

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**W.P.(C) 3771/2008**

**Reserved on October 22, 2008**

**Date of decision: October 24,  
2008**

**# NIMMAKAKAYALA GEETA SWAPNA ..... Petitioner  
! Through Dr. G.R. Sharma with  
Mr. Anil Gupta, Advocate**

**versus**

**\$ UNION OF INDIA and ANR ..... Respondents  
Through Mr. Naresh Kaushik with Ms. Amita  
Kalkal, Advocate for UPSC.  
Ms. Jagrati Singh, Advocate for Mr. A.K. Bhardwaj, Advocate for UOI.**

**CORAM:**

**HONBLE DR. JUSTICE S. MURALIDHAR  
HONBLE MR. JUSTICE SURESH KAIT**

- 1. Whether Reporters of local papers may be allowed to see the judgment? No**
- 2. To be referred to the Reporter or not? Yes**
- 3. Whether the judgment should be reported in Digest? Yes**

**J U D G E M E N T**

**24.10.2008**

- 1. This writ petition challenges an order dated 26th March 2008 passed by the Central Administrative Tribunal (?Tribunal?), Principal Bench dismissing the petitioner?s application OA No. 592 of 2008.**
- 2. The facts leading to the filing of the present petition are that the petitioner sat for the Civil Service (Main) Examination 2006 conducted by the respondent No.2 Union Public Service Commission (UPSC). Among the**

- subjects were Psychology Part-II and Essay (English). According to the petitioner, she had performed very well in these subjects. She states that she appeared in the personality test but ultimately did not make it to the merit list. It is the case of the petitioner that on knowing her marks in Essay and Psychology-II papers to be 64 out of 200 and 126 out of 300 respectively, she wrote a letter dated 8th June 2007 to the UPSC seeking revaluation/reappraisal of the said two subjects. The UPSC replied by a letter dated 4th July 2007 informing her that although these papers have been rechecked/retotaled, no error has been noticed. The petitioner then filed initially a writ petition in this Court which was dismissed with liberty to the petitioner to approach the Central Administrative Tribunal.
3. The petitioner then filed OA No. 592 of 2008 before the Tribunal. The case set up by the petitioner before the Tribunal was that the UPSC ought to have revalued her answer sheets in Essay and Psychology-II by an independent expert and that in failing to do so the UPSC had acted arbitrarily and malafide. Her case was that her answer sheets in the said two subjects were not checked by the experts in the field as was evident from the fact that she had got far less marks than she should have. The Tribunal has by the impugned order dated 26<sup>th</sup> March 2008 dismissed the petitioner's application holding that there was no rule prescribed by the UPSC which permitted revaluation of answer sheets and that in the circumstances it was not possible for the Tribunal to issue a direction to that effect to the UPSC.
  4. When the writ petition was listed for hearing on 16th May 2008 this Court required to the UPSC to produce the answer sheets of the petitioner in said two subjects in a sealed cover. At the hearing on 23rd May 2008 this Court examined the answer sheets submitted to it in sealed cover and returned them to the learned counsel for the UPSC. At the hearing on 29th May 2008 the learned counsel appearing for the UPSC informed this Court that there is no provision under which there can be a revaluation of the answer sheets and thereafter the case was set down for final hearing.
  5. We have heard the submissions of Dr. G.R. Sharma, learned counsel for the petitioner and Mr. Naresh Kaushik, learned counsel for the UPSC.
  6. The first submission made by learned counsel for the petitioner is that the UPSC has adopted a moderation procedure whereby the marks awarded to the petitioner in Psychology-II were reduced from 152 to 126 and that this itself demonstrated arbitrariness. When asked to show the factual basis of this submission learned counsel for the petitioner sought to contend that his source was the information provided orally to this Court by learned counsel for the UPSC during a previous hearing. No such statement has been recorded in any proceedings in this case. We also find that no such case has been set up by learned counsel for the petitioner before the Tribunal. In para 4.15 of the application filed by the petitioner before the Tribunal, it has been

stated:

