

(2002) 12 AHC CK 0103

Allahabad High Court

Case No: C.M.W.P. No"s. 31362 and 31179 of 2002

Subhash Chandra Pandey and
Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision: Dec. 11, 2002

Acts Referred:

- Uttar Pradesh Civil Services (Executive Branch) Rules, 1982 - Rule 15(4)
- Uttar Pradesh Public Service Commission (Procedure of Conduct and Business) Rules, 1976 - Rule 51
- Uttar Pradesh Public Service Commission (Regulation of Procedure) Act, 1985 - Section 10, 9

Citation: (2003) 2 AWC 1328 : (2003) 1 UPLBEC 548

Hon'ble Judges: G.P. Mathur, Acting C.J.; N.K. Mehrotra, J

Bench: Division Bench

Advocate: L.K. Dwivedi, for the Appellant; R.N. Singh, U.N. Sharma, B.N. Singh and S.C., for the Respondent

Final Decision: Allowed

Judgement

G.P. Mathur, A.C.J.

1. These petitions under Article 226 of the Constitution have been filed for quashing the result of U. P. Combined State/Upper Subordinate Services Examinations, conducted by U. P. Public Service Commission in the years 2001 and 2002. In Civil Misc. Writ Petition No. 31362 of 2002, the main challenge is to the preliminary examination of the year 2002 and in Civil Misc. Writ Petition No. 31179 of 2002, the challenge is to Mains examination conducted in the year 2002. A further prayer has been made that the U. P. Public Service Commission be directed to declare the result of the aforesaid examinations on the basis of actual marks secured by the candidates without applying the formula of scaling.

2. The U. P. Public Service Commission (for short Commission) conducts an examination known as U. P. Combined State/Upper Subordinate Examination for the purpose of selecting candidates for Provincial Civil Services and Allied services and also for Upper Subordinate services. The examination is held in three stages, namely, Preliminary Examination, Mains Examination and Interview and, thereafter, a final list of selected candidates is prepared. Since the number of candidates who appear in the examination is very large Initially a preliminary examination is held which has one paper of general studies of 100 marks and one optional paper of 300 marks. There is a choice of 22 different optional subjects. The candidates, who qualify in the preliminary examination, appear in the Mains examination which is of 4 compulsory papers and 4 optional papers. For optional papers, there is a choice of 33 different subjects. On the basis of marks secured by the candidates in this examination, a small number is called for interview and thereafter a final list of selected candidates is prepared. The petitioners in Civil Misc. Writ Petition No. 31362 of 2002 did not qualify in the preliminary examination conducted in the year 2002 and were not declared successful for the purpose of appearing in the Mains examination. In Civil Misc. Writ Petition No. 31179 of 2002, the petitioner Dharmendra Prasad Singh had qualified in the preliminary examination of 2001 and, as such, he was allowed to appear in the Mains examination. However, he did not qualify in the said examination to be called for interview.

3. It is averred in the writ petitions that the Commission applied a system of scaling to scale the marks awarded by the examiners who examined the copies. In this process of scaling the marks actually awarded by the examiners who examined the copies was completely changed, high marks of bright candidates were reduced and the low marks of poor and mediocre candidates were enhanced. The main ground for assailing the result of the examinations is that the same has not been prepared on the basis of actual marks awarded by the examiners but on altogether different marks which had been arrived at by a process of scaling.

4. In the counter-affidavit filed on behalf of Commission, it is averred that there had been constant pressure on the Commission to introduce the system of scaling as was being done by Union Public Service Commission. There are many subjects and large number of examiners which results in great deal of variation of standard in evaluating the answer books. In order to reduce the aforesaid variation in evaluation by different examiners, the scaling system was applied using the appropriate statistical techniques and the system is uniformly applied to all the candidates appearing in the examination. Before introducing the system of scaling, an in-depth study was done by a Committee consisting of three professors, who made their recommendation on 2nd September 1996. The Commission in its meeting held on 7th September, 1996, approved the recommendation and resolved to apply the formula of scaling and thereafter it was made applicable to P.C.S. (Preliminary) Examinations, 1996, and also in P.C.S. (Main) Examination. Thereafter, the Commission in its meeting held on 30th March, 1999, decided to apply the

scaling system in all the examinations.

