

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on : 26.02.2020

Judgment Delivered on : 06.03.2020

Writ Appeal No. 108 of 2020

(Arising out of order dated 09.07.2019 passed by the learned Single Judge in WPS No. 4993 of 2019)

- Chhattisgarh Professional Examination Board Through Its Controller VYAPAM Bhawan, North Block, Sector 19, Naya Raipur Chhattisgarh - 492002

---- Petitioner

Versus

1. Vikram Singh Rana S/o R.K.S. Rana Aged About 28 Years R/o H. No. 62, New Police Line, Bilaspur Chhattisgarh - 495001
2. Ravi Kumar Patel S/o Ganesh Ram Patel Aged About 26 Years R/o H. N. - 116/1, Patrapali (West), Transport Nagar Raigarh Chhattisgarh. 496001
3. Vikas Kumar Chandrakar S/o Nehrual Chandrakar Aged About 26 Years R/o H. No. M I G A/3, Sahyog Park, Mahavir Nagar Raipur Chhattisgarh - 492001
4. Girish Kumar Chandravanshi S/o Ramsharan Chandravanshi Aged About 25 Years R/o D-3, Daulat Estate, Dr. Hutendra Chaubey Marg, Dangania Raipur Chhattisgarh - 492001
5. Roshan Singh S/o Shankar Lal Aged About 28 Years R/o Dinesh Stores, Bajar Chowk, Tifra Bilaspur Chhattisgarh - 495001
6. State of Chhattisgarh Through Its Secretary Department Of Urban Administration And Development, Indravati Bhawan Naya Raipur Chhattisgarh. 492002
7. Chhattisgarh State Agriculture Marketing Board Through its Managing Director Beej Bhawan Naya Raipur Chhattisgarh. 492002
8. Director of Town And Country Planning Through its Secretary Indravati Bhawan Naya Raipur Chhattisgarh. 492002
9. Office of Chief Technical Examiner (Vigilance) Through its Chief Technical Examiner Indravati Bhawan Naya Raipur Chhattisgarh - 492002

10. Raipur Development Authority Through its Chief Executive Officer Matabhakt Karma Parisar, New Rajendra Nagar - Raipur Chhattisgarh. 492001
11. New Raipur Development Authority Through its Chief Executive Officer Naya Raipur Chhattisgarh - 492002

---- Respondents

For Appellant	: Dr. Saurabh Kumar Pande, Standing Counsel
For Respondents No.1 & 2	: Mr. Ali Asgar, Advocate
For Respondent No.6/State	: Mr. Chandresh Shrivastava, Dy. AG
For Respondent No.7	: Mr. Raghvendra Pradhan, Advocate
For Respondent No.10	: Mr. Kashif Shakeel, Advocate
For Respondent No.11	: Mr. Praveen Das, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

CAV JUDGMENT

Per P. R. Ramachandra Menon, Chief Justice

1. Finalization of the writ petition, granting the relief sought for by the writ petitioners, directing a fresh Expert Committee to be constituted and examine the objections raised in respect of the questions pointed out by the writ petitioners and other candidates; that too on the very 'first day of posting' of the case for admission, without getting a chance to file a proper reply (except the reply in respect of the interim relief sought for) and demonstrate the facts and figures is put to challenge. The appeal has been preferred by the Chhattisgarh Professional Examination Board (hereinafter referred to as 'Board'), who conducted the examination for selection of Sub Engineer (Civil) for the different Requisitioning Departments / Authorities arrayed as Respondents No.6 to 11 in the appeal (Respondents No.2 to 7 in the writ petition).

