

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**LPA No. 1097 of 2015 (O&M)
Date of decision: 03.12.2015.**

State of Punjab and anotherAppellants.

Versus

Golo KaurRespondent.

**CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE AMOL RATTAN SINGH**

Present: Mr. P.P.S. Thethi, Additional Advocate General, Punjab,
for the appellants.

Mr. Somesh Gupta, Advocate, for the respondent.

S.S. SARON, J.

CM No. 2313-LPA of 2015.

The civil miscellaneous application has been filed by the appellants seeking condonation of 236 days delay in filing the appeal.

It is submitted that the appellants received copy of the order dated 29.10.2014 passed by the learned Single Judge on 19.11.2014. The Government then approached the Advocate General, Punjab for legal opinion vide letter dated 04.11.2014 and thereafter vide letter dated 03.12.2014. An opinion was given by the office of Advocate General to the effect that it was not a fit case for filing an appeal, which was received by the Government on 02.01.2015.

The matter regarding filing of LPA was under active consideration of the Government and after due deliberations it was decided to file an appeal. The office of Director, State Council of Educational Research and Training, Punjab wrote a letter dated 12.03.2015 to the

Government for issuing sanction for filing LPA. The sanction for filing LPA was issued on 31.03.2015. A copy of the same was received in the office of the Director, State Council of Educational Research and Training, Punjab on 06.04.2015. The office of Advocate General, Punjab was approached for vetting the grounds of LPA on 21.05.2015.

In this process a delay of 236 days, it is stated, occurred for filing the appeal, which it is stated to be neither intentional nor deliberate but due to the reasons beyond the control of the appellants. Besides, the delay is stated to be bona fide and unintentional and the appellants would not gain anything in delaying the process of filing the appeal.

Learned counsel for the non-applicant/respondent has opposed the prayer and submitted that no cause muchless sufficient cause has been shown for condoning the delay in filing the appeal. Therefore, the application, it is submitted, is liable to be dismissed.

We have given our thoughtful consideration to the matter and find sufficient cause to condone the delay in filing the appeal. This is more so for the reason that other connected appeals of similar nature and matters have been heard and decided. Therefore, it would be just and expedient in the facts and circumstances to hear the case of the parties on merit rather than non-suiting the appellants on technical considerations of delay in filing the appeal.

Accordingly, the civil miscellaneous application is allowed and the delay in filing the appeal is condoned.

LPA No. 1097 of 2015.

Learned counsel for the State has filed short affidavit of Shri Sukhdev Singh, Director, State Council of Educational Research and

Training, Punjab, Mohali on behalf of respondents No. 1 and 2 (sic. appellants No. 1 and 2) in compliance to the order dated 16.10.2015. The affidavit is taken on record subject to just exceptions.

This appeal has been filed by the appellants-State of Punjab and State Council of Educational Research and Training, Punjab ('SCERT, Punjab' - for short) against the order dated 29.10.2014, passed by the learned Single Judge in CWP No. 15676 of 2014, whereby the petition filed by respondent-Golo Kaur has been allowed.

The present case relates to the question of determining the eligibility of the respondent for consideration for appointment as a School Teacher for Classes I to V.

The Parliament enacted the 'Right of Children to Free and Compulsory Education Act, 2009' ('Act' - for short) to provide for free and compulsory education to all children of the age of six to fourteen years. The Act *inter alia* provides that every child has a right to be provided full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards. Section 23 of the Act provides for qualifications for appointment and terms and conditions of service of teachers. Sub-section (1) of Section 23 envisages that any person possessing such minimum qualifications, as laid down by an 'academic authority', authorized by the Central Government, by notification, shall, be eligible for appointment as a teacher.

The National Council for Teachers Education ('NCTE' - for short), which is an 'academic authority' vide notification dated 23.08.2010 has laid down minimum qualifications for candidates to be eligible for appointment as teachers for Classes I to VIII. One of the pre-requisites for

a person to be eligible for appointment as a teacher is that he/she should pass the Teachers Eligibility Test ('TET' - for short) to be conducted by the State Governments in accordance with the guidelines framed by NCTE.

