

A SUNIL KUMAR & ORS. ETC. ETC.

v.

THE BIHAR PUBLIC SERVICE
COMMISSION & ORS. ETC. ETC.

B (Civil Appeal Nos. 8606-8610 Of 2015)

OCTOBER 14, 2015

[**RANJAN GOGOI AND N.V. RAMANA, JJ.**]

C *Service law: Competitive Examination – Whether the*
D *Court in **Sanjay Singh** had laid down any principle or direction*
E *regarding the methodology that has to be adopted by the*
F *Commission while assessing the answer-scripts of the*
G *candidates in a public examination and specifically whether*
H *any such principle or direction has been laid down governing*
public examinations involving different subjects in which the
*candidates are to be tested – Held: This Court in **Sanjay***
***Singh** could not be understood to have laid down any binding*
principle of law or directions or even guidelines with regard
to holding of examinations; evaluation of papers and
declaration of results by the Commission – What was held,
was that scaling is a method which was generally unsuitable
to be adopted for evaluation of answer papers of subjects
common to all candidates and that the application of the said
method to the examination in question had resulted in
*unacceptable results – **Sanjay Singh** did not decide that to*
such an examination i.e. where the papers are common, the
system of moderation must be applied and to an examination
where the papers/subjects are different, scaling is the only
available option – The decision, therefore, has to be
understood to be confined to the facts of the case, rendered
upon a consideration of the relevant Service Rules
prescribing a particular syllabus.

Judicial review: Public Service Commission – Decisions by – Scope of interference – Held: In the instant case, absence of plea of malafide and uniform application of principles adopted by the Commission – Not an appropriate case for exercise of power of judicial review.

Dismissing the appeals, the Court

HELD: 1. In the judgment *Sanjay Singh*, this Court was considering the validity of the selections held for appointment in the U.P. Judicial Service on the basis of a competitive examination in which the Rules prescribed five (05) papers all of which were compulsory for all the candidates. There is no dispute that the U.P. Public Service Commission in the said case had scaled down the marks awarded to the candidates by following the scaling method. This Court, after holding that the Judicial Service Rules which governed the selection did not permit the scaled down marks to be taken into consideration, went into the further question of the correctness of the adoption of scaling method to an examination where the papers were compulsory and common to all the candidates. This Court in *Sanjay Singh* could not be understood to have laid down any binding principle of law or directions or even guidelines with regard to holding of examinations; evaluation of papers and declaration of results by the Commission. The decision, therefore, has to be understood to be confined to the facts of the case, rendered upon a consideration of the relevant Service Rules prescribing a particular syllabus. [Paras 14, 20] [1080 D - G; 1084 C - D ; G]

2. The requirement of adoption of moderation of marks to a particular kind of examination and scaling to others are, at best, opinions, exercise of which requires an in-depth consideration of questions that are more

A suitable for the experts in the field. Holding of public examinations involving wide and varied subjects/ disciplines is a complex task which defies an instant solution by adoption of any singular process or by a strait jacket formula. Not only examiner variations and variation in award of marks in different subjects are issues to be answered, there are several other questions that also may require to be dealt with. Variation in the strictness of the questions set in a multi-disciplinary examination format is one such fine issue that was coincidentally noticed in *Sanjay Singh*. A conscious choice of a discipline or a subject by a candidate at the time of his entry to the University thereby restricting his choice of papers in a public examination; the standards of inter subject evaluation of answer papers and issuance of appropriate directions to evaluators in different subjects are all relevant areas of consideration. All such questions and, may be, several others not identified herein are required to be considered, which questions, by their very nature should be left to the expert bodies in the field, including, the Public Service Commissions. The fact that such bodies including the Commissions have erred or have acted in less than a responsible manner in the past cannot be a reason for a free exercise of the judicial power which by its very nature will have to be understood to be, normally, limited to instances of arbitrary or *malafide* exercise of power. In the instant case, the contempt proceedings against the Public Service Commission for violation of order dated 26th August, 2011 in C.W.J.C. NO.3892 of 2011 had failed. The Public Service Commission made all attempts to gather relevant information from the Union Public Service Commission and other State Public Service Commissions to find out the practice followed in the other States. The information received was fully

