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**(2013) 07 AHC CK 0141**

**Allahabad High Court (Lucknow Bench)**

**Case No:** Writ Petition (SB) Nos. 303, 308, 313, 314, 307, 315, 318, 320, 328, 437 of 2011, 1815 of 2009, 1553 of 2010, 304, 309, 311, 312, 316, 317, 321, 327, 499 and 436 of 2011

Avinash Chandra and  
Others

APPELLANT

Vs

U.P. Public Services  
Commission and  
Others

RESPONDENT

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**Date of Decision:** July 12, 2013

**Hon'ble Judges:** Rajiv Sharma, J and Surendra Vikram Singh Rathore, J

**Final Decision:** Partly Allowed

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**Judgement**

Surendra Vikram Singh Rathore, J.

Heard Dr. L.P. Mishra, Mr. Vivek Raj Singh, Mr. Manik Sinha, Advocates on behalf of the petitioners, Mr. I.B. Singh, Senior Advocate assisted by Mr. Rajneesh Kumar, Advocate for the U.P. Public Services Commission and Mr. J.N. Mathur, Senior Advocate on behalf of the selected candidates.

2. In the aforementioned bunch of writ petitions, the result of the U.P. P.C.S. (J), 2006 conducted by U.P. Public Services Commission (hereinafter referred to as "Commission") is under challenge. In the writ petitions mentioned at Sl. No. 1 to 11, petitioners are the candidates, who were selected in the written examination and were called for interview, but failed to get their place in the final select list. Other petitioners are the candidates who failed to qualify the written/preliminary examination.

3. This bunch of writ petitions was earlier heard by another Bench of this Court. Under the orders of the said Bench, the record pertaining to the aforesaid selection was summoned vide order dated 8.10.2010. The entire record was in 11 boxes. We have been informed that 8 boxes contained the answer books while in the remaining 3 boxes, there were other documents pertaining to the said selection. In view of the bulk of records, the Registrar of this Court was directed to make inspection of the record in presence of the

parties and submit report with regard to the factual status. The said order was challenged before the Hon"ble Apex Court by the Commission and Hon"ble Apex Court upheld the said order and S.L.P. was dismissed. Hon"ble Apex Court in the matter directed that the candidates or their counsels shall not be permitted to peruse the answer sheets and accordingly in compliance thereof this Court directed the Registrar of this Court, who was asked to submit a fact finding report, to comply with the said directions. The fact finding report was filed by the Registrar in Court on 16.12.2010. When this bunch of petitions came up for hearing before this Bench then this Court directed the petitioners to implead the selected candidates also as opposite party. In view of the large number of selected candidates, to be precise 237, this Court directed that the entire petitions be uploaded on the website of this Court and Registrar General was directed to inform all the selected candidates as they were working as Judicial Officers in the State of U.P. and it was further directed that they may download the petition from the website. In compliance thereof the selected candidates have also put in their appearance and filed their counter affidavits. In their counter affidavits, they have supported the stand taken by the Commission.

4. During the course of proceedings, Mr. I.B. Singh, Senior Advocate appearing for the Commission has raised objections to the correctness of the report of the Registrar of this Court and has submitted that he has filed the supplementary affidavit wherein in paragraph no. 3 of the said affidavit, it has been stated that the guidelines, which have been laid down by the Hon"ble Apex Court in paragraph no. 23 in the case of Sanjay Singh and another Vs. U.P.P.S.C., Allahabad and another reported in [(2007) 3 SCC 720] were strictly adhered to. Under these circumstances, in order to verify the aforesaid submissions made in the said paragraph, the Court preferred to inspect the record and accordingly record of three boxes (containing the procedural documents) were inspected by the officers of the Commission in the presence of the Bench on 11.5.2013.

5. The record was inspected by the officers of the Commission While inspecting the record, minutes of the work shop conducted for the General Knowledge paper was found in the boxes wherein the entire details of workshop were mentioned. Thereafter, on the date of next listing an application for permission for inspection of the other boxes was moved on behalf of Commission. It was submitted that the record with regard to the moderation of the marks may be in other boxes and therefore, officers of the commission be permitted to inspect the record in all the eleven boxes. The said application was allowed and the Registrar of this Court was directed to get the record of all boxes inspected in his presence by the officers of the Commission. It was further directed to point out the documents, which they consider necessary to be perused by this Court during the course of their arguments and to place them in a different box. In pursuance of order of this Court the record so considered necessary by the officers of the commission was placed in a separate box and the said box was numbered as Box No. 12.

6. Before proceeding further, we consider it necessary to mention that in this case there is absolutely no allegation of nepotism, favoritism, corruption, or any illegality in conducting

the examination by the commission. The only submission is that the guidelines as laid down by the Hon"ble Apex Court in Sanjay Singh's Case (Supra) have not been followed. The entire arguments of learned counsels for petitioners have been based on the fact finding report of the Registrar of this Court.

7. Objections against the said report, on behalf of the Commission have also been filed.

8. The submission of learned counsel for the Commission was that in this case the procedure for moderation of the marks applied by the Commission for the first time and all efforts were made to ensure full compliance of the directions of the Hon"ble Apex Court given in Sanjay Singh's case (Supra).

