

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

CWP 11700 of 2019 (O&M)

Date of Decision: April 28, 2021

Nikhil Kaushik

.....Petitioner

Versus

Union of India and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. G.S.Phull, Advocate
for the petitioner.

None for respondent No. 1.

Mr. Salil Sabhlok, Advocate
for respondent No. 2.

Mr. Harsh Aggarwal, Advocate
for respondent No. 3.

FATEH DEEP SINGH, J. (Oral)

The matter has been taken up through
video-conferencing on account of outbreak of pandemic COVID-
19.

Petitioner Nikhil Kaushik holding a decree of
Bachelor of Laws and pursuing his Masters in the same subject

in pursuance of advertisement given by the respondents applied for UGC-NET examination for the post of Junior research Fellowship/Assistant Professor. The petitioner was allotted application Number 180520685440 and Roll No. CH0107508642 by the respondents and copies of the public notice and the roll number so issued are Annexure P-1 and P-2, respectively.

As per the scheme of examination, the test was conducted by means of OMR sheets on 19.12.2018 and the result was declared on 05.01.2019 regarding which the respondents had invited objections with regard to the answer keys which were displayed on the web-site on 28.12.2018, in which, the final answer key was released on 17.01.2019 after the declaration of result. The respondents, thereafter, issued cut off for the examination, in which, the petitioner claims to have secured 60%, that is, 130 marks out of total 300 marks. While the cut off percentage for General category was fixed 60.67%, as a consequence of which, the petitioner could not qualify for the post of Junior Research Fellow/Assistant Professor. Photocopies of the result and cut off list are Annexure

P-4 and Annexure P-5, respectively.

The petitioner is aggrieved over the wrong answer key to Q-44 (Section-General Aptitude) and (Section-58 Law), which are reproduced as below:

“Q-44 (Section-General Aptitude)

Assertion (A) : Hydropower is an exhaustible energy resource.

Reason (R) : the power of falling water would neither diminish nor get exhausted.

1. Both (A) and (R) are true but (R) is not, the correct explanation of (A)
2. Both (A) and (R) are true and (R) is the correct explanation of (A).
3. Both (A) and (R) are false
4. (A) is true but (R) is false

According to Final Answer Key : option 2 (Option ID-91394367373).

Correct Answer : option 3 (Option ID-91394367376)

The proofs showing the correct answer are collectively appended herewith as (Annexure P-7)

Q-44 (Section -58 Law)

'A' enters into the house of 'B' with intention to commit theft. 'B' alongwith other members of his family surround and attack 'A' with wooden sticks.

'A' finding his life in danger fires with pistol causing death to 'B'. Here 'A' has committed:

1. Theft
2. Culpable homicide not amounting to murder
3. Murder
4. No offence, as he acted in self-defence.

According to Final Answer Key : option 3 (option ID-91394367644)

The petitioner claims that the correct key to Q-44 (Section- General Aptitude) is in Annexure P-7 which is renewable source of energy while the correct key to Q-44 (Section –58 Law) is culpable homicide not amounting to murder and the answer key shows it to be murder which is legally not correct, for which, reliance is placed on Annexure P-8. It is on the basis of this wrong answer key, the present writ for *certiorari* has been filed seeking quashment to the extent the answer key so set in the question paper by the respondents.

The stand of the respondents No. 2 and 3 in unison is that in order to maintain a uniform standard of teaching and research under the New Education Policy, 1986 candidates who fulfil the minimum academic qualifications for the posts of lecturers need to qualify in a comprehensive test to be specially

conducted for the purpose to enable them to be appointed as lecturers and which tests are conducted under the supervision of University Grants Commission-UGC. Though, the respondents admitted the conduct of the UGC-NET examination which was out sourced and got conducted by Central Board of Secondary Education which is the responsibility of National Testing Agency of the Government of India. Specific plea has been taken up that the petitioner has not challenged the correctness of the answer keys at appropriate time and has failed to score the cut off marks and, thus, malafidely filed the petition in question to improve upon his score. It is claimed that respondent had conducted examination in 85 subjects with total around 956837 candidates though full proof procedure has been adopted by the respondents but a single wrong answer key does not qualify the petitioner to seek the relief in question. The respondents have stressed on the provisions of Clause 12.1 of the Information Bulletin issued by the UGC NET regarding displaying of answer key with recorded responses claiming that the non-compliance of this procedure by the petitioner is well on time debars him to allow the change at this juncture when

selections have already been made. The main assertion is that the experts did not agree with the objections raised by the students and, thereafter, the results were declared on 05.01.2019 and as per the procedure prescribed there is no second opportunity permissible to challenge the answer key by the examinee. On the strength of the same sought dismissal of the petition.

Appreciating the arguments of the two sides in the light of the records of the case. It could not be displaced by the counsel for the respondents the arguments of the petitioner counsel Mr. G.S. Phull, who has sought to place reliance on social science text book prescribed for Clause 8 (Annexure P-7) pertaining to resources and development and wherein it is mentioned in no uncertain terms how natural resources can be broadly categorized in which renewable and non-renewable resources have been defined which get renewed or replenished quickly like solar and wind energy and under this water has been opined to be an “**unlimited renewable resource**”. More so, as per the second question, for which, the reliance has sought to be placed on **Jangir Singh Vs. The State of Punjab,**

Criminal Appeal No. 2499 of 2009 (Annexure P-8), a judgment of the Supreme Court of India on same preposition holding that if there is no premeditation, the act of the accused is an exception to Section 304 Part I of the IPC and, therefore, the correct answer falls in the domain of **“not amounting to murder”**. Though on behalf of the respondents counsel accepts that both these answer keys are wrong which erroneous is reflected from Annexure P-7 and Annexure P-8. The claim that even the answers given by the petitioner to these questions are also wrong even if his case is assumed to be true, the answers cannot be termed to qualify the grant of marks as they are also wrong.

The learned counsel for the respondents seek support from Civil Appeal No. 907 of 2006 **H.P. Public Service Commission Vs. Mukesh Thakur and another** with connected appeal, **U.P.P.S.C., through its Chairman and another Vs. Rahul Singh and Another** Civil Appeal No. 5838 of 2018 and W.P.(C) 6801/2019 **Purbasha Das and others Vs. National Testing Agency and others** with connected writ. The ratios cited as above are factually at much variance and do not help

the case.

The respondents are holding entrance test and are supposed to ensure that all the answer keys of the questions are correctly given and cannot hide under the garb of fault of the examinee. The wrong answer keys rather are misleading the examinees and cannot adjudge the intelligence of the examinee. Had they been correctly given would have put the examinee to a balanced view of the likely correct answers. Even there is no report placed on record of the Moderation Committee to show how the objections made by the examinees were dealt with and brushed aside. The conduct of respondents smacks of vindictiveness, arrogance and which has resulted in illegality thereby prejudicing the case of the petitioner and similarly placed candidates. The wrongs answer keys have caused immense prejudice necessitating intervention by this Court due to transgression of constitutional rights enshrined by virtue of Articles 14 and 16 of Constitution of India.

In the light of the same, the instant writ petition is allowed to the extent that the questions detailed above deserve to be deleted from the question paper and marks will be

accordingly calculated.

Disposed off accordingly.

April 28, 2021

amit rana

(FATEH DEEP SINGH)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No