

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.204 of 2016
Reserved on:04.02.2016
Decided on :16.03.2016

Gurwinder Kaur

... Petitioner

Versus

State of Punjab & others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. A.K. Jain, Advocate and
Mr.Varun Baanth, Advocate, for the petitioner (s)
in CWP-203-2016.

Ms. Alka Chatrath, Advocate for the petitioner (s)
in CWP Nos.204 & 1710 of 2016
CWP No.2899 of 2016 (Reserved on 12.02.2016)
& CWP No.2478 of 2016 (Reserved on 03.03.2016).

Mr. Somesh Gupta, Advocate for the petitioner (s)
in CWP No.1378 of 2016.

Mr. Aman Bahri, Addl.AG, Punjab.

Mr. J.S. Puri, Advocate
for respondent No.4-PSEB.

G.S. Sandhawalia , J.

Relief claimed in the present six writ petitions is for revising the result by giving grace marks to the petitioners for the Punjab State Teachers Eligibility Test-I (for short, the 'PSTET-2015'), held on 13.12.2015. Further directions are prayed for applying for the ETT teachers against the advertisement dated 09.11.2015 (Annexure P3) by considering them having passed the said test.

The pleaded case of the petitioners is that in view of the Right of Children to Free & Compulsory Education Act, 2009 and the notification issued laying down the minimum qualifications for appointment of teachers from Class I to Class 8, the respondent-Board had been entrusted the responsibility of conducting the PSTET, 2015. The question paper was to consist of 150 questions which were objective type with multiple choice on OMR sheet with one correct answer of each question of appropriate standards. The duration of the paper was 150 minutes and there were to be no negative marking. Paper-I was for the applicants who intended to be teachers of Classes 1 to 5 and Paper-2, who intended to be teachers of Classes 6 to 8. The applicants who intended to be teachers of both levels had to appear in both the papers. The qualifying marks were 60% and 55% for persons falling under Scheduled Castes/Scheduled Tribes/Other Backward Classes/Differently Abled Persons.

The test was held on 13.12.2015, as per public notice dated 07.11.2015. Prior to the holding of the test on 09.11.2015, applications were invited from eligible candidates to fill up 3522 posts of ETT teachers. The educational qualifications were Matriculation/10+2 and candidates were to have the training/elementary training of 2 years course of Punjab State or from any other State or Union Territory declared equivalent and recognized by the Punjab Government. Besides the said

qualifications, passing in the PSTET-I, conducted by the Punjab Government was the requirement. The marks obtained in the PSTET were also to be the basis of merit. Relevant clause reads as under:

“2. Educational Qualifications:

(i) Matric/10+2

(ii) Training/Elementary Teachers Training two years course of Punjab State or from any other State or Union Territory declared equivalent and recognized by the Punjab Government.

Besides the above said educational qualifications, for the post of Teacher, the candidates must have passed the Punjab State Teacher Eligibility Test-I (P.S.T.E.T.-1) conducted by the Punjab Government required under the R.T.E. Act.

3. Mode of Selection: Final merit of candidates who are fulfilling the academic qualifications/professional qualifications and other prescribed qualifications, as mentioned for the aforesaid posts, will be prepared purely on the basis of marks obtained in the Punjab State Teacher Eligibility Test (PSTET).

Note: (In case more than one candidate have equal marks in Punjab State Teacher Eligibility Test-1 (PSTET), then person elder in age will be placed above in merit and in case more than 2 candidates have equal marks and they are of same age then the candidates who is having higher in percentage of marks in Elementary Teacher Training (ETT) will be placed above in merit.”

Vide interim order dated 10.12.2015 (as corrected from 12.12.2015) in CWP-25249-2015 titled *Mandeep Kaur & others Vs. State of Punjab & others* and connected cases, directions had been issued that on account of not holding the test by the State,

from 14.08.2014 to 13.12.2015, large number of prospective applicants would be ineligible to apply since the cut-off date was prior to the holding of PSTET, 2015 and accordingly, the cut-off date had been extended to 2 weeks beyond the declaration of the result of the PSTET. The persons who would qualify for the test, were eligible to apply, within 2 weeks from the date of the declaration of the result (said petition had been dismissed as having become infructuous, on 01.02.2016 whereas connected cases were adjourned). Similar order was passed in cases pertaining to ETT Teachers in CWP-25773-2015 titled *Harman Preet Singh Wadhwa & others Vs. State of Punjab & others*, on 11.12.2015, wherein it had been directed that the interim order would be in the same terms.

