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W.P.No.27579 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.27579 of 2022

and

W.M.P.Nos.26824 to 26826 of 2022

M.Selvam

..... Petitioner

-Versus-

Teachers Recruitment Board,
Rep. by its Member Secretary,
College Road,
Chennai 600006.

..... Respondent

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondent relating to the selection list dated 10.09.2022 for direct recruitment to the post of PG Assistant for the year 2020-21 issued as per Notification No.01/2021 dated 09.09.2021 and to quash the same insofar as it relates to non-selection of the petitioner is concerned (Reg. No.TRB PG 283758 – Roll No.21PG0913105423) to the post of PG Assistant (History) and to issue consequential directions to the respondents herein to award marks to the petitioner for question Nos.135, 128, 92,25, 16, 23, 66, 142, 138 and call him



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for certificate verification on that basis (78 + 9 = 87 marks) and selection him for appointment as PG Teacher (History).

For Petitioner : *Mr.R.Dhanasekar*
For Respondent : *Mr.R.Neelakandan,*
Additional Advocate General
Assisted by Mr.C.Kathiravan,
Standing Counsel

ORDER

This writ petition challenges the non selection of the petitioner to the post of PG Assistant (History) and the key answers to certain questions.

2. The petitioner is an aspirant for the post of Post Graduate Assistant (History). He belongs to Most Backward Class (MBC) community. He is also a differently-abled affected by muscular dystrophy. He is fully qualified to apply for the post and he applied for the post pursuant to the Notification / Advertisement No.01/2021 dated 09.09.2021 issued by the 3rd 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. His roll number No.21PG0913105423. He had taken the written examination on 14.02.2022



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and secured 78 out of 144 marks. The cut-off mark was 75. The grievance of the petitioner is that the answers which he had given to Question Nos.23, 66, 142, 138, 135, 128, 25, 92 & 16 are correct and if he had been given marks for those questions, he would have reached the cut-off and thus, he would have been considered for certificate verification and selected for appointment.

3. Since the petitioner failed to secure the cut-off marks pertaining to MBC category, he was not selected. It is the stand of the petitioner that key answers set in respect of Question Nos.23, 66, 142, 138, 135, 128, 25, 92 & 16 are demonstrably and palpably wrong and that therefore, he should have been awarded marks for those questions also.

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 counsel appearing for the petitioner took this court



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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.23, 66, 142, 138, 135, 128, 25, 92 & 16. One K.Devi under Sl.No.144 who had scored 75 marks has been selected under MBC category and the petitioner who had secured 78 was not selected. The petitioner who is eligible for selection was also not considered under the quota for differently abled persons.

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 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.



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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. Though the petitioner has alleged arbitrariness and discrimination, he has not placed any material before this court substantiate his allegations. On the other hand, it is seen from the counter that Devi was selected under SGT reservation. Insofar as the other ground raised by the petitioner that he was not considered under the quota for disabled persons, For this, according to the TRB , the petitioner did not reach the eligible cut-off zone which was 88 marks for MBC Cat-III and the last cut-off mark for MBC Cat III is 89. Therefore, this court does not find any valid reason to interfere in the impugned selection list. However, the submission of the petitioner that certain key answers are wrong merits consideration.

10. 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.

11. It is also the settled law that this court cannot conduct itself like an



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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.

12. 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



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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.”

13. 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 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



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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.”

14. In the case of **High Court of Tripura v. Tirtha Sarthi Mukherjee and others [(2019) 2 Scale 708]**, the Supreme Court has held as under:-

"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



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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.”

15. 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 reevaluation of the answer sheets, the 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.

16. 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.

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



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18. It is pertinent to note here that key answers to Question Nos.12, 27, 69, 102 & 108 were the subject matter of challenge in W.P.(MD) No.19024 of 2022 and batch cases wherein a single Judge of the Madurai Bench of this Court by common order dated 20.04.2023 had examined the correctness of the key answer. The learned judge while upholding the correctness of the key answers to Question No.69 and rejecting the objections of the petitioners, revised the key answers set by the TRB Question Nos.102 & 108 and awarded mark for the same and requested the TRB to revisit the Question Nos.12 & 27 about which reference would be made in this order at the appropriate place to the extent it may be used for deciding the issue in the present writ petitions.

19. In this writ petition, the petitioner has challenged Question Nos.135, 128, 92, 25, 16, 23, 66, 142, 138 and the corresponding numbers in the master question are Question Nos.89, 102, 69, 108, 3, 9, 20, 36, & 42.

20. It was brought to the notice of this court that, already Question Nos.3, 9, 20, 36 and 42 were deleted from the valuation after the objections were received and on the basis of the experts opinion. No marks were given for those questions to any of the candidates.

21. Therefore, the key answers to the questions that are to be considered



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are Master Question Nos.89, 102, 69 & 108 only.

