IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI

AND

HON'BLE SRI JUSTICE RAKESH THAPLIYAL

SPECIAL APPEAL NO. 100 OF 2023

13TH JUNE, 2023

BETWEEN:

Anit Dutt Joshi & others …..Appellants.

And

State of Uttarakhand & others ….Respondents.

With

SPECIAL APPEAL NO. 210 OF 2023

BETWEEN:

Mahesh Kumar & others …..Appellants.

And

State of Uttarakhand & others ….Respondents.

With

SPECIAL APPEAL NO. 211 OF 2023

BETWEEN:

Mohit Bhandari & others …..Appellants.

And

State of Uttarakhand & others ….Respondents.

With

SPECIAL APPEAL NO. 212 OF 2023

BETWEEN:

Gokulanand Tiwari & others …..Appellants.

And

State of Uttarakhand & others ….Respondents.

Counsel for the Appellants	:	Mr. Vinay Kumar and Ms. Sudha Tamta, learned counsels.
Counsel for the State	:	Mr. Pradeep Joshi, learned Additional Chief Standing Counsel and Mr. K.N. Joshi, learned Deputy Advocate General.
Counsel for the UKSSSC	:	Mr. C.K. Sharma and Mr. Shailendra Nauriyal, learned counsel.
Counsel for the Intervener	:	Mr. Abhishek Rana, *proxy* counsel for Mr. Abhijay Negi, learned counsel.

The Court made the following:

COMMON JUDGMENT:(per Hon'ble The Chief Justice Sri Vipin Sanghi)

Delay Condonation Applications (IA No.01 and 02 of 2023)

Learned counsels for the respondents fairly do not oppose the delay in preferring the present special appeals.

2. For the reasons stated in the affidavit(s), filed in support of the delay condonation applications, the delay condonation applications are allowed, and the delay of 198 days in preferring the SPA No.100 of 2023 and the delay of 224 days in preferring the SPA Nos.210, 211 and 212 of 2023, is, hereby, condoned.

Special Appeal Nos.100, 210, 211 and 212 of 2023

3. We have heard learned counsels and proceeded to dispose of the present special appeals.

4. The present special appeals are directed against the common judgment dated 24.09.2022, rendered by the

learned Single Judge in a batch of writ petition, including Writ Petition (S/S) No.308 of 2022, *"Sunita vs. State of Uttarakhand & others"*.

5. The appellants were the writ petitioners in Writ Petition (S/S) Nos.90 of 2022, 419 of 2022, 591 of 2022, and 421 of 2022 respectively. The appellants had preferred the said writ petitions to raise the issue with regard to the correctness of the answer keys to certain questions, in respect of the examination held by the respondent-Uttarakhand Subordinate Service Selection Commission, for the post of Assistant Teacher (L.T.) Grade in Government Schools. The questions, in respect whereof the challenge was raised, were Question Nos.9, 29, 65 and 85 of Series 'A' booklet. At the hearing, the appeals have not been pressed in respect of Question No.29.

6. The learned Single Judge dismissed the writ petitions by the common impugned judgment on the ground that it is not for the Courts to take on the role of experts in academic matters and to re-evaluate the answer key prepared by the Selection Body under the guidance of the Subject Experts. The learned Single Judge held that the issue as to which option- to a given question, gives correct answer can only be decided by Experts, and the answer key had been revised by the Selecting Body based on the recommendation

of the Subject Experts, who considered the objections received against the first answer key.

7. There can be no quarrel with the preposition noticed by the learned Single Judge in the impugned judgment. We cannot go into the correctness of the answers finalized by the Expert Body. However, the process of decision making by the Expert Body, and the material which have been considered or left out of consideration, would fall for scrutiny by the Court, as this Court is concerned primarily with the issue: whether the Body- even if it is composed of Subject Experts, has given due application of mind to the issue, on which its decision/ opinion was called for; whether the Expert Body has considered the relevant and germane aspects, and not taken into consideration irrelevant or extraneous aspects, and; whether the decision appears to be well reasoned. In that light, we have proceeded to take notice of the three questions, in respect whereof, the appellants are pressing the present special appeals; the texts and material relied upon by the appellants; the reasoning adopted by the Experts, and; the texts and other literature relied upon by the Expert Body.

8. *Vide* our order dated 17.05.2023, we had directed the respondent-authorities to produce before us the Expert Committee's report along with the background and the qualifications of the Experts, who have made the said report.

