

(1985) 02 KAR CK 0045

In the Karnataka High Court

Case No : Writ Petition No's. 729 and 749 of 1985

Channarevanna

APPELLANT

Vs

K.P.S.C.

RESPONDENT

Date of Decision : 08-02-1985

Acts Referred:

Karnataka Recruitment of Gazetted Probationers Rules, 1966 — Rule 4

Citation : (1985) ILR (Kar) 2011

Hon'ble Judges : Doddakale Gowda, J

Bench : Single Bench

Advocate : H. Subramanya Jois and Mohandas N. Hegde, for the Appellant; S.V. Narasimban, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

Doddakale Gowda, J.—Though prayer in these two Writ Petitions is slightly at variance both are directed against procedure to be followed or adopted in case of "missing answer scripts" in a competitive examination held by the Karnataka Public Service Commission (hereinafter referred to as "KPSC") for recruitment of (KAS Class I and II) Gazetted Officers in State of Karnataka.

2. Question arises in this form.

Petitioner, in the first case, as a candidate for recruitment of Gazetted Probationers (KAS Class 1 and II) has taken competitive examination held in 1983, the result of which was announced in the year 1984. Interview of successful candidates in written examination is held/being held. Petitioners and few others whose answer scripts in subject-Essay - were missing, were informed that attempt is being made to trace their answer scripts, if not traced, re-examination would be held in so far as those candidates are concerned in that subject vide Endorsement dated 14th December 1984 (Annexure A). By subsequent intimation (Annexure-C) KPSC informed that re-examination on the particular subject viz., Essay will be held on 19th January 1985 as answer scripts

were not traced with registration numbers already assigned. Aggrieved by proposed conduct of re-examination he has presented Writ Petition No. 729 of 1981 seeking three reliefs (i) to direct Respondents to trace Essay answer scripts and cause to be evaluated; (ii) to forbear Commission from subjecting petitioner to re-examination and/or in the alternative to direct Commission to hold fresh written examination for all candidates who had previously taken written examination held in July 1983 in that particular subject - Essay ; and (iii) to direct Respondents not to publish the list of selected candidates till process of conduct of written examination is completed.

Petitioner in second Writ Petition (W.P. No.749 of 1985) is also a candidate for recruitment of Gazetted Probationers (KAS-Class I and II) in the State of Karnataka. His apprehension is that by conducting re-examination in so far as 31 or 39 candidates, as the case may be, whose answer scripts are missing KPSC intend or likely to boost them up as there will not be uniformity of standard or common yard stick to evaluate merit. Hence, prayer in this Writ Petition is to forbear KPSC from holding re-examination in Essay paper and/ or in the alternative to hold fresh examination on this subject for all candidates.

3. Recruitment to KAS - Class I and II is governed by Karnataka Recruitment of Gazetted Probationers (Appointment by competitive Examinations) Rules, 1966 (as amended from time to time) (hereinafter referred to as the "Rules"). As per Rule 4 of the Rules a combined competitive examination for recruitment to one or more of the services or categories of posts mentioned in Schedule I is required to be held at such intervals, and in such manner as set out in Schedule II inviting application in prescribed form, from intending candidates, possessing prescribed minimum qualification. Candidates are required to express their preference to service/ categories they would like to be considered for appointment. As per Rule 9 KPSC is required to call for interview ten times the number of candidates as there are vacancies in categories I and II respectively in order of merit, on the basis of results of written papers subject to making provision for calling candidates belonging to Scheduled Castes and Scheduled Tribes and other Backward Classes to the extent vacancies are reserved for them. Under Rule 11 list of names of candidates is prepared for each of the services in categories I and II arranged in order of merit determined on the basis of total number of marks secured in written and viva-voce examination. Under sub-rule (2) of Rule 11 list is required to be published in the official Gazette apart from being sent to Government with marks secured in written and . viva-voce examination.

4. Schedule-II enumerates subjects, forms and procedure for conduct of examination in those subjects. Compulsory subjects for both these categories are Essay, General English and General Knowledge and maximum marks for each of these subjects is 150. Scheme provided for conduct of competitive written examination and interviews is the same as the one provided in rule 4 of Karnataka Public Service Commission Function Rules, 1957.

5. It is only after KPSC reached the conclusion that there are no chances of

tracing these "missing answer scripts" action is taken to hold re-examination in respect of those whose answer scripts are missing. No purpose would be served by directing them to search and to evaluate those scripts, hence, first relief is rejected.

