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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 11 of 2021**

{Arising out of order dated 03.11.2020 passed by the learned Single Judge in Writ Petition (S) No. 2526 of 2020}

1. Udyan Dubey, S/o Vimal Kumar Dubey, aged about 26 years, R/o Near Siddh Shikhar Apartments MIG-2/4, Narmada Nagar, Bilaspur, District Bilaspur, Chhattisgarh.
2. Lokesh Kumar, S/o Madhav Prasad Naik, aged about 26 years, Village Gohadidipa, Post Kondatari, Raigarh, District Raigarh, Chhattisgarh.
3. Nitesh Kumar, S/o Durganand Sahu, aged about 33 years, R/o Madhuban Nagar, Behind Kanti Bhawan, Borsi Durg, District Durg, Chhattisgarh. Pin 491001.
4. Ashish Kumar Goyal, S/o Lalit Kumar Goyal, aged about 32 years, R/o Shanti Nagar Lailunga, District Raigarh, Chhattisgarh. Pin 496113.
5. Manoj Kumar Sarthi, S/o Makkar Lal Sarthi, aged about 37 years, R/o Jila Panchayat Road, Near Abhinav School, Chote Attarmuda, District Raigarh, Chhattisgarh.
6. Naveen Kumar Yadav, S/o Shri Krishna Kumar Yadav, aged about 24 years, R/o Village Pokhra, Post Office Parsada Josi, Tehsil Rajim, District Gariyaband, Chhattisgarh. Pin 493885.

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1. State of Chhattisgarh, Through Secretary, General Administration Department, DKS Bhawan, Mantralaya, Raipur, Chhattisgarh. Pin code – 492001.
2. Chhattisgarh Public Service Commission, Through Secretary, Shankar Nagar Road, Raipur, Chhattisgarh. Pin Code – 492001.
3. Examiner Chhattisgarh Public Service Commission, Through Examiner Controller, Shankar Nagar Road, Raipur, Chhattisgarh.
4. Anju Manhar, D/o H R Manhar, aged about 31 years, R/o Nehru Chowk District Bilaspur, Chhattisgarh. Pin 495001.

5. Akash Kumar Kashyap, S/o Dwarika Prasad Kashyap, aged about 29 years, R/o 414/1, Gudipara, Loharsi, Janjgir-Champa, District Janjgir-Champa, Chhattisgarh. Pin 495556.
6. Kailash Sahu, S/o Mr Dayalu Ram Sahu, aged about 26 years, R/o Poem Nagar Sukma, Tehsil Sukma, District Sukma, Chhattisgarh. Pin 494111.
7. Aarti Singh, D/o Mr Ayodhya Singh, aged about 31 years, Resident of Ward No. 3, Near Masjid West Chirmiri Collery, District Korea, Chhattisgarh. Pin No. 49773.
8. Indrajeet Singh Thakur, S/o Late Shri RKS Thakur, aged about 32 years, Resident of GAD Colony, Q.No. 09, Dantewada, Tehsil Dantewad, District Dantewada, Chhattisgarh. Pin No. 494449.
9. Jyoti Baya, D/o Jagdish Prasad Baya, aged about 30 years, Resident of Sahupara, Bazaar Chowk, Bhilai-3, District Durg, Chhattisgarh. Pin 490021.
10. Ashish Kumeti, S/o Mannu Ram Kumeti, aged about 29 years, Resident of Santoshi Mandi, Near Radha Villa, Main Road Dantewada, District Dantewada, Chhattisgarh. Pin 494449.
11. Deepak Kumar Agrawal, S/o Ramesh Agrawal, aged about 27 years, Resident of C/o Anil Agrawal, Salasar Balaji Enterprises Near Bus Stand Pithora, District Mahasamund, Chhattisgarh.
12. Gaya Prasad Lilahare, S/o Sidha Ram Lilahare, aged about 43 years, R/o Chhipa Post Musra, Tahsil Dangargarih, District Rajnandgaon, Chhattisgarh.
13. Ashish Thakur, S/o Siya Ram Thakur, aged about 30 years, R/o Village Khardi Post Khardgaon, Manpur, Tehsil, Manpur, District Rajnandgaon, Chhattisgarh.
14. Hemant Kumar Sahu, S/o Bali Ram Sahu, aged about 28 years, R/o Loharsi Tehsil Pamgarh, District Janjgir-Champa, Chhattisgarh. Pin 495556.
15. Gautam, D/o Sher Singh Thakur, aged about 30 years, R/o Behind State Bank of India, Subash Ward Bhatapara, District Baloda-Bazaar, Chhattisgarh.

