

IN THE KARNATAKA STATE ADMINISTRATIVE TRIBUNAL AT  
BANGALORE

DATED, THIS THE 8<sup>th</sup> DAY OF SEPTEMBER, 2020

**PRESENT**

HON'BLE Dr. JUSTICE K.BHAKTHAVATSALA, CHAIRMAN  
AND  
HON'BLE Dr.S.K.PATTANAYAK, ADMINISTRATIVE MEMBER

**APPLICATION NO.6969/2019**

**BETWEEN**

Dr. S.S.MADHUKESHWARA,  
Son of late Someshakaraiah,  
Aged about 52 years,  
Presently working as Special Land Acquisition Officer,  
Karnataka Road Development Corporation Limited,  
Samparka Bhavan, Dr.Rajkumar Road,  
Rajajinagar, Yeshwanthapura,  
Bangalore - 560 022

APPLICANT

(By Sri T.Mohandas Shetty, Advocate)

**AND**

1. THE STATE OF KARNATAKA,  
represented by the Principal Secretary  
to Government,  
Department of Personnel & Administrative Reforms,  
Vidhana Soudha, Dr.B.R.Ambedkar Veedhi,  
Bangalore 560 001
2. KARNATAKA PUBLIC SERVICE COMMISSION,  
Represented by its Secretary,  
Udyoga Soudha,  
Bangalore - 560 001

3. VARAPRASADA REDDY,  
Son of Narasimha Reddy,  
Residing at Hunasenahally, Melya Post,  
Gowribidanur Taluk,  
Kolar District - 561 208

RESPONDENTS

(Sri T.S.Mahantesh, Additional  
Government Advocate for Respondent No.1,  
Sri K.M.Prakash, Standing Counsel for  
Respondent No.2,  
Sri B.A.Nanjareddy and Sri S.K.Venkatareddy,  
Advocates for Respondent No.3)

This Application is filed under Section 19 of the Administrative Tribunals Act, 1985, praying to quash (i) Notification bearing No.PSC/E(1)/377/18-19 dated 22.8.2019 at Annexure A6 on the file of Respondent No.2, in so far as it relates to the Applicant at serial No.5 under Commercial Tax Officer Group-B and (ii) Notification bearing No.E(1)308/18-19/PSC dated 25.1.2019 at Annexure A-1 on the file of Respondent No.2, in so far as it relates to the Applicant at serial No.5 under Commercial Tax Officer Group-B and alternatively to direct Respondents 1 and 2 to continue the Applicant in the same post by creating a supernumerary post and to grant him all consequential benefits.

This Application coming up for Hearing and the same having been heard and reserved for pronouncement of order, this day, the **Hon'ble Chairman** made the following

**ORDER:**

**Recruitment of candidates to the post of Gazetted Probationers Group-A and B initiated 22 years back is still in doldrums, because of nepotism, bias, inefficiency and imprudence and has caused huge exchequer to the State, Karnataka Public Service Commission, financial loss to**

L

A.6969/2019

**selected as well as non-selected candidates. Further, the same has caused huge impact on the judicial system.**

With this Note we proceed with this Application. Selection to the post of Gazetted Probationers Group-A and B (1998 batch) initiated about 22 years back has got a chequered history.

2. Brief facts of the case leading to the filing of the Application may be stated as under:

As against the Recruitment Notification dated 9.3.1998 issued by the KPSC, Preliminary Examination was held on 30.8.1998. 9847 candidates (1:5 ratio) were eligible to appear for Main Examination. On 11.11.1998 the Hon'ble High Court of Karnataka declared Rule 3B of the Karnataka Civil Services (General Recruitment) Rules, 1977 in Writ Petition No.13517/1998 as unconstitutional and directed that a list of candidates who were qualified under Rural Weightage shall be prepared and those candidates shall be permitted to write examination. On 5.2.1999 KPSC published additional list of 2823 candidates eligible to appear for Main Examination. Thus in all 12670 candidates were permitted to appear for Main



Examination. Main Examination was conducted between 9.4.1999 and 3.5.1999. On 12.1.2000 results of Main Examination were published. In all 2393 candidates were qualified for Personality Test (viva voce in the ratio of 1:5). Personality Test was conducted during the months of July and August, 2001. Provisional selection list of candidates was published on 28.9.2001. Initially legal battle started with 8 candidates who appeared for the Main Examination but failed in Preliminary Examination, namely in Compulsory Papers of Kannada and English. They filed Writ Petitions No.5332-5339/2000 before the Hon'ble High Court of Karnataka alleging serious irregularities in evaluation of answer scripts in regard to the Main Examination. They also sought for revaluation of their answer scripts in compulsory subjects. Likewise, other candidates also filed Writ Petitions. Later on, all the Writ Petitions were transferred to this Tribunal which has got exclusive jurisdiction over service related matters pertaining to civil servants of the State. They were numbered as Applications No.7901-7908/2001. Thereafter, some more candidates filed Applications before this Tribunal seeking similar relief. This Tribunal by order dated 6.2.2002 allowed the **Applications**

