

GAHC040011632022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Writ Petition (C) No. 343/2022

Sri Wangrum Hosai,
S/o – Shri Chuwang Hosai,
Vill & P.O. – Kaimai,
P.S. – Khonsa,
Dist. – Tirap, Arunachal Pradesh.

..... **Petitioner.**

-Versus-

1. The Arunachal Pradesh Public Service Commission,
Represented by the Secretary, Itanagar, Arunachal Pradesh,
791111.
2. The Secretary Home,
Government of Arunachal Pradesh, Itanagar-791111.
3. The Director General of Police, Government of Arunachal
Pradesh, Itanagar-791111.
4. Shri Bharat Rai.
5. Gopal Tok.
6. Shri Deveso Chaitom. Respondent Nos.4 to 6 are

C/o The Secretary, APPSC, Arunachal Pradesh, Itanagar-791111.

..... Respondents.

BEFORE

HON'BLE MR. JUSTICE ROBIN PHUKAN

Advocate for the petitioner : Mr. S.K. Deori.

Advocate for the respondents : Mr. M. Pertin,
Ms. T.Y. Bhutia,
Mr. A. Apang,
Ms. K. Wangmo.

Date of Hearing : 14.06.2023.

Date of Judgment & Order : 31.08.2023.

JUDGEMENT & ORDER (CAV)

Heard Mr. S.K. Deori, learned counsel for the petitioners. Also heard Mr. M. Pertin, learned Senior Counsel assisted by Ms. T.Y. Bhutia, learned counsel for the respondent Nos.4, 5 & 6; Mr. A. Apang, learned Senior Counsel for the respondent No.1 and Ms. K. Wangmo, learned Government Advocate, Arunachal Pradesh for the respondent Nos.2 and 3.

2. This writ petition, under Article 226 of the Constitution of India, is instituted by the petitioner, namely, Shri Wangrum Hosai seeking following relief(s):-

(i) To issue necessary direction to the respondent No. 1 to review, re-verification of the „Answer Key“ of Question No. 57 of General Knowledge Paper

by an expert, independent resource person.

(ii) To issue necessary direction the respondent No. 1 to award 1 [one] mark to the petitioner if the answer of the petitioner in the OMR Sheet, in respect of Question No. 57 of General Knowledge Paper is found to be correct after re-verification by expert, independent person.

(iii) To issue necessary direction to the respondent No. 1 to recommend the petitioner for appointment to the post of SubInspect [Civil/IRBN].

THE BACKGROUND FACTS

3. The background facts, leading to filing of the present petition, is adumbrated herein below:-

“The petitioner, namely, Shri Wangrum Hosai had applied for and participated in the recruitment process initiated by Arunachal Pradesh Public Service Commission [herein after, “APPSC”] for filling up the post of Sub-Inspector [Civil/IRBN] in the Home Department Government of Arunachal Pradesh. The petitioner was declared unsuccessful in the said recruitment process. Thereafter, on meticulous verification of General Knowledge Question Paper with OMR Sheet and the Answer Key, the petitioner had found that the answer to the question No. 57 has wrongly been set as option „B” in the official answer key, whereas the correct answer ought to have been option „A”. The petitioner had correctly answered the said question in the OMR sheet, but he was not awarded 1 [one] mark despite giving of the correct answer for wrong and demonstrably erroneous answer key set by the respondent APPSC.

The pleaded case of the petitioner is that the total mark awarded to the

petitioner is 198.66 and the same would have been 199.66 if the 1 [one] mark is added to the same and in that event his position would have been at serial No. 123 in the Merit List of 123 published by the respondent APPSC. Being aggrieved the petitioner has requested the respondent No. 1, APPSC for re-verification of question No. 57 of General Knowledge Paper with his OMR and Answer Key from an expert resource person from recognized institutions, but, the respondent authorities denied the same. Being aggrieved, the petitioner approached this court by filing the present petition, with the prayers mentioned herein above.”

4. The respondent No. 1- APPSC had filed affidavit-in-opposition stating that the commission has its own panel of experts entrusted with the task of setting question paper and evaluation of answer scripts and in the instant case the result was prepared by commission, on the basis of „Answer Key“, as provided by the experts assigned with the task, and the matter was clarified to the petitioner vide letter No. PSC-R/09/2008/2020/2082, dated 07.09.2022, and there is no negligence on the part of the commission and the examination was conducted strictly as per SOP as contained in the Arunachal Pradesh Public Service Commission Conduct of Examination Guidelines, 2017 which provides no provision for re-evaluation of Answer Script and this position was duly informed to the petitioner vide letter No. PSCR/09/2008/2020/2082, dated 07.09.2022. Therefore, it is contended to dismiss this petition.