2. The appeal is stated as belated by 135 days, which was sought to be condoned by filing I.A. No.01 of 2020 and as per separate order passed by this Court on 26.02.2020, we have condoned the same after considering the return filed by the Respondents No.1 & 2 and also after hearing both the sides. Despite the completion of service of notice in the appeal, the Respondents No.3 to 5 (Petitioners No.3 to 5 in the writ petition) have not turned up. We heard the learned counsel for the parties on both the sides on the merit involved.
3. The Appellant – Board is stated as constituted by the Department of Higher Education, Technical Education, Manpower Planning, Science & Technology of the Government of Chhattisgarh vide Notification dated 30.07.2005 (published in the Official Gazette dated 19.08.2005) with the object and task for conducting examinations for identifying the suitable candidates in different fields. The various Requisitioning Departments / Authorities, who are arrayed as the Respondents herein, informed the requirement and vacancies for selection and appointment of Sub Engineers (Civil) to the Appellant–Board. Altogether 122 vacancies were thus reported and based on the said requirement, the Appellant-Board proceeded with further steps to conduct the common examination for selection of Sub Engineers (Civil) Joint Requirement Examination, 2018 (CSE–2018) and issued Annexure-P/1 Notification dated 27.07.2018, inviting applications from qualified candidates. The said Examination was originally scheduled to be conducted on 09.09.2018, but it was subsequently postponed to 16.09.2018. The question papers of the said examination (set in different types – including Type 'C' as borne by

Annexure-A/2 involved herein) carried a total of 150 questions (of one mark each), with multiple choice answers. The candidates were required to identify the most appropriate answer from the given multiple answers. Any wrong answer was to result in 'minus marks' and the candidates were informed accordingly. After conducting the examination, 'Model Answers' were published as per Annexure-A/3 on 12.11.2018, inviting objections, if any. The Petitioners in the writ petition raised objections in respect of '07' questions (Questions No. 79, 83, 95, 104, 127, 128 and 137). After considering the objections raised by all the candidates and based on the opinion of the Expert Committee appointed in this regard, the choice answers of the questions No. 79, 83, 127, 128 and 137 were changed by the Board; by virtue of which the grievance of the Petitioners was stated as redressed in respect of the said '05' questions. But, objections raised in respect of questions No. 95 and 104 were over-ruled and at the same time, the Board deleted as many as '18' questions, based on the objections raised by others, distributing the marks in respect of such questions to the remaining questions by adopting the formula prescribed in this regard. On finalizing the process as above, Annexure-A/4 final answers were published on 30.05.2019. The Petitioners in the writ petition felt aggrieved because of the deletion of the questions as above and also in respect of the non-consideration of the objections with reference to questions No. 95 and 104 in a proper manner. Based on Annexure-A/4 final answers, the results were declared by the Appellant-Board on 09.07.2019, which made the writ Petitioners to approach this Court by filing writ petition, seeking to issue a

writ of mandamus, directing 're-examination' or in the alternative, to appoint a High Level Technical Expert Committee for preparing the final answer-sheet.

4. The above writ petition filed on 02.07.2019, was listed for consideration / admission on 09.07.2019. Based on the advance copy served upon the standing counsel for the Board (who was the 1st Respondent in the writ petition), a reply was filed in response to the interim relief sought for, contending that the proceedings were pursued and finalized strictly as per the norms; that the objections were considered meticulously by the Expert Committee constituted by the Appellant – Board; that there was no merit or basis on the objections raised by the Petitioners; that the Petitioners were virtually placed far below in the merit list because of the lower ranks secured by them and further that the Petitioners had failed to demonstrate the genuineness of the objections; by virtue of which no interference was possible in view of the law declared by the Apex Court on the point; including as per decision in ***Kanpur University and Others v. Samir Gupta and Others***¹ and such other verdicts.
5. The learned Single Judge, after hearing the learned counsel on both the sides, passed the final verdict on 09.07.2019 itself, observing in paragraph 15, that the ends of justice would be met, if the writ petition was disposed of with a direction to the Respondents to re-examine the objections of the Petitioners and also with reference to all the 18 deleted questions, so as to avoid further complications, if any. In paragraph 17, the learned Single Judge observed that the writ petitioner could submit

¹ (AIR 1983 SC 1230)

additional submissions and also permitted any other candidate as well to raise objections; in turn directing to have them considered by the Expert Committee, which was stated as with an intention to avoid multiplicity of litigations. In paragraph 18, the learned Single Judge went further to hold that such a re-examination was to be conducted by a fresh team of Experts without being influenced by any previous assessment made by the Expert in the past. This was without arriving at a finding that the course pursued by the Expert Committee appointed by the Appellant – Board was wrong in any manner. The learned Single Judge interdicted all further steps with reference to the merit list and this is put to challenge in this appeal.