5. The formula applied for scaling the marks is that given in the book Scaling Techniques written by V. Natarajan and K. Ganasekaran. The precise formula used is as under :

$$Z = \frac{\text{Assumed Mean} (X - M)}{\text{Assumed S.D.}}$$

Z is the Scaled Score

X is the Raw Marks or actual marks awarded by examiner

M is the Mean of Raw Marks of the group/subject (as the case may be)

S.D. is the Standard Deviation of Raw Marks of the group/subject (as the case may be)

Assumed Mean will be taken as Half of the maximum marks of the group/subject.

Assumed S.D. will be taken as 1/5th of the assumed mean.

If after scaling, the scaled marks are less than zero, the candidate will be given zero mark in that subject.

If after scaling, the scaled marks exceed the maximum mark, the candidate will be given the maximum marks in that subject.

In the preliminary examination, scaling will be done at the stage of optional paper and in the mains examination, scaling will be done of all the papers at examiner's level.

The merit will be determined after adding the scaled marks in each subject.

If the scaled score is in decimal, the same will be converted into whole number according to practice.

The standard deviation is calculated in the following manner.

If five candidates secure 20,25,32, 15 and 28 marks-

Mean marks of the group =

$$\begin{aligned} & \frac{20+25+32+15+28}{5} \\ &= \frac{120}{5} \\ &= 24 \end{aligned}$$

Actual Marks X	Deviation from Mean d= x-m	Square of Deviation d ²
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20	-4	16
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25	1	1
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32	8	64
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15	-9	81
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28	4	16
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Standard Deviation (d) = $\sqrt{d^2/n}$
=178

= $\sqrt{178/5}$

= $\sqrt{35.6}$

=5.96

6. It is important to note that for making any calculation in accordance with the above noted formula, the whole exercise is done examiner-wise. There are different examiners who examine the copies of various papers. Sri B.N. Singh, learned standing counsel for the Commission, has made a statement that approximately 300 copies are given to one examiner and since the number of candidates appearing in the same subject is often very large, the copies are given to several examiners. For finding out the Mean of the raw marks, the Mean of the marks awarded by only one examiner is determined. The Mean of all the candidates who appear in a particular paper is neither determined nor is taken into consideration. Similarly, the Mean of all the papers is neither determined nor is taken into consideration. There is no comparison of the marks of all the examiners who examine the various papers. The formula as applied by the Commission does not take care of the varying standards which may have been applied by different examiners but has sought to reduce the variation of the marks awarded by the same examiner to different candidates whose copies he had examined. The entire exercise of calculating the Mean marks and the standard deviation is done individually and separately for each examiner. The working of the formula was explained to the Court by Sri B.K. Singh, learned counsel for the Commission, which was issued by the System Analyst in U. P. Public Service Commission. He also made a statement that the scaling has been done with reference to each examiner and not subject-wise.

7. It may be mentioned here that Civil Misc. Writ Petition No. 32802 of 2001, Subhash Chandra Dixit v. U. P. Public Service Commission and Anr., was filed for quashing the result of the Civil Judge (Jr. Div.) Examination, 2000. This writ petition

was allowed by us on 3.10.2002 and the scaling of marks done by the Commission was held to be bad and the Commission was directed to declare the result afresh without applying any formula of scaling. In the rejoinder-affidavit filed in Civil Misc. Writ Petition No. 31179 of 2002, it has been averred that SLP No. 8598 of 2002 with SLP No. CC 8888 of 2002, Mita Kumari and Ors. v. U. P. Public Service Commission and Ors., was filed in the Hon"ble Supreme Court against the judgment and order dated 3.10.2002 of this Court and the same was rejected on 15.11.2002. A copy of order passed by Hon"ble Supreme Court has been filed as Annexure-RA 2 to the rejoinder-affidavit. Sri B.N. Singh, learned standing counsel for the Commission has admitted the aforesaid fact.

8. The formula applied by the Commission for scaling of marks in the Combined State/Upper Subordinate Examination, which is under challenge here, is exactly the same as applied in the Civil Judge (Jr. Div.) examination.

