

ORISSA HIGH COURT : C U T T A C K

WPC(OAC) NO.3110 OF 2013

In the matter of a Petition under Articles 226 & 227 of the Constitution of India.

Manada Dehuri

: Petitioner

-Versus-

State of Orissa & ors.

: Opp.Parties

For Petitioner

:

M/s.B.B.Mohanty,
J.N.Panda,M.Harichandan
& B.Tripathy

For Opp. Parties

:

Mr.S.Ghose, ASC

CORAM :

JUSTICE BISWANATH RATH

Date of hearing : 05.04.2022 & Date of Judgment : 19.04.2022

1. This Writ Petition was originally filed and registered as O.A. No.3110(C) of 2013 on the File of the Orissa Administrative Tribunal, Cuttack Bench, Cuttack. On abolition of the Tribunal, the Petition has been transferred to this Court for being decided under the provision of Articles 226 & 227 of the Constitution of India.

2. The Writ Petition involves the following relief claimed :-

“Under the above circumstances, it is humbly prayed that the Original Application may be allowed;

a) This Hon’ble Tribunal may graciously be pleased to quash the selection process and the consequential Select

List prepared for the post of Sub-Inspector of Excise ;
and

- b) This Hon'ble Tribunal may further be pleased to direct the respondents to prepare the select list afresh by suitably correcting the total marks of the applicant as 197 and accordingly issue a revised recommendation in favour of the applicant for being appointed as Sub-Inspector of Excise and issue appointment order in favour of the applicant and the consequential service and financial benefits retrospective from the date of appointment of Respondent No.5 who has secured total 196 marks has already been appointed....”

3. Short background involving the case is that being a Graduate and belonging to Scheduled Caste Category, the Petitioner finding himself unemployed came across an advertisement, vide Notification No.1329 dated 31.5.2011 published by the Orissa Staff Selection Commission for recruitment of total 30 posts of Sub-Inspector of Excise under the Excise Commissioner in the Oriya Daily, “The Samaj”. The advertisement involved showing the vacancy position category-wise by way of bringing in vacancy to fifty posts through Corrigendum dated 1.10.2011. The Petitioner satisfying the eligibility criteria applied against the advertisement. Considering him for meeting with the advertisement requirement, the Petitioner was directed to appear in the written test scheduled to be held on 15.1.2012. The Petitioner claims to have cleared the written test and thus declared qualified to appear the physical test on 14.3.2012 by virtue of intimation dated 25.2.2012. The Petitioner was assigned with Roll No.19111700856. The Petitioner claiming to have been successful in the physical test was allowed to

appear the viva voce test meant for the Scheduled Caste Category. Advertisement indicated five posts were earmarked for Scheduled Caste Category. After the whole process is over, select list for the post of Sub-Inspector of Excise was prepared on 22.3.2012. The Petitioner got shocked in not finding his name in the select list of 50 persons finds place in Annexure-3. The Petitioner thus applied for the marks secured by him as well as the cut off mark involved therein. In Paragraph-6.6 of the Petition, the Petitioner claimed, he has been provided with all such information applying the provision of the Right to Information Act. In Paragraph-6.7 thereof the Petitioner claimed, he fell short by two marks. The Petitioner at this stage applied for photocopies of the questions and the OMR Answer Sheet involving General Study Paper of that particular Examination. Simultaneously, the Petitioner also applied for supply of photocopy of the General Studies Answer Key of the Set Code-6 relating to the Sub-Inspector of Excise Examination, 2011. For not getting any information on his R.T.I. Application, the Petitioner filed an Appeal. Finally the Petitioner was supplied with questions of General Studies with Set Code-6 OMR Answer Sheet and the answer key of General Studies with Set Code-6 respectively. After coming to possess the above on evaluation of his answer sheet with the OMR Answer Sheet and the marking as well, the Petitioner found as against question nos.58, 71, 84 & 88, there has been wrong answer keys by the

Authority. The Petitioner also claimed to have found in spite of his giving correct answer but for feeding of wrong answers by the Authority, the Petitioner's answer on these particular questions have been held to be negative. On the premises that there has been wrong answer fed in the answer key involving the aforesaid questions, the Petitioner claimed, there has been wrong evaluation and as a consequence, it is claimed, had there been proper answer in the answer key involving General Studies with Set Code-6, the Petitioner would have surely got full marks in respect of the question indicated herein above and as a consequence, the Petitioner would have scored much higher marks than the marks awarded to him. In the process, the Petitioner claimed for at least re-evaluation of answers of the Petitioner and placing him in appropriate place further providing him an employment pursuant to the advertisement involved herein.

