

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.05.2012

CORAM:

THE HON'BLE MS. JUSTICE K. SUGUNA  
AND  
THE HON'BLE MR. JUSTICE M.M. SUNDRESH

W.P. No.13550 of 2012 and M.P. No. 1 of 2012  
W.P. No.13553 of 2012 and M.P. Nos.1-3 of 2012  
W.P. No.13575 of 2012 and M.P. No.1 of 2012  
W.P. No.13621 of 2012 and M.P. Nos.1-3 of 2012  
W.P. No.13622 of 2012 and M.P. Nos.1-3 of 2012  
W.P. No.13631 of 2012 and M.P. No.1 of 2012  
W.P. No. 13635 of 2012 & M.P. No. 1 of 2012  
W.P. No.13637 of 2012  
W.P. No.13643 of 2012  
W.P. No.13644 and 13645 of 2012 and M.P. Nos.1 & 1 of 2012  
W.P. No.13652 of 2012 and M.P. Nos.1 & 2 of 2012  
W.P. No.13654 of 2012 and M.P. Nos.1-3 of 2012  
W.P. No.13657 of 2012 and M.P. Nos.1-3 of 2012  
W.P. Nos.13659 and 13660 of 2012 and M.P. Nos.1 & 1 of 2012  
W.P. No.13665 of 2012 and M.P. Nos.1-3 of 2012  
W.P. No.13669 of 2012  
W.P. No.13685 of 2012 and M.P. Nos.1-3 of 2012  
W.P. (MD) No.6644 of 2012 and M.P. Nos.1 & 2 of 2012  
W.P. (MD) No.6677 of 2012  
W.P. (MD) No.6678 of 2012  
W.P. (MD) No.6715 of 2012 and M.P. Nos.1 & 2 of 2012  
W.P. (MD) No.6717 of 2012 and M.P. No.1 of 2012  
W.P. (MD) No.6725 of 2012 and M.P. No.1 of 2012  
W.P. (MD) No.6836 of 2012 and M.P. No.1 of 2012  
W.P. (MD) No.6837 of 2012 and M.P. Nos.1 and 2 of 2012  
W.P. (MD) No.6838 of 2012 and M.P. Nos.1 and 2 of 2012  
W.P. (MD) No.6898 of 2012 and M.P. Nos.1 and 2 of 2012

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|-----------------------------|-----------------------------------|
| 1. Mr.N. Mariappan          | ..Petitioner in W.P.13550 of 2012 |
| 2. N. Suresh                | ..Petitioner in W.P.13553 of 2012 |
| 3. S. Muthusubramanian      | ..Petitioner in W.P.13575 of 2012 |
| 4. K.Krishnamoorthy         | ..Petitioner in W.P.13621 of 2012 |
| 5. D. Sathiya               | ..Petitioner in W.P.13622 of 2012 |
| 6. P. Alan                  | ..Petitioner in W.P.13631 of 2012 |
| 7. J. Stalin                | ..Petitioner in W.P.13635 of 2012 |
| 8. M. Bharath               | ..Petitioner in W.P.13637 of 2012 |
| 9. M.D. Devi Saravana Priya | ..Petitioner in W.P.13643 of 2012 |
| 10. J. Starmi               | ..Petitioner in W.P.13644 of 2012 |
| 11. J. Starli               | ..Petitioner in W.P.13645 of 2012 |
| 12. Ms.D. Jayasudha         | ..Petitioner in W.P.13652 of 2012 |
| 13. N. Sureshkumar          | ..Petitioner in W.P.13654 of 2012 |
| 14. R. Kiruthigadevi        | ..Petitioner in W.P.13657 of 2012 |
| 15. S. C. Kerena Ranjitham  | ..Petitioner in W.P.13659 of 2012 |
| 16. A. Jagitha Parveen      | ..Petitioner in W.P.13660 of 2012 |

17. K. Myilsamy ..Petitioner in W.P.13665 of 2012  
18. N. Subha ..Petitioner in W.P.13669 of 2012  
19. P. Alli ..Petitioner in W.P.13685 of 2012  
20. L. Arun ..Petitioner in W.P.(M.D) 6644 of 2012  
21. K. Shanmugavadivelan ..Petitioner in W.P.(M.D) 6677 of 2012  
22. S. Hariharan ..Petitioner in W.P.(M.D) 6678 of 2012  
23. T. Vanitha ..Petitioner in W.P.(M.D) 6715 of 2012  
24. T. Satyabama ..Petitioner in W.P.(M.D) 6717 of 2012  
25. P. Krishnavani ..Petitioner in W.P.(M.D) 6725 of 2012  
26. L. Bharathi ..Petitioner in W.P.(M.D) 6836 of 2012  
27. K. Dhivya Boopathi ..Petitioner in W.P.(M.D) 6837 of 2012  
28. P. Muthudurai ..Petitioner in W.P.(M.D) 6838 of 2012  
29. M. Sudarmani ..Petitioner in W.P.(M.D) 6898 of 2012

vs.

The Registrar General  
High Court, Madras-104

..Ist Respondent in W.P.No.13550,  
13553, 13575, 13621, 13622, 13635,  
13637, 13643, 13644, 13645, 13654,  
13657, 13665, 13669, 13685 of 2012.

..2nd Respondent in W.P.13631, 13652,  
13659, 13660/2012 & W.P. (M.D) 6644,  
6677, 6678, 6715, 6717, 6725, 6836,  
6837, 6838, 6898/12

2.The Principal Secretary to Government,  
Home Department, Secretariat,  
Fort St.George,  
Chennai - 600 009.

...2nd Respondent in W.P.13553, 13621,  
13622, 13635, 13644, 13645, 13654,  
13657, 13665, 13685 of 2012

...Ist Respondent in W.P.13631, 13652,  
13659, 13660 of 2012 & W.P. (M.D)  
6644, 6677, 6678, 6715, 6717, 6725,  
6836, 6837, 6838, 6898 of 2012.

3.The Government of Tamil Nadu  
Rep.by its Home Secretary,  
Secretariat, Chennai -9.

...2nd Respondent in W.P.13575/2012.

Writ Petitions filed under Article 226 of the Constitution  
of India praying to issue a writs of Mandamus as stated in the  
order.

W.P. No. 13550 of 2012 :: Mr.AR.L. Sundaresan for  
Mr.A. Subramani

W.P. No. 13553 of 2012 :: M/s.K. Raja  
S. Gajendraraj  
R. Perumal

W.P. No. 13575 of 2012 :: Mr.N. Subramanian for  
Mr. G. Mutharasu

W.P. No. 13621 of 2012 :: Mr.K. Krishnamoorthy for  
Mr.K. Raja

W.P. No. 13622 of 2012 :: Mr.G. Sankar

W.P.(M.D.) No.6644 of 2012:: M/s. G.R. Swaminathan  
& W.P. Nos. 13659 & E. Udhaya  
13660 of 2012 M. Muthappan

W.P. No. 13631 of 2012 :: Mr.R. Manickavel

W.P. No. 13635 of 2012 :: Mr.A.R. Nixon

W.P. No. 13637 of 2012 :: Mr.R. Jayaprakash

W.P. No. 13643 of 2012 :: M/s. R. Radha Pandian

W.P. Nos.13644 & 13645  
of 2012 :: Mr. V. Raghavachari

W.P. No. 13652 of 2012 :: Ms. D. Jayasudha  
Petitioner-in-person

W.P.No. 13654 of 2012 :: Mr. S. Prabakaran for  
Mr. S. Conscious Ilango

W.P. No. 13657 of 2012 :: Mr.S. Prabakaran for  
Mr.T.P. Senthilkumar

W.P. No. 13665 of 2012 :: Mr.G. Rajan

W.P. No. 13669 of 2012 :: Mr.A.S. Baalaji

W.P. No. 13685 of 2012 :: Mr.W.M. Abdul Majeed

W.P.(MD)Nos. 6677 & :: Mr.M. Purushothaman for  
6678 of 2012 Mr.M. Kannan

W.P.(MD) No. 6715 of 2012 :: Mr.V. Govardhan for  
Mr.S. Muthukrishnan

W.P.(MD) Nos. 6717 & 6725  
of 2012 :: Mr. A. Haja Mohideen

W.P. (MD) No. 6836 of 2012 ::Mr. R. Suriyanarayanan

W.P.(MD) No. 6837 of 2012 ::Mr.G. Balaji for  
Mr. D. Gnanasekaran

W.P.(MD) No. 6838 of 2012 :: Mr. S. Kasi Rajan

W.P.(MD) No. 6898 of 2012 :: Mr. S. Alagusundar

For Respondents

:: Mr. R. Vijayakumar,  
Additional Government Pleader for  
Government

Mr.Somayaji,  
Senior Counsel for  
Mr.C.T. Mohan for  
Registrar General,  
High Court

COMMON ORDER

(Order of the Court was made by K. SUGUNA, J.)

