

(2015) 04 RAJ CK 0070

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 210 of 2013

Ravi Kumar Khandelwal and Others

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 22-04-2015

Acts Referred:

Citation : (2015) 04 RAJ CK 0070

Hon'ble Judges : Mohammad Rafiq, J;Prakash Gupta, J

Bench : Division Bench

Advocate : R.N. Mathur, Senior Counsel and Abhishek Sharma, for the Appellant; S.K. Gupta, Additional Advocate General, Tarpit Patni and Swasti Choudhary, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.—This special appeal on behalf of appellants is directed against common judgment dated 14.12.2012 of learned Single Judge whereby a bunch of twelve writ petitions was allowed in part. The appeal has been filed on the ground that by the impugned judgment, the interest of large number of persons, who have been selected in selection process conducted by the Rajasthan Public Service Commission for the posts of Accountant (Grade Pay Rs. 3600/-) and Junior Accountant (Grade Pay Rs. 3200/-), would be affected, who were not party to the writ petitions.

2. Dispute pertains to direct recruitment on the post of Accountant and Junior Accountant in the Accounts Department under the Rajasthan Subordinate Accounts Service Rules, 1963.

3. An advertisement was published by the Rajasthan Public Service Commission (for short, "the RPSC") for filling up 394 vacancies of the post of Accountant and 924 vacancies of the post of Junior Accountant. The advertisement was issued after amendment introduced in the Rajasthan Subordinate Accounts Service Rules, 1963, vide amendment notification dated 05.07.2011. By this

amendment, additional qualification for the post of Accountant and Junior Accountant was introduced and the existing Schedule-II appended to the said Rules was substituted by the new Schedule-II, which provided scheme of papers for the combined competitive examination for the posts of Accountant, Junior Accountant and Tehsil Revenue Accountant. As per the new scheme, the competitive examination shall include two papers, namely, Paper-I and Paper-II and each would carry maximum 450 marks. It was further provided that every correct answer would carry three marks and there would be minus marking of one mark for every incorrect answer. It was further provided that a candidate would have to score minimum of 35% marks in Paper-I and Paper-II, each, and 40% marks in aggregate and relaxation in minimum marks upto 5% will be applicable to the candidates of Scheduled Caste and Scheduled Tribe candidates. There was no weightage for viva voce. The RPSC initially declared the result on 09.05.2012 and the cutoff marks for various categories were declared on 16.05.2012. When the writ-petitioners-respondents did not find their names placed in the merit list prepared by the RPSC on the basis of result declared on 09.05.2012, they challenged the result by way of filing separate writ petitions alleging that there were several wrong questions and answers and prayed that bonus marks should be awarded to them. The writ petitions were decided by learned Single Judge vide separate orders requiring the writ-petitioners-respondents to submit detailed representation to the RPSC, which was to decide the same and, if necessary, by constituting an expert committee for assessing the grievance regarding wrong questions and wrong answers etc. In pursuance thereof, the writ-petitioners-respondents submitted a detailed representation to the RPSC raising their grievance. Thereupon, the RPSC issued revised result on 27.09.2012. In the revised result, the RPSC issued revised cutoff for the Paper-I and Paper-II. The revised result indicated that the result had been revised because of change in answer keys based upon the expert committee's report, which was constituted under the order of learned Single Judge of this court. While declaring the original result on 09.05.2012, the RPSC distributed the marks of Paper-I proportionately. Initially the RPSC deleted 21 question in Paper-I, but, on revision in answer-key, the RPSC curtailed the deleted question to 14 in Paper-I and that in Paper-II the deleted two questions have now been raised to nine questions. In the revised result dated 27.09.2012, the RPSC distributed the marks proportionately subject-wise instead of for entire paper. Out of total 1374 vacancies, only 494 candidates came to be selected in the originally declared result dated 09.05.2012 and in the revised result dated 27.09.2012, out of 1374 vacancies, only 436 candidates have been selected. Thus, total 70 candidates were ousted from the merit list and only 19 candidates were brought in. This happened because most of the candidates failed to score minimum qualifying marks in each paper or they could not secure minimum qualifying marks in aggregate. Total 450 marks were divided in remaining 129 questions (150-21) and thus proportionate value of each correct question was increased as also of the incorrect question was decreased accordingly. The RPSC this time in the result dated 27.09.2012 distributed the marks subject-wise in the entire

paper. For example, in the English subject six wrong questions were deleted out of 25 questions, thus there remained only 19 questions and 75 marks were divided amongst 19 questions. Learned counsel for the appellant has sought to explain this position with the help of Schedule-A appended the memo of appeal.

