

**Court No. - 39**

**Case :-** WRIT - A No. - 3887 of 2021

**Petitioner :-** Janhvi

**Respondent :-** State Of U.P. And 2 Others

**Counsel for Petitioner :-** Sanjay Kumar Singh, Siddharth Khare

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

**Hon'ble Saumitra Dayal Singh, J.**

**Hon'ble Donadi Ramesh, J.**

1. Heard Mr. Siddharth Khare, learned counsel for the petitioner; Mr. G.K. Singh, Senior Advocate assisted by Mr. M.N. Singh, learned counsel for Uttar Pradesh Public Service Commission (in short 'U.P.P.S.C.');

Ms. Kritika Singh, learned Additional Chief Standing Counsel. Mr. Ashish Mishra, learned counsel for the High Court is also present. On being called, he has rendered valuable assistance to the Court.

2. Present writ petition has been filed for the following relief:

*"(a) Issue a writ, order or direction in the nature of Mandamus directing the respondent Nos. 2 & 3/Authorities to produce the copy of English Language for the post of Civil Judge (Junior Division), in respect to the UPPCS (J) 2018/Uttar Pradesh Judicial Service Civil Judge (Junior Division) Examination 2018 conducted by the Uttar Pradesh Public Service Commission, Prayagraj.*

*(b) Issue a writ, order or direction in the nature of Mandamus to look into the matter of the petitioner and do needful immediately, so far as re-calculation of two marks in English Language paper although two marks was awarded to her and declare the result of the petitioner for the post of Civil Judge (Junior Division) after re-calculation of her marks in respect to the UPPCS (J) 2018/Uttar Pradesh Judicial Service Civil Judge (Junior Division) Examination 2018 conducted by the Uttar Pradesh Public Service Commission, Prayagraj."*

3. In the initial order dated 15.3.2021 itself, it was noted as below:

*"In paragraph 15 of the writ petition, the petitioner has stated that she secured 88 marks in the English Language paper but only 86 marks were awarded to her. The total tally of marks awarded to the petitioner is 473 and the cut-off marks for candidate belonging to Scheduled Caste is 475 and therefore if 02 marks are allotted to the petitioner in English Language paper, she would fall within the zone of consideration.*

*Sri M.N. Singh has accepted notice on behalf of respondents 2 and 3. He prays for and is allowed 10 days time to seek instruction and he shall also ensure production of the English Language paper of the petitioner in a sealed cover on the next date.*

*Put up on 05th April, 2021."*

4. However, the writ petition remained pending for more than three years, purely for procedural reasons. Upon the matter being substantively heard on 21.11.2024, we passed the below quoted order:

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1. Heard Sri Siddharth Khare, learned counsel for the petitioner and Sri G.K. Singh, learned Senior Counsel assisted by Sri M.N. Singh, learned counsel for the UPPSC and learned Standing Counsel for the State-respondents.

2. The petitioner has assailed the selection for UPPCS (J) 2018. The writ petition has remained pending for three years. The principal grievance of the petitioner is, instead of awarding 88 marks earned by the petitioner in the paper English, she was wrongly awarded 86 marks. According to her, she had earned 23 marks for her answer to question no.2. The examiner had also awarded her those marks but wrongly totalled the same as 21 marks.

3. Today, learned counsel for the UPPSC has produced answer book of the petitioner for the paper English along with opinion of the examiner, Associate Professor Sri G.D. Dubey, Department of English, T.D. College, Jaunpur, in sealed cover.