W.P.No.13550 of 2012 is filed for the issuance of a writ of mandamus to direct the respondent to revalue the petitioner's answer paper (Registration No.10887) in Law Paper II of the Civil Judge Examination conducted by this Court on 25.03.2012 within a stipulated period.

1.1 W.P.No.13553 of 2012 is filed for the issuance of a writ of mandamus to direct the respondents to re-valuate and retotal the petitioner's Law Paper II so as to enable him to take part in the viva voce exam for appointment to the post of Civil Judge (Junior Division).

1.2 W.P.No.13575 of 2012 is filed for the issuance of a writ of mandamus to direct the respondents to permit the petitioner to peruse all his answer sheets, provide him the copy of the answer sheet of Law Paper II, with marks awarded during valuation for each answer and to revalue the answer sheet of, and re total the marks awarded for Law Paper II of the written examinations conducted by the 1<sup>st</sup> respondent pursuant to the Notification dated 21.01.2012 issued by the 2<sup>nd</sup> respondent calling for application for the post of Civil Judge in the Tamil Nadu State Judicial Service by Direct Recruitment within a time limit, prior to the commencement of the Viva-Voce.

1.3 W.P.No.13621 of 2012 is filed for the issuance of a writ of mandamus to direct the respondents to revalue and retotal the Translation paper, Law Paper I, Law Paper-II and Law Paper III written by the petitioner so as to enable him to take part in the viva voce examination for appointment to the post of Civil Judge (Junior Division).

1.4 W.P.No.13622 of 2012 is filed for the issuance of a writ of mandamus to direct the respondents to revalue and retotal the Law Paper-II written by the petitioner so as to enable her to take part in the viva voce examination for appointment to the post of Civil Judge (Junior Division).



1.5 W.P.No.13631 of 2012 is filed for the issuance of a writ of mandamus to direct the respondents to revalue or rescrutinise the petitioner's translation answer paper, written under Register No.13058 in Civil Judge (Junior Division) 2012 Examination held on 24.03.2012 and award the correct marks to pass him in the said paper by disposing of his representation dated 18.05.2012.

1.6.W.P. NO. 13635 of 2012 is filed for the issuance of a writ of mandamus to direct the 1<sup>st</sup> respondent to revalue the petitioner's answer sheet in Law Paper-II (Reg. No.11733) in the written examination conducted by the 1<sup>st</sup> respondent to fill up 185 vacancies to the post of Civil Judge (Junior Division) in the Tamil Nadu State Judicial Service, held on 25.03.2012.

1.7 W.P.No.13637 of 2012 is filed for the issuance of a writ of mandamus to direct the respondent to revalue the answer sheet of the petitioner in Law Paper II for which the examination is conducted on 25.03.2012 based on the Civil Judge recruitment Notification dated 21.01.2012 by considering his representation dated 18.05.2012.

1.8 W.P.No.13643 of 2012 is filed for the issuance of a writ of mandamus to direct the respondent to revalue the petitioner's answer sheet with register No.13269 in Law Paper I of written examination of direct recruitment to the post of Civil Judges, 2012 conducted on 24.03.2012 and consequently direct the respondent to call her for Viva-Voce.

1.9 W.P. No.13644 of 2012 is filed seeking a writ of mandamus directing the first respondent to value the petitioner's answer sheet in Law Paper II (Reg. No.11738) in the written examination conducted by the first respondent to fill up 185 vacancies to the post of Civil Judge (Junior Division) in Tamil Nadu State Judicial Service held on 25.03.2012.

1.10 W.P. No.13645 of 2012 is filed seeking a writ of mandamus directing the first respondent to value the petitioner's answer sheet in Law Paper II (Reg. No.11737) in the written examination conducted by the first respondent to fill up 185 vacancies to the post of Civil Judge (Junior Division) in Tamil Nadu State Judicial Service, held on 25.03.2012.

1.11 W.P. No.13652 of 2012 is filed seeking a writ of mandamus directing the respondents to re-evaluate the answer papers written by the petitioner vide Registration No.10561 and re-total the marks in the said answer paper, in the subject Law Paper -I in the written examination conducted as per the notification dated 21.01.2012, issued by the first respondent.

1.12 W.P. No.13654 of 2012 is filed seeking a writ of mandamus directing the respondents to reevaluate and retotal the Law Paper-II written by the petitioner so as to enable him to take part in the viva voce examination for appointment to the post of Civil Judge (Junior Division).

1.13 W.P. No.13657 of 2012 is filed seeking a writ of mandamus directing the respondents to reevaluate and retotal the Law Paper-I and the Translation paper written by the petitioner so as to enable her to take part in the viva voce examination for appointment to the post of Civil Judge (Junior Division).

1.14 W.P. No.13659 of 2012 is filed seeking a writ of mandamus directing the second respondent to reevaluate the answer paper written by the petitioner for Law Paper - I of the written examinations held for the post of Civil Judge-Junior Division on 24.03.2012 and 25.03.2012 (Hall ticket No.13610).

1.15 W.P. No.13660 of 2012 is filed seeking a writ of mandamus directing the respondents to re-evaluate and re-total the Law Paper II (Registration No.10522) written by the petitioner on 25.03.2012.

1.16 W.P. No.13665 of 2012 is filed seeking a writ of mandamus directing the respondent authorities to re-evaluate and re-total the Law Paper II which is written by the petitioner on 25.03.2012 bearing Registration No.12537 so as to enable him to take part in the viva voce for the appointment to the post of Civil Judge (Junior Division).

1.17 W.P. No.13669 of 2012 is filed seeking a writ of mandamus directing the respondent to revalue the petitioner's answer sheet with register number 11745 in Law Paper-II of the written examination of direct recruitment to the post of Civil Judges-2012 conducted on 24.03.2012.

1.18 W.P. No.13685 of 2012 is filed seeking a writ of mandamus directing the respondents to re-evaluate and re-total the Law Paper - II written by the petitioner so as to enable her to take part in the viva voce examination for appointment to the post of Civil Judge (Junior Division).

1.19 W.P. (MD) No. 6644 of 2012 is filed before the Madurai Bench of this Court and transferred to the file of this Court, seeking a Writ of Mandamus directing the respondents to re-evaluate and re-total the Law Paper II (Reg. No.13116) written by the petitioner on 25.03.2012.

1.20. W.P.(MD) No.6677 of 2012 is filed before the Madurai Bench of this Court and transferred to the file of this Court, seeking a writ of mandamus to direct the respondent to revalue the petitioner's answer sheet with register number 14426 in Law Paper I of written examination of direct recruitment to the post of Civil Judges 2012 conducted on 24.03.2012 and consequently, direct the respondent to call him for viva-voce.

1.21 W.P.(MD) No.6678 of 2012 is filed before the Madurai Bench of this Court and transferred to the file of this Court, seeking a writ of mandamus to direct the respondent to revalue the petitioner's answer sheet with register number 13396 in Law Paper II of written examination of direct recruitment to the post of Civil Judges 2012 conducted on 24.03.2012 and consequently, direct the respondent to call him for viva-voce.

1.22 W.P. (MD) No.6715 of 2012 is filed before the Madurai Bench of this Court and transferred to the file of this Court, seeking a writ of mandamus directing the second respondent to furnish photocopy of the petitioner's answer sheet for Register No.14649 in respect of Law Paper - II along with mark summary sheet so as to enable her to test the veracity of her declared result in the direct recruitment of Civil Judge in the Tamil Nadu State Judicial Service in the year 2012, consequently rectify the mistake either in totalling or in evaluating the answer if any found to have been omitted.