discussed in the light of the particulars of the examination in question and thereafter a conscious decision was taken by the resolution dated 15th January, 2013, details of which have been already extracted. In the light of the above and what has been found to be the true ratio of the decision in *Sanjay Singh*, it cannot be held that in the present case the action taken by the Bihar Public Service Commission deviated either from the directions of the High Court (dated 26th August, 2011 in C.W.J.C. No. 3892 of 2011) or the decision of this Court in *Sanjay Singh*. Also, the absence of any plea of *malafide* and the uniform application of the principles adopted by the Commission by its resolution dated 15th January, 2013 would lead to the conclusion that the present would not be an appropriate case for exercise of the power of judicial review. The absence of reasons in the said resolution cannot justify such interference when the decision, on scrutiny, does not disclose any gross or palpable unreasonableness. [Paras 21, 22] [1084 H; 1085 A-H, 1086 A-D]

Sanjay Singh and Anr. vs. U.P. Public Service Commission, Allahabad and Anr. (2007) 3 SCC 720: 2007 (1) SCR 235; U.P. Public Service Commission vs. Subhash Chandra Dixit (2003) 12 SCC 701: 2003 (5) Suppl. SCR 210 – referred to.

Case Law Reference

2007 (1) SCR 235 referred to. Para 4

2003 (5) Suppl. SCR 210 referred to. Para 17

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 8606-8610 of 2015.

From the Judgment and Order dated 03.01.2014 of the High Court of Judicature at Patna in Civil Writ Jurisdiction Case Nos. 9674, 9574, 8331, 8554, 8554 of 2013 and

A Miscellaneous Jurisdiction Case No. 2880 of 2013 in Civil Writ Jurisdiction Case NO. 3892 of 2011.

With C. A. Nos. 8611 and 8612 of 2015.

B P. P. Rao, Basava Prabhu S. Patil, Sr. Advs., Ravi Chandra Prakash, Durga Dutt, Purushottam S. Tripathi, Mukesh Kr. Singh, Swarenendu Chatterjee, M. P. Srivignesh, Ananya Sarkar, Sanjeeb Panigrahi, Ranjan Kumar, O. P. Bhadani, Rakesh Kumar Singh, Ashok Anand, Chinmay Deshpande, Advs. for the Appellants.

C Dr. Rajeev Dhawan, Ratnakar Dash, Arvind Varma, Sr. Advs., Navin Prakash, Meetu Singh, Bhumika Chowdary, Kabir Ghosh, Gopal Singh, Manish Kumar, Varsha Poddar, H. P. Sahu, K. K. Jaipurkar, Quaiser Ali, Aditi Kochhar, Kopal Shrivastava, Abhishek Choudhary, Atulesh Kumar, Gaurav Kr., Anurag Ojha, Satya Mitra, Shekhar Kumar, Rajeev Narayan, Janme Joy, Mohd. Fuzail Khan, Shefali Jain, Anil Kumar Tandale, Kulbir Singh Malik, Dr. Sushil Balwade, Neeraj Kr. Gupta, Anil Kumar, Advs., for the Respondents.

E The following Judgment of the Court was delivered by

RANJAN GOGOI, J. 1. Leave granted.

F 2. Applications for Impleadment/ Intervention are allowed.

G 3. The refusal of the High Court to interfere with the result of the 53rd to 55th Combined (Mains) Competitive Examinations, 2011 held by the Bihar Public Service Commission (hereinafter referred to as "the Commission") in May-June, 2012 is the subject matter of challenge in the present appeals.

H 4. The principal basis on which interference of the High Court was sought is that in finalizing the results of the Examination the Commission had moderated the marks

awarded by the examiners who had scrutinized the answer- A
sheets of the candidates instead of scaling down the said
marks which process was required to be undergone in view of
the fact that the examinations, so far as the optional papers
are concerned, were in different subjects. It is contended that
the course adopted was contrary to the earlier order of the B
High Court dated 26th August, 2011 passed in a proceeding
registered and numbered as C.W.J.C. No.3892 of 2011
besides being contrary to the law laid down by this Court in
Sanjay Singh and Another Vs. U.P. Public Service C
Commission, Allahabad and Another¹.