6. We heard Dr. Saurabh Pande, the learned standing counsel for the Appellant – Board, Mr. Ali Asgar, the learned counsel representing the Respondents No.1 & 2 (Petitioners No.1 & 2 in the writ petition), Mr. Chandresh Shrivastava, the learned Deputy Advocate General representing the State and Mr. Raghvendra Pradhan, Mr. Kashif Shakeel and Mr. Praveen Das, the learned counsel for the other Departments / Requisitioning Authorities.
7. The learned counsel for the Appellant – Board points out that the course pursued by the learned Single Judge in finalizing the writ petition on the date of admission itself, before getting any opportunity to file a detailed reply as to the merit involved (except the return filed with reference to the interim relief sought for) is not correct or proper. The interference made is without arriving at a finding that constitution of the Expert Committee or the inference drawn, leading to deletion of 18 questions was wrong in any

manner. It was also pointed out that the issues have been approached quite casually and no finding has been arrived at, that the Petitioners had demonstrated the genuineness of their grievance as per the law declared by the Supreme Court in ***Uttar Pradesh Public Service Commission and Another v. Rahul Singh and Another***². The learned counsel submitted that granting of liberty to the Petitioners to supplement the objections and the liberty given to any other candidates (who have not come up before this Court with any objection) also to submit objections from their side and the further direction to re-consider all the 18 deleted questions, though the writ Petitioners were having grievance only in respect of some questions is beyond comprehension, as it will amount to opening of Pandora's box and hence the challenge.

8. According to the learned counsel for the Respondent No.1 & 2 (the writ petitioners) the objections raised by them in respect of questions No. 95 and 104 have not been properly considered and that the opinion of the Expert Committee has to be re-considered in the light of some other textbooks sought to be relied on by the writ petitioners. Similarly, it is pointed out that there is no rhyme or reason for deleting the questions concerned, as according to the writ petitioners the said questions did not suffer from any obscurity and the choices given contained the right answers, which accordingly were opted and marked by them. Even though, it is stated that marks in respect of the deleted questions have been re-distributed to all the candidates, by virtue of the 'minus marks' provided, it may change the balance altogether. The learned counsel

² (2018) 7 SCC 254

further submits that the very same Appellant-Board, in respect of a different examination conducted for the PWD & Medical Services Corporation Examination, 2018 has given a different answer with reference to Question No. 95 and this clearly demonstrates that even the Appellant – Board was not having a consistent stand as to the answers; which hence requires re-examination as sought for in the writ petitions or to have a re-evaluation after constituting a High Level Technical Committee for preparing the final answer-sheet. The Respondent No.1 and 2 (writ petitioners No.1 & 2) have also sought to place reliance on the verdict passed by the Apex Court in ***Ran Vijay Singh and Others v. State of Uttar Pradesh and Others***³ (paragraph 1) {which decision has been referred to in ***Uttar Pradesh Public Service Commission's case*** (supra) cited from the part of the Appellant}.

9. The learned counsel appearing for the State and the other Requisitioning Authorities submitted that the said Respondents were only formal parties, being the recipient of the selected candidates, and hence their stand is virtually 'neutral'.
10. There is no dispute to the fact that the judgment was passed by the learned Single Judge on the very first date of posting for admission and no opportunity was obtained to the Appellant – Board (1st Respondent in the writ petition) to produce all the relevant materials including the Experts' opinion to demonstrate the facts and figures (which has been produced along with the appeal–Annexure-A/5). The learned Single Judge has also rightly noted in paragraph 5 that the reply filed by the

³ (2018) 2 SCC 357

Board (on getting advance copy) was only in respect of the I.A. filed by the writ petitioners for interim relief. Paragraphs 1 to 8 of the judgment refer to the nature of dispute raised. Paragraphs 9 to 14 refer to the various judicial precedents as to the conduct of examinations and re-valuation of the same. The analysis starts only from 'paragraph 15' and ends up in paragraph 19, which are reproduced below for convenience of reference :

“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.”