1.23 W.P. (MD) No.6717 of 2012 is filed before the Madurai Bench of this Court and transferred to the file of this Court, seeking a writ of mandamus directing the second respondent to re-value and re-total the petitioner's Law Paper III answer sheet in Registration Number 16582 to enable her to participate in the Viva Voce by considering her representation dated 07.05.2012 within a stipulated time.

1.24 W.P.(MD) No.6725 of 2012 is filed before the Madurai Bench of this Court and transferred to the file of this Court seeking a writ of mandamus to direct the 2<sup>nd</sup> respondent to revalue and re-total the petitioner's Law Paper II answer sheet in registration number 13626 to enable her to participate in Viva-Voce



by considering her representation dated 07.05.2012 within a stipulated period.

1.25 W.P.(MD) No.6836 of 2012 is filed before the Madurai Bench of this Court and transferred to the file of this Court seeking a writ of mandamus to direct respondents to re-value or re-scrutinise the petitioner's translation answer paper written under Register Number 13209 in Civil Judge (Junior Division) Examination, 2012, held on 24.03.2012 and award her the correct marks to pass her in the said paper by disposing of her representation dated 05.05.2012.

1.26 W.P.(MD) No. 6837 of 2012 is filed before the Madurai Bench of this Court and transferred to the file of this Court, seeking a Writ of Mandamus directing the respondents to re-evaluate the answer papers written by the petitioner vide Registration No. 13286 and re-total the marks in the said answer papers, in the subjects of Law Paper-II, as well as Law Paper-I and Law Paper-III in the written examination conducted as per the notification, dated 21.01.2012, issued by the first respondent.

1.27 W.P.(MD) No. 6838 of 2012 is filed before the Madurai Bench of this Court and transferred to the file of this Court seeking a Writ of Mandamus directing the respondents herein to furnish photocopy of the petitioner's answer sheet in Register Number 17339 in respect of Law Paper I along with mark summary sheet so as to enable him to test the veracity of his declared result in the direct recruitment of Civil Judge in the Tamil Nadu State Judicial Service in the year 2012 and consequently rectify the mistake either in totalling or in evaluating the answer if any found to have been omitted.

1.28 W.P.(MD) No. 6898 of 2012 is filed before the Madurai Bench of this Court and transferred to the file of this Court seeking a Writ of Mandamus directing the respondents to re-evaluate the answer papers written by the petitioner vide Registration No.14530 and re-total the marks in the said answer papers, in the subjects of Translation Paper and Law Paper-II, in the Written Examination conducted as per the notification dated 21.01.2012 issued by the first respondent.

2 All these writ petitions have been filed by the candidates who had initially applied for selection to the post of Civil Judge (Junior Division) and since they had possessed the basic required qualification, they were permitted to sit for the written examination. However, the petitioners herein have failed in one or two papers. Consequently, these writ petitions have been filed by them.

3 The date of the notification issued with regard to the appointment of Civil Judge (Junior Division) is 21.01.2012. As per the said notification, one has to write four papers and as per clause 3 of the said notification, the minimum mark to be secured



in each paper for SC/ST candidates is 30%, for MBC/DC and BC candidates, it is 35% and as far as others are concerned, it is 40%. As per the "Note" under the said clause 5 of the said notification, candidates who secure less than the minimum marks in any one of the papers are not eligible to attend viva voce. As far as the petitioners are concerned, most of them have not secured the minimum mark in Law Paper - II and a few in other papers. For example, in W.P. (MD) No.6677 of 2012, the petitioner has not secured the minimum mark in Law Paper - I. However, he had secured the minimum mark in Law Paper - II. As far as W.P. (MD) No.6678 of 2011 also is concerned, in Law Paper-I, he had secured the minimum mark, but, in Law Paper-II, he had not secured the minimum mark. Consequently, the petitioners are not qualified to attend viva-voce. Hence, challenging the marks awarded to them, they have filed these writ petitions seeking revaluation and also seeking production of certified copies of answer sheet.

4 As far as furnishing certified copies of answer sheet is concerned, the learned Senior Counsel appearing for the High Court has submitted that since as per the statutory provision under the Right to Information Act, 2005, the petitioners are entitled to get the certified copies of the answer sheet, the respondent High Court is willing to furnish the certified copies of the answer sheet to the respective petitioners.

5 In view of the above submission made by the learned Senior Counsel appearing for the High Court, the writ petitions filed for furnishing certified copies of the answer sheet of the papers in which the petitioners have failed, have to be allowed.

6 As far as the other writ petitions are concerned, the petitioners seek revaluation of answer papers. As far as the candidates who had not secured minimum marks in Law Paper - II alone are concerned, their stand is that they have secured more than 60% in all the other papers and only in Law Paper - II, the mark awarded to them is very low. Consequently, according to the learned counsel for the petitioners, as far as this Law Paper - II is concerned, the valuation is very harsh. The other ground taken by the learned counsel for the petitioners is relying on the particulars of marks awarded to each candidate which has been enclosed in the typed set of papers. It is the specific stand of the learned counsel for the petitioners that in the papers corrected by particular examiners, marks have been awarded very strictly and in certain papers, corrected by certain examiners, marks have been awarded liberally, consequently, there is no uniformity in valuation, hence, revaluation has to be done.

7 Apart from this, relying on paragraph nos.29 and 30 of the judgment reported in AIR 2004 SC 163 (U.P. Public Service Commission V. Subhash Chandra Dixit), which read as follows:

"29. As already noticed, the proviso to Rule 51 of the U.P. State Public Service Commission (Regulation of Procedure and Conduct of Business) State (Amendment)

Act, 1976 gives power to the Commission to eliminate variation in the marks awarded to the candidates and to adopt any method, device or formula considered appropriate for that purpose. The system of scaling was intended to remove the disparity in evaluation. In the case of judicial service examination, more than four thousand candidates appeared. The answer papers were evaluated by 14 examiners. Some examiners were liberal in awarding marks whereas some others were strict in awarding marks. The details given along with the special leave petition show the extent of difference in marks awarded by the examiners. Table 1 on p. 47 in SLP (C) No. 3758 of 2002 shows as follows:

TABLE - I

Subject-Present day				Maximum marks 150			
Examiner No	No. of scripts examined	Mean marks of the examiner	Standard deviation of the marks allotted	Minimum marks	Maximum marks	After scaling, mean marks of the scaled score	After scaling, standard deviation of the scaled score
1	2	3	4	5	6	7	8
1	300	68.50	17.23	10	102	75.00	14.98
2	300	45.91	16.02	0	92	75.01	14.99
3	300	39.39	49.12	2	76	74.98	14.99
4	600	35.07	21.64	0	105	74.99	15.00
5	300	52.16	20.66	0	112	75.00	15.03
6	300	53.55	13.84	7	94	74.97	14.99
7	300	66.17	27.15	8	134	75.00	15.01
8	300	70.09	13.65	0	97	75.04	14.98
9	300	35.94	10.74	9	77	74.96	14.99
10	300	81.74	15.95	25	125	75.02	15.01
11	300	77.45	15.68	26	125	74.99	15.01
12	300	49.98	14.43	11	92	75.03	15.00
13	300	41.16	17.72	3	99	74.98	15.00
14	111	47.82	24.25	4	118	74.99	14.92

30. There is a vast percentage difference in awarding of marks between each set of examiners and this was sought to be minimised by applying the scaling formula. If scaling method had not been used, only those candidates whose answer-sheets were examined by liberal examiners alone would get selected and the candidates whose answer-sheets were examined by strict examiners would be completely excluded, though the standard of their answers may be to some extent similar. The scaling system was adopted with a view to eliminate the inconsistency in the marking standards of the examiners. The

counsel for the respondents could not demonstrate that the adoption of scaling system has in any way caused injustice to any meritorious candidate. If any candidate had secured higher marks in the written examination, even by applying the scaling formula, he would still be benefited."

it is the further stand of the learned counsel for the petitioners that if the method of scaling down had been followed, discrimination in valuation would not have arisen.

