

THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5442 of 2013

Deepak Kumar S/O Sheoyogi Singh R/O 53, A.P. Colony Gaya, P.S- Rampur,
Distt- Gaya.

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary Personal And Administrative Reforms Department,
Govt. Of Bihar, Patna.
3. Bihar State Selection Commission (Here After Referred As Commission)
Through Its Chairman, Vetnary College, Patna.
4. The Chairman, Bihar Staff Selection Commission, Vetnary College, Patna.
5. The Secretary, Bihar Staff Selection Commission, Vetnary College, Patna.

.... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rajendra Pd. Singh, Sr. Adv. Mr. Mukesh Kumar Singh, Adv.
For the SSC	:	Mr. Kamla Kant Upadhyay, Adv. Mr. Chandra Bhushan Das, Adv.
For the State	:	Mr. Ghanshyam Pd. Sinha, AC to GA-6

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 28-10-2016

Heard learned counsel for the petitioner and counsel for
the State.

In this case, the petitioner is challenging the action of the
respondents in refusing to select and appoint the petitioner to the post
of Excise Sub Inspector and further made a prayer to issue appropriate
order and direction commanding upon the respondents to re-evaluate
the answer-sheet of Excise Sub-Inspector of the examination
conducted on 2.9.2012 and further prayer to prepare the fresh merit

list after conducting the marks allotted against the wrong questions.

An advertisement was published in the Hindi daily newspaper Dainik Jagran on 13.9.2008 and 28.10.2008 inviting application from the eligible candidates for the post of Excise Sub Inspector and the last date for receipt of the application was fixed on 5.12.2008. The petitioner is a Graduate having secured 72% marks. The result of the written examination was published in the daily newspaper which is Annexure-3 to the writ application where the roll number of the petitioner has been printed as a successful candidate and later on the petitioner was called for interview vide letter dated 23.11.2012 and in pursuance thereof, the petitioner appeared in the interview and the final result was published in the daily newspaper which is Annexure-5 to this writ application the name of the petitioner is not standing. The petitioner falls in the category of E.B.C. and he could gather information through R.T.I. that the last person in that category who has been selected and appointed had secured 245.40 which is annexure-7 to the writ application whereas the petitioner has secured total 242.60 marks. The petitioner was not satisfied with the result as he had higher hope of his being selected as he had done fairly well in the written examination as well as in the interview. The petitioner has also under the R.T.I. Act obtained question and answer



book which consists of the question paper including model answer-sheet and he arrived to a conclusion that he has not been granted proper marks as the model answer with respect to five questions are not correct such as in English, the petitioner has said that question no.13 and 62, in Hindi question nos. 75, 79 and 93, the model answer shows incorrect answer whereas the correct answer would be as has been suggested by the petitioner. He has further submitted that if the five model answers are corrected in terms of the suggestion, he would be able to crack the competition examination and surely would be selected. According to the petitioner, the English question no.13, the proper answer would be (D) whereas the model answer has been shown as (A) whereas the question no.62 as per the petitioner the correct answer will be (C) but the Commission has shown answer option (D). Similarly, in Hindi, the question no.75, the proper answer is (D) whereas the Commission has given answer as (B). In Question no.79, the proper answer will be (D) but the Commission has answered (A). With respect to question no.93, the question and answers are correct but the Commission has deleted that question on the ground that answer of the question no.93 is incorrect and sheets of all the candidates have been evaluated treating the question no.93 has been deleted and has not been taken into consideration.



Learned counsel for the petitioner has submitted that the petitioner's answer-sheet should be evaluated in terms of the proposed suggestion given by him whereas the evaluation has been done on the basis of wrong answer. It will be relevant to examine question no.13 which reads as follows:-

“13. The commandos took a long time to ----- the resistance of the rebels.

Four options have been given. As per the petitioner, the proper answer would be option (C) Pool Down whereas in terms of the Expert, the correct answer is option (A) break down.

Question no.62 reads as follows:-

“62. The main idea of second paragraph of the passage is

As per petitioner, proper answer is option “C” but evaluation has been done treating the correct answer option “D” is correct answer.

Similarly, question no.75 reads as follows:-

“75. "सुवाच्य" का सही अर्थ है?

As per petitioner, the appropriate answer is option “D” whereas, as per the Expert, the appropriate answer is option (B).

Question no.79 reads as follows:-

“79. सस्वर वाचन का अर्थ है

As per petitioner, the correct answer is option (D) but as per Expert, the answer proper answer is option (A).

