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WA No. 217 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2024

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No.217 of 2024
and
CMP. No. 1307 of 2024

E. Babu
Roll No. 21PG0902083067
Son of Mr. D. Embiran
No.1/20-A, 8th Cross Street
Rajendra Nagar
Gingee - 604 202
Villupuram District

.. Appellant

Versus

1. The State of Tamil Nadu
rep. by the Principal Secretary to Government
Department of School Education
Secretariat, Chennai - 600 009
2. The Commissioner/Director
School Education Department
DPI Campus, College Road
Chennai - 600 006
3. The Teachers Recruitment Board
rep. by its Member Secretary
DPI Campus, College Road
Chennai - 600 009

.. Respondents



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Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 09.10.2023 passed by the learned Judge in WP No. 20324 of 2022.

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For Appellant : Mr. M.R. Jothimanian

For Respondents : Mr. S. Yashwanth
Additional Government Pleader for RR1 & 2

Mr. R. Neelakandan, Additional Advocate General
for Mr. K. Sathish Kumar, Standing Counsel for R3

JUDGMENT

[Judgment of the Court was delivered by **R.MAHADEVAN, J.**]

The appellant, who is aggrieved by the order dated 09.10.2023 passed by the learned Judge dismissing his writ petition bearing No. 20324 of 2022, has come forward with this intra-court appeal.

2. The appellant has filed the aforesaid writ petition praying to issue a Writ of Mandamus directing the second respondent to award 4 marks and permit him to participate in the ensuing certificate verification for the post of P.G. Assistant (History) as per the notification issued by the third respondent on 09.09.2021 in advertisement No. 01/2021 and consequently, direct the second respondent to appoint him as P.G. Assistant (History) in the School Education Department.



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3. The case projected by the appellant before the writ court was that pursuant to the notification dated 09.09.2021 issued by the third respondent, he submitted his application for selection and appointment to the post of PG Assistant (History) and he was assigned Roll No. 21PG0902083067. The appellant also wrote the competitive examination and secured 96 marks out of 144 marks. Originally, 150 questions were given in the question paper, but after examination, 6 questions were deleted by the third respondent due to some mistakes without any bonus marks and the marks were reduced as 144, instead of 150. According to the appellant, the cut off mark for selection to the post of P.G. Assistant (History) was 100 marks and he was running short of 4 marks for his selection. Therefore, he applied for the answer sheets written by him along with the key answers. When the key answers were produced, the appellant came to know that the answers written by him to Question Nos. 12, 24, 27, 36, 94, 100, 102 and 108 are correct, however, he was not awarded any marks. In this regard, the appellant made a representation to the third respondent. Based on the same, the third respondent revised the key answers and corrected some of the questions. Still, the appellant challenged the 4 key answers to question nos.12, 27, 102 and 108, which are totally incorrect and the same was also not considered by the third respondent. Therefore, the appellant preferred the writ petition for the above stated relief.



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4. On behalf of the respondents, a counter affidavit was filed denying the various allegations raised by the appellant. It was also stated that similarly placed persons like the appellant have also objected to certain questions set in the competitive examination and sought for additional marks. Therefore, 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. Thus, according to the respondents, it is not open to the appellant to raise objections as it is contrary to the opinion rendered by the expert body.

5. The learned Judge, after having found that the very same key answer to Question No. 102 was already dealt with by this Court in WP No. 20168 of 2022, held that the key answer set by the third respondent is erroneous and accordingly, awarded 1 mark to the appellant. As far as the other questions are concerned, the learned Judge dealt with each one of the questions individually and concluded that the answers provided by the appellant are wrong. That apart, the learned Judge also held that when an expert body has rendered its opinion as to the correctness of the key answers set by the third respondent, judicial review is impermissible. The learned Judge further held that the Constitutional Courts, in matters of this nature, has to exercise great restraint and should be reluctant to entertain a plea



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challenging the correctness of the key answers. Placing reliance on the decisions of the Honourable Supreme Court in (i) *Ran Vijay Singh vs. State of UP [(2018) 2 Supreme Court Cases 357]* (ii) *U.P. Public Service Commission vs. Rahul Singh [(2018) 7 Supreme Court Cases 254]* and (iii) *Vikesh Kumar Gupta vs. State of Rajasthan [(2021) 2 Supreme Court Cases 309]*, the learned Judge held that the re-evaluation of answer sheets cannot be subjected to judicial scrutiny or review as it has to be best left to the experts in the matter and the academic matters are best left to academics. Accordingly, by order dated 09.10.2023, the learned Judge disposed of the writ petition with the following observations:

“28. In view of the above discussion, the petitioner is entitled to 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. Consequently, connected WMPs are closed.”

