

**WEST BENGAL PUBLIC SERVICE  
COMMISSION**



**IN THE WEST BENGAL ADMINISTRATIVE TRIBUNAL**

**BIKASH BHAVAN, SALT LAKE, KOLKATA- 700 091**

**Case No. 0A-646/2001**

**D.D. 2.1.2004**

**Justice Mr. R.K.Mazumder, Hon'ble Chairman**

**Mr. S.K.Ghosh, Hon'ble Member (A)**

**Manas Ranjan Mazumder & Ors. ... Applicants**

**Vs.**

**State of West Bengal & Ors. ... Respondents**

**Qualification – Experience qualification:**

Applicants were candidates for recruitment to the posts of Principal in Government Colleges – Apart from educational qualification experience for 15 years in research work was prescribed – As the applicants did not have the experience for the number of years prescribed they were not called for interview – The Tribunal upheld the contention of P.S.C. that 15 years experience in research work should be gained after obtaining Ph.D. degree dismissed the applications.

**Held:**

Where experience of a number of years is prescribed as an item of qualification, this would mean only experience/research experience gained in full time employment/research after acquiring the minimum requisite educational qualification.

**ORDER**

The case of the Applicants was in brief that the P.S.C, West Bengal, being Respondent No.3, published an Advertisement being Advertisement No. 15/2000 dated 18/9/00 inviting applications for filling up the posts of Principal in Government Colleges in the West Bengal in the Senior Education Services. All the applicants possessed necessary essential qualifications and hence they applied for the said posts. But unfortunately the applicants were not called for interview. Hence, they contacted the Secretary, PSC for information in the matter. It was informed by the PSC authorities that since the applicants did not fulfill the essential qualifications, they were not called for interview. Being aggrieved by such stand. The applicants sent representations for consideration by the authorities, but in vain. Hence the case.

The Public Service Commission, West Bengal being Respondent No.3 contested this case by filing a Reply. The case of this Respondent was that in response to the advertisement NO.15/2000 dated 18/9/2000 inviting applications for the posts of Principal in Govt. Colleges under Senior Education Service, 112 candidates applied for the said posts. On proper scrutiny of the applications, 71 candidates were not called for interview on the ground that they did not fulfill the essential qualification as to experience in research/teaching for 15 years obtained after acquiring Ph.D. degree, which was the minimum required essential academic qualification. It was also the case of this Respondent that the Commission being a Constitutional independent body, it never acted with "bias" or "prejudice". On the other hand, the Commission acted fairly and bonafide to get the best talented persons for public service. This Respondent, therefore, prayed for dismissal of this case.

The Applicants filed Rejoinder controverting the contentions made in the Reply by the Respondent No.3.

Both the parties filed written notes of arguments in support of their respective cases.

The only question requiring consideration was whether the Respondent authorities concerned should be directed to call the applicants for interview for the posts of Principal in Govt. Colleges in the West Bengal in the Higher Education Services as prayed for or not.

At the time of hearing Ld.Counsel for the applicants vehemently submitted that his clients possessed all the essential qualifications, namely, (i) Master degree with prescribed percentage of marks, (ii) Ph.D. degree or equivalent, (iii) Experience for 15 years in research work, and (iv) Good power of expression in Bengali and Nepali, But none-the-less they were not called for interview on the alleged ground that they did not possess the necessary experience for 15 years after obtaining the Ph.D.degree. It was further submitted by him that the PSC Respondents misinterpreted the Recruitment Rules and also the advertisements as published in certain Newspaper by way of saying that those documents never mentioned that the experience in research for 15 years should be counted from the date of getting the Ph.D. degree. According to him no such condition as to experience for 15 years after obtaining the Ph.D. Degree was stipulated. It was also submitted that all the applicants had had the research experience for long 15 years in the total and hence they were qualified for the said posts and were eligible to be called for

interview, but PSC Respondent stood in the way and was insisting illegally that the applicants should have experience in research work for 15 years after obtaining the Ph.D. degree.

Ld.Counsel for the PSC Respondent submitted, on the other hand, that 15 years experience in teaching/research after obtaining Ph.D. degree or equivalent was essential which the applicants did not possess. It was also submitted by him that PSC acted bonafide in the matter. As the applicants did not fulfill the essential conditions by way of having 15 years experience after obtaining the Ph.D. degree, they were not called for in the interview for the said posts. In that connection it was also submitted that the PSC was a Constitution authority and it acted bonafide in the matter without any “bias” or “prejudice” against any applicant. Hence, the instant application was liable to be dismissed.