4. For ready reference, material part of question no.2 reads as below:

*"Make a precis of the following passage in your own words in about one-third of its length, and suggest a suitable title to it: 58+2=60"*

*Conversation is a fine art. It is the art of exchanging thoughts. It is an art which even the least gifted of us can learn. Not everybody can paint or play music, but almost everyone can talk. Conversation, therefore, is that art which gives the greatest pleasure to the greatest number. "To talk", says R. L. Stevenson, "is our chief business in the world; and talk is by far the greatest source of pleasure. It costs nothing in money; it is all profit; it completes our education, founds and maintains our friendship and can be enjoyed at any age and in almost every state of health."*

*Conversation is indeed the most easily teachable of all the arts. All you need to do in order to become a good talker is to find a subject that interests you and your listener. There are, for example, numerous things to talk about. But the important thing is that you must talk about the secret of your popularity. Talk to your friends about the things that interest them, and you will get a name for good fellowship, charming wit and a brilliant mind. There is nothing that pleases people so much as your interest in their interests.*

*It is just as important to know what subjects to avoid as what subjects to select for good conversation. If you don't want to be a bore, be careful to avoid certain unpleasant topics. Avoid talking about yourself, unless you are asked to do so. People are interested in their own problems, not in yours. Sickness and death bore everybody. The only one who willingly listens to such talk is the doctor, but he gets paid for it. (293 words)"*

5. The above nature of question clearly indicated to the candidates that maximum 58 marks may be awarded for the precis writing and maximum 2 marks may be awarded for the title that the candidates may choose to give to the precis written by them.

6. Seen in that light, the answer book of the petitioner reveals that on the left margin of the answer book at page 12, marks 22 have been awarded to the petitioner at the end of the precis written by her. Then a little below the same, mark 1 has been awarded in the same margin against title given by the petitioner. Both marks (22 and 1) have been separately circled by the examiner Associate Professor Sri G.D. Dubey. However, towards the right margin, marks 21 have been written and again circled by the examiner.

7. Prima facie, it clearly appears that 22 marks were awarded by the examiner to the petitioner for the precis written by her and 1 mark was awarded for the title to the precis, given by her. Thus, total marks that were earned by the petitioner were 23 marks. Perhaps due to calculation error, those have been wrongly mentioned as 21 marks.

8. We emphasise, there is no correction at all made by Associate Professor Sri G.D. Dubey to either the marks awarded as noted on the left margin or to the total marks written towards the right margin.

9. At the same time, the Commission has obtained the response of the examiner Associate Professor Sri G.D. Dubey. The same has also been enclosed in sealed cover. We have perused the same. Paragraph no.3 of the said report dated 10.03.2021 reads as below:

*"Marks figuring on the left-hand margin of the page number 12 of the script were for my internal/personal reference. They had to be cancelled, but were forgotten to be cancelled. The final marks to the said answer were awarded on the right-hand margin. Considering the candidate's lapses in the skills of writing and the use of grammar as well as his exceeding the prescribed word-limit, he does not deserve more than 21 marks. Hence, the marks awarded to the answer cancelled on the right hand-margin of page no.12 be treated as final, and the marks on the left-hand margin be ignored."*

10. Again prima facie, we note, instead of admitting the mistake and allowing the benefit of fair marks awarded to the petitioner arising to her, the examiner Associate Professor G.D. Dubey has tried to defend his mistake on wholly untenable reasoning.

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11. Thus, at present it does appear, the petitioner had earned 475 marks (in all). Those being the cut off marks for the female Scheduled Caste candidate, the petitioner's claim may require further examination.

12. Before we pass any further order, learned counsel for the UPPSC prays for and is granted five days' time to file proper affidavit with respect to the facts noted above. Amongst others, that affidavit may disclose the stand of the Commission vis-a-vis discrepancy noted above and action, if any, proposed to be taken as consequence thereto not only with respect to the particular examiner but by way of the policy so as to avoid any such unfair consequences in future, involving other candidates, as well. Further counter affidavit would also disclose how many candidates belonging to the Scheduled Caste female came to be selected at the cut off marks 475 and further considering the age and other consideration, if the petitioner stood any chance for selection had she been awarded 475 marks, at the time of declaration of the result.

13. Put up on 29.11.2024 in top ten cases.

14. The original mark-sheet and the examiner report have been returned to Sri M.N. Singh, learned counsel for the UPPSC."

5. Today, learned counsel for the Commission has filed Supplementary Counter Affidavit sworn by Mr. Sunil Kumar, Deputy Secretary, U.P.P.S.C., Prayagraj. Paragraphs 2 to 9 of the said affidavit read as below:

"2. That the present writ petition has been filed by the petitioner questioning her non-selection in the U.P. Judicial Service, Civil Judge (Junior Division) Examination, 2018.

