

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-9225-2022

Chandni and others

....Petitioners

VS

State of Punjab and others

....Respondents

CWP-10654-2022

Vikramjit Singh and others

....Petitioners

VS

State of Punjab and others

....Respondents

CWP-9974-2022

Sangeeta Rani and others

....Petitioners

VS

State of Punjab and others

....Respondents

CWP-11640-2022

Daljeet Singh and others

....Petitioners

VS

State of Punjab and others

....Respondents

Date of Decision: 30.05.2022

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Munish Bansal, Advocate and
Mr. Prince Goyal, Advocate
for the petitioners in CWP Nos. 9225, 10654 and 9974 of 2022

Mr. H.C. Arora, Advocate
for the petitioners in CWP No. 11640 of 2022

SUDHIR MITTAL, J.

This judgment shall decide CWP Nos. 9225 of 2022, 10654 of 2022, 9974 of 2022 and 11640 of 2022 as common questions of fact and law are involved therein.

2. The legal proposition for consideration is whether in exercise of jurisdiction under Article 226 of the Constitution of India, this Court would direct correction of the final answer key if allegedly the same is erroneous.

3. For selection of teachers for Classes I to VIII, the National Council for Teacher Education (NCTE) has prescribed qualification of Teacher Eligibility Test (TET) apart from other eligibility conditions laid down vide notification dated 23.08.2010. Conduct of TET has been delegated to the Central Government/respective State Governments. In Punjab the agency conducting the test is the State Council for Educational Research and Training (SCERT) for the State of Punjab. Guidelines for conducting the TET have been laid down by the NCTE vide Memorandum dated 11.02.2011. The question paper comprises Multiple Choice Questions (MCQs), each question having four alternatives. No negative marking is done and one mark is awarded for each correct answer. The question paper is divided into five sections, each of 30 questions and total is of 150 marks. 60% viz. 90 marks is the qualifying score whereas in case of reserve category candidates it is 82 marks. Two separate tests are conducted, one for candidates desirous of being appointing to teach Classes I to V and the second for those desirous of teaching Classes VI to VIII. The present case concerns PSTET-I

i.e. for candidates desirous of teaching Classes I to V. Each section of the question paper corresponds to one subject. There are a total of five subjects prescribed in the guidelines being Child Development and Pedagogy, Language-I, Language-II, Mathematics and Environmental Studies.

4. Vide Public Notice dated 22.11.2021 the SCERT, Punjab invited online applications for PSTET-I. The examination was conducted on 24.12.2021 and provisional answer key was notified on 04.01.2022. The petitioners submitted their objections but the same were rejected. Final answer key was notified on 03.04.2022. The petitioners could not score qualifying marks and, thus, they have approached this Court with the grievance that the final answer key was incorrect.

5. In support of his case learned counsel for the petitioner has placed reliance upon *Kanpur University and others vs. Samir Gupta and others, 1983 AIR (Supreme Court) 1230* and *Nishant Dutta vs. Punjab and Haryana High Court through Registrar General, 2021(2) SCT 607*.

6. In the past, the Supreme Court has deprecated the practice of interference in a selection process by holding that the Courts are not competent to examine the correctness of actions taken by subject experts. If at all, interference must be minimal and only in such cases where the answer key is patently erroneous. Else it results in delaying the selection process causing general public inconvenience and harassment to the candidates. Public posts are left unfilled for years together which adversely affects the functioning of public institutions resulting in affecting public interest adversely. As far back as in the early 1980s the Supreme Court in *Maharashtra State Board of Secondary and Higher Secondary Education and another vs. Paritosh Bhupesh Kurmarsheth, etc., AIR 1984 SC 1543* held that uncertainty in results of competitive examinations for indefinite period defeats the public interest. In that case certain candidates had

Education Board Regulations, 1977, which barred disclosure or inspection of answer books. A Division Bench of the Bombay High Court allowed the challenge and issued directions to the Board to permit inspection of answer books. The Division Bench judgment was set aside by the Supreme Court by holding that the Board was competent to make regulations and there was no illegality in Regulation 104(3). It was not even ultra vires. Relevant observations are as under:-

