For Petitioner(s)	:	Mr. Rajendra Prasad, Senior Counsel assisted by Mr. Manish Parihar Adv. Mr. Abhinav Sharma Adv. Mr. Raghunandan Sharma Adv. Mr. Ashwinee Kumar Jaiman Adv.
For Respondent(s)	:	Mr. M.S. Singhvi Advocate General assisted by Mr. Siddhant Jain, Mr. M.F. Baig, Adv.

HON'BLE MR. JUSTICE INDERJEET SINGH

Judgment

25/05/2022

1. All these writ petitions since involve common questions of law, hence with consent of the parties, these writ petitions have been heard together and are being decided by the present order.

2. To examine the questions raised for consideration, the facts, as prayed, have been noticed from S.B. Civil Writ Petition No.4088/2022, the prayer made therein reads as under :-

> "It is, therefore humbly prayed that Your Lordships may graciously be pleased to accept and allow this writ petition and:
> 1. The action-omission on the part of respondent Rajasthan Public Service Commission in making erroneous calculation of Scaled marks on the basis of improper application of Scaling formula in the result of Objective Examination declared on 09.12.2021 in pursuance of advertisement dated 04.04.2018 for appointment on the post of Assistant Conservator of Forest and Forest Range Officer Grade-I may kindly be

declared arbitrary and against the principles of fair play, in the interest of justice.

2. The respondent Rajasthan Public Service Commission may kindly be directed to resort to the Scaling method only after adopting the principle of capping of 10% and accordingly the result declared on 09.12.2021 may kindly be ordered to be revised on the basis of Scaled marks with a capping of 10%, in the interest of justice.

3. The Scaling formula adopted by the Rajasthan Public Service Commission in the result of Objective Examination declared on 09.12.2021 in pursuance of advertisement dated 04.04.2018 and the adversities caused there from as pleaded in the writ petition may kindly be ordered to be reviewed and examined by an independent agency/institution, in the interest of justice; or in alternate

4. The action-omission on the part of applying Scaling method in the result of Objective Examination declared on 09.12.2021 in pursuance of advertisement dated 04.04.2018 may be declared arbitrary and accordingly the result declared on 09.12.2021 may kindly be quashed and set aside and the respondent Rajasthan Public Service Commission may be directed to declare the result of the Objective examination on the basis of actual/raw marks secured by the candidates, in the interest of justice.

5. Any other appropriate order, which may be found just and proper in the facts and circumstances of the case, be passed in favour of the petitioner."

3. Brief facts are that in pursuance of the advertisement dated 04.04.2018 issued by the respondent-Rajasthan Public Service Commission (hereinafter to be referred as '**RPSC**') holding selections for appointment on the posts of Assistant Conservator of Forest (99 posts) and Forest Range Officer Grade-I (70 posts),

the petitioners applied for the said posts, subsequently corrigendums dated 23.04.2019, 21.01.2020 & 12.11.2021 were issued increasing the number of posts initially advertised and clarifying about the reservation to certain categories, thus in all 127 & 115 posts came to be advertised for appointment on the posts of Assistant Conservator of Forest and Forest First Grade Officer Grade-I. As per the scheme of examination, the recruitment was divided into two phases; first Objective Examination and second Interview. According to the syllabus, apart from two compulsory subjects; General Knowledge & General English, each of 100 marks, there were two optional subjects, each of 200 marks. The RPSC conducted the first phase of examination i.e. Objective Examination from 18.02.2021 to 26.02.2021 and result of the said objective examination was declared on 09.12.2021 in which as many as 871 candidates declared provisionally qualified for the next phase of the selection process i.e. interview.

4. Grievance of the petitioners by way of filing these writ petitions is that the formula of scaling applied by the respondents is improper, resulting into huge and undue variation in the marks awarded in different subjects and adversely affecting the final merit to be drawn on the basis of marks scaled, thus prayed for a direction of this Court to the respondents to declare the result on the basis of raw marks.

5. Sh. Rajendra Prasad, learned Senior Counsel, appearing for the petitioners, submitted that the respondents have wrongly applied the formula of scaling as there is no need to apply such a formula as all the subjects relate to the Science Stream. Learned

Senior Counsel further submitted that the grouping has also done & prescribed in the advertisement, therefore there would be possibility of huge variance in the marks. Learned Senior Counsel further submitted that applying the formula of scaling amounts to sacrificing the merit of the candidates. Counsel further submitted that the action of the respondents is violative of Article 14 of the Constitution of India as no equal opportunity has been granted to the participants in the selection process.

6. Sh. Abhinav Sharma, learned counsel appearing on behalf of some of the petitioners submitted that the selection process is going to be adversely affected by application of scaling formula and the selection process should have been proceeded by the RPSC on the basis of the actual/raw marks secured by the candidates. Counsel further submits that all the subjects are intra-disciplinary subjects of Science Stream therefore the formula of scaling has wrongly been applied by the respondents. Counsel further submits that the RPSC in an arbitrary manner has given one more chance to the candidates for change in the subjects offered by them which shows that there is complete absence of bonafides in the action of the respondents. Counsel further submits that the respondents have neither notified the formula of scaling nor provided any information regarding application of said formula to the candidates prior to its application. Counsel further submits that since the OMR sheets were used in the examination by the RPSC, therefore, there is no question of difficulty in level playing field. Counsel further submits that prior to applying the formula of scaling no expert opinion was taken by the RPSC.

7. Mr. Ashwinee Kumar Jaiman appearing on behalf of some of the petitioners submits that there is no provisions in the Rajasthan Forest Service Rules and Rajasthan Forest Subordinate Service Rules regarding applying of scaling formula. Counsel further submits that the respondents have made the selections in an arbitrary manner and there is no fairness in the selection process. Counsel further submits that the final result has not been declared by the respondents of the selected candidates so far, therefore, they have not impleaded any affected person as party respondent in the present writ petitions.

8. Counsels appearing for the petitioners relied upon the following judgments :-

9. The Hon'ble Supreme Court in the matter of **Sanjay Singh & Anr. Vs. U.P. Public Service Commission, Allahabad and Anr.** reported in **(2007) 3 Supreme Court Cases 720**, in para Nos.21, 34, 36, 37, 48, 52 & 53, has held as under:-

> "21. But the question is whether the raw marks which are converted into scaled scores on an artificial scale which assumed variables (assumed mean marks and assumed standard deviation) can be considered as "marks finally awarded" or "marks obtained". Scaled scores are not marks awarded to a candidate in a written examination, but a figure arrived at for the purpose of being placed on a common scale. It can vary with reference to two arbitrarily fixed variables, namely "assumed mean" and "assumed standard mean". We have dealt with this aspect in greater detail while dealing with question (iii). For the reasons given while considering question (iii), we hold that "scaled scores" or "scaled marks" cannot be considered to be "marks awarded to a

candidate in the written examination". Therefore, scaling violates Rule 20(3) and Note (i) of Appendix-II of Judicial Service Rules.

34. We will next refer to apparent anomalies which show scaling of marks is arbitrary. The Commission has furnished five Tables relating to the five subjects showing the following particulars : (i) The number of examiners, (ii) Number of answer scripts allotted to each examiner; (iii) Mean marks of each examiner; (iv) Standard deviation of the marks allotted by each examiner; (v) Minimum raw marks secured by a candidate in the batch of answer-scripts corrected by each examiner; (vi) Maximum raw marks secured by a candidate in the batch of answer-scripts corrected by each examiner. The Commission has also furnished the tabulation of scaled and actual marks of all the candidates. An examination of the particulars furnished discloses several glaring anomalies.

36. The scaling has equalized the different high end marks of candidates, where the mean marks is low. To give a hypothetical example if the mean marks is 70 and the standard deviation is 15, all candidates securing raw marks 145 to 200 will be assigned the equal scaled marks of 200. If the mean marks are 60 and the standard deviation is 15, all candidates securing 135 to 200 will be awarded the scaled marks of 200. Similarly, if the mean marks are 80 and the standard deviation is 20, all candidates securing raw marks between 180 to 200 will be awarded equal scaled marks of 200. In addition to the above hypothetical examples, we may give a concrete example. In regard to Examiner No. 14 in Language Paper, Table-II shows that the highest marks secured is 145. In regard to that examiner, the mean marks is 54.77 and standard deviation is 17.02. By applying the scaling formula, the marks of 145 secured by that candidate becomes 206 which is taken as 200 as per the formula. All candidates who

were awarded raw marks of 140 to 145 by Examiner 14 in Language paper will be assigned the equal scaled marks of 200. This leads to unequals being treated as equals. In case of candidates securing marks in higher ranges, on scaling there is likelihood of their marks being equalised with those who secured lesser marks thereby losing the benefit of their higher marks and inter se merit.

37. The scaling has also equalized the different low end marks of candidates, where the mean marks is high. To give a hypothetical example, if the mean marks is 95 and the standard deviation is 11, then all candidates securing 40 and below will be awarded only '0'. To give a concrete example, in regard to Examiner 7 in Law Paper II, one candidate has secured 32. In respect of that examiner, the mean marks is 94.4 and standard deviation is 11.48. By applying the scaling formula, the scaled marks of the said candidate who secured 32 becomes '0'. Not only that, scaled marks of all candidates who were given raw marks of 37 and less by that examiner, become '0'. This leads to unequals being treated as equals and candidates who secured marks in the lower ranges (from that examiner) losing out to candidates who performed much worse but were in the pool of other examiners.

48. S.C. Dixit, therefore, upheld scaling on two conclusions, namely (i) that the scaling formula was adopted by the Commission after an expert study and in such matters, the Court will not interfere unless it is proved to be arbitrary and unreasonable; and (ii) the scaling system adopted by the Commission eliminated the inconsistency arising on account of examiner variability (differences due to evaluation by strict examiners and liberal examiners). As scaling was a recognized method to bring raw marks in different subjects to a common scale and as the Commission submitted that they introduced scaling after a scientific study by experts, this Court apparently

did not want to interfere. This Court was also being conscious that any new method, when introduced, required corrections and adjustments from time to time and should not be rejected at the threshold as unworkable. But we have found after an examination of the manner in which scaling system has been introduced and the effect thereof on the present examination, that the system is not suitable. We have also concluded that there was no proper or adequate study before introduction of scaling and the scaling system which is primarily intended for preparing a common merit list in regard to candidates who take examinations in different optional subjects, has been inappropriately and mechanically applied to a situation where the need is to eliminate examiner variability on account of strict/liberal valuation. We have found that the scaling system adopted by the Commission leads to irrational results, and does not offer a solution for examiner variability arising from strict/liberal examiners. Therefore, it can be said that neither of the two assumptions made in *S.C. Dixit* can validly continue to apply to the type of examination with which we are concerned. We are therefore of the view that the approval of the scaling system in *S.C. Dixit* is no longer valid.

52. The petitioners have requested that their petitions should be treated as being in public interest and the entire selection process in regard to Civil Judge (Junior Division) Examination, 2003 should be set aside. We are unable to accept the said contention. What has been made out is certain inherent defects of a particular scaling system when applied to the selection process of the Civil Judges (Junior Division) where the problem is one of examiner variability (strict/liberal examiners). Neither mala fides nor any other irregularities in the process of selection are made out. The Commission has acted bona fide in proceeding with the selection and neither the High Court nor the State Government had any grievance in

regard to selections. In fact, the scaling system applied had the seal of approval of this Court in regard to the previous selection in *S.C. Dixit* (supra). The selected candidates have also been appointed and functioning as Judicial Officers. Further as noticed above, the scaling system adopted by the Commission has led to irrational and arbitrary results only in cases falling at the ends of the spectrum, and by and large did not affect the major portion of the selection. We, therefore, direct that our decision holding that the scaling system adopted by the Commission is unsuited in regard to Civil Judge (Junior Division) Examination and directing moderation, will be prospective in its application and will not affect the selections and appointments already made in pursuance of the 2003 Examination.

