

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2243 of 2021

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Kundan Kumar S/o Late Surendra Singh At and P.O.- Purvi Laxmi Nagar,
District- Patna- 800030.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Department of Posts, Dak Bhawan, New Delhi, 110001.
2. The Director General (Posts), Dak Bhawan, Sansad Marg, New Delhi- 110001.
3. The DDG (P), O/o Director General (Posts), Dak Bhawan, Sansad Marg, New Delhi- 110001.
4. The Director (Staff), Director General (Posts), Dak Bhawan, Sansad Marg, New Delhi- 110001.
5. The Asstt. Director General (DE), Govt. of India, Ministry of Communication and Information Technology, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
6. The Chief Postmaster General, Bihar Circle, Patna 800001.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Jayant Kumar Karn
For the Respondent/s : Mr.Rakesh Kumar Sinha, CGC

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 23-12-2021

The office of the Chief Post Master General, Bihar Circle, Patna under the Department of Posts, Government of India conducted a Limited Departmental Competitive Examination (LDCE in short) for promotion to the cadre of P.S. Group-B. The examination was objective type with multiple



choice answers. The petitioner was an applicant amongst others. After the examination was held, the provisional keys of the answers were uploaded by the respondents on the departmental website for information to the participants, inviting their feedback/comments/objections on the said provisional keys. Objections were raised by the applicants in respect of 54 questions in paper-I and 49 questions in paper-II. The objections were placed before a Committee of experts. Upon consideration of the objections so-raised, the expert Committee came to a conclusion that question Nos. 10,12,22,35,39,73,81,82,115,116,117,118,120 of A series of Paper-I (total 13) and question Nos. 10,51,107,123 of A series of Paper-II deserved to be dropped from evaluation, the same being either ambiguous or correct answers were not available or more than one correct answers were available resulting in lack of clarity. The expert Committee further, recommended revision in the provisional key answers of question No.57 of Paper-I and question Nos. 30 and 65 of Paper-II of A series. The expert Committee, thus, recommended dropping of 17 questions from evaluation and revision of three (3) model key answers. The recommendation of the expert Committee was accepted by the competent authority and accordingly final result of the LCDE



was published and accordingly a final result of LCDE was published on 10.04.2018. The petitioner's name did not figure in the list of selected candidates. Feeling aggrieved the petitioner challenged the said result of the LCDE before the Central Administrative Tribunal, Patna Bench, Patna by filing O.A./050/00429/2018, which came to be dismissed by the Tribunal by a judgment and order dated 09.01.2020, which is under challenge in the present writ application preferred under Article 226 of the Constitution of India.

2. We have heard Mr. Jayant Kumar Karn, learned counsel for the petitioner and Mr. Rakesh Kumar Sinha, learned counsel for the Union of India.

3. Mr. Jayant Kumar Karn, learned counsel appearing on behalf of the petitioner has submitted that had the aforesaid 17 questions been not dropped and there been no revision of the provisional answer keys, based on the provisional answer keys the petitioner would have succeeded in the LCDE. He has contended that the petitioner had correctly answered question Nos. 35, 39, 116 and 120 of Paper-I and question No. 51 of Paper-II which have been illegally deleted from evaluation based on recommendation of the expert's Committee. He contends that the petitioner has scored 381 marks after illegally



deleting some of the questions from evaluation and revising answers in respect of some. Had the same been not done, the petitioner would have scored 391 marks and would have thus, become successful in the examination, 386 being the cut off marks. He has contended that the petitioner had made a representation after publication of result against deletion of some of the questions from evaluation and revision of answer key on 24.04.2018, stating specifically as to how the recommendations of the expert Committee were unjustified. The respondents, he contends refused to consider in correct perspective the petitioner's representation.

4. Assailing the impugned order of the Tribunal, Mr. Karn has contended that the judgment was reserved by the Tribunal on 03.12.2019. In accordance with the extant rules, the judgment ought to have been delivered within fourteen (14) days but the Tribunal delivered the judgment much thereafter on 09.01.2020. He has contended that the impugned order of the Tribunal deserves interference by this Court on this ground alone. Reference has been made in this regard to Rule 105 of the Central Administrative Tribunal Rules of Practice, 1993.

5. He has thereafter taken us to the representation which was filed by the petitioner to convince this Court as to



how the determination by the expert's Committee leading to recommendations for deletion of certain questions and revision of model key answers was improper. The said representation contains the details in respect of five question in paper-I and one question in Paper-II, which according to him, were wrongly deleted. Mr. Karn has also argued that the petitioner ought to have been given an opportunity in tune with the principles of natural justice to explain if the competent authority intended to drop some of the questions for evaluation which were rightly attempted by the petitioner.

6. Mr. Rakesh Kumar Sinha, learned Central Government counsel, appearing for the Union of India, on the other hand, has submitted that the result has been published after obtaining opinion of an expert Committee constituted for considering objections received from the candidates. This Court exercising writ jurisdiction under Article 226 of the Constitution of India may not interfere with the decision of the expert's Committee.

7. We have perused the pleadings and other materials on record and have given our anxious consideration to the submissions advanced on behalf of the parties.

8. Before we address the question of limited scope of



judicial review in the matters of decision of the expert's body for the purpose of evaluation of answer-sheets of an objective type examination based on multiple choice questions, it is significant to note that the petitioner had not raised any objection in respect of any of the provisional answer keys nor about wrong framing of questions. Admittedly, on the basis of the recommendations of the expert's body, the competent authority decided to drop altogether 17 questions, 13 in paper-I and four (4) in paper-II. The petitioner in his representation, however, objected to deletion of only four questions in paper-I and one question in paper-II (total five). Apparently, thus, he has no dispute in relation to dropping of other 12 questions on the recommendations of the expert's Committee, for the reasons which have been noted herein above. This goes to suggest the petitioner's own position where he answered/attempted even such questions in the LCDE which were found to have been incorrectly framed by the expert Committee, without raising objection.