Question no.93 reads as follows:-

“93. निम्नांकित में कौन सा शब्द अनिश्चयवाचक है?

As per petitioner, the proper answer would be option (B) but as per Expert, all the answer of question no.93 are incorrect.

It will be also relevant to note herein that after the written examination was conducted on 2.9.2012, the Commission uploaded the model answer along with corresponding question papers and sought objection/suggestion from all the candidates and the candidates were required to file objection/suggestion between 16.10.2012 to 20.10.2012 and, after receipt of the suggestions, the Commission has constituted Expert Committee and the Expert Committee, after going through the question paper and key model answer and the suggestions given by the candidates, made deliberations and examined the respective suggestion and corrected the model answer. On that basis, the final evaluation was done, interview was conducted and the merit list was prepared.

As per learned counsel for the petitioner, the evaluation of the marks has been based upon the wrong key answer as the

Commission has not given due attention towards the suggestion of the answer what he has proposed and, in support of the same, the petitioner has produced books to fortify the stand with regard to his suggestion and, for the question no.13, the petitioner has produced relevant portion of the Bhargao Dictionary where the meaning of Pool Down has been stipulated i.e. तोड़कर नष्ट करना and for Hindi the petitioner has submitted the Hindi dictionary by Dr. Hardeo Bahri which provides (क्रि० वि०) स्वर सहित and other meaning has been given which has nothing to do with the present dispute and, in support of question no.75, the petitioner has produced the book आधुनिक हिन्दी व्याकरण और रचना, लेखक— डा० वासुदेव नन्दन प्रसाद, प्रकाशक— भारती भवन, पटना where वाच्य has been defined in the following words:-

“क्रिया के जिस रूप —परिवर्तन से यह पता चले कि वाक्य में क्रिया के व्यापार का मुख्य विषय कर्ता, कर्म या क्रिया का भाव है, उसे वाच्य कहते हैं।”

but he has not produced any dictionary meaning of सुवाच्य.

So far question no.93 is concerned, the petitioner has produced the Grammar of aforesaid publisher where कुछ has been given an example of अनिश्चयवाचक.

On this basis, learned counsel for the petitioner has submitted that the model key answer of the model answer-sheet is based upon the wrong answer and he has wrongly been deprived of



the proper marks and if it would be evaluated according to his suggestion, certainly he will qualify and will be selected as an Excise Sub-Inspector. Learned counsel for the petitioner has further submitted that still the seats are available where the petitioner can be adjusted as certain candidates have not joined the post.

Learned counsel for the Commission has taken a plea that after the written examination, the Commission has taken curative and effective measure by publishing the question paper and the model answer and sought objection/suggestion from the candidates who had appeared in the examination and, accordingly, all the objections were collected and were placed before the Expert Committee and the Expert Committee examined each and every objection and applied their independent mind and re-moduled the answers and also deleted those questions whose answers were incorrect and, thereafter, a fresh key model answer was prepared, became basis for the examiner and, after evaluation, whosoever were found qualified, their results were published including the petitioner who was declared successful in the examination but, after addition of the marks of interview as he could not acquired the cut-off marks having been not selected. This method has been approved by this Court in the case of *Md. Nafis Nawaz Khan & Anr. Vs. The State of Bihar & Ors.* reported in 2016(1) PLJR 667 and in the



case of *Ravindra Kumar Singh Vs. The High Court of Judicature at Patna through its Registrar & Ors.* reported in 2016(1) PLJR 865. Learned counsel for the Commission has further submitted that when the Expert has already applied its mind and made necessary correction, in such circumstances, this Court should not exercise the judicial review to sit over as an appellate court and make afresh enquiry or act as an appellate court for deciding the case. He has further submitted that unless the opinion of the Expert is completely illegal, in such circumstances, the Court, while exercising judicial review, can interfere with the wisdom of the Expert Committee and normally, the Court should not interfere in the matter. The Hon'ble Apex Court in the case of *Dr. Basavaiah Vs. Dr. H.L. Ramesh & Ors.* reported in 2010(3) PLJR 190 (SC), there the Court has said that the Court while exercising the judicial view in a normal course, the Court should not act as an appellate court over the wisdom and the opinion given by the expert and the Court is not better known as that of the Expert who are familiar with the subject and has arrived to approximately correct answer. The hon'ble Supreme Court in the case of *Dalpat Abasaheb Solunke, etc. Vs. Dr. B.S. Mahajan Etc.* reported in AIR 1990 SC 434 and in the case of *Raj Kumar & Ors. VS. Shakti Raj & Ors.* reported in AIR (1997) 9 SCC 527 where the Hon'ble Apex Court has said that the Court can interfere in exercise of judicial review in the circumstance when the



