

**KARNATAKA PUBLIC SERVICE
COMMISSION**

IN THE HIGH COURT OF KARNATAKA AT BANGALORE**Writ Petition Nos.12548-12589/2002 & connected cases****D.D. 11.10.2002****The Hon'ble Mr. Justice R.V.Raveendran****&****The Hon'ble Mr. Justice K.L.Manjunath****Karnataka Public Service Commission ... Petitioner****Vs.****Linganna Kuchabal & Others ... Respondents****Examination – Examination malpractice:**

Respondents-candidates for Gazetted Probationers 1998 Examination approached KAT seeking revaluation of their compulsory Kannada/English language papers – They also alleged that some successful candidates indulged in examination malpractice in collusion with and connivance of Examiners/officials of the Commission – KAT allowed the applications and quashed the valuation and directed fresh valuation of answer scripts in all subjects – Aggrieved by the same the Commission and some successful candidates filed these writ petitions before the High Court – After examining the case in detail and in view of in-house enquiry report of the Sub Committee of the Commission identifying the candidates who indulged in examination malpractice and proposing to take action against them, set aside the order of KAT directing fresh valuation and upheld valuation in respect of 10 subjects (2 papers each) and directed moderation/scaling in respect of 20 subjects (2 papers each).

Held:

Where a large number of answer scripts are to be evaluated, obviously they cannot be evaluated by a single examiner. The answer scripts relating to the same subject are therefore distributed to several Examiners, for evaluation. When there is more than one or when there are several Examiners for evaluation of the answer scripts relating to a subject, usually two problems arise:

- (i) Each Examiner will have his own perception as to what is the right answer. In fact some Examiners may not even know what exactly is the correct answer, leading to incorrect evaluation.

(ii) Each examiner will have his own method of awarding marks. While some may be highly conservative or 'stingy' in awarding marks, some may be highly liberal or 'generous' in awarding marks. There may also be different levels of 'stinginess' or 'generousness' among the Examiners.

To iron out the natural creases arising in evaluation, it is necessary to adopt certain procedural safeguards to ensue that no candidate is unjustly benefited or placed at a disadvantage, vis-a-vis the other candidates and to ensure that the evaluation is uniform and consistent.

Further held:

P.S.C. should have such number of examiners as are required with reference to number of answer scripts to be evaluated and number of days allotted for evaluation. It should be remembered that more number of evaluators means more chances of variation and need for more moderation. Ideally the number of examiners should be kept to the minimum, so that the chances of variation in evaluation is also the minimum. In future PSC may consider fixing a ratio between the number of answer scripts and the Examiners for evaluation and avoid unnecessarily large number of examiners being appointed in some subjects.

Cases referred:

1. AIR 1974 SC 1155 – GM, South Central Railway, Secunderanad Vs. A.V.R. Siddhanti
2. AIR 1985 SC 167 – Proboth Verma vs. State of Uttar Pradesh
3. AIR1984 SC 1543 – Maharashtra State Board of Secondary & Higher Secondary Education & Ors. Vs. Paritosh Bhupesh Kurmarsheth
4. 2000 (10) SCC 196 – Ex-Constable Chotelal Vs. Union of India
5. 2002 (4) SCC 503 – Kendriya Vidyalaya Sangthan Vs. Ajaykumar Das

ORDER

Karnataka Public Service Commission [KPSC] issued a notification dated 9.3.1998 inviting applications for recruitment to the post of Gazetted Probationers [Group A and B posts], in pursuance of a request of the State Government made on 4-2-1998 to select 415 candidates for Group-A and Group-B posts. In response to said notification, KPSC received 85598 applications. On scrutiny 79130 candidates were found eligible for preliminary examination. The mode of

selection is governed by the Karnataka Recruitment of Gazetted Probationers [Appointment by Competitive Examination] Rules, 1997 [for short, the 'Recruitment Rules'], made by the Government of Karnataka in exercise of powers under Section 3(1) read with Section 8 of the Karnataka State Civil Services Act, 1978.

2. Rule 4 of the Recruitment Rule requires that a combined competitive examination for recruitment to one or more of the services or group of posts (mentioned in Schedule I to the Rules) shall be held every year, subject to availability of vacancies, in the manner set out in Schedule II to the Rules. As per the scheme of examination contained in Schedule II to the Rules, the competitive examination comprises two stages viz., (i) preliminary examination [objective type] for selection of candidates for the main examination; and (ii) main examination [written examination and personality test] for selection of candidates to the posts, to be held as follows:

A. PRELIMINARY EXAMINATION: The preliminary examination shall consist two papers of objective type (multiple choice).

Paper I	General Studies	150 marks
Paper II	One Subject to be selected from the list of optional subjects	300 marks
Total	450 marks	

Note 1 to 3: xxxx (not relevant)

Note 4: The number of candidates to be admitted to the main examination shall be 20 times the vacancies notified for recruitment in the order of merit, on the basis of the performance in the preliminary examination subject to accommodating in the same ratio adequate number of candidates belonging to the categories of scheduled castes, scheduled tribes and each of the other backward classes.

B. MAIN EXAMINATION: The main examination shall consist of written examinations and Personality Test:

Written Examination:

Paper I	Kannada	150 marks
Paper II	English	150 marks
Paper III & IV	General Studies	300 marks for each paper (total 600 marks)
Paper V, VI, VII & VIII	Two subjects to be selected from the list of optional subjects. Each subject will have two papers.	300 marks for each paper (total 1200 marks)
	Total marks for written examination	2100 marks

Note 1: The marks obtained in compulsory papers, i.e., in Kannada and in English shall be of qualifying nature. For qualifying in these papers, a minimum of 30% in each paper and 35% aggregate is prescribed. The marks obtained in these two papers shall not be considered for determining the merit for selection. Candidates who do not secure the prescribed marks in the qualifying papers namely Kannada and English shall not be eligible for the personality test and selection.

Note 2: The examination shall be of conventional type.

Note 3: The question papers shall be set both in Kannada and in English. A candidate may answer a paper either entirely in Kannada or in English.

Note 4: The standard of the main examination [except paper-I Kannada and Paper-II English] shall be that of degree level. The standard of paper I Kannada and paper II English shall be that of first language Kannada and first language English respectively at SSLC level.

C. PERSONALITY TEST: The Commission shall call for a personality test as far as may be, five times the number of candidates as there are vacancies in the services in Group 'A' and Group 'B' respectively, of schedule I in the order of merit

on the basis of the result of the main examination, subject to calling candidates belonging to schedule castes, schedule tribes and other backward classes in the same ratio to the extent vacancies reserved for them. Personality test shall carry a maximum of 200 marks. The object of the personality test is to assess the personal suitability of the candidate for the service for which he is a candidate.....

3. The preliminary examination was held on 30.8.1998 and 56228 candidates appeared for the said examination. The results of preliminary examination were announced by KPSC on 16-11-1998 and 9857 candidates were declared eligible for the main examination, keeping in view the prescribed ration of 1:20 and accommodating the same ratio of number of candidates belonging to SC, ST and OB classes. The main examination was held between 9-4-1999 and 3-5-1999. On 12-1-2000, the results of the main examination were announced and 2397 candidates were qualified for personality test (interview) keeping in view the ratio of 1:5 and accommodating the same ratio of number of candidates belonging to SC, ST and OB classes. 1209 candidates who had failed in the compulsory papers [Kannada and English] were not considered for ranking. The personality test which was scheduled to be held between 19-6-2000 and 31-7-2000 could not be held due to certain administrative reasons. Subsequently, the government withdrew the vacancies on 14-8-2000, but again referred back the vacancies to KPSC in June 2001. Therefore the personality tests were held in only July and August, 2001 and a provisional list of selected candidates was published on 28-9-2001.

4. In the meanwhile, in February, 2000, eight candidates who had appeared for the main (Written) Examination, but had failed in the compulsory papers of Kannada and/or English filed WP Nos.5332-39/2000 alleging serious irregularities in evaluation of answer script in regard to the main examination and sought the following reliefs: a) a direction for reevaluation of their answer scripts in compulsory subjects; b) a direction to State Government to appoint an independent body to inquire into the manner in which the examinations had been conducted and to direct KPSC to get the entire papers evaluated again through an independent body under the supervision of the court and in the event of the court holding that any mal-practice has taken place, then to direct KPSC to hold fresh examinations; and c) direct the KPSC to declare the marks obtained by in the optional and general studies papers. Another candidate who failed in the compulsory

subjects filed WP No.7022 of 2000 seeking a direction to KPSC to revalue his answer script in compulsory English paper.

5. In the said writ petitions, the said candidates raised the following among other contentions:

- a) Having regard to their high qualifications, it was inconceivable that they failed to secure 30 marks in SSLC level Kannada and English compulsory papers.
- b) There were serious irregularities in valuation as per newspaper reports. In particular one Rameshwarappa (working as a Deputy Director of Food & Civil Supplies) and his family members had secured I, II and IV ranks in the written examination. All of them had taken the examination in the same room and had selected the same optional subjects and their papers had been evaluated by the same examiner; The said Rameshwarappa was a close friend of the then Secretary of KPSC (A.K.Monnappa).
- c) A senior employee of KPSC, whose son had appeared for the examination, had participated in the Examination process and evaluation, thereby giving cause for a serious doubt about the fairness in valuation.
- d) Key answers [model answers] prepared by KPSC, which had to be kept confidential until the declaration of results, were leaked out by KPSC even before the main examination;
- e) The then Secretary of KPSC and his personal assistant who were in charge of the answer scripts and who had knowledge of the code numbers given to the answer scripts, got some of the answer scripts in which they were interested, evaluated with the help of a particular examiner and also manipulated the computer entries;
- f) Several candidates who had passed the compulsory subjects had secured very low marks in the optional subjects, which imply that the compulsory papers were not properly valued; and for example one Sheryar Khan, who did not have any knowledge in Kannada had been declared as having passed Kannada paper.
- g) Some of the examiners selected to evaluate the papers were blood relatives of the candidates, which is contrary to KPSC Rules.