3. That in the schedule caste category 3 candidates allotted master fake 010830, 007615 and 011030 had secured 475 marks and were declared successful in the final select list and recommended for appointment.

4. That subsequently in terms of the requisition sent by the State Government to Commission, for forwarding one additional name from the waiting list in the schedule caste category, candidates allotted master fake 011549 who had secured 474 marks was recommended for appointment.

5. That the petitioner allotted master fake 010009 had secured 473 marks. Accordingly in the eventuality of the present petitioner, being awarded 475 marks would and place in the final select list and taking into consideration her age, she being eldest would be placed in the select list over and above the 3 candidates of her category who had secured 475 marks and consequentially the candidate allotted master fake 011549, who had secured 474 marks and had being recommended for appointment from the waiting list, pursuant to the requisition received from the State Government, would stand ousted.

6. That it is further relevant to submit before the Hon'ble Court that with respect to the U.P. Judicial Service, Civil Judge (Junior Division) Examination, 2018 certain anomalies were detected at the end of the experts/examiners owing to which as many as 11 examiners have been debarred from the panel of examiners of U.P. Public Service Commission. In so far as Professor G.D. Dubey is concerned, he was not amongst the aforesaid 11 examiners.

It may further be submitted that as a matter of policy, in the eventuality of any examiner being found to have erred in discharging his duties assigned to him in reference to any recruitment process, after due consideration, such examiner is debarred from the panel of experts/examiners of U.P. Public Service Commission.

7. That the evaluation of answer books is done by renowned learned subject experts duly appointed by the Commission according to procedure. After proper evaluation of the answers given in the answer books the examiner awards marks on his wisdom and there is no interference of any other person into that. Marks Given by the examiner is sacrosanct to the Commission and the Commission does not interfere with that.

8. Valuation of copies is the jurisdiction of the examiner which cannot be transgressed because examiners are the experts and the matter is purely academic in nature, where the examiner's role, objectivity and opinion should be valued.

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*9. That the Commission always act in a bonafide manner. It is also pertinent to mention here that the intention of the Commission is always to strengthen the transparency and fairness of selection process and therefore Commission gives opportunity to candidates to view their answer books under the Right to Information Act, 2005 (hereinafter referred as Act of 2005). Commission has also provided the opportunity to the petitioner to peruse the answer books of the main examination for the post in question and the petitioner has seen her answer books on 10.11.2020 and the answer book of the petitioner was also preserved as it was."*

6. In view of the above candid admission made by U.P.P.S.C., it may be recorded that the petitioner was entitled to be selected and recommended for appointment at the time of declaration of the final result itself, on the strength of cut-off marks obtained by her. Considering the fact, she is the eldest of the first three candidates recommended under the Reserved Category - (Scheduled Caste) belonging to female category, against equal marks achieved by her, the petitioner's name should have been recommended first under that category as may have allowed her natural seniority in the cadre of Civil Judge (Junior Division). That relief and status was denied to the petitioner for no fault. Therefore, she is found entitled to relief.

7. We are only required to consider what relief may be granted to the petitioner at this belated stage. In that regard, we have heard learned counsel for the petitioner; learned senior counsel for the Commission; learned Additional Chief Standing Counsel and, learned counsel for High Court. The UPPSC admits it's mistake, yet learned senior counsel for the Commission would submit, the UPPSC is helpless at this stage. Not only recommendations were made pursuant to completion of the selection process for the UPPCS (J) 2018, two more examinations have been conducted in 2020 and 2022. In any case, the UPPSC acts on the requisition made by the State Government. That requisition having lapsed, the Commission does not have the authority and it is not in a position to revisit the final result as may provide for any recommendation to be made in favour of the petitioner, today.

8. Learned Additional Chief Standing Counsel would state that the State has not filed counter affidavit in the writ petition. Yet, in absence of any recommendation made by the Commission, it cannot act to offer any appointment to the petitioner, on its own.