9. Before proceeding further, it is necessary to refer the case of Sanjay Singh (Supra) wherein PSC (J) Examination, 2003 was under challenge. In the said examination, the Commission adopted the procedure of "Scaling of marks", which was under challenge and the same was not approved by the Hon"ble Apex Court. It was held that the Scaling system adopted by the Commission is unsuited in regard to Civil Judge (Junior Division) examination and directed moderation of marks to be followed in future. In paragraph no. 23, Hon"ble the Apex Court has laid down the procedure of moderation. It is necessary to reproduce the said paragraph, which is quoted below:

"23. When a large number of candidates appear for an examination, it is necessary to have uniformity and consistency in valuation of the answerscripts. Where the number of candidates taking the examination are limited and only one examiner (preferably the papersetter himself) evaluates the answerscripts, it is to be assumed that there will be uniformity in the valuation. But where a large number of candidates take the examination, it will not be possible to get all the answerscripts evaluated by the same examiner. It, therefore, becomes necessary to distribute the answerscripts among several examiners for valuation with the papersetter (or other senior person) acting as the Head Examiner. When more than one examiners evaluate the answerscripts relating to a subject, the subjectivity of the respective examiner will creep into the marks awarded by him to the answerscripts allotted to him for valuation. Each examiner will apply his own yardstick to assess the answerscripts. Inevitably therefore even when experienced examiners receive equal batches of answerscripts, there is difference in average marks and the range of marks awarded, thereby, affecting the merit of individual candidates. This apart, there is "hawkdove" effect. Some examiners are liberal in valuation and tend to award more marks. Some examiners are strict and tend to give less marks. Some may be moderate and balanced in awarding marks. Even among those who are liberal or those who are strict, there may be variance in the degree of strictness or liberality. This means that if the same answerscript is given to different examiners, there is all likelihood of different marks being assigned. If a very wellwritten answerscript goes to a strict examiner and a mediocre answerscript goes to a liberal examiner, the mediocre answerscript may be awarded more marks than the excellent answerscript. In other words, there is "reduced valuation" by a strict examiner and "enhanced valuation" by a liberal examiner. This is

known as "examiner variability" or "hawkdove effect". Therefore, there is a need to evolve a procedure to ensure uniformity inter se the examiners so that the effect of "examiner subjectivity" or "examiner variability" is minimised. The procedure adopted to reduce examiner subjectivity or variability is known as moderation. The classic method of moderation is as follows:

"(i) The papersetter of the subject normally acts as the Head Examiner for the subject. He is selected from amongst senior academicians/scholars/senior civil servants/judges. Where the case is of a large number of candidates, more than one examiner is appointed and each of them is allotted around 300 answerscripts for valuation.

(ii) To achieve uniformity in valuation, where more than one examiner is involved, a meeting of the Head Examiner with all the examiners is held soon after the examination. They discuss thoroughly the question paper, the possible answers and the weightage to be given to various aspects of the answers. They also carry out a sample valuation in the light of their discussions. The sample valuation of scripts by each of them is reviewed by the Head Examiner and variations in assigning marks are further discussed. After such discussions, a consensus is arrived at in regard to the norms of valuation to be adopted. On that basis, the examiners are required to complete the valuation of answerscripts. But this by itself, does not bring about uniformity of assessment inter se the examiners. In spite of the norms agreed, many examiners tend to deviate from the expected or agreed norms, as their caution is overtaken by their propensity for strictness or liberality or erraticism or carelessness during the course of valuation. Therefore, certain further corrective steps become necessary.

(iii) After the valuation is completed by the examiners, the Head Examiner conducts a random sample survey of the corrected answerscripts to verify whether the norms evolved in the meetings of examiner have actually been followed by the examiners. The process of random sampling usually consists of scrutiny of some top level answerscripts and some answer books selected at random from the batches of answerscripts valued by each examiner. The top level answer books of each examiner are revalued by the Head Examiner who carries out such corrections or alterations in the award of marks as he in his judgment, considers best, to achieve uniformity. For this purpose, if necessary certain statistics like distribution of candidates in various marks ranges, the average percentage of marks, the highest and lowest award of marks, etc may also be prepared in respect of the valuation of each examiner.

(iv) After ascertaining or assessing the standards adopted by each examiner, the Head Examiner may confirm the award of marks without any change if the examiner has followed the agreed norms, or suggests upward or downward moderation, the quantum of moderation varying according to the degree of liberality or strictness in marking. In regard to the top level answer books revalued by the Head Examiner, his award of marks is accepted as final. As regards the other answer books below the top level, to achieve maximum measure of uniformity inter se the examiners, the awards are moderated as per

the recommendations made by the Head Examiner.

(v) If in the opinion of the Head Examiner there has been erratic or careless marking by any examiner, for which it is not feasible to have any standard moderation, the answerscripts valued by such examiner are revalued either by the Head Examiner or any other examiner who is found to have followed the agreed norms.

(vi) Where the number of candidates is very large and the examiners are numerous, it may be difficult for one Head Examiner to assess the work of all the examiners. In such a situation, one more level of examiners is introduced. For every ten or twenty examiners, there will be a Head Examiner who checks the random samples as above. The work of the Head Examiners, in turn, is checked by a Chief Examiner to ensure proper results."

10. In the report of the Registrar, it was mentioned that no minutes of any workshop held in compliance of the directions of Hon"ble the Apex Court were prepared. In some cases, the enhancement/moderation of marks, to the extent of 25% was recommended. But actually the marks have been enhanced, in some cases to a much higher extent i.e. more than 300%. The Registrar has also prepared a chart of such candidates, which forms part of the report. Said chart is being reproduced as under:

Sl. No.