9. In Civil Misc. Writ Petition No. 32802 of 2001, Subhash Chandra Dixit v. U. P. Public Service Commission and Anr., learned counsel for the Commission had produced before the Court a chart showing the actual and scaled marks secured by the candidates who were amongst the first hundred in the merit list. In the judgment, we gave the position of actual marks, scaled marks, addition/subtraction in marks and the percentage of enhancement/subtraction to the marks actually secured by some of the candidates. Three tables, namely. Table A, B and C, were given showing the position of actual and scaled marks of the total marks secured in written examination, marks secured in Language-II paper and marks secured in Law-I paper respectively of some of the candidates. These are given in pages 3, 6 and 8 of the judgment. The glaring features of the result of scaling were noted below the tables and it is not necessary to reproduce the same here. Some of the anomalies occurring on account of scaling and how they were affecting the marks of the candidates were noticed on page 11 of the judgment and the same is being reproduced below :

"Table "A" given earlier demonstrates how the scaling done by the Commission has affected the marks awarded to the candidates by the examiners. Those who actually got 377 or 379 marks were enhanced to 545 marks respectively while a candidate who had actually secured 579 marks was reduced to 552. Thus, a lead of 200 marks secured by a far superior candidate was reduced to just 3 marks. A lead of about 149 marks secured by a candidate was completely reversed and the candidates securing lesser marks went higher and took a lead of a substantial number of marks. Table "B" which shows the marks of Language-II paper depicts the same position. This paper was of 40 marks. A large number of candidates had secured zero marks in this paper on account of the fact that they have absolutely no knowledge of Urdu language and are wholly ignorant thereof. However, the marks of those candidates were enhanced to 18. Thus, they have been awarded 45 per cent marks ($18 \times 100/40 = 45$). The marks of the candidates securing 31 or 34 marks were reduced to 27 and

30 respectively. Zero is zero. Zero multiplied by a million or a billion is zero and zero multiplied by infinity is zero. However, by the scaling done by the Commission, zero has been enhanced to 18 which means 45 per cent marks.

Someone not knowing Latin or Greek will get zero even in a simple examination of the said subjects. But if by a process of scaling, as has been done here by the Commission he is awarded 45 per cent marks, it will convey an impression that he has at least a workable or reasonable knowledge of the subject. This clearly demonstrates that the very purpose of holding the examination viz., to test a candidate's knowledge and ability is completely defeated by the scaling process."

10. It is important to note that there is no uniformity in the addition or subtraction of marks. As mentioned earlier, in Language-II paper (Urdu), the marks of those candidates who got zero were enhanced to 17 or 18, the marks of a candidate who had secured 37 marks was reduced to 29, the marks of candidates who had secured 25 remained the same, namely, 25. Three candidates each of whom had actually secured 23 marks were enhanced to 24, 26 and 28, respectively, and two other candidates who had each secured 18 marks were scaled to 30 and 26 respectively. (See serial Nos. 18, 21, 29, 35, 42 and 68 of Table "B"). The reason for this haphazard addition or subtraction in marks was analysed by us as under :

"The drastic and substantial alteration in the marks as a result of scaling has occurred on account of the fact that the Mean of the marks plays a major role in the formula applied for determining, scaled mark. As mentioned earlier, the Mean is determined by totalling or adding the marks secured by all the candidates examined by one examiner and dividing the same by the number of candidates. Again in calculating the standard deviation, the Mean of the marks plays a major role. Thus, if in a set of examination copies examined by one examiner majority have secured very poor marks and few bright candidates have secured very high marks, their marks will be considerably reduced as the Mean of the whole set or group will be less."

11. The reason why the formula applied by the Commission for scaling of marks was defective and its application will result in grave injustice to the candidates was given as under :

"The formula itself contemplates that impossible situations may arise. After scaling a candidate's marks may become less than zero or may get marks in minus. According to the formula he would be given zero mark. It also contemplates that after scaling the marks may exceed the maximum marks. Here he would be allotted the maximum marks. The purpose of holding a competitive examination is to judge the comparative merit of the candidates. The purpose is not to award him a division or the scores in passing a particular class like X or XII. Any formula which affects the actual marks secured by a candidate by taking Mean or average of the marks secured by all the candidates examined by one examiner cannot be used at all in

judging the comparative merit of a candidate. The scaling of marks done by the formula applied by the Commission affects or alters the actual marks secured by a candidate to a great degree by taking into account some kind of a Mean or average of the group and thus they cease to be a true guide for assessing their comparative merit. The scaling of the marks, which completely vitiates the result of the examination, has no rational basis and therefore cannot be permitted in any manner.

