

## **K. Channegowda And Others vs Karnataka Public Service Commission ... on 6 October, 2005**

**Equivalent citations: 2005 AIR - KANT. H. C. R. 2791, (2006) 109 FACLR 31, (2005) 8 SCJ 42, 2005 (12) SCC 688, (2005) 6 SERVLR 44, (2005) 8 SUPREME 393, (2005) 8 SCALE 455, (2006) 2 SERVLJ 68**

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**Bench: B.P. Singh, Arun Kumar**

CASE NO.:

Appeal (civil) 6172-6222 of 2005

PETITIONER:

K. Channegowda and others

RESPONDENT:

Karnataka Public Service Commission and others.

DATE OF JUDGMENT: 06/10/2005

BENCH:

B.P. Singh & Arun Kumar

JUDGMENT:

**J U D G M E N T** (Arising out of SLP (C) Nos.11589-11639 of 2003) WITH CIVIL APPEAL NO.6313 OF 2005 (Arising out of SLP (C) No. 24322 of 2003) Dr. K. Rameshwarappa Appellant Versus Karnataka Public Service Commission and another Respondents AND CIVIL APPEAL NOS.6223-6312 OF 2005 (Arising out of SLP (C) Nos. 610-699 of 2004} M. R. Ravi and others Appellants Versus Karnataka Public Service Commission and Others Respondents B.P. SINGH, J.

Special leave granted in all the matters.

In this batch of appeals the common judgment and order of the High Court of Karnataka at Bangalore dated October 11, 2002 has been assailed. The matter relates to the conduct of competitive examination by Karnataka Public Service Commission for recruitment to the post of Gazetted Probationers (Group 'A' and 'B' Posts). Some of the unsuccessful candidates approached Karnataka Administrative Tribunal with a grievance that the competitive examination conducted by the Karnataka Public Service Commission was not fair and impartial. The manner in which the examination was conducted and the evaluation of the answer scripts by the examiners were suspect. In particular allegations were made about the favours shown to one K. Rameswarappa, the appellant in Civil Appeal arising out of SLP ) No. 24322 of 2003 and two of his relatives who had secured high positions and were ultimately selected.

The Karnataka Administrative Tribunal by its judgment and order dated February 6, 2002 allowed the applications filed before it, inasmuch as it found certain irregularities committed in the conduct of the competitive examination, and in particular favours shown to the aforesaid Rameswarappa and some of his relatives. The Tribunal ultimately directed the Karnataka Public Service Commission to get all the answer scripts evaluated afresh after appointment of fresh examiners in accordance with the procedure contained in the order. It also gave certain directions in regard to the evaluation of the answer scripts and the declaration of the result.

The Karnataka Public Service Commission filed writ appeals before the High Court of Karnataka at Bangalore challenging the findings recorded by the Administrative Tribunal and the ultimate order passed by it. The High Court after hearing the parties gave certain directions for the re- evaluation of some of the answer scripts, though not all. The High Court was of the view that having regard to the findings recorded by it, it was not necessary to get all the answer scripts evaluated over again. The judgment and order of the High Court has been impugned in this batch of appeals.

The appellants in the appeals arising out of SLP ) Nos. 11589 to 11639 of 2003 are the unsuccessful candidates who were not selected for appointment. They contend that the entire examination should have been scrapped in view of the findings recorded by the Tribunal and the High Court.

The appellants in appeals arising out of SLP ) Nos.610-699 of 2004 are the successful candidates who were selected for appointment by the Karnataka Public Service Commission on the basis of the declared result. They contend that for no fault of theirs' the answers scripts are sought to be re-evaluated, particularly when the High Court was able to identify the culprits and the beneficiaries of the irregularities committed in the evaluation and moderation of the answer scripts. They contend that apart from the persons against whom a clear and categoric finding has been recorded, there is no need to order fresh evaluation of the answer scripts in 15 optional subjects and also in general studies.

The appellant in the appeal arising out of SLP ) No. 24322 of 2003 is one Dr. Rameshwarappa against whom findings have been recorded by the Karnataka Administrative Tribunal which have been affirmed by the High Court. He has challenged the findings recorded against him and has prayed for setting aside the judgments and orders of both the Karnataka Administrative Tribunal and the High Court.

The facts of the case may be briefly noticed.

On February 4th, 1998 the Government of Karnataka sent requisition to the Karnataka Public Service Commission for the selection of 415 candidates for appointment to the post of Gazetted Probationers (Group 'A' and 'B' posts). Pursuant to the said requisition, the Karnataka Public Service Commission issued an advertisement on March 9, 1998 inviting applications. As many as 85598 applications were received in response to the said advertisement and out of them 79130 applications were found to have been validly made by eligible candidates. In accordance with the rules for selection to the said posts, a preliminary examination was held followed by the main examination. The preliminary examination was held on August 30, 1998 in which 56228 candidates

appeared. Result of the preliminary examination was declared on November 16, 1998 and on the basis of the aforesaid result 9857 candidates were found eligible to take the main examination. The main examination was held between April 9, 1999 and May 3, 1999. The answer scripts were evaluated between May 17, 1999 and June 18, 1999. On January 12, 2000 the result was declared and as many as 2397 candidates qualified for the personality test. In the months of July and August, 2001 the personality test was held and the provisional list of selected candidates was declared on September 28, 2001.