53. However, in so far as the petitioners are concerned, we deem it proper to issue the following directions to do complete justice on the facts of the case:

(a) If the aggregate of raw marks in the written examination and the marks in the interview of any petitioner is less than that of the last selected candidate in the respective category, he will not be entitled to any relief (for example, the petitioners in WP(C) No. 165/2005 belonging to the Category 'BC' have secured raw marks of 361 and 377 respectively in the written examinations, whereas the last five of the selected candidates in that category have secured raw marks of 390, 391, 397, 438 and 428 respectively. Even after adding the interview marks, the marks of the petitioners in W.P. [C] No. 165/2005 is less than the marks of the selected candidates).

(b) Where the aggregate of raw marks in the written examination and the interview marks of any petitioner, is more than the aggregate of the raw marks in the written examination and interview marks of the last selected candidate in his category, he shall be

> considered for appointment in the respective category by counting his appointment against future vacancies. [For example, we find that petitioner Archana Rani, one of the petitioners in WP (C) No. 467/2005 has secured 384 raw marks which is more than the raw marks secured by the last five selected candidates (347, 337, 336, 383 and 335) under the SC category and even after adding the interview marks, her marks are more than the five selected candidates. Hence, she should be considered for appointment.] This relief will be available only to such of the petitioners who have approached this Court and the High Court before 31-08-2005."

10. The Hon'ble Supreme Court in the matter of **Ramavatar Pareek and Ors. vs. Rajasthan Public Service Comm. and Ors.** reported in **(2015) 1 SCC (LS) 399,** in para No.12, has held as under:-

> 12. Under the circumstances it would be reasonable to presume that they were knowing about the pendency of D.B. Civil Writ Petition No. 825 of 2010 and other cognate matters in the High Court. Nothing prevented them from taking steps to get themselves impleaded in those writ petitions. But admittedly no such step was ever taken by any of the Petitioners. The argument of non-adherence to the principles of natural justice and fairness in action of Court which decided D.B. Civil Writ Petition No. 825 of 2010 and other petitions cannot be readily accepted in the matters like the present one where the very sanctity of the examination system based on scaling of marks was at stake. Here in this case, the Division Bench hearing D.B. Civil Writ Petition No. 825 of 2010 and other cognate matters held that the declaration of final result after holding of oral interviews and the recommendations made by the R.P.S.C. to the State

Government to appoint the selected candidates were void ab-initio because R.P.S.C. had committed breach of interim order dated 18-2-2010 and adoption of scaling method was held to be illegal in Sanjay Singh's case. This is not a case of any particular examinee who was charged with adoption of unfair means. If it is not a question of charging any one individually with unfair means but to condemn the examination for adoption of scaling of marks, it is not necessary for the Court to give an opportunity to all the examinees if examination as a whole is declared to be illegal. It is not the case of any of the Petitioners that the High Court, while deciding D.B. Civil Writ Petition No. 825 of 2010 and other cognate matters had charged any of them of adopting unfair means. The scaling of marks was adopted by R.P.S.C. which was heard in the said matter. Therefore, the plea that the Petitioners should have been heard before declaring result and recommendation made by R.P.S.C. as void ab-initio has no substance. It is not disputed by the Petitioners that the declaration of result after oral interviews and recommendation by R.P.S.C. to the State Government was quite contrary to the interim order dated 18-02-2010 passed in D.B. Civil Writ Petition No. 825 of 2010 and other cognate petitions. It is also not disputed that scaling of marks was declared to be illegal by the Rajasthan High Court vide judgment dated October 27, 2009 rendered in D.B. Civil Writ Petition No. 3942 of 2007 filed by Sarita Naushad against R.P.S.C. and Ors. and other cognate petitions. Even if the Petitioners had been issued notice and heard, they could have hardly pleaded that the declaration of final result and recommendation to the State Government were not contrary to the interim Order dated 18-02-2010 passed in D.B. Civil Writ Petition No. 825 of 2010 and other matters or that the scaling method adopted by R.P.S.C. was not declared to be illegal by Division Bench of Rajasthan High Court in D.B. Civil Writ Petition No. 3942 of 2007 and

> other cognate matters. It is well settled that if upon admitted or indisputable facts only one conclusion is possible then in such a case, the principle that breach of natural justice was in itself prejudice would not apply. If no other conclusion is possible on admitted facts it is not necessary to quash the order which was passed in violation of natural justice. Thus, the argument that the conclusion namely declaration of final result and recommendation by R.P.S.C. were void ab-initio was not binding upon the Petitioners has no substance.

11. The Hon'ble Supreme Court in the matter of **Ramjit Singh Kardam and Ors. vs. Sanjeev Kumar and Ors**. reported in **2020 (2) SCT 491,** in para Nos.32 & 60, has held as under:-

> 32. From the pleadings on the records and submissions made by the learned Counsel for the parties, following points arise for consideration:
> i) Whether the Respondent writ Petitioners who had participated in the selection were estopped from challenging the selection in the facts of the present case?
>
> ii) Whether the Respondent writ Petitioners could have challenged the criteria of selection applied by Commission for selection after they had participated in the selection?
>
> iii) Whether the decision dated 30.06.2008 to cancel the written examination and the decision dated 11.07.2008 to call the candidates for interview 8 times number of vacancies on minimum percentage of marks as fixed therein and the decision dated 31.07.2008 to call all the eligible candidates for interview were arbitrary decision to change selection criteria published on 28.12.2006, which have effect of downgrading the merit in the Selection?
>
> iv) Whether it was obligatory for the Commission as a body to take all

decisions pertaining to Selection on the post of PTI including the decision of not holding written examination, decision to screen on the basis 8 times of vacancies and decision to call all eligible candidates and whether aforesaid decisions were taken by the Chairman alone?

v) Whether on 03.08.2008, a decision was taken by the commission fixing the criteria for the selection on the post of PTI which was signed by all the members on 03.08.2008 as claimed by the Commission?

vi) Whether without there being any specific allegations of mala fide against the Chairman and members of the Commission and without they having been impleaded by name as party Respondents, the writ Petitioners could have challenged the allocation of marks in viva-voce and High Court was right in accepting the claim that candidates who got highest marks for academic qualifications ranging between 40 to 48.74 marks have been awarded just 7 to 9 marks in the viva-voce and as against it there are hundreds of selected candidates who have been awarded 20 to 27 out of 30 marks in the viva-voce to ensure that they outclass the academically bright candidates?

vii) Whether no fresh selection can be held as directed by learned Single Judge since as per 2012 Rules, the post of PTI has been declared as a dying cadre and the post has merged into the post of TGT Physical Education?

60. There cannot be any dispute to the above preposition of law reiterated by this Court as above. We have noticed from the array of the parties in the writ petition that neither Chairman nor the members of the Commission were personally impleaded nor there are any specific allegations of mala fide against the Chairman or the members of the Commission.

12. The Hon'ble Supreme Court in the matter of **Renu and Ors. vs. District and Sessions Judge, Tis Hazari and Ors.** reported in **2014 (2) SCT 201,** in para No.16, has held as under:-

> 16. Another important requirement of public appointment is that of transparency. Therefore, the advertisement must specify the number of posts available for selection and recruitment. The qualifications and other eligibility criteria for such posts should be explicitly provided and the schedule of recruitment process should be published with certainty and clarity. The advertisement should also specify the rules under which the selection is to be made and in absence of the rules, the procedure under which the selection is likely to be undertaken. This is necessary to prevent arbitrariness and to avoid change of criteria of selection after the selection process is commenced, thereby unjustly benefiting someone at the cost of others.

13. In the matter of **Pankaj Rane and Ors. vs. The Goa Public Service Commission and Ors.** (Writ Petition No.660 of 2017) decided on 21.11.2017, in para Nos.19 & 20, has held as under:-

> 19. In view of this legal position settled by the Apex Court, it is clear that the Commission, which is bound by these Goa Civil Service Rules, 2016 framed under Article 309 of the Constitution of India has to carry out the selection process as per the Rules. In the present case, not only there are no minimum qualifying marks for oral interview prescribed in the Rules, but they were not even notified in the advertisement. This is not to say that we are commenting upon the legal position whether they can be so provided in the advertisement if the Rules do not provide. We, however, take a note of the fact that in the subsequent advertisement dated 21 July 2017, the Commission has prescribed 50%

> qualifying marks. We do not wish to conclude the issue regarding the advertisement dated 21 July 2017 as there is no specific challenge on that count before us. But it needs to be noted that, in the present petition the stand of the Commission is that they had taken a decision on 16 May 2017 prescribing 65% minimum qualifying marks, and in the Advertisement dated 21 July 2017 it is stated as 50%.
>
> 20. The stand taken by the Secretary of the Commission in the affidavit is that providing such qualifying marks is solely within the discretion of the Commission. It, therefore, appears that the Commission is under an incorrect impression that it can change and impose any qualifying marks as per its will any time even though it is not so provided in the Rules. In furtherance of this stand, it is the contention of Mr. Faldessai that the Rules vest power in the Commission to select a suitable candidate and therefore it had taken a decision on 16 May 2017 to prescribe the minimum marks in furtherance of this power. His submission cannot be accepted as the Rules do not contemplate any such minimum qualifying marks. As laid down by the Apex Court in the case of P.K. Ramachandra Iyer, the Rules must be explicit in this regard and such powers cannot be assumed by implication.

14. The Hon'ble Supreme Court in the matter of **State of Uttar Pradesh and Ors. vs. Atul Kumar Dwivedi and Ors**. reported in **2022 SCC OnLine SC 17,** in para Nos. 70,72 & 73, has held as under:

> 70. In *Sunil Kumar and Ors. v. Bihar Public Service Commission and Ors.*, a Bench of two Judges of this Court, among other questions, considered the applicability of the decision in *Sanjay Singh* to cases where the candidates were tested in different subjects as against an examination where the question papers were compulsory and

common to all the candidates. The discussion was:-

" 11. Having considered the rival submissions advanced before us, we are of the view that the question that calls for an answer in the present case is whether this Court in *Sanjay Singh* had laid down any principle or direction regarding the methodology that has to be adopted by the Commission while assessing the answer scripts of the candidates in a public examination and specifically whether any such principle or direction has been laid down governing public examinations involving different subjects in which the candidates are to be tested. Closely connected with the aforesaid question is the extent of the power of judicial review to scrutinise the decisions taken by another constitutional authority i.e. the Public Service Commission in the facts of the present case.

… … …

13. We have read and considered the judgment in *Sanjay Singh* . In the said case, this Court was considering the validity of the selections held for appointment in the U.P. Judicial Service on the basis of a competitive examination in which the Rules prescribed five (5) papers all of which were compulsory for all the candidates. There is no dispute that the U.P. Public Service Commission in the aforesaid case had scaled down the marks awarded to the candidates by following the scaling method. This Court, after holding that the Judicial Service Rules which governed the selection did not permit the scaled down marks to be taken into consideration, went into the further question of the correctness of the adoption of scaling method to an examination where the papers were compulsory and common to all the candidates. In doing so, it was observed as follows:(SCC p.742, para 24)

"24. The moderation procedure referred to in the earlier paragraph will

solve only the problem of examiner variability, where the examiners are many, but valuation of answer scripts is in respect of a single subject. Moderation is no answer where the problem is to find inter se merit across several subjects, that is, where candidates take examination in different subjects. To solve the problem of inter se merit across different subjects, statistical experts have evolved a method known as scaling, that is creation of scaled score. Scaling places the scores from different tests or test forms on to a common scale. There are different methods of statistical scoring. Standard score method, linear standard score method, normalised equipercentile method are some of the recognised methods for scaling."

It was furthermore observed: (SCC p. 742, para 25)

"25.... Scaling process, whereby raw marks in different subjects are adjusted to a common scale, is a recognised method of ensuring uniformity inter se among the candidates who have taken examinations in different subjects, as, for example, the Civil Services Examination."

14. After holding as above, this Court, on due consideration of several published works on the subject, took note of the preconditions, the existence or fulfilment of which, alone, could ensure an acceptable result if the scaling method is to be adopted. As in Sanjay Singh the U.P. Public Service Commission had not ensured the existence of the said preconditions the consequential effects in the declaration of the result were found to be unacceptable. It was repeatedly pointed out by this Court (paras 36 and 37) that the adoption of the scaling method had resulted in treating unequals as equals. Thereafter, in para 45 this Court held as follows: (SCC p. 751)

45. We may now summarise the position regarding scaling thus:

(i) Only certain situations warrant

adoption of scaling techniques.

