

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.642 of 2019
In
Civil Writ Jurisdiction Case No.3670 of 2019

1. The Bihar Public Service Commission through its Chairman.
 2. The Secretary, Bihar Public Service Commission,
 3. The Special Secretary -cum- Controller of Examination, Bihar Public Service Commission.
- Appellant
- Versus

1. Ashish Kumar Pathak, S/o Baidyanath Pathak, Resident of Ramnagar Raj Compound, P.S.- Bettiah, Distt.- Bettiah.
2. Pradip Kumar, son of Devnandan Singh, resident of Aurai South Tola, P.O.- Pakari, P.S.- Barhariya, Distt.- Siwan.
3. Aditya Aryan, son of Sadanand Singh, resident of Village- Mahaddipur, P.S.- Pasraha, Distt.- Khagariya.
4. Raj Gaurav Kumar, son of Arun Kumar, resident of Sharifa Ganj, Patna City, P.S.- Malsalami, Distt.- Patna.
5. Abhinit Kumar, son of Upendra Kumar, resident of Village - Bardih, P.S.- Islampur, Distt.- Nalanda.
6. Anant Kumar, son of Akhileshwar Prasad Sharma, Resident of Village- Bakhtiyarpur (East Tola), P.S.- Bakhtiyarpur, Distt.- Patna.
7. Md. Juned Alam, son of Md. Aminuddin, resident of P.S. Sikarhatta, Distt.- Bhojpur.
8. The State of Bihar through its Chief Secretary, Govt. of Bihar, Patna.
9. Additional Chief Secretary G.A.D. Govt. of Bihar, Patna.
10. Principal Secretary, Road Construction Department, Govt. of Bihar, Patna.
11. Principal Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
12. Principal Secretary, Water Resources Department, Govt. of Bihar, Patna.
13. Principal Secretary, Building Construction Department, Govt. of Bihar, Patna.
14. Principal Secretary, Rural Works Department, Govt. of Bihar, Patna
15. Principal Secretary, Planning and Development Department, Govt. of Bihar, Patna



... .. Respondents

with
Letters Patent Appeal No. 638 of 2019
In
Civil Writ Jurisdiction Case No.4663 of 2019

1. The Bihar Public Service Commission through its Secretary, Bihar Public Service Commission, Bihar, Patna.
2. The Controller of Examination cum -Joint Secretary, Bihar Public Service Commission, Bihar, Patna.

... .. Appellants

Versus

1. Vishwajeet, son of Satish Kumar, resident of House No.3, Road No. 9C Rajeev Nagar, P.S.-Rajeev Nagar, District-Patna.
2. The State of Bihar through the Secretary, Department of Science and Technology, Government of Bihar, Patna.

... .. Respondents

with
Letters Patent Appeal No. 649 of 2019
In
Civil Writ Jurisdiction Case No.2654 of 2019

1. The Bihar Public Service Commission Patna-1,through its Chairman, Bailey Road, Patna-1.
2. The Chairman, Bihar Public Service Commission, Bailey Road, Patna-1
3. The Joint Secretary-cum-Examination Controller, Bihar Public Service Commission, Bailey Road, Patna.

... .. Appellants

Versus

Ram Dutta Bharti, S/o Basuki Nandan Roy, Resident of Village Rannuchak, P.O. Rannuchak, Makandpur, P.S. Nathnagar (Makandpur), Dist. - Bhagalpur (Bihar)- 812064.

... .. Respondent

with



Letters Patent Appeal No. 750 of 2019
In
Civil Writ Jurisdiction Case No.5100 of 2019

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-
1. The Bihar Public Service Commission through its Chairman, Bailey Road, Patna -1.
 2. The Chairman, Bihar Public Service Commission, Bailey Road, Patna-1.
 3. The Secretary, Bihar Public Service Commission, Bailey Road, Patna-1.
 4. The Joint Secretary-cum- Examination Controller, Bihar Public Service Commission, Bailey Road, Patna-1.

... .. Appellants

Versus

1. Sumit Kumar, aged about 28 years, Male, S/o Brij Mohan Prasad Singh, Resident of Mohalla - Saketpuri, Bibiganj, P.O.- Bhagwanpur, P.S.- Town, Distt.- Muzaffarpur.

... .. Respondents

with
Letters Patent Appeal No. 751 of 2019
In
Civil Writ Jurisdiction Case No.3457 of 2019

1. The Bihar Public Service Commission through its Chairman, Bailey Road, Patna-1.
2. The Chairman, Bihar Public Service Commission, Bailey Road, Patna-1.
3. The Joint Secretary -cum- Examination Controller, Bihar Public Service Commission, Bailey Road Patna- 1.

... .. Appellants

Versus

Vikash Gaurav, (Age 24 years) son of Ajit Kumar Singh, Resident of Village- Dakpuria, P.O.- Monatalab, P.S.- Rahui, District- Nalanda.

... .. Respondent

Appearance :-

(In Letters Patent Appeal No. 642 of 2019)

For the Appellant/s	:	Mr. Lalit Kishore, Senior Advocate Mr. P.K. Shahi, Senior Advocate Mr. Sanjay Pandey, Advocate
For the State	:	Mr. Prabhat Kumar Verma (AAG-3)



For Private Respondent: Ms. Saroj Sharma, A.C. to AAG-3
Mr. Harsh Singh, Advocate

(In Letters Patent Appeal No. 638 of 2019)

For the Appellant/s : Mr. Lalit Kishore, Senior Advocate
Mr. P.K. Shahi, Senior Advocate
Mr. Sanjay Pandey, Advocate
For the State : Mr. Pushkar Narain Shahi (AAG-6)
For the Private Respondent: Mr. Harsh Singh, Advocate

(In Letters Patent Appeal No. 649 of 2019)

For the Appellant/s : Mr. Lalit Kishore, Senior Advocate
Mr. P.K. Shahi, Senior Advocate
Mr. Sanjay Pandey, Advocate
For the Respondent/s : Mr. Poddar Suresh Gandhi, Advocate
Mr. Ram Dutt Bharti (in person)

(In Letters Patent Appeal No. 750 of 2019)

For the Appellant/s : Mr. Lalit Kishore, Senior Advocate
Mr. P.K. Shahi, Senior Advocate
Mr. Sanjay Pandey, Advocate
For the Respondent/s : Mr. Nachiketa Jha, Advocate

(In Letters Patent Appeal No. 751 of 2019)

For the Appellant/s : Mr. Lalit Kishore, Senior Advocate
Mr. P.K. Shahi, Senior Advocate
Mr. Sanjay Pandey, Advocate
For the Respondent/s : Mr. Sanjay Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE SHIVAJI PANDEY)

Date : 05-01-2021

Heard learned counsel appearing for the respective parties.

2. In the present appeals, the appellants are challenging the judgment and order dated 26.03.2019 passed in C.W.J.C. No.3670 of 2019 (Ashish Kumar Pathak and Ors. vs. The State of Bihar and Ors.) and other analogous cases, whereby and whereunder the learned Singled Judge has



interfered with the report of the expert committee holding that the answers given by the expert committee with respect to four questions are incorrect and directed the Bihar Public Service Commission to constitute an expert body of members, who were not part of the erstwhile committee, to revisit the four abovementioned questions and if it is found that the answers provided by the Commission to the aforesaid four questions are incorrect, the petitioners do deserve to participate in the selection process by writing the mains examination. It has also been directed for holding of special examination in the event of their success even if it entails an additional cost, energy and time of the Commission by placing reliance on the judgment of this Court rendered in the case of ***Ravindra Kumar Singh v. High Court of Judicature of Patna (2016 SCC Online Pat. 260)***.

FACTS OF THE CASES.

3. The precise facts of this case are that in the year 2017 an advertisement no.02 of 2017 was published by the Bihar Public Service Commission for selection and appointment on the post of Assistant Engineers (Civil). Altogether, 28,874 applications were received. The Preliminary Test was held on 15th September, 2018, in which total 17,865 candidates



appeared. After completion of examination, the question papers and model answers commonly known as “Key Answers” of the concerned subjects was published by the Commission in its website. Altogether, 1267 objections were received from the candidates raising objections pertaining to framing of wrong questions, wrong answers in the model answer-sheet or having more than one answer of a question. The questions were in four sets i.e. ‘A’, ‘B’, ‘C’ and ‘D’. Apart from other objections, Md. Juned Alam, petitioner no.7 of C.W.J.C. No.3670 of 2019, raised objection with respect to answer of four questions i.e. questions no. 62, 84, 100 and 123 of Question Booklet Series “B”; Vishwajeet, petitioner of C.W.J.C. No.4663 of 2019 raised objections with respect to answer of two questions i.e. question no.65 and 104 of Question Booklet Series “D”; Ram Dutta Bharti, petitioner of C.W.J.C. No. 2654 of 2019 raised objection with respect to answer of one question i.e. question no.123 of Question Booklet Series “B” but, Sumit Kumar, petitioner of C.W.J.C. No.5100 of 2019 and Vikash Gaurav, petitioner of C.W.J.C. No.3457 of 2019 did not file any objection with regard to model answers.

4. After receiving the objections, the Commission constituted a committee of experts to examine the said



objections. Altogether, answers of 15 questions were found to be wrong but, these four answers were not within that 15 answers. There were five members in the expert committee, they all were either from I.I.T., Patna, N.I.T., Patna or from B.I.T., Patna, which are reputed institutions and having not made any allegation of prejudice or biasness on the part of the experts. The full members of the Commission after receiving the report of the expert committee, applied their mind and thereafter the result of preliminary test was published. Since, the original petitioners-respondents failed to obtain the minimum cut-off marks in their respective groups, did not qualify in the Preliminary Test, led to filing of the writ petitions. The learned Single Judge made reference to the text-books of the concerned subjects relied upon by the original petitioners-respondents and arrived to a finding that the original petitioners-respondents have demonstrably proved the errors committed by the setters in giving answers to the aforesaid four questions, even the committee of experts also committed error in not correcting the answers of the aforesaid questions and accordingly, passed the impugned judgment and order, which is under challenge in these appeals.