Another fallacy which lies in the process of scaling is that the same is done examiner-wise only. It is the marks awarded by one single examiner to a group of candidates, whose copies he has examined, which are scaled. This is done by recourse to a formula which takes into account the Mean or average of the marks secured by that particular group. There can be a strict examiner who awards less marks or a liberal examiner who awards comparatively more marks but in normal course an examiner will apply the same yardstick to the entire group whose copies he has examined. If the same examiner awards very poor marks to some candidates and awards very high marks to some others, he does so consciously applying his own yardstick, which cannot be faulted. The scaling formula does not take into consideration the average or Mean of all the candidates in one particular paper but takes Mean of only the group of candidates which have been examined by one single examiner. The reduction or enhancement of marks of candidates only on account of the fact that the average or Mean of the marks secured by the group (viz. the whole lot examined by one examiner) in which they fall is different has absolutely no basis and cannot be accepted by any process of reasoning. There can always be some outstanding boys and some very poor boys in one group which were examined by a single examiner. If per chance the average or Mean of the whole group is around 50 per cent, the marks secured by the outstanding candidate who may be of the calibre of 80 or 90 per cent could be drastically reduced and the marks secured by the poor candidate who may be of the calibre of around 10 per cent would be considerably enhanced. This kind of a system can have no place in an examination which is conducted for judging the comparative merit of a candidate."

12. Another reason given in the judgment for showing the inherent contradiction in scaling the marks in the manner in which it is being done by the Commission was as under :

"It may be accepted that there may be variation in standard of evaluation of answer books by different examiners. There can also be wide disparity in the marks secured by the candidates in different subjects on account of unusually easy or simple paper having been set in one subject and unusually difficult paper having been set in another subject. In such a case the candidates opting for the subject in which the paper was easy may get advantage. But the system of scaling adopted here does not obviate anyone of the aforesaid two contingencies. There is no comparative evaluation of marks awarded by different examiners of the same subject to bring

them to a common scale. Similarly, there is no comparative evaluation of marks of candidates who have opted for different subjects."

13. It is the case of the respondent-Commission that the scaling of marks is done on the basis of a Statistical formula. In the judgment of Subhash Chandra Dixit (supra), we examined as to what is Statistics and what is its purpose. After referring to The World Book Encyclopaedia (Vol. 18, published in 1990 by World Book, Inc.), Encyclopaedia Americana (Vol. 25-1986 Ed. page 629) and Encyclopaedia Britannica, (Vol. 28-1985 Ed. page 230), we drew the following conclusion :

"It will thus be seen that the statistics is the science of obtaining and analysing quantitative data in order to make reliable inference in the face of uncertainties. It requires calculation and tabulation of numerical data and determining the characteristics of the particular data observed. The statistical data can never be applied to individual cases, nor the merit or worth or potential of the individuals can be determined on its basis. The purpose of statistics is entirely different and is used for taking policy decisions with regard to a large group or segment of population or the matter under consideration,"

14. Whether a statistical formula can be applied to individual cases where the facts are known was also considered and it was held as under :

"Application of statistical data to individuals may result in gross absurdities. In India 2002, published by the Ministry of information and Broadcasting, Government of India (on page 292) the per capita income in the country in the year 1999-2000 is mentioned as Rs. 16,047. Using the said data, can it be said that the income of every Indian was Rs. 16,047 in that year? Even applying a deviation of fifty per cent on either side, it will come to Rs. 8,000 to Rs. 24,000 per annum. There are many Indians whose income is far less and there are some whose income is in crores. Similarly, regarding life expectancy it is mentioned on page 205 that it has risen from 37.1 years (male) and 36.2 years (female) in 1951 to 62.3 years (male) and 65.27 years (female) in 1999. Can this data be used to say that a particular Individual female will necessarily live upto the age of 65 years and will necessarily not live beyond that age? A deviation of 25 percent on either side will mean 49 to 81 years, which would make a world of difference for the concerned individual. This data can no doubt be used in the face of uncertainty, namely, for assessing the life expectancy in the case of accidental death or in laying down the health policy by the Government. But it can never be used where the facts and figures are known as in the case of competitive examination where the marks secured by each candidate is known with exactitude. Therefore, to apply any principle of statistics to scale the marks of the candidates and then to determine their comparative merit would be wholly wrong and cannot be countenanced in any manner."

