



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 % **Reserved on : 2nd August, 2023**
Pronounced on: 13th September, 2023

+ W.P.(C) 8626/2023 & CM APPL No. 32739/2023

HIMANSHU KUMAR & ORS. Petitioners

Through: Mr. Saurav Agrawal, Mr. Rajeev Kumar Dubey, Mr. Ashish Tiwari and Mr. Sahib Patel, Advocates.

versus

THE UNION PUBLIC SERVICE COMMISSION & ANR.

.... Respondents

Through: Mr. Naresh Kaushik and Mr. Shubham Dwivedi, Advocates for UPSC.
 Ms. Arunima Dwivedi, CGSC with Mr. Aakash Pathak and Ms. Pinky Pawar, Advocates for UOI.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant petition has been preferred by 17 aspirants who appeared at the Union Public Service Commission - Civil Services (Preliminary) Examination 2023, (hereinafter referred to as "Preliminary Examination"), conducted by the Union Public Service Commission/ respondent no. 1 (hereinafter referred to as the "UPSC"), and did not qualify for the subsequent round i.e., Civil Services (Mains) Examination 2023. The petitioners are *inter alia* aggrieved by the respondents' act of



neither releasing the individual marks scored, cut off marks and answer keys along with the Preliminary Examination's result nor assigning any reason for the non-disclosure.

2. By way of this judgment, this Court has considered and adjudicated upon the issue of maintainability of the instant petition preliminarily raised on behalf of the respondents.

3. The learned counsel appearing for the petitioners, during the course of arguments, submitted that he is not pressing prayers (a) and (b) as mentioned in the petition and clarified that the petitioners are only pressing prayer (c) to the extent of paragraph No. 3 of the impugned Press Note dated 12th June, 2023 and not the entire Press Note. Therefore, the limited question for consideration, at this instance, is whether the instant petition is maintainable or, considering the statement made on behalf of the petitioners, whether this Court has the jurisdiction to entertain the reliefs which has been sought by the petitioners in prayer (c) and (d).

SUBMISSIONS

4. The learned counsel for the respondents, at the very outset, objected to the instant petition on the ground of maintainability and submitted that this Court lacks the jurisdiction to entertain and adjudicate upon the present writ petition since the consideration of the instant petition is barred by the operation of the Administrative Tribunals Act, 1985 (hereinafter referred to as "the Act").

5. It is submitted that the reliefs sought in the instant writ petition fall within the ambit of 'recruitment matters' and further within the



expression “*recruitment and matters concerning recruitment*” as mentioned in the bare language used in Section 14 of the Act.

6. It is further submitted that the jurisdiction of this Court stands excluded by virtue of Section 28 of the Act which reads as under:

“28. Exclusion of jurisdiction of courts except the Supreme Court under Article 136 of the constitution—

On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any Service or post or service matters concerning members of any Service or persons appointed to any Service or post, [no court except –

(a) the Supreme Court ; or

(b) any industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 (14 of 1947) or any other corresponding law for the time being in force,

shall have], or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters.”

7. It is submitted that the counsel for the petitioners does not press prayer (a) and (b) and only confines to the prayers (c), to the extent of paragraph No. 3 and the prayer (d). It is submitted that a perusal of said prayers makes it abundantly clear that the reliefs claimed therein specifically relates to the recruitment to the All-India Service which is made through the mechanism of Civil Service Examination. The answer key referred to in the relevant prayer clauses pertains to the Civil Services Preliminary Examination. Even the Press Note, as mentioned in the prayer clause, concerns the process which is to be followed by the UPSC



for declaration of the answer key in relation to the said examination. By no stretch of imagination, can it be claimed that prayers (c) and (d) have no bearing on the aspects which are covered by the provisions of Section 14 and Section 28 of the Act. Further, it cannot be said that the prayers in question do not have any correlation with the recruitment to All-India Service for which the Civil Service Exam (Preliminary) Examination 2023 is conducted by the UPSC.