4. Mr.B.B.Mohanty, learned counsel for the Petitioner on reiteration of the background involved and taking this Court to the questions involving General Studies with Set Code-6 to the particular questions and the answers fed by way of key answer sheet on comparison of both vis-à-vis the answers provided by the Petitioner demonstrated to submit that the answer key providing particular answer against these questions is wrong. For his submission in the Application, Mr.Mohanty, learned counsel for the Petitioner attempted to assert that

the answers provided by the Petitioner as against the questions involved are in fact correct, and therefore, it is claimed that the Petitioner should not suffer on account of wrong feeding of answers in the key answer sheet by the Authority. It is in the circumstance, Mr.Mohanty, learned counsel for the Petitioner taking this Court to the decision of the Hon'ble Supreme court in ***Rajesh Kumar & ors. vrs. State of Bihar & ors.*** reported in (2013) 4 SCC 690 prayed this Court for interfering in the evaluation process and issuing suitable direction involving a direction to the Selection Authority to provide him a post and placing the Petitioner in order of merit involving the recruitment year.

5. Mr.S.Ghosh, learned Additional Standing Counsel appearing for the State in his serious opposition to the claim of the Petitioner taking this Court to the counter affidavit filed by O.P.3 contended that initially the advertisement involving 30 posts and subsequently, it was enhanced to 50 posts by way of Corrigendum dated 1.10.2011. Mr. Ghosh further contended that involving the interview, ten sets of question papers were printed looking to the number of candidates applied and as natural, different sets of question papers were subjected to different answer keys for adoption of OMR Answer Sheet system. It is claimed, since the Service Provider was provided to evaluate the answer sheet in terms of the respective answer keys fed against it, the Service Provider evaluated the answer and the question papers in strict

terms of answer key and provided the computer evaluation for further action by the Selection Authority. It is again claimed, the question papers and answer keys since were prepared by Experts and accepted by the Commission, it is in the circumstance and for the answer key applied involving the candidates whomsoever appeared through Set-6 question uniformly, all such question papers have been evaluated uniformly. Mr.Ghosh thus contended that there is no question of accepting individual claim on the basis of his own answer preparation. Mr.Ghosh, learned Additional Standing Counsel made an oral submission that since the recruitment process was undertaken in the year 2011 and in admission of the matter, the Tribunal, vide order dated 29.11.2013 even though made the selection of Sub-Inspector of Excise in Scheduled Caste Category subject to final outcome and it is at this stage not known if such condition was directed to be incorporated in all such appointment orders or not. Mr.Ghosh also contended, for passage of almost a decade time in the meantime, for the interest of justice, the Petitioner should have been careful enough in bringing all such selected candidates and making them parties to contest. Mr.Ghosh thus urged, for almost a decade time passed after the admission being made, it is difficult to dislodge such persons as otherwise many of them must have crossed the age bar involving future selection process. In the circumstance,

Mr.Ghosh, learned Additional Standing Counsel opposed the claim of the Petitioner.

6. Considering the rival contentions of the Parties, this Court finds, following the advertisement dated 31.5.2011 and increased in the number of vacancies by way of Corrigendum to fifty, the number of vacancy in Scheduled Caste side was increased to eight including three reserved for women in Scheduled Caste Category. So in all total five Scheduled Caste Candidates were appointed involving such posts in the Scheduled Castes Category. It is here looking to the interim order dated 29.11.2013 passed by the Tribunal continuing as of now, five persons were already appointed as against Scheduled Caste vacancies. Appointments were made in some time in 2012. Interim direction since was made in 2013, it is not clear, if these five candidates' appointment was made subject to outcome in the application at hand. In the meantime, twelve years have also passed. Coming to the claim of the Petitioner that for the Petitioner there has been wrong answer key in respect of question nos.58, 71, 84 & 88 so far as Set-6 General Studies is concerned, in the event the Petitioner was justified in claiming that such questions have been placed with wrong answer keys, for the opinion of this Court, it is at the threshold of the matter, attempt should have been taken, if possible, for getting into Expert opinion and asking for their opinion with regard to the correct answers in respect of the

questions claimed to have been fed with wrong answer keys. This Court finds, nine years have passed from the date of filing and almost eleven years have passed since selection process completed. Secondly, this Court finds, these are undertakings of selection exercise involving large candidates. Undisputedly, there involved preparation of different sets of questions. As a consequence, there is also requirement of different sets of answer keys dependent on the question set involving each set. When the selection process involved large candidates, it is obvious evaluation involves uniform application of answer sheet and accordingly, there is evaluation process depending on the scoring. There involved preparation of merit list and the subsequent interview taking place. This Court not only finds there is universal application of answer key in respect of all such candidates appeared against Set-6 question papers but based on such evaluation, appointments have also been made, after such long period, it is difficult to revisit the selection process involving such huge candidates appearing in the written test and that too after a decade. Therefore, it becomes difficult to accept the claim of the Petitioner for interfering in such selection process and that too in absence of any concrete material either by way of answer through any publication or even through Expert opinion. Besides this Court here finds, the Petitioner remained satisfied with the marks provided to him in the written test involved and on such satisfaction, the Petitioner even

attended to the call of the Authority exercising such process to attend the physical test on 14.3.2012, vide communication dated 25.2.2012 and subsequently being thus found qualified to the next stage also appeared in the viva voce test held on 15.3.2012 under communication dated 14.3.2012. This Court here finds, in the event the Petitioner was not satisfied with the marks provided to him as against the written test and if at all he had any suspicion in the feeding of answers, he ought to have approached the court of law even before attending the physical test if not at least before attending the viva voce.

