



कर्मचारी भविष्य निधि संगठन
(श्रम एवं रोजगार मंत्रालय, भारत सरकार)
Employees' Provident Fund Organisation
(Ministry of Labour & Employment, Govt. of India)



मुख्य कार्यालय/ Head Office

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File No. Exam. RTI/18/2018

356

Dated: 25 NOV 2019

To,

All Addl. Central P F Commissioner (HQ)/ Director, PDNASS
All Addl. Central P F Commissioner
All Regional P F Commissioner-I & II-

Subject:- Forwarding of judgment of Hon'ble High Court, New Delhi in W P (C) No. 1343/2019 and CM No. 6111/2019 regarding supply of Answer Sheets of a third party under the RTI Act, 2005.

Madam / Sir,

Please find enclosed herewith a copy of judgment dated 18.10.2019 passed by the Hon'ble High Court, New Delhi in W P (C) No. 1343/2019 and CM No. 6111/2019 in the matter of Central Public Information Officer, Employees Provident Fund Organisation vs Shailendra Kumar.

In this case, the Hon'ble High Court, New Delhi observed that "... the Supreme Court took the view that under Section 8(1) (e) of the RTI Act, 2005 access cannot be granted to the answer sheets of third party" and quashed the order of the Hon'ble CIC directing the CPIO, EPFO to provide copies of the Answer Booklets of the selected candidates.

The order of the Hon'ble High is circulated to all concern for information.

Encl: As above

Yours faithfully,


(K Rupeshor Singh) 25/11/19

Regional P.F. Commissioner-I (Exam)

Copy to:

1. All Divisional Head, EPFO, HQ
2. Hindi Cell for Hindi Translation
3. RPFC-I NDC

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 1343/2019 and CM No. 6111/2019

CENTRAL PUBLIC INFORMATION OFFICER EMPLOYEES
PROVIDENT FUND ORGANIZATION Petitioner

Through Mr.Keshav Mohan, Mr. Piyush
Chodhary and Mr.Piyush Vatsa, Advs.

versus

SHAILENDRA KUMAR Respondent

Through None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

18.10.2019

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1. This petition is filed to impugn the order dated 08.06.2018 of the CIC.
2. The respondent is served. None appeared for the respondent on the last date of hearing. Hence, the matter was kept for today. Today also none has appeared for the respondent. The respondent is proceeded ex parte.
3. On 18.01.2018, the respondent filed an application before the CPIO pointing out that a Limited Departmental Competitive examination for the post of Enforcement Officer/Accounts Officer was organised by EPFO on 13-14th November, 2014. The respondent was one of the candidates who appeared in all the four papers. The respondent sought photocopy of the evaluated papers of the respondent. He also sought photocopy of the evaluated papers with respect to the five passed/selected candidates for the Jharkhand Region. Admittedly, the photocopy of the evaluated paper of the respondent has been supplied to him.
4. The grievance centres around the photocopy of the evaluated copies

of the papers with respect to the other candidates who passed/got selected. The CIC by the impugned order noted that the answer sheets of the four employees who have qualified for promotion are not personal information nor qualified to be confidential reports. It also noted that the judgment of the Supreme Court in the case of *CBSE vs. Aditya Bandopadhyay, (2011) 8 SCC 447* and *UPSC vs. Angesh Kumar, (2018) 4 SCC 530* would have no application to the facts of the present case. A direction was issued to the petitioner to provide certified copies of the answer booklets of the selected candidates.

5. Learned counsel for the petitioner relies upon the judgment of the Supreme Court in the case of *CBSE & Anr. vs. Aditya Bandopadhyay & ors., (supra)* to contend that the impugned order has wrongly interpreted the said judgment.

6. A perusal of the said judgment shows that the Supreme Court in para 11 culled out the question that arises for consideration as follows:-

“11. On the contentions urged, the following questions arise for our consideration:

(i) Whether an examinee's right to information under the RTI Act includes a right to inspect his evaluated answer books in a public examination or taking certified copies thereof?

(ii) Whether the decision of this Court in Maharashtra State Board of Secondary and Higher Secondary Education[^] and other cases referred to above, in any way affect or interfere with the right of an examinee seeking inspection of his answer books or seeking certified copies thereof?

(iii) Whether an examining body holds the evaluated answer books "in a fiduciary relationship" and consequently has no obligation to give inspection of the evaluated answer books under Section 8(I)(e) of the RTI Act?

(iv) If the examinee is entitled to inspection of the evaluated answer books or seek certified copies thereof, whether such right is subject to any limitations, conditions or safeguards?"

7. On the right of an examinee to seek papers of a third party, the Supreme Court held as follows:-

"45. One of the duties of the fiduciary is to make thorough disclosure of all the relevant facts of all transactions between them to the beneficiary, in a fiduciary relationship. By that logic, the examining body, if it is in a fiduciary relationship with an examinee, will be liable to make a full disclosure of the evaluated answer books to the examinee and at the same time, owe a duty to the examinee not to disclose the answer books to anyone else. If A entrusts a document or an article to B to be processed, on completion of processing, B is not expected to give the document or article to anyone else but is bound to give the same to A who entrusted the document or article to B for processing. Therefore, if a relationship of fiduciary and beneficiary is assumed between the examining body and the examinee with reference to the answer book. Section 8(1)(e) would operate as an exemption to prevent access to any third party and will not operate as a bar for the very person who wrote the answer book, seeking inspection or disclosure of it."

8. Hence, the Supreme Court took the view that under Section 8(1)(e) of the RTI Act, 2005 access cannot be granted to the answer sheets of a third party.

9. To that extent, it is manifest that the impugned order is contrary to the settled legal position. Accordingly, the impugned order is quashed.

10. The petition is disposed of accordingly. Pending applications, if any, also stand disposed of.

OCTOBER 18, 2019
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JAYANT NATH, J