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W.P.No.25284 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 12..09..2023

Orders Pronounced on : 09..10..2023

Coram

THE HON'BLE MR JUSTICE N.SATHISH KUMAR

Writ Petition No.25284 of 2022

and

W.M.P.No.24249 of 2022

S.Divya

..... Petitioner

-Versus-

1. Teachers Recruitment Board
rep. By its Member Secretary,
3rd Floor,
Puratchi Thalaivar Dr. MGR Centenary Building,
DPI Campus, College Road, Chennai 600 006.

2. The Expert Committee,
C/o. Teachers Recruitment Board,
3rd Floor,
Puratchi Thalaivar Dr. MGR Centenary Building,
DPI Campus, College Road, Chennai 600 006.

..... Respondents

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Mandamus, directing the 1st respondent to refer the objections dated 12.09.2022 of the petitioner for deletion of question Nos.71 and 108 for not choosing the correct option in the subject English for which written examination was conducted on 18.02.2022 for the post of PG Assistant in



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English pursuant to Advertisement No.01/2021 dated 09.09.2021 to the 2nd respondent Expert Committee and direct the 1st respondent to give an opportunity to the petitioner to substantiate before the Expert Committee petitioner's objections in connection with Question Nos.71 and 108 in the subject English and furnish the details relating to the petitioner's objections in the format given by this Court in the batch of writ petitions in W.P.No.662 of 2020 etc., dated 20.02.2022 to the petitioner.

For Petitioner : *Mrs.Nalini Chidambaram,*
Sr. Counsel
for Ms.C.Uma

For Respondent (s) : *Mr.R.Neelakandan,*
Additional Advocate General
Assisted by Mr.C.Kathiravan,
Standing Counsel

ORDER

This writ petition has been filed seeking a writ in the nature of mandamus, directing the 1st respondent to refer the objections dated 12.09.2022 of the petitioner for deletion of question Nos.71 and 108 for not choosing the correct option in the subject English for which written examination was conducted on 18.02.2022 for the post of PG Assistant in English pursuant to Advertisement No.01/2021 dated 09.09.2021 to the 2nd respondent Expert Committee and direct the 1st respondent to give an opportunity to the petitioner to substantiate before the Expert Committee petitioner's objections in connection with Question Nos.71 and 108 in the subject English and furnish the



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details relating to the petitioner's objections in the format given by this Court in the batch of writ petitions in W.P.No.662 of 2020 etc., dated 20.02.2022 to the petitioner.

2. The petitioner is an aspirant for the post of Post Graduate Assistant (English). She is fully qualified to apply for the post and she applied for the post pursuant to the Notification / Advertisement No.01/2021 dated 09.09.2021 issued by the 1st respondent for direct recruitment to the post of Post Graduate Assistants / Physical Education Directors Grade-I/Computer Instructor Grade-I in School Education Department and other Departments for the year 2020-2021. There is no dispute in it. There is also no dispute regarding the Scheme of Examination. She had taken the written examination on 18.02.2022 and secured 97.77 out of 150 marks. The grievance of the petitioner is that the answers which she had given to Question Nos.71 &108 are correct and if she had been given marks for those questions, she would have been considered for certificate verification and selected for appointment.

3. Since the petitioner failed to secure the cut-off marks, she was not selected. It is the stand of the petitioner that key answers set in respect of Question Nos.71 &108 are demonstrably and palpably wrong and that therefore, he should have been awarded marks for those questions also.



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4. The respondent board filed its counter affidavit denying the allegations made in the writ petition and inter alia contending that objections were received from the candidates in respect of certain questions that key answers were wrong and an expert body was constituted and based on the opinion of the expert body certain key answers were revised and marks were given to the candidates. Therefore, now, it is not open to the petitioner to raise the same objection before this court as second round.

5. The learned senior counsel appearing for the petitioner took this court through the materials submitted during the course of argument in the form of typed set of papers in support of his submission that the answers opted by the petitioner are correct and the key answers are wrong and the petitioner is entitled to get marks for Question Nos.71 & 108.

6. Per contra, the learned Additional Advocate General appearing on behalf of the learned standing counsel on record for the TRB taking this court through the counter affidavit submitted that questions setters were experts in their respective fields and the objections were referred to a expert body, who were also experts in the field. The expert body after examining the objections submitted its report that answers to certain questions were wrong. When there was an effective mechanism evolved by the TRB to raise objection to key



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answer, if any, and the objections raised by the candidates were already considered by the expert body, the petitioner cannot raise the same claim once again before this court. Further, according to him, the books relied on by the petitioner to prove the errors were not the materials authorised by the State.

