‘ **REPORTABLE’**

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.823-854 OF 2016
(Arising out of SLP (C) Nos. 15919- 15950 of 2011)

Kerala Public Service Commission & Ors. …..Appellants

Versus

The State Information Commission & Anr. ….Respondents

With
CIVIL APPEAL NO.855 OF 2016
(Arising out of SLP (Civil) No.5433 of 2014)

Public Service Commission U.P. …..Appellant

Versus

Raghvendra Singh .. Respondent

J U D G M E N T

M.Y. EQBAL, J.

Leave granted.

2. In these two appeals the short question which needs consideration is as to whether the Division Bench of the Kerala High Court by impugned judgment has rightly held that the respondents are entitled not only to get information with regard to the scan copies of their answer sheet,

tabulation-sheet containing interview marks but also entitled to know the names of the examiners who have evaluated the answer sheet.

3. The information sought for by the respondents were denied by the State Public Information Officer and the Appellate Authority. However, the State Information Commission allowed the second appeal and held that there is no fiduciary relationship in case of answer scripts. Further, the interview marks cannot be considered as personal information, since the public authority had already decided to publish them.

4. Both the High Courts of Kerala and Allahabad have taken the view, following the earlier decisions of this Court that no fiduciary relationship exists between the appellants and the respondents and, therefore, the information sought for have to be supplied to them.

5. We have heard learned counsel for the parties and have gone through the impugned judgments passed by the

Division Bench of the High Court of Kerala at Ernakulam and Allahabad.

6. So far as the information sought for by the respondents with regard to the supply of scanned copies of his answer-sheet of the written test, copy of the tabulation sheet and other information, we are of the opinion that the view taken in the impugned judgment with regard to the disclosure of these information, do not suffer from error of law and the same is fully justified. However, the view of the Kerala High Court is that the information seekers are also entitled to get the disclosure of names of examiners who have evaluated the answer-sheet.

7. The view taken by the Kerala High Court holding that no fiduciary relationship exists between the University and the Commission and the examiners appointed by them cannot be sustained in law. The Kerala High Court while observing held:-

> "16.What, if any , is the fiduciary relationship of the PSC qua the examinees? Performance audit of constitutional institutions would only

strengthen the confidence of the citizenry in such institutions. The PSC is a constitutional institution. To stand above board, is one of its own prime requirements. There is nothing that should deter disclosure of the contents of the materials that the examinees provide as part of their performance in the competition for being selected to public service. The confidence that may be reposed by the examinees in the institution of the PSC does not inspire the acceptability of a fiduciary relationship that should kindle the exclusion of information in relation to the evalution or other details relating to the examination. Once the evaluation is over and results are declared, no more secrecy is called for. Dissemination of such information would only add to the credibility of the PSC, in the constitutional conspectus in which it is placed. A particular examinee would therefore be entitled to access to information in relation to that person's answer scripts. As regards others, information in relation to answer scripts may fall within the pale of "third party information" in terms of section 11 of the RTI Act. This only means that such information cannot be accessed except in conformity with the provisions contained in section 11. It does not, in any manner, provide for any immunity from access.

17. We shall now examine the next contention of PSC that there is a fiduciary relationship between it and the examiners and as a consequence, it is eligible to claim protection from disclosure, except with the sanction of the competent authority, as regards the identity of the examiners as also the materials that were subjected to the examination. We have already approved TREESA and the different precedents and commentaries relied on therein as regards the concept of fiduciary relationship. We are in full agreement with the law laid by the Division Bench of this Court in Centre of Earth Science

> Studies (supra), that S.8 (1)(e) deals with information available with the person in his fiduciary relationship with another; that information under this head is nothing but information in trust, which, but for the relationship would not have been conveyed or known to the person concerned. What is it that the PSC holds in trust for the examiners? Nothing. At the best, it could be pointed out that the identity of the examiners has to be insulated from public gaze, having regard to issues relatable to vulnerability and exposure to corruption if the identities of the examiners are disclosed in advance. But, at any rate, such issues would go to oblivion after the conclusion of the evaluation of the answer scripts and the publication of the results. Therefore, it would not be in public interest to hold that there could be a continued secrecy even as regards the identity of the examiners. Access to such information, including as to the identity of the examiners, after the examination and evaluation process are over, cannot be shied off under any law or avowed principle of privacy."

8. We do not find any substance in the reasoning given by the Kerala High Court on the question of disclosure of names of the examiners.

9. In the present case, the PSC has taken upon itself in appointing the examiners to evaluate the answer papers and as such, the PSC and examiners stand in a principal-agent relationship. Here the PSC in the shoes of a Principal

has entrusted the task of evaluating the answer papers to the Examiners. Consequently, Examiners in the position of agents are bound to evaluate the answer papers as per the instructions given by the PSC. As a result, a fiduciary relationship is established between the PSC and the Examiners. Therefore, any information shared between them is not liable to be disclosed. Furthermore, the information seeker has no role to play in this and we don't see any logical reason as to how this will benefit him or the public at large. We would like to point out that the disclosure of the identity of Examiners is in the least interest of the general public and also any attempt to reveal the examiner's identity will give rise to dire consequences. Therefore, in our considered opinion revealing examiner's identity will only lead to confusion and public unrest. Hence, we are not inclined to agree with the decision of the Kerala High Court with respect to the second question.

10. In the present case the request of the information seeker about the information of his answer sheets and details of the interview marks can be and should be provided to him. It is not something which a public authority keeps it under a fiduciary capacity. Even disclosing the marks and the answer sheets to the candidates will ensure that the candidates have been given marks according to their performance in the exam. This practice will ensure a fair play in this competitive environment, where candidate puts his time in preparing for the competitive exams, but, the request of the information seeker about the details of the person who had examined/checked the paper cannot and shall not be provided to the information seeker as the relationship between the public authority i.e. Service Commission and the Examiners is totally within fiduciary relationship. The Commission has reposed trust on the examiners that they will check the exam papers with utmost care, honesty and impartially and, similarly, the Examiners have faith that

they will not be facing any unfortunate consequences for doing their job properly. If we allow disclosing name of the examiners in every exam, the unsuccessful candidates may try to take revenge from the examiners for doing their job properly. This may, further, create a situation where the potential candidates in the next similar exam, especially in the same state or in the same level will try to contact the disclosed examiners for any potential gain by illegal means in the potential exam.

11. We, therefore, allow these appeals in part and modify the judgment only to the extent that the respondents-applicants are not entitled to the disclosure of names of the examiners as sought for by them.

…….J.
(M.Y. Eqbal)

…….J.
(Arun Mishra)

New Delhi
February 4, 2016