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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **LPA 1008/2004**

SECRETARY D.S.S.B.
Through

..... Appellant
Mr.R.Venkataramani,
Sr.Advocate with
Mr.G.S.Sistani & Mr.Achi
Sharma, Advocates

versus

ASHWANI KUMAR & ORS.
Through

..... Respondent
Mr.G.D.Gupta, Sr.Advocate with
Mr.Ajay Dahiya & Mr.Alok
Singh, Advocates

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SHIV NARAYAN DHINGRA

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ORDER
21.03.2006

For orders see the file of LPA No.1004/2004.

CHIEF JUSTICE

SHIV NARAYAN DHINGRA, J

MARCH 21, 2006
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **LPA 1004/2004 with LPA 1008/2004**

SECY D.S.S.S.B.

Through

..... Appellant

Mr.R.Venkataramani,
Sr.Advocate with
Mr.G.S.Sistani, Mr.Ashok
Panigrahi & Mr.Achi Sharma,
Advocates

versus

NEERAJ KUMAR & ORS

Through

..... Respondent

Mr.G.D.Gupta, Sr.Advocate with
Mr.Ajay Dahiya & Mr.Alok
Singh, Advocates

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SHIV NARYANA DHINGRA

- ✓1. Whether Reporters of local papers may be allowed to see the judgment?
- ✓2. To be referred to the Reporter or not?
- ✓3. Whether the judgment should be reported in the Digest ?

MARKANDEYA KATJU, C.J (ORAL)

1. This writ appeal has been filed against the impugned judgment of the learned Single Judge dated 15.10.2004.
2. Heard learned counsel for the parties.
3. It appears that an examination was conducted by the Delhi Subordinate Services Selection Board on 25.7.2004 for recruitment to Group 'C' posts in Grade-II, Delhi Administration Subordinate Services. There were some allegations of cheating in the

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examination because of which the examination was cancelled by an order dated 27.8.2004. Against the cancellation a writ petition was filed which was allowed by the impugned judgment and hence this appeal.

4. In our opinion in such cases where there are allegations of use of unfairness means in an examination, it is open to the authorities to cancel the entire examination if the authorities feel that the fairness and transparency in the examination could have been affected. This can be done even if there is no clinching evidence that cheating or use of unfair means was resorted to. There may be instances where the authorities get some information on the basis of which they have reasonable apprehension of use of unfairness means in the examination, but it may not be possible to find out to what extent that was done. In such cases it may not be possible to cancel the result of individual students as it may not be possible to know which particular student did cheating and which did not. Hence in such cases very often the authorities resort to cancellation of the whole examination, and this Court will not interfere in such administrative decisions as has been repeatedly held by the Supreme Court e.g. in Union of India & Others vs. Tarun K.Singh & Others (2003) 11 SCC 768.

5. There is a distinction between a case where an individual candidate

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has been proceeded against on allegations of use of unfairness means. In such cases, there must be given opportunity of hearing to the candidate before cancelling his examination. However, no opportunity of hearing need be given if it is sought to cancel the entire examination where there are malpractices, and it is not necessary that there must be clinching evidence for doing so. After all the very purpose of an examination is that meritorious students should be selected, and if there is reasonable apprehension that there was cheating in the examination, it is open to the authorities to cancel the entire examination and to hold a fresh examination. This has been repeatedly held by the Supreme Court e.g. in Samsuddin Rahman v. Bihari Das, J.T. 1996 (6) SC 511, etc.

6. Hence, we allow the appeal and set aside the impugned judgment dated 15.10.2004 and the writ petition is dismissed.

M. Katju
CHIEF JUSTICE

SHIV NARAYAN DHINGRA, J

MARCH 21, 2006
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