L

A.6969/2019

**No.7901-7908/2001 (LINGANNA KUCHABAL AND OTHERS v. KARNATAKA PUBLIC SERVICE COMMISSION AND ANOTHER)** and connected Applications holding that the valuation of answer scripts was arbitrary, unfair and also issued directions as under:

- (i) that the KPSC shall get the answer scripts freshly valued by appointing Examiners who are in no way interested in the candidates who had taken examination;**
- (ii) that the appointment of Examiners shall be done only after verifying their declaration that none of their relatives specified in the format of the declaration is a candidate in the examination;**
- (iii) that the KPSC shall erase all the code numbers that are given to the answer scripts and give fresh code numbers both to the compulsory subjects as well as to the optional subjects and to have them valued on the basis of the norms for valuation already formulated or to have a fresh norm formulated for the examiners;**



- (iv) that the KPSC shall have all the answer scripts which have fetched 60% and above marks valued by a set of two examiners and if there should be any difference between the dual examiners exceeding 5% of the marks, the papers shall be referred to third Examiner;**
- (v) that the acceptability of the valuation by the Examiners, as aforesaid, shall be amongst the top three Examiners referred to above;**
- (vi) that in respect of the results announced on fresh evaluation as aforesaid, the KPSC shall permit revaluation of answer scripts of all those candidates who seek such revaluation within a time to be specified from the date of publication of the results and on such payment as may be determined by it;**
- (vii) that on publication of the results pursuant to the above orders, the KPSC shall be obliged to furnish to all the candidates the marks obtained by them in all the papers attempted by them irrespective of the fact as to whether**

*h*

**they have passed in the compulsory papers or not.**

3. KPSC challenged the above said order of this Tribunal in Writ Petitions No.12548-12589/2002 and connected cases before the Hon'ble High Court of Karnataka. Likewise, several candidates whose names appeared in the provisional selection list also filed Writ Petitions. In the said Writ Petitions the KPSC filed a Memo dated 27.3.2002 offering to redo the moderation. The contents of the Memo read thus:

**"The Commission has placed before this Hon'ble Court subject-wise 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 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**

2

**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 percent 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**





A.6969/2019

more 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."

4. On 11.10.2002 the Hon'ble High Court allowed the Writ Petitions No.12548-12589/2002 (**KARNATAKA PUBLIC SERVICE COMMISSION v. LINGANNA KUCHABAL AND OTHERS**) permitting KPSC to subject for 10% of random answer scripts in 38 papers (19 subjects) of each examiner, for moderation and scaling as per clause (b) of the Memo dated 27.3.2002. The operative portion of the order of the Hon'ble High Court reads as under:

**"39. In the result, we allow these petitions in part, as follows:**

- (a) The order dated 6.2.2002 of the Karnataka Administrative Tribunal in Applications No.7901



to 7908/2001 and connected cases declaring that the entire valuation of answer scripts is arbitrary and consequently directing fresh evaluation in terms of para-78 of the said order, is set aside.

- (b) We declare that moderation/random review carried out by the Head Examiners and Chief Examiners in regard to both papers of the following subjects, is inadequate, improper and illegal and quash the same; Agricultural & Marketing, Botany, Commerce, Criminology, Economics, Geography, Mathematics, History, Physics, Political Science, Psychology, Public Administration, Sociology, Zoology, Rural Development, Anthropology, Kannada, English and General Studies. Consequently, we direct KPSC to redo a fresh moderation in regard to the aforesaid Eighteen Optional subjects and also General Studies in the manner suggested by KPSC in para (b) of its Memo dated 27.3.2002 extracted below:

'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'.

h

A.6969/2019

**The entire process of moderation shall be done under the supervision of the Secretary of KPSC. It is open to him to have the moderation done at a two-tier level (that is Head Examiner and Chief Examiner) or have it done at only one level (that is Examiner). He shall select and prepare a fresh panel of Head and/or Chief Examiners for this purpose.**

(emphasis supplied by us)

- (c) The evaluation of answer scripts in regard to the following papers as moderated by Head/Chief Examiners are upheld:

Sl.No.	Subject/Paper
3	AN.HUSB. & V.SC. Paper-1
4	AN.HUSB. & V.SC. Paper-2
7	CHEMISTRY Paper-1
8	CHEMISTRY Paper-2
9	CIVIL ENGG. Paper-1
10	CIVIL ENGG. Paper-2
17	ELECL.ENGG. Paper-1
18	ELECL.ENGG. Paper-2
21	LAW Paper-1
22	LAW Paper-2
27	MECHL.ENGG. Paper-1
28	MECHL.ENGG. Paper-2
29	PHILOSOPHY Paper-1
30	PHILOSOPHY Paper-2
31	GEOLOGY Paper-1
32	GEOLOGY Paper-2
43	STATISTICS Paper-1
44	STATISTICS Paper-2
49	HINDI Paper-1
50	HINDI Paper-2
53	URDU Paper-1
54	URDU Paper-2
59	MANAGEMENT Paper-1
60	MANAGEMENT Paper-2