The petitioners had applied and appeared in the test in which 4 sets of booklets were given whereby the questions were the same but the sequence had been changed, to prevent copying. The correct answer keys were disclosed on the website on 19.12.2015 and the result was declared on 23.12.2015. The petitioners had been declared fail as they could not secure 90 marks in case of General Category and 82 marks in cases of Reserved Categories, out of 150 marks. The table was given whereby the petitioners had secured between 70 to 89 marks. Resultantly, various questions were put forth to submit that wrong answer keys had been given.

Apart from the wrong answer keys, which was projected, it was further argued that the bilingual system had been adopted and questions were provided in both languages. Some of the candidates had opted for Punjabi medium and they could not answer questions No.18, 25 and 149, answers of which were given in English. Resultantly, it had been projected that in spite of the representations, no action had been taken.

The respondent-Punjab School Education Board was entrusted the task of conducting the said examination. In its short affidavit filed, it took the plea that for Paper-I for classes I to V, 36,974 candidates had appeared. The paper had been put in four different sets by changing the serial number of questions to avoid cheating. The public notices were issued on 16.12.2015 calling for objections regarding the answer key, which was to be made available on the website on 19.12.2015. Queries were received for both the papers and different subject expert committees consisting of paper setters and 2 to 5 subject experts were to examine the questions along with their answers and apply the same to the queries. The queries were considered in the light of the evaluation made by the subject expert committees. Consequently, the revised answer key was uploaded on the website on 22.12.2015 and the result was declared on 23.12.2015 and the petitioner's grievance stood redressed. Wherever there was an opinion regarding the change of answer by the subject experts, the change was accepted

and the answer key has been revised. Where no change was revised, the same remained intact. Where there was an ambiguity or mistake in the question which could not be rectified, the Board decided to give an additional mark to all the candidates. Thus, the Board had discharged its functions in a diligent manner and taken the advise of the subject experts for the correction of any mistake and rectified the same.

Various questions of Paper-2, of which objections had been raised, were noticed by this Court and on 08.01.2016, it was noticed that there were apparent ambiguity regarding the correct answer key and resultantly, directions were issued in CWP-104-2016 titled *Daljit Kaur & another Vs. State of Punjab & others*, pertaining to Paper-2. Relevant part of the order read as under:

“It is, in such circumstances, once there seems to be an apparent ambiguity regarding the correct answer key, this Court is of the opinion that a fresh exercise need to be reconducted by the subject experts so that nobody is prejudiced and their rights to apply is not taken away.

Resultantly, the Board is directed to reconsider the objections which have been received by it, within a period of 10 days from today. Once the same is done, the Board shall put on the website, the revised result of the successful candidates, immediately thereafter, latest by 10 days.

Resultantly, a direction is also issued that the cut off period of 09.01.2016, as directed in CWP-25249-2015 and other connected matters, for

applying, will necessarily have to be extended till the result of the PSTET is revisited by the Board. Thus, the date of applying of successful candidates of PSTET, 2015 would be extended from 09.01.2016 to 25.01.2016. The State shall publish a public notice regarding this extension of time, so that the candidates who are not petitioners herein and who might be the beneficiaries of the revised result, would be able to apply, on the basis of the benefit, if any, is granted by the Board.

However, anything said herein does not mean that the Board shall consider only these questions and it will examine all the objections, since out of the 21,400 queries against 150 questions, there is bound to be overlapping pertaining to few questions.

List on 28.01.2016, for further consideration.

Copy of this order be placed on the record of each connected case and also on the records of CWP-25249-2015 and other connected cases.

Copy of this order be supplied to Mr.J.P.S.Puri, Advocate, for the respondent-Board, under the signatures of Special Secretary of this Court.”

Similar order was passed in 3 cases in the bunch of 6 cases on 08.01.2016, regarding Paper-I also. Resultantly, the Board carried out the exercise of revision, keeping in view the queries received. It is the case of the Board that 36974 candidates appeared in the examination and a total of 7906 queries were received. It was further averred that initially only 4442 candidates had qualified on 23.12.2015 and the Board, on its own, after the

first revision, in view of the objections raised, had corrected the marks and 5653 candidates had been successful. Out of the 150 questions, objections were received for 149 questions, which was put to be re-examined by the subject experts who had expertise in the relevant subjects.