11. The first point to be considered is whether there is any discussion as to the merit involved and any finding has been rendered with reference to the genuineness of the objections raised by the writ petitioners. As mentioned already, the analysis in 'paragraph 15' begins with the inference drawn that 'justice would be met', if the writ petition is disposed of with a direction to the Respondents to re-examine the objections raised by the Petitioners as mentioned therein and that it would be more proper, if the 1st Respondent re-examined all the 18 deleted questions so as to avoid complications. It is with the presumption that no much prejudice would be caused to anybody, if such a course was ordered, virtually reflecting a 'problem solving approach'. However, no satisfaction is recorded as to the genuineness of the objections raised by the writ petitioners with reference to the questions, which was quite necessary, by virtue of the law declared by the Apex Court in ***Uttar Pradesh Public Service Commission's case*** (supra). Similarly, no finding is rendered in

the judgment to the effect that the opinion expressed by the Experts (after considering the objections, leading to finalization of the answer-sheets vide Annexure-A3) was wrong, arbitrary, illegal or unsustainable in any manner.

12. It is true that the learned Single Judge has not ventured into scrutiny of the questions on the technical subjects and has only ordered it to be re-examined by the Expert Committee. But, before ordering re-examination by the Expert Committee, it is necessary to consider and arrive at a finding whether the course pursued by the Appellant, based on the opinion of the Expert Committee, was wrong or unsustainable for some or other reason. This is more so, when the scrutiny has been ordered to be made by another Committee to be constituted by the Appellant-Board, which otherwise will affect the morale of the Expert Committee members, who had done the exercise already. That apart, the learned Single Judge has permitted the writ petitioners to supplement the objections and the scrutiny has been ordered to be made also considering the objections to be preferred by any other candidates as well. When no other candidate was having any objection at all, it was not proper or necessary for this Court to have directed consideration of such objections under any circumstance. The learned Single Judge has observed in paragraphs 15 and 17 of the judgment under challenge that, it is with an intention 'to avoid multiplicity of litigations and further complications', if any. But, once the said direction is given effect to, there is every chance for getting the matter protracted further, as any change in the position will give a chance to the other candidates, who have not raised any objection so far, to raise

their objections in respect of such changes and to approach this Court by filing writ petitions, thus opening Pandora's box.

13. With regard to the merit involved, the questions objected from the part of the writ petitioners and put to challenge in the writ petitions are Questions No. 26, 55, 74, 85, 95 and 104 of Type - 'C' Question Paper (Annexure-A/2). The Appellant-Board has produced the 'opinion of the Expert Committee' in respect of the disputed questions collectively as Annexure-A/5.

(i) In respect of the **Question No.26**, Annexure-A/3 Model Answers suggested option at 'B', whereas according to Annexure-A/5 Expert Committee, both the answers at 'B' and 'C' were correct and therefore, because of the plurality of the possible answers, the question was ordered to be deleted.

(ii) Regarding **Question No.55**, as per Annexure-A/3 Model Answers, as to the minimum area of Kitchen (with store), the suggested answer was option 'B', whereas as per the Experts opined that the said answer cannot be correct and since the correct option was not available, the question was recommended for cancellation. Even otherwise, a bare look at the question as to the minimum area of Kitchen (with store), it appears to be too vague, being not with reference to any context / rules.

(iii) In respect of **Question No.74**, Annexure-A/3 Model Answers suggested option at 'D', whereas according to the Expert Committee opinion given as per Annexure-A/5, option 'A' and 'C' would be correct

and hence the question was held as liable to be deleted for want of clarity/exclusivity in the answers/options.

(iv) With regard to **Question No.85**, the answer given at option 'A' is cited as correct in Annexure-A/3 Model Answers; whereas according to the Experts, it was an improperly constituted question and hence was to be deleted.

(v) Coming to **Question No.95**, the answer suggested as per Annexure-A/3 Model Answers was option 'C'. The objection of the writ petitioners was that in respect of examination conducted by the same Examination Board in PWD & Medical Services Corporation Examination, 2018, the very same question was repeated, but the correct option identified was 'D' i.e., 'All the above (A,B,C,)'. Since the question was answered differently in two different examinations, there was an apparent error in the question and hence sought to be deleted. The learned counsel for the Appellant-Board points out with reference to the materials produced, that the 'Question' in CSE-2018 (Question No.95) and PWD & Medical Services Corporation Examination, 2018 (Question No.99) is the same; but the answers given as the different options are not exactly similar and there is substantial difference between the answers at options 'B' and 'C' of the CSE-2018 from the answers given at options 'B' and 'C' in PWD & Medical Services Corporation Examination, 2018. We find considerable force in the said submission, in view of the glaring facts revealed from the materials on record.

