

**Court No. - 5**

**(1) Case :-** SERVICE SINGLE No. - 3780 of 2011

**Petitioner :-** Sanjay Kumar Pathak And Another

**Respondent :-** State Of U.P. Through Prin. Secy. Home Civil Sectt. Lko. And

**Petitioner Counsel :-** K.S.Pawar

**Respondent Counsel :-** C.S.C.

**ALONG WITH**

**(2) Case :-** SERVICE SINGLE No. - 3851 of 2011

**Petitioner :-** Constable No. 972310350 Wakar Ahmad

**Respondent :-** State Of U.P. Thorough Secy. Home Dept. Lucknow And Ors.

**Petitioner Counsel :-** H.D.Singh

**Respondent Counsel :-** C.S.C.

**(3) Case :-** SERVICE SINGLE No. - 4446 of 2011

**Petitioner :-** H.C. No. 952100605 Bhagwan Singh

**Respondent :-** State Of U.P. Through Secretary, Home Department, Civil  
Secr

**Petitioner Counsel :-** H.D.Singh

**Respondent Counsel :-** C.S.C.

**(4) Case :-** SERVICE SINGLE No. - 4515 of 2011

**Petitioner :-** Neeraj Kumar Singh

**Respondent :-** State Of U P Thr. Secy. Home & 2 Ors.

**Petitioner Counsel :-** Singh Vinod Kumar

**Respondent Counsel :-** C.S.C.

**AND**

**(5) Case :-** SERVICE SINGLE No. - 4284 of 2011

**Petitioner :-** H C No.9723203449 Ram Niwas Yadav

**Respondent :-** State Of U P Thr. Secy Home & 2 Ors

**Petitioner Counsel :-** H D Singh, Hari Kant

**Respondent Counsel :-** C.S.C

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**Hon'ble Ritu Raj Awasthi, J.**

Since all the aforesaid writ petitions are involving similar facts and circumstances, as such, they have been heard together and are being decided by a common order.

With the consent of parties' counsel, the writ petitions have been heard finally.

Heard Sri K.S. Pawar and Sri H.D.Singh, learned counsel for petitioners as well as learned Standing Counsel for the State and perused the records.

Learned counsel for petitioners submit that the petitioners had appeared in the examination for selection on the post of Sub Inspector Rankers for which written examination was held by the opposite parties. As per the instructions given in each question paper of the written examination, petitioners were required to fill up their roll number as well as the series on the OMR sheet and put their signatures at the prescribed place. They were also required to blacken the circles by black or blue ball point pen in the OMR sheet. It was also required that they shall not put any identity mark on the OMR Sheet otherwise their candidature would stand cancelled.

Learned counsel for petitioners submits that petitioners could not fill up the series on the OMR sheets and, as such, their answer-sheets have not been evaluated whereas in most arbitrary and discriminatory manner, the Board has examined the answer-sheets of several other similarly situated persons who had not followed the directions issued in this regard and have declared them successful in the written examination.

It is submitted that one Sri Dhananjay Singh Roll No.23011798 and PNO No.980501027 has been declared successful, although he had not filled up the series in the OMR sheet. The name of Dhananjay Singh does not find in the list of qualified candidates issued by the Board, however, he has been sent for training.

It is further submitted that 22 persons have been declared successful whose details have been given in the list of persons annexed as Annexure No. SA-4 to the Supplementary Affidavit dated 12.9.2012. They had not marked the encircles or had not entered the roll number as prescribed or had wrongly marked the circle, however, thier answer books were examined.

It is also submitted that opposite parties have also examined the answer-sheets of such other candidates who had not signed the declaration in the answer-sheet. As many as 17 persons had not signed

the answer-sheets at the declaration column, meaning thereby there was no verification of these candidates as required under Clause (1) but ignoring the said mandatory direction the authorities had examined the answer-sheets of these 17 persons.

It is also submitted that a large number of candidates who had wrongly mentioned their series their answer-sheets have been examined.

Mr. K.S. Pawar, learned counsel for petitioners emphasized that the copies/answer-sheets of the petitioners could have been easily identified by their PNO Number, even in case petitioners had not filled up the series in the OMR sheet as non examination of their answer-sheets was totally arbitrary and wrong.