SUBMISSIONS OF THE PARTIES.

5. Mr. Lalit Kishore, learned Senior Counsel



appearing for the appellant - Bihar Public Service Commission has referred to page no.13 of the impugned judgment and submitted that the learned Single Judge in fair words has held that the process adopted by the Commission was transparent and in fair manner the objections to the model answers were re-evaluated by the committee of experts, thereupon, deliberations were made and finally the report of the expert committee was accepted and adopted by the Commission. It has also been submitted that when the learned Single Judge has recorded the aforesaid finding, in such circumstance, nothing more was to be expected on the part of the Commission. It has also been submitted that question setters are experts in their respective fields and objections were referred to another committee of experts, who were also experts in their respective fields, and the said committee after examining the objections submitted its report that answers of 15 questions were wrong leaving the four questions raised by the original petitioners-respondents, so there should be some finality at any stage. It should not be an unending process as tomorrow another set of experts may differ or if the objections raised by the original petitioners - respondents are accepted by another set of experts that may lead to filing of another set of writ petitions by another set of



petitioners raising grievance that opinion of the earlier expert committee is correct and the opinion of present expert committee is wrong. It has also been submitted that the Commission has done its marathon exercise in conducting the examination as well as the candidates, who have been declared successful, have put their labour hard for being declared to be successful in the preliminary test and if the unending process will be allowed to continue it will be waste of time and energy. It has further been submitted that there may be some variations in answer but ultimately, it is for the expert to find out the correct answers of the questions.

6. Mr. Lalit Kishore, learned Senior Counsel, again referred to para no.2 of page no.14 of the impugned judgment and order and submitted that this part of the finding of learned Single Judge is not correct as there cannot be further re-evaluation and the text-books which have been brought on record by the original petitioners are not standard text-books, inasmuch as, the learned Single Judge has no power, under judicial review, to scrutinize which answer of the expert is correct or which answer of the expert is incorrect but, the learned Single Judge should have left the matter to the wisdom of the experts of the concerned subjects as the members of the



expert committee were / are the experts in their respective fields. It has further been submitted that the learned Single Judge has placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Ran Vijay Singh and Ors. vs. The State of Uttar Pradesh and Ors.*** reported in ***(2018) 2 SCC 357*** and quoted paragraph nos. 30 and 31 of the said judgment but, paragraph no.30.2 dealing with the situation where there is no provision in the rule or statute with respect to re-evaluation of answer-sheet and if it is demonstrated before the Court in clear term, not by process of reasoning, model answers are wrong, showing from the standard of the text-books then only order would be issued for re-evaluation, however, in the present cases, it is with respect to the report submitted by the expert committee after re-evaluation, so there cannot be further re-evaluation. It has further been submitted that the Hon'ble Supreme Court in catena of decisions has held that when there is no provision for re-evaluation, the candidate will not have right to get the answer-sheet re-evaluated but, when such provision is there in the statute and the error is so apparent without application of inferential process of reasoning and thought, then the Court may direct for re-evaluation of the answer-sheet but, in the present case, the Commission has conducted the examination following



the transparent process, inasmuch as, on receipt of objections, the Commission constituted a committee of experts and the objections were examined and answers were re-evaluated by the said committee, so now there cannot be further re-evaluation.

7. It has further been submitted that on the one hand the learned Single Judge in fair words has held that the process adopted by the Commission was transparent but, on the other hand, directed for re-evaluation of the answer-sheet, which is not in consonance with the law laid down by the Hon'ble Apex Court. It has further been submitted that with respect to similar issue earlier writ petitions were filed before this Court, which were dismissed. Against the said orders, two L.P.As. were filed i.e. L.P.A. No.1522 of 2019 (Kunal vs. The State of Bihar and Ors.) and L.P.A. No. 798 of 2019 (Prakash Chandra vs. State of Bihar and Ors.). In both the matters, the Division Bench of this Court by placing reliance upon the decision of the ***Ran Vijay Singh's case*** (supra) rejected the plea of the appellants for giving direction for re-evaluation of the answer-sheet. It has further been submitted that in another judgment rendered in the case of ***Uttar Pradesh Public Service Commission and Another vs. Rahul Singh and Others*** reported in ***2018(7) SCC 254***, the Hon'ble Supreme Court has taken same view. Therefore, the



learned Single Judge has acted in teeth of the direction of the Hon'ble Supreme Court and the learned Single Judge should not have directed for constitution of expert committee and further re-evaluation as there should be some finality at some stage.

8. Mr. P.K. Shahi, learned Senior Advocate appearing for the appellants in L.P.A. No. 642 of 2019 has adopted the line of argument submitted by Mr. Lalit Kishore, learned Senior Counsel, and drawn the attention of this Court to paragraph nos. 7 to 16 and 18 of the written argument, in which it has been stated that out of seven writ petitioners-respondents only writ petitioner no.7 of C.W.J.C. No.3670 of 2019 (respondent no.7 of L.P.A. No. 642 of 2019) namely, Md. Juned Alam, made objection against question nos. 57, 73, 96 and 135 of Question Booklet Series 'A'. Writ petitioner namely, Vishwajeet of C.W.J.C. No.4663 of 2019 (respondent no.1 of L.P.A. No.638 of 2019) made objection with respect to question nos. 65 and 104 of Question Booklet Series 'D' corresponding to question nos. 96 and 135 of Question Booklet Series 'A'. Writ petitioner namely, Ram Dutta Bharti of C.W.J.C. No. 2654 of 2019 (respondent of L.P.A. No. 649 of 2019) made objection with respect to question no.123 of Question Booklet Series 'B' corresponding question no.96 of Question Booklet Series 'A'.



Writ petitioner namely, Vikash Gaurav of C.W.J.C. No.3457 of 2019 (respondent of L.P.A. No.751) and writ petitioner namely, Sumit Kumar of C.W.J.C. No. 5100 of 2019 (respondent no.1 of L.P.A. No. 750 of 20189) did not file any objection to the model answers. In paragraph no.8 of the written argument, it has been stated that the expert committee was of the opinion that out of 150 questions of General Paper, options of 13 questions namely, question nos. 32, 38, 62, 118, 123, 128, 129, 130, 133, 134, 135, 140 and 145 of Question Booklet Series 'A' has to be changed because the said options were given wrong and four questions namely, question nos. 117, 121, 124 and 125 of Question Booklet Series 'A' has to be deleted because none of the given options were correct. The expert committee also considered the objection made by Md. Juned Alam, Vishwajeet, Ram Dutt Bharti and other candidates and found that the answers of the setter to the said questions are correct and no change is required in the same. In paragraph no.9 of the written argument, it has been stated that the Commission, in full strength, in its meeting dated 06.12.2018 after careful consideration and due deliberation of the aforesaid report decided to approve the same. Thereafter, the Commission published the result of preliminary test on 30.01.2019 declaring 10125 candidates as successful in



the said examination. The writ petitioners of the said writ petitions could not be declared successful in the said examination because they have secured lesser marks than the cut-off marks in their respective categories. Since the writ petitioner no.1 of C.W.J.C. No.3670 of 2019 and respondent no.1 of L.P.A. No. 642 of 2019 namely, Ashish Kumar Pathak has not obtained the minimum qualifying marks i.e. 58.40 marks out of 146 marks which is essential for the General (01) category, he could not qualify in the preliminary test. In paragraph no.10 of the written argument, it has been stated that the Commission has conducted the mains examination of Advertisement no. 02 of 2017 from 27.03.2019 to 31.03.2019 i.e. more than one and half years after publication of the Preliminary Test result. In paragraph no.11 of the written argument, it has been stated that the Commission constituted the expert committee which was approved previously to reconsider / revisit the aforesaid four questions i.e. question nos. 62, 84, 100 and 123 of Question Booklet Series 'B' corresponding to question nos. 57, 73, 96 and 135 of Question Booklet Series 'A' and prepared model answer / report with reliable evidence in details. The expert Committee gave its opinion in the following manner:-

"Q. No.62. Option "C" is the most appropriate



answer as it relates to the basic parameters viz. absolute temperature and pressure that governs the kinetic theory of gases.

The books by R.S. Khurmi and others referred to by the petitioners are not standard books in the opinion of the experts.

Q. No.84. The answer provided by the B.P.S.C. and experts is 'D' i.e. 340 litres whereas the Hon'ble Court mentioned 'B' or 135 litres on their behalf. 135 litres is for General use. As the word "hospital" is mentioned in the question, the most appropriate answer can only be 340 litres.

Answer 'D' is the most appropriate answer in the opinion of the experts.

Q. No.100. The option 'C' i.e. $ks \cos^2 q + c \cos q$ is the correct answer which by printers devil led to its printing as $ks \cos^2 q + c \cos q$. In the opinion of the expert the simple typographic error the examinees must have realized.

Q. No.123. The option 'D' is appropriate as it even match with sequence of unit given by the candidate in the petition."

In paragraph nos.13, 14,15 and 16 of the written argument, it has been stated that it is the onus 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



answer suggested by expert is wrong. In the event of a doubt, the benefit should go to the examination authority rather than to the candidate. It has been held by the Hon'ble Apex Court in catena of judgments that Court must exercise great restraint in such matter and should be reluctant to entertain plea of challenging the correctness of answers. The sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of answer sheets as all candidates suffer equally though some might suffer more but that cannot be helped since mathematical precision is not always possible.

9. Mr. P.K. Shahi, learned Senior Advocate has placed reliance on the following judgments:-

- (i) ***Ranvijay Singh and Ors. vs. State of Uttar Pradesh and Ors.***, reported in **2018(2) SCC 357**, paras- 30, 31 and 32.
- (ii) ***U.P. Public Service Commission vs. Rahul Singh***, reported in **2018(7) SCC 254**, Paras- 10 to 14 and 15.
- (iii) ***Ashok Kumar and Ors. vs. The State of Bihar and Ors.*** reported in **2017(4) SCC 357**, paras- 12 to 15 and 21.
- (iv) ***High Court of Tripura vs. Tirtha Sarathi***



Mukharjee and Ors. reported in ***2019 (2)***

PLJR (SC) 114, paras- 15 to 19.

