
(1993) 03 DEL CK 0085

In the Delhi High Court

Case No : Civil Writ Petition No. 292 of 1993

Rajinder Kumar Aggarwal

APPELLANT

Vs

High Court of Delhi and Another

RESPONDENT

Date of Decision : 22-03-1993

Acts Referred:

Constitution of India, 1950 — Article 141, 234

Citation : (1993) 25 DRJ 602

Hon'ble Judges : V.K. Jain, J;D.P Wadhwa, J

Bench : Division Bench

Advocate : Pradeep Gupta, Yatendra Sharma, E.X. Joseph and S.P. Jha, for the Appellant;

Judgement

D.P. Wadhwa, J.

(1) The petitioner was a candidate for appointment to the Delhi Judicial Service constituted under the Delhi Judicial Service Rules, 1970, as amended (for short "the Rules") and for that purpose he took the competitive examination held in October 1991. He did not qualify the written test and was not called for viva voce test. The petitioner sought revaluation of one of his written papers. His request was declined as the Rules did not envisage revaluation. He was informed by letters dated 22 October 1992 and 8 December 1992. By this petition he has challenged those two communications and seeks a mandamus that his paper of Essay and General Knowledge (Paper-IV) be revalued and if he qualifies in that paper, he be considered for appointment to the Delhi Judicial Service.

(2) As per the Rules the written examination is of the following subjects and carry the number of marks shown against them :-

SUBJECTS:1 .Essay and General Knowledge 150 2. Language. 100 3. Law Paper (I) Civil Law. 200 4. Law Paper (II) Civil Law. 200 5. Paper (III) Criminal Law. 200 6. Viva Voce. 100

(3) As to what is this paper of Essay and General Knowledge about, we may

quote the relevant rule :-

"(1)ESSAY And General KNOWLEDGE:- This paper will be to test the candidates' knowledge of current affairs and also his power of expression in English. Credit will be given both for substance and expression. Conversely deduction will be made for bad expression, faults of grammar and misuse of words etc."

(4) The Rules also prescribe that only such candidates shall be called for viva voce who have obtained 40% marks in each written paper and 50% in the aggregate except in the case of candidates belonging to the Scheduled Castes/Tribes, in whose case the qualifying marks shall be 35% in each written paper and 45% in the aggregate. The petitioner belong to General Category. Under the Rules the competitive examination is to be held by the High Court. There is, however, no rule providing for revaluation or moderation of the answer sheets.

(5) The Full Court Meeting of the High Court on 25 January 1985 took the following decision which was in respect of the competitive examination held in 1984 :- Agenda Minutes To consider the The Full Court considered question whether High the question and decided as follows : Court has the power (i) Rechecking is always possible. to recheck and revalue (ii) If there is to be revaluation, it must the answer book of an be by the same examiner. examinee of the Delhi (iii) Revaluation may be Judicial Service, ordered by the Hon"ble the Chief Justice where he thinks it is a deserving ease for sufficient reasons. (iv) Moderation of 2 marks in each paper to every candidate of the 1984 Delhi Judicial Service Examination be done.

(6) Contention of the petitioner in short is that when the competitive examination is to be held by the High Court and the High Court itself has provided that revaluation was permissible as per resolution of the Full Court abovementioned, the request of the petitioner for revaluation could not have been declined. It is stated that in the Essay and General Knowledge Paper the petitioner has secured 59 marks. These were less by one mark for passing in this paper. Otherwise, the petitioner says, he has obtained sufficient marks in other papers and even otherwise his aggregate of marks were more than 50% which entitled him to be called for viva voce examination.

(7) The respondent however, says that the aforesaid resolution of the Full Court was subject-matter of a decision of the Supreme Court and the Supreme Court has held that in the absence of there being a specific rule for revaluation this could not be done. Certain candidates of the Delhi Judicial Service Examination, 1984, Filed writ petitions in the Supreme Court questioning the resolution of the Full Court which had resulted in some candidates being left out from the select list and others taken in after a select list had already been prepared and displayed. The Supreme Court judgment in Writ Petition No. 3805/85 and other connected writ petitions is reported as Umesh Chandra Shukla Vs. Union of India (UOI) and Others, . This judgment is dated 2 August 1985. Before the final hearing in the Supreme Court, one of the candidates withdrew his name from the

contest. This was on 26 July 1985 and the Supreme Court passed the following order:-