The guidelines for Punjab State Teachers Eligibility Test ('PSTET' - for short) based on the NCTE guidelines were issued by the Department of School Education, Government of Punjab. The responsibility for conducting the test was entrusted to the SCERT Punjab (appellant No.2), which assigned the work for completing the formalities to a private agency. As per the guidelines two papers of PSTET were provided. Paper-I was for the applicants who intended to seek eligibility for consideration for appointment as Classes I to V teachers and Paper-II for Classes VI to VIII. In case a candidate intended to be a teacher for both the levels, he/she was required to appear in both the papers. The qualifying marks for being eligible for appointment as a teacher was 60% or more in the PSTET examinations.

The Department of School Education, Government of Punjab entrusted the responsibility of conducting the PSTET for candidates to be eligible for appointment as teachers for classes I to VIII to the SCERT Punjab (appellant No.2). Accordingly, the SCERT Punjab invited applications for the PSTET. The eligible candidates were asked to apply online.

The respondent being eligible and having completed the necessary formalities appeared in the PSTET in Paper-I against Roll No.10026848 as a candidate of the general category. She was required to qualify the eligibility test with 90 marks. The respondent appeared in the PSTET Paper-I Examination that was conducted by the SCERT Punjab

(appellant No.2) on 09.06.2013, the result of which was declared on 19.06.2013. The respondent obtained 86 marks against the required 90 marks for the general category candidates. Therefore, she fell short by four marks and could not qualify the said PSTET. In other words, she did not pass the PSTET Paper-I so as to be eligible for consideration for appointment as a teacher for classes I to V.

The respondent being aggrieved against the key answers to the question papers in which she appeared filed a petition in this Court seeking quashing of the result of PSTET declared by the appellants on 19.06.2013. According to the respondent, the question paper of the PSTET in which she had appeared was taken back after the examination. Besides, the answer key was also not uploaded on the website of the SCERT Punjab (appellant No.2). The system of uploading answer key on the website of SCERT Punjab has, however, now been introduced for the result of the PSTET conducted subsequently in December, 2013. The respondent, in any case, could not know the question paper and whether the answer keys were correct or not.

The respondent being dissatisfied with the result sought information under the Right to Information Act, 2005 by an application dated 25.06.2013. In response thereto, the respondent received a letter dated 12.08.2013 stating that the information sought by her had been provided to her by login. In this regard, SMS message was also sent on her mobile phone on 31.07.2013. She could use her application number as user ID to get information from 'tetpunjab.com' website. In case she required a printed copy of the information, she was required to send requisite fee of Rs.2/- per page. The respondent submitted the necessary fee which was

received by SCERT Punjab (appellant No.2) on 24.09.2013. A reminder was sent and after exchange of letters, the OMR (Optical Mark Recognition) answer sheet was provided. The respondent, however, downloaded the documents from the website of SCERT Punjab (appellant No.2).

From the evaluation of the question paper, the respondent came to know that the answer key of question No.5, 18, 86, 89, 123 and 145 were wrong and in that case the SCERT Punjab (appellant No.2) should have awarded grace marks which it did not. The respondent made representations against the incorrect assessment of her paper but her grievance was, however, not redressed. Therefore, she filed the petition out of which this appeal arises.

The learned Single Judge by his impugned order dated 29.10.2014, noticed the questions and answers that were raised on behalf of the respondent. It was held by the learned Single Judge that he had undertaken the exercise of going into the questions and key answers because the key answers were completely wrong and he was unable to see what the correct answers were. The questions No. 5, 18, 86 and 89, their key answers as also the answers given by the respondent were noticed by the learned Single Judge. It is these questions and answers which the respondent alleged were not correctly appraised. The learned Single Judge considered the said questions and their answers both as given by the respondent as also the key answers of the appellants; besides, the own assessment of the learned Single Judge as follows:

"Q.No.5 Ling Sambandhat hai (Gender is related with)

- (a) Marda te aurtan da vichla farak jo jaivik te utpatti da natiza hai (difference between men and women is due to biological characteristics).
- (b) Marda da aurtan te dabdaba (dominance of men over women).
- (c) Marda te aurtan de vichkar da antar sanskriti di uptpatti hai (difference between men and women is result of cultural origin).
- (d) Bache paida karn vich aurtan di yogta (capability of women to produce child)."

