

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

- (1) **CWP No.25300 of 2014**
Rajinder Singh & othersPetitioners
Vs.
State of Punjab & othersRespondents
- (2) **CWP No.26504 of 2014**
Gurpreet KaurPetitioner
Vs.
State of Punjab & anotherRespondents
- (3) **CWP No.26714 of 2014**
Jaskaran SinghPetitioner
Vs.
State of Punjab & anotherRespondents
- (4) **CWP No.10405 of 2015**
Balkar SinghPetitioner
Vs.
State of Punjab & othersRespondents
- (5) **CWP No.11508 of 2015**
Bhupinderjeet SinghPetitioner
Vs.
State of Punjab & othersRespondents

Reserved on:20.12.2016
Decided on:11.01.2017

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

Present: Mr.S.S.Sodhi, Advocate, for
Mr.R.S.Dhaliwal, Advocate
Mr.P.S.Mirpur, Advocate and
Ms.Jagdeep Bains, Advocate, for the petitioner(s).

Ms.Lavanya Paul, AAG, Punjab.

G.S.Sandhawal J.

This judgment shall dispose of 5 cases, i.e. CWP-25300, 26504 & 26714-2014 and CWP-10405 & 11508-2015, involving common questions of law and facts. However, to dictate judgment, facts have been taken from CWP-25300-2014 titled *Rajinder Singh & others Vs. State of Punjab & others*.

The petitioners, in the present writ petition, seek a direction for granting of 4 grace marks on account of 4 wrong questions/options in the examination of the Punjab State Teachers Eligibility Test, 2014 (for short, the 'PSTET') held on 24.08.2014.

Shorn of any additional details, it is the case of the petitioners in the connected matters also that they are on the verge of qualifying the said test as the qualification marks are 90 (60% for being eligible for consideration), for the General Candidates, whereas 82 marks would be for the cut-off marks for the specified Reserved Category candidates. Under the Right of Children to Free & Compulsory Education Act, 2009, the qualifications for appointment have been laid down under Section 23 and the minimum qualifications as laid down by

the Academic Authority, authorized by the Central Government, by notification, would make the person eligible for appointment as a Teacher. The test in question was for Paper-II, for Classes 6 to 8 and anybody who achieves the said 60% or more would be eligible for consideration for appointment.

As noticed, the test was held on 24.08.2014 and question papers of 4 different sets were given to the candidates. They had to attempt 150 questions, which were similar but were given different numbering and were of multiple choice which had been given by the respondents. The same, thus, has been questioned as having a wrong answer key or incorrect or a confusing option, for which grace marks should be granted.

It is the case of the petitioners that on account of the negligence of the respondents, the petitioners had been prejudiced and therefore, they had served a legal notice upon them to grant them the grace marks. If the grace marks are granted, the petitioners would make the cut-off. The main questions, on which counsels for the petitioners have stressed their arguments, as noticed, are 4 in number and figure at Sr.Nos.59, 112, 121 and 142 of Set-1 (Question-booklet bearing Sr.No.1).

The defence of the respondents, regarding the principle involved, primarily revolves around the issue that this Court is not to go into the issue of correctness of the answer keys, as it is the exclusive reserve of the subject experts. It is the case of the respondents that clarifications had been sought regarding the challenged questions from

NYSA Communication Pvt. Ltd. who had set the paper and justifications had been received in support of the answer keys and grace marks had been given to the entitled candidates.

Vide order dated 23.08.2016, it had been noticed that contrary stand was taken by the State in different written statements, filed in the present bunch of cases, as to the fact that grace marks had been given against which questions and accordingly, directions were issued on 09.09.2016, to file a consolidated affidavit in all the cases. Clarification had to be given on the issue with regard to how the aforesaid 4 questions were addressed by the expert Committee and whether any benefit of grace marks had been given to the candidates or not. Resultantly, a consolidated affidavit was filed by Mr.Sukhdev Singh, Director, State Council for Education Research & Training, Punjab, Mohali, wherein an apology had been tendered regarding the submissions made in CWP-25300-2014, that grace marks had been given for the said 4 questions. It has, accordingly, been clarified that grace marks had only been given regarding question No.122 of question booklet No.1. The answer keys of the 4 questions have, thus, been reiterated. It has further been averred that in view of the interim orders passed in CWP-11508-2015 on 15.10.2015, a Committee had also been constituted to examine the 4 questions and the justification given by the Committee tallied with the opinion of NYSA Communication Pvt. Ltd., the examining body.