- 4.15 That the applicant appeared in the examination and scored good marks in all the subjects as can be seen in the mark sheets bearing No. 6264 relating to Roll No. 005964 issued to the applicant, but the applicant was shocked to find that in two subjects i.e. one Essay Code No. 96, Psychology-II Code No. 38, the marks were not as good as she scored in other subjects as such, the petitioner was surprised and shocked to see such a low score whereas she scored very good marks in the other papers in the examination. The mark sheet referred to in the above paragraph was enclosed by the petitioner as Annexure P-6. Further, in the present writ petition again in para 16 the petitioner has referred to a mark sheet bearing No. 6264 relating to Roll No. 005964 issued to the petitioner and has annexed a copy of the same as Annexure P-6. A perusal of Annexure P-6 shows that it is the photocopy of the mark sheet issued by the UPSC indicating that the name of the petitioner and her Roll number. This mark sheet clearly shows that the marks obtained by the petitioner in Essay was 64 out of 200 and in Psychology-II it was 126 out of 300. Therefore, there was no question of the petitioner coming to know of her reduced marks only on account of some oral statement by counsel for the UPSC, which incidentally has been denied by him.
7. Learned counsel for the petitioner then referred to his rejoinder where it is stated that "actually and factually I was allegedly awarded 60 marks in Essay and 152 in Psychology II." We find absolutely no merit in this submission made in the rejoinder for the first time. This rejoinder is purportedly in reply to the counter affidavit which however does not make any reference to a reduction of the marks awarded to the petitioner as a result of any order or procedure. We find no such case of alleged reduction in marks having been set up by the petitioner before the Tribunal or even in the writ petition filed in his Court. Throughout, her case has been that she should have been awarded marks higher than 126 out of 300 for Psychology II and 64 out of 200 for Essay.
  8. Learned counsel for the petitioner then contended that if the petitioner was awarded 152 marks in Psychology-II, she would qualify in the examination. Again we find no such case having been set up at any point of time by the petitioner before the Tribunal or in the writ petition filed in this Court. We find this submission to be entirely without basis.
  9. It was then sought to be contended that although there is no rule prescribed by which revaluation of answer sheets can be permitted, this Court should in the interests of justice, issue such a direction. This Court is not inclined to do so in view of the settled law in this regard. The judgment of the Supreme Court in *Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission* (2004) 6 SCC 714 is categorical. It has been held by the Supreme Court in the said decision that when there is no provision entitling a candidate to have his answer sheets revalued, a prayer to that effect before

- the High Court would be wholly untenable.? The Supreme Court has also pointed out the practical difficulties in permitting revaluation of answer sheets after the declaration of the results. Learned counsel for the petitioner was unable to distinguish this judgment.
10. Learned counsel for the petitioner referred to the judgment of the Supreme Court in Secretary, West Bengal Council of Higher Secondary Education v. Ayan Das (2007) 8 SCC 242 where in para 13 it was observed that it was important to have a fool proof system of evaluation. Having gone through the said judgment and having examined the facts of the present case this Court is of the considered view that no error can be found in the system of evaluation followed by the UPSC in the instant case. There is no rule requiring it to undertake revaluation of the answer sheets. We are not at all impressed by the submission that the evaluation of the answer sheets of the petitioner in the first instance was done by the persons who were not qualified or competent. This submission is entirely without basis and remains unsubstantiated. Reliance was sought to be placed on the judgment of the Supreme Court in The President Board of Secondary Education, Orissa v. D. Suvankar 2006 (12) SCALE 24. The facts of the said case make it clear that it has no application to the present case.
  11. We find absolutely no infirmity in the impugned order of the Tribunal. There is no merit in this petition and it is dismissed as such.

**S. MURALIDHAR, J.**

**SURESH KAIT, J**

**OCTOBER 24, 2008**