*“28. As pointed out by a Constitution Bench of this Court in **Fateh Chand Himmatlal and Ors. v. State of Maharashtra, etc.** "the test of reasonableness is not applied in vacuum but in the context of life's realities", 1977 (2) SCR 828. If the principle laid down by the High Court is to be regarded as correct, its applicability cannot be restricted to examinations conducted by School Educational Boards alone but would extend even to all competitive examinations conducted by the Union and State Public Service Commissions. The resultant legal position emerging from the High Court Judgment is that every candidate who has appeared for any such examination and who is dissatisfied with his results would, as an inherent part of his right to 'fair play' be entitled to demand a disclosure and personal inspection of his answer scripts and would have a further right to ask for revaluation of his answer papers. The inevitable consequence would be that there will be no certainty at all regarding the results of the competitive examination for an indefinite period of time until all such requests have been complied with and the results of the verification and revaluation have been brought into account,*

29. Far from advancing public interest and fair play to the other candidates in general, any such interpretation of the legal position would be wholly defeasive of the same. As has been repeatedly pointed out by this court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the court to make a pedantic and purely idealistic approach to the problems of

this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice. It is unfortunate that this principle has not been adequately kept in mind by the High Court while deciding the instant case.”

7. A similar view has been taken in ***Secretary, All India Pre-Medical/Pre-Dental Entrance Examination, C.B.S.E. and others vs. Khushboo Srivastava and others, (2014) 14 SCC 523***. In this case a candidate had sought re-examination and re-totalling of her marks in three separate subjects but the request was refused on the ground that re-checking/re-evaluation was not permissible under the Rules. The action was challenged before the Patna High Court and learned Single Judge called for the answer sheet of the student and personally examined the same with the modal answers. He came to the conclusion that two answers had not been properly evaluated but did not grant any relief as successful students had completed one year study already. The judgment was challenged before the Division Bench, which returned the same finding and directed that the student be admitted to the MBBS course in the next session. Both these judgments were set aside by the Supreme Court by holding :-

“In our considered opinion, neither the learned Single Judge nor the Division Bench of the High Court could have substituted his/its own views for that of the examiners and awarded two additional marks to the respondent no.1 for the two answers in exercise of powers of judicial review under Article 226 of the Constitution as these are purely academic matters.”

8. In *Ran Vijay Singh and others vs. State of U.P. And others*, AIR 2018 S.C. 52 an examination was held for recruitment as trained graduate teachers. The examination was on the pattern of MCQs. Certain unsuccessful candidates filed writ petitions in the Allahabad High Court but the same were dismissed by a learned Single Judge. However, certain other writ petitions were admitted by another learned Single Judge who personally examined seven questions against which a grievance had been raised and concluded that the answer key was incorrect. Thus, re-examination of the answer sheets of the petitioners was directed. This decision was challenged before a Division Bench of the High Court by the Board and some candidates. The challenge of the Board failed whereas that of the candidates succeeded and a direction was issued for re-evaluation of answer sheets of all the candidates. After the re-evaluation, another set of petitions were filed and directions were issued to those aggrieved by the order of the Division Bench to file review petitions. In the review petitions, the seven disputed questions were referred to an Expert Committee and vide judgment dated 02.11.2015, the Division Bench directed a fresh evaluation of the answer key on the basis of report of the Expert Committee. This decision of the Division Bench was challenged before the Supreme Court and by the time the case was decided a period of nine years has elapsed. Thus, the Supreme Court held as under :-

“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, 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.

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.”

9. Even in ***Kanpur University case (supra)***, the Supreme Court has held as under:-

“16. Shri Kacker, who appears on behalf of the University, contended that no challenge should be allowed to be made to the correctness of a key answer unless, on the face of it, it is wrong. We agree that the key-answer should be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by 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 text-books, 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.”

The students were given benefit as text books prescribed by the Board of Examination itself supported their case that the answer key was wrong.

10. In ***Nishant Dutta (supra)*** the law on the subject of re-evaluation of answer books has been re-examined and it has been held that in a case of MCQ re-evaluation of answer sheets may be done even if it is specifically barred provided that the answers are shown to be patently incorrect. With these observations the writ petition was dismissed.

11. Is this case covered by the parameters laid down in law?
12. The petitioners allege that the answers to seven questions given in the final answer key are incorrect. I will take up each of these questions individually and examine the answer key in the light of the law laid down hereinabove.
13. (i) Question 44 is in the Section pertaining to Punjabi Language and its translation has been given in the writ petition. The question alongwith choices is translated as:-

44. Adheen Yojak are of how many types?

(A) Three

(B) Five

(C) Two

(D) Seven

According to the answer key option 'A' is the correct answer whereas according to the petitioners option 'D' is the correct answer. The petitioners are relying upon 'Punjabi Vyakaran atte Rachnavali' an extract of which has been annexed as Annexure P-10. A perusal of the aforementioned Annexure P-10 shows that the text book is for Classes IX and X whereas the syllabus prescribed for the instant examination is that meant for Classes I to V. The text book is also not an official publication and, thus, blind reliance can not be placed upon it.