Roll No. and Name

Original Marks

Moderated Marks

Increase of Marks

Percentage Increase

Sonal Pandya 4249

24

111

87

362.50%

Nishant Dev 4401

27

106

79

292.59%

Prakash Chand 4143

32

119

85

265.62%

Chandra Mohan 4496

30

100

70

233.33%

Nisha Jha 3762

32

103

71

221.87%

Nipur 1042

62

122

60

96.77%

Himanshu Dayal 2518

35

87

52

148.57%

Pragya Singh 3363

32

85

53

165.62%

Nirdosh Kumar

43

92

49

113.95%

10

Shailendra Yadav 4448

28

73

45

160.71%

11

Sushil Kumar 1110

41

84

43

104.87%

12

Dinesh Kumar Gautam 1977

28

71

43

153.57%

13

Ashif Iqbal 2995

52

95

43

82.69%

14

Susheel Kumar 5190

36

80

44

122.22%

15

Swati 3564

32

68

36

112.50%

16

Anupam Shorey 3564

38

71

33

86.84%

17

Abhishek Sinha 7272

62

94

32

51.61%

18

Nirbhay Prakash 2662

51

81

30

58.82%

19

Swantantra Prakash

5070

45

77

22

48.88%

20

Vinay Kumar 5451

70

91

21

30.00%

21

Aparna Tripathi 7616

89

112

23

25.84%

22

Vishnu Pratap 23611

105

126

21

20.00%

23

Ajay Vikram 22632

70

90

20

28.57%

24

Varun Mohit Nigam 23710

83

104

19

22.89%

25

Inder 6878

98

118

20

20.40%

26

Poonam Trivedi 32842

41

99

58

141.46%

27

Nikant Mani 33041

45

92

47

104.44%

28

Saurabh 33947

47

93

46

97.87%

29

Anjani Kumar 34073

54

98

44

81.48%

30

Kamal Kant 33818

53

105

52

98.11%

31

Sanjay Kumar 34066

31

73

42

135.48%

32

Kalpraj 33218

43

79

36

83.72%

33

Mithlesh 33100

73

108

35

47.94%

34

Alok Kumar 35582

55

95

40

72.72%

35

Yasmin Akbar 32711

50

88

38

76.00%

36

Saurabh 34087

59

90

31

52.54%

37

Alok Kumar 34012

48

77

29

60.41%

38

Nitu

44

72

28

63.63%

39

Hari Ram

45

72

27

60.00%

40

Mahendra Kumar 35019

48

74

26

54.16%

41

Purnima Pathak

59

83

24

40.67%

11. Submission of learned counsel for the petitioners is that the moderation in this examination has been done in an arbitrary and erratic manner, which has adversely effected the result and because of such moderation the deserving candidates could not find their place in the select list.

12. Some of the petitioners in their writ petitions have pleaded that they have very good academic background, therefore, it is not conceivable that how they failed to get any place in the final select list. On this strength, it is submitted that awarding of marks/moderation of marks was not in accordance with the guidelines. On this ground, it is pressed that the selection deserves to be quashed and fresh reevaluation of all the answer books should be directed. In support of his arguments, reliance has been placed on behalf of the petitioners in the case of K. Channegowda and others Vs. Karnataka Public Service Commission and others reported in [2006 SCC (L & S) 707].

13. Submission of learned counsel for the Commission is that entire procedure as provided by the Hon"ble Apex Court was followed in this case and with regard to the above quoted chart, it is submitted that the marks so awarded to the candidates mentioned in the list were not result of moderation but these answer sheets were reevaluated because the examiner who had examined these answer sheets was found to

be erratic and careless, accordingly the Head Examiner recommended that he be debarred from the panel of the examiners and such enhancement of marks is the result of the revaluation and not the result of moderation as mentioned by the Registrar in his report.

14. It is submitted on behalf of the Commission that there is absolutely no allegation of any favoritism, illegality, irregularity, corruption, malpractice against the Commission nor any such instance has been pointed out by any of the petitioners wherein undue favour was shown by the Commission or any examiner to any particular candidate. It is further submitted that all the efforts were made by the Commission to ensure full compliance of the directions of Hon"ble the Apex Court in Sanjay Singh's Case (Supra) and the same can be ascertained by the documents contained in Box No. 12.

15. Learned counsel for the selected candidates has submitted that no allegation has been made against any of the selected candidates regarding any malpractice on his behalf or any action on his behalf which affected the final merit list. It is further submitted that the selected candidates have already been appointed and are working as Judicial Officers for the last several years, therefore, their appointments cannot be quashed. In support of his submission, learned counsel for the selected candidates has placed reliance on the pronouncement of Hon"ble the Apex Court in the case of Indrapreet Singh Kahlon Vs. Punjab & Haryana Public Service Commission reported in [2006 (11) SCC 356], Ashok Kumar Yadav Vs. State of Haryana reported in [1985 (4) SCC 417] and Inder Prakash Gupta Vs. State of Jammu & Kashmir reported in [2004 (6) SCC 786].

16. On behalf of the Commission reliance has also been placed on some case laws, which shall be considered at the relevant part of the judgment.

17. So far as case law of K. Channegowda (Supra) relied upon, on behalf of the petitioners is concerned, the facts of that case were different. In the facts of that case, the Karnataka Public Service Commission had framed guidelines for moderation of marks and there was violation of such guidelines, which were considered important in the background that there were very serious allegation of favoritism, which is clear from paragraph no. 20 of the said judgment, which reads as under:

"20. As regards allegations of unfairness in valuation of answer scripts, the Tribunal noticed that in the case of Rameshwarappa and his relatives the answer scripts were first valued by the examiner and then by the Chief Examiner who awarded very high marks to them which really enabled them to get high positions in the merit list resulting in their ultimate selection. The Tribunal noticed the marks awarded to Rameshwarappa and his relatives Nagaraja and Triveni which demonstrated that very high marks were awarded by the Chief Examiner and in some cases 80% marks were awarded as against 30% awarded by the examiner."

18. But in the facts of present case, no such instance was brought to the notice of the Court wherein any favoritism has been shown in favour of any of the candidates.

19. During the course of arguments much emphasis has been laid on the fact finding report of the Registrar of this Court submitted in compliance of the orders of this Court. We consider it necessary to quote some of the paragraphs of the report towards which the attention of the Court was drawn during the course of arguments. The Registrar of this Court in his report has given categorywise minimum cut off marks for qualifying in the examination as this fact is mentioned in the report on the basis of the information given by the Controller of Examination and the same is reproduced as under:

General Candidates 547.32

O.B.C. Candidates 499.35

S.C. Candidates 450.96

S.T. Candidates 448.48

Under Horizontal reservation

D.F.F. Candidates 490.87

Lady Candidates 448.48

Excerpts from Registrar's Report:

On receipt of the evaluated answer scripts, all the answer scripts except the answer scripts examined by the Chief Examiner and the Head Examiners, few answer scripts examined by the other Examiners, were subjected to the moderation. The Chief Examiner with the help of two Head Examiners, is said to have been reexamined answer scripts randomly, which had already been examined by the various examiners and came to the conclusion that evaluation of answer scripts of the two examiners at serial no. 10 and 11 in the report of the moderator, were not found to be satisfactory and has recommended 25% increase in the marks awarded by the Examiner at serial no. 10 and 25% decrease in the marks awarded by the Examiner at serial no. 11, barring the scripts already reexamined by the Chief Examiner/Head Examiners. As informed by the officers of the U.P.P.S.C., the Examiner at serial no. 10 and 11 as mentioned in the report of the Moderator, are given numbers as Examiner No. 13 (G.K.) and Examiner No. 10 (G.K.) respectively, in order not to disclose the names of the Examiners. The relevant portion of the above recommendation regarding Examiner No. 13 (G.K.) and Examiner No. 10 (G.K.) is quoted hereinbelow for the kind convenience of the Hon"ble Court.

