



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL No.2326 of 2011

U.P. PUBLIC SERVICE COMMISSION Appellant(s)

Versus

MANOJ KUMAR YADAV & ANR.Respondent(s)

WITH

Civil Appeal Nos.2328-2330 of 2011
Civil Appeal No.2327 of 2011

J U D G M E N T

L. NAGESWARA RAO, J.

Civil Appeal No.2326 of 2011 and Civil Appeal Nos.2328-2330 of 2011 :

The Appellant is aggrieved by the judgment of the High Court by which the results of the main written examinations of Combined State/Upper Subordinate Service (Backlog/Special Recruitment) Examination, 2004 (hereinafter referred to as "*Backlog Examination, 2004*") and Provincial Civil Service (P.C.S.) Examination, 2004 (hereinafter referred to as the "*P.C.S. Examination, 2004*") were quashed.

2. An advertisement was issued by the Appellant inviting applications for appointment to posts under the Combined State/Upper Subordinate Services in February, 2004. The preliminary examination was conducted on 19.12.2004 and the results were declared on 30.06.2005. The preliminary examination consisted of two papers namely General Studies and one optional subject. The main written examination was held between 19.12.2005 and 03.01.2006, the results of which were announced on 06.10.2006. In the main written examination, the candidates were required to take two papers of 200 marks each in General Studies, one paper in Hindi and another in English Essay both carrying 150 marks. All these four papers were compulsory. Apart from the compulsory papers, the candidates had to take two optional subjects with two papers in each optional. Oral interviews were conducted between 09.11.2006 and 16.11.2006.

3. There was another advertisement issued by the Appellant in May, 2004 for the *Backlog Examination, 2004* calling for applications from reserved category candidates for backlog posts. The preliminary examinations were conducted on 27.02.2005 and its results were announced in September, 2005. The main written examination was conducted between 19.05.2006 to 03.06.2006, the results of which were announced on 24.03.2007.
4. Writ Petitions were filed in the High Court challenging the declaration of results of the above two examinations mainly on the ground that the scaling method followed by the Appellant in awarding marks to the candidates was illegal, arbitrary and irrational. According to the Respondents their actual marks were reduced due to the scaling method adopted by the Appellant.
5. Recruitment made to the posts of Civil Judge (Junior Division) in the State of U.P. was the subject matter of challenge in a Writ Petition filed in this Court in ***Sanjay Singh and Another v. U.P. Public Service Commission, Allahabad and Another (2007) 3 SCC 720***. The examination was conducted by the Uttar

Pradesh Public Service Commission in 2003. The result of the examination was challenged on the ground that the adoption of the scaling method was arbitrary. The complaint was that there was reduction of actual marks to the detriment of meritorious candidates. This Court in **Sanjay Singh** (supra) considered the point whether the scaling method adopted by the Commission was arbitrary and irrational and held that moderation is the appropriate method to offset examiner variability and the process of scaling can be followed where the candidates take different optional subjects.

6. The High Court by its judgment dated 25.05.2007 allowed Civil Writ Petition Nos.18775 of 2007, 19089 of 2007 and 20331 of 2007 by quashing the results of the main written examination of the *Backlog Examination, 2004* declared by the Commission on 24.03.2007. There was a further direction by the High Court to the Appellant to declare the results of the *Backlog Examination, 2004* afresh in the light of the observations made therein and the directions issued in the judgment of this Court in **Sanjay Singh's** case. The High Court referred to the submissions made on behalf of the Appellant that the

subjects of General Studies, Hindi and English Essay were compulsory subjects to be taken by all the candidates. There were two optional subjects with two papers each to be taken by the candidates in the main written examinations. The candidates had to choose the two options from a choice of 33 subjects mentioned in the advertisement. The Appellant submitted before the High Court that scaling method i.e. Linear Standard Score Method was applied by the Commission to the compulsory as well as the optional subjects. The pleadings and the submissions made on behalf of the Commission were also taken into account by the High Court for the purpose of holding that the adoption of scaling method even for compulsory subjects was contrary to the judgment of this Court in **Sanjay Singh's** case. On the basis of the above findings, the High Court allowed the Writ Petitions challenging the *Backlog Examination, 2004* by a judgment dated 25.05.2007. The High Court allowed Writ Petition No.22659 of 2007 pertaining to the *P.C.S. Examination, 2004* by following the judgment dated 25.05.2007 in Writ Petition No.18775 of 2007 by an order dated 15.06.2007. There is no

dispute that the point involved in both the cases is similar.