6. KPSC resisted the said writ petitions contending that the examinations had been conducted in accordance with the Recruitment Rules. It denied any irregularity either in conducting the examinations or in the valuation of answer scripts. It pointed out that all the writ petitioners had not failed in Kannada and English papers; that three had failed in English and one had failed in Kannada papers and others had passed the compulsory papers, but did not become eligible for personality test as they did not secure sufficient marks to be called for personality test. KPSC set out the procedure adopted for evaluation of answer scripts in its statement of objections which is extracted below:

“It is submitted that the examination work consists of the following: 1. Pre-valuation work, 2. Post valuation work. The examination process is conducted in secrecy and confidentiality. It is inevitable for the Secretary to be in charge of all the details, because of administration of the Commission is done under his supervision and he is the executive Head of the Office of the Commission. He is a responsible Officer who belongs to I.A.S. cadre. Panels of Examiners are sent by various Universities at the behest of the Commission and selection of the Examiners is effected from those panels. The qualifications and status of the Examiners are prescribed. The Examiners were highly qualified and were either Professors, Selection grade Lecturers and Senior Scale Lecturers and were well trained and proficient in their respective subjects. Examiner’s consent for examination work, his/her undertaking to the effect that he/she is not a candidate for the examination in question, that no close relatives of his/her have appeared for the said examination viz., Son/daughter/brother/sister/spouse/son-in-law/daughter-in-law etc., that he/she has not been debarred from any examinership and such other necessary undertakings pertaining to the examination were sought and obtained and after such undertakings was obtained, the said person was considered for appointment as Examiner.

It is submitted that, a day or two prior to the actual commencement of the valuation work, the concerned Chief and Head Examiners jointly used to prepare the model answers which model answer intrinsically contained the scheme of valuation. On the forenoon of the day of commencement of the valuation, copies of the model answers so prepared used to be circulated among the valuers. The scheme of valuation

and model answer was to be discussed by Chief/Head/Additional Examiners and a consensus used to be arrived at in respect of scheme of valuation and model answer. This resulted in removing any arbitrariness and angularities in the valuation, besides in adopting uniform standards for awarding marks by all the concerned evaluators. These Examiners and Head Examiners who were all well trained and proficient in their respective subjects, had also indicated such guidelines as deemed fit by mutual discussion for the guidance of the valuers to ensure a fair and objective valuation. It is emphasised that this central valuation involved also face to face discussion among the Chief Examiners, Head Examiners and Examiners so that any arbitrariness and angularities are eliminated. Thus, the model answers will be only prepared for the above purpose, long after the examinations are over and a day or two prior to the Central Valuation takes place.

It is submitted that the examination was completed by 2nd May, 1999. The valuation work was commenced by 17-5-1999 and was completed by 18-6-1999. The answer scripts for the purpose of valuation were coded under the direct supervision of the Secretary of the Commission. There are 8 papers. In other words, there are 8 answer scripts of a candidate. Each of the answer script of a candidate bears a unique and exclusive code number. Thus, each candidate will have 8 different code numbers. The answer scripts were subject wise bundled after randomising and put in plastic covers each bundle having ten scripts and sent to the place of Central Valuation. There, the Chief Examiners, Head Examiners and Additional Examiners (Valuers) used to be present. The answer scripts used to be handed over to the Chief Examiners, who in turn used to give packets to the answer scripts to the Examiners, who used to value it. From the Commission side, there used to be one Assistant Secretary permanently at the place of Central Valuation with clerical and other assistance to hand over the scripts to the Chief Examiners and most of the time the Secretary used to visit the place of Central Valuation to ensure that the work of valuation was smooth and devoid of any problems. Security had also been provided to ensure and to see that no unauthorised persons had access to that place. After the valuation, the scripts valued, used to be returned to the Commission along with the marks sheet.

The answer scripts and marks sheet used to be sealed separately in the central valuation venue itself and the answer books stores in the central place in the Commission, with police security. The sealed marks sheet cover used to be in the safe custody of the Secretary.

7. When the said writ petitions came up for consideration before a learned Single Judge, it was submitted that the issues raised in the writ petitions were of considerable importance and even though the petitioners in the writ petitions had made individual grievances in regard to valuation of their answer scripts, several other infirmities which had been pointed out related to public interest and therefore it was desirable to refer the matter to a Division Bench. The learned Single Judge, therefore, by a considered and detailed order dated 21-3-2000 referred the said writ petitions to a Division Bench.

8. In the meanwhile, 24 other candidates also approached this Court with a similar prayer. Hence, those petitions were also clubbed with WP No.5332-39 and 7022 of 2000. Before the Division Bench, KPSC pointed out that as recruitment related to State service, and as the Karnataka Administrative Tribunal was functional by appointment of necessary members, the writ petitions were not maintainable. The Division Bench accepted the said contention and transferred 33 writ petitions to the Tribunal with a direction to treat the writ petitions as Applications and adjudicate the same in accordance with law. Accordingly, the tribunal registered the transferred writ petitions as applications and assigned numbers as Application Nos.7901 to 7908, 7928 to 7933, 7909, 7911 to 7918, 7920 to 7927, 8772 and 8893 of 2001. Nine other candidates directly approached the Tribunal in Application Nos.8087, 8274, 8275, 8442 to 8446 and 8502 of 2001. All the 42 petitions were heard and disposed of together by the Tribunal.

9. During the course of arguments, the Tribunal directed KPSC to produce (i) the answer scripts of Rameshwarappa and two of his relatives who had secured top ranks, as also the answer scripts of Sheryar Khan and one Virupaksha whose father was a Deputy Secretary of KPSC; (ii) model answers; and (iii) the list of Examiners, Head Examiners and Chief Examiners, who had evaluate the answer scripts and tabulated the statements, indicating who had valued the answer scripts of applicants and others. All these were produced by KPS and considered by the Tribunal. The arguments were concluded on 2.11.2001 and the Tribunal reserved the applications for orders.

On 19-11-2001 the Tribunal issued a direction to KPSC to maintain status quo until the disposal of the Applications. The Tribunal also suggested to the learned counsel for KPSC that KPSC may produce the marks assigned to the top 50 candidates in each category (by the Examiner, Head Examiner and Chief Examiner) and posted the matters to 21-11-2001. KPSC sought certain clarification in regard to the suggestion of the Tribunal for production documents. Thereafter the learned counsel for KPSC sought time to consult the Commission and make submissions. The matter was adjourned to 22-11-2001 and again to 28-11-2001. On 28-11-2001, the learned counsel for KPSC submitted that the Secretary of the Commission was away on training at Missouri for a period of six to eight weeks, and the keys of the almirah in which the records were kept were with him and therefore the information could not be produced immediately; and that even otherwise, KPSC was unwilling to give the information sought, having regard to the scope of the proceedings before the Tribunal. KPSC also filed the following memo:

After hearing the parties this Hon'ble Tribunal suggested the KPSC to cause production of marks of the top 50 candidates in each category along with the marks awarded if any by the Head Examiner and Chief Examiner. This suggestion has been considered by the KPSC with all seriousness it deserves as it was coming from this Hon'ble Tribunal.

However it is not possible nor is it legally incumbent upon KPSC to produce the information sought on account of several administrative reasons and having regard to the limited scope of judicial review in these matters, where allegations made have remained as mere allegations and not proved or substantiated in manner known to law.

The above memo may be taken on record.

10. Thereafter, the tribunal by order dated 6-2-2002 allowed the applications, being of the view that the awarding of marks to candidates was not fair and therefore the merit list was vitiated. The Tribunal issued the following directions:

In the instant case, we are of the view that the valuation of the answer scripts cannot be regarded as fair and consequently has to be held to be arbitrary. Having regard to the circumstances of the case, no distinction could be made between answer scripts

which are validly valued and those that are not validly valued. The entire valuation of the answer scripts would have, therefore, to be held as arbitrary requiring fresh valuation. The KPSC shall have to get the answer scripts freshly valued by appointing Examiners who are in no way interested in the candidates taking the examination. 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 this examination. It would be necessary for the KPSC to erase all the code numbers that are given to the answer scripts and to 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. The KPSC shall have all the answer scripts which have fetched 60% and above marks valued by a set of two Examiners. If there should be any difference between the dual examiners exceeding 5% of the marks, the papers shall be referred to 3rd Examiner. The acceptability of the valuation by the Examiners, as aforesaid shall be left to the discretion of the KPSC, but that must be amongst the top three Examiners referred to above. In respect of the results announced on fresh valuation 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. On publication of the results pursuant to this order, the KPSC shall be obliged to furnish to all the candidates marks obtained by them in all the papers attempted by them irrespective of the fact as to whether they have passed in the compulsory papers or not.

11. Feeling aggrieved, KPSC has filed WP No.12548-589 of 2002 and sought quashing of the order passed by the Tribunal Respondents 1 to 42 were the applicants before the Tribunal and 43rd respondent is the State Government. Several selected candidates, whose names appear in the provisional select list published by the KPSC, have also filed writ petitions challenging the order of Tribunal, in WP Nos.8702-11, 9085-91, 9250-55, 13310-16, 13464-69, 134747-84 and 21218 of 2002. As they involve the same questions, we have heard them together.

11.1) Before us, the following grounds are urged by KPSC:

- a) As there is no provision for revaluation, no candidate had a right to seek revaluation and therefore the Tribunal ought not to have directed revaluation;

- b) The only irregularity established before the Tribunal was in regard to

matters, an applicant can seek relief only for himself and cannot seek relief in general. The Tribunal has proceeded with the matter and issued directions as if the matter was a public interest litigation, which is impermissible.

f) KPSC had announced the main examination results on 12.1.2000, showing 2397 candidates had qualified for personality test. The writ petitions (which were converted as Applications before the tribunal), were all filed subsequent to 12-1-2000. Therefore the writ petitions by the unsuccessful candidates without impleading the 2397 candidates who qualified for the personality test, were liable to be rejected for non-joinder of necessary parties. Further, before the conclusion of arguments before the Tribunal, the provisional list of selected candidates was also published on 28.9.2001. At all events, the Applications before the Tribunal could have proceeded with this Applications after 28.9.2001, only by impleading the selected candidates. As the selection candidates were not impleaded, the Applications ought to have been rejected for non-joinder of necessary parties.

h) Even if there is any non-observance or violation of the guidelines issued by KPSC in regard to valuation, it will not furnish any cause of action to any of the unsuccessful candidates, as such guidelines do not have any statutory force. The selection process can be interfered with only if there is any violation of Article 14 or 16 of the Constitution of India or statutory provisions.

