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WPCT 21 of 2021

**Progyadyuti Dutta
Vs.
Union of India & Ors.**

Mr. S.K. Datta
Mr. Barun Chatterjee
.... For the Petitioner

Mr. Dayashankar Mishra
.... For the Union of India

The writ petition is directed against order dated November 20, 2019 in Original Application No. 1077 of 2015 and order dated February 21, 2020 in Review Application No. 350/28/2019 passed by the Central Administrative Tribunal, Kolkata Bench.

The grievance of the writ petitioner before the Central Administrative Tribunal is against wrong and incorrect marking of the answers in connection with the Limited Departmental Competitive Examination, 2011-12 for filling up the post of Chargeman/Tech. & Non-tech (Stores & OTS) held by the Ordinance Factory Board.

The writ petitioner, before the Tribunal, had contended that the assessment of his answer-scripts was made in an arbitrary manner. The original applicant secured 183 marks and Sri Amit Gupta, the private respondent no. 6 herein, secured 186 marks. The original applicant asked for certain information under Right To Information Act regarding examination of his answer-scripts and a copy of the model answer keys. From the information so obtained, it appears that as many as 11 model key answers are wrong and contrary to the provisions of Acts, Regulations and accredited Text Books on the

subject.

The respondent authorities opposed the prayer of the petitioner on two fold grounds. Firstly, the model key answers were prepared by the Chairman, Ordinance Factory Board – Director General, Ordinance Factories and the Principal Director of the Ordinance Factories Institute of Learning and secondly, there is no provision in the Rules for re-evaluation of the answer-scripts. It is submitted that reliance in support of some of the answers in justification of its correctness based on Swamy's Handbook 2014 cannot be accepted for the disclaimer made by the author in the Handbook itself. Lastly, it is submitted that the private respondent no. 6 has already been appointed as he secured more marks than the petitioner and such appointment, at this stage, should not be disturbed. Before the Tribunal the respondent authorities appeared to have relied upon a decision of the Tribunal in Original Application no. 908 of 2012 (Sri Pratap Chakraborty Vs. Union of India & Ors.) in support of their contention that in the absence of any provision regarding re-evaluation of the answer-scripts for Limited Departmental Competitive Examination, the original application is not maintainable.

The Tribunal without even referring to the materials relied upon by the petitioner to demonstrate that the answers to the model answer keys are palpably erroneous, dismissed the said original application relying upon its earlier observation in Sri Pratap Chakraborty (supra).

The petitioner thereafter filed a review application on the ground that although the discrepancies in the answer keys were clearly mentioned in the original application, the same

has been overlooked and ignored and as such there is an error apparent on the face of the record. The relevant grounds for review are stated below:-

“i) that in course of hearing on behalf of the applicant, the discrepancies in the answer keys were clearly pointed out e.g. so far as the question no. 4 Labour Accounting & Factory Accounting is concerned the answer as per answer key is ‘C’ and the applicant in the answer sheet marked the option-b as correct and the authority in support of the correct answer given by the applicant would appear at page no. 22 which is the answer of question no. 82 as per e-answers and if the same is tallied with the question and answer of the applicant against question no. 4 at page 33 it could be clear that the answer given by the applicant was correct.

ii) that several instances were given at the time of hearing referring to the annexures to the original application but none of the instances except one was considered by the Tribunal while passing the final order dated 20.11.2019 which was contradicted on behalf of the respondents but the Tribunal failed to consider the provisions of FR 53(1)(a)(iii) which was brought to the notice of the Tribunal at the time of final hearing as also the Tribunal failed to consider the rejoinder filed by the applicant which was also placed at the time of hearing of the original application.”

The said application for review was dismissed by the Tribunal on consideration of its earlier finding in Sri Pratap Chakraborty (supra) and proceeded on the basis that since the answer keys were set by the independent dedicated

organisation, that is, by the Ordinance Factories Institute of Learning at Ambarnath, the allegations that the answers to the model answer keys are wrong could not be accepted. The Tribunal proceeded on the basis that the contentions of the respondent authorities notwithstanding the discrepancies pointed out by the original applicant were to be treated as final.

