

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 3772 of 2020**

Bhuwneshwar Lal Sahu S/o Shri Tirathe Ram Sahu Aged About 43
Years R/o, Ward No. -12, Kalle, Anwari, Dhamtari, District-Dhamtari
Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Commissioner, Directorate Of Higher Education, Indarawati Bhawan, Atal Nagar, District-Raipur Chhattisgarh
2. Chhattisgarh Professional Examination Board (Cgyapam), Through Its Advisor. Vyapam Bhawan, North Block, Sector-19, Atal Nagar, Raipur Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Siddharth Rathod, Advocate
For State	:	Mr. Sudeep Verma, Deputy GA
For Respondent No.2	:	Dr. Saurabh Kumar Pande, Advocate

Hon'ble Shri Justice P. Sam Koshy
Order on Board

08/10/2020

1. The grievance of the petitioner in the present writ petition is the action on the part of the respondents in declaring the two questions attempted by the petitioner in the Political Science, Paper-II SET-A of the Chhattisgarh State Eligibility Test (SET) 2019 conducted by the respondent No.2 is concerned.
2. The contention of the counsel for the petitioner is that the petitioner being eligible for participating in the State Eligibility Test conducted for the year 2019, appeared for the examination and attempted both general paper I and Paper II. The exams were

held on 08.09.2019 and the model answers of the said examination was published on 25.11.2019. It is the contention of the counsel for the petitioner that the answers that the petitioner has attempted is based upon the text which is usually taught in the colleges and the petitioner is confident that the answers to be correct. So far as Question No. 36 & 98 of the Subject Political Science Paper-II SET-A is concerned, the answers attempted by the petitioner was same that was reflected in the model answers published on 25.11.2019. However, when the final results were declared, it was revealed that the aforesaid two questions which the petitioner has attempted and where answers were finally correct as per the model answers have been later on declared to be incorrect and marks have been deducted. Immediately thereafter the petitioner had raised his objection before respondent No.2 on 29.06.2020 i.e. immediately after final results were declared on 25.06.2020 and this objections raised have till date not been decided by respondent No.2 which has led to the filing of the present writ petition.

3. Dr. Saurabh Pande, Advocate appearing for the Respondent No. 2 on the other hand, opposing the petition submitted that the objection on publication of the model answer was called upon and the objection so filed by the petitioner have been duly considered by the committee consisting of experts in the field. The experts having scrutinized each of the objections so filed by the candidates finalised the answers and thereby the final result were published in the month of June, 2020.

4. According to the counsel for respondent No.2 after the model answers were published the objections were called from all the candidates and in the process of scrutiny of the objections the Expert Committee reached to the conclusion that answers in the model answer to the question No.36 & 98 of the Political Science Paper-II SET-A were incorrect and thereby the final results were published after correcting the same and in the process the two answers of the petitioner were declared incorrect and marks were accordingly awarded which cannot be said to be erroneous or illegal in any manner as the same has been done in accordance with procedure prescribed and on due verification by the experts on the subject. The counsel for the respondents relied upon the judgment of the Supreme Court in the case of ***Uttar Pradesh Public Service Commission and Anr. Vs Rahul Singh and Another (2018) Vol. 7 SCC 254*** and thus prayed for the rejection of the said writ petition.

5. Having heard the contentions put-forth on either side, the undisputed facts of the case is that the petitioner appeared for the State Eligibility Test 2019 held on 08.09.2019, the model answers were published on 25.11.2019. Since the question No.36 & 98 of the Paper-II SET-A of the subject Political Science attempted by petitioner was the same as was reflected in the model answers, there was no occasion for the petitioner to have raised any objection. However it is only when the final results were published and the petitioner suffered the loss of two answers attempted by the petitioner being declared incorrect.

6. It would be relevant at this juncture to refer to the principles of law laid-down by the Supreme Court in the case of **Rahul Singh (supra)** wherein in paragraph 9 to 12, the Hon'ble Supreme Court held as under:

“9. In Kanpur University v. Samir Gupta², 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 three of the key answers were wrong. The 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 rationalisation. 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 v. State of U.P.³, this Court after referring to a catena of judicial pronouncements summarised the legal position in the following terms: (SCC pp. 368-69, para 30)

“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

² (1983) 4 SCC 309

³ (2018) 2 SCC 357 : (2018) 1 SCC (L&S) 297

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: (Ran Vijay Singh case³, SCC p. 369)

“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 candidates 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 case², the Court recommended a system of:

(1) moderation;

³ (2018) 2 SCC 357 : (2018) 1 SCC (L&S) 297

² Kanpur University v. Samir Gupta, (1983) 4 SCC 309

(2) avoiding ambiguity in the questions;

(3) prompt decisions be taken to exclude suspected questions and no marks be assigned to such questions.”

7. A similar view has already been taken by the **Supreme Court in the case of Richal and Ors. vs. Rajasthan Public Service Commission & ors. (2018) Vol. 8 SCC 81**, wherein the Hon'ble Supreme Court dealing with a similar issue has in paragraph 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.”

8. From what has been laid down by the Supreme Court in the aforesaid two judgments it clearly stands settled that in exercise of all the powers of the judicial review, the High Court cannot re-evaluate or scrutiny the answers attempted by the candidates as it is a matter of expertise and the matter relating to the academics should be left to be considered by the experts in academics and in the process the opinion of the experts have to be presumed to be correct. However, at the same time, the candidate who has submitted his objections based upon certain materials that he is relying upon, it is expected that the Committee of Experts on scrutiny of the same, duly appreciates the objections and the supported documents and then reach to a conclusion as to

whether the objection has any force and also as regards, whether the answers attempted by the candidates or the answers depicted in the final answer is a better answer?

9. Apart from that, the candidate also should have the benefit of knowing as to how the objection so raised by the candidate/petitioner is not sustainable and what is the material which were taken note of by the Expert Committee in declaring the answer of the petitioner to be incorrect. Such an exercise would also be necessary so as to benefit the petitioner as well as other students in their future studies and also in the preparation of their further competitive examinations. This aspect also should be borne in mind by the Expert Committee while deciding the objection of the petitioner.
10. Under the circumstances, in the present writ petition this Court is of the opinion that as of now, the writ petition stands disposed off directing the Respondent no. 2 to intimate the petitioner as to why his objections were not sustainable or whether the text that he has relied upon was authentic or not and as to how the final answers published are more accurate answers.
11. Let the Respondent No. 2 intimate the petitioner in-respect-of the discussion of the Expert Committee only so far as the objections raised by the petitioner in-respect-of Question No. 36 and 98 of Paper-II of Set-A (Political Science) is concerned. Let this exercise be completed within a period of four weeks from the date of receipt of copy of this Order. That in the event if there is any change of opinion by the committee and the marks of the

petitioner would get improved, revised the result accordingly shall be published by the Respondents with consequence to follow on the same.

12. With the aforesaid direction, the present writ petition stands partly allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Rohit