5. The respondent Nos.3 also filed affidavit in opposition and denied the assertions made in the petition. It is stated that APPSC had conducted the examination and furnished the list of selected candidates to it, and it has nothing to do with the selection process.

6. The respondent No. 4, 5 and 6 also filed their affidavit-inopposition denying the assertions made in the petition. It is stated by the respondent Nos. 4, 5 and 6 that they have cleared the examination and secured 121, 122 & 123 rank respectively, and that the Arunachal Pradesh Public Service Commission Conduct of Examination Guidelines, 2017 does not provide for re-evaluation of the Answer Script and that there is no doubt about the integrity of the system of examination of Answer Book of the APPSC. It is also stated that even if there was anomalies in the Answer Key, picking up the Answer Script of the petitioner alone for re-evaluation will lead to arbitrary and anomalous situation and in the larger interest such exercise has to be avoided. Under these circumstances, it is contended to dismiss the petition.

7. The petitioner has filed reply to the affidavit-in-opposition filed by the respondent No. 1, wherein it is stated that large scale irregularities were committed in the selection process so conducted by the APPSC EE Examination, 2021 for the post of Sub-Inspector and in connection with the same SIC[Vig.] P.S. Case No. 12/2022, under Sections 406/420/409/120[B] of the IPC, read with section 7/8/13[2] of PC Act has been registered and 6 [six] candidates, who got selection by fraudulent means were arrested and as such, the plea of abundant caution, being taken by the APPSC is false and the negligence on the part of the APPSC is writ large and the guidelines in conducting the examination and standard operating procedure has not been followed and therefore, there is scope for re-evaluation of the Answer Key of the petitioner, despite there being absence any provision for re-evaluation in the guidelines of the APPSC, and therefore, it is contended to allow the petition.

THE SUBMISSIONS:-

8. Mr. S.K. Deori, learned counsel for the petitioner submits that large scale irregularities have been committed by the APPSC while conducting the examination for the post of Sub-Inspector, which led to registration of a case of SIC [Vig.] P.S. Case No. 12/2022, under Sections 406/420/409/120[B] of the IPC read with section 7/8/13[2] of PC Act and the investigation is going on and 6 [six] candidates, who have adopted fraudulent means, have been arrested by the police. Mr. Deori further submits that the respondent in the APPSC has not taken proper care and it had not followed the SOP, and there is negligence in conducting the examination in fair manner and they have not prepared the „Answer Key“ as required and despite giving proper answer by the petitioner, he had not been awarded any mark and the respondent had denied re-evaluation on the ground of absence of any Rule, which violates the fundamental rights of the petitioner, and therefore, Mr. Deori contended to allow the petition.

9. Mr. S.K. Deori, learned counsel for the petitioner also referred to some decisions of Hon“ble Supreme Court in **Tripura High court through the Registrar General vs. Tirtha Sarathi Mukharjee and Others**, reported in **2019 16 SCC 663** and **Manish Ujjal and Others vs. Maharshi Dayananda University and Others** reported in **(2005) 13 SCC 744**, to contend that despite being absence of rule or any provision for re-evaluation the court has the power under Article 226 of the Constitution of India, where injustice is caused to the petitioner despite giving proper answer in the Answer Script. Therefore, Mr. Deori contended to allow the petition by setting aside the impugned order. Mr. Deori also referred to the case of **Sahiti and Another vs. Cancellor of Dr. NTR University of Health Science and another**, reported

in **2009 1 SCC 599** to contend that while the action of the authorities is arbitrary, unreasonable and mala-fide, then the court can invoke the jurisdiction under Article 226 of the Constitution of India for directing the re-evaluation.

10. On the other hand, Mr. A. Apang, learned Senior Counsel for the respondent No. 1- APPSC, submits that the examination process had already been completed and the result, which was prepared based on answer key as provided by expert, had already been declared and there is restriction in the Manual of the APPSC in re-evaluation of the Answer Script. Mr. Apang further submits that as there is no rule for re-evaluation of the Answer Script, the petitioner was informed in reply to their representation for re-evaluation. Mr. Apang, referring a decision of Hon“ble Supreme Court in **Ran Vijay Singh And Others vs. State of Uttar Pradesh And Others** reported in **(2018) 2 SCC 357**, submits that if a Statute, Rule or Regulation permits reevaluation of an Answer Script or scrutiny of an Answer Script as a matter of right, only then the court may permit re-evaluation and if not, the court may also permit it, and only if it is demonstrated very clearly, without any inferential process of reasoning or by process of rationalisation and only in rare or exceptional cases that a material error has been committed. Mr. Apang further submits that the onus is upon the candidate to demonstrate such clear and material incorrectness of Answer Key, and the court should presume the correctness of the Answer Key and in the event of doubt, the benefit should go to the examination authority. Under these facts and circumstances Mr. Apang contended to dismiss this petition.

