

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 439 of 2021**

1. Rajendra Singh S/o Jaipal Singh Aged About 31 Years R/o S - /26, Annapurna Vihar, Ganesh Nagar, Bilaspur, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
2. Gaya Prasad Lilahare S/o Sidha Ram Lilahare Aged About 43 Years R/o Chhipa Post Musra, Tahsil Dongargarh District Rajnandgaon Chhattisgarh., District : Rajnandgaon, Chhattisgarh
3. Sushant Namdeo S/o Late Shri Kailash Prakash Namdeo Aged About 31 Years R/o F-1 Vinayak Vihar, Deen Dayal Upadhyaya Nagar, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

---- Petitioners**Versus**

1. State Of Chhattisgarh Through The Secretary, General Administration Department Mantralaya, Naya Raipur, Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Chhattisgarh Public Service Commision Through Secretary, Shankar Nagar Road, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
3. Examinar Chhattisgarh Public Service Commission Though Examiner Controller, Shankar Nagar Road, Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. P. Acharya, Advocate
For State	:	Mr. Rahul Jha, GA
For Res. 2 & 3	:	Mr. Anand Mohan Tiwari, Advocate

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

21/01/2021

1. The challenge in the present writ petition is to the order passed by the respondent no.3 vide Annexure P-1 dated 26.12.2020.

2. The present is a second round of litigation. The earlier round of litigation was WPS 2526/2020 which was disposed of by this Court on 03.11.2020. The matter pertains to the recruitment process to the State Civil Service. The Preliminary Examination for the same was conducted on 09.02.2020. The model answers were first published on 12.02.2020 and objections were called for from the candidates. That after considering the objections the amended final answers were published on 29.05.2020. Dissatisfied from the outcome of the final answers the petitioner approached the High Court vide WPS 2526/2020 alleging that the manner in which the final answers were published by the respondent were totally arbitrary, mala fide and was contrary to the available literature with the candidates and so also contrary to the submission given by the Public Service Commission in the writ petition. After considering the contentions put forth on either side this Court disposed of the writ petition on 03.11.2020 directing the State Public Service Commission to constitute an Expert Committee to scrutinize the objections of the petitioners in respect of three questions.
3. In terms of the order of this Court the State Public Service Commission constituted an Expert Committee of five members who thereafter scrutinized three questions and in the process they found one question to be not proper and accordingly deleted the same, two questions and the answers published were found to be intact without warranting any interference. Pursuant to the Expert Committee's report the impugned order Annexure P-1 was passed which is under challenge in this writ petition.
4. As has been stated in the preceding paragraphs it stands undisputed that matter had come up before this Court on the previous occasion and this Court had directed the State Public Service Commission to constitute an Expert Committee relating to the subject and to get the answers scrutinized and experts have already scrutinized and have submitted their report.

5. At this juncture it would be relevant to refer to the recent decision of the Division Bench of this Court passed in bunch of writ Appeals the leading case of which is WA No.165/2020 which was disposed of on 10.12.2020. Hon'ble Division Bench in some what similar factual backdrop dealing with such a situation and dealing with the order of Single Bench whereby the Single Bench had directed to constitute an Expert Committee for scrutinizing the questions involved in the said examination, in paragraphs 14, 15, 16, 17 & 21 has held as under :-

“14. The observation made by this Court in paragraphs-11 and 12 of the judgment passed in Writ Appeal No.108 of 2020 are relevant and we extract the same for easy reference :

“11. The first point to be considered is whether there is any discussion as to the merit involved and any finding has been rendered with reference to the genuineness of the objections raised by the writ petitioners. As mentioned already, the analysis in 'paragraph 15' begins with the inference drawn that 'justice would be met', if the writ petition is disposed of with a direction to the Respondents to re-examine the objections raised by the Petitioners as mentioned therein and that it would be more proper, if the 1st Respondent re-examined all the 18 deleted questions so as to avoid complications. It is with the presumption that no much prejudice would be caused to anybody, if such a course was ordered, virtually reflecting a 'problem solving approach'. However, no satisfaction is recorded as to the genuineness of the objections raised by the writ petitioners with reference to the questions, which was quite necessary, by virtue of the law declared by the Apex Court in Uttar Pradesh Public Service Commission's case (supra). Similarly, no finding is rendered in the judgment to the effect that the opinion expressed by the Experts (after considering the objections, leading to finalization of the answer-sheets vide Annexure-A3) was wrong, arbitrary, illegal or unsustainable in any manner.

