

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPC No. 1573 of 2020**

Bhumika Madaria D/o Dushyant Kumar Madaria Aged About 33 Years R/o 121/ K, Ward No. 02, Vivekanand Nagar (East), Baloda Bazar, District Baloda Bazar Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Higher Education Ministry At Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh.
2. Commissioner (Directorate Higher Education), Indrawati Bhawan, 2nd And 3rd Floor, Atal Nagar, District Raipur Chhattisgarh
3. Controller Chhattisgarh Professional Examination Board, Vyapam Bhavan, North Block, Sector- 19, New Raipur, District Raipur Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Jai Prakash Shukla, Advocate
For State	:	Mr. Siddharth Dubey, Dy. G.A.
For Respondent No.3	:	Dr. Saurabh Kumar Pandey, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****14/08/2020**

1. The grievance of the petitioner in the present writ petition seems to be non-granting of proper marks by the respondents in the Chhattisgarh State Eligibility Test, 2019 conducted by the respondents.
2. The State of Chhattisgarh for the Chhattisgarh State Eligibility Test (SET), 2019 had conducted an examination on 8th of September, 2019. The model answers were published by the respondents on 25.11.2019. The petitioner belonged to the OBC (Non-creamy layer) category. At the time when the model answers were published, the petitioner had raised an objection in respect of five questions in

paper-I and four questions of paper-II, which had declared the answers of the petitioner incorrect. Out of the objection so raised by the petitioner, the respondents had on scrutiny found that four of the answers of paper-I out of five to be correct and the petitioner was granted marks for those answers. Likewise, in paper-II, three answers were accepted to be correct out of four which were initially declared to be incorrect. Appropriate marks have been granted to the petitioner in this regard also and the position of the petitioner has improved by the same.

3. However, when the final answers were published, it has been found that the authorities have held that question No.2 of paper-I answered by the petitioner to be incorrect, likewise question Nos.53 and 85 of paper-II of the petitioner was found to be incorrect though as per the model answer, these were correct. It is this declaration of the three questions to be incorrect, that the petitioner seems to be more aggrieved of, in addition to his grievance so far as non-considering of one of the questions from paper-I and one of the questions of paper-II, to which he had objected at the first instance when the model answers were published.
4. On the previous date of hearing, this Court had asked the learned counsel for the Vyapam i.e. respondent No.3 to seek instructions in this matter. Today the learned counsel appearing for the respondent No.3 submits that he has by way of a covering memo dated 11.08.2020 filed certain informations and as per the information, according to the learned counsel for the respondent No.3 the petitioner was given set 'C' for paper-I and set 'A' for paper-II. After

the model answers were published on 25.11.2019, an expert committee was constituted to decide the objections, which were to be filed by each of the candidates on the publication of the model answers. The said committee consisted of experts in the field. The committee had thoroughly scrutinized the objections raised by each of the candidates including that of the petitioner and on scrutiny it has been found that four out of five objections in set 'C' of paper-I of the petitioner were accepted and his answers were treated to be correct. Likewise, three of the objections raised in respect of four questions of set 'A' of paper-II of the petitioner were also accepted and his answers were treated as correct and he has been granted appropriate marks for the same. Meanwhile, however one answer of the petitioner in set 'C' of paper-I and two answers of set 'A' of paper-II were declared incorrect in the light of the objections raised by many other candidates, which were scrutinized by the committee of the experts.

5. According to the counsel for the respondents, once when the entire objections have been scrutinized by the experts in the field, there is no scope of judicial review left for this Court at this juncture and in support of his contention he relied upon the judgment of the Hon'ble Supreme Court in the case of **“Uttar Pradesh Public Service Commission, through its Chairman and Another v. Rahul Singh and Another”** reported in **2018 (7) SCC 254**.
6. The counsel for the petitioner countered the judgment relied upon by the counsel for the respondents by referring to a judgment of the Hon'ble Supreme Court in the case of **“Richal and Others v. Rajasthan Public Service Commission and Others”** reported in

2018(8) SCC 81.