8. It is submitted that the Hon'ble Supreme Court has interpreted Section 14 and 28 of the Act, in its judgment rendered by its Constitution Bench, in *L. Chandra Kumar v. Union of India (1997) 3 SCC 261*. The Hon'ble Supreme Court in the said judgment while comprehensively considering the above said provisions held that the powers of the Central Administrative Tribunal (hereinafter referred to as "the Tribunal") are exhaustive and inclusive of all the aspects of legality such as violation of principle of natural justice and enforcement of fundamental rights. The Hon'ble Supreme Court also held that powers of the Tribunal under the said provisions substitute the powers of the High Court exercised by under Article 226 of Constitution of India. Reliance has also been placed on the judgments passed in *Savitur Prasad v. UOI, 2017 SCC OnLine Del 12297*, *State of Rajasthan v. Rajendra Prasad Sharma & Ors., Civil Appeal No. 2553/2022* dated 29th March 2022, and *All India NIC S&T Officers Association v. UOI, W.P. (C) 14533/2022*, passed by this Court on 14th December 2022.

9. It is, thus, submitted that this Court lacks the jurisdiction to entertain the instant petition and as such the submission to the effect that



the said prayers can be granted by entertaining this petition is far-fetched, misconceived and misleading, hence, the same deserves to be rejected outrightly, in interest of justice.

10. *Per Contra*, the learned counsel appearing for the petitioners submitted that the UPSC's contention that Section 14(1) read with Section 28 of the Administrative Tribunals Act, 1985 would bar the present writ, is neither substantiated nor explained, and is not even supported by the judicial view on this issue. It is a mere assertion that asking for the marks, cut-off marks and answer key along with the result, instead of waiting till the end of the examination, is a matter relating to recruitment to the All India Service and that granting such reliefs will have a bearing on the recruitment thereto.

11. It is submitted that Section 14(b) of the Act grants the power to the Tribunal to hear all *service matters*. 'Service matters' as defined in Section 3(q) of the Act, means "*all matters relating to his (the) conditions of service*". However, such a question does not arise in the present petition. Therefore, only the effect of Section 14(1)(a) of the Act is to be considered which states that the Tribunal would exercise jurisdiction, power and authority in relation to "*recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence services, being, in either case, a post filled by a civilian.*"

12. It is submitted that for the respondents to show that there is a bar under Section 14(1)(a) of the Act against the instant petition, the respondents have to show that the matter pertains to recruitment.



‘Recruitment’, means the act or process of recruiting or an act of offering inducement to qualified personnel to enter into a particular job or profession. This is the basic characteristic of the term ‘recruitment’ in the context of service jurisprudence. A Division Bench of the Punjab and Haryana High Court in *Basant Lal Malhotra v. State of Punjab*, 1968 SCC OnLine P&H 155, held that the term ‘recruitment’ connotes and clearly signifies enlistment, acceptance, selection or approval for appointment.

13. It is further submitted that Section 14 of the Act has to be read in the background of Article 323A of the Constitution of India, which makes provision for the Parliament to provide for adjudication of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union, State, any local or other authority under the control of the Government of India.

14. It is submitted that the word ‘and’ appearing in Article 323A is conjunctive, which means that only the recruitment and condition of service of those persons who are appointed to a post which is a ‘public post’ and is within the ‘public service’ domain, can be brought under the umbrella of Article 323A to set up administrative tribunals for speedy disposal of service disputes. It is submitted that there is no employee-employer relationship that exists in the present matter, nor are the petitioners herein challenging selection/recruitment of the “*persons appointed to public service or post*”, which is the mandate of Article 323A of the Constitution of India. Therefore, there is no bar whatsoever



under Article 323A of the Constitution, and the questions and claims raised by the petitioners can be entertained by this Court.

