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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 10650/2015 & CM APPL. 27264/2015

SACHIN

..... Petitioner

Through: Mr. Krishan Kumar, husband of
petitioner.

versus

DEPUTY SECRETARY (EXAMS),
COUNCIL OF SCIENTIFIC & INDUSTRIAL
RESEARCH (CSIR) & ORS.

..... Respondents

Through: Mr. Vaibhav Kalra, Advocate.

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Date of Decision: 11th May, 2016

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present writ petition has been filed seeking a direction to the respondents to award marks to the petitioner qua Question No.31 in Part 'B' of the question paper.
2. Mr. Krishan Kumar, husband of the petitioner states that Question No.31 in Part 'B' is contrary to and in violation of Instruction No.6 of Test Booklet inasmuch as it has two correct answers. The Instruction No.6 is reproduced hereinbelow:-

“6. Below each question in Part ‘A’ and ‘B’, four alternatives or responses are given. Only one of these alternatives is the “correct” option to the question. You have to find, for each question, the correct or the best answer. In Part ‘C’ each question may have ‘ONE’ or ‘MORE’ correct options. Credit in a question shall be given only on identification of ‘ALL’ the correct options in Part ‘C’. No credit shall be allowed in a question if any incorrect option is marked as correct answer.”

3. Mr. Kumar further states that as Question No.31 has more than one correct option, the same should have been part of Part ‘C’ of the Test Booklet. He contends that there was negligence, error and/or mistake on the part of respondents in placing Question No.31.

4. He also states that due to excessive time being consumed by the petitioner due to confusion on the invalid Question No.31 of Part ‘B’, she could not attempt or answer fifteen very easy questions of Part ‘A’ and five other questions of Part ‘B’.

5. Mr. Kumar states that respondents had erroneously and contrary to Instruction No.6 awarded marks to candidates who had opted for Options No.1 or 2. He contends that as Question No.31 was invalid for Part ‘B’, marks should have been awarded to every candidate who had attempted the said question.

6. On the other hand, Mr. Vaibhav Kalra, learned counsel for respondents states that the present writ petition is an afterthought and an attempt to get marks by misconstruing the facts/instructions. He states that despite having an opportunity to represent, petitioner had not made any representation to the respondents.

7. Learned counsel for respondents points out that in view of two correct answers to Question No.31, a policy decision was taken by the respondents

to award marks to all the candidates who had opted for either of the correct answers i.e. Option No.1 or Option No.2.

8. According to him, as the petitioner did not choose either of the correct options, but instead chose the Option No.3 which was the wrong answer, petitioner had not been awarded any marks in the said Question.

9. Mr. Kalra points out that difference in Part 'B' and Part 'C' questions is primarily of level as well as the time required to answer the questions and the marks they carry. It is stated that Part 'B' questions are elementary and Part 'C' questions are advanced. According to him, Question No.31 of Part 'B' is of elementary nature being a lower value question pertaining to basic fundamentals of the subjects carrying 03 marks, whereas the Part 'C' of the Mathematical Sciences contains higher value questions carrying higher marks of 4.75 that may test candidate's knowledge of scientific concepts or application of the scientific concepts in accordance with respondents' exam scheme. Thus, he contends that there is no ambiguity as far as validity or placement of Question No.31 is concerned.

10. He further states that petitioner is merely taking a chance by challenging the validity of the question in an attempt to gain marks as she is short of 3.14 marks for qualifying marks for Lectureship inasmuch as the cut-off for Lectureship is 47.82, whereas the petitioner has scored 46.25%.

11. Learned counsel for respondents contends that if the present petition is allowed, the same shall affect other qualified candidates who have not been made parties to the case. Thus according to him, the present writ petition is liable to be dismissed for non-joinder of necessary parties.

12. He submits that if the prayer in the writ petition is allowed at this belated stage, it would open flood gates of litigation. He points out that on

the basis of declared final result, some of the qualified candidates may have gained admission/employment in various institutes.

13. Learned counsel for respondents lastly states that petitioner had re-appeared for the Joint CSIR-UGC JRF/NET December Exam of 2015 in the subject of Mathematical Sciences held on 20th December, 2015, but was unsuccessful. He states that petitioner is registered for the forthcoming Joint CSIR-UGC JRF/NET June, 2016 exam.