In February, 2000 eight candidates who had failed in compulsory papers of Kannada and/or English filed writ petitions before the High Court alleging serious irregularities in evaluation of the answer scripts. The writ petition came up before a learned Single Judge of the High Court who by a reasoned order dated March 21, 2000 referred the aforesaid writ petitions to the Division Bench.

In the meantime 24 other candidates filed writ petitions before the High Court. Those writ petitions were also clubbed with writ petitions filed by eight candidates earlier and another Writ Petition No. 7022 of 2000 filed by another candidate. Ultimately the Division Bench held that the writ petitioners may seek remedy before the Karnataka Administrative Tribunal and that writ petitions were not maintainable. The High Court transferred all the 33 writ petitions filed in the High Court to the Karnataka Administrative Tribunal. Nine other petitioners had directly approached the Karnataka Administrative Tribunal. In this manner 42 matters were heard and disposed of by the Karnataka Administrative Tribunal vide its judgment and order dated February 6, 2002.

Aggrieved by the judgment and order of the Karnataka Administrative Tribunal, the Karnataka Public Service Commission preferred writ petitions before the High Court of Karnataka at Bangalore being Writ Petition Nos. 12548-12589 of 2002 which have been disposed of by the impugned common judgment and order.

The Karnataka Administrative Tribunal concluded that the valuation of the answer scripts could not be regarded as fair. In the facts and circumstances of the case no distinction could be made between answer scripts validly valued and those not validly valued. It was, therefore, necessary that all the answer scripts should be re-evaluated. Accordingly, it directed the Karnataka Public Services Commission to get all the answer scripts valued afresh by appointing examiners who are in no way interested in the candidates taking the examination. The examiners were to be appointed after verifying their declaration that none of their relatives specified in the format of the declaration was a candidate. The Commission was directed to erase all the code numbers and give fresh code numbers to the answer scripts relating to the compulsory as well as the optional subjects. It, further, directed that all answer scripts wherein more than 60% marks were awarded must be valued by a set of two examiners. In case there was a difference exceeding 5% of the marks in evaluation by the two examiners, the matter must be referred to the third examiner. It also directed that Karnataka Public Service Commission shall permit re-evaluation of answer scripts of all those candidates who seek such re-evaluation within the time to be specified, and on such payment as may be determined. It further obliged the Commission to furnish to all candidates marks obtained by them in all the papers.

The High Court, however, modified the directions of the Tribunal. It came to the conclusion that in the facts and circumstances of the case it was not necessary to get all the answer scripts re-evaluated. It directed moderation/random review by the Head Examiner and Chief Examiner only in regard to subjects where the same had not been adequately done earlier. This had to be done in the manner suggested by the Public Service Commission in para (b) of its memo dated March 27, 2002 which reads as follows :-

" ..on the basis of random review of answer scripts done in respect of answer scripts evaluated by each Examiner average variation shall be arrived at. Wherever the average variation is less than plus or minus 20, general review of the marks awarded need not be done. However where the average difference is plus or minus 20 or more the marks awarded by such examiner shall be increased or decreased by that average in respect of each of the answer scripts evaluated by that Examiner. In case the average variation is less than plus or minus 20 but variation in respect of individual answer scripts is plus or minus 20 or more those answer scripts would be subjected to third valuation."

The entire process of moderation was directed to be done under the supervision of the Secretary of Karnataka Public Service Commission. It was left to the discretion of the Secretary of the Karnataka Public Service Commission to have the moderation done either at a two tier level (Head Examiner and Chief Examiner) or at only one level. The Secretary of the Karnataka Public Service Commission was directed to select and prepare a fresh panel of Head/Chief Examiners for this purpose. The process of interviews and selection carried out during the pendency of the applications before the Karnataka Administrative Tribunal was declared to be illegal. The Commission was further directed to re-evaluate the compulsory papers (English and/or Kannada) of those candidates who had approached the High Court or Tribunal for such re-evaluation before the date of judgment. After re-evaluation and moderation as directed, the Commission shall prepare the list of candidates to be called for personality test in accordance with the Rules.

It would thus be seen that whereas the Karnataka Administrative Tribunal directed that all the papers be evaluated by the examiners afresh, the High Court confined it to re-evaluation and moderation of some papers, and that too only in those subjects wherein that was considered necessary, applying the scaling method. A significant finding recorded by the High Court is that there was hardly any material to raise any suspicion about the fairness of the examiners in examining the answer scripts. Some doubts arose when re-evaluation/moderation was done by the Head Examiner/Chief Examiner in respect of some of the subjects. The High Court, therefore, gave directions for a limited re-evaluation and moderation confined to some subjects only, and did not consider it necessary to order a total re-evaluation of answer scripts of all subjects, or cancellation of the examination itself.