order on the face of it is completely illegal since no reasonable person would arrive to such conclusion of finding. This Court, in the case of *Dr. Narendra Kumar Singh Vs. The State of Bihar through Principal Secretary, Department of Health and Ors.* reported in 2015(3) PLJR 528 followed the same principle and held that the Court should be slow in interfering with the opinion expressed by the Expert, further propounded that when the appointment has been made on the recommendation of Expert, the judicial scrutiny is limited to examine whether the appointment has contravened any statutory and binding rules, the Court should give due regard to the opinion of the Expert. So in this background, this Court will have to exercise its power of judicial review for the disposal of the present case.

It is important to note herein that this Court had directed the Commission to produce the report of the Expert Committee for perusal of this Court and, in pursuance thereto, the Commission has produced the original photocopy of the same which is kept on record and the original, has been returned. A supplementary counter affidavit has been filed by the Commission wherein it has been submitted that the question no.62 as suggested by the petitioner was accepted and the evaluation has been done on that basis but, other suggestions were not accepted and the Expert Committee has suggested different answer for

the rest of the objection raised by the petitioner. It will be relevant to quote paragraph nos. 3, 4 & 6 of the supplementary counter affidavit which reads as follows:-

"3. That the petitioner vide Annexure-11 at page 11 of the petition, had made his objections as to the following questions with his own assessed answers

Subject	Question Booklet service	Question no.	Candidate Answer
English	C	1.13	-C
		2.62	-C
Hindi	C	1.75	-D
		2.79	-D
		3.93	-Deleted

4. That question papers in the examination of Excise Sub-Inspector were in four services i.e. A,B.C & D. In the circumstances, the question number of A series differs with other three series. So, at the time of evaluation, jumbling chart was prepared with a view to ensure that which number of question of A series corresponds with other three series.
6. That in Hindi paper of 'C' series booklet's, answer of question no. 75,79 and question no. 93 have been objected by the petitioner which corresponds with question no. 9, 13 & 27 respectively of 'A' series of booklet."

In the case of Basavaiah (Dr.) (supra) the Court has held that the Court should show deference and consideration to the recommendation of the Expert Committee consisting of distinguished experts in the field and the Court has held in context of that case that the Expert had evaluated the qualification, experience and published



work of the appellants and thereafter recommendation for their appointment. It has further been held that the High Court ought not to have sat as an appellate court on the recommendations made by the country's leading experts in the field of sericulture. It has also been held that the Court should be slow to interfere with the opinions expressed by the Experts particularly in a case when there is no allegation of malafide against the Expert who had constituted the Selection Board. It has also been observed that it would be wise and safe for the Courts to leave the decisions of the academic matters to the Experts who are more familiar with the problems they face than the Courts generally can be. It is relevant to quote paragraph nos. 21, 22, 23, 24, 26, 27, 28, 29, 30 and 31 which reads as follows:-

21. *It is the settled legal position that the courts have to show deference and consideration to the recommendation of an Expert Committee consisting of distinguished experts in the field. In the instant case, experts had evaluated the qualification, experience and published work of the appellants and thereafter recommendations for their appointments were made. The Division Bench of the High Court ought not to have sat as an appellate court on the recommendations made by the country's leading experts in the field of Sericulture.*
22. *A similar controversy arose about 45 years ago regarding appointment of Anniah Gowda to the post of Research Reader in English in the Central College,*



Bangalore, in the case of The University of Mysore and Anr. v. C.D. Govinda Rao and Anr. AIR 1965 SC 491, in which the Constitution Bench unanimously held that normally the Courts should be slow to interfere with the opinions expressed by the experts particularly in a case when there is no allegation of mala fides against the experts who had constituted the Selection Board. The court further observed that it would normally be wise and safe for the courts to leave the decisions of academic matters to the experts who are more familiar with the problems they face than the courts generally can be.