A.6969/2019

- (d) The process of interviews and selection carried out during the pendency of the applications before the KAT are declared illegal;**
- (e) KPSC is directed to revalue the compulsory papers (English and/or Kannada) of those candidates who have approached this Court or Tribunal for such revaluation, before this date.**
- (f) After revaluation (as per para [b] above) and moderation (as per para [b] above) as aforesaid, KPSC shall redo the list of candidates to be called for personality test, as per the rules and then proceed with the selection as per Rules. If on revaluation, such candidates are found to be qualified, they shall also be considered for selection of candidates for interview."**

5. It is the case of KPSC that on 21.6.2002 KPSC formed a Sub-Committee of three members to enquire into the alleged illegalities committed by the then Secretary of KPSC and other candidates who participated in the 1998 examination. Accordingly, the Committee, after enquiring into the issue, submitted a report stating that the then Secretary along with one K.S.Shivanna (who was the Chief Examiner) and Rameshwarappa, a candidate as well as other candidates were responsible for the alleged illegalities. As per proceedings of KPSC bearing No. E(1)/574/2002-03/PSC dated 18.1.2003, the



A.6969/2019

10 candidates have committed malpractice in examination and therefore they were debarred permanently from appearing in any examination that would be conducted by KPSC.

6. After the disposal of the Writ Petitions, KPSC filed I.A.No.3 and 4 on 11.11.2002 and the Writ Petitions were listed on 10.2.2003 for orders on I.A.No.3 (seeking clarification of final order dated 11.10.2002) and I.A. No.4 (for permission to subject 4 more papers for fresh moderation and scaling). But, KPSC did not press I.A. No.3 (seeking clarification of the order dated 11.10.2002). I.A.No.4 was filed seeking permission to carry out fresh moderation/random review as per the methodology laid down in paragraph 39(b) of the order dated 11.10.2002 in four papers, namely Animal Husbandry and Veterinary Sciences Paper-I, Animal Husbandry and Veterinary Sciences Paper-II, Geology Paper-I and Geology Paper-II, on the ground that the Chief Examiner/Head Examiner in the above said four papers did not assign marks on review/moderation, in regard to answer to each question, but merely stated "checked, OK" or agreed with the total marks awarded by the examiner and the same was contrary to Rules; that the Chief Examiner/Head Examiner was required to indicate the marks to be awarded by them. On



A.6969/2019

10.2.2003 the Hon'ble High Court after hearing the parties, accepted the request of KPSC to carry out fresh moderation/random review in respect of the above said four papers also. Accordingly, I.A.No.4 was disposed of. Thus the final order dated 11.10.2002 in regard to paragraph 39(b) came to be modified and as a result of which 4 more papers were added to 38 papers (i.e., 38+4 papers - in all 42 papers in lieu of 38 papers) for fresh moderation and random review.

7. KPSC filed I.A.No.5 stating that it perceived difficulties in implementing the order 11.10.2002 made in the Writ Petition and sought for clarification. On 4.7.2003 I.A.No.5 was disposed of by the Hon'ble High Court as per the following order:

**"IA-V is filed in these disposed of matters, seeking clarification in regard to some perceived difficulty in implementing our order dated 11.10.2002, particularly with reference to certain subsequent directions given by the Commission, by a resolution dated 21.5.2003.**

**The doubt is that if there are variations beyond the permissible limit in regard to more than one examiner, whether scaling should be done by averaging the difference in regard to all the examiners in regard to a subject or with reference to each examiner separately. The purpose of the Chief Examiner moderating the answer scripts by random examination is to find out whether any particular examiner has given unreasonably high or low marks.**



A.6969/2019

Scaling should obviously be with reference to the answer scripts corrected by that particular examiner alone and not with reference to all the Examiners. Therefore, the question of averaging the percentage of difference arrived at for each examiner does not arise. The following illustration will clarify the positions:

Number of scripts                      400

Number of Examiners              4 (each correcting 100  
Answer scripts)

Result of moderation	Name of Examiner	Average difference on moderation
	Examiner No.1	- 22 marks (out of 300 marks)
	Examiner No.2	+ 28 marks (out of 300 marks)
	Examiner No.3	- 10 marks (out of 300 marks)
	Examiner No.4	- 05 marks (out of 300 marks)

Scaling to be done:

- (i) In regard to all answer scripts corrected by Examiner No.1, KPSC shall have to deduct 22 marks from all the answer scripts corrected by Examiner No.1 from the marks assigned by Examiner No.1.
- (ii) In regard to all answer scripts corrected by Examiner No.2, KPSC shall have to add 28 marks to all the answer scripts corrected by Examiner No.2, to the marks assigned by Examiner No.2.
- (iii) In regard to Examiner No.3 and 4 as the average variation is less than plus or minus 20, no scaling need be done.