9. Shri Ashish Mishra, learned counsel for the High Court has first referred to Rule 21(2) of Uttar Pradesh Judicial Service Rules, 2001. It reads as below :

"21. Appointment to the service -

(1) .....

(2) *The select list prepared under sub-rule (3) of Rule 20 shall lapse after all the vacancies advertised or varied after due notification, are filled up."*

10. Then, he has also obtained written instructions from the High Court, on an urgent basis. He has made available a copy of the same. It has been marked as 'X' and retained on record. The said instruction reveals that one post of Civil Judge (Junior Division) is still available against impugned selection process.

11. Other learned counsel for the respondents have generally opposed the prayer for grant of relief of appointment to the petitioner for reason of delay. With respect to delay, we may note the undisputed facts of the case. The notification advertising 610 vacancies in UPPCS (J) 2018 was issued on 11.09.2018. After completion of the preliminary examination, written examination was conducted by the Commission between 30.01.2019 and 01.02.2019. Thereafter, the Interview Test (of the petitioner) was held on 27.06.2019. The final result was declared by the Commission on 20.07.2019. Consequently, recommendation was first made by the Commission on 25.07.2019. Thereafter, on 07.08.2020, the petitioner submitted an application under the Right to Information Act, 2005, to inspect her answer books. That inspection was allowed to her on 10.11.2020. Then, she first discovered that she had been awarded two marks less than earned by her in the paper English. Within 90 days therefrom, she filed the present writ petition. As noted above, despite the main ground of challenge noted in the order dated 15.3.2021, the writ petition has remained pending for three and half year, for procedural reasons.

12. In such facts, learned counsel for the petitioner has relied on a recent decision in **Smita Shrivastava vs State of Madhya Pradesh & Ors., (2024) SCC OnLine SC 764** wherein in identical circumstances, Supreme Court had made following pertinent observations:

*"10. The situation at hand is clearly covered by the aforesaid observations made by this Court in the case of Manoj Kumar (supra). There is no dispute that the appellant is presently of 59 years of age and can hold the post of Samvida Shala Shikshak Grade-III till the age of 62 years. The High Court took note of the fact that despite a clear-cut finding that the amended rule would not apply in the case of the appellant, the State Government has rejected her legitimate claim by relying on the amended rule. The High Court, on the one hand, thought it fit to proceed with contempt action against the erring officers of the State Government, but at the same time, denied relief to the*

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appellant on the basis of notification dated 21st March, 2018 which makes the amended rule i.e. Rule 7-A effective retrospectively i.e., with effect from 1st January, 2008. This observation of the High Court is in sheer contravention of the findings and conclusions recorded earlier.

11. As a consequence, we are of the firm view that the appellant deserves a direction for restitutive relief along with compensation for the misery piled upon her owing to the arbitrary and high-handed action of the State Government and its officials. Accordingly, the following directions are issued:—

(i) The appellant shall forthwith be appointed to the post of Samvida Shala Shikshak Grade-III or an equivalent post within a period of 60(sixty) days from today.

(ii) The appointment order will be effective from the date on which the first appointment order pursuant to the selection process dated 31st August, 2008 came to be issued.

(iii) The appellant shall be entitled to continuity in service. However, she shall not be entitled to back wages. However, she is granted exemplary cost quantified at Rs. 10,00,000/-(Rupees Ten Lakhs only). The above amount shall be paid to the appellant by the State of Madhya Pradesh within 60 days.

(iv) The State Government shall hold an enquiry and recover the said amount of Rs. 10,00,000/-(Rupees Ten Lakhs only) from the officer(s) who were responsible of taking deliberate, illegal, mala fide actions for denying relief to the appellant."

13. He has further placed reliance on another decision of the Supreme Court in **Ran Vijay Singh & Ors. vs State of Uttar Pradesh & Ors., (2018) 2 SCC 357** wherein seven years after the declaration of the result (on 14.09.2010), the Supreme Court (on 11.02.2017) granted the relief to a candidate who ought to have been offered appointment upon declaration of the result, seven years earlier.

