
(2024) 07 RAJ CK 1547

In the Rajasthan High Court, Jodhpur Bench

Case No : Civil Writ Petition No. 17538 Of 2016, Connected With Civil Writ Petition No. 259 Of 2016, No. 268 Of 2016, No. 977 Of 2016, No. 1001 Of 2016, No. 1412 Of 2016, No. 2626 Of 2016, No. 3408 Of 2016, No. 9922 Of 2016, No. 10222 Of 2016, No. 14969 Of 2016, No. 17399 Of 2016, No. 17785 Of 2016, 17814 Of 2016, No. 122 Of 2017, No. 2336 Of 2017, No. 11922 Of 2016

Nand Singh Rathore Andors

APPELLANT

Vs

State Of Raj And Anr Nand Singh Rathore Andors Vs. State Of Raj And Anr

RESPONDENT

Date of Decision : 12-07-2024

Acts Referred:

Citation : (2024) 07 RAJ CK 1547

Hon'ble Judges : Yogendra Kumar Purohit, J

Bench : Division Bench

Advocate : Manish Dadhich, Amit Saran, Raj Bishnoi

Final Decision : Disposed of

Judgement

Sameer Jain, J

1. In the present batch of writ petitions, the scope of the controversy involved is identical. Therefore, with the consent of learned counsel appearing on behalf of both the sides, the present of batch of petitions is being jointly taken up for final disposal. For the purpose of recording arguments, S. B. Civil Writ Petition No. 1022/2016 is being taken up as the lead file.

2. The instant petition is filed with the following prayers:

"1. That the entire selection process of APO Exam, 2015 and result dated 19.11.2016 may kindly be quashed and set aside and further direction to initiate fresh selection process be given or in alternate the action-omission of the respondents in not selecting the petitioners in the final result of APO Exam, 2015, for the post of APO declared on 19.11.2016 on the basis of equated marks

and not as per actual marks obtained by them may be declared arbitrary & be quashed and set aside and accordingly the respondents may be directed to take into account the actual marks secured by the petitioners in the written examination for the appointment on the post of Assistant Prosecution Officer, in pursuance of the advertisement (Annx.1).

2. The respondents may be directed to allow the petitioners, having more than cut-off marks, to appointment on the post of APO Grade-II, in the interest of justice.

3. Any other appropriate order, which may be found just and proper in the facts and circumstances of the case, be passed in favour of the petitioners."

3. Learned counsel for the petitioner submitted that an advertisement dated 15.05.2015 was issued by the respondent- RPSC for recruitment on the post of Assistant Prosecution Officer (APO). As per the scheme of the examination, the selection process consisted of two stages i.e. Written Examination and Interview. The former stage i.e. written examination, consisted of two papers, wherein the candidates were required to score 35% marks in each paper independently and 40% marks in aggregate to qualify for the subsequent stage of 'Interview'. The petitioner participated in the written examination held on 18.10.2015 at the allotted center in Udaipur. Subsequently, the respondent-RPSC issued a press note dated 20.10.2015, wherein it was mentioned that due to some technical error at the examination centers in Udaipur and Alwar, the Paper-I Examination (Online) of the candidates could not start/commence and therefore, the Paper-I and Paper-II Examination shall be re-conducted on 25.10.2015, for those candidates who were allotted the aforementioned examination centers. The petitioners duly participated in the said re-examination.

4. In this background, learned counsel for the petitioners averred that there was a significant difference in the difficulty level of the two examinations so conducted on 18.10.2015 and 25.10.2015, and therefore, in a purported attempt to iron out the discrepancies, the respondent-RPSC introduced the unusual, unscientific and arbitrary method of 'scaling' of marks. It was argued that on account of said scaling of marks, a huge difference arose between the marks actually obtained by the candidates as opposed to those reflected in the revised result, post-scaling. Therefore, as a result of said scaling, the petitioners failed to qualify for the subsequent stage of the selection process i.e. the interview. At this stage, learned counsel averred that the fact of adopting the method of 'scaling' was not spelled out in the advertisement and therefore, the same could not be adopted at a subsequent stage. Moreover, even the rules of the respondent/RPSC do not recognize the said method of scaling. Therefore, the mere adoption of such a method has vitiated the entire selection process, which has resulted into the arbitrary ousting of the petitioners from the selection process, on account of them not having qualified for the interview.

5. Learned counsel for the petitioners also submitted that as per the RTI

information so procured vide letter dated 26.04.2023, 19 vacancies/seats still subsist as on date. In support of the arguments advanced, reliance was placed upon the dictum of the Hon'ble Apex Court as enunciated in *Sanjay Singh and Anr. Vs. U.P. Public Service Commission* reported in (2007) 1 SCC 639. Reliance was also placed upon the dictum of the Division Bench of this Court as enunciated in *Sarita Noushad and Ors. Vs. RPSC and Ors.* reported in (2009) 4 WLC 679

and *Rishabh Saxena Vs. State of Rajasthan and Ors.* reported in (2015) 1 WLC 335. Having placed reliance upon the said judgments, it was conclusively argued that the adoption of the scaling formula, on the basis of the expert's recommendation has no nexus in the legal field, therefore, advancing misleading results, especially when such a method was not spelled out in the rules/advertisement.