4. Earlier this question was raised before this court in S.B. Civil Writ Petition No. 11490/2012 - Vinita Gupta v. State of Rajasthan and Others. That writ petition was disposed of by judgment of the learned Single Judge dated 03.08.2012 requiring the petitioner to make a representation to the RPSC and the RPSC was asked to seek opinion of the independent expert body. The RPSC constituted a committee of experts, which, after considering various aspects relating to 20 questions and their weightage, revised the result and accordingly new merit list was published. In this merit list, the appellants herein were selected and were placed much higher in the order of merit and thus became entitled to appointment on the post of Accountant. The respondent No. 3 filed above captioned writ petition stating that the RPSC has deleted 14 questions in Paper-I and that earlier marks were reduced and that total marks cannot be permitted to remain the same. Stand of the RPSC before the Court was that it has done so in compliance of the order of this court, with the help of experts and 14 questions have been deleted in Paper-I, as a result of which the value of the remaining 136 questions was raised from 3 to 3.30 and 9 questions have been deleted in Paper-II, thus value of each question has been increased from 3 to 3.19. The learned Single Judge vide judgment dated 14.12.2012 disposed of the writ petition, taking note of the fact that the RPSC, after deleting the questions with wrong answers, in order to give the proportionate weightage to the remaining questions, as the weightage was given for negative as well as positive answers and directed the RPSC to maintain the value of each question and same was to be considered for preparing the merit list. The appellants were higher in the order of merit in the second result and were selected for the post of Accountant but now placed lower in the merit list and have been selected only on the post of Junior Accountant. Aggrieved by the judgment of the learned Single Judge, the appellants filed the present special appeal before the Division Bench.

5. Shri R.N. Mathur, learned Senior Counsel appearing for the appellants, argued that the learned Single Judge was not justified in directing that the value of each of the remaining questions should be increased proportionately. As a result of this direction, equilibrium in the scheme of examination has been disturbed. Paper-I as well as each of the Paper-I and Paper-II consisted of six subjects. Each Paper-I and Paper-II carried out value of 450 marks, each subject being given weightage of 75 marks. The result of the direction of the learned Single Judge would be that in this equilibrium has been disturbed and resulted in breach of the scheme of the examination. To elaborate this, learned Senior Counsel has pointed out that in the subject of English, which carried value of 75 marks, six questions were deleted. The proportionate marks should have therefore been divided subject-wise so as to maintain the weightage given to each subject. Result of implementation of the impugned judgment has been that the

candidates earlier selected for the post of Accountant, have now been pushed down in the merit and they would be entitled to secure appointment on the post of Junior Accountant only. This direction has resulted in debarring several other similarly situated candidates of securing appointments on the higher post.

6. Shri R.N. Mathur, learned Senior Counsel argued that the RPSC has been having the practice of giving proportionate weightage to each of the subject. Learned Senior Counsel in this connection has given the example of the posts of Headmasters, Teacher Gr.II, Lower Division Clerk etc. This was the most equitable method because apart from weightage to each subject, the question of award of aggregate marks and deduction of wrong marks would also be there. There was no question therefore to deviate from that practice in the present case and the RPSC had rightly prepared the result.