8 Besides, in support of their contention that to have uniformity in valuation, moderation method should have been adopted, the learned counsel for the petitioners have relied on paragraph nos.22 and 25 of the judgment reported in AIR 2011 SC 3336, The Institute of Chartered Accountants of India vs. Shaunak H. Satya and Others which read as under:

"22. Regulation 39(2) of the Chartered Accountants Regulations, 1988 provides that the Council may in its discretion, revise the marks obtained by all candidates or a section of candidates in a particular paper or papers or in the aggregate, in such manner as may be necessary for maintaining its standards of pass percentage provided in the Regulations. Regulation 39 (2) thus provides for what is known as "moderation", which is a necessary concomitant of the evaluation process of answer scripts where a large number of examiners are engaged to evaluate a large number of answer scripts.

This Court explained the standard process of moderation in Sanjay Singh v. U.P. Public Service Commission thus: (SCC pp. 739-41, para 23)

"23. When a large number of candidates appear for an examination, it is necessary to have uniformity and consistency in valuation of the answer scripts. Where the number of candidates taking the examination are limited and only one examiner (preferably the paper-setter himself) evaluates the answer scripts, 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 answer scripts evaluated by the same examiner. It, therefore, becomes necessary to distribute the answer scripts among several examiners for valuation with the paper-setter (or other senior person) acting as the Head Examiner. When more than one examiners evaluate the answer scripts relating to a subject, the subjectivity of the respective examiner will creep into the marks awarded by him to the answer scripts allotted to him for valuation. Each examiner will apply his own <https://hcservices.ecourts.gov.in/hcservices> to assess the answer scripts. Inevitably



therefore, even when experienced examiners receive equal batches of answer scripts, there is difference in average marks and the range of marks awarded, thereby affecting the merit of individual candidates. This apart, there is 'hawk-dove 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 answer script is given to different examiners, there is all likelihood of different marks being assigned. If a very well-written answer script goes to a strict examiner and a mediocre answer script goes to a liberal examiner, the mediocre answer script may be awarded more marks than the excellent answer script. 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 'hawk-dove 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:

(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 answer scripts. 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 answer scripts to verify



whether the norms evolved in the meetings of examiner have actually been followed by the examiners....

(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 answer scripts 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.

The above procedure of 'moderation' would bring in considerable uniformity and consistency. It should be noted that absolute uniformity or consistency in valuation is impossible to achieve where there are several examiners and the effort is only to achieve maximum uniformity."

Each examining body will have its own standards of "moderation", drawn up with reference to its own experiences and the nature and scope of the examinations conducted by it. ICAI shall have to disclose the said standards of moderation followed by it, if it has drawn up the same, in response to Part (ii) of the first respondent's Query 13.

25. . . . Examining bodies like ICAI should change their old mindsets and tune them to the new regime of disclosure of maximum information. Public

authorities should realise that in an era of transparency, previous practices of unwarranted secrecy have no longer a place. Accountability and prevention of corruption is possible only through transparency. Attaining transparency no doubt would involve additional work with reference to maintaining records and furnishing information. Parliament has enacted the RTI Act providing access to information, after great debate and deliberations by the civil society and Parliament. In its wisdom, Parliament has chosen to exempt only certain categories of information from disclosure and certain organisations from the applicability of the Act. As the examining bodies have not been exempted, and as the examination processes of the examining bodies have not been exempted, the examining bodies will have to gear themselves to comply with the provisions of the RTI Act. Additional workload is not a defence. If there are practical insurmountable difficulties, it is open to the examining bodies to bring them to the notice of the Government for consideration so that any changes to the Act can be deliberated upon. Be that as it may."

Besides, according to the learned counsel, as far as revaluation is concerned, unless there is prohibition in the rules, in certain exceptional circumstances, candidates are entitled for revaluation; as far as the cases in hand are concerned, for a particular set of Registration Numbers alone, very low marks have been awarded in Law Paper - II and also in certain cases, candidates who had secured higher marks in other papers are awarded below 35%; since this is an exceptional circumstance, the candidates are entitled for revaluation.

9 According to Mr. G.R. Swaminathan, learned counsel for the petitioner in W.P. (MD) Nos.6644, 13659 and 13660 of 2012, though as per the judgment reported in AIR 1984 SC 1543, Maharashtra State Board of Secondary and Higher Secondary Education and another vs. Paritosh Bhupesh Kurmarsheth, etc. etc., revaluation cannot be demanded as a matter of right, after the coming into force of the Right to Information Act, 2005, as per paragraph nos.32,37 and 38 of the judgment reported in (2009) 1 SCC 599, (Sahiti V. Chancellor, Dr. N.T.R. University of Health Sciences and Others) which read as under:

"32. The plea that there is absence of specific provision enabling the Vice-Chancellor to order re-evaluation of the answer scripts and, therefore, the judgment impugned should not be interfered with, cannot be accepted. Re-evaluation of answer scripts in the absence of specific provision is perfectly legal and permissible. In such cases, what the court should consider is whether the decision of the educational authority is arbitrary, unreasonable, mala fide and whether the decision contravenes any statutory or

binding rule or ordinance and in doing so, the court should show due regard to the opinion expressed by the authority.

37. Award of marks by an examiner has to be fair and considering the fact that re-evaluation is not permissible under the Statutes at the instance of the candidate, the examiner has to be careful, cautious and has the duty to ensure that the answers are properly evaluated. Therefore, where the authorities find that award of marks by an examiner is not fair or that the examiner was not careful in evaluating the answer scripts, re-evaluation may be found necessary.

38. There may be several instances wherein re-evaluation of the answer scripts may be required to be ordered and this Court need not make an exhaustive catalogue of the same. However, if the authorities are of the opinion that re-evaluation of the answer scripts is necessary then the Court would be slow to substitute its own views for that of those who are expert in academic matters."

once a candidate is entitled for certified copies of answer sheet, certainly, the judgment reported in AIR 1984 SC 1543 (cited supra) will not have application at all.

10 Apart from this, according to the learned counsel, on a perusal of the certified copies of the answer sheet, prima facie, if a candidate is able to point out any glaring error, he is entitled for revaluation. In support of this contention, the learned counsel for the petitioners have relied on the judgment of a Division Bench of this Court rendered in W.P. Nos.28236, 28260, 28923 and 29249 of 2008 dated 16.12.2008 and the relevant portion of the said judgment reads as under:

"5. We do not accept such a submission, as it is evident that it is the TNPSC which reserved itself a right to get any answer book revalued, if in its opinion there was any sufficient/valid grounds to do so. If any candidate has any doubt that the answer book has not been properly evaluated and if there is a large variation in the marks of the candidate which he expected with the marks that what was actually awarded, such candidate at best can represent before the TNPSC and if sufficient and valid grounds are shown, it is always open for the TNPSC to get any answer book revalued.

6. For example, if it is found that the candidates of a particular Examination Centre have been awarded such lesser marks that most of them failed, on the contrary, in another Examination Centre, almost all



the candidates have been awarded with exceptionally higher marks, then with respect to the very same subject, one may raise some doubt and if sufficient and valid grounds are made out, the TNPSC may enquire into the same and make revaluation of the answer books in general."

According to the learned counsel, as per the above said Division Bench judgment, if a candidate is expecting very high marks in a particular subject but awarded with lesser marks, that itself is a ground to seek revaluation. Consequently, according to the learned counsel, the petitioners are entitled for revaluation and the petitioners also have submitted representations in this regard.

11 Besides, according to the learned counsel for the petitioners, when examinations are conducted by the Tamil Nadu Public Service Commission, double valuation is adopted and in the second valuation, if the variation in marks is beyond 15%, the papers will be referred to a third valuer; but, as far as the cases in hand are concerned, double valuation has not been followed by the respondent. Based on these submissions, the learned counsel for the petitioners have sought revaluation of papers in which the petitioner have secured below the minimum mark.