(ii) There are number of methods of statistical scaling, some simple and some complex. Each method or system has its merits and demerits and can be adopted only under certain conditions or making certain assumptions.

(iii) Scaling will be useful and effective only if the distribution of marks in the batch of answer scripts sent to each examiner is approximately the same as the distribution of marks in the batch of answer scripts sent to every other examiner.

(iv) In the linear standard method, there is no guarantee that the range of scores at various levels will yield candidates of comparative ability.

(v) Any scaling method should be under continuous review and evaluation and improvement, if it is to be a reliable tool in the selection process.

(vi) Scaling may, to a limited extent, be successful in eliminating the general variation which exists from examiner to examiner, but not a solution to solve examiner variability arising from the 'hawk-dove' effect (strict/liberal valuation).

15. Moreover, in para 46, this Court observed that the materials placed before it did not disclose that the Commission or any expert body had kept the above factors in mind for deciding to introduce the system of scaling. In fact, in the said paragraph this Court had observed as follows: (*Sanjay Singh,* SCC p.751)

46.... We have already demonstrated the anomalies/absurdities arising from the scaling system used. The Commission will have to identify a suitable system of evaluation, if necessary by appointing another Committee of Experts. Till such new system is in place, the Commission may follow the moderation system set out in para 23 above with appropriate modifications.

16. In *Sanjay Singh* an earlier decision of this Court approving the scaling method i.e. *U.P. Public Service Commission v. Subhash Chandra Dixit* to a similar examination was also noticed. In para 48 of the judgment in *Sanjay Singh* it was held that the scaling system adopted in Subhash Chandra Dixit received this Court's approval as the same was adopted by the Commission after an in-depth expert study and that the approval of the scaling method by this Court in Subhash Chandra Dixit has to be confined to the facts of that case.

17. Finally, in para 51 of the Report in Sanjay Singh the Court took note of the submission made on behalf of the Commission that it is not committed to any particular system and "will adopt a different or better system if the present system is found to be defective" (SCC p. 754).

18. In Sanjay Singh the Court was considering the validity of the declaration of the results of the examination conducted by the Public Service Commission under the U.P. Judicial Service Rules by adoption of the scaling method. This, according to this Court, ought not to have been done inasmuch as the scaling system is more appropriate to an examination in which the candidates are required to write the papers in different subjects whereas in the examination in question all the papers were common and compulsory. To come to the aforesaid conclusion, this Court had necessarily to analyse the detailed parameters inherent in the scaling method and then to reach its conclusions with regard to the impact of the adoption of the method in the examination in question before recording the consequences that had resulted on application of the scaling method. The details in this regard have already been noticed (*Sanjay Singh* case paras 45 and 46) (in paras 14 and 15 herein).

19. The entirety of the discussion and

conclusions in *Sanjay Singh* was with regard to the question of the suitability of the scaling system to an examination where the question papers were compulsory and common to all candidates. The deficiencies and shortcomings of the scaling method as pointed out and extracted above were in the above context. But did Sanjay Singh lay down any binding and inflexible requirement of law with regard to adoption of the scaling method to an examination where the candidates are tested in different subjects as in the present examination? Having regard to the context in which the conclusions were reached and opinions were expressed by the Court it is difficult to understand as to how this Court in Sanjay Singh could be understood to have laid down any binding principle of law or directions or even guidelines with regard to holding of examinations; evaluation of papers and declaration of results by the Commission. What was held, in our view, was that scaling is a method which was generally unsuitable to be adopted for evaluation of answer papers of subjects common to all candidates and that the application of the said method to the examination in question had resulted in unacceptable results. *Sanjay Singh* did not decide that to such an examination i.e. where the papers are common the system of moderation must be applied and to an examination where the papers/subjects are different, scaling is the only available option. We are unable to find any declaration of law or precedent or principle in *Sanjay Singh* to the above effect as has been canvassed before us on behalf of the Appellants. The decision, therefore, has to be understood to be confined to the facts of the case, rendered upon a consideration of the relevant Service Rules prescribing a particular syllabus.

20. We cannot understand the law to be imposing the requirement of adoption of moderation to a particular kind of examination and scaling to others. Both are, at best, opinions, exercise of which requires an in-depth consideration of

questions that are more suitable for the experts in the field. Holding of public examinations involving wide and varied subjects/disciplines is a complex task which defies an instant solution by adoption of any singular process or by a straitjacket formula. Not only examiner variations and variation in award of marks in different subjects are issues to be answered, there are several other questions that also may require to be dealt with. Variation in the strictness of the questions set in a multi-disciplinary examination format is one such fine issue that was coincidentally noticed in *Sanjay Singh*. A conscious choice of a discipline or a subject by a candidate at the time of his entry to the University thereby restricting his choice of papers in a public examination; the standards of inter-subject evaluation of answer papers and issuance of appropriate directions to evaluators in different subjects are all relevant areas of consideration. All such questions and, may be, several others not identified herein are required to be considered, which questions, by their very nature should be left to the expert bodies in the field, including, the Public Service Commissions. The fact that such bodies including the Commissions have erred or have acted in less than a responsible manner in the past cannot be a reason for a free exercise of the judicial power which by its very nature will have to be understood to be, normally, limited to instances of arbitrary or mala fide exercise of power.

72. In the backdrop of these decisions, what is of importance in the instant matters is the fact that more than 6.3 lakh applicants had submitted online application forms whose candidature was tested in written examinations held in 29 different batches over 12 days. The cases dealt with by this Court did not deal with the fact situation akin to that which arises in the instant matters. In the aforesaid decisions the number of candidates was not quite large (4270 in Subhash Chandra Dixit, 51524 and 5748 in preliminary and main examinations respectively in Sanjay Singh and about 3000 in Mahinder Kumar). Further, these

> decisions dealt with "single examination" for the concerned papers or subjects and the variability was either with regard to the examiners or in the circumstances arising from different optional subjects.
>
> 73. Cases of single examination where there are multiple number of examiners may call for moderation to be adopted by the examiner-in-chief or such body constituted for the purposes. On the contrary, scaling of marks has been accepted to be an appropriate method where candidates are tested in different subjects. As noticed by this Court in Sanjay Singh , a candidate having secured 70% marks in "Mathematics" cannot be said to be on an equal footing as against the candidate who had secured 70% marks in "English". As against examiner variability in the same or compulsory examination, the subject variability was thus found to be a good ground to adopt "Scaling of Marks" as a method to put all the candidates on an even keel.

15. Reliance was also placed upon the judgment in the matter of **Sharwan Kumar & 10 Ors. Vs. RPSC & Ors.**, reported in **2010(3) WLC (Raj.) 337**, and in the matter of **Sarita Noushad & 17 Ors. Vs. RPSC & Ors.**, reported in **2009(4) WLC (Raj.) 679**.

16. Learned Advocate General appearing on behalf of the respondent-State submitted that the petitioners have not impleaded any affected person as party respondents in the writ petitions. He further submitted that the formula of scaling has rightly been applied by the respondents in the selection process as there were 14 different optional subjects of which 5 groups were made & prescribed in the advertisement, as such for equalizing the level playing field to all the candidates the formula of scaling was rightly applied by the respondents. Counsel further submits

that the scaling formula is a time tested formula which has been applied by the respondents in various recruitments. Counsel further submits that the judgment in the matter of Sanjay Singh relied upon by counsel for the petitioner, according to the syllabus of Judicial Officers Recruitment Rules all the subjects were compulsory subjects and no optional subject was there. Counsel further submits that where different subjects are offered in an examination, the formula of scaling has rightly been applied by the recruiting agency for the purpose to give equal opportunity to all the participants/candidates. Counsel further submits that there is no allegation of malafide levelled by the petitioners in these writ petitions either against the Chairman or Members of the Board. Counsel further submits that it is nowhere mentioned in the writ petitions that what is wrong in the procedure of applying the formula of scaling by the RPSC. Counsel further submits that the scope of judicial review is very limited and this Court cannot sit as an Appellate Court to examine the correctness of the decision of the experts in the field. Counsel further submits that while applying the formula of scaling a conscious decision has been taken in the meeting of Full Commission on the basis of reports of the experts, of which detail has been mentioned in para no.4 of the reply which reads as under :-

> "4. That the contents of para no.7 of the writ petition are not admitted as stated and replied in the terms that RPSC declared the result dated 09.12.2021 for the post of ACF Grade-I therein 871 candidates declared successful in the written examination in the ratio 1:2.5 against the overall advertised posts category wise.
> That since selection process is based on two stages, first written examination and

second is personal interview. The written examination consists with the two compulsory papers having each of the 100 marks and two optional papers having each of 200 marks. That in the said examination a candidate was required to opt two optional papers out of 20 optional subjects. The result dated 09.12.2021 was declared therein candidates who have obtained prescribed minimum aggregate marks in the written examination and on the basis of obtained qualifying marks with application of scaling for the two optional papers out of 20 different subjects.

That since in the optional papers 20 different subjects were available to the participant which all were are the different in nature therefore, by the full commission meeting dated 01.10.2021 decision has been taken for the scaling of the marks for the different 20 papers. That in pursuance of the full commission meeting dated 01.10.2021 a committee was constituted consisting with the statistical expert. The meeting of the statistical expert was held on 12.11.2021 & 04.12.2021 and after analyzing the difficulty level of different optional subjects and assessing the order statistical datas by the meeting of statistical expert dated 04.12.2021 it was recommended that scaling may be applied in the present recruitment. The formula for the scaling proposed by the statistical experts is adopted by the RPSC for scaling is time tested formula therefore, RPSC committed no irregularity while applying the scaling method to bring the uniformity in scores of all subjects. That during the process of preparing the result of A.En. Examination, 2018, on the basis of datas of statistical analysis it was found that means and the standard deviation values were having high differences for the different subjects because of the difficulty level of the subject question papers, in such circumstances after the analyzing the statistical datas and considering the all existing facts minutely expert committee taken a decision to apply the scaling method in the present recruitment by the expert opinion dated 04.12.2021 and on the

basis of expert opinion/report RPSC taken decision to adopt the scaling method by the full commission decision dated 09.12.2021. That RPSC applied the formula which is reproduced as under :-

Scaled Marks = M + (Xi − μi) * σ/σi

M = Combined Mean of All the Subjects

σ = Pooled Standard Deviation of Scores of All the Subjects

Xi = Raw Marks of i^{th} Subject

μi = Mean Marks of i^{th} Subject

σi = Standard Deviation of Marks of i^{th} Subject Concerned

That as such after scaling the candidates on the basis of the obtained marks was called for the interview in the ratio of 1:2.5 category wise. That to call the candidates in the ratio of 1:2.5 category wise is based on the full commission decision dated 09.12.2021. That as such petitioner are not having any entitlement to call them on the basis of Raw Marks but, candidates were called for the interview on the basis of obtained marks after application of the scaling method which is time tested and accepted/applied in the various examination conducted by the RPSC.

17. Counsel further submits that total 32382 candidates appeared in the selection process out of which 17 candidates have approached this Court by filing the present writ petitions and there is no error apparent on the record.

18. Counsel further submits that the advertisement in question was issued in the year 2018 and interviews have been held in the

year 2022 after a delay of 4 years and there is need of officers for smooth running of the administration in the department. He relied upon the following judgments

19. The Hon'ble Supreme Court in the matter of Prashant Ramesh Chakkarwar vs. Union Public Service Commission and Ors. reported in (2013) 12 Supreme Court Cases 489 in para No. 13, has held as under:-

> "13. We have considered the respective arguments and scanned the voluminous papers produced by the petitioners. In our view, the High Court did not commit any error by non-suiting the petitioners on the ground of non-impleadment of the selected candidates as parties to the original applications and the writ petitions. If the methodology of moderation adopted by the Commission is faulted, the entire selection will have to be quashed and that is not possible without giving opportunity of hearing to those who have been selected and appointed in different cadres."