L

A.6969/2019

**In regard to other matters, our directions are specific and we have entrusted the work of supervision of the directions to the Secretary of KPSC. The Secretary is therefore responsible to ensure that the order is complied with. The question of subjecting the directions of this Court for review by KPSC does not arise.**

**Having regard to the fact that nearly eight months have already elapsed, KPSC will have to complete the evaluation process by 15<sup>th</sup> of August, 2003 and endeavour to complete selection process by the end of November, 2003.**

**With the above observations, IA-V is closed."**

8. Candidates, namely K.Channegowda and others, Dr.K.Rameshwarappa and M.R.Ravi and others challenged the order of the Hon'ble High Court, unsuccessfully, before the Hon'ble Apex Court in **Civil Appeals No.6172-6222/2005, 6313/2005 and 6223-6312/2005**. The Appeals came to be dismissed by order dated 6.10.2005.

9. It is the case of KPSC that by adopting the method of random review, moderation and scaling, it published final selection list on 28.2.2006 bearing Notification No.CONF.25/2005-06. Accordingly, the Government issued posting orders to the selected candidates. Aggrieved persons approached the Hon'ble High Court in Writ Petition

L



A.6969/2019

No.27674/2012 (PIL) and connected cases regarding Gazetted Probationers selection in 1998, 1999 and 2004. A fact-finding Committee constituted by the Hon'ble High Court submitted its report stating that scaling and moderation was not properly done and that there were irregularities in implementing the Order dated 11.10.2002 passed in Writ Petitions No.12548-12589/2002 and connected cases. Writ Petition No.27674/2012 and connected cases were disposed of by the Hon'ble High Court as per order dated 21.6.2016. For immediate reference, the relevant portion of the Order dated 21.6.2016 is excerpted below:

"(1) The procedure followed by the KPSC in preparing the list of candidates who are admitted to the written examination and the list of candidates who are called for the personality test in 1998, 1999 and 2004 for the post of Gazetted Probationers (Group A and B posts) is unconstitutional, contrary to the Rules and the Government Orders.

However, on that ground, the entire selection of 1998, 1999 and 2004 batch selection cannot be set aside.

Segregation of tainted/ineligible candidates is possible. The KPSC shall undertake the following exercise to segregate the ineligible candidates.

- (a) The KPSC shall prepare a separate list of candidates belonging to the reserved category, who took the written examination, showing the



A.6969/2019

marks secured in the written examination in the order of merit.

- (b) From out of the names in the said list prepared, prepare a list of candidates eligible to be called for the personality test in the ratio of 1:5, i.e., five times the number of candidates as there are vacancies reserved for each of the category out of reserved posts belonging to Scheduled Caste, Scheduled Tribes and other Backward Classes.
  - (c) If the names of the selected candidates belonging to the reserved category finds a place in this list, whether as General Merit candidate or Reserved candidates, when their appointment is valid and it shall not be disturbed.
  - (d) If the names of the selected candidates do not find a place in this list, then their appointment is void and the same is hereby set aside.
  - (e) The KPSC shall undertake this exercise within two months from the date of receipt of the copy of this order and forward the same to the Government for passing appropriate orders.
- (2) The revised list prepared by the KPSC in terms of the order dated 11<sup>th</sup> October, 2002 in W.P.No.12548-589/2002 which is affirmed by the Apex Court in Civil Appeal No.6172-6222/2005 vide order dated 6<sup>th</sup> October, 2005, which was submitted to the Court by the KPSC in a sealed cover, which was web-hosted by virtue of the order dated 11.11.2014 of this Court, is upheld. The KPSC and the State Government shall give effect to the said list.
- (3) **The KPSC shall take into consideration the 91 answer scripts which forms part of excess of 10% of the revalued paper and give effect to the order of the Hon'ble High Court dated 11<sup>th</sup>**



A.6969/2019

**October, 2002 in W.P.No.12548-589/2002 and the order of the Apex Court in Civil Appeal No.6172-6222/2005 vide order dated 6<sup>th</sup> October, 2005.** (Emphasis supplied)

- (4) The selection of candidates for the post of 1999 Gazetted Probationers (Group A and B posts) is not liable to be set aside on the ground of destruction of answer scripts.
- (5) In respect of the matters which are adjudicated and decided in this writ petition, this Public Interest Litigation is maintainable.
- (6) **All other issues/disputes which are personal in character are relegated to be decided by the Karnataka Administrative Tribunal, where the applications of the Petitioners are pending consideration. It is open to the petitioners to amend the said application to include those issues which are not decided in this Public Interest Litigation. Similarly, it is open to the respondents to agitate their rights/put forth their defence in pending proceedings before the Karnataka Administrative Tribunal, if they are made parties. Otherwise, they can also initiate independent proceedings for protecting their rights or agitate their rights.**  
(Emphasis supplied)
- (7) The KPSC and the State Government shall take steps to frame Rules or amend the existing Rules giving effect to the recommendations of Hota Committee, at the earliest. Till such Rules are framed or amended, the KPSC and the State Government shall follow the recommendations of the Hota Committee as set out in paragraphs 46, 47, 50, 51, 53, 54, 56, 58, 65 and 66 of the report, which are clearly set out in paragraph 287 of the judgment.
- (8) The High Court Registry is directed to keep the reports submitted by the members of the High Court

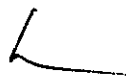


A.6969/2019

Committee constituted by this Court in this proceedings, in safe custody. If and when any request is made from the Karnataka Administrative Tribunal to transmit the said records, the same shall be sent to the Karnataka Administrative Tribunal."