9. Coming now to the issue of the scope of judicial review in such matters, in our view, the law is well settled and it has been reiterated repeatedly by the Supreme Court and this Court that it is impermissible for the Court exercising



jurisdiction under Article 226 of the Constitution of India to take upon itself the task of Examiner/Selection Board and examine discrepancies and inconsistencies in question paper and evaluation thereof. [see **H.P Public Service Commission Vs. Mukesh Thakur & Another** reported in (2010) 6 SCC 759].

10. The submission of Mr. Karn that before a decision to delete the questions and revise the key-answers was taken, the petitioner ought to have been given an opportunity of hearing deserves to be rejected at the threshold.

11. In case of **Maharashtra State Board of Secondary and Higher Secondary Education Vs. Paritosh Bhupeshkumar Sheth and others** reported in (1984) 4 SCC 27, the Supreme Court has categorically held that the principles of natural justice cannot be carried to such absurd lengths as to make it necessary that candidates who have taken a public examination should be allowed to participate in the process of evaluation of their performances or to verify the correctness of the evaluation made by the examiners. The principles involved in the *audi alteram partem* rule cannot be extended beyond reasonable and rational limits so as to make it applicable to the “twilight zone of mere expectations”, however great they may be. (see para 12), the Supreme Court has held.



12. It is one of the fundamental legal principles that while exercising power of judicial review the Court should be extremely reluctant to substitute its views as to what is wise, prudent and proper in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working experience.

13. In case of **Central Board of Secondary Education Vs. Khushboo Shrivastava and others** reported in (2014) 14 SCC 523, the Supreme Court placing reliance on the decision in case of **Paritosh Bhupeshkumar Sheth** (supra) has reiterated that the High Court ought not to have substituted its own views for that of the examiners in exercise of power of judicial review under Article 226 of the Constitution of India.

14. Same issue had fallen for consideration before the Supreme Court in case of **Ran Vijay Singh and Others Vs. State of Uttar Pradesh and others** reported in (2018) 2 SCC 357. The observations made in paragraphs 31 and 32 in case of **Ran Vijay Singh and others** (supra), is of great significance, which read as under:-

“31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the



complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse-exclude the suspect or offending question.

32. It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a classic example of the consequence of such interference where there is no finality to the result of the



examinations even after a lapse of eight years. Apart from the examination authorities even 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."

15. The Supreme Court further, has highlighted few significant conclusion apropos the law in the subject of judicial review in the matter of evaluation/reevaluation or scrutiny of answer-sheets in case of **Ran Vijay Singh** (supra) and has held that the Court should not at all reevaluate or scrutinize the answer-sheets as it has no expertise in the matter. The Court should presume the correctness of the key answers and proceed on that assumption. In the event of a doubt, the benefit should go to the examination authority rather than to the candidate. Reiterating the law, the Supreme Court in subsequent decision in case of **U.P. Public Service Commission Vs Rahul Singh** reported in **(2018) 7 SCC 254** has explicitly held that the Judges



are not and cannot be experts in all fields, and. therefore, they must exercise great restraint and should not overstep their jurisdiction to upset the opinion of the experts. The Judges cannot take on the role of the experts in the academic matters, the Supreme Court observed in the case of **Rahul Singh** (supra). In case of **Richal and others Vs. Rajasthan Public Service Commission and others** reported in **(2018) 8 SCC 81**, the Supreme Court approved deletion of question from evaluation by treating question papers as containing questions less the deleted questions.

16. We find, in the present case that the Department has adopted a uniform method to deal with all the applicants. No case of any discrimination is made out. All the candidates who participated in the LCDE have been uniformly treated after accepting the opinion of the expert's body. The Tribunal, in our opinion, has rightly refused to interfere in the process of selection after having noticed that the process adopted by the respondents did not suffer from any infirmity or violation of any statutory rules or instructions.

17. Reference may also be made to a coordinate Bench decision of this Court in case of **Rabindra Kumar Singh Vs. High Court of Judicature at Patna** reported in



2016(1) PLJR 865, wherein noticing the Supreme Court's decision in case of **Mukesh Thakur** (supra), this Court has held that if there is any discrepancy in framing of question or evaluation of answers, it would be for all candidates and not for any particular candidate and, that a Court cannot take upon itself the task of a statutory authority in exercise of power of judicial review under Article 226 of the Constitution of India.

18. In all fairness to the submission made on behalf of the petitioner in relation to Rule 105(b) of the Rules, the said provision reads as under:-

“105. Pronouncement of order:-

*(a) * * **

(b) When the orders are reserved, the date for pronouncement not later than 3 weeks shall be fixed. The date so fixed shall not be changed except after due notice to all parties/counsel.”

19. The said provision simply requires fixing of a date when an order is reserved not later than three weeks from the date the judgment is reserved.

20. In our considered opinion, pronouncement of judgment after the stipulated period for fixing date cannot by itself vitiate the impugned judgment and order of the Tribunal.

21. For the reasons aforesaid, we do not find any



merit in this writ application, which is accordingly dismissed.

22. There shall be no order as to cost.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

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AFR/NAFR	NAFR
CAV DATE	17.11.2021
Uploading Date	24.12.2021
Transmission Date	