It will be necessary at this stage to notice the salient findings recorded by the Karnataka State Administrative Tribunal and the High Court. The Tribunal after noticing the submissions urged on behalf of the parties observed that during the course of argument it enquired of the Karnataka Public Service Commission about its willingness to re-evaluate the answer scripts of the applicants

before it. The senior counsel appearing on behalf of the Commission submitted that the Commission was not willing to undertake that exercise. The Tribunal subsequently suggested, after arguments were concluded, to the Commission that it may produce the marks list of the top 50 candidates in each category indicating the marks assigned by the Head Examiner and the Chief Examiner as the case may be, but the Commission filed a memo declining to produce the information sought by the Tribunal for administrative reasons and having regard to the limited scope of judicial review in such matters. It was also explained by counsel appearing for the Commission that the Secretary of the Commission had gone for a training to Mussorie for a period of 6 to 8 weeks and that the keys of the almirahs where the records had been kept were with him, and therefore the required information could not be produced readily.

The Tribunal also sought clarification from the Commission about the allegations made against some of the candidates namely Rameshwarappa and his relatives. The Commission confirmed the fact that Rameshwarappa and his relatives were seated in the same hall to take the examination. They had opted for same optional subjects and their answers were valued by the same examiner.

In the facts and circumstances of the case, the Tribunal formulated the following contentions of the Petitioners which required examination by it :

"(i) That they are highly qualified persons having secured very high professional degrees such as their chosen fields and in that back ground it is inconceivable that they should have been failed in Compulsory papers, the expected standards of which are not more than SSLC standards.

(ii) That the valuation of the papers by the examiners are apparently erratic as not to be regarded as fair to all the candidates as for example, members of the one family like sister, brother and brother-in-

law securing top ranking in the final examination indicating thereby manipulation of marks secured by them, bearing no connection between the marks given and the quality of answers; that one of the senior employees of the KPSC whose son had appeared for the examination had participated in the examination process including evaluation of the answer scripts casting a serious doubt as to the fairness in valuation of the answer scripts.

(iii) That one of the model answers had been leaked-out prior to the examination affecting the fairness of the examination process".

Repelling the submission urged on behalf of the Karnataka Public Service Commission that a candidate cannot seek revaluation of his answer scripts merely on his own perception of good performance, the Tribunal observed that the mere fact that a candidate may think that he has performed extremely well and yet not awarded marks which he rightly deserved, may not by itself justify the revaluation of the answer scripts. However, in the light of other allegations of unfairness and arbitrariness, if found to be true, re-examination of the answer scripts may be justified. Reliance placed by the Karnataka Public Service Commission on the decision of this Court in Maharashtra

State Board of Secondary and Higher Secondary Education and another vs. Paritosh Bhupeshkumar Sheth and others : AIR 1984 SC 1543 did not, according to the Tribunal, support the case of the Commission. That decision was distinguished on the ground that in that case the Rules specifically prohibited the authorities to entertain a claim of revaluation. In the instant case it observed that the Rules were silent on this aspect of the matter and, therefore, in the absence of any express prohibition the Karnataka Public Service Commission certainly had the power to order fresh evaluation of answer scripts if it was satisfied that there was evidence of unfairness and mal practice in the valuation of answer scripts. In the interest of fairness, the Commission may exercise such authority wherever necessary.

As regards allegations of unfairness in valuation of answer scripts, the Tribunal noticed that in the case of Remeshwarappa and his relatives the answer scripts were first valued by the Examiner and then by the Chief Examiner who awarded very high marks to them which really enabled them to get high positions in the merit list resulting in their ultimate selection. The Tribunal noticed the marks awarded to Rameshwarappa and his relatives Nagaraja and Triveni which demonstrated that very high marks were awarded by the Chief Examiner and in some cases 80% marks were awarded as against 30% awarded by the Examiner. The Tribunal commented on the manner in which the Chief Examiner increased the marks awarded to these candidates. This also disclosed that the model answers prepared to maintain uniformity in the award of marks was not adhered to, because in that event there could not be possibility of such a huge difference in the award of marks by the Examiner and the Chief Examiner. This reflected on the fairness in the valuation of the answer scripts and demonstrated that the answer scripts were not valued on the basis of the model answers prepared as per the accepted standard.

The Tribunal further commented on the refusal of the Karnataka Public Service Commission to accept a suggestion of the Tribunal that all the answer scripts of the applicants should be revalued. In fact the suggestion of the Tribunal that the marks list of the top 50 candidates in each category be produced showing the marks awarded to them by the Examiners, Head Examiner and the Chief Examiner was not accepted. The Tribunal did not find the explanation given by the Commission to be convincing. The Tribunal went to the extent of holding that the refusal of the Karnataka Public Service Commission to produce the marks assigned to top 50 candidates gave rise to an adverse inference that if such tabulated statement of marks was produced it would have gone against the Commission.

The Tribunal also commented on the conduct of some of the officials who shouldered heavy responsibility in the conduct of the examination. Apart from the Secretary of the Commission, one Sadyojathaiah, who was Incharge Secretary for a few months, did not declare that his son was also taking the examination. In fact his daughter also took the examination but was unsuccessful. This only showed that the declaration made by the Examiners/officials were not scrutinized and enquired into with the result that the wards/relatives of some of the officials closely associated with the conduct of the examination also participated in the competitive examination. May be that they did not act unfairly, but what was important was that the examination must be seemed to have been conducted fairly.