Questions were examined again, in view of the orders of this Court, irrespective of the fact that whether they were examined earlier, in which queries were received. The 13 main questions which were commonly disputed were thoroughly examined and regarding 5 questions which were found desirable to grant additional marks to all candidates due to the ambiguity and unclear matching of questions with the answers. The answers to remaining 8 questions remained unchanged. The list of the 13 questions was attached as Annexure R4/2. There was a mistake in uploading on 18.01.2015 and only benefit of 4 marks had been given, but thereafter, with regard to one question pertaining to amendment in the Constitution of India qua right to education was inadvertently left out. The mistake was rectified and result was again revised on the website on 25.01.2016, granting grace marks for total 5 questions and all 6062 qualified candidates were informed through SMS and emails and therefore, out of the 3 writ petitions, in CWP-204-2016, out of 77 petitioners, 72 had qualified and 5 remained unqualified. In CWP-194-2016, the sole petitioner had qualified. Resultantly, the petitioners had withdrawn CWP-188

& 194-2016. Accordingly, it is submitted that the scope for interference is limited as the subject experts had examined the issue and therefore, this Court should refrain from opining on the same.

State has chosen not to file reply, to controvert the averments made in the writ petitions.

The questions which have been disputed, read as under:

“18. Meaning of ILFE is :

- (A) Integrated learning friendly environment
- (B) Inclusive learning friendly environment
- (C) Integrated learning friendly education
- (D) Inclusive learning friendly education

25. Students can improve their comprehension of written material if they use a strategy called SQ4R, which stands for

- (A) Study, query, read, review, revise and recite
- (B) Survey, question, read, recite, write and review
- (C) Study, question, read, revise, review, recite
- (D) Survey, query, read, review, recite and revise

39. ਸੁਲੇਖ ਦੀ ਜਾਂਚ ਕਿਹੜੀ ਭਾਸ਼ਾ ਪ੍ਰੀਖਿਆ ਰਾਹੀਂ ਸੰਭਵ ਹੈ?

- (A) ਸੁਣਨ ਸ਼ਕਤੀ
- (B) ਪੜ੍ਹਨ ਕੌਸ਼ਲ
- (C) ਤੇਜ਼ ਲਿਖਣ
- (D) ਬੋਲ ਲਿਖਤ

60. ਵਾਚਨ ਸਿੱਖਿਆ ਵਿੱਚ ਅਧਿਆਪਕ ਬੱਚੇ ਨੂੰ ਕੀ ਸਿਖਾਉਂਦਾ ਹੈ?

- (A) ਲਿਖਣਾ
- (B) ਚਿੱਤਰ ਵੇਖਣਾ ਤੇ ਸਮਝਣਾ
- (C) ਪੜ੍ਹਨਾ
- (D) ਧੁਨੀਆਂ ਦਾ ਗਿਆਨ ਦੇਣਾ

65. Which among these is not a psychological principle of the learning and acquisition of a language?

- (A) Motivation
- (B) Stress-free environment
- (C) Reinforcement
- (D) Frequent review

149. The main atmospheric layer near the surface of the earth is

- (A) Troposphere
- (B) Mesosphere
- (C) Ionosphere
- (D) Stratosphere

Counsel for the petitioner has argued that the above said questions No.18, 25 & 149, could not be attempted properly by them, since they had applied for Punjabi medium and they could not answer the questions which were given in English. It is submitted that for question No.18, the correct option was option 'B' and similarly, for question No.25, the correct answer was also option 'B' whereas for question No.149, the correct option was option 'D'.

It is not disputed that all the candidates who had taken

the paper in Punjabi medium would have faced the same difficulty. Perusal of the above said questions would go on to show that the meaning of the abbreviations was asked for from the petitioners, in questions No.18 & 25, who are striving to be selected as Elementary Trained Teachers and have to further educate children from Classes I to V. Therefore, it was elementary for them to at least understand the terms and familiarize themselves with the said concepts. Clause 10 of the instructions for the candidates provides that in case there is any discrepancy, the candidate could refer to the English version and that would be deemed to be right. The Punjabi version of question No.18 itself is very clear that the meaning of 'ILFE' is asked and various options were given. Similarly, for question No.25 also, the Punjabi version was clear regarding the ability of students for utilizing the strategy for improving their comprehension of written material. As per the instructions, 30 questions were compulsory in Section A which pertained to child development and pedagogy (bilingual) which are the instructions and principles of the science of teaching. The relevant clause reads as under:

“10. In case any discrepancy or controversy arises out of translation of any question in Punjabi and English, the question printed in English shall be deemed right. Candidate is advised to check English version in such a situation.

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IMPORTANT INFORMATION :

1. The test booklet contains two sections – Section A and

Section B. All the questions in both the sections are compulsory.

(i) Section - A

All the questions in Section A are compulsory.

- Child development and

pedagogy (bilingual) – 30 Questions (Q.No.1-30)

- Punjabi language – 30 questions (Q.No.31-60)

- English Language – 30 Questions (Q.No.61 to 90)”

The petitioners were as much at disadvantage as similarly situated persons who also attempted the Paper in Punjabi from questions No.31 to 60 and thus, cannot claim any exclusive right of benefit of grace marks.