16. Naveen Kumar Sharma, S/o Late Shri Ram Narayan Sharma, aged about 28 years, House No. 21, Ward No. 41, Behind Old Sub Post Kelabadi, Durg, District Durg, Chhattisgarh.
17. Reena Mahipal, D/o Bhagirathi Mahipal, aged about 28 years, Ward No. 28, Shankar Nagar, Champa, District Janjgir-Champa, Chhattisgarh. Pin 495671.
18. Kamal Kishore Kashyap, S/o Milan Prasad Kashyap, aged about 29 years, Resident of Village Kamrid, District Janjgir-Champa, Chhattisgarh.
19. Dheeraj Soni, S/o Shreeram Soni, aged about 25 years, R/o of Village Sanjay Ward Chaurasiya Gali, Near Old Kushal Auto Bhatapara, District Baloda-Bazaar, Chhattisgarh.
20. Pradeep Patel, S/o Basant Kumar Patel, aged about 27 years, Resident of Chhuwari (Dhobnipali), Post Manikpur, Beram Kela, District Raigarh, Chhattisgarh.
21. Alok Kumar Hota, S/o Santoshi Kumar Hota, aged about 32 years, R/o Ashok Vihar Colony Seth Kirodimal Chowk, Dhimrapur, Raigarh, Chhattisgarh. Pin 496001.

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For Appellants	:	Shri P. Acharya and Ms. Juhi Jaiswal, Advocates.
For Respondent/State	:	Shri Sudeep Agrawal, Deputy Advocate General.
For Respondents No. 2&3	:	Shri Ashish Shrivastava and Shri Aman Pandey, Advocates.
For Respondent No. 12	:	Shri Arjit Tiwari, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge
Judgment on Board

Per P. R. Ramachandra Menon, Chief Justice

05.02.2021

1. The challenge is against the verdict passed by the learned Single Judge in Writ Petition (S) No. 2526 of 2020 and connected cases, whereby the answers given by the experts in respect of '3 Questions' (Q.Nos. 2, 76 and 99) alone, in connection with the selection for filling up the post in

question, have been ordered to be revisited. The prayer is to cause the answers to 'Q.Nos. 47, 49, 57 and 88' as well in respect of 'Set-A General Studies' to be revisited alongwith the questions mentioned by the learned Single Judge.

2. The contention is that the final answers given and reckoned by the Chhattisgarh Public Service Commission (for short, 'PSC') are not correct in view of the entries in the relevant text books and hence the learned Single Judge was not correct in having accepted the version of the PSC, which led to non-interference with regard to the aforesaid '4 Questions' (Q.Nos. 47, 49, 57 and 88).
3. The sequence of events reveals that the 2nd Respondent/PSC had issued Annexure P/2 notification on 27.11.2019 inviting applications from eligible candidates for selection to the post in question. As per the scheme of the examination, the aspirants had to get through the 'Preliminary Examination', which was to be conducted on 09.02.2020, to be followed by the 'Final Examination' and 'Interview'. The Appellants participated in the Preliminary Examination held on 09.02.2020 and thereafter the 3rd Respondent issued 'Model Answers' of the examination on 12.02.2020 inviting objections, if any.
4. The objections were forwarded by the PSC to the Expert body who considered the same; based on which the amended model answers were published on 29.05.2020. By virtue of the said exercise, the Petitioners came to be aggrieved, who approached this Court by filing Writ Petition (S) No. 2526 of 2020 joining hands with some other similarly situated candidates (who have been arrayed as private Respondents in this appeal) with the following prayers:

“10.1. It is prayed that this Hon'ble Court may kindly be pleased to call for the entire records concerning the present selection, and the comparative results, for its kind perusal.

10.2. This Hon'ble Court may kindly be pleased to issue an appropriate writ quashing and setting aside the entire selection process 12.06.2020 (Annexure P-1) issued by respondent No. 3.

10.3. This Hon'ble Court may kindly be pleased to issue an appropriate writ in the nature of mandamus directing respondent No. 2 & 3 to issue fresh result of the said Preliminary Examination 2019-20 on the basis of proper calculation based on correct questions and answers, in accordance with law.

10.4. Any other relief/reliefs which this Hon'ble Court may think fit and proper in the facts and circumstances of the case, with cost of the petition may also be pleased to be granted to the petitioners.”