7. It is relevant to state that the judgment of this Court in **Sanjay Singh's** case was delivered on 09.01.2007. We are informed that the final result of the *P.C.S. Examination, 2004* was also declared on 09.01.2007 whereas the result of the main examination in the backlog Examination was declared in 24.03.2007. While issuing notice, this Court by an order dated 20.08.2007 stayed the judgment of the High Court. The Appellant proceeded to make appointments on the basis of interim order passed by this Court. The candidates who were appointed have been working for the past ten years.

8. The main contention of the learned Senior Counsel for the Appellant is that the High Court did not appreciate the ratio of the judgment in **Sanjay Singh's** case in its proper perspective. According to him, it is true that this Court in **Sanjay Singh's** case held that moderation is the appropriate method to be followed for examiner variability. However, it was also held that in case candidates have to take examination in different subjects, scaling method can be followed. He submitted

that the examinations in this case are different from the examinations in **Sanjay Singh's** case where all the candidates had to take the same papers. In the examinations with which we are concerned in this case, there were 33 different optional subjects out of which candidates had to choose two. He also submitted that the Appellant Commission was adopting the scaling method on the basis of expert advice taken by them in respect of all the examinations conducted by the Commission. He finally submitted that this case does not warrant interference as all the selected candidates have been working for the past ten years and are not parties before this Court.

9. The counsel appearing for the Respondents/Writ Petitioners submitted that admittedly, scaling method was followed by the Appellant - Public Service Commission due to examiner variability. They have pointed out the pleadings as well as the admissions made on behalf of the Public Service Commission before the High Court to support the said submission. The counsel further pointed out that the Appellant - Commission should not have adopted the scaling method

for the compulsory subjects i.e. English and Hindi. In any event, the learned counsel for the Respondents urged that they were adversely affected in view of the scaling method being followed due to reduction of marks actually scored by them in the examination. They could not be selected only due to the adoption of scaling method in awarding marks.

10. Having considered the submissions made on behalf of the parties and after perusing the material on record, we are of the considered opinion that the Appellant committed an error in following the scaling method for both the examinations in issue. It would be relevant to refer extensively to the judgment in **Sanjay Singh's** case which has dealt with the examinations conducted by the Appellant- Commission for recruitment to the posts of Civil Judge (Junior Division). The pattern of the examination for the said selection is similar to the exams in the instant case. In the said case, the Appellant relied upon the Proviso to Rule 50 of the U.P. Public Service Commission (Procedure and Conduct of Business) Rules, 1976 to contend that any formula or method or device to eliminate variation in marks can be adopted by the

Commission. One of the points considered was whether the scaling method adopted by the Commission was arbitrary and irrational. There is a detailed discussion about the concepts of examiner variability and subject variability. The reasons given by this Court for the purpose of holding that moderation would bring considerable uniformity and consistency in case of examiner variability are as follows:

“23. When a large number of candidates appear for an examination, it is necessary to have uniformity and consistency in valuation of the answer-scripts. Where the number of candidates taking the examination are limited and only one examiner (preferably the paper-setter himself) evaluates the answer-scripts, it is to be assumed that there will be uniformity in the valuation. But where a large number of candidates take the examination, it will not be possible to get all the answer-scripts evaluated by the same examiner. It, therefore, becomes necessary to distribute the answer-scripts among several examiners for valuation with the paper-setter (or other senior person) acting as the Head Examiner. When more than one examiners evaluate the answer-scripts relating to a subject, the subjectivity of the respective examiner will creep into the marks awarded by him to the answer-scripts allotted to him for valuation. Each examiner will apply his own yardstick to assess the answer-scripts. Inevitably therefore, even when experienced examiners receive equal batches of answer-scripts, there is difference in average marks and the range of marks awarded, thereby affecting the merit of individual candidates. This apart, there is “hawk-dove” effect. Some examiners are liberal in valuation and tend to award more marks. Some examiners are strict and tend to give less marks. Some may be moderate and balanced in awarding marks. Even among those who are liberal or those who are strict, there may be variance in the degree of strictness or liberality. This means that if the same answer-script is given to

different examiners, there is all likelihood of different marks being assigned. If a very well-written answer-script goes to a strict examiner and a mediocre answer-script goes to a liberal examiner, the mediocre answer-script may be awarded more marks than the excellent answer-script. In other words, there is “reduced valuation” by a strict examiner and “enhanced valuation” by a liberal examiner. This is known as “examiner variability” or “hawk-dove effect”. Therefore, there is a need to evolve a procedure to ensure uniformity inter se the examiners so that the effect of “examiner subjectivity” or “examiner variability” is minimised. The procedure adopted to reduce examiner subjectivity or variability is known as moderation. The classic method of moderation is as follows:

(i) The paper-setter of the subject normally acts as the Head Examiner for the subject. He is selected from amongst senior academicians/scholars/senior civil servants/judges. Where the case is of a large number of candidates, more than one examiner is appointed and each of them is allotted around 300 answer-scripts for valuation.

(ii) To achieve uniformity in valuation, where more than one examiner is involved, a meeting of the Head Examiner with all the examiners is held soon after the examination. They discuss thoroughly the question paper, the possible answers and the weightage to be given to various aspects of the answers. They also carry out a sample valuation in the light of their discussions. The sample valuation of scripts by each of them is reviewed by the Head Examiner and variations in assigning marks are further discussed. After such discussions, a consensus is arrived at in regard to the norms of valuation to be adopted. On that basis, the examiners are required to complete the valuation of answer-scripts. But this by itself, does not bring about uniformity of assessment inter se the examiners. In spite of the norms agreed, many examiners tend to deviate from the expected or agreed norms, as their caution is overtaken by their propensity for strictness or liberality or erraticism or carelessness during the course of valuation. Therefore, certain further corrective steps become necessary.

(iii) After the valuation is completed by the examiners, the Head Examiner conducts a random sample survey of the corrected answer-scripts to verify whether the norms evolved in the meetings of examiner have actually been followed by the examiners. The process of random sampling usually

consists of scrutiny of some top level answer-scripts and some answer books selected at random from the batches of answer-scripts valued by each examiner. The top level answer books of each examiner are revalued by the Head Examiner who carries out such corrections or alterations in the award of marks as he, in his judgment, considers best, to achieve uniformity. (For this purpose, if necessary certain statistics like distribution of candidates in various marks ranges, the average percentage of marks, the highest and lowest award of marks, etc. may also be prepared in respect of the valuation of each examiner.)

(iv) After ascertaining or assessing the standards adopted by each examiner, the Head Examiner may confirm the award of marks without any change if the examiner has followed the agreed norms, or suggests upward or downward moderation, the quantum of moderation varying according to the degree of liberality or strictness in marking. In regard to the top level answer books revalued by the Head Examiner, his award of marks is accepted as final. As regards the other answer books below the top level, to achieve maximum measure of uniformity inter se the examiners, the awards are moderated as per the recommendations made by the Head Examiner.

(v) If in the opinion of the Head Examiner there has been erratic or careless marking by any examiner, for which it is not feasible to have any standard moderation, the answer-scripts valued by such examiner are revalued either by the Head Examiner or any other examiner who is found to have followed the agreed norms.

(vi) Where the number of candidates is very large and the examiners are numerous, it may be difficult for one Head Examiner to assess the work of all the examiners. In such a situation, one more level of examiners is introduced. For every ten or twenty examiners, there will be a Head Examiner who checks the random samples as above. The work of the Head Examiners, in turn, is checked by a Chief Examiner to ensure proper results.”

11. This Court also considered a situation where candidates have an option to take different subjects for which the scaling method is appropriate as follows:

“**24.** In the Judicial Service Examination, the candidates were required to take the examination in

respect of all the five subjects and the candidates did not have any option in regard to the subjects. In such a situation, moderation appears to be an ideal solution. But there are examinations which have a competitive situation where candidates have the option of selecting one or few among a variety of heterogeneous subjects and the number of students taking different options also vary and it becomes necessary to prepare a common merit list in respect of such candidates. Let us assume that some candidates take Mathematics as an optional subject and some take English as the optional subject. It is well recognised that marks of 70 out of 100 in Mathematics do not mean the same thing as 70 out of 100 in English. In English 70 out of 100 may indicate an outstanding student whereas in Mathematics, 70 out of 100 may merely indicate an average student. Some optional subjects may be very easy, when compared to others, resulting in wide disparity in the marks secured by equally capable students. In such a situation, candidates who have opted for the easier subjects may steal an advantage over those who opted for difficult subjects. There is another possibility. The paper-setters in regard to some optional subjects may set questions which are comparatively easier to answer when compared to some paper-setters in other subjects who set tougher questions which are difficult to answer. This may happen when for example, in Civil Service Examination, where Physics and Chemistry are optional papers, Examiner 'A' sets a paper in Physics appropriate to degree level and Examiner 'B' sets a paper in Chemistry appropriate for matriculate level. In view of these peculiarities, there is a need to bring the assessment or valuation to a common scale so that the inter se merit of candidates who have opted for different subjects, can be ascertained. The moderation procedure referred to in the earlier para will solve only the problem of examiner variability, where the examiners are many, but valuation of answer-scripts is in respect of a single subject. Moderation is no answer where the problem is to find inter se merit across several subjects, that is, where candidates take examination in different subjects. To solve the problem of inter se merit across different subjects, statistical experts have evolved a method known as scaling, that is creation of scaled score. Scaling places the scores from different tests or test forms on to a common scale. There are different methods of statistical scoring. Standard score method, linear standard score method, normalised

equipercntile method are some of the recognised methods for scaling.

