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2023:DHC:8127

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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
**BEFORE**

**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**

+ **W.P.(C) 4878/2018 & CM APPL. 13616/2019**

Between: -

**SMT MAMTA KUMARI**

W/o OF MAJOR KARTOR SINGH KHOKHAR (SM),

R/o DEPOT SUPERVISING OFFICER

SUPPLIED DEPOT ASC,

MORAR CANTT,

GWALIOR, M.P 474006

.....PETITIONER

*(Through: Mr.Ajay Sharma, Advocate.)*

**AND**

**UNIVERSITY GRANT COMMISSION**

THROUGH ITS CHAIRMAN

BAHADUR SHAH ZAFAR MARG,

NEW DELHI-110002

..... RESPONDENT NO.1

**CENTRAL BOARD OF SECONDARY EDUCATION**

THROUGH SECRETARY

H-149,SECTOR-63, NOIDA,

GAUTAM BUDH NAGAR,

U.P-201309

.....RESPONDENT NO.2

*(Through: Mr.Ravikesh K.Sinha, Advocate for R-1.*

*Ms.Seema Dolo, Advocate for R-2.)*

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1. The present petition has been filed against the actions of the University Grants Commission (*hereinafter 'UGC'*) i.e., respondent no.1 and Central Board of Secondary Education (*hereinafter 'CBSE'*) i.e., respondent no.2, in rejecting the representations of the petitioner to modify the result of the UGC-NET and JRF Examination' November 2017.

2. The facts necessary for disposal of the instant writ petition would indicate that the process for online application for UGC-NET Examination November 2017 had commenced on 11.08.2017. The petitioner had appeared for the examination on 5.11.2017, for the post of Assistant Professor and Junior Research Fellowship (JRF). Thereafter, on 02.01.2018, the result was declared which reflected that the petitioner had secured 56.57 percent in total and had qualified for the post of Assistant Professor. However, she had failed to qualify for the post of Junior Research Fellowship and Assistant Professor since the declared cutoff for the same was set at 57.14 percent. She was short of less than one percent from the requisite cutoff.

3. The petitioner, thereafter, on 08.01.2018, made an application to respondent no.1 for providing the photocopy of OMR sheet and calculation sheet alongwith the answer key of paper 1, 2 and 3 of the said examination. On perusal of such documents, she found that no marks were awarded to her in question no. 30 in Paper-1 and question no. 40 in Paper-2.

4. Thereupon, the petitioner made representations to both respondent no.1 and 2 with regard to her grievance of non-awarding of marks for question no. 30 and question no. 40, which were rejected by both the respondents.

petitioner has approached this court seeking directions to award marks to the petitioner for questions under challenge.

6. Learned counsel appearing on behalf of the petitioner submits that though the petitioner had given correct answer to question no. 30 of Paper-1, however, the respondent has not awarded the marks on account of electrical and technical mistake of the OMR scanner machine. He relied upon books namely, “Business Legends” of Penguin publication written by Gita Piramal and “Indian Business and Nationalist politics 1931-39” of Cambridge Publication written by Claude Markovits, to submit that the answer given by the petitioner to question no. 40 of Paper-2 is correct as against the answer given by respondent no.2. He also contends that due to mistake on part of the respondents, the petitioner was not declared qualified for JRF since she falls short by less than 1 percent marks to clear the cut-off percentage.

7. Learned counsel submits that respondent no.2, instead of displaying the proposed answer sheet, had directly declared result in violation of Clause 25 of the notification dated 11.08.2017. He further contends that none of the clauses of the said notification provides for submitting a representation regarding the answer key within the stipulated time.

8. Learned counsel appearing on behalf of respondent no.2, while controverting the submissions made by learned counsel for the petitioner, submits that the objections against the provisional answer key were to be made during the stipulated time when the provisional answer key was displayed on the website i.e., 12<sup>th</sup> December to 18<sup>th</sup> December, 2017. However, during the said period, the petitioner had

Paper-2, and question no. 30 of Paper-1 was later challenged on 7<sup>th</sup> February, 2018, after more than a month had elapsed from declaration of the final result.

9. Learned counsel while referring to OMR answer sheet of the petitioner pertaining to Paper-1, submits that the petitioner has partially circled Option (1) and at the same time has also darkened Option (4) in response to question no.30, which renders the answer invalid since it is in violation of the instructions prescribed under Clause 18 of the notification issued for UGC-NET November 2017.

10. Learned counsel submits that the subject experts appointed by respondent no.2 examine the objections/challenges to the provisional answer keys and on their opinion, modifications are made in the answer key. He further submits that the subject experts, after exhaustively examining the reference made by the petitioner with regard to question no. 40 of Paper-2, came to the conclusion that there was no discrepancy in the answer to the said question. Hence, no merit was found in the objection of the petitioner, accordingly, the same was rejected.