12. When these petitions came up for consideration of the interim prayer on 19.3.2002, learned counsel for the KPSC voluntarily produced the marks obtained by the top 50 candidates in each of the categories with an abstract, as also the particulars of moderation (that is marks increased/decreased by the Head Examiner Chief Examiners) in regard to all candidates who became eligible for personality test. After hearing the rival contentions in regard to interim prayer, we directed KPSC 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 revaluation with particulars of difference in marks. In response to it, on 21-3-2002 KPSC made available for the perusal of the court, statements showing the subjectwise marks awarded by the Examiner, Head Examiner and Chief Examiner where the difference was plus or minus 20 or above with subjectwise abstracts.

13. On 27-3-2002, KPSC offered to redo the moderation and circulated its proposals to all counsel. However, as the service of the respondents was not complete, and as the matter was being heard only with reference to the interim prayer, the said memo was not filed. After service, during the course of final arguments, on 22.7.2002, KPSC filed the said memo dated 27-3-2002 offering to redo the moderation, without prejudice to its contentions. We extract below the said memo in its entirety.

MEMO

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-a-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 feel 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 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 percent of the answer scripts evaluated by any examiner in any subject, the shortfall 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 scripts 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 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.

14. It was also submitted on behalf of KPSC that an in-house inquiry has been held by a Three Member Sub-Committee of the Commission in regard to the alleged irregularities, and a report had been submitted to the effect that the result of ten candidates are vitiated by malpractice and recommending the cancellation of their results after following the necessary procedures and further recommending certain other steps. It was observed that it will also initiate action in terms of the said report. A copy of the said report was also made available for the perusal of the court.

15. The contesting respondents (applicants before the Tribunal) were not however willing for restricting the revaluation/moderation, in the manner suggested by KPSC in its Memo filed on 22-7-2002. We will therefore consider the several points in issue in these petitions.

Whether the Applications are liable to be rejected for non-joinder of selected candidates as parties:

16. The selected candidates contend that they were necessary parties to the proceedings and their selection cannot be challenged by the non-selected candidates, without impleading them as parties. It is submitted that as they were not impleaded as parties and as no allegation or irregularity has been made against them [selected candidates], their selection should be not interfered with. Reliance is placed on the decision of the Supreme Court in *PROBOTH VERMA vs STATE OF UTTAR PRADESH* [AIR 1985 SC 167], wherein it is held that where large number of persons who are to be vitally affected by the writ petitions are not impleaded as respondents, the petitions cannot be proceeded with, without requiring that such persons or at least some of them in a representative capacity, be made as respondents; and that on failure to so implead, the petitions should be dismissed for non-joinder of necessary parties. Reliance is also placed on the decision in *EX-CONSTABLE CHOTELAL vs UNION OF INDIA* [2000 (10) SCC 196] where the Supreme Court held that the principles of natural justice requires that selected persons whose appointments were sought to be set aside, should be made parties to the proceedings.

17. The two cases relied on by the selected candidates were cases where on the date of filing of writ petitions, the selection had already been made. But, in these cases, as noticed above, the applications considered by the tribunal were transferred writ petitions originally filed before this court in or about February, 2000. In February, 2000, only the main examination results had been announced and no candidate had been called for personality tests. Persons who had filed writ petitions were those who had failed in the compulsory papers or those who were not considered to be qualified for personality test. They had approached this court immediately after announcement of the main examination results. The personality test was held only in July/August, 2001 and the provisional selection list was published in September, 2001 more than one and a half years after the filing of those writ petitions and long after the matters were transferred to the Tribunal. The question whether a person is a necessary party or not has to be examined as on the date of filing of the petitions and not with reference to the subsequent events. In fact as the publication of provisional selection list was during the pendency of applications, the said list is itself subject to the final decision in the pending cases. Therefore, it cannot be contended that candidates who were selected on 28-9-2001 were necessary parties to the applications.

18. In this case, what is challenged is not the selection of any particular candidate. What is challenged is the entire evaluation process on the ground of fraud and irregularities. It is a settled principle of service jurisprudence that where there are large scale fraud or irregularities in selection and the entire selections are challenged on that ground (as contrasted from challenge to the selection of any specific candidate), it is not necessary to implead the selected candidates.

18.1) In *GM, SOUTH CENTRAL RAILWAY, SECUNDERABAD vs A V R SIDDHANTI* [AIR 1974 SC 1155], the Supreme Court held that where a policy regarding seniority is challenged as being violative of Articles 14 and 16 of the Constitution, relief can be claimed only against the authority/employer and non-joinder of employees/persons who are likely to be affected by the decision will not be fatal to the petitions. In this case, the challenge is on the ground that there are large scale irregularities in the conduct of a competitive examination and in the evaluation of answer scripts. Therefore, it cannot be said that all person who passed the examination or all the persons who were subsequently shown as having been selected should be impleaded as parties.

18.2) In *KRISHNA YADHAV vs STATE OF HARYANA* [AIR 1994 SC 2166], the Supreme Court held that where the process of selection was conceived in fraud and delivered in deceit involving fake and ghost interviews and tampering of records, the entire selection will have to be held to be arbitrary and the principle that innocent candidates should not be penalized for the misdeed of other will be inapplicable in such cases. Supreme Court held that where there was a systematic fraud, the only course is to set aside the entire selection, as fraud unravels everything; and where the selection process is arbitrary, what is faulted is the entire selection as such and not the selection of any individual candidates.

18.3) In *UNION OF INDIA vs O CHAKRADHAR* [2002 AIR SCW 872], the Supreme Court held thus:

“..... the nature and extent of illegalities and irregularities committed in conducting the selection will have to be scrutinized in each case, so as to come to a conclusion about future course of action to be adopted in the matter. If the mischief played is so widespread and all pervasive, affecting the results so as to make it difficult to pick out persons who have been unlawfully benefited or wrongfully deprived of their selection, in such cases, it will neither be possible nor necessary to issue individual

show cause notices to each selectee. The only way out would be to cancel the whole selection.....”

To a similar effect is the decision of Supreme Court in KENDRIYA VIDYALAYA SANGTHAN vs AJAYKUMAR DAS [2002 (4) SCC 503].

19. We, therefore, hold that there was no need for the applicants before the Tribunal to implead all the candidates who were qualified for the personality test or all the selected candidates.

ii) Whether there were any irregularities in the evaluation/moderation:

20. The grievance of unsuccessful candidates who approached this court Tribunal was not in regard to the conduct of examinations, but in regard to the valuation. What is alleged are (a) improper evaluation leading to applicants before the tribunal being shown as having failed in the compulsory papers [Kannada and English]; and b) irregularities in moderation to help several candidates to secure higher marks than they deserved. Though a vague contention that the key answers [model answers] prepared for the benefit of Evaluators for the purpose of evaluation, were leaked out even before the main examination was urged, it was not pursued nor established. In fact KPSC has clarified that the examinations were held between 9-4-1999 and 3-5-1999 and valuation work commenced on 17-5-1999 and the model answers were prepared only a few days before the actual commencement of the valuation. Therefore the question of model answers being leaked at the time of examination does not arise. In fact the tribunal has also not recorded any finding of any irregularity in conducting the examination. It has only directed fresh valuation of answer scripts and not fresh examination. Therefore, what falls for consideration is whether there were large scale irregularities in evaluation/moderation as alleged by the applicants (unsuccessful candidates).

21. The first contention of the applicants before the Tribunal was that having regard to their qualifications, they would not have failed in SSLC level Kannada/English papers and the fact, that they are shown as having failed in Kannada or English papers shows that valuation was not proper and therefore, their papers should be re-evaluated. It is, well settled that no candidate has

a right to seek revaluation of his/her answer scripts unless such a right is expressly conferred by the Rules governing the conduct of the Examination. In MAHARASHTRA STATE BOARD OF SECONDARY & HIGHER SECONDARY EDUCATION & OTHERS vs PARITOSH BHUPESH KURMARSHETH [AIR 1984 SC 1543], the Supreme Court held that there is no legal right in any examinee to demand disclosure, inspection or verification of his answer books in the absence of an express provision in the Rules/Regulations, governing the conduct of examination; and that the power conferred on the Examining Authority to order revaluation or correct errors in the event of mal practice or fraud does not confer a right of an examinee to seek revaluation. But, as already noticed, if there are large scale irregularities in regard to valuation, the Court can direct revaluation of all answer scripts. It is however unnecessary to examine this matter further, as KPSC has, having regard to the facts and circumstances, voluntarily come forward to re-evaluate the compulsory papers [Kannada and English] of the applicants before the Tribunal if they have been shown as having failed in those subjects. KPSC has, however, made it clear that this concession of revaluation is only in regard to compulsory papers and that too only in regard to the applicants/petitioners who have already approached the Tribunal or this court and who have failed in such papers. As only a few candidates have a grievance in regard to valuation of their compulsory papers (English and Kannada), we are satisfied that relief in regard to revaluation of compulsory papers should be restricted to those candidates who have approached the Tribunal or this Court till now and none others.

22. The next grievance is in regard to alleged irregularities in evaluation. Evaluation consists of two stages: (i) Evaluation of all answer scripts by Examiners; and (ii) random re-evaluation by Head Examiners and Chief Examiners resulting in moderation. KPSC issued instructions to the examiners in regard to evaluation and also issued Guidelines containing the nature and duties of the Chief Examiner and Head Examiners. Paras 1 to 4 of the said guidelines to Chief/Head Examiners which are relevant are extracted below:

1. Before the commencement of the central valuation the Examiners will be supplied with the question papers and the model answers/scheme of valuation adopted/finalised by the Chief Examiners and the Head Examiners in their meeting held previous to the day of commencement of central valuation. This will be

followed by a detailed discussion between the Chief Examiners, the Head Examiners and the Examiners for a thorough exchange of views on various aspects covering central valuation, model answers/scheme of valuation etc.

2. In the light of the model answers/scheme of valuation supplied to them and the consensus arrived at the meeting with the Chief Examiners and the Head Examiners, the Examiners will have to carry out a sample valuation of at least ten answer scripts. These sample valuation will have to be reviewed by the Head Examiners. Deviation if any, will be informed to the Examiners concerned. After this, the Examiners will go ahead with their job of valuation.

3. During the course of central valuation, the Head Examiners should continuously review at random the valuation done by the Examiners, to ensure that the scheme of valuation is actually being followed by them. Such random sampling should not be less than 5% of the top-level answer scripts and the overall random review should not be less than 10% of the answer scripts evaluated by each Examiner. During the review, the Head Examiners can carry out alteration in the awards keeping in view the scheme of valuation.