5. The prayer was opposed from the part of the PSC and reliance was placed on various judgments rendered by the Apex Court cited from the both the sides. After considering the materials on record and the dictum laid down by the Apex Court, the learned Single Judge held that the answers given by the Experts in respects of 'Q.Nos. 2, 76 and 99' appeared to be palpably wrong on the face of it (on the basis of the documents on which Experts relied upon) which hence was directed to be revisited by the Expert body. The operative portion of the judgment as contained in paragraph 49 is to the following effect:

“49. Applying the aforesaid principles as it is found that three questions i.e. question Nos. 2, 76 & 99, the answers given by the experts appear to be palpably wrong on the face of it on the basis of the documents on which the experts have relied upon. Apart from the fact that the PSC before this Court as an institution has fairly admitted the answers one question to be wrong. In such case when the negative marking exists, then the entire result would require to reshuffle after fresh key answers are reverified on the basis of new answers. Therefore, in view of the discussion above, it is directed that the PSC shall send the above mentioned three questions

& answers again to the expert body who will revisit the answer and thereafter if the answers are changed, the entire list of the candidates shall be reshuffled according to the new available answers given by the students. The aforesaid exercise shall be carried out as early as possible within an outer limit of two months so that certainty for the subsequent main examination for the succeeded students can be arrived at, at the earliest.”

The case/grievance is that the learned Single Judge was not correct in confining the re-examination of the questions/answers only in respect of 'Q.Nos. 2, 76 and 99' and that similar treatment is required in respect of the 'Q.Nos. 47, 49, 57 and 88' as well and hence the challenge.

6. As per the examination scheme for the 'Preliminary Examination (objective type)' there will be two compulsory papers of 2 hours of duration each. Both the question papers will have objective type multiple choice questions. There will be four choices of answers for each questions, out of which one answer has to be selected. It is also stated that there will be 'negative marking' for wrong answer. It is further pointed out that the first question paper will be of 'General Studies' with 100 questions carrying 200 marks and for each wrong answer, $\frac{1}{3}^{\text{rd}}$ marks of the correct answer will be deducted. Second question paper is 'Attitude Test' with 100 questions carrying a total of 200 marks and here also, for each wrong answer $\frac{1}{3}^{\text{rd}}$ marks of the correct answer will be deducted. This is to the effect that, if correct answer is given it will give 2 marks and if a wrong answer is chosen there will be a deduction of '0.0666' marks ($2 \times \frac{1}{3}$) for each question.
7. Shri Ashish Shrivastava, the learned counsel appearing for the PSC submits that there is absolutely no merit in the appeal, as a threadbare analysis w.r.t the facts and figures, the relevant provisions of law and the binding precedents has been made by the learned Single Judge.

Interference to the limited extent required has already been ordered, which cannot be sought to be widened by the Appellants so as to suit to their convenience. The learned counsel also submits that the course and proceedings were finalized by the PSC after getting the versions of Experts, adding that as many as 21 Expert was appointed by the PSC and each Expert was from the particular subject. It is also pointed out that there is no specific plea of malafides on the part of the PSC and that the PSC can only go by the opinion of the Experts in the field. A reply statement dated 30.01.2021 has been filed on the part of the PSC seeking to sustain the course of action pursued by them and in support of the judgment passed by the learned Single Judge.

8. When the matter came up for consideration before this Court on 03.02.2021, we wanted to ascertain the position of the Appellants, particularly, with regard to the marks obtained by them and the cut-off marks obtained by the last candidate who has been permitted to appear in the main-final examination. This Court also wanted to ascertain whether the Appellants had actually raised any objection with regard to the disputed questions. Instructions were directed to be obtained as ordered on 03.02.2021.
9. Today, when the matter is taken up for consideration, Shri Ashish Shrivastava, the learned standing counsel for the PSC submits that necessary instructions have been collected pursuant to the order passed by this Court on 03.02.2021 and the relevant particulars in this regard have been submitted in a closed cover. We opened the cover in the open Court and perused the contents.
10. Shri P. Acharya and Ms. Juhi Jaiswal, the learned counsel appearing for the Appellants submits that the 2nd Appellant by name Lokesh Kumar has

already got cleared by the 2nd Respondent/PSC; pursuant to the revisit of the '3 Questions' ordered by the learned Single Judge and that he has been declared eligible to participate in the main-final examination. In the said circumstance, no further relief is sought for on behalf of the said Appellant; submits the learned counsel.

11. As pointed out by the Shri Ashish Shrivastava, the learned counsel for the PSC, the 1st Appellant by name Udyan Dubey raised objection only in respect of 'Q.No. 88' and there is no objection in respect of the final answers published by the PSC with reference to the 'Q.Nos. 47, 49 and 57'. This being the position, the scrutiny requires to be made only with reference to the 'Q.No. 88'. In the case of the 3rd Appellant by name Nitesh Kumar, he has raised objection in respect of the final answers for the 'Q.Nos. 47, 49 and 57' only. The 4th Appellant by name Ashish Kumar Goyal has not raised objection to any of the '4 Questions'; while the 5th Appellant by name Manoj Kumar Sarthi raised objection only in respect of 'Q.No. 59'. Similarly, the 6th Appellant by name Naveen Kumar Yadav had raised objection only in respect of 'Q.No. 49'. The primary point to be considered is whether the Appellants can aspire to participate in the final examination, even if their version is accepted with reference to the objection raised by them in respect of the particular question/s and marks are awarded to them in respect of the relevant questions, as if their version/answer was correct. It was with this intent, that we sought for the particulars as to the marks secured by the Appellants and the cut-off marks, as per our order dated 03.02.2021, which are now being furnished from the part of the PSC.
12. Coming to the case of the **1st Appellant-Udyan Dubey** who belongs to the 'Unreserved Category', he had raised objection only in respect of

