

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

Civil Writ Petition No. 1945 of 2021 (O&M)

Reserved On: 02.03.2021

Pronounced On: 06.04.2021

Nishant Dutta

..... Petitioner

Versus

Punjab & Haryana High Court through Registrar General,
Sector-1, Chandigarh and two others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH**

Present: Mr. Harkesh Manuja, Advocate
for the petitioner.

Mr. Kanwal Goyal, Panel Advocate,
High Court, Chandigarh – respondent No. 1.

*[The aforesaid presence is being recorded through video conferencing
since the proceedings are being conducted in virtual court]*

JASWANT SINGH, J.

Petitioner- Nishant Dutta, who had applied under the General Category for the post of Civil Judge (Junior Division)-cum-Judicial Magistrate in the Punjab Civil Services (Judicial Branch) Examination-2019 (hereinafter referred to as 'PCS-JB') in pursuance to the advertisement dated 05.04.2019, has filed the present petition seeking writ in the nature of Mandamus for correcting the alleged mistakes committed by the paper checker while evaluating English Language Answer Sheet (**Annexure P-7**) in particular Questions No. 4(1), 4(5), 5(1), 5(5) and 5(6).

FACTS OF THE CASE:

[2] The exam was scheduled to be held in three parts starting with preliminary examination followed by the main written examination and

thereafter the viva voce. A specific clause No. 11 was mentioned in the advertisement as per which re-evaluation of answer sheets is not permissible and only re-checking is permissible.

[2.1] The preliminary examination was held on 25.08.2019 and the result was declared on 03.10.2019. Petitioner having qualified, appeared in the main written examination. Result was declared on 19.12.2019 of PCS-JB. Petitioner secured 507.13 marks out of 525 total marks. Petitioner could not qualify for the interview as he fell 17.87 marks short of the minimum qualifying marks i.e. 525 in the general category.

[2.2] Petitioner did not qualify for the 3rd stage of the examination i.e. viva voce. Interview of the qualified candidates was conducted from 10.02.2020 to 13.02.2020. Final cumulative result of all the candidates qualified and unqualified disclosing the individual marks secured by each candidate in each of the five subjects in PCS (JB) main written examination was declared on 14.02.2020.

[2.3] Petitioner filed an application under the Right to Information Act, 2005 (hereinafter referred to as 'RTI Act'), seeking copy of his answer sheet in English Language examination, which the petitioner received and has been appended with writ petition as **Annexure P-7**.

[2.4] In the meanwhile, about 36 candidates approached the Hon'ble Supreme Court by filing ***Writ Petition (Civil) No.143 of 2020*** titled ***“Navneet Kaur Dhaliwal and others Versus High Court of Punjab and Haryana”*** with a prayer for issuance of a writ of *mandamus* for directing re-evaluation done of all main written examination of the petitioners, who

committee or such re-evaluation of mark sheet on lines as affirmed in **“Centre for Public Interest Litigation Versus Registrar General of High Court, Delhi” 2017 (11) SCC 456**. Prayer was also made for issuance of a writ of mandamus directing reduction in the qualifying marks of PCS (JB) main examination 2019. The said writ petition was disposed of by the Hon’ble Supreme Court on 17.12.2020 (**Annexure P-8**) after taking into consideration the report submitted by Hon'ble Justice A.K. Sikri, former Judge of the Supreme Court in respect of Criminal Law paper and Hon'ble Justice Surinder Singh Saron, former Acting Chief Justice of Punjab and Haryana for the Punjabi paper by observing as follows:-

“ We are of the view that the ends of justice can be subserved by directing moderation by increase of marks in both the papers to the extent of 5% in each of the papers.

Naturally this benefit will go across the board so that the people who have already selected are not affected in any manner either in seniority or otherwise.

The result be revised in the aforesaid terms and all eligible candidates be called for interview and the process completed.

Needless to say, that the process should be completed as early as possible.

We are following the course of action as followed in the case of Pranav Verma & Ors. vs. The Registrar General of the High Court of Punjab & Haryana High Court at Chandigarh & Anr (2019) 17 SCALE 731 and are thus fortified by the judicial view taken by this court already in such matters.

We express our appreciation for the assistance rendered by both Justice Sikri and Justice Saron.

The writ petition is accordingly disposed of.”

[2.5] In the light of the above order passed by the Hon’ble Supreme

obtained by the petitioner after adding 17.5 grace marks came to be 524.63 and thus, he was still short by 0.37 marks to qualify for the interview stage in the PCS (JB) 2019.