The learned advocate appearing on behalf of the writ petitioner before us, by way of illustration, has referred to the following questions and possible answers for our consideration:-

Question no. 40 If in an Ordinance Factory the number of workmen is 1,000, the monthly wages to IEs must be paid –

- a) Before the expiry of the seventh day of next calendar month
- b) Before the expiry of tenth day of next calendar month
- c) On any day within 30 days of next calendar month
- d) There is no such restriction under Payment of Wages Act.

The possible answer to question no. 40 is as follows:-

“142. Under the Payment of Wages Act 1936, the wages for any wage period (the calendar month in the case of Ordinance and Ordinance Equipment Factories) are payable before the expiry of the tenth day following the last day of wage period if the factory employs 1000 or more workmen and before the expiry of the seventh day following in the case of factories employing less than 1000 workmen. It is, therefore, necessary that the factory should receive the master roll showing gross wages in sufficient time to enable factory authorities to effect various

authorised recoveries of dues from the workmen. The exact date on which the roll should be same to the factory should be settled between the Accounts Officer and the General Manager.

Question no. 7 – What are maximum working hours per week in factories?

(a) $44\frac{3}{4}$ (b) 48 (c) 51 (d) 54

The possible answer to question no. 7 is as follows:-

“51. Weekly hours – no adult worker shall be required or allowed to work in a factory for more than 48 hours in any week.

In answer to question no. 40, the writ petitioner out of 4 answers has chosen option (b), that is, before the expiry of tenth day of next calendar month. This answer is supported by the Ordinance Factories Office Manual Part-VI (Vol-I) in paragraph 142. Similarly, in answer to question no. 7 (at page 97), according to the writ petitioner the correct answer would be option (b), namely 48 hours, which answer finds support in Section 51 of the Factories Act, 1948.

Our attention is also drawn to the question no. 10 of the Store Procedure & Material Management, which reads thus – “All materials received in the factory are entered in the material inward slip, which bears (a) Form IAF (Fac) 149 (b) Form IAF (Fac) 150 (c) Form IAF (Fac) 151 (d) Form IAFZ 2096.”

The corresponding answer to the said question is given in Ordinance Factories Office Manual, which reads as follows:-

“Accounting of Receipts

407. (a) All materials handled by Receipt branch will be entered in Material Inward Slip in Form IAF (Fac) 151, recording full particulars of the stores and the results of their examination and inspection. Materials not handled by

Receipt Branch, such as materials received by post will be similarly entered on a M.I Slip, on its being handed to Store Holder for custody, if it is to come on stock or deposit ledger charges M.I Slip will be given consecutive serial number from 00001 to 99999. From the number it is possible to know the month of transaction. M.I Slip will normally be prepared, timbered and dated on the same day of the receipt of stores. The number of copies to be made out will be according to local convenience. For taking stores on regular stock or deposit stock charge, the M.I Slip itself allotted "S" or "D" series Receipt Voucher. In other cases e.g. machinery, stock pile, medical, nominal etc. items, a voucher on Form IAF Z-2096 is prepared quoting M.I Slip No. and allotting specific series of vouchers e.g. "M", "R", "Med", "N" etc.

(b) Surplus Voucher in Form IAF (Fact)-45 is made out for receipts from surplus found at stock taking.

(c) Transfer Vouchers on IAFZ- 2096 made out or transfers from Stock Pile/Capital are allotted Receipt Voucher No. in stock series.

(d) Receipt from Factories Own Manufacture
The Inspection Note made out is used both as an issue Voucher and Receipt Voucher."

The writ petitioner answered option (c) out of four options, namely, Form IAF (Fact) 151. This answer given by the petitioner conforms with the Ordinance Factories Office Manual.

However, unfortunately the Tribunal did not examine the materials produced before it and perfunctorily dismissed the original application as well as the review application.