20. Counsel further relied upon the judgment passed by the Division Bench of this Court in the matter of **Mahesh Kumar Khandelwal & 16 ors. Vs. State of Raj. & ors.** reported in 1994 (1) RLR 533, wherein para Nos.36,37,38,39,41,44,47, & 54 it has been held as under:-

> 36. A serious exception has been taken to the fact that the RPSC resorted to moderation/normalization of marks, even though rules did not envisage such a moderation either by express words or by necessary intendment. On behalf of the respondents, it is urged that even though the relevant rules do not speak of moderation/normalization, scaling down of marks is a very well accepted technique, well recognised in academic circles and is implicit in the scheme of examination, itself, and

hence no exception can be taken to the scheme of moderation/normalization.

37. We have considered the rival contentions and the precedents cited by either side on this court. We may readily concede that the Rules do not speak of moderation/normalization of marks as such. It appears that Birla Institute of Technology first of all adopted the scheme of moderation or normalization, as noticed in **N.K. Batra & others Vs. Kurukshetra University & others**. The scheme adopted was as follows:

"Normalization : That disparity exists between the absolute marks awarded to candidates by the different examining authorities in the country is well known. To bring all such candidates on the same scale of comparison the institute for more than a decades has been practising a time-honoured and well known system known as normalization. It basically tries to find the relative displacement of a candidate from the candidate who stood first in the public examination which the candidate under review has passed. If the number of candidates in each of these cases is large enough it would be a correct statistical case with the intrinsic merit of the first rank student in one Board being equated to that of the first rank student in any other Board of the similar size. In practice the Institute as an all India Institute recognises the Central Board (which incidentally is the largest single contributor of students year by year) and the Indian School Certificate examination for normalization of the percentage marks of an individual candidate based on the percentage marks of the first rank student in that Board for a stream which consists of at least Physics, Chemistry and Mathematics and English, if it is provided in the offerings of that board. In respect of the following situations the Institute reserves the right to do the normalization on the basis of aggregate percentage marks which is the highest for the current year:

(a) Where in respect of named Boards the correct information is not available within the due date either because it has not been supplied or the information is only in respect of a stream which has no affinity to a combination of Physics, Chemistry and Mathematics.

(b) Where a State Board or its equivalent does not exist and the task is shared by several examining authorities of the State without any one of them being large enough to meet the statistical requirement.

(c) Where admission is being considered on the basis of performance in a public examination which is other than the current year main examination."

The Punjab & Haryana High Court did not find any fault with the scheme of normalization by the Birla Institute. But, however, it took strong exception to the impugned scheme of moderation adopted for admission to Regional Engineering Colleges in the State of Haryana and the Chhotu Ram State College of Engineering Murthal (Haryana). Their Lordships found that so-called moderation adopted in that case was really no moderation. They observed in this regard —

"But, in the instant case, the basis of selection is not on any normalization as no standard is recognised of any of the two Boards. Rather it was conceded by the learned Advocate-General, Haryana, that the standard as was inherent would be the standard derived at by drawing an average, whichever was higher in the two Boards. The principle evolved thus, in our view, can in no event be normalization, so that it could promote equal chances and opportunities for admission and rather it would go, in our view, to make things abnormal, promoting inequality and denial of equal opportunity for admission."

10. It would be useful to add here that besides asserting what was stated in the return, the Advocate General, Haryana, could not, despite our repeated asking, produce before us any valid material which would have gone to persuade the respondents to adopt this normalization principle.

Thus, it was on the peculiar facts of that case that their Lordships of Punjab & Haryana High Court quashed the concept of normalization as being violative of Articles 14 & 16 of the Constitution. Really speaking, in that case, the finding was that it was no normalization at all. Even the so-called normalization suffered from other vices-reference to which was made in para 11 of the judgment. Hence we find that this precedent is not an authority for the general proposition that moderation or normalization of marks is per-se or invalid or is violative of Articles 14 & 16 of the Constitution of India.

38. This takes us to the consideration of the decision rendered in **Umesh Chandra Vs. Union of India**. In that case, recruitment was to be made to Delhi Judicial Service by way of a competitive examination. Certain specified candidates failed to secure the minimum qualifying marks. The names of these specified candidates, who had failed to achieve the minimum qualifying marks were added to the list of successful candidates under the name of moderation by granting two marks to each of the candidates in each paper. The result of this exercise was to make eligible certain named and specified candidates to take the viva voce examination, even though they had failed to secure the prescribed minimum marks. It was in these circumstances that the aforesaid so called 'moderation' was struck down as bad. Moreover, in that case, no power was reserved in the selection body (High Court) to prescribe minimum marks different from those prescribed under the rules. It was no this basis as

well that the selection was held to be bad.

In the present case, the RPSC had not entered into any exercise in the name of moderation to pull up named & specified candidates, even though they were ineligible. In the present case, moderation was thought proper because candidates had taken various optional papers with different standards and different scorabilities. That was not the case in either the Haryana case or the Delhi case, where the papers were common. Hence, to our mind, case of Umesh Chandra Shukla (supra) also does not assist the petitioners in any way.

39. On behalf of the respondents, reliance was placed upon certain judgments of the Central Administrative Tribunal as also of Gujarat High Court, affirmed by the Apex Court wherein the scheme of moderation adopted by the UPSC was held to be valid. In letters patent appeal **Kalmesh Vs. Union of India** a division bench of the Gujarat High Court took the view that process of moderation was necessary to find out merit of the candidates inter se. It was held that the Commission had power to moderate the evaluation of the performance of the candidates at the written examination. This view was affirmed in a common judgment delivered by the Apex Court in with the main title as **Soorjeet Kumar Das, Kamlesh Harlal Corud, petitioner(s) Vs. Chairman, UPSC, Union of India & another, respondents** wherein it was observed:

"We are in agreement with the view expressed by a Division Bench of the High Court that the system of moderation of marks adopted by the Union Public Service Commission in evaluating the performance of the candidates appearing for the Civil Service Examination cannot be said to be vitiated by arbitrariness or illegally of any kind."

On the basis of the aforesaid observation, two benches of Central Administrative Tribunal at Allahabad

and Hyderabd and the principal Bench at New Delhi took a view that scheme of moderation of marks adopted by the UPSC was permissible.

41. Association of Indian Universities has published a brochure entitled, 'scaling Techniques' —'what, why and how' authored by V. Natrajan & K. Gunasekaran. In the preface to the book, the learned authors observe as follows:

"Equating and Scaling of marks in examinations are certainly unknown concepts in India. Hence, they need some explanation. In simple terms, Scaling is necessary wherever the standards maintained in measuring any characteristics are different. Naturally, it is assumed that many people are involved in measuring the characteristic. **By adopting Scaling techniques, all the different standards are brought to a common standard so that comparisons will be meaningful.** As an example, let us consider the case of a large number of examiners involved in valuing the scripts in a mass-conducted examination. One can find that while one examiner is failing only, say, 2% of his candidates whereas another is failing as high as 90% of his candidates. Such a large variation can be brought down to some extent by a thorough discussion on the scheme of valuation before the actual valuation of scripts is taken up. But, the inconsistencies of the examiners will still produce different types of results. Scaling will take care of this problem."

(emphasis ours).

At pages 8 and 9 of the book, (supra), they quote Dandekar, who carried out extensive research on the subject as follows:

"(1) Inspite of all the instruction given to the examiners and inspite of all the steps taken to achieve the maximum objectivity in the marking system, marks given by two examiners to two

different scripts are not comparable. They are not comparable in the sense that a mark of 40 given by one examiner to a script does not necessarily mean the same thing as mark 40 given to another script examined by another examiner…..”

(2) The marks secured by a particular candidate in a subject in a year are not comparable with the marks secured by another candidate in the same subject but in another year…..”

(3) The marks secured in one subject are not comparable with the marks secured in another subject, even in the same year and by one and the same candidate. This, too, is obvious, for in this case not only the examiners would be different but they would be evaluating scripts in two different subjects under very different marking instructions…..”

44. Learned counsel for the petitioners laid much emphasis on the expression “marks obtained in the preliminary examination” occurring in Rule 13 of the Rules and urged that this referred only to raw marks and not to scaled marks. In our considered opinion, when scaling is an accepted technique and has been upheld for UPSC, there can be no reason to hold that ‘marks obtained’ in the context must necessarily be raw marks and not scaled marks, ‘scaled marks’ to our mind are also ‘marks obtained’ for purposes of the said rule and hence scaling of marks for optional papers does not violate the scheme of examination, at all.

47. We thus find that the RPSC has used a very proper formula in a proper manner in working out the scaled marks of the examinees on the basis of the raw marks obtained by them and we have no reason to doubt the veracity of the sworn statements of Shri Y. Singh and Shri M.L. Sharma in this regard. We further find that evaluation made on the basis of a computer programme was also manually checked

and verified by random sampling. Shri M.L. Sharma has stated in para 5 of his additional affidavit dated 11.7.1994 as under:—

"5. That the Chairman of the Commission engaged a team of 4 retired Selection Scale Lecturers to carry out manual random checking of the results at different stages of evaluation of the computerised answer-sheets. The results as moderated by the computer were checked manually on a random basis to confirm that the process of moderation was being carried out by the computer correctly."

54. When we talk of furnishing marks to the various candidates, we mean that both, raw as well as scaled marks must be made available to them alongwith formula adopted for moderation of the marks. It was vehemently urged before us that the formula of moderation should be allowed to be kept as a close secret because, the UPSC had been doing so. In our opinion, the contention is devoid of all merit. The respondent-RPSC had, itself, adopted formula which has been written by two eminent authors, Sarva Shri V. Natrajan and K. Gunasekaran and has been published by the Association of Indian Universities in their treatise, 'Scaling Techniques-What, Why & How', 1986. It is thus already public property. If formula of moderation alongwith raw marks & scaled marks are furnished to the candidates, they would be able to ascertain and verify as to whether formula was correctly applied or not. Once a candidate is satisfied about correct application of the formula, he would have no occasion to knock portals of this Court to get justice because, he would be in a position to satisfy himself, as to whether exercise of awarding of marks and moderation thereof has been fair or not. There is nothing sacrosanct about moderation formula, as stated already. However, in the present cases, non-furnishing of raw or scaled marks or non-furnishing of moderation formula does not affect

> the result of the petitioners in any way since, we are satisfied that the formula of moderation was correctly applied by the respondent-RPSC. Individually, the petitioners have not been able to show that the marks awarded to them were not just and fair-vis-a-vis their performance. Hence, our observations, above, would not affect ultimate result and fate of these writ petitions.

21. Counsel further relied upon the judgment passed by the Division Bench of this Court in the matter of Jai Singh & 6 Ors. v. State of Rajasthan and Anr. reported in 2011 (2) WLC 46, wherein para Nos.5,6,7,8,15,24,29,30,31,32,34,38 & 39 has held as under:-

> 5. The petitioners have canvassed that one Ms. Mamta Tiwari was at rank No. 1 with raw marks 849 and on scaling, her marks were reduced by 15. Thus, by applying the method of scaling she has been placed at Serial No. 9 in the merit. Another shocking example is of a candidate who secured 838 raw marks and was 3rd in ranking as per raw marks but her marks were reduced by 71 and placed at general ranking at No. 194. Ranking of a person as per raw marks at No. 13 has been reduced to 283 after scaling. A person who had 52 ranking on the basis of raw marks, after scaling was placed at No. 5 and so on. Thus, absurd results have occurred due to the application of scaling method. Petitioners have submitted certain data in the petition indicating as to how scaling of marks caused anomalous results. It is also averred that in the case of one Ms. Sunita Meena, who is perhaps the relative of Shri H.L. Meena, Member, Rajasthan Public Service Commission, wrongful scaling was done. The children of close friends and relatives have been given benefit not only in scaling but at the level of interview too. One Narendra Choudhary, relative of Shri C.R. Choudhary, Chairman, Rajasthan Public Service Commission has also been

given benefit of increase of marks from 726 to 792. Thus, the examination conducted by the Commission is in a cloud of doubt.