Sl. No. 10 (In the Report of Moderator) Examiner No. 13 (G.K.)

"In his evaluation, he was found to be uniformity strict. The average of marks awarded by him is also the lowest. A 25% increase in the marks awarded by him in each script (barring those reviewed by me) is recommended."

Sl. No. 11 (In the Report of Moderator) Examiner No. 10 (G.K.)

"In his evaluation he was found to be uniformity liberal. The average of marks awarded by him is also substantially high. A 25% decrease/reduction in the marks awarded by him in each script (barring those already reviewed by me) is recommended."

The Moderator in his report has not given any statistics or details or the basis on which the above assertion of average marks being high or low has been arrived at by the Moderator, and simply made recommendation for such enhancement and reduction in marks of both the above noted examiners.

The Chief Examiner with the help of Head Examiners is reported to have reexamined the few scripts physically on the basis of which mechanical moderation had been recommended regarding the scripts examined by the Examiner 13 (G.K.) & Examiner No. 10 (G.K.) barring the scripts reexamined by the Chief Examiner/Head Examiners, with the remark that no moderation is required regarding the scripts examined by the rest of the Examiners.

From the perusal of the limited available records, it cannot be said as to what principle had been adopted by the Chief Examiner or the Head Examiners in selecting the answer scripts for physical examination. Out of the scripts reevaluated by the Chief Examiner with the help of Head Examiners, it is not clear as to which scripts were reevaluated by the Chief Examiner himself and which scripts were got reexamined by the Head Examiners.

As informed, subsequently it was revealed that though the total question paper of General Knowledge was having maximum marks 200, but one question having maximum marks 10 was wrongly printed and it was recommended that marks awarded on this question be deleted and the marks awarded to the candidates be granted out of total 190 marks and consequently, 20/19% marks were recommended to be enhanced in respect of all the candidates and accordingly the second mechanical moderation was made with the help of computer. Hence, second mechanical moderation in respect of all the candidates answer scripts of the G.K. paper was done.

English Language:

There is nothing on record to reveal as to how many number of examiners were invited by the U.P. Public Service Commission to evaluate the copies of the English Language of the examinees, but as informed orally in all, 19 Examiners were invited to give their consent for the purpose of evaluation of the copies of the English Language, and out of them only 12 Examiners had given their consent, for the purpose of evaluation of the copies of English Language. Thus, out of the 12 Examiners, one was chosen as Head

Examiner and the rest 11 worked as Examiners. According to the statement given by the Chief Controller (Examinations), the workshop was held on 14th, 15th, & 16th, November, 2007 and on 19th December, 2007.

The Moderator/Head Examiner in his report has criticized Examiner No. 7 and Examiner No. 8 as erratic and recommended complete reevaluation but no reason has been assigned for reevaluation of scripts examined by other examiners, but in his report, he has stated that all the scripts barring those examined by him, have been reexamined and moderated whereas a perusal of Annexure No. "3" Language indicates that only few scripts have actually been physically moderated.

The Head Examiner, in his first report dated 26.4.2008, had opined that the marking pattern of the three examiners Examiner No. 9 in the list (packet nos. 30 41), Examiner No. 2 in the list (packet nos. 100 109) and Examiner No. 10 in the list (packet nos. 120 131) was in consonance with the consensus arrived in the workshop and they had adhered to the principles agreed with during the workshop and hence, there is no need for moderation or reexamination of copies evaluated by the aforementioned Examiner Nos. 9, 2 and 10 in the list. He had further opined that the Examiner No. 5 in the list (packet nos. 6 17), Examiner No. 8 in the list (packet nos. 42 53), Examiner No. 7 in the list (packet nos. 54 65), Examiner No. 1 in the list (packet nos. 66 77), Examiner No. 3 in the list (packet nos. 78 89) and Examiner No. 11 in the list (packet nos. 90 99) had evaluated answer scripts strictly and recommended for an increase of 20% marks awarded by the Examiner Nos. 8, 7, 1, 3 & 11 and 25% increase in marks awarded by Examiners No. 5 in order to maintain the uniformity. The recommendation for general enhancement of marks by 20%/25% in answer scripts evaluated by different examiners is mentioned below:

1. Examiner No. 1 Packet Nos. (66 77) Enhancement 20%
2. Examiner No.3 Packet Nos. (7889) Enhancement 20%
3. Examiner No.5 Packet Nos. (6 17) Enhancement 25%
4. Examiner No.7 Packet Nos. (54 65) Enhancement 20%
5. Examiner No. 8 Packet Nos. (42 53) Enhancement 20%
6. Examiner No. 11 Packet Nos. (90 99) Enhancement 20%

The Head Examiner, in his subsequent report dated 26.05.2008, had reported that he made random checking and found that the answer scripts bearing Code Nos. 530 ABH 01 to 50, 530 ABI 1 to 50, 530 ABJ 1 to 50, 530 ACA 01 50, 530 ACB 01 to 50, 530 ACC 01 50, 530 ACD 01 50, 530 ACE 01 50, 530 ACF 01 50, 530 ACG 01 50, 530 ACH 01 50 and 530 ACI 01 50 had been evaluated strictly by Examiner No. 6 in the list and recommended for an increase of 25% marks in the answer scripts evaluated by the

Examiner No. 6 (packet nos. 18 29).