7. It is argued that the learned Single Judge has erred in law in directing proportionate weightage to be given to remaining questions in entire papers by describing this direction as exception to the rule and directing that the same would not be taken as precedent. Prior to passing the impugned judgment, the posts of Accountant were already filled, as against 395 posts all the candidates were selected, whereas against 924 posts of Junior Accountant, only 41 candidates were selected. The direction of the learned Single Judge has thus caused tremendous amount of prejudice to those who were not even party to the writ petition and yet, as a effect thereof, either they have not been able to make to their merit or have been pushed down in the merit thereby, accepting appointment on the lower post of Junior Accountant. Learned Single Judge has failed to duly appreciate the ratio of the judgment of the Supreme Court in K. Manjusree Vs. State of A.P. and Another, AIR 2008 SC 1470 : (2008) 2 CLT 123 : (2008) 2 JT 437 : (2008) 2 SCALE 554 : (2008) 3 SCC 512 : (2008) 1 SCC(L&S) 841 : (2008) 1 UJ 375 : (2008) AIRSCW 1529 , wherein ratio of 3:1 was required to be adopted. Learned Senior Counsel argued that the RPSC has granted grace of one mark to certain candidates, who have not acquired 35% marks individually in one of the paper but have secured 40% in aggregate, whereas the Rajasthan Subordinate Accounts Service Rules, 1963 does not provide for giving bonus marks to the candidate who have not acquired minimum qualifying marks. Thus, benefit of this has been availed by such candidates, who did not even secure minimum pass marks in individual subject but could yet get appointment on the higher post of Accountant, whereas the appellants who have secured the minimum pass marks in both Paper-I and Paper-II and also having aggregate of marks on their own, in spite of their entitlement to get appointment on the post of Accountant, have been pushed down.

8. Shri R.N. Mathur, learned Senior Counsel has argued that the grade pay of Accountant is Rs. 3600/- whereas grade pay of Junior Accountant is Rs. 3200/-. The adverse effect of the impugned judgment on the appellant is so severe that they would have now to wait for almost 15-20 to reach that stage.

9. Shri Vigyan Shah, learned counsel for the respondents, opposed the appeal

and submitted that the respondents could not find place in the originally declared result by the RPSC on 09.05.2000. The petitioner challenged the aforesaid result by filing separate writ petitions on the premise that there were questions and answers in the question paper therefore they should be awarded bonus marks. The learned Single Judge decided those writ petitions directing the petitioners to submit detailed representation to the RPSC, which in turn, was directed to decide the same if necessary by constituting expert committee for examining the grievance of the petitioners for wrong questions and wrong answers etc. However, the RPSC then decided the representation of the respondent in right perspective revising the result in legal manner and the RPSC did not declare the answer key nor invited objections from the petitioners on the proposed answers. Initially 21 questions were proposed to be deleted in Paper-I and 2 questions in Paper-II, but in the revised answer key, the respondents had curtailed the deleted questions to 14 in Paper-I, and raised to 9 questions in Paper-II. While declaring the result on 09.05.2012, the respondents distributed marks proportionately to the entire Paper-I, which can be explained thus, that earlier in Paper-I total 450 marks were divided in 129 questions (150-21) in the manner that every right answer carry 3.48 marks and further for every wrong answer there was minus marking of 1.18 marks. As a result of which, the weightage given to every correct answer was increased, so also the weightage of every wrong answer was also increased. This was contrary to the scheme of the Rules. As per the amended Rules, 2011 the respondents cannot award more than 3 marks for any right answer nor can deduct more than 1 mark for any wrong answer.

10. It is argued that while total 450 marks of each Paper-I and Paper-II, which being the maximum weightage of each paper, could be decreased, but as far as weightage/value of every correct and incorrect answer is concerned, which has been specifically fixed in the Rules, can, in no circumstance, be increased. The RPSC has, instead of granting bonus marks for the deleted questions in the revised result dated 27.09.2012, impugned before the learned Single Judge, distributed the marks subject-wise instead of entire paper. Out of total 1374 vacancies, only 494 candidates came to be selected in the originally declared result dated 09.05.2012 and in the revised result dated 27.09.2012, out of 1374 vacancies, only 436 candidates have been selected. Thus, total 70 candidates were ousted from the merit list and only 19 candidates were brought in. This happened because most of the candidates failed to score minimum qualifying marks in each paper or they could not secure minimum qualifying marks in aggregate. Total 450 marks were divided in remaining 129 questions (150-21) and thus proportionate value of each correct question was increased as also of the incorrect question was decreased accordingly. The RPSC this time in the result dated 27.09.2012 distributed the marks subject-wise in the entire paper. For example, in the English subject six wrong questions were deleted out of 25 questions, thus there remained only 19 questions and 75 marks were divided amongst 19 questions.