10. Aggrieved parties preferred Special Leave Petitions (Civil) No.29245/2016 and connected cases against the above said order dated 21.6.2016. KPSC also preferred Special Leave Petition (Civil) No.30585-30587/2016, unsuccessfully, before the Hon'ble Supreme Court. On 27.2.2019 Review Petition against the order of dismissal of Special Leave Petition dated 11.4.2018 was also dismissed.

11. KPSC filed I.A.No.1/2018 in Writ Petition No.27674/2012 (PIL) and connected cases seeking clarification as to the manner of implementation of directions No.2 and 3 of the order dated 21.6.2016 etc. Thereafter, KPSC issued revised select list as per Notification bearing No.E(1)308/18-19/PSC dated 25.1.2019, at Annexure A1. Another Selection List in compliance of direction No.(3) of the order dated 21.6.2016 vide Notification bearing No.PSC/E(1)377/18-19 dated 22.8.2019 was issued and it is impugned at Annexure A6.



A.6969/2019

12. Applicant is before this Tribunal challenging shifting of his selection from the post of Tahasildar (Group-B) to the post of Commercial Tax Officer (Group-B) as per the impugned Notification dated 25.1.2019 (at Annexure A-1) and 22.8.2019 (vide Annexure A6) both on the file of Respondent No.2 and for direction to Respondents 1 and 2 to continue the Applicant in the post of Tahasildar (Group-B) by creating a supernumerary post and grant him all consequential benefits on the following grounds:

- (a) that the moderation and scaling done by KPSC is unscientific and improper and as a result of which his selection to the post of Tahasildar (Group-B) is disturbed and consequently his selection is shifted from the post of Tahasildar (Group-B) to Commercial Tax Officer (Group-B) under the impugned Notifications at Annexure A1 and A6;
- (b) that review of moderation and scaling of answer scripts is not in accordance with the order of the Hon'ble High Court dated 11.10.2002 passed in Writ Petitions No.12548-12589/2002 and there is



A.6969/2019

miscarriage of justice on account of applying improper moderation and scaling;

- (c) that Applicant has already rendered service for 13 years as Tahsildar and Assistant Commissioner and there is no justification to disturb his position.

13. Respondent No.3 has entered appearance, but has not filed Reply Statement.

14. Learned counsel for the Applicant vehemently contended that moderation and scaling adopted by KPSC is unscientific and there is no uniformity in applying moderation and scaling. In support of his contention, he submitted that if average variation were to be plus or minus up to 20 marks, no scaling need be done, but to add or deduct if average variation is over and above 20 marks runs counter and contrary to each other. He submitted that as per the Notification dated 28.2.2006 the Applicant is selected to the post of Tahsildar (Group-B) under General Merit, but as per the impugned Notifications at Annexure A1 and A6, Applicant's selection to the post of Tahsildar (Group-B) is disturbed. He placed reliance on decisions of the Hon'ble Supreme Court in the case of (i) **Dr. M.S.MUDGHAL v.**

h

A.6969/2019

**S.D.HALEGKAR (1993) 3 SCC 591**, (ii) **RAJESH KUMAR v. STATE OF BIHAR (2013) 4 SCC 690** and (iii) **VIKAS PRATHAP SING v. STATE OF CHATTISGARH (2013) 14 SCC 494** on the point that even in case of candidate who is wrongly selected by the committee and continuing in the post for more than 9 years, his appointment need not be disturbed at a later stage.

15. Sri K.M.Prakash, learned Panel Advocate for KPSC submitted that the impugned Notifications at Annexure A1 and A6 have been issued in compliance of the order of the Hon'ble High Court dated 11.10.2002 passed in Writ Petitions No.12548-12589/2002 and connected cases and order dated 21.6.2016 passed in Writ Petition No.27674/2012 and connected cases and there is no illegality in the impugned Notifications.

16. In view of the grounds urged, we formulate the following points for consideration:

**Point No.1** : Whether the method of moderation and scaling applied to 21 subjects/ 42 papers for selection to the posts of Gazetted Probationer (Group-A and B) 1998



A.6969/2019

by KPSC, ignoring bench marks of 20 (+/-) is correct and scientific?

**Point No.2:** Whether the impugned selection lists dated 25.1.2019 and 22.8.2019 at Annexure A1 and A6 on the file of KPSC, in so far as the Applicant are liable to be quashed?