6. Neither Rules referred to above nor general recruitment rules provide procedure for such contingency. No legislature and no rule making authority can visualise such a situation to make provision to meet such contingency. By virtue of rules framed under proviso to Article 309 of the Constitution of India, power to conduct written and viva-voce examination is entrusted to KPSC. Object is to evaluate merit and suitability of candidates for recruitment. This power to evaluate includes ancillary power to re-evaluate or to conduct re-examination to such of those whose answer scripts are missing or involved in commission of malpractice either by examinee or examiner. This view, to a certain extent, derives; sustenance from the observation of Division Bench of this Court in *R. Sundaramma - v. - Chairman, the Mysore Public Service Commission, Bangalore and others* which reads thus:

"In a proper case, the Commission could in the exercise of its general power of superintendence over the conduct of the examinations confided to it, stop the announcement of the results even after the paper set by the examiner has been answered by the Candidates and corrected by the examiner, and, although a complete and exhaustive enumeration of the situations in which that authority could be exerted, is not possible and cannot be accurate..."

7. Next contention of Learned Counsel for petitioner is that by conducting re-examination only to a few, KPSC intends to apply different yardstick to determine merit of candidates which results in discrimination. In other words, their contention is that test to determine their merits will not be the same; examination may be stiff or liberal. But it is still an examination in the manner prescribed in Schedule II of the Rules. Examination involves evaluation of persons performance when confronted with series of questions exhibiting knowledge, ability, proficiency, attainment and skill etc. Variation, if any, in the process is an inevitable consequence. It is impossible to secure the same standard of marks by all the examinees. If same examiner evaluates the answer scripts on different occasions is unlikely to award the same marks. Likewise, performance of a candidate is uneven.

1 17 L.R (Mys) 579 They cannot be re-examined with reference to same question paper. Conduct of fresh written examination necessarily involves setting of new question paper. Factors which contributes to such variation are - width and range of syllabus of respective subjects, method adopted by examiner to test the merit of candidate and aptitude and interest of examinee etc. Uniformity is inconceivable from the concept of the word "examination" as it has got its own spectrum.

In this context, useful reference may be made to the decision of the Supreme

Court in Chitra Lekha - v. - of State Mysore which reads thus :

"In the field of education there are divergent views as regards the mode of testing the capacity and caliber of students in the matter of admissions to colleges. The scheme of selection, however, perfect it may be on paper, may be abused in practice. That it is capable of abuse is not a ground for quashing it. So long as the order lays down relevant objective criteria and entrust the business of selection to qualified persons, this Court cannot obviously have any say in the matter."

Having regard to all these facts, it is not possible to conclude that re-examination to only such of those candidates whose answer scripts are missing would result in discrimination.

8. Other facet of same contention is re-examination must be held in that subject for all candidates so that there may be an uniformity of standard to test merit of a candidate. The fallacy of this argument may be tested with illustrations - instead of one or two answer scripts missing in a particular subject, if it happens in more than one subject, should a re-examination be held in those subjects for all examinees? Take the case where examinees are more in number-Secondary School Leaving Certificate, P.U.C., or B.E., etc., - if answer scripts of a student in one subject is missing should other students also face re-examination in the same subject? Likewise, if few answer papers of four or five students are missing in 2 R. Chitralekha and Another Vs. State of Mysore and Others, more than one subject, should there be a re-examination for all in those subjects? Last in the examples but more concrete in its application - same questions are not put to all candidates in an interview. Can it be said, a different yard-stick is adopted to evaluate the suitability ? It would be most illogical to hold that all of them must face re-examination-whether they have passed or failed.

In Maneka Gandhi - v. - Union of India it is stated by the Supreme Court thus:

"-Equality is a dynamic concept with many aspects and dimensions and cannot be imprisoned within traditional and doctrinaire limits....Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence-"

In Special Court Bills dealing with scope of Article 14 of the Constitution this is what the Supreme Court has stated :

"Cases arising under Article 14 "have been repeated so many times during the past few years that they now sound almost platitudinous." What was considered to be platitudinous some 18 years ago has, in the natural course of events, become even more platitudinous today, especially in view of the avalanche of cases which have flooded this Court. Many a Learned Judge of this Court has said that it is not in the formulation of principles under Article 14 but in their

application to concrete cases that difficulties generally arise."

and ultimately summarising the scope and ambit, it is stated:

"The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian Territory or that the same remedies should be made available to them irrespective of differences of circumstances...."

Sum and substance is that in applying Article 14, mathematical precision or nicety or perfect equanimity are not insisted. Similarity rather than identity of treatment is enough.

3. Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, 4. In Re: The Special Courts Bill, 1978, Hence, I find no merit in the plea that conduct of re-examination to only a few would be discriminatory.

9. Sri S. V. Narasimhan, Learned High Court Government Pleader, who was directed to take notice and ascertain from KPSC as to whether they would finalise the list of selected candidates even before the completion of process of written examination, submitted on instructions that till the process of written examination and viva-voce is completed for all candidates no selection list would be finalised. In view of this statement, there is no basis for the apprehension of the petitioners that KPSC would finalise the list of selected candidates even before completion of process of examination.

10. No merit. Writ Petitions are rejected.