-6 examiners (E-1), an Addl. Head Examiner (E-2) was appointed. Over all one Head Examiner for each centre was appointed. To achieve uniformity in evaluation, a meeting of Head Examiner with all Addl. Head Examiner and Examiner was held soon after assembling at the respective valuation centres. In pursuance of the guidelines of the RPSC, they discussed thoroughly the question paper, question wise answer parameters and about the weightage to be given to various aspects of the answers to give marks, looking to the clarity in approach and originality of the

fundamental ideas, and in the light of the discussion they arrived on the norms to minimize the variation in assigning marks.

In spite of the norms agreed, many examiners may tend to deviate, by their strictness or liberalness or carelessness during the courses of evaluation. Therefore, to supervise and minimize such tendency Addl. Head Examiner (E-2) made a random inspection of the answer scripts to the extent of about 15% and reevaluated them and by doing so, if marks increased or decreased, they discussed it with the respective examiner's (E-1) about the variation of the marks, to minimize the further variability in remaining answer scripts. Head Examiner inspected the answer scripts randomly, where in difference of more than 5% in marks awarded by E-1 and E-2 was observed. The evaluation process was adopted by the RPSC to minimize the examiner variability on the respective centres, looking into the large number of the examiners as well as the scripts. It was a prerequisite of scaling technique, to keep the normal distribution. Examiners were directed to use Red Ink in column E-1 of the script, E-2 was directed to use Green Ink in Column E-2 and Head Examiner was directed to use Black Ink. On this juncture, it is pertinent to mention here that despite of the all efforts as mentioned above, examiner variability was widely available, amongst the examiner on each center as well as amongst the four different Evaluation centres.

7. That after evaluation of the answer scripts, on receiving the answer scripts from all four centres, RPSC make it assured that the marks obtained were got checked mathematically so as to ensure that the marks were written correctly on the Cover Page by the examiners while checking the Answer-books completely (meaning thereby no answer kept unchecked). There after all statistical data's regarding scripts, total marks, examiner data, and subject wise data were entered into the computer.

8. That to minimize the examiner variability as well as the subject variability between the heterogeneous subjects, commission decided to adopt the same scaling technique as being adopted in earlier such exams and upheld in Jai Singh's case. It will be pertinent to mention here that for four compulsory papers, more than 500 examiners were appointed to assess the copies of the candidates at four different centers, in such a situation, where large number of examiner evaluated the answer scripts related to a subject, a large number of examiner variability would be in existence, therefore examiner wise scaling technique was adopted. That in optional paper candidates adopted different 37 heterogeneous subjects and therefore to minimize the subject wise variability, subject wise scaling and examiner wise scaling technique was adopted. The scaling technique adopted, is described herewith as under:--

A. That after valuation process valued marks in the scripts were equated as raw marks.

B. That answer scripts having "0" marks were not included in the process of

scaling.

C. That for each subject examiner wise statistics analysis was prepared on computer by the programme. Thereafter number of scripts, mean of examiners, standard deviation of each examiner, overall mean and overall standard deviation have been derived by the mathematical calculations.

D. That in a case where copies were evaluated by more than one examiner scaling has been done by way of computer programme adopting a linear formula which is reproduced as under:--

$$S = M + (X_i - X) * (e / e_i)$$

S = Scaled marks

M = Overall Mean

X_i = Raw Marks

X = Examiner/Subject Mean e = Overall Standard Deviation

e_i = Examiner/Subject Standard Deviation.

E. That examiner wise scaling has not been adopted in those copies which were examined by a single examiner.

F. That after examiner wise scaling, subject wise scaling has been adopted for the optional papers by the statistical analysis which was programmed by the computer. Under this statistical analysis, number of scripts of each subjects, mean of each subject, standard deviation of each subject and over all standard deviation were derived by the mathematical calculation thereafter subject wise scaling has been done on the basis of above mentioned linear formula by the computer.

