

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.24582 of 2018 (O&M)
Date of decision: May 28, 2019

Vinay Bansal and others

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Gurminder Singh, Senior Advocate with
Mr. J.S. Gill, Advocate for the petitioners in CWP No.24582.

Ms. Jasmine, Advocate for
Mohd. Yousaf, Advocate for the petitioners in CWP No.25084.

Ms. Anu Chatrath, Addl. A.G. Punjab with
Ms. Jasleen Kaur Sandhu, Secretary, Punjab Public Service
Commission.

Rajan Gupta, J.(oral)

This order shall dispose of two writ petitions i.e. CWP Nos.24582 and 25084 of 2018, as common questions of law arise in both these cases.

Petitioners have approached this court praying for a writ in the nature of certiorari, seeking quashing of the result of the preliminary examination of Punjab Civil Service, on the ground that revised answer-key dated 6.9.2018 has been prepared without properly appreciating the objections raised by the petitioners. It is contended *inter alia* that questions No.22, 33 and 61 of Paper-I (General Studies) and questions No.45 and 53 of CSAT of the preliminary exams require reconsideration, as uploaded

answer-keys are not correct.

In response, the Commission has filed two separate affidavits dated 3.10.2018 and 17.11.2018. Learned State counsel submits that the answer-key was uploaded on the website of the Commission and objections were invited. Candidates were advised to deliberate over the issue in four days and attach material in support of their objections. After considering the objections, revised answer-key was uploaded. The Commission maintains that no fault can be found with the answer-key.

The matter has been heard at length. At the outset, it needs to be pointed out that out of the petitioners, who approached this court in various writ petitions, only three have been able to clear the main examinations. Petitions qua rest of them were dismissed as infructuous. As the interview process is now in progress, rights of all the three petitioners need to be determined at the earliest. Petitioners have referred to the material annexed as Annexures P-12 to P-15 in support of their contention that revised answer-key is erroneous and their objections have not been considered in the correct perspective. Mr. Gurminder Singh has vehemently argued that even if objection pertaining to one question is not dealt with properly, it would result in ouster of such objecting candidates and would mar their chances to be considered in the selection process. Referring to answers to various questions as per the chart prepared by the petitioners, he submits that it is evident that the answer-key is erroneous.

Learned State counsel, however, submits that the objections were referred to a Body of Experts, who are prominent academicians, most of them having doctorate in their subjects. As per the procedure, opinion of

the experts was adhered to. As a matter of abundant caution, if the two experts disagreed, the question itself is withdrawn. A sub committee was constituted which considered the opinion of experts and thereafter, decision was taken. Effort of the Commission is to treat all candidates on equal footings. According to her, this procedure has been followed in letter and spirit, as would be evident from records produced today. The Secretary of the Punjab Public Service Commission has produced in a sealed cover particulars of the experts, to whom the objections were referred. Same has been perused by the court. There can be no doubt that all the experts are from reputed Institutions and occupy senior positions in their respective subjects. In another sealed cover, the opinion of the expert has been produced. A perusal thereof shows that question No.53 related to interpretation of a symbol. Detailed reasoning has been given by the experts in coming to the conclusion that answer to that question would be “B”. It is further clear that questions Nos.52 and 54 are based on the same set of information. Reasons have been given for arriving at the conclusion, the experts have. As regards question No.45, again the experts have analyzed the same and are unanimous as regards answer to the same. However, finding typographical error in the question, same has been withdrawn. Another question No.71, which relates to statistics, all the experts agreed that the answer to the question would be “D”. Same was uploaded in the revised answer-key. Question No.22, which pertains to geography, the experts came to the conclusion that the answer to the question would be “D”. Detailed reasons have been given in their final analysis report. It appears the experts have arrived at a correct conclusion.

As regards question No.33, the experts were again of the unanimous opinion that answer to this question would be “D”. The source, from which the information has been gathered, is disclosed in the report. In question No.61, however, there was one of the experts, who disagreed and he gave certain reasons for the same. The question was, thus, promptly withdrawn by the Commission. Another question, which appears in the report, is question No.28. As all the experts agreed that the answer would be “C”. Same was incorporated in the revised answer-key.

On due consideration of the matter, this court is satisfied that no fault can be found with the process adopted by the Commission. The list of panel experts as well as the opinion rendered by them, cannot be disclosed to the candidates, as it may create an anomalous situation for the Commission and lead to further litigation. It was proposed to reveal some of the reasons given by the experts to the petitioners. However, this prayer was vehemently opposed by the Secretary of the Commission on the ground that it would be difficult for the Commission to conduct examinations, if expert's opinion is disclosed as it would become a precedent. This court, thus, feels that photo copies of list of panel of experts as well as their opinion need to be kept on record in sealed cover.

