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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Decision delivered on: 11.08.2021

+ **W.P.(C) 6328/2021 & CM No. 19916/2021**

ISHWAR KAUR

..... Petitioner

Through: Mr. Harpreet Singh, Adv.

versus

DELHI SUBORDINATE SERVICES SELECTION BOARD &
ANR.

..... Respondents

Through: Mrs Avnish Ahlawat Standing
Counsel with Mr Nitesh Kumar
Singh, Mrs Tania Ahlawat, Ms
Palak Rohmetra Advocates.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

RAJIV SHAKDHER, J. (ORAL):

[Court hearing convened via video-conferencing on account of COVID-19]

1. This writ petition is directed against the order dated 16.06.2021, passed by the Central Administrative Tribunal (in short 'the Tribunal') in OA No. 1064/2021.

1.1. The Tribunal, via the impugned judgment, has dismissed the original application filed by the petitioner.

2. Being aggrieved, the petitioner has approached this Court.

3. The backdrop in which this writ petition has been filed is, broadly, as follows:

3.1 The petitioner had applied for selection to the post of Trained

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Graduate Teacher (Computer Science) [hereafter referred as 'TGT (Computer Science)'] in Directorate of Education, Government of NCT of Delhi, against an advertisement issued by respondent no.1/DSSSB in 2014.

3.2. Consequent thereto, a written test was conducted on 21.05.2017. The petitioner secured 68 marks, whereas under the OBC category the cut off was pegged at 68.5 which is the category in which the petitioner had filed her application.

3.3. At this point, it is important to note that the present writ action arises from a second round of litigation initiated by the petitioner before the Tribunal. In the first instance, she approached the Tribunal, via OA No. 2401/2017.

3.4. To begin with, the petitioner was not satisfied with answers to several questions, as provided in the draft answer key, and finally, before the Tribunal, the challenge got narrowed down to answers to Question nos.102 and 183. The Tribunal, via order dated 03.12.2020, while disposing of the said OA, had ordered revaluation of question nos.102 and 183, by a different expert i.e. other than the expert who had framed the paper in the first instance.

3.5. The result of the revaluation exercise carried out by the new expert revealed that, the answers to the two question i.e. Question nos. 102 and 183 remained the same. In other words, the new expert and the examiner/expert who had initially prepared the question paper, did not vary.

3.6. It is in this background that the Tribunal did not grant any relief, when the petitioner approached it for the second time.

4. The instant writ petition was moved, for the first time, before this

Court, on 09.07.2021, at which point of time we had asked Mr. Harpreet Singh, counsel for the petitioner, as to whether the petitioner's grievance was confined to question nos. 102 and 183? Mr. Singh had affirmed that position.

4.1. At that point in time i.e. 09.07.2021, the issue, which came to fore, was: whether the petitioner should be given access to the report of the expert, who was appointed pursuant to the order of the Tribunal dated 03.12.2020, passed in OA No.2401/2017.

4.2. Mr. Harpreet Singh, in support of his contention that access ought to be given to the petitioner, had relied upon the judgment of the Supreme Court, passed in Civil Appeal Nos. 4695-4699/2018, titled ***Rishal & Ors. vs. Rajasthan Public Service Commission & Ors.***,

4.3. We had examined the aforementioned judgment on that date, and agreed with Mr. Singh that access ought to be granted to the report of the experts [although, after redacting the names of the experts in order to protect their identity, as noticed on 09.07.2021]. Consequently, the matter was directed to be listed on 16.07.2021.

4.4. On 16.07.2021, Ms. Avnish Ahlawat, who appears for the respondents, indicated to us that, she will place the two reports, which were prepared by the experts, referred to hereinabove, in a sealed cover, for perusal of this Court.

4.5. Furthermore, Ms. Ahlawat had also submitted that the judgment of the Supreme Court in ***Rishal & Ors. case*** (supra) had been considered in a later judgement, i.e., ***Vikesh Kumar Gupta vs. State of Rajasthan***, (2021) 2 SCC

309.

4.6. It is in this background that the matter was listed before us, on 06.08.2021.

4.7. On 06.08.2021, Ms. Ahlawat had indicated to us that, since the examiner, who had framed the question paper, and the expert, who was appointed vide order dated 03.12.2020 passed in OA No. 2401/2017, had reached the same conclusion, an affidavit, in that behalf, will be filed.