23. *We have been called upon to adjudicate the similar matter of the same University almost after half a century. In a judicial system governed by precedents, the judgments delivered by the Constitution Bench and other Benches must be respected and relied on with meticulous care and sincerity. The ratio of the Constitution Bench has not been properly appreciated by the learned judges in the impugned judgment.*
24. *In Dr. M.C. Gupta & Others v. Dr. Arun Kumar Gupta & Others (1979) 2 SCC 339, somewhat similar controversy arose for adjudication, in which the State Public Service Commission invited applications for two posts of Professors of Medicine in the State Medical Colleges. The two appellants as well as respondent nos.1, 2 and 3 applied for the said post. Appellant no.1 had teaching experience of about 6 years and 6 months as a Lecturer in Cardiology in the department of medicine and about 3 years and 2 months as Reader in Medicine in S. N. Medical College, Agra. Since there was no separate*



Department of Cardiology in that College, Cardiology formed part of general medicine and as such he was required to teach general medicine to undergraduate students and to some post-graduate students in addition to Cardiology. Similarly, appellant no.2 had one year's experience as post-doctoral teaching fellow in the Department of Medicine, State University of New York, Buffalo, one year's teaching experience as Lecturer while posted as a Pool Officer and 15 months' teaching experience as post-doctoral research fellow in the Department of Medicine in G.S.V.M. Medical College, Kanpur and about 4 years' and 6 months' teaching experience as Assistant Professor of Medicine, State University of New York, Buffalo. The cardiology is a part of medicine and the teaching experience acquired while holding the post of Lecturer in Cardiology, was teaching experience in a subject which substantially formed part of general medicine and over and above the same. The Commission was amply justified in reaching to the conclusion that he had the requisite teaching experience. The High Court was, therefore, in error in quashing his selection of the appellant in this case.

26. *In Dr. J. P. Kulshrestha & Others v. Chancellor, Allahabad University & Others (1980) 3 SCC 418, the court observed that the court should not substitute its judgment for that of academicians: (SCC p. 426, para 17)*

"17. Rulings of this Court were cited before us to hammer home the point that the court should not substitute its judgment for that of academicians when the dispute relates to

educational affairs. While there is no absolute ban, it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies."

27. *In Maharashtra State Board of Secondary and Higher Secondary Education & Another v. Paritosh Bhupeshkumar Sheth & Others (1984) 4 SCC 27, the court observed thus: (SCC pp. 56-57, para 29)*

"29. ... As has been repeatedly pointed out by this Court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them.."

28. *In Neelima Misra v. Harinder Kaur Paintal & Others (1990) 2 SCC 746, the court relied on the judgment in University of Mysore (supra) and observed that in the matter of appointments in the academic field, the court generally does not interfere. The court further observed that the High Court should show due regard to the opinion expressed by the experts constituting the Selection Committee and its recommendation on which the Chancellor had acted.*

29. *In Bhushan Uttam Khare v. Dean, B.J. Medical College & Others (1992) 2 SCC 220, the court placed reliance on the Constitution Bench decision in University of Mysore (supra) and reiterated the same*

legal position and observed as under: (Bhushan Uttam case, SCC p. 223, para 8)

"8. ... the Court should normally be very slow to pass orders in its jurisdiction because matters falling within the jurisdiction of educational authorities should normally be left to their decision and the Court should interfere with them only when it thinks it must do so in the interest of justice."

30. *In Dalpat Abasaheb Solunke & Others v. Dr. B.S. Mahajan & Others (1990) 1 SCC 305, the court in some what similar matter observed thus: (SCC pp. 309-10, para 12)*

"... ..It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after

going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the court, the High Court went wrong and exceeded its jurisdiction."

31. *The Chancellor & Another etc. v. Dr. Bijayananda Kar & Others (1994) 1 SCC 169, the court observed thus: (SCC pp. 174-75, para 9)*

"9. This Court has repeatedly held that the decisions of the academic authorities should not ordinarily be interfered with by the courts. Whether a candidate fulfils the requisite qualifications or not is a matter which should be entirely left to be decided by the academic bodies and the concerned selection committees which invariably consist of experts on the subjects relevant to the selection...."

In the case of Dalpat Abasaheb Solunke (supra), the Hon'ble Apex Court has held that it is not the function of the Court to hear appeals over the decisions of the Selection Committee and to scrutinize the relative merits of the Candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or

patent material irregularity in the Constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It will be relevant to quote paragraph no. 9 of the judgment which reads as follows:-

"9. *It will thus appear that apart from the fact that the High Court has rolled the cases of the two appointees in one, though their appointments are not assailable on the same grounds, the Court has also found it necessary to sit in appeal over the decision of the Selection Committee and to embark upon deciding the relative merits of the candidates. It is needless to emphasise that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the Candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the Constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the*

candidates as assessed by the Court, the High Court went wrong and exceeded its jurisdiction."