11. Mr. Apang also submitted written Note of argument, wherein he raised as issue of absence of regular officer and that the Commission is defunct as advertisement for selection of Members has been stayed by a Division bench of

this court in Writ Appeal No. 203 of 2023. Mr. Apang also raised an issue that in another case similar prayer was rejected by this court in WP(C) 356/2012 (Bharat Sering vs. State of A.P. & Others) and as held by Hon“ble Supreme Court in the case of **Ran Vijay Sing (supra)** judicial discipline is required to be maintained.

12. On the other hand defending the examination process, Mr. M. Pertin, learned Senior Counsel for the respondent No. 4, 5, & 6, submits that in absence of any rule for Re-evaluation of Answer Book the court cannot direct for re-examination. Mr. Pertin also relied upon two case laws **Pramud Kr. Shrivastab vs. Chairman Bihar Public Service Commission** reported in **(2004) 6 SCC 714** and also the **High Court of Tripura [Supra]** and **Ran Vijay Singh [supra]** to contend that in absence of any Rule the court cannot direct for reevaluation. Under the aforesaid facts and circumstances Mr. Pertin contended to dismiss the petition.

THE ISSUES :-

13. In view of the stands being taken by the parties in their respective pleadings and also in view of the submissions of learned counsel for all the parties, the issues which are required adjudicated by this court, are formulated as under:-

- [i] Whether the petitioner has been able to demonstrate that the „Answer key“ so given by the respondent authorities, so far it relates to Question No. 57, is palpably wrong and despite giving of correct answer, he was not awarded any mark, and thereby violates right?
- [ii] Whether in absence of any rule, governing the issues of rechecking of

the „Answer Key“, this court can direct re-checking of Answer key and also direct re-evaluation of the Answer Script of the petitioner, if the Answer Key is found to be erroneous, by exercising the jurisdiction under Article 226 of the Constitution of India?

14. I have carefully gone through the petition and the documents placed on record and also gone through the case laws, referred by Mr. S.K. Deori, learned counsel for the petitioner as well as by Mr. M. Pertin, learned Senior Counsel for the respondent No. 4, 5 & 6 and Mr. A. Apang, learned counsel for the respondent No. 1.

15. It is the categorical stand of the petitioner that the „Answer Key“ in respect of Question No. 57 of the General Knowledge Question Paper was set wrongly. According to him the correct option in respect of Question No. 57 ought to have been „A“, whereas in the Answer Key, the answer was marked as option „B“. It is the further contention of the petitioner that since the answer to the said question is option „A“, he had marked the option correctly. But, he had not been awarded any mark, and had he been awarded 1 (one) mark, his aggregate marks would have been 199.66, and in that event his position would have been at serial No.123 in the merit list of 123 candidates, so published by the respondent APPSC. But, he had been given only 198.66 marks, for which he was declared unsuccessful.

16. It is to be mentioned here that the Question No. 57 of the General Knowledge Question Paper - **Annexure - 4**, of the petition, read as under:-

Question No. 57 read as under:-

Select the correct statement from the following with regard to the declaration of

emergency under Article 352:-

- (A) The declaration was made on the written communication of the Union Cabinet,
- (B) The declaration is made on the advice of the Prime Minister,
- (C) The declaration is made on the decision taken by the Union Council of Ministers,
- (D) The declaration is made in consultation with the House of People,

17. Whereas, in the Answer Key- **Annexure- 6**, of the petition, reveals that the answer is marked as option- „B“, against Question No. 57. The Answer Sheet (OMR Sheet) - **Annexure - 5**, of the petition reveals that the petitioner had marked the answer to the Question No.57 as option „A“.

18. Further it appears that the petitioner had relied upon a letter **Annexure - 8** of the petition, written by Smti Sumcha Misia, a Post Graduate Teacher (Political Science) of Government Higher Secondary School, Khonsa, Tirap District, wherein it has been certified that the correct answer of Question No. 57 of the General Knowledge Question Paper of Recruitment Examination for the post of Sub-Inspector by APPSC, is option „A“ and the APPSC had wrongly marked the answer in the Answer Key as option „B“, to demonstrate that the Answer Key in respect of aforesaid question is wrong.

19. Referring to the Constitutional of India, a book published by Lexis Nexis, specially to Clause 3 of Article 252, Mr. S.K. Deori, the learned counsel for the petitioner, during argument, submits that the correct answer to the question is Option-„A“, not „B“ as set by the APPSC in the Answer Key- **Annexure- 6**, that the declaration of emergency under Article 352, is made on the written

communication of the Union Cabinet.