The issue is no longer *res integra* as to the inherent jurisdiction of this Court regarding the correctness of the answer key.

While examining the answer keys of PSTET, 2015, this Court, in **Daljit Kaur & another Vs. State of Punjab & others 2016 (3) SCT 26**, elaborated on the issue of jurisdiction and came to the conclusion that where the options were glaringly improbable or impossible, the Court would go into the issue. The fact that the subject experts had the necessary expertise was also taken into consideration but where the questions were palpably wrong and the answer keys were patently incorrect, it was held that jurisdiction of the Court to go into the issue, would, as such, be not barred. The relevant observations read as under:

“11. The issue of correct answer keys and the jurisdiction of the Court to interfere or deliberate upon, has been dealt by a Three Judges Bench of the Apex Court in ***Kanpur University & others Vs. Samir Gupta & others 1983 (4) SCC 309***. In the said case, the High Court had accepted the contention of the students that the answers ticked by them are correct and the key answers furnished by the paper setters were wrong, since there was two options as per Hindi and the English version. The publication of the key was approved since the students had benefited otherwise they would have suffered injustice. Relevant observation reads as under:-

"The findings of the High Court raise a question of great importance to the student community. Normally, one would be inclined to the view, especially if one has been a paper setter and an examiner, that the key answer furnished by the paper setter and accepted by the University as correct, should not be allowed to be challenged. One way of achieving it is not to publish the key answer at all. If the University had not published the key answer

along with the result of the test, no controversy would have arisen in this case. But that is not a correct way of looking at these matters which involve the future of hundreds of students who are aspirants for admission to professional courses. If the key answer were kept secret in this case, the remedy would have been worse than the disease because, so many students would have had to suffer the injustice in silence. The publication of the key answer has unravelled an unhappy state of affairs to which the University and the State Government must find a solution. Their sense of fairness in publishing the key answer has given them an opportunity to have a closer look at the system of examinations which they conduct. What has failed is not the computer but the human system."

12. In ***Gourav Jain Vs. Haryana Public Service Commission 2009 (4) PLR 161***, while examining the answer keys of the Haryana Civil Services (Judicial Branch) Examination, it was held that 4 questions were palpably wrong and accordingly, directions were issued that the benefit should be given regarding the said 4 questions.

13. 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.

14. 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.***

15. 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.

xxxx xxxx xxxx

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."

In **Manish Ujwal & others Vs. Maharishi Dayanand Saraswati University & others 2005 (13) SCC 744**, the High Court had refused to interfere with the answer keys on the ground that it could not be said with certainty that the answer keys were erroneous or incorrect. The Apex Court noticed that experts had come to the conclusion that the answer keys were erroneous and the answer keys provided by the University were wrong and therefore, deprecated the University's casual approach provided by the concerned persons. Accordingly, re-evaluation was directed by changing the correct answer keys and by setting aside the judgment of the High Court and imposing costs of Rs.1 lakh. Relevant observations read as under:

"11. The High Court has committed a serious illegality in coming to the conclusion that "it cannot be said with certainty that answers to six questions given in the key answers were erroneous and incorrect". As already noticed, the key answers are palpably and demonstrably erroneous.

