

CENTRAL ADMINISTRATIVE TRIBUNAL SRINAGAR

Order Sheet

Item no.: 4
O.A./969/2023 (SRINAGAR)
[SELECTION]
Court No.: 2

No of Adjournment:

Order Dated: 05/12/2023

**SAHIL SALEEM RATHER AND OTHERS
Vs
PUBLIC SERVICE COMMISSION**

For Applicant(s) Advocate : M ASHRAF WANI

For Respondent(s) Advocate : SHAH AAMIR FOR R-1, BIKRAM DEEP SINGH FOR R-2

Order of The Tribunal

This OA/969/2023 impugnes the preliminary examination held by the respondents on 15-10-2023, pursuant to notification no. 12 PSC(DR-P of 2023) dated 13-04-2023, with an alternative prayer to direct the respondents to declare the petitioners, who have qualified their preliminary examination, as the applicants have correctly marked the questions whose answer key had been changed thus changing their answers from correct to incorrect and further the applicant be allowed to appear in the written and viva-voce examination and accordingly the petitioners be selected and appointed.

Alongside the main relief claimed by the petitioners the petitioner has sought for an interim relief by directing the respondents to stay the operation of the notification no. PSC/Exam/S/2023/90 dated 18-11-2023 whereby the revised result has been declared.

Learned counsel for the petitioner submits that the applicants being eligible and qualified applied for the said posts by submitting their application forms through online mode. The said application forms were duly received by the Public Service Commission and accordingly admit cards were issued bearing roll numbers allotted to each applicant. As a consequence of the notification preliminary examination was conducted on 15-10-2023 and the examination was conducted through four paper series i.e Series A, B, C and D.

According to the learned counsel for the petitioner, the applicants participated in the preliminary examination who fared well and the Public Service Commission after the

conduct of the preliminary examinations vide their notification no. PSC/Exam/S/2023/65 dated 15-10-2023 released the answer key for series A paper (GS-I i.e General Studies Paper-I) and according to him tentative answers were against each question and it was also provided that if any candidate has a grievance against the answer key, he or she may approach the PSC in a prescribed format and along with a fee of Rs. 500/- per question.

Learned counsel for the petitioner submits that a number of candidates, including the applicants, therein submitted their grievances against same answers which, according to the learned counsel, were supported by the documentary evidence. Learned counsel for the petitioner submits that the procedure for conducting the written examination and the redressal mechanism is contained in rule 10 of the J&K Public Service Commission (Conduct of Examination) Rules, 2022. He has referred to notification no. PSC/Exam/S/2023/67 dated 27-10-2023 which is a notification issued by the Under Secretary to J&K Public Service Commission whereby *the independent team of experts recommended changes in the provisional official answer key/keys in respect of the said paper and the Public Service Commission agreed to the official answer key/keys which were annexed with the notification as annexure A & B, GS Paper-I and GS Paper-II respectively, as per rule 10 sub-rule d of the J&K Public Service Commission (Conduct of Examination) Rules, 2022 as amended up to date. The marks allocated to the deleted questions were individually added to the marks secured by the individual candidates to ensure that the mark(s) allocated for the question paper as a whole remain unchanged, at the time of calculation/compilation of award sheet before the declaration of the result.*

Learned counsel for the petitioner submits that the respondent Public Service Commission, with an oblique and malafide motive, yet again issued another notification bearing no. PSC/Exam/S/2023/89 dated 18-11-2023 whereby learned counsel for the petitioner wants to impress that once the experts had given their opinion it was not open for the Public Service Commission to have again constituted a committee to re-examine the answer key. To this effect, learned counsel has referred to sub-rule E of rule 10 of the J&K Public Service Commission (Conduct of Examination) Rules, of 2022, “The position of the team of experts shall be final and binding upon all the stakeholders”.

Learned counsel further buttressing his arguments submits that once, vide notification dated 27-10-2023, the experts had given their opinion, there was no occasion for the respondent Public Service Commission to have yet again issued notification dated 18-11-2023.

The law is no more res integra that Courts cannot substitute its view for the view expressed by the experts but at the same time Courts cannot shut their eyes to any arbitrary or malafide action of the respondents which statute does not provide. Undoubtedly employment is a national wealth in which every individual has a right of consideration and nobody has a right to monopolise such a national wealth.

Per contra Mr. Shah Aamir learned counsel, representing the Public Service Commission, submits that he would clarify and substantiate his clarification by a duly supported affidavit as to in what circumstances notification dated 18-11-2023 has been issued and whether any rule prescribes such a mode and method.

Fairness of the procedure and the right of person to a response is itself inbuilt in our Constitution protected under Article 14 & 16 of the Constitution of India.

Heard learned counsel for the parties.

Issue notice to Mr. Shah Aamir for respondent no. 1 and Mr. Bikram Deep Singh learned DAG for respondent no. 2, both accept the notice and are granted ten days time to file their detailed response and it is further provided that the Secretary/Controller of examination, PSC will explain as to whether there is any rule which permits them to have issued notification dated 18-11-2023 and with a further direction upon the Public Service Commission to place all such representations before this Tribunal as to who were the candidates who had filed the applications for seeking review of the earlier notification dated 27-10-2023, the needful be done on or before ten days time.

It is also provided that the interest of the petitioners shall be protected subject to the outcome of the O.A.

List this matter on 19-12-2023.

Prasant Kumar
Member (A)

M. S. Latif
Member (J)

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