

09 12.12.22

Ct. No. 04

Akd

WP.ST. 51 of 2022

**Paritosh Saha
Vs.
The State of West Bengal & Ors.**

**Mr. S. C. Dhara,
Mr. Raju Bhattacharyya.
... for the petitioner.**

**Mr. A. Roy,
Mr. Raja Saha,
Mr. Biswabrata Basu Mallick,
Mr. Sayan Ganguly.
... for the State.**

**Ms. Shraboni Sarkar.
... for the P.S.C.**

The instant writ petition has been filed against the order dated 17th December, 2021 passed by the West Bengal Administrative Tribunal in OA 721 of 2021; whereby and whereunder the tribunal application was disposed of solely on the ground that the petitioner has been found guilty of considerable delay in addressing the issue and the Tribunal cannot sit over the decision of the expert in relation to key answers.

When the writ petition was moved before this Court, a point was taken that there is an apparent mistake and/or discrepancy in the answer keys published by the Public Service Commission, and the other experts have also indicated so and, therefore, the Tribunal should not have proceed in a slipshod manner in rejecting the application simply on the ground of delay.

In view of the nature of allegations and disputes involved in the proceeding, we directed the Public Service Commission to submit a report indicating

whether the answer keys in relation to the questions as disclosed in the tribunal application are correct answers. On the last occasion the report was submitted by the Professor, who is no longer in service after attaining superannuation, indicating that out of seven questions answer key of question nos. 20, 38, 74 and 78 are correct and no discrepancy or ambiguity can be raised thereupon. However, the said expert, who published the answer key, opined that the answers given in the answer key for question nos. 28, 81 and 88 are wrong/incorrect, which gives impetus to the petitioner to contend that he has been wrongly awarded a negative marks and if the marks allotted for such correct answers is given, he would be within the zone of appointment. It leaves another thing whether the question attempted by the petitioner is a right answer.

We directed the said retired Professor who published the answer key to submit a further report indicating the correct answers for question nos. 28, 81, 88; such report is filed today. Let the same be kept with the record. The said report has indicated the correct answer keys for the aforesaid questions.

It is no doubt true that the Court cannot have an expertise on each and every branch of engineering, more particularly mechanical engineering and the opinion of the expert if cannot be tainted on any other parameters may be used as a guiding source in adjudicating the dispute.

It admits no ambiguity that the petitioner attempted 99 questions out of 100 and was found to have wrongly answered 16 questions. He raised an

objection to the answers shown in the answer key subsequently published in relation to seven questions obviously with the profound hope that the answers shown in the answer key for such questions are incorrect.

We invited the Counsel appearing for the Public Service Commission to indicate whether the petitioner has rightly chosen the option for the aforesaid three questions. It is submitted that so far as the question no. 28 is concerned, the answer key so published shows correct answer as 'B', but later on in the instant report the same expert has indicated that the correct answer is 'D'; whereas the petitioner has attempted option 'C' and, therefore, is not entitled to any benefit.

It is no doubt true that the petitioner would get benefit for attempting such question provided he opted for either option 'B' or 'D', but since he opted option 'C' he cannot get the benefit on a mere wrong and/or incorrect options published in the answer key.

So far as the question nos. 81 and 88 are concerned, it is undeniable that the petitioner has attempted right option but because of the incorrect options published in the answer key, he was awarded negative mark.

We, therefore, direct the Public Service Commission to revisit the answer scripts of the petitioner and after awarding the marks for such answers if the petitioner comes within the zone of appointment shall extend all benefits attached thereto. In the event, the petitioner despite awarding

the marks for those questions does not fall within the zone of appointment, the authority would communicate the same to the petitioner forthwith. The aforesaid exercise shall be completed within fortnight from the date of the communication of this order.

With the above observations the writ petition is disposed of.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)