Before parting with the order, it is necessary to take note of the submission made by the State counsel that none of the three petitioners, whose cases are subject matter of considerations filed any objections with the Commission. For the first time, objections have been filed alongwith the instant writ petition. In such eventuality, their very right to question the revised answer-key is bizarre. Had they submitted their objections to the

answer-key, they may have acquired a right to impugn the revised answer-key. Having not done so, the pleas raised in these petitions as an afterthought, are unacceptable. On a query being put to Mr. Gurminder Singh, learned senior counsel regarding this, he submits that the petitioners did not file objections out of fear that same may be rejected on the basis of opinion of experts which may lead to negative marking. This court finds this ground wholly absurd. During the course of hearing, counsel for the petitioners places reliance on judgment in *Kanpur University, through Vice Chancellor vs. Samir Gupta, (1983) 4 SCC 309*, to contend that once the answer keys are uploaded, same can be questioned in writ jurisdiction. State counsel submits that said judgment was considered in subsequent judgments i.e. *Ran Vijay Singh & Ors. Vs. State of U.P. & Ors., 2018 (2) SCC 357*. Paras 32, 33 and 38 thereof read as under:-

“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.

33. The facts of the case before us indicate that in the first instance the learned Single Judge took it upon himself to actually ascertain the correctness of the key answers to seven questions. This was completely beyond his jurisdiction and as decided by this Court on several occasions, the exercise carried out was impermissible. Fortunately, the Division Bench did not repeat the error but in a sense, endorsed the view of the learned Single Judge, by not considering the decisions of this Court but sending four key answers for consideration by a one-man Expert Committee.

38. Before concluding, we must express our deep anguish with the turn of events whereby the learned Single Judge entertained a batch of writ petitions, out of which these appeals have arisen, even though several similar writ petitions had earlier been dismissed by other learned Single Judge(s). Respect for the view taken by a coordinate Bench is an essential element of judicial discipline. A judge might have a difference of opinion with another judge, but that does not give him or her any right to ignore the contrary view. In the event of a difference of opinion, the procedure sanctified by time must be adhered to so that there is demonstrated respect for the rule of law.”

Similar view has been expressed by the apex court in judgment reported as *U.P.P.S.C., Through its Chairman & Anr. Vs. Rahul Singh & Anr., 2018 (3) S.C.T. 298*. Paras 12, 13, 14 & 16 thereof read as under:-

“12. The law is well settled that the onus is on the candidate to not only demonstrate that the key answer is incorrect but also that it is a glaring mistake which is totally apparent and no inferential process or reasoning is required to show that the key answer is wrong. The Constitutional Courts must exercise great restraint in such matters and should be reluctant to entertain a plea challenging the correctness of the key answers. In Kanpur University case (supra), the Court recommended a system of - (1) moderation; (2) avoiding ambiguity in the questions; (3) prompt decisions be taken to exclude suspected questions and no marks be assigned to such questions.

13. As far as the present case is concerned even before publishing the first list of key answers the Commission had got the key answers moderated by two expert committees. Thereafter, objections were invited and a 26 member committee was constituted to verify the objections and after this exercise the Committee recommended that 5 questions be deleted and in 2 questions, key answers be changed. It can be presumed that these committees consisted of experts in various subjects for which the examinees were tested. Judges cannot take on the role of experts in academic matters. Unless, the candidate demonstrates that the key answers are patently wrong on the face of it, the courts cannot enter into the academic field, weigh the pros and cons of the arguments given by both sides and then come to the conclusion as to which of the answer is better or more correct.

14. In the present case we find that all the 3 questions needed a long process of reasoning and the High Court itself has noticed that the stand of the Commission is also supported by certain text books. When there are conflicting views, then the court must bow down to the opinion of the experts. Judges are not and cannot be experts in all fields and, therefore, they must exercise great restraint and should not overstep their jurisdiction to upset the opinion of the experts.

16. In view of the above discussion we allow the appeal filed by the U.P. Public Service Commission and set aside the judgment of the Allahabad High Court. The appeals filed by Rahul Singh and Jay

Bux Singh and Others are dismissed. All pending applications stand disposed of.”

The relevant files containing list of objectors and the manner in which their objections were dealt with have been produced. Names of the petitioners do not figure in the list of objectors. Despite the fact that petitioners did not file objections to the answer-key, this court has considered all their pleas in light of the opinion of experts. However, it has found no substance in their grouse.

In view of above and judgments in *Ran Vijay Singh's case and UPPSC's case (supra)*, the writ petitions need to be dismissed being devoid of merit. Ordered accordingly.

(RAJAN GUPTA)
JUDGE

May 28, 2019
'Rajpal'

Whether speaking / reasoned

Yes / No

Whether Reportable:

Yes / No