Mr.Puri has referred to material to show that for question No.18, the inclusive learning friendly environment pertains to inclusion of children with disabilities who are left out of or excluded from schools and the learning process by teachers in conducive environment in schools and classrooms, is the meaning of 'ILFE'.

Similarly, for question No.25, he has also elaborated that option 'B' is the abbreviation for teaching children by surveying the chapter or assigning and how the question has to make the student think. While reading, the students have to also pay particular attention to underlined, bold printed and italicized words and phrases and while reciting aloud in their own words, the answer to the question should be given. Once that is down, it is to be written down and then reviewed and therefore, the abbreviation

is called 'SQ4R' and '4R' stands for the sounding of read, recite, write and review. The question has been put in Punjabi language and the answer, as such, could not be translated into the same and there would be no Punjabi equivalent, therefore, no fault can be found, as such.

Similarly, the Punjabi version for question No.149 also gives option 'D' as the correct option and the word in English and Punjabi, both read as 'Stratosphere' which is the main atmospheric layer, closest to the surface of the Earth and there would be no Punjabi equivalent to the same and therefore, no fault can be found, as such. It is not that the questions, as such, do not fall within the prescribed syllabus and that the petitioners have been, thus, prejudiced.

Regarding question No.39, which pertains to the judging of handwriting, the option given by the Board is 'D' whereas, the case of the petitioners is that option 'B' is the correct answer. Counsel for the Board has attempted to show various materials to justify that the option which has been given was correct and even the subject experts had also re-examined the whole issue and come to the conclusion that it was option 'D' which was the correct answer.

However, this Court is of the opinion that the option 'D' which is given for question No.39, which is 'ਬੋਲ ਲਿਖਤੋ' which translates into dictation, to which, there is no such dispute.

Material has been placed on record regarding the same in CWP-203-2016 titled *Puneet Vatish Vs. State of Punjab & another*, as Annexure P8, regarding the teaching of Punjabi. In the same, there is a comprehensive description that what are the characteristics of handwriting and the same has been described as clear and definite alphabets, the shape of the alphabets, average speed, straight line, proper gap between the words and proper margins on the side of the papers while writing on the lines. The option 'B' would, thus, be the better option, for which, sufficient material has been placed on record to show that 'ਸੁਲੇਖ' means good handwriting and the features have already been discussed above. Various material in the form of Punjabi and English dictionaries have been appended in support of the said proposition, to point out as to what are the essential characteristics of good handwriting. The distinctiveness, simplicity, size, uniformity, spacing, speed and writing straight, would, thus, be the better option, on the face of the question itself and the submission, thus, raised deserves acceptance regarding question No.39. The option given by the Board qua dictation seems, on the face of it, palpably incorrect.

Similarly, regarding question No.60, materials were shown by counsel for the respondent-Board, from various books, teaching guides that the option given were correct.

The contention of the counsels for the petitioners, for

the said question was that though the Board had given option 'C' as the correct answer, which was 'studying' but the correct answer was option 'B' whereby the student would understand by seeing the pictures. It was submitted that since the question was that what the students feel when the teacher is teaching, it would be a process of not only the eye movement, perception and the facial expressions, which would enable the child to learn and therefore, benefit should be given of the said question. Reference was made to the material as Annexure P10 (in CWP-203-2016 titled *Puneet Vatish Vs. State of Punjab & another*).

On the other hand, counsel for the Board rightly has referred to other material also to submit that the option 'C', "to study" was correct and that the teacher would educate the child and the child would learn. It was submitted that the other options of reading, seeing pictorial diagrams and giving knowledge of the world, was not the better option. No such fault can, therefore, be attributed to the answer key projected by the Board.

Regarding question No.65, stress has been laid that the correct option was option 'B', as per the Board and 'frequent review' at option 'D' would be the correct answer.

A perusal of the question would go on to show that it is framed in a negative manner and for acquisition of knowledge, option 'B', stress-free environment, is to be ticked. The Board has rightly given the option as 'B', since motivation, reinforcement and

frequent reviews are principles of learning and acquiring the skills of language and thus, there can be no such doubt on the said issue. Accordingly, keeping in view the material which has been placed on record, this Court is of the opinion that the option which has been given by the Board seems to be correct option, which has been further verified by the experts and there is no scope for interference, as such, regarding the said option.

The principal which is to govern this Court is not to tread into the field of academic experts. It is only where the Court comes to the conclusion that the options given are totally contrary, it would interfere and the law stands settled, in this regard.