6. It is further submitted by the petitioners that the scaling system is wholly defective and illegal. Scaling of marks is required to be done only when there are large number of candidates appearing in the examination. The combined mean of all examiners and combined mean of all subjects are two different variants. Standard deviation of the examiners would be different in different subjects. It is not known as to which formula was applied causing shocking results. Rules of 1999 do not allow any kind of scaling. Rule 15 lays down the Scheme of Examination, Personality and Viva-Voce Test. There are certain combination of subjects which cannot be opted together such as Mathematics and Statistics; Agriculture and Animal Husbandry & Veterinary Science. Even it was not permissible to go for scaling in the aforesaid subjects and then apply the mean of the subjects. Reliance has been placed upon the decision of the Apex Court in **Sanjay Singh and Anr. Vs. U.P. Public Service Commission, Allahabad and Anr.,** (2007) 3 SCC 720. In compulsory papers, examiner-wise scaling could not have been resorted to; in case of difference, moderation is the answer. When under the Rules of 1999, no provision has been made to apply scaling, it could not have been resorted to and thus the action of applying scaling is beyond the powers of the Commission. Scaling technique could not have been applied even in optional subjects as scaling has created anomalous results, and thus, the final result so declared by the Commission be quashed and the Commission be directed to declare the result on the basis of raw marks obtained by the candidates without taking into consideration the scaled and interview marks.

7. The respondents, in their reply, have contended that the recommendation of

the Commission is based on aggregate marks finally awarded to each candidate as per the scheme of examination provided under Rule 15 of the Rules of 1999. Scaling system has been approved by the Apex court in **Mahesh Kumar Khandelwal and 16 Ors. Vs. State of Rajasthan and Ors.**, 1994 (1) RLR 533; **Rajasthan Public Service Commission Vs. Ramesh Chandra Pilwal**, RLW 1997(2) Raj. 1348 and in the matter of **Manish Sinsinwar and Ors. Vs. Rajasthan Public Service Commission and Anr.** (D.B. Civil Writ Petition (PIL) No.368/2004 decided on 14.6.2004). In scaling system, many examiners are involved in marking the answering scripts relating to a subject; in different languages the answers are given i.e. English and Hindi. Seven areas have been specified where scaling can be applied. Decision has been taken in consonance with those principles. After completion of main examination of 37 heterogeneous subjects having first and second papers, the evaluation was done with the help of several examiners as per the number of answer scripts, therefore, examiner code had been separately awarded. The subject mean and standard deviation are having much deviation, hence, to bring common mean and common standard deviation adoption of scaling system was necessary as held in the meeting dated 2.2.2009 and thereafter meeting of Experts was held on 13.3.2009 for application of the scaling technique.

8. A chart was placed before the Experts relating to variant subjects mean and standard deviation etc. Unanimous recommendation was made to apply the scaling principles as enumerated by V. Natarajan and K. Gunasekaran in their book. Considering the large number of examiners and subject variation, scaling was found to be appropriate mode to arrive at a just result. The combined mean of all examiners, the examiner subject mean, pooled standard deviation of all examiners and standard deviation of the subjects concerned had been

applied as per formula. Formula has been approved by this Court in Mahesh Kumar Khandelwal Vs. State of Rajasthan, 1994(1) RLR 533 against which SLP was dismissed by the Apex Court.

15. The main question for consideration is whether the Commission is justified in taking recourse to the process of scaling of the marks. It is not in dispute that there were 37 optional subjects each subject having first and second papers. There were total 74 papers in addition to 4 compulsory papers. It is also not in dispute that there were 385 examiners. It is also not in dispute that the linear method of scaling was applied, as laid down by V.Natarajan and K.Gunasekaran. They have laid down the justification necessitating the adoption of scaling in para 6.2 of the recommendations, which is quoted below:-

"6.2. **Specific Recommendations** :

The situations necessitating adoption of Scaling which are discussed earlier are presented here again to reinforce it. They are:

(1) When many examiners are involved in marking the scripts relating to a subject;

(2) When scripts relating to two sets of students, one set answering in English and the other in a regional language, have to be scored;

(3) When marks relating to different subjects are added so as to get an aggregate;

(4) When Internal and External Assessment marks are to be added and/or compared;

(5) When students' performance from different school Boards are to be equated;

(6) When marks relating to objective part is to be added with that of essay part in a paper; and

(7) When candidates' performance in parallel forms of an objective paper are to be compared."

It is not in dispute in the instant case that many examiners were involved in marking the answer scripts relating to the subjects and there were different languages, English and Hindi in which answers were given. It is also not in dispute that marks relating to different subjects are to be added so as to get an aggregate. The marks of interview as well as written examination are to be added. The students were from different background or schools/board. Objective marks of the candidates were also required to be added with that of essay part of a paper and performance in parallel forms of an objective paper was also required to be compared. Thus, we find that considering large number of optional papers and optional subjects and the examiners, it was necessary to apply the scaling method to arrive at just results. If we consider subject-wise analysis for RAS Pre 2010, which indicates that in the subject of Agriculture, submean (raw) was 100.42; in Botany sub mean (raw) was 61.82; in Chemistry 65.1; in Computer Engineering 61.5; in Home Science 66.94; in Political Science 63.54; in Psychology 60.99. As compared to the aforesaid raw sub mean, the marks of other optional subjects were on extremely lower side such as Statistics sub mean (raw) was 23.47; in Public Administration sub mean (raw) was 29.14; in Mechanical Engineering

39.68; in Indian History 40.33; in Economics 33.88 etc. The subject mean after scaling had been arrived in the aforesaid subjects at 47.84.

24. The Apex Court in Sanjay Singh (supra) has laid down that every method or system has its merits and demerits and even in linear standard method, there is no guarantee that the range of scores at various levels will yield candidates of comparative ability. Scaling method should be under continuous review and evaluation and improvement. Scaling may be successful in eliminating the general variation which exists from examiner to examiner, but not a solution to solve examiner variability arising from the "hawk-dove" effect(strict/liberal valuation). When we apply the Apex Court dictum of Sanjay Singh (supra), it cannot be said that the Commission had committed illegality in applying the scaling in the aforesaid manner.

29. When we consider the submission raised by the counsel appearing on behalf of the petitioners that absurd results have been caused due to application of the scaling method, chart which has been placed for consideration, indicates that the person who has obtained less than the average marks had been awarded marks in proportion and the person who has obtained higher marks, his marks had been reduced by applying the scaling method. There is consistency in the method of scaling which has been resorted to. The Committee which was appointed by this Court has also found on fact that the formula of scaling used is correct and the same scaling has been applied for each subject. Same scaling has been applied for each

examiner. No calculation mistake was found while operating formula.

30. In view of the aforesaid finding recorded by the Expert Committee appointed by this Court and even otherwise the petitioners counsel were unable to indicate that the formula was wrongly applied so as to give undue benefit even to a single candidate. Their main thrust of argument was that the scaling formula could not have been applied which we have found to be meritless. Certain observations have been made by the Committee for future guidance of the Commission which has also been observed by the Apex Court in Sanjay Singh (supra) that scaling formula has to be further studied and applied to the fact in appropriate manner. There has to be continuous study.

31. The submission raised by the counsel appearing on behalf of the petitioners that the Commission used the scaling at the level of examiner as well as subject-wise. The formula which has been applied is quoted below:—

"RAJASTHAN PUBLIC SERVICE COMMISSION, AJMER
SPECIAL DIVISION
Regarding scaling formula adopted in RAS Exam, 07.
SCALED MARKS = M+(Xi – X)*e/ei
Name of Candidate:
Subject - Roll No. :
Raw – Marks= 0 Scaled Marks= Examiner Code -

M=	COMBINED MEAN OF ALL EXAMINERS/SUBJECTS	0
Xi=	RAW MARKS OF INDIVIDUAL	0
X=	MEAN OF EXAMINER/SUBJECT	0
e=	STANDARD DEVIATION POOLED OVER EXAMINERS/SUBJECTS	0
ei=	Standard deviation of the examiner/subject	0

SCALED MARKS = M=(Xi – X)*e/ei
0 +(0 - 0)* 0/ 0

Scaled Marks=

M= Combined Mean of all examiners/Subjects

Xi= Raw marks of individual
m= Mean of examiner / Subject
S= Standard deviation pooled over all Examiners/Subjects
s= Standard deviation Examiner/ Subject

SCALED MARKS Xi = (S/s)*xi+(M-(S/s)*m) (0/0) * 0+ (0 - (0/0) * 0 **Scaled Marks=**

32. There is a common formula under the linear standard method for another scaling. Thus, it cannot be said that the formula has been applied at two levels. When one formula is to be applied, it has to be applied completely and not in part. It cannot be said that the Commission has modified the V.Natarajan scaling formula. Standard deviation of a subject and average standard deviation of all subjects has been worked out methodically.

34. The submission raised by the counsel appearing on behalf of the petitioners that variation has been caused in ranking of selected candidates which has produced absurd results. We have carefully gone through the formula and find that it has been uniformly applied and it cannot be said that it has produced absurd results, rather it worked out the average mean of all the subjects. Standard deviation of all the subjects to do so was necessary considering the optional subjects and papers and large number of examiners. It could not be said that moderation ought to have been applied for examiners variation whereas scaling for subjects variations. In our opinion, the scaling method has rightly been applied by the Commission after obtaining experts opinion. In compulsory papers, examiner-wise

scaling has been done and not subject-wise. Where there was only one examiner in optional subjects, examiner-wise scaling has not been done. It has been resorted to where there was more than one examiner in optional papers and subject-wise scaling of the optional papers has been done which is permissible.

38. It was submitted that scaling was not permissible in view of Rules of 1999. Rule 15 of the Rules of 1999 provides scheme of examination, personality and viva-voce test. Rule 15 is quoted below:—

"15. **Scheme of Examination, Personality and Viva-voice Test** :— The competitive examination shall be conducted by the Commission in two stages i.e. Preliminary Examination and Main Examination as per the scheme specified in Schedule-III. The marks obtained in the Preliminary Examination by the candidates, are declared qualified for admission to the Main Examination will not be counted for determining their final order of merit. The number of candidates to be admitted to the Main Examination will be 15 times the total approximate number of vacancies (category wise) to be filled in the year in the various services and posts but in the said range all those candidates who secure the same percentage of marks as may be fixed by the Commission for any lower range will be admitted to the Main Examination.

Candidates who obtain such minimum qualifying marks in the Main Examination as may be fixed by the Commission in their discretion shall be summoned by them for an interview. The Commission shall award marks to each candidates interviewed by them,

having regard to their character, personality, address, physique and knowledge of Rajasthani Culture. However, for selection to the Rajasthan Police Service candidate having 'C' Certificate of N.C.C. will be given preference. The marks so awarded shall be added to the marks obtained in the Main Examination by each such candidate:

Provided that the commission, on intimation being received from the Government before declaration of the result of the Preliminary Examination, may increase or decrease the number of vacancies advertised.

Rule 17 provides for recommendation to be made by the Commission that has to be on the basis of marks finally awarded to each candidate. Rule 18 provides for retotalling of marks and prohibits re-evaluation of the answer-scripts. Merely by the provision made in Rule 18, that there shall be no re-evaluation, it cannot be said that scaling method could not have been applied. There is vast difference in scaling and revaluation. Scaling is done so as to remove anomalies as pointed out by the Apex Court in para 24/25 of the dictum in Sanjay Singh (supra). The submission raised that the marks obtained in the written examination and the marks of the interview have to be added does not oust the element of scaling. Such scaling is not permissible in the cases of common subjects. But in the case of optional subjects available to be opted by large number of candidates scaling has been held to be permissible by the Apex Court.

39. In our opinion, scaling method is not ousted by operation of the Rules though scaling is not provided under the Rule, at the same time in order to

arrive at just result, the Commission can evolve any appropriate method or formula as laid down by the Apex Court in **Andhra Pradesh Public Service Commission Vs. Baloji Badhavath & Ors.**, (2009) 5 SCC 1. The Apex Court held that Commission which has been constituted in terms of the provision made in Constitution of India is bound to conduct examination for appointment to the services of the State in terms of the Rules framed by the State. However, it is free to evolve procedure for conduct of examination. While conducting the examination in a fair and transparent manner as also following known principles of fair play, it cannot completely shut its eyes to the constitutional requirements. How the Commission would judge the merit of the candidates is its function. The Apex Court has laid down thus:

"25. How the Commission would judge the merit of the candidates is its function. Unless the procedure adopted by it is held to be arbitrary or against the known principles of fair play, the superior courts would not ordinarily interfere therewith. The State framed Rules in the light of the decision of the High Court in S. Jafeer Saheb. Per se, it did not commit any illegality. The correctness of the said decision, as noticed hereinbefore, is not in question having attained finality. The matter, however, would be different if the said rules per se are found to be violative of Article 16 of the Constitution of India. Nobody has any fundamental right to be appointed in terms of Article 16 of the Constitution of India. It merely provides for a right to be considered therefor. A procedure evolved for laying down the mode and manner for consideration of such a right can be

> interfered with only when it is arbitrary, discriminatory or wholly unfair."