11. Shri Vigyan Shah, learned counsel for the respondents, argued that number of successful candidates have been very less because either the candidate could not score minimum qualifying marks in each paper or they could not score minimum qualifying marks in aggregate. The RPSC has violated the scheme of the Rules in preparing the revised result dated 27.09.2012, therefore, learned Single Judge was perfectly justified in issuing the direction in the impugned order.

12. Shri Vigyan Shah, learned counsel for the respondents argued that in similar scheme of examination provided under the Rajasthan Education Service Rules, 1970, the judgment dated 15.02.2013 of Single Bench in Writ Petition No. 19453/2013 - Sudarshan Gaur v. State of Rajasthan, directing to proportionately award marks subject-wise in each paper, was quashed and set-aside by a Division Bench vide its judgment dated 11.04.2014 in Special Appeal (Writ) No. 345/2013 - Umesh Kumar Sharma v. Sudarshan Gaur and Others. It is argue that learned counsel appearing for the RPSC also did not oppose passing of impugned judgment as an exceptional case without making it as a precedent.

13. Shri S.N. Kumawat, learned counsel for the RPSC, submitted that the RPSC has contested the writ petition before the learned Single Judge. Learned counsel for the RPSC submitted that it was only an observation of the court that this direction should be taken as an exception to the Rule and this direction contained in the impugned judgment would be taken as an exception to the Rules without making the judgment as a precedent. It was not based on any concession. Neither he made any concession before learned Single Judge nor was the aforesaid direction based on any concession made by him. It is argued that in any case the RPSC is bound to follow the direction of this court, particularly when this direction has been upheld by a coordinate bench of this court in its judgment dated 27.02.2013 in a bunch of Special Appeals, leading one being D.B. Civil Special Appeal (Writ) No. 27/2013 - Sitaram Dayal and Others v. R.P.S.C. and Others, dismissing all the four special appeals.

14. Shri S.N. Kumawat, learned counsel for the RPSC submitted that the practice of the RPSC has been to maintain the weightage amongst all the subjects in a particular paper. As regards the grace marks, it is submitted that the RPSC has done so in compliance of the judgment dated 13.08.2014 of another Division Bench of this Court rendered in Madhavi Bhatnagar v. Rajasthan Public Service Commission and Another - D.B. Civil Special Appeal (Writ) No. 1133/2013. The Division Bench, in the aforesaid case, has, on interpretation of Rule 22 of the Rajasthan Subordinate Accounts Service Rules, 1963, observed that when the Commission has granted grace marks to the candidates in the compulsory paper i.e. wherever the candidates did not obtain the minimum marks of 35% in compulsory paper, same yardstick shall apply in respect of the aggregate marks. The Commission has, on that basis, extended the benefit of grace marks in aggregate.

15. We have bestowed our thoughtful consideration to rival submissions and scrutinized the material on record.

16. In so far as award of grace marks is concerned, this issue stands concluded by a coordinate Division Bench of this Court in *Madhavi Bhatnagar, supra*. Even prior thereto, a Single Bench of this court vide judgment dated 03.07.2014 (delivered by one of us - Justice Mohammad Rafiq) in *S.B. Civil Writ Petition No. 2937/2013 - Jitendra Kumar v. Rajasthan Public Service Commission and Another*, held that the interpretation placed by the RPSC on Rule 22 is illegal. The RPSC in its practice used to grant grace marks only in individual subjects but did not do so in aggregate and in the case of some of the candidates taking note of this fact, it was observed by this court in *Jitendra Kumar, supra*, as under:--

