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W.P.No.15785 of 2024 etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.15785, 16225, 16236, 16317, 16323, 16465,
16487, 16568, 16994, 17039, 17063 of 2024

and

W.M.P.Nos.17194, 17200, 17768, 17769, 17770, 17783, 17784, 17785,
17859, 17860, 17869, 17870, 17871, 18017, 18019, 18020, 18060,
18062, 18177, 18179, 18729, 18732, 18733, 18752,
18784, 18809, 18811 of 2024

W.P.No.15785 of 2024 :-

Karpukarasi

...

Petitioner

Vs

Teachers Recruitment Board,
Dr.MGR Centenary Building
3rd and 4th Floor,
Perasiriyar Anbhazhagan
Kalvivalagam College Road,
Nungambakkam,
Chennai – 600 006.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, call for the records of the respondent pertains to the impugned rejection order RC.No.11794/C1/S3/2023, dated 28.05.2024 and quash the same as arbitrary and illegal, consequently direct the respondent to award 3 marks to the petitioner for the question No.90, 103 and 140 in mathematics



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subject in the examination which was held on 04.02.2024 (FN) for the post of Graduate Teachers/Block Resource Teacher Educators (BTRE) 2023-2024 and call for the petitioner for certificate verification for the appointment to the post of Graduate Teachers/Block Resource Teacher Educators (BTRE) 2023-2024.

For Petitioner : Mr.B.Janakiram
For Respondent : Mr.R.Neelakandan
Additional Advocate General
For Mr.C.Kathiravan
Special Government Pleader

COMMON ORDER

All these writ petitions have been filed for declaration declaring that the petitioners are eligible for additional marks in the competitive examination conducted by the Teachers Recruitment Board (hereinafter referred to as “the Board”) for the post of Graduate Teachers/Block Resource Teacher Educators (hereinafter referred to as “BTRE”). Further, some of the petitioners filed the writ petitions for declaration declaring that framing of wrong questions and key answers are null and void.

2. All the petitioners have passed Teacher Eligibility Test (hereinafter referred to as “TET”). However, they were not selected on



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their respective teachers posts. Therefore, the Board conducted competitive examination for direct recruitment for the post of Graduate Teachers/BRTE on 07.01.2014. The results were also published on 18.05.2024. After publishing the results, the Board published the list of candidates for certificate verification under various category. However, the name of the petitioners were not found in the certificate verification list. Now the petitioner sought for declaration declaring that the wrong questions and key answers are null and void. Further they sought for declaration that they are eligible for the respective post by awarding additional marks for the wrong questions and answers.

3. Mrs.Nalini Chidambaram, learned Senior Counsel appearing for the petitioner in W.P.No.16994 of 2024, submitted insofar as the subject of Mathematics, the Board mentioned a symbol of star to 17 question and awarded marks to all the candidates, which resulted the candidate who has secured lower marks reached the cut off marks for the selection to the post of Teachers in the subject of Mathematics. After receipt of the objections from various candidates to the final key answer, the Board found that the final answer key itself was wrong as per the experts opinion and as such, has given star mark to those questions and



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awarded marks to all the candidates. She further submitted that it affected the meritorious candidates who wrote the correct answers to those questions. The candidates those who were not attended the questions are also now granted additional marks. On perusal of the selection list for certificate verification shows that the candidates who had secured less than the minimum marks have been included in the list of candidates called for certificate verification on account of addition of 17 grace marks for star marked questions and 2 multiple answers questions resulting unfair treatment to the meritorious candidates, who had secured good marks in the written examination. It is clear violation of the Articles 14 and 16 of the Constitution of India, and the said list contains names of the candidates who had secured less marks in the written examination.

4. Ms.N.Kavitha Rameshwar, learned counsel appearing for some of the petitioners submitted that the questions itself are now found to be wrong as per the final key answer. Further, the petitioners were not provided copy of Optical Mark Recognition (hereinafter referred to as “OMR”) answer sheets by the Board. Therefore, the petitioners are not in a position, whether they were awarded marks for the right answer and also they were awarded grace marks for the wrong questions and wrong



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answers. Admittedly, there were typographical errors in the answers.