14. Having heard the parties, this Court is of the opinion that it would not like to interfere with a policy decision unless the same is vitiated by bias or arbitrariness. A Coordinate Bench of this Court in ***Sushant Jain vs. Central Board of Secondary Education & Anr., W.P.(C) 4777/2015*** decided on 15th May, 2015, after referring to the Supreme Court's judgment in ***University Grants Commission & Anr. vs. Neha Anil Bobde (Gadekar), (2013) 10 SCC 519*** has observed as under:-

“The learned counsel for respondent no.1, who appears on advance notice, submits that the answer keys had been published on the website and objections were invited. All objections received were duly considered by the experts and in cases where it was found that two options were correct – as for question no.53 (Set C) and question no.20 (Set D) – marks were awarded to all students who had marked either of the correct options. However, the experts did not find any error in the answer key published in respect of question nos. 57 & 73.

*In the aforesaid circumstances, it is not possible to conclude that the answers provided by the petitioner were correct. The Supreme Court in **University Grants Commission and Another v. Neha Anil Bobde (Gadekar): (2013) 10 SCC 519** had observed as under:-*

“We are of the view that, in academic matters, unless there is a clear violation of statutory provisions, the Regulations or the Notification issued, the Courts shall keep their

hands off since those issues fall within the domain of the experts. This Court in University of Mysore vs. C.D. Govinda Rao, AIR 1965 SC 491, Tariq Islam vs. Aligarh Muslim University (2001) 8 SCC 546 and Rajbir Singh Dalal vs. Chaudhary Devi Lal University (2008) 9 SCC 284, has taken the view that the Court shall not generally sit in appeal over the opinion expressed by expert academic bodies and normally it is wise and safe for the Courts to leave the decision of academic experts who are more familiar with the problem they face, than the Courts generally are.”

In my view, no orders are warranted in this petition. Accordingly, the same is dismissed.”

15. This Court is also of the opinion that Question No.31 of Part ‘B’ of the question paper has not caused any confusion to the petitioner as she did not mark either of the correct options i.e., Option No.1 or Option No.2. In fact, as the petitioner was not aware of either of the correct answers, it is not understood as to how the petitioner can claim that she spent excessive time in answering the said question.

16. This Court is of the view that a question cannot be declared invalid simply because it is found to have more than one correct answer as the respondent has awarded marks to all the candidates who had attempted either of the correct options.

17. Further, the respondent-CSIR’s decision to award marks to candidates who had opted for either of the correct options is not in violation of Instruction No.6 of the Test Booklet, but is in line with the principle of fairness and justice.

18. Consequently, the petitioner’s arguments that all candidates who had

attempted Question No.31 should be awarded marks, is not correct. In fact, if all the options to Question No.31 were wrong, then only marks could have been awarded to all the candidates.

19. This Court also finds merit in the respondent's submission that since the petitioner had not filed any objection/representation despite being given an opportunity to do so, petitioner cannot subsequently challenge the result by way of a writ petition. In fact, a Coordinate Bench in ***Atul Kumar Verma vs. Union of India & Anr., W.P.(c) 5719/2015*** decided on **13th July, 2015** has held as under:-

“19. A Division Bench of this Court also recently in Salil Maheshwari Vs. The High Court of Delhi MANU/DE/2085/2014 held that, (i) a candidate in an examination who has not availed of the opportunity given for objecting to the answer key is estopped from raising a challenge at a belated stage; (ii) that the Supreme Court in Kanpur University has held that the answer key must be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by an inferential process of reasoning or by a process of rationalisation; it must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well versed in the particular subject would regard as correct; and if the traditional parameters of judicial review – illegality, irregularity, non-consideration of material facts or consideration of extraneous considerations or lack of bona fides in decision making process as contrasted with the decision itself, are satisfied can the decision be corrected in judicial review; (iii) in matters of judicial review which involve examination of academic content and award of marks, a circumspect approach, leaving evaluation of merits to the expertise of academics has to be effected; (iv) and, else judicial review is permitted only when decision is so manifestly and patently erroneous that no reasonable person could have taken it.

20. Mention at this stage may be made of In Re: v. Askew [1768] 4 2168, where Lord Mansfield considered the question whether mandamus should be granted against the College of Physicians and held “it is true, that the judgment and discretion of determining upon this skill, ability, learning and sufficiency to exercise and practise this profession is trusted to the College of Physician: and this Court will not take it from them, nor interrupt them in the due and proper exercise of it. But their conduct in the exercise of this trust thus committed to them ought to be fair, candid and unprejudiced; not arbitrary, capricious or biased; much less, warped by resentment, or personal dislike.”

20. Consequently, present writ petition and application are dismissed.

MANMOHAN, J

MAY 11, 2016

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