15. It is submitted that the declaration of marks, cut off marks and the publication of the answer key of a candidate who is already not qualified, not claiming recruitment, cannot be treated as a matter concerning recruitment.

16. It is further submitted that since the petitioners have not pressed prayer clauses (a) and (b), and have also modified prayer (c), the writ petition cannot said to be barred. It is submitted that the Preliminary Examination is not even the recruitment examination and is only a qualifying and stand-alone examination.

17. The learned counsel for the petitioners submitted that the petitioners are not presently challenging the result of the Preliminary examinations or re-examination or claiming recruitment or participation in any examination for recruitment. The petitioners have not qualified the examination and the reliefs being sought by the petitioners merely pertain to declaration of marks, cut off marks and release of the answer key along with the result before the lapse of one year. It is submitted that such reliefs cannot be treated as matters concerning recruitment. The declaration of marks, cut off marks, mark sheet and answer key along with the result will not affect the recruitment process or give appointment to the petitioners since the information being sought by the petitioners will ultimately be given by the UPSC after one year. Hence, publishing the answer key along with the result will not affect the recruitment process in any manner.



18. It is also stated that the instant writ raises a substantial question of general public importance for the entire student community which has fallen for the consideration of this writ court. It is submitted that that the purpose of giving the marks, cut off marks and answer key is that the students are aware of how much marks they scored, the tentative marks to be secured the next time to qualify and can also ascertain, and rectify in future, the errors committed. Further, if an aspirant finds that he has secured extremely low marks in comparison to the tentative cut off, he may decide to invest his time, energy and efforts into something else instead of continuing with the preparation for the Civil Services Examination. This would also lead to saving time, money and would also substantially reduce the burden of number of students.

19. It is submitted that not providing to the students, the answer key of an exam they have appeared for, not considering the representations of the candidates despite a particular time window being provided for the same, asking questions which are disproportionately vague, testing candidates' ability to answer only on the basis of guesswork, is not only arbitrary but defies all principles of fairness, logic and rationality and is a question which can be adjudicated by this Court by way of exercising its writ jurisdiction.

20. It is further submitted that even the Parliamentary Standing Committee on Personnel, Public Grievance, Law and Justice in its Report No. 131, i.e., Report on Review of functioning of recruitment organizations of Government of India has recommended that answer key



for UPSC Examination be published right after the Preliminary stage. The relevant portion of the said report is reproduced hereunder:

“The Committee, therefore, recommends that UPSC may take steps to publish the answer key right after the preliminary stage of the civil services examination and allow candidates to raise objections.”

21. It is submitted that it is evident that the issue of release of the answer key of the UPSC Preliminary Examinations is an issue which must be considered by the concerned Department and it is prayed that directions may be given by this Court for the same.

22. It is submitted that the respondent no. 1/UPSC has relied upon the general judgments where the facts are entirely different as discussed hereafter:

(i) L. Chandra Kumar v. UOI (Supra)

The Hon’ble Supreme Court in this case held that *‘the Tribunals may perform a supplemental role in discharging the powers conferred by the aforesaid Articles’* overruling the earlier decision in the case of ***S.P. Sampath Kumar v. Union of India, (1987) 1 SCC 124***, which had held that the Tribunals were substitutes to the High Court. Despite this, UPSC in its preliminary objection states that the Tribunal is in-substitute of the powers of this Court.

(ii) Savitur Prasad v. UOI (Supra)



In this case, the challenge was against an Order passed by the Hon'ble President of India placing the appellant therein under suspension, while a criminal offence was under investigation against the appellant. This case was a clear case where there existed an employer-employee relationship and thus, would come within the definition of 'service matter'. The Tribunal thus had the jurisdiction over this case. However, the facts of the petitioners' case before this Court stand on a completely different footing.