A contention was raised before the Tribunal that the model answers were known even before the examination was conducted and that such a model answer relating to the compulsory subject, namely Kannada language prepared by the Karnataka Public Service Commission was filed in a batch of applications. The Karnataka Public Service Commission averred that these model answers were prepared only a couple of days prior to commencement of the valuation, but it did not deny that the model answer filed with the applications purporting to be the model answer for the Kannada language subject was in fact not the model answer prepared by the Commission. Though the Tribunal did not record a categorical finding of fact that such a model answer was available to the candidates even before the conduct of the examination, it commented on the fact that the model answer was available to a candidate who annexed it with his application which demonstrated that the Commission was not able to maintain secrecy in such matters.

The Tribunal also held that the Karnataka Public Service Commission could not deny revaluation of answer scripts if sought by any candidate who is aggrieved by the valuation of his answer scripts. To deny a candidate the right to seek revaluation amounted to denial of fairness to him. Therefore, in the absence of a specific rule prohibiting re-evaluation, it would be obligatory on the Karnataka Public Service Commission to grant such re-evaluation within a specified time after the announcement of the result. It referred to earlier instances where the Public Service Commission had permitted re-evaluation of the answer scripts.

On such findings the Tribunal came to the conclusion that the award of marks to the candidates did not appear to be fair resulting in the vitiation of the merit list. But the Tribunal following the principles laid down in *Anamica Mishra and others vs. U.P. Public Service Commission, Allahabad and others : 1990 (Suppl.) SCC 692* held that the entire examination need not be set aside in the facts and circumstances of the case. Fairness could be ensured if the answer scripts were revalued after taking necessary precautions to ensure fairness. It, therefore, passed an order for fresh valuation of all the answer scripts laying down guidelines which have been earlier referred to in this judgment.

We may observe at this stage that the Tribunal after considering the material on record came to the conclusion that in respect of atleast three candidates namely, Rameshwarappa, Nagaraja and Triveni who were high rank holders, the marks awarded by the Chief Examiner was much more than the marks awarded to them by the examiner. That is how, they managed to secure high positions in the competitive examination. The findings of the Tribunal are also borne out by the report of the Sub-committee constituted by the Commission to investigate the matter. The Committee found that serious irregularities were committed by one Prof. K.S. Shivanna, Chief Examiner when he reviewed the marks awarded to Rameshwarappa, Nagaraja and Triveni. The said Rameshwarappa was employed as Deputy Director of Food and Civil Supplies while Nagaraja was his wife's brother and Smt. Triveni and Smt. Hemalatha were two sisters of his wife. The report of the Sub-committee discloses that their academic record was average. All of them had chosen the same optional subjects. In General Studies Paper I and II and History Papers I and II all of them had chosen the very same questions for answering and their answers were also identical. The Sub-committee found that Prof. Shivanna had been appointed Chief Examiner to examine answers written in Kannada medium in the subjects General Studies and History. He had evaluated 127 answer scripts as Chief Examiner. It

was discovered that in respect of the aforesaid four candidates he had even awarded marks for totally wrong answers. He later claimed that by oversight such mistakes were committed. He described as bona fide errors the awarding of more marks than the maximum prescribed. It was found that six other candidates had been shown such favourable treatment by Prof. Shivanna, out of whom two were ultimately selected but the remaining four could not get selected. The evidence collected by the Sub-committee established that the aforesaid Rameshwarappa used to visit the then Secretary of the Commission very frequently, while Prof. Shivanna was his research guide for the Ph. D programme. It also appeared from the material collected by the Sub-committee that after the evaluation of answer scripts, all the three had undertaken a joint foreign trip. The Sub-committee came to the conclusion that Sri Monappa the then Secretary of the Commission had parted with the code numbers of the candidates to Prof. Shivanna, who was willing to oblige Rameshwarappa and some others. The Sub-committee found that Prof. Shivanna who was Chief Examiner in respect of answer scripts in Kannada medium, in the subjects General Studies and History, also picked up answers given in English medium as in the case of Nagaraja and Triveni. He sought to explain this by saying that since Prof. Raju Naidu, Chief Examiner of English medium was away, those papers had been brought to him and he had accordingly moderated those papers.

We do not wish to go into the details of the findings recorded by the Sub-committee because we are informed that a proceeding is pending against Sri Rameshwarappa. The selection of the alleged favoured candidates has also been cancelled. Any observation made by us, or finding recorded in respect of the matter, may prejudice the case of Rameshwarappa in the pending proceeding, and, therefore, we do not wish to make any further comment on this aspect of the matter. The findings of the Sub-committee have been noticed by us, as also by the High Court, in the context of the challenge to the validity and fairness of the competitive examination only for that limited purpose and not with a view to finding the guilt or otherwise of Sri Rameshwarappa.

In the writ petitions preferred before the High Court against the order of the Tribunal, while the selected candidates challenged the order for fresh moderation in some subjects, the unsuccessful candidates challenged the fairness of the examination and prayed for cancellation of the examination itself. The Karnataka Public Service Commission justified its stand before the Tribunal.