12 On the other hand, relying on paragraphs 20, 22, 26 and 27 of the Judgment reported in AIR 1984 SC 1543, Maharashtra State Board of Secondary and Higher Secondary Education and another vs. Paritosh Bhupesh Kurmarsheth, etc. etc. which read as follows:-

"20. We consider that the above approach made by the High Court is totally fallacious and is vitiated by its failure to follow the well-established doctrine of interpretation that the provisions contained in a statutory enactment or in rules/regulations framed thereunder have to be so construed as to be in harmony with each other and that where under a specific section or rule a particular subject has received special treatment, such special provision will exclude the applicability of any general provision which might otherwise cover the said topic. Regulation 102(2), if properly construed in the setting in which it occurs, only confers a suo motu power on the Divisional Board to amend the result of the examination in respect of any candidate or candidates on its being found that such result has been affected by error, malpractice, fraud, improper conduct, etc. The "error" referred to in the said provision has, in the context, to be understood as being limited to an error arising in consequence of malpractice, fraud, improper conduct or other similar matter of whatsoever nature. We are unable to understand this provision as conferring any right on an examinee to demand a disclosure, inspection or verification of his answer books or other related documents. All scope for doubt or speculation in



relation to this matter has, however, been eliminated by the provision contained in Regulation 104 which specifically deals with the subject of verification of marks obtained by a candidate. Clause (1) of the said regulation states that any candidate who has appeared at the HSC examination may apply to Divisional Secretary for verification of marks, particularly in any subject, but such verification will be restricted to check whether all the answers have been examined and whether any mistake has been committed in totalling of marks in that subject or in transferring marks correctly on the first cover page of the answer book as well as whether the supplements attached to the answer books as mentioned by the candidates are intact. Clause (3) of the said regulation imposes the further limitation that no candidate shall claim or be entitled to revaluation of his answer book or disclosure or inspection of the answer book or further documents as these are to be treated by the Divisional Boards as most confidential. It is obvious that clauses (1) and (3) have to be read together and not in isolation from each other as has apparently been done by the High Court. The right of verification conferred by clause (1) is subject to the limitation contained in the same clause that no revaluation of the answer books or supplements shall be done and the further restriction imposed by clause (3), prohibiting disclosure or inspection of the answer books. The High Court seems to have construed the last portion of clause (3) as implying that the confidentiality of the answer books is to be declared by some order of the Divisional Board and it has proceeded to hold that since no such order was brought to the notice of the Court there was no basis for treating the answer books as confidential. In our opinion, this interpretation of the concluding words of clause (3) is incorrect. What is laid down therein is that the answer books and other documents are to be treated by the Divisional Boards as most confidential. In other words, this clause of the regulation contains a mandate to the Divisional Boards to treat the answer books and documents as confidential and lays down that no candidate shall be entitled to claim disclosure or inspection of the said confidential books and documents. We are also of the opinion that the High Court was in error in invoking the "doctrine of implied power and obligation" for the purpose of holding that because the right of verification has been conferred by clause (1) of Regulation 104, there is an implied power in the examinees to demand disclosure and inspection and a corresponding implied obligation on the part of the Board to accede to such a demand. There is no scope at all for invoking any such implied power or imputing to the regulation-making authority an intention to confer such power by implication when

there is an express provision contained in the very same regulation [clause (3)] which clearly manifests the contrary intention and states in categorical terms that there shall be no claim or entitlement for disclosure or inspection of the answer books.

22. As already noticed, one of the principal factors which appears to have weighed with the High Court is that in certain stray instances (specific instances referred to in the judgment are only about three in number), errors or irregularities had gone unnoticed in the past even after verification of the concerned answer books had been conducted according to the existing procedure and it was only after further scrutiny made either on orders of court or in the wake of contentions raised in petitions filed before a court that such errors or irregularities were ultimately discovered. In this connection we consider it necessary to recall the observations made by Krishna Iyer, J. in *R.S. Joshi v. Ajit Mills Ltd.*<sup>6</sup> that "a law has to be adjudged for its constitutionality by the generality of cases it covers, not by the freaks and exceptions it martyrs" [SCC para 10, p. 106: SCC (Tax) p. 544]. It is seen from the affidavits that form part of the record of this case that the three Divisional Boards conduct the HSC examinations twice every year, i.e. in March and October every year. The number of candidates who appeared for the HSC examination in March 1980 was 1,15,364. Likewise, the SSC public examination is also conducted by the Divisional Boards twice during the year, and the number of candidates appearing in the said examination is very much larger than the number appearing in the HSC examination. From the figures furnished by the Board, it is seen that there is a progressive increase from year to year in the number of candidates appearing in both these public examinations. In March 1980, a total number of 2,99,267 had appeared in the SSC examination. Considering the enormity of the task of evaluation discharged by the Board through the examiners appointed by it, it is really a matter for satisfaction that proved instances of errors and irregularities have been so few as to be counted on one's fingers. Instead of viewing the matter from this correct perspective, we regret to find the fact that the High Court laid undue and exaggerated stress on some stray instance and made it a basis for reaching the conclusion that reasonable fair play to the candidates can be assured only if the right of disclosure and personal inspection is allowed to the candidates as part of the process of verification. This approach does not appeal to us as legally correct or sound. We do not find it possible to uphold the view expressed by the High Court that clause (3) of

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

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

In making the above observations, the High Court has ignored the cardinal principle that it is not within the legitimate domain of the Court to determine whether the purpose of a statute can be served better by adopting any policy different from what has been laid down by the Legislature or its delegate and to strike down as unreasonable a bye-law (assuming for the purpose of discussion that the impugned regulation is a bye-law) merely on the ground that the policy enunciated therein does not meet with the approval of the Court in regard to its efficaciousness for implementation of the object and purposes of the Act.

26. We are unable to agree with the further reason stated by the High Court that since "every student has



a right to receive fair play in examination and get appropriate marks matching his performance" it will be a denial of the right to such fair play if there is to be a prohibition on the right to demand revaluation and unless a right to revaluation is recognised and permitted there is an infringement of rules of fair play. What constitutes fair play depends upon the facts and circumstances relating to each particular given situation. If it is found that every possible precaution has been taken and all necessary safeguards provided to ensure that the answer books inclusive of supplements are kept in safe custody so as to eliminate the danger of their being tampered with and that the evaluation is done by the examiners applying uniform standards with checks and cross-checks at different stages and that measures for detection of malpractice, etc. have also been effectively adopted, in such cases it will not be correct on the part of the courts to strike down the provision prohibiting revaluation on the ground that it violates the rules of fair play. It is unfortunate that the High Court has not set out in detail in either of its two judgments the elaborate procedure laid down and followed by the Board and the Divisional Boards relating to the conduct of the examinations, the evaluation of the answer books and the compilation and announcement of the results. From the affidavit filed on behalf of the Board in the High Court, it is seen that from the initial stage of the issuance of the hall tickets to the intending candidates right upto the announcement of the results, a well-organised system of verification, checks and counter-checks has been evolved by the Board and every step has been taken to eliminate the possibility of human error on the part of the examiners and malpractices on the part of examinees as well as the examiners in an effective fashion. The examination centres of the Board are spread all over the length and breadth of each Division and arrangements are made for vigilant supervision under the overall supervision of a Deputy Chief Conductor in charge of every sub-centre and at the conclusion of the time set for examination in each paper including the main answer book all the answer books and the supplements have to be tied up by the candidate securely and returned to the Supervisor. But before they are returned to the Supervisor, each candidate has to write on the title page of main answer books in the cages provided for the said particulars, the number of supplements attached to the main answer book. The Supervisor is enjoined to verify whether the number so written tallies with the actual number of supplements, handed over by the candidate together with his main answer book. After the return of all the answer books to the Deputy Chief Conductor, a tally is taken of the answer books including supplements used by



the candidates by the Stationery Supervisor who is posted by the Board at each sub-centre. This enables the supervisory staff at a sub-centre to verify and ensure that all answer books and supplements issued to the candidates have been turned in and received by the supervisory staff. At this stage of checking and double-checking, if any seat number has been duplicated on the answer books by mistake or by way of deliberate malpractice it can be easily detected and corrective measures taken by the Deputy Chief Conductor or the Chief Conductor. The answer books are then sent by the Deputy Chief Conductor to the Chief Conductor in charge of the main centre. He sorts out the answer books according to the instructions issued by the Board and sends them to the examiners whose names had been furnished in advance except in the case of the science subjects, namely, "mathematics and statistics, physics, chemistry and biology". The answer books in the science subjects are forwarded by the Chief Conductor under proper guard to camps in Pune already notified to the Chief Conductors. The further procedure followed in relation to the valuation of the answer books has been explained in paras 22 to 26 of the counter-affidavit dated July 10, 1980 filed in the High Court by the Joint Secretary to the Pune Divisional Board of Secondary Education. We do not consider it necessary to burden this judgment with a recapitulation of all the details furnished in those paras, and it would suffice to state that the procedure evolved by the Board for ensuring fairness and accuracy in evaluation of the answer books has made the system as foolproof as can be possible and it meets with our entire satisfaction and approval. Viewed against this background, we do not find it possible to agree with the views expressed by the High Court that the denial of the right to demand a revaluation constitutes a denial of fair play and is unreasonable. The Board is a very responsible body. The candidates have taken the examination with full awareness of the provisions contained in the Regulations and in the declaration made in the form of application for admission to the examination they have solemnly stated that they fully agree to abide by the regulations issued by the Board. In the circumstances, when we find that all safeguards against errors and malpractices have been provided for, there cannot be said to be any denial of fair play to the examinees by reason of the prohibition against asking for revaluation.