Therefore, the Board has decided to award grace marks for all the star marked questions. It would amount to windfall gains to undeserving candidates while artificially increasing the cut-off thereby depriving candidates like the petitioner from proceeding to selection.

4.1. She further submitted that the respondents ought to have called for the candidates for certificate verification in the ratio of 1:1.25. However, this ratio was not followed, while calling upon the candidates for certificate verification. She also specifically contended that it is unfair that those who were not attended wrong questions and wrong answers were also awarded marks.

5. Mr.Shankarasubbu, learned counsel appearing for some of the petitioners submitted that wrong questions and answers are liable to be declared as null and void instead of awarding grace marks. It would affect the candidates who were selected the right answers. Only because of the some mistakes in the answers, now the Board has awarded grace marks to all the candidates including those who were not attended the questions. He further submitted that the Board ought to have served a



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copy of the OMR Sheets so that they could have verified the marks awarded to them.

6. Heard the learned counsel appearing on the either side and perused the materials placed before this Court.

7. The Board filed counter and on the submissions made by the learned Additional Advocate General revealed that the Board issued notification thereby inviting application for recruitment for the post of Graduate Teacher/BRTE in school education and other departments included in the Special Rules for the Tamil Nadu School Educational Subordinate Service for the year 2023-2024. The total number of vacancies are 3192 as per the notification. Totally 41,485 candidates were applied for the said posts and the Board conducted written examination. The question papers were in the pattern of multiple choice question with four options of answers. There are totally 180 questions. After written examination, the Board had released the tentative key answers with the question paper to raise objection from the candidates. Accordingly, the candidates submitted their objections through online as well as manual representation. Except some of the candidates, all the



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candidates were objected with materials to substantiate their answer with standard books acceptable by the Board. All the objections were placed before the experts for their final opinion. In fact, the Board has also released the status of objection tracker in the website along with the examination results. Though the Board fixed time for raising objections on the tentative key answers from 19.02.2024 to 25.02.2024 at 5.30 pm., some of the petitioners in this writ petitions, challenged the key answers without even raising objections, in the online objection tracker or manual representation.

8. It is also pertinent to note mention here that as per Clause 11 B(iv) of the notification, the objections raised after the stipulated time and any written representation will not be entertained. Further, the objections must be raised only through online objections tracker. All the petitioners, raised the common ground that awarding of grace marks for the star marked questions is nothing but artificially pushing up the cut-off marks of the candidates and the meritorious candidates, who were attended the questions, were also treated equally with the candidates who were not attended those questions. In the case of no negative mark patten of exam, when the questions and answers are incorrect or ambiguous, the marks



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will be awarded to all the candidates invariably. Therefore, the contention raised by the petitioners cannot be countenanced. If the Board awarded marks only to particular candidates who attended the questions which were marked as star, as per the final key answer, it would cause prejudice to the candidates who were not attended the questions for the reason of incorrect or ambiguous questions and answers. For an example, in some of the answers, there are spelling mistakes. Therefore, the Board fairly awarded marks irrespective of all the candidates, who attended the questions or not attended the questions.

9. Further contention is that the one question has multiple answers. Because of the confusion, those who were attended the said question also to be awarded grace marks. If the question has multiple answers, the candidates who have chosen one of the correct answer would be given marks. Further, the multiple answers for some questions only because of the materials produced by the candidates who objected the tentative key answers. Therefore, the experts decided as per the materials produced by the candidates and finalized the key answers with multiple answers for the very same questions.



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10. Insofar as the contention raised by the petitioner to provide copy of OMR sheets, the Board initially scans the OMR sheets and will evaluate the same only after arriving the final key answer. The scanning of OMR sheets and evaluation processes are being carried out on computer basis only, without any human intervention. Further in order to maintain confidentiality, the OMR sheets of the individual cannot be provided to the candidates. Further, as per the notification, there is no expressed clause for providing OMR answer sheets to the candidates. Therefore, the candidates are not entitled for OMR answer sheets.