We have earlier noticed that the Tribunal after conclusion of the hearing of the matter, had suggested to the Commission on November 11, 2001 that it may produce the marks awarded to the top 50 candidates in each category, by the Head Examiner and the Chief Examiner. The Commission expressed its inability to give the aforesaid information having regard to the scope of the proceeding before the Tribunal. It was also stated that since the Secretary of the Commission was away on training at Mussorie for a period of six to eight weeks and the keys of the Almirah in which the records were kept were with him, the information could not be produced immediately. However, before the High Court the Commission voluntarily produced the marks obtained by the top 50 candidates in each category, and with necessary particulars. The Commission also furnished the particulars of marks obtained by all the candidates who were ultimately selected for the personality test disclosing the marks awarded to them by the Examiner and thereafter the Head Examiner or Chief Examiner after moderation. The High Court directed the Commission to produce the list of candidates in whose cases the variation in marks was plus or minus 20 or above (out of 300 marks)



in a subject and also to furnish the particulars of cases where the Chief Examiners had done random re-evaluation with particulars of difference in marks. Accordingly, the Commission had produced necessary statements as required by the Court. The relevant part of the Memo filed before the Court is as follows : -

"The Commission has placed before this Hon'ble Court subjectwise abstract of total number of answer scripts valued, number of answer scripts moderated by the Head Examiner and/or Chief Examiner and cases where the marks awarded in moderation is plus or minus 20 or more vis-à-vis the marks awarded by the Examiner. The total number of cases where the variation is plus or minus 20 or more has been identified as 661. Keeping in mind anxieties expressed and apprehensions stated during the hearing of the writ petitions and the suggestions that fell from the Bench of this Hon'ble of this Hon'ble Court, the Commission has examined the entire issue in the light of the scheme laid down by the Commission regarding valuation of the answer scripts. The endeavour of the Commission has been to find a solution which would be in line with the scheme of examination prescribed by the Commission.

Keeping the above objective in mind and in deference to the suggestions that emerged during the hearing of the writ petitions, the Commission is making the following offer:

(a) Wherever the random review done by the Head Examiner is less than 10 per cent of the answer scripts evaluated by any examiner in any subject, the short fall would be made up examinerwise and subjectwise by random review of answer scripts to the extent of shortfall. While doing so, it will be ensured that random sampling shall not be less than 5 per cent of the top-level answer scripts.

(b) The Commission has always been of the view that review referred to at para 3 of the scheme of valuation is not analogous to scaling technique. It has been understood by the Commission as review of marks of particular answer script taken up for random review by the Head Examiner. However, during the hearing it has been expressed that review should be understood as scaling technique. The Commission has considered the suggestion and is of the opinion that on the basis of random review of answer scripts done in respect of answer scripts evaluated by each examiner average variation shall be arrived at. Wherever the average variation is less than plus or minus 20 general review of the marks awarded need not be done. However, where the average difference is plus or minus 20 or more, the marks awarded by such examiner shall be increased or decreased by that average in respect of each of the answer scripts evaluated by that examiner. In case the average variation is less than plus or minus 20, but variation in respect of individual answer scripts is plus or minus 20 or above those answer scripts would be subjected to third valuation.

(c) As a result of random review if in respect of any candidate the change in marks is too generous or too adverse to the candidate, the Commission would refer such paper

for third valuation.

The secretary who was holding the post at the time when central valuation was conducted in respect of examination in question is no longer with the Commission. The Commission would ensure that disinterested staff of the Commission headed by the Secretary will supervise and monitor the entire process of review and revaluation that would be undertaken as set out above".

The High Court has noticed the fact that on March 27, 2002 this memo had been prepared and circulated to all Counsels appearing in the matter. However, since the service of notice of the respondents was not complete and the matter was being heard only for the grant of interim relief at that stage, the memo was not actually filed and was later filed on July 22, 2002. We have noticed these facts because it was argued before us that this memo is anti-dated. The observations of the High Court must set at rest this controversy.

On some aspects of the matter the Tribunal as well as the High Court have recorded concurrent findings. It has been concurrently found that so far as Sri Rameshwarappa is concerned, as also his two relatives, with the assistance of Chief Examiner, Prof. Shivanna and the Secretary of the Commission, they were shown undue favour and their marks were increased by Prof. Shivanna to such an extent that they obtained high positions and were selected for appointment. In doing so, Prof. Shivanna had committed irregularities. The High Court however has further recorded a finding that so far as evaluation of the answer papers by the Examiners is concerned no case of irregularity or unfairness has been established. It is only at the stage of moderation, and that too the moderation undertaken by Prof. Shivanna, that there is evidence of irregularity and unfairness confined to the cases of the three selected candidates, though seven other unsuccessful candidates had also been given high marks by Prof. Shivanna. It has, however, been concurrently held that in the facts and circumstances of the case it was not necessary to cancel the examination. While the Tribunal felt that all the answer scripts should be valued afresh, the High Court held that it was not necessary to do so. The High Court was of the view that only those answer scripts required to be re-evaluated which had been moderated by Prof. Shivanna as also those answer scripts in various subjects where the requisite percentage of answer papers as required by the guidelines were not moderated by the Head Examiner/Chief Examiner. The High Court further directed that scaling method should be adopted in re-evaluation so that the benefit of moderation is not confined to those candidates whose answer scripts are by chance picked out for moderation, but the benefit is extended to all candidates who may have similarly suffered or gained on account of the examiner being strict or liberal in awarding marks.

Having perused the material placed before us we are satisfied that this is not a case where the examination deserves to be cancelled. We are also satisfied that the finding recorded by the High Court that there is really no allegation imputing unfairness in the matter of examination of answer scripts by the examiners, is justified. The allegations, if any, relate to the stage of moderation by the Chief Examiners, and in particular confined to the conduct of Chief Examiner Prof. Shivanna.

