

IN THE HIGH COURT OF ORISSA AT CUTTACK
WPC(OA) No.2548 of 2014

Sasmita Dutta

....

Petitioner

-versus-

State of Odisha and Ors..

....

Opp. Parties

Advocates appeared in the case:

For Petitioner

:

Mr. Ajit Rath, Adv.

-versus-

For Opp. Parties

:

Mr. Saswat Das, AGA

CORAM:

DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-23.08.2022

DATE OF JUDGMENT:-13.09.2022

Dr. S.K. Panigrahi, J.

1. The petitioner through this Writ Petition seeks direction from this Court for her appointment as Jr. Clerk in the Collectorate cadre, Mayurbhanj, Baripada for which she has been deprived of purely on the grounds of illegal consideration in evaluating. The petitioner further seeks to quash the appointment order

with respect to the Respondent No. 4 as it is based on faulty marking and evaluation.

2. The petitioner had applied for the post of Jr. Clerk in the year 2013 through the advertisement issued by the Collector and District Magistrate, Mayurbhanj, Baripada. Thereafter, the applicant duly appeared in the written test. Subsequently, there was short listing with respect to the candidates and the list of candidates shortlisted as per notice issued by the Collector, Mayurbhanj bearing No. 299 dated 24.01.2014. According to the list, Basumati Samal (Respondent no.4) bearing Roll No. 0599 scored the total marks of 282 as reflected in column 15 of page 16. Similarly, the petitioner bearing Roll No. 4584 secured 274.5 marks, 7.5 marks less than Respondent no.4 which led to the rejection of her candidature. On account of the said notice, Respondent No. 4 was selected and appointed to the post of Junior Clerk under Collectorate cadre, Mayurbhanj, Baripada as per an official order bearing No.676 dated 10.02.2014.

3. The petitioner after scrutinizing the answer key filed a representation to the Collector & District Magistrate on 10.06.2014 claiming that five of her correct answers have been marked wrong by the examiner erroneously. The petitioner further claimed that this erroneous correction of her answer

sheet has costed her 8 marks which has consequently deprived her of the abovementioned post. However, the Collector & District Magistrate rejected the claim of the petitioner. On being aggrieved of the same, the petitioner has filed this writ petition.

4. Learned Counsel for the petitioner has submitted that after comparing the petitioner's answers with the model answers provided by the examining authority, in five instances, the answers given against the questions have been adjudged as wrong, even though such answers are correct as per model answer sheet. Therefore, the marks earned by her on such five counts comes to 8 marks. On adding the said 8 marks to her total mark of 274.5, the petitioner's marks exceed that of the Respondent no.4. Hence it is submitted that the petitioner has been deprived of her appointment on selection due to the wrong marking of her paper. The correct marking places her over Respondent no.4, who has been appointed on selection.

5. Therefore, the petitioner has been grossly discriminated and such illegality has resulted in deprivation of the petitioner from being appointed to the post of Jr. Clerk in the Collectorate cadre of Mayurbhanj district at Baripada. Moreover, such discrimination amounts to violation of Article 14 and 16 of the Constitution of India.

6. *Per contra*, learned counsel for the Opposite Party has submitted that the petitioner had scored 274.5 marks in the written examination held on 08.12.2013. However, due to incorporation of wrong answer in the model answer sheet prepared for evaluation of answer, the answer sheet was re-evaluated. In view of that, the petitioner was awarded 6 marks in respect of Question No.25 of Objective General knowledge (Part-1) and Question No.28 & 34 of Basic Computer Skill Test. Accordingly, after re-evaluation, the total marks of the petitioner was enhanced from 274.5 to 280.5. However, the petitioner was not eligible to get any mark in respect of question No.13 and 21 of Language Test i.e. English (part-1) as her answer was incorrect.
7. Additionally, with respect to the said re-evaluation, the Respondent No.4 was also awarded 6 marks in respect of Question No.18 of Objective General Knowledge (Paper-1) (Part-1) and Question No.19 and 25 of Basic Computer Skill Test Paper-II (Part-II). After re-evaluation, the total marks of the Respondent No.4 was enhanced from 282 to 288 which is more than the mark secured by the applicant and therefore she was selected for appointment to the post of Jr. Clerk. In view of the same, the petitioner has no reason to say that she has been deprived of her appointment on selection due to

the wrong marks given. It is evident that even after re-evaluation, the applicant was placed below the merit rank of the Respondent No.4. Therefore, question of violation of Article-14 and 16 of the Constitution of India does not arise. In this regard, the allegation of the applicant is baseless and liable to be discarded.