The Head Examiner, vide report dated 29.07.2008, made a request to provide assistance of two coexaminers for completing the work of moderation of the answer scripts well in time and had further reported on 23.08.2008 that with the help of one coexaminer (Examiner No. 3), he had rechecked the answer scripts (packet nos. 110119) evaluated by Examiner No. 4 in the list, the answer scripts (packet nos. 9099) evaluated by Examiner No. 11 in the list and rechecking of some of the answer scripts (packet nos. 617) evaluated by Examiner No.5 in the list, is in progress and will take some more time, with the note dated 03.09.2008 that there is no need of any enhancement of marks in the answer scripts already moderated by him.

The Head Examiner, giving reference to his previous reports dated 26.04.2008 and 26.05.2008, has further submitted another report dated 23.08.2008 to the effect that he had made with the help of coexaminer (Examiner No.3), further random evaluation of all the answer scripts whose evaluation was not proper and after random evaluation, made recommendations for enhancement of 20% marks in the answer scripts examined by Examiner No. 8 in the list (packet nos. 4253), Examiner No.7 in the list (packet nos. 5465), Examiner no. 1 in the list (packet nos. 6677) and Examiner No.3 in the list (packet nos. 7889) and enhancement of 25% marks in the answer scripts examined by Examiner No. 6 in the list (packet nos. 1829).

Finally, the Head Examiner, vide his report dated 20.09.2008, has recommended for the enhancement of marks in the answer scripts evaluated by the aforementioned five examiners, barring the answer scripts evaluated in the workshop and the answer scripts physically moderated by him, giving details of the answer scripts evaluated by the different examiners as mentioned below:

1. Examiner No.6 Packet Nos. (1829) Enhancement 25%
2. Examiner No.8 Packet Nos. (4253) Enhancement 20%
3. Examiner No. 7 Packet Nos. (5465) Enhancement 20%
4. Examiner No. 1 Packet Nos. (6677) Enhancement 20%
5. Examiner No. 3 Packet Nos. (7889) Enhancement 20%

(ii) Law II:

As reported, only 10 Examiners had given consent and participated in the evaluation work regarding the Law second paper out of which one was chosen as Head Examiner and rest 9 of them were chosen as Examiners. A workshop was held on 8th and 9th February, 2008 to discuss the model answers and the pattern of evaluation and marking, wherein consensus was arrived regarding the pattern of marking. The minutes of this workshop

was also not prepared by the Head Examiner.

After getting few answer scripts evaluated in the workshop by the different examiners, the answer scripts were sent to the Examiners for evaluation on the basis of consensus arrived at workshop and on receiving back the evaluated answer scripts from the Examiners, as reported by the Head Examiner on 19.05.2008, he had reevaluated some of the answer scripts from the bundles bearing nos. 540/11 to 540/130 except 540/107 to 540/118 checked by the Head Examiner himself and had come to the conclusion that in the answer scripts evaluated by the Examiner No.2 from 540/11 to 540/22 except answer script no. 36 of 540/20 + 230 extra answer scripts (details of which are not given), the examiner had over marked and hence recommended that 5% marks be reduced in all the answer scripts barring the answer scripts physically moderated by him or evaluated in the workshop. Similarly, he had recommended 5% reduction in marks in all the answer scripts evaluated by the Examiner No.3 (540/119 to 540/130) barring the answer scripts physically moderated by him or evaluated in the workshop, as the answer scripts were evaluated very negligently and wrong answers had been given full marks by the Examiner No.3, but has not given any statistics or details on the basis on which the above assertion of average marks being high or low, has been arrived by the Moderator.

(iii) LawIII:

As reported, only 11 Examiners had given consent for doing the evaluation work and out of them one was chosen as Head Examiner and the rest 10 of them were chosen Examiners. The workshop held on 12.02.2008 and 13.02.2008 wherein the Head Examiner has prepared model answers and discussed between the Examiners and some answer scripts were got evaluated by the different examiners in the workshop. This fact has been disclosed by the Officers of the U.P. Public Service Commission, but as reported, no minutes of the workshop was prepared by the Head Examiner.

Subsequently, the answer scripts were sent for evaluation to the Examiners and on receiving back of the answer scripts from the Examiners after evaluation, the Head Examiner is said to have examined/moderated the answer scripts evaluated by the different examiners. The Head Examiner has reported on 03.05.2008 that he reviewed about 274 evaluated answer scripts and made certain corrections and during the process, he found that few examiners had been a bit careless and had not taken into consideration even the general decisions taken in the workshop held for the guidance. As per his report, he had seen 76 bundles of answer scripts of six examiners and 05 bundles of one examiner and found that this later examiner had been a bit careless or a bit liberal and therefore, recommended for general reduction of 10% marks awarded by this examiner answer scripts in bundle nos. 30 to 41 (Examiner No. 11 in the list), barring the answer scripts reviewed by the Head Examiner and the answer scripts evaluated in the workshop. The Head Examiner, vide his subsequent report dated 20.05.2008, has reported that he had reviewed 36 more bundles of answer scripts and had made corrections and moderated the answer scripts of two examiners containing in the bundle

nos. 54 to 65 (Examiner No. 6 in the list) and 66 to 77 (Examiner No. 1 in the list). He had further reported that the examiner who had evaluated the answer scripts in bundle nos. 42 to 53 had been too harsh and therefore, recommended for an increase of 10% marks awarded by this examiner (Examiner No.09 in the list) barring the answer scripts reviewed by the Head Examiner and the answer scripts evaluated in the workshop.

### LawIII

Here it is pertinent to mention that while examining the answer scripts of the selected candidates, I found that one candidate, namely Shri Anupam Shaury at serial no. 30 in the list of selected candidates with roll no. 003554 and master fake no. 007771, got 74 marks on the copy in LawIII paper, but his marks has been shown in the list as 94 as given by the examiner on the copy and remained as 94 after final moderation. He has been selected in the examination taking into consideration as he got 94 marks in LawIII paper.