20. It is to be mentioned here that the contention of the petitioner had not been disputed by the respondent APPSC, in its affidavit in opposition. Its only contention is that the examination was conducted strictly on the basis on SOP contained in the Arunachal Pradesh Public Service Commission Conduct of Examination Guidelines, 2017 which provides for no provision for re-evaluation of Answer Key and that it has its own panel of experts of preparing question papers and evaluation of answers and the result of the examination was prepared based on the answer keys as provided by the expert assigned the task.

21. Whereas, the contention of the respondents No. 4, 5 and 6 is that Smti Sumcha Misia, Post Graduate Teacher (Political Science) of Government Higher Secondary School, Khonsa, is not the appropriate person or authority to say whether the Answer Keys are correct or not as the Answer Keys are evaluated by the expert and it is not possible for APPSC to get the Answer Book examined through some other examiner.

22. But, having gone through the Books on Constitutional law, referred to by the learned counsel for the petitioner, specially through the Article 353, the opinion of Smti Sumcha Misia, Post Graduate Teacher (Political Science) of Government Higher Secondary School, Khonsa, in respect of the Answer Key, seems to be very much relevant and correct. Thus, the contention of respondent No. 4, 5 and 6, seems to be without any basis. Thus, this court is satisfied to hold that the petitioner has successfully demonstrated that the Answer Key, so prepared by the respondent authorities in respect of Question No. 57 of General Knowledge Question Paper, is palpably wrong and no

reasonable man, well versed in the subject concerned, would regard the same as correct, and that despite giving of correct answer, the petitioner had not been awarded any mark. Though the petitioner had filed a representation to the respondent authorities for re-evaluation, but the same has been denied on the ground of absence of any provision in the rule. Thus, this court is inclined to hold that the right of the petitioner to get the marks awarded for giving correct answer stands violated.

Thus, **Issued No. [i]**, so formulated herein above, has to be answered in affirmative and the same stands answered.

23. Now coming to the Issue No.[ii], I find that in the APPSC Conduct of Examination Guidelines, 2017 there is no provision for reevaluation of Answer Key. This position is not disputed by the petitioner. However, the contention of Mr. S.K. Deori, learned counsel for the petitioner is that though the Rule does not provide for reevaluation of the Answer Script, after declaration and announcement of the result, yet, the rights of the petitioners to get the marks awarded for the correct answers given by him remains and this court has the power to direct for re-evaluation by exercising the power under Article 226 of the Constitution. The basis of such submission of Mr. Deori is three decisions of Hon“ble Supreme Court in the case of **Manish Ujwal [Supra]** and in the case of **High Court of Tripura [Supra]** and **Sahiti And Others [supra]**. However, such a submission is seriously contested by Mr. A. Apang, the learned Senior Counsel for the respondent No. 1 and Mr. M. Pertin, learned Senior Counsel for the respondent No. 4, 5 and 6, that in absence of violation of any right, this court cannot direct for re-evaluation of the Answer Script.

THE LAW GOVERNING THE FIELD:-

24. The jurisprudence of examination is being developed over the years through various judicial pronouncements. The first decision of Hon“ble Supreme Court in this regard was [Kanpur University and others v. Samir Gupta and others;](#) **AIR 1983 SC 1230**. In the aforesaid decision a three-Judge Bench posed a question in paragraph No.1 of the judgment in the following manner:-

"If a paper-setter commits an error while indicating the correct answer to a question set by him, can the students who answer that question correctly be failed for the reason that though their answer is correct, it does not accord with the answer supplied by the paper-setter to the University as the correct answer?" The answer which the paper-setter supplies to the University as the correct answer is called the „key answer“. No one can accuse the teacher of not knowing the correct answer to the question set by him. But it seems that, occasionally, not enough care is taken by the teachers to set questions which are free from ambiguity and to supply key answers which are correct beyond reasonable controversy. The keys supplied by the paper-setters in these cases raised more question than they solved."

25. Again in paragraph Nos. 3 and 4, Hon“ble Supreme Court has held as under:-

"3. So far so good, the snag lies in determining which out of the four suggested answers is the correct answer. That duty is naturally assigned to the paper-setter, who is required to supply to the University the correct answer to each question, called the 'key answer'. The difficulty involved in evaluating a very large number of answer-books is solved by the State Government, quite successfully, by computerizing the result. The key answers are fed into a computer and the marking computerized.

4. The difficulty which arose in these cases is not due to the failure of the computer, which is quite encouraging. The habit of

man is to blame the machine. The difficulty arose because the key answers furnished by the paper-setters turned out to be wrong.