5. To appreciate the first contention advanced the operative
part of the order dated 26th August, 2011 passed by the High
Court in the earlier writ petition i.e. C.W.J.C. NO.3892 of 2011
may be reproduced hereinbelow: D

“16. In the result, the writ petition is allowed. Respondent
Nos. 2 and 3 would be well-advised to frame Rules, may
be after supplanting the existing Rules with respect to
conduct of examinations, incorporating therein the system
of moderation, as well as the system of scaling of raw E
marks. The Commission shall draw guidelines from the
judgment of the Supreme Court in *Sanjay Singh Vs.*
U.P.PSC (supra), as well as the Rules of the Union Public
Service Commission, and other Public Service F
Commissions, etc. This Court will be pleased if the entire
process is completed within a period of six months from
today. Till then, the judgment of the Supreme Court in
Sanjay Singh (supra), will guide the affairs of the G
Commission, with respect to all the examinations where
the candidate has the choice of optional subjects, in so
far as these two concepts are concerned.”

6. It is contended that the method adopted i.e. moderation H

¹(2007) 3 SCC 720

A is in clear breach of above directions issued by the High Court in its earlier order which is also between the same parties. No deviation, therefrom, by the Public Service Commission was permissible.

B 7. Insofar as the decision in **Sanjay Singh** (supra) is concerned, it is urged that this Court had clearly and categorically held the system of moderation is applicable only to cases where the candidates take a common examination i.e. where there are no optional subjects and all the papers in
C which the candidates appear are the same. In a situation where the subjects are different, according to the learned counsel, it has been held in **Sanjay Singh** (supra) that it is the scaling method which has to be upheld and in such situations the system of moderation would not be relevant. As the Combined
D Civil Services Examination held by the Public Service Commission involved taking of examination by the candidates in different subjects/papers, the results declared are vitiated as the same has been finalized by following the moderation
E method. This, in short, is the plea advanced on behalf of the appellants.

8. In reply, it is urged on behalf of the Commission that the format format of the Civil Services Examination is covered by
F the Bihar Civil Service (Executive Branch) and the Bihar Junior Civil Service (Recruitment) Rules, 1951. Appendix 'D' thereto lays down the syllabus for the combined competitive examination. It is urged that apart from 4 (four) compulsory papers, the optional papers are divided into four categories/
G groups i.e. Groups 'A', 'B', 'C' and 'D'. While Group 'A' deals with Literature, Group 'B' deals broadly with Humanities subjects whereas Group 'C' deals with Law and Public Administration; Group 'D' deals with Science papers/subjects. Under the Rules, apart from the compulsory papers, a
H candidate has to take three optional papers out of which not

more than two papers can be from any one single group. It is pointed out that the above position must be kept in mind while scrutinizing the action taken by the Commission after the High Court had passed the order dated 26th August, 2011 in C.W.J.C. No.3892 of 2011. It is urged that after the said order was rendered the Commission had sought information from the Union Public Service Commission as well as from certain State Public Service Commissions like Karnataka and Maharashtra. The entire issue including the information received from the Union Public Service Commission and the State Public Service Commissions, as referred to above, was discussed in detail in a meeting of the Commission held on 15th January, 2013 and a resolution was adopted that for evaluation of the answer-sheets of the Combined Competitive Examination so as to achieve uniformity in the results, the following procedure would be adopted.

(i) The Chief Examiner acts as a coordinator and guide for the Examiners working under him and is also responsible for objectivity and uniformity in evaluation done by different Examiners.

(ii) Before the start of evaluation of any subject/ paper, the Chief Examiner/ Examiners shall hold a in-depth, detailed and minute discussion with the Examiners with regard to all questions of the question paper and with a purpose of having uniformity in evaluation, a clear-cut standard of evaluation shall be explained with regard to through and prescribed answer of each question and process of marking.

(iii) The Chief Examiner shall must examine all answer-books getting marks of more than 60% (sixty percent) and below 30% (thirty percent). At least 15% of evaluated answer-books shall be examined by him.

A 8. After due consideration of above facts, it is the opinion
of the Commission that the uniformity in evaluation has been
ensured by adopting the method of moderation in the evalua-
tion of answer-books of different subjects/papers of 53rd to 55th
B Combined Joint (Main) Competitive Examinations. Therefore,
further actions be taken for publication of result of the said
examinations.”