(v) ***Order dated 29.01.2019*** passed in ***L.P.A.***

No.1522 of 2019 (Kunal vs. The State of Bihar and Ors.)

(vi) ***Order dated 11.07.2019*** passed in ***L.P.A.***

No. 798 of 2019 (Prakash Chandra vs. The State of Bihar and Ors.).

10. It has further been submitted that there were five members of the expert committee, they all are either from I.I.T., Patna, N.I.T., Patna or from B.I.T., Patna, which are reputed institutions, inasmuch as, there is no any allegation of prejudice or biasness on the part of the experts. It has also been submitted that the present dispute is with respect to preliminary test whereas, the mains examination has already been held by the Commission and the result of the said examination is ready for publication but, because of filing of these L.P.As. result could not be published. It has also been submitted that the original petitioners have not said that the B.P.S.C. has not constituted the expert committee to examine their objections nor they said that the expert committee has not examined their objections but, what they are saying, the opinion of the expert committee is not



correct. It has also been submitted that the Court does not have jurisdiction to sit over the opinion of the expert committee and substitute the same with his own view, it falls within the realm of consideration of the experts as they know the subjects very well and also know that which books have been classified as standard text-books.

11. Mr. Harsh Singh, learned counsel representing the respondent no.1 of L.P.A. No. 642 of 2019 and L.P.A. No. 638 of 2019 has submitted that the learned Single Judge has not directed the B.P.S.C. to rectify the answers of aforesaid four questions nor scrutinize which answer of the expert is correct, even the learned Single Judge has not issued *mandamus* to accept the answers suggested by the original petitioners with regard to aforesaid four question but, only directed the BPSC to constitute a fresh committee of experts to re-visit the aforesaid four questions and if it is found that the answers were wrong and the original petitioners have given correct answer, in such circumstance, a separate mains examination would be conducted for them. So, the submission of learned Senior Counsel for the Commission that the learned Single Judge has acted as an appellate authority has no substance as the original petitioners have been able to demonstrate correct answers by citing



different text-books that the key answers of aforesaid four questions are demonstrably wrong and in such a situation, it cannot be said that the learned Single Judge has committed error in giving such direction.

12. In support of his submission, he placed reliance on the decision rendered in the case of *Bihar Staff Selection Commission and Ors. vs. Arun Kumar* reported in (2020) 6 SCC 362 and submitted that in the aforesaid decision the Hon'ble Supreme Court has categorically held that the High Court should have referred the matter to another panel of experts and the B.P.S.C. had acted fair in referring the matter to the committee of experts. It has also been held that it is not the case of sitting over the opinion of the expert, if the High Court comes to a conclusion that there are justifiable doubts with regard to the opinion of the experts, in such circumstance, the High Court can issue direction to reconstitute a fresh committee of experts to revisit the model answers.

13. It has also been submitted that in first two categories, the Supreme Court clearly held that the High Court does not have power to interfere with the opinion of the expert committee but, in third category i.e. Doctrine of prejudice, would apply in appropriate cases. There may be three situations;



first, a candidate has claimed to have been prejudiced and fact is that he contends that four questions are wrong but, he missed the cut-off marks by six marks, in such circumstance, no prejudice is caused to such candidate. Second, if the examining body gives answer to a particular question as option “A” and a candidate objects the same by saying that option “B” would be the correct answer but, the candidate has marked option “C”, in such circumstance, no prejudice is caused to such candidate and in third category the matter is dealt with as like the present matters, wherein the model key answers, after consideration of objections, approved by the expert committee, which are demonstrably incorrect, the Constitutional Court, under the power of judicial review, it will be appropriate to give direction to revisit the answers. In the present case, the learned Single Judge has only directed to revisit the answers vis-a-vis questions in light of objections of the original petitioners.

14. It has also been submitted that in paragraph no.10 of C.W.J.C. No.3670 of 2019 it has specifically been stated that the petitioners themselves or through their friends sent objections with regard to as many as 11 questions and the aforesaid statement has not been contradicted by the Commission in the its counter affidavit nor in the memo of



appeal they have contradicted the same but, for the first time, in the written argument they taken plea that except respondent no.7, no objections was filed by other respondents. It has further been submitted that the original petitioners are the students, they are/were not aware of the fact that they will have to compile and conserve their evidence but, it is true that they have jointly filed their objections with regard to the answers of aforesaid four questions.

15. Mr. Singh, learned counsel, further referred the averments made in paragraph no.12 of C.W.J.C. No. 3670 of 2019 and submitted that in the said paragraph there is a categorical pleading that last column is the answer suggested by the original petitioners, previous column is the option marked by them in the examination, so the submission is that the original petitioners have marked the options which they are contending to be correct answers. It has also been submitted that respondent no.1 of L.P.A. No. 642 of 2019 has filed objection with respect to answer of four questions, each question carries one mark and he has missed the cut-off marks by 0.4 mark only, so even if one of the aforesaid answers will be corrected, the respondent no.1 would be declared successful candidate in the Preliminary Test. Similarly, respondent no.1 of L.P.A. No.638 of



2019 has filed objection with respect to answer of two questions and he has missed the cut-off marks by one mark, so even if one answer will be corrected, he would be declared as successful candidate in the preliminary test.

16. Mr. Singh, learned Advocate, has further submitted that the learned senior advocate for the Commission has placed reliance on the judgment of ***Ran Vijay Singh's case (supra)*** and tried to create an impression that the Writ Court while exercising the power under Judicial review cannot interfere with the view taken by the expert committee. It has also been submitted that in fact in ***Ran Vijay Singh's Case (supra)***, the learned Single Judge of Allahabad High Court has personally examined the answers of seven disputed questions and arrived to an independent finding about the correctness of the key answers and in that context the Hon'ble Supreme Court has taken such view but, in the present case, facts and situations are quite different.

17. Mr. Harsh Singh, learned advocate, further placed reliance on the judgment of Hon'ble Supreme Court rendered in the case of ***Kanpur University, through Vice- Chancellor and Ors. vs. Samit Gupta and Ors.*** reported in ***(1983) 4 SCC 309*** and submitted that though in the subjective examination the



Court is consistently not interfering with the answers of the expert committee as in the subjective examination the answer-sheet of the candidate has to be examined by the expert in their own manner not in the manner the objective examination is conducted, which is based on key answer prepared by examining body and the Constitutional Court from time to time has interfered in objective examination by examining as to whether the options of answers is correct or not. It has also been submitted that the original petitioners have no other option but to bring on record, in the writ petition, the text-books of concerned subjects so as to prima facie satisfy the Court that the setters have committed error in giving answers to the aforesaid four questions and same mistake committed by subsequent constituted expert committee while examining the correctness of the objections. This is the only way to demonstrate the wrong answers suggested by the Commission, if it is not the right way, then how a candidate would be able to demonstrate the mistake.

18. Mr. Singh, learned counsel, also relied upon the decision of Hon'ble Supreme Court rendered in the case of ***Rajesh Kumar and Ors. vs. State of Bihar and Ors.*** reported in ***(2013) 4 SCC 690*** and submitted that in objective type examination if there is justifiable doubt with regard to answer



given by the expert, in such circumstance, the matter should be referred to the another committee of expert for examination.

19. Mr. Harsh Singh, learned counsel, further placed reliance on the decision of Hon'ble Supreme Court rendered in the case of *Richal v. Rajasthan Public Service Commission*, reported in *(2018) 8 SCC 81* and submitted that the aforesaid case arises from the State of Rajasthan. In that case also, objections were invited and the Hon'ble Supreme Court appointed another expert committee to revisit the model answer key.

20. It has further been submitted that each petitioner has attached different text-books in their writ petitions to substantiate their claim that answers of aforesaid four questions are not correct. Thereafter, Mr. Singh, learned counsel, placing reliance on the various text-books one by one tried to show that the opinion of the expert committee as well as answer provided in the key answers are completely incorrect in the manner that either the question is incomplete or it has given a wrong answer or the question has more than one answer. He referred to paragraph no.19 of the L.P.A. No.642 of 2019, wherein it has been stated that the answer of question no.84 of Question Booklet Series "B" has been provided by the B.P.S.C. and



experts is “D” i.e. 340 litres whereas, the Hon’ble Court mentioned option “B” i.e. 135 litres on their behalf. 135 litres is for general use. As the word “hospital” is mentioned in the question, the most appropriate answer can only be 340 litres i.e. option “D”. It has been submitted that in fact this question is unintelligible as there cannot be any particular answer to the said question and as such, the question has wrongly been framed and even the expert committee could not understand the objection raised by the petitioners and as such, could not form the correct opinion.

In support of his contention, he has attached some relevant pages of a text-book namely, Water Supply and Sanitary Engineering in C.W.J.C. No. 3670 of 2019, which is at page no.84 of the writ petition. He has drawn the attention of this Court to the inferential part, which is on the same page and reads as follows:-

“The water required in the industries mainly depends on the type of industries which are existing in the city. The quantity of water required by industries are also expressed in terms of per capita demand. The water required by factories, paper mills, clothe mills, cotton mills, breweries, sugar refineries etc. comes under industrial use. The quantity of water demand for industrial purposes is around 20 to 25% of the total demand of the city.”



He has also drawn the attention of this Court to another text-book namely, Indian Standard Code of Basic Requirement for Water Supply, Drainage and Sanitation (which is annexed at page no.85 of the C.W.J.C. No. 3670 of 2019). Table 1 thereof, dealing with Water Requirements for Buildings Other than residences.

So, by referring the aforesaid materials, Mr. Singh, learned advocate, has tried to impress this Court that 340 litres cannot be correct answer as this question has more than one answer depending upon number of beds available in the hospital.