According to the Ld.Counsel for the Respondent, PSC., the experience of teaching/research should be counted from the date, the candidates obtained their respective Ph.D. degrees. In support of such contentions Ld. Counsel for the PSC drew our attention to the note as on record as appended below:-

“The advertisement that the prescribed essential qualifications were the minimum and mere possession of the same did not entitle the candidates to be called in for the interview”. In that connection he also interalia drew our attention to the note contained in the Advertisement, which ran as follows:-

“Where experience of a number of years is prescribed as an item of qualifications, this would mean only experience/research experience gained in full time employment/ research after acquiring the minimum requisite educational qualifications”.

Ld.Counsel for the PSC argued that minimum requisite educational qualification was Ph.D. and hence the experience of a candidate in teaching/research in Universities/Colleges etc. should be counted from the date Ph.D. degree was obtained by a candidate. He further submitted that since the applicants of this case did not possess such experience for 15 years counted from the date of their getting Ph.D. degree, the Respondent PSC had no other alternative but to refuse their prayer for appearing before the Interview Board. He further argued that the Respondent PSC was an independent Constitutional Body and it acted strictly in terms of the reference made by the State Govt. under Article 309 of the Constitution of India in Notification NO.465-EDN(A)/4A-15/99

dated 2/6/2000. It was also submitted by him that PSC, being the expert Independent Body, it acted bonafide and nurtured no “bias” or grudge or ill-feeling against anybody. It was his candid submission that since the applicants did not fulfill the essential qualifications as to experience obtaining the degree of Ph.D. their candidature could not be considered by way of giving them an opportunity of appearing before the Interview Board. He, therefore, prayed for dismissal of this case on merit.

On the other hand, it was the submission of the Ld.Counsel for the applicants that the essential qualifications as to experience in research for 15 years should be courted not from the date of their obtaining the Ph.D. degree but that the whole experience for 15 years could be counted from a date before the candidate obtained his Ph.D. degree. In other words, it was the submission that the total period of experience for 15 years should be counted by taking into considerations the experience gathered by the candidate not only in respect of the period from the date of their obtaining Ph.D. degree but also by taking into consideration the experience they obtained from before the date of their getting Ph.D. degree. To be specific, it was their contention that the required experience in research should be counted covering the whole period of their experience whether gained before obtaining the Ph.D. degree or thereafter.

Admittedly, the Respondent No.3, PSC published an advertisement being Advertisement No.15/2000 in the leading Newspapers dated 18/9/2000 for appointment to the posts of Principal in Govt.Colleges in West Bengal. Admittedly also all the applicants applied for the said posts. Admittedly also all the applicants hold the M.Sc. degree with prescribed percentage of marks and also the Ph.D. degree or equivalent. But the whole dispute revolved round the question as to whether the Applicants fulfilled the qualification as to 15years research experience after obtaining the Ph.D. degree or not.

A copy of the Advertisement as published in Newspapers is on record. According to this Advertisement, the essential qualifications were prescribed as follows:-

“QUALIFICATIONS ESSENTIAL – (i) Master degree with at least 55% marks or an equivalent grade of “B”=Good, Grade point : 3.50 – 4.49, percentage equivalent – 55.64 in 7-point scale as stipulated by the University Grants Commission, at the Master degree level in the relevant subject, (ii) Ph.D. or equivalent, (iii) 15 years experience of teaching/research in University/Colleges and other Institutions of Higher Education, (iv) Good power of expression in Bengali Nepali.”

It also appears from the notes appended below the said Advertisement that on the question of experience, it prescribed as under:-

“Where experience of a number of years is prescribed as an item of qualification, this would mean only experience/research experience gained in full time employment/ research after acquiring the minimum requisite educational qualification”.

According to the Applicants, this experience of 15 years in research should be counted not from the date of getting the Ph.D. degree but from the date prior to the date of getting the Ph.D. degree. On the other hand, the contention of the PSC was that this experience of 15 years should be counted from the date of getting the Ph.D. degree and not from any date prior to the date of getting the Ph.D. degree. A close scrutiny of the Advertisement as published made it abundantly clear that the experience of 15 years is to be counted from the date of getting the Ph.D. degree, which was the minimum required essential academic qualification. That being the position, the PSC did not rightly allow the applicants to appear before the Interview Board as they did not possess the 15 years experience in research after getting the Ph.D. degree. We, therefore, find no merit in the present application. Hence the case is dismissed.