20. While preparing the judgment, we again perused the documents of Box No. 12, which contains five bundles, out of which three were in sealed cover and two were unsealed. The first bundle contains File No.3/4/200708, which relates to the correspondence with the Examiner and their consent and also contains the notes and directions to maintain the harmonious evaluation of the answer books and also the holding of the workshop on different dates, with regard to different papers. In the second sealed bundle, the letters of the examiner, who had given their consent to participate in the workshop has been placed and also the orders for making payment of their honorarium. In the third sealed bundle, the report regarding the process of evaluation and moderation of marks and moderators report is also kept. The report of the Head Examiner with regard to General Knowledge Paper dated 4.4.2008 and 24.9.2008 are at page No. 31. In connection with the LawI Paper reports of the Head Examiner dated 26.4.2008, 26.5.2008, 23.8.2008, 3.8.2008 and 20.09.2008 are on record. With regard to LawII Paper the reports dated 19.5.2008 and 15.09.2008 are on record. With regard to the LawIII Paper, reports dated 3.6.2008 and 20.5.2008 are on record. In the unsealed bundle, the original tabulation charts are kept and also the copies evaluated in the workshop. In the second unsealed bundle, Five Registers relating to each subject are kept wherein the details of the answer books issued to each Examiner were mentioned. The Head examiner in Substantive Law Paper in the report dated 26.4.2008 in paragraph no. 3 has reported as under:

"Packet Nos. 110119 have been most negligently evaluated and needs reevaluation. I am told that these papers were examined by xxxx (name withheld)."

Thereafter the aforesaid papers were reevaluated and checked. LawIII bundle Nos. 550/30 to 550/41 were reevaluated and process of moderation was followed as is evident from the report of Head Examiner dated 14.9.2008. Similar procedure has been adopted in respect of other papers also and reports to the same are already on record.

21. On behalf of the Commission, a chart has been produced before this Court wherein the details of the process for evaluation and the time taken in that, has been mentioned. It also discloses that number of Examiners to whom letters were sent by the Commission and also the number of Examiners, who had given their consent. dates of the evaluation of the workshop, dates of dispatch answer books to the Examiners, dates of report, evaluated answer books from the examiner and dates of moderation by the Head Examiner. The said chart is reproduced hereunder:

Sl. No.

Subject/

No. Answer books

Activity of repairing the answerbooks by giving them subject fake roll nos.

No. of Examiner from whom the consent was asked for by letter

No. of exami

ners consenting for the evaluation work

Dates of preevaluation

Dates of dispatch answer books to the examiners for evaluation

Return of evaluated answer books from the examiners

Dates of moderation by Head Examiners

Language 6540

Dated from 5.11.2007 to 11.55.2007

19

12

14, 15 & 16 November, 07 and 19.12.2007

27 November & 22 December, 07

Between December, 07 to February, 08

17,18 & 19 March, 08 and 9,10 & 11 April, 08

General Knowledge 6567

Dated from 16.11.07 to 28.11.07

21

14

27, 28, 29 & 30 November, 07 and 17 & 18 December, 07

5, 6 & 22nd December, 07 and 9.1.08 and 1.2.08 and 17th March, 08

Between January to February, 08

26, 27, 28, 29, 30, 31 March & 1, 2, 3 & 4 April and 15th April, 08

LawI

6528

Dated from 29.11.07 to 2.1.08

The letters for consent to 84 examiners were sent for 3 papers of Law subject in Special format attached with question papers.

11

10 and 11th January, 08

23, 29 & 30 January and 29th March, 09

Between February, 08 to April, 08

24, 25 & 26th April, 26th May and 28 & 29 July and 5, 6, 7, 18, 19, 20, 21, 22, 23 August and 1, 2 and 3 September, 08.

LawII 6499

Dated from 17.01.08 to 1.2.08

10

8 and 9 February 08

14, 18 February and 29th March, 08

Between March, 08 to April, 08

30 April, 1, 2, 3 May and 16, 17, 18 & 19 May, 08

LawIII

Dated from 2.2.08 to 16.2.08

11

12 and 13 February, 08

3 and 7 March, 08

Between March, 08 to May, 08

29, 30 April and 1, 2, 3, 19, 20 May, 08.

22. The aforementioned chart and perusal of the documents kept with the Box No. 12 makes it clear that all the efforts were made to follow the directions of Hon"ble the Apex Court given in Sanjay Singh's Case (Supra). It is pertinent to mention here that the same selection was challenged before the High Court of Judicature at Allahabad by means of Writ Petition No. 5013 of 2009 (Rohit Sinha Vs. State of U.P.) and Writ Petition No. 2274 of 2009 (Mrs. Sushma Chandra Vs. State of U.P.) and the Division Bench of this Court after perusal of the record observed as under:

"Having gone through the answer sheets and after perusing thereof being satisfied that there is no irregularity whatsoever therein, we find it a disturbing feature in this case where the petitioner, a candidate for a judicial service, has made such reckless and baseless allegations against a constitutional functionary. Public Service Commission being a constitutional functionary and autonomous body enjoy confidence and faith of the public at large in respect of its purity being maintained in the recruitment to public service. If the candidates appearing in the examination in such a reckless manner would drag the Commission in frequent litigation it would be extremely difficult for Commission to function smoothly and discharge its constitutional obligation."

With the aforesaid observations, the abovementioned writ petitions were dismissed with costs of Rs. 20,000/ each.

23. Now fact finding report of the Registrar of this Court furnished in compliance of order of this Court has to be considered.