9. That it will be pertinent to mention here that in compulsory paper only examiner wise scaling technique has been adopted and for four optional papers, first of all examiner wise scaling and thereafter, subject wise scaling has been adopted and on the basis of scaled marks result was declared. That scaling technique applied by the commission in R.A.S. and Subordinate Service Examination as received approval of this Hon'ble Court right from the year 1993 starting from the case of Mahesh Kumar Khandelwal and 16 others v. State of Rajasthan and others 1994(1) RLR 533, Rajasthan Public Service Commission Vs. Ramesh Chandra Pilwal, and in the matter of Manish Sinsinwar and Others v. Rajasthan Public Service Commission and Anr. (D.B. Civil Writ Petition No. 368/2004 decided on 14.6.2004) and lastly in the case of Jai Singh and Ors., reported in 2011 (2) WLC 46. The law was well settled and duly crystallized by atleast five Division Bench Judgments. Technique of scaling has been adopted by the appellant commission which has been done for all the candidates.

10. That the scaled marks were finally compiled for final result and merit was prepared on the basis of the scaled marks of all the subjects. On the basis of

above procedure, result of examination 2012 was declared by RPSC on 27.01.2014 and 3165 candidates were declared successful for interview on the basis of the result declared."

10. It is submitted by learned counsel appearing for the Rajasthan Public Service Commission that the scaling method has been consistently upheld by the Division Benches of this Court to be applicable to the RAS Examinations, with reference to the Rules of 1999. There was no amendment in the Rules nor any different method or methodology was adopted by the RPSC to interfere in the matter. Learned Single Judge has relied on the stray cases cited before him and has decided the case on his own perceptions. In view of the settled principles of "stare decisis", he was bound by the judgments delivered by two successive Division Benches of this Court including the last in Jai Singh's case (supra) in which the application of scaling system in RAS Examination by RPSC was upheld. Learned Single Judge has applied his own tests and relied on his own reasoning in holding that adoption of scaling method has resulted into arbitrariness and illegality.

11. It is submitted that the observations made in paragraph 51 of the impugned judgment that the RPSC had not produced any material before the Court at any point of time, either in the earlier round of litigation before learned Single Judge or before the Division Bench or even now while arguing the matter before the Court in third round and has not produced any minutes or resolution or papers to establish that it had undertaken any kind of study and exercise into the relevant material while deciding to adopt and apply the scaling method to the RAS/RTS Examination, 2012, completely overlooks the additional affidavit filed in D.B. Civil Special Appeal (Writ) No. 513/2014, in which the principle was explained and it was argued that adoption of scaling method does not require taking of a decision fresh for each examination when there was no amendment or change in the method of examination and that the method of scaling has been consistently approved by judicial pronouncements and more recently in Jai Singh's case (supra).

12. It is submitted that learned Single Judge has failed to appreciate that adoption of method of scaling in the examinations is within the powers of the Rajasthan Public Service Commission and when the applicability of scaling method in the same circumstances was upheld in Jai Singh's case (supra), there was no necessity to take a fresh decision, as there was no varying factors to review or to reconsider the decision. The observation made by learned Single Judge that the decision of RPSC to apply scaling method three days before the declaration of result was arbitrary, was not justified.

13. It is submitted that in Sanjay Singh's case (supra), the Supreme Court had only distinguished and commented upon the applicability of scaling method in the examination in which there was no subject variability. The decision in Sanjay Singh's case (supra) was rendered in a case of the judicial service examination held by the UP Public Service Commission in which all the question papers for the

combination were common and thus, it was held that whereas examiner moderation may be applied for removing the hawk-dove effect, the scaling in view of the absence of subject variability could not have been applied.

14. It is submitted by learned counsel for the RPSC that in the present case, as observed by learned Single Judge, there was option of as many as 24 subjects, out of which, the candidates have to opt for two optional papers carrying 200 marks. The 24 subjects relate to Science, Economics, Commerce, Law and Engineering and in order to do away with the subject variability, the scaling method was adopted, which has been approved by the judicial pronouncements by this Court including in Jai Singh's case as well as by the Supreme Court in Sanjay Singh's case (supra).