4. The Chief Examiner will co-ordinate with the Head Examiners and the Examiners in the smooth and orderly conduct of the central valuation. During the central valuation, the Chief Examiner should also review at random the answer scripts valued by the Examiners and/or re-review the answer scripts already reviewed by the Head Examiners to ensure uniformity in the valuation among the Examiners and the Head Examiners. The marks awarded by the Examiners, the Head Examiners or the Chief Examiners, as the case may be, shall be final unless otherwise decided by the Commission for valid reasons.

23. Where a large number of answer scripts are to be evaluated, obviously they cannot be evaluated by a single examiner. The answer scripts relating to the same subject are therefore distributed to several Examiners, for evaluation. When there is more than one or when there are several Examiners for evaluation of the answer scripts relating to a subject, usually two problems arise:

(iii) Each Examiner will have his own perception as to what is the right answer.

In fact some Examiners may not even know what exactly is the correct answer, leading to incorrect evaluation.

(iv) Each examiner will have his own method of awarding marks. While some may be highly conservative or 'stingy' in awarding marks, some may be highly liberal or 'generous' in awarding marks. There may also be different levels of 'stinginess' or 'generousness' among the Examiners.

To iron out the natural creases arising in evaluation, it is necessary to adopt certain procedural safeguards to ensue that no candidate is unjustly benefited or placed at a disadvantage, vis-a-vis the other candidates and to ensure that the evaluation is uniform and consistent.

23.1) The first problem is dealt with by preparing and furnishing model answers to the Examiners and having a group discussion before the commencement of evaluation with Head/Chief Examiners to sort out the doubts and modalities.

23.2) The second problem is usually sought to be solved by adopting moderation. In this case, KPSC has chosen double random review method as detailed in para 3 and 4 of the guidelines (extracted in para 22 above). The more effective way of achieving moderation is by Scaling Technique method adopted by the Union Public Service Commission. Under that method, after evaluation by the Examiners, the Head Examiner conducts a random sample-survey of answer books to ensure that the norms and standards have been followed scrupulously by the examiners. For this purpose, some answer books of higher grading are produced for the scrutiny of the Head Examiner. A few answer books of middle and lower levels or marks are also selected at random for the same purpose. The Commission will also supply statistics like distribution of candidates in various ranges based on marks obtained by them, the average percentage of marks and the highest and lowest awards etc., for the papers valued by the concerned Examiner in order to assist the Head Examiner in his work and help forming his judgement about the standards marking of each Examiner. On such survey, the Head Examiner may either confirm the awards without any change on satisfying himself that the examiner has followed the instructions on the standards decided upon or may suggest an upward or downward revision as the case may be, as moderation,

the quantum of moderation varying according to the degree of strictness or liberality of the Examiner, revealed by the random survey. In the case of top level answer books, revalued by the Head Examiner, his award of marks are accepted as final. As regards the other answer books, below the top level, to achieve maximum measure of uniformity among the Examiners, the awards are moderated as per the recommendations made by the Head Examiner.

24. In the double random review method adopted by KPSC only the answer scripts re-evaluated at random get moderated and the adverse effect of either too strict or too liberal award by an Examiner in regard to other answer scripts evaluated by him remains un-rectified. (For example, if an Examiner who is too liberal evaluates 100 answer scripts resulting in liberal valuation of 100 scripts and five of such answer scripts are re-evaluated and moderated by the Chief/Head Examiner, the effect of moderation is reflected only on those five answer scripts and the valuation in regard to the remaining 95 answer scripts remains unaltered). But in the scaling technique method uniformity is achieved on account of Head Examiner moderating the award in respect of all other answer scripts evaluated by the Examiner, by either an upward or downward revision depending on the strictness or liberality of the Examiner disclosed on random re-valuation. Thus where several Examiners evaluate the answer scripts in respect of the same subject or a single paper, Scaling Technique method will be more appropriate. Realising the need for such moderation, particularly in view of the irregularities noticed, KPSC in its memo filed on 22-7-2002 has agreed to apply the Scaling Technique method in this case. It has agreed that if on random review of answer scripts evaluated by an Examiner, the average variation is more than plus or minus 20 (out of 300), 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; and in case the average variation is less than plus or minus 20, but variation in respect of individual answer script in plus or minus 20 or more, those answer scripts would be subjected to third valuation. We find that what is suggested by KPSC is fair and reasonable and will safeguard the interests of all candidates who have taken the examination.

25. Before taking up the next question relating to irregularities, we extract below the details of the optional subjects, the total number of answer scripts, the number of Examiners, the total number of answer scripts moderated by Head Examiners and or by Chief Examiner, in regard to each subject (extracted from statements furnished by KPSC):-

Sl. No.	Subject/Paper	Total Number of answer scripts valued	Total number of examiners appointed	Total number of answer scripts moderated by Head Examiner	Number of answer scripts moderated by Chief Examiner
1	2	3	4	5	6
1.	AG& MKTG, SERI, Paper-1	222	7	0	3
2.	AG& MKTG, SERI, Paper-2	219	14	0	4
3.	An.Husb. & V.Sc. Paper-1	78	9	0	78
4.	An.Husb & V.Sc. Paper-2	77	9	0	77
5.	Botany Paper-1	654	18	59	31
6.	Botany Paper-2	652	12	65	26
7.	Chemistry Paper-1	197	7	42	37
8.	Chemistry Paper-2	193	5	39	41
9.	Civil Engg. Paper-1	28	2	0	3
10.	Civil Engg. Paper-2	27	1	0	4
11.	Commerce Paper-1	256	8	24	30
12.	Commerce Paper-2	256	9	19	24
13.	Criminology Paper-1	832	12	0	83
14.	Criminology Paper-2	826	11	0	99
15.	Economics Paper 1	998	19	99	12
16.	Economics Paper-2	995	18	97	11
17.	Elecl.Engg. Paper-1	31	3	0	3
18.	Elecl.Engg. Paper-2	31	3	0	5
19.	Geography Paper-1	1135	21	109	7
20.	Geography Paper-2	1132	26	110	9
21.	Law Paper-1	422	9	0	119
22.	Law Paper-2	419	9	1	125
23.	Mathematics Paper-1	221	6	9	37
24.	Mathematics Paper-2	222	6	43	13
25.	History Paper-1	4389	54	446	24
26.	History Paper-2	4386	48	445	28
27.	Mechl. Engg. Paper-1	54	3	0	4
28.	Mechl. Engg. Paper-2	52	1	0	6
29.	Philosophy Paper-1	21	1	0	4
30.	Philosophy Paper-2	20	1	0	5
31.	Geology Paper-1	106	4	0	26

Sl. No.	Subject/Paper	Total Number of answer scripts valued	Total number of examiners appointed	Total number of answer scripts moderated by Head Examiner	Number of answer scripts moderated by Chief Examiner
32.	Geology Paper-2	106	4	0	23
33.	Physics Paper-1	323	7	32	21
34.	Physics Paper-2	322	7	21	7
35.	Pol.Science Paper-1	1462	24	146	19
36.	POL. Science Paper-2	1458	25	135	14
37.	Psychology Paper-1	336	10	54	23
38.	Psychology Paper-2	337	9	40	7
39.	Public Admn. Paper-1	2266	40	224	6
40.	Public Admn. Paper-2	2252	36	227	4
41.	Sociology Paper-1	2572	31	321	77
42.	Sociology Paper-2	2555	32	276	47
43.	Statistics Paper-1	30	1	0	10
44.	Statistics Paper-2	30	2	0	7
45.	Zoology Paper-1	509	7	127	100
46.	Zoology Paper-2	508	8	102	98
47.	Rl.Devpmnt Paper-1	565	14	45	47
48.	Rl.Devpmnt Paper-2	564	11	111	161
49.	Hindi Paper-1	26	2	0	21
50.	Hindi Paper-2	26	2	0	6
51.	Anthropology Paper-1	729	10	8	172
52.	Anthropology Paper-2	721	10	65	88
53.	Urdu Paper-1	74	4	0	5
54.	Urdu Paper-2	74	3	0	2
55.	Kannada Paper-1	1348	46	147	48
56.	Kannada Paper-2	1342	42	140	7
57.	English Paper-1	214	7	20	6
58.	English Paper-2	214	8	32	4
59.	Management Paper-1	127	5	0	17
60.	Management Paper-2	124	5	0	21
61.	Gen.Studies Paper-1	10493	154	1026	43
62.	Gen.Studies Paper-2	10425	151	1025	34
		61283	1073	5931	2124

26. We will now proceed to consider the allegation relating to irregularities in evaluation. The first stage is the evaluation by the examiners. The contesting respondents [unsuccessful candidates] have neither alleged nor made out any irregularity at the stage of evaluation by the examiners, except making a vague allegation that some of the examiners were related to the candidates who took the examinations. The Examiners came into the picture only at the stage of evaluation of the answer scripts. They had no part to play earlier. No Examiner knew which answer scripts would be entrusted to him for evaluation. The answer scripts were made into bundles of 10 each after randomising, and sent to the place of central valuation. The bundles of answer scripts were handed over to the Chief Examiners, who in turn handed over them to the Examiners in the central valuation hall under the supervision of the Head Examiners/Chief Examiners and the Officers of Commission. Further, the answer scripts which were given to the Examiners for evaluation were coded and it was not possible for any Examiner to know the identity of the candidates whose answer scripts were evaluated by him.

27. There is nothing to show that the Examiners were related to any of the candidates or that on account of such relationship, any examiner helped any candidate in securing higher marks. The records secured by the Tribunal and by us do not disclose any irregularity at the stage of evaluation by the Examiners. The fact that some irregularities took place in re-evaluation by Chief Examiner/s cannot lead to an inference that there was any irregularity in evaluation by the Examiners. The Tribunal found irregularities at the stage of re-evaluation and moderation and not at the earlier stage of evaluation by the Examiners. It has not recorded any specific finding of irregularity in the evaluation by the Examiners. Though an allegation of irregularity is not proof of irregularity, the Tribunal was persuaded to direct wholesale fresh evaluation on account of the refusal by KPSC to furnish the particulars sought by it. KPSC has now furnished those particulars and clearly explained why such particulars were not furnished to the Tribunal. In the absence of any specific allegation regarding irregularity in evaluation by Examiners and in the light of material placed before us, we find no reason to direct fresh evaluation of all answer scripts by a new set of Examiners. While it is true that every unsuccessful candidate who took the examinations should have the satisfaction that the examinations/evaluation were done fairly and that only persons better qualified than him have been selected in a fair competitive examinations, mere doubts and apprehensions, without factual basis, cannot lead to interference with the evaluation.