15. We also referred to a book "Facts From Figures" written by M. J. Moroney, a Fellow of the Association of Incorporated Statisticians and of the Royal Statistical

Society, where he said in the opening lines of the 1st Chapter that there is more than a gem of truth in the suggestion that, in a society where statisticians thrive, liberty and individuality are likely to be emasculated. The table of marks in the case of Subhash Chandra Dixit (supra) clearly demonstrated that by the statistical formula applied by the Commission for scaling of marks a lead of 202 marks secured by a candidate was reduced to 6-7 marks only or a lead of 97 marks secured by a candidate over another pushed him below by 27 marks. The examination conducted by Commission is a competitive examination where a difference of even 1 mark makes a world of difference but the scaling formula drastically alters the marks, virtually scaling the fate of some of the bright candidates.

16. The challenge in Civil Misc. Writ Petition No. 31362 of 2002, Subhash Chandra Pandey and Ors. v. State of U. P. and Anr., is to the system of scaling adopted in Preliminary Examination, 2002, in this examination, a candidate has to appear in a compulsory subject known as general study which is of 150 marks and in an optional subject having 300 marks. There is a choice of 22 different optional subjects. Sri R.N. Singh, learned senior advocate, assisted by Sri B.N. Singh, learned standing counsel for the Commission, has made a statement that both the papers are of objective type. The question paper is of multiple choice containing four answers, out of which only one is correct and the candidate is required to give answer by blackening with pencil one of the four options. The answer-sheet is placed on a computer for evaluation. Even here, the marks obtained by a candidate in optional paper are scaled by the formula given in the earlier part of the judgment. It is extremely important to note that no human being comes into picture in this kind of evaluation of answer-sheets and the whole thing is done by a single computer. The main reason given by the Commission for applying the system of scaling is that there is variation in standard of different examiners who award different marks on the same kind of answers. Such a situation cannot arise where the question paper is of objective type and the answer-sheets are evaluated by a computer and not by human beings. As already noticed earlier, there is no comparison of marks of one subject with that of another. The only submission raised by learned counsel for the Commission to apply the system of scaling in Preliminary examination is that there can be variation in standard in different optional papers. In our opinion, the contention raised has no substance. The Legislature has made adequate safeguards for this eventuality by enacting the U. P. State Public Service Commission (Regulations of Procedure) Act, 1985 (hereinafter referred to as the Act). Chapter IV of the Act deals with competitive examination. Section 9 of the Act provides for appointment of paper-setters, moderators and valuers. Section 10 of the Act lays down that every question paper shall be set by three different paper-setters who shall not belong to the same place and the moderators shall moderate all three question papers out of which one will be chosen. The purpose of setting of every question paper by three different paper-setters and thereafter their moderation by moderators is to eliminate the

kind of a situation suggested by learned counsel for the Commission, namely, variation in standard of different optional papers. We are, therefore, of the opinion that there is absolutely no justification for adopting any process of scaling in the Preliminary examination which is of objective type.

17. In Civil Misc. Writ Petition No. 31179 of 2002, Dharmender Prasad Singh v. Public Service Commission and Anr., the challenge is to the system of scaling adopted in the Main examination. In this examination, there are 4 compulsory subjects and 2 optional subjects having 2 papers each. The main reason given for adopting a system of scaling is that the difficulty level of papers of different optional subjects and the making standard (personality) of the examiners within the same subject and others may vary and to ensure the proportionate participation of candidates having knowledge of different optional subjects in the State services. It is averred in the counter-affidavit that if scaling system is not applied, the candidates who had offered such subjects of which the question paper was easy or the award of marks was liberal may be selected ignoring capable candidates of other optional subjects which had tough papers or where hard marking was done by the examiners.