It will be relevant to quote paragraph nos. 18 & 19 of the judgment passed in the case of Dr. Narendra Kumar Singh (supra) which reads as follows:-

- "18. The question therefore would as to what extent there could be judicial review over such assessment made by the team of experts. It is by now well settled that this Court in exercise of power under Article 226 should be slow to interfere with the opinion of the selection committee particularly when such a committee consisted of experts being men of high status and also had unquestionable integrity. Reference in this connection may be usefully made to the judgment of the Apex Court in the case of **National Institute Mental Health & Neuro Science v. K.Kalyana Raman** reported in 1992 (2) SCC 481 and of this Court in the case of **Kamal Kumar Sinha v. Indira Gandhi Institute of Medical Science** reported in 1993 (1) SLJ 67.
19. The Supreme Court has also, in the case of **University of Mysore v. C.D.Govinda Rao** reported in AIR 1965 SC 491 and in the case of **Dr. J.P.Kulshrestha v. Chancellor, Allahabad University** reported in AIR 1980 SC 2141, emphasized that the Court should be slow to interfere with the opinion expressed by experts. In the case of **Neelima Misra v. Dr. Harinder Kaur Paintal** reported in (1990) 2 SCC 746, the Apex Court has pointed out that when an appointment has been made on recommendation of experts, judicial review is limited to overseeing whether the appointment had contravened any statutory or binding rule. The Court

should have due regard to the opinion expressed by the experts constituting the selection committee and its recommendation."

In the case of **Raj Kumar (supra)**, the Hon'ble Supreme Court affirmed the view of earlier judgment in the case of **Madan La. Vs. State of J.K. & Ors.** reported in (1995) 3 SCC 386 wherein the Court has held that the Court should interfere in the matter when the Government has committed glaring illegalities in following the procedure to get the candidate selected. It would be relevant to quote relevant portion of paragraph no.16, which reads as follows:-

"-----But in his case, the Government have committed glaring illegalities in the procedure to get the candidates for examination under 1955 Rules, So also in the method of selection and exercise of the power in taking out from the purview of the Board and also conduct of the selection in accordance with the Rules. Therefore, the principle of estoppel by conduct or acquiescence has no application to the facts in this case.-----"

In the case of **Sajeesh Babu K. Vs. N.K. Santhosh & Ors.** reported in (2012) 12 SCC 106 again the issue came for consideration on the manner of exercise of power of judicial review with respect to interference in the opinion of the Expert Committee. If the Committee consists of experienced persons, gives its report on a particular subject matter, naturally having better knowledge of that subject, then the Court, in exercise of judicial review, will be slow to interfere with the



opinion expressed by the Expert, unless there is an allegation about the malafide against the Experts who are constitutes of the Selection Committee. Thus, the principle has been imbibed, normally it would be wise and safe for the courts to leave the decision of selection of this nature to the experts who are more familiar with the problem of the work. This Court in the case of *Ravindra Kumar Singh Vs. The High Court of Judicature at Patna & Ors.* reported in *2016 (1) PLJR 865* has reiterated the same principle placing reliance on the judgment in the case of *H.P. Public Service Commission Vs. Mukesh Thakur & Anr.* reported in *(2010) 6 SCC 759* wherein the principle has been adumbrated that the Court cannot take upon itself, the task of statutory authority, it is not permissible for the Court under the judicial review the Court would examine the correctness of question paper and answer-sheets itself, particularly, when the Commission has assessed the inter se merit of the candidates on the basis of some of question and answer. If there is a discrepancy in framing of the questions or evaluation of the answer, it would be for all the candidates appearing for the examination and not for respondent. It is a matter of chance that the High Court was examining the answer sheets relating to law. Had it been other subjects like physics, chemistry and mathematic. The Supreme Court is of the view that it was unable to understand as to whether such a

course could have been adopted by the High Court.

Thus, aforesaid view pronounces principle of judicial restraint of the courts to interfere with the report of the Expert Committee unless there is an allegation of malafide on a particular member of the Committee or the constitution of Committee itself suffers from patent and inherent illegality.