24. Submission of learned counsel for the Commission is that such fact finding report cannot be acted upon and the petitioners are required to contest only on the basis of their pleadings and not on this report. In support of his submission, reliance has been placed on the pronouncement of Hon"ble the Apex Court in the case of Sada Nand Halo and others Vs. Momtaz Ali Shaikh and others reported in 2008 (4) SCC 619, wherein Hon"ble the Apex Court in paragraphs no. 58, 60 and 65 has held as under:

"58. It is settled law that in such writ petitions a roving inquiry on the factual aspect is not permissible. The High Court not only engaged itself into a nonpermitted factfinding exercise but also went on to rely on the findings of the amicus curiae, or as the case may be, the scrutiny team, which in our opinion was inappropriate. While testing the fairness of the selection process wherein thousands of candidates were involved, the High Court should have been slow in relying upon such microscopic findings. It was not for the High Court to place itself into a position of a factfinding commission, that too, more particularly at the instance of those petitioners who were unsuccessful candidates. The High Court should, therefore, have restricted itself to the pleadings in the writ petition and the say of the respondents. Unfortunately, the High Court took it upon itself the task of substituting itself for the Selection Committee and also in the process assumed the role of an appellate tribunal which was, in our opinion, not proper. Thus, the High Court converted this writ petition into a public interest litigation without any jurisdiction.

60. In our opinion the first basic thing for such a selection process would be the lack of bona fides or, as the case may be, mala fide exercise of powers by those who were at the helm of selection process. Both the courts below have not recorded any finding that they found any mala fides, on the part of any of the State officials who headed the interviews. On the other hand the tenor of the judgments shows that the process did not suffer from mala fides, lack of bona fides, bias or political interference. In *Union of India v. Bikash Kuanar* this Court observed in para 14 thus:

"14. When a Selection Committee recommends selection of a person, the same cannot be presumed to have been done in a mechanical manner in absence of any allegation of favoritism or bias. A presumption arises in regard to the correctness of the official act. The party who makes any allegation of bias or favoritism is required to prove the same. In the instant case, no such allegation was made. The selection process was not found to be vitiated. No illegality was brought to our notice."

65. We also do not approve of the approach adopted by the learned Single Judge of the High Court as going all the way into the facts and the microscopic details not via the pleadings of the parties but on the basis of an unnecessary investigation. We also disapprove of the logic of relying on the findings arrived at only on the basis of sample survey. Such selection of large number of candidates could not have been set aside on the basis of sample survey. No evidence was available before us as to the proportion of this so called "sample survey."

25. Reliance has also been placed on the pronouncement of Hon"ble the Apex Court in the case of *H.P. Public Service Commission Vs. Mukesh Thakur & Anr.* reported in [2010 AIR SCW 3636] wherein Hon"ble the Apex Court in paragraph no. 19 has held as under:

"19. In view of the above, it was not permissible for the High Court to examine the question paper and answer sheets itself, particularly, when the Commission had assessed the interse merit of the candidates. If there was a discrepancy in framing the

question or evaluation of the answer, it could be for all the candidates appearing for the examination and not for respondent No. 1 only. It is a matter of chance that the High Court was examining the answer sheets relating to law. Had it been other subjects like physics, chemistry and mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court."

26. When the aforementioned principles as laid down by Hon"ble the Apex Court are applied in the facts of the instant case then it is clear that there is absolutely no allegation of any bias, corruption, illegality, irregularity, favoritism or nepotism against the Commission. The crux of the entire argument of learned counsel for the petitioners is that in case of some of the selected candidates, the marks were moderated and enhanced to the extent of more than 300%.

27. Submission of learned counsel for the Commission is that such enhancement is not the result of moderation but virtually the answer books so mentioned in the said chart were examined by the examiners, who was found by the Head Examiner to be erratic and therefore, the answer books, which were evaluated by such erratic, careless examiner were reevaluated by the Head Examiner. This submission finds support with the fact finding report of the Registrar of this Court wherein Examiner No. 5 was found to be erratic and he was recommended to be debarred from the panel of examiners. It is further submitted that after reevaluation of the answer books of such erratic examiner, the marks of the candidate at Master fake number 007696 were decreased from 120 to 55 but he was selected in the final merit list.

28. The submission of the Commission is that such increase was made only in respect of few candidates but the number has been increased or decreased for various other candidates also whose answer books were examined by Examiner No. 5. It is further submitted that for Master Fake No. 008072, 103 marks were awarded by the examiner and his marks were not changed after the revaluation as in his case the evaluation was found to be proper.

29. Petitioners of Writ Petition No. 1347 (MB) of 2009 (Avinash Chandra Vs. U.P. Public Service Commission, Allahabad through its Secretary and others) and Writ Petition No. 11642 (MB) of 2008 (Atul Sinha Vs. U.P. Public Service Commission, Allahabad through its Secretary and others) have drawn our attention towards the the list of 41 selected candidates, whose marks have been enhanced in Lawl Paper after moderation. It is the same list which has been mentioned in report of Registrar and the same has been controverted by the counsel for the Commission by submitting that in the Lawl Paper Examiner No. 4, 5 and 11 were erratic while no change was made for Examiner No. 2, 9 and 10 and increase of 20% was recommended in the marks awarded by the Examiner No. 1, 3, 7 & 8 and 25% enhancement of the marks was recommended with regard to Examiner No. 6. The submission of learned counsel for the Commission is that it is nowhere the case of the petitioners that any undue favour was shown to a particular candidate which affected the selection process. The enhancement of marks with regard

to particular examiner was recommended with regard to certain Examiner and the same was followed with regard to all the candidates whose copies were evaluated by such examiner. Same criteria was followed with regard to all the concerned candidates.

30. It is further submitted that with regard to the some of the examiners, the moderators have recommended the enhancement of the marks to certain extent. However, the grounds have not been disclosed by the moderators on what basis they have recommended the enhancement to that extent. On this point, this Court is of the view that it is the subjective satisfaction of the moderators and they have recommended for the enhancement of the marks with regard to all the candidates, whose answer scripts were examined by a particular examiner and therefore, the petitioners cannot challenge the moderation procedure on this ground. This Court cannot take place of the examiner/moderator to examine the copies and to evaluate as to what extent the marks awarded by a particular examiner ought to have been enhanced. Hence this ground has no force.

