

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 4993 of 2019

1. Vikram Singh Rana S/o R.K.S. Rana Aged About 28 Years R/o H. No. 62, New Police Line Bilaspur, Chhattisgarh.
2. Ravi Kumar Patel S/o Ganesh Ram Patel Aged About 26 Years R/o H. No.- 116/1, Patrapali (West), Transport Nagar, Raigarh, Chhattisgarh.
3. Vikas Kumar Chandrakar S/o Nehrual Chandrakar Aged About 26 Years R/o H. No. Mig A/3, Sahyog Park, Mahavir Nagar, Raipur, Chhattisgarh.
4. Girish Kumar Chandravanshi S/o Ramsharan Chandrawanshi Aged About 25 Years R/o D-3, Daulat Estate, Dr. Hutendra Chaubey Marg, Dangania, Raipur, Chhattisgarh.
5. Roshan Singh S/o Shankar Lal Aged About 28 Years R/o Dinesh Stores, Bajar Chowk, Tifra, Bilaspur, Chhattisgarh.

---- Petitioners

Versus

1. Chhattisgarh Professional Examination Board Through Its Controller, Vyapam Bhawan North Block, Sector 19, Naya Raipur, Chhattisgarh.
2. State Of Chhattisgarh Through Its Secretary Department Of Urban Administration And Development, Indravati Bhawan, Naya Raipur, Chhattisgarh.
3. Chhattisgarh State Agriculture Marketing Board Through Its Managing Director, Beej Bhawan, Naya Raipur, Chhattisgarh.
4. Director Of Town And Country Planning Through Its Secretary, Indravati Bhawan, Naya Raipur, Chhattisgarh.
5. Office Of Chief Technical Examiner (Vigilance) Through Its Chief Technical Examiner, Indravati Bhawan, Naya Raipur, Chhattisgarh
6. Raipur Development Authority Through Its Chief Executive Officer, Matabhakt Karma Parisar New Rajendra Nagar, Raipur, Chhattisgarh.
7. New Raipur Development Authority Through Its Chief Executive Officer, Naya Raipur, Chhattisgarh.

---Respondents

For Petitioners	:	Mr. Ali Asgar, Advocate
For State	:	Mr. Jitendra Pali, Dy. A.G.
For respective Respondents	:	Mr. Saurabh Pandey, Advocate
		Mr. Praveen Das, Advocate
		Mr. Kashif Shakeel, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

09/07/2019

1. The present petition has been filed seeking for a direction to the respondent No.1 to re-examine the questions and answers, which have been attempted by the petitioners or in the alternative get the model answer re-examined and prepare the final answer and the merit list be published again for the examination conducted by the respondent No.1 in respect of appointment to the posts of Sub-Engineers in the respondents No.2 to 7 Departments of the State Government.
2. The facts in brief is that the State Government published an advertisement for appointment of Sub-Engineers in the six Departments i.e. the respondents No.2 to 7 on 27.07.2018. All the petitioners herein had participated in examination. The total number of questions put in the examination were 150 questions, each questions carrying one marks each. There were also the system of negative marking for the incorrect answers. After the examinations were conducted, the respondents published a model answer inviting objections against the model answer if any from the participants. The petitioners filed their objections in respect of 7 specific questions i.e. the questions No. 79, 83, 95, 104, 127, 128 & 137 in set "C".
3. So far as the objections raised by the petitioners in respect of the 7 questions, the respondent No.1 acceded the objections so far as questions No. 79, 83, 127, 128 & 137 and held that the answers submitted by the petitioners were correct. So far as the questions No. 95 & 104 are concerned, the respondents have rejected the objections of the petitioners holding that there is no change required to the answer as published in the model answer. Subsequently, a final answer list was published and based on that the merit list has been prepared and the petitioners have been ranked at serial Nos. 108, 93, 206, 438 & 143 respectively. While publishing

the final answer, the respondent No.1 also had deleted the 18 questions and have granted pro-rata marks to each of the candidates, who had participated in the examination.

4. The contention of the petitioners at this juncture is that of the 18 answers also, there are 4 questions i.e. questions No. 26, 55, 74 & 85 in set "C", where the deletion has been wrongly made. The answers given in the model answer were correct and the answers attempted by the petitioners also is correct and this has adversely affected the overall ranking of the petitioners and have thus prayed for an appropriate direction to the respondents for re-examination of the answer sheet.