18. The reasons given for applying the system of scaling do not appeal at us. Sections 9 and 10 of the Act, which mandate setting of each question paper by three different paper setters and thereafter their moderation by moderators, are meant to take care of a situation that the question paper should neither be very easy nor very difficult and a uniform and proper standard is maintained. It is admitted by learned counsel for the Commission that the Commission is strictly following the mandate of Sections 9 and 10 of the Act. As already mentioned in the earlier part of the judgment, in the process of scaling of a candidate's marks in accordance with the formula, the whole exercise is done examiner-wise. For finding out the Mean of the Raw Marks, the Mean of the marks awarded by only one examiner is determined. The Mean of all the candidates who appeared in a particular paper is neither determined nor is taken into consideration. There is no comparison of marks of all the examiners who examined various papers. The formula as applied by the Commission does not take care of the varying standard which may have been applied by different examiners but seeks to reduce the variation of the marks awarded by the same examiner to different candidates whose copies he had examined. In normal course, an examiner will apply the same yardstick to the entire group whose copies he has examined. If the same examiner awards very poor marks to some of the candidates and awards very high marks to some others, he does so consciously applying his own yardstick which cannot be faulted. Similarly, it does not in any manner take care of the situation where the paper of one subject may be unusually simple and that of another subject unusually difficult thereby giving advantage to some candidates and a positive disadvantage to others. Thus, the system of scaling done by the Commission appears to be wholly wrong.

19. Sri R.N. Singh, learned senior counsel for the Commission, has submitted that in exercise of power conferred by the U. P. State Public Service Commission (Regulation of Procedure and Conduct of Business) Act, 1974, the Commission has made the U. P. Public Service Commission (Procedure and Conduct of Business) Rules, 1976. The 1974 Act has been repealed and has been replaced by 1985 Act, and Section 14 (1) (ii) of this Act saves the aforesaid Rules. Learned counsel has referred to Rule 51, which reads as under :

"51. The mark-sheets so obtained shall be opened on the last day of interview and immediately thereafter the marks of interview/personality test shall be added to the marks obtained by the candidates in the written examination. Thereafter on the basis of the total so obtained, the merit list shall be prepared and placed before the Commission for final declaration of the result :

Provided that the Commission may with a view to eliminating variation in the marks awarded to candidates at any examination or interview, adopt any method, device or formula which they consider proper for the purpose."

20. Sri Singh has submitted that the Commission can adopt any method, device or formula which it considers proper for the purpose of eliminating variation in marks awarded to the candidates and, therefore, the scaling of marks done by the Commission is perfectly valid. It is difficult to accept this submission. Rule 51 says that the merit list shall be prepared after adding the marks of interview/personality test with the marks secured by the candidates in the written examination. The expression that the "marks obtained by the candidates in the written examination" means the actual marks awarded by the examiner. The proviso cannot completely change the meaning or import of the main provision.

21. Chapter IV of the Act specifically deals with Competitive Examination. Section 8 refers to Controller of Examination who is responsible for making all arrangements for the conduct of the examination and also for maintaining and ensuring secrecy thereof. Section 9 deals with paper-setters, examiners, moderators and valuers. Section 10 lays down that each paper shall be set by three different paper-setters who shall not belong to the same place and also for moderation of each of such question papers. If the Legislature wanted that there should be scaling of the marks awarded to the candidates. It would have made a specific provision to that effect in the Act itself. Section 11 of the Act which confers rule making power upon the Commission finds place in Chapter VI, which is headed as Miscellaneous and it is confined to regulation of its procedure. The scheme of the Act does not indicate that the Commission can make a rule which has the effect of completely altering the marks awarded by the examiners.

22. Sri R.N. Singh has strenuously urged that in Civil Misc. Writ Petition No. 26323 of 2001, Sumit Kumar v. U. P. Public Service Commission, decided on 16.8.2001, a Division Bench of this Court had upheld the system of scaling and, therefore, the

said judgment is binding upon this Bench and it cannot take a different view. He has also submitted that system of scaling of marks is adopted by Union Public Service Commission and the said system has been upheld by the Courts. It may be mentioned here that there is a bald assertion in the counter-affidavit that a system of scaling is adopted by Union Public Service Commission. No material has been placed on record to show what is the formula used and in what manner the scaling system is applied. Therefore, the mere assertion in the counter-affidavit to that effect can be of no assistance.

23. Basically, two findings have been recorded in the judgment of this Court in Sumit Kumar v. U. P. Public Service Commission. One finding is that the formula by which the scaling is done seems to be a scientific one and the counsel for the petitioners could not point out any infirmity therein. The other finding is that the object of scaling is to ensure representation in State services of candidates having studied different subjects.