15. Learned counsel appearing for the RPSC submits that the optional subjects in Section-B of Schedule III have since been done away by the Rajasthan State and Subordinate Services (Direct Recruitment by Combined Competitive Examination) (Amendment) Rules, 2012 and that the RAS Examination 2012 will be the last examination in which the candidates were given the option to choose 2 out of 24 subjects. After the amendment in 2012, the examinees will not have a choice and the main examination with compulsory papers have been retained. The amendment was to do away with the applicability of the scaling method to the optional papers in the said examination conducted under the unamended Rules.

16. It is submitted that after the amendment made in the year 2012, the applicability of scaling method may not arise and thus, the RAS Examination, 2012, which is the subject matter of these Special Appeals, will be the last of the examination in which the scaling method has been adopted to avoid the subject variability of the marks secured by the candidates, which has been approved by the Division Bench of this Court in Jai Singh's case (supra).

17. Learned counsel for the RPSC submits that learned Single Judge has not correctly appreciated the judgment in Sanjay Singh's case (supra) and has been swayed away by the variation of marks, which is the result of applying the scaling method to set off the arbitrariness.

18. It is submitted that learned Single Judge has not given any satisfactory reason in issuing direction that in case of difference or variance of marks on account of moderation and scaling method, the moderated or scaled marks beyond 10% of the maximum marks shall be ignored. There was absolutely no basis whatsoever to suggest a cap of 10% on the variation of marks on the adoption of scaling method. The idea of 10% cap was taken out of some comments made by an expert, who was not concerned with the subject examination. It is submitted that cases are to be decided on the basis of law and the precedents and not by the perception of a Judge, which he may have harboured on an opinion gathered from out of study conducted by an expert, which was not examined or valued by the examining body.

19. Mr. S.P. Sharma, learned counsel for the respondents, who did not succeed in the written examination, submits that though in Jai Singh's case (supra), the applicability of scaling was approved by the Division Bench of this Court, in Sanjay Singh's case (supra), the applicability of scaling in compulsory subjects, where there was no subject variability was not approved. No independent data was produced before the Court to show that the moderation method adopted for compulsory papers was to undo the effect of examiner variability and the scaling method was adopted to do away with the subject variability. The Sanjay Singh's case was not considered in Jai Singh's case and that in Sanjay Singh's case, the Supreme Court had put in a word of caution in applying the moderation and scaling to examinations, unless its effect has been studied by the examining body.

20. Shri S.P. Sharma submits that some of the cases have been transferred from Jaipur Bench to Jodhpur in which there was relevant material, which is required to be taken into consideration. He submits that in the advertisement issued for RAS Examination, 2012, there was no mention for adopting the scaling method. Clause 19 of the procedure for examination adopted by the RPSC also does not prescribe for adoption of scaling method. A wide and absurd variation has resulted from applying the scaling method in the examination, in which there were both compulsory and optional papers and he has relied on eight instances in which there was wide difference between raw marks and scaled marks. The RPSC has, after taking into consideration such variation, done away with the scaling by amending the Schedule of the Rules of 1999. The amendment made on 31st July, 2012 be applied to the subsequent examination as it would take away the optional subjects and thereby giving up scaling method. The State Government has done away with the scaling method and thus, the same method should not have been applied to the subject matter of advertisement dated 6.2.2012.

21. Learned counsel for the respondents submits that moderation and scaling are two different methods adopted in the examinations. Whereas the moderation is adopted to do away with the examiner variability, the scaling is adopted for reducing the effect of subject variability. Both these matters, however, should be applied after conscious application of mind to the method of examination. In the present case, the examinations are held under the Rules of 1999, which is a successor of Rules of 1962. There is no prescription in the Rules for applying the scaling method in the RAS Examination, whereas in Sanjay Singh's case, there were Rules for applying the moderation and scaling.