21. Mr. Singh, learned counsel, has further drawn the attention of this Court to question no.96 of Question Booklet Series “A” and submitted that the Commission is saying that option “D” is correct answer of question no.96 but, the original petitioners are saying option “A” is correct answer as first filtration comes then disinfection comes. In support of his contention, he placed reliance on the text-book of Environmental Engineering Book by N.N. Basak, which is at page no. 112 of C.W.J.C. No.3670 of 2019 and referred to Clause-7.2 i.e. Flow Diagram of a Treatment Plant, which shows that filtration comes before chlorination unit i.e. disinfection of



water. He has also drawn the attention of this Court to the text-book of Water Supply Engineering by Santosh Kumar Garg, which is attached at page no.119 of C.W.J.C. No. 3670 of 2019. Chapter 9.2 thereof deals with Purification of water Supplies, which suggests first filtration comes and disinfection comes later. It has further been submitted that even this question asked in GATE, 2014 examination as question no.47 and answer key of said examination matches with the option given by the original petitioners and also substantiate the claim of the petitioners that filtration comes first and disinfection comes later.

22. Mr. Singh, learned advocate, has drawn the attention of this Court to question no.135 of Question Booklet Series “A” and submitted that as per the text-book of Thermal Engineering by R.S. Khurmi, and G.K. Gupta, the proper answer will be option “D”, not the opinion of the expert committee i.e. option “C”.

23. In this way, Mr. Singh, learned counsel, has submitted that the text-books placed by the petitioners are standard text books, which demonstratively showing that the view taken by the expert committee affirming the answers of aforesaid four questions given in model answer key are



completely incorrect and it requires that these four questions be again revisited by second expert committee in order to examine the correctness of view taken by present expert committee.

24. It has also been submitted that the decision rendered in the case of *Uttar Pradesh Public Service Commission and Another vs. Rahul Singh and Others* (supra) relied upon by learned senior counsel for the Commission does not apply to the facts of the present case. It has further been submitted that the decision rendered in the case of *High Court of Tripura vs. Tirtha Sarathi Mukharjee and Ors.* (supra) relied upon by the Commission also does not apply to the facts of the present cases as that matter relates to subjective examination where long answers are given and the petitioner of that case was seeking re-evaluation of his answer sheet, which he has written in the examination but, the present matters relate to objective examination. It has further been submitted that in the said judgment, the case of *Pramod Kumar* (supra) and *Rajesh Kumar* (supra) have also been relied upon, but the same are also related to subjective examination.

25. It has also been submitted that the decisions rendered in the case of L.P.A. No.1522 of 2019 (Kunal vs. The State of Bihar and Ors.) and L.P.A. No. 798 of 2019 (Prakash



Chandra vs. State of Bihar and Ors.), relied upon by the Commission, do not apply to the facts of the present cases as in L.P.A. No. 1522 of 2018, the learned Single Judge has dismissed the writ petition on the ground that the petitioners have not satisfied the doctrine of prejudice, which has been affirmed by the Division Bench, so it is completely not applicable in the present case. So far as the judgment rendered in the case of L.P.A. No. 798 of 2019 is concerned, in that case the Commission had filed counter affidavit in which report of the expert committee was annexed, which explained why the answer suggested by the petitioner is incorrect and why the answer suggested by the Commission is correct, so on this ground, the learned Single Judge did not interfere with the report of the expert committee. However, in the present case, the petitioner has been able to demonstrate how the answers suggested by the Commission is incorrect, inasmuch as, each of the writ petitioners have referred different authoritative text-books to substantiate their claim that the answers of aforesaid questions suggested by the Commission are incorrect and even the Commission has not been able to contradict the answers given the aforesaid text-books.

26. It has also been submitted that the expert



committee has said that the text-book relied by the original petitioners is not a standard text book without giving reason how the opinion of the author of those books are incorrect as in the present case there are five writ petitioners, they have attached different text-books showing that the opinion of the expert committee dealing with the objections is demonstrably wrong.

27. It has further been submitted that the decision rendered in the case of *Ashok Kumar and Ors. vs. The State of Bihar and Ors.* (supra) relied upon by the Commission also does not apply to the facts of the present case as in that case ratio has been laid down that unsuccessful candidate cannot turn around and challenge the selection process but, in the present case right from the beginning the petitioners have raised objection with regard to answers of four questions suggested by the Commission.

28. Mr. Ram Dutt Bharti, respondent no.1 appeared in person and adopted the argument of Mr. Harsh Singh, learned advocate, and submitted that he is the grandson of freedom fighter in the State of Bihar and he has secured 58 marks in Preliminary Examination but, he missed to become successful candidate by 0.4 marks. He further submits that he has given



correct answer of question nos. 62 and 123 in Question Booklet Series 'B' and in this regard he has also filed objection to the answer key.

29. Learned counsel for respondent of L.P.A. No. 751 of 2019 has submitted that respondent Vikash Gaurav secured 64 marks in preliminary examination in Booklet-D but, missed to become successful by 2 marks. He has given correct answer of questions nos. 65, 104, 126 and 143 but, he has not filed any objection.

30. In reply, Mr. Lalit Kishore, learned Senior Counsel for the Commission, submits that in all decisions, upon which the reliance has been place either by himself or by Mr. Shahi, learned Senior Counsel, dealing with issue in respect to objective type examination not subjective examination. It has also been submitted that other side tried to distinguish the decisions rendered in L.P.A. No. 1522 of 2018 and L.P.A. No.798 of 2019 but, in both the cases, same issue was involved even the doctrine of prejudice was also under consideration and even the same arguments were made but, the Division Bench did not accept the submissions advanced by the petitioners placing reliance on the decision rendered in the case of **Ran Vijay Singh's case** (supra) and dismissed both the L.P.As, so,



the decisions rendered in aforesaid two L.P.As squarely covers the present matters and these appeals should be allowed and the impugned judgment and order of learned Single Judge should be interfered with.

31. It has also been submitted that the model answers have been framed by the experts in their respective subjects not by laymen. Of course, some human error is bound to occur but the possibility cannot be ruled out that large number of candidates had attempted those four questions which according to them were not wrong. It has further been submitted that the model key answers was prepared by the question setters, who were experts in their respective fields and in pursuance of the objections, the said four questions were again re-evaluated by the committee of experts and the said committee did not find the answers of those four questions to be wrong. So, two expert committees; first, the setters of question papers and second expert committee examined the objections raised by the candidates and both are in agreement that the answers of aforesaid four questions provided in the model answers are correct.

32. It has also been submitted that if the judgment and order of the learned Single is allowed to be implemented and



these four questions referred to the another panel of expert committee for re-evaluation, there would be two possibilities; first, the new expert committee may agree with the view of the earlier expert committee or second, may disagree with the view of earlier expert committee. If the new expert committee will disagree with the view of the earlier expert committee, in such a situation, the candidates who had attempted correct answers of aforesaid four questions as per model answers and on the basis of which they were declared successful, naturally their results have to be revised and it might be possible that they may not become successful candidates or the candidates who earlier declared unsuccessful will become successful candidate. In such circumstance, again writ petitions would be filed, so it will be nothing but opening a Pandora's box and the matter will remain undecided for years together.

33. It has also been submitted that the decision of ***Bihar Staff Selection Commission and Ors. vs. Arun Kumar*** (supra), which has been relied by learned counsel for the respondents is not applicable to the facts of present case as those writ petitions were filed raising grievance that some of the answers were wrong and the learned Single Judge disposed of the writ petition with a direction to recast the result and



published the same. Accordingly, the result was published but some of the candidates who were earlier declared successful became unsuccessful and some of the candidates, who were declared unsuccessful, became successful candidates. Therefore, the matter was taken up to the appellate Court, the appellate Court again sent the matter to the panel of experts and several times results were revised and published. In those circumstances, when the matter went to the Hon'ble Supreme Court and the Hon'ble Supreme Court has categorically held that both the Single Judge and the Division Bench in spite of solving the issue got it more complicated.

34. It has also been submitted that in the case of ***Richal v. Rajasthan Public Service Commission*** (supra), relied upon by the respondents, there are several round of litigation. Earlier, the examination was held and model answer was published and objections were received. Thereafter, writ petitions were filed questioning various model answers. The High Court disposed of the writ petitions with a direction to upload even the revised model answers and invite objection. In pursuance thereto, the Commission uploaded the revised key answers. As a consequence, 18 answers were again deleted. Again, writ petitions were filed and the learned Single Judge accepted the



subsequent expert committee's report and dismissed the writ petitions. Against which, writ appeals were filed but, the same were also dismissed. In the meantime, appointments were made. Now, those who became unsuccessful on account of revised model answer and deletion of 18 questions, raised grievance and the matter was taken up before the Hon'ble Supreme Court and the Hon'ble Supreme Court under a particular facts and circumstances, passed the order and held that in order to achieve the fairness and transparency, opportunity should be given to the candidates to point out if there is any incorrect answers and that should be examined by the expert committee. So, on the contrary, the decision rendered in the case of ***Richal v. Rajasthan Public Service Commission (supra)*** supports the contention of the appellants and in that case direction was issued for further re-evaluation by expert committee under a particular facts and circumstances of the case and that part cannot be said to be as law decided.

35. Mr. Lalit Kishore, learned Senior counsel referred to second paragraph of page no.19 of the impugned judgment, wherein the learned Single Judge held that the petitioners clearly demonstrated through recognized / accredited / acclaimed text books of the respective fields that the answers provided by the



Commission to the four questions are wrong and submitted that in fact it is the expert committee, who will decide which book is standard text book as they are the experts in their respective field.

36. Having considered the rival contentions of the parties, this Court has to see whether the learned Single Judge while exercising the power under judicial review is justified in holding that the answer of four questions are incorrect setting at naught the report of the expert committee by referring certain text-books placed by the original petitioners-respondents in the background of fact that the learned Single Judge recorded a finding that the Commission has conducted the examination fairly and properly and maintained the transparency at every stage.

