

Court No. - 36

A.F.R.

Case :- WRIT - A No. - 6649 of 2020

Petitioner :- Alok Kumar Singh And 8 Others

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Anurag Tripathi, Gaurav Kumar

Counsel for Respondent :- C.S.C., M.N. Singh

Hon'ble Vivek Agarwal, J.

1. Petitioners who admittedly undertook examination in terms of advertisement issued by the UP Public Service Commission on 6.7.2018 for Combined State / Upper Subordinate (PCS) Examination, 2018 and Assistant Conservator of Forest (ACF)/ Range Forest Officer (RFO) Services Examination, 2018, are challenging the selection process on the ground that since scaling method has been adopted, therefore, in the light of the judgment of the Supreme Court in case of **Sanjay Singh and another Vs. U.P. Public Service Commission, Allahabad and others** as reported in (2007) 3 SCC 720, selection process has been vitiated. It is prayed that a writ, order or direction in the nature of certiorari quashing the impugned result of PCS-2018 main examination declared on 23.6.2020 by UPPSC, be granted. It is also prayed that UPPSC be directed by issuing a writ, order or direction in the nature of mandamus to declare the result of main exam afresh and calling for records relating to scaling/moderation method applied in PCS-18 main exam. Petitioners have also prayed for the following other reliefs:

(i) Issue a writ, order or direction in the nature of mandamus commanding the respondent no. 2 to provide the descriptions (names, roll no, marks obtained, category etc.) of the selected candidates in the selection list when the final result is declared.

(ii) Issue a writ, order or direction in the nature of mandamus commanding respondent no. 2 to issue the marks sheets (raw marks & scaled marks both) of the petitioners who appeared in main / interview exam after declaring the result as soon as possible within a specified time-frame.

(iii) Issue a writ, order or direction in the nature of mandamus commanding the respondent no. 2 to answer any application submitted under Right to Information Act, in a manner taking into consideration practicality (to fix a reasonable date in order to allow the candidate to inspect his answer scripts of written examination), so that it may not appear that UPPSC takes RTI queries as a burden and a tool to harass candidates.

(iv) Issue any other suitable writ, order or direction in addition to & in supplement to refer the above, as this Hon'ble Court may deems fit and proper in view of the facts and circumstances of the case.

(v) Award the cost of the writ petition to the petitioners.

2. Learned counsel for the petitioners, submits that UP Public Service Commission, Prayagraj (Respondent no. 2) is a constitutional autonomous body and its main duty is to conduct examination for appointment to various services of the State.

3. It is submitted that the general business and functions of UPPSC are regulated by the provisions of UPPSC (Procedure and Conduct of Business) Rules, 2011 (hereinafter referred to as Rules, 2011) and UP State Public Service Commission (Regulation and Procedure) Act, 1985 (hereinafter referred to as Act, 1985).

4. It is submitted that vacancies were advertised on 6.7.2018 for approximately 984 posts under various categories with the rider of reservation.

5. The examination is to be conducted by the UPPSC in three stages consisting of :- (i) Preliminary Examination (objective type and multiple choice), (ii) Main examination (conventional type) i.e. written examination and (iii) viva voice i.e. personality test / interview.

6. Petitioners case is that they had qualified for the main examination and were issued admit cards after qualifying in preliminary examination. In the main examination, a total of 16738 candidates have been declared qualified to appear in the interview. It is submitted that admittedly petitioners did not pass written (main examination) except for petitioner No. 4, Alok Kumar Singh, who has become eligible to appear in the interview and has been called for interview on 31.7.2020.

7. Petitioners contention is that they were fully hopeful of success in the main examination, but are shocked not to find their names in the list of successful candidates when result for main examination was declared on 23.6.2020.

8. Petitioners contention is that scaling method has been adopted as a result of which candidates whose marks were scaled have been subjected to several anomalies and since marks of petitioner no. 1 were scaled to 934.06 against obtained raw marks of 951 in the Public Service Examination 2011, he could not succeed in the examination.

9. Petitioners have placed reliance on the judgment of Sanjay Singh (supra) and of Rajasthan High Court in case of **Bhanwar Lal Vs. State of Rajasthan & another (S.B. Civil Writ Petition No. 1211 of 2014)** (decided on 3.3.2014). By placing reliance on these judgments, it is submitted that so called, scaling formula, that has been used by UPPSC for result processing is unjust, unfair and irrational. It is submitted that, in fact, when scaling system is applied over the raw-marks in optional subject, then it results to, increase or decrease. When the raw-marks are converted into scaled marks, it causes undue disadvantage to candidates who appear in the main examination.