22. It is submitted that the additional affidavit was submitted by the RPSC in the previous Special Appeal, which was not on record before learned Single Judge and thus, the observation of learned Single Judge that no material has been produced, justifies the conclusion drawn by him.

23. Learned counsel for the respondents has also relied on the judgments of Supreme Court in Sujasha Mukherji v. The Hon'ble High Court of Calcutta and ors. (2015(2) Scale 563)ENDLAWFINDER in which the Supreme Court directed

reconsideration of the scaling method. He has also relied on the judgment of the Supreme Court in Prashant Ramesh Chakkarwar Vs. Union Public Service Commission and Others, .

24. We have examined the pleadings and the materials placed before us as well as considered the arguments for and against the applicability of scaling method in RAS Examination.

25. We are of the view that learned Single Judge has committed gross error in taking a view different from Jai Singh's case (supra) in which the applicability of scaling method in RAS Examination was upheld, following the judgments in Mahesh Kumar Khandelwal and Ors. v. State of Rajasthan and Ors. (supra) rendered in the year 1994, Rajasthan Public Service Commission v. Ramesh Chandra Pilwal (supra) rendered in the year 1997, Manish Sinsinwar and Ors. v. Rajasthan Public Service Commission and anr. (D.B. Civil Writ Petition (PIL) No. 268/2004) decided on 14.6.2004. All the four Division Benches of this Court have consistently upheld the scaling method adopted by the RPSC in RAS Examination held under the Rules of 1999. The same method was adopted in which the scaled marks were finally compiled for final results and merit was prepared for calling candidates for interview, based on the scaled marks of all subjects. The results were declared by RPSC on 27.1.2014 of 3165 candidates, to call for interview.

26. The principle of "stare decisis" (to stand by decided cases) is as old as the establishment of the courts. It is derived from legal maxim "stare decisis et non quieta movere". It is best to adhere to decisions and not to disturb questions, which have been put at rest. When a point of law has been settled, it forms a precedent which is not to be ordinarily departed afterwards. When the same point comes for consideration again in litigation, the scales of justice must be kept even and steady. A principle of law should not change from case to case. The judgments are to be altered or changed in accordance with the individual opinions or private sentiments of the judges. The primary duty of the judiciary is to maintain rule of law. The law does not change with the opinion of the judges. In a given case the opinion of the judges may change, the principles of law however must remain on surer foundations until there is any change in legislation, or the society needs change.

27. We do not find that there was any change in the circumstances or change in the adoption of scaling system. The methodology was the same as it was adopted in Jai Singh's case. We have also examined the judgment of the Supreme Court in Sanjay Singh's case (supra) and do not find that there was any change in law, recommended by the Supreme Court in adopting the scaling system. The Supreme Court has observed that scaling results into variation of the marks, which by itself do not make the adoption of scaling system to be arbitrary or illegal or irrational. The scaling method was not adopted in a case where examinee has secured "0" marks and there was no question of giving any examinee, who has secured "0" marks, higher marks by adopting scaling method. In Sanjay Singh's case, the Supreme Court held as follows:--