The respondent had given the answer as option (a), while the key answer stated option (c) as the correct answer. The key answer it was held by the learned Single Judge was clearly wrong. The difference between male and female, it was observed by the learned Single Judge, was not based on culture. It was based on biological reason and that was the answer which the respondent had given.

- "Q.No.18. Ankhan to dikat wale ik vidyarthi te thora kum wekhan waliyan layi ki eh chijan madadgar nhi h (following are not helpful for low vision student)
- (a) wada chhapai da saman (larger print items).
 - (b) Braille adharat saman (braille based items).
 - (c) sunan diyan tepan (audio tapes).
 - (d) drishtigochar (magnifying devices)."

The respondent, it was noticed had attempted the correct answer for question No.18 as option (b), while the key answer that was given was option (d). The key answer, it was observed by the learned

Single Judge, was definitely not the correct answer, for, it did not require the role of an expert to determine that a person who has a low vision is not blind and therefore, it could not be said that a magnifying glass would not be helpful. It was observed that it would indeed be helpful. What may not be helpful was a Braille based item, for, it required a particular expertise to be learnt in order to understand the Braille based item. A totally visually challenged person could be trained and a situation of such a kind was not being examined. A case of a person with low vision was being examined to whom a particular item would not be useful and the correct answer attempted by the respondent it was held to be option (d) and the learned Single Judge accorded full mark for the same.

The question No.86 read thus and the four options were:

“Q.No.86 Use of multimedia in language class ensures _____

- (a) Essentiality of the use of teaching learning material.
- (b) Effective teaching learning process.
- (c) Appropriate ways of assessment.
- (d) Satisfaction of all the requirements of almost all the students.”

The respondent attempted the option (b), while the correct answer as per the key answer was option (d). Option (d), it was observed by the learned Single Judge, made no sense at all. Satisfaction of all the requirements of almost all the students had nothing to do with the use of multimedia. The learned Single Judge, therefore, rejected the key answer as wholly incorrect.

Question No.89 reads thus and the multiple choices were as under:

“Q.No.89. To develop reading proficiency, learners should be trained to:

- (a) Read rapidly and correctly.
- (b) Comprehend denotative meaning of the text.
- (c) Comprehend connotative meaning of the text.
- (d) Interacting actively with text.”

The respondent attempted the option (a), while the key option was (d). It was observed by the learned Single Judge that a person who reads efficiently is a person who reads rapidly and correctly and it would be meaningless to suggest that he interacted actively with text. Reading proficiency, it was observed, had nothing to do with interaction with text but it was the ability to read quickly and correctly and that was held to be the correct answer.

The other two questions, that is, questions No.123 and 145, it was held by the learned Single Judge, were not within the comprehension of the Court to make an appraisal of the same. At the beginning of the judgment, the learned Single Judge had outlined that the extent of intervention by a Court is to be very minimal but yet it had undertaken the exercise because the key answers were outlandish and completely wrong. The learned Single Judge observed that he was able to see what was correct. The other two questions, it was observed by the learned Single Judge did not partake the same character. Besides, the learned Single Judge did not propose to grant marks for what the respondent had answered for the said two questions. The four correct answers which had been outlined were sufficient to find the respondent eligible for additional marks and take her tally to 90, which was to be adjudged as, ‘pass’. Accordingly,

the writ petition filed by the respondent was allowed and the appellants were directed to issue a fresh certificate of eligibility.