7. This court had called upon the TRB to produce the experts opinion justifying the key answers. Report of the expert body was accordingly produced.

8. This court has considered the rival submissions carefully and gone through the materials on record including the report of the expert body.

9. In the case of **Kanpur University v. Samir Gupta** [(1983) 4 SCC 309], the Supreme Court has held that it should be presumed that the key answers set by the paper setters are correct, unless it is demonstrably wrong.

10. It is also the settled law that this court cannot conduct itself like an expert and go into the correctness of the key answers set to the questions by the paper setters and affirmed or revised by the expert body based certain concrete materials.

11. In **Ran Vijay Singh v. State of U.P.** [(2018) 2 SCC 357], the Supreme Court has held as under:-

“**30.1.** 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;

30.2. 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;

30.3. The court should not at all re-evaluate or scrutinise the answer sheets of a candidate—it has no expertise in the matter and academic matters are best left to academics;

30.4. The court should presume the correctness of the key answers and proceed on that assumption; and

30.5. In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.”

12. In the case of *U.P. Public Service Commission v. Rahul Singh*, [(2018) 7 SCC 254], while reiterating the law on the subject, the Supreme Court the has held as under:-

12. The law is well settled that the onus is on



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the candidate to not only demonstrate that the key answer is incorrect but also that it is a glaring mistake which is 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. In *Kanpur University case* [*Kanpur University v. Samir Gupta*, (1983) 4 SCC 309] , the Court recommended a system of:

- (1) moderation;
- (2) avoiding ambiguity in the questions;
- (3) prompt decisions be taken to exclude suspected questions and no marks be assigned to such questions.”

.....

14. In the present case, we find that all the three 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 textbooks. 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. In the case of **High Court of Tripura v. Tirtha Sarthi Mukherjee**



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and others [(2019) 2 Scale 708], the Supreme Court has held as under:-

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"19. The question however arises whether even if there is no legal right to demand revaluation as of right could there arise circumstances which leaves the Court in any doubt at all. A grave injustice may be occasioned to a writ applicant in certain circumstances. The case may arise where even though there is no provision for revaluation it turns out that despite giving the correct answer no marks are awarded. No doubt this must be confined to a case where there is no dispute about the correctness of the answer. Further, if there is any doubt, the doubt should be resolved in favour of the examining body rather than in favour of the candidate. The wide power under Article 226 may continue to be available even though there is no provision for revaluation in a situation where a candidate despite having given correct answer and about which there cannot be even slightest manner of doubt, he is treated as having given the wrong answer and consequently the candidate is found disentitled to any mark."

14. Very recently in the case of **Vikesh Kumar Gupta v. State of Rajasthan [(2021) 2 SCC 309]**, after considering a catena of decisions on the scope of judicial review with regard to re-evaluation of the answer sheets, the



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Supreme Court observed and held that the court should not re-evaluate or scrutinise the answer sheets of a candidate as it had no expertise in the matter and the academic matters are best left to academics.

15. The candidates who took the written examination were given an opportunity to submit their objections, if any, to the tentative key answers published by the TRB through online objection tracker. Based on the objections received from the candidates, an expert body was constituted to go into the correctness of the key answers. According to the TRB, valuation of the answer sheets was done by them based on the opinion of the expert body.

16. The correctness of the Key Answers set to Questions Nos.71 & 108 by the TRB are now under challenge.

17. Let this court now examine the challenges to the key answers made in the writ petitions one after the other keeping in mind the principle laid down by the Supreme Court referred to herein above.

18. The first challenge is to the Question No.71 which reads as under:-

Who is the narrator of 'Wuthering Heights' the novel written by Emily Bronte?

- (A) Mrs. Ellen
- (B) Heathcliff
- (C) Linton



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(D) Catherine

The key answer for this question original was option “A”. According to the petitioner, option “A” is the correct answer. However, the experts opined that none of the options given were correct. According to the experts, Lockwood and Nelly Dean to be the correct answer. This question has admittedly been deleted from the valuation based on the opinion of the experts and no mark was awarded. Therefore, the challenge of this question does not merit consideration. Further, this court by order dated 02.11.2022 made in W.P.(MD) No.22129 of 2022 rejected the challenge made by one K.Vinopratha. This challenge is, therefore, rejected accordingly.

19. Insofar as Question No.108 is concerned, it reads as under:-

According to Allen Tate the meaning of good poetry, “is its _____, the full organized body of all the extension and intention that we can find in it”.