10. Counsel for the petitioner also submits that in case of Sanjay Singh (Supra) Hon'ble Supreme Court has held that application of scaling formula as has been approved in case of **UPPSC Vs. Subhash Chandra Dixit, (2003) 12 SCC 701**, requires reconsideration and it is further observed that scaling system adopted by the Commission leads to irrational results and does not offer a solution for examiner variability arising from strict / liberal valuation.

11. Learned counsel for the petitioners, based on aforesaid material submits that the Commission by not providing raw-marks, under Right to Information Act has violated the ratio of the judgment pronounced by the Hon'ble Supreme Court in case of **Central Board of Secondary Education & another Vs. Aditya Bandopadhyay & others** as reported in **(2011) 8 SCC 497**, decided on August, 09, 2011. It is submitted that neither the Act of 1985 nor Rules, 2011 prescribe for any scaling method and therefore adoption of scaling procedure to remove examiner variability is against the ratio of judgment of Sanjay Singh case (Supra).

12. It is also submitted that if any Act, Rule or judgment, having force of law, provides something to be done in a particular manner, then it should be done in that manner alone, otherwise not at all.

13. Counsel for the petitioner also submits that the judgment of the Supreme Court rendered in case of **Manoj Kumar Yadav Vs. PPPSC in Civil Appeal No. 2326 of 2011** decided on 16.2.2018 reiterated that UPPSC must form the merit list made on the basis of the marks allotted to candidates as per judgment pronounced in Sanjay Singh's case (Supra).

14. Sri M.N. Singh, learned counsel for the UP Public Service Commission submits that final result has been already declared on 11.9.2020 after conducting the interviews in which admittedly one of the candidates out of the petitioners appeared.

15. It is submitted that petitioners in para-1 of the writ petition has mentioned that the present writ petition is the first writ petition being filed by the petitioners pertaining to the cause of action involved in the writ petition. No earlier writ petition has been filed by the petitioner in this regard before the Hon'ble High Court or the Lucknow Bench of this Court or any other court of law for the same cause of action.

16. He submits that earlier as many as 26 persons had filed Civil Misc. Writ Petition No. 5302 of 2020; Anuj Dwivedi and 25 others Vs. UP Public Service Commission and 2 others praying for issuance of writ, order or direction in the nature of certiorari quashing the result of main written examination of Provincial Civil Services (PCS) Examination-2018 as declared by UP Public Service Commission (UPPSC) and determining the cut off for declaring the list of the candidates eligible to appear in the interview for selection and further prayed to issue any other suitable, writ, order or direction, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

17. It is submitted that this relief is similar to the prayer clause-1 in the present writ petition. It is pointed that petitioner no. 7 Anuj Dwivedi, S/o Amar Nath Dwivedi, R/o village Manaiya, Manaiya Kachar, District Prayagraj was petitioner no. 1 in Civil Misc. Writ Petition No. 5302 of 2020. Similarly, petitioner no. 8 – Nirmal Kumar Jaiswal, S/o Ram Prasad Jaiswal, R/o Bank Road, Bank Road Chauraha, Prayagraj was petitioner no. 2 in that writ petition. Petitioner no. 1 Alok Kumar Singh, S/o Ajay Pratap Singh is petitioner no. 3 in the said writ petition whereas petitioner no. 2 Shashank Shekhar Singh, S/o Harinarayan Singh is petitioner no. 4 in the said writ petition. Petitioner no. 5 Upendra Kumar Singh, S/o Narendra Pratap Singh, R/o Ward No. 03, Dindayal Nagar, Robertsganj, district Sonbhadra was petitioner no. 9 in the said writ petition and therefore, it is apparent that these petitioners namely petitioner nos. 1, 2, 5, 7 and 8 are guilty of suppressing of correct facts from this Court and therefore this writ petition filed

on the basis of incorrect declaration deserves to be dismissed in regard to these petitioners.

18. It is also submitted that Civil Misc. Writ Petition No. 5302 of 2020 has been dismissed by a coordinate Bench of this Court vide order dated 10.7.2020.

19. As far as another ground which has been urged by learned counsel for the petitioners that petitioners had sought information under the Right to Information Act, in regard to raw/scaled marks, but the respondent authorities have not replied till date, is concerned, there is an elaborate mechanism under the Right to Information Act, 2005 which provides for first appeal and second appeal, and therefore if petitioners are aggrieved by non-compliance of mandate of the Right to Information Act, 2005 then they have statutory remedy under the Act of 2005 itself.

20. Petitioners allegation is that not providing information amounts to violation of law laid down by the Hon'ble Supreme Court in case of Central Board of Secondary Education & another Vs. Aditya Bandopadhyay & others (Supra). Mandate of law is, examinee in a public examination has a right to inspect his evaluated answer book or taking certified copies thereof. Such a book is document and record in terms of Sections (2) (f) and 2 (i) and therefore, "information" under Right to Information Act.

21. Thus the ratio of the law laid-down in case of CBSE Vs. Aditya Bandopadhyaya (Supra) that an examinee is having right to inspect his evaluated answer book and if there are glaring irregularities in the evaluation then that can be made a ground for challenge before the High Court. This right is subject to be read with harmony with exemption and exclusion provision provided under the Right to Information Act.

22. In the present case dispute is not in regard to irregularities in valuation of the answer book but dispute is in regard to scaling methodology adopted by UPPSC (Respondent no. 2) and therefore scaling being a statistical tool and the object of the scaling is to counter variation in standards adopted by different examiners.

23. Thus it is apparent that aspect of scaling has nothing to do with the right of the petitioners to obtain copies of his answer script and as such there is no allegation of irrational, illogical or arbitrary valuation but whole writ petition is based on ground of methodology of the scaling and on the premise that its adoption has been disapproved by the Supreme Court in Case of Sanjay Singh (supra) and therefore UPPSC should be directed to prepare the merit list on the basis of raw-marks.

24. In view of such prayer in the writ petition, this ground of not providing copies under the Right to Information Act loses its steam and therefore the judgment rendered by the Hon'ble Supreme Court in case of CBSE Vs. Aditya Bandopadhyay (Supra) has no relevance to the facts and circumstances of the present case.

25. Third ground which has been taken by the petitioner which is the main limb of the writ petition that respondent no. 2 is not entitled to adopt methodology of scaling in PCS (Provincial Civil Services), 2018 main examination as it promotes mediocrity at the cost of meritorious candidates and this practice has been discarded by Hon'ble Supreme Court in case of Sanjay Singh (Supra).

26. Facts of the case of Sanjay Singh (Supra) are that on the request of Allahabad High Court, UPPSC issued an advertisement on 28.11.2003 to fill up 347 post of Civil Judge (JD) for which 51524 candidates appeared in preliminary examination on 21.3.2004 and the preliminary examination was of objective type consisting of 2 papers – General Knowledge and Law. On 30.6.2004 results were declared and 6046 candidates were declared to be qualified to appear in the main examination which was of “descriptive” (conventional type). Main examination consist of 5 papers, each carrying 200 marks, namely, General Knowledge, Language, Law-1, Law-2 and Law-3. In fact, 5748 candidates took the examination and thereafter 1290 candidates were interviewed and the UPPSC declared the final result on 1.5.2005 based on the aggregate of scaled marks.

27. The unsuccessful candidates challenged the selection process contending that the statistical scaling method adopted by the Commission is illegal and is contrary to the Uttar Pradesh Judicial Services Rules, 2001 (for short Judicial Services Rules) . They contended that conversion of their raw-marks into scaled marks, is illegal as it was done by applying arbitrary, irrational and inappropriate scaling formula. Therefore argument before the court was that scaling has resulted in meritorious students being ignored and less meritorious students being awarded higher marks and selected thereby violating the fundamental rights of the candidates.

28. The Supreme Court framed as many as 4 issues namely :-

(i) Whether the writ petitions are not maintainable?

(ii) Whether “scaling” of marks is contrary to or prohibited by the relevant Rules?

(iii) Whether the “scaling system” adopted by the Commission is arbitrary and irrational, and whether the decision in case of S.C. Dixit approving the “scaling system” requires reconsideration?

(iv) If the statistical scaling system is found to be illegal or irrational or unsound, whether the selections already made, which are the subject-matter of these petitions, should be interfered with?

29. As far as question no. 2 is concerned, in para-18, the Supreme Court drew comparison between Rule 20 (3) of UP Judicial Services Rules along with Note (i) of Appendix-II and Rule 51 of PSC Procedure Rules and noted that since field of appointment of Civil Judge is occupied by Rule 20(3) and note (i) of Appendix-II of the Judicial Service Rules, they will prevail over the general provisions in Rule, 51 of the PSC procedure Rules and in this back drop it is held that the scaling system adopted by the UPPSC contravenes Rules 20(1) so also Rule 20(3) and Note (i) of Appendix II which specifically refers “to the marks finally awarded to each candidates in the written examination” and held that this implies that marks awarded by the examiner can not be altered by scaling.