14. Having weighed the fact submissions, in the first place, it is noticed that the petitioner is not at fault, at all. She, a citizen was always protected under Articles 14 and 16 of the Constitution of India. She was fully entitled to believe that a completely fair, equal and transparent opportunity of equal participation would be maintained by the state authorities. That right of a citizen is supreme. Therefore, the petitioner had no reason to suspect and she had no cause of action - to approach the Court at the stage when final result was declared by the Commission, on 20.07.2019.

15. At the same time, the High Court notifies State Government, from time to time, the vacancies in the cadre of UPPCS (J). The State Government is the appointing authority. Under the constitutional scheme, it has chosen the UPPSC as its hands to conduct the examination to test the merit of desirous and eligible candidates. The burden to conduct the selection process to ensure due compliance of Articles 14 and 16 of the Constitution of India, therefore rest solely with the State Government and UPPSC. Insofar as both are State, within

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the meaning of Article 12 of the Constitution of India, the citizens are impliedly (and for good reason), assured that they would be treated fairly and reasonably, in a transparent manner. There is no presumption or room existing with the citizenry to believe or suspect that they would be arbitrarily or unfairly dealt with in the conduct of such public examinations. Therefore, if the petitioner did not immediately act upon declaration of the final result on 20.07.2019, it cannot be said that petitioner did not act with due diligence or the petitioner acted with any amount of inherent negligence.

16. It is equally true that any candidate unsuccessful at any public examination requires time to deal with the sense of the immediate failure that may visit them. Also, in their capacity as a candidate and a young citizen, it is not expected that a person such as the petitioner would be able to collect all relevant information and to rush to Courts to seek legal remedies, rationalize it immediately upon such injury being caused. In the backdrop of the presumption that exists with the favour of all actions performed by the State Government and UPPSC and the inexperience in life that must be attributed to the petitioner, a margin of time must be given to her. She would have taken time to seek due consultation and guidance with family, friends and lawyers to discover the path to her remedies. At that stage, no forum for counselling or guidance or redressal of grievances was offered by the Commission, as may have allowed the petitioner to act earlier.

17. Considered from that perspective, the petitioner did not act with delay or laches in making her application on 07.08.2020, under the Right to Information Act, 2005. Inspection was first allowed on 10.11.2020. Then, the petitioner first realized that she had been wrongly awarded 473 marks (total) against 475 marks earned by her. As noted above, to that extent, there is absolutely no dispute. Within ninety days therefrom, the petitioner approached this Court. Therefore, no element of laches maybe attributed in the conduct offered by the petitioner.

18. Therefore, we find, no legal impediment in the path of equitable relief to which the petitioner is found deserving. Unless equity is confronted with any explicit legal provision, the exercise of extraordinary jurisdiction of the Court under Article 226 of the Constitution of the India may not be fettered for reason

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of procedural delays etc. Those may never be attributed to the petitioner.

19. As observed by the Supreme Court in **Smita Shrivastava (supra)**, the petitioner is found entitled to restitutive relief. Here, we are mindful of the fact that the maximum age for appointment for UPPCS (J) is 35 years. We are also mindful of the fact that the selection to UPPCS (J) 2018 were completed sometime in 2020. The last candidate selected is described as "Master Fake 011549" (in paragraph 4 of the affidavit filed by the Commission, today). He may have also worked for more than 2-3 years. He also was not at fault, to any extent. Therefore, equities commend that no direction may be issued as may lead to his termination from service, to accommodate the petitioner.

20. As on date, the petitioner is only 33 years of age. She would still have 27 years of active service, from today. We find, the petitioner is wholly entitled to the relief of appointment to UPPCS (J) 2018. Subject to due verification, let the petitioner be granted appointment to UPPCS (J), 2018 against one available vacant post with notional security and all consequential benefits except arrears of salary. If for any reasons it is required, a supernumerary post may be created. Let petitioner be placed at seniority position of her batch (2018) as she may have earned against marks secured.

21. In view of the above, present petition stands **allowed**. No order as to costs.

**Order Date :-** 5.12.2024

Prakhar

(Donadi Ramesh, J.) (S.D. Singh, J.)