**CONSIDERATION OF JUDGMENTS REFERRED
BY THE PARTIES.**

37. Before deciding the aforesaid issue, it would be beneficial and appropriate to consider the judgments of Hon'ble Supreme Court as well as this Court as large number of judgments had dealt with the issue presently involved in these cases. First case in the line has been dealt with by the Hon'ble Supreme Court is *Kanpur University, through Vice-*



Chancellor and Ors. vs. Samit Gupta and Ors. (supra). The facts of that case was that an entrance examination with respect to admission in seven Medical Colleges in Uttar Pradesh was conducted. The examination was based on multiple choice objective test. Total 779 seats were available in seven Medical Colleges of Uttar Pradesh, out of which 50% seats were reserved and remaining 50% seats were open. The examination was conducted with respect to four subjects i.e. Physics, Chemistry, Zoology and Botany. After the examination was conducted, the University published the key answer along with the result. The students, who could not find place in select list, approached the Allahabad High Court contending that some of the answers ticked by them were correct and key answer published by the University was wrong. The High Court accepted their contention with respect to question no.24 and while deciding the issue the Hon'ble Supreme Court found that the question and answer key in English and Hindi are not congruent as there is some difference. With respect to question no.23 of Zoology paper, the expert committee constituted by the university, found that the answer which has been given in the key answer is incorrect and the view with regard to question no.23 was accepted and affirmed by the expert committee. With



regard to question no.66 of Botany Paper, it has been informed by the expert committee that answer given in the key answer as well as marked by the candidates in the examination both are incorrect. Ultimately, the Hon'ble Supreme Court found the result to be defective and it has been held that the answer should be assumed to be correct unless it is proved to be wrong and 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. It has further been held that the textbooks support the case of the students. If this were a case of doubt, we would have unquestionably preferred the key answer but, if the matter is beyond the realm of doubt, it would be unfair to penalise the students for not giving an answer which accords with the key answer, that is to say, with an answer which is demonstrated to be wrong.

38. It will be proper to quote relevant portion of paragraph no.16 of the said judgment, which reads as under:-

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...”

39. In the case of ***Rajesh Kumar and Ors. vs. State of Bihar and Ors.*** (supra) identical issue came for consideration before the Hon’ble Supreme Court. In that case, an advertisement was issued by the Bihar State Staff Selection Commission from eligible candidates for appointment against 2268 posts of Junior Engineer (Civil), out of which, 1057 posts were in the open merit category. The preliminary test was computer based objective type examination, in which 210 persons were declared successful. The evaluation of the answer-sheet was assailed by 13 unsuccessful candidates. While the aforesaid writ petition was pending, 35 candidates were appointed as Junior Engineers in Road Construction Department of the Government of Bihar while 144 others were appointed in Water Resources Department and 9 of the selected candidates were appointed in the Public Health Engineering Department. Taking the total number of those appointed to 188 out of 210 candidates included in the merit list. In the writ proceeding, the learned Single Judge has referred the model key answer to the expert committee constituted by the High Court comprising of



two experts' panel of Associate Professor of NIT, Patna, who found several such answers to be wrong. In addition, two questions were also found to be wrong while two others were found to have been repeated. Question No.100 was also found to be defective as the choices in the key answer were printed but only partially. Based on the report of the said expert committee, the learned Single Judge has held the entire examination to be defective and cancelled the result including the appointment made on the basis of said result. Against the order of the learned Single Judge, an appeal was filed before the Division Bench and the Division Bench has held that as there was no allegation of any corrupt motive or malpractice in regard to the other question papers, so instead of cancelling the entire examination process, the Single Judge ought to have directed for a fresh examination in Civil Engineering Paper only, which would be sufficient to rectify the defect and prevent injustice to any candidate. It has further been held that those appointed on the basis of the impugned selection shall be allowed to continue until publication of the fresh result, anyone of them who failed to make the grade on the basis of the fresh examination shall be given a chance to appear in another examination to be conducted by the Staff Selection Commission. While the



challenge to the selection process was still pending before the High Court, a fresh selection process was initiated to fill up the available vacancies and written test was held on 29.07.2007. The High Court restrained the declaration of result corresponding to second advertisement but, the Hon'ble Supreme Court has vacated the same. In pursuance thereto, a list of 392 selected candidates was sent to the State Government by the Staff Selection Commission for issuing appointment orders in their favour, in which the respondents were also declared successful. Ultimately, the Hon'ble Supreme Court found the key answers to be wrong, having taken view that as there is no mention of any fraud or malpractice and directed for re-evaluation of the answer-sheet. It has further been held that the re-evaluation process may additionally benefit those who have lost the hope of an appointment on the basis of a wrong key applied for evaluating the answer sheets. Such of those candidates as may be ultimately found to be entitled to appointment on the basis of their merit shall benefit by such re-evaluation and shall pick up their appointments on that basis according to their *inter se* position on the merit list.

40. Identical issue again came for consideration before the Hon'ble Supreme Court in the case of ***Veer Pal Singh Vs.***



Secretary, Ministry of Defence reported in ***(2013) 8 SCC 83***. In that case, the appellant-Veer Pal Singh was enrolled in the Army (Corps of Signals) and before his enrollment, a rigorous medical examination was conducted and everything was found to be in order. After completion of training, the appellant was posted in 54 Infantry Division Signals Regiment. After about two years, he was admitted in Military Hospital for the treatment of “Intestinal-Colic”. He was discharged from the hospital on 18.2.1976. Between March, 1976 to October, 1977 he was treated in different Army Hospitals. He was downgraded to Medical Category “CEE” (Temporary) for a period of six months with effect from 03.01.1977. His case was considered on 14.11.1977 by the Invaliding Medical Board held at Military Hospital, Meerut and on its recommendations, he was discharged from service. His claim for disability pension was rejected by Principal Controller of Defence Accounts (Pension), Allahabad on account of having disease, i.e., Schizophrenic Reaction, which was the cause of his discharge was not attributable to the military service. The Hon’ble Supreme Court considered the report of the Medical Board and also consulted the different books of Medical Science and interfered with the impugned order and directed to refer the case to Review



Medical Board for reassessing the medical condition of the appellant and find out whether at the time of discharge from service he was suffering from a disease which made him unfit to continue in service and whether he would be entitled to disability pension. While deciding the issue, the Hon'ble Supreme Court has held that although, the Courts are extremely loath to interfere with the opinion of the experts, there is nothing like exclusion of judicial review of the decision taken on the basis of such opinion. What needs to be emphasized is that the opinion of the experts deserves respect and not worship and the Courts and other judicial / quasi-judicial forums entrusted with the task of deciding the disputes relating to premature release / discharge from the Army cannot, in each and every case, refuse to examine the record of the Medical Board for determining whether or not the conclusion reached by it is legally sustainable.

41. It will be relevant to quote paragraph no.10 of the said judgment, which reads as under:-

“10. Although, the Courts are extremely loath to interfere with the opinion of the experts, there is nothing like exclusion of judicial review of the decision taken on the basis of such opinion. What needs to be emphasized is that the opinion of the



experts deserves respect and not worship and the Courts and other judicial / quasi-judicial forums entrusted with the task of deciding the disputes relating to premature release / discharge from the Army cannot, in each and every case, refuse to examine the record of the Medical Board for determining whether or not the conclusion reached by it is legally sustainable.”

42. In *Ashok Kumar and Ors. vs. The State of Bihar and Ors.* (supra), the matter relates to promotion from Class-IV post to Class-III post. In that case, on 02.12.2003, the office of the District and Sessions Judge, Muzaffarpur, issued General order, inviting applications for promotion to Class III posts from amongst Class IV employees of the Civil Court at Muzaffarpur. The selection was to be made on the basis of a written test and interview. 27 candidates appeared in the written examination, out of which, 14 candidates qualified. They were interviewed in the ratio; 85 marks were fixed for the written examination and 15 marks fixed for the interview. The appointment committee selected 6 candidates on the basis of merit for appointment to Class III posts by promotion. The select list was submitted to the High Court but, the High Court declined to approve the select list on the ground that the marks allotted for the written



examination were not in accordance with the Court's General letter No. 1 of 1995 and the Rules of 1992, 1998 and 2001 covering Bihar Civil Court Staff. By letter dated 19.08. 2004, the Registrar (Administration) directed the District and Sessions Judge, Muzaffarpur to hold a fresh examination fixing 90 marks for the written examination by treating the qualifying marks as 45. Accordingly, a fresh General order was issued mentioning the letter addressed by the High Court. The test was conducted followed by interview in the ratio; 90 marks for written and 10 marks for interview. As the appellant-Ashok Kumar and others could not succeed, they challenged the order of the High Court and the order of appointment taking ground that appointment process was vitiated since under the relevant rules the written test was required to carry 85 marks and the interview 15 marks. In the counter affidavit, the High Court defended its action by taking plea that the General letter continued to hold the field. Moreover, it was urged that Rule 6 of the Bihar Civil Court Staff (Class III and Class IV) (Amendment) Rules, 2001 stipulates that promotion from Class IV to Class III posts shall be made by an appointment committee on the basis of merit cum seniority. The learned Single Judge allowed the writ petition and quashed the appointment made by the District and Sessions Judge,



Muzaffarpur by holding that under Rule 6 of the Bihar Civil Court Staff (Class III and Class IV) (Amendment) Rules, 2001, the written examination was to carry 85 marks and for interview 15 marks. In the view of the learned Single Judge, once the rules, which have been made under Article 309, were amended in 2001, the earlier rules would stand superseded and the General letter of the High Court would not have the effect of overriding the statutory rules. Ultimately, the learned Single Judge held that the notification fixing 85 marks for the written examination and 15 marks for the interview had been correctly issued by the District and Sessions Judge, Muzaffarpur but, the Division Bench set aside the judgment of the learned Single Judge by holding that when the candidates appeared in the fresh examination for promotion without any protest in pursuance of the direction of the High Court, in such circumstance, they cannot turn round and challenge the same. The judgment of the Division Bench of this Court was challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court affirmed the view of the Division Bench and held that candidates who had taken chance and participated in the selection process without demur, in the event they were declared unsuccessful, they cannot turn round and challenge the procedure laid down for



promotion.