'Q.No.88' since all the '4' disputed questions were carrying an equal mark of '2' and even if the objection raised by the 1st Appellant is sustained and his answer is treated as correct, he can have a maximum of '2' more marks, with a possible deduction of 1/3rd mark for the negative marking, to be deducted from the marks of the last listed candidate. With a possible presumption that he/were wrong, thus losing 1/3rd of the marks for the question - because of negative marks provided. The 1st Appellant got a total of '**135.4406**' marks, whereas the last candidate's cut-off mark is '**138.9495**'. As mentioned above, even if 2 more marks are added to the 1st Appellant, it will take him to '**137.4406**' and if the last candidate had chosen the wrong answer, with possibility for reduction of 1/3rd marks for such wrong answer, it will lower the said candidate's marks to $138.9495 - 0.6666 = \text{'138.2829'}$. In other words, the last candidate identified still remains on a higher pedestal than the 1st Appellant and hence there is no chance to get through.

13. In the case of the **2nd Appellant-Lokesh Kumar** ('OBC Category'), we have already held, based on the submission made by the learned counsel for the Appellants, that he already got cleared to appear in the final examination, by virtue of the revisit of the relevant questions as ordered by the learned Single Judge. As such, no further deliberation is necessary in respect of the 2nd Appellant.
14. With regard to the **3rd Appellant-Nitesh Kumar** ('OBC Category'), the cut-off marks obtained to the last candidate in that segment is '**134.0371**', whereas the said Appellant has obtained only '**114.3872**' even if all the '3 Questions' objected by the 3rd Appellant ('Q.Nos. 47, 49 and 57') are considered as sustainable and the marks are awarded to him he will get an addition of $(3 \times 2 = 6)$ which will take his total marks to '**120.3872**'

(114.3872 + 6). At the same time if the last candidate with the cut-off mark of '134.0371' is held as given wrong answers in respect of above '3 Questions', there would be a possible deduction of $\frac{1}{3}^{\text{rd}}$ marks for each question, which comes to a total of 2 (3 questions carrying 2 marks = $3 \times \frac{1}{3}$). Even if the said 2 marks are deducted, the last candidate will still be with a total of $134.0371 - 2 = \text{'132.0371'}$ marks and will hold the position much above the Appellant.

15. In the case of **4th Appellant-Ashish Kumar** Goyal belonging to the 'Unreserved Category', he had not raised objection to any of the '4' disputed questions mentioned in the appeal. The said candidate got only a total of '**129.1243**' marks, whereas the last candidate in the unreserved segment is of '**138.9495**' marks and stands placed much above the said Appellant.
16. Coming to the case of the **5th Appellant-Manoj Kumar Sarthi** belonging to 'Schedule Caste', he had obtained a total of '**110.8784**' marks. He had raised objection only in respect of 'Q.No. 57' and even if his answer is treated as correct he can have a maximum number of 2 more marks to take the total to $110.8784 + 2 = \text{'112.8784'}$. The cut-off marks obtained by the last candidate in the list is '**120.7033**'. Even if it is held that the answer given by the last candidate in the list to 'Q.No. 57' was wrong and $\frac{1}{3}^{\text{rd}}$ marks of the said question had to be deducted, the last candidate will still have $120.7033 - 0.666 = \text{'120.0373'}$ marks; which shows the wide gap between the **5th Appellant** and the last listed candidate in the Schedule Caste segment.
17. In respect of the **6th Appellant-Naveen Kumar Yadav** belonging to the 'OBC Category', he obtained a total of '**131.2300**' marks, whereas the cut-off marks of the last candidate in the list is '**134.0371**'. If it is

presumed that the answer given by the 6th Appellant to the disputed question is correct, he may get 2 more marks, taking his total to '**133.2300**'. At the same time, there is possible chance for deduction of 1/3rd marks in respect of the wrong answer given by the last listed candidate to 'Q.No. 57', thus, reducing the said candidate's marks from '134.0371' to '**133.3711**'. The 6th Appellant is nowhere near the last candidate in the list.

18. In the above circumstances, we are of the firm view that no further deliberation is required to be made with regard to the challenge raised by the Appellants to the questions pointed out ('Q.Nos. 47, 49 and 88'), as it will not tilt the balance, even if their version is accepted. We hold that there is no merit in the appeal. It stands dismissed accordingly.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge