

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

LPA No. 1147 of 2015 (O&M)

Date of decision: 03.12.2015.

Lukesh KumarAppellant.

Versus

State of Punjab and anotherRespondents.

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

Present: Mr. Ashu Kaushik, Advocate for the appellant.

Mr. P.P.S. Thethi, Additional Advocate General, Punjab,
for the respondents.

S.S. SARON, J.

This appeal has been filed by the appellant - Lukesh Kumar against the order dated 28.05.2014, passed by the learned Single Judge in CWP No. 23848 of 2014, whereby the petition filed by Lukesh Kumar (appellant) has been dismissed in terms of the reasons recorded in the case of Raman Garg and another v. State Council for Education and Research Training, Punjab CWP No.7788 of 2014 decided on 28.05.2014. In fact three writ petitions, that is, of Raman Garg (supra), Lukesh Kumar (appellant) and Nensi CWP No.9524 of 2014 were dismissed by a common order.

The appellant Lukesh Kumar filed a petition in this Court seeking quashing of the result notification dated 07.10.2014 of the Teachers Eligibility Test, Paper - II held on 24.08.2014. The appellant in the said test scored 89 marks out of 150 and was one mark short of the qualifying marks of 90 i.e. 60 per cent for being eligible for consideration for

appointment as an Upper Primary School Teacher for classes VI to VIII. The appellant prayed for declaring him as qualified in the Punjab State Teachers Eligibility Test (PSTE Test - for short) Paper-II held on 24.08.2014 as questions No.56 and 1 (Question Booklet Series/S.S.T-4) were incorrect due to which two less marks had been awarded to him.

The case relates to the question of determining the eligibility of the appellant for consideration for appointment as an Upper Primary School Teacher for classes VI to VIII. 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 laid down the 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 to be conducted by the State

Governments in accordance with the guidelines framed by NCTE. The guidelines for PSTE Test 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 Director, State Council of Education, Research and Training, Punjab (SCERT Punjab - for short) (respondent No.2), which assigned the work for completing the formalities to a private agency namely NYSA Communication Pvt. Ltd.. As per the guidelines two papers of PSTE Test are provided. Paper-I is for the candidates who intend 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 intends to be a teacher for both the levels, he/she is required to appear in both the papers. The qualifying marks for being eligible for appointment as a teacher is 60% or more in the PSTE Test. The appellant appeared in the said PSTE Test Paper - II so as to be eligible for consideration for appointment as an Upper Primary School Teacher for classes VI to VIII.

The SCERT Punjab (respondent NO.2) notified through advertisement (Annexure P-1) for conducting PSTE Test on 24.08.2014. The test was for candidates aspiring to be Primary Teachers i.e. for class I to V and Upper Primary Teachers i.e. for classes VI to VIII. The appellant applied for PSTE Test to be conducted by SCERT Punjab (respondent No.2) so as to be eligible for consideration for appointment as an Upper Primary Teacher for classes VI to VIII. He had the minimum educational qualification i.e. graduation with at least 45 per cent marks and passed or appearing in one year Bachelor in Education (B.Ed.) course in accordance

with the NCTE (Recognition Norms and Procedure) Regulations issued from time to time in this regard. He applied in the general category of PSTE Test Paper II on 16.07.2014. The medium of paper offered by the appellant was English language and the optional subject opted by the appellant was social studies/social sciences.

The entrance test of PSTE Test was held on 24.08.2014. The appellant was supplied question book series - 4 and he attempted all the 150 questions. The candidates were allowed to take the carbon copy of the answer booklet (OMR sheet) and the question booklet along with them. The online result of the PSTE Test Paper -II was declared on 07.10.2014. The appellant scored 89 marks out of 150 and was, therefore, one mark short of the qualifying marks of 90 for being eligible for consideration for appointment as an Upper Primary School Teacher.

According to the appellant, several questions given in the key answers were wrong and did not contain any correct option or had multiple correct options or were not correctly framed. The examination contained multiple choice questions. According to the appellant, the questions in the examinations were required to have only one correct option. A copy of the true translation of the relevant extract of the question paper has been filed as Annexure P-5 and the answers key to the said questions is annexed as Annexure P-6.

The appellant being dissatisfied with the result, cross-checked the answers key supplied by the respondents with the text books and material available on the internet. He found that answers to two questions i.e. questions No.56 and 1 in Q.B. series - 4 had been mentioned as wrong.

As regards question No.56, it is submitted that it suffers from infirmity as the correct answer provided to the question in the answer key is option (a). It is submitted that the said question is the part of Section A and is in Punjabi language.

The English translation of question No.56 of the question booklet series-4 is as follows:-

“Q.56 Which of the following is not an objective type question?

- a) Filling the blanks type
- b) True false type
- c) Multiple choice question
- d) Matching type”

The above question shows that the option which does not fall under the category of objective question is to be answered. The appellant submits that initially on 24.08.2014 the answer as per Annexure P-13 was displayed as option (d) to be the correct answer. However, in the revised answers key, the option (a) was taken as correct. According to the appellant all the options from (a) to (d) to the aforesaid question fall under one category, that is, ‘objective type question’. He has referred to various books, the relevant extracts of which have been appended as Annexure P-8 (colly). From a perusal of the text/literature contained in the aforesaid books, it is submitted that all options referred in the aforesaid question No.56 have been categorized as objective type questions and none of the options could be kept out from the objective type question. It is submitted that “Filling the Blank” option has been taken as correct in the answers key

while evaluating the answer sheet/OMR sheet of the candidates. The said option being incorrect is clear not only from the text books that have been referred but also from bare perusal of the question paper itself as in the question paper itself that was set there were number of questions which were of “Filling the Blank” type. It is submitted that the structure and content of the PSTE Test is that of multiple choice questions (MCQs), each carrying one mark with four alternatives out of which one answer is the correct one; besides, there is to be no negative marking. Therefore, from the question paper of PSTE Test there are questions which require the filling of blanks, which would make it clear that ‘filling the blank type question’ are of the same category as of multiple choice questions, that is, objective type questions. As such in all probability, the answer option (a) as given in the answers key is not the correct answer. In this situation, when none of the options was the correct option then a grace mark is to be given to the appellant.