6. Per contra, learned counsel for the respondents, at the very outset, raised a preliminary objection regarding the maintainability of the present petition as on date. In this regard, it was averred that the subject advertisement was issued for recruitment in the Year 2015. As on date, approximately 8 years have lapsed since the advertisement was floated. Moreover, in the meanwhile, for recruitment on the post of APO considering the vacancies, subsequent advertisement(s) have been issued and much water has flowed under the bridge. Furthermore, it was averred that during the pendency of the proceedings before this Court, no interim protection was extended in favour of the petitioners. Hence, as on date, the petitions have been rendered infructuous due to the efflux of time.

7. Learned counsel for the respondents, on merits, submitted that it is settled position of law that in extraordinary situations/circumstances appropriate decisions can be taken by the administering body in the larger public interest. In this regard, it was averred that on account of certain technical disturbances/malfunctioning at the examination centers in Udaipur and Alwar, the requisite examination could not commence and as a result had to be rescheduled afresh. Therefore, in order to perpetuate uniformity and neutralize the varying degrees of difficulty between the former and subsequent papers, the method of equipercentile scaling was introduced, pursuant to having received suggestions from a body of experts, in the larger public interest. As a result, to hash out the differences in difficulty and ensuring uniformity, the equipercentile method was adopted. Learned counsel further submitted that as on date, no vacancy subsists. It was reiterated that time and again, the Hon'ble Apex Court as well as Division Bench of this Court have expounded that in extraordinary circumstances, legitimate decisions can be taken to cater to the larger public administration and public satisfaction and correspondingly the equipercentile method, which is scientific in nature, could be used to perpetuate uniformity amongst the candidates whilst hashing out the differences and the difficulty level of the two examinations. In support of the arguments advanced, reliance was placed upon the dictum enunciated in *Ranjana Atal Vs. Rajasthan University of Health Service*

& Ors. reported in (2022) 11 SCC 578 and SBCWP No.4088/2022 titled as Gourav Sharma vs. Rajasthan Public Service Commission.

8. Lastly, during the course of arguments, the experts appointed by respondent-RPSC, who were present in the Court, submitted that the application of the equipercentile method, in the facts and circumstances of the case, was the logical and rational method for preparation of the merit list, having a scientific and statistical approval.

9. Heard and considered the arguments advanced by learned counsel appearing on behalf of both the sides, scanned the record of the petitions and perused through the judgment cited at Bar.

10. At the outset, prior to the adjudication on merits, this Court deems it appropriate to take note of certain germane facts and/or stipulations necessary for the efficacious disposal of the lis at hand. They are noted herein-under:

10.1 That the subject advertisement for recruitment on the post of Assistant Prosecution Officer (APO) was issued in the Year 2015. As on date, approximately 9 years have lapsed since the issuance of the said advertisement. Moreover, subsequently, distinct advertisements for recruitment on the post of APO have been issued as well.

10.2 That on account of certain technical malfunctioning/glitches at the examination centers in Udaipur and Alwar, the requisite examination could not start and as a result, had to be rescheduled afresh.

10.3 That the level of difficulty between the examinations conducted on 18.10.2015 and 25.10.2015 varied and therefore to equate and hash out the said differences qua difficulty the respondent-RPSC introduced the equipercentile method for the preparation of the merit list.

10.4 That the equipercentile method was adopted by the respondent-RPSC with due approval of the Chairman and after duly considering the opinion expounded by the experts.

10.5 That the equipercentile method was uniformly adopted at large qua all the candidates and not as an alternate approach qua a select few candidates.

10.6 That during the pendency of the proceedings before this Court, no interim protection was operative in favour of the petitioner.

11. Upon a cumulative consideration of the forgoing stipulations, this Court deems it appropriate to dismiss the instant petition on the following grounds, namely:-

11.1 That the subject advertisement for recruitment on the post of Assistant Prosecution Officer (APO) was issued approximately 9 years ago i.e. on 15.05.2015. In the meantime, qua recruitment on the post APO, considering the vacancies, subsequent advertisement(s) have been issued. Therefore, as on

date, much water has flown under the bridge qua the selection process of the Year 2015, especially when the selection process has already culminated. As on date, extension of interference in the present petition would be an exercise steeped in futility and of mere academic importance, capable of vitiating the entire selection process of the Year 2015 at a belated stage, especially when no interim protection was operative in favour of the petitioners.

11.2 That the arguments advanced by the petitioners regarding introduction and/or adoption of the equipercentile method being arbitrary, non-scientific and unjust cannot be countenanced for the reasons that the said method was only uniformly introduced in order to circumvent the extraordinary challenge posed by the differing level of difficulty in the examinations conducted on 18.10.2015 and 25.10.2015. It cannot be said that the equipercentile method was adopted in the regular course; rather, it was only on account of the subsequent developments such as the administering of the subsequent examination on account of technical glitches, that such a method was adopted. Moreover, it cannot be said that the introduction of the equipercentile method was unjust and/or discriminatory, as the same was uniformly applicable qua all the candidates appearing in the examination for recruitment on the post of APO. Having said that, it goes without saying that as the equipercentile method was adopted in an extraordinary situation which arose on account of subsequent facts, the same could not be reflected in the body of the advertisement.