"On hearing learned counsel for the parties and perusing the material available on record, I find that the Rule 22 of the Rajasthan Subordinate Accounts Service Rules, 1963 cannot be interpreted in the manner in which it has been interpreted by learned counsel for the respondents. When the Commission has granted grace marks to the candidates in individual subjects, i.e. Wherever candidates did not secure the minimum pass marks of 35% in each individual subject, same yardstick shall apply in respect of the aggregate marks. In other words, if any candidate despite securing minimum 35% pass marks in individual subject has not been able to secure 40% marks, the Commission has to exercise its discretion to award grace marks to make up the deficiency of securing minimum 40% aggregate marks. If the petitioner has secured more than 35% marks in each individual subject, then it is wrong to say that his case for award of grace marks cannot be considered by the respondents. He would nonetheless be eligible for award of grace marks to the extent of shortage of the aggregate marks, so as to make it 40%. The petitioner has secured 331.40 marks. Annexure-2 of the writ petition which has been relied by learned counsel for the petitioner shows that in the old result, on Kuldeep Khatri, who secured 35% marks in each individual paper, but, failed to secure 40% marks in aggregate out of 900 marks, was granted 2.47 grace marks to make his total 40% in aggregate i.e. 360 marks out of 900 marks."

17. The Division Bench in *Madhavi Bhatnagar, supra*, has also decried that practice of RPSC and declared the interpretation on Rule 22 as illegal, holding that when grace marks can be awarded in individual papers, there is no question why grace marks should not be granted in subject upto the limit of three marks in aggregate. This is clear from plain reading of Rule 22.

18. Shri S.N. Kumawat, learned counsel for the RPSC has produced a chart of 15 appellants showing their position in originally declared result dated 09.05.2012, revised result dated 27.09.2012 and thirdly revised result dated 02.01.2013. According to the chart, five of the appellants were originally selected on the post of Accountant and on deletion of incorrect questions, when the value of the questions was proportionately increased subject-wise, all 15 of them got selected for appointment on the post of Accountant. But when, pursuant to direction of learned Single Judge, the result was revised, proportionate increase was made in value of remaining questions, for the entire Paper-I and Paper-II. In the

aftermath of deletion of incorrect questions, none of them could retain their position in the merit so as to get appointment on the post of Accountant. After grant of grace marks in aggregate to the extent of maximum three marks, however, the situation improved for at-least five of them, who could again appear in merit to secure appointment on the post of Accountant. There is a striking coincidence in the chart that five of the appellants, who were originally selected on the post of Accountant by securing more than aggregate 35% marks in individual papers and 40% in aggregate, are the same candidates, who again were selected for appointment on the post of Accountant. This time on account of grace marks being granted to them so as to make the aggregate to the extent they fell short of 40%. In our considered opinion, this has happened because of not one reason but for two reasons. First reason of course, as has been debated before us elaborately, is the proportionate increase in the value of the remaining questions of the entire papers rather than confining to subject-wise but another reasons and most significant one is that the value of each incorrect answer, which was three by virtue of the scheme of the Schedule-II examination conducted in Schedule-II and incorrect answer which is one mark, has been kept in tact, which can be best understood by having a look at what has been observed by learned Single Judge in the impugned judgment:--

"So far as third issue is concerned, it pertains as to how an individual question should be given value in case certain questions out of particular paper are deleted. For illustration, in one paper, 100 questions were set with one mark for each question for positive marking and half mark with negative marking. Out of those 100 questions, 10 questions are deleted then according to the petitioner, marking of that paper should be based on 90 marks and not by proportionate increase of value of 1 mark for remaining questions. The view has been supported by the judgment in the case of K Manjushree (supra).

In my opinion, the issue aforesaid needs detailed discussion but looking to the peculiar facts of these cases where even after selection, number of posts would remain vacant, as stated, I am of the opinion that in the given circumstances and as argued by learned counsel for the Commission, as an exception to this case and without making it a precedent, respondents are directed to give value to each question as given in the rules. Thereby, if any of the questions has been deleted in the particular paper, value of each question may not be increased proportionately but to maintain as it is. The marks should be valued based on correct and incorrect answers for each question with the same value, say, for a paper, 90 questions out of 100 are found to be correct, marks should be assessed based on 90 questions with the same value as was given at the initial state and provided under the rules for determination of minimum percentage of marks required. It would be then in accordance to the rules which provide value of each question. Aforesaid exercise should be undertaken by the Commission after completion of exercise in regard to first issue. The directions would be however not to be treated as precedent but as an exception to this case only and request in this regard made by learned counsel for the Commission is accepted."