[2.6] It is at this stage that the petitioner has filed the present writ petition with the grievance that in English language answer sheet, marks have not been granted to the petitioner correctly for Question No. 4(1), 4(5), 5(1), 5(5) and 5(6) despite the fact that the answers written by the petitioner are correct in nature and genesis. Petitioner had also given the reasons for the grievance with regard to the non-allocation of marks.

ARGUMENTS:

[3] Learned counsel for the petitioner has raised the following arguments:-

- (i) It is settled position of law that re-evaluation/re-assessment of answer sheet is permissible in case it is found by the writ court that there is an error apparent on the face of record. In the present case, the petitioner had rightly answered the disputed questions but they have been wrongly marked as incorrect.
- (ii) A bare perusal of the answer sheet (**P-7**) shows that binary marking has been done i.e either mark have been given in full or zero marks have been given. No step wise marking has been done;
- (iii) The Hon'ble Supreme Court has also held in Navenet Dhaliwal's case which pertained to this very selection that the marking was very strict and that is why additional

marks have been given to all the candidates;

- (iv) The petitioner seeks discretion of only 0.37 marks from the court which will make him eligible for being considered for the third stage of selection i.e viva-voce.
- (v) Under the general category, 34 seats were advertised however only 26 posts have been filled and therefore in case the discretion of 0.37 marks is granted, then no prejudice would be caused to any candidate.

[3.1] In support of his contentions, the counsel has relied upon the following judgments:-

- (a) Kanpur University Vs. Sameer Gupta, 1983 AIR SC 1230;**
- (b) Ranvijay Vs. State of Uttar Pradesh, 2018 AIR SC 52;**
- (c) High Court of Tripura Through the Registrar General Vs. Tirtha Sarathi Mukherjee & Ors, 2019 AIR SC 3070;**
- (d) Navneet Kaur Dhaliwal and ors. Vs. Registrar General of Punjab and Haryana at Chandigarh and Anr., WP No. 143 of 2020 decided on 17.12.2020 (SC);**
- (e) Mahipal Singh Vs. State of Haryana 2019 (2) SCT 436 (P&H) (DB);**
- (f) Harvinder Singh Johal Vs. Registrar General Hon'ble Punjab and Haryana High Court 2020(1) SCT 600 (P&H) (DB);**

[4] On the other hand, learned counsel for the respondent-High Court has made the following submissions:

- (i) After the candidates attempt their papers, all of them are checked in such a manner that uniformity is maintained so as to avoid difference in the method of checking.

Consequently, the marks are awarded as per the set pattern/ procedure and the petitioner has also been evaluated on the said pattern only;

- (ii) Since, it is the prerogative of a subject expert as to how he/she evaluates a question and its answer, which is uniform to all, it cannot be said that the petitioner has wrongly not been awarded marks for the disputed questions or that any prejudice has been caused to him;
- (iii) Clause 11 of the advertisement dated 05.04.2019 bars re-evaluation of answer sheet and only rechecking of the answer sheet on the written request of the candidate addressed to the Secretary, Punjab Public Service Commission, Patiala, is permissible and that too within 30 days of the date of despatch of the mark sheet or display of marks on the website of High Court/Commission. Since prayer made in the writ petition is akin to seeking re-evaluation, therefore, in view of clause 11, he cannot be granted the benefit of re-evaluation of the answer sheets.
- (iv) In any case there is no provision in relevant rules for re-evaluation and therefore in the absence of any such provision, no candidate in an examination has got any right whatsoever to claim or ask for re-evaluation of his marks.
- (v) In case petitioner was so aggrieved regarding strict

checking, he could have very well approached the Hon'ble Supreme Court earlier when other candidates had approached and sought relief. However, by not doing so the petitioner cannot be permitted to now alleged strict marking.

- (vi) Similar issue as raised by petitioner has already been decided by a Co-ordinate Bench of this Court on 13.01.2021 in ***"Ishita Chadha vs. The Hon'ble High Court of Punjab and Haryana and another"***, CWP No. ***681 of 2021***, whereby similar pleas as raised by present writ petitioner have been rejected.