(iii) All India NIC S&T Officers Association v. UOI (Supra)

In this case, a Writ of Mandamus was filed before this Court seeking recall of part of a Notification issued under the subject 'Personnel Policy for Group 'A' S & T Officers of Ministry of Electronics and IT and its Organisation' and a Circular issued by the Ministry of Electronics and IT relating to promotion of, and assessment process and criteria and conditions of promotions. The grievance related to the discrimination between those officers, who were promoted prior to the change in policy. This is also a case directly concerning the persons in service, thereby affecting the conditions of service. However, there is no such situation in the instant case.

23. To give force to his arguments, the learned counsel for the petitioner has also placed reliance upon the judgments passed in *Kanpur University v. Sameer Gupta & Ors*, (1983) 4 SCC 309, and *Padma Sharma v. Director of Education*, 1989 SCC OnLine HP 81.



24. It is submitted that the declaration of answer key along with the result is a right of a student and grievances relating to infraction of such right cannot be relegated to the Administrative Tribunal and accordingly, these questions can be considered by this Court by exercising its powers under Article 226 of the Constitution of India.

ANALYSIS & FINDINGS

25. Heard learned counsels for the parties and perused the record.

26. The learned counsels for the parties addressed this Court only on the issue of maintainability of the instant petition and as such, this Court is restricting itself to adjudicating the question of maintainability of the case at this stage.

27. The crux of the arguments made by the learned counsel for the petitioners is that this Court as a writ court, while exercising its power under Article 226 of the Constitution, can entertain the instant petition. On the other hand, the learned counsel for the respondents have argued that this Court is barred from entertaining the instant petition because of the restraint placed by the provisions of the Administrative Tribunals Act, 1985 since the scheme of the said Act provides that the Central Administrative Tribunal has the exclusive jurisdiction to assess disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services.

28. The relevant provision under the Constitution of India which empowers the Tribunal is Article 323A, which reads as under:

“323A. Administrative tribunals.-



(1) Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government.”

29. The enactment overseeing the powers and functions of the Tribunal is the Administrative Tribunals Act, 1985, the long title of which reads as under:

*“An Act to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to **recruitment and conditions of service of persons appointed** to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government in pursuance of article 323A of the Constitution and for matters connected therewith or incidental thereto.”*

30. It is evident from the conjoint reading of the above quoted relevant portions of the Constitution of India and the Act, that the Tribunal is empowered to adjudicate disputes and complaints *qua* recruitment and conditions of service of persons appointed to public services and such other posts. The key words in the provision being “*recruitment and conditions of service*” have to be given due consideration while adjudicating an issue of the nature which is before this Court in the instant petition.

31. In the matter at hand, since the petitioners are aspirants and are not employed in the public services, there is no doubt that the issues of



‘conditions of service’, at the first instance, do not exist or even arise. What is thus required to be seen is that whether or not the prayers made by the petitioners herein pertain to ‘recruitment’.

32. ‘Recruitment’ has neither been defined in the Administrative Tribunals Act, 1985 nor in the General Clauses Act, 1897. ‘Recruitment’, in its dictionary meaning, refers to the act or process of recruiting, or offering to recruit, qualified personnel to a particular job or profession. Even under Section 14(1)(a) of the Act, for the jurisdiction of the Tribunal to lie, the matter in dispute has to pertain to recruitment. In the instant case, after having relinquished their prayers (a) and (b) that dealt with a challenge to the result of the Preliminary Examination, since the candidates are merely asking for the disclosure of the answer key, the same stands on a different footing altogether than the recruitment in the context of Article 323A of the Constitution of India. Had the petitioners continued with their earlier prayers, the case could have been on a completely different footing, and its maintainability would have been adjudicated accordingly.

33. At this juncture, it is pertinent to peruse the impugned Press Note dated 12th June 2023, which reads as under:

“On the basis of the result of the Civil Services (Preliminary) Examination, 2023 held on 28/05/2023, the candidates with the following Roll Numbers have qualified for admission to the Civil Services (Main) Examination, 2023.