22. Counsel further relied upon the judgment passed by the Hon'ble Supreme Court in the matter of **State of Uttar Pradesh and Others Vs. Atul Kumar Dwivedi and Others,** reported in **AIR 2022 SC 973**, wherein para No.90, it has been held as under:-

> 90. In conclusion, the exercise undertaken by the Board in adopting the process of normalization at the initial stage, that is to say, at the level of Rule 15(b) of Recruitment Rules was quite consistent with the requirements of law. The power exercised by the Board was well within its jurisdiction and as emphasized by the High Court there were no allegations of mala fides or absence of bona fides at any juncture of the process. One more facet of the matter is the note of caution expressed by this Court in paragraph 20 of its decision in *Sunil Kumar and Ors. v. Bihar Public Service Commission*. As observed by this court, the decisions made by expert bodies, including the Public Services Commissions, should not be lightly interfered with, unless instances of arbitrary and mala fide exercise of power are made out.

23. Counsel further relied upon the judgment passed by the Hon'ble Supreme Court in the matter of The State of Tamil Nadu and others Vs. G. Hemalathaa & Another. reported in (2020) 19 Supreme Court Cases 430, wherein para Nos.10 & 11, it has been held as under:-

> 10. In spite of the finding that there was no adherence to the instructions, the High Court granted the relief, ignoring the mandatory nature of the Instructions. It cannot be said that such exercise of discretion should be affirmed

> by us, especially when such direction is in the teeth of the Instructions which are binding on the candidates taking the examinations.
>
> 11. In her persuasive appeal, Ms Mohana sought to persuade us to dismiss the appeal which would enable the Respondent to compete in the selection to the post of Civil Judge. It is a well-known adage that, hard cases make bad law. In Umesh Chandra Shukla v. Union of India, Venkataramiah, J., held that:(SCC p.735, para 13)
> "13…. Exercise of such power of moderation is likely to create a feeling of distrust in the process of selection to public appointments which is intended to be fair and impartial. It may also result in the violation of the principle of equality and may lead to arbitrariness. The cases pointed out by the High Court are no doubt hard cases, but hard cases cannot be allowed to make bad law. In the circumstances, we lean in favour of a strict construction of the Rules and hold that the High Court had no such power under the Rules."

24. Counsel further relied upon the judgment passed by the Hon'ble Supreme Court in the matter of Sunil Kumar and Ors. vs. Bihar Public Service Commission and Ors. reported in (2016) 2 Supreme Court Cases 495, wherein para No.19 & 21, it has been held as under:-

> "19. The entirety of the discussion and conclusions in Sanjay Singh was with regard to the question of the suitability of the scaling system to an examination where the question papers were compulsory and common to all candidates. The deficiencies and shortcomings of the scaling method as pointed out and extracted above were in the above context. But did Sanjay Singh lay down any binding and inflexible requirement of law with

regard to adoption of the scaling method to an examination where the candidates are tested in different subjects as in the present examination? Having regard to the context in which the conclusions were reached and opinions were expressed by the Court it is difficult to understand as to how this Court in Sanjay Singh could be understood to have laid down any binding principle of law or directions or even guidelines with regard to holding of examinations; evaluation of papers and declaration of results by the Commission. What was held, in our view, was that scaling is a method which was generally unsuitable to be adopted for evaluation of answer papers of subjects common to all candidates and that the application of the said method to the examination in question had resulted in unacceptable results. Sanjay Singh did not decide that to such an examination i.e. where the papers are common the system of moderation must be applied and to an examination where the papers/subjects are different, scaling is the only available option. We are unable to find any declaration of law or precedent or principle in Sanjay Singh to the above effect as has been canvassed before us on behalf of the Appellants. The decision, therefore, has to be understood to be confined to the facts of the case, rendered upon a consideration of the relevant Service Rules prescribing a particular syllabus.

21. To revert, in the instant case, we have noticed that the contempt proceedings against the Public Service Commission for violation of order dated 26-8-2011 in *53rd to 55th Combined Competitive Examination Candidates Assn. v. State of Bihar* had failed. We have also noticed that the Public Service Commission made all attempts to gather relevant information from the Union Public Service Commission and other State Public Service Commissions to find out the practice followed in the other States. The information received was fully discussed in the light of the particulars of the examination in

> question and thereafter a conscious decision was taken by the resolution dated 15-1-2013, details of which have been already extracted. In the light of the above and what has been found to be the true ratio of the decision in *Sanjay Singh*, we cannot hold that in the present case the action taken by the Bihar Public Service Commission deviates either from the directions of the High Court dated 26-8-2011 in *53rd to 55th Combined Competitive Examination Candidates Assn. v. State of Bihar* or the decision of this Court in *Sanjay Singh.* Also, the absence of any plea of mala fides and the uniform application of the principles adopted by the Commission by its resolution dated 15-1-2013 would lead us to the conclusion that the present would not be an appropriate case for exercise of the power of judicial review. The absence of reasons in the aforesaid resolution, on which much stress has been laid, by itself, cannot justify such interference when the decision, on scrutiny, does not disclose any gross or palpable unreasonableness."

25. Counsel further relied upon the judgment passed by the Hon'ble Supreme Court in the matter of Prashant Ramesh Chakkarwar vs. Union Public Service Commission and Ors. reported in (2013) 12 Supreme Court Cases 489 wherein para Nos.15, 16 & 17, it has been been held as under:-

> "15. The argument of Shri Tulsi that in the garb of moderation, the Commission has resorted to scaling of marks and thereby deprived more meritorious candidates of their legitimate right to be selected does not commend acceptance because no material has been placed before this Court to substantiate the same. The mere fact that some of the candidates like the petitioner who cleared the preliminary examinations but could not cross the hurdle of main examination cannot lead to an inference that the

> method of moderation adopted by the Commission is faulty.
>
> 16. The suggestive argument made by Shri Tulsi that the award of roll numbers was manipulated by the officers/officials of the Commission for ensuring selection of their favorites does not merit acceptance because the documents produced before the Court and the information obtained by the petitioner by making application under the Right to Information Act do not show that any candidate selected by the Commission had been deliberately given the particular roll number.
>
> 17. Equally meritless is the submission of the learned senior counsel that the selection of large number of candidates from the block of first 50,000 should lead to an inference that the entire selection made by the Commission is tainted by mala fides. The table produced before this Court does not show that in each and every examination, 50% candidates were selected from those who were having Roll Nos. 1 to 50,000. That apart, in the absence of cogent evidence, the Court cannot accept such a spacious argument ignoring that between 4 to 5 lacs candidates appear in the annual examination conducted by the Commission for recruitment to Indian Administrative Services and other Allied Services. In the result, the special leave petitions are dismissed."

26. Counsel further relied upon the judgment passed by the Hon'ble Supreme Court in the matter of V.Lavanya and Ors. vs. State of Tamil Nadu and Ors. reported in (2017) 1 Supreme Court Cases 322, wherein para Nos.34 & 40, it has been held as under:-

> 34. The Government has not changed the Rules of selection so far as the present appellants are concerned. Weightage of marks obtained in TET as well as that of academic qualification is still the same. The entire selection

process conforms to the equitable standards laid down by the State Government in line with the principles enshrined in the Constitution and the extant reservation policy of the State. It is not the case where basic eligibility criteria has been altered in the midst of the selection process. Conducting TET and calling for certificate verification thereafter is an exercise which the State Government is obliged to conduct every year as per the Guidelines issued by NCTE. By calling for CV along with certificates of other requisite academic qualifications, a candidate's overall eligibility is ascertained and then he/she is recruited. Such an exercise by which qualified teachers in the State are segregated and correspondingly certified to that effect cannot be equated to finalization of select list which comes at a much later stage. No prejudice has been caused to the appellants, since the marks obtained by the appellants in TET are to remain valid for a period of seven years, based on which they can compete for the future vacancies. Merely because the appellants were called for certificate verification, it cannot be contended that they have acquired a legal right to the post. Impugned GOMs No. 25 did not take away the rights of the appellants from being considered on their own merits as pointed out by the Madras Bench. We entirely agree with the views taken by the Madras Bench that "*by merely allowing more persons to compete, the petitioners cannot contend that their accrued right has been taken away*".

40. The appellants have maintained that while prescribing the marks for performance in Higher Secondary Examination, the respondents have failed to take into account different Education Boards (CBSE, ICSE, State Boards,etc.) conducting Higher Secondary Examination and difference in their marks awarding patterns. As also, the Appellants have alleged that respondents failed to consider different streams of education while formulating the grading pattern. It is submitted that

> unless and until the respondents take note of difference in marking scheme of Education Boards, as also the marking scheme of different streams such as Arts, Science, etc. a valid grading system cannot be formulated. Equivalence of academic qualifications is a matter for experts and courts normally do not interfere with the decisions of the Government based on the recommendations of the experts (vide *University of Mysore v. C.D. Govinda Rao* and *Mohd. Sujat Ali v. Union of India*). We hold that it is the prerogative of State authorities to formulate a system whereby weightage of marks is decided with reference to actual marks secured by each candidate. In the present case, as no arbitrariness is proved on the part of the respondents, in formulating the grading system we cannot interfere with the same. We cannot be expected to go into every minute technicalities of the decision taken by the experts and perform the job of the respondent State. Moreover, the High Court has also noted that submission of learned Advocate General that almost all the appellants have completed their High Secondary examination from the State Boards."

27. The Hon'ble Supreme Court in the matter of **Maharashtra State Board of Secondary and Higher Secondary Education and Another v. Paritosh Bhupeshkumar Sheth and Others,** reported in **(1984) 4 SCC 27** in para nos. 1,15,16,22 & 26 has held as under:-

> 1. It is common experience that whenever the results of public examinations conducted by School Boards and Universities or by other bodies like the Public Service Commission are announced, amidst the rejoicings of successful candidates who have secured the grade of marks anticipated by them, it also inevitably brings with it a long trail of

disappointments and frustrations as the direct outcome of the non-fructuation of hopes and expectations harboured in the minds of the examinees based on the candidates' own assessment of their performance and merit. Labouring under a feeling that there has not been a proper evaluation of their performance in the examination, they would naturally like to have a revaluation of the answer books and even a personal inspection and verification of the answer books for finding out whether there has been a proper evaluation of the answers to all questions, whether the totalling of marks has been correctly done and whether there has been any tampering with the seat numbers written on the answer books and the supplementary sheets. The question canvassed before us in these appeals is whether, under law, a candidate has a right to demand such an inspection, verification and revaluation of answer books and whether the statutory regulations framed by the Maharashtra State Board of Secondary and Higher Secondary Education governing the subject insofar as they categorically state that there shall be no such right can be said to be ultra vires, unreasonable and void.