9. It may be also pointed out in this regard that the gist of
the information received from the Union Public Service
C Commission and the State Public Service Commissions have
been recorded in the said resolution which is, *inter alia*, to the
effect that neither the Commission nor the Karnataka or
Maharashtra Public Service Commissions had adopted or
adopts the system of scaling.

D 10. Insofar as the order of the High Court dated 26th August,
2011 in C.W.J.C. NO.3892 of 2011 is concerned, it is pointed
out that with regard to non-implementation of the said directions
a contempt petition was filed before the High Court which was
E dismissed by order dated 16th October, 2012. It is urged that
on a cumulative consideration of the format of the examination;
the practice followed by the Union Public Service Commission
and different State Public Service Commissions and other
relevant facts the Bihar Public Service Commission, by its
F resolution dated 15th January, 2013, had taken a conscious
decision details of which have been extracted above. The
Commission also specifically denies that this Court in **Sanjay**
Singh (supra) had laid down any principle of law to the effect
that in a public examination involving different subjects the
G scaling method has to be necessarily adopted to bring
uniformity in the results. It is pointed out that this Court had
merely observed that scaling is one of the available methods
which could be applied in such situations i.e. where the
H examination is in different subjects. It is also pointed out that
in **Sanjay Singh** (supra) the difficulties and preconditions

necessary in the practical application of the principle of scaling down had also been noticed. On the basis of the said facts, it is submitted that there will be no scope for this Court to understand that any binding principle, direction or guidelines has been laid down in **Sanjay Singh** (supra) so as to bind the Commission to any specific course of action while conducting a public examination, the format of which prescribes different subjects.

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11. It is further contended on behalf of the Commission that being an autonomous body the Commission would be authorized and competent to take its independent decision, of course, having due regard to judicial directions and pronouncements and so long such decisions are taken bona fide and are not arbitrary the scope of judicial review to scrutinize the decisions of the Commission would be circumscribed. In this regard it is also pointed out that, admittedly, it is not the case of the appellants – writ petitioners that any mala fide is attributable to the Public Service Commission in the conduct of examination and the declaration of the results.

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

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A present case.

13. Before adverting to the aforesaid issue we may briefly indicate our views with regard to the order of the High Court dated 26th August, 2011 in CWJC No. 3892 of 20911 on the basis of which the action of the Commission is sought to be faulted. Reading the operative directions, reproduced hereinabove, we fail to find any direction of the High Court which would bind the Commission to any particular course of action. There is sufficient discernible flexibility in the said order leaving it open for the Commission to modulate its action as the facts surrounding the particular examination(s) that is involved may require.

14. We have read and considered the judgment in **Sanjay Singh** (supra). In the said case, this Court was considering the validity of the selections held for appointment in the U.P. Judicial Service on the basis of a competitive examination in which the Rules prescribed five (05) papers all of which were compulsory for all the candidates. There is no dispute that the U.P. Public Service Commission in the aforesaid case had scaled down the marks awarded to the candidates by following the scaling method. This Court, after holding that the Judicial Service Rules which governed the selection did not permit the scaled down marks to be taken into consideration, went into the further question of the correctness of the adoption of scaling method to an examination where the papers were compulsory and common to all the candidates. In doing so, it was observed as follows:

"The moderation procedure referred to in the earlier para will solve only the problem of examiner variability, where the examiners are many, but valuation of answer-scripts is in respect of a single subject. Moderation is no answer where the problem is to find inter se merit across several subjects, that is, where candidates take examination in

different subjects. To solve the problem of inter se merit across different subjects, statistical experts have evolved a method known as scaling, that is creation of scaled score. Scaling places the scores from different tests or test forms on to a common scale. There are different methods of statistical scoring. Standard score method, linear standard score method, normalized equipercntile method are some of the recognized methods for scaling.”
(Para 24)

It was furthermore observed:

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

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

“45. We may now summarize the position regarding scaling thus :

- (i) Only certain situations warrant adoption of scaling techniques.
- (ii) There are number of methods of statistical scaling,

A some simple and some complex. Each method or system has its merits and demerits and can be adopted only under certain conditions or making certain assumptions.