In the given circumstances, we feel that the

Tribunal ought to have applied the principles laid down by the Hon'ble Supreme Court in the case of **Rajesh Kumar & Ors. Vs. State of Bihar & Ors.**, reported in **(2013)4 SCC 690**. This decision although was cited along with **Vikas Pratap Singh & Ors. Vs. State of Chattishgarh & Ors. (Civil Appeal Nos. 5318 - 5319 of 2013)**, the Tribunal, in our view, has failed to apply the principles laid down in the said cited decisions and dismissed the review application solely relying upon the statement of the respondents that the question and answer keys were set by the independent dedicated organisation of the department and there is no illegality and/or irregularity in the selection process. Moreover, there is no provision for re-evaluation of the answer-scripts for the Limited Department Competitive Examination.

The learned advocate appearing on behalf of Union of India has reiterated the objection raised before the Tribunal at the time of hearing of the original application as also the review application.

For the reasons indicated above, we feel that the Tribunal has failed to address the proper question and has overlooked the material and/or the documents touching upon and/or concerning issues raised by the writ petitioner. The model key answer cannot be contrary to the statute and the Ordinance Factories Office Manual. The Office Manual on which the writ petitioner has relied upon is binding upon the department and the answer is based on what is stated in the manual. As such, the same cannot be rejected.

The learned advocate for the respondents has failed to give any satisfactory answer as to why the provisions of the Factories Act or the Ordinance Factories Office Manual would not

apply in the instant case.

The Hon'ble Supreme Court of India in the case of *Ran Vijay Singh & Ors. vs. State of Uttar Pradesh & Ors.* reported at (2018) 2 SCC 357 while dealing with the issue as to the power of the Court to allow the prayer for re-evaluation of the answer scripts in the absence of any provision for such re-evaluation in the relevant rules highlighted a few significant conclusions in paragraph 30 of the said report which runs as follows-

"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 rationalization" and only in rare or exceptional cases that a material error has been committed;

30.3. The court should not at all re-evaluate or scrutinise the answer sheets of a candidate- it has no expertise in the matter and academic matters are best left to academics;

30.4. The court should presume the correctness of the key answers and proceed on that assumption; and

30.5. In the event of a doubt, the benefit should go to the examination authority rather than to the candidate."

Thus, it is well settled that if the relevant rules does not permit re-evaluation of an answer sheet, then the Court may permit re-evaluation only, in rare and exceptional case, if it is demonstrated that a material error has been committed.

In the case of *High Court of Tripura Vs. Tirtha Sarathi Mukherjee & Ors* reported at (2019)16 SCC 663, the Hon'ble Supreme Court held that the wide power under Article 226 may continue to be available even though there is no provision for re-evaluation. The Hon'ble Supreme Court in the said report held as

under –

“20. The question however arises whether even if there is no legal right to demand re-evaluation as of right could there arise circumstances which leave 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-valuation 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 re-valuation in a situation where a candidate despite having giving correct answer and about which there cannot be even the slightest manner of doubt, he is treated as having given the wrong answer and consequently the candidate is found disentitled to any marks.”

The answers to the said three questions, *prima facie*, appears to be correct on the basis of the materials disclosed in the petition, in our view, ought to have been accepted by the respondent authorities and the petitioner ought to have been given the marks deserved by him.

The writ petitioner herein could demonstrate before us that material error has been committed in the evaluation of the answer script of the petitioner. The case of the petitioner falls within the rare and exceptional case as observed in *Ran Vijay Singh* (supra).

We, therefore, set aside the orders passed in the original application as well as the review application and direct the Tribunal to rehear the matter on merits and decide the original application as expeditiously as possible, preferably within December 31, 2021.

We make it clear that all points with regard to the correctness of the answers given by the petitioner in respect of all the 11 questions are kept open and shall be decided by the Tribunal in accordance with law after giving reasonable

opportunity of hearing to the parties and if required by appointing an expert committee. In the event it is found that there is any mistake or wrong in the model key answers, the Tribunal shall pass appropriate orders.

WPCT 21 of 2021 is thus disposed of without any order as to costs.

Urgent photostat copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya,J.)

(Soumen Sen, J.)