(ii) Question 147 alongwith choices is as under:-

147. Which of the following environmentalists filed a case in the Supreme Court of India on the issue of environment pollution?

(A) Baba Amte

(B) S.C. Mehta

(C) S.L. Bahuguna

(D) None of the above

According to the final answer key option 'D' i.e. 'None of these' is correct answer whereas the petitioners place reliance upon a text book titled 'Meri

option 'B' is the correct answer. The contents of the text book relied upon by the petitioners are patently erroneous and, thus, the answer can not be said to be incorrect.

(iii) The next question against which the grievance is raised is Question 75:

75. Continuous and Comprehensive evaluation is to:

- (A) Assess all aspects of a student's development on a continuous basis throughout the year.***
- (B) Give diagnostic tests to the students at regular intervals.***
- (C) Assess student's academic achievement.***
- (D) All of the above.***

The petitioners state that the correct answer is option 'D' whereas according to the final answer key option 'A' is the correct answer. In support of their submission the petitioners are relying upon study notes published by BYJU's Exam Preparation. Having gone through the extract of the publication referred to, it can not be held that option 'A' is an incorrect answer. Moreover, the publication relied upon is not a standard publication.

(iv) Question 5 is as under:-

5. Assessment of students to monitor their progress is known as:

- (A) Assessment for learning***
- (B) Assessment of learning***
- (C) Assessment from learning***
- (D) Assessment to learning***

According to the final answer key option 'A' is the correct answer whereas according to the petitioners both option 'A' as well as option 'B' are correct. They draw support from study notes published by BYJU's Exam Preparation. A reading of the extract of the publication does not lead to the conclusion that option 'A' is an incorrect answer. Coupled with the fact that the

publication relied upon is not a standard publication, the question is not covered by the parameters laid down in the judgments referred to hereinabove.

(v) Question 138 is as follows:-

138. Who is Punjab's first women pilot instructor?

(A) Mandeep Kaur

(B) Harmandeep Kaur

(C) Sukhdeep Kaur

(D) Ekamjot Kaur

The final answer key states that option 'C' is the correct answer whereas according to the petitioners none of the choices given is correct. Reliance is placed upon Google Search conducted by the petitioners, according to which Harita Kaur Deol was Punjab's first women Pilot Instructor. Again the contention is not acceptable as a Google Search of 'Sukhdeep Kaur' shows that she was the first women pilot instructor of Punjab. Moreover, Google Search can not be considered to be conclusive in this case as the answer thrown up by the search engine depends upon the way a query is worded.

(vi) The next question is Question 67 which is as follows:-

67. Which of the following does not come under the Principle of Selection?

(A) Frequency

(B) Range

(C) Availability

(D) Imitation

The petitioners say that the correct answer is option 'A' whereas the answer key says that the correct answer is option 'B'. In support of their answer the petitioners are relying upon a result thrown up by a web search but I can not place blind reliance thereupon for the reason that results shown up by the web search are dependent upon the way a query is worded. Moreover, the question pertains to

principles of selection whereas the web search relied upon refers to Principle of selection and gradation.

(vii) The final question whose answer is stated to be incorrect is:

122. Which of the following gives the four stages of organizing Environmental Studies (EVS) activities in logical sequence?

(A) Evaluating the performance - Planning - Reflecting on the process - Conducting the activity

(B) Planning - Evaluating the performance - Reflecting on the process - Conducting the activity

(C) Planning - Conducting the activity - Evaluating the performance - Reflecting on the process

(D) Planning - Reflecting on the process - Conducting the activity - Evaluating the performance

The petitioners state that the correct answer is option 'D' whereas according to the answer key the correct answer is 'C'. In support of their case the petitioners are relying upon a 2017 publication for PSTET which can not be said to be a standard publication. Moreover, the answer given therein is not the same as mentioned in option 'D'.

14. From the above, there is no doubt in my mind that the answers in the final answer key are not incorrect. Thus, there is no scope for interference in exercise of jurisdiction under Article 226 of the Constitution of India keeping in view the law laid down on the subject by the decisions referred to hereinabove.

15. The writ petitions are, accordingly, dismissed.

16. A photocopy of this order be placed on the files of other connected cases.

30.05.2022
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(SUDHIR MITTAL)
JUDGE