28. We may, however, refer to one aspect in regard to appointment of Examiners for future

guidance of KPSC. We find that KPSC has not proceeded in accordance with any set guidelines as to the ratio of examiners to be appointed for evaluating the answer scripts. For example we find that as many as 9 examiners were appointed to evaluate only 78/77 answer scripts [I and II papers] of Animal Husbandry and Veterinary Sciences; the number of examiners appointed for evaluating 256 answer scripts each in Commerce and 422/419 answer scripts in Law were also nine. While only one examiner was appointed to evaluate 52 answer scripts in Mechanical Engineering (Paper II) and one Examiner to evaluate 30 answer scripts of Statistics (paper I), we find that three examiners were appointed to evaluate 31 answer scripts in Electrical Engineering. The number of examiners appointed for evaluating 729/721 answer scripts in Anthropology papers was 10. The number of examiners to evaluate 214/214 answer scripts in English papers was eight. We find 58 examiners were appointed to evaluate 4386 history papers, 151 Examiners were appointed to evaluate 10425 answer scripts in General Studies. While 24/25 examiners were appointed to evaluate 1462/1458 answer scripts in political science papers, 46/42 examiners were appointed to evaluate 1348/1348 Kannada papers. We have referred to these figures only to demonstrate that there is no discernable ratio between the number of answer scripts to be evaluated and the number of Examiners appointed. The guidelines state that an examiner was required to evaluate 30 answer scripts per day in regard to optional/general studies papers. Therefore KPSC should have only such number of examiners as are required with reference to number of answer scripts to be evaluated and number of days allotted for evaluation. It should be remembered that more number of evaluators means more chances of variation, and need for more moderation. Ideally the number of examiners should be kept to the minimum, so that the chances of variation in evaluation is also the minimum. In future KPSC may consider fixing a ratio between the number of answer scripts and the Examiners for evaluation and avoid unnecessarily large number of examiners being appointed in some subjects. Be that as it may. These observations are not intended in any way to cast any doubt about the manner of evaluation in regard to the examination under consideration.

29. To find out whether there was any irregularity at the stage of moderation by the Head Examiners/Chief Examiners, we have called for and examined the following statements/abstracts produced by KPSC (among others):

- i) statement showing the merit wise marks of the first 50 candidates category wise (that is GM, Group I, 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) statement 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.

31. On such verification, we find that in regard to the following seven optional subjects (out of the total 30 optional subjects) consisting of two papers each, the number of answer scripts were very few and therefore no Head Examiners were appointed and only chief Examiners were appointed and only chief Examiners were appointed, and that the Chief Examiners have done random review of adequate number of answer scripts.

Subject code No.	Name of the subject	Total number of answer scripts	No.of answer scripts reviewed by the Chief Examiner
3	Animal Husbandry-I	78	78
4	Animal Husbandry-II	77	77
9	Civil Engineering-I	28	3
10	Civil Engineering-II	27	4
17	Electrical Engg.-I	31	3
18	Electrical Engg.-II	31	5
27	Mechanical Engg.-I	54	4
28	Mechanical Engg.-II	52	6
29	Philosophy-I	21	4
30	Philosophy-II	20	5
31	Geology-I	106	26
32	Geology-II	106	23
53	Urdu-I	74	5
54	Urdu-II	74	2

On review, the variation in marks has not exceeded plus or minus 20 marks (out of 300 marks) in regard to any answer scripts. There is therefore no need to adopt any scaling technique moderation. As we do not find any irregularity in regard to the review evaluation or moderation in regard to the said seven subjects, there is no need to interfere with the valuation in respect of said papers.

32. In regard to the following four optional subjects also, no Head Examiners was appointed. But, the Chief Examiners have done adequate random review of answer scripts. The variation beyond plus or minus 20 marks [out of 300 marks], is nil in regard to some papers and hardly a few and that too only marginal in the other papers, as detailed below:

Sub codeNo.	Name of the subject	Total number of answer scripts	No.of answer scripts reviewed by the Chief Examiner	No.of answer scripts where variation is more than plus or minus 20 and extent thereof
21	Law-I	422	119	Nil
22	Law-II	419	125	Nil
43	Statistics-I	30	10	1(+22 marks)
44	Statistics-II	30	7	3(+23 to 27 marks)
49	Hindi-I	26	21	1 (-25)
50	Hindi-II	26	6	Nil
59	Management-I	127	16	1 (-25)
60	Management-II	124	18	3(-20 to -30)

Therefore, even in regard to the above four optional subjects, there is no need to adopt any scaling technique moderation. As we find no irregularities, there is no need to interfere with the valuation in respect of the said papers also.

33. In regard to the optional subject-Chemistry, the total number of answer scripts were 197 and 193 in Paper I and II. The Head Examiners have reviewed 42/39 answer scripts and Chief Examiners have reviewed 37/41 answer scripts. In regard to paper II there is no variation exceeding plus or minus 20 marks on such review. In regard to paper-I, the variation is only in regard to

three answer scripts beyond plus or minus 20 marks (between + 23 and + 31) on review by the Chief Examiners. We can therefore conclude that in regard to those papers also there are no irregularities and no need for scaling Technique moderation and consequently there is no need to interfere with the valuation process.

34. In regard to one optional subject (Agriculture & Marketing) no Head Examiner was appointed and Chief Examiner had reviewed only 3 answer scripts out of 222 in paper I and 4 answer scripts out of 279 in paper II and the percentage is hardly 1% to 2%. In regard to another optional subject (Criminology) also, no Head Examiner was appointed even though the number of answer scripts are large. The answer scripts moderated by Chief Examiner is around five percent only. In regard to the remaining sixteen optional subjects (two papers each) and General studies (two paper), we find that the number of answer scripts and number of Examiners are large. The variations exceeding plus or minus 20 marks, are also substantial. We given below the particulars of answer scripts moderated:

Sl. No.	Subject/Paper	Total Number of answer scripts	Answer papers moderated by (original figures)		Answer papers moderated (Revised figures)	
			Head Examiners	Chief Examiners	Head Examiners	Chief Examiners
1.	AG & MKTG, SERI, Paper-1	222	0	3	0	3
2.	AG & MKTG, SERI, Paper-2	219	0	4	0	4
5.	Botany Paper-1	654	48	20	59	31
6.	Botany Paper-2	652	43	26	65	26
11.	Commerce Paper-1	256	24	11	24	30
12.	Commerce Paper-2	256	19	6	19	24
13.	Criminology Paper-1	832	0	43	0	83
14.	Criminology Paper-2	826	0	44	0	99
15.	Economics Paper 1	998	92	10	99	12
16.	Economics Paper-2	995	94	9	97	11
19.	Geography Paper-1	1135	96	5	109	
20.	Geography Paper-2	1132	103	6	110	9
23.	Mathematics Paper-1	221	9	32	9	37
24.	Mathematics Paper-2	222	34	13	43	13

Sl. No.	Subject/Paper	Total Number of answer scripts	Answer papers moderated by (original figures)		Answer papers moderated (Revised figures)	
			Head Examiners	Chief Examiners	Head Examiners	Chief Examiners
25.	History Paper-1	4389	403	24	446	24
26.	History Paper-2	4386	293	18	445	28
33.	Physics Paper-1	323	30	17	32	21
34.	Physics Paper-2	322	20	3	21	7
35.	Pol.Science Paper-1	1462	119	14	146	19
36.	Pol. Science Paper-2	1458	0	0	135	14
37.	Psychology Paper-1	336	54	21	54	23
38.	Psychology Paper-2	337	40	3	40	7
39.	Public Admn. Paper-1	2266	158	5	224	6
40.	Public Admn. Paper-2	2252	178	2	227	4
41.	Sociology Paper-1	2572	308	70	321	77
42.	Sociology Paper-2	2555	251	40	276	47
45.	Zoology Paper-1	509	123	73	127	100
46.	Zoology Paper-2	508	96	50	102	98
47.	Rl.Devpmnt Paper-1	565	45	111	45	47
48.	Rl.Devpmnt Paper-2	564	103	138	111	161
51.	Anthropology Paper-1	729	8	137	8	172
52.	Anthropology Paper-2	721	51	77	65	68
55.	Kannada Paper-1	1348	131	13	147	48
56.	Kannada Paper-2	1342	119	8	140	7
57.	English Paper-1	214	20	3	20	6
58.	English Paper-2	214	6	4	32	4
61.	Gen.Studies Paper-1	10493	794	37	1026	43
62.	Gen.Studies Paper-2	10425	887	31	1025	34

The large variation in the figures earlier furnished and subsequently modified as to the answer scripts that were moderated raises a doubt about the actual number of answer scripts reviewed by Head Examiners and Chief Examiners. Be that as it may. In spite of the above, moderation was restricted only to the answer scripts which were reviewed by the Head/Chief Examiners and no effort was made to adopt the scaling technique of moderation by applying an upward or downward revision to all the answer scripts evaluated by the respective examiners. Further, in regard to most of those subjects the random preview was not done to the extent suggested in the guidelines (5% of top level answer scripts and overall random review of 10%). No minutes or record has also been maintained to show whether moderation was done by the Head Examiners/Chief Examiners in the manner required by the guidelines. They (the answer scripts in the above subjects) therefore require proper review. KPSC having realised the inadequacies/irregularities has now agreed to do the moderation by applying scaling Technique (as stated its memo dated 27-3-2002 filed on 22-7-2002).

36. There are also serious irregularities in the review valuation by one of the Chief Examiner (Prop. K.S.Shivanna) in regard to some candidates in particular, one K.Rameswarappa and his family members (B.S.Nagaraj and B.S.Triveni) which when disclosed in the newspapers led to the filing of the writ petitions. We extract below the facts which are gathered by the sub-committee constituted by KPSC itself in its investigation and its conclusions in this behalf:

“During the investigation, it came to notice of the committee that apart from Sri. K.Rameswarappa and two other named in the resolution, one more candidate Smt.B.S.Hemalatha with register No.414089 who is also closely related to Sri. K.Rameswarappa was a candidate in the examination in question and she has also been selected. Hence the committee decided to examine her case also. Sri. K.Rameswarappa is employed as Deputy Director of Food and Civil Supplies. Sri.B.S.Nagaraj is the elder brother of Sri.Rameswarappa’s wife. Smt.B.S.Triveni and Smt.B.S.Hemalatha are sisters of Rameswarappa’s wife. The academic record of these four candidates is average. For the competitive examination all these four persons chose by the same optional subjects..... On a verification of the answer scripts of these four candidates in respect of General Studies Papers-1 and II and History Papers-I and II. It is noticed that all the four candidates have chosen the

very same questions for answering and the answers they have written are almost identical.