24. The formula applied by the Commission for scaling the marks is given in a book "Scaling Techniques" written by V. Natarajan and K. Ganasekaran. No material has been placed before us to show that leading scientists or top authorities in the field of education have, after critical examination of the formula, found it to be a correct scientific formula which may be applied in a competitive examination. No authoritative material or book or scientific journal of repute has been shown to us wherein the formula in question may have been referred or may have been examined. The report or opinion of the three professors of statistics relied upon by the Commission neither contains any data nor any reasons. The Judges do not possess the expertise to certify a formula as a scientific formula. With profound respects to the learned Judges who decided the case of Sumit Kumar v. U. P. Public Service Commission, it is difficult to accept the view taken by them that the formula is a scientific one as neither any reasons were given for holding so nor its impact in actual practice was examined.

25. Any scientific formula by itself is no guarantee that it is the correct formula or that if applied in a given situation, it will lead to a correct result. Merely because a formula is a scientific one, it cannot be applied to every kind of factual situation nor will it lead to a correct result. In the case of Sumit Kumar v. U. P. Public Service Commission, the scaled marks and the actual marks secured by the candidates were not produced before the Court. The Court got absolutely no opportunity to examine as to how the formula is operating on a practical plain. In the case of Subhash Chandra Dixit (supra), decided by us, we have shown from the chart of marks produced before us that the application of formula leads to gross distortion of marks which has absolutely no rational basis. It is not necessary for us to repeat what we have demonstrated in the judgment of Subhash Chandra Dixit v. U. P. Public Service Commission, by showing the actual marks awarded by the examiners and the scaled marks of different candidates. A formula by which zero becomes 17

for some candidates and 18 for others cannot be said to be a scientific formula as even an ordinary student of Mathematics knows that zero multiplied by even a million or billion is zero. A formula which has the effect of scaling the same mark 23 actually awarded to three candidates into 24, 26 and 28 for different candidates can hardly be said to be a scientific formula. A formula which makes 50 as 114 and 57 and 125, resulting in increase by as much as 119 and 128 per cent can by no stretch of imagination be said to be a scientific formula. A scientific formula must be exact and precise and cannot lead to this kind of varying results. There is absolutely no material either in the record of the present petitions or anywhere else that the application of the formula in the manner done by the Commission was ever examined to see how the same is operating on a practical plain and how it is completely distorting the marks actually awarded to the candidates,

26. Merely dubbing the formula as a scientific one does not mean that it must be applied in every situation without realising the impact thereof in actual practice. Scientists all over the world spend great time, energy and money to produce new drugs but until they are absolutely sure, after repeated tests and examinations, that the drug has proved to be effective without any side-effect the same is not prescribed to patients. Scientists and engineers put in years of hard labour and energy for producing new electronic devices but until they are found to be really effective after repeated trials in varying and hard conditions, they are not put to actual use. The leading manufacturer of aircrafts (civil or military) first subject their engines and aircraft body to tests in every conceivable hard and difficult situation and only after they pass the tests, they are put in operation. Here no such attempt has been made at any earlier stage to examine the impact of the formula on a practical plain and without doing that and realising the havoc played by it in completely distorting the marks of the candidates in a most atrocious manner, the same has been applied by Commission. This aspect has not even been touched in the judgment of Sumit Kumar.

27. The observation made in the aforesaid judgment of Sumit Kumar that the object of scaling is to ensure representation in State services of candidates having studied different subjects is not supported by any statutory provision. There is no provision either in the Act or in any service rule like U. P. Civil Service (Executive Branch) Rules that representation in Services should be given to candidates having studied different subjects. The idea of holding a competitive examination is to select the best person to carry on the duties of the job for which he is selected like Executive or Police or Accounts service. It is not like a Parliament or Assembly where there has to be representation of every constituency. Learned counsel for the Commission has not placed before us any statutory provision, rule, Government order or even executive instructions laying down that there should be representation in State services of candidates having studied different subjects.