7. Careful reading of the aforesaid two judgments would make it evident that the stand taken by the Hon'ble Supreme Court in both the cases were almost similar as the principal and ratio of law laid down in both these judgments are almost same.
8. In the case of **“Rahul Singh”** (supra) the Hon'ble Supreme Court in paragraphs No. 9 to 12 has held as under:

“9. In *Kanpur University, through Vice Chancellor and Ors. v. Samir Gupta and Ors.* (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 3 of the key answers were wrong. 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 rationalization. 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 and Ors. v. State of Uttar Pradesh and Ors.* (2018) 2 SCC 357, this Court after referring to a catena of judicial pronouncements summarized the legal position in the following terms:

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.

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:

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.

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.

9. So also in the case of “**Richal**” (supra) referring to the very precedents, the Hon'ble Supreme Court in paragraph No.19 held as under:

“19. The key answers prepared by the paper-setter or the examining body is presumed to have been prepared after due deliberations. To err is human. There are various factors which may lead to framing of the incorrect key answers. The publication of key answers is a step to achieve transparency and to give an opportunity to candidates to assess the correctness of their answers. An opportunity to file objections against the key answers uploaded by examining body is a step to achieve fairness and perfection in the process. The objections to the key answers are to be examined by the experts and thereafter corrective measures, if any, should be taken by the examining body. In the present case we have noted that after considering the objections final key answers were published by the Commission thereafter several writ petitions were filed challenging the correctness of the key answers adopted by the Commission. The High Court repelled the challenge accepting the views of the experts. The candidates still unsatisfied, have come up in this Court by filing these appeals.”

10. From the plain reading of the aforesaid two decisions what is culled out is that the Hon'ble Supreme Court was very clear in its view that the Courts in exercise of its judicial review should not re-value or scrutinize the answer sheets of a candidate as it has no expertise on the matter and the matters relating to academics should be left for the experts in academics and the Courts have to presume the

correctness of the answers so arrived at by the experts in the field.

11. In the instant case, though the counsel for the respondent No.3 submits that a committee of experts was constituted for scrutinizing the objections raised by the candidates and which has been considered and decided while publishing the final answers. What cannot be lost sight of is the fact that so far as the three answers of petitioner i.e. answer of question No.2 of set 'C' of paper-I and answers of questions No.53 and 84 of set 'A' of paper-II attempted by the petitioner has been declared incorrect while publishing the final answers, whereas at the time of publication of the model answers, the answers given by the respondents in the model answers were the same that the petitioner had provided and it was presumed to be correct at the first instance. Thus, the petitioner never had an occasion of filing any objection in respect of these three questions. The petitioner subsequent to the publication of the final answers by the respondents have vide Annexure P/5 made another representation to the respondents, which till date has not been considered or decided by the respondents. The fact that the answers of the petitioner so far as question No.2 in paper-I in set 'C' and questions No.53 and 84 of paper-II in set 'A' is concerned, the petitioner has made a representation supporting his contentions with documents published by the NCERT as also from the literature available in the *Britannica* Encyclopedia.
12. Keeping in view the aforesaid two judgments of the Hon'ble Supreme Court in the case of “**Richal**” (supra) as also in the case of “**Rahul Singh**” (supra) this Court is of the opinion that ends of justice would

meet if the respondent no.3 can consider the objections of the petitioner in respect of question No.2 of paper-I set 'C' and questions No.53 and 84 of paper-II set 'A' and scrutinize the same taking into consideration the literature provided or referred to by the petitioner and take a decision at the earliest within a period of 45 days. That in the event if there is any change of opinion by the committee and the marks of the petitioner would get improved, revised result shall be published by the Respondents with consequence to follow on the same.

13. With the aforesaid observations, the present writ petition stands disposed of.

Sd/-
(P. Sam Koshy)
Judge

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