12. It is true that the learned Single Judge has not ventured into scrutiny of the questions on the technical subjects and has only ordered it to be re-examined by the Expert Committee. But, before ordering re-examination by the Expert Committee, it is necessary to consider and arrive at a finding whether the course pursued by the Appellant, based on the opinion of the Expert Committee, was wrong or unsustainable for some or other reason. This is more so, when the scrutiny has been ordered to be made by another Committee to be constituted by the Appellant-Board, which otherwise will affect the morale of the Expert Committee members, who had done the exercise already. That apart, the learned Single Judge has permitted the writ petitioners to supplement the objections and the scrutiny has been ordered to be made also considering the objections to be preferred by any other candidates as well. When no other candidate was having any objection at all, it was not proper or necessary for this Court to have directed consideration of such objections under any circumstance. The learned Single Judge has observed in paragraphs 15 and 17 of the judgment under challenge that, it is with an intention 'to avoid multiplicity of litigations and further complications', if any. But, once the said direction is given effect to, there is every chance for getting the matter protracted further, as any change in the position will give a chance to the other candidates, who have not raised any objection so far, to raise their objections in respect of such changes and to approach this Court by filing writ petitions, thus opening Pandora's box."
15. This Court also considered whether the 'decision making process' pursued by the Board was correct or not and whether there was any scope for interference. The specific observations made in paragraphs-14 and 15 are having relevance in the context and the same is extracted below :
- "14. The above questions and answers, as considered and opined by the Expert Committee, have been referred to by this Court only to point out that the Petitioners have miserably failed to demonstrate the genuineness of their objections before the writ Court, which was

essential, in view of the ruling rendered by the Apex Court in Uttar Pradesh Public Service Commission(supra), before any relief was granted. There is absolutely no challenge as to the competence of the Expert Committee, constituted by the Appellant-Board or as to any instance of mala fides. This being the position, the idea of the writ petitioners with reference to the way in which it has been painted in some of the textbooks and sought to be relied on by them to suit to their stand cannot be a ground to tilt the balance in respect of the opinion given by the Expert Committee, for the reasons as given in Annexure-A/5. The course of action pursued by the Appellant-Board is demonstrated as transparent in all respects. The questions were framed by the Experts and after completion of the Examination, the Model Answers were published as per Annexure-A/3, giving a chance to the candidates to submit the objections, if any. It was after considering all the objections, that the opinion was formed by the Expert Committee, leading to finalization of the answers as per Annexure-A/4 and the publication of merit list. This being the position, the 'decision making process' pursued by the Appellant-Board is quite in order and there is no scope for interference in this regard. 15. As mentioned already, though the writ petition was filed by 'five' candidates, who are arrayed in the appeal as Respondents No.1 to 5, even after completion of service of notice, only Respondents No.1 and 2 have turned up. The learned counsel for Respondents No.1 and 2 submits that the verdict passed by the learned Single Judge is in the best interest for all concerned and no harm will be caused to anybody by causing the disputed questions to be examined by a fresh Committee. This Court finds it difficult to accept the said proposition for the reasons (already stated); firstly, since the writ petitioners have failed in demonstrating the genuineness of their objections; secondly, since competence/authority of the Expert Committee is not questioned and in the absence of any finding as to any lapse in this regard, no further scrutiny; that too by constituting another Expert Committee can be ordered and thirdly, since the writ petition was filed by only

'five' writ petitioners and their objections were only in respect of few specific questions, no direction can be given to conduct scrutiny of all the 18 deleted questions and also to consider other objections, if any, filed by any other candidates as well."