According to the petitioners the Professional Examination Board has wrongfully deleted many of the questions inspite of the answers given in the Model Answer to be correct. As per the petitioner inspite of the objections raised and materials supplied in support of the objections raised by the petitioners, the respondent No.1 has not cared to get it properly evaluated/assessed and reach to a proper conclusion and have in a mechanical manner decided the objections so raised. The petitioners have through this writ petition prayed for re-examination of the deleted questions from subject Experts in respect of the questions and also in respect of the questions to which the petitioners had raised an objection, which stood rejected and thereafter reach to a proper conclusion and a fresh merit list be prepared accordingly.

5. The counsel appearing for the respondent No.1 has filed a reply to the interim application filed by the petitioners submitting that the Department has fairly conducted the examination and have called upon the objections from each of the participants and thereafter the entire objections were

scrutinized and based on the finding of the Expert Committee, the final list has been prepared and thus there is no scope of interference left for this Court at this juncture.

6. The counsel for the respondent No.1 also took an objection that the ranking of the petitioners being so low, even if the petitioners are awarded marks against each of the questions, to which they have raised an objection, their ranking as such would not substantially improved and therefore the writ petition needs not to be entertained at this juncture.
7. During the course of the arguments, one of the objections which the petitioners had raised is that so far as the question No.95 is concerned, the answer given by the respondent No.1 in two of the examinations recently conducted are two different answers and as such the respondent No.1 itself is not very sure as to the correct answer of the said question and the petitioners have not got proper mark in the said question. Likewise, it was further the contention of the petitioners that so far as the objection that they had raised in respect of the question No.104 was also based upon the answers, which have been given in the text book and yet the respondent No.1 has not properly appreciated the answer and the source provided by the petitioners.
8. It is also pointed out during the course of the arguments that the question No.36 in set "C" is concerned, the answer given in the model answer sheet has been changed by the respondents at the behest of an objection raised by some other candidates, thereby the petitioners had been adversely affected in the process.

9. All said and done, it would be relevant at this juncture to take into consideration the recent views of the Hon'ble Supreme Court so far as the conducting of the examination and revaluation of the same is concerned.
10. This Court in the case of **“Sanjay Tiwari & Others v. State of Chhattisgarh & Others”** in WPS No. 3202/2009 and again in the case of **“Prem Prakash Sinha & Others v. State of Chhattisgarh & Others”** in WPS No. 2663/2012 took a view that taking into consideration the objections and the manner in which the respondents had dealt with the objections on the Model Answer thought it fit of sending the matter back to a team of Experts in respect of the subject questions to get their opinion and the answers provided in the Model Answer and thereafter to rearrange the results accordingly.
11. It would be more relevant at this juncture to take note of the decision of the Hon'ble Supreme Court in the case of **“Subash Chandra Verma and others v. State of Bihar and others” 1995 Supp (1) SCC 325**, wherein in paragraph No. 25(3) it has been held as under:

“25(3) Several controversial questions were set and in relation to some questions, there could be more than one answer: In an objective type of test, more than one answer are given. The candidates are required to tick mark the answer which is the most appropriate out of the plurality of answers. The questions and answers were prescribed by the experts in the field with reference to standard books. Therefore, it is incorrect to say that a question will have more than one correct answer. Even if the answers could be more than one, the candidates will have to select the one which is more correct out of the alternative answers. In any event, this is a difficulty felt by all the candidates.”
12. A similar view has also been taken in the past by the Hon'ble Supreme Court in the case of **“Kanpur University, Through Vice-Chancellor and others v. Samir Gupta and others” (1983) 4 SCC 309**, wherein in paragraph No.17, it has been held as under:

“17. Students who have passed their Intermediate Board Examination are eligible to appear for the entrance Test for admission to the Medical Colleges in U.P. Certain books are prescribed for the Intermediate Board Examination and such knowledge of the subjects as the students have is derived from what is contained in those text-books. Those text-books support the case of the students fully. If this were a case of doubt, we would have unquestionably preferred the key answer. But if the matter is beyond the realm of doubt, it would be unfair to penalise the students for not giving an answer which accords with the key answer, that is to say, with an answer which is demonstrated to be wrong.”