The High Court has very meticulously examined the material on record and it is not necessary for us to undertake that exercise over again. The High Court had called for and examined the following

statements/ extracts :-

- "i) statement showing the merit-wise marks of the first 50 candidates category wise (that is GM, Group 1, 2A, 2B, 3A, 3B, SC and ST);
- (ii) statement showing the subject-wise marks awarded by the Examiners, Head examiners and Chief examiners, where the difference is plus 20 and above (335 answer scripts);
- (iii) statements showing the subject wise marks awarded by the Examiners, Head Examiners and Chief Examiners, where the difference is minus 20 and above (in regard to 326 candidates);
- (iv) Subject wise abstracts showing the number of answer scripts moderated by Head Examiners and Chief Examiners and the number of answer scripts where the variation on moderation is plus or minus 20 and more;
- (v) subject-wise list of Examiners, Head Examiners and Chief Examiners".

The High Court found that random review of adequate number of answer scripts had been done in the seven optional subjects (out of thirty) noticed in paragraph 31 of its judgment. Review disclosed that variation of marks had not exceeded plus or minus 20 (out of 300 marks). The High Court, therefore, found that there was no irregularity in review evaluation or moderation in the aforesaid seven subjects and no interference was, therefore, called for.

It further found that in the four subjects noticed in paragraph 32 of its judgment consisting of two papers each, there was adequate random review of answer scripts by the Chief Examiners and there was no variation beyond plus or minus 20 marks (out of 300 marks) in some papers, and only a very few, that too marginal, in other papers. There was, therefore, no need to interfere with the evaluation in respect of the aforesaid four subjects. In the optional subject Chemistry also, the material placed on record, did not justify any interference with the evaluation of answer papers. However, the High Court found that in the optional subject Agriculture and Marketing, no Head Examiner has been appointed, and the Chief Examiner had reviewed only three answer scripts out of 222 in Paper I and only four out of 279 in Paper II, that is 1% to 2%. Similar was the case with optional subject Criminology. In regard to the remaining 16 optional subjects and General Studies the High Court found that the number of answer scripts were large and the variation exceeding plus or minus 20 marks were also substantial. The necessary particulars have been noticed by the High Court in paragraph 34 of its judgment. The High Court has observed that the moderation in these subjects was restricted only to the answer scripts which were reviewed, without adopting the scaling technique of moderation by applying the upward or downward revision of all the answer scripts evaluated by the respective examiners. Even the random review was not done to the extent suggested in the guidelines, nor was any record maintained to show whether moderation was done by the Head Examiner/Chief Examiner in the manner required by the guidelines.

The High Court further noticed that there were serious irregularities in the review valuation by one of the Chief Examiners namely, Prof. Shivanna who had evaluated 127 answer scripts as Chief Examiner in the subject General Studies and History. The High Court has noticed the findings recorded by the Sub committee appointed by the Commission to investigate into the matter. The High Court found that glaring irregularities were committed by Prof. Shivanna in the random review done by him in History Papers I and II and General Studies Papers I and II and, therefore, there was need to review the process of moderation even in these subjects.

In view of its findings the High Court set aside the direction of the Karnataka Administrative Tribunal for a fresh evaluation of all the answer scripts. The High Court directed that moderation, or random review, will be undertaken only where such moderation/random review was found to be inadequate. The subjects in which re-evaluation has been ordered have been enumerated in paragraph 39(b) of the judgment of the High Court. In so doing, the Karnataka Public Service Commission has been directed to apply the scaling method as described in paragraph (b) of its memo dated March 27, 2002. The moderation is required to be done under the supervision of the Secretary of the Karnataka Public Service Commission, and it is open to him to have the moderation done at two tier level (i.e. Head Examiner and Chief Examiner) or at only one level, that is Chief Examiner. A fresh panel of Head and/or Chief Examiner shall be prepared. The High Court did not direct moderation/ random review in respect of the subjects where it found random review to be adequate and there was no conspicuous variation in marks awarded by the examiner and the Head Examiner. The High Court in its impugned order has enumerated those subjects/papers in sub-para (c) of its order.

The High Court further directed to hold fresh interviews and selection in place of those carried out during the pendency of the applications before the Karnataka Administrative Tribunal. It further directed the Karnataka Public Service Commission to re-evaluate the compulsory papers (English and or Kannada) of those candidates who had approached the High Court and the Tribunal for such re-evaluation before the date of the Judgment. The High Court has directed that a fresh list of candidates shall be prepared and candidates invited for personality test in accordance with Rules.