The relevant extract of the books on which reliance had been placed by the Expert Committee was also required to be placed before us.

9. Learned counsels for the respondent- Commission have produced before us a sealed cover containing the aforesaid information question-wise.

10. Question No.9 in Series 'A' booklet was the following:-

> *"9. Propounder of reinforcement theory is:*
> *(A) Pavlov*
> *(B) Skinner*
> *(C) Thorndike*
> *(D) C.L. Hull"*

11. The initial answer key gave option 'D' as the correct answer, namely C.L. Hull. However, in the revised answer key, as determined by the experts, option 'B' was treated as the correct answer.

12. In support of their plea that option 'D' C.L. Hull was the correct answer, the appellants had placed, with the writ petition, the textbook, namely, *'Educational Psychology by P.D. Pathak, published by Vinod Pushtak Mandir, Agra, 1996 Edition'*. The text of the said book states that "*प्रबलन सिद्धांत का प्रतिपादन सी.एल. हल* ***(C.L. Hull)*** *नामक अमेरीकी मनोवैज्ञानिक ने 1915 में अपनी पुस्तक "Principles of Behaviour" में किया था।"*.

13. The appellants-writ petitioners also place reliance on another textbook, namely *"शिक्षा मनोविज्ञान, by P.D. Pathak"*, wherein once again, in respect of propounder of reinforcement theory, the same information was contained.

14. The appellants-writ petitioners also placed on record another textbook, namely *"उच्चतर शिक्षा मनोविज्ञान Advanced Educational Psychology Theory and Practice, by Prof. S.P. Gupta/ Dr. Alka Gupta, published by Sharda Pushtak Bhawan, Prayagraj"*, which too attributes the reinforcement theory to *C.L. Hull* at Page No.453.

15. Another textbook relied upon by the appellants-writ petitioners was *"संज्ञात्मक मनोविज्ञान: बौद्धिक प्रक्रियायें, Cognitive Psychology: Intellectual Processes, published by Samaj Vigyan Vidhyashala, Uttarakhand Open University"*, which too narrates that *"प्रबलन सिद्धांत का प्रतिपादन* ***हल (Hull 1942)*** *द्वारा किया गया है।"*.

16. Insofar as the Question No.9, aforesaid, is concerned, the same shows that the Expert Committee of three Experts states that the objection raised by the objectors was correct. The key answer given by the Commission, i.e. option 'D', was not correct, and that the correct option was option 'B'. The reasoning given is that there is variation in the Hindi and the English version of the question. That being the

position, in terms of the instructions No.9, it is the English question, which shall prevail.

17. At this stage, we may take extract of Question No.9 from the Question Paper- both the English and Hindi versions of the same question. They read as follows:-

9. Propounder of reinforcement theory is:	*9. प्रबलन सिद्धांत के प्रतिपादक हैं :*
(A) Pavlov	*(A) पावलव*
(B) Skinner	*(B) स्किनर*
(C) Thorndike	*(C) थोर्नडाइक*
(D) C.L. Hull	*(D) सी. एल. हल*

18. Firstly, *prima facie*, there appears to be no difference in the question, as posed in English language and in Hindi language. The Expert Committee, unfortunately, does not record any reason for its conclusion that there is a difference in the Hindi and the English version of the said question. It is not explained by the Experts as to how they considered that there is a difference in the question- as posed in the English, and the Hindi languages.

19. The literature relied upon by the Expert Committee has also been placed along with its decision. The same shows that the Experts have relied upon a book called *"शैक्षिक तकनीकी के मूल आधार, by Dr. S.P. Kulshresth, published in 2007".* The extract from the said book, on which reliance is placed by the Experts, reads as follows:-

"Reinforcement Theory- B.F. Skinner: 1938 (Process Theory)

> ***<u>What is the Theory</u>*** *?*
>
> *B.F. Skinner's work is built on the assumption that behavior is influenced by its consequences. Reinforcement theory is the process of shaping behavior by controlling consequences of the behavior.*
>
> *Reinforcement theory proposes that you can change someone's behavior by using reinforcement, punishment, and extinction. Rewards are used to reinforce the behavior you want and punishments are used to prevent the behaviour you do not want. Extinction is a means to stop someone from performing a learned behavior. The technical term for these processes is called 'operant conditioning'".*

20. The aforesaid would show that the text relied upon by the Experts nowhere claims that B.F. Skinner- who appears to have propounded the 'process theory', was the propounder of the reinforcement theory, i.e. *प्रबलन सिद्धांत*.

