

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: November 14, 2017

+ **W.P.(C) 9939/2017 & CMs 40509-10/2017**

MOHD SHIKOH Petitioner

Through: Mr. Vibhor Mathur, Advocate

versus

UNION OF INDIA AND ORS Respondents

Through: Mr. Roshan Lal Goel and Ms. Anju Gupta, Advocates for respondent No.1-UI

Mr. Amit Bansal and Ms. Seema Dolo,
Advocates for respondent No.2

Mr. Apoorv Kurup and Ms. Isha Mital,
Advocates for respondent No.3-UGC

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Petitioner had appeared in UGC-NET Examination conducted in July, 2016 and results were declared in November, 2016 and in December, 2016, petitioner had made a grievance to respondent-CBSE pertaining to answer to question No.42, but according to petitioner, no response to petitioner's query was received. Petitioner claims that on 13th July, 2017, petitioner had sought information under RTI in respect of action taken by the Expert Committee on petitioner's grievance and had sought correction of the Answer Key in relation to question No.42. It is the case of petitioner that information under RTI (*Annexure P-11*) was received by petitioner in August, 2017 wherein it was disclosed that

petitioner's grievance was considered by Committee of Experts, which after verification, has not changed the Answer Key. Not satisfied by information under RTI (*Annexure P-11*), petitioner has filed this writ petition in October, 2017 seeking a mandamus to respondent-CBSE, to correct the Answer Key to question No.42 and to treat petitioner as Junior Research Fellow Qualified candidate for the post of Assistant Professor, Department of Library and Information Sciences.

2. Petitioner's counsel relies upon a Division Bench of High Court of Allahabad in Writ A No.12344 of 2017 titled *Niraj Kumar Singh v. State of U.P. and Others*, rendered on 28th April, 2017 to submit that upon re-evaluation, Answer Key to question No.42 needs to be corrected and result of petitioner be accordingly declared afresh.

3. On the contrary, learned counsel for respondent-CBSE relies upon a decision of a co-ordinate Bench of this Court in *Atul Kumar Verma v. Union of India & Anr.* 2015 SCC Online Del 10316 to submit that it is impermissible for this Court to re-examine the question(s) and answer(s) given by inferential process of reasoning or rationalization as Supreme Court has declared that in matters of judicial review involving examination of academic content, the court should be circumspect leaving evaluation of merits to the experts of academics and in cases like the instant one, judicial review is permitted only when the decision is so manifestly and patently erroneous that no reasonable person could have taken it. Thus, it is submitted that in view of information under RTI (*Annexure P-11*), no case for exercise of power of judicial review is made out.

4. Upon hearing and on perusal of material on record and the decisions cited, I find that the decision of Allahabad High Court in *Niraj Kumar Singh (supra)* will not hold the field in view of Supreme Court's decision in *H.P. Public Service Commission v. Mukesh Thakur* (2010) 6 SCC 759 wherein re-evaluation was sought and it was held that it is impermissible for the High Court to examine the question paper and answers thereto itself, particularly when the examining body has assessed the *inter se* merits of the candidates and if there was any discrepancy in framing of the question and evaluation of the answer, it effected all the candidates appearing the examination and not petitioner alone and that the course adopted by the High Court was disproved.

5. In *Atul Kumar Verma (supra)* reliance has been placed upon Supreme Court's decision in *Kanpur University v. Samir Gupta* (1983) 4 SCC 309 to reiterate that judicial review in matters like the instant one is permitted only when the decision is so manifestly and patently erroneous that no reasonable person could have taken it. One of the options given in the Answer Key to question No.42 in the Annexure P-3 is "*Slopping*" whereas in the Literature (*Annexure P-8*) by the same very author, the option given is of "*Stopping*" and not "*Slopping*".

6. Since this Court is not an expert on the subject in hand, therefore, it refrains from opining whether the Answer Key in Annexure P-2 is in consonance with the Literature (*Annexure P-8*) by the very author or not. The information under RTI (*Annexure P-11*) merely discloses that petitioner's grievance qua the Answer Key to question No.42 was examined by Committee of Experts, but it does not make it clear as to whether the re-look at the answer key to question No.42 as per

information under RTI (*Annexure P-11*) was by the same very Committee of Experts, who had set the question paper and the Answer Key thereto or by another Committee of Experts. This aspect needs to be clarified in the peculiar facts of this case as during the course of hearing, it was disclosed that if the benefit of answer to question No. 42 is given to all the candidates, it would change petitioner's fate as it hangs on answer to this solitary question and would enable petitioner to qualify the aforesaid examination. It is made clear that if the re-consideration of the answer key to question No.42, as indicated in information under RTI (*Annexure P-11*) is by the same Committee of Experts, then respondent-CBSE shall send the Answer Key to question No.42 to another Committee of Experts and if the benefit accruing from answer to this very question is to be given, then petitioner's result be declared afresh. Since petitioner alone has approached this Court, therefore, the benefit of this order will accrue only to him. Let the exercise be conducted and completed within six weeks and the outcome be made known to petitioner within two weeks thereafter.

7. With aforesaid directions, this petition and the applications are disposed of.

8. Copy of this order be given *dasti* to learned counsel for respondent-CBSE.

(SUNIL GAUR)
JUDGE

NOVEMBER 14, 2017

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