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

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

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

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

F 16. Moreover, in para 46, this Court observed that the materials placed before it did not disclose that the Commission or any Expert Body had kept the above factors in mind for deciding to introduce the system of scaling. In fact, in the said paragraph this Court had observed as follows:

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

H 17. In *Sanjay Singh* (supra) an earlier decision of this

Court approving the scaling method i.e. **U.P. Public Service Commission Vs. Subhash Chandra Dixit**² to a similar examination was also noticed. In paragraph 48 of the judgment in **Sanjay Singh** (supra) it was held that the scaling system adopted in **Subhash Chandra Dixit** (supra) received this Court's approval as the same was adopted by the Commission after an indepth expert study and that the approval of the scaling method by this Court in **Subhash Chandra Dixit** (supra) has to be confined to the facts of that case.

18. Finally, in paragraph 51 of the report in **Sanjay Singh** (supra) the Court took note of the submission made on behalf of the Commission that it is not committed to any particular system and "will adopt a different or better system if the present system is found to be defective"

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

20. The entire of the discussion and conclusions in **Sanjay Singh** (supra) was with regard to the question of the suitability

² (2003) 12 SCC 701

A of the scaling system to an examination where the question papers were compulsory and common to all candidates. The deficiencies and shortcomings of the scaling method as pointed out and extracted above were in the above context.

B But did **Sanjay Singh** (supra) lay down any binding and inflexible requirement of law with regard to adoption of the scaling method to an examination where the candidates are tested in different subjects as in the present examination? Having regard to the context in which the conclusions were reached and opinions were expressed by the Court it is difficult

C to understand as to how this Court in **Sanjay Singh** (supra) could be understood to have laid down any binding principle of law or directions or even guidelines with regard to holding of examinations; evaluation of papers and declaration of results

D by the Commission. What was held, in our view, was that scaling is a method which was generally unsuitable to be adopted for evaluation of answer papers of subjects common to all candidates and that the application of the said method to the examination in question had resulted in unacceptable

E results. **Sanjay Singh** (supra) did not decide that to such an examination i.e. where the papers are common the system of moderation must be applied and to an examination where the papers/subjects are different, scaling is the only available option. We are unable to find any declaration of law or precedent or principle in **Sanjay Singh** (supra) to the above effect as has been canvassed before us on behalf of the appellants. The decision, therefore, has to be understood to be confined to the facts of the case, rendered upon a

F consideration of the relevant Service Rules prescribing a particular syllabus.

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H **21.** We cannot understand the law to be imposing the requirement of adoption of moderation to a particular kind of examination and scaling to others. Both are, at best, opinions, exercise of which requires an in-depth consideration of

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

22. To revert, in the instant case, we have noticed that the contempt proceedings against the Public Service Commission for violation of order dated 26th August, 2011 in C.W.J.C. NO.3892 of 2011 had failed. We have also noticed that the Public Service Commission made all attempts to gather relevant information from the Union Public Service Commission and other State Public Service Commissions to find out the practice followed in the other States. The information received was fully discussed in the light of the

A particulars of the examination in question and thereafter a
conscious decision was taken by the resolution dated 15th
January, 2013, details of which have been already extracted.
In the light of the above and what has been found to be the true
ratio of the decision in **Sanjay Singh** (supra), we cannot hold
B that in the present case the action taken by the Bihar Public
Service Commission deviates either from the directions of the
High Court (dated 26th August, 2011 in C.W.J.C. No. 3892 of
2011) or the decision of this Court in **Sanjay Singh** (supra).
C Also, the absence of any plea of mala fide and the uniform
application of the principles adopted by the Commission by
its resolution dated 15th January, 2013 would lead us to the
conclusion that the present would not be an appropriate case
for exercise of the power of judicial review. The absence of
D reasons in the aforesaid resolution, on which much stress has
been laid, by itself, cannot justify such interference when the
decision, on scrutiny, does not disclose any gross or palpable
unreasonableness.

E **23.** On the aforesaid conclusions that we have reached
we have to dismiss the appeals. We, therefore, do not consider
it necessary to go into the question as to whether it was
necessary for the appellants to implead the selected
F candidates as party respondents to the present proceedings,
an issue on which elaborate arguments have been advanced
and several precedents have been cited at the bar. For the
same reasons the weighty arguments advanced by both sides
on the power of the Court to mould the relief in a given case
will have to await consideration in a more appropriate case.

G **24.** Consequently and in the light of the above, the appeals
are dismissed, however, without any order as to cost. All interim
orders are vacated.