30. While answering question no. 3 regard to validity of the decision of the Supreme Court in case of UPPSC Vs. Subhash Chandra Dixit and others (Supra), also a case of appointment of Civil Judge (JD) which approved the scaling system, the Supreme Court did not approve the ratio of the judgment of the SC Dixit (Supra) which upheld scaling on two conclusions namely (i) that the scaling formula was adopted by the Commission after an expert study and in such matter, the Court will not interfere unless it is proved to be arbitrary and unreasonable, and (ii) scaling system adopted by the Commission eliminated the inconsistency arising on account of examiner variability, differences due to evaluation by strict examiners and liberal examiners on the ground that the Supreme Court in case of Sanjay Singh (Supra) found after an examination of the manner in which scaling system has been introduced and the effect thereby on the present examination, that the system is not suitable. In this back drop the Supreme Court held that “neither of the two assumptions made in SC Dixit case can validly continue to apply to the type of the examination with which we are concerned. We are, therefore of the view that the approval of the scaling system in SC Dixit is no longer valid”.

31. These findings are based on appreciation of the material before the Supreme Court in regard to which following relevant paragraphs of judgment in case of Sanjay Singh (Supra) needs to be reproduced so the throw light on the material on the basis of which conclusion has been drawn in regard to question no. 3.

“25. A. Edwin Harper Jr. & 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 'mark' is different. Scaling is the process which brings the mark awarded by Examiner 'A' in regard to Geometry scale and the mark 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 into 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 is 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 recognized method of ensuring uniformity inter se among the candidates who have taken examinations in different subjects, as, for example, the Civil Services Examination.

26. The Union Public Service Commission ('UPSC' for short) conducts the largest number of examinations providing choice of subjects. When assessing inter se merit, it takes recourse to scaling only in civil service preliminary examination where candidates have the choice to opt for any one paper out of 23 optional papers and where the question papers are of objective type and the answer scripts are evaluated by computerized/ scanners. In regard to compulsory papers which are of descriptive (conventional) type, valuation is done manually and scaling is not resorted to. Like UPSC, most examining authorities appear to take the view that moderation is the appropriate method to bring about uniformity in valuation where several examiners manually evaluate answer-scripts of descriptive/ conventional type question papers in regard to same subject; and that scaling should be resorted only where a common merit list has to be prepared in regard to candidates who have taken examination of different subjects, in pursuance of an option given to them.

27. But some Examining Authorities, like the Commission are of the view that scaling can be used, not only where there is a need to find a common base across different subjects (that is bringing the performance in different subjects to a common scale), but also as an alternative to moderation, to reduce examiner variability (that is where different examiners evaluate answer scripts relating to the same subject).

30. We may at this stage refer to the condition to be fulfilled, for scaling to be effective. For this purpose, we are referring to passages from the Authors/Experts relied on by the Commission itself.

30.1) A. Edwin Harper & Vidya Sagar Misra (in 'Research on Examinations in India) make it clear that scaling will be useful and effective only if the distribution of marks in the batch of answer scripts sent to each examiner is approximately the same as the distribution of marks in the batch of answer scripts sent to every other examiner.

30.2) A similar view is expressed by J.P. Guilford & Benjamin Fruchter (in their treatise 'Fundamental Statistics in Psychology and Education' page 476-477). They say that two conditions are to be satisfied to apply scaling :

(i) The population of students from which the distributions of scores arose must be assumed to have equal means and dispersions in all the abilities measured by the different tests; and (ii) the form of distribution, in terms of skewness and

kurtosis, must be very similar from one ability to another. He proceeds to refer to the disadvantages of scaling thus :

"Unfortunately, we have no ideal scales common to all these tests, with measurements which would tell us about these population parameters. Certain selective features might have brought about a higher mean, a narrower dispersion, and a negatively skewed distribution on the actual continuum of ability measured by one test, and a lower mean, a wider dispersion, and a symmetrical distribution on the continuum of another ability represented by another test. Since we can never know definitely about these features for any given population, in common scaling we often have to proceed on the assumption that actual means, standard deviations, and form of distribution are uniform for all abilities measured. In spite of these limitations, it is almost certain that derived scales provide more nearly comparable scales than do raw scores."

30.3) V. Natarajan & K. Gunasekaran in their treatise 'Scaling Techniques what, why and how', have warned :

"If one studies the literature in this field, he can find that there are a number of methods available ranging from simple to complex. Each has its own merits and demerits and can be adopted only under certain conditions or making certain assumptions."

