

IN THE HIGH COURT OF ORISSA AT CUTTACK
WPC(OAC) No.523 of 2019

Rabindra See

....

Petitioner

Mr.Susanta Ku.Das, Adv.

-versus-

State of Odisha & Ors.

....

Opp. Parties

Mr. G.R.Mohapatra,ASC

CORAM:

DR. JUSTICE S.K. PANIGRAHI

ORDER

24.08.2022

Order
No.

05

1. This matter is taken up by hybrid mode.
2. The present petition has been directed against Order No. 338 dated 26.07.2018 whereby the petitioner assails the legality and propriety of the marks awarded in the written test conducted by the Odisha Police State Selection Board and the consequential selection of candidates from and out of such illegal and irregular selection.
3. Learned counsel for the petitioner submits that pursuant to advertisement issued by the Chairman, State Selection, the applications were invited for recruitment to the post of constable in OISF. The petitioner, being an eligible candidate, applied for the concerned post in the prescribed

form. In accordance with Rule- 20, a merit list was prepared on 29.02.2016, wherein the name of the petitioner was not included. The petitioner sought for information under the RTI Act, 2005 in order to ascertain the marks secured by him in the recruitment test. The petitioner was provided information vide letter dated 28.03.2016 that he has secured 53 marks out of which 14 marks have been awarded for his performance in the written test.

4. Learned counsel further submits that the Petitioner was entitled to 15 marks as he had given 15 right answers. Since, the marks expected by the Petitioner did not tally with the marks awarded in the written test, he sought for a copy of the answer key of question set A, B, C & D. The Petitioner was provided with the Answer Key of Set-D on 22.04.2016. Upon verification, it was found that in respect of Question No. 13, the answer is given as "D" though the correct answer to the question is option "B".

5. It is further submitted by learned counsel for the Petitioner that the text book published by Board of Secondary Education also mentions option "B" as the correct answer but, inadvertently, the same has been mentioned as option "D" in the Model Answer Key. The

Petitioner has been wrongfully deprived of one (1) mark due to fault of the authorities following which he secured 53 marks and missed out on qualification by just one (1) mark.

6. Per Contra, the learned counsel for the Opposite Party submitted that the Question No. 13 of Set-D pertains to Sanskrit Language and not from Odia Byakaran for which the answer option "D" is correct and hence, the petitioner is not entitled to get any mark for the said question.

7. In the case at hand, a letter was sent to V.C of Rama Devi Women's University, Bhubaneswar to examine the Question No. 13 of Set-D and obtain the opinion of a scholar and expert in Odia language which has been received by this Court in sealed cover vide letter no. 3585(WE) dated 29.07.2022 and opened in the Court in presence of both parties wherein it was notified that the correct answer of the Question No.13 of Set-D is option "B".

8. The issue pertaining to scope of judicial review of correctness of key answer had been considered by this Court time and again. This Court had entertained such challenges on very limited ground

and has always given due weight to the opinions of subject experts. In the case of *Kanpur University, through Vice-Chancellor and others vs. Samir Gupta and others*¹, the Supreme Court observed that:

“Normally, one would be inclined to the view, especially if one has been a paper-setter and an examiner, that the key answer furnished by the paper-setter and accepted by the University as correct, should not be allowed to be challenged. One way of achieving it is not to publish the key answer at all. If the University had not published the key answer along with the result of the Test, no controversy would have arisen in this case. But that is not a correct way of looking at these matters which involve the future of hundreds of students who are aspirants for admission to professional courses. If the key answer were kept secret in this case, the remedy would have been worse than the disease because, so many students would have had to suffer the injustice in silence. The publication of the key answer has unravelled an unhappy state of affairs to which the University and the State Government must find a solution. Their sense of fairness in publishing the key answer has given the man opportunity to have a closer look at the system of examinations which they conduct. What has failed is not the computer but the human system.”

The Court further iterated hereasunder:

“We agree that the key answer should be assumed to be correct unless it is proved to be wrong and that it should not beheld to be wrong by

¹1983 (4) SCC 309

an inferential process of reasoning or by a process of rationalisation. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well-versed in the particular subject would regard as correct. The contention of the University is falsified in this case by a large number of acknowledged textbooks, which are commonly read by students in U.P. Those text books leave no room for doubt that the answer given by the students is correct and the key answer is incorrect."

09. Having considered the matter in aforesaid perspective and guided by the precedents cited hereinabove, this Court is unable to accede to the submissions of the Opposite Party. The writ petition is allowed and accordingly disposed of.

10. The letter no. 3585(WE) dated 29.07.2022 be kept in sealed cover and retained by the Registrar(Judicial) for further reference.

11. Issue urgent certified copy as per Rules.

(Dr. S.K. Panigrahi)
Judge