However, this is not the issue involved in the present cases as in the present cases the issue is quite different, so this judgment does not apply to the facts of the present cases.

43. Identical issue came for consideration before the Hon'ble Supreme Court in the case of ***Ran Vijay Singh and Ors. vs. The State of Uttar Pradesh and Ors.*** (supra). In that case, Uttar Pradesh Secondary Education Services Selection Board (for short the "Board") published an advertisement inviting applications for recruitment to the post of Trained Graduate Teachers in Social Science. The recruitment was to be made in accordance with the provisions of the U.P. Secondary Education Services Selection Board Act, 1982. More than 36,000 candidates appeared in the written examination and the result of the written examination was declared by the Board. The written examination was based on multiple choice answers. The qualified candidates were called for interview accordingly, the final result was declared by the Board, the appellants were amongst those who were in the select list for recruitment. Several writ petitions were filed in the Allahabad High Court, which were dismissed by the learned Single Judge by holding that there was no provision for re-evaluation of the answer



sheets hence, no relaxation can be given. Another batch of writ petitions were filed challenging seven questions/answers which, according to them, were incorrect. The learned Single Judge accepted the contention and directed for re-evaluation of the answer sheets of writ petitioners. It was further directed that in case these writ petitioners are selected then those at the bottom of the select list would automatically have to be pushed out placing reliance on the judgment rendered in the case of ***Manish Ujwal And Ors. vs Maharishi Dayanand Saraswati*** reported in ***(2005) 13 SCC 74***. Following the judgment and order of the High Court reevaluated results of the written examination of all candidates were declared. As a result of the re-evaluation, some candidates, who were earlier declared successful were declared unsuccessful. Challenge was made to the Division Bench and the Division Bench referred the seven disputed questions/answers to one man expert committee. The expert committee gave its report to which the appellants filed objections. Eventually, the Division Bench directed for fresh evaluation of the answer sheets on the basis of the report of the expert committee. The same was also challenged before the Hon'ble Supreme Court. During the pendency of the appeals, the Hon'ble Supreme Court again directed for reevaluation of



the answer sheets, so the result of the third re-evaluation kept in a sealed cover. The Hon'ble Supreme Court was of the view that the order of the learned Single Judge was challenged before the Division Bench by the Board unsuccessfully but, when the matter came up before the Hon'ble Supreme Court, the Hon'ble Supreme Court held that the High Court has failed to appreciate the law laid down in the aforesaid case and also held that six disputed answers under consideration in that case were demonstrably wrong and this was not in dispute and even the learned counsel appearing for the University did not question this fact and aforesaid judgment was distinguishable on facts. The Hon'ble Supreme Court has held that examination was held in the year 2009 but, even after eight years, the same could be reached to finality and placed reliance on the decision rendered in the case of ***Himachal Pradesh Public Service Commission v. Mukesh Thakur*** reported in (2010) 6 SCC 759, and quoted paragraph no.20 of the said judgment, in which it has been held that "if there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the examination. It is a matter of chance that the High Court was examining the answer sheets relating to Law. Had it been other subjects like Physics, Chemistry and



Mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court”. It has further been held that complete hands-off or no interference approach was neither suggested in the case of ***Mukesh Thakur’s case*** (supra) nor it has been suggested in any other decision but, the ratio laid down in the case of Kanpur University case (supra) should be taken into consideration. Further, the Hon’ble Supreme Court has placed reliance on the decision of ***Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth*** reported in (1984) 4 SCC 27, wherein the question was raised whether, under law, a candidate has a right to demand an inspection, verification and re-evaluation of answer books and whether the statutory regulations framed by the Maharashtra State Board of Secondary and Higher Secondary Education. The Hon’ble Supreme Court quoted verbatim Rule 104 of the Maharashtra Secondary and Higher Secondary Education Boards Regulations, 1977, which prescribes and provide “*the verification will be restricted to checking whether all the answers have been examined and that there has been no mistake in the totalling of marks for each question in that subject and transferring marks correctly on the first cover page of the*



answer book and whether the supplements attached to the answer book mentioned by the candidate are intact. No revaluation of the answer book or supplements shall be done” and also quoted the principle that the Court cannot sit in judgment over the wisdom of the policy evolved by the Legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy. The Hon’ble Supreme Court also quoted paragraph no.29 from ***Paritosh Bhupeshkumar Sheth’s case (supra)***, in which it has been held that the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from



the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice.

The Hon'ble Supreme Court also considered the decision rendered in the case of *Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission* reported in (2004) 6 SCC 714, wherein it has been held that the answer-books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totalling of marks of each question and noting them correctly on the first cover page of the answer-book. The Hon'ble Supreme Court also considered the decisions rendered in the case of *Board of Secondary Education vs. Pravas Ranjan Panda* reported in (2004) 13 SCC 383 and *C.B.S.E v. Khusboo Shrivastav* reported (2014) 14 SCC 523 and finally held in paragraph no.30 that 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 permit it but, if a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet then the Court may permit re-evaluation or scrutiny only if it is demonstrated very clearly that error has been committed without any inferential process of reasoning or by a process of rationalization and only in rare or exceptional cases.

44. It will be relevant to quote paragraph nos. 30, 31, 32 and 33 of the said judgment, which read as under:-

“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 scrutinize the answer sheets of a candidate – it has no expertise in the matter and academic matters are best left to academics; (iv) The Court should presume the correctness of the key answers and proceed on that assumption; and (v) In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.

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.”*

45. Another judgment on the issue is ***Uttar Pradesh Public Service Commission and Another vs. Rahul Singh and Others*** (supra). The facts of that case was that the preliminary examination consisted of two papers namely General Studies-I and General Studies-II, the General Studies-I paper which carried 200 marks and consists of 150 objective type questions with multiple choice answers. After the preliminary examination was conducted, key answers were published by the Commission. Many persons including the petitioners of that case approached before the Allahabad High Court contended that some of the key answers were incorrect or that some of the questions had more than one correct answer. The Commission



initially constituted two separate expert committees; one comprising of 15 experts and the other comprising of 18 experts. This was done even before the key answers were displayed on the official website of the Commission. After these two committees gave their opinion, the key answers were uploaded on the official website of the Commission. In pursuance thereof, 962 objections were received. The Commission again constituted a committee consisting of 26 members to consider the objections raised by the candidates. The expert committee examined all the objections and on the basis of the recommendations of the expert committee, 5 questions were deleted and the key answers of 2 questions were changed. As a consequence, the result was declared on the basis of 145 questions. Thereafter, various writ petitions were filed in the Allahabad High Court challenging the correctness of the key answers in respect of 14 questions. The High Court examined these questions and after elaborate discussion and reasoning negatived the prayer of the petitioners in respect of 11 questions but, in respect of one question the High Court held that the question should be deleted. In respect of another question, it has been held that there were two correct answers and in respect of one more question it disagreed with the view of the Commission



and accepted the submission of the petitioners that the answer given in the key was incorrect. Ultimately, matter went to the Hon'ble Supreme Court. It was submitted by the Commission that the High Court transgressed its jurisdiction and went beyond the scope of judicial review, it should not have overruled the view of the Commission which was based on the report of two committees of experts. The Hon'ble Supreme Court in that case has considered various judgments such as, ***Kanpur University, through Vice- Chancellor and Ors. vs. Samir Gupta and Ors. (supra)*** and finally held that the law is well settled that the onus is on the candidate to show not only 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. In fact, the Hon'ble Supreme Court held that objections were received and committee has considered those objections, in such circumstance, the 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.



46. It will be relevant to quote paragraph nos. 12 and 13 of the said judgment, which 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.”

47. Identical issue again came for consideration before the Hon’ble Supreme Court in the case of ***Richal v. Rajasthan Public Service Commission*** (supra). In that case, the Rajasthan Public Service Commission conducted the Competitive Examination for the recruitment of Lecturers for various subjects under Secondary Education Department, Government of Rajasthan. The examination consisted of two papers i.e. Paper-1-General Awareness and General Studies and Paper-II of respective subjects. Examination was conducted and key answers were published, inviting objections regarding correctness of the key answers. Various candidates submitted their respective objections with regard to different subjects with respect to Paper-I as well as Paper-II. The Commission declared the result, against which several writ petitions were filed questioning various answers as per final answer key. In one of the writ petitions, the learned Single Judge directed to upload the revised answer key along with the report of the experts on the official website within one week. In pursuance thereof, final



key answers were published and 18 questions in Paper-I were deleted. Whereafter, second round of litigation was started raising objections about correctness of the answer key, which were dismissed by the learned Single Judge. The judgment of the learned Single Judge was challenged unsuccessfully. Ultimately, the matter went to the Hon'ble Supreme Court in various Special Leave Petitions raising objection with regard to correctness of the key answers. The Hon'ble Supreme Court vide order dated 16.08.2018 constituted the expert committee to examine as to whether the key to the answer is correct. In pursuance thereof, 22 answers in all subjects were re-examined and revised. On the basis of the report of the expert committee, directions was given to revise the merit list. In the aforesaid case, the Hon'ble Supreme Court has considered the view taken in the case of *Kanpur University, through Vice- Chancellor and Ors. vs. Samit Gupta and Ors.* (supra), *Manish Ujwal And Ors. vs Maharishi Dayanand Saraswati* (supra) and *Guru Nank Dev University vs. Saumil Garg and others*, reported in *(2005) 13 SCC 749* and held that the key answer prepared by the paper-setter or the examining body is presumed to have been prepared after due deliberations and there are various factors which may lead to framing of the incorrect key answers,



inasmuch as, 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 and ultimately, directed the Commission to revise the result of all the candidates including all the appellants on the basis of the report of the expert committee. It has also been directed that while carrying the above exercise, the Commission need not revise the result of all those candidates whose names were included in the select list earlier published.

In this case, the Hon'ble Supreme Court has not laid down any concrete view under which circumstance the Constitutional Court would interfere in academic matters while exercising the power of judicial review.