28. In Sumit Kumar (supra), no principle of law had been laid down nor any provision of law was interpreted. A decision is binding not because of its conclusion but in regard to its ratio and the principle laid down therein. See [B. Shama Rao Vs. The Union Territory of Pondicherry](#). Ratio decidendi is defined as a statement of law applied to the legal problems raised by the facts as found upon which the decision is based. See Dalbir Singh v. State of Punjab. AIR 1979 SC 1384 and Qualcast (Wolverhampton) Ltd. v. Haynes 1959 AC 743. We do not find any statement of law in the aforesaid judgment. We are not deferring from any principle of law which may have been laid down in the said case. Therefore, there is no occasion for making a reference to a larger bench.

29. In the present case, the Commission had completely altered and changed the marks which had been awarded to the candidates by the examiners by a process of scaling. As shown earlier, the scaling done is destructive of the examination process and the scaled marks depict an altogether artificial picture wholly different from the real assessment of the candidates done by the expert examiners who had occasion to thoroughly examine answers given by them. The scaling is also not justified or supported by any valid statutory provision. Therefore, the result of the examination prepared after scaling the marks cannot be sustained and must be set aside.

30. After hearing learned counsel for the parties at considerable length and having given our careful consideration to the submissions made, we are of the opinion that there is no reason to take a different view in the present case from that in Subhash Chandra Dixit v. U. P. Public Service Commission.

31. In the result, both the writ petitions are hereby allowed. The result of U. P. Combined State/Upper Subordinate Services Examination, 2001 (Mains) and U. P. Combined State/Upper Subordinate Services Examination, 2002 (Preliminary) are hereby quashed. The U. P. Public Service Commission is directed to declare the result of the aforesaid examinations on the basis of actual marks secured by the candidates without applying the formula of scaling.

32. We have extensively referred to the Judgment delivered by us earlier in Civil Misc. Writ Petition No. 32802 of 2001, Subhash Chandra Dixit v. U. P. Public Service Commission, decided on 3.10.2002. While issuing certified copy of this judgment, certified copy of the judgment in the aforesaid case shall also be annexed with this Judgment and the parties applying for copy will have to pay fee for both the judgments.

N.K. Mehrotra, J.

I have occasion to read the opinion expressed by brother G. P. Mathur, J., (Acting Chief Justice).

34. On pages 16 and 17, brother G. P. Mathur, A.C.J., has referred Rule 51 of U. P. Public Service Commission (Procedure and Conduct of Business) Rules, 1976 and

after referring the same has drawn a conclusion that the merit list shall be prepared after adding the marks of the interview/personality test with the marks secured by the candidate in the written examination and the expression that the "marks obtained by the candidate in the written examination", means the actual marks awarded by the Examiner. This view is further cemented by the provision of Rule 15 (4) of U. P. Civil Services (Executive Branch) Rules, 1982, which deal with the cadre for which the impugned examination was held. Rule 15 (4) of these Rules provided that the Commission shall prepare the list of candidates, in order of their proficiency and aggregate marks obtained by each candidate at the written examination and the interview. Proficiency means the expertness in the subject. In my opinion. Rule 15 (4) cannot be complied by applying the process of scaling in the preparation of merit.

35. Brother G. P. Mathur, A.C.J., has further opined on page 20 that the impact of the formula of scaling has not been examined at any earlier stage and the impact of the formula is that it distorts the marks actually awarded to the candidate. Agreeing with this view, I want to further emphasise that distortion in the marks actually obtained by the candidate is to the extent that it affects the merit of the candidate in a competitive examination of the prestigious State Civil Services. After the earlier judgment given by this Court, the matter was referred to one so-called expert Shri B.S. Yadav by the Commission and his opinion has been filed before us. Shri B.S. Yadav has admitted that the ranks of the candidate based on their raw scores will be mostly affected after considering the scaled scores. According to him, it is in the preamble of scaling that raw scores are not the true representatives to their true ability, mostly because of the differential difficulty level of the question papers of different subjects and the pattern of awarding marks by different examiners for the same papers. The reason given by the expert is not acceptable to us and it is an absurdity to place this reason for applying the formula of scaling in the preliminary examination where the objective type questions are set in the examination papers as has been described by brother G. P. Mathur, J. In the body of the Judgment.

36. After further cementing the opinion of the brother G. P. Mathur, J. (Acting Chief Justice) by aforesaid reasons, I am in complete agreement with the opinion expressed and the order passed by brother G. P. Mathur, A.C.J., (Acting Chief Justice).