

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

**C.W.P 4608 of 2018
Date of decision : 08.01.2019**

Munni DeviPetitioner
versus

State of Haryana and others ...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.K. Nehra, Advocate
for the petitioner.

Mr. Hitesh Pandit, Addl.A.G Haryana

Mr. H.N. Mehtani, Advocate
for the Commission.

Mr. Sanjay Kaushal, Sr. Advocate with Mr. Amit, Advocate
for respondent Nos. 4 to 6.

RITU BAHRI, J. (Oral)

Petitioner is seeking quashing of final result dated 15.01.2018 (P-6) declared by the Haryana Public Service Commission for the post of Assistant Professor (Chemistry), as two questions have been deleted wrongly in the revised answer key (P-5).

It is not in dispute that the similar question has already been dealt by this Court in CWP-26877 & 27509-2017, which were dismissed. The order dated 06.12.2017 reads as under:-

CWP-26877 & 27509-2017 involving common questions of law and facts. Challenge raised in the present writ petitions was that the petitioners, who are applicants for the post of Assistant Professor (College Cadre) in Chemistry, had filed objections against the incorrect questions, immediately after the result had been declared. It was their contention that the respondent-Commission has

not acted upon their objections.

Affidavit of the Deputy Secretary of the Commission has been filed today in CWP-26877-2017 and the same is adopted by Mr.Mehtani in CWP-27509-2017. It has been averred in the affidavit that on receipt of 269 representations received by the candidates including the petitioners, the matter had been referred to the Expert Committee to give its opinion on all the questions for fair conduct of examination. 9 questions, accordingly, were found incorrect by the Expert Committee, in question booklet Series-A, bearing Nos.12, 40, 55, 62, 65, 67, 74, 81, 95 and similarly, the same questions bearing different numbers in other booklets were also deleted.

Accordingly, once the objections raised in the answer keys have been duly acted upon by the subject experts, which was the sole grievance of the petitioners, this Court is of the opinion that nothing survives in the present writ petitions, as the respondent-Commission has duly acted upon the candidates' grouse, which has, accordingly, been duly ventilated.

In view of the above, the present writ petitions are hereby, dismissed.

It has further been informed that LPA No. 30/2018 in CWP No. 27509-2017 filed against the above order/judgment dated 06.12.2017 also stands dismissed on 11.01.2018 and LPA No. 65/2018 filed against order/judgment dated 06.12.2017 in CWP No. 26877-2017 also stands dismissed on 14.03.2018

In the present case, learned counsel for the petitioner has argued that Experts Committee had given this information with regard to 09 questions and they are deleted. The result of written examination was declared on 07.11.2017 (P-4/A) and thereafter, the revised answer key was uploaded on 01.01.2018 (P-5) and the final result was declared on 15.01.2018. In response to the result dated 07.11.2017 (P-4/A), the petitioner had given objection with regard to two questions i.e 37 and 62. Learned counsel submits that the petitioner had given

right answers to question no. 37 and 62 but these questions have been deleted.

On 11.12.2018, this Court passed the following order:-

The short question for consideration in the present writ petition is that (i) the written examination was conducted on 09.07.2017 for the post of Assistant Professor Chemistry and the answer key was uploaded vide Annexure P-3. Objections were filed by the petitioner in four questions on 15.7.2017. Thereafter, the final result was declared on 07.11.2017 (Annexure P-4/A) the revised answer key was uploaded on 01.01.2018 Annexure P-5 and the final result was declared on 15.01.2018 (Annexure P-6).

The grievance of the petitioner is that in response to the answer key he had given her objections with regard to two questions i.e. Question No.37 and Question No. 62. In the revised answer key these two questions were deleted and, thereafter, no candidate has been given marks for the questions deleted and the revised answer key has been uploaded and merit list has been prepared according to the revised answer key on the basis of percentile.

The main question is whether two questions which have been deleted what benefit the petitioner would get from these questions which have been deleted even if their answers in the answer key are correct.

Learned counsel for respondent No.3 has produced the report prepared by the experts/members who were to examine the issues pointed out by the candidates with regard to the correct questions/answers (MCQ's) of Chemistry paper of the HPSC. The Commission has given the opinion that Questions No. 12 40, 55, 62, 65, 67, 74 , 81 and 95 in booklet series A be deleted as their answers in the answer key are wrong and with respect to two questions is not appropriate and with respect to question No.95 answer A was correct but was not most appropriate.

The result be sent back in two sealed covers.

Adjourned to 08.01.2019. ”

Learned counsel for the petitioner has relied upon judgment of

Hon'ble the Supreme Court of India in a case of **Kanpur University vs. Samir**

Gupta and others, 1983 AIR SC 1230 wherein there was error in key answer of question paper and students answered correctly. It has been held that the students cannot be failed and were entitled to admission after revaluation of answer sheets. This judgment has further been followed by this Court in a case of ***Jitender Kumar and another vs. HPSC, 2012 (4) SCT 283*** and even LPA filed against the said judgment stands dismissed.

On the other hand, learned counsel for the respondent has referred to judgment of Hon'ble the Supreme Court of India in a case of ***Ran Vijay Singh vs. State of U.P and others, 2018 (1) SCT 334*** wherein Hon'ble the Supreme Court has considered Samir Gupta's case (supra) as well. In para 31 to 33, it has been observed as under:-

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.

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

Heard learned counsel for the parties at length

Reference at this stage can be made to the judgment of Hon'ble the Supreme Court in a case of ***U.P.P.S.C, through its Chairman and another vs. Rahul Singh and another, 2018 (3) SCT 298*** wherein it has been held that where 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. Hon'ble the Supreme Court while referring the Kanpur University case (supra), in para 12 has observed 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.

The ratio of the above judgment is directly applicable to the facts of the present case, where the Commission after inviting the objections has deleted 09 questions and now the Court cannot interfere with the decision of the Expert Committee.

Accordingly, the writ petition stands dismissed.

January 08, 2019
G Arora

(RITU BAHRI)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>