The Authors describe the Linear Standard Score method (which is used by the Commission) thus :

"Unlike Z-score (Standard score) which has a mean of 'zero' and standard deviation 'one', the linear standard score has some pre-determined mean and standard deviations.

The choice of the mean and standard deviations is purely arbitrary. Each has its own advantages and disadvantages and useful for specific purpose only. It may be emphasized here that both the standard scores and linear standard scores retain the shape of the original distribution of raw marks. Therefore, if the original distribution is 'normally' distributed, then any type of Linear Standard Scores will also be 'normally' distributed. Taking the Normal Curve as the model, various points in other scales are plotted. It should be, however, noted that the kind of relationship shown in Figure -2 between normal curve vis-`-vis the other scores are valid only if the raw score distribution can be assumed to approximately normally distributed. (emphasis supplied).

30.4) The Kothari Report, 1976 ('Policy & Selection Methods' published by UPSC) while referring to scaling in regard to papers in different subjects, by using appropriate statistical techniques as a recognized procedure for improving the reliability of examination as a tool for selection, however cautions that the method should be under continuous review and evaluation, that continuing improvement in the light of experience and new developments, taking into account advancement of knowledge, is essential.

45. We may now summarize the position regarding scaling thus:

(i) Only certain situations warrant adoption of scaling techniques.

(ii) There are number of methods of statistical scaling, some simple and some complex. Each method or system has its merits and demerits and can be adopted only under certain conditions or making certain assumptions.

(iii) Scaling will be useful and effective only if the distribution of marks in the batch of answer scripts sent to each examiner is approximately the same as the distribution of marks in the batch of answer scripts sent to every other examiner.

(iv) In the Linear Standard Method, there is no guarantee that the range of scores at various levels will yield candidates of comparative ability.

(v) Any scaling method should be under continuous review and evaluation and improvement, if it is to be a reliable tool in the selection process.

(vi) Scaling may, to a limited extent, be successful in eliminating the general variation which exists from examiner to examiner, but not a solution to solve examiner variability arising from the 'hawk-dove' effect (strict/liberal valuation).”

32. Thus ratio of the law is that marks are assigned to answer script in different papers in different subjects by different examiners. Scaling process uses its variability by bringing the marks in different subjects to common scale by applying a statistical formula which is :

Formula

$Z = \frac{\text{Overall Combined Mean} + \frac{X - M}{\text{Overall combined SD}}}{\text{SD}}$

Z = is the scaled Score

X = is the Raw marks (actual Marks)

SD = is the standard deviation.

M = is the mean of Raw Marks of the Subject/ Examiner (as the case may be)

33.. Thus the back drop in which law in case of Sanjay Singh (Supra) has been laid down is that if Rules do not permit scaling then it cannot be adopted to. Secondly where all the candidates taking up judicial service examination are appearing in common papers then as per publication by A. Edwin Harper & Vidya Sagar Misra (in 'Research on Examinations in India) Subject variability being not present scaling has no application and the Supreme Court has held that moderation is a better methodology.

34. In the present case it is evident from discussion made in para-18 of the judgment of Sanjay Since Case (Supra) that PCS examination in which petitioners had appeared is covered by PSC Procedures Rules and there is provision in Rule 51 for adoption of any

method, device, or formula which they consider proper for the purpose so to eliminate variation in the marks awarded to candidates at any examination or interview.

35. In the present case it is admitted that all the candidates did not appear in the same papers and they had opted for different subjects (Optionals), therefore, Combined State/ Upper Subordinate Services (PCS) Examination is different from examination conducted for selection of Civil Judge. Secondly unlike Civil Judge selection where provisions of Judicial Service Rules are applicable and there is a specific provision in Rule 20 (3) as to method of and the basis of preparation of final list of selected candidates, this being totally different from Rule 51 of PSC Procedure Rule, ratio of law laid down in case of Sanjay Singh (Supra) overruling the judgment of SC Dixit (Supra) being in specific context of Civil Judge (JD) selection, which is governed by the Judicial Service Rules, will not be helpful to the petitioners in stricto sensu. Thus necessarily the law laid-down in case of Sanjay Singh (Supra) is on the issue of inconsistency between Rules for appointment of Judicial Officers and the Rules of the Public Service Commission. The ratio is that in absence of anything to the contrary, Rules of 2001 will have supremacy over the Rules of Public Service Commission.

36. This discussion leads to another aspect, that petitioners, submission in absence of any Rules or the Act, scaling could not have been adopted, is not made out. It is apparent that such contention deserves to be rejected and is hereby rejected in view of availability of Rule 51 as has been extracted in case of Sanjay Singh (Supra).