17. Our answers to the above points is as under:

Point No.1 – In the Negative

Point No.2 – In the affirmative

18. Since Points No.1 and 2 are interlinked and overlapping each other, we take up both the points together for consideration.

19. **Points 1 and 2** : It is pertinent to mention that as per the Notification dated 28.2.2006 Applicant's total marks mentioned therein is 1091 (i.e., Written Examination marks 936 and Viva Voce marks 155); whereas private Respondent No.3's score is 1085 marks (i.e., Written Examination marks 935 and Viva Voce marks 150). Both were selected as Tahsildar, under General Merit (Group-B) (vide serial No.4 and 5 of Tahsildar- Group B of the Notification dated 28.2.2006, respectively). But, as per the





A.6969/2019

impugned Notification dated 25.1.2019 (at Annexure A1), Applicant's name is shown as selected to the post of Commercial Tax Officer (Group-B), under General Merit. His marks are shown as 1061 (i.e., 906 + 155); whereas private Respondent No.3 is shown as selected to the post of Tahsildar (Group-B). His marks are shown as 1095 (i.e., 945 + 150). As per the impugned Notification dated 22.8.2019 (at Annexure A6), selection of the applicant to the post of CTO (Group-B) remains the same; whereas selection of private Respondent No.3 to the post of Tahsildar (Group-B) with 1095 marks is maintained, but his name is pushed down from serial No.3 to serial No.4.

20. With regard to application of random review, moderation and scaling, it must be mentioned that the Karnataka Recruitment of Gazetted Probationers (Appointment by Competitive Examinations) Rules, 1997, which govern the procedure for selection to posts of Gazetted Probationers Group-A and B (including holding of competitive examination, age limit, qualification, reservation etc.,) do not provide for moderation and scaling. It is not out of place to mention that scaling system or scaling process, whereby raw marks in different subjects are adjusted to a common scale, is a recognized method of ensuring



uniformity inter se among the candidates who have taken examination in different subjects in civil services examination. Another reason for introducing scaling is to cure the disparity on account of strictness or liberality of the examiners. The entire basis for applying scaling in regard to marks awarded by different examiners in the same subject is the assumption that all answer scripts have been thoroughly mixed and that equal number of answer scripts drawn at random and sent to each examiner for valuation will contain answer scripts of candidates with equal distribution of abilities. The method of moderation and scaling came to be examined by 3-Judge Bench by the Apex Court in detail in the case of **SANJAY SINGH v. U.P. PUBLIC SERVICE COMMISSION, reported in (2007) 3 SCC 720**. As a matter of fact, this Tribunal set aside the provisional selection list on the ground that there was no proper compliance of the norms for evaluation of answer scripts and arbitrary and therefore directed for fresh evaluation by Examiners who are not interested in the candidates taking the examination. However, the order of this Tribunal was challenged by the KPSC before the Hon'ble High Court. The Hon'ble High Court came to the conclusion that the evaluation of answer scripts in 42 papers

h

were not in accordance with law. KPSC itself filed a Memo dated 27.3.2002 offering to undertake moderation of 10% of answer scripts of each examiner and apply scaling if average variation is (plus or minus) more than 20 marks. The Hon'ble High Court has accepted clause (b) of the Memo dated 27.3.2002 (filed by KPSC) with regard to moderation as clause (b) only and clause (c) of the Memo was not accepted by the Hon'ble High Court (vide operative portion of the order dated 11.10.2002 made in the Writ Petition).

21. In all, 62 papers were prescribed for the competitive examination for selection to posts of Gazetted Probationers (Group-A and B). Out of 62 papers, the Hon'ble High Court by final order dated 11.10.2002 and modified order dated 10.2.2003 ordered for random review, moderation and scaling in the following subjects:

<b>Sl.No.</b>	<b>Subject/Paper:</b>
1.	AG & MKTG SERI Paper-1
2.	AG & MKTG SERI Paper-2
3.	AN HUSB. 7 V.SC. Paper-1
4.	AN HUSB. 7 V.SC. Paper-]
5.	BOTANY Paper-1
6.	BOTANY Paper-2
7.	COMMERCE Paper-1
8.	COMMERCE Paper-2
9.	CRIMINOLOGY Paper-1
10.	CRIMINOLOGY Paper-2

h

11. ECONOMICS Paper-1
12. ECONOMICS Paper-2
13. GEOGRAPHY Paper-1
14. GEOGRAPHY Paper-2
15. MATHEMATICS Paper-1
16. MATHEMATICS Paper-2
17. HISTORY Paper-1
18. HISTORY Paper-2
19. GEOLOGY Paper-1
20. GEOLOGY Paper-2
21. PHYSICS Paper-1
22. PHYSICS Paper-2
23. POL.SCIENCE Paper-1
24. POL.SCIENCE Paper-2
25. PSYCHOLOGY Paper-1
26. PSYCHOLOGY Paper-2
27. PUBLIC ADMN. Paper-1
28. PUBLIC ADMN. Paper-2
29. SOCIOLOGY Paper-1
30. SOCIOLOGY Paper-2
31. ANTHROPOLOGY Paper-1
32. ANTHROPOLOGY Paper-2
33. ZOOLOGY Paper-1
34. ZOOLOGY Paper-2
35. RL. DEVLPMNT Paper-1
36. RL. DEVLPMNT Paper-2
37. KANNADA Paper-1
38. KANNADA Paper-2
39. ENGLISH Paper-1
40. ENGLISH Paper-2
41. GEN. STUDIES Paper-1
42. GEN. STUDIES Paper-2