"AT the hearing of the above writ petition Mr. F.S. Nariman, learned counsel for Shri Rajan Sharma, one of the candidates selected for the Delhi Judicial Service Examination held in the year 1984, who has been impleaded as a respondent in this case submits fairly and we think rightly that in the absence of an express rule for re-valuation it was not possible for the examining body to get one of the answer books of Shri Rajan Sharma revalued. In the absence of 18 marks which were added at the revaluation, Shri Rajan Sharma would not have been eligible for the viva voce examination even though in some of the papers at the examination, he had done well. Shri Rajan Sharma, Therefore, withdraws his application for appointment to the Delhi Judicial Service. We appreciate the stand rightly taken by Shri Rajan Sharma in this Court. In view of the above we direct that the name of Shri Rajan Sharma would not be considered by the examining body for the purpose of appointment at the 1984 examination. sd/- E.S .Venkataramahia, J. July 26, 1985. R.B. Mishra, J."

(8) The High Court relied upon the observations made in this order that in the absence of an express rule for revaluation it is not possible to revalue any answer book. Mr. Gupta, learned counsel for the petitioner, however, contended that when the final judgment came on 2 August 1985 the Supreme Court did not touch this question of revaluation and that the observation of the Supreme Court in its order dated 26 July 1985 could not be the law declared by the Supreme Court under Article 141 of the Constitution and would not be binding on this Court. We do not think Mr. Gupta is quite right in his submission. The rule here has certainly to be a statutory rule under the Delhi Judicial Service Rules and the resolution of the Full Court cannot be termed as a rule. It is also correct that when the main judgment of the Supreme Court came (the court was concerned more with moderation than with any revaluation. But then the observation of the Supreme Court, stating that it had been rightly submitted before it that in the absence of any express rule for revaluation it could not be permitted, has to be given its due weight. Recently, in another writ petition (No. 473/93) where there was question of revaluation of a question paper of Civil Services Examination, this Court, while dismissing the petition in limine on 23 February 1993, observed as follows:-

"THERE is no rule or regulation which can entitle the petitioner to seek revaluation of the paper. According to the respondents, the rechecking has been done and there is no mistake. "

(9) In Umesh Chandra Shukla Vs. Union of India (UOI) and Others, the Supreme Court did observe that it was not concerned in that case with the question whether the High Court had the power to get the answer books revalued since the case of the candidate who had prayed for revaluation of his answer book had already been disposed by separate order on 26 July 1985 by which he was permitted to withdraw from the contest. On the fourth part of the resolution of

the Full Court aforesaid the Court observed that the question for decision was whether such a resolution could be passed by the High Court which was entrusted with the duty of conducting the examination. It further observed that the High Court had not found any defect in the question papers or any irregularities in the valuation of the answer books. Addition of any marks by way of moderation to the marks obtained in any written paper or to the aggregate of the marks in order to make a candidate eligible to appear in the viva voce test would indirectly amount to an amendment of the Rules which the court said was not permissible as the amendment to the Rules could be made under Article 234 of the Constitution only by the Lt. Governor after consulting the High Court in.p111.5" that regard. The court said in a competitive examination of this nature the aggregate of the marks obtained in the written papers and at the viva voce test should be the basis for selection.

(10) It, Therefore, does appear to us it is not possible for us to interfere in the matter. During the course of hearing it came to our notice that the petitioner secured first division in LL.B. and just because of one mark in Essay and General Knowledge paper he could have qualified for viva voce test. Had he been given one grace mark he would have certainly qualified for viva voce test and then would have certainly secured a position in the Delhi Judicial Service. The fact remains that all those candidates who passed the written test were absorbed in the Delhi Judicial Service irrespective of how they faired in the viva voce test. It is also admitted fact that seats in the Delhi Judicial Service are still lying vacant. We certainly sympathise with the petitioner, but then, as noted above, in a competitive examination of this nature we are unable to tinker with the result and come to the rescue of the petitioner. Though revaluation is not permissible, rechecking in the case of the petitioner has been done by the High Court and marks given were found to be correct. This petition, Therefore, fails and is dismissed.