This Court in the case of Md. Nafis Nawaz Khan (supra) in which also the challenge was made of framing of wrong answer corresponding to its question and sought relief of giving direction for evaluation of the answer-sheet as the model answer which was subject matter of examination was claimed to be wrong. This Court is not required to examine the merit of the case as it will not serve any purpose but it will be proper to place reliance on certain directives given by the Division Bench where a direction has been given that after conducting the multiple choice question test, the Committee will be obliged to under the exercise of evaluation of answer-sheet, to ascertain whether the question and answers were correctly framed, should be notified and the objection should be invited from the candidates. On receipt of the objections, that must be examined by the Expert Body to ascertain that the question and answer is correctly framed or not. They would also be required to

examine as to whether the model answer prepared by the question settler are correct or not for the purpose of correct evaluation of the answer-sheet and it should be modified in terms of the suggestion given by the Expert Body. It will be relevant to quote paragraph nos. 38, 39, 40 of the said judgment which reads as follows:-

"38. Before we part with the present judgment, we consider it appropriate to issue certain directives to be followed in future. It would have been ideal situation that utmost care is taken, while setting multiple choice questions leaving no scope of uncertainty in assessing individual merits of the test takers. However, there can be a situation, where despite due care taken, mistakes may occur in preparing such questions, because of human error. This Court is of the view that the agencies/authorities, responsible for setting such questions, should carry out the exercise with utmost care as even a small flaw leads to series of litigations, creates lot of confusion and, at times, puts question mark on the sanctity of selection process itself.

39. Keeping in mind that there has been numerous instances, where the questions have been found to be incorrect, giving rise to several litigations, we are compelled to issue general directions to the such statutory bodies or other agencies holding tests based on multiple-choice questions for the purpose of appointment to various posts under the State within the meaning of Article 12 of the

Constitution of India or for the purpose of admission to various institutions managed or controlled by the State.

40. *Having considered the matters in its entirety and in the interest of justice, we, therefore, direct as follows:-*

(a) *Immediately after a multiple choice question test is held, it shall be obligatory for the Committee or the Body, which conducts such a test, to undertake an exercise, before evaluating the answer-sheets, to ascertain whether the questions were correctly framed having definite answers. In case any objections are invited from the candidates and such objections are received, they must be looked into by a body of the experts, who would not only be required to ascertain whether the questions were correctly framed or not, but they would also be required to examine as to whether the model answers, prepared by the question-setter, are correct or not, for the purpose of correct evaluation of answer-sheets;*

(b) *If the structure of a question is found to be incorrect or if the option suggested is found to be incorrect or if there is any printing mistake of such a nature that the correct answer cannot be ascertained or more than one option is found to be correct, such a question must be rejected and should not be allowed to be evaluated;*



(c) *If, after publication of result, despite due care, it is found that the model key answer/answers suggested was/were incorrect, leading to wrong evaluation, remedial measures must be taken and answer-sheets must be re-evaluated with correct model answers."*

On conspectus of the aforesaid facts and circumstances, the present case has to be examined on its own fact as in the present case, a claim has been made by the petitioner that the model answers which were prescribed are wrong answers and there should be evaluation of the mark-sheet on the basis of the suggestion given by the candidates. In that circumstance, the petitioner would certainly be declared to be selected on the post of Excise Sub-Inspector. It has to be seen as to whether Commission has followed the method or has trapped in the wrong method of evaluation of the answer-sheet. It is an admitted fact that after the examination was conducted, the Commission notified question paper vis-à-vis its corresponding model answer and sought suggestion from the candidates whereupon after collecting all the objections, the Expert Committee in all subjects was constituted and the evaluation has been made on the basis of opinion given by the Expert Committee.

During course of argument, the petitioner has suggested certain answers on the strength of book, except one question which

has been deleted and one suggestion was accepted, rest suggestions of the petitioner does not give a clear-cut picture of its authenticity and correctness with respect to answer suggested by him and this Court has no expertise on the line to assess the correctness of the suggestion given by the Expert Committee vis-à-vis the petitioner.

As has been stated above, this Court cannot sit as an appellate court over the opinion of the Expert Committee, they are very much conversant with the academic matter and this Court does not have that expertise on the stream of subject matter. It has consistently been stipulated that the Court should be very slow in interfering with the report of the Expert Committee. In such circumstances, this Court feels restraint to interfere with the opinion of the Expert Committee and does not find favour with the relief sought for by the petitioner.

With the aforementioned consideration, this application is dismissed.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.11.2016
Transmission Date	