The students got to know the key answers out of the generosity of the University. If wanted, rightly, to be frank and fair. Therefore, it published the key answers along with the result of the test. Respondents, whose names did not figure in the list of successful candidates, filed writ petitions in the High Court of Allahabad, contending that the answers ticked by them were correct and the key answers wrong. The High Court has accepted their contention and that is how the Kanpur University has come to file these appeals. There cannot be a more telling instance of 'Shishyat Ichhet Parajam' (Wish for defeat from your pupil). But the Gurus contend that the Shishyas are wrong and do not deserve to win."

- 26.** Thereafter, while dealing with the contention of the learned counsel appearing on behalf of the University, that no challenge should be allowed to be made to the correctness of the key answer unless, on the face of it, it is wrong, Hon"ble Supreme court in paragraph No.16 observed as under:-

"16..... We agree that the key-answer should be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by an inferential process of reasoning or by a process of rationalization. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well-versed in the particular subject would regard as correct. The contention of the University is falsified in this case by a large number of acknowledged textbooks, which are commonly read by students in U.P. Those textbooks leave no room for doubt that the answer given by the students is correct and the key answer is incorrect."

27. Thereafter, Hon“ble Supreme Court in the case of [Abhijit Sen and others v. State of U.P. and others](#); **(1984) 2 SCC 319**, followed the dictum of law laid down in the case of **Kanpur University (supra)** was followed.

28. Thereafter, the issue as to whether a candidate could seek reevaluation of his answer books in the absence of any provision of reevaluation, came up before the Hon“ble Supreme Court in the case of [Pramod Kumar Srivastava v. Chairman, Bihar Public Commission, Patna and others](#); **(2004) 6 SCC 714**, wherein a three-Judge Bench in paragraph Nos. 7 and held as under:-

"7. We have heard the appellant (writ-petitioner) in person and learned counsel for the respondents at considerable length. The main question which arises for consideration is whether the learned Single Judge was justified in directing re-evaluation of the answer-book of the appellant in General Science paper. Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for re-evaluation of his answer- book. There is a provision for scrutiny only wherein the answer- books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totaling of marks of each question and noting them correctly on the first cover page of the answer-book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. In the absence of any provision for re-evaluation of answer- books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re- evaluation of his marks. This question was examined in considerable detail in Maharashtra State Board of Secondary and Higher Secondary Education and another v. Paritosh Bhupesh Kurmarsheth and others AIR 1984 SC 1543. In this case, the relevant rules provided for verification (scrutiny of marks) on an application made to that effect by a candidate. Some of the

students filed writ petitions praying that they may be allowed to inspect the answer- books and the Board be directed to conduct re-evaluation of such of the answer-books as the petitioners may demand after inspection. The High Court held that the rule providing for verification of marks gave an implied power to the examinees to demand a disclosure and inspection and also to seek re-evaluation of the answer-books. The judgment of the High Court was set aside and it was held that in absence of a specific provision conferring a right upon an examinee to have his answerbooks re-evaluated, no such direction can be issued. There is no dispute that under the relevant rule of the Commission there is no provision entitling a candidate to have his answer-books reevaluated. In such a situation, the prayer made by the appellant in the writ petition was wholly untenable and the learned Single Judge had clearly erred in having the answer-book of the appellant re-evaluated.

8. Adopting such a course as was done by the learned Single Judge will give rise to practical problems. Many candidates may like to take a chance and pray for re-evaluation of their answerbooks. Naturally, the Court will pass orders on different dates as and when writ petitions are filed. The Commission will have to then send the copies of individual candidates to examiners for reevaluation which is bound to take time. The examination conducted by the Commission being a competitive examination, the declaration of final result will thus be unduly delayed and the vacancies will remain unfilled for a long time. What will happen if a candidate secures lesser marks in re-evaluation? He may come forward with a plea that the marks as originally awarded to him may be taken into consideration. The absence of clear rules on the subject may throw many problems and in the larger interest, they must be avoided."

29. And thereafter, in the case of **Manish Ujwal [Supra]**, the Hon"ble Supreme Court in para Nos. 9 and 10 has held as under:-

"8. In Kanpur University, through vice-Chancellor and Ors. v. Samir Gupta and Ors., considering similar problem, this Court held that there is an assumption about the key answers being correct and in case of doubt, the court would unquestionably prefer the key answer. It is for this reason that we have not referred to those key answers in respect whereof there is a doubt as a result of difference of opinion between experts. Regarding the key answers in respect whereof the matter, is beyond the realm of doubt, this Court has held that it would be unfair to penalise the students for not giving an answer which accords with the key answer, that is to say, with an answer which is demonstrated to be wrong. There is no dispute about the aforesaid six key answers being demonstrably wrong and this fact has rightly not been questioned by the learned counsel for the University. In this view, students cannot be made to suffer for the fault and negligence of the University.

