



Jammu and Kashmir State Information Commission

جموں اینڈ کشمیر اسٹیٹ انفارمیشن کمیشن

(Constituted under the Right to Information Act, 2009)

Wazarat Road, near DC Office Jammu, 0191-2520947, 2520937

Old Assembly Complex, Srinagar, 0194-2506660,

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File No. SIC/CO/SA/597-2018

Decision No. SIC/CO/SA/597-2018/1360

Appellant: Ms. Savita Devi,
D/O Sh. Devi Ditta Salgotra
R/O Gumpul Domana,
Jammu.

Respondents: 1. First Appellate Authority,
J&K Public Service
Commission.
2. Public Information Officer,
J&K Public Service
Commission.

Date of Registration: 02-04-2018

Date of Decision : 01-08-2018

FINAL ORDER

In the present case the appellant Miss Savita Devi had filed an RTI request on 14-08-2017 with the Public Information Officer, J&K Public Service Commission seeking the following information:-

(a) kindly provide complete merit list with break-up of marks (i.e. marks obtained in written exam and marks obtained in interview) obtained by the candidates who

have qualified Jammu and Kashmir Civil Service (Judicial) Competitive Examination, 2013;

(b) kindly provide the break-up of the marks (i.e. marks obtained in written exam and marks obtained in interview) secured by the applicant who had appeared in written/ mains examination under Roll No. 2101433 in the aforesaid Jammu and Kashmir Civil Service (Judicial) Competitive Examination, 2013;

(c) kindly provide the copy of the answer scripts of mains examination of all the subjects (i.e. Compulsory and Optional) of the applicant bearing Roll No. 2101433, with marks allotted for each question.

The PIO, J&K PSC vide his communication No. PSC/Exm/RTI/53/2017 dated 24-10-2017 informed the applicant (appellant herein) in response to point (a) and (b) that the marks cards were already available on the Commission's website. In response to point (c), the PIO informed the appellant that Commission does not provide the Xerox copies of evaluated Answer Scripts. Aggrieved by the response of the PIO, the appellant filed 1st Appeal before the First Appellate Authority/ Secretary, J&K PSC on 25-11-2017 arguing thereunder that while the PIO has satisfactorily responded to point (a) and (b) of her RTI request, he has refused to provide information sought in point (c). The appellant also contended that the information sought by her pertained to the appellant, therefore, the said information was not exempted from disclosure under section 8 of the J&K RTI Act, 2009. The appellant accordingly prayed that the PIO be directed to furnish the requisite information and a reference under section 16(3) of

the Act be made to the State Information Commission. The FAA disposed of the 1st Appeal filed by the appellant on 29-02-2018 as under:-

“Considered the arguments of the appellant as well as the PIO (Exams). The examination/ selection process of KCS (Judicial), 2013 has already been completed. The PIO (Exams) has already provided the information sought by the applicant except the Xerox copies of answer scripts as providing of Xerox copies of answer scripts which usually bears the initials/signatures of evaluators and the same i.e. Xerox copies may lead to disclosure of their particulars to the candidates/Public. The applicant is not entitled to have the names/particulars of evaluators as has been held by the Hon’ble Supreme Court in SLP titled Kerala Public Service Commission and ors Vs. State Information Commission and ors. However, the PIO (Exams) will allow the inspection of answer scripts by the appellant under the close supervision of the officer designated by the Commission for the purpose.”

The appellant challenged the orders of PIO denying information on point (c) and also the order of FAA disallowing Xerox copies of answer scripts but allowing inspection thereof in the 2nd Appeal filed before the State Information Commission on 02-04-2018. The appellant contended in her 2nd Appeal that a candidate appearing in an examination has a right to get copies of the answer scripts after the examination is over and results are declared but the PIO in her case has illegally denied

information to her in response to point (c) of her request. The appellant accordingly prayed for a direction to the respondents to provide information against point (c) of RTI request dated 14-08-2017 and also grant of any other relief as the Commission may deem fit.

