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W.P.No.17519 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2024

CORAM:

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

W.P.No.17519 of 2024
and
W.M.P.Nos.19296 & 19297 of 2024

N.Vimala

.... Petitioner

Vs

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
School Education Department,
Fort St.George, Chennai – 600 009.

2. The Director of School Education,
DPI Campus, College Road,
Chennai – 600 006.

3. Teachers Recruitment Board,
4th Floor, DPI Campus,
College Road, Chennai – 600 006.

.... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration to declare that the petitioner is eligible to be appointed as Graduate Teacher-Physics pursuant to the recruitment notification No.3/2023 dated 25.10.2023 and addendum notifications No.03A & 03B dated 15.11.2023 and 17.05.2024.



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For Petitioner : Mr.N.Kavitha Rameshwar
For R1 & R2 : Mrs. S.Mythreye Chandru
Special Government Pleader
For R3 : Mr.R.Neelakandan
Additional Advocate General
Assisted by Mr.C.Kathiravan
Standing Counsel

ORDER

This Writ Petition has been filed for declaration declaring that the petitioner is 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 “BRTE”) and declaring that framing of wrong questions and key answers are null and void.

2. The petitioner had passed Teacher Eligibility Test (hereinafter referred to as “TET”). 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 petitioner was not found in the certificate verification



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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 she is eligible for the post of graduate teacher by awarding additional marks for the wrong questions and answers.

3. M/s.N.Kavitha Rameshwar, learned counsel appearing for the petitioner submitted that the questions itself are now found to be wrong as per the final key answer. Further, the petitioner was not provided copy of Optical Mark Recognition (hereinafter referred to as “OMR”) answer sheets by the Board. Therefore, the petitioner is not in a position, whether she was awarded marks for the right answer and also she was awarded grace marks for the wrong questions and wrong 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. She further submitted that the respondents ought to have



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

6. 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.



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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 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 dated 19.02.2024, the petitioner in this writ petition, challenged the key answers without even raising objections, in the online objection tracker or manual representation.

7. 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. The petitioner raised a 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



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questions, were also treated equally with the candidates who were not attended those questions. In the case of no negative mark pattern of exam, when the questions and answers are incorrect or ambiguous, the marks 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.

8. 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



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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.

9. 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.

10. 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. The petitioner has been appeared for examination and she has not been selected for certificate verification.



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Now she sought for declaration that she is eligible for certificate verification and seeking appointment for the post of graduate teacher.

Now the certificate verification was conducted and the candidates were called with ratio of 1:1.25 ratio. As per the said ratio, the qualified candidates were called for certificate verification.

11. The over all contention raised by the petitioner 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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12. 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 subject has been categorically laid down by W.A.Nos.598, 600, 602 to 609 of 2022 the Hon'ble



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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.”

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

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



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“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.”

14. Also in the case of ***Sumathi Vs. The Chairman*** in W.P.No.3063 of 2022 dated 21.02.2022, this Court held as follows:

"4. Admittedly, the final key answers have been made by an expert body constituted. The appellants are



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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 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.



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15. 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.

16. This Court, after hearing the petitioner, 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 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 or not?



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(iv) *If so at what percentage, the mistakes can be*

permitted to be corrected?"

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17. 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.

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



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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.

19. 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 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.



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20. Therefore, the prayer sought for in this writ petition 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.

21. With the above directions, this writ petition stands disposed of. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

25.07.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No
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To

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G.K.ILANTHIRAIYAN. J.

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