11. Respondent no. 2, while discussing the scope of judicial review in challenging the correctness of answer key published by the examination conducting body, has placed reliance on various decisions of the Hon'ble Supreme Court and High Courts in the cases of *H.P Public Service Commission vs Mukes Thakur*<sup>1</sup>, *Ranvijay Singh vs State of U.P.*<sup>2</sup>, *Atul Kumar Verma vs UOI & Ors.*<sup>3</sup>, *U.P.P.S.C & Anr. vs Rahul Singh & Anr*<sup>4</sup> and *Mohamed Anwar vs NTA & Ors in W.P (C) no. 15279/2022*.

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<sup>1</sup> (2010) 6 SCC 759

<sup>2</sup> AIR 2018 SC 52

<sup>3</sup> 2015 SCC Online Del 10316

<sup>4</sup> (2018) 7 SCC 254

12. I have heard learned counsel appearing on behalf of the parties and perused the record.

13. In order to examine the challenges made by the petitioner to question no.30 of Paper-1, it is pertinent to reproduce Clause 18 of instructions in notification dated 11.08.2017, which reads as under:

***“18) INSTRUCTIONS FOR USE OF TEST BOOKLET AND ANSWER SHEET***

*2. The Answer Sheet used will be of special type which will be scanned on Optical Scanner.*

***IMPORTANT INSTRUCTIONS FOR MARKING THE RESPONSES IN PEN AND PAPER BASED EXAMINATION***

*(i) Out of four alternatives for each question, only one circle for the correct answer is to be darkened completely with blue/black Ball Point Pen only.*

*ii) Use Blue or Black Ball Point Pen to completely darken the appropriate circle, i.e. one circle for each entry.*

*The answer once marked is not liable to be changed. Use of pencil is strictly prohibited. If any candidate uses the pencil for darkening the answer sheet, his/her answer sheet will be rejected.*

*(iii) A light or faintly darkened circle is a wrong method of marking and liable to be, rejected by the Optical Scanner. So, the circle should be properly darkened. Any other partial or 'X' or '✓', may not get captured by the scanner.*

*(iv) The Correct way of marking is shown below.*

*Correct Method*



*viii) CHANGING AN ANSWER IS NOT ALLOWED*

*If more than one circle is darkened or if the response is marked in any other manner except the 'Correct Method' shown above, it shall be treated as wrong way of marking.”*

14. On perusal of the aforementioned Clause, it can be observed that in order to avoid any mistake, unambiguous and clear instructions are provided for marking the responses, since special type of OMR sheets are used in examinations which are scanned using an optical

scanner. It is also observed that the correct way of marking is demonstrated by an image wherein, it has been depicted that an

appropriate circle must be completely darkened. It has been categorically stated that a light or faintly darkened circle is a wrong method of marking and only one circle must be marked as response for each question. It is further clarified that if more than one circle is darkened or if the response is marked in any other manner except the correct method as shown in instructions, it shall be treated as wrong way of marking and the same will be rejected by the optical scanner.

15. It is the case of the petitioner that she had marked the correct answer to question no.30 in Paper-1 but the marks for the same were not awarded to her due to fault in OMR sheet scanner machine of respondent no.1. However, on perusal of OMR answer sheet of the petitioner for Paper-1, it is seen that the petitioner has marked two circles in response to question no. 30 wherein, Option A was partially circled and Option D was properly darkened. Therefore, in view of the instructions provided under Clause 18, it can be ascertained that the petitioner's way of marking the response is wrong and the same is liable to be rejected by the optical scanner while scanning.

16. In view of above discussion, it is evident that the process of evaluation of OMR sheet is purely computerised and does not involve any human intervention. It is for this reason unambiguous instructions are given to mark the responses in a particular way. To avoid any mistake, it is expected from the candidates to strictly follow the same, as any mistake committed cannot be corrected manually by human intervention. The same has been categorically provided in the instructions given in the notification.

17. The process of evaluation is same for all the candidates and no exclusions can be made for any candidate, as such intervention will

of the petitioner with regard to question no.30 is unjustified and cannot be entertained.