48. Another judgment on this issue is ***High Court of Tripura vs. Tirtha Sarathi Mukharjee and Ors.*** (supra). In that case, in advertisement dated 18.01.2011, applications were invited from practicing Advocates for appointment as Grade-I in Tripura Judicial Service against 3 vacancies. Pursuant to the advertisement, respondent Tirtha Sarathi Mukherjee appeared in preliminary examination. Thereafter, the results were declared, in which the petitioner along with 16 other candidates were shown qualified. The main examination was held and the result



of the main examination was declared, in which respondent was not declared qualified. He filed writ petition seeking re-evaluation of his answer papers and declaring the decision holding him as not qualified for the interview as null and void. The said writ petition was dismissed. The same was challenged before the Supreme Court unsuccessfully. Thereafter, Review Petition was filed. In the Review Petition, the Reviewing Court found that he was wrongly deprived of and accordingly, the writ petition was allowed and modified the judgment of writ Court and directed the Registrar General to re-evaluate the answer sheet scripts pertaining to Papers II and III of the main examination. In paragraph no.25 of the review judgment, it has been recorded as follows:-

“25. We have gone through the answer scripts of the petitioner both in Paper- I and Paper-II. To us, answers given in respect of Question Nos. 3 (xiii), 2(xviii) and 3(xv) of Paper II which were marked as incorrect answers and Question No.I(xiv) of Paper II for which no marks were awarded may require a relook. However, we hasten to add that we have not expressed any final opinion in this regard”.

Against the said order, challenge was made before the Hon’ble Supreme Court. The Hon’ble Supreme considered the issue with regard to exercise of power of review by the High



Court and held that when the matter was dealt with by Hon'ble Supreme Court and after that a review application has filed, in such circumstance, the review application has wrongly been entertained. Apart from that, the Court has also considered the power and jurisdiction of writ Court while exercise the power of judicial review and placed reliance on the judgment of *Himachal Pradesh Public Service Commission v. Mukesh Thakur* (supra), *Central Board of Secondary Education through Secretary, All India Pre-Medical / Pre-Dental Entrance Examination and Ors. vs. Khusboo Shrivastava and Ors.* (supra), wherein it has been held that in the absence of the provision for revaluation of answer book, in the relevant rule, no candidate in an examination has any right to claim or ask for re-evaluation of his marks and even if there is no legal right to demand revaluation as of right could there arise circumstances which leaves the Court in any doubt at all. A grave injustice may be occasioned to a writ applicant in certain circumstances. The case may arise where even though there is no provision for re-evaluation it turns out that despite giving the correct answer no marks are allotted. No doubt, this must be confined to a case where there is no dispute about the correctness of the answer. In such circumstance, it has been held if there is any doubt, the



benefit would go in favour of the examining body rather than in favour of the candidate. The Hon'ble Supreme Court also considered the judgment of ***Ran Vijay Singh's case*** (supra) and formed opinion that in an exceptional circumstance, when there is no doubt that error has been committed, the Court has power to correct the error and give justice.

49. It will be relevant to quote paragraph nos. 19, 20, 21 and 22 of the said judgment, which read as under:-

“19. The question however arises whether even if there is no legal right to demand revaluation as of right could there arise circumstances which leaves the Court in any doubt at all. A grave injustice may be occasioned to a writ applicant in certain circumstances. The case may arise where even though there is no provision for revaluation it turns out that despite giving the correct answer no marks are awarded. No doubt this must be confined to a case where there is no dispute about the correctness of the answer. Further, if there is any doubt, the doubt should be resolved in favour of the examining body rather than in favour of the candidate. The wide power under Article 226 may continue to be available even though there is no provision for revaluation in a situation where a candidate despite having giving correct answer and about which there cannot be even slightest manner of doubt, he is treated as having given the wrong



answer and consequently the candidate is found disentitled to any marks.

20. Should the second circumstance be demonstrated to be present before the writ court, can the writ court become helpless despite the vast reservoir of power which it possesses? It is one thing to say that the absence of provision for revaluation will not enable the candidate to claim the right of evaluation as a matter of right and another to say that in no circumstances whatsoever where there is no provision for revaluation will the writ court exercise its undoubted constitutional powers? We reiterate that the situation can only be rare and exceptional.

21. We would understand therefore the conclusion in paragraph 30.2 which we have extracted from the judgment in Ran Vijay Singh & Ors. Vs. State of Uttar Pradesh & Ors. (2018) 2 SCC 357 only in the aforesaid light. We have already noticed that in V.S.Achuthan vs Mukesh Thakur's case reported in (2010) 6 SCC 759, a two Judge Bench in paragraph 26 after survey of the entire case law has also understood the law to be that in the absence of any provision the Court should not generally direct revaluation.

22. In this case we have already noted that the writ petition was filed challenging the results and seeking revaluation. The writ petition came to be dismissed in the year 2012 by the High Court. The Special Leave Petition was dismissed



in the year 2013. The review petition is filed after nearly 5 years. In the interregnum, there were supervening development in the form of fresh selection. While it may be true that the delay in filing the review petition may have been condoned, it does not mean that the Court where it exercises its discretionary jurisdiction under Article 226 is to become oblivious to the subsequent development and the impact of passage of time. Even in the judgment of this Court in U.P.P.S.C. through its Chairman & Anr. Vs. Rahul Singh & Anr. reported in (2018) 2 SCC 357 which according to the first respondent forms the basis of the High Court's interference though does not expressly stated so, what the Court has laid down is that the Court may permit revaluation inter alia only if it is demonstrated very clearly without any inferential process of reasoning or by a process of rationalization and only in rare or exceptional cases on the commission of material error. It may not be correct to characterize the case as a rare or exceptional case when the first respondent approaches the Court with a delay of nearly 5 years allowing subsequent events to overtake him and the Court. We feel that this aspect was not fully appreciated by the High Court. The review, it must be noted is not a re-hearing of the main matter. A review would lie only on detection without much debate of an error apparent. Was this such a case? It is here that we must notice the argument of the



appellant relating to question in Part III of the examination alone, engaging the attention of the Court for the reason that the first respondent pressed this aspect alone before the High Court. The judgment of the High Court in the writ petition appears to bear out this submission of the appellant. The issue relating to the anomaly in the evaluation of the Paper III has been discussed thread bare in the judgment. The view of the High Court has not been disturbed by this Court. Despite this the High Court in the impugned judgment has proceeded to take up the plea relating to questions in Part-I and Part-II and proceeded to consider the review petition and granted relief that too after the passage of nearly 5 years. This suffices to allow the present appeal.

Despite all this we would also make a few observations on the merit of the matter.”

50. Another judgment on this issue is ***Bihar Staff Selection Commission and Ors. vs. Arun Kumar and Ors.*** reported in (2020) 6 SCC 362. In that case, the Bihar Staff Selection Commission issued an advertisement for recruitment of 1563 Class-III posts. Examination was conducted, result of preliminary test was declared, which was challenged before the learned Single Bench. After calling for evaluation of the questions and the results published by experts, directed fresh declaration of the results. Accordingly, a fresh declaration of



result was made, in which 27,289 candidates qualified in the examination. Meanwhile, the number of vacancies increased. After having declared the result of preliminary test, the mains examination was held. Thereafter, model answers to the mains examination was published. The Bihar Staff Selection Commission constituted a committee of experts to examine the objections. The report suggested changes with respect to 13 questions, which was accepted and revision of the result was made. Accordingly, the result was published, which led to filing of writ petitions on various grounds. After examining the merits of the answers accepted by the Commission, the Single Judge formed opinion that question numbers 82, 147, 148 and 149 were incorrect and allowed the writ petitions with a direction to Bihar Staff Selection Commission to reevaluate the answer sheets of the candidates after deleting the said four questions. Two appeals were preferred against that decision of the learned Single judge, in which plea was taken that the Bihar Public Service Commission has wrongly assessed 11 questions but, the Division Bench found four questions to be defective and directed the same be deleted or corrected. The Division Bench was of the view that by change of answers of these four questions there may be some persons, who are now found to



have made to the final merit list but, were not selected earlier leaving them out would be injustice. Ultimately, the Division Bench held that such persons who now come into the merit list would have to be adjusted, if vacancies were there or there are vacancies available in cadre, for which examination was held. Their inter se seniority in the cadre to which they are allotted would be determined by inter se merit position, irrespective of their date of appointment. The matter went to the Hon'ble Supreme Court in different Special Leave Petitions, where the candidates have taken different pleas including large number of questions were wrongly framed or the answers are wrong in the key answer sheet. The Hon'ble Supreme Court has considered the scope of judicial review and also considered the decision rendered in the case of ***Ran Vijay Singh's case*** (supra), wherein it has been held that sympathy or compassion does not play any role in the matter of directing or not directing revaluation 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. The Hon'ble Supreme Court reiterated the scope of judicial review under Article 226 of the Constitution that in an exception circumstances, the Court would interfere with the matter when on face of it, the wrong is reflected and placed reliance on the decision of ***Central Board of Secondary Education through Secretary, All India Pre-Medical / Pre-Dental Entrance Examination and Ors. vs. Khusboo Shrivastava and Ors.*** (supra), ***Pramod Kumar's case*** (supra) and ***Ranvijay Singh's case*** (supra) and held that the Court should not at all re-evaluate or scrutinize the answer sheets of a candidate as it has no expertise in the matter and academic matters are best left to academics.