Resultantly, in view of the above discussion, this Court is of the opinion that the benefit can only be given regarding question No.39, as reproduced above, to all candidates who had opted for option 'B' and the Board, while granting grace marks to all such candidates, irrespective of the fact that they have filed writ petitions or not, would revise the results, accordingly. Regarding the other questions, the Board, on its own, had revised the result, after taking into consideration the objections of the petitioners and the number of qualified candidates had gone up from 5552 to 5653. Therefore, 1211 candidates had benefitted, in view of the objections raised. Thereafter, in pursuance of the orders passed by this Court on 08.01.2016 (in CWP-104-2016), another 409 candidates benefitted, taking the total number of qualified

candidates to 6062.

In **Gourav Jain Vs. Haryana Public Service Commission 2009 (4) PLR 161**, benefit was given of 4 questions and directions was given that merit would be recomputed since the questions were palpably wrong.

Similar view has also been taken by this Court in **Manmit Singh Vs. State of Punjab & another 2015 (2) PLR 796** wherein it was held that the Court would be failing in its duty not to exercise its jurisdiction where the answer keys are patently incorrect. The said view was, thereafter, reiterated in CWP-19113-2015 titled *Mukesh Kumar Vs. State of Punjab & others*, decided on 27.11.2015.

A similar issue arose before the Division Bench of this Court in LPA-1956-2012 titled *Sameer Khurana & others Vs. Board of School Education Haryana & others*, decided on 16.01.2013, regarding the HTET Examination, 2011. It was, accordingly, held that the Court had a very limited expertise and would not sit in appeal over the decision of the subject experts and reference was made to **Himachal Pradesh Public Service Commission Vs. Mukesh Thakur and another (2010) 6 SCC 759**.

In similar circumstances, a Division Bench of this Court, in **Reetika & others Vs. State of Punjab & others 2016 (1) SCT 71**, while examining the answer keys of the PMET Test, 2015, also came to the same opinion that where remedial steps had been

taken, then the examiner's answer key is considered to be correct. It was, accordingly, held that the answers or formation of answer keys to the questions should be left to the subject experts and the specialists in the subjects. It was also further noticed that where the options are shown to be glaringly improbable or impossible, the Court would go into the issue. Relevant portions of the judgment read as under:

“26. It may also be noticed that the answers or formation of answers key to the questions set in the PMET 2015 is best left to the wisdom of the resource persons and subject experts and the Courts would not impose themselves as specialists of subject experts in matters like the present. The limited indulgence that the Court has is to direct the examining body to take cognizance of the objections received from the aggrieved candidates and decide such objections. This exercise has already been undertaken in extenso before the learned Single Judge.

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32. In the present case it is appropriate to notice that the learned Single Judge has dealt with and considered each of the questions that were raised on behalf of the petitioners before him and some of which have been reiterated by the appellants herein and wherever there is a doubt, remedial steps it was noticed had been taken. Besides, as has been noticed the PMET text books did not enjoin that the correct answer is to be considered as right but it is the examiner's key which is to be considered correct or at least appropriate against the questions that have been set unless these are shown to be glaringly improbable or not possible. In the circumstances, the learned Single Judge has gone into the entire gamut of controversy in this case and there is no infirmity in the same.”

Accordingly, keeping in view the above settled position of law and keeping in view the fact that the Committee of experts had gone into the issue to remove any discrepancy in the answer keys and have examined the same, not once but twice, this Court is of the opinion that no further fault can be found in the answer keys. It is not for this Court to substitute its opinion over and above that of the experts, except where the answer keys, on the face of it, is apparently wrong. Resultantly, the maximum benefit that the candidates can draw is regarding question No.39, which has been discussed in detail above.

Accordingly, the writ petitions are partly allowed, with direction to the Board to give the benefit of marks to all the candidates who had also ticked option 'B' for question No.39, as reproduced above and similarly, in the corresponding sets and revise the result, within one week, accordingly and upload the same on the website.

In view of the writ petition being partly allowed, it is clarified that the candidates who benefit by grant of the above-said one mark and qualify the test, will be eligible to apply for the posts of 4500 ETT teachers, advertised on 09.11.2015 and extended till 10.02.2016, within one week from the declaration of revised result, being successful in the PSTET-1, as it would enable them to qualify. This order is passed in continuation of the interim order passed in CWP-204-2016 on 08.01.2016 and the judgment passed in CWP-25773-2015 titled *Harman Preet Singh Wadhwa Vs. State of Punjab & others*, decided on 11.03.2016.

MARCH 16, 2016
sailesh

(G.S. SANDHAWALIA)
JUDGE