9. The High Court has committed a serious illegality in coming to the conclusion that "it cannot be said with certainty that answers to six questions given in the key answers were erroneous and incorrect". As already noticed, the key answers are palpably and demonstrably erroneous. In that view of the matter, the student community, whether the appellants or intervenors or even those who did not approach the High Court or this Court, cannot be made to suffer on account of errors committed by the University. For the present, we say no more because there is nothing on record as to how this error crept up in giving the erroneous key answers and who was negligent. At the same time, however, it is necessary to note that the University and those who prepare the key answers have to be very careful and abundant caution is necessary in these matters for more than one reasons. We mention few of those; first and paramount reason being the welfare of the student and a wrong key answer can result in the merit being made a casualty. One can well understand the predicament of a young student at the

threshold of his or her career if despite giving correct answer, the student suffers as a result of wrong and demonstrably erroneous key answer; the second reason is that the courts are slow in interfering in education matters which, in turn, casts a higher responsibility on the University while preparing the key answers; and thirdly, in cases of doubt, benefit goes in favour of the University and not in favour of the students. If this attitude of casual approach in providing key answer is adopted by concerned persons, directions may have to be issued for taking appropriate action, including the disciplinary action, against those responsible for wrong and demonstrably erroneous key answers but we refrain from issuing such directions in the present case."

30. The issue, as to whether the examining body, on being reported about the manifest errors and discrepancies in the Model Answer Keys can embark upon the exercise of re-verification of the answer keys and then re-evaluate the answer scripts squarely fell for consideration before Hon"ble Supreme Court in the case of [Sahiti and others \(supra\)](#), wherein, a three-Judge Bench while dilating on the issue in paragraph Nos.32, 37, 38 and 39 held thus:-

"32. The plea that there is absence of specific provision enabling the Vice-Chancellor to order re-evaluation of the answer scripts and, therefore, the Judgment impugned should not be interfered with, cannot be accepted. Re- evaluation of answer scripts in the absence of specific provision is perfectly legal and permissible. In such cases, what the Court should consider is whether the decision of the educational authority is arbitrary, unreasonable, mala fide and whether the decision contravenes any statutory or binding rule or ordinance and in doing so, the Court should show due regard to the opinion expressed by the authority.

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37. Award of marks by an examiner has to be fair and considering the fact that re-evaluation is not permissible under the Statute at the instance of candidate, the examiner has to be careful, cautious and has the duty to ensure that the answers are properly evaluated. Therefore, where the authorities find that award of marks by an examiner is not fair or that the examiner was not careful in evaluating the answer scripts re-evaluation may be found necessary.

38. There may be several instances wherein re- evaluation of the answer scripts may be required to be ordered and this Court need not make an exhaustive catalogue of the same. However, if the authorities are of the opinion that re-evaluation of the answer scripts is necessary then the Court would be slow to substitute its own views for that of those who are expert in academic matters.

39. Under the circumstances the plea advanced on behalf of the respondents that Vice-Chancellor of the N.T.R. University of Health, Sciences had no authority to order re-evaluation of the answer scripts, cannot be upheld. Therefore, this Court does not agree with the finding recorded by the Division Bench of the High Court that the Vice-Chancellor of the University had no power or jurisdiction to order the re-verification of answer scripts. However, the facts indicate that the Vice- Chancellor had exercised power to order re-verification of answer scripts under pressure and coercion from the students and their parents and not independently on merits."

31. It is also to be mentioned here that in similar circumstances, Hon"ble Supreme Court in the case of [Rajesh Kumar and others v. State of Bihar and others;](#)

reported in **(2013) 4 SCC 690** upheld the power of the examining body to correct the model answer keys, in the following words:-

"Application of an erroneous "model answer key" for evaluation of answer scripts of candidates appearing in a competitive examination is bound to lead to erroneous results and an equally erroneous inter se merit list of such candidates."

32. It is to be mentioned here that in the case of **High Court of Tripura [Supra]**, Hon"ble Supreme Court in para Nos. 18, 19, 20 and 21 has held as under :-

"18. It is, finally, in Ran Vijay Singh &Ors. Vs. State of Uttar Pradesh &Ors. reported in 2018 (2) SCC 357, that the Court proceeded to cull out the conclusions which include para 30.2. We may also notice conclusion in para 30.5 which reads as follows:-

"30.5 In the event of a doubt, the benefit should go to the examination authority rather than to the candidate."

19. We have noticed the decisions of this Court. Undoubtedly, a three Judge Bench has laid down that there is no legal right to claim or ask for revaluation in the absence of any provision for revaluation. Undoubtedly, there is no provision. In fact, the High Court in the impugned judgment has also proceeded on the said basis. The first question which we would have to answer is whether despite the absence of any provision, are the courts completely denuded of power in the exercise of the jurisdiction under Article 226 of the Constitution to direct revaluation? It is true that the right to seek a writ of mandamus is based on the existence of a legal right and the corresponding duty with the answering respondent to carry out the public duty. Thus, as of right, it is clear that the first respondent could not maintain either writ petition or the review petition demanding holding of revaluation.