4.8. Accordingly, the matter was listed for further hearing before us, today.

5. Ms. Ahlawat says that, pursuant to the order dated 06.08.2021, she has filed the affidavit. The said affidavit is not on record; however, Ms. Ahlawat has screen-shared the same with us.

5.1. The aforesaid affidavit is dated 10.08.2021. The relevant paragraphs contained in the affidavit are extracted hereafter:

“4. That however, when the Hon’ble Tribunal passed an order directing the answering Respondents to verify the objections raised by the Petitioner with reference³ to question No.102 and 183 only as a special case the matter was referred to another expert for giving answer to the two questions.

5. That initially during the course of examination the answer keys were uploaded by the DSSSB on 7.6.2017 for raising objections if any. Answers to 63 questions were objected to by various candidates. The questions with respective objections raised by the candidates were sent to the expert which included question no.102 & 183. The expert upheld the earlier answer keys except with respect to 11 questions, out of which 4 questions were deleted and 7 questions answer sheets were changed as per the advice. Final result was declared accordingly.

6. That question No.102 and 183 as per the directions of the Hon’ble Court as a special case were sent to another expert and the subsequent expert has given the same answers which were given in the final answer key of the earlier expert

on the basis of which the result was declared. With respect to question No.102 answer given by both the experts was 'C' and with respect to Question no.183 the answer was 'A' by both the experts.

7. *That a detailed order was also passed on 28.05.2021 (pg. 78) indicating all the facts with respect to the challenge to the questions raised by the Petitioner, which order was challenged by the Petitioner in OA 1064/2021 and the same has been dismissed by the Hon'ble Tribunal on 16.6.21. In Para-5 & 6 the Hon'ble Court has dealt with the whole issue and the same does not need any re-consideration by this Hon'ble Court."*

5.2. We have also examined the documents given to us in a sealed cover by Ms. Ahlawat.

6. In sum, what emerges is: insofar as the answers given to question nos. 102 and 183 are concerned, the expert, who was appointed vide order of the Tribunal dated 03.12.2020 passed in OA No. 2401.2017, has arrived at the same conclusion as the expert/examiner, who framed the question paper.

6.1. This was communicated to the petitioner, vide order dated 28.05.2021, which led to the filing of the instant OA i.e. OA No. 1084/2021, on 02.06.2021, from which the above-captioned writ petition has arisen.

7. In this backdrop, Mr. Singh went on to make the following submissions:-

7.1 That the judgment of the Supreme Court in **Vikesh Kumar Gupta case** (supra) does not dilute the modality, which was adopted in **Rishal & Ors. case** (supra), which was to give access to the report.

7.2. The Court needs to ascertain, whether the new expert relied upon any material to reach his conclusion?

7.3. The Court also needs to ascertain, whether the expert relied upon the material furnished by the petitioner before the Tribunal?

8. Insofar as first submission is concerned, Mr. Singh is right that, it is not as if the Supreme Court in the latter judgment in ***Vikesh Kumar Gupta case (supra)*** has anyway veered away from the modality adopted in ***Rishal & Ors. case (supra)***. It is because of this that, we had read out crucial parts of the reports placed before us to Mr. Singh, and also indicated to him, the material on which reliance has been placed by the new expert to reach to his conclusion.

8.1. As regards the second submission made by Mr. Singh, it is obvious that, it stands answered by what we have indicated above. The expert has relied upon standard text book(s) on the subject, in support of the conclusions recorded in the report.

8.2. Insofar as the third submission of Mr. Singh is concerned, which is, that, the Court should ascertain: whether the expert looked at the material supplied by the petitioner? - It is our opinion that, this is not an area into which we would like to foray with the requisite domain expertise. The expert has relied upon source material, which cannot be questioned as we are not experts in the subject area.

9. Given the aforesaid position, we are of the view that no interference is called for qua the impugned order of the Tribunal.

10. The writ petition is, accordingly, dismissed. Pending application shall also stands closed.

11. The Registry will ensure that the affidavit dated 10.08.2021, which is filed on behalf of the respondents is placed on record, for the purposes of good order and record. The report submitted by Ms. Ahlawat will be re-sealed, and will be preserved by the Registry, as part of the court record.

RAJIV SHAKDHER, J

TALWANT SINGH, J

AUGUST 11, 2021/nk

Click here to check corrigendum, if any