37. A careful perusal of the advertisement issued by the Commission on 6.7.2018, Annexure-1 to the writ petition reveals that under the head “important instructions for candidates:” “(15) scaling system will remain applicable in the optional subjects of the main (written) examination”, makes it abundantly clear that petitioners were aware of the fact, even before filling of forms for preliminary examination, that scaling system will be applicable in the optional subjects of the Main Written examination. Therefore, after they have participated in the examination, demanding change of the Rule and saying that adoption of scaling is arbitrary amounts to demanding the change of Rules after the game has begun and the petitioners have participated by appearing both in the preliminary examination (successful) and in the main examination unsuccessfully (except for one successful candidate).

38. Thus now petitioners are estopped from challenging the selection criteria as has been held in case of **Dhananjay Malik Vs. State of Uttranchal, (2008) 4 SCC 171** wherein it has been held that “if petitioners had any valid objection to the terms and conditions of

the advertisement then they should have challenged the selection process without participating in the same.

39. Similarly in case of **Union of India Vs. M. Chandra Shekharan, (1998) 3 SCC 694**, it has been held that “Principle of estoppel will apply to candidates who appeared in the DDC after being made aware of the procedure for promotion before they sat for the written test and appeared in the interview and such candidates on not being selected, are not permitted to turn around and contend that the marks prescribed for interview and confidential reports were disproportionately high or that the authorities seeking fixed minimum marks to be secured either at the interview or in the evaluation of the confidential report.

40. Similarly in case of **Gurmeet Pal Singh Vs. State of Punjab and another, (2018) 7 SCC 260**, it is held by the Supreme Court that the advertisement was not challenged by any of the appellants, it is a well-settled principle of law that when a candidate appears in an examination without objection and is subsequently found to be not successful a challenge to the process is precluded. In a recent judgment in **Ashok Kumar Vs. State of Bihar**, this principle has been re-emphasised by referring to the earlier judgments on this point starting from **Chandra Prakash Tiwari Vs. Shakuntala Shukla**. Thus, undoubtedly the appellants not having challenged the advertisement at the relevant point of time, cannot be permitted to contend that having not made a mark in the cut-off for the select list, something must be done to somehow accommodate them.

41. Admittedly, petitioners participated in the selection process and there is specific mention in the scheme as was advertised by the Commission in regard to scaling system, therefore, after being unsuccessful petitioners have no right to challenge the scaling system and they are estopped from challenging the same.

42. In case of **Prashant Ramesh Chakkarwar Vs. UPSC** as reported in **(2013) 12 SCC 489**, the Supreme Court has held that “in absence of any evidence to substantiate the allegations pertaining to resort to scaling of marks, to deprive more meritorious candidates of their legitimate right to be selected, such contention rejected”. It has been held that mere fact that some candidates who cleared preliminary examination could not pass main examination, cannot lead to an inference that method of moderation adopted by the Commission was faulty.

43. In case of **Prashant Ramesh Chakkarwar (Supra)**, the Supreme Court has approved the judgment of Delhi High Court and has held that in case of **Sanjeev Singh Case (Supra)**,

the court was called upon to decide the legality of the method of scaling adopted. Dehors the above conclusion, we are convinced that the impugned order does not suffer from any legal infirmity. In Sanjay Singh's case, the Court was called upon to decide the legality of the method of scaling adopted by the U.P. Public Service Commission for recruitment to the posts of Civil Judge (Junior Division). After examining various facets of the method adopted by the U.P. Public Service Commission and taking cognizance of the earlier judgment in U.P. Public Service Commission v. Subhash Chandra Dixit (supra), the three Judge Bench observed: (sanjay singh case , SCC pp.738-42,paras 20,23,&26)

“We cannot accept the contention of the Petitioner that the words "marks awarded" or "marks obtained in the written papers" refer only to the actual marks awarded by the examiner, "Valuation" is a process which does not end on marks being awarded by an examiner. Award of marks by the examiner is only one stage of the process of valuation. Moderation when employed by the examining authority, becomes part of the process of valuation and the marks awarded on moderation become the final marks of the candidate. In fact Rule 20(3) specifically refers to the "marks finally awarded to each candidate in the written examination", thereby implying that the marks awarded by the examiner can be altered by moderation.”

Thus it is apparent that Sanjeev Singh case (Supra) is to be read in the context of the Rules of 2001` and it cannot be read in isolation.