"23. When a large number of candidates appear for an examination, it is necessary to have uniformity and consistency in valuation of the answer- scripts. Where the number of candidates taking the examination are limited and only one examiner (preferably the paper-setter himself) evaluates the answer-scripts, it is to be assumed that there will be uniformity in the valuation. But where a large number of candidates take the examination, it will not be possible to get all the answer-scripts evaluated by the same examiner. It, therefore, becomes necessary to distribute the answer-scripts among several examiners for valuation with the paper-setter (or other senior person) acting as the Head Examiner. When more than one examiner evaluate the answer-scripts relating to a subject, the subjectivity of the respective examiner will creep into the marks awarded by him to the answer- scripts allotted to him for valuation. Each examiner will apply his own yardstick to assess the answer-scripts. Inevitably therefore, even when experienced examiners receive equal batches of answer scripts, there is difference in average marks and the range of marks awarded, thereby affecting the merit of individual candidates. This apart, there is "Hawk- Dove" effect. Some examiners are liberal in valuation and tend to award more marks. Some examiners are strict and tend to give less marks. Some may be moderate and balanced in awarding marks. Even among those who are liberal or those who are strict, there may be variance in the degree of strictness or liberality. This means that if the same answer-script is given to different examiners, there is all likelihood of different marks being assigned. If a very well written answer-script goes to a strict examiner and a mediocre answer-script goes to a liberal examiner, the mediocre answer-script may be awarded more marks than the excellent answer-script. In other words, there is "reduced valuation" by a strict examiner and "enhanced valuation" by a liberal examiner. This is known as "examiner variability" or "Hawk-Dove effect". Therefore, there is a need to evolve a procedure to ensure uniformity inter se the Examiners so that the effect of "examiner subjectivity" or "examiner variability" is minimised. The procedure adopted to reduce examiner subjectivity or variability is known as moderation. The classic method of moderation is as follows:

(i) The paper-setter of the subject normally acts as the Head Examiner for the subject. He is selected from amongst senior academicians/scholars/senior civil servants/Judges. Where the case of a large number of candidates, more than one examiner is appointed and each of them is allotted around 300 answer-scripts for valuation.

(ii) To achieve uniformity in valuation, where more than one examiner is involved, a meeting of the Head Examiner with all the examiners is held soon after the examination. They discuss thoroughly the question paper, the possible answers and the weightage to be given to various aspects of the answers. They also carry out a sample valuation in the light of their discussions. The sample valuation of scripts by each of them is reviewed by the Head Examiner and variations in assigning marks are further discussed. After such discussions, a consensus is arrived at in regard to the norms of valuation to be adopted. On

that basis, the examiners are required to complete the valuation of answer scripts. But this by itself, does not bring about uniformity of assessment inter se the examiners. In spite of the norms agreed, many examiners tend to deviate from the expected or agreed norms, as their caution is overtaken by their propensity for strictness or liberality or eroticism or carelessness during the course of valuation. Therefore, certain further corrective steps become necessary.

(iii) After the valuation is completed by the examiners, the Head Examiner conducts a random sample survey of the corrected answer scripts to verify whether the norms evolved in the meetings of examiner have actually been followed by the examiners. The process of random sampling usually consists of scrutiny of some top level answer scripts and some answer books selected at random from the batches of answer scripts valued by each examiner. The top level answer books of each examiner are revalued by the Head Examiner who carries out such corrections or alterations in the award of marks as he, in his judgment, considers best, to achieve uniformity. (For this purpose, if necessary certain statistics like distribution of candidates in various marks ranges, the average percentage of marks, the highest and lowest award of marks etc. may also be prepared in respect of the valuation of each examiner.)

(iv) After ascertaining or assessing the standards adopted by each examiner, the Head Examiner may confirm the award of marks without any change if the examiner has followed the agreed norms, or suggest upward or downward moderation, the quantum of moderation varying according to the degree of liberality or strictness in marking. In regard to the top level answer books revalued by the Head Examiner, his award of marks is accepted as final. As regards the other answer books below the top level, to achieve maximum measure of uniformity inter se the examiners, the awards are moderated as per the recommendations made by the Head Examiner.

(v) If in the opinion of the Head Examiner there has been erratic or careless marking by any examiner, for which it is not feasible to have any standard moderation, the answer scripts valued by such examiner are revalued either by the Head Examiner or any other Examiner who is found to have followed the agreed norms.

(vi) Where the number of candidates is very large and the examiners are numerous, it may be difficult for one Head Examiner to assess the work of all the Examiners. In such a situation, one more level of Examiners is introduced. For every ten or twenty examiners, there will be a Head Examiner who checks the random samples as above. The work of the Head Examiners, in turn, is checked by a Chief Examiner to ensure proper results."

The above procedure of "moderation" would bring in considerable uniformity and consistency. It should be noted that absolute uniformity or consistency in valuation is impossible to achieve where there are several examiners and the effort is only to achieve maximum uniformity.