\*\*\*

**IN THE HIGH COURT AT CALCUTTA****Constitutional Writ Jurisdiction****W.P.S.T.No.496(W) of 2004****D.D. 18.8.2004****Hon'ble Mr. Justice Alope Chakrabarti****Hon'ble Mr. Justice S.P.Talukdar****Debabrata Bandyopadhyay            ...            Petitioner****Vs.****The State of West Bengal & Ors.    ...            Respondents****Examination : Review of answer scripts as well as review of marks given in the personality test:**

Petitioner a candidate for West Bengal Civil Services (Judicial Examination) 1997, alleged that even though he performed well he was given less marks in Mohammedan Law and Civil Procedure Code and given only 5 marks out of 100 marks in the personality test – Aggrieved by the same the petitioner approached West Bengal Administrative Tribunal which dismissed the application – As against that the petitioner filed this writ petition it was also dismissed.

**Held:**

Revaluation of answer script, even if not provided with the relevant rules and regulations may be made in certain situations. And it is found that the said answer scripts were produced before the Tribunal and according to the Tribunal marks have been rather liberally allotted by the Examiner. In such backdrop there can be no further scope for grievance. True, mere fact that Interview Board comprised of eminent personalities does not make it unassailable. But bias must be proved.

**Cases referred:**

1. 1997 SCC (L&S) 1674 – Madhya Pradesh Public Service Commission Vs. Om Prakash Gupta & Anr.
2. AIR 1998 SC 162 – State of U.P. Vs. Rafikuddin & Others

**ORDER**

S.P.Talukdar, J.: This relates to an application under Article 226 of the Constitution. This is directed against Order dated 5<sup>th</sup> January, 2004 passed by the West Bengal Administrative Tribunal,

hereinafter referred to as 'the Tribunal' in O.A.No.6547 of 1999.

The present petitioner, as applicant, approached the Tribunal with the following grievances:-

He appeared in the W.B.C.S. (Judicial Examination), in 1997 with Roll No."44". He secured 473 marks out of 1100 marks in the written examination. He qualified for the personality test where he could secure only 5 marks out of 100. He missed the qualifying marks for the final selection by 2 marks only in the aggregate. Besides having grievances over the marks given to him in subjects like Mohammedan Law and Civil Procedure Code, he alleged that his performance was not properly appreciated in the personality test. He was just 2 marks short of the qualifying 480 marks out of total 1200 being 100 marks for each of the 11 subjects for the written examination and 100 for the personality test. After publication of the result he applied for review but to no effect. He, therefore, prayed for a direction upon the respondents for review of his answer scripts in respect of the said two subjects, i.e., Mohammedan Law and Civil Procedure Code as well as for review of the marks given in the personality test.

The Opposite Party/PSC as respondent No.2 contested the case by filing reply. It was stated that all the answer scripts were evaluated by a single examiner in order to maintain uniformity. The Interview Board was constituted with eminent persons and marks were awarded by the Members unanimously. The applicant having failed to secure the qualifying standard was not considered for being included in the merit list.

Learned Tribunal after taking into consideration of both sides, by order dated 5<sup>th</sup> January, 2004 dismissed the application.

Learned Counsel for the petitioner, Mr.A.Sanyal, submitted that the petitioner was deliberately left out and there could be no reason for denial of his prayer for review of the answer scripts and giving him 5 out of 100 marks in the personality test. Mr.Sanyal relying the decision in the case of Madhya Pradesh Public Service Commission Vs. Om Prakash Gupta & Anr., reported in 1997 SCC, (L&S) 1674 submitted that this Court in response to an application and in exercise of its writ jurisdiction can very well direct re-evaluation of the answer scripts.

In the said case the correctness of the evaluation of the answer script was the subject matter of a writ application filed earlier. In response to the contention that answer papers were not correctly assessed, the High Court directed the PSC to appoint an Expert Committee to re-

evaluated the paper of the writ petitioner. The writ petitioner, thus, benefit of the re-evaluation and took the opportunity of being selected by appearing at the interview. In such background, the Apex Court in response to an appeal filed by Madhya Pradesh Public Service Commission set aside the order of the High Court on the ground that the subsequent contention sought to be raised by way of amendment after disposal of the earlier writ petition was barred by the principles analogous to *res judicata*. The facts and circumstances of the present case are, however, different.

Mr.Sanyal referring to the decision in the case of *Ashok Kumar Yadav & Ors.Vs.State of Haryana & Ors.* As well as other matters, reported in AIR 1987, SC, 454 submitted that justice must be shown to have been done. He contended that justice is not the function of the Courts alone; it is also the duty of all those who are expected to decide fairly between contending parties. The Apex Court in connection with the said case gave certain guidelines in the matter of conducting of examination as well as viva voce test. But, noting could be placed before this Court in order to show that there had been any violation of the aforesaid guidelines in connection with the holding of the West Bengal Civil Service(Judicial) Examination which is now under consideration.