6. Challenging the above said order dated 09.10.2023 of the learned Judge passed in the writ petition, the writ petitioner is before this court with

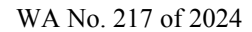


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the present appeal.

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7. The learned counsel appearing for the appellant submitted that the learned Judge erred in rejecting the claim of the appellant, without properly appreciating the materials produced by him. The reasons assigned by the learned Judge for rejecting the claim of the appellant to award marks for Question No.108 is not sustainable in law and it is liable to be interfered with by this Court. He also drew the attention of this Court to the book relied on by the experts constituted by the third respondent as well as the question and key answer for the same question issued by the third respondent during the year 2007-2008 and submitted that the appellant is entitled to additional marks. According to the learned counsel, the question and answer set by the third respondent for the competitive examination conducted during 2007-2008 is sought to be given a go-by by the third respondent by placing reliance on the opinion of the expert. He also submitted that Question No.108 fell for consideration of this Court and by order dated 20.04.2023 passed in WP (MD) No. 19024 of 2022, this Court directed the third respondent to award mark for the petitioner therein. However, the learned Judge omitted to consider the order dated 20.04.2023 of this Court and to award marks thereof. Even otherwise, the learned Judge made reference to the book authored by Mr. Arun Bhattacharjee to reject the claim of the appellant, but a deep perusal of the



8. The learned counsel for the appellant further submitted that the appellant challenged 4 key answers set by the third respondent herein as erroneous and prayed to award marks for the same. In other words, the answers given by the appellant to question Nos. 12, 27, 102 and 108 are correct, but he was deprived of marks by the respondents. The key answers given by the third respondent are incorrect and contrary to the books issued by the Tamil Nadu Text Book Corporation. When the errors committed by the respondents in setting the questions and key answers in the competitive examination, have been substantiated as wrong by material reference, the learned Judge ought to have allowed the writ petition filed by the appellant, instead of dismissing it. By virtue of the dismissal of the writ petition, the appellant, who is in need of one more mark to get appointment, was deprived of an opportunity to get employment. The appellant has demonstrated that the question and answer set by the respondents are patently wrong, while so, the learned Judge, in exercise of the power conferred under Article 226 of the Constitution, should have allowed the writ petition. On the other hand, the learned Judge observed that it is the job of the experts over which judicial review is impermissible. The learned Judge also did not take note of the fact that the appellant and others have approached this Court during July 2022, much before certificate



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verification and this Court also granted interim stay on 25.08.2022. However, when the writ petition was listed for final hearing, after a year, it was dismissed by the learned Judge on the grounds, which are totally irrelevant for consideration. Therefore, the learned counsel for the appellant prayed for allowing this writ appeal, by setting aside the order passed by the learned Judge in the writ petition.

9. Per contra, the learned Additional Advocate General appearing for the contesting third respondent, at the outset, submitted that the entire selection process has been completed and the selected candidates have also joined the post and therefore, at this stage, interference of this Court is not warranted. Even on merits, it is submitted that the learned Judge dealt with each and every question, compared the key answers set by the respondents as well as the correct answers as per the text books and other materials, and concluded that the key answers for three out of four questions challenged by the appellant are correct and no interference is required. Accordingly, out of 4 marks sought for by the appellant, only one mark was ordered to be awarded in favour of the appellant, but it nowhere takes the appellant within the zone of consideration for the purpose of selection. As rightly pointed out by the learned Judge, the matters of this nature have to be left to the decision of the



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academicians who are having academic knowledge on the subject and exercise of discretion under Article 226 of the Constitution of India is not permissible.

The learned Additional Advocate General for the third respondent therefore prayed for dismissal of this writ appeal.

10. We have heard the learned counsel for the appellant, the learned Additional Government Pleader for the respondents 1 and 2 and the learned Additional Advocate General appearing for the contesting third respondent and also perused the materials placed on record.