In that view of the matter, the student community, whether the appellants or intervenors or even those who did not approach the High Court or this Court, cannot be made to suffer on account of errors committed by the University. For the present, we say no more because there is nothing on record as to how this error crept up in giving the erroneous key answers and who was negligent. At the same time, however, it is necessary to note that the University and those who prepare the key answers have to be very careful and abundant caution is necessary in these matters for more than one reasons. We mention few of those; first and paramount reason being the welfare of the student and a wrong key answer can result in the merit being made a casualty. One can well understand the predicament of a young student at the threshold of his or her career if despite giving correct answer, the student suffers as a result of wrong and demonstrably erroneous key answer; the second reason is that the courts are slow in interfering in education matters which, in turn, casts a higher responsibility on the University while preparing the key answers; and thirdly, in cases of doubt, benefit goes in favour of the University and not in favour of the students. If this attitude of casual approach in providing key answer is adopted by concerned persons, directions may have to be issued for taking appropriate action, including the disciplinary action, against those responsible for wrong and demonstrably erroneous key answers but we refrain from issuing such directions in the present case. The second counselling for the admission abovementioned, we are informed, is fixed from 25th August, 2005, onwards. We direct re-evaluation of all the questions by feeding correct answers, as above noticed, and on that basis correct number of marks obtained by all the students should be assigned and their ranking prepared. This exercise shall be completed within a

period of three says from today. List so prepared shall be put on internet soon thereafter as also be published in the newspapers wherein it was earlier published. The second counselling and admissions hereinafter in the medical and central courses in the State of Rajasthan in Government colleges as also in the private colleges insofar as the State quota is concerned would be made on the basis of ranking as per the list which will now be prepared by the University pursuant to the directions of this Court. The merit list shall be prepared for the same number of students as it was prepared earlier while declaring the results on 22nd 23rd May, 2005."

Similar observations also came from a Three Judges Bench of the Apex Court in *Guru Nanak Dev University Vs. Saumil Garg & others 2015 (13) SCC 749*.

The 4 disputed questions of Question Set No.1, read as under:

"Q.59. Which is not objective type of question in the below mentioned:

- a. Fill in the blanks.
- b. True-false.
- c. Multiple choice.
- d. Similar questions.

Correct option given is (a), as per Answer-Key.

Q.112. Jainism and Buddhism were similar in all these aspects EXCEPT-

- a. Both were agnostic and rejected the Vedic thoughts.
- b. Both had equal faith in Ahimsa.
- c. Both accepted followers without any class distinctions.
- d. Both believed in the Doctrine of Karma.

Correct option given is (b), as per Answer-Key.

Q.121. Which of these were not depicted in the Indo-Islamic architecture because of being considered as Un-Islamic?

- a. Floral designs
- b. Lotus and Kalash
- c. Human and animal figures.
- d. Bell motifs.

Correct option given is (a), as per Answer-Key.

Q.142. A map's legends helps us to

- a. read the map's symbols correctly
- b. understand the purpose of the map
- c. calculate the real distance shown on the map
- d. distinguish between the two tropics.”

Correct option given is (a), as per Answer-Key.

Out of the above 4 questions, question No.59 was subject matter of challenge in CWP-23848-2014 titled *Lukesh Kumar Vs. State of Punjab & another*, which was dismissed on 28.05.2014. The said petitioner carried the matter in appeal before the Division Bench in LPA-1147-2015, which was decided on 03.12.2015 and the same was dismissed, keeping in view the opinion of the subject experts, who had opined that the true-false type, multiple choice question and matching type, are not objective type. The same have similarity with each other. Even otherwise, as per the justification given by the experts of 'fill in the

blanks' would only become objective when given to choose from a multiple choice and multiple choice had already been given as option 'c', as separate option. Accordingly, in such circumstances, the answer key of the said question, as such, is not liable to be interfered with, inspite of the counsels persuasive efforts.

Regarding question No.121, nothing, as such, could be shown to the Court that the option which had been given as 'c', was wrong, in any manner, as the justification given was that human and animal figures were not depicted in the Indo-Islamic Architecture, as idol worship was prohibited.

Similarly, regarding question No.142, the correct option is given as 'a' as the legends in the map helps to read the map's symbols correctly. The legends in the map gives various signs which are depicted in the map in the form of symbols and by looking at the said symbols, one can make out whether the map, as such, depicts issues like the type of the road which is shown, whether it is a National Highway (NH)/State Highway. Similarly, with reference to the positioning of a temple/church/gurudwara or a sanctuary, mountain top, village, school, where the symbol is mentioned in the legends, helps to identify the positioning of the said feature in the map, without elaboration in the map itself and therefore, there can be no doubt with the option give as 'a' as the correct option.