We may at the outset notice the submission urged on behalf of the unsuccessful candidates that the entire examination should be cancelled and a fresh examination be held. We have noticed earlier the findings of the Tribunal as well as the High Court on this aspect of the matter. It has been concurrently held by the Tribunal as well as the High Court that it is not necessary to hold the examination afresh. However, while the Tribunal held that all the papers should be evaluated afresh, the High Court after a meticulous examination of the material placed on record has come to the conclusion that it is not necessary to re-evaluate all the papers. It has upheld the evaluation of papers in some subjects while it has directed re-evaluation in some others. The High Court did not consider it necessary to order fresh evaluation of all the papers by the examiners, because it did not find any allegation or evidence of partiality or favouritism against the examiners. Even the Tribunal has not specifically recorded any finding that the examiners acted in improper or unfair manner. The allegations really are against the re-evaluation of papers by Head Examiners/Chief Examiners and in particular against the conduct of Prof. Shivanna, who it is found granted abnormally high marks to his favourite candidates so that they may rank high in the merit list and be ultimately

selected. The Tribunal as well as the High Court have concurrently held that the conduct of Prof. Shivanna was improper and unfair and we do not find any reason to interfere with their concurrent finding. However, we do not wish to make any further observations since we are informed that proceedings are pending against Prof. Shivanna and necessary action is being taken in this regard. We further clarify that the finding recorded in these proceedings is only for the purpose of disposing of these appeals and should not prejudice the case of the parties in the pending enquiry.

So far as the Tribunal is concerned, it has ordered fresh evaluation by the examiners, while the High Court has directed re-evaluation only at the Head Examiners/Chief Examiners level, that is at the stage of moderation/ random review. We find that there is really no justification for fresh evaluation of all the answer scripts by the examiners, and we concur with the finding of the High Court.

It appears to us that the Tribunal directed fresh evaluation of all answer scripts because the suggestion made by the Tribunal for production of the marks assigned to the top 50 candidates in each category was not accepted by the Commission. However, before the High Court the relevant material was produced and the High Court had the advantage of scrutinizing the material placed before it. Counsel for the successful candidates is, therefore, right in his submission that if the material asked for had been produced before the Tribunal, perhaps the Tribunal would not have drawn an adverse inference and directed a wholesale re-evaluation of all the answer scripts.

On the question of re-evaluation by Head Examiner/Chief Examiner, the High Court has placed the subjects into two categories viz; those where sufficient percentage of answer scripts as required by the Rules had not been taken up for random review/moderation, and secondly, those where the random review/moderation is either found to be unfair (as in the case of Prof. Shivanna), or where the variation of marks awarded by the examiner and the Chief Examiner/ Head Examiner was plus or minus 20 or more. The High Court has recorded reasons for directing re-evaluation in only some of the subjects. In regard to other subjects the High Court has found that sufficient number of answer scripts were randomly evaluated and moderated, and further there was no conspicuous variation in the award of marks by the examiners and the Head Examiners. Obviously, therefore, there was no need to get such answer scripts re-evaluated. However, where sufficient number of answer scripts were not re-evaluated by Head Examiner/Chief Examiner as required by the Rules, the High Court was certainly justified in directing compliance of the Rules.

Another aspect of the matter is with regard to applying the scaling method as per the direction of the High Court. The scaling method has been described earlier in this judgment. The selected candidates have a grievance against the application of this method. It was submitted that it may not be proper to apply the scaling method only in respect of subjects where the answer scripts have to be moderated by Head Examiner/Chief Examiner and not to other subjects where the High Court has upheld the moderation/ random checking by the Head Examiner/Chief Examiner. We have given the submission our serious thought. The scaling method is applied only with a view to maintain a uniform standard in the marking of answer scripts. As is well known some answer scripts are randomly taken up for evaluation by Head Examiners/Chief Examiners. It may be that some examiner may be very liberal and generous in awarding marks whereas some other examiner may award much less marks for the same quality of answer. Upon moderation, no doubt the candidate

whose answer paper is moderated gets benefit of moderation, but such benefit is not extended to other candidates whose answer scripts may have been examined by the same examiner, but were not randomly selected for re-evaluation by the Head Examiner/Chief Examiner. It is true that there is bound to be some difference in the marks awarded by different examiners in the same subject. But the need for applying scaling method arises only in cases where the variation in marks awarded exceeds a certain level. It is, therefore, not necessary that the scaling method should be applied in all cases. The scaling method will be applied only where the variation in marks is plus or minus a certain level or percentage. The High Court in the instant case has directed that scaling method shall be applied only when it is found that average variation is plus or minus 20 or more. Wherever the average variation is less than plus or minus 20, general review of the marks awarded need not be done. We were told that the scaling method is now being applied in many competitive examinations held in this country and the purpose of applying the scaling method is to bring about a certain uniformity of standard in the matter of award of marks by the examiners. No exception can be taken to the scaling method in principle.

In fact this Court in U.P. Public Services Commission vs. Subhash Chandra Dixit and others : AIR 2004 SC 163, has found the scaling method to be fair since it seeks to eliminate the inconsistency in the marking standards of the examiners. This Court has observed:-

"There is a vast percentage difference in awarding of marks between each set of examiners and this was sought to be minimized 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".

Then remains the question as to whether it will make any difference in the instant case if the scaling method is not applied to subjects where valuation and revaluation has been upheld by the High Court. In our view, it will make no difference because the High Court has not found it necessary to direct re-evaluation of answer scripts in those subjects where the average variation was not found to be more than plus or minus 20%. Thus, the subjects in which the High Court has not directed re-evaluation are those subjects where in any case the scaling method would not be applicable because the average variation of marks has been found to be within the prescribed parameter. We, therefore, uphold the direction of the High Court to apply the scaling method in re-evaluation of answer scripts pursuant to the order of the High Court.

