

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on 10/3/2021**
Judgment delivered on 17/03/2021**WA No. 70 of 2021**
(Arising out of the order dated 21.1.2021 passed by learned
Single Judge in WPS No.5427/2020)

- Bhuvneshwar Lal Sahu S/o Shri Tirath Ram Sahu, aged about 43 years, R/o Ward No.12, Kalle, Anwari, Dhamtari, District Dhamtari (CG)

---- Appellant/Petitioner**Versus**

1. State of C.G., through Commissioner, Directorate of Higher Education, Indrawati Bhawan, Atal Nagar, District Raipur (CG)
2. Chhattisgarh Professional Examination Board (CG VYAPAM) Through its Advisor, Vyapam Bhawan, North Block, Sector-19, Atal Nagar, Raipur (CG)

---- Respondents

For Appellant : Mr. Siddharth Rathod, Advocate
 For Respondent No.1: Mr. Vikram Sharma, Dy. Govt. Advocate
 For Respondent No.2: Dr. Saurabh Kumar Pande, Advocate

Hon'ble Shri PR Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J**CAV Order****Per Parth Prateem Sahu, J**

1. Challenge in this appeal is to the order dated 21.1.2021 passed by the learned Single Judge in WPS No.5427/2020 dismissing writ petition preferred by petitioner/appellant herein seeking constitution of Committee of Experts to consider the objection raised by petitioner/appellant herein.
2. Facts of the case, in brief, are that respondent No.2 issued an

advertisement inviting applications from eligible candidates for Chhattisgarh State Eligibility Test, 2019 (SET). The exam consists of two papers i.e. General Knowledge and the subject for which candidate has applied/opted for. The candidates coming out successful in the SET examination are to be considered for appointment on the posts of Assistant Teacher, Librarian, Sports Officer etc. in different government and non-government (aided & non-aided) universities of the State. Appellant being eligible applied for the same and appeared in the test, which was conducted by respondent No.2 on 8.9.2019, choosing his main subject as 'Political Science'. As regards paper pattern, it was clarified that questions would be in Multiple Choice type (MCQ). On completion of examination, respondent No.2 published model answers to question papers inviting objections from candidates and thereafter respondent No.2 published final model answers to questions. On going through final model answers, the appellant noticed that answers given by him to Question Nos.36 & 98 were shown correct earlier in model answers, but in the final model answers, the same have been found to be incorrect. This made the appellant to raise objection which was not considered and no action was taken by respondent No.2. Aggrieved by said action of respondent No.2, appellant filed writ petition before the High Court bearing WPC No.3772/2020, which came to be disposed of vide order dated 8.10.2020 directing respondent No.2 to intimate petitioner/appellant herein the reasons of not sustaining the objection

raised along with discussions made by the Expert Committee, within a period of four weeks from the date of passing of the order.

3. Respondent No.2 forwarded information along with discussions and reasons vide covering letter dated 7.11.2020 (Annexure P-3). Dissatisfied with the information and reasons assigned for not sustaining appellant's objection, the appellant again preferred WPC No.5427/2020. The learned Single Judge upon hearing respective parties, dismissed the writ petition which made the appellant to file this appeal.

4. Mr. Siddharth Rathod, learned counsel for appellant submits that appellant opted Political Science as his main subject in the SET Exam, 2019. Grievance of appellant is with regard to Political Science-II (Set 'A' Paper). Appellant has retained the OMR sheet with regard to Political Science-II (Set 'A' Paper) of all 100 questions. For Question No.36 appellant opted 'B' option and for Question No.98 opted 'D'. As per model answer published by respondent No.2, the answers opted by appellant for Questions No.36 & 98 have been stated to be correct and for which appellant deserves marks. However, in the final model answers of Political Science-II (Set 'A' Paper), the answers to Questions No.36 & 98 have been changed from 'B' to 'D' and 'D' to 'B' respectively. Appellant raised objection supported with relevant literature and extracts of books, but the same has not been considered by respondent No.1 in appropriate manner. He submits that with regard to

