

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.9872 OF 2014

CHIEF GENERAL MANAGER, BSNL & ORS. APPELLANT(S)

VERSUS

M.J. PAUL & ORS. RESPONDENT(S)

WITH

CIVIL APPEAL NO.9873 OF 2014

CIVIL APPEAL NO.9874 OF 2014

CIVIL APPEAL NO.9965 OF 2014

O R D E R

C.A NOS.9872 OF 2014, 9873 OF 2014 and 9874 OF 2014

By the impugned common order dated 29.03.2012, the High Court has proceeded to dismiss the writ petitions filed by the present appellants against the directions issued by the Central Administrative Tribunal, Bench at Ernakulam (for short, 'the Tribunal') in relation to the departmental examination to the following effect :

"(a) The respondent shall take out a few sample answer sheets in paper V to ascertain whether the answers based on Works Manual were properly evaluated and if so, the applicants be accordingly informed.

(b) In case evaluation was not proper in that answers as per the CPWD Manual have been preferred to Works Manual, then, the respondents shall segregate those cases wherein the candidates had failed

only in Paper V.

(c) These papers be got evaluated by some other examiners and the results compiled and those who have qualified in all the papers be arranged on merit basis and accommodated against the balance of the vacancies out of 172 initial vacancies. The results of already qualified candidates shall not be disturbed.

(d) The results be declared to all the candidates as per the normal practice of declaration of results."

2. On a perusal of the order impugned, it appears that the High Court was not satisfied with the cause for delay in filing the petitions against the orders so passed by the Tribunal. This apart, the High Court was also of the view that the decision of the Tribunal was not resulting in any situation of gross illegality or jurisdictional error or even injustice to BSNL warranting exercise of jurisdiction under Articles 226 and 277 of the Constitution of India.

3. On these appeals being taken up for consideration, learned counsel appearing for the respondent Nos. 1, 2, 4, 8, 16 and 17 as also the learned counsel appearing for the impleaded respondents have frankly submitted, at the outset, that these respondents do not propose to contest

these appeals on merits, but they are desirous of final declaration of the results and further proceedings in accordance with law.

4. None has appeared for the other respondents.

5. In our view, the learned counsel appearing for the aforesaid respondents have rightly not attempted to justify the impugned directions issued by the Tribunal.

6. We are clearly of the view that such directions, interfering with the examination process and mandating the process of re-evaluation or sample evaluation and then recasting of merits, could not have been issued.

7. In the case of *Dr. NTR University of Health Sciences v. Dr. Yerra Trinadh & Ors.*: 2022 SCC OnLine SC 1520, this Court has, after referring to various previous decisions, thoroughly disapproved the process of the Court calling for answer sheets for satisfying as to whether there was a need for re-evaluation or not and thereafter, issuing directions for re-evaluation. This Court has observed and held as under:-

“9. Applying the law laid down by this Court in the aforesaid decisions to the facts and circumstances of the case on hand, we are of the opinion that the

High Court was not at all justified in calling the record of the answer scripts and then to satisfy whether there was a need for re-evaluation or not. As reported, the High Courts are calling for the answer scripts/sheets for satisfying whether there is a need for re-evaluation or not and thereafter orders/directs re-evaluation, which is wholly impermissible. Such a practice of calling for answer scripts/answer sheets and thereafter to order re-evaluation and that too in absence of any specific provision in the relevant rules for re-evaluation and that too while exercising power under Article 226 of the Constitution of India is disapproved."

The said principles squarely apply to the present case too.

8. In view of the above, these appeals succeed and are allowed. The impugned order dated 29.03.2012 as passed by the High Court as also the impugned orders as passed by the Tribunal which were in challenge before the High Court are set aside.

9. However, having regard to the circumstances, we would expect the appellants to take the said examination process forward and issue further/consequential orders/directions in accordance with law without further delay.

10. Pending applications also stand disposed of.

C.A. NO.9965/2014

By way of this appeal, the appellants

related with BSNL have challenged the order dated 12.03.2012 as passed by the Division Bench of the High Court of Judicature at Madras in Writ Petition No.26648 of 2011.

2. By the order impugned, the High Court has reversed the order dated 14.09.2011 as passed by the Central Administrative Tribunal, Madras Bench (for short, 'the Tribunal') in O.A. No.920 and 1289 of 2010 and while accepting the case of the present respondent of want of evaluation of some of the answers given by him in the departmental examination conducted in 2010, has proceeded not only to direct the appellants to award the marks of the allegedly left out answers, but has further issued consequential directions in the following terms :

"Considering all the aforesaid circumstances, in the interest of justice, we consider it appropriate that the petitioner is entitled for awarding marks for those two items and he is eligible for getting pass mark in the said JAO Examination. Accordingly the writ petition is disposed of with a direction to the Respondents/ authorities concerned to award marks for those two pages stated above and take steps to extend the consequential benefits on par with the persons who appeared in the examination pursuant to notification dated 17.8.2009 and promotion effected on 19.4.2010, within period of four weeks from the date of receipt of a copy of this order. No Costs."