19. All the aforementioned issues stand concluded against the appellants herein by division bench judgment of this court in *Sitaram Dayal*, supra, filed at the instance of several other affected candidates, which has upheld the very same judgment impugned in this appeal. Those appeals were dismissed primarily on the premise that large number of applicants failed to qualify for the vacancies in the examination held by the Commission, the Commission informed the court that such posts are vacant because of non-availability of qualifying candidates in the examination. It was observed that "the learned Single Judge taking note of the submission and grievance, in the peculiar facts of the case which came at the stage when the Commission reached at the final stage of the selection process and without treating it as precedent, considered it appropriate to give value of each question as given in the Rules and observed that the marks should be valued based on correct and incorrect answers of each question with the same value as was given at the initial stage and provided under the Rules for determination of minimum percentage of marks required." The Division Bench held that what has been observed by the learned Single Judge appears to be equitable and reasonable and does not call for interference.

20. This very question came to be considered by a coordinate Division Bench of this court in Special Appeal (Writ) No. 345/2013 - *Umesh Kumar Sharma*, wherein dispute pertained to direct recruitment to the post of Headmaster, Secondary School. In terms of the scheme, the examination was to comprise of two papers of 300 marks each i.e. Paper-I of General Studies and Paper-II of General Awareness about education and educational administration. Paper-I consisted of five subjects with marks separately allotted therefore, Paper-II also had six subject units for which marks were individually assigned. In that selection process also written examination was conducted by the RPSC on 15.05.2012. In that process of examination also there were several mistakes in the questions, difference in Hindi and English version throughout and typographical errors as also the errors in the languages of the answers thereto. Several candidates submitted representations before the RPSC and when their grievances were not remedied, they approached this court both at the Principal Seat at Jodhpur and the Bench at Jaipur by filing several writ petitions. Eventually, the RPSC deleted certain questions in the model answer-key and based on the opinion of the experts, declared the result. Apart from correctness of the questions/answers, deleted and not deleted, learned Single Judge in the aforesaid case also referring to the scheme of the examination and syllabus as per the amendment to the Rules vide notification dated 29.06.2011, concluded that allotment of marks to segment subjects comprising of the two papers and the variation of weightage patent therefrom, distribution of marks on deletion of questions in any segment subject, ought to have been limited to the remaining questions of that segment and not allocated to the remaining questions generally, as the same did have the potential of exceeding the maximum marks otherwise assigned to a particular constituent subject. Learned Single Judge thus directed the RPSC to give weightage of marks of deleted questions subject-wise

to maintain the allocation of total marks provided under the Rules for each subject, pursuant to the notification dated 29.06.2011. Stand of the RPSC in that matter before the Division Bench was that the Rules amended vide notification dated 29.06.2011 did not allocate distribution of marks of the deleted questions only amongst remaining questions of same subject. The RPSC therefore did not err in distributing the marks of the deleted question rather than of remaining questions. This argument as to the subject-wise proportionate non-distribution of the marks and distributing such marks for the entire paper was rejected by the Division Bench of this court at the Principal Seat at Jodhpur in Praveen Singh v. State of Rajasthan and Others - Special Appeal (Writ) No. 1032/2012 vide judgment dated 04.02.2013. The Division Bench in Umesh Kumar Sharma and Others v. Sudarshan Gaur and Others - Special Appeal (Writ) No. 345/2013, at Jaipur Bench, while deciding a bunch of special appeals vide judgment dated 11.04.2014, concurred with that view observing that "the debate on the manner of distribution of marks does not merit further scrutiny and that too, at the instance of the present writ-petitioners..." The Division Bench also observed that attention of the court was not drawn to any enjoinder in the Rules or a conscious decision of the Commission in this regard. It was therefore held that impeachment of the selection process on the counts, as canvassed in the present proceedings, ought to fail.

21. The aforesaid judgment dated 27.02.2013 of the Division Bench of this Court in Special Appeal (Writ) No. 27/2013 - Sitaram Dayal and Others v. R.P.S.C. and Others, was challenged before the Supreme Court in Petition for Special Leave to Appeal (Civil) No. 19968/2013, by the affected parties but the SLP has been rejected.

22. In view of the above, the issue even otherwise stands concluded by the aforesaid judgments and impugned judgment therefore needs not be interfered with.

23. The appeal is therefore dismissed.