Aggrieved against the said decision of the learned Single Judge, the present appeal has been filed by the appellants.

It is submitted by learned counsel for the appellants that after the judgment passed by the learned Single Judge, the appellants constituted an Expert Committee to verify the answers given by the respondent to the aforesaid questions as referred to by the learned Single Judge. It is submitted that according to the report of the Expert Committee, instead of four answers two answers, i.e. answers to questions No. 18 and 86 given by the respondent were found to be correct; however, the learned Single Judge has ordered the petitioner as 'pass' by giving her four marks. In fact, the respondent is not entitled to four marks. It is submitted that answers to questions No. 5 and 89 as given by the respondent are incorrect and no benefit of the same is to be given to the respondent. Besides, answers to questions No.123 and 145 as given by the respondent are also incorrect. Reliance is placed on the judgment passed in Guru Nanak Dev University v. Saumil Garg and others (2005) 13 SCC 749.

Learned counsel appearing for the respondent has submitted that the judgment and order passed by the learned Single Judge is correct and in any case no finding has been given by the learned Single Judge with respect to questions No. 123 and 145, the key answers of which given by the appellants are incorrect. Therefore, the respondent in any case is entitled to the benefit of marks for the said two questions No. 123 and 145.

We have given our thoughtful consideration to the contentions of learned counsel for the parties and with their assistance gone through the records of the case.

During pendency of the appeal, the following order was passed on 16.10.2015:

“Learned counsel for the State has submitted that the Committee constituted by the appellant, during pendency of the appeal, has not held two of the questions and the answers thereto i.e. question Nos. 5 and 89 to be wrong.

Question No. 5 is to the effect that gender is related with:

- (a) Difference between men and women is due to biological characteristics;
- (b) Dominance of men over women;
- (c) Difference between men and women is result of cultural origin;
- (d) Capability of women to produce child.

The petitioner (now respondent) had given the answer as option (a), while the key answer stated option (c) as the correct answer. The Committee has found option (c) to be correct.

Question No. 89 is to the effect that to develop reading proficiency, learners should be trained to:

- (a) Read rapidly and correctly;
- (b) Comprehend denotative meaning of the text;
- (c) Comprehend connotative meaning of the text;

(d) Interacting actively with text.

The petitioner (now respondent) attempted the answer as option (a) while the key answer stated option (d) as the correct answer. The Committee has found option (d) to be the correct answer.

Learned counsel for the respondent prays for time to address arguments.

Learned counsel for the State shall also verify question Nos. 123 and 145 and their correct answers as well.”

In response to the above-said order, an affidavit of Shri Sukhdev Singh, Director, SCERT, Punjab (appellant No.2) has been filed in this Court. Insofar as question No. 5 and 89 are concerned, it is submitted that the justification for the same is as follows:-

“**Question No. 5** pertains to Child Development and Pedagogy Paper and justification rendered by Committee Members is as under:

- ‘Gender as a social construct’ is a topic in the book of child development and pedagogy of Diploma in Elementary Education (D.E. Ed.) Course. So the question has been set in reference with the syllabus.
- Gender refers to the attitude, feeling and behaviours that a given culture associates with person’s biological sex.
- For biological status the word sex refers to categorize as male and female.

Hence the option (c) is the best answer.

Question No. 89 pertains to English Language Paper and justification rendered by Committee Members is as under:

- The proficiency in reading means reading with understanding.
- Unless one interacts actively with the text, understanding or comprehension whether denotative or connotative is not possible.
- Therefore, in order to develop reading proficiency the learner should be trained to interact actively with the text.

Hence option (d) is the best answer.”