.....The Head Examiner/Chief Examiner is required to pick up one script from each bundle at random. It is also stated that the scheme of valuation envisages that where the variation between the marks awarded by the Examiner and Head Examiner/Chief Examiner is more, the Head Examiner/Chief Examiner is required to discuss with and advise the Examiner to ensure that there is uniformity in valuation. The Examiners have stated that in none of the cases in question the Chief Examiner has consulted or advised the Examiners even while increasing the marks in respect of these 4 candidates in question enormously. They have also stated that they do not know how the Chief Examiner has picked up more than one answer script from the very same bundle.....Prof K.S.Shivanna was appointed as Chief Examiner based on the panel obtained by the Commission from the Universities in the State. He was appointed as Chief Examiner for answers written in Kannada medium in respect of General Studies and History papers...The valuation was done on 12 working days. Prof.K.S.Shivanna has evaluated 127 answer scripts as Chief Examiner....In his statement he admitted that he has in the process of moderation in respect of these 4 candidates given marks for writing totally wrong answers which he claims to be by oversight committed carry over mistakes/total mistakes which has resulted in more marks in favour of the candidates and in some cases in respect of these four candidates he has awarded more marks than the maximum mark prescribed for the question. He says all these are bona fide errors. The committee is of the view that having regard to the expertise of prof. K.S.Shivanna in the subject, his long experience as an Examiner and the statements of the Examiners/Head Examiners, the defence of Prof. K.S.Shivanna cannot be accepted. There are few more aspects which have

When the sub-committee scrutinised all the answer scripts picked up by Dr.K.S.Shivanna for moderation, it is noticed that Dr.Shivanna has awarded abnormally higher marks after moderation to the other 6 candidates namely 1) Leela M, bearing Reg.No.117641 selected for the post of Asst.Commissioner 2) Sri. Ponnappa K.C., Reg.No.415634 selected for the post of Asst.Controller of State Accounts 3) Naveen, Reg.No.110374 not selected for any post 4) Sri Subash, Reg.No.126347 not selected for any post 5) Sri Pratap, Reg.No.109582 not selected for any post 6) Sri.Cauveriappa, Reg.No.108226 not selected for any post.

It is prima-facie noted that their answers, do not merit such high marks from any standard of valuation. Further, Dr.K.S.Shivanna never brought this to the notice of Examiner or Head Examiner, why he has escalated the marks so much. The omissions and commissions found clearly probabalise with the first 4 candidates earlier referred wanted to be brought to the forefront. As far as these six candidates are concerned prima-facie there appears to be a motive to bring these persons some how or other to the eligibility list by Dr.K.S.Shivanna by awarding abnormally higher marks. However, in spite of this four candidates namely (1) Naveen P C, Reg.No.110374 (2) Subhash K G, Reg.No.126347 and (3) Pratap K R, Reg.No.109582 (4) Cauveriappa Reg.No.108226 did not figure in the select list.

Yet another pattern that is seen in the choice of answer script for evaluation by the Chief Examiner Prof.K.S.Shivanna is that wherever he has picked up only one or two answer scripts of a candidate, the difference between the marks awarded by him and that awarded by the examiner has been marginal and there are both increases and reductions. However, wherever he has picked up 3 or more papers, the difference has invariably been on the plus side to the benefit of the candidate. In respect of Sri K Rameswarappa, Sri. B.S.Nagaraj, Smt.B.S.Triveni and Smt.B.S.Hemalatha, the Chief Examiner Prof. K.S.Shivanna has moderated 3 papers each of these candidates and has increased the marks enormously. All these four persons who are closely related are selected with Sri. K.Rameswarappa getting first rank, Sri. B.S.Nagaraj getting second rank and Smt.B.S.Triveni getting

fourth rank and Smt.B.S.Hemalatha getting selected as Tahsildar that is Group-B post though not securing glaringly high rank as the other three. By virtue of their high ranks secured Sri.K.Rameswarappa is selected as Assistant Commissioner, Smt.B.S.Triveni is also selected as Assistant Commissioner and Sri. B.S.Nagaraj is selected as Assistant Commissioner of Commercial Taxes. It appears Prof.K.S.Shivanna boosted the marks and selected more than one answer script of the very same candidate in cases other than these 4+6 candidates also only with a view to find a cover for his wrong doing in respect of these four+six candidates.

The evidence collected by the Committee shows that Prof.K.S.Shivanna, the Chief Examiner, Sri. K.Rameswarappa, the beneficiary of the largesse not only for himself but also for his family members and Sri A.K.Monappa who was the Secretary of the Commission and without whose connivance it would not have been possible for the Chief Examiner to know the code numbers of the candidates, joined together as a well knit team and all the three have been part of criminal conspiracy. Evidence collected by the Committee shows that Sri. K.Rameswarappa was visiting Sri A.K.Monappa, the Secretary of the Commission very frequently. The regularity of his visits were so frequent that he was not even required to send either a visiting card seeking permission to see Sri. A.K.Monappa or send a chit containing his name to the Secretary seeking the permission to see him. That apart, Prof.K.S.Shivanna was the research guide for the Ph.D. programme of Sri K.Rameswarappa. After then Examination and evaluation was over during September, 2000 these three persons have also undertaken a joint foreign tour. Sri. K.Rameswarappa has given E-mail ID of Prof.K.S.Shivanna as his E-Mail address in the conference papers. The evidence collected by the Committee clearly establishes that Sri. A.K.Monappa has parted with the code numbers of the candidates to Prof.K.S.Shivanna and he has also taken the help of Prof.Shivanna in substitution of some of the answer papers of these four candidates in question. The Committee is of the view that the result of these four candidates requires to be annulled and appropriate action including criminal has to be initiated

against the four candidates in question, Sri. A.K.Monappa who was the then Secretary of the Commission and Prof.A.K.Shivanna who was the Chief Examiner inquestion.

The clinching evidence apart from what is set out above to establish the conspiracy is that as already stated Prof. K.S.Shivanna was only a Chief Examiner in respect of Kannada medium in the subjects of General Studies and History. He also picked up and boosted the marks in respect of Sri B.S.Nagaraj and Smt. B.S.Triveni who had answered the papers in English Medium. When this was confronted to Prof. K.S.Shivanna by the Committee, his answer was Prof. Narasimha Raju Naidu who was the Chief Examiner in English medium in these two subjects was away on those days and the examiner Head Examiner has brought the papers to Prof.K.S.Shivanna and accordingly he has moderated those papers. The evidence before the committee belies this statement of Prof.K.S.Shivanna. At the relevant point of time Prof.Narasimha Raju Naidu was very much present and there was no reason for Prof.K.S.Shivanna to have moderated the papers of Sri. B.S.Nagaraj and Smt.B.S.Triveni. The answer papers were picked up by Prof.K.S.Shivanna himself and they were not given to him by any Examiner or Head Examiner as claimed by him, as already stated in the earlier part of this report. Further on the covering sheet of the answer papers of these candidates there are so many alterations made in the marks awarded to each question which clearly indicates that the effort was to give the requisite marks to these candidates to secure them places at a particular rank in the order of the merit.

One more aspect requires to be noticed here. Prof. Narasimha Raju Naidu who as Chief Examiner for English medium answer scripts of General Studies and History papers went on leave when the valuation was in progress from 24th May. Having regard to the fact that General Studies is a compulsory subject and nearly 50 percent of the candidates take History as one of the optional subjects immediate arrangements were required to be made by a proper order by the Secretary of the Commission appointing some one as Chief Examiner for English

medium answer scripts in these subjects. No written order was issued by Sri A.K.Monnappa, the Secretary. However, the enquiries have disclosed that Prof.K.S.Shivanna performed the duties of Chief Examiner in respect of English medium students in General Studies and History on oral instructions of the then Secretary.

37. We have noted below some glaring instances where professor K.S.Shivanna, who random reviewed 127 answer scripts in History (I & II) and General Studies (I & II) as Chief Examiner, has played havoc by awarding abnormally high marks:

Sl. No.	Name	Subject	Marks awarded by Examiner	Marks awarded by Head Examiner	Marks awarded by Chief Examiner (K.S.Shivanna)
1.	Rameswarappa Reg.No.414084 (Category I)	General Studies Paper-II History Paper-I History Paper-II	59 155 91	- -	246 262 245
2.	Nagaraja B S Reg.No.414064 (Category I)	General Studies Paper-II History Paper-I History Paper-II	128 170 168	205	200 243 230
3.	Triveni B S Reg.No.414066 (Category I)	General Studies Paper-II History Paper-I History Paper-II	174 232 155	148 -	215 244 234
4.	B S Hemalatha Reg.No.414089 (Category I)	History Paper-I History Paper-II General Studies Paper I	159 102 134		225 302 165
5.	Reg.No.415634 K.C.Ponnappa (GM)	History Paper-I General Studies Paper-I General Studies Paper-II	162 86 134		200 160 180
6.	Reg.No.109582 Pratap (Category 2A)	History Paper-I History Paper-II General Studies Paper-I General Studies Paper-II	112 90 86 92		160 174 137 150

In some cases Prof. K.S.Shivanna, as Chief Examiner, while drastically increasing the marks of a candidate in a particular category has also drastically reduced the marks of another candidate, apparently to enable favoured candidates to have a better chance of selection. We may refer to the following instances:

Name/Regn.No.	Subject	Examiner	Marks awarded by Head Examiner	Chief Examiner
409001 (Category 3A)	History-II General Studies-I	139 155	—	180 172
131377 (Category 3A)	General Studies-I General Studies-II	117 153	—	147 185
111237 (Category 3A)	General Studies-I	209	177	139

As a result the marks of candidates No.409001 and 131377 in category 3A were increased from 955 to 1013 and 902 to 977 were as the marks of candidate No.111237 went down from 1054 to 973.