24. In the Judicial Service Examination, the candidates were required to take the examination in respect of the all five subjects and the candidates did not have any option in regard to the subjects. In such a situation, moderation appears to be an ideal solution. But there are examinations which have a competitive situation where candidates have the option of selecting one or few among a variety of heterogeneous subjects and the number of students taking different options also vary and it becomes necessary to prepare a common merit list in respect of such candidates. Let us assume that some candidates take Mathematics as an optional subject and some take English as the optional subject. It is well-recognised that a mark of 70 out of 100 in mathematics does not mean the same thing as 70 out of 100 in English. In English 70 out of 100 may indicate to an outstanding student whereas in Mathematics, 70 out of 100 may merely indicate an average student. Some optional subjects may be very easy, when compared to others, resulting in wide disparity in the marks secured by equally capable students. In such a situation, candidates who have opted for the easier subjects may steal an advantage over those who opted for difficult subjects. There is another possibility. The paper setters in regard to some optional subjects may set questions which are comparatively easier to answer when compared some paper setters in other subjects who set tougher questions difficult to answer. This may happens when for example, in a Civil Service examination, where Physics and Chemistry are optional papers, examiner "A" sets a paper in Physics appropriate to a degree level and examiner "B" sets a paper in Chemistry appropriate for matriculate level. In view of these peculiarities, there is a need to bring the assessment or valuation to a common scale so that the inter se merit of candidates who have opted for different subjects, can be ascertained. The moderation procedure referred to in the earlier para will solve only the problem of examiner variability, where the examiners are many, but valuation of answer scripts is in respect of a single subject. Moderation is no answer where the problem is to find inter se merit across several subjects, that is, where candidates take examination in different subjects. To solve the problem of inter se merit across different subjects, statistical experts have evolved a method known as scaling, that is creation of scaled score. Scaling places the scores from different tests or test forms on to a common scale. There are different methods of statistical scoring. Standard score method, linear standard score method, normalized equipercentile method are some of the recognized methods for scaling.

25. A. Edwin Harper Jr. and V Vidya Sagar Misra in their publication "Research on Examinations in India" have tried to explain and define scaling. We may usefully borrow the same. A degree "Fahrenheit" is different from a degree "Centigrade". Though both express temperature in degrees, the "degree" is different for the two scales. What is 40 Degrees in Centigrade scale is 104 Degrees in Fahrenheit scale. Similarly, when marks are assigned to answer-scripts in different papers, say by Examiner "A" in Geometry and Examiner "B" in History, the meaning or value of the "mark" is different. Scaling is the process which brings the mark

awarded by Examiner "A" in regard to Geometry scale and the mark awarded by Examiner "B" in regard to History scale, to a common scale. Scaling is the exercise of putting the marks which are the results of different scales adopted in different subjects by different examiners into a common scale so as to permit comparison of inter se merit. By this exercise, the raw marks awarded by the examiner in different subjects is converted to a "score" on a common scale by applying a statistical formula. The "raw marks" when converted to a common scale are known as the "scaled marks". Scaling process, whereby raw marks in different subjects are adjusted to a common scale, is a recognized method of ensuring uniformity inter se among the candidates who have taken examinations in different subjects, as, for example, the Civil Services Examination.

26. The Union Public Service Commission ("UPSC" for short) conducts the largest number of examinations providing choice of subjects. When assessing inter se merit, it takes recourse to scaling only in civil service preliminary examination where candidates have the choice to opt for any one paper out of 23 optional papers and where the question papers are of objective type and the answer scripts are evaluated by computerized/scanners. In regard to compulsory papers which are of descriptive (conventional) type, valuation is done manually and scaling is not resorted to. Like UPSC, most examining authorities appear to take the view that moderation is the appropriate method to bring about uniformity in valuation where several examiners manually evaluate answer-scripts of descriptive/conventional type question papers in regard to same subject; and that scaling should be resorted to only where a common merit list has to be prepared in regard to candidates who have taken examination of different subjects, in pursuance of an option given to them.