It is also submitted that in compliance to order dated 16.10.2015 passed by this Court, a Committee of Experts namely (1) Mrs. Baljeet Kaur, Subject Expert, State Council for Educational Research and Training (SCERT), Punjab; (2) Dr. Anand Gupta, Lecturer Chemistry, SISE, Punjab; (3) Dr. Amarbir Singh, Lecturer Physics, ASPD, RMSA, Punjab and (4) Mrs. Parminder Kaur, Lecturer Physics Eduset was constituted with regard to Questions No.123 and 145. The Report of the Committee has been given in Annexure A-2 of the affidavit of Shri Sukhdev Singh, Director, SCERT, Punjab. It is mentioned in Annexure A-2 with regard to question No.123 as follows:-

“Q.No.123. With increase in temperature, the capacity of air to hold the water vapours;

- (a) decreases.
- (b) increases.
- (c) may increase or decreases because it is not related to temperature.

(d) remains constant.

Answer: the correct answer is option (b)

This question pertains to Environmental Science Paper and justification rendered by Committee Members is as under:-

- As the temperature increases, the space between the molecules of the air increase which in turn creates more space for water vapours to fit in. (proof attached)

Hence the correct answer is option (b).”

It is further mentioned in Annexure A-2 with regard to question No.145 as follows:-

“Q.No. 145 In which the following locations is thermal pollution the biggest problem?

- (a) Soil
- (b) Surface water
- (c) Air
- (d) Ground water

Answer: The correct answer is option (b)

This question pertains to Environmental Science Paper and justification rendered by Committee Members is as under:-

- Thermal pollution is the degradation of water quality by any process that changes ambient water temperature.
- Many industries use high temperature furnace and boilers in their manufacturing process. The resulting hot effluents are directly released in to a nearby water source e.g. river, lake etc. This is called thermal pollution.

- It destroys the aquatic life due to the thermal shock. A common cause of thermal pollution is the use of water as a coolant by power plants and industrial manufacturers. When water used as a coolant is returned to the natural environment at a higher temperature, the change in the temperature decreases oxygen supply and affects ecosystem. (proof attached).

Hence the correct answer is option (b).”

The Committee in its report has, therefore, found that option (b) to question No.123 and option (b) to question No.145 to be the correct answers and this tallied with the answers key. The result of which was uploaded on the website by NYSA Communication Pvt. Ltd.

Questions No. 123 and 145 as given by the respondent in her petition filed in this Court are as follows:

“Q.No.123 Tapman de wadhan naal, hawa di, Pane de vashap nu pakran (hold) di shakti (power of air to hold water vapour at increasing temperatures):

- (a) wadhdi hai (increases).
- (b) ghatdi hai (decreases).
- (c) wadh wi sakdi hai te ghat we sakdi hai kyunki tapman naal isda koi sambhand nahi (it can increase or decrease as it has no connection with temperature).
- (d) sthir rehndi hai (remains stable).”

It may be noticed that the options given for question No.123 in English and in the vernacular Punjabi languages are different and these

vary. The options given in vernacular Punjabi language with respect to question No.123 have been reproduced above.

The question No.123 and its options in the English language read as follows:

- “Q.No.123 With increase in temperature, the capacity of air to hold the water vapours
- (a) Decreases
 - (b) Increases
 - (c) May increase or decrease because it is not related to temperature
 - (d) Remains constant”

The options (a) and (b) have been interchanged in English and in the vernacular. Inasmuch as the option (a) in vernacular is that it ‘increases’ while option (a) in English is that it ‘decreases’. Similarly, option (b) in vernacular is that it ‘decreases’ while in English is that it ‘increases’. Options (c) and (d) in vernacular and in English are the same, i.e. ‘it may increase or decrease because it is not related to temperature’ and that ‘it remains constant’ respectively.

As per official answer key, option (b) is the correct answer; however, according to the respondent the correct answer is option (a), and option (b) is incorrect answer as per the information collected from various sources:

Source No.1

www.wiki.answers.com/Q/

Source No. 2

www.cedengineering.com/airconditioning/psychrometric

It is to be noticed that the question paper booklet which mentions the questions and the options contains; “Instructions for the Candidates”. Instruction No. 11 is as follows:

“11. In case of any dispute, the question in English will be treated as final. Candidates are advised to refer to question in English in case of any doubt/confusion/lack of clarity.”