Name/Regn.No.	Subject	Examiner	Marks awarded by Head Examiner	Chief Examiner
M.Leela Reg.No.117641 (SC)	History-I History-II General Studies-I General Studies-II	183 143 115 90	- - - -	247 200 151
117141 (SC)	History-I	221	-	194

As a result the marks of candidate (SC) No.117641 went up from 811 to 1049 and candidate (SC) No.111742 went down from 1072 to 1045. Having regard to the number of answer scripts in History (4389 and 4386 answer scripts) and General Studies (10,493 and 10425 answer scripts), it is doubtful whether Prof.K.S.Shivanna who random reviewed in all 127 answer script of History and General Studies could have zeroed in an three papers each of K.Rameswarappa and three members (B.S.Nagaraj, B.S.Triveni and B.S.Hemalatha) or four papers each of Pratap and M.Leela. The inevitable inference is that there have been large scale irregularities where Prof.K.S.Shivanna was involved as Chief Examiner.

38. We are satisfied that having regard to glaring irregularities in random review by Prof. K.S.Shivanna in regard to History (I&II) and General Studies (I&II) and having regard to inadequate and/or improper moderation in regard to other seventeen subjects (two papers each), the entire process of moderation requires to be done afresh in regard to those papers (that is 18 optional subjects and General Studies).

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

a. The order dated 6.2.2002 of the K.A.T. in A.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 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; Agriculture & 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.’

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 Chief Examiner). He shall select and prepare a fresh panel of Head and /or Chief Examiners for this purpose.

c. The evaluation of answer scripts in regard to 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

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 (e) 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.

g. Parties to bear their respective costs.

[Note: Appeals preferred against this judgment in Civil Appeal Nos.6172-6222/2005 and connected cases have been dismissed by the Hon'ble Supreme Court as per judgment dated 6.10.2005 which has been reported in 2005 (6) Services Law Reporter 44]

2005 (6) SERVICES LAW REPORTER 44
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS.6172-6222 OF 2005 & CONNECTED CASES
(Arising out of SLP (C) Nos.11589-11639 of 2003)
D.D. 6.10.2005
HON'BLE MR. JUSTICE B.P. SINGH
HON'BLE MR. JUSTICE ARUN KUMAR

K.Channegowda & Others ... **Appellants**

Vs.

Karnataka Public Service Commission & Ors. ... **Respondents**

Examination - Examination malpractice indulged by some candidates with the connivance of Examiner – Effect:

Constitution of India, Article 16 – Recruitment – Probationer – Post of Gazetted Probationers – Some unsuccessful candidates approached Tribunal with a grievance that competitive examination held by Karnataka Public Service Commission was not fair – Manner in which examination was conducted and evaluation of answer scripts by the examiners were suspected – Tribunal directed Karnataka PSC to get all the answer scripts evaluated fresh – High Court gave directions to evaluate some of the answer scripts though not all - High Court was of the view that it was not necessary to get evaluated all answer scripts all over again – High Court directed holding of fresh interviews on the basis of marks obtained after re-evaluation of answer scripts – 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 answer scripts – Judgment of High Court affirmed.

Cases referred:

1. AIR 1984 SC 1543 [Para 18] - Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupesh Kumar.
2. 1990(1) SLR 138 (SC) [Para 24] – Anamica Mishra v. U.P. Public Service Commission, Allahabad.
3. 2004(1) SLR 324 (SC) [Para 42] – U.P. Public Service Commission v. Subhash Chandra Dixit.

JUDGMENT

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 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 (C) 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, through 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 (C) 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 (C) 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 answer 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 person against whom a clear and categorical 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 (C) 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/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 Service 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 to 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 Rameshwarappa 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 Sadyojathiah, 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 at least 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 answer 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 Rameswarappa 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 proceedings, 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-a-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 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 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 scripts 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 Examiners 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 Administration 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 and 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 has 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 prescribe 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, Rameswarappa 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, 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 inference 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.

[Note: I.A. filed by one of the candidates Sri. L.Arun Pandit, for directions to appoint an expert committee for revaluation etc., in C.A.Nos.6265-6275/2005 (M.R.Ravi & Ors. Vs. KPSC & Ors. has been dismissed by the Hon'ble Supreme Court as per order dated 3.2.2006)]

IN THE KARNATAKA ADMINISTRATIVE TRIBUNAL AT BANGALORE

APPLICATION NO.1241 OF 2004

D.D. 21.6.2004

REVIEW APPLICATION NO.16 OF 2005

D.D. 1.8.2005

THE HON'BLE MR. T.Y.NAYAZ AHMED, ADMINISTRATIVE MEMBER

Sri.Govind Jadhav ... **Applicant**

Vs.

The Karnataka Public Service Commission & Anr. ... **Respondents**

Examination Malpractice:

Rule 14 of K.P.S.C. (Conduct of Service Examination) Rules, 1965 – The applicant working as Chief Officer, Town Panchayat, appeared for General Law Part-I and General Law-II Examinations 2003 I Session Departmental Examinations conducted by the Commission – It was noticed that the applicant had committed Examination malpractice by getting the answers written in the answer book by some third person – After issuing notice and holding necessary enquiry the applicant was found guilty of examination malpractice and penalty of debarring him permanently from appearing for Examination conducted by the Commission and recommended to take disciplinary action against him as per Rules – The applicant challenged the said order before KAT which dismissed the application – Pursuant to the order passed in the writ petition filed by the applicant, the applicant filed Review Application which was also dismissed by KAT.

Held:

That there was sufficient compliance with the procedure before imposing the penalty, that the charge of examination malpractice was duly proved and that the penalty imposed was commensurate with the gravity of the charge proved.

ORDER IN A.NO.1241 OF 2004

The Applicant Sri Govind Jadav, who is the Chief Officer of the Town Panchayat, Belagi, has

questioned the decision of the Respondent-1 in his Order dated 29-11-2003 at Annexure-A2, wherein the Applicant has been debarred from taking departmental examination during the remaining part of his service. The Respondent-1 has also suggested to the Government to initiate disciplinary action against the Applicant.

2. I have heard both the parties. The Applicant had appeared for the departmental examination conducted by the Respondent-1 in the 1st Session of 2003. The Applicant has written examination for General Law, Part-I and II. The Respondent-2 discovered that the answers written for General Law Part-I and II are fabricated answers. The Respondent-2 has come to this conclusion on the basis that the hand -writing on the covering sheet of the answer booklet does not tally, with the hand -writing of the answers in the booklet. After having conducted a formal enquiry, the Respondent-2 has passed the impugned order and imposed the penalty as mentioned above.

3. The learned Counsel for the Applicant argued that the Applicant has written the answers in his own hand -writing and handed –over the answer booklet to the exam Supervisor. She further contended that while sorting out, perhaps the officers of the Respondent-1 office could have mixed –up the answer sheets and enclosed answers sheet which were not written by the Applicant. She further argued that if the Applicant was caught doing malpractice at the time of examination, the Respondents could have resorted to levying of any penalty. She was of the firm view that the penalty imposed is unjust and excessive. She urged that at least the applicant should be allowed to write the examination in the coming session since he is in the run for promotion, for which he has to pass the departmental examination prescribed.

4. The learned Counsel for Respondent-1 contended that a detailed enquiry has been conducted and statement of the Applicant has been obtained wherein he has agreed that the hand-writing of the matter written on the covering sheet of the answer book-let is written by the Applicant and, the hand-writing and the answers in the sheets enclosed to the booklet are not written by him.

5. With a view to see the original answers booklet, I had asked the learned Counsel for Respondent-1 to get the relevant records. Today, i.e., on 16-06-2004, the answer booklet of the Applicant was shown to me in the open Court. It is very clear from the answer booklet that the hand -

writing of the details written on the covering sheet of the Booklet No.0550324, does not match with the hand -writing of the answer sheet written in the subsequent pages of the booklet. During the course of the enquiry conducted by the Respondent-1, the Applicant has agreed that whatever has been written in the covering sheet of the answer booklet has been written by him and the subsequent answers written are not written by him. It is also discovered from the records that the answer booklet which was supplied to the Applicant in the examination hall was bearing No.0653577. The Applicant had also taken additional answer sheets during the course of the examination. It is quite surprising to note that the answer booklet No.0550324 handed over by the Applicant after the conclusion of exam time is not the one which was supplied to him for writing answers during the time of examination. Therefore, it is abundantly clear that the Applicant has fraudulently replaced a totally different answer booklet in which, some-other person has written answers to various questions on his behalf. How the Applicant could manage to do so within a period of examination time is a mystery. There is no doubt the Applicant has committed a serious fraud and the punishment imposed by the Respondent-1 is proper and exemplary.

6. I may also mention here that the Applicant has almost completed his service. He is 55 years of age, he has not been able to pass the examination prescribed so far. I am sure he must be an incompetent officer, he deserves the punishments imposed by the Respondent-1 and he shall also pay the cost of Rs.5,000/- to the Respondents who are made to waste the precious time and public funds. Respondent-2 shall also initiate disciplinary action as suggested by the Respondent-1 in the impugned order immediately and before the Applicant retires from service.

7. Accordingly, the Application is dismissed.

ORDER IN REVIEW A.NO.16 OF 2005**IN****A.NO.1241 OF 2004**

This Application is for a review of this Tribunal's order dated 2.6.2004 in A.No.1241/2004. In fact the Applicant had challenged the aforementioned order of this Tribunal before the High Court of Karnataka in W.P.No.36746/2004. The High Court of Karnataka disposed of the Writ Petition on 9.12.2004 on the solitary ground that this Tribunal did not consider the case of the Applicant from the point of view of affording an opportunity of hearing by the 1st Respondent which tantamount to the violation of principles of natural justice. Therefore, by the same order the High Court of Karnataka advised the Applicant to seek a review of this order before the Tribunal. Hence, this Review Application.

2. The learned Counsel for the Applicant has raised the following points.

- (a) That the Notice dated 8.8.2003 of the 1st Respondent to appear for enquiry before it on 18.8.2003 was actually received by the Applicant on 27.8.2003 therefore, he could not participate in the enquiry affectively.
- (b) That the Applicant was not caught during the course of examination indulging in malpractice.
- (c) That the 1st Respondent does not have Authority to recommend for disciplinary action against the Applicant.
- (d) That the punishment imposed by the impugned order is excessive, and
- (e) The answer scripts have been fraudulently included by the 1st Respondent at the behest Ex-president of Town Panchayat, Biligi, who had mutual animosity against the Applicant.