Proceedings before the State Information Commission:

The 2nd Appeal came up for hearing before the State Information Commission on 21-05-2018. The hearing was attended by Shri Vinay Samotra, Dy Secretary/PIO, J&K PSC while the appellant Ms. Savita Devi was heard through video conferencing from Jammu office of the Commission. During the hearing, the appellant submitted that inspite of the order of the First Appellate Authority (FAA) allowing inspection of answer scripts, the Commission did not allow her to inspect her answer scripts even though she approached the Commission many a times for the same. The PIO, PSC submitted the counter statement dated 17-05-2018 to the 2nd Appeal submitting thereunder that pursuant to the order of FAA allowing inspection of answer scripts by the appellant, the appellant made a request for such inspection on 05-04-2018. However, the Commission in its 8th Extraordinary Meeting held on 13-03-2018 decided that *“the answer scripts duly evaluated shall not be subject to the inspection by the candidates or a third party nor copies thereof to be made available and instead Commission shall continue to comply with Rule 33 of the Jammu and Kashmir (PSC) Examination Rules, 2005 in this behalf.”* The PIO further stated that in view of the decision of the Commission, the answer scripts were not shown to the candidate. After hearing both the parties, the appeal was

adjourned as it was felt that the reasons put forth by PIO, PSC for non-disclosure of information needed further examination.

The appeal again came up for hearing before the Commission on 19-06-2018. PIO, J&KPSC Sh. Vinay Samotra was present in person whileas the appellant was heard through video conferencing from Jammu office of the Commission. During the hearing, the appellant submitted that she has not been provided copies of her answer sheets by the PIO. The PIO submitted that the answer sheets have not been provided to the appellant in view of the decision of the PSC that answer scripts duly evaluated couldn't be made subject to inspection by the candidate or a third party, nor can copies thereof be made available. However, procedure for re-checking and scrutiny of results as provided under rule 33 of J&K (PSC) Examination Rules, 2005 shall be followed. The appellant, however, submitted that she has not applied for rechecking under rule 33 but seeks information under the RTI Act. Hence, rule 33 cannot be made applicable in her case. After hearing the parties, the hearing was adjourned with a direction to the PIO to explain by filing a written statement as to how rule 33 of J&K (PSC) Examination Rules, 2005 has been invoked by him for denying information sought by the appellant under section 6 of the J&K Right to Information Act, 2009.

The appeal once again came for hearing before the Commission today on 1st August, 2018. Mr. Irshad Ahmad, Dy. Secretary/PIO, J&K PSC attended the hearing in person while the appellant was heard through video conferencing from Jammu office of the Commission. The PIO filed a

written statement of facts dated 27-06-2018 reiterating the earlier stand taken in this appeal that the evaluated answer scripts cannot be provided to the appellant in view of the decision of the Public Service Commission dated 13-03-2018 and that even inspection of evaluated answer scripts could not be allowed in terms of rule 33 of J&K Public Service Commission (Conduct of Examination) Rules, 2005 whereby only rechecking is allowed. The appellant also reiterated her argument that she has not applied under rule 33 and as such, that rule cannot be invoked to deny her information under RTI Act.

Decision:

Before advertng to main contentious issue involved in this appeal whether answer scripts can be accessed by the concerned candidate participating in an examination or the same is exempted from disclosure under any of the clauses of section 8 of the J&K Right to Information Act, 2009, it would be apt to examine and analyse rule 33 of the J&K Public Service Commission (Conduct of Examination) Rules, 2005 viz a viz the provisions of the J&K Right to Information Act, 2009. The said rule 33 provides that *'any candidate, who has taken the examination, may apply to the Controller of Examinations for scrutiny of his marks and rechecking of his results. Such applications shall be made within one month of the date of publication of the result in the J&K Government Gazette.'*As is clear from the language employed in this rule, it deals with scrutiny of marks and rechecking of results. It does not provide any mechanism for seeking information by an aggrieved candidate. Rechecking and scrutiny of marks/result is one of the features of the

examination process. Therefore, this rule cannot be treated as a substitute or an alternate remedy for Right to Information, which is a facet of Fundamental Right of 'Freedom of Speech and Expression' guaranteed under Article 19(1)(a) of the Constitution and also a manifestation of 'Right to Life and Personal Liberty' guaranteed under Article 21 of the Constitution, as held by the Hon'ble Supreme Court in a number of cases including **Peoples' Union of Civil Liberties V/S Union of India, S.P Gupta Vs President of India and Reliance Petrochemicals Ltd Vs Indian Express Newspaper Ltd.** The J&K Right to Information Act, 2009 provides an institutional and statutory mechanism for realizing and achieving this fundamental right. Section 19 of the J&K RTI Act, 2009 gives it an overriding effect over all other laws or instruments having the effect by virtue of any law other than the RTI Act so far as such laws or instruments are inconsistent with the provisions of the RTI Act. As mentioned above, rule 33 of the PSC Examination Rules does not deal with anything related to access to information but deals with altogether a different subject of the examination process and hence, cannot be read into, or interpreted as, a substitute or alternate for right to information. If the argument of the PIO, J&K PSC that rule 33 is a substitute to right to information under the J&K RTI Act is accepted, then the said rule becomes redundant having been overridden by the provisions of Right to Information Act by virtue of section 19 thereof. The Supreme Court of India and various other High Courts have held in a catena of judgments that all laws and rules having