15. As already noticed, the power to make regulations is conferred on the Board by Section 36 of the Act. Sub-section (1) of the said section lays down that the Board may make regulations for the purpose of carrying into effect the provisions of the Act. Sub-section (2) enumerates, in clauses (*a*) to (*n*) the various matters for which the provisions may be made by such regulations, the said enumeration being without prejudice to the generality of the power conferred by sub-section (1). We have already extracted clauses (*c*), (*d*), (*f*) and (*g*) which deal with the conditions governing admission of candidates for the final examinations, the arrangement for the conduct of final examinations by the Divisional Boards and for publication of results, and the appointment of examiners, their powers and duties in relation to the final examinations, etc. These topics are

comprehensive enough to cover the prescription of the procedure for finalising the results of the examination based on the evaluation of the answers of the candidates who have appeared for the examinations, as well as the laying down of the restrictive provisions relating to verification of marks, prohibition against disclosure and inspection of answer books and denial of any right or claim for evaluation. We fail to see how it can be said that these are not matters pertaining to the conduct of the final examination and the publication of the results of such examination. Further, Section 19 of the Act which sets out the powers and duties of a Divisional Board lays down in clauses (*f*) and (*g*) that the Board shall have the power and is under a duty to conduct in the area of its jurisdiction the final examination on behalf of the State Board and to appoint paper setters, examiners, etc., for conducting the final examination in the area of its jurisdiction, for evaluation of candidates' performances and for compiling and release of results in accordance with such instructions as the State Board may from time to time issue. It is thus clear that the conduct of the final examination and the evaluation of the candidates' performance and the compiling and release of results are all to be carried out by the Divisional Board in accordance with the instructions to be issued by the State Board from time to time. It is, therefore, manifest that a duty is cast on the State Board to formulate its policy as to how the examinations are to be conducted, how the evaluation of the performances of the candidates is to be made and by what procedure the results are to be finalised, compiled and released. In our opinion, it was perfectly within the competence of the Board, rather it was its plain duty, to apply its mind and decide as a matter of policy relating to the conduct of the examination as to whether disclosure and inspection of the answer books should be allowed to the candidates, whether and to what extent verification of the result should

be permitted after the results have already been announced and whether any right to claim revaluation of the answer books should be recognised or provided for. All these are undoubtedly matters which have an intimate nexus with the objects and purposes of the enactment and are, therefore, within the ambit of the general power to make regulations conferred under sub-section (1) of Section 36. In addition, these matters fall also within the scope of clauses (*c*), (*f*) and (*g*) of sub-section (2) of the said section. We do not, therefore, find it possible to accept as correct the view expressed by the High Court that clause (3) of Regulation 104 is ultra vires on the ground of its being in excess of the regulation-making power conferred on the Board. Instead of confining itself to a consideration whether the impugned regulations fall within the four corners of the statute and particularly of Section 36 thereof which confers the power to make regulations, the High Court embarked upon an investigation as to whether the prohibition against disclosure and inspection of answer books and other documents imposed by the impugned clause (3) of Regulation 104 would, in practice, effectively serve the purpose of the Act ensuring fair play to the examinees. The High Court was of the opinion that in deciding the question as to whether the impugned clause was ultra vires, the Court had to bear in mind "the glaring deficiencies" found to exist in the working of the system in spite of all the elaborate precautionary measures taken for preventing such lapses which were detailed in the affidavit in reply and "the far-reaching implications of the said deficiencies on the future of the examinees" and it went on to observe that "the nexus or absence thereof between the purposes of the Act or the purpose of the examination and the prohibition against inspection in the impugned clause can be discovered only by reference to these factors". Then the High Court proceeded to make following further observations:

The examinee is the person affected by miscalculation of totals, omissions to examine any answer, misplacement of the supplementaries of the answer books and misplacement or tampering with the said record in any manner, if any. Adverse result creates suspicion in his mind about the possible errors in the system and his claim to inspection against this background must be held to be reasonable and calculated to subserve the purposes of the examination as also the overall purposes of the Act. This enables him to verify if his suspicions are ill or well founded. Existence of some overriding factors alone can justify denial of his claim.

The High Court concluded the discussion by stating: "Such confidentiality cannot be found to be serving any purpose of the Act merely because it was acquiesced in the past or accepted without challenge. According to Mr Setalvad, authority to treat these documents confidential is implicit in the very power to hold the examination itself, it being necessary to secure effective achievement of the process. This is too broad a statement to admit of any scrutiny. No such power can, however, be implied unless its indispensability of treating the question papers, and names of the question setters and examiners confidential, upto a certain stage can easily be appreciated. Their premature disclosure or exposure may defeat the purpose of examinations and make a mockery of its very conception. It is, however, difficult to see any purpose of continuing to keep them confidential at any rate after the declaration of the results."

16. In our opinion, the aforesaid approach made by the High Court is wholly incorrect and fallacious. The Court cannot sit in judgment over the wisdom of the policy evolved by the Legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement.

But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The Legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution. None of these vitiating factors are shown to exist in the present case and hence there was no scope at all for the High Court to invalidate the provision contained in clause (3) of Regulation 104 as ultra vires on the grounds of its being in excess of the regulation-making power conferred on the Board. Equally untenable, in our opinion, is the next and last ground by the High Court for striking down clause (3) of Regulation 104 as unreasonable, namely, that it is in the nature of a bye-law and is ultra vires on the ground of its being an unreasonable provision. It is clear from the scheme of the Act and more particularly. Sections 18, 19 and 34 that the Legislature has laid down in broad terms its policy to provide for the establishment of a State Board and Divisional Boards to regulate matters pertaining to secondary and higher secondary education in the State and it has authorised the State Government in the first instance and subsequently the Board to enunciate the details for carrying into effect the purposes of the Act by framing regulations. It is a common legislative practice that the Legislature may choose to lay down only the general policy and leave to its delegate to make detailed provisions for carrying into effect the said policy and

effectuate the purposes of the statute by framing rules/regulations which are in the nature of subordinate legislation. Section 3(39) of the Bombay General clauses Act, 1904, which defines the expression "rule" states: "Rule shall mean a rule made in exercise of the power under any enactment *and shall include any regulation made under a rule or under any enactment"*. It is important to notice that a distinct power of making bye-laws has been conferred by the Act on the State Board under Section 38. The Legislature has thus maintained in the statute in question a clear distinction between 'bye-laws' and 'regulations'. The bye-laws to be framed under Section 38 are to relate only to procedural matters concerning the holding of meetings of the State Board, Divisional Boards and the Committee, the quorum required, etc. More important matters affecting the rights of parties and laying down the manner in which the provisions of the Act are to be carried into effect have been reserved to be provided for by regulations made under Section 36. The Legislature, while enacting Sections 36 and 38, must be assumed to have been fully aware of the niceties of the legal position governing the distinction between rules/regulations properly so called and bye-laws. When the statute contains a clear indication that the distinct regulation-making power conferred under Section 36 was not intended as a power merely to frame bye-laws, it is not open to the Court to ignore the same and treat the regulations made under Section 36 as mere bye-laws in order to bring them within the scope of justiciability by applying the test of reasonableness.

22. As already noticed, one of the principal factors which appears to have weighed with the High Court is that in certain stray instances (specific instances referred to in the judgment are only about three in number), errors or irregularities had gone unnoticed in the past even after verification of the concerned answer books had been conducted according to the existing procedure and it was only after further

scrutiny made either on orders of court or in the wake of contentions raised in petitions filed before a court that such errors or irregularities were ultimately discovered. In this connection we consider it necessary to recall the observations made by Krishna Iyer, J. in *R.S. Joshi v. Ajit Mills Ltd.* that "a law has to be adjudged for its constitutionality by the generality of cases it covers, not by the freaks and exceptions it martyrs" [SCC para 10, p. 106: SCC (Tax) p. 544]. It is seen from the affidavits that form part of the record of this case that the three Divisional Boards conduct the H.S.C. examinations twice every year, i.e. in March and October every year. The number of candidates who appeared for the H.S.C. examination in March 1980 was 1,15,364, Likewise, the S.S.C. public examination is also conducted by the Divisional Boards twice during the year, and the number of candidates appearing in the said examination is very much larger than the number appearing in the H.S.C. examination. From the figures furnished by the Board, it is seen that there is a progressive increase from year to year in the number of candidates appearing in both these public examinations. In March 1980, a total number of 2,99,267 had appeared in the S.S.C. examination. Considering the enormity of the task of evaluation discharged by the Board through the examiners appointed by it, it is really a matter for satisfaction that proved instances of errors and irregularities have been so few as to be counted on one's fingers. Instead of viewing the matter from this correct perspective, we regret to find the fact that the High Court laid undue and exaggerated stress on some stray instance and made it a basis for reaching the conclusion that reasonable fair play to the candidates can be assured only if the right of disclosure and personal inspection is allowed to the candidates as part of the process of verification. This approach does not appeal to us as legally correct or sound. We do not find it possible to uphold the view expressed by the High Court that

clause (3) of Regulation 104 which disentitles the examinees to claim disclosure and inspection of the answer books and declares those documents to be confidential is "defeasive of the corrective powers of the Board under Regulations 102 and 104 and the right of verification under Regulation 104(1) as also destructive of the confidence of public in the efficacy of the system". The reasons which prompted the High Court to reach the aforementioned conclusion are to be found in the following observations occurring in para 33 of the judgment of Deshpande, J.:

"33. On the other hand, access of the student to the answer books would enable him to verify (1) if the papers are his own, and (2) supplementary answer papers are duly tagged, and (3) all answers are evaluated, and (4) totals are correct, and (5) marks of his practicals or internal assessments are included therein and (6) his adverse results are not due to any error or manipulations. This will at once not only make the verification process under Regulation 104(1) effective and real, but facilitate Board's exercising its powers to trace errors and malpractices and amend the result preventing frustration of the students. The purpose of the Act can be served thus better by permitting inspection than by preventing it. In other words, the confidentiality, rather than serve any purpose of the Act goes to defeat it firstly by making the functioning of the system dependent entirely on the staff, and, secondly, by making process under Regulations 102(3), (4) and 104(1) ineffective for want of assistance of the examinee himself."

In making the above observations, the High Court has ignored the cardinal principle that it is not within the legitimate domain of the Court to determine whether the purpose of a statute can be served better by adopting any policy different from what has been laid down by the Legislature or its delegate and to strike down as unreasonable a bye-law (assuming for the purpose of discussion that the impugned regulation is a bye-law)

merely on the ground that the policy enunciated therein does not meet with the approval of the Court in regard to its efficaciousness for implementation of the object and purposes of the Act.

26. We are unable to agree with the further reason stated by the High Court that since "every student has a right to receive fair play in examination and get appropriate marks matching his performance" it will be a denial of the right to such fair play if there is to be a prohibition on the right to demand revaluation and unless a right to revaluation is recognised and permitted there is an infringement of rules of fair play. What constitutes fair play depends upon the facts and circumstances relating to each particular given situation. If it is found that every possible precaution has been taken and all necessary safeguards provided to ensure that the answer books inclusive of supplements are kept in safe custody so as to eliminate the danger of their being tampered with and that the evaluation is done by the examiners applying uniform standards with checks and cross-checks at different stages and that measures for detection of malpractice, etc. have also been effectively adopted, in such cases it will not be correct on the part of the courts to strike down the provision prohibiting revaluation on the ground that it violates the rules of fair play. It is unfortunate that the High Court has not set out in detail in either of its two judgments the elaborate procedure laid down and followed by the Board and the Divisional Boards relating to the conduct of the examinations, the evaluation of the answer books and the compilation and announcement of the results. From the affidavit filed on behalf of the Board in the High Court, it is seen that from the initial stage of the issuance of the hall tickets to the intending candidates right upto the announcement of the results, a well-organised system of verification, checks and counter-checks has been evolved by the Board and every step has been taken to eliminate the possibility of human error on the part of the

examiners and malpractices on the part of examinees as well as the examiners in an effective fashion. The examination centres of the Board are spread all over the length and breadth of each Division and arrangements are made for vigilant supervision under the overall supervision of a Deputy Chief Conductor in charge of every sub-centre and at the conclusion of the time set for examination in each paper including the main answer book all the answer books and the supplements have to be tied up by the candidate securely and returned to the Supervisor. But before they are returned to the Supervisor, each candidate has to write on the title page of main answer books in the cages provided for the said particulars, the number of supplements attached to the main answer book. The Supervisor is enjoined to verify whether the number so written tallies with the actual number of supplements, handed over by the candidate together with his main answer book. After the return of all the answer books to the Deputy Chief Conductor, a tally is taken of the answer books including supplements used by the candidates by the Stationery Supervisor who is posted by the Board at each sub-centre. This enables the supervisory staff at a sub-centre to verify and ensure that all answer books and supplements issued to the candidates have been turned in and received by the supervisory staff. At this stage of checking and double-checking, if any seat number has been duplicated on the answer books by mistake or by way of deliberate malpractice it can be easily detected and corrective measures taken by the Deputy Chief Conductor or the Chief Conductor. The answer books are then sent by the Deputy Chief Conductor to the Chief Conductor in charge of the main centre. He sorts out the answer books according to the instructions issued by the Board and sends them to the examiners whose names had been furnished in advance except in the case of the science subjects, namely, "mathematics and statistics, physics,

chemistry and biology". The answer books in the science subjects are forwarded by the Chief Conductor under proper guard to camps in Pune already notified to the Chief Conductors. The further procedure followed in relation to the valuation of the answer books has been explained in paras 22 to 26 of the counter-affidavit dated July 10, 1980 filed in the High Court by the Joint Secretary to the Pune Divisional Board of Secondary Education. We do not consider it necessary to burden this judgment with a recapitulation of all the details furnished in those paras, and it would suffice to state that the procedure evolved by the Board for ensuring fairness and accuracy in evaluation of the answer books has made the system as foolproof as can be possible and it meets with our entire satisfaction and approval. Viewed against this background, we do not find it possible to agree with the views expressed by the High Court that the denial of the right to demand a revaluation constitutes a denial of fair play and is unreasonable. The Board is a very responsible body. The candidates have taken the examination with full awareness of the provisions contained in the Regulations and in the declaration made in the form of application for admission to the examination they have solemnly stated that they fully agree to abide by the regulations issued by the Board. In the circumstances, when we find that all safeguards against errors and malpractices have been provided for, there cannot be said to be any denial of fair play to the examinees by reason of the prohibition against asking for revaluation.

