

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02-11-2018

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.23362 of 2017

And

W.M.P.Nos.24454 and 24455 of 2017

M.Kalaiselvi

.. Petitioner

..Vs..

The Member Secretary,
Teachers Recruitment Board,
EVK Sampath Maaligai 4th Floor,
DPI Compound,
College Road,
Chennai-600 006.

.. Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus, directing the respondent to revalue the answer sheet for Question Nos.89 and 94 written by the petitioner, as per the correct answers given on the basis of the authoritative text books, rearrange the merit list on the basis of the revaluation marks and publish the list of the candidates in the website for Notification No.3/17 dated 9.5.2017 for the direct recruitment to fill up 3375 posts of Post Graduate Assistants/ Physical Education Directors Grade-I in School Education and other Departments for the year 2016-2017 by considering her representations dated 22.7.2017 and 23.8.2017.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.R.Karthikeyan,
Government Advocate.

ORDER

The relief sought for in this writ petition is for a direction to direct the respondent to revalue the answer sheet for Question Nos.89 and 94 written by the petitioner, as per the correct answers given on the basis of the authoritative text books, rearrange the merit list on the basis of the revaluation marks and publish the list of the candidates in the website for Notification No.3/17 dated 9.5.2017 for the direct recruitment

to fill up 3375 posts of Post Graduate Assistants/ Physical Education Directors Grade-I in School Education and other Departments for the year 2016-2017 by considering her representations dated 22.7.2017 and 23.8.2017.

2. The writ petitioner has completed B.Sc., Chemistry in the year 2001, M.Sc., Chemistry in the year 2011 and B.Ed., in the year 2017. The writ petitioner is fully qualified for appointment to the post of P.G. Assistant. Pursuant to the Recruitment Notification, the writ petitioner submitted an application to participate in the process of selection. The writ petitioner participated in the selection process and appeared in the written examination.

3. The grievances of the writ petitioner is that the answers with reference to Question Nos.89 and 94 were evaluated erroneously by the Examiners. Thus, the writ petitioner could not able to succeed in the written examination. In the event of awarding marks to Question Nos.89 and 94, the writ petitioner's name would have been placed in the select list, thereby enabling her to secure appointment to the post of P.G. Assistant.

4. The learned Government Advocate, appearing on behalf of the respondent, brought to the notice of this Court that the batch of writ petitions were filed, challenging the key answers with reference to certain questions and based on the reports of the Experts Committee, those cases were decided. In the batch of cases decided on 16.2.2018 by the Hon'ble Division Bench of Madurai High Court in WA (MD) Nos.194 to 199 and 209 to 212 of 2018, marks were awarded in respect of certain questions only for six candidates and confining the relief to the said six candidates, the Writ Appeals were disposed of. The relevant portion of the order of the Hon'ble Division Bench of Madurai High Court in paragraph 5, reads as under:-

"5. The learned Special Government Pleader expressed an apprehension that the order passed in the writ petition would be a precedent for subsequent cases as well. There need not be any apprehension in this regard as this Court will make proper observation and direction in this order. That apart, as noted above, the Writ Court has not decided the jurisdictional issues which has been specifically pleaded in the counter affidavit filed in the writ petitions and stated to have been argued by the learned Special Government Pleader before the Writ Court. Thus, necessarily the legal issue has to be left open and the

order passed in the writ petition cannot be treated as a precedent nor could be extended to other persons, who participated in the same selection process and should be confined only to six of the writ petitioners, who are stated to come within the zone of consideration. Thus, for the above reasons, while confirming the order passed in the writ petition, we clarify that the directions/ methodology adopted by the Writ Court cannot be treated as a precedent and the effect of the order impugned cannot be extended to any other candidates, except those six candidates whose name has been mentioned and the selection process have already been completed no other new candidate, who has been unsuccessful can come before this Court pleading similar relief. Accordingly, these writ appeals stand disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed."

5. The learned Government Advocate with reference to the relief sought for in the present writ petition in respect of Question Nos.89 and 94, made a submission that as per the Experts Committee Report, the writ petitioner has opted Serial No.'A' as a right answer in Question No.89. However, the Experts Committee found that the right answer is Serial No.'B' and not Serial No.'A' as opted by the writ petitioner. Thus, the writ petitioner was not awarded with any marks. In respect of Question No.94, the writ petitioner opted Serial No.'D' as a right answer. However, as per the Experts Committee Report, the right answer is Serial No.'B'. Thus, the two questions, now raised by the writ petitioner, were verified with reference to the Report submitted by the Experts Committee and accordingly, the case of the writ petitioner was rejected for grant of additional marks.