the force of law stand overridden by the provisions of Right to Information Act, 2005 (Central Act) so far such laws and rules are inconsistent with the provisions of the Right to Information Act by virtue section 22 of the Central Act (which corresponds to section 19 of the J&K RTI Act, 2009).

In a celebrated case on the subject titled **Central Board of Secondary Education & Anr. Vs. Aditya Bandopadhyay & Ors.** [SLP(C) NO. 7526/2009], the Supreme Court has held as under:-

“Section 22 of RTI Act provides that the provisions of the said Act will have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Therefore the provisions of the RTI Act will prevail over the provisions of the bye-laws/rules of the examining bodies in regard to examinations. As a result, unless the examining body is able to demonstrate that the answer-books fall under the exempted category of information described in clause (e) of section 8(1) of RTI Act, the examining body will be bound to provide access to an examinee to inspect and take copies of his evaluated answer-books, even if such inspection or taking copies is barred under the rules/bye-laws of the examining body governing the examinations.”

Therefore, PIO, J&K PSC cannot invoke rule 33 of the J&K Public Service Commission (Conduct of Examination) Rules, 2005 to deny the appellant information sought by her under the J&K Right to Information Act, 2009. The decision of the PSC dated 13-03-2018 is not in consonance of the

provisions of J&K Right to Information Act, 2009 and the law laid down by the Apex Court in this respect.

Now reverting to the main issue involved in this appeal, the right to information is a cherished right. This right is intended to be a formidable tool in the hands of citizens to fight corruption and to bring in transparency and accountability. The provisions of Right to [Information Act](#), therefore, need to be enforced strictly. Under this Act, a public authority is under a statutory obligation to provide every kind of information to an information seeker that comes within the ambit 'information' as defined in section 2(d) of the J&K Right to Information Act, 2009. Section 2(d) defines the expression 'information' as any material held by a public authority in any form including records, documents, e-mails, opinions, advices, reports, papers etc. Answer script of a candidate is available with an examination body in the form of record/document. Therefore, answer script qualifies to be 'information' held by the examining body within the meaning of section 2(d) of the J&K RTI Act to which a candidate can seek access under the RTI Act. In above referred case of **Central Board of Secondary Education & anr. Vs. Aditya Bandopadhyay & ors.**, the Hon'ble Supreme Court held in para 11 of the judgment as under:-

“The definition of ‘information’ in section 2(f) of the RTI Act refers to any material in any form which includes records, documents, opinions, papers among several other enumerated items. The term ‘record’ is defined in section 2(i) of the said Act as including any document, manuscript or file among others. When a

scripts. The order of PIO denying such information to the appellant on the ground of a decision taken by PSC for not disclosing such information is set aside as the very basis of such order i.e. the decision of PSC taken in its 8th Extraordinary Meeting held on 13-03-2018 is erroneous and unsustainable being violative of the Right to Information. The PIO, J&K PSC is directed to provide Xerox copies of her own answer scripts to the appellant. In case the PIO finds that the evaluated answer scripts of the appellant actually bear the name and signature of examiners/evaluators in a manner disclosing the identity of the examiners/evaluators, the PIO shall allow inspection of the answer scripts by the appellant under proper supervision or provide answer scripts copied in an appropriate manner so as to hide and conceal the identity of the examiners/evaluators.

The appeal is disposed of with the above directions.

Sd/-

(Mohammad Ashraf Mir)
State Information Commissioner.

Typed by:

Altaf Zullah, PS

Copy to:

1. First Appellate Authority (FAA)/J&K Public Service, Commission
2. Public Information Officer (PIO)/ J&K Public Service, Commission
3. Ms. Savita Devi D/O Sh. Devi Ditta Salgotra R/O Gumpul Domana, Jammu.

(Sheikh Fayaz Ahmad)
Registrar,

State Information Commission, Srinagar