27. ...Further, it is in the public interest that the results of public examinations when published should have some finality attached to them. If inspection, verification in the presence of the candidates and revaluation are to be allowed as of

right, it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking, etc. of the candidates, besides leading to utter confusion on account of the enormity of the labour and time involved in the process."

paragraphs 3, 5, 6, 7 and 8 of the Judgment reported in 2004 6 SCC 714, Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, which read as follows:-

"3. For holding the Judicial Services (Competitive) Examination, 1999, the Commission issued an advertisement on 19-4-1999. The appellant appeared in the written examination which was held from 25-1-2000 to 31-1-2000. After the viva voce examination, the final result was declared on 6-8-2000. The appellant did not qualify in the written examination and was not called for interview. A copy of the marksheet was sent to him on 1-1-2001. He applied for scrutiny of his marks in General Science paper wherein he had secured 35 marks. The Commission found that there was no mistake and, accordingly, an intimation to that effect was sent to him on 18-7-2001. Thereafter, the appellant preferred a writ petition in the High Court wherein the main prayer made was that a direction be issued to the Commission to re-evaluate his General Science paper. It was averred in the writ petition that he had secured very good marks in all other papers, namely, General Hindi, General Knowledge, Law of Evidence & Procedure, Transfer of Property and Personal Law, etc. and had also answered the questions in General Science paper correctly and, therefore, he should have been awarded much higher marks in the said paper.

5. The learned Single Judge issued a direction to the Commission to produce the answer-book of the appellant of General Science paper after he had deposited an amount of Rs 5000 by way of security. The answer-book was shown to the Standing Counsel for Patna University, who apparently had science background, and, he was of the opinion that the appellant deserved more marks. The learned Single Judge then directed the Standing Counsel for Patna University to have the answer-book re-evaluated by expert teachers through the Principal, Science College, Patna. A photocopy of the answer-book (after blacking out the marks awarded by the examiner of the Commission) was handed over to the said counsel. After fresh evaluation of the answer-book by two experts viz. a Physics teacher and a Biology teacher of Patna Science College, the answer-book was returned to the Court by the counsel. In that fresh evaluation, the appellant was awarded 63 marks as against 35 marks which had been awarded to him by the

examiner of the Commission. The writ petition was allowed and a direction was issued to the Commission to reconsider the case of the appellant treating his marks in General Science paper as 63.

6. The Commission preferred a letters patent appeal against the aforesaid judgment and order of the learned Single Judge which was allowed by the Division Bench by the impugned judgment and order dated 16-4-2003 and the order of the learned Single Judge was set aside.

7. We have heard the appellant (writ petitioner) in person and learned counsel for the respondents at considerable length. The main question which arises for consideration is whether the learned Single Judge was justified in directing re-evaluation of the answer-book of the appellant in General Science paper. Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for re-evaluation of his answer-book. There is a provision for scrutiny only wherein the answer-books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totalling of marks of each question and noting them correctly on the first cover page of the answer-book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. In the absence of any provision for re-evaluation of answer-books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re-evaluation of his marks. This question was examined in considerable detail in Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth<sup>1</sup>. In this case, the relevant rules provided for verification (scrutiny of marks) on an application made to that effect by a candidate. Some of the students filed writ petitions praying that they may be allowed to inspect the answer-books and the Board be directed to conduct re-evaluation of such of the answer-books as the petitioners may demand after inspection. The High Court held that the rule providing for verification of marks gave an implied power to the examinees to demand a disclosure and inspection and also to seek re-evaluation of the answer-books. The judgment of the High Court was set aside and it was held that in absence of a specific provision conferring a right upon an examinee to have his answer-books re-evaluated, no such direction can be issued. There is no dispute that under the relevant rule of the Commission there is no provision entitling a candidate to have his answer-books re-evaluated. In such a situation, the prayer made by the appellant in the writ petition was wholly



untenable and the learned Single Judge had clearly erred in having the answer-book of the appellant re-evaluated.

8. Adopting such a course as was done by the learned Single Judge will give rise to practical problems. Many candidates may like to take a chance and pray for re-evaluation of their answer-books. Naturally, the Court will pass orders on different dates as and when writ petitions are filed. The Commission will have to then send the copies of individual candidates to examiners for re-evaluation which is bound to take time. The examination conducted by the Commission being a competitive examination, the declaration of final result will thus be unduly delayed and the vacancies will remain unfilled for a long time. What will happen if a candidate secures lesser marks in re-evaluation? He may come forward with a plea that the marks as originally awarded to him may be taken into consideration. The absence of clear rules on the subject may throw many problems and in the larger interest, they must be avoided."

paragraph 6 of the Judgment reported in 2004 13 SCC 383, Board of Secondary Education v. Pravas Ranjan Panda, which reads as follows:-

"6. The High Court though observed that the writ petitioner who has taken the examination is hardly a competent person to assess his own merit and on that basis claim for re-evaluation of papers, but issued the aforesaid direction in order to eliminate the possibility of injustice on account of marginal variation in marks. It is an admitted position that the regulations of the Board of Secondary Education, Orissa do not make any provision for re-evaluation of answer-books of the students. The question whether in absence of any provision to that effect an examinee is entitled to ask for re-evaluation of his answer-books has been examined by us in Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission decided on 6-8-2004. It has been held therein that in absence of rules providing for re-evaluation of answer-books, no such direction can be issued. It has been further held that in absence of clear rules on the subject, a direction for re-evaluation of the answer-books may throw many problems and in the larger public interest such a direction must be avoided. We are, therefore, of the opinion that the impugned order of the High Court directing for re-evaluation of the answer-books of all the examinees securing 90% or above marks is clearly unsustainable in law and must be set aside."



and also paragraphs 3, 5, 6, 8, 14 and 15 of the Judgment reported in (2007) 1 SCC 603, President, Board of Secondary Education, Orissa v. D. Suvankar which read as follows:-

"3. . . . Initially, Respondent 1 was declared to have passed in the Ist division securing 654 marks out of 750 marks. Respondent 1 made a representation pointing out that the marks appear to have been wrongly mentioned in the marksheet. Answer scripts were verified, and it was found that the marks awarded in one paper i.e. SSH were wrongly shown as 35 though Respondent 1 had really secured 65 marks. It was pointed out that the mistake occurred due to the wrong entry made in the computer. The error was rectified in the tabulation register and fresh marksheet was issued on 7-7-2004. The revised marksheet was sent to the Zonal Officer at Balasore for onward transmission to the Headmaster, N.S. Police High School where the petitioner had prosecuted studies. In September 2004, Respondent 1 filed a writ petition. It is to be noted that the Board had constituted a committee pursuant to the direction given in Bismaya Mohanty case. The cut-off mark was fixed at 682. As at that time Respondent 1's marks were taken to be 654, his papers were not examined by the committee. As the candidate had deposited requisite fees for checking of addition of marks, the exercise was undertaken and it was noted that in the SSH paper he had secured 71 and not 65 as was posted on the cover page. In other words, the actual marks secured by the candidate were 690 and not 654 as was originally recorded.

5. The Board is in appeal against the cost imposed. As observed by this Court in Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth<sup>2</sup>, it is in the public interest that the results of public examinations when published should have some finality attached to them. If inspection, verification in the presence of the candidates and re-evaluation are to be allowed as of right, it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking, etc. of the candidates, besides leading to utter confusion on account of the enormity of the labour and time involved in the process. The court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It would be wholly wrong for the court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass

root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to pragmatic one was to be propounded. In the above premises, it is to be considered how far the Board has assured a zero-defect system of evaluation, or a system which is almost foolproof.