[4.1] In support of his arguments, learned counsel has relied upon the following judgments:

- (a) **Pramod Kumar Srivastava vs. Chairman, Bihar Public Service Commission, (SC) 2004(6) SCC 714;**
- (b) **Secretary, All India pre-Medical/Pre-Dental Entrance Examination vs. Khushboo Srivastava, (SC)2014(14) SCC 523**
- (c) **H.P. Public Service Commission vs. Mukesh Thakur (SC), 2010(6) SCC 759;**
- (d) **Pranav Verma & Others vs. Registrar General of the High Court of Punjab and Haryana at Chandigarh & Anr., 2019(17) SCALE 731**
- (e) **Ishita Chadha vs. The Hon'ble High Court of Punjab and Haryana and another, CWP No. 681 of 2021, decided on 13.01.2021;**
- (f) **Ajay Kumar Kukreja vs. Central Administrative Tribunal, Chandigarh (P&H)(D.B.) 2012(3) SLR 690.**

[5] We have heard Ld. Counsel for the parties at length and have scrutinized the record.

ISSUES:

[6] To our mind following **issues** arise for consideration of this Court:-

- (i) Whether in the absence of any provision in statutory rules regarding re-evaluation of an “answer paper”, a complete ‘hands-off’ approach has to be adopted by the writ courts, especially when the examinations are conducted under the supervision of subject experts?
- (ii) In case answer to issue no (i) is in negative, then whether the scope of interference would differ in case of an “answer paper” which is multiple choice/ answer key based than that of an answer paper which is subjective type? If yes, then what is the scope of interference in both the cases i.e objective and subjective answers?

[7] To answer the aforementioned two issues, it would be gainful to discuss the relevant case laws cited before us. However, we will be dividing the case laws into two parts. Part-A would relate the case law pertaining to multiple choice examination and Part-B would pertain to subjective type examination.

[7.1] PART-A (Multiple Choice Examination)

I. The first judgment on this subject was passed way back in the year 1983 in ***Kanpur University’s case*** whereby Hon’ble Supreme Court was considering the effect of answer keys which were demonstrated to be

Supreme Court in paragraph 16 and 17 held as under:-

- “ 16. Shri Kacker, who appears on behalf of the University, contended that no challenge should be allowed to be made to the correctness of a key answer unless, on the face of it, it is wrong. **We agree that the key answer should be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by an inferential process of reasoning or by a process of rationalisation. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well versed in the particular subject would regard as correct. The contention of the University is falsified in this case by a large number of acknowledged text-books, which are commonly read by students in U. P. Those text-books leave no room for doubt that the answer given by the students is correct and the key answer is incorrect.**
17. Students who have passed their Intermediate Board Examination are eligible to appear for the entrance Test for admission to the Medical Colleges in U. P. Certain books are prescribed for the Intermediate Board Examination and such knowledge of the subjects as the students have is derived from what is contained in those text-books. Those text-books support the case of the students fully. **If this were a case of doubt, we would have unquestionably preferred the key answer. But if the matter is beyond the realm of doubt, it would be unfair to penalise the students for not giving an answer which accords with the key answer, that is to say, with an answer which is demonstrated to be wrong.**

(Emphasis Supplied)

II. Second judgment cited before us on this issue is **Secretary, All India Pre-Medical/Pre-Dental Entrance Examination**, whereby the Hon'ble Supreme Court was considering the issue of re-evaluating answer sheet pertaining to pre-medical examination conducted for Undergraduate courses throughout country. Here the Hon'ble Supreme Court, after

evaluating the entire case law on the subject has held as under:-

- “7. We find that a three-Judge Bench of this Court in **Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, Patna & Ors.** (supra) has clearly held relying on **Maharashtra State Board of Secondary and Higher Secondary Education & Anr. v. Paritosh Bhupeshkumar Sheth & Ors.** (supra) that in the absence of any provision for the re-evaluation of answers books in the relevant rules, no candidate in an examination has any right to claim or ask for re-evaluation of his marks. The decision in **Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, Patna & Ors.** (supra) was followed by another three-Judge Bench of this Court in **Board of Secondary Education v. Pravas Ranjan Panda & Anr., (2004) 13 SCC 383** in which the direction of the High Court for reevaluation of answers books of all the examinees securing 90% or above marks was held to be unsustainable in law because the regulations of the Board of Secondary Education, Orissa, which conducted the examination, did not make any provision for re-evaluation of answers books in the rules.
8. In the present case, the bye-laws of the All India Pre-Medical/Pre-Dental Entrance Examination, 2007 conducted by the CBSE did not provide for re-examination or reevaluation of answers sheets. Hence, the appellants could not have allowed such re-examination or re-evaluation on the representation of the respondent No. 1 and accordingly rejected the representation of the respondent No. 1 for reexamination/re-evaluation of her answers sheets. The respondent No. 1, however, approached the High Court and the learned Single Judge of the High Court directed production of answer sheets on the respondent No. 1 depositing a sum of Rs. 25,000/- and when the answer sheets were produced, the learned Single Judge himself compared the answers of the respondent No. 1 with the model answers produced by the CBSE and awarded two marks for answers given by the respondent No. 1 in the