Learned Counsel, Mr.Sanyal, categorically asserted that recruitment to service, no doubt, regulated by the statutory rules and it must be made in accordance with the rules and any appointment made in breach of the same must be held to be illegal. Reference was made also to the decision in the case of *State of U.P. Vs.Rafikuddin* and other matters reported in AIR 1988. SC, 162 in support of the contention that even eminent persons constituting the Board for taking interview cannot have any authority to disregard any rules.

In the present case, the first grievance of the petitioner that the answer scripts of the petitioner for the papers Mohammedan Law and Civil Procedure Code were not properly examined and evaluation was not made correctly could not be substantiated by any valid reason. The fact that the present petitioner got 32 and 27 marks respectively in the said papers does not necessarily lead to the presumption that the answer scripts for the papers were not properly examined.

According to the Mr.Sanyal, the fact that the petitioner was given only 5 out of 100 marks in the personality test was not only shocking, it goes a long way to suggest that the authority concerned did not act in proper manner and was biased in its decision.

After giving due regard to the facts and circumstances of the case it appears that the petitioners grievances are essentially centered around alleged wrong evaluation of the answer scripts for Mohammedan Law and Civil Procedure Code and unreasonable manner in which he was given just 5 out of 100 in personality test.

Re-evaluation of answer scripts, even if not provided with in relevant rules and regulations, may be made in certain situations. And it is found that the said answer scripts were produced before the Tribunal and according to the Tribunal “marks have been rather liberally allotted” by the examiner. In such backdrop there can be no further scope for grievance. True, mere fact that Interview Board comprised of eminent personalities does not make it unassailable. But where is the material to even indicate ‘bias’?

Nothing could be placed or shown so as to suggest that the petitioner was arbitrarily given 5 out of 100 in the personality test.

Is it not strange that the Public Service Commission could not recommend the requisite number of candidates to even fill up the advertised vacancies? Mere allegation of arbitrariness is not enough. It sounds more like a cry of despair and incompetence. The fact that the petitioner has missed the qualifying standard by only 2 marks does not bring about any change in complexion. As discussed earlier, this could not justify lowering of standard in order to accommodate those who failed to qualify.

Considering all such facts and materials, we find that the order under challenge does not suffer from any such infirmity or impropriety which calls for or justifies any interference by this Court.

Accordingly, the present application being W.P.S.T.No.496 of 2004 be dismissed.

The order under challenge being Order dated 05.01.2004 passed by the West Bengal Administrative Tribunal in O.A.No.6547 of 1999 stands affirmed.

There is no order as to costs.

\*\*\*

**IN THE HIGH COURT AT CALCUTTA****Constitutional Write Jurisdiction****W.P.S.T.No. 648 of 2004****D.D. 22.12.2004****The Hon'ble Mr. Justice Alope Chakrabarti****The Hon'ble Mr. Justice S.P.Talukdar****Sri Susanta Bhattacharya** ... **Petitioner****Vs.****The West Bengal Public Service Commission & Ors.** ... **Respondents****Examination : Revaluation of answer scripts:**

The petitioner appeared for various examinations in the West Bengal Civil Service Examination 1993 – Petitioner was unsuccessful in the written examination – Petitioner approached Administrative Tribunal which was dismissed – Against that this writ petition was filed – In view of the fact that no complaint was made by the petitioner that some of the answers in his answer scripts were not valid at all and that his complaint was that the marks assigned to him does not reflect proper assessment of his quality – The High Court dismissed the writ petition.

**Held:**

Considering the aforesaid judgments, it appears that in appropriate case the Court can interfere in respect of a written examination in connection with the selection process only when such superintendence is found required and reasonable in the facts involved. In the present case in view of recording by the learned Tribunal that the learned Tribunal had gone through the records produced by the respondent PSC for examination by the Tribunal, there is no occasion to presume that all relevant records were not produced before it.

**Cases referred:**

1. AIR 1972 Cal. 348 – Mehboobur Rahman Vs. Public Service Commission West Bengal
2. AIR 1979 SC 429 – Manager, Government Branch Press vs. D.B.Beliappa
3. AIR 1990 Patna 196 – Sheodhari Prasad Sah vs. State of Bihar
4. 1992 Supp (2) scc 118- Krishan Yadav vs. State of Haryana
5. AIR 1993 Cal 1 – University of Calcutta vs. Sm. Gopa Chakraborty

6. 1995 Supp (1) SCC 325 – Subash Candra Verma vs. State of Bihar
7. 1995 (4) SCC 73 – A.K.Kaul Vs. Union of India
8. 1997 WBLR (Cal) 210 – Ashutosh Ghosh Vs. University of Calcutta
9. 1997 (6) SCC 674 – Rajesh Kumar v. Institute of Engineers
10. 2000 (1) CHN 375 – University of Calcutta vs. Sk. Monir
11. AIR 2004 SC 163 – U.P. Public Service Commission vs. Subhash Chandra Dixit
12. 2004 (6) SCC 714 – Pramad Kumar Srivastava vs. Chairman, Bihar P.S.C.

### **ORDER**

Aloke Chakrabarti, J. – Petitioner appeared in the West Bengal Civil Service Examination, 1993 from Calcutta Center for all the groups namely A,B,C and D Minimum qualifying marks for written examination was fixed for declaring a candidate eligible to appear in personality test examination fixing 30 marks for each paper with minimum aggregate number at prescribed percentage. Petitioner stated in the written petition that he performed in the written examination to his satisfaction and that petitioner should obtain more marks than the qualifying aggregate marks in written examination. But when result in written examination was published only names of selected candidates for personality test of groups A, B and C were displayed in the notice board.

As the petitioner could not find his name in the list of selected candidates though he was confident that he got good marks he made a representation to the Chairman, Public Service Commission requesting him to look into the matter personally and give reply to the petitioner without delay. No reply came and being aggrieved, petitioner moved an original application before West Bengal Administrative Tribunal which was dismissed by the impugned judgment of the learned tribunal.

Heard Mr.Saktinath Mukherjee, learned senior counsel for petitioner and Mr.Bikash Ranjan Bhattacharyya, learned counsel for respondent nos. 1 to 3 being the authorities of public service commission.

Only contention made by the petitioner is that answer scripts of the petitioner be directed to be brought to court and in spite of such direction given on three occasions by the learned tribunal, authorities failed to bring the said answer scripts and only some records including the

tabulation sheet were produced and surprisingly the learned tribunal dismissed the petition only considering the tabulation sheet without insisting for production of answer scripts. It is the contention of the petitioner that though evaluation of answer scripts can not be directed by the tribunal/court but scrutiny of answer scripts for finding out whether all the answers given by the candidate have been evaluated and taken into consideration for finding the total marks in each subject, should be directed when a candidate challenges the examination. In support of his contention Mr.Mukherjee relied on the judgments in the case of *Manager, Government Branch Press vs. D.B.Beliappa* reported AIR 1979 SC 429, *Mehboobur Rahman vs. Public Service Commission, West Bengal* reported in AIR 1972 Cal 348, *Subash Chandra Verma vs. State of Bihar* reported in 1995 Supp (1) SCC 325, *U.P. Public Service Commission vs. Subhash Chandra Dixit* reported in AIR 2004 SC 163, *A.K.Kaul vs. Union of India* reported in 1995 (4) SCC 73. On the question of examining answer scripts, reliance was placed on the judgment in the case of *University of Calcutta vs. Sk.Monir* reported in 2000 (1) CHN 375, *Sheodhari Prasad Sah vs. State of Bihar* reported in AIR 1990 Patna 196, *Ashutosh Ghosh vs. University of Calcutta* reported in 1997 WBLR (Cal) 210, *Rajesh Kumar vs. Institute of Engineers* reported in 1997 (6) SCC 674, *University of Calcutta vs. Sm Gopa Chakraborty* reported in Air 1993 Cal 1 and *Krishan Yadav vs. State of Haryana* reported in 1992 Supp (2) SCC 118.

On behalf of respondents, heard Mr.B.R.Bhattacharyya, learned counsel, who contended that in terms of tribunal's direction records were produced and such production of records was noted in the impugned order of the learned tribunal. Contention of the petitioner that answer scripts were not produced is on presumption and surmises and in case on non-production of such answer scripts in spite of directions, the tribunal would have recorded the said fact. Mere mentioning of tabulation sheet, does not indicate that answer scripts were not produced. In such circumstances, it is contended by Mr.Bhattacharyya, learned counsel appearing for the respondents there is no ground for interference by this court when records were perused by the learned tribunal and impugned order was passed there. In support of his contention, learned counsel referred to the judgments in the case of *Pramad Kumar Srivastava vs. Chairman, Bihar Public Service Commission, Patna* reported in 2004 (6) SCC 714. It is contended by Mr.Bhattacharyya that the fact that records were produced including the answer scripts before the learned tribunal will also be supported from the fact that petitioner has not made any effective complaint in any representation that answer scripts did not contain evaluation in respect of each answer given by petitioner or that answer scripts are not available. It is the argument of Mr.Bhattacharyya, that in

the facts and circumstances of the case there is no reason for giving direction for production of records including the answer scripts any further. It is further argument of the respondent that a candidate is not entitled to maintain application asking for production of answer scripts of such examination as a matter of right.