In terms of the said instructions, it is to be taken that option (b) in English, according to the appellants, is the correct answer. This would mean that with the increase in temperature the capacity of air to hold water vapours, increases. The respondent, it appears, has given option (a) of vernacular as the said question and options reproduced by the respondent in her petition are reproduced from the vernacular. The option (a) of the vernacular also makes a mention that with the increase in temperature, the capacity of air to hold the water vapours, increases. This is the option (b) in the English set of question papers, but is option (a) in the vernacular set of question papers. Therefore, the answer to question No.123 as given by the respondent is to be taken as correct.

Question No. 145 and its options in the vernacular containing the English translation along with the vernacular as given by the respondent in her petition are as follows:

“Q.No.145 Kehre khetar wich thermal pardushan ek bahut wadi samasya hai (in which field thermal pollution is a big problem):

- (a) Miti (soil)
- (b) Dharatal da paani (Underground water)
- (c) Hava (Air)

(d) Jamin da paani (Water on land).

In English language set of question papers, question No. 145 and its options are as follows:

“145. In which of the following locations, is thermal pollution the biggest problem?

- (a) Soil
- (b) Surface water
- (c) Air
- (d) Ground water”

As per official answer key, option (b) is the correct answer; however, according to the respondent, the correct answer is option (c), and option (b) is incorrect answer as per the information collected from various sources:

Source No.1

It's our Earth Environmental Education Writer Shakuntla Bhattacharya Chapter 4 Exploiting Resources Page 33: In thermal power stations, fossil fuels (coal, oil and natural gas) are burnt to heat water and produce steam. This process is highly polluting as it releases many unwanted gases such as carbon dioxide, sulphur dioxide and nitrogen oxide into the atmosphere.

Source No. 2

8th class Science book of PSEB Page 172 – causes of air pollution: Air gets polluted because of the following reasons:

1. Dust gets raised by strong winds, movement of vehicles, sweeping of floors and roads, small particles of dust keep floating in the air.
2. Smoke emitted by the powerhouses, factories and automobiles.

Source No.3

Science Textbook for class 8th NCERT page 240 – how does air get polluted – The sources of air pollutants are factories (Fig.18.2), power plants, automobile exhaust and burning of firewood and dung cakes.

Source No. 4

www.ripublication.com/ijeem_spl/ijeemv4n6_09.pdf -

Among thermal based power generation, coal based power plants are highest in: Air pollution, Waste generation, Water consumption, Emission of mercury, Greenhouse emission.

Source No. 5

Unistar Practice Papers Punjab TET Elementary Stage Page-I page No. 141 Q. No. 143 answer at page No. 148 – Air is the correct answer.”

The respondent in her petition while giving the options to question No. 145 has given translation of option (b), i.e. ‘Dharatal da paani’ as ‘underground water’, and the English translation of option (d), i.e. ‘Jamin da paani’ has been given by her as ‘water on land’. In fact, ‘Dharatal da paani’ is ‘surface water’. In the ‘Punjabi English Dictionary’ published by Punjabi University, Patiala, 1999 at page 476 the word, ‘Dharatal’ has been translated as ‘land surface, surface, area; relief,

topography'. However, the respondent has translated 'Dharatal da paani' as 'underground water' and 'Jamin da paani' as 'water on land' whereas it should have been converse. In other words, 'Dharatal da paani' means 'surface water' and 'Jamin da paani' means 'underground water'. In the circumstances, the official answer as given in answer key option (b) is to be taken as the correct answer and not that given by the respondent.

Therefore, it is to be noticed that the respondent, in response to question No. 5, had stated option (a) to be the correct answer, which has been found by the Experts Committee to be an incorrect answer. Besides, in respect of question No. 89, the respondent attempted option (a), while the best answer according to the Experts Committee is option (d). The Experts Committee has given its justification for the same, which has been reproduced above. In response to questions No. 123 and 145, option (b) for both the questions has been held by the Experts Committee to be the correct answer. However, option (b) given by the respondent for question No. 123 is to be taken as correct. Therefore, the respondent, according to the Experts Committee, has not given correct answers in respect of questions No.5, 89 and 145.