Question No.36, the answer opted by appellant has also been stated to be one of correct answers, but in the discussions they have erroneously concluded to answer 'D' instead of 'B'. He points out that answer 'A' & 'B' both are correct, hence appellant should have been awarded marks against said questions. Similarly, with regard to Question No.98, in the model answers the answer has been shown to be 'D', appellant has marked option 'D' in his OMR sheet, but while declaring final answer it has been changed to option 'B'. He submits that reasons assigned by the Expert Committee to this answer is also not correct. It is contention of learned counsel for appellant that learned Single Judge erred in dismissing writ petition holding that scope for judicial review is minimal overlooking the fact that reasons and discussions of the Expert Committee supported by literature is self-contradictory which cannot be allowed to stand. Action on the part of respondent No.2 is arbitrary as they are making all their efforts to support their wrong actions. He submits that if Examiner commits some mistakes and the same are demonstrated to be wrong by a candidate, then the Court being expert of experts can interfere to render justice to candidate approaching the Court of law. Non-consideration of objection of appellant is with mala fide and oblique intention. He further pointed out that when two answers of multiple choice given to questions appear to be correct, then marks are to be awarded to all the candidates who have opted for those answers. He submits that respondents have failed to consider

this fact that the model answers has been published by respondent No.2 itself, therefore, writ petition filed by appellant be allowed and respondents be directed to award 04 marks to appellant or respondents be directed to delete Questions No.36 & 98.

5. Dr. Saurabh Pande, learned counsel for the respondents submits that respondent No.2 has conducted examination of SET, 2019 strictly in accordance with law. After publication of model answers to the question papers, the Expert Committee constituted has considered all the objections minutely and only thereafter final answers have been published. The Expert Committee while considering objections raised by candidates have dealt with study material of different authors and have correctly arrived at the finding. After declaration of final result, appellant has raised an objection which was considered by the Committee and have not found any substance in it. Appellant has earlier filed writ petition wherein learned Single Judge has issued a direction to respondent No.2 to provide information with supporting reasons of decision taken on objection raised by petitioner/appellant. Respondent No.2 in compliance of the order passed by the learned Single Judge has given information with the discussions on the objections and reasons have also been given for not finding any substance on objections raised by appellant. He submits that Hon'ble Apex Court has held that it is for the expert to consider whether the answers given by candidates are correct or not.

There was no merit in writ petition, hence learned Single Judge has rightly dismissed writ petition referring to the judgment passed by this Court in **WA No.165/2020**, parties being **Umang Gauraha v. State of Chhattisgarh & ors.** In support of his submissions, learned counsel places his reliance on the ruling of Hon'ble Supreme Court in case of **UPSC & anr Vs. Rahul Singh** reported in **(2018) 7 SCC 254**.

6. We have heard learned counsel for respective parties and perused the record.
7. To appreciate the submissions made by learned counsel for both sides, we have gone through particular questions of Political Science-II (Set 'A' Paper) i.e. Questions No.36 & 98 (Annexure P-7) as well as information supplied by respondent No.2 along with discussions and reasons (Annexure P-3). Objection raised by the appellant has been considered by the Committee of three experts on the subject and they have assigned reasons for turning down objection of petitioner/appellant. Upon going through the said reasons and discussions, we do not find any extraordinary reason to interfere with the reasoning given by the Expert Committee. Hon'ble Supreme Court in the matter of **Ran Vijay Vs. State of UP** reported in **(2018) 2 SCC 357** held thus:-

“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.”

8. Hon'ble Supreme Court in case of Rahul Singh (supra) has held thus:-

“14. In the present case we find that all the three questions needed a long process of reasoning and the High Court itself has noticed that the stand of the Commission is also supported by certain text books. When there are conflicting views, then the court must bow down to the opinion of the experts. 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.

15. In view of the above discussion we are clearly of the view that the High Court over stepped its jurisdiction by giving the directions which amounted to setting aside the decision of experts in the field. As far as the objection of the appellant - Rahul Singh is concerned, after going through the question on which he raised an objection, we ourselves are of the *prima facie* view that the

answer given by the Commission is correct.”

9. It is for the expert committee to consider objections and to declare correct answers. The Courts are not experts for considering objection with regard to questions and answers of a particular subject. This is not the field for the Courts to consider unless and until some apparent error in the nature of some extraordinary circumstance has been brought to the notice of the Court. No such circumstance has been pointed out by learned counsel for appellant but for his submissions that while declaring model answers, the answers attempted by appellant have been found to be correct.
10. Appellant in writ petition has sought relief for considering his objection and accordingly to amend final answers (Annexure P-2). By this relief, in fact the appellant wants the objection raised by him to be decided by another Expert Committee because the objection of petitioner/appellant was considered by the Expert Committee of three experts and in his objection no merit has been found. The issue with regard to issuance of a direction to constitute fresh expert committee was considered by this Court in case of Umang Gauraha (supra) and it was held as under:-

“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, malafide or unreasonable in any manner.”

11. Reliance placed by appellant on the decision rendered in **Ajay Kumar Gupta vs. High Court of MP** reported in **2012 (3) MPHT 502** is of no help to him because the facts of that case are different from the facts of present case.
12. For the foregoing reasons, we do not find any illegality or infirmity in the impugned order passed by the learned Single Judge. Appeal being devoid of merit is liable to be and is hereby dismissed.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-