Consequently, as per the order of the Hon'ble High Court dated 11.10.2002 and modified order dated 10.2.2003, valuation of 20 papers and marks awarded by the Examiner/Head Examiner and Chief Examiner were accepted on the ground that average variation was minus or plus upto 20 marks. Therefore, the Hon'ble Court did not order for random review, moderation and scaling in the following papers:

h

**Sl.No. Subject/Paper**

1. CHEMISTRY Paper-1
2. CHEMISTRY Paper-2
3. CIVIL ENGG. Paper-1
4. CIVIL ENGG. Paper-2
5. ELECL. ENGG. Paper-1
6. ELECL. ENGG. Paper-1
7. LAW Paper-1
8. LAW Paper-2
9. MECHL. ENGG. Paper-1
10. MECHL. ENGG. Paper-2
11. PHILOSOPHY Paper-1
12. PHILOSOPHY Paper-2
13. HINDI Paper-1
14. HINDI Paper-2
15. STATISTICS Paper-1
16. STATISTOCS Paper-2
17. URDU Paper-1
18. URDU Paper-2
19. MANAGEMENT Paper-1
20. MANAGEMENT Paper-1

22. On careful scrutiny and examination of the records placed by KPSC, we have noticed the following irregularities in implementing the orders of the Hon'ble High Court:

- (i) while applying random review and moderation, all the answer scripts, in the concerned subject, of the examiner are not taken into consideration;
- (ii) in many cases the examiner marks is wrongly taken into consideration for the purpose of random review, moderation and scaling;
- (iii) since the average variation up to 20 marks, (whether plus or minus), general review of the marks awarded by the examiner need not be disturbed, but benefit

L

- of the Bench marks of 20, has not been taken into consideration while applying moderation and scaling;
- (iv) in the cases of 3<sup>rd</sup> valuation marks also bench marks of 20 has not been taken into consideration;
  - (v) subjecting answer scripts for review in excess of 10% as mentioned in clause (c) of the memo dated 27.3.2002 filed in the Writ Petition is not accepted by the Hon'ble High Court, but KPSC has subjected certain answer scripts in excess of 10% of answer scripts of particular examiner for random review etc and sent for third valuation and extended the benefit of third evaluation marks to those candidates, but moderation and scaling is not applied with reference to those answer scripts;
  - (vi) in many cases, moderation and scaling has been done on the basis of marks awarded by Head/Chief Examiner;
  - (vii) there are instances where on the basis of wrong marks, moderation and scaling have been done;
  - (viii) while selecting 5% of the top level marks and another 5% of random marks of a particular examiner, for the purpose of moderation and scaling, KPSC has not properly selected and in that process top level marks answer scripts have been ignored;
  - (ix) in many cases while deducting average variation marks, plus (+) or minus (-) above 20 and wherever fraction of 0.50 is arrived at, the same is rounded off

L

as 1.00 in some cases and in some cases it was not so.

23. The following are the marks awarded to the applicant by examiners in the Competitive Examination in 3 Subjects/ 6 papers, namely General Studies, Criminology and Rural Development:

General Studies Paper-2	:	187
Criminology Paper-1	:	225
Criminology Paper-2	:	169
Rural Development Paper-1	:	183
Rural Development Paper-2	:	173
General Studies Paper-1	:	192
<b>Total</b>		<b>1129</b>

As per random review and moderation carried out by KPSC Applicant has been awarded marks paper-wise, as under:

In **General Studies Paper-2**, the average variation was minus 23. After deducting 23 marks out of 187 marks, awarded 164 marks.

In **Criminology Paper-1**, the average variation was minus 71.60 [rounded off to minus 72]. After deducting 72 marks out of 225, he has been awarded 153 marks.

*h*

In **Criminology Paper-2**, the average variation was minus 42.42 [rounded off to minus 42]. After deducting 42 marks out of 169, 127 marks are awarded.

In **Rural Development Paper-1**, original marks is 183 and average variation was minus 4.25. In review he scored 145 as against 183 marks and since individual variation of marks was more than 20, the paper was sent for third valuation. As per third valuation he was awarded 145 marks. Hence, he has been awarded 145 marks as against 183 marks.

In **Rural Development Paper-2**, the average variation was plus 4.60 and since average variation was less than 20 marks, original marks of 173 was retained.