The respondent, as already noticed, had secured 86 marks in the PSTET Paper-I for being eligible for teaching students for Classes I to V. She was short by four marks, which were awarded by the learned Single Judge for questions No.5, 18, 86 and 89. However, the Experts Committee constituted by the appellants as also the appellants have accepted the answers given by the respondent to questions No.18 and 86 to be the correct answers. This would entitle her to benefit of two more marks, which would increase her marks from 86 to 88. Besides, in view of

the translation of question No.123, she would be entitled to one more mark. The answers given by the respondent to the other questions, that is, questions No.5, 89 and 145 have been held by the Committee to be incorrect. Therefore, she would not be entitled to marks for the same and she would fail to make the grade of securing 90 marks so as to be eligible for consideration for appointment as a School Teacher for Classes I to V. The learned Single Judge did not consider the affect of assessment of questions No.123 and 145; however, question No.145 is now to be taken as wrong.

In Guru Nanak Dev University v. Saumil Garg, (2005) 13 SCC 749, at page 752, it was held by the Hon'ble Supreme Court as follows:-

“The key answers of the aforesaid eight questions provided by the appellant University are incorrect. In regard to two questions i.e. Questions 41 and 152, there is difference of opinion between CBSE and the University of Delhi as to the correct key answer. The question numbers as referred to CBSE and the University of Delhi and in this order are with reference to the Question Paper Code A.

Insofar as the aforesaid eight questions are concerned, namely, Questions 36, 49, 109, 110, 128, 165, 167 and 168, there can be no doubt that the key answers provided by the appellant University are demonstrably erroneous. Insofar as key answers to Questions 41 and 152 are concerned, benefit of doubt, as per law well settled by this Court, has to go in favour of the examining body.” (Emphasis added)

Therefore, the benefit of doubt that the key answers as given by the Expert Committee with respect to questions No. 5, 89 and 145 as per the settled law of the Supreme Court is to go in favour of the Examining Body, i.e. the appellants.

Even otherwise, this Court in exercise of its supervisory writ jurisdiction is not to sit in appeal over the assessment of answers to the questions given by a candidate in response to the questions that were set in an examination for determining eligibility for consideration for appointment as a School Teacher. An error of law which is apparent on the face of record can be corrected by this Court by a writ; however, an error of fact may be even grave is not normally to be interfered with especially when an Experts Body has reevaluated the answers given to the questions that were set in an examination.

The Supreme Court in Rajesh Kumar v. State of Bihar, (2013) 4 SCC 690 held that given the nature of defect in the answer key, the most natural and logical way of correcting the evaluation of the scripts was to correct the key and get the answers scripts reevaluated on the basis thereof. This is precisely what has been done by the appellants in the present case by getting a report of reevaluation done by an Experts Committee and awarding marks for the same when the options given in the answer key to the questions that were set were found to be incorrect and wrong. The findings of expert bodies in technical matters, is normally and ordinarily not to be interfered with by this Court in exercise of its supervisory writ jurisdiction under Article 226 of the Constitution of India.

Therefore, since the respondent has failed to make the grade of 90 marks for being eligible for consideration for appointment as a School

Teacher for Classes I to V, the present appeal is liable to be allowed and the judgment and order dated 29.10.2014 passed by the learned Single Judge is liable to be set aside.

Accordingly, the appeal is allowed, the judgment and order dated 29.10.2014 passed by the learned Single Judge is set aside and the writ petition filed by the respondent is dismissed. There shall, however, be no order as to costs.

(S.S. SARON)
JUDGE

(AMOL RATTAN SINGH)
JUDGE

03.12.2015
Ramesh

Whether to be referred to reporter: Yes