
(1997) 04 SC CK 0180

In the Supreme Court Of India

Case No : Civil Appeal No. 4314 Of 1991

Madhya Pradesh Public Service Commission

APPELLANT

Vs

Om Prakash Gupta and Another

RESPONDENT

Date of Decision : 10-04-1997

Acts Referred:

Citation : (1997) 6 SCC 766 : (1998) SCC(L&S) 359

Hon'ble Judges : V. N. Khare, J; Sujata V. Manohar, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Sujata V. Manohar and; V.N. Khare, JJ.-The respondent had appeared for the written test conducted by the appellant-Madhya Pradesh Public Service Commission (hereinafter referred to as "the Commission") for selection to 150 posts of Civil Judges, Second Class, in the State of Madhya Pradesh. He was not called for an interview because the marks secured by him were less than 145. He filed a writ petition before the High Court praying that the examination held on 19-2-1989 be quashed, that the answer-book of the respondent should be placed before the High Court and his answer-book should be re-evaluated. By an interim order passed in this writ petition, the High Court directed the Commission to appoint an Expert Committee to re-evaluate the answer-paper of the respondent. As a result of the re-evaluation, the respondent secured 147 marks. He was, thereafter, called for an interview but was not placed in the select list. He was, however, placed in the reserve list.

2. Thereafter, the respondent filed a second writ petition before the High Court praying that he should be selected for the post of Civil Judge, Second Class. In the second writ petition he filed an application for amendment to insert new paras 12, 13 and 14 in which he has expressed doubts regarding the key answers used in the evaluation of the written test. He also wants to amend the prayer clause by adding a prayer that the Commission should be directed to furnish the copy of the question paper, the key answers prepared by the

Commission and the answer script of the respondent to enable him to demonstrate that some key answers are wrong and the respondent has been put to disadvantage and has been denied the marks to which he is entitled, on the basis of the correct answers to the questions. This amendment has been allowed. The High Court has added that in respect of the amendment, at the time of hearing the appeals, the respondent will be entitled to raise the plea of res judicata.

3. We fail to see how such an amendment could have been allowed. The correctness of evaluation of the answer-paper of the respondent was very much the subject-matter of the first writ petition. It was because of his contention that his answer-paper had not been correctly assessed that the High Court had directed the Commission to appoint an Expert Committee to re-evaluate his paper. Pursuant to it, his answer-paper was re-evaluated. He availed of the benefit of re-evaluation and took the opportunity of being selected by appearing at the interview. If the respondent had any doubt about the method of re-evaluation or had he wanted to contend that the key answer-paper with the help of which his answer-paper was valued or re-evaluated was not a correct key, this contention ought to have been taken by him in the first writ petition. After taking the advantage of the interim orders passed in that petition, and getting his paper re-evaluated, he cannot now contend by filing another writ petition that the key answer-paper is wrong. Even in the proposed amendment, apart from an allegation that the key answers are wrong, there is no material on which this allegation is founded. The key answers are in the possession of the Commission. The respondent has asked for the production of the key answer-paper so that he can demonstrate that the key answers are wrong. We fail to see how such a vague allegation should be countenanced when admittedly, the respondent has not even seen the key answers. His prayer for production of key answers with a view to demonstrate that some of them are wrong, is more in the nature of a fishing inquiry. If at all such a plea had to be raised, it should have been raised in the first writ petition when he got his answer-paper re-evaluated. The contentions sought to be raised by way of an amendment of this kind in a writ petition after the disposal of the earlier writ petition are barred by principles analogous to res judicata.

4. We allow this appeal and set aside the order of the High Court. The respondent to pay to the appellant costs of this appeal.