44. Another facet though not argued is that whether the petitioners are entitled to claim the desired relief without impleading the selected candidates as parties. If entire selection is to be quashed then opportunity of hearing is to be given to those who have been selected and appointed in different cadres, leads to conclusion, that, petitioners were obliged to implead those selected candidates as party whose results were declared on 11.9.2018 and admittedly this writ petition was taken up for hearing on 23.9.2020. In absence of such impleadment, petitioners are not eligible to seek desired relief of quashing of the results.

45. Similarly the Supreme Court dealt with the issue of plea of the petitioners in regard to disclosing certain information like showing evaluated answer books to candidates and the problems which arises in the process. These problems are enumerated in the judgment are as under:

B) PROBLEMS IN SHOWING EVALUATED ANSWER-BOOKS TO CANDIDATES

(i) Final awards subsume earlier stages of evaluation. Disclosing answer-books would reveal intermediate stages too, including the so-called 'raw marks' which would have negative implications for the integrity of the examination system, as detailed in Section (C) below.

(ii) The evaluation process involves several stages. Awards assigned initially by an examiner can be struck out and revised due to (a) Totalling mistakes, portions unevaluated, extra attempts (beyond prescribed number) being later corrected as a result

of clerical scrutiny (b) The Examiner changing his own awards during the course of evaluation either because he/she marked it differently initially due to an inadvertent error or because he/she corrected himself/ herself to be more in conformity with the accepted standards, after discussion with Head Examiner/ colleague Examiners (c) Initial awards of the Additional Examiner being revised by the Head Examiner during the latter's check of the former's work (d) The Additional Examiner's work, having been found erratic by the Head Examiner, been re-checked entirely by another Examiner, with or without the Head Examiner again re-checking this work.

(iii) The corrections made in the answer-book would likely arouse doubt and perhaps even suspicion in the candidate's mind. Where such corrections lead to a lowering of earlier awards, this would not only breed representations/grievances, but would likely lead to litigation. In the only evaluated answer book that has so far been shown to a candidate (Shri Gaurav Gupta in WP 3683/2012) on the orders of the High Court, Delhi and that too, with the marks assigned masked; the candidate has nevertheless filed a fresh WP alleging improper evaluation.

(iv) As relative merit and not absolute merit is the criterion here (unlike academic examinations), a feeling of the initial marks/revision made being considered harsh when looking at the particular answer-script in isolation could arise without appreciating that similar standards have been applied to all others in the field. Non-appreciation of this would lead to erosion of faith and credibility in the system and challenges to the integrity of the system, including through litigation.

(v) With the disclosure of evaluated answer-books, the danger of coaching-institutes collecting copies of these from candidates (after perhaps encouraging/inducing them to apply for copies of their answer-books under the RTI Act) is real, with all its attendant implications.

(vi) With disclosure of answer-books to candidates, it is likely that at least some of the relevant Examiners also get access to these. Their possible resentment at their initial awards (that they would probably recognize from the fictitious code numbers and/ or their markings, especially for low-candidature subjects) having been superseded (either due to inter-examiner or inter-subject moderation) would lead to bad blood between Additional Examiners and the Head Examiner on the one hand, and between Examiners and the Commission, on the other hand. The free and frank manner in which Head Examiners, for instance, review the work of their colleague Additional Examiners, would likely be impacted. Quality of assessment standards would suffer.

(vii) Some of the optional Papers have very low candidature (sometimes only one), especially the literature papers. Even if all Examiners' initials are masked (which too is difficult logistically, as each answer-book has several pages, and examiners often record their initials and comments on several pages-with revisions/ corrections, where done, adding to the size of the problem), the way marks are awarded could itself be a give-away in revealing the examiner's identity. If the masking falters at any stage, then the examiner's identity is pitilessly exposed. The 'catchment area' of candidates and Examiners in some of these low-candidature Papers is known to be limited. Any such possibility of the Examiner's identity getting revealed in such a high-stakes examination would have serious implications-both for the integrity and fairness of the Examination system and for the security and safety of the Examiner. The matter is compounded by the fact that we have publicly stated in different contexts earlier that the Paper-setter is also generally the Head Examiner.

(viii) UPSC is now able to get some of the best teachers and scholars in the country to be associated in its evaluation work. An important reason for this is no doubt the assurance of their anonymity, for which the Commission goes to great lengths. Once disclosure of answer-books starts and the inevitable challenges (including litigation) from disappointed

candidates starts, it is only a matter of time before these Examiners who would be called upon to explain their assessment/award, decline to accept further assignments from the Commission. A resultant corollary would be that Examiners who then accept this assignment would be sorely tempted to play safe in their marking, neither awarding outstanding marks nor very low marks-even where these are deserved. Mediocrity would reign supreme and not only the prestige, but the very integrity of the system would be compromised markedly.