13. Further, the Hon'ble Supreme Court in the case of **“Rajesh Kumar and others v. State of Bihar and others”**, (2013) 4 SCC 690, in paragraph No.15, it has been held as under:

“15. xxxxxxxxxx If the key which was used for evaluating the answer sheets was itself defective the result prepared on the basis of the same could be no different. The Division Bench of the High Court was, therefore, perfectly justified in holding that the result of the examination in so far as the same pertained to 'A' series question paper was vitiated. This was bound to affect the result of the entire examination qua every candidate whether or not he was a party to the proceedings. It also goes without saying that if the result was vitiated by the application of a wrong key, any appointment made on the basis thereof would also be rendered unsustainable. The High Court was, in that view, entitled to mould the relief prayed for in the writ petition and issue directions considered necessary not only to maintain the purity of the selection process but also to ensure that no candidate earned an undeserved advantage over others by application of an erroneous key.”

14. More recently, the Hon'ble Supreme Court again in the case of **“Richal & others etc. etc. v. Rajasthan Public Service Commission & others etc. etc.”** in Civil Appeal Nos. 4695-4699 of 2018, decided on 3rd May, 2018, in paragraph No.23 has held as under:

“23. In the affidavit filed by the Commission it is mentioned that the result has been revised of only 311 appellants who are before this Court. We are of the view that key answers having been corrected, merit of all the candidates except those who have already been selected needs to be redetermined. In our order dated 16.01.2018 it is mentioned that this exercise shall not affect those who have already been selected.

We, thus, are of the view that the Commission should revise the entire result of all the candidates except those who have been selected on the basis of the report of Expert Committee and publish revise result of all the candidates. When the key answers are correct of the candidates who appeared in the examination, they are entitled for revision of their result, since, fault does not lie with the candidates but lies with the examination body. It shall not be equitable to not extend the benefit to those candidates who have not come to the Court being satisfied with the steps taken by the Commission and its earlier Expert Committee which was given the task of revising the key answers.”

15. In the light of the aforesaid legal position this Court is of the opinion that ends of justice would meet if the writ petition is disposed of with a direction to the respondents to re-examine the objections which the petitioners have raised so far as the questions No. 95 & 104 in set “C” are concerned and also the questions No. 26, 36, 55, 74 & 85 in set “C” are concerned and the whole issue can be resolved. It would also be relevant that since the respondent No.1 have deleted 18 questions and since the respondents would be re-examining a few of the questions, it would be more proper if the respondent No.1 re-examine all the 18 questions deleted again so as to avoid further complications, if any.
16. It would be in the larger interest of the candidates if these questions i.e. 18 deleted questions and the 3 questions pointed out by the petitioners i.e. the questions No. 36, 104 & 95 are examined by the Experts in the field of the question concerned and an appropriate decision is arrived at by the Expert Committee and the respondent No.1 thereafter based on the findings of the said Expert Committee shall publish a fresh merit list.
17. The Committee so constituted shall evaluate the questions, the Model Answer and the final answer published by the respondent No.1 and reach to a conclusion as to which among the two is correct or both the answers are

incorrect. The petitioners, if they want to submit any additional submission in respect of the aforementioned disputed questions, they may do so within a period of 10 days from the date of receipt of the copy of this order. It is expected that the respondents shall also put before the Expert Committee any another objections raised by any other candidate in respect of their objections, which have been rejected after the Model Answers were published so that the grievance of those candidates can also be scrutinized by the Expert Committee and this is also with an intention to avoid multiplicity of litigation.

18. Needless to mention that the re-examination would be conducted by a fresh team of Experts without being influenced in any manner by any previous assessment made by any Expert in the past. It is expected that the respondent No.1 would constitute the Committee at the earliest and get the revised merit list published without any further delay. Meanwhile, as a precautionary measure, the respondents No.1 & 2 are expected not to proceed further with the merit list that has been published by the respondent No.1.
19. With the aforesaid observations, the present writ petition stands disposed off.

Sd/-
(P. Sam Koshy)
Judge

Ved