(A) Confusion

(B) Stress

(C) Tension

(D) Depression

The key answer is option “A”. According to the petitioner option “C” which he opted is the correct answer. The TRB stick on its stand that option “A” is correct. The experts opined that setters material is sufficient to hold that option



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“A” to be the correct answer. They relied on the book titled “A Glossry of Literary Terms” by M.H.Abrahams.

20. However, while considering the challenge to this question in W.P.(MD) No.22129 of 2022 (K.Vinopratha v. TRB dated 02.11.2022), a learned Judge of Madurai Bench of this Court by order order dated 02.11.2022 has held as under:-

“15.I called upon the learned standing counsel to make available the basis on which the experts came to the conclusion that the correct alternative is “confusion” and not “tension”. It is too obvious from the record that the experts have arbitrarily taken the stand that the key answer is correct and does not require change. Even the extract enclosed in the sealed cover indicated that tension” is the right answer. “Contemporary Literary Critics” by Elmer Borklund published by Palgrave Macmillan while dealing with Allen Tate reads as follows : “The true poet, on the other hand, “is responsible for the virtue proper to him as a poet, for his special arete for the mastery of a disciplined language which will not shun the full report of the reality conveyed to him by his awareness.” The poet achieves this condition by means of what Tate calls “tension”. the meaning of poetry is its “tension”, the full organized body of all the extension and intention that we can find in it.....” The respondents merely passed on a slim sealed cover.



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When I clearly indicated that the material enclosed therein does not support the key answer but rather supports the answer given by the writ petitioner, there was no demurrer. No endeavour was made by the Board to even indicate that their answer could possibly be right. In the counter affidavit also, the accent was on questioning the jurisdiction of the court to entertain the writ petition. The counter affidavit is silent as to how the key answer is correct. Respectfully applying the decision of the Hon'ble Three Judges Bench of the Hon'ble Supreme Court in Kanpur University case, I hold that the petitioner has demonstrated that the key answer to Question No.108 is manifestly, demonstrably and patently wrong. The court cannot shut its eyes to what is too obvious and apparent. Only an ostrich donning judicial robes will hide its head in the sand.

16. Here is a case the petitioner is a woman belonging to backward class. Her future is at stake. Her fundamental rights guaranteed under Article 14 of the Constitution of India are involved. The paper setters had shown a wrong answer in the key. The experts have arbitrarily refused to correct the same while publishing the final key. I have already given a finding that the experts not only have not placed any material to show that the key answer is correct but even the material passed on to the court shows that the



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petitioner's answer is correct. The petitioner should therefore be awarded one more mark.

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.....

17. I grant relief to the petitioner because she had filed the writ petition on 16.09.2022 itself. On 20.09.2022, I passed an interim order in the presence of the standing counsel that any appointment made pursuant to the selection list will abide by the outcome of the writ petition. Now that the process is over I will not entertain any further writ petitions even if the petitioners are placed on the same footing. I do not want to open the flood gates. Grant of relief shall remain confined to the petitioner alone.”

21. The present writ petition was filed on 15.09.2022. When this court has already granted relief to a similarly placed candidate, the petitioner who



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filed the present writ petition promptly is also entitled to be awarded mark for

Question No.108.

22. In view of the above discussions, the petitioner is entitled to be awarded mark for Question No.108 and challenge in respect of the other questions is rejected.

In the result, The TRB will award mark to the petitioner for Question No.108 and revise the total mark secured by the petitioner. The right of the petitioner to be appointed as PG Assistant (English) will abide by the said revision. It is made clear that since the selection process has already been over and the interest of the petitioner has been protected by way of interim order of this court, the benefit of this order will enure in favour of the petitioner and the candidates who have approached the court promptly by initiating legal proceedings and the TRB shall not extend the benefit of this order to any of the other candidates.

The writ petition is disposed of accordingly with the above directions. No costs. Consequently, connected WMP is closed.

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Index : yes / no
Neutral Citation : yes / no
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To
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- 1.The Member Secretary,
Teachers Recruitment Board,
3rd Floor, Puratchi Thalaivar Dr. MGR Centenary Building,
DPI Campus, College Road, Chennai 600 006.

- 2.The Expert Committee,
C/o.Teachers Recruitment Board,
3rd Floor, Puratchi Thalaivar Dr. MGR Centenary Building,
DPI Campus, College Road, Chennai 600 006.



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N.SATHISH KUMAR.J.,

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Pre delivery Order
in
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