It is further contended by Mr. Bhattacharyya that there is no pleading made by the petitioner even before the learned Tribunal which justified the relief prayed for by petitioner.

After considering the aforesaid respective contentions, it appears from pleading available and contents of various representations made by petitioner available on records that there was no complaint on the part of the petitioner that some of the answers in his answer scripts were not evaluated at all by the examiner. Nature of complaint was that petitioner had performed very well in the examination and therefore, marks assigned to him did not reflect the proper assessment of his quality. Said complaint cannot be made a ground either before the tribunal or in the writ court in respect of such examination. It also appears that learned tribunal thrice directed production of records and it is also available from the order sheet that records were produced. From the order it does not appear that answer scripts were not produced in compliance of direction of the learned Tribunal. In such circumstances, there is no material to hold that answer scripts were not produced before the learned Tribunal. Therefore, after the impugned judgment was passed and there being no recording by the learned Tribunal that answer scripts were not produced in spite of direction of the learned tribunal, we do not find any ground for giving any further direction for production of answer scripts.

With regard to the law in this regard, we find that number of judgments were cited by the respective parties and the position in law is clear. In the case of D.B. Beliappa (*supra*) the question involved was protection of Articles 14 and 16(1) whether is available to a temporary government servant if he has been arbitrarily discriminated against. This judgment does not directly help deciding the matter in our hands.

The case of A.K. Kaul (*supra*) was cited for showing the law as regards power of judicial review and its extent.

The case of Mehboobur Rahman (*supra*) dealt with a case wherein the Public Service

Commission's action was held to be arbitrary and in that background power of writ court to interfere was upheld. In this case the allegation against the commission was of exclusion of a candidate arbitrarily and wrongfully.

The case of Subash Chandra Verma (*supra*) dealt with evaluation of answer sheets. It was held in the said judgment that Public Service Commission is made autonomous in order that functions could be carried on independently, fairly and impartially. But as the facts and questions involved therein are different from the present one, the said judgment does not help either of the parties in present proceeding.

In the case of Subash Chandra Dixit (*supra*), it was held that the power conferred on the Public Service Commission shall not be used arbitrarily.

The case of Sk.Monir (*supra*) decided by a Division Bench of this court dealt with the facts wherein answer scripts were destroyed during pendency of the litigation and it was held that this fact justifies drawing of an adverse presumption that had answer scripts been produced before the court that would go against the university. In view of the findings on facts recorded hereinabove, this judgment also does not help the petitioner.

Similar were the facts in the case of Sheodhari Prasad Sah (*supra*) and therefore, the same also does not help the petitioner.

The case of Shri Ashutosh Ghosh (*supra*) also dealt with the facts involving non production of the papers in spite of direction by the court and therefore, justifying drawing adverse inference.

The facts involved in the case of Rajesh Kumar (*supra*) also are different from the facts involved in present case.

The case of Sm Gopa Chakraborty (*supra*) is also in the facts of loss of papers of the candidate by the university which is different from present case.

The judgment in the case of Krishnan Yadav (*supra*) also does not apply in present facts.

As against this, on behalf of respondents reliance was placed on the judgment in the case of Pramad Kumar Srivastava (*supra*) wherein it was held that in absence of a specific provision conferring a right upon an examinee to have his answer books reevaluated, no direction can be given for reevaluation of the answer books.

Considering the aforesaid judgments, it appears that in appropriate case the court can interfere in respect of a written examination in connection with the selection process only when such superintendence is found required and reasonable in the facts involved. In the present case in view of recording by the learned Tribunal that the learned Tribunal had gone through the records produced by the respondent for examination by the tribunal, there is no occasion to presume that all relevant records were not produced before it. Apparently such relevant record includes answer script for which direction was earlier given. In such background, only because in the judgment, tabulation sheet was discussed separately, there is no ground for drawing presumption that answer scripts were not produced. Moreover, the petitioner did not make out any case at any contemporaneous point of time making any complaint of no evaluation of his answer script or any particular answer in the answer script. The representation of the petitioner as also his writ petition make the position clear and there is no reason in such background of pleadings which justifies drawing of an inference that answer scripts or answers to any particular question or questions of the petitioner were not evaluated. Therefore, the contention of the petitioner advanced on the basis of present material do not justify and interference on the present writ application and the same is hereby dismissed.

\*\*\*

**IN THE HIGH COURT AT CALCUTTA****CIVIL APPELLATE JURISDICTION****M.A.T. No.491 of 2005****D.D. 21.4.2005****Hon'ble Mr. Chief Justice V.S.Sirpurkar****Hon'ble Mr. Justice A.K.Ganguly****Somak Das ... Appellant**

Vs.