However, regarding question No.112, the same seems to be not free from doubt, which has rightly been raised by counsel for the

petitioners. Infact, a perusal of the justification which has also been given by the subject experts, would go on to show that they themselves were not clear as to what would be the correct answer and therefore, the benefit necessarily has to flow to one and all, regarding the said answer key. It is pertinent to notice that question No.112 talks about the exception of the similarities of the two religions-Jainism and Buddhism. As per the explanation given by the Committee, the correct answer key given was option 'b' which depicted that both had equal faith in Ahimsa. The justification given by the NYSA Communication Pvt. Ltd. is that the Buddhist religion was not that extreme, as such and the traditional Buddhists understanding of non-violence is not as rigid as the one followed in Jainism. Similarly, the Committee members also, while noticing the interim directions issued by this Court on 15.10.2015, had came to the conclusion that option 'b' was the best option. However, even they themselves, as per their opinion, came to the conclusion that both believe in Ahimsa to an equal extent. Therefore, there was no correct option which was provided which correctly elaborated the exception which could have been given by the candidates, in the opinion of this Court. Both the 4 options were practised by both the religions and therefore, the candidates, as such, would be at loss as to which would be the correct option and the answer given was never clear, as should have been. The justification of the experts which has been provided, reads as under:

“Justification as provided by NYSA Communication Pvt. Ltd.:-

Non-violence is seen as the most essential religious duty for everyone in Jainism which makes it more radical in its practice. (Ahimsa paramo Dharmah is often inscribed in all Jain temples). However, in Buddhist Texts non violence is not as rigid as Jainism. This is why eating of non-vegetarian food is permitted to be consumed on conditions. Unlike in Hindu and Jain sources, in ancient Buddhist texts, Ahimsa is not used as a technical term. The traditional Buddhist understanding of non-violence is not as rigid as the Jain one, but like the Jains, Buddhists have always condemned the killing of all living beings. In some Buddhist traditions vegetarianism is not mandatory. In these traditions, monks and common people may eat meat and fish on condition that the animal was not killed specifically for them. Rest in option (a) (c) and (d) both the religions followed the same thoughts.

Justification as provided by Committee Members constituted by the answering respondent in compliance to order dated 15-10-2015 in CWP No. 11508 of 2015.

Option (b) is the best answer.

- Both were agnostic and rejected the Vedic thoughts.
- Both accepted followers without any class distinctions.
- Both believed in the doctrine of Karma.
- Both believed in the Ahimsa but not at equal extent. A copy of proof is attached as Annexure R-2/2.

Committee Members:-

1. Mrs. Seema Chawla, Subject Expert, Punjab School Education Board. (PSEB).
2. Mr. Raminder Singh Wasu, Subject Expert, Punjab School Education Board. (PSEB).

3. Mrs. Rajni, Lecturer History, Govt. Sen. Sec. School (G.S.S.S.).

4. Mr. Bhupinder Singh, Lecturer History, Govt. Model Sen. Sec. School (G.M.S.S.S.) 3B1 Mohali.”

The proof further attached as Annexure R2/2, would also go on to show that as per Clause 3, both the religions emphasized on the principle of Ahimsa. The translation reads as under:

“Comparison of Buddhism and Jainism

Similarities or points of Agreement

Buddhism and Jainism took birth to eradicate the evil practices prevailing in Hinduism. Due to this, there are many similarities between both the religions.

1. Both acted as reformatory movement. Both tried to eradicate the evil practices prevailing in Vedic religion. Both attained many principles from the Vedic literature.

2. The leaders of both the religions were Khatri Princes who left their homes in pursuit of truth and started preaching for the welfare of human beings after attaining enlightenment.