21. The theory propounded by B.F. Skinner was the '*process theory'* in the year 1938. However, as per the text relied upon by the appellants, C.L. Hull had already propounded the reinforcement theory 23 years earlier, i.e. in the year 1915.

22. Pertinently, while arriving at their decision that option 'B' is the correct option, the Experts do not record any reasons, to explain as to on what basis, they claim that option 'D' was wrong.

23. The Expert Committee has also relied upon another text, namely, "*शैक्षिक तकनीकी के मूल आधार, by Dr. S.P. Kulshresth"*. This text nowhere claims that B.F. Skinner was

the propounder of the reinforcement theory. In fact, against the name of B.F. Skinner, the important contributions have been enlisted as, "*सक्रिय अनुबंध अनुक्रिया (Operant Conditioning Theory) अधिगम सिद्धांत का प्रतिपादन* in the year 1943, *पुनर्बलन का सिद्धांत, रेखीय अभिक्रम सामग्री तथा शिक्षण मशीनो को बनाना* in the year 1945", and in 1950, he is credited with '*प्रसिद्ध लेख अधिगम का विज्ञान तथा शिक्षण की कला का प्रकाशन*.

24. As we have already noticed, it is not for us to step into the shoes of the Experts, and conclude for ourselves as to which is the correct answer. However, one thing can certainly be said upon examination of the aforesaid aspect, that the Expert Committee has not undertaken the exercise with the seriousness and rigors with which it was expected to do so. There is no reason for rejecting the texts relied upon by the appellants, and rely upon the texts, on which reliance was placed by the Expert Committee.

25. It pains us to see that the respondent- Commission is approaching its very important responsibility with utter indifference and incompetence, to say the least. The career and lives of thousands of young people are at stake, who apply for the posts which are advertised for selection through public examination. The manner, in which the Expert Committee of three Experts have gone about their motion, and concluded that option 'B' is the correct answer, is

completely flawed, since they do not explain as to why option 'D'- C.L. Hull, was not considered as the correct answer, and why they have taken into consideration the text which does not appear to squarely answer the question, namely, who is the propounder of reinforcement theory.

26. The revised option 'B' in respect of Question No.9 of Series 'A' booklet, on the basis of the exercise undertaken by the Expert Committee, cannot be sustained, and, is therefore, quashed.

27. We may now move to the next question, in respect whereof the appellants have raised the challenge, which is the Question No.65 of Series 'A' booklet, which reads as follows:-

> *"65. डॉ. नागेंद्र ने प्रगतिवाद का आरम्भ काल माना है :*
> *(A) सन् 1936 ई० को*
> *(B) सन् 1937 ई० को*
> *(C) सन् 1938 ई० को*
> *(D) सन् 1939 ई० को"*

28. In respect of the said question, the model answer in the answer key prepared by the Commission was '*सन् 1936 ई०*', i.e option 'A'. The objection raised by the appellants to the said question was that the correct answer to the said question was '*सन् 1938 ई०*', i.e. option 'C'. The Expert Committee of the Commission consisting of three Experts has, however, rejected the said objection, and ruled that the correct option was option 'A', i.e. '*सन् 1936 ई०*'. Unfortunately,

in the note-sheet, wherein the reasoning is recorded by the Expert Committee, there is no reason to be found.

29. We may, at this stage, notice several texts relied upon by the appellants in support of their plea that the correct answer was '*सन् 1938 ई०*'.

30. First text relied upon by the appellants is "*हिंदी साहित्य का इतिहास,* by Dr. Nagendra and Dr. Hardayal". Thus, it would be seen that Dr. Nagendra, himself, was the author of the text relied upon by the appellants. At Page No.41 of the said text, Dr. Nagendra states that *Hindi Literature could be divided into different periods, and named as follows:-*