27. But some Examining Authorities, like the Commission are of the view that scaling can be used, not only where there is a need to find a common base across different subjects (that is bringing the performance in different subjects to a common scale), but also as an alternative to moderation, to reduce examiner variability (that is where different examiners evaluate answer scripts relating to the same subject)."

(emphasis supplied)

28. We have examined the judgment in *Sujasha Mukherji v. The Hon'ble High Court of Calcutta and ors.* (supra), in which the Supreme Court followed the judgment in *Sanjay Singh's case* (supra) as the matter in issue before the Supreme Court was related to the written test for recruitment to the cadre of the District Judge (Entry Level) through Direct Recruitment from the Bar-2012. The Supreme Court was concerned with the result of the appellant and while commenting upon the method of moderation in which the marks obtained in compulsory paper No. II were reduced from 55 to 10 directed the High Court to interview the candidate. It found that the deduction of as many as 18 marks was not logical or justified as a consequence of moderation. Following *Sanjay Singh's case*, the Supreme Court held that a moderator should give a long and serious

thought to the correctness of his assessment on the realization he finds that the top most candidate stands disqualified by the purported exercise of moderation. By deducting 18 marks or even 15 marks, the appellant, who had scored the highest marks before moderation and the second highest marks even after moderation, could not have been disqualified to be called for interview. The Supreme Court found that on the results obtained by way of moderation in examination for District Judge (Entry Level) through Direct Recruitment from the Bar, 2012, the fundamental predication of the paragraph 23(i) and (ii) of Sanjay Singh's case did not exist. Even if that were to be overlooked, no meeting was convened in which the examiners were present so as to discuss the substance of the questions and reach a consensus as regards suitable/model answers thereto.

29. In Prashant Ramesh Chakkarwar v. Union Public Service Commission and ors. (supra), the method of moderation approved in Sanjay Singh's case was examined and it was held that in the absence of evidence to substantiate allegations pertaining to resort to scaling of marks to deprive more meritorious candidates of their legitimate right to be selected, such contention was rejected. The Supreme Court held that mere fact that some candidates, who had cleared preliminary examination could not pass main examination, cannot lead to an inference that method of moderation adopted by the Commission was faulty. The Supreme Court did not find any error in the method in which the examinations were held. In paragraph 14 of the judgment, the Supreme Court observed that in Sanjay Singh's case, the Court was called upon to decide the legality of the method of scaling adopted by the UP Public Service Commission for recruitment to the posts of Civil Judge (Junior Division) and has observed that "we cannot accept the contention of the petitioner that the words "marks awarded" or "marks obtained in the written papers" refer only to the actual marks awarded by the examiner. "Valuation" is a process which does not end on marks being awarded by an examiner. Award of marks by the examiner is only one stage of the process of valuation. Moderation when employed by the examining authority, becomes part of the process of valuation and the marks awarded on moderation become the final marks of the candidate. In fact Rule 20(3) specifically refers to the "marks finally awarded to each candidate in the written examination" thereby implying that the marks awarded by the examiner can be altered by moderation". The Supreme Court thereafter, observed in para 23 of the judgment in Sanjay Singh's case that moderation is adopted to avoid examiner variability or hawk-dove effect and recommended for evolving a procedure to ensure uniformity inter se the examiners.

30. In the present case, the scaling method is being adopted by the Rajasthan Public Service Commission for the RAS Examination since 1993 and the same has been approved by four Division Benches of this Court, last of which was Jai Singh's case. In view of the long chain of precedents, it was not open for learned Single Judge to have deviated from the law laid down by the Division Benches of this Court, in breach of the principles of "stare decisis" and in taking a different view on his individual perceptions.

31. The Special Appeals are allowed. The judgment of learned Single Judge dated 26.11.2014 is set aside. A copy of this judgment will be placed in all the connected files.