51. It will be relevant to quote paragraph nos.22 of the said judgment, which reads as under:-

“22. Given the clear declaration of law in the judgments of this court, we are of the opinion that the unilateral exercise of re-valuation undertaken by the High Court (both by the single judge and the Division Bench) has not solved, but rather contributed to the chaos. No rule or regulation was shown by any party during the hearing, which justified the approach that was adopted. The BSSC, in our opinion,



*acted correctly in the first instance, in referring the answers to a panel of experts. If there were justifiable doubts about the recommendations of that panel, the least that should have been done, was to require the BSSC to refer the disputed or doubtful questions to another expert panel. That was not done; the “corrections” indicated by the single judge were accepted by the BSSC; several candidates who made it to the select list freshly drawn up pursuant to his directions, were appointed. The Division Bench, thereafter undertook the entire exercise afresh, compounding the matter further by not referring the disputed questions to any panel of experts. We are left reiterating the lament, (made in *Ran Vijay*) that the High Court’s interference has not resulted in finality “to the result of the examinations” despite a long lapse of time. There is an air of uncertainty about the entire selection - nay, the entire cadre, because the inter se seniority of selected (and appointed) candidates is in a state of flux.”*

52. Two orders of this Court passed in L.P.A. No. 1522 of 2018 (*Kunal vs. The State of Bihar and Ors.*) and L.P.A. No.798 of 2019 (*Prakash Chandra vs. The State of Bihar and Ors.*) has also been relied upon by the parties wherein this Court placing reliance on the decision of ***Ran Vijay Singh’s case*** (*supra*) has refused to interfere with the model answer key.



CONSIDERATION AND REASONS ON FACTS

53. In view of the aforesaid decisions, it is very much clear that if there is a rule providing and prescribing for re-evaluation or scrutiny of the answer sheet, in such circumstance, a candidate may claim for re-evaluation or scrutiny of answer sheet and the authority conducting the examination may permit it. If the statute or rule and regulations is silent for re-evaluation or scrutiny of answer sheet, in such circumstance, the Court may permit re-evaluation or scrutiny of answer sheet if it is demonstrated that the material error has been committed but, this exercise should not be done by applying an inferential process of reasoning or by class of rationalization and only in the rare and exceptional cases. However, the Court should not act at all to re-evaluate or scrutinize the answer sheet of a candidate as it has no expertise in the academic matters and academic matters are best left to academics and the Court cannot enter into the domain of the academician as if acting as an appellate body over the opinion of the experts. The Court has little expertise to embark upon and to assess the correctness of the view of experts unless on the face of it, it appears to be absurd or wrong.

54. The principle, as aforesaid, this Court has to



examine as to whether the learned Single Judge has rightly interfered with the opinion of the experts on the basis of the objections raised by the respondents-original petitioners especially in the circumstances when the learned Single Judge having found that the examination has been conducted fairly and properly and transparency has been maintained at every stage. Especially in that circumstance, whether this Court, in exercise of power under judicial review, will substitute the view of the expert and form a different opinion when the Court does not have expertise in the field. Further, it has not been brought to our notice any provision or rule prescribing for re-evaluation and scrutiny of answer sheet.

EXAMINATION OF FACTS

55. The controversy in the present case is with respect to four questions namely, question nos. 62, 84, 100 and 123 of Question Booklet Series “B”. Altogether 1267 objections were received and the expert committee found that out of 150 questions of General Paper, options of 13 questions i.e. question nos. 32, 38, 62, 118, 123, 128, 129, 130, 133, 134, 136, 140 and 145 of Question Booklet Series “A” has to be changed as the said options were wrong and 4 questions namely, question nos. 117, 121, 124 and 125 of Question Booklet Series “A” has to be



deleted as none of the given options were correct. The objections filed by the respondents- original petitioners were not accepted by the expert committee which has been constituted by the Commission after receipt of the objections. It is not in dispute that the members of expert committee are from I.I.T., Patna, N.I.T., Patna or from B.I.T., Patna, they do have knowledge of the respective subjects and to verify the objections and give report. They are the masters of the subjects and the Court cannot say that they do not have knowledge to examine the correctness of the objections filed by the original petitioners and others. The original petitioners have emphatically submitted that objections raised by them to be correct placing reliance on the text-books written by different authors.

56. Question no.62 of Question Booklet Series “B”, which is question no.135 of Question Booklet Series “A” states as follows:-

“Q. 62. The behavior of a perfect gas, undergoing any change in the variables which control physical properties, is governed by

- (A) Boyle’s Law*
- (B) Charles’ Law*
- (C) Gay-Lussac Law*
- (D) All of the above.”*



As per the original petitioners option “D” will be the correct answer of this question, meaning thereby, Boyle’s Law, Charles’ Law and Gay-Lussac Law all law will be applied, whereas, as per the Commission, the right answer will be option “C” i.e. Gay-Lussac Law. To substantiate the claim, the original petitioners, have placed reliance on a text-book namely Thermal Engineering written by R.S. Khurmi, and G.K. Gupta, but, in paragraph no.19 of L.P.A. No.642 of 2019, it has been stated that the text-books by R.S. Khurmi and others referred to by the original petitioners are not standard books in the opinion of the experts. It is very difficult for this Court to hold that view of expert committee is incorrect as this Court does not have expertise on this subject.

57. Question no.84 is equivalent to question no.57 of Question Booklet Series “A” states as follows:-

Q. 84. Water requirement per day per bed in a hospital is

(A) 45 litres

(B) 135 litres

(C) 270 litres

(D) 340 litres”

As per the original petitioner-respondents the question itself is incorrect and incomplete questions as the same



does not specify the number of beds available in the hospital and also does not specify the requirement with laundry or without laundry and placed reliance on a text-book annexed as Annexure - 8 of C.W.J.C. No. 3670 of 2019 namely, Indian Standard Code of Basic Requirement for Water Supply, Drainage and Sanitation written by G.S. Birdie and on that basis plea has been taken that question itself is incomplete and incorrect whereas, the experts have considered the objection and given its opinion that option “D” will be the correct answer.

58. Question no.100 is equivalent to question no.73 of Question Booklet Series “A”, reads as under:-

Q. In a tacheometry, if intercept taken on a vertically held staff is inclined at q to horizontal, the horizontal distance is

- (A) $ks + c$*
- (B) $ks \cos q + c \cos q$*
- (C) $ks \cos 2q + c \cos q$*
- (D) $ks \sin 2q + c \sin q$*

As per the original petitioners- respondents, the correct answer will be option “C” i.e. $ks \cos 2q + c \cos q$ whereas, in the opinion of the expert the correct answer will be option “D” i.e. $ks \sin 2q + c \sin q$.

59. Question no.96 is equivalent to question no.123 of



Question Booklet Series “B” reads as under:-

“Q. 123. The potable water is prepared from turbid surface water by adopting which of the following treatment sequences?”

(A) Turbid surface water, coagulation, flocculation, sedimentation, filtration, disinfection, storage and supply

(B) Turbid surface water, disinfection, flocculation, sedimentation, filtration, coagulation, storage and supply

(C) Turbid surface water, filtration, sedimentation, disinfection, flocculation, coagulation, storage and supply

(D) Turbid surface water, sedimentation, flocculation, coagulation, disinfection, filtration, storage and supply”

As per the expert committee, the proper answer will be option “D” as first disinfection comes and thereafter filtration whereas, as per the original petitioners-respondents the proper answer of this question will be option “A” as first filtration comes and disinfection comes later.

60. These are science subjects and we do not have expertise to say that we do have wisdom to examine the correctness of the answers as academic matter should be left to



the domain of the academician. It has to be kept in mind that certain candidates have also filed interlocutory application for impleading them as parties to the proceeding to support the contention of the Commission but, this Court rejected their interlocutory application with an observation that if they want to challenge the order of the learned Single Judge they should file their respective appeals. The Hon'ble Supreme Court has succinctly held that if a statute, rule or regulation, governing an examination, permits the re-evaluation of an answer sheet or scrutiny of an answer sheet, in such circumstance, in appropriate case, the Court can give direction for re-evaluation of answer sheet but, in a case where no such provision is there, then only in exceptional circumstance i.e. without application of inferential process of reasoning or rationalization it is demonstrated the apparent error in key answer, 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 can give direction for reevaluation of answer sheet. The Hon'ble Supreme Court also held that the answer should be assumed to be correct unless it is proved to be wrong. If there is doubt, the benefit should go to the examining body.

61. In the entire argument, learned counsel for the



respondents have tried to justify the order of the learned Single Judge by submitting that since there is doubt in the answers so the learned Single Judge has rightly given direction for revisit of answers by a fresh committee of experts whereas, the law has been settled by the Hon'ble Supreme Court that in such cases the benefit should go to the examining body rather than the candidates. Further, the Hon'ble Supreme Court in ***Ran Vijay Singh's case*** (supra) has categorically held that the Court should not at all re-evaluate or scrutinize the correctness of key answer as it has no expertise in the matter and academic matters are best left to academicians. The learned Single Judge has placed reliance on different text books cited by the original petitioners and held that the same are the acclaimed text-books of the respective fields but, the expert committee said that the text-books written by R.S. Khurmi and others referred to by the original petitioners are not standard text-books and they have considered the objections raised by the original petitioners and did not accept the same. If this Court directs for revisit of answer sheets of those questions then, it is not sure that there will be end of litigation rather, in all possibility, there will be further round of litigation as those who will be affected by the revision of result will definitely come before this Court and



again second round and third round of litigation will start and litigation will not come to an end in near future. The candidates have invested their time and effort, prepared themselves and declared successful in the preliminary examination and equally the examining body also put their tremendous effort in conducting the examination, that should not go waste and unless there is blatant error in the key answers as well as in the opinion of the expert, it will be unjustified to interfere with the view of experts, otherwise it will be nothing but sitting over the opinion of the expert as an appellate authority, which will be outside the scope of the judicial review. Furthermore, in the case of *Mukesh Thakur* (supra) the Hon'ble Supreme Court has held that if there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the examination.

CONCLUSION

62. In view of the aforesaid discussions, we are of the view that the interference by the learned Single in the report of the expert committee and giving direction for constitution of fresh expert committee to revisit the answer sheet and consequential direction is outside the realm of judicial review. Accordingly, the judgment and order dated 26.03.2019 passed in



C.W.J.C. No.3670 of 2019 and other analogous cases is set aside. This Court directs the Commission to proceed further and declare the result of the mains examination, if the result is ready.

63. With the aforesaid observations and directions, these appeals are allowed. Pending Interlocutory Application, if any, stands disposed of.

(Shivaji Pandey, J)

(Partha Sarthy, J)

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