11. It is seen that the appellant is one of the candidates who participated in the process of selection for appointment to the post of P.G. Assistant (History) pursuant to the notification dated 09.09.2021 issued by the third respondent. The cut off mark prescribed for selection is 100 marks and the appellant fell short of 4 marks. Therefore, he filed the writ petition bearing No. 20324 of 2022 before the writ Court. The learned Judge, following the earlier order of this court, in respect of the same notification dated 09.09.2021, in which, it was held that answer set for question No.102 is erroneous and one mark was awarded to the petitioner therein, directed the respondents to award one mark to the appellant, thereby scaling up his total marks to 97.



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WEB COPY 12. Insofar as the remaining questions and answers challenged by the appellant, the learned Judge refused to award any mark and dismissed the writ petition. It was reasoned by the learned Judge that in exercise of the jurisdiction conferred under Article 226 of the Constitution of India, judicial review is impermissible in matters of this nature and it has to be left to be decided by the experts in the field. In fact, the learned Judge observed that the third respondent has sought expert opinion, when claims have been made by the similarly placed candidates challenging the correctness of the questions as well as answers set by the third respondent in the competitive examination. The learned Judge also directed the third respondent to produce the expert opinion and perused it. Thereafter, on perusal of the expert opinion and by referring to various decisions of the Honourable Supreme Court, the learned Judge refused to review the questions and answers set by the third respondent. Feeling aggrieved and being dissatisfied with the order so passed by the learned Judge, the appellant has preferred this appeal before this court.

13. During the course of argument, the learned counsel for the appellant invited the attention of this Court to the book relied on by the experts constituted by the third respondent, including the books published by the



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Tamil Nadu Text Book Corporation and sought to project that the questions and answers for the same questions were set during the competitive examinations held in 2007-2008 and based on the same, the appellant is entitled to get marks, as prayed for. The learned counsel also submitted that the learned Judge made reference to the book authored by Mr. Arun Bhattacharjee, but without properly appreciating the same, rejected the claim of the appellant.

14. However, we are not inclined to go through the textbook materials relied on by the learned counsel for the appellant, especially when the experts in the field have gone into those references and rendered their opinion. Originally, the third respondent had sought the opinion of the experts in the field, *qua* certain questions and answers set in the competitive examination. The experts, on comparison of the questions as well as the answers, concluded that certain key answers to the questions are incorrect. It is on the basis of the expert opinion, the third respondent was directed to award one mark to those who have written the correct answer for question No.102 and accordingly, the learned Judge also extended the said benefit to the appellant. The opinion of the experts in respect of the other questions was that they were properly framed and there was no ambiguity in the questions set by the third



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respondent. When the experts in the field have rendered such an opinion, this Court cannot substitute its opinion and reverse the conclusion arrived at by the experts. It is well settled that when there are disputed questions of fact, the Court cannot adjudicate such facts in exercise of power conferred under Article 226 of the Constitution of India. In this case, the dispute is with respect to the questions set by the third respondent in the competitive examination and the correctness or otherwise of the same cannot be gone into by this Court. It is in this context, the learned Judge has rightly held that the scope of judicial review in academic matters is very limited and judicial scrutiny or review cannot be undertaken by this Court and it has to be left to the experts in the field. In such view of the matter, we refrain from interfering with the order passed by the learned Judge in the writ petition.

15. At this juncture, it is important to reiterate the submissions made on the side of the respondents that the entire selection process was completed and the selected candidates have joined the post and therefore, awarding any further marks in favour of the appellant and directing the respondents to re-do the selection process would certainly unsettle the settled things. Therefore, the selection and appointment already made by the third respondent need not be disturbed at this stage, at the instance of the appellant.



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WEB COPY 16. Viewing from any angle, the order of the learned Judge does not warrant any interference by this court. Accordingly, the Writ Appeal fails and is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J.] [M.S.Q., J.]

01.04.2024

Index : Yes / No

Internet : Yes / No

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To

1. The the Principal Secretary to Government
State of Tamil Nadu
Department of School Education
Secretariat, Chennai - 600 009
2. The Commissioner/Director
School Education Department
DPI Campus, College Road
Chennai - 600 006
3. The Teachers Recruitment Board
rep. by its Member Secretary
DPI Campus, College Road
Chennai - 600 009



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