18. The second limb of challenge by the petitioner is casted on question no. 40 in Paper-2 which is reproduced as under:

*“40. Who among the following industrialists of the country, were the signatories to the 'Bombay Manifesto of 1936?*

*(a) Purushottann Thakurdas*

*(b) A.D. Shroff*

*(c) Ambalal Sarabhai*

*(d) Walchand Hirachand*

*Code :*

*(1) (a) and (b)*

*(2) (b) and (c)*

*(3) (a) and (d)*

*(4) (b) and (d)”*

19. On perusal of OMR Sheet of Paper-2 of the petitioner, it can be seen that the petitioner has marked Option A in response to question no. 40 whereas, the correct answer as per respondent no.2 is Option C. The petitioner had objected to the proposed answer given by respondent no.2 sustaining its challenge on books namely “Business Legends” of Penguin publication written by Gita Piramal and “Indian Business and Nationalist politics 1931-39” of Cambridge Publication written by Claude Markovtits. The challenge and the material were examined by the subject experts appointed by respondent no.2 and after an exhaustive examination, no discrepancy was found in the proposed answer to the said question.

20. Since the reference of the petitioner regarding question no.40 was examined by the subject experts after following due procedure, therefore, this court is of view that any interference by this court will have effect of disturbing the decision taken by the subject experts. The law is settled that the writ courts under Article 226 of the

Constitution of India are normally not expected to interfere in the experts’ decisions if the same is passed after following the proper

21. The Hon'ble Supreme Court in the case of ***H.P. Public Service Commission v. Mukesh Thakur***<sup>5</sup> has held that the discrepancies in framing of questions and evaluation of answers are for all the candidates appearing for the examination and not particularly for an aggrieved candidate, and it is not permissible for High Courts to examine the question papers and answer sheets particularly when the commission had already assessed the *inter se* merit of the candidates. The relevant paragraph is reproduced as under: -

*“20. In view of the above, it was not permissible for the High Court to examine the question papers and answer sheets itself, particularly, when the Commission had assessed the inter se merit of the candidates. If there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the examination and not for Respondent 1 only. It is a matter of chance that the High Court was examining the answer sheets relating to Law. Had it been other subjects like Physics, Chemistry and Mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court. Therefore, we are of the considered opinion that such a course was not permissible to the High Court.”*

22. The Hon'ble Supreme Court in the matter of ***U.P. Public Service Commission vs. Rahul Singh & Anr. (supra)*** has held that when it came to conflicting views regarding the answer key in an examination, then the courts must rely on the opinion of the experts and cannot assume the role of experts in academic matters. The relevant paragraph is reproduced as under: -

*“13. As far as the present case is concerned even before publishing the first list of key answers the Commission had got the key answers moderated by two expert committees. Thereafter, objections were invited and a 26-member committee was constituted to verify the objections and after this exercise the Committee recommended that 5 questions be deleted and in 2 questions, key answers be changed. It can be presumed that these committees consisted of experts in various subjects for which the examinees were tested. Judges cannot take on the role of experts in academic matters. Unless, the candidate demonstrates that the key answers are patently wrong on the face of it, the courts cannot enter into*

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*the academic field, weigh the pros and cons of the arguments given by both sides and then come to the conclusion as to which of the answer is better or more correct.”*

23. This court in the case of *Atul Kumar Verma vs UOI & Ors (supra)* has held that once procedure of inviting objections to answer key has been followed, there cannot be any further challenge except on the traditional parameters of judicial review. It was further held that if such challenges are allowed, the same will lead to numerous unnecessary challenges by the students leading to delay in admissions and in commencement of academic session. The relevant paragraphs read as under: -

*"22. The Courts have directed the examining bodies which did not have the procedure of inviting objections to the answer key to follow the said procedure which the Courts felt was necessary to have a fair result of the examination and to eliminate the possibility of mistakes in the answer key. Once such a procedure has been followed, there can be no possible further challenges except on the traditional parameters of judicial review. If such challenges were to be allowed, the same would lead to disgruntled students filing one petition after other with opinions of the subject experts and which can vary and which will ultimately lead to delays in admissions and in commencement of academic session and all of which will be contrary to public interest and cannot be permitted and if permitted would amount to a cure worse than the disease of a possibility of error remaining in the answer key inspite of the procedure of inviting objections and considering the same being followed.*

*23. No case for judicial review within the traditional parameters thereof has been made out."*

24. A similar view has been taken by this Court in the case of *Urvashi Khanna v. Union of India through Secretary, Ministry of Health and Family Welfare & Ors.*<sup>6</sup>

25. It is thus seen that a fair procedure has been adopted by respondent no.2 in the present case inasmuch as objections were invited on the proposed answer key, such objections were examined

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and decided by the subject experts and only then the final result was published. Since such an exhaustive exercise has already been carried out, therefore, the decision of the subject experts does not warrant a judicial review on merits.

26. In view of the above discussion, this Court does not find any reason to interfere with the decision of the subject experts and the answer key finalised by the respondents.

27. Accordingly, the petition stands dismissed along with pending applications.

**(PURUSHAINDRA KUMAR KAURAV)**  
**JUDGE**

**NOVEMBER 07, 2023**  
**VG**