7. It is at this stage, considering the decision cited by the learned counsel for the Petitioner in *Rajesh Kumar & ors.* (supra), this Court finds, finding substance in the case at hand, the Hon'ble Supreme Court almost after seven years directed for re-evaluation on the basis of a correct key prepared through the report of Dr. (Prof.) C.N.Sinha and Prof. K.S.P. Singh and consequently, based on change in marks, if any, directed to prepare a fresh merit list. Looking to the documents involving the case at hand, this Court finds, the Petitioner did not have any such attempt at least to get Expert opinion to support his claim, for which this Court finds, the decision cited has no application to the case at hand. This Court here takes into account the decision of the Hon'ble Supreme Court in *Ran Vijay Singh & ors. vrs. State of Uttar Pradesh & ors.* reported in (2018) 2 SCC 357 and finds, the Hon'ble Supreme

Court through Paragraph-33 deprecated the attempt of the Single Bench to ascertain the correctness of the key answer and observed as follows :-

“33. The facts of the case before us indicate that in the first instance the learned Single Judge took it upon himself to actually ascertain the correctness of the key answers to seven questions. This was completely beyond his jurisdiction and as decided by this Court on several occasions, the exercise carried out was impermissible. Fortunately, the Division Bench did not repeat the error but in a sense, endorsed the view of the learned Single Judge, by not considering the decisions of this Court but sending four key answers for consideration by a one-man Expert Committee.”

8. It is apt to mention here that the case there involved a direction of the Division Bench sending the key answer for consideration of one man Expert Committee, which has already been approved by the Hon'ble Supreme Court and thereby directing to prepare further select list on the basis of Expert opinion. It is also apt to mention here that ten years after appointment is already over. Undisputedly, the persons so selected have already crossed their age bar in appearing any further selection. It is at this stage, it will be just difficult to unsettle the career of persons already selected and being engaged almost a decade back. In a recent case in ***Vikesh Kumar Gupta & anr. Vrs. State of Rajasthan & ors.*** reported in (2021) 2 SCC 309 in Paragraphs-14 to 17, Hon'ble Supreme Court came to observe as follows :-

“14. Though re-evaluation can be directed if rules permit, this Court has deprecated the practice of re- evaluation and scrutiny of the questions by the courts which lack expertise in academic matters. It is not permissible for the High Court to examine the question papers and answer sheets itself, particularly when the Commission has assessed the inter se merit of the

candidates (Himachal Pradesh Public Service Commission v. Mukesh Thakur & Anr.). Courts have to show deference and consideration to the recommendation of the Expert Committee who have the expertise to evaluate and make recommendations [See- Basavaiah) v. Dr. H.L. Ramesh).

15. Examining the scope of judicial review with regards to re- evaluation of answer sheets, this Court in *Ran Vijay Singh & Ors. v. State of Uttar Pradesh & Ors.*³ held that court should not re-evaluate or scrutinize the answer sheets of a candidate as it has no expertise in the matters and the academic matters are best left to academics. This Court in the said judgment further held as follows: (*Ran Vijay Singh Case, SCC PP.369-70, PARAS 31-32*).

“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.”

16. In view of the above law laid down by this Court, it was not open to the Division Bench to have examined the correctness of the questions and the answer key to come to a conclusion different from that of the Expert Committee in its judgment dated 12.03.2019. Reliance was placed by the Appellants on *Richal v. Rajasthan Public Service Commission*. In the said judgment, this Court interfered with the selection process only after obtaining the opinion of an expert committee but did not enter into the correctness of the questions and answers by itself. Therefore, the said judgment is not relevant for adjudication of the dispute in this case.

17. A perusal of the above judgments would make it clear that courts should be very slow in interfering with expert opinion in academic matters. In any event, assessment of the questions by the courts itself to arrive at correct answers is not permissible. The delay in finalization of appointments to public posts is mainly caused due to pendency of cases challenging selections pending in courts for a long period of time. The cascading effect of delay in appointments is the continuance of those appointed on temporary basis and their claims for regularization. The other consequence resulting from delayed appointments to public posts is the serious damage caused to administration due to lack of sufficient personnel.”

Through the above judgments, it also becomes clear that the Courts should be very slow in interfering with the Expert opinion for an Expert opinion already existed there, which is not the case here and in the meantime, long eleven years have passed from the judgment involved herein.

9. In the above background and the support of law to the case of the O.Ps., this Court finds, there is no substance in the claim of the Petitioner, for which this Court dismisses the Petition involved for having no merit. No cost.

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(Biswanath Rath, J.)