**(1991) 09 RAJ CK 0010**

**In the Rajasthan High Court**

**Case No :** Civil Writ Petition No. 3898 of 1991

Prabhu Dayal Sesma APPELLANT

Vs

Rajasthan Public Service Commission RESPONDENT

**Date of Decision :** 25-09-1991

**Acts Referred:**

Rajasthan Subordinate Accounts Service Rules, 1963 — Rule 16

**Citation :** (1991) 2 RLW 93 : (1991) 2 WLC 648 : (1991) 2 WLN 360

**Hon'ble Judges :** G.S. Singhvi, J

**Bench :** Single Bench

**Final Decision :** Allowed

## Judgement

G.S. Singhvi, J.—Petitioner is an applicant for appointment on the post of Accountant and he had applied for selection by Rajasthan Public Service Commission in pursuance of the advertisement issued by the RPSC and published on 17-11-90. The examination was divided into two parts, namely, preliminary examination and final examination. The petitioner was provisionally admitted to the preliminary examination which constituted of two papers of General Knowledge and Every Day Science (one paper) and Arithmetic (second paper). The examination was held on 2-6-91. In the paper of Arithmetic the examinees were called upon to answer 39 questions. The paper was, divided in three parts viz., A, B and C. The paper carried maximum marks of 100 and the duration was three hours. According to the petitioner, of the 39 questions, only 29 questions were relating to arithmetic and the rest related to algebra and geometry. In para 6 of the petition the petitioner has given out the numbers of the questions of Algebra and Geometry. The petitioner has given out that the marks secured at the preliminary examination will be added for the purpose of average marks of the total at the lime of preparation of mark list, and since more than 50% questions in the paper of Arithmetic were beyond the scope of the syllabus, it became extremely difficult for the candidates to answer the questions. The petitioner has challenged the action of the RPSC in holding the examination in the paper of Arithmetic and has prayed that the examination held in pursuance of Annexure-1 may be declared as bad and the Respondent Commission may be directed to held the examination of Arithmetic afresh.

2. In its reply, the RPSC has stated that applications for the posts of Tehsil Revenue Accountant, Junior Accountant and Accountant were invited vide advertisement No. 4/90-91 dated 17-11-90. In all 574 vacancies have been notified. The examination was required-to be held as per Schedule II of the Rajasthan Subordinate Accounts Service Rules, 1963. The examination consists of two parts. The first part relates to compulsory subjects and the second part to optional subjects. The compulsory subjects are Hindi and English, General Knowledge and Everyday Science and Arithmetic. The standard of compulsory subjects is that of higher secondary and for optional papers the standard is equivalent to degree classes. A candidate, who obtained minimum 35 marks in each of the compulsory papers and minimum 40 marks in aggregate is treated as having secured qualifying marks. According to the Commission, Arithmetic is the science of numericals which may include alphabets, lines, dots, cens. Arithmetic deals with addition subtraction multiplication and devision of numericals. The science of addition, subtraction, multiplication and division has been advanced by the modern techniques which are being taught in the School upto higher secondary level. The Commission has denied that the Arithmetic paper was out of course. The question enumerated as Algebra and Geometry are simple questions of common understanding to test the knowledge of incumbent for daily requirement and are within the course of Rajasthan Secondary standard. The questions relates to addition, subtraction, multiplication and division of numericals and are easily covered by the definition of Arithmetic of Rajasthan Secondary standard. The Commission has admitted that the marks obtained in compulsory papers are added with the marks obtained in optional papers for determination of merit. The Commission has then stated that in all 57, 760 applications were received by it. Approximately 32, 300 candidates appeared in the examination and many of the candidates have secured good marks in the paper of Arithmetic. The petitioner had appeared in the previous years also and was selected for the post of Junior Accountant, but he did not challenge that the paper was out of course. Commission has then stated that even if it is assumed that some questions fall in the zone of Algebra and Geometry, none of them are beyond the standard of secondary. The Commission has then stated that no prejudice has been caused to the petitioner and it has not committed any mistake. However, RPSC is ready to accept the directions of the Court which may be given in the instant case for future guidance and the Commission is also ready to eliminate the questions which the Court finds as out of course, and the total marks of the papers may be spread over the remaining questions.

3. Recruitment to the post of Junior Accountant, ''Accountant and Assistant Accounts Officer and conditions of service of the persons appointed to these posts are regulated by the provisions contained in the Rajasthan Subordinate Accounts Service Rules, 1963. Post of Junior Accountant is required to be filled

 

100% by direct recruitment, those of Accountant are required to be filled by direct recruitment and promotion in the ratio of 1:2 and those of Assistant Accounts Officer arc required to be filled 100% by promotion. The procedure for direct recruitment, as prescribed in Part IV of the Rules. Rule 16 contains provisions for conducting the examination and syllabus for direct recruitment. This Rule reads as.under:

Rule 16 of 1963 Rules "Examination and Syllabus for Direct Recruitment-(1)(1) Separate competitive examinations for recruitment to the posts of Junior Accountants and Accountants shall be held every year by the commission in accordance with the syllabi prescribed under Sub-rule 3, unless the Chief Accounts Officer, in consultation with the Commission decides that the examination/examinations shall not be held in any particular year.