**The State of West Bengal & Ors. ... Respondents****Reservation for Physically Handicapped persons:**

Petitioner who was unsuccessful for the post of West Bengal Civil Services (Judicial) 2003 alleged that he being a physically handicapped person he ought to have been selected in terms of Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and full participation) Act, 1995 - The writ petition filed by him was rejected by the High Court – In this appeal the Division Bench in view of the fact that 135 candidates were selected as against 141 vacancies and also the marks secured by the petitioner and similarly situated candidates with physical disabilities allowed the Appeal with a direction to select the petitioner and such candidates.

**Cases referred:**

1. 1986 SCC (Supp.) 285 – Omprakash Shukla vs. Akhilesh Shukla
2. (1995) 3 SCC 486 - Madan Lal Vs. State of J&K
3. (1997) 9 SCC 527 – Raj Kumar & Ors. Vs. Shankti Raj & ors.
4. (1998) 3 SCC 694 – Union of India Vs. N.Chandrasekharan

**ORDER**

Heard finally with consent of parties.

1. This matter pertains to the selection and appointment of petitioner for the post of West Bengal Civil Services (Judicial) 2003. The writ petitioner appeared for the necessary tests and admittedly cleared them. However, there was one more factor, which he had reported while applying for the candidature. He had pointed out that he was suffering from physical disability and he was a

physically challenged candidate. He was not selected and, therefore, he approached the Court by way of a writ petition wherein he pointed out that there was no reservation provided in terms of Section 33 of the Persons with Disabilities Equal opportunities, Protection of Rights and full participation) Act, 1995. The learned Judge took the view that the petitioner had appeared at the selection test, succeeded and thereafter was called for interview but he was not selected. It was clear that he had participated in the selection process as a general candidate and did not succeed and, therefore, he could not turn back and find fault with the selection process. The learned Judge dismissed a few other petition with which we are not concerned today. The learned judge accordingly dismissed the writ petition.

2. The appellant now is before us by way of this appeal. The learned counsel for the appellant points out it was an admitted position that the concerned appellant was a physically challenged person and that there was in reality no reservation made for the physically challenged persons.

3. The learned Counsel for the appellant drew our attention to section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and contended that it was imperative under that Act for every government to appoint in establishment such percentage of vacancies not less than 3% for persons or class of persons with disability, like (i) blindness or low vision; (ii) hearing impairment; (iii) locomotor disability or cerebral palsy, as provided in that provision. We are not concerned with the proviso in the circumstances of this case. Relying on that section the counsel averred that there ought to have been reservation for the handicapped persons.

4. The learned counsel argues that such reservation for the physically challenged persons not being there in the present selection the whole selection process was rendered illegal on that score. The learned Counsel has invited our attention to the advertisement and from that it seems that there was no reservation for the physically challenged persons. There are 141 vacancies shown, out of which 103 were for general category, 13 for scheduled caste, 10 for scheduled tribes and 7 for backward classes. Beyond these, there does not appear to be any reservation. Our attention was also invited by the learned Counsel to the contents of the advertisement which suggest that for the physically handicapped candidates having disability 40% above the age limit shall be released upto 45 years. We are taken through the application form wherein it is suggested that the petitioner/appellant Somak Das had claimed to be belonging to general category and had also tick-marked the entry under 'PH' (physically handicapped). Therefore, it was obvious that the petitioner/appellant had pointed out that he was a physically handicapped person but had not

claimed for any relaxation of age on that account. It is, no doubt, true thereafter he appeared for the written test and cleared the same and as a result of that he was called for the personal interview also.

5. The learned Counsel for the appellant/petitioner has thereafter taken the pains to point out that a select list of 135 persons was released, wherein the name of the appellant/petitioner did not figure.

6. The learned Counsel also relied on a letter dated 14<sup>th</sup> October, 2004 (Annexure P/5 to the writ petition) which seems to suggest that the appellant/petitioner was required to bring a Certificate suggesting that he was a physically handicapped person. That is apparent from paragraph 3 of the said letter.

7. There can be no dispute with the proposition that once a person chooses to take part in the selection, he cannot turn back and call the names to the selection process. This principle is settled in *Madan Lal-Vs- State of J & K.* reported in (1995) 3 SCC 486, *Omprakash Shukla – vs- Akhilesh Shukla* reported in 1986 SCC (Supp.) 285, and *Union of India vs. N.Chandrasekharan*, reported in (1998) 3 SCC 694. However, where there has been an error which would go to the very root of the selection the Constitutional Courts are not debarred from interfering. That is the ratio of the Supreme Court in *Raj Kumar & Others Vs. Shakti Raj & Ors.* Reported in (1997) 9 SCC 527.