6. Award of marks by an examiner is to be fair, and considering the fact that re-evaluation is not permissible under the statute, the examiner has to be careful, cautious and has a duty to ensure that the answers are properly evaluated. No element of chance or luck should be introduced. An examination is a stepping stone on career advancement of a student. Absence of a provision for re-evaluation cannot be a shield for the examiner to arbitrarily evaluate the answer script. That would be against the very concept for which re-evaluation is impermissible.

8. It has to be ensured that the examiners who make the evaluation of answer papers are really equipped for the job. The paramount consideration in such cases is the ability of the examiner. The Board has bounden duty to select such persons as examiners who have the capacity, capability to make evaluation and they should really be equipped for the job. Otherwise, the very purpose of evaluation of answer papers would be frustrated. Nothing should be left to show even an apprehension about lack of fair assessment. It is true that evaluation of two persons cannot be equal on golden scales, but wide variation would affect credibility of the system of evaluation. If for the same answer one candidate gets higher marks than another that would be arbitrary. As indicated above, the scope for interference in matters of evaluation of answer papers is very limited. For compelling reasons and apparent infirmity in evaluation, the court step in. Care should be taken to see that the examiners who have been appointed for a particular subject belong to the same faculty. It would be a mockery of the system of evaluation if a teacher belonging to Arts stream is asked to evaluate answer papers of Science stream. It may be that a teacher had Physics, Chemistry or Biology at the intermediate level, but at graduation stage he had special paper in Zoology. To ask such a teacher to evaluate Botany paper would not be proper. Similarly in the case of a teacher having Mathematics at intermediate level while he took his higher studies in Physics, or Chemistry, or Botany at the graduation level, evaluation of answer paper of Mathematics by him would not be proper. May be that he has working knowledge of the subject. But the evaluation should be done by an examiner who is well equipped in the

subject. That would rule out the chance of variation or improper evaluation. Board authorities should ensure that anomalous situations as pointed out above do not occur. Additional steps should be taken for assessing the capacity of a teacher before he is appointed as an examiner. For this purpose, the Board may constitute a body of experts to interview the persons who intend to be appointed as examiners. This process is certainly time-consuming but it would further the ends for which the examinations are held. The Chief Examiner is supposed to act as a safety valve in the matter of proper assessment.

14. It is not in dispute that the Board's regulations do not provide for any re-evaluation. What is provided is for the addition of the marks. The Board had set up a committee pursuant to the direction given in Bismaya Mohanty case<sup>1</sup>. Initially, candidate's case was not covered. But on account of corrections his case was to be considered. His total marks were 690, whereas the cut-off marks fixed by the Board were 682.

15. The appellant Board is certainly not blemishless. Undisputedly, lesser marks were shown in the marksheet supplied to Respondent 1. In the first marksheet the total marks indicated were 654. Finally, marksheet was issued showing the aggregate marks to be 690. Except putting the blame on the computer firm, the Assistant Examiner and the Scrutiniser, nothing further has been offered by the appellant Board as explanation. True it is the first mistake of the computer firm but the second correction is clearly on the basis of the prayer for readdition of marks. It was found that the marks actually secured were 71 while on the cover page of the answer sheet the marks were noted as 65. For this the blame has to be fixed on the Assistant Examiner and the Scrutiniser. But that does not provide an escape route to the Board."

according to the learned Senior Counsel appearing for the High Court, unless there is a provision under the particular Act providing for revaluation, as a matter of right, one cannot claim revaluation. Further, according to him, even in public interest, revaluation should not be ordered. Yet another stand taken by the learned Senior Counsel appearing for the High Court is that as far as the cases in hand are concerned, there is no provision in the concerned notification which enables the petitioners to seek revaluation; under such circumstances, the petitioners are not entitled for revaluation of answer papers at all.



before this Bench, it was brought to our notice that as per the Tamil Nadu Public Service Commission Rules, the Tamil Nadu Public Service Commission reserves the right with regard to revaluation on its own. Hence, this Bench directed the learned Senior Counsel appearing for the High Court to find out as to whether the respondent High Court is willing to exercise this power with regard to revaluation. Consequently, the matters were adjourned and listed today.

14 Today, when the matters are taken up, the learned Senior Counsel appearing for the High Court has submitted that as far as the provision by which the TNPSC is reserving its right for revaluation is concerned, it is not a statutory rule and it has been made by way of instructions under Rule 22 of the Tamil Nadu Public Service Commission Rules of Procedure, consequently, that is not binding on the High Court. Apart from this, according to him, the High Court does not have any such rule at all. That apart, according to the learned Senior Counsel, as far as double valuation is concerned, no ground has been taken at all in the writ petitions with regard to the same, consequently, the argument of the learned counsel appearing for the petitioners in this regard does not carry any weightage at all.

15 Yet another stand taken by the learned Senior Counsel appearing for the High Court is that as on date, 185 vacancies are to be filled up in the post of Civil Judge (Junior Division) and only in order to fill up these vacancies immediately, this Court has issued direction for the conduct of the examination by the High Court, though the TNPSC is the expert body. Apart from this, according to him, if revaluation is done for 6,000 and odd candidates who had written the examination, certainly, the object of directing the High Court to conduct the examination for filling up these 185 posts immediately will get defeated.

16 That apart, according to the learned Senior Counsel, whatever be the procedure adopted, there will be an error and that cannot be a ground for the relief sought, which is not provided under the notification. He relied on the following portions of the judgment reported in (2007) 1 SCC 603 (cited supra):

"5. ...If inspection, verification in the presence of the candidates and re-evaluation are to be allowed as of right, it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking, etc. of the candidates, besides leading to utter confusion on account of the enormity of the labour and time involved in the process.

8. ...Nothing should be left to show even an apprehension about lack of fair assessment. It is true that evaluation of two persons cannot be equal on golden scales, but wide variation would affect

credibility of the system of evaluation. If for the same answer one candidate gets higher marks than another that would be arbitrary. As indicated above, the scope for interference in matters of evaluation of answer papers is very limited."

17 Further, it is the specific stand of the learned Senior Counsel for the High Court, in the notification, based on which the High Court has conducted the examination, there is no provision for revaluation, consequently, as a matter of right, certainly, the petitioners cannot claim for revaluation at all. That apart, according to him, the procedure to be followed has been prescribed in Clause 9 of the said notification and the High Court has strictly followed the same, consequently, what is not mentioned in the notification, cannot be sought by filing these writ petitions.

18 Yet another stand taken by the learned Senior Counsel for the High Court is that the method of correction adopted by the High Court is that, first, each examiner was given one candidate's answer paper and only after the same was corrected and collected from the concerned examiner, the second answer sheet was given for correction, consequently, the stand of the learned counsel for the petitioners that for particular serial numbers, say 1 to 10, high marks were awarded and for certain serial numbers, say 11 to 20, lower marks were awarded, cannot be a ground for revaluation. In other words, according to the learned Senior Counsel, when these Sl.Nos.1 to 10 or 11 to 20 were not corrected by a particular examiner, but, by different examiners, the above stand of the learned counsel for the petitioners will not hold good.

19 Apart from this, according to the learned Senior Counsel, after the valuation of the papers by the examiners, totalling was done by the concerned examiners, subsequently, re-totalling was also done by two Hon'ble Judges of this Court, consequently, there is no mistake either in awarding marks to any question or in totalling and no question has also been left out in any of the papers without awarding marks. Based on these submissions, it is the stand of the learned Senior Counsel appearing for the High Court that no case has been made out by the petitioners with regard to the relief sought. Consequently, the learned Senior Counsel has sought dismissal of the above writ petitions.

20 We have considered the above submissions of the respective learned counsel.

21 The relief sought is two-fold, one is to furnish certified copies of answer sheets and the second relief is for re-valuation of answer sheets.

ie., to furnish certified copies of answer sheet, since the learned Senior Counsel appearing for the High Court has conceded to furnish the same, the said relief is granted.

23 With regard to the second relief, i.e. with regard to re-valuation, though a stand was taken by the learned counsel for the petitioners that with regard to the candidates who could not get through in the Law Paper - II, the key answer given was wrong, but, according to the learned Senior Counsel appearing for the respondent High Court, as far as Law Paper - II is concerned, it is relating to writing judgments, consequently, the key answer to that Paper was not given and based on the method of answers given, marks were awarded.