*Chemistry and Botany, but declined to grant any relief to the respondent No. 1. When respondent No. 1 filed the LPA before the Division Bench of the High Court, the Division Bench also examined the two answers of the respondent No. 1 in Chemistry and Botany and agreed with the findings of the learned Single Judge that the respondent No. 1 deserved two additional marks for the two answers. **In our considered opinion, neither the learned Single Judge nor the Division Bench of the High Court could have substituted his/its own views for that of the examiners and awarded two additional marks to the respondent No. 1 for the two answers in exercise of powers of judicial review under Article 226 of the Constitution as these are purely academic matters.** This Court in **Maharashtra State Board of Secondary and Higher Secondary Education & Anr. v. Paritosh Bhupeshkumar Sheth & Ors.** (supra) has observed:-*

"... As has been repeatedly pointed out by this Court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. ..."

9. *We, therefore, allow the appeal, set aside the impugned judgment of the learned Single Judge and the Division Bench of the High Court and dismiss the writ petition. There shall be no order as to costs. We are informed that the first respondent was admitted to the MBBS Course subsequently. If so, her*

admission in the MBBS Course will not be affected.

Appeal allowed.”

III. The next judgment on this issue is ***Ranvijay’s case*** wherein the Hon’ble Supreme Court was considering the challenge to selection to the post of Trained Graduate Teachers involving the issue regarding correctness of answer key published by recruiting authority for multiple choice questions. In this judgment, after considering all the previous precedents on the subject, the Hon’ble Supreme Court in paragraph 18, 30 and 31 has held as under:-

- “18. *A complete hands-off or no-interference approach was neither suggested in Mukesh Thakur nor has it been suggested in any other decision of this Court the case law developed over the years admits of interference in the results of an examination but in rare and exceptional situations and to a very limited extent.*
30. *The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are: (i) 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; (ii) **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 rationalisation" and only in rare or exceptional cases that a material error has been committed;** (iii) **The Court should not at all re-evaluate or scrutinize the answer sheets of a candidate - it has no expertise in the matter and academic***

matters are best left to academics; (iv) The Court should presume the correctness of the key answers and proceed on that assumption; and (v) In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.

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 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.”

(Emphasis Supplied)

IV. Other judgments cited before us on this issue are Division Bench judgments of this Court in ***Mahipal's case*** and ***Harvinder Singh Johal***. In both the judgments, after considering the underlying principles laid down by Hon'ble Supreme Court in afore-cited cases, the High Court had interfered in the selection process by holding certain questions/ answer keys were either ambiguous or incorrect. Accordingly, remedial actions were advised by the Court.

[7.2] PART-B (Subjective type questions)

I. On this issue, the first judgment relied before us is ***Pramod Kumar Srivastava's case***, whereby the Hon'ble Supreme Court, while considering challenge to certain questions raised by a few candidates to the veracity of subjective type General Science paper for the post of Judicial Officers in Bihar had held as under:-

“7. *We have heard the appellant (writ-petitioner) in person and learned counsel for the respondents at considerable length. The main question which arises for consideration is whether the learned Single Judge was justified in directing re-*

evaluation of the answer-book of the appellant in General Science paper. Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for re-evaluation of his answer-book. There is a provision for scrutiny only wherein the answer-books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totaling of marks of each question and noting them correctly on the first cover page of the answer-book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. In the absence of any provision for re-evaluation of answer-books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re-evaluation of his marks. This question was examined in considerable detail in Maharashtra State Board of Secondary and Higher Secondary Education and another v. Paritosh Bhupesh Kurmarsheth and others, AIR 1984 SC 1543. In this case, the relevant rules provided for verification (scrutiny of marks) on an application made to that effect by a candidate. Some of the students filed writ petitions praying that they may be allowed to inspect the answer-books and the Board be directed to conduct re-evaluation of such of the answer-books as the petitioners may demand after inspection. The High Court held that the rule providing for verification of marks gave an implied power to the examinees to demand a disclosure and inspection and also to seek re-evaluation of the answer-books. The judgment of the High Court was set aside and it was held that in absence of a specific provision conferring a right upon an examinee to have his answer-books re-evaluated, no such direction can be issued. There is no dispute that under the relevant rule of the Commission there is no provision entitling a candidate to have his answer-books re-evaluated. In such a situation, the prayer made by the appellant in the writ petition was wholly untenable and the learned Single

Judge had clearly erred in having the answer-book of the appellant re-evaluated.