The submission of learned counsel for petitioners is that on the one hand the opposite parties have examined the answer-sheets of those persons who had not complied with the directions and requirements as per the instructions issued along with question papers and on the other hand have denied to examine the answer-sheets of petitioners which amounts to hostile discrimination.

Learned Standing Counsel, on the basis of counter affidavit as well as on the basis of instructions sought on the supplementary affidavit filed by the petitioners, submits that under the similar facts and circumstances, Special Appeal No. 642 (D) of 2011 filed by the State against the order of the learned Single Judge directing the opposite party to declare the result of the similarly situated persons has been allowed and the order of learned Single Judge has been set aside.

It is further submitted that it is wrong to say that answer-sheets of the persons who had not filled up the series either in words or blacken the encircles have been examined. Copies of such candidates who had encircled the series or had named the series in the column meant for that, have been examined. Likewise copies of such candidates who had either put their signature or roll number were also examined. However, in the present case, the petitioners had not filled in the series either in words or blacken the encircle and as such, their answer books could not have been examined.

It is further submitted by learned Standing Counsel that so far as Dhananjay Singh is concerned who is alleged to be similarly situated as petitioners, as per instructions from the opposite parties, he had

encircled the series in the OMR sheet which fact was found subsequently on a representation made by him and, as such, his answer book was examined.

So far as 22 persons who had not allegedly marked the encircle or had not entered the roll number are concerned, it is submitted that their answer books have been examined as they had either encircled the series or had named the series on the OMR sheet.

So far as 17 persons who alleged to have not signed the answer-sheets at the declaration column is concerned, it is submitted that even in such cases they had mentioned their roll number hence their answer books were verified and, therefore, they were examined.

I have considered the submissions made by the parties' counsel.

It is to be noted that in Special Appeal No. 642 (D) of 2011 filed by the State against the order of the learned Single Judge wherein a direction was issued to opposite parties to declare result of similarly situated persons, the Division Bench had allowed the special appeal by setting aside the order of learned Single Judge.

The relevant observations of the Court on reproduction reads as under:

*"In the instant case, the instructions specifically stated that in case a candidate does not fill up the roll number and series of the question booklet alongwith his signatures, then his copy would not be evaluated and he shall be awarded zero marks.*

*That being the rule, this Court would not issue a mandamus contrary to the rule, as it would amount to altering the conditions of the competitive examination, which is not permissible.*

*With regard to the plea of the respondent that answer books of some of the candidates, who had not filled in all the required columns were examined but the respondent has been discriminated, Sri Manjeev Shukla, counsel for the petitioners, on the basis of instructions, says that copy of none of the candidates who had not filled in the series either in words or by blackening the circle, has been examined. He further says that copies of such candidates who had encircled the series or had named the series in the column meant for that, have been examined. Likewise, copies of such candidates who had either put their signatures or roll number were also examined and may be that, they*

*have not written both the things.*

*That being the factual position, the order passed by the learned Single Judge cannot be sustained, which is hereby set aside.*

*The special appeal is allowed with no order as to costs."*

It is also to be noted that considering the order of Division Bench this court under similar facts and circumstances has earlier dismissed the writ petitions by order dated 18.12.2012 passed in Writ Petition 3723 (SS) of 2011 along with Writ Petition No. 4287 (SS) of 2001.

The Division Bench while allowing the special appeal had observed that the instructions specifically stated that in case a candidate does not fill up the roll number and series of the question booklet along with his signatures, then his copy would not be evaluated and he shall be awarded zero marks. That being the rule, this Court would not issue a mandamus contrary to the rule, as it would amount to altering the conditions of the competitive examination, which is not permissible.

Considering the entire matter and the submissions made by learned counsel for parties, it is the admitted position that the petitioners had not filled up the series of the question booklet in short OMR sheet and, as such had not followed the instructions issued along with question booklet.

Since it is the specific stand of the opposite parties that copy of none of the candidates who had not filled in the series either in words or by blackening the encircles has been examined, as such, I am of the considered opinion that in case a direction is issued to examine the answer books of petitioners it would amount to altering the conditions of the competitive examination, which is not permissible. Therefore, no such direction can be issued.

The writ petitions being devoid of merit are liable to be dismissed.

Accordingly, the writ petitions are dismissed.

**Order Date :- 8.1.2013**

Santosh/-