

1. रिट याचिका संख्या 2669(एम/बी)/2009 पवन कुमार अग्रहरि बनाम उ०प्र० लोक सेवा आयोग व अन्य विषय – उ०प्र० लोक सेवा आयोग की संयुक्त राज्य/अपर अधीनस्थ सेवायें (प्रारम्भिक परीक्षा) 2007 में निरस्त किये गये प्रश्नों के सम्बन्ध में।
निर्णय— मा० उच्च न्यायालय द्वारा निर्णय दिया गया कि

This writ petition has been filed by a candidate, who had appeared in the preliminary examination conducted by the U.P. Public Service Commission, namely, Combined State/Upper Subordinate Services (Preliminary Examination), 2007, which he has missed to qualify only by one mark.

Submission of the petitioner's counsel is that in case the petitioner is awarded one mark, he would qualify for appearing in main written examination. In support of his plea he has submitted that one question was a wrong question, namely, question no. 73, therefore, the petitioner was entitled to get one mark, since he had attempted the same, and if one mark is given, he would stand in the list of qualifying candidates. Further submission is that in three other questions, namely, question nos. 35, 44 and 91, which were rightly answered by the petitioner, he has not been awarded marks.

This Court, after the exchange of affidavits, required the Commission to produce the experts' opinion.

The Commission in its counter affidavit has stated that, to bring complete transparency in the evaluation, as per policy decision of the Commission, a press communique was published inviting objections regarding any question answer from the candidates and the answer keys of all subjects including the Indian History of Combined State/Upper Subordinate Service (Preliminary) Examination, 2007 was displayed on the website of the Public Service Commission. In all 81 candidates submitted their objections/representations in respect of answer keys of optional subject Indian History till the last date of submitting objections. Though the petitioner did not

file objections but objections were filed to the question nos. 35, 44 and 91 in respect of which, the petitioner also feels aggrieved.

All the objections/representations were put up before the subject expert committee, consisting of professors of reputed Universities, constituted by the Commission to examine objections, as per policy of the Commission. The subject expert committee examined in detail all the representations and considered the objections submitted by the candidates. The subject expert committee after thorough consideration substituted the answers of five question by the most correct answers existing amongst the options. The expert committee also concluded and recommended for deletion of one question as it was wrong, namely, question no. 73. The subject expert committee did not find anything wrong in the in any other answers.

After the report of the subject expert committee and on the basis of the modified answers, the evaluation of answer sheets of all the candidates including the petitioner had been done and marks have been awarded accordingly. The maximum marks of the papers was 300 and each question carried equal marks i.e. 2.5 for each of 120 questions in all, so deletion of one question enhanced the mark allotted to one question and evaluation and allotment of marks have been done on the basis of 300 marks and deletion of one question, which means $300 - 1 = 299$.

The petitioner had done 91 right answers as such he has been awarded actual marks on the basis of number of right answers i.e. $300/299 \times 91 = 293.31$, rounded up as 293. This actual mark has been enhanced in scaling score to 235.31 after applying the principle of scaling as per the guidelines of the Supreme Court.

It is thus, clear on detection, that one question was wrongly put in the question paper, care has been taken and marks have been modified as per the aforesaid statement given by the Commission, which again find support from a Division Bench judgement of this Court in Civil Misc. Writ Petition No. 9685 of 2007: Riyaz Khan Vs. State of U.P. and others, decided on 05.1.08.

So far the answers to question number 35, 44 and 91 are concerned, the expert committee had considered the answers as claimed by the candidates and the answers approved by the Commission.

The report of the expert committee has been placed before us and we find that on the basis of the meaning of the word "Mahsul" given in Aina -e-Akbari and in the history book by historians like Sri Irfan Habeeb and Ct. L.H. Qureshi, it was found that the answers approved by the expert committee were correct, which were not the answers given by the petitioner.

The plea of the petitioner that in another book there is different meaning given to the word "Mahsul", firstly does not flow from the meaning given therein and secondly this Court would not substitute its own meaning to the word, in the presence of the experts' opinion.

The experts have given their opinion. The issue was considered by the Commission, who relied upon the definition of "Mahsul" given by historian Sri Irfan Habeeb and Ct. L.H. Qureshi, who relied upon Ain-e-Akbari. The Court, therefore, would not interpret its own meaning to the word "Mahsul". It is for the experts to find the correct answer and to delve on the issue.

Likewise in regard to answers to the question nos. 44 and 91, the experts have given their report and have relied upon noted authorities.

We thus, do not find merit in the challenge set forth by the petitioner.

The petition is, therefore, misconceived and is dismissed.