29. Far from advancing public interest and fair play to the other candidates in general, any such interpretation of the legal position would be wholly defensive of the same.As has been repeatedly pointed out by this court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men

> possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice. It is unfortunate that this principle has not been adequately kept in mind by the High Court while deciding the instant case.

28. The Hon'ble Supreme Court in the matter of **Union Public Service Commission vs. M. Sathiya Priya and Ors.** reported in **2018 (15) Supreme Court Cases 796,** in para No.17,18,19 & 20, has held as under:-

> 17. The Selection Committee consists of experts in the field. It is presided over by the Chairman or a Member of the UPSC and is duly represented by the officers of the Central Government and the State Government who have expertise in the matter. In our considered opinion, when a High-Level Committee or an expert body has considered the merit of each of the candidates, assessed the grading and considered their cases for promotion, it is not open to the CAT and the High Court to sit over the assessment made by the Selection Committee as an appellate authority. The question as to how the categories are assessed in light of the relevant records and as to what norms apply in making the assessment, is

exclusively to be determined by the Selection Committee. Since the jurisdiction to make selection as per law is vested in the Selection Committee and as the Selection Committee members have got expertise in the matter, it is not open for the Courts generally to interfere in such matters except in cases where the process of assessment is vitiated either on the ground of bias, mala fides or arbitrariness. It is not the function of the Court to hear the matters before it treating them as appeals over the decisions of the Selection Committee and to scrutinise the relative merit of the candidates. The question as to whether a candidate is fit for a particular post or not has to be decided by the duly constituted expert body, i.e. the Selection Committee. The Courts have very limited scope of judicial review in such matters.

18. We are conscious of the fact that the expert body's opinion may not deserve acceptance in all circumstances and hence it may not be proper to say that the expert body's opinion is not subject to judicial review in all circumstances. In our constitutional scheme, the decision of the Selection Committee/Board of Appointment cannot be said to be final and absolute. Any other view will have a very dangerous consequence and one must remind oneself of the famous words of Lord Acton "Power tends to corrupt, and absolute power corrupts absolutely". The aforementioned principle has to be kept in mind while deciding such cases. However, in the matter on hand, it is abundantly clear from the affidavit filed by UPSC that the Selection Committee which is nothing but an expert body had carefully examined and scrutinised the experience, Annual Confidential Reports and other relevant factors which were

required to be considered before selecting the eligible candidates for the IPS. The Selection Committee had in fact scrutinised the merits and demerits of each candidate taking into consideration the various factors as required, and its recommendations were sent to UPSC. It is the settled legal position that the Courts have to show deference and consideration to the recommendations of an Expert Committee consisting of members with expertise in the field, if malice or arbitrariness in the Committee's decision is not forthcoming. The doctrine of fairness, evolved in administrative law, was not supposed to convert tribunals and courts into appellate authorities over the decision of experts. The constraints - self-imposed, undoubtedly - of writ jurisdiction still remain. Ignoring them would lead to confusion and uncertainty. The jurisdiction may become rudderless.

19. No doubt, the Selection Committee may be guided by the classification adopted by the State Government but, for good reasons, the Selection Committee may evolve its own classification which may be at variance with the grading given in the Annual Confidential Reports. As has been held by this Court in the case of **UPSC v. K. Rajaiah and Ors.**, the power to classify as "Outstanding", "Very Good", "Good" and "Unfit" is vested with the Selection Committee. That is a function incidental to the selection process. The classification given by the State authorities in the Annual Confidential Reports is not binding on the Selection Committee. Such classification is within the prerogative of the Selection Committee and no reasons need be recorded, though it is desirable that in a case of grading at variance with that of the State

> Government, reasons be recorded. But having regard to the nature of the function and the power confined to the Selection Committee under Regulation 5(4), it is not a legal requirement that reasons should be recorded for classifying an officer at variance with the State Government's decision. It is relevant to note that no allegations of malice or bias are made by the first respondent at any stage of the proceedings against the Selection Committee or UPSC.
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> 20. This Court has repeatedly observed and concluded that the recommendations of the Selection Committee cannot be challenged except on the ground of mala fides or serious violation of the statutory rules. The courts cannot sit as an appellate authority or an umpire to examine the recommendations of the Selection Committee like a Court of Appeal. This discretion has been given to the Selection Committee only, and the courts rarely sits as a Court of Appeal to examine the selection of a candidate; nor is it the business of the Court to examine each candidate and record its opinion. Since the Selection Committee constituted by the UPSC is manned by experts in the field, we have to trust their assessment unless it is actuated with malice or bristles with mala fides or arbitrariness.

29. The Hon'ble Supreme Court in the matter of **Ashok Kumar & Anr. Vs. State of Bihar & Ors.** reported in **(2017) 4 Supreme Court Cases 357** in paras No.13 to 18 has held as under:-

> "13. The law on the subject has been crystalized in several decisions of this Court. In Chandra Prakash Tiwari v. Shakuntala Shukla (2002), this Court laid down the principle that when a candidate appears at an examination without objection and is

subsequently found to be not successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable. In Union of India v. S. Vinodh Kumar MANU/SC/7926/2007 : (2007) 3 SCC 100, this Court held that:

"18. It is also well settled that those candidates who had taken part, in the selection process knowing fully well the procedure laid down therein were not entitled to question the same. (See Munindra Kumar v. Rajiv Govil (1991) and Rashmi Mishra v. M.P. Public Service Commission).
14. The same view was reiterated in Amlan Jyoti Borroah where it was held to be well settled that candidates who have taken part in a selection process knowing fully well the procedure laid down therein are not entitled to question it upon being declared to be unsuccessful.

15. In Manish Kumar ShahI v. State of Bihar, the same principle was reiterated in the following observations:(SCCp.584, para 16)

"16. We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the Petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The Petitioner invoked jurisdiction of the High Court Under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the Petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition. Reference in this connection may be made to the Judgments in Madan Lal v. State of J &K, Marripati Nagaraja v. Government of Andhra Pradesh, Dhananjay Malik and Ors. v. State of Uttaranchal, Amlan Jyoti Borooah v. State of Assam and K.A. Nagamani v. Indian Airlines.

16.In Vijendra Kumar Verma v. Public Service Commission, candidates who had participated in the selection process were aware that they were required to possess certain specific qualifications in computer operations. The Appellants had appeared in the selection process and after participating in the interview sought to challenge the selection process as being without jurisdiction. This was held to be impermissible.

17. In Ramesh Chandra Shah v. Anil Joshi, candidates who were competing for the post of Physiotherapist in the State of Uttrakhand participated in a written examination held in pursuance of an advertisement. This Court held that if they had cleared the test, the Respondents would not have raised any objection to the selection process or to the methodology adopted. Having taken a chance of selection, it was held that the Respondents were disentitled to seek relief Under Article 226 and would be deemed to have waived their right to challenge the advertisement or the procedure of selection. This Court held that (SCC P.318, para18)

"18. It is settled law that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome".

18.In Chandigarh Admn. v. Jasmine Kaur, it was held that a candidate who takes a calculated risk or chance by subjecting himself or herself to the selection process cannot turn around and complain that the process of selection was unfair after knowing of his or her non-selection. In Pradeep Kumar Rai v. Dinesh Kumar Pandey, this Court held that:(SCC P. 500, para17)

"17. Moreover, we would concur with the Division Bench on one more point that the Appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the Appellants did not challenge it at that time. This, it appears that only when the Appellants found themselves to be unsuccessful, they challenged the interview. This cannot be allowed. The candidates cannot approbate and reprobate at the same time. Either the candidates should not have participated in the interview and challenged

> the procedure or they should have challenged immediately after the interviews were conducted."
> This principle has been reiterated in a recent judgment in Madras Institute of Development Studies V. S.K. Shiva Subaramanyam."

30. Heard counsel for the parties and perused the record.

31. Admittedly, these writ petitions have been filed by the petitioners after participating in the selection process and the petitioners have not levelled the allegation of malafide against Chairman or Member of the Board. The petitioners have relied upon the judgment in the matter of Sanjay Singh which relates to the examination of the Judicial Officers where all the subjects were compulsory whereas in the present selection process apart from two compulsory subjects there are 14 optional subjects, out of which five groups were formed, as such for the purpose of giving equal opportunity to the candidates the formula of scaling was applied. The Hon'ble Supreme Court in the case of Union Public Service Commission Vs. M. Sathiya Priya & Ors. (supra) has held that the High Court cannot sit as an Appellate Court over the decision of the expert body unless the allegation of malafide is there. I have also gone through certain Rules produced by Mr. Jaiman with regard to Rajasthan Judicial Service Rules, Rajasthan Forest Service Rules and Rajasthan Forest Subordinate Service Rules. The difference between the two Rules is that in the Rajasthan Judicial Service Rules, all the subjects are compulsory in nature and no optional subject is there whereas in the present set of Rules i.e. Rajasthan Forest Service Rules and Rajasthan Forest Subordinate Service Rules, apart from two compulsory subjects, 14 optional subjects were available in the syllabus,

therefore, the comparison with the Rajasthan Judicial Service Rules will not help the petitioners.

32. In view of the above discussion, these writ petitions filed by the petitioners deserve to be dismissed for the reasons; firstly by applying the formula of scaling since as many as 14 different optional subjects including grouping was available the respondent provided same level playing field to all the candidates and hence the scaling formula has been rightly applied by the expert body; secondly there is no allegation that the paper/question is out of syllabus as prescribed under the Rules; thirdly the Full Commission has taken a conscious decision based on the report of the expert for applying the formula of scaling, therefore, this Court cannot sit as an Appellate Court on the decision taken by the experts in the field as has been held by the Hon'ble Supreme Court in the matter of UPSC Vs. M. Sathiya Priya; fourthly the candidates have challenged the procedure after participating in the selection process, in my considered view the petitioners are estopped to challenge the same after participating in the same in view of the judgment passed by the Hon'ble Supreme Court in the matter of Ashok Kumar (supra); fifthly out of 32382 candidates, only 17 candidates have approached this Court by filing the present writ petitions without there being any allegation of malafide either against the Chairman or Members of the Board, therefore in view of the judgment passed by the Hon'ble Supreme Court in the matter of State of U.P. & Ors. Vs. Atul Kumar Dwivedi & Ors. (supra), the writ petitions deserve to be dismissed and; lastly in the facts and circumstances, I am not inclined to exercise

the jurisdiction of this Court under Article 226 of the Constitution of India.

33. In that view of the matter, the writ petitions are hereby dismissed. Copy of this order be separately placed in each file.

(INDERJEET SINGH),J

VIJAY SINGH SHEKHAWAT /40