31. It is further submitted that no Chief Examiner was appointed and this fact has been admitted by the Commission in paragraph no. 25 of the counter affidavit. It is further submitted that random survey of corrected answer scripts was not done and Chief Examiner was not appointed for each paper. It is further submitted that more than 300 copies were given to each examiner and it is contrary to the directions given by Hon<sup>ble</sup> the Apex Court. Hon<sup>ble</sup> the Apex Court had directed that 300 copies should be examined by each of the examiners. So far as appointment of the Chief Examiner is concerned Hon<sup>ble</sup> the Apex Court in Sanjay Singh's Case (Supra) in paragraph no. 1 has observed that the paper setter of the subject normally acts as the Head Examiner of the subject. It is further provided in this direction that where the case is of a large number of candidates, more than one examiner be appointed and each of them is allotted around 300 answer scripts for evaluation. In the facts of this case, Head Examiners for each paper were appointed by the Commission. It is admitted that more than 300 copies were allotted to the examiners. But the reason for doing so has been explained. It is submitted that in another Writ Petition No. 38447 of 2008 (Sanjay Kumar Singh Vs. U.P.P.S.C.) vide order dated 5.8.2008, a Division Bench of this Court had directed the Commission to finalize the result of the Main Examination of Civil Judge (Jr. Division), 2006 expeditiously, if possible within two months from the date a certified copy of this order is filed before the U.P. Public Service Commission. It is further submitted that the Commission had issued letters to several examiners but consent of few were received and therefore, only those examiners were engaged in evaluation process who had given their consent and there was no time to prepare a fresh panel of examiners and to issue letters to the examiners and to receive their consent as it would have consumed a lot of time and by doing so, the abovementioned directions of the Division Bench for finalizing the result within two months could not have been complied with. The perusal of the direction given by the Hon<sup>ble</sup> Apex Court in Sanjay Singh's Case (Supra), it is not a mandatory direction that maximum number of 300 answer scripts can be evaluated by a

single examiner. It has been mentioned that each of them is allotted 300 answer scripts, therefore, simply because more than 300 answer scripts have been evaluated by one examiner, it by itself cannot be said to be such violation of the directions, which vitiates the entire evaluation process particularly in the circumstances mentioned above.

Admittedly, Head Examiner was appointed for each and every subject and the procedure as directed by Hon"ble the Apex Court was followed. Admittedly in this case number of candidates was very large. It is clear from the perusal of the record that the manner in which the procedure was followed, was adopted with regard to all the candidates, and no discrimination in following the said procedure with regard to the any particular group of candidates is alleged.

32. The submission of learned counsel for the Commission has force that even if it is assumed that there was slight deviation in following specific directions of Hon"ble the Apex Court then the same was under compulsion and under unavoidable circumstances but the same was harmoniously applied for all the candidates and therefore it cannot be presumed that any of the petitioners' interest was adversely affected in any manner.

33. In view of the discussion made above, it is clear that the Commission has made all the endeavor to follow the guidelines laid down by Hon"ble the Apex Court in the case of Sanjay Singh's Case (Supra). But one glaring mistake has been pointed out in the report of the Registrar of this Court, which has also been admitted by the Commission. The Registrar on Page No. 25 of his report has referred a candidate with regard to Roll No. 003554, Master fake No. 00771 that actually he secured 74 marks but on the cover page of the answer scripts 94 marks were mentioned and by this mistake he found place in the final select list. The submission of the Commission on this point is that it was only due to human error. No. 7 was written in such a manner that it was read as 9 and due to this human error, this mistake has occurred. The Commission has accepted this mistake and has also submitted that with the leave of this Court, the Commission is prepared to correct the mistake.

34. In view of the discussion made above, Writ Petition Nos. 303 (SB) of 2011, 308 (SB) of 2011, 313 (SB) of 2011, 314 (SB) of 2011, 307 (SB) of 2011, 315 (SB) of 2011, 318 (SB) of 2011, 320 (SB) of 2011, 328 (SB) of 2011, 437 (SB) of 2011 and 1815 (SB) of 2009 (wherein the petitioners were called for interview) deserve to be partly allowed and are hereby partly allowed. Remaining Writ Petition Nos. 1553 (SB) of 2010, 304 (SB) of 2011, 309 (SB) of 2011, 311 (SB) of 2011, 312 (SB) of 2011, 316 (SB) of 2011, 317 (SB) of 2011, 321 (SB) of 2011, 327 (SB) of 2011, 499 (SB) of 2011 and 436 (SB) of 2011 have no force and deserve to be dismissed and are hereby dismissed. It is provided that the Commission shall rectify the mistake with regard to roll No. 003554, Master Fake No. 00771 and appointment shall be offered to the candidate who ought to have been appointed in his place. However, keeping in view the aforementioned case law as relied upon by the learned counsel for the selected candidates and keeping in view the fact that there was no mistake of the candidate in this matter, we are not inclined to cancel his appointment and accordingly direct that his appointment shall not be cancelled. The

Commission is also further directed to offer appointment to any of the petitioners of Writ Petition Nos. 303 (SB) of 2011, 308 (SB) of 2011, 313 (SB) of 2011, 314 (SB) of 2011, 307 (SB) of 2011, 315 (SB) of 2011, 318 (SB) of 2011, 320 (SB) of 2011, 328 (SB) of 2011, 437 (SB) of 2011 and 1815 (SB) of 2009 of this bunch, who have been interviewed and have been awarded more marks than the candidate at Roll No.003554, Master Fake No. 00771, if there is no impediment against them. Seniority of the selected candidates shall also stand corrected according to the fresh merit list prepared in compliance of the order of this Court.

35. The records, which are kept in 12 boxes shall be returned to the U.P. Public Service Commission, who in turn shall keep them in safe custody. It is made clear that in order to comply this Court's Order, if they want to reopen the boxes, the boxes shall be opened strictly in presence of the Chairman of the U.P. Public Service Commission and resealed the boxes. This arrangement is provided subject to the orders, if any, passed in S.L.P. preferred by any of the parties, within a period of limitation.