In respect of question No.1, the answer key displayed by the respondents was option (c) (Piage) whereas the appellant answered option (b) (Bruner). The English translation of question No.1 and its options are as follows:-

“Q.1_____ is the proponent of constructivist famed work.

- (a) Bandura
- (b) Bruner
- (c) Piage
- (d) Jung”

The appellant, as already noticed, answered this question as option (b). According to him Jerome Bruner was the proponent of the constructivist theory. The appellant searched for information on the subject and it was substantiated that the correct answer was option (b) i.e. Bruner who was the proponent of constructivist frame work and not Piage. In this regard, the appellant submitted his online objections earlier also, but the respondents-authorities did not pay any heed to it. In the revised answers key, the same option was again displayed.

From the literature annexed with the petition as Annexure P-9 (colly), according to the appellant it was clear that Bruner was one of the founding father of constructivist theory. It is submitted that constructivism is a broad conceptual frame work with numerous perspectives and Bruner is only one. Bruner's theoretical framework, it is submitted, is based on theme that learners construct new ideas or concepts based upon existing knowledge. Learning is an active process. The facets of process include selection and transformation of information, decision making, generating hypothesis and making meaning from information and experiences. Further it has been submitted that Bruner (1961) proposes that learners construct their own knowledge and do this by organizing and categorizing information using a coding system. Bruner believed that the most effective way to develop a coding system is to discover it rather than being told by the teacher. The concept of discovery learning implies that students construct their own knowledge for themselves (also known as constructive approach). From the text/literature annexed as Annexure P-9 (colly), according to the appellant, it is apparent Piage is concerned about cognitive

theory and it is Bruner who is known as the founding father of constructive theory. Therefore, according to the appellant option (b) had been rightly answered by him in his OMR sheet for which he was entitled to one mark.

The Director, SCERT Punjab (respondent No.2) has given the justification for the correct answers being option (a) for question No.56 and option (c) for question No.1.

The justification that has been given for question No.56 is based on the Expert opinion of Sh. Yog Raj Angrish, School of Punjabi Studies, Panjab University, Chandigarh and is submitted as Annexure R-1.

The justification is as follows:-

“Because true false type, multiple choice question and matching type are not objective type. The same (sic.-have) similarity with each others.”

The justification given for the correct answer to question No.1 is based on the Expert opinion of Dr. Mohammed Khalid, Professor of Political Science and is submitted as Annexure R-2. It is mentioned that:-

“Because among others:-

- (a) Jerome Burner deal with cognitive psychology and cognitive learning.
- (b) Albert Bandura specialized in social cognitive theory, therapy and personality psychology.
- (c) Carl Jung deals with analytical psychology recognized primary importance of individual psychology.”

The learned Single Judge observed that the petitioners including the appellant before it were short of one or three marks to qualify the exam and they had disputed the correctness of answers provided in the answers key. A reference was made to the case of 'Ajay Kumar v. State of Punjab and others', LPA No.2017 of 2014, decided on 08.12.2014 in which a Division Bench of this Court held that the decision on the correct answer or formation of answer-key has to be left with the wisdom of resource persons/subject experts and Courts would not impose themselves as super specialists in such like matters. The only indulgence that a Court can show is to direct the Examining body to take cognizance of the objection(s) received from aggrieved candidate(s) and decide whether there is any substance in such objections or not. Accordingly, a direction was issued to the extent that the objection raised by the appellant in the said case in the answer key is put before the resource person or a Committee who would decide whether or not there is any merit in the plea of the appellant.

In the present case, the resource persons namely NYSA Communication Pvt. Ltd., has already given its justification in respect of the answers given by them in the answer key. Accordingly, it was held that no interference was called for in the petitions.

Indeed the exercise of reevaluation of the answer-sheets with reference to questions No.56 and 1, which have been disputed by the appellant has been undertaken by the Director, SCERT Punjab (respondent No.2) and the Experts' opinion Annexure R-1 as regards question No.56 and Annexure R-2 as regards question No.1 has been submitted. 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 already been done by the Director, SCERT Punjab (respondent No.2) in the present case by getting a report of reevaluation done by Experts. 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 appellant has failed to make the grade of 90 by one mark for being eligible for consideration for appointment as an Upper Primary School Teacher for classes VI to VIII, the present appeal is liable to be dismissed and the judgment and order dated 28.05.2015 passed by the learned Single Judge is liable to be sustained.

Accordingly, the appeal is dismissed and the judgment and order dated 28.05.2014 passed by the learned Single Judge is upheld. There shall, however, be no order as to costs.

(S.S. SARON)
JUDGE

(AMOL RATTAN SINGH)
JUDGE

03.12.2015
A.Kaundal

Whether to be referred to reporter: Yes