8. *Adopting such a course as was done by the learned Single Judge will give rise to practical problems. Many candidates may like to take a chance and pray for re-evaluation of their answer-books. Naturally, the Court will pass orders on different dates as and when writ petitions are filed. The Commission will have to then send the copies of individual candidates to examiners for re-evaluation which is bound to take time. The examination conducted by the Commission being a competitive examination, the declaration of final result will thus be unduly delayed and the vacancies will remain unfilled for a long time. What will happen if a candidate secures lesser marks in re-evaluation ? He may come forward with a plea that the marks as originally awarded to him may be taken into consideration. The absence of clear rules on the subject may throw many problems and in the larger interest, they must be avoided.”*

(Emphasis Supplied)

II. Second judgment cited before us on this issue is ***H.P. Public Service Commission vs. Mukesh Thakur***, whereby the Hon’ble Supreme Court was again considering the challenge to a few subjective type answers given by candidates for the post of Civil Judge (Junior Division) in Himachal Pradesh. The Court, after framing questions in paragraph No. 12 had held in paragraphs 24 to 27 **that re-evaluation is not permissible**. These paragraphs are reproduced as under:-

“12. *In the facts and circumstances of the aforesaid case, three basic questions arise for consideration of this Court :-*

- (i) *As to whether it is permissible for the court to take the task of Examiner/Selection Board upon itself and*

examine discrepancies and inconsistencies in the questions paper and valuation thereof.

(ii) Whether Court has the power to pass a general order restraining the persons aggrieved to approach the court by filing a writ petition on any ground and depriving them from their constitutional rights to approach the court, particularly, when some other candidates had secured the same marks, i.e., 89 and stood disqualified for being called for interview but could not approach the court.

(iii) Whether in absence of any statutory provision for revaluation, the court could direct for revaluation.

*24. The issue of re-evaluation of answer book is no more res integra. This issue was considered at length by this Court in **Maharashtra State Board of Secondary and Higher Secondary Education & Anr. v. Paritosh Bhupesh Kurmarsheth etc., AIR 1984 SC 1543**, wherein this Court rejected the contention that in absence of provision for re-evaluation, a direction to this effect can be issued by the Court. The Court further held that even the policy decision incorporated in the Rules/Regulations not providing for rechecking/verification/re-evaluation cannot be challenged unless there are grounds to show that the policy itself is in violation of some statutory provision. The Court held as under :*

".....It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy, how the provisions of the Statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act.....The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision

and improvement. But any draw-backs in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act....."

25. This view has been approved and relied upon and re-iterated by this Court in **Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, Patna & Ors, 2004(3) S.C.T. 831 : AIR 2004 SC 4116** observing as under :

" Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for re-evaluation of his answer- book. There is a provision for scrutiny only wherein the answer-books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totalling of marks of each question and noting them correctly on the first cover page of the answer-book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. In the absence of any provision for re-evaluation of answer-books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re-evaluation of his marks." (emphasis added)

26. A similar view has been reiterated in **Dr. Muneeb Ul Rehman Haroon & Ors. v. Government of Jammu & Kashmir State & Ors. AIR 1984 SC 1585; Board of Secondary Education v. Pravas Ranjan Panda & Anr. (2004) 13 SCC 383; President, Board of Secondary Education, Orissa & Anr. v. D. Suvankar & Anr. 2007(1) S.C.T. 350 : (2007) 1 SCC 603; The Secretary, West Bengal Council of Higher Secondary Education v. Ayan Das & Ors., 2007(4) S.C.T. 462 : 2007(5) R.A.J. 587 : AIR 2007 SC 3098; and Sahiti & Ors. v. Chancellor, Dr. N.T.R. University of Health Sciences & Ors.**

2009(1) S.C.T. 262 : (2009) 1 SCC 599.

27. Thus, the law on the subject emerges to the effect that in absence of any provision under the Statute or Statutory Rules/Regulations, the Court should not generally direct revaluation.”

III. Last judgment directly on this issue is the latest decision rendered by a Co-ordinate Bench of this Court in ***Ishita Chadha’s case (supra)***, whereby after discussing entire case law on the issue, the writ petition challenging same selection was dismissed.