6. This Court is of an opinion that the High Courts cannot evaluate the answer sheets and the key answers. Courts are not Experts in respect of all the subjects. The Judges cannot assess the nature of the questions and the key answers with reference to the Text Books, unless there is a glaring mistake or mistake apparent on the face of the record. In all other circumstances, the opinion of the Experts Committee should be relied upon unless it is questioned on the ground of some malpractice or corrupt activities.

7. The Hon'ble Supreme Court of India in the case of U.P. Public Service Commission v. Rahul Singh [(2018) 7 SCC 254], held that interference with the key answers provided by the Experts Committee is not preferable. The need for Judicial Restraint in such areas are certainly to be followed.

8. What is the extent and the power of the Court to interfere in the matters of academic nature and the subject matter of two number of cases and those cases are extracted hereunder:-

"9. In Kanpur University v. Samir Gupta [Kanpur University v. Samir Gupta, (1983) 4 SCC 309] , this Court was dealing with a case relating to the Combined Pre-Medical Test. Admittedly, the examination setter himself had provided the key answers and there were no committees to moderate or verify the correctness of the key answers provided by the examiner. This Court upheld the view of the Allahabad High Court that the students had proved that three of the key answers were wrong. The following observations of the Court are pertinent:

"16. ... We agree that the key answer should 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."

The Court gave further directions but we are concerned mainly with one that the State Government should devise a system for moderating the key answers furnished by the paper setters."

10. In Ran Vijay Singh v. State of U.P. [Ran Vijay Singh v. State of U.P., (2018) 2 SCC 357 : (2018) 1 SCC (L&S) 297] , this Court after referring to a catena of judicial pronouncements summarised the legal position in the following terms: (SCC pp. 368-69, para 30)

"30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are:

30.1. If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it;

30.2. If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any "inferential process of reasoning or by a process of rationalisation" and only in rare or exceptional cases that a material error has been committed;

30.3. The court should not at all re-evaluate or scrutinise the answer sheets of a candidate—it has no expertise in the matter and academic matters are best left to academics;

30.4. The court should presume the correctness of the key answers and proceed on that assumption; and

30.5. In the event of a doubt, the benefit should go to the examination authority rather than to the candidate."

9. In Paragraph 11 of the abovesaid judgment, the Supreme Court held that the Constitutional Courts must exercise restraint in such matters and the same is extracted hereunder:-

"11. We may also refer to the following observations in paras 31 and 32 which show why the constitutional courts must exercise restraint in such matters: (Ran Vijay Singh case [Ran Vijay Singh v. State of U.P., (2018) 2 SCC 357 : (2018) 1 SCC (L&S) 297] , SCC p. 369)

"31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer.

All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse – exclude the suspect or offending question.

32. It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a classic example of the consequence of such interference where there is no finality to the result of the examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination—whether they have passed or not; whether their result will be approved or disapproved by the court; whether they will get admission in a college or university or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion being worse confounded. The overall and larger impact of all this is that public interest suffers."

10. The Supreme Court in unequivocal terms held that the High Courts cannot interfere in academic matters in a routine manner. The Court is not an Expert Body in all the subjects and more specifically, in respect of evaluation of the answer sheets with reference to the key answers. Thus, the Experts opinion and the Report is to be relied on for the purpose of award of marks, if any, doubts are raised in respect of evaluation by the candidates, who had participated in the written examination.

11. In the present case on hand, the writ petitioner ask for revaluation of two questions i.e., Question Nos.89 and 94. As stated above, the writ petitioner has opted the wrong answers and the right answers are also stated based on the Expert Committee Report. This being the factum of the case, the writ petitioner has not made out any valid ground for the purpose of considering the relief, as such, sought for in the present writ petition.

12. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Svn
To

The Member Secretary,
Teachers Recruitment Board,
EVK Sampath Maaligai 4th Floor,
DPI Compound,
College Road,
Chennai-600 006.

+ 1 cc to Mr. N. Manokaran, Advocate SR.76177
+ 1 cc to Government Pleader Sr.76744

WP No.23362 of 2017

KJ(CO)
EU(06/12/2018)