(ii) Subject to the provisions of Sub-rule (1) above, the Commission may, in consultation with the Chief Accounts Officer, held a combined competitive examination for direct recruitment to the service and to any other service or services.

(iii) The syllabus for the competitive examinations be held under Sub-rule (1) above shall be such as may be prescribed, from time to time, by the Government in consultation with the Commission.

4. A perusal of the above quoted Rule show that the Commission has been empowered to hold combined competitive examination in accordance with the syllabus prescribed in Schedule II appended to the Rules of 1963. As per the provisions of the schedule, compulsory papers are required to be of higher secondary standard. In accordance with this Rule, the Commission had issued advertisement in 1990 and invited application from eligible candidates. The Commission had referred to the syllabus prescribed in the Rules and provided that the compulsory papers shall be of higher secondary standard. From a perusal of the syllabus of higher secondary school standard prescribed by the Secondary Board of Education, Rajasthan, Ajmer. It is more than clear that Arithmetic, Algebra and Geometry are been treated as independent papers for the purpose of higher secondary standard. In fact, the Rajasthan Public Service Commission itself has realised its mistake when it has stated that the questions of Algebra and Geometry are simple questions of common understanding. In Encyclopedia of Britannica, Arithmetic has been described as an elementary aspects of the theory of numbers. It would be useful to quote the following portion from the Encyclopedia Britannica Volume 1 page 1171:

Arithmetic (derived from the Greek arithmes, "number" refers generally to the elementary aspects of the theory of number, arts of mensuration (measurement), and numerical computations. Such meaning, however, has not been uniform in mathematical usage. An eminent German mathematician, Carl Fried rich Gauss (q.v.), in Disquisitiones Arithmetic as (1801), and certain contemporary mathematicians have used the term to include some aspects of number theory that are considerably more advanced.

5. From perusal of the question paper, Annexure-3, it is clear that question No. 1 to 11,15,17 and 18 of Part ''A'' questions No. 21,26 to 28 of Part ''B'', question No. 36 of Part ''C'' are related to Arithmetic, whereas question No. 12 and 16 of Part ''A'', questions No. 22 to 24 and 30 to 32 of Part ''B'' and questions No. 33 to 39(a) of Part ''C'' are related to Algebra and Questions No. 13,19 and 20 of Part ''A'', questions No. 25 and 29 of Part ''B'' and question No. 39(b) of Part ''C'' fall within the domain of Geometry. Question No. 14 of Part ''A'' falls within the domain of Statistics. It is, therefore, clear that more than 50 percent of the questions set in the paper of Arithmetic were in fact questions relating to Algebra, Geometry and even Statistics. Apparently, the examiner who was asked by the Commission to prepare the question paper had ignored the fact that the questions should be confined to Arithmetic only. He probably took the paper of Mathematics and, therefore, included the questions related to Algebra, Geometry and even Statistics in that paper. It is. thus evident that the question paper of Arithmetic was not in accordance with the syllabus which is statutory by virtue of the provisions contained in Rule 16 of the 1963 Rules. Thus, a clear illegality has been committed by the Respondent in asking the candidates to answer the question relating to Algebra, Geometry and even Statistics.

6. Now the question arises as to what relief should be given to the petitioner. It is evident that as many as 32,300 candidates have appeared in the examination conducted by the Commission. Their answer books have also been examined. If the entire examination is ordered to be held afresh, a huge sum of money will have to be spent and all the candidates will be put to inconvenience and hardship. This course of action can however, be avoided if the matter could be looked from another angle. 17 out of 39 questions fall within the domain of Arithmetic and the candidates have answered these questions. It is reasonably possible to assess their performance from the 17 questions which they have answered and which belong to the domain of Arithmetic. Therefore, instead of asking the Commission to hold the examination afresh, it will be more appropriate to direct the Commission to get the answer books of the candidates reassessed to the extent of taking into consideration of the marks secured by the candidates in the 17 questions of Arithmetic and then increase them proportionately with reference to the maximum marks. The Commission will have to divide the maximum marks into 17 questions and then find out how many marks are secured by each candidate. This would be a just and reasonable yardstick for judging and assessing the performance of the candidates.

7. The Writ Petition is, therefore, allowed. The action of the Commission in holding the examination in the paper of Arithmetic by calling upon the candidates to attempt the questions of Algebra and Geometry as also of Statistics, is declared invalid. However, in the interest of the candidates, the entire examination is not cancelled. Instead it is directed that the Commission should redistribute the 100 marks to the 17 questions of Arithmetic and then

 

proportionately increase the marks secured by the candidates in these 17 questions. This exercise must be undertaken expeditiously. The Commission should take steps to ensure that such illegalities are not repeated in future and the examiner concerned should be debarred for all future examinations which may be undertaken by the Commission after a notice is given to him for that purpose. Parties are left to bear their own costs.

 