DISCUSSION

[8] A bare perusal of the aforementioned judgments would show that the Hon’ble Supreme Court, in the case of Multiple Choice Questions has held that although there might not be any rule permitting re-evaluation of answer sheets, still a ‘hands-off’ approach has never been advocated. The Courts, while exercising powers under Article 226 of the Constitution are not mute spectators when it is evident that the answer key/ question is demonstrably ambiguous/incorrect for which no reasonable body of men would regard it as correct.

[8.1] At the same time, it has also been consistently held that in case the Court has to resort to an exercise which would require an inferential process of reasoning or rationalisation, then the doubt has to go in favour of the expert body/ recruiting agency.

[8.2] However, the law *vis-a-vis* subjective type questions is slightly different. The Courts, in such examinations have impliedly held that it is best left for the experts who have conducted the examination to decide the

expert. At the same time, to our understanding, the Courts have also adopted a strict 'hands-off' approach when there is no provision in the Rules for re-evaluation for subjective examinations. The reason, we think, is not difficult to understand. A subjective type paper, unlike a multiple choice examination, does not have a set answer key or pattern for checking. The answers are checked by an examiner by considering numerous factors like the level of examination, the nature of question and the expected intellectual knowledge that a candidate must possess while answering the question paper. These factors cannot be considered by the Courts at all, as the Court can never sit as a court of appeal on the marking done by an examiner and/or sit in the armchair of an examiner and find the true intent behind his/her marking.

[8.3] At this stage we would like to refer to a judgment passed by Hon'ble Supreme Court in ***High Court of Tripura's case*** which pertains to a subjective type paper undertaken for the post of Judicial Services. Even though in this case, the Hon'ble Supreme Court has held that complete hands-off approach is not applicable for re-evaluation, however, at the same time the appeal preferred by recruiting agency was allowed and consequently, order passed by High Court directing re-evaluation of answer sheets was set aside. That apart, a bare perusal of the questions reproduced in paragraph 27, 29 and 31 (first half of paragraph) were objective type/multiple choice questions, whereas fourth question reproduced in paragraph 31 (second half of paragraph) would show that a detailed question was considered. While noting that this detailed question is not

“31. It is to be noted that it is not an objective type question, the maximum marks are 3. This is not a case even if we proceed on the basis that the answer is correct, marks is to be awarded as such. We noticed that for 5 questions, the respondent No. 1 has been given 1 mark, even though, the maximum is 3 marks. It would appear that awarding full marks is based, not merely, on the correctness of the answer.”

Meaning thereby, the Hon’ble Supreme Court in the aforementioned case had itself held that giving of marks to a candidate for an attempted question is best left to the examiner as it is he who knows what he expects as an answer.

[8.4] Here it would be relevant to consider the pattern of checking adopted by the respondent-High Court so as to ascertain as to whether the marking method adopted by it is common for all or are there any chances of some variance. For this, it would be gainful to refer to paragraph 14 to 16 of the Judgment passed in ***Pranav Verma’s case*** whereby the procedure adopted by the respondent-High Court has been highlighted and thus same is reproduced as under:-

“14. In the instant case, Justice Sikri critically examined the selection process as well as the evaluation method and it is explicit from his report that the procedure of evaluation was ‘uniform’. We are of the view that evaluation done by multiple evaluators i.e. one Evaluator examining and marking one question in all the mark-sheets, ensures uniformity and prevents chance grading. Every candidate’s answers are marked on same parameters by the same examiner. There can possibly be no other better method to ensure uniformity in evaluation. The petitioners have stated that as per the information received via RTI no model

'answer key' was present. It gives more credance to the afore-stated method of evaluation as no model 'answer key' ought to be devised for the Main Exam, the purpose whereof is not to just assess the knowledge of candidates but also to evaluate their analytical ability. In the present case, there was no Examiner Variability, therefore, Justice Sikri has very aptly remarked that, "this was well intended move to attain uniformity in evaluation". This method ensures equal level play field for all candidates. The only setback was lack of holistic view and lack of realistic expectations in the examiner's mind, for which there are adequate remedies as discussed in the later part of this order.