> "***आदिकाल*** *: सातवीं शती के मध्य से चौदहवीं शती के मध्य तक।*
> ***भक्तिकाल*** *: चौदहवीं शती के मध्य से सत्रहवीं शती के मध्य तक।*
> ***रीतिकाल*** *: सत्रहवीं शती के मध्य से उन्नीसवीं शती के मध्य तक।*
> ***आधुनिक काल*** *: उन्नीसवीं शती के मध्य से अब तक:*
> *1. पुनर्जागरणकाल (भारतेंदुकाल) 1857-1900 ई0*
> *2. जागरणसुधारकाल (द्विवेदिकाल) 1900 -1918 ई०*
> *3. छायावादकाल 1918 -1938 ई०*
> *4. छायावादोत्तरकाल*
> *(क) प्रगति- प्रयोगकाल 1938 -1953 ई०*
> *(ख) नवलेखनकल 1953 ई० से अब तक"*

31. From the aforesaid text, it appears that *प्रगति-प्रयोगकाल,* began in *1938 ई०.*

32. The appellants have also placed on record another text, namely *हिंदी साहित्य का इतिहास,* by Dr. L.N. Pande". The said textbook is the prescribed textbook by the Hemwati Nandan

Bahuguna Garhwal University. The 2017 Edition of this textbook states that, *छायावादोत्तर काल,* i.e. *प्रगति- प्रयोगकाल* was between 1938-1953 *ई०*. The relevant extract from the said text reads as follows:-

> "***छायावादोत्तर काल***
>
> *1. प्रगति-प्रयोगकाल (सन् 1938.1953)*
>
> *2. नवलेखन-कल (सन् 1953 अब तक)।*
>
> *डॉ. नागेंद्र का काल-विभाजन आचार्य शुक्ल और डॉ. हजारीप्रसाद द्विवेदी के अनुसार ही रहा है।"*

33. Another text produced by the appellants was "*हिंदी काव्य,* by Dr. Vivek Shankar, published by *राजस्थान हिंदी ग्रन्थ अकादमी,* 2020 Edition". In the said text, following is found:-

> *"डॉ. नागेंद्र द्वारा किया गया काल विभाजन एवं नामकरण*
>
> ***आदिकाल*** *: सातवीं शती के मध्य से चौदहवीं शती के मध्य तक।*
>
> ***भक्तिकाल*** *: चौदहवीं शती के मध्य से सत्रहवीं शती के मध्य तक।*
>
> ***रीतिकाल*** *: सत्रहवीं शती के मध्य से उन्नीसवीं शती के मध्य तक।*
>
> ***आधुनिक काल*** *: उन्नीसवीं शती के मध्य से अब तक:*
>
> *1. पुनर्जागरणकाल (भारतेंदुकाल) 1857-1900 ई0*
>
> *2. जागरणसुधारकाल (द्विवेदिकाल) 1900 -1918 ई०*
>
> *3. छायावादकाल 1918 -1938 ई०*
>
> *4. छायावादोत्तरकाल*
>
> *(क) प्रगति- प्रयोगकाल 1938 -1953 ई०*
>
> *(ख) नवलेखनकल 1953 ई० से अब तक"*

34. As opposed to the text relied upon by the appellants, the Expert Committee relies on the extract from the text, namely "*हिंदी साहित्य का इतिहास,* by Dr. Nagendra and Dr. Hardayal". At Page No.606 of the said text, which textbook is also relied upon by the appellants, as aforesaid, it is stated as follows:-

"प्रगतिवाद काव्य की संज्ञा उस काव्य को दी गयी जो छायावाद के समाप्तिकाल में 1936 के आसपास से सामाजिक चेतना को लेकर निर्मित होना आरम्भ हुआ।"

35. As in the case of Question No.9, in this case also, we find that there is absolutely no discussion by the Experts with regard to the text relied upon by the objectors. The text relied upon by the Experts does not appear give a definite answer inasmuch, as, it states that "*प्रगतिवाद काव्य की संज्ञा उस काव्य को दी गयी जो छायावाद के समाप्तिकाल में* ***1936 के आसपास*** *से सामाजिक चेतना को लेकर निर्मित होना आरम्भ हुआ।*" (emphasis supplied). Thus, the text relied upon by the Experts only talks about 1936 as an approximate time, and not the exact time.

36. In our view, the exercise done by the Experts even in relation to Question No.65, is equally casual and suffers from non-application of mind. There is no discussion of as to why the texts relied upon by the appellants have not been preferred, over the texts on which reliance is placed by the Expert Committee. For the same reasons, as aforesaid, the said view of the Experts is liable to be quashed, which we, hereby, do.

37. The third question, in respect whereof, the appellants raised the challenge, was Question No.85 of Series 'A' booklet. The said question reads as follows:-

"85. देवनागरी लिपि में मूल लिपि चिह्न हैं :
(A) 44
(B) 45
(C) 46

(D) उपयुक्त में से कोई नहीं"

38. The model answer key in respect of the said question fixed by the respondent- Commission was option 'B', i.e. 45. The appellants claimed that the correct answer was option 'C', i.e. 46. The Expert Committee came to the conclusion that the correct answer is option 'A', i.e. 44.

39. In support of their submission that the correct answer was option 'C', i.e. 46, the appellants have relied upon the work called '*देवनागरी लिपि तथा हिंदी वर्तनी का मानकीकरण,* published by the Central Hindi Directorate, Department of Higher Education, Ministry of Human Resource Development, Government of India'. At Page No.4 of the said text, under the heading 'मानक हिंदी वर्णमाला तथा अंक', 'स्वर' were set out in Paragraph No.2.1.1, which aggregated to 11. Paragraph No.2.1.2 sets out 'मूल व्यंजन', which include 'ङ' and 'ढ़'. At Page No.5 of the said text, it is stated as follows:-

"'ङ' and 'ढ़' व्यंजन रूप हिंदी में स्वीकृत ध्वनियाँ हैं। इस तरह हिंदी वर्णमाला में मूलतः 11 स्वर तथा 35 (33+ 2) व्यंजन हैं।"

40. Thus, according to the appellants, the total of 11 स्वर तथा 35 (33+ 2) व्यंजन comes to 46, which, according to them, was the correct answer.

41. The Expert Committee of the Commission, on the other hand, has also relied upon the same text, namely '*देवनागरी लिपि तथा हिंदी वर्तनी का मानकीकरण,* published by the

Central Hindi Directorate, Department of Higher Education, Ministry of Human Resource Development, Government of India'. The Expert Committee, however, does not take into consideration the two alphabets, namely 'ङ' and 'ढ़', and therefore, comes to the conclusion that the aggregate of 11 स्वर तथा 33 व्यंजन comes to 44.

42. It is pertinent to note that, in any event, 45 is not the correct answer, even according to the Expert Committee. It is, therefore, clear that the Commission framed a question which does not appear to have a clear-cut answer, and there is ambiguity in the same.

43. We may notice that the Experts have relied upon a couple of other texts in support of their conclusion that the correct answer is 44, but the fact remains that in the text, relied upon by the appellants, which is also relied upon by the Experts, the answer given is 46.

44. We fail to understand as to why the Commission should include questions which have ambiguity, or whose answers are not clear. Framing of such questions is bound to result in confusion, and would be unfair to that section of the candidates, who may choose the option which the Commission, or the Experts, may not agree with, even though, the chosen option is also clearly one of the correct options. In such situations, the only correct course that the

appears to us, for the Commission to adopt, would be to award marks to candidates who opt for either of the two answers, namely option 'A' or 'C'.

45. In the light of the aforesaid, we dispose of these special appeals with a direction to the respondent-Commission to re-examine the correctness of the answer key in relation to Question Nos.9 and 65, and also to consider whether full marks could be awarded to candidates who had opted for option 'A' or 'C' in relation to Question No.85 of Series 'A' booklet.

46. We hope that on this occasion, the Commission will not let the candidates down by undertaking a mindless and casual exercise, and that the Experts would take a considered and reasoned decision to support their final decision in the matter. The Commission shall, therefore, constitute Expert Committees to examine the three questions, aforesaid, afresh, in the light of the model answer key, with justification, framed by the Commission; the objections raised by the candidates with supporting evidence, and; in the light of the texts relied upon by the Experts themselves. The Commission shall constitute Expert Committees of Experts other than those who have already participated in the earlier process. The exercise be completed by the Commission within the next four weeks, and the decision shall be published by the Commission on its website, and also be communicated to

the appellants. Depending on the answers determined by the Experts, as the correct answers, the marks awarded to the candidates shall be re-calculated, and a fresh merit list be prepared on the basis of which the selection process shall continue. The aforesaid exercise is limited in respect of candidates who are on the waiting list, and shall not affect those who have already been appointed.

47. The interim orders operating in the present appeals shall continue to apply till the process, as directed, is completed.

48. The special appeals stand disposed of in the aforesaid terms.

49. Pending application, if any, also stands disposed of.

(VIPIN SANGHI, C.J.)

(RAKESH THAPLIYAL, J.)

Dated: 13th June, 2023
NISHANT