22. The first challenge is to Question No.89 which reads as under:-

The first Ministerial meeting of SAARC was held
in _____

- (A) Thimpu in Bhutan
- (B) Dhaka in Bangladesh
- (C) Mali in Maldives
- (D) New Delhi in India

The key answer is option “D” New Delhi. According to the petitioner option “B” is correct. The experts relied on the book titled “India's Foreign Policy” published by Surjeet Publications. The opinion of the experts would show that first Ministerial meeting of SARC was held in New Delhi in 1983. Thus, the material placed before this court substantiate the stand of the TRB.

23. This court is not an expert in the academic matter. The scope of the judicial review against the experts' opinion is extremely limited and unless it is shown that the mistake is a glaring mistake which is totally apparent, the view of the examining body cannot be interfered with. Taking into account the guiding principles on the power of judicial review, this court does not want to assume the role of an academic expert. The emphasis in the case of Rahul Singh was that not only the onus is on the candidates to demonstrate that the key



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answer was incorrect, but also that it is a glaring mistake which is totally apparent and no inferential process of reasoning is required to show that the key answer was wrong. The petitioner has also not demonstrated that the key answer is patently wrong on the face of it. Therefore, this court is of the view that in the absence of any other contrary material to dispel the opinion of the expert, answer set by the TRB cannot be said to be palpably wrong. Therefore, this challenge is rejected.

24. The second challenge is to Question No.102 which reads as under:-

In 18 June 1815 Napoleon was defeated in the
battle of Waterloo by British Forces under the
leadership of _____”

- (A) Wellington
- (B) John Keats
- (C) Fraun Hofer – (Correct Alternative)
- (D) Herold

The key answer is option “C”. According to the petitioner, he opted for option “D” and it is the correct answer. The objection raised by the candidates for this question was rejected by the TRB. This court has already dealt with this question in W.P.No.20168 of 2022 wherein this court has held that the key answer set by the TRB is wrong and awarded mark to the petitioner therein.



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Therefore, the petitioner herein also has to be awarded mark for Question

No.102. The TRB will award mark for this question to the petitioner.

25. The third challenge is to Question No.69 which reads as follows:-

The founder of Bhamini Kingdom was:

- (A) Abdul Muzaffer Alauddin
- (B) Hasan Sank
- (C) Ist Muhamadu
- (D) Muhammad Ghorī

The key answer is option “A”. According to the petitioner, option “B” is correct. The expert evidence produced by the TRB before this court is a text book titled “History of Medieval India” [Muslim Rule in India] authored by V.D.Mahajan and revised by Dr.Mahesh Bhatnagar. As already stated above, this question has already been dealt with by the Madurai Bench of this court in W.P.No.20168 of 2022. The petitioner has also not demonstrated that the key answer is patently wrong on the face of it. Therefore, this court is of the view that in the absence of any other contrary material to dispel the opinion of the expert, option set by the TRB for this question cannot be said to be palpably wrong. It is the settled law that in the event of doubt over correctness of answer key, benefit must be given to the examining body and not to the candidates.



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Therefore, this challenge is rejected.

26. The fourth and last challenge is to Question No.108 which reads thus:-

108. Rome – Berlin – Tokyo Axis was signed in which year?

- (A) October, 1934
- (B) October, 1935
- (C) October, 1936
- (D) October, 1937

As per the key answer, option “C” is correct. The petitioner opted for “D”.

27. Insofar as this question is concerned, the learned Judge has held that option set by the TRB in the key answer is wrong and the agreement was signed only in October, 1937. According to him, Rome – Berlin – Axis was created in October, 1936, but the question is not about creation of of Rome – Berlin – Axis and it is about, Rome – Berlin – Tokyo Axis and the agreement was signed only in October, 1937. Therefore, the learned Judge has proceeded to hold that key answer is palpably wrong.

28. This court has perused the experts' opinion produced before this court



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and the book titled “A History of Europe” authored by Arun Bhattacharjee.

The petitioner has also not demonstrated that the key answer is patently wrong on the face of it. Therefore, this court is of the view that in the absence of any other contrary material to dispel the opinion of the expert, option “C” set by the TRB for Question No.108 cannot be said to be palpably wrong. Therefore, this challenge is rejected.

29. In view of the above discussion, the petitioner is entitled to be awarded mark for Question No.102 and challenge in respect of the other questions is rejected.

In the result, The TRB will award mark to the petitioner for Question No.102 and revise the total mark secured by the petitioner. The right of the petitioner to be appointed as PG Assistant in History 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 on the above terms. No costs.



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Consequently, connected WMPs are closed.

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Index : yes / no
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Speaking / Non Speaking Order
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To

1.The Member Secretary,
Teachers Recruitment Board,
College Road, Chennai 600006.



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Pre delivery Order
in
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