11.3 That in the aforementioned extraordinary situation, the equipercentile method was adopted by the respondent-RPSC with due approval of the Chairman, after duly considering the opinion of the experts. Moreover, the said method was made applicable qua all the candidates uniformly sans discrimination. Thus, it can very well be inferred that there was no mala fide, fraud, concealment or suppression qua the applicability of the equipercentile method.

11.4 That the universal applicability, acceptance and validity of the equipercentile method can also be inferred from the dictum enunciated in *Ranjana Atal* (Supra) and *Gourav Sharma* (Supra).

In *Ranjana Atal* (Supra):-

"8. The University received 393 grievances. About 200 grievances were for re-conduct of examination because of fear of students pointing out the difficulty index of the two papers for the same kind of examination and variation of marks allotted to the students. It is relevant to mention that no complaint was received regarding corruption, unfair means, paper leakage and impersonation. The major grievance left to answer by University was equivalence and uniformity of the result of students appeared in Pre P.G. Medical/Dental Examination, 2012 on two different days on 11.02.2012 and 14.02.2012 by some methodology so there should not be any advantage and disadvantage for any candidate appeared in this examination. Looking towards the entire scenario of other various national

and international recruitment and competitive examination, like Manipal University, GRE, TOEFL, USMLE, which are conducted for the same objective on different days with different types of question papers, but the marks finally awarded by them are adjusted by the statistical equivalence in terms of equalization of percentile and finally the result of all the students appeared on different days is displayed in terms of inter-se merit. The methodology of applying this statistical equivalence in the result is accepted nationally and internationally and also proved in the Court of Law.

43. In view of above authoritative pronouncements, we find no force in the submissions of the learned counsel for the appellants that relief granted by the Single Bench was not prayed for in the writ petition or it is contrary to the relief prayed for in the writ petition. The Single Bench was absolutely legal and justified in considering the subsequent events regarding decision of the respondent-University to apply SEP procedure for the purpose of preparing inter-se merit of 11.02.2012 and 14.02.2012 examinees and in directing the respondents to publish the revised merit list of all the candidates introducing SEP method and to give admissions on that basis.

44. In Harish Verma and others Vs. Ajay Srivastava and another(supra), the Hon'ble Apex Court considered Regulation 9 relating to selection of Post Graduate students and in para 18 thereof, while considering several conclusions, one of the conclusions that there can be only one common entrance test for determining eligibility for post-graduation for in-service candidates and those not in service, was taken into consideration. In the present case, there was common entrance test on 11.02.2012, however, due to technical fault in computer server at one center, a decision was taken to hold the examination of that particular center on 14.02.2012 and looking to unexpected result of that one particular center, where examination took place on 14.02.2012, the Academic Council, Core Committee and Grievance Committee took a decision to invite grievances from the concerned candidates and thereafter, a decision was taken by University to apply the SEP system. Therefore, looking to the facts and circumstances of the present case, the judgment of Hon'ble Apex Court in Harish Verma's case(supra), is not applicable and is distinguishable.

46. In our view, the learned Single Judge was absolutely right in not interfering with the decision of respondent- University in this regard."

In Gourav Sharma (Supra):-

32. In view of the above discussion, these writ petitions filed by the petitioners deserve to be dismissed for the reasons; firstly by applying the formula of scaling since as many as 14 different optional subjects including grouping was available the respondent provided same level playing field to all the candidates and hence the scaling formula has been rightly applied by the expert body; secondly there is no allegation that the paper/question is out of syllabus as prescribed under the Rules; thirdly the Full Commission has taken a conscious decision based on the

report of the expert for applying the formula of scaling, therefore, this Court cannot sit as an Appellate Court on the decision taken by the experts in the field as has been held by the Hon'ble Supreme Court in the matter of UPSC Vs. M. Sathiya Priya; fourthly the candidates have challenged the procedure after participating in the selection process, in my considered view the petitioners are estopped to challenge the same after participating in the same in view of the judgment passed by the Hon'ble Supreme Court in the matter of Ashok Kumar (supra); fifthly out of 32382 candidates, only 17 candidates have approached this Court by filing the present writ petitions without there being any allegation of malafide either against the Chairman or Members of the Board, therefore in view of the judgment passed by the Hon'ble Supreme Court in the matter of State of U.P. & Ors. Vs. Atul Kumar Dwivedi & Ors. (supra), the writ petitions deserve to be dismissed and; lastly in the facts and circumstances, I am not inclined to exercise the jurisdiction of this Court under Article 226 of the Constitution of India."

11.5 That the equipercentile method was adopted and given sanction to by the respondent-RPSC only in an extraordinary situation, which could not be foreseen at the time of the issuance of the advertisement. Therefore, the judgments relied upon by the petitioner are factually distinguishable.

12. Therefore, in the light of the foregoing observations, the instant petition is dismissed. Pending applications, if any, stand disposed of.