11. Further the experts committee, comprising of three minimum number of subject experts, thoroughly scrutinized the objections with the materials produced by the candidates and finalized the answer key. Therefore, the Board has no role to play in the finalization of answer key. All the petitioners have been appeared for examination and they have not been selected for certificate verification. Now they sought for declaration that they are eligible for certificate verification and seeking appointment for their respective posts. Now the certificate verification was conducted from 30.05.2024 to 02.06.2024 and the candidates were called with ratio of 1:1.25 ratio. As per the said ratio, the qualified candidates were called



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for certificate verification.

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12. The over all contention raised by the petitioners is that such kind of ambiguous questions and answers are caused serious prejudice to the meritorious candidates, since the candidates who did not know the answers and who failed to attend those questions were also awarded equal marks. The Hon'ble Supreme Court of India as well as this Court repeatedly held that when the conscious decision has been taken by the experts, the Courts have no expertise in the matter and academic interference with the same. Further there are no reason to suspect the credentials of those experts. This Court cannot sit on appeal as against the experts opinion and adjudicate upon an academic issue whether the answers finalised by the expert body is correct or the answer that is projected by the candidates are correct.



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13. In this regard, the Hon'ble Division Bench of this Court held in the case of **Director of School Education Vs. Mercy Vennila** in WA.No.598 of 2022, wherein it is held as follows:

“15.We have considered the rival submissions made on either side and perused the material records of the case. At the outset, even if the final key answers/the marks in respect of the said questions have to be interfered on any ground, the same cannot be done only with respect to the petitioners alone. The error if at all has to be corrected has to be done in respect of all the candidates. Therefore, the writ petitioners ought to have challenged the final key answers and the Select List. This Court, if at all could have interfered, can only order awarding of marks in respect of all the candidates and re-work the Select List. In the absence of such prayers and in the absence of such an exercise, allowing the Writ of Mandamus prayed for by the writ petitioners to grant marks for them alone is untenable as this exercise does not result in the meritorious candidates being selected. Therefore, the very writ petition, as filed for a Writ of Mandamus, is bound to fail.

16.Even otherwise, as rightly pointed out by the learned Additional Advocate General, the law on the



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subject has been categorically laid down by W.A.Nos.598, 600, 602 to 609 of 2022 the Hon'ble Supreme Court of India in the Uttarpradesh Public Service Commission Vs. Rahul Singh and Anr. (cited supra) that 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. Therefore, in the first place, when as per the notification draft key answers were published, the objections were invited and duly considered by an expert committee, appointing another expert committee itself is stretching the discretion, a little far. In any event, when the said experts, constituted by this Court, have opined that even in respect of the said questions, the questions are answerable and the key answers for the same are found to be correct and when the other candidates have answered the questions, the exercise undertaken by the learned Judge, to go into the merits of the said opinion and to form a contrary opinion certainly is not in order as per the dictum laid down by the Hon'ble Supreme Court of India and therefore, we have no other option than to interfere with the order of the learned Judge and thus, we find that the order of the learned Judge is unsustainable.”



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14. In the case of **Priya.N. Vs. The Secretary to Tamilnadu** in

WP(MD)No.2527 of 2015, this Court held as follows:

“4.The said questions as alleged by the petitioner were evaluated for the purpose of awarding marks and accordingly, cut-off marks were fixed. Thus, the writ petitioner cannot seek direction to reevaluate the questions. Once the questions are evaluated and a common decision is taken by the Teachers Recruitment Board to award marks or not to award marks, it is to be applied uniformly to all the candidates who participated in the process of selection. In the present case, the said five questions were not omitted by the Teacher Recruitment Board. This apart, the Teachers Recruitment Board has categorically stated that regarding the correctness of the answers, the Court is not an expert body. The Court cannot evaluate the answers or answer sheets.

5.This being the factum now established, after a lapse of about five years, the selection already made deserves no interference and accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.”

15. Also in the case of **Sumathi Vs. The Chairman** in



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W.P.No.3063 of 2022 dated 21.02.2022, this Court held as follows:

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"4. Admittedly, the final key answers have been made by an expert body constituted. The appellants are not able to demonstrate before us that the said key answers are not correct. In this regard, it is quite opposite to point out a Division Bench judgment dated 20.12.2012 passed by this Court in W.A.No.837 of 2010, wherein, the methodology adopted in not awarding any mark to certain questions, was approved. This apart, the appellants cannot seek marks without even knowing as to whether the answer given by them was correct or not".