20. The question however arises whether even if there is no legal right to demand revaluation as of right could there arise circumstances which leaves the Court in any doubt at all. A grave injustice may be occasioned to a writ applicant in certain circumstances. The case may arise where even though there is no provision for revaluation it turns out that despite giving the correct answer no marks are awarded. No doubt this must be confined to a case where there is no dispute about the correctness of the answer. Further, if there is any doubt, the doubt should be resolved in favour of the examining body rather than in favour of the candidate. The wide power under Article 226 may continue to be available even though there is no provision for revaluation in a situation where a candidate despite having giving correct answer and about which there cannot be even slightest manner of doubt, he is treated as having given the wrong answer and consequently the candidate is found disentitled to any marks.

21. Should the second circumstance be demonstrated to be present before the writ court, can the writ court become helpless despite the vast reservoir of power which it possesses? It is one thing to say that the absence of provision for revaluation will not enable the candidate to claim the right of evaluation as a matter of right and another to say that in no circumstances whatsoever where there is no provision for revaluation will the writ court exercise its undoubted constitutional powers? We reiterate that the situation can only be rare and exceptional."

33. From the illuminating discourse above, the legal proposition, in respect of re-evaluation of the Answer Key and Answer Script, can be crystallized as under:-

- (a) The examination authority has inherent power to correct the model answer keys and re-evaluate the answer scripts of the candidates, even in absence of any specific prohibition in the Rules/Regulations.

- (b) When Rules/Regulations governing the examination provides for, a candidates can ask for re-evaluation of his/her answer scripts and access to the model answer keys,
- (c) The Court may also permit re-evaluation or scrutiny, if it finds that the errors in the model answer keys are demonstrably erroneous without any inferential process of reasoning or by a process of rationalization.
- (d) But, this power shall be exercised by the Court only in rare and exceptional cases.
- (e) When there is any doubt about any question and answer, the benefit will always goes to the examining body, as finality has to be attached to the result of the examination process, when the result of the examination already declared.
- (f) The authority, having the inherent power to correct the question paper and model answer key and direct re-evaluation, has to exercise such power in a bona fide manner. Mala-fides and arbitrariness has no place in such exercise of power by the authority.

FINDING:-

34. Now, advertent to the facts of the case in hand, I find that the petitioner has successfully demonstrated that the „Answer Key“, so prepared by the respondent authorities in respect of Question No. 57 of General Knowledge Question Paper is palpably wrong and that despite giving correct answer, the petitioner had not been awarded any mark. The representation of the petitioner to the respondent authorities for re-evaluation was rejected on the ground of absence of any provision in the Rules. Thus, having not been awarded any mark

to the petitioner, despite giving of correct answer by him violates the right of the petitioner to get marks. And as such, the act of denial of re-evaluation of Answer Key and also the Answer Script, of the petitioner by the respondent authority, seems to be arbitrary, since by application of an erroneous "model answer key" for evaluation of answer scripts of candidates appearing in a competitive examination leads to erroneous result, and the same has already been held by Hon"ble Supreme Court in the case of **Rajesh Kumar (supra)**.

35. It is to be noted here that while dealing with arbitrariness in the case of **State of Orissa v. Mamata Mohanty**, reported in **(2011) 3 SCC 436**, Hon"ble Supreme Court has held in paragraph No. 59 as under:-

"59. The rule of law inhibits arbitrary action and also makes it liable to be invalidated. Every action of the State or its instrumentalities should not only be fair, legitimate and above board but should be without any affection or aversion. It should neither be suggestive of discrimination nor even give an impression of bias, favouritism and nepotism. Procedural fairness is an implied mandatory requirement to protect against arbitrary action where statute confers wide power coupled with wide discretion on an authority. If the procedure adopted by an authority offends the fundamental fairness or established ethos or shocks the conscience, the order stands vitiated. The decisionmaking process remains bad."

36. In the same vein, Hon"ble Supreme Court in **A.P. Dairy Development Corporation vs. B. Narasimha Reddy**, reported in **(2011) 9 SCC 286**, reiterated the legal proposition as follows:

"29. It is a settled legal proposition that Article 14 of the Constitution strikes at arbitrariness because an action that is arbitrary, must necessarily involve negation of equality. This doctrine of arbitrariness

is not restricted only to executive actions, but also applies to the legislature. Thus, a party has to satisfy that the action was reasonable, not done in unreasonable manner or capriciously or at pleasure without adequate determining principle, rational, and has been done according to reason or judgment, and certainly does not depend on the will alone.”

37. It is to be mentioned here that the petitioner had submitted affidavit in reply, which reveals that large scale anomalies were committed in conducting the examination for the aforesaid post and 6 candidates have been arrested in connection the anomalies and with SIC [Vig] Case No. 12/2022, registered under sections 406/420/409/120B/ IPC, read with section 7/8/13(2) PC Act and the investigation is being carried out by the special investigation team. Thus, in view of above and also in view of the submission of Mr. S.K. Deori, learned counsel for the petitioner, the respondent authorities, appears to be callous in conducting the aforesaid examination, which leads to registration of a criminal case, being SIC [Vig] Case No. 12/2022.

38. In view of the successful demonstration of giving wrong „Answer Key“ given by the respondent authorities and refusing to act on the representation so submitted by the petitioner to it and avoiding tactfully in confronting the contention of the petitioner on the core issue, this court is of the view that the power conferred under Article 226 of the Constitution of India is required to be exercised to protect the right of the petitioner. In arriving at such a decision, this court derived authority from the proposition of law laid down by Hon“ble Supreme Court in the case of **Kanpur University (supra), Sahiti and others (supra), Tirtha Sarathi [Supra]** and in the case of **Manish Ujwal [Supra]**.

39. I have considered the submission of Mr. A. Apang, the learned senior counsel for the respondent No.1 and Mr. T. Pertin, learned counsel for the respondent 4, 5 and 6 and also carefully gone through the case laws referred by them, but I am in respectful disagreement with them in view of the discussion and finding herein above. Though Mr. Pertin have relied upon **Pramod Kumar Shrivastava (supra)** to contend that in absence of any provision for re-evaluation of the answer books in the relevant Rules, no candidate in an examination has got any right whatsoever, to claim or ask for re-evaluation of his marks, but, this proposition of law stands explained by another three Judge Bench in the case of **Sahiti and others (supra)** wherein referring to the aforementioned decision it has been held that said decision deals with the right of the student or candidate to claim reexamination/re-evaluation of his answer sheet and the power of the High Court to order revaluation of answer sheets. It does not deal with the power of the Board to order re-evaluation of answer books if factual scenario so demands. It has also been upheld that award of marks by an examiner has to be fair and considering the fact that reevaluation is not permissible under the Statute at the instance of candidate, the examiner has to be careful, cautious and has the duty to ensure that the answers are properly evaluated. But, in the case of **Ran Vijay Singh (supra)** it has been held that - „If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the Court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any “inferential process of reasoning or by a process of rationalisation” and only in rare or exceptional cases that a material error has been committed. Thus, these two decisions and also the decision of **Tirtha Sarathi [Supra]** would not come into aid of the respondents. Though Mr.

Apang has referred a decision of this court in **WP(C) No. 356/2012** (Bharat Saring vs. State of A.P. & Ors.) to contend that judicial discipline is required to be maintained, yet the facts of the said case is clearly distinguishable from the case in hand. Mr. Apang has also taken a stand that now the commission is defunct on account of absence of regular officer and staying of the selection of Members of APPSC in W.A. No. 203/2023, by a division bench of this court, yet, the same is too enfeeble as a ground, to deny the right of the petitioner. Whereas, the submission of Mr. S.K. Deori is found to be based on sound principle of law, and accordingly, I record concurrence with the same.

DIRECTIONS:-

40. Under the aforesaid facts and circumstances, this court is inclined to issue following direction:-

- (i) The respondent No.1 - APPSC shall evaluate the correctness of Answer Key in respect of Question No.57 of the General Knowledge Question Paper, through an independent, expert and experienced examiner.
- (ii) And if the same is found to be not correct then to prepare correct Answer Key in respect of the said Question No.57.
- (iii) And thereafter, to re-evaluate the Answer Script of the petitioner and to take follow up action.
- (iv) This exercised has to be carried out within a period of 1 [one] month from the date of receipt of this order.

41. It is, however, being clarified that this court is not inclined to direct re-evaluation of the Answer Script of the respondent No.4, 5 and 6, as it appears

from the paragraph No. 14 of the petition and from Annexure-9 of the petition- the Notice dated 23rd March 2022, that 14 selected candidates have not joined within the stipulated time. Further, it appears from the page No. 58 of the petition, submitted by the petitioner that 23 posts are lying vacant out of 123 selected candidates. It is to be mentioned here that page 58 is the RTI reply given by the respondent No.3, vide letter, dated 31.08.2022, to the petitioner.

42. In terms of above, this writ petition stands disposed of, leaving the parties to bear their own costs.

JUDGE

Comparing Assistant