46. These problems have been accepted as challenge before the Commission authorities, which prevents them from showing the answer books.

47. At this stage and in this back drop Sri M.N. Singh, learned counsel for the Commission submits that orders passed in Writ A No. 5302 of 2020 is when tested on aforesaid yardsticks then even that mandate cannot be enforced in absence of any specific Rule being brought on record in the light of the law laid down in case of Prashant Ramesh Chakkarwar (Supra).

48. This argument does not call for any pronouncement inasmuch as it is always open to the Commission to seek review of the order passed in Writ A No. 5302 of 2020.

49. Thus on due appreciation of the facts and law on the subject, I am of the opinion that the petitioners are not entitled to the relief claimed by them as firstly they are estopped from claiming such relief for the reasons mentioned above. Secondly, facts of Sanjay Singh's case (Supra) being different are not applicable to the facts and circumstances of the present case especially when there is no dispute or challenge to validity of Rule 51 of PSC Rules. Thirdly petitioners are not entitled to claim quashing of the results already declared in absence of impleadment of successful candidates. Therefore the writ petition deserves to be dismissed and is dismissed.

50. However, before directing consignment of the petition to the record room, it will be appropriate to again refer to the undertaking / declaration made by the petitioners in para-1 of the writ petition. Viz that, the present writ petition is the first writ petition being filed by the petitioner pertaining to the cause of action involved in the writ petition. No earlier writ petition has been filed by the petitioners in this regard before this Hon'ble Court or the Lucknow Bench of this Hon'ble Court or any other court of law for the same cause of action. Since petitioner nos, 1, 2, 5, 7 and 8 namely

- (i) Alok Kumar Singh, S/o Ajay Pratap Singh.
- (ii) Shashank Shekhar Singh, S/o Harinarayan Singh.
- (iii) Upendra Kumar Singh, S/o Narendra Pratap Singh.
- (iv) Anuj Dwivedi, S/o Amar Nath Dwivedi and

(v) Nirmal Kumar Jaiswal, S/o Ram Prasad Jaiswal

were petitioners in Writ Petition No. 5302 of 2020 claiming the same relief as has been sought in the present writ petition and as has been submitted by the learned counsel for respondent no. 2, that writ petition is not maintainable on the ground of suppression and making incorrect submission before the High Court by furnishing a false declaration having been proved from the record. The jurisdiction of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein may be issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim..

The underlying object has been succinctly stated by Scrutton, L.J., in *R. v. Kensington Income Tax Commissioners* (1917) 1 KB 486: 86 LJ KB 257: 116 LT 136, in the following words:

“ [I]t has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts - facts, not law. He must not misstate the law if he can help it - the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside any action which it has taken on the faith of the imperfect statement.”

51. In India in case of *All India State Bank Officers Federation vs. Union of India, 1990 Supp. SCC 336*, it has been held that the party who invokes the extraordinary jurisdiction of the Supreme Court under Article 32 or of a High Court under Article 226 of the Constitution, is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot pick and choose the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct facts). It is also held that if material facts are suppressed or distorted, the very functioning of the writ courts and exercise would become impossible.

52. In case of *Hindustan Transport Corporation vs. State of Uttar Pradesh* as reported in *AIR 1984 SC 953*, it has been held that non-disclosure and suppression will not only invite rejection of the petition, but over and above,

dismissing the petition, the Court may direct the petitioner to pay heavy costs also.

53. In view of the aforesaid discussion, present writ petition needs to be dismissed with cost of Rs. 10,000/- against each of the above named five petitioners whose roll numbers and registration numbers are mentioned in para-10 of the writ petition which are as under:-

Petitioners Name	Roll No.	Registration No.
1. Alok Kumar Singh	516103	10600934061
2. Shashank Shekhar Singh	512868	10601817318
3. Upendra Kumar Singh	298786	10601824071
4 Anuj Dwivedi	303262	10603846527
5. Nirmal Kumar Jaiswal	428234	10603062851

54. The above named petitioners are directed to deposit the cost within 30 days before the High Court Legal Services Authority, failing which Registrar General shall direct the Collector of the concerned district where the concerned petitioners are residing to recover the cost as arrears of land revenue from the petitioners.

In view of the above, the writ petition is dismissed.

Order Date :- 23.9.2020

S.K.S.