8. Heard the learned counsel for the rival parties of the case and perused the documents attached herein.
9. It is pertinent to note that the representation of the petitioner was partly considered by the Collector & District Magistrate and was not inherently rejected. Learned Counsel for the Opposite party has submitted that due to incorporation of wrong answer in the model answer sheet prepared for evaluation of answer, the answer sheet was re-evaluated. In view of the same, the petitioner was awarded 6 marks in respect of Question No.25 of Objective General knowledge (Part-1) and Question No.28 & 34 of Basic Computer Skill Test. Accordingly, after re-evaluation, the total marks of the petitioner was enhanced from 274.5 to 280.5. However, the claim of the petitioner with respect to erroneous marking in question no.13 and 21 of Language Test i.e. English (part-1) has been rejected.

10. On bare perusal of the model answer sheet with respect to question no.13 and 21 of Language Test i.e. English (part-1), this court is of the opinion that there has been no erroneous marking against the petitioner. The answers submitted by the petitioner do not coincide with the solutions in the model answer sheet. Hence this court is unable to accept the contention of the petitioner. Moreover, the question of violation of Article-14 and 16 of the Constitution of India does not arise in the present case.

11. Additionally, it has been well established by the Supreme Court that the Court should not at all re-evaluate or scrutinize the answer sheets of a candidate since it has no expertise in the matter and the academic matters should be left to the academics. Furthermore, the Court should presume the correctness of the answer key and proceed on that assumption. The relevant excerpt from the case of *Ran Vijay Singh & Ors. vs. State of Uttar Pradesh & Ors.*¹, is as follows:

“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,

¹ (2018) 2 SCC 35.

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.”

12. Similarly, in the case of **Uttar Pradesh Public Service Commission, through its Chairman & Anr.**², the Supreme Court reiterated the law laid down in the case of **Ran Vijay Singh & Ors.** (Supra) and held that where there are conflicting views, the Court should accept the opinion of the experts. The relevant excerpts are as follows:

“12. The law is well settled that the onus is on the candidate to not only demonstrate that the key answer is incorrect but also that it is a glaring mistake which is

² (2018) 7 SCC 254.

totally apparent and no inferential process or reasoning is required to show that the key answer is wrong. The Constitutional Courts must exercise great restraint in such matters and should be reluctant to entertain a plea challenging the correctness of the key answers.....

14. In the present case we find that all the 3 questions needed a long process of reasoning and the High Court itself has noticed that the stand of the Commission is also supported by certain text books. When there are conflicting views, then the court must bow down to the opinion of the experts. Judges are not and cannot be experts in all fields and, therefore, they must exercise great restraint and should not overstep their jurisdiction to upset the opinion of the experts."

13. The Division Bench of Delhi High Court in the case of ***Sumit Kumar vs High Court of Delhi***³ held that a candidate could not be penalized for answers at variance with the key only if the answer key was proven to be incorrect beyond doubt. However, it is relevant to note that according to the said judgment, an answer key cannot be disregarded as being incorrect merely on a doubt. The Court had reiterated the settled law that there is always a presumption of correctness regarding the answer key and it may be subject to judicial review only when it is "demonstrably wrong" i.e. it must be such as no reasonable body of men well-versed in the

³ (2016) 232 DLT 504.

particular subject would regard it as correct. The relevant excerpt is as follows:

“9. We have to apply the aforesaid standard or test when we examine the contentions of the two petitioners. In other words, only when we are convinced that the answer key is “demonstrably wrong” in the opinion of a reasonable body of persons well-versed with the subject, will it be permissible to exercise power of judicial review. Albeit, in cases where the answer key is indeed incorrect or more than one key to the answer could be correct, the candidates should not be penalized for answers at variance with the key. The expression “demonstrably wrong” and the clapham omnibus standard or test on the second aspect (i.e. more than one correct key) is noticeably the corner stone of the said principle. While applying the said test, the Court should keep in mind that the answer key should be presumed as correct and should not be treated as incorrect on mere doubt.”

14. Considering the precedents cited hereinabove, this Court is of the opinion that the Petitioner has not been able to prove the invalidity of the answer key and, therefore, the contention of the Petitioner is devoid of any merit. Moreover, this Court also observes that a liberal or sympathetic approach should not be taken in cases of service jurisprudence wherein it shall affect the equitable right of a third party. In the present case, a sympathetic approach in favour of the Petitioner shall affect the rights of Opposite Party No.4 who has been rightfully

availing the benefit of the abovementioned post for more than 8 years.

15. In view of the above, the instant Writ Petition filed by the Petitioner is devoid of merit and the same is dismissed.

(Dr. S.K. Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 13th of September, 2022/B. Jhankar