No doubt counsel for the successful candidates submitted that it was not necessary to apply the scaling method as the same purpose can be achieved by the procedure already prescribed. It was submitted that the percentage 5 or 10% as the case may be for random evaluation is the minimum prescribed. There is nothing which prevents the random re-evaluation of a larger percentage of answer scripts. There was, therefore, no need to apply the scaling technique. This submission must be rejected because even if answer scripts more than the percentage prescribed are reviewed by

Head Examiner or Chief Examiner, that will not achieve the purpose for which the scaling technique is adopted, because the scaling technique is confined to award of marks by examiners in the same subject who are either too liberal or too strict in awarding marks with the result that the average variation is more than plus or minus 20 marks. If the desired result is to be achieved all the answer papers examined by a particular examiner will have to be re-evaluated. As between the two options, we find the scaling method to be more practical and effective.

The counsel for the successful candidates as well as counsel appearing on behalf of the Karnataka Public Service Commission submitted that it is not necessary even to re-evaluate the answer scripts in some of the subjects as directed by the High Court because the findings of the Sub-committee appointed by the Karnataka Public Service Commission is clear and categoric. The Sub-committee which inquired into the irregularities committed in the conduct of the examination found that the irregularities were committed by Prof. Shivanna who awarded very high marks as the Chief Examiner to his favourite candidates namely, Rameshwarappa and the members of his family. There were 10 cases which were identified for favoured treatment, out of whom three were selected. In all Shivanna had moderated only 127 answer papers and, therefore, it was not necessary to re-evaluate the other answer scripts except those re-evaluated by Prof. Shivanna as the Chief Examiner. It was also submitted on behalf of the successful candidates that the guidelines provided that random review or random sampling should not be less than 5% of the top level answer scripts and over all random review should not be less than 10% of the answer scripts evaluated by each examiner. However, according to them, the High Court has increased the percentage to 20% instead of 5 to 10%.

There is no merit in either of the two submissions. The High Court has found as a fact that in some subjects random review was not done to the extent prescribed in the guidelines (5% of top level answer scripts and over all random review of 10%). No minutes or record were maintained to show whether moderation was done by the Head Examiners/Chief Examiners in the manner required by the guidelines. In these circumstances, one cannot find fault with the direction of the High Court for re-evaluation of answer scripts in subjects in which moderation/random review was not done in accordance with the guidelines.

The submission that the guidelines earlier provided only for a random review to the extent of 5 to 10 % which has now been increased to 20%, is based on a factually wrong assumption. The High Court in paragraph 35 of its judgment has noticed that the random review prescribed under the guidelines was to be done in respect of 5% of top level answer scripts and 10% over all random review. Even the memo filed by the Karnataka Public Service Commission and accepted by the High Court assured that whenever random review done by the Head Examiner was less than 10% of the answer scripts evaluated by any examiner in any subject, the shortfall would be made up examiner-wise and subject-wise by random review of answer scripts to the extent of shortfall. While doing so it will be ensured that random sampling was not be less than 5% of the top level answer scripts. We have, therefore, no doubt that the direction of the High Court has not deviated from the guidelines. Moreover, 5% or 10% as the case may be is the minimum required percentage of random review. It can always be more than the minimum prescribed.

We shall now notice some of the other submissions advanced before us. It was argued before us that the key answers had been leaked out. The High Court has noticed the contention advanced before it and observed that the same was neither pursued nor established. The facts disclosed that the model answers were prepared only a few days before the actual commencement of the valuation. In the instant case, valuation commenced on May 17, 1999 while the examination was held between April 9, 1999 and May 3, 1999. There was, therefore, no question of the model answers being leaked out earlier so as to be available to the examinees on the dates of examination.

It was also argued before the High Court and faintly submitted before us that the writ petitioners were students who had a good academic record and, therefore, it was unbelievable that they would have failed in compulsory papers English and Kannada which were of SSLC level. It was explained by the Commission that it is not as if all writ petitioners had failed in compulsory subjects English and Kannada. Only three had failed in English and one had failed in Kannada. The other writ petitioners had passed in the compulsory subjects English and Kannada, but since they had not secured high marks over all they were not called for personality test. In any event, the Karnataka Public Service Commission had agreed to re-evaluate the compulsory papers of the applicants/petitioners who had already approached the Tribunal or the High Court. The High Court has accepted the submission on behalf of the Commission and clarified that the relief in regard to re-evaluation of compulsory papers should be restricted to those candidates who have approached the Tribunal or the High Court, and not to others.

A submission was sought to be urged before us on behalf of the unsuccessful candidates that even the interview conducted for selection of candidates was not proper inasmuch as 350 candidates out of 390 were awarded 195 marks each. Counsel for the successful candidates submitted that such a contention was not raised either before the High Court or the Tribunal, and there is no pleading or finding on this aspect of the matter. It is not necessary for us to examine this question. The High Court has directed holding of fresh interviews on the basis of marks obtained after re-evaluation of answer scripts in accordance with the directions of the High Court. Since fresh interviews will be held, the grievance of the aforesaid petitioners does not subsist.

Having considered all aspects of the matter, we are satisfied that no interference by this Court in these appeals is called for. The High Court has taken care to safeguard the interest of all concerned and to rule out the possibility of unfairness in the re-evaluation of the answer scripts. The directions made by the High Court are adequate to deal with the peculiar facts of this case.

We, therefore, dismiss all the appeals and affirm the judgment and order of the High Court.