The candidature of these candidates is provisional. In accordance with the Rules of the Examination, all these candidates have to apply again in the Detailed Application Form-I (DAF-I) for the Civil Services (Main) Examination,



2023. The dates and important instructions for filling up of the DAF-I and its submission will be announced in due course on the website of the Commission.

Candidates are also informed that marks, cut off marks and answer keys of CS (P) Examination, 2023 will be uploaded on the Commission's website i.e. <https://upsc.gov.in> only after the entire process of the Civil Services Examination, 2023 is over i.e. after the declaration of final result.

The Union Public Service Commission has a Facilitation Counter near the Examination Hall Building in its premises at Dholpur House, Shahjahan Road, New Delhi. Candidates may obtain any information/clarification regarding their result of the above mentioned Examination on all working days between 10.00 AM to 5.00 PM, in person or on Tel. No. 011-23385271, 011-23098543 or 011-23381125 from the Facilitation Counter.”

(emphasis supplied)

34. The reliefs sought herein by the petitioners are with respect to the highlighted paragraph of the Press Note as mentioned above, and the argument is limited as to the opportune time of releasing the answer key of the Preliminary Examinations. The claims of the petitioners *prima facie* pertain to the concerns surrounding the facets of fair play and right to know as well as the Fundamental Rights of the candidates and as such would require this Court to test the same by delving into the domain of administrative law and constitutional provisions. However, the said exercise can be done if the objection on maintainability is decided in favor of the petitioners and the case is heard on merits.



35. As regards the maintainability and entertainability of the instant prayers, it is pertinent to note that a prayer has been made for release of the answer key of the Preliminary Examination, which is in itself a stand-alone examination and is qualifying in nature, the score of which is not added to the subsequent stages of examination to determine the rank or for final selection. The candidates, i.e., the petitioners herein, requesting the same have already been disqualified from the said recruitment process/exercise and they are not even challenging their disqualification before this Court in the instant petition. In any case, the petitioners are not even challenging the examination process but are making a mere request for disclosure of answer key at the stage immediately succeeding the Preliminary Examinations.

36. Such a prayer cannot be said to *per se* leading to a dispute with respect to recruitment under Article 323A of the Constitution of India or under the Administrative Tribunals Act, 1985. Once it is held that it does not fall within the ambit of a “dispute or complaint with respect to recruitment”, it cannot be said that the Tribunal has the exclusive jurisdiction to entertain the said dispute.

37. This Court has also taken note of the judgments passed by the Hon’ble Supreme Court as well as by this Court in the past regarding issues dealing with examinations and disclosure of answer keys/sheets, including *CBSE v. Aditya Bandopadhyay*, (2011) 8 SCC 497, *Venu C v. CPIO, General Manager (Finance) Postal Accounts, Department of Post*, 2021 SCC OnLine CIC 4306 and *UPSC v. Agnesh Kumar*, (2018) 4 SCC 530. The judgments relied upon by both the parties have also been



considered by this Court, however, there is no ruling therein pertaining to the disclosure of the answer key of the UPSC – Preliminary Examinations or as regards the maintainability of a petition seeking disclosure of scores or answer keys of the Preliminary Examinations.

38. Before concluding, this Court has also taken note of a writ petition filed by the UPSC, way back in 2013, wherein the respondent no. 1 herein had challenged an order of Chief Information Commissioner directing the UPSC to provide the answer keys of the Preliminary Examination to the Appellant therein. The Chief Information Commissioner in the case of ***Mrunal Patel v. CPIO, Union Public Service Commission (CIC/SM/A/2012/001599)*** vide its order dated 1st March 2013 held as under:

“5. ... However, in regard to the answer keys for the Preliminary Examination 2011 and 2012, we would tend to allow the disclosure of this information because, in our opinion, this examination has no bearing on the entire Civil Services Examination process being of a qualifying nature. The marks obtained by a candidate in this examination are not added to the marks in the succeeding stages of the examination to determine the status of the candidate. Therefore it is entirely a standalone examination. In the light of this, we direct the CPIO to provide the answer keys for the Preliminary Examination 2011 and 2012 to the Appellant within 10 working days of receiving this order.”