Apart from this, this Court, in W.P No.29605 of 2013 has held that the correctness of the said question has already been decided by this Court in earlier writ petitions and the aforesaid judgment was confirmed by the Division Bench of this Court in W.A.No.1097 of 2014. In the light of the aforesaid facts and decisions cited supra, especially dealt with recruitment, there is no merits in this writ petition and the same is liable to be dismissed.

5. Accordingly, this writ petition stands dismissed. No costs. Consequently, connected writ miscellaneous petition is closed."

Thus, it is settled law that while exercising the discretionary and



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extraordinary power under Article 226 of the Constitution of India, this Court cannot act like an expert body, by replacing the assessment made by the experts.

16. That apart, now the entire certificate verification has been completed and the Board is about to publish the selection list. At this juncture, if the claims of the petitioners are accepted, it will lead to alteration of selection list, thereby selected candidates will be prejudiced. As stated supra, if there is discrepancy in framing the questions, answers and awarding marks, it will be for all the candidates and not for the petitioners only.

17. This Court after hearing the petitioners, by an order dated 24.06.2024, directed the respondents to answer the following queries :-

“(i) The procedure contemplated by the agency while initially framing the questions, arriving at the key answers, while considering the objections and arriving at the final answers;

(ii) In respect of the questions which are given as star and marks are given, whether all the questions have been printer mistake and if so, whether any expert was involved in verifying the draft of the question



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paper?

(iii) The Court will only then consider the larger question that how much percentage of mistakes can be there in a given exam and if the mistakes are beyond a particular level, whether it would amount to very results being fortuitous are not?

(iv) If so at what percentage, the mistakes can be permitted to be corrected?"

18. Insofar as the first query raised by this Court, the Board answered that all the question papers are set up at the Board's office by the experts as per the syllabus allotted to them. After correction by the experts, it was sent to the printer. After completion of examination, tentative key answers were published by the Board as provided by the experts. In the online objection tracker portal, the candidates can raise their objections with standard materials to substantiate their difference in answers. The objections and the materials are placed before the experts and the final key answer, as provided by the experts, was published by the Board.

19. Insofar as the second query is concerned, spelling error in



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Tamil/English happened due to the setter's style of writing. Therefore, it can be taken as printing error. Further in order to maintain confidentiality of the question paper, no experts were involved for verifying the draft question paper. Insofar as the third query is concerned, there are no negative marks in the examination conducted by the Board. So, if there is any error in the question paper/ambiguous answers, final key answers were released based on the report of the subject experts. Whenever error occurs in questions/ambiguous answers, the particular questions are treated as star marked question and were awarded marks to all the candidates, who have attended the examination, invariably. Insofar as the fourth query is concerned, there is no negative marks are awarded for the wrong answers as such percentage of mistake not a par.

20. The above explanation seems to be fair and acceptable one. Therefore, as stated supra, this Court must bow down to the opinion of the experts and the Courts cannot be experts in all fields. Therefore, this Court cannot overstep its jurisdiction to upset the opinion of the experts. The questions which are marked with star are awarded marks irrespective of all candidates, who had attended or not attended the star marked question. Further, for the questions in multiple answers, the candidates



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who marked any one of the answer as per the final key answers, were awarded marks. Even after awarding the marks to the petitioners, they were not coming under the zone of consideration for certificate verification.

21. Therefore, the prayers sought for in these writ petitions cannot be granted. However considering the facts and circumstances, this Court is inclined to pass the following directions :-

(i) In future, the Board must ensure that there will not be any ambiguous questions and answers in the examination for any recruitment.

(ii) The Board is directed to verify the draft question papers and tentative answer key before sending them for printing.

(iii) The Board is directed to correct the draft question papers and key answers with the help of experts who are not the original question paper setter.

(iv) The Board is directed to frame guidelines for the experts to arrive correct answers with approved materials.

22. With the above directions, all the writ petitions are disposed of. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

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