

HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT
AT JABALPUR

Case No.	WP. No.9519/2017
Parties Name	<i>Rohit Jain</i> Vs. <i>M.P.P.S.C. & Another</i>
Date of Judgment	28/08/18
Bench Constituted	Single Bench.
Judgment delivered by	Justice Sujoy Paul
Whether approved for reporting	YES
Name of counsels for parties	For the petitioner: Mr. Neelesh Kotecha, Advocate For the respondents-PSC: Mr. Prashant Singh, Senior Counsel with Mr. Anshul Tiwari, Advocate
Law laid down	1. Doctrine of Estoppel cannot be used as a shelter when the constitutional body itself commits a mistake or illegality in evaluating the answer sheet of the candidate. More so, when it is obliged to evaluate the answer sheet with accuracy and precision. 2. In absence of any provision under the statute/regulations, the Court should not 'generally' direct revaluation. In a case where error is glaring, apparent and admitted, direction for rechecking, re-evaluation can be granted.
Significant paragraph numbers	6,7,8

ORDER
(28/08/2018)

The admitted fact in this case is that Question No.2(A) of Second Paper (General Studies M-2014-II) was not evaluated by the examining body. The petitioner contended that the respondents

have erred in not examining the said answer. In the result, no marks were allotted to the petitioner. If the marks would have been received, his fate would have been different. Thus, it is prayed to direct the respondents to give marks for Question No.2(A) of second paper to the petitioner and decide his pending representation in this regard.

2. The stand of Shri Prashant Singh, learned Senior Counsel is that in the advertisement itself it was made clear that there exists no provision of re-evaluation /re-totaling. The petitioner knowing fully well about the said condition, appeared in the examination without any protest. Now, he is 'estopped' from praying for revaluation /re-totaling. The second contention is that the examination in question had taken place in the year 2014 and the petition is filed in 2017, therefore it suffers from delay and laches. Thirdly, in absence of any provision, the direction for revaluation/re-totaling cannot be granted. After publication of select list (Annexure P/9), the appointment orders were issued. After examination in question, two more selections were conducted by the respondents and, therefore, now it will not be proper to direct the respondents for giving marks to the petitioners on the said question. In support of his contention, learned senior counsel placed reliance on the order of Supreme Court in *H.P. Public Service Commission vs. Mukesh Thakur & Another (2010) 6 SCC 759*. He also placed reliance on a recent judgment of Supreme Court in *U.P.P.S.C. & Anr. vs. Rahul Singh & Anr (2018) 7 SCC 254* The judgment of *P.K. Selvendran vs. The Director of government Examination & Anr 2016 SCC Online 6029* is also relied upon by the respondents.

3. No other point is pressed by the parties.

4. I have heard the parties at length and perused the record.

5. During the course of arguments, Shri Kotecha, learned counsel for the petitioner pointed out that although the selection in question was of the year 2014, its result was declared in 2016 and when the petitioner found that his name is not there in the select list, he preferred an application for grant of copies under the R.T.I. Act, 2005. In turn, respondents by communication dated 23-05-2017 informed him that he may deposit the requisite fees and inspect the answer sheets. The respondents declined to provide the photocopy of the answer sheets. The call letter dated 12-08-2016 (Annexure P/6) shows that the date of interview was 20-09-2016. Thus, the result came in the end of 2016. Immediately, thereafter the petitioner obtained information under the R.T.I. Act, inspected the documents and then filed this petition. Hence, I am unable to hold that the petition suffers from any delay or laches.

6. So far the question of 'estoppel' is concerned, I do not see any merit in this contention. A constitutional body is obliged to evaluate the answer sheets of the candidates with accuracy and precision. If it commits a mistake or illegality, it cannot take shelter of 'estoppel'. Putting it differently, the constitutional body like PSC is under a constitutional obligation to examine the answer sheets of the candidates with fairness, seriousness and due care. If it fails to discharge the said constitutional obligation, it cannot hide behind the doctrine of 'estoppel'.

7. The next question is whether in absence of any provision of revaluation/re-totaling, any direction can be issued by this court. To bolster aforesaid objection, Shri Singh placed heavy reliance on the judgment of *Mukesh Thakur* (supra). A careful reading of this judgment shows that the Apex Court held that in absence of any provision under the statute/regulations, the Court should not

'generally' direct re-evaluation . I am unable to read this judgment in the manner suggested by Shri Singh. The Apex Court, in my considered opinion, consciously used the word 'generally' in the relevant paragraph. This was done in order to leave scope for extreme cases where illegality is apparent on the face of the record or it is an admitted position between the parties. As a thumb rule, it has not been laid down that no circumstance, revaluation /re-totaling is permissible. At the cost of repetition, in this case, the respondents have admitted that one answer of petitioner has not been evaluated. In the relevant answer a tick (✓) mark is given but no marks were given against the said answer. In a recent judgment of Supreme Court in **Rahul Singh** (supra), the Apex Court considered catena of judgments and opined as under:-

“30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are: (i) If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it; (ii) If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the Court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any “inferential process of reasoning or by a process of rationalisation” and only in rare or exceptional cases that a material error has been committed; (iii) The Court should not at all re-evaluate or scrutinize the answer sheets of a candidates- it has no expertise in the matter and academic matters are best left to academics; (iv) The Court should presume the correctness of the key answers and proceed on that assumption; and (v) In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.”

8. The condition (ii) aforesaid in no uncertain terms makes it clear that once it is demonstrated very clearly, without any inferential process of reasoning or rationalization that material error has been committed the case may be treated as a rare or exceptional

case. A conjoint reading of judgment of *Mukesh Thakur and Rahul Singh* (supra) leaves no doubt that in a case of this nature, where error is glaring, apparent and admitted, direction for rechecking, re-evaluation can be granted.

9. As discussed above, the petition does not suffer from delay and laches. The examination was conducted in the year 2014, result was declared in 2016 and the petitioner prayed for and granted permission to inspect the answer sheets on 27-05-2017. Immediately thereafter, he filed this petition on 05-07-2017. If in between, certain more selections had taken place, the petitioner cannot be deprived from the fruits of this litigation on that score. It is thus apparent that the respondents have committed a grave, admitted and material error in not giving marks to the said question. This is a matter of common knowledge that in the present days of cut throat competition, difference of marks in decimal obtained by a candidate may make a world of difference about his position in the merit list. Thus, non examination of one answer may have a drastic effect in terms of position in the select list. Thus, this argument and grievance cannot be marginalized or ignored that answer sheets is not properly evaluated.

10. In this view of the matter, I deem it proper to allow this petition and direct the respondents to recheck the Question No.2(A) of Part B of Second Question Paper and grant appropriate marks to the petitioner. The entire exercise be completed within 30 days from the date of production of copy of this order. Needless to mention that if on grant of marks, the petitioner's name finds place in the select list, his position shall be informed by the PSC to the government so that government may act upon such revised merit position of the petitioner. Needless to emphasize that in that event, it will not be open to the respondents/State Government to say that

life of select list has already expired.

11. The petition is allowed to the extent indicated above. No cost.

(SUJOY PAUL)
JUDGE

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