

Court No. - 1**Case :- SPECIAL APPEAL DEFECTIVE No. - 642 of 2011****Petitioner :-** State Of U.P. through Secy. Home Lko.and Ors.
3836(S/S)2011**Respondent :-** H.C. No.912080116 Surendra Bahadur Singh and another**Petitioner Counsel :-** C.S.C.**Respondent Counsel :-** H.D.Singh, O.P. Srivastava**Hon'ble Pradeep Kant,J.****Hon'ble Ritu Raj Awasthi,J.**

Heard the parties' counsel.

Delay in filing the special appeal is condoned.

Counter affidavit has been filed by the private respondent.

This special appeal by State of U.P. and its functionaries, challenges the order dated 6.7.2011 passed by the learned Single Judge, by means of which the respondent's prayer for evaluating his answer book in the departmental examination held for promotion to the post of Sub-Inspector has been allowed.

In brief facts of the case are, that the private respondent presently posted as Head Constable appeared in a departmental promotion examination of Sub-Inspector, Civil Police, conducted by U.P. Police Recruitment and Promotional Board, Lucknow. While answering the second paper, which was of 'law', he forgot to fill up the series of the question booklet (OMR Sheet). As a consequence of this mistake, or so to say lapse on the part of the respondent in filling up the series of the question booklet, his answer book was not examined and he was awarded zero mark.

The respondent approached the High Court and the learned Single Judge, taking it to be a small mistake, which if not rectified, would ruin the respondent's career, ordered for examining the aforesaid answer book of 'law' and to award marks accordingly.

Further direction was, that on award of such marks, he would be placed in merit, as per the marks which he would secure.

Sri Manjeev Shukla, learned counsel for the State, assailing the aforesaid order, submitted that it was very specifically mentioned and written in the instructions given in the answer sheet, that the candidates will have to put their roll number at the specified place and shall also mark/write the series of the question booklet alongwith their signatures and in case any

candidate misses to do any of these things, namely, putting their roll number and mentioning of series of the question booklet alongwith his signature, his copy would not be evaluated and he would be awarded zero marks.

The respondent, in the instant case, did not mark the series of the question booklet though the invigilator did mark the series in the column, where he was required to do so.

Almost a similar controversy came up before a Division Bench of this Court at Allahabad in Special Appeal Defective No. 972 of 2011: Kamal Kausal Tiwari vs. State of U.P. and others, wherein also in the OMR sheet, the question paper series was not filled up by the appellant in that case. He also failed to put his signatures. For the aforesaid lapse, his answer book was not examined and he was awarded zero marks. The writ petition was dismissed by learned Single Judge and in special appeal, the said order was upheld.

Curiously enough, the order dated 6.7.2011 passed by the learned Single Judge in Writ Petition No. 3826 (SS) of 2011, impugned in the instant special appeal, was placed before the Division Bench in support of the submission that such a direction for examination of the answer book, under the similar circumstances, can be issued but the Division Bench observed that it was not bound by the said order and that it was not known as to whether any special appeal has been preferred against that order or not.

May be, that the mistake was small, as opined by the learned Single Judge but the fact remains that the instructions written on the answer book specifically requiring the candidates to fill up the series of the question booklet, if have not been followed and if consequence of such an omission is also given, the Court would not interfere so as to give advantage to any candidate, who has not followed the rules/instructions.

Interference in such matters and showing leniency to a candidate, who has not followed the instructions given in the answer book, would amount to awarding marks to a candidate, who should be awarded zero marks.

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.

Order Date :- 1.11.2011
MFA