8. In the aforementioned decision, the Supreme Court observes in paragraph 16 as follows:

“ .... It is true, as contended by Sri Madhava Reddy, that this Court in *Madan Lal vs. State of J& K* and other decisions referred therein held that a candidate having taken a chance to appear in an interview and having remained unsuccessful, cannot turn round and challenge either the constitution of the Selection Board or the method of selection as being illegal, he is estopped to question the correctness of the selection. But in this case, the Government have committed glaring illegalities in the procedure to get the candidates being examined under the 1955 Rules, so also in the method of selection and exercise of the power in taking out from the purview of the Board and also conduct of the selection in accordance with the rules. Therefore, the principle of estoppel by conduct or acquiescence has no application to the facts in this case. ...”

9. Similar is the situation here. In not reserving any posts for physically disabled candidates as

per the mandate of Section 33 of The Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995, a glaring procedural irregularity has crept in Not only this, but it has to be realized that the challenge is not to the constitution of the Selection Board or the method of selection. The challenge is regarding the very availability of the post for the disabled persons. Here was an advertisement where we do not find any reservation for the physically handicapped person and as such, reservation not being there, it was undoubtedly a basically defective advertisement. However, the fact cannot be ignored that the appellant/petitioner did not challenge the advertisement and instead chose to appear.

10. We do not find anything wrong in the view taken by the learned Judge under circumstances. However, we find that the learned Judge did not address on the issue as to whether the selection process suffered from inherent defects. We have gone through the judgment very carefully. The only ground on which the learned Judge rejected the petition was that the appellant/petitioner had taken part in the selection process and having found himself unable to succeed in the same had turned to challenge the selection process. That undoubtedly is true. However, in our opinion, the learned Judge should have also addressed himself on the issue as to whether there was any inherent error in the selection process. We find that non-reservation for the category 'physically handicapped persons' would amount to an inherent error.

11. When we confronted this the learned Government Pleader very frankly admitted that the advertisement was erroneous. We appreciate the fairness on the part of the Government Pleader who makes no bones about the aforementioned inherent error, which had crept, in the said advertisement. We also confronted this to the learned Counsel appearing for the Public Service Commission who, however, contended that the advertisement was issued on the basis of the requisition of the Government and that strictly in terms of the requirement of the Government and the Recruitment Rules. There can be no doubt that Public Service Commission, which published the advertisement, would undoubtedly be guided by the communications of the Government. However, that would not absolve either the Government or the Public Service Commission if the advertisement is inherently incorrect. The question is, therefore, as to what is the course to be taken under the circumstances.

12. It is reported before us that 135 candidates have already been selected though vacancies were for 141 candidates. It is also reported in terms of the selection such candidates have also joined in their posts. None of them was a party to this writ petition or to this appeal. It will not, therefore, be possible to upset the whole selection process if any via media can be found out to allay the

grievances of the petitioner/appellant. In that view we asked the Government Pleader as to whether any post was available for being filled up. The learned Government Pleader reports to us that 6 posts made for the S.T. have not so far been filled up. Besides that, he points out that some 2/3 persons who were initially selected have not chosen to join leaving those posts vacant. Specific question was put to the learned counsel for the Public Service Commission, as to whether there was any benchmark for the written test and also for oral interviews. The learned counsel very frankly admitted that the petitioner had scored above the benchmark so far as the written test and the oral interviews were concerned. The learned counsel pointed out that the candidate had to score 40% for being included in the merit list and we find that the present candidate has scored more than that and his score being 47%. The position of the candidate in the merit list is at 166. We also tried to gather from the learned counsel, for the respondent as to how many physically handicapped persons had cleared the examination and the interview. We were told that there are only 2 candidates they being (1) Shri Subhasis Bhattacharya who had scored 598 and his position is 114 in the general standard list and the petitioner/appellant who scored 564 marks and was placed at 166 positions in the general standard list. It is needless to mention that had there been any reservation provided, then the two persons namely, Subhasis Bhattacharya and Somak Das, would have found their names in the select list as of right on the basis of their score in the written test as well as in the oral interview. Under these unusual circumstances, we feel that complete justice would be done in the two physically handicapped persons if a direction is given to include their names in the select list and further to offer them an appointment in the post sought for.

13. Accordingly we see in whoojudgointmion of the learScorde Judgetest anlto tand ndicalally withs if a directest aould halrt Pys to menscored alant. Iipostnitio7(, Subhasis Bhattacha Su and)Tj 0 -1.748