39. The UPSC/respondent no. 1 herein challenged the said order of Chief Information Commissioner by way of a writ petition, bearing W.P.(C) No. 3059/2013 titled ***Union Public Service Commission v.***



Mrunal Patel before this Court. The said petition was disposed of by the Coordinate Bench of this Court on 7th May 2014 in the following terms:

“Mr. Naresh Kaushik, learned counsel for petitioner states that as civil services examination for the year 2012 has been completed inasmuch as results have already been announced, petitioner shall provide the answer keys to the respondent, if not earlier provided, within a period of four weeks.

The aforesaid statement is accepted by this Court and petitioner is held bound by the same.

*In view of the aforesaid, present writ petition and application are disposed of. **However, the issue of law raised in the present petition is left open to be decided in an appropriate case.**”*

(emphasis supplied)

40. The aforementioned petition filed by the UPSC concerning the disclosure of answer key of the Preliminary Examination, while the entire process of the Civil Services Examination, 2012 was yet to be completed, was not adjudicated in the said petition because by the efflux of time during the pendency of the said petition, one year had passed and the entire process stood completed; *secondly* the UPSC gave an undertaking before the Court that they shall provide the answer keys to the respondent, if not earlier provided, within a period of four weeks.

41. However, as is evident from a bare perusal of the said order, the issue of law raised therein was left open to be decided in an appropriate case.

42. This Court is of the opinion that the instant petition is a fit case for adjudicating the said question that was raised in the above said writ



petition, as to whether the UPSC can be directed to release the answer key, since the same does not fall within the scope of ‘recruitments’ as set forth under the Act.

CONCLUSION

43. As far as the maintainability and entertainability of the instant prayers are concerned, it is pertinent to note that a prayer has been made for release of the answer key of the Preliminary Examination, which in itself is a stand-alone examination which is qualifying in nature, and the score attained by a qualified candidate is not added to the subsequent stages of examination to determine the rank or for final selection. The petitioners herein are candidates disqualified from the said recruitment exercise and are not challenging their disqualification before this Court, nor are they challenging the examination process but are making a mere request for disclosure of the answer key before the entire process is completed.

44. Such a prayer cannot be said to *per se* leading to a dispute with respect to recruitment under Article 323A of the Constitution of India or under the Administrative Tribunals Act, 1985. Once it is held that it does not fall within the ambit of a ‘dispute or complaint with respect to recruitment’, it cannot be said that the Central Administrative Tribunal has the exclusive jurisdiction to entertain the said petition.

45. The prayers in the petition, especially with respect to the request for disclosure of answer key or the marks attained in a public service examination, would warrant and essentially entail an adjudication of the legal and fundamental rights of the candidates including fair play,



legitimate expectation and the right to know. In any case, where the enforcement and protection of Fundamental Rights or any rights of a person is sought, this Court cannot look the other way.

46. Therefore, this Court is of the considered opinion that mere asking for the answer key, which may be used to assess performance of the candidates, does not amount to interference in the process of recruitment barring this Court to exercise its jurisdiction under Article 226 of the Constitution of India. As such, in view of the precedents and exposition of law, this Court is of the view that there is no hurdle in adjudicating the instant petition.

47. Accordingly, the petition stands admitted.

48. It is made clear that any remarks made herein shall have no impact on any other proceedings before any other Court, and as such, the adjudication in the instant order at present is restricted only to the question of maintainability and the subsequent entertainability of the present petition. The order on merits shall be passed after hearing the parties on merits subsequently.

49. Judgment be uploaded on the website forthwith.

50. List for arguments on merits on 26th September 2023.

(CHANDRA DHARI SINGH)
JUDGE

SEPTEMBER 13, 2023
gs/ms