3. Both emphasized on the principle of Ahimsa. Both were against to cause any harm to living beings.

4. Both have considered moksha as prominent factor of life. Both have accepted the theories of karma and rebirth. Both believed that a person suffers as per karmas (deeds and actions) and the cycle of birth and death continues indefinitely, until one attains moksha.

5. Both believed in simple, pious and moral living.

6. Both opposed casteism, class differences and untouchability. Both considered all the people equally. Both accepted social equality and freedom of thoughts. Both opened the doors of moksha for all castes. Both denied the affect of Brahmins. Both accepted that greatness of person depends upon karma rather than caste one belongs to.

7. Both denied the existence of God. They rejected the theory that the God created universe. Both rejected the theory of “many Gods” of Brahmins.

8. Both denied the authority of the Vedas and opposed the authenticity of the Vedas and did not treat it necessary for the attainment of Moksha.

9. Both opposed religious activities such as fire sacrifice, animal sacrifice etc. and consider the same as useless.

10. Both established organizations for preaching of religion and bhikshus---(line incomplete)”

Resultantly, keeping in view the above facts, once the experts themselves were not clear in their justifications as to what was the specific difference between the two religions and the question specifically was to point out the exception between the two, which was not present in all the 4 options, the benefit must flow to the candidates by awarding of grace marks, as has been held by the Apex court that the failure is not of the computer but of a human system. Thus, the option given by the Board does not seem to be a correct option and necessarily the issue has to be decided in favour of the petitioners, regarding question No.112 of Set No.1 and the equivalent question of different sets.

It is pertinent to mention that Mr.Sodhi, counsel for the petitioner(s) in CWP-26714-2014, has objected to various questions, bearing Sr.Nos.3, 4, 21, 48, 52, 59 and 70, pertaining to Set No.4, which he raised in his replication. Out of these questions, question No.59 is similar to the one which was subject matter of consideration before the Division Bench and therefore, cannot be examined afresh, in view of the reasoning given above. Regarding the other questions, no material was

produced before this Court to show that the questions were palpably wrong or incorrect, as suggested, apart from raising an oral argument. In the absence of any such material, the principles, as laid down above, would stand in the way of the petitioner(s) that once the matters have been referred to the subject experts, it would not be for this Court to substitute the opinion of the experts and therefore, reliance is placed by the respondents upon the judgment of the Apex Court in **Sajeesh Babu K. Vs. N.K.Santhosh & others 2012 (12) SCC 106**, wherein, it was held that reverence was to be shown to the experts and only if there is allegations of mala fide, interference is to be done. Relevant observations read as under:

"18. It is clear that in a matter of appointment/selection by an Expert Committee/Board consisting of qualified persons in the particular field, normally, the Courts should be slow to interfere with the opinions expressed by the experts, unless there is any allegation of mala fides against the experts who had constituted the Selection Committee. Admittedly, in the case on hand, there is no allegation of mala fides against the 3 experts in the Selection Committee. In such circumstances, we are of the view that it would normally 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 technicalities/nature of the work. In the case on hand, the Expert Committee evaluated the experience certificates produced by the appellant herein, interviewed him by putting specific questions as to direct sale, home delivered products, hospitality/service industry etc. and awarded marks. In such circumstances, we hold that the High Court ought not to have sat as an

appellate Court on the recommendations made by the Expert Committee."

Resultantly, keeping in view the above, the writ petitions are partly allowed, to the extent that the answer key to question No.112 of Set-1 and its corresponding question in the other sets, was vague and not specific and on that account, the candidates of the said examination, i.e., PSTET, 2014, held on 24.08.2014 are entitled for the benefit of one grace marks. It is further clarified that apart from the petitioners, other candidates would also be entitled for the benefit, irrespective of the fact that whether they have approached this Court or not, as it has not been pointed out by the respondents that the said answer key was ever challenged in any other writ petition(s) and therefore, the said issue was never examined in complete perspective, as has been done by this Court. The answer key of the said question be, accordingly, corrected and the result be modified, accordingly, within a period of 4 weeks from the date of receipt of the certified copy of this order.

JANUARY 11th, 2017
sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No