It was thus analyzing the actual facts and figures in the light of the law laid down by Hon'ble Apex Court in Uttar Pradesh Public Service Commission (supra) and such other judgments referred therein, that the verdict passed by the learned Single Judge was set aside. Since the judgments impugned in these appeals are simply consequential to the judgment passed in Writ Petition (S) No.4993 of 2019, without any discussion on merit and since the judgment in Writ Petition (S) No.4993 of 2019 has been set aside in Writ Appeal No.108 of 2020, the judgments under challenge in these writ appeals are also liable to be interdicted.

16. Shri Anup Majumdar, the learned counsel appearing for Respondent No.4 in Writ Appeal No.165 of 2020 and Respondent No.1 in Writ Appeal No.442 of 2020 filed by the Board made submissions with reference to the disputed questions No.4, 27, 48, 57, 88, 89, 90 and 147 in Set-C, which were sought to be analyzed in the light of the literature/Expert opinion produced from the part of the Petitioner. Similarly, Shri Ali Asgar, the learned counsel appearing for Respondent No.5 in Writ Appeal No.236 of 2020 and Respondent No.1 in Writ Appeal No.443 of 2020 filed by the Board made submissions with reference to the disputed question Nos.8, 38, 145 etc. in Set-B. The learned counsel points out that the final answer key is sought to be sustained by the Respondent-Board with reference to the Expert opinion given; simultaneously commenting that, the so-called Experts have also placed reliance on the "Wikipedia" to identify the correct answers, despite the fact that Wikipedia is a platform where anybody could enter and edit/update the data, which has gone wrong as well. The sum and substance of the submissions is that, the literature produced by the Writ Petitioners is enough to hold that the final answer key prepared by the Board (based on the Expert opinion obtained by them) is not correct and that the expertise of the so-called Experts is rather poor.
17. It is settled law that the Constitutional Courts must exercise great restraint in such matters and should be reluctant to entertain a plea challenging the

correctness of the key answer, as the Judges are not Experts in every field to decide the issue either one way or the other. The matter can be dealt with only by the Experts in the field and judicial scrutiny can only be to the limited extent, to see whether proper course of action has been pursued by the agency conducting the selection or whether the final answers given are palpably wrong as discernible from the face of it, without going for any research.

21.As mentioned already, there is no dispute with regard to the course and events insofar as after conducting the examination, the model answers were published by the Board inviting objections from the interested participants. The objections obtained were forwarded and subjected to scrutiny by the Expert Committee. Considering the objections, the Expert Committee found that some questions were liable to be deleted because of the defects either in the questions or the answers and in respect of some other questions, the model answers were noted as required to be corrected. It was on the basis of the said opinion of the Experts that the final answer key was published by the Board, followed by further steps. This clearly shows that the course pursued by the Respondent-Board was quite transparent in all respects and it cannot be held as arbitrary, mala fide or unreasonable in any manner.”

6. Taking the aforesaid view of the Division Bench whereby it has set aside the order passed by the Single Bench and had allowed the writ appeals dismissing all the writ petitions the judicial propriety demands that this Court follow the view taken in that judgment by this Court on similar issue. Another aspect which further comes in the way of the petitioner is the fact that in the first round of litigation, the contention of petitioner having in fact been accepted by this Court while disposing of the WPS 2526/2020 vide order dated 03.11.2020 whereby this Court had directed the Commission to constitute a Committee and to scrutinize the questions to which the objections were raised. Pursuant to which the Commission has in fact constituted a Committee and got the questions scrutinized which means that the objections of the petitioners were again subjected to scrutiny

before the Committee of Experts consisting of 5 members and who after scrutiny have given a report vide Annexure P-1. That the Expert Committee having formed an opinion, this court finds it difficult to again go into the veracity of the findings so arrived at by the experts. Accordingly in the light of the judgment of the Division Bench and also for the reason that matter has already been scrutinized at the behest of this Courts order dated 03.11.2020 by a Committee of Experts no case warranting interference is made out. Accordingly the writ petition stands rejected.

Sd/-
(P. Sam Koshy)
Judge

Rohit