15. *The marking criteria and evaluation method was strict but it was so for everyone. This was may be for the reason that one Evaluator checked one answer in each script and in this manner the entire lot of scripts were marked. The Evaluators failed to keep a pragmatic view that source of recruitment was likely to be the same in a fresh attempt also and that candidates had only 8.5 minutes to answer each question and time constraint did not allow them to give their best of performance. Even those candidates who covered all aspects briefly were not awarded proper marks. Unlike the hypothetical illustration given in Sanjay Singh's case (supra), it was not a case where some candidates were subjected to strict marking and others had an advantage of lenient marking, so as to draw an inference that the evaluation method was discriminatory or arbitrary.*
16. *It has been found as a matter of fact that the officials and officers of the High Court ensured adequate security measures such as keeping the answer scripts in iron boxes under round-the-clock security and CCTV cameras. Hence, it is just and fair to hold that no discriminatory or mala fide practice was undertaken while conducting the exam or its following processes."*

It is informed that same process of evaluation i.e one examiner to check a single question of all candidates has been adopted in this recruitment as well. Thus, the issue of uniform marking has already been settled by the Hon'ble Supreme Court. Consequently, no question of any prejudice being caused to petitioner herein arises.

[8.5] Further, in this very judgment, it is interesting to note that Hon'ble Supreme Court framed issue No. (iii) which reads as under: -

“(iii) Whether re-evaluation of Civil Law-I and Civil Law-II papers is required by an Independent Expert Committee?”

To this issue, the Hon'ble Supreme Court has answered in the following manner:-

*“24. The alternative prayer of the petitioners for re-evaluation by an Independent Expert Committee is not worth acceptance. Firstly, for the reason that these 107 posts are already lying vacant for a considerable long period and the re-evaluation would further delay it. Secondly, Justice Sikri has thoroughly examined the fact situation before recommending the award of grace marks. Thirdly, there is no provision for re-evaluation in the Recruitment Rules and any such direction would run counter to the mandate of this Court in **H.P. Public Service Commission v. Mukesh Thakur, (2010) 6 SCC 759**, laying down that in the absence of any provision under the statute or statutory rules/regulations, the Courts should not generally direct re-evaluation.*

*25. The above-cited view has been reiterated by this Court in **Pramod Kumar Srivastava v. Bihar Public Service Commission, (2004) 6 SCC 714** observing as under:*

"7. ... Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for revaluation of his answer book. There is a provision for scrutiny only wherein the answer books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been

any mistake in the totalling of marks of each question and noting them correctly on the first cover page of the answer book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. In the absence of any provision for revaluation of answer books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for revaluation of his marks.

[Emphasis added]"

26. *The Petitioners have relied on the decision in **Centre for Public Interest Litigation v. Registrar-General High Court of Delhi, (2017) 11 SCC 456** to substantiate their plea for re-valuation of answer scripts by an Independent Expert Committee. However, in that case too it was held "if the suitable candidates are not found, the employer is not obliged to fill up the posts." The directions for revaluation were given only as a special case."*

Thus, not only the Hon'ble Supreme court has upheld a similar clause as contained in the present advertisement by relying upon previous precedents but has again held that re-evaluation is not permissible. Consequently the prayer of the writ petitioners therein for re-evaluation was categorically dis-allowed.

[8.6] Similar view has been taken by a Co-ordinate Bench of this Court while considering this very advertisement in ***Ishita's case*** whereby in paragraph No. 16 it has been held as under:-

"16. In the light of the above provisions as also the judgments passed by the Supreme Court on which reliance has been placed by counsel for respondent No.1 i.e. Pramod Kumar Srivastva's case (supra), Secretary, All India Pre-Medical/pre-Dental Entrance Examination Versus Khushboo Srivastva's case (supra) and H.P. Public Service Commission Versus Mukesh Thakur's case (supra), where it has been specifically held that in the absence of the relevant

rules/instructions, where there is no provision, a candidate is not entitled to nor can it be claimed or asked for re-evaluation of answer sheets. Hon'ble Supreme Court in Pranav Verma's case (supra) following the above said judgments have reiterated the same position."

Consequently, from the conspectus of the case law cited before us and the from the facts of the case, we hold as follows:-

ISSUE No. 1:

The Courts have never suggested a complete "hands-of" approach. The writ court would have inherent jurisdiction to interfere, **depending upon the facts of the case** even if an examination is conducted under the supervision of subject experts. The Court cannot be a mute spectator and **can in rare and exceptional cases**, in exercise of judicial review, **permit for re-evaluation even when it is not permitted under statute**, rule, regulation governing the examination **in case it is "demonstrated very clearly, without any "inferential process of reasoning or by a process of rationalization"** that a material error has been committed in the answer key. Additionally, the factors discussed in paragraphs 30 to 32 of **Ranvijay's cases** should also be kept in mind while interfering in the selection process.