3. The aforesaid directions are preceded by the High Court's observations as regards acceptance of the case of respondent in the following terms :

"In order to appreciate the contentions raised by the petitioner, we have gone through the answer scripts produced by the petitioner. From the answer script of Paper V Part II JAO Examination it is seen that in Page No. 27, the column dated 10.7.2005 was not evaluated and no marks were awarded. Likewise in Page no. 29, the column dated 29.7.2005 was also not evaluated. We are able to notice that these two entries do not even bear a tick mark. Therefore, it is clear that the said two columns were left unnoticed. It is not in dispute that if those two entries had been evaluated, the petitioner would have cleared the examination and he would have become eligible for promotion."

4. Learned counsel for the appellants has contended that the High Court has proceeded rather contrary to the record and, with reference to a photo-replica of the answer sheets placed before us, has submitted that the said answers occurring at Page Nos. 27 and 29 were indeed evaluated, which were forming part of question No.1.

5. Learned counsel has also contended that after evaluation, proper marks having been awarded, the High Court has not been right in interfering in the matter.

6. Learned counsel for the respondent has

attempted his best to support the order impugned and has contended that the High Court has indeed examined the answer-sheet and found want of evaluation of a part of the answers. As regards awarding of marks, learned counsel would submit that it had not been in dispute before the High Court that if those two omitted entries were evaluated, the appellant would have cleared the examination.

7. Learned counsel has also referred to an order dated 04.11.2011 passed by the Tribunal in O.A. No.14191 of 2010 and has submitted that in the said case too, the similarly circumstanced employee was granted relief by the Tribunal but the order so passed in favour of the said employee was not challenged by the appellants.

8. Having given thoughtful consideration to the rival submissions and having examined the record, we are constrained to interfere with the order impugned and we are clearly of the view that neither interference in the order passed by the Tribunal in the present matter was justified nor the final directions and reliefs as granted by the High Court were justified.

9. We are not entering into the aspect as to

whether the said answers at page 27 and 29 were evaluated or not but, *prima facie*, with reference to the photo-replica placed before us, it cannot be said that the answer as a whole had not been evaluated by the examiner. In fact, we do not wish to make any further comment beyond this for, we are clearly of the view, that if at all anything of such a nature was to be examined with reference to the instructions said to have been issued by the Government, the only appropriate course for the High Court was to leave it for the authorities concerned to examine, as was the course adopted by the Tribunal in the said order dated 04.11.2011.

10. In the present case, the High Court has proceeded not only to record a finding on non-evaluation but thereafter, has proceeded to record rather assumptive findings as if those pages, when evaluated, were likely to result only in positive marks in favour of the respondent.

11. In fact, adopting of such a course and process has not been countenanced by this Court and it has repeatedly been observed that all such steps ought to be left to the authority concerned and in fact, re-evaluation is not to be resorted to when not

provided for in the Rules.

12. Yet another aspect of the matter had been that the High Court was considering a writ petition arising from the order of the Tribunal. In such a writ petition, adopting the course of factual analysis and rendering the finding on facts was not warranted. The course as adopted by the High Court and the directions as finally issued cannot be countenanced.

13. In the aforesaid view of the matter, this appeal succeeds and is allowed; the impugned order dated 12.03.2012 is set aside.

14. However, in the interest of justice, we deem it appropriate to observe that if the respondent is otherwise eligible and entitled, his case may be examined by the authorities in accordance with law.

15. Pending applications also stand disposed of.

....., J.
(DINESH MAHESHWARI)

....., J.
(J.B. PARDIWALA)

NEW DELHI;
APRIL 26, 2023

ITEM NO.105

COURT NO.6

SECTION XI-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 9872/2014

CHIEF GENERAL MANAGER,BSNL & ORS.

Appellant(s)

VERSUS

M.J. PAUL & ORS.

Respondent(s)

(IA No. 118017/2022 - APPROPRIATE ORDERS/DIRECTIONS)

WITH

C.A. No. 9873/2014 (XI-A)

C.A. No. 9874/2014 (XI-A)

C.A. No. 9965/2014 (XII)

IA No. 146736/2022 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

Date : 26-04-2023 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DINESH MAHESHWARI

HON'BLE MR. JUSTICE J.B. PARDIWALA

For Appellant(s) Mr. Ankur Mittal, AOR
Ms. Nidhi Mittal, Adv.
Mr. Ankur Saboo, Adv.
Ms. Muskan Jain, Adv.

For Respondent(s)

Mr. Md. Farman, AOR
Dr. Ashish K.kulshreshtha, Adv.
Mr. Salman Khan, Adv.
Ms. Seema Rani, Adv.

Mr. P. A. Noor Muhamed, AOR
Mr. Mohamad Shareef K.p., Adv.
Mrs. Giffara S., Adv.
Mr. Abdul Shukoor Mundambra, Adv.
Mr. Shereef K.a., Adv.
Mr. Boby K Paul, Adv.
Mr. T.k. Kunjumon, Adv.

Mr. P. V. Dinesh, AOR
Mr. Akhil, Adv.
Ms. Anagha Lakshmy Raman, Adv.

UPON hearing the counsel the Court made the following
O R D E R

These appeals are allowed in terms of the
signed order.

Pending applications also stand disposed of.

(NEETU KHAJURIA)
ASTT. REGISTRAR-cum-PS

(RANJANA SHAILEY)
COURT MASTER

(Signed order is placed on the file.)