3. I had perused the records of the 1st Respondent before passing the orders under review. It is

a fact that the notice dated 8.8.2003 of the 1st Respondent to appear before it on 18.8.2003 has actually reached the Applicant by post on 27.8.2003. Non-the less, the Applicant himself has appeared before the 1st Respondent on 29.8.2003 and he has subjected himself to a formal enquiry. In that he has given in writing that the answer scripts was not written by him. His statement has been recorded and it is on the file of the Respondent.

4. The learned Counsel for the Respondent submitted that, the formal enquiry normally done in all such cases is that the answer scripts are shown to the delinquent officials. Further, to match or compare the handwriting, at the time of enquiry he/she is made to write a few lines on a separate sheet. In fact as per the record and the written statement of the Applicant before the 1st Respondent dated 29.8.2003 such an exercise is done. The learned Counsel for the Respondent further submitted if the handwriting of the answer scripts and the handwriting of the write-up taken during the enquiry vary, such answer scripts are considered as enclosed fraudulently. In our considered view, the Principles of natural justice is fully met in this case.

5. Very strangely the Applicant has brought, in this Review Application an extraneous issue in support of his case this time. The Applicant has alleged that while he was working at Bilagi Town Panchayat, as a Chief Officer, the 3rd Respondent who is an Ex-President of the Town Panchayath, Biligi, had developed animosity and he is responsible for the fraudulent enclosure of written script in connivance of the 1st Respondent. Such a wild allegation, in our view, is extraneous and perverted. Moreover, the applicant had not made 3rd Respondent as a party and urged this point in his original application, nor he has said the same before the 1st Respondent on 29.08.2003. Not even in his written statement dated 29.08.2003 given to the 1st Respondent on the day of enquiry he has whispered about the same. I cannot entertain such a plea in a review application. Moreover, in my considered view, the Applicant is trying to make a desperate attempt to wriggle out of the punishment by making such an incomprehensible and perverted contention and, therefore, I reject such a plea.

6. As regards the other contention that the Respondent did not have the power to recommend for disciplinary action, the learned Counsel for the Applicant has produced the proceedings of the 1st Respondent based on which the impugned order was issued. In that the amended Rule 14/ Regulation of the Commission is referred to. The said regulation reads thus:

“14 . A candidate who is found guilty by the commission of impersonation or of submitting fabricating document or documents which have been tampered with or of making statements which are incorrect or false or of suppressing any material information or of using or attempting to use unfair means in the examination hall or otherwise resorting to any other irregular and improper means in connection with any Service Examination, such candidates may in addition to rendering himself liable to a criminal prosecution:

a) be debarred either permanently or for a specified period by the Commission from admission to any examination or appearance at any interview held by the Commission for selection of candidates; and

b) be subjected to disciplinary proceedings.”

7. The 1st Respondent undoubtedly has the power to recommend for disciplinary action as per Regulation-14(b). Hence, the contention of the Applicant is unfounded.

8. Viewed this case holistically, in my view the principles of natural justice is not violated in this case. Furthermore, all other contentions are in my view are unfounded, hence the Review Application stands rejected. The Applicant shall pay a cost of Rs.5000/-.

Accordingly, Application is disposed of.

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

W.Ps.NO.22736, 20106, 22247, 22428 AND 23262/2005 (S)

D.D. 28.10.2005

THE HON'BLE MR. JUSTICE B.S.PATIL

Kum. Jayashree B.K. & Others ... Petitioners

Vs.

The University Grants Commission & Ors. ... Respondents

Jurisdiction of Administrative Tribunal:

The Commission initiated recruitment to the post of Lecturer in English prescribing qualification as per C&R Rules as per which candidates who do not get exemption from passing NET/SLET should have completed M.Phil by 31.12.1993 or have submitted thesis for Ph.D. in the concerned subject upto 31.12.2002 – The petitioners filed writ petitions for quashing UGC Regulation 2002 which prescribes the above qualification – The Commission resisted the case by contending among other things that as the matter relates to Civil Services of the State falls within the jurisdiction, power and authority of State Administrative Tribunal and the High Court has no jurisdiction – Upholding the contention of the Commission the writ petitions were dismissed.

Held:

The Administrative Tribunal as per Section 15 shall exercise the jurisdiction, power and authority in relation to recruitment and matters concerning recruitment to any Civil Service of the State or any Civil Posts under the State.

Cases referred:

1. ILR 1992 KAR 2629 - Ganganarasaiah Vs. State of Karnataka

2. ILR 2002 KAR 4123 – M.S.Ganesh & Others Vs. H.K.Subramanya & Others

ORDER

In all these writ petitions, common questions are raised and therefore they are clubbed, heard together and disposed of by this common order.

2. Petitioners are aggrieved by the action of the 2nd respondent – Karnataka Public Service Commission in issuing the notification dated 12.7.2005 inviting applications for the post of Lecturer in the Government First Grade Colleges in the State of Karnataka by imposing a clause at para-7 of the notification interalia providing that the candidates who have completed M.Phil by 31.12.1993 or have submitted thesis for Ph.D. in the concerned subject upto 31.12.2002 are only exempted from passing National Eligibility Test. It is the contention of the petitioners that this exemption ought to have been made available without fixing any cut off date as is resorted to in the notification published inviting applications. It is in this background, contending that the said cut off date is incorporated by virtue of the notification issued by the University Grants Commission, the petitioners have challenged the said notification dated 31.7.2002 issued by the UGC. Petitioners have also sought for a direction to the 2nd respondent not to insist upon the cut off date as stipulated in the notification inviting applications.

3. Several contentions are urged on merits by the learned counsel appearing for the petitioners.

4. Respondent-KPSC having entered appearance has filed the statement of objections. Learned counsel appearing for the KPSC Sri. A.N.Venugopala Gowda, has raised a preliminary objection regarding the maintainability of this writ petition having regard to the alternative remedy available before the Karnataka Administrative Tribunal. In that view of the matter, I have heard the learned counsel appearing for the parties on the maintainability of the writ petition.

5. Learned counsel for the petitioners Sri. Hubli submits that the cut off date prescribed as per the notification inviting applications is pursuant to the notification issued by the UGC and as the petitioners have also called in question the said notification issued by the UGC, this writ

petition is maintainable. He further submits that the Karnataka Administrative Tribunal does not have the jurisdiction to examine the validity or correctness of the notification issued by the UGC and therefore the jurisdiction of this Court under 226 is rightly invoked. He also contends that the Special Recruitment Rules 1993 have not been amended and the rules now brought into force in the year 2002 are only general in nature and cannot have the effect of amending the 1993 Rules. Per contra, learned counsel Sri. Venugopal taking me through the provisions contained u/s 15 of the Administrative Tribunal Act r/w Section 28 and referring to the Rules framed by the State Government prescribing the cut off date has contended that the stipulation in clause 7 of the notification issued by the 2nd respondent-KPSC inviting applications is in pursuance to the amendment brought about to the Rules called the Karnataka Education Department Services (Collegiate Education Department) (Recruitment) (Amendment) Rules 2002 which have come into force with effect from 9.1.2003. He refers to the proviso to Sub clause 2 of Rule 9 providing for direct recruitment of Lecturers. The said proviso provides that candidates who have completed M.Phil or have submitted Ph.D. thesis in the concerned subject upto 31.12.1993 are exempted from appearing in the NET examination. In the statement of objections filed, the respondent-KPSC has taken up a stand that in pursuance to the aforementioned rule, the notification issued inviting applications has stipulated the cut off date providing exemption to only such of the candidates who have completed M.Phil by 31.12.1993 or have submitted Ph.D. thesis to the university in the concerned subject on or before 31.12.2002. He therefore contends that the entire exercise undertaken by the respondent-KPSC is in relation to the recruitment to the posts in the service of the State and the process is initiated pursuant to the Rules framed in this regard which have interalia provided for fixing the cut off date for providing exemption from passing any national eligibility test and therefore the petitioners are required to approach the Karnataka Administrative Tribunal for adjudication of their grievance if any. Supporting his contention, he has drawn the attention of the court to the judgment in the case of M.S.Ganesh and others vs. H.K.Subramanya and others (ILR 2002 KAR 4123) wherein this Court has held that the Administrative Tribunal as per Section 15 shall exercise the jurisdiction, power and authority in relation to recruitment and matter concerning recruitment to any Civil Service of the State or any Civil Posts under the State. It is also held therein that the validity of the Rules in matters relating to the Civil Services of the State can also be gone into by the Tribunal. Even the applicants to a post, being prospective candidates for the civil posts under the State and who are denied the

chance of applying and competing for appointment to the post could as well maintain applications challenging the Rules. Thus, it is his contention that the petitioners can avail the remedy before the Administrative Tribunal and the writ petitions are not maintainable. He has also placed reliance on yet another judgment in the case of Ganganarasiah vs. State of Karnataka (ILR 1992 KAR 2629).

6.I have heard the learned counsel appearing for the parties. The essential grievance made by the petitioners is directed against the action of the respondent-KPSC in incorporating a clause in the notification inviting the applications interalia providing for exemption from passing national eligibility test in respect of candidates who have completed M.Phil by 31.12.1993 or who have submitted Ph.D. thesis in the concerned subject upto 31.12.2002. Petitioners claim that they have also completed M.Phil. though subsequent to the cut off date namely 31.12.1993 and they should also be exempted from the rigour of passing the national eligibility test. This is essentially a grievance that can be the subject matter of adjudication before the Karnataka Administrative Tribunal having regard to the fact that the post for which the notification is issued is that of a Lecturer in Government Colleges. The relevant clause incorporated in the notification is pursuant to the amendment brought about as per the Karnataka Education Department Services (Collegiate Education Department) (Recruitment) (Amendment) Rules 2002. Rule 6 of these rules provide for cut off date which is reflected in the notification inviting applications. Therefore, the grievance of the petitioners, in essence is, against the notification and the rules framed. Merely because the challenge is incidentally made to the notification issued by the UGC, it cannot be a ground to entertain this petition, as the main grievance is directed against the action of the respondent-KPSC which is traceable to the recruitment rules framed. Therefore, reserving liberty to the petitioners to approach the Karnataka Administrative Tribunal to air their grievances, these writ petitions are rejected as not maintainable with no order as to costs.

Learned counsel appearing for the KPSC-Sri. A.N.Venugopala Gowda is permitted to file his vakalath in W.P.No.23262/2005 within three weeks from today.

Government Pleader is permitted to file memo of appearance within 6 weeks.