25. A. Edwin Harper Jr. and V. Vidya Sagar Misra in their publication *Research on Examinations in India* have tried to explain and define scaling. We may usefully borrow the same. A degree “Fahrenheit” is different from a degree “Centigrade”. Though both express temperature in degrees, the “degree” is different for the two scales. What is 40 degrees in Centigrade scale is 104 degrees in Fahrenheit scale. Similarly, when marks are assigned to answer-scripts in different papers, say by Examiner ‘A’ in Geometry and Examiner ‘B’ in History, the meaning or value of the “marks” is different. Scaling is the process which brings the marks awarded by Examiner ‘A’ in regard to Geometry scale and the marks awarded by Examiner ‘B’ in regard to History scale, to a common scale. Scaling is the exercise of putting the marks which are the results of different scales adopted in different subjects by different examiners onto a common scale so as to permit comparison of inter se merit. By this exercise, the raw marks awarded by the examiner in different subjects are converted to a “score” on a common scale by applying a statistical formula. The “raw marks” when converted to a common scale are known as the “scaled marks”. Scaling process, whereby raw marks in different subjects are adjusted to a common scale, is a recognised method of ensuring uniformity inter se among the candidates who have taken examinations in different subjects, as, for example, the Civil Services Examination.”

12. It is clear from the above that the process of scaling is a recognized method for ensuring uniformity amongst candidates who have taken examinations in different subjects. When there are a number of examiners evaluating the papers of a large number of candidates in an examination, there is a possibility of ‘examiner subjectivity’ or ‘examiner variability’. To minimise the examiner variability, this Court in **Sanjay Singh’s** case

held that moderation would be the best method to be followed.

13. In the *P.C.S. Examination, 2004* and the *Backlog Examination, 2004* the candidates had to take part in the main written examinations which consisted of four compulsory subjects and two optional subjects. The compulsory subjects were common to all candidates and the two optional subjects were to be chosen from the available 33 subjects as mentioned in the advertisements. As per the judgment of this Court in **Sanjay Singh's** case, the Commission could have followed the scaling method only for the optional subjects and not for the compulsory subjects. However, it is clear from the submissions made on behalf of the Appellant in the High Court that scaling method was followed even for compulsory subjects. We approve the findings of the High Court that the evaluation of *P.C.S. and Backlog recruitment examinations, 2004* was contrary to the judgment of this Court in **Sanjay Singh's** case.

14. Though we are in agreement with the view of the High

Court that the examinations were not conducted in accordance with the principles laid down in **Sanjay Singh's** case, we do not approve the directions given in the judgment to finalise the results afresh in accordance with the observations made therein. The exercise to be undertaken as per the said directions would result in displacement of a number of selected candidates not before this Court and alteration of the merit list causing serious prejudice to those appointed and working for the last ten years. Therefore, we are of the opinion that the appointments made pursuant to the advertisements of 2004 for the 'P.C.S.' and 'Backlog' posts should not be disturbed.

15. It is settled law that in certain situations, on account of subsequent events, the final relief granted by this Court may not be the natural consequence of the *ratio decidendi* of its judgment. In such situations, the relief can be moulded by the Court in order to do complete justice in the matter. It is relevant to note the fact that **Sanjay Singh's** case was also made prospective in operation and this Court declined to interfere with the selections already made in that case on the basis that

relief can be moulded. In the instant case, the examinations were conducted by the Appellant on the basis of the pattern being followed by them since 1996. At the time when the examinations were conducted, a judgment of this Court in ***U.P. Public Service Commission v. Subhash Chandra Dixit (2003) 12 SCC 701*** approving the scaling method adopted by the Commission held the field. Moreover, the selected candidates were appointed on the basis of an interim order passed by this Court in 2007 and they have been working continuously since then. There are no allegations of any irregularities or mal-practices in the conduct of the said examinations. The candidates who participated in the examinations cannot be found fault with for the error committed by the Appellant in adopting the scaling method. In view of the above, we do not deem it fit to disturb the appointments made pursuant to the selections in the examinations conducted in 2004.

16. Though we uphold the judgment of the High Court in declaring the adoption of the scaling method by the Appellant in the examinations as arbitrary, we set aside the directions given by the High Court to the Appellant to

declare the results of the said examinations afresh. The appeals are disposed of accordingly.

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17. This appeal filed by a successful candidate in the *P.C.S. Examination, 2004* is disposed of in terms of our judgment in Civil Appeal No. 2326 of 2011.

.....J.
[S.A. BOBDE]

.....J.
[L. NAGESWARA RAO]

**New Delhi,
February 16, 2018**