ISSUE No. 2:

For an objective type, Multiple Choice questions, even if there is a specific bar on re-evaluation of answer sheets, there cannot be a complete 'hands-of' approach by the writ courts. However, it is in rarest of the rare cases, where it is shown without any doubt and without resorting to

the process of inferential reasoning or rationalization that the question/answer is incorrect and the court would interfere.

On the other hand, for a subjective type answer, in which the marking has been uniformly done, the Courts are required to adopt a 'hands-off' approach while entertaining a prayer for re-evaluation, as it is best left for the examiner / expert body to analyse the answer and award marks. Further, if there is a categorical bar or no provision at all for re-evaluation, then the Courts cannot even permit re-evaluation. This position of law has been discussed in detail by us in **paragraphs 8.1 and 8.2** of this judgment, which is duly supported by authoritative pronouncements of Hon'ble Supreme Court in ***Pramod Kumar Srivastava's case (supra)***, ***H.P. Public Service Commission's case (supra)*** and ***Pranav Verma's case (supra)***, to name a few and discussed in detail by us in **paragraph 7.2 with heading PART-B (Subjective Type Questions)**. The judgment passed by Hon'ble Supreme Court in ***High Court of Tripura's case (supra)*** was rendered in view of the peculiar facts of the case which has been discussed in detail by us in **paragraph 8.3**. Infact even in that judgment, the Hon'ble Supreme Court had declined to interfere in a subjective type question.

Hence, issue No. 2 is answered accordingly.

MERITS OF PRESENT CASE:

[9] Coming back to the facts of the present case, we do not find any reason to interfere and permit re-evaluation for the following reasons:-

- Hon'ble Supreme Court in ***Pranav Verma's case*** has already upheld similar clause as published in the present advertisement and held that such course of re-evaluation is impermissible;

- We have ourselves seen the questions and answers given for the sake of satisfying our conscience. However we find that each answer carried 2 marks and the examiner expected the answer to be given in a manner that behoves the post for which they are to be selected i.e Civil Judge (Junior Division) in the State of Punjab. Consequently, it seems that merely knowing the correct answer was not important for examiner but answering it correctly with usage of correct grammar was paramount;
- Since it is for the examiner to decide the manner in which he/she expects a candidate to answer a question, we cannot sit as a 'super-examiner' and consider awarding marks to candidates. Further, the pattern in which marks are awarded i.e binary or otherwise, are same for all the candidates and therefore the petitioner cannot claim any prejudice caused to him;
- In case of recruitment, sympathy/empathy does not matter. There will always be some candidates who will fall out of zone of consideration, may be by a huge margin or by a whisker. The court cannot be permit awarding of marks out of compassion, as it would run against the underlying principle of 'selection based on merit';
- In the present case, result of the main written examination was declared on 19.12.2019 and the petitioner had applied for answer sheets in English Language after revision of result as ordered by Hon'ble Supreme Court. Admittedly he did not

agitate or make any grievance with regard to the non-granting of the marks at that level and it is at this belated stage that the petitioner has approached the respondents after finding that he has missed out on being qualified by 0.37 marks;

- ***Navneet Kaur Dhaliwal's case*** cannot be of much help to the petitioner at this stage. The petitioner, in case was actually aggrieved, could have also approached the Hon'ble Supreme Court at that stage and raised grievance *vis-a-vis* strict marking of English Language Paper as well. However, he remained a mute spectator and has come to the court after realizing that he has fallen short by a few decibels i.e 0.37 to be precise. Further, it cannot be said with surety that marking was indeed strict for English Language paper as well. Merely on conjectures and surmises re-evaluation cannot be ordered;
- When a selected candidate does not have a right for being issued an appointment letter, the petitioner, who is not even within zone of consideration cannot ask for being considered for interview as the posts are still lying vacant under the advertisement.
- Similar view has been taken by a Co-ordinate Bench of this Court in ***Ishita's case*** and declined a similar request while considering the import of Clause 11 of the Advertisement dated 05.04.2019 prohibiting re-evaluation of answer sheets, to which we fully subscribe.

[10] In view of the above, we find no merit in the present writ **petition**, and therefore, order the same to be **dismissed** with no order as to costs.

(JASWANT SINGH)
JUDGE

April 6th, 2021
'dk kamra'

(SANT PARKASH)
JUDGE

Whether Speaking/reasoned	Yes
Whether Reportable	Yes