24 Apart from this, as far as re-totalling of marks is concerned, it is the specific stand of the learned Senior Counsel appearing for the respondent High Court that after totalling of marks by the concerned examiner, second totalling was done by two Hon'ble Judges of this Court and with regard to the writ petitions which came up on 16.05.2012, the concerned answer papers were even produced before this Court on 17.05.2012 and this Court also, on verification, found that there was neither any mistake in totalling nor any question was left out without awarding any mark. Consequently, this stand of the petitioners with regard to re-totalling will not hold good.

25 But, with regard to re-valuation, as per the following judgments which have been relied on by the learned Senior Counsel appearing for the respondent High Court:

(2004) 13 SCC 383, Board of Secondary Education vs. Pravas Ranjan Panda and another (paragraph no.6)

"6. The question whether in absence of any provision to that effect an examinee is entitled to ask for re-evaluation of his answer-books has been examined by us in Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission decided on 6-8-2004. It has been held therein that in absence of rules providing for re-evaluation of answer-books, no such direction can be issued. It has been further held that in absence of clear rules on the subject, a direction for re-evaluation of the answer-books may throw many problems and in the larger public interest such a direction must be avoided. We are, therefore, of the opinion that the impugned order of the High Court directing for re-evaluation of the answer-books of all the examinees securing 90% or above marks is clearly unsustainable in law and must be set aside."

(2007) 1 SCC 603, President, Board of Secondary Education, Orissa v. D. Suvankar (paragraph no.5)



"5. . . .If inspection, verification in the presence of the candidates and re-evaluation are to be allowed as of right, it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking, etc. of the candidates, besides leading to utter confusion on account of the enormity of the labour and time involved in the process. . . ."

(2010) 6 SCC 759, Himachal Pradesh Public Service Commission vs. Mukesh Thakur and another (paragraph no.26)

"26. Thus, the law on the subject emerges to the effect that in the absence of any provision under the statute or statutory rules/regulations, the Court should not generally direct revaluation."

as a matter of right, an examinee cannot claim revaluation, unless there is a provision for the same. As far as the cases in hand are concerned, neither in the notification nor in the statutory rules applicable to the respondent High Court, there is any provision for revaluation. As far as availability of provision with regard to revaluation is concerned, the respondent High Court is conducting this examination with regard to filling up the vacancies in the Judicial Service for the second time, i.e., last year, the respondent High Court had conducted examination for the post of District Judges and this year, for the post of Civil Judge (Junior Division). Consequently, the possibility of availability of any provision in the statutory rules applicable to the respondent High Court, with regard to revaluation, is certainly, not possible at all. Apart from this, even as per the notification also, as an one-time measure, the respondent High Court is conducting this examination. Under such circumstances, the availability of provision for re-valuation may not be possible. But, at the same time, as per the Rules applicable to the Tamil Nadu Public Service Commission which is an expert body, there is a provision for re-valuation. But, even as per the said provision also, the right to exercise the power of re-valuation lies with the Tamil Nadu Public Service Commission and as per Clause 5(vii) of the Instructions supplied by the TNPSC to the candidates which reads as under:

"(vii) The Commission reserves itself to get any answer book revalued if in its opinion there is sufficient/valid grounds to do so."

if, in the opinion of the Tamil Nadu Public Service Commission, any valid ground exists for re-valuation, the power can be exercised by the Tamil Nadu Public Service Commission. According to the learned Senior Counsel appearing for the High Court, since there is no provision for re-valuation in the notification, the respondent High Court has not taken a decision with regard to re-valuation sought by the petitioners.

examination in the place of the Tamil Nadu Public Service Commission. Under such circumstances, we are of the considered opinion that if the examination in question had been conducted by the Tamil Nadu Public Service Commission, certainly, if, in the opinion of the Tamil Nadu Public Service Commission, any valid ground existed for revaluation, the possibility for re-valuation would have been available to the candidates.

27 Since the respondent High Court is conducting this examination, without even examining this aspect, the chance of re-valuation need not be totally shut down to the candidates. We are well aware of the fact that conducting this examination is a herculean task and enormous efforts have been taken by the respondent High Court. We are also well aware of the fact that TNPSC Rules are not applicable to the respondent High Court. But, since the respondent High Court is conducting this examination in the place of the TNPSC, we are of the opinion that the respondent High Court can examine whether they are willing to exercise their discretion of exercising the power of re-valuation or not.

28 Consequently, the candidates are at liberty to apply for re-valuation within a period of five days after getting certified copies of the answer sheets of the papers in which they have not secured the minimum marks and if the High Court takes an affirmative view with regard to revaluation, i.e., they are willing to exercise their discretion, they can take further steps and if in the opinion of the respondent High Court, the discretionary power need not be exercised by them for any reason, they need not do any further exercise. Thus, if the decision taken by the respondent High Court is in the affirmative, after re-valuation, results may be intimated to the candidates, within a period of fifteen days.

29 Since the respondent High Court is willing to furnish the certified copies of the answer sheets, the respondent High Court shall furnish certified copies of answer sheets on or before 25.05.2012 to the candidates, who have already submitted their representations and if any candidate is going to apply for the same in future, he can do so and within 5 days from the date of receipt of such application, the certified copies of the answer sheets shall be furnished to the candidates concerned.

30 As far as WP. Nos. 13654 and 13657 of 2012 are concerned, though the relief sought is for issue of a writ of mandamus directing the respondents to revalue and retotal the Law Paper-II and Law Paper -I respectively written by the respective petitioners so as to enable them to take part in the viva voce examination for appointment to the post of Civil Judge (Junior Division), today, when the matters are taken up, the learned counsel for the petitioners submitted that in both the cases, the respondent High Court may be directed to furnish certified copies of the answer sheets concerned. A perusal of the typed set of papers in W.P. No. 13657 of 2012 reveals that a representation has been made by the petitioner under the Right to Information Act,

2005, to furnish the same. But, no such representation has been made by the petitioner in W.P. No. 13654 of 2012. Consequently, as directed above, the petitioner in W.P. No. 13654 of 2012 is at liberty to make a representation seeking certified copies of answer sheet in Law Paper-II. As far as W.P. No.13657 of 2012 is concerned, as in the case of others, the respondent High Court is directed to furnish the certified copies of answer sheet concerned to the petitioner.

In fine, W.P. Nos.13575, 6715, and 6838 of 2012 are allowed insofar as furnishing of certified copies of answer sheets of papers wherein the petitioners concerned have not secured the minimum marks. The other writ petitions are disposed of as indicated above. No costs. Consequently, connected M.P.s are closed.

Sd/  
Asst.Registrar  
//True Copy//

Sub.Asst.Registrar

nv/rg/cad  
To

1.The Registrar General,  
High Court, Madras 104.

2.The Principal Secretary/Secretary to Government  
Home Department,  
Secretariat, St.George Fort, Chennai - 600 009.

3.The Home Secretary,  
The Government of Tamil Nadu,  
Secretariat, Chennai -9.

1 cc to Mr.A.Subramani , Advocate, Sr.No.30047  
2 cc to Mr.K.Raja , Advocate, Sr.No.30059,30046  
1 cc to Mr.G.Muthurasu , Advocate, Sr.No.30044  
1 cc to Mr.G.Shankar , Advocate, Sr.No.30050  
1 cc to Mr.R.Manikavel , Advocate, Sr.No.30045  
1 cc to Mr.A.R.Nixon , Advocate, Sr.No.30049  
1 cc to Mr.R.Jeyaprakash , Advocate, Sr.No.30055  
1 cc to Mr.G.R.Swaminathan , Advocate, Sr.No.30056  
1 cc to Mr.A.S.Baalaji , Advocate, Sr.No.30051  
1 cc to Mr.G.Rajan , Advocate, Sr.No.30053  
1 cc to Mr. Muthukrishnan, Advocate, Sr.No.30058  
2cc to Mr. A.Haja Mohideen, Advocate, Sr.No.30057  
5 cc to Mr.M.Purushothaman , Advocate, Sr.No.30048

W.P. No.13550 of 2012, etc.

Sj, Bs(co)  
Pmk, Eu.23.5.2012