In **General Studies Paper-1**, the average variation was minus 48.50 (rounded off to Minus 48) and hence 48 marks were deducted out of 192 marks and he was awarded 144 marks.

If the benefit of bench mark of minus/plus 20 marks per paper is taken into consideration, marks in those papers would be more than the marks awarded to the applicant.

24. Private Respondent No.4 has been awarded original marks (as awarded by the Examiner) in the following six papers:

General Studies Paper-2 : 133

h



Public Administration Paper-1	:	151
Public Administration Paper-2	:	131
Agriculture & Marketing Paper-1	:	180
Agriculture & Marketing Paper-2	:	150
General Studies Paper-1	:	145
<b>Total:</b>		<b>890</b>

Now we refer to subject-wise random review and moderation carried out by KPSC, in regard to private Respondent No.4.

In case of **Public Administration Paper-1 and Paper-2 and General Studies Paper-1**, the original marks awarded were 151, 131 and 145, respectively, and they were retained as there was no effect of average variation in those papers.

In **General Studies Paper-2** the original marks was 133 but average variation was (-) 16.50, no scaling was applied, but since individual variation was in excess of 20, the said paper was referred to third valuation and in the third valuation he was awarded 169 marks (i.e., 133 + 36 marks) and thus was awarded 169 marks in the said paper.

In **Agriculture & Marketing Paper-1** the original marks was 180, the average variation was (-) 24 and after deducting 24 marks (180-24) he was awarded 156 marks.

✓

In **Agriculture & Marketing Paper-2** the original marks was 150, but on average variation of (+) 43, 43 marks were added to 155 (150+43) and thus he was awarded 193 marks. Thus as per the moderation and scaling applied in 2014 the private Respondent No.4 was awarded in all 945 marks. His marks remained the same in 2019 moderation. As per the impugned Notification dated 22.8.2019 (at Annexure A6), selection of the applicant to the post of CTO (Group-B) remains the same; whereas selection of private Respondent No.3 to the post of Tahsildar (Group-B) with 1095 marks is maintained, but his name is pushed down from serial No.3 to serial No.4. The private Respondent No.3 has not filed Reply Statement nor challenged the impugned Notification at Annexure A6 though his selection under General Merit to the post of Tahsildar (Group-B) is brought down from serial No.3 to 4. Further, Respondent No.3 is not the last selected candidate for the post of Tahsildar under General Merit. Therefore, we hold that the private Respondent No.3 is not a necessary party in this Application.

25. At the cost of repetition, we mention that out of 62 papers prescribed for the examination, in 20 papers the Hon'ble High Court has upheld the marks awarded by the Examiner, Head

L

A.6969/2019

Examiner and Chief Examiner, on the ground that there was variation of (-) minus or (+) plus upto 20 marks. When the benefit of Bench Mark was extended and the marks awarded to those candidates in those papers, namely Chemistry Paper 1 and 2, Civil Engineering Paper 1 and 2, Electrical Engineering Paper 1 and 2, Law Paper 1 and 2, Mechanical Engineering Paper 1 and 2, Philosophy Paper 1 and 2, Hindi Paper 1 and 2, Statistics Paper 1 and 2, Urdu Paper 1 and 2 and Management Paper 1 and 2, are not altered, moderation and scaling applied by KPSC to other candidates in other subjects/papers is unscientific. Therefore, marks awarded to the Applicant in the selection list dated 28.2.2006 as well as in the impugned orders are not correct, but the Applicant has not challenged marks awarded and mentioned in the selection list dated 28.2.2006. Keeping in view that the Applicant has challenged the impugned Notifications at Annexure A1 and A6 with regard to the marks awarded in 2014 and 2019 and on account of the above said illegalities committed by KPSC we hold that there is a miscarriage of justice. Hence, we answer Point No.1 in the negative and 2 in the affirmative in favour of the Applicant. Since the Applicant is entitled to succeed on merits, question of going into the alternative prayer

L

of the Applicant to continue him in the same post by creating a supernumerary post does not arise.

26. In the result, we pass the following Order:

Application is allowed and the impugned Notification bearing No.PSC/E(1)/377/18-19 dated 22.8.2019 at **Annexure A6** and Notification bearing No.E(1)308/18-19/PSC dated 25.1.2019 at **Annexure A-1**, both on the file of Respondent No.2, in so far as they relate to selection of the Applicant, under the heading Commercial Tax Officer Group-B, are quashed. KPSC is directed to re-do moderation and scaling as per the orders of the Hon'ble High Court dated 11.10.2002 and 10.2.2003 passed in Writ Petitions No.12548-12589/2002 and connected cases by extending the benefit of bench marks of minus or plus 20 in case of scaling and place the Applicant at an appropriate place in the selection list dated 28.2.2006 published vide Notification No.CONF.25/2005-06/PSC, within three months from the date of receipt of certified copy of this order and until then, the order of status quo granted in favour of the Applicant shall continue.