(vi) In respect of **Question No. 104**, the correct answer suggested as per Annexure-A/3 Model Answers is at option 'C', whereas according to the writ petitioners, it should be 'D' (to the effect that all the options A,B,C, are correct). Just to understand the scope of the challenge, the said question and answers are extracted below :

“104. What are the modes of failure in case of columns ?

- (A) Buckling alone
- (B) Crushing alone
- (C) Both buckling and crushing
- (D) All of the above.

The options at 'A' and 'B' are in absolute terms, excluding one from the other. Experts opined that the correct answer was 'C' i.e., 'both buckling and crushing' and hence the Expert Committee has upheld the answer chosen and notified as per Annexure-A/3 Model Answers. There cannot be any grievance for the Petitioners in this regard.

14. The above questions and answers, as considered and opined by the Expert Committee, have been referred to by this Court only to point out that the Petitioners have miserably failed to demonstrate the genuineness of their objections before the writ Court, which was essential, in view of the ruling rendered by the Apex Court in ***Uttar Pradesh Public Service Commission*** (supra), before any relief was granted. There is absolutely no challenge as to the competence of the Expert Committee, constituted by the Appellant-Board or as to any instance of *mala fides*. This being the position, the idea of the writ petitioners with reference to the way in which it has been painted in some of the textbooks and sought to be relied on by them to suit to their stand

cannot be a ground to tilt the balance in respect of the opinion given by the Expert Committee, for the reasons as given in Annexure-A/5. The course of action pursued by the Appellant-Board is demonstrated as transparent in all respects. The questions were framed by the Experts and after completion of the Examination, the Model Answers were published as per Annexure-A/3, giving a chance to the candidates to submit the objections, if any. It was after considering all the objections, that the opinion was formed by the Expert Committee, leading to finalization of the answers as per Annexure-A/4 and the publication of merit list. This being the position, the 'decision making process' pursued by the Appellant-Board is quite in order and there is no scope for interference in this regard.

15. As mentioned already, though the writ petition was filed by 'five' candidates, who are arrayed in the appeal as Respondents No.1 to 5, even after completion of service of notice, only Respondents No.1 and 2 have turned up. The learned counsel for Respondents No.1 and 2 submits that the verdict passed by the learned Single Judge is in the best interest for all concerned and no harm will be caused to anybody by causing the disputed questions to be examined by a fresh Committee. This Court finds it difficult to accept the said proposition for the reasons (already stated); **firstly**, since the writ petitioners have failed in demonstrating the genuineness of their objections; **secondly**, since competence/authority of the Expert Committee is not questioned and in the absence of any finding as to any lapse in this regard, no further scrutiny; that too by constituting another Expert Committee can be

ordered and **thirdly**, since the writ petition was filed by only 'five' writ petitioners and their objections were only in respect of few specific questions, no direction can be given to conduct scrutiny of all the 18 deleted questions and also to consider other objections, if any, filed by any other candidates as well.

16. The grievance is only with regard to the deletion of 18 questions and nothing else. By virtue of the deletion of 18 questions, which were found as not correct or sustainable because of ambiguity or due to availability of more answers or having been framed wrongly without giving proper answer, the marks available in respect of such 18 questions (one mark each) have been re-distributed to the remaining 132 questions (out of total of 150) as per the formula stipulated in this regard. All the candidates, who participated in the Examination, are either 'beneficiary' or 'not a loser' in any manner and hence there cannot be any valid or sustainable grievance or cause of action for the writ petitioners. That apart, the writ petitioners cannot contend or insist that the question paper should carry a minimum of 150 questions always. No provision of law or precedent is brought to the notice of this Court that, if the multiple choice questions get reduced (from 150 to 132 in the instance case, with equitable distribution of marks to all the candidates in respect of remaining questions), it will vitiate the exercise. No legally sustainable cause of action has been substantiated by the writ petitioners and therefore, the interference made by the learned Single Judge, upsetting the selection process and widening the scope is not correct or sustainable, which requires to be interdicted.

17. In the above facts and circumstances, we set aside the verdict passed by the learned Single Judge and uphold the action pursued by the Appellant-Board. The appeal stands allowed and the writ petition stands dismissed. No cost(s).

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge