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W.A.No.3463 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2024

CORAM :

THE HONOURABLE MR. R. MAHADEVAN, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

W.A.No.3463 of 2023

and

CMP Nos.28308 and 28309 of 2023

P. Vijayan

.. Appellant

Versus

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

Writ appeal filed under Clause 15 of the Letters Patent against the order dated 17.11.2023 passed in WP No. 32453 of 2023 on the file of this Court.



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For Appellant : Ms. Kavitha Nithyanandam
For Respondents : Mrs.S.Anitha,
Special Government Pleader for RR1 and 2
Mr. R. Neelakandan
Additional Advocate General
assisted by Mr. R. Siddharth
Government Advocate for R3

JUDGMENT

[Judgment of the Court was delivered by the Hon'ble Acting Chief Justice)

The appellant has come forward with this intra-court appeal aggrieved by the order dated 17.11.2023 of the learned Judge, dismissing the Writ Petition No. 32453 Of 2023 filed by him.

2. The appellant has filed the aforesaid writ petition praying to issue a Writ of Mandamus directing the third respondent to award five marks to him for Question Nos. 3, 8, 10, 26 and 31 of Master Question paper for the Teacher Eligibility Test (TET) examination held on 12.02.2023, declare him as having passed in the TET 2023, and award pass certificate to him.

3. According to the appellant, he is a holder of B.Sc. degree with B.Ed. In response to the notification issued by the respondents for conducting TET examination, he applied for the same in the year 2022 and participated in the written examination conducted on 12.02.2023 - TET Paper-II, Tamil, Mathematics



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and Science. Subsequently, the third respondent published the results during March 2023, declaring that the appellant had secured 80 marks, as against the minimum required pass mark of 82. After publication of results, some of the candidates have approached the respondents for revision of the marks on the ground that certain questions and key answers set by them are incorrect. Accordingly, revised marks were awarded by the respondents to some persons. But, as far as the appellant is concerned, his marks were not revised and remained at 80, meaning thereby that he needs two marks for a pass in TET, 82 being the minimum pass in TET.

4. The appellant further stated that while publishing the revised mark, the respondents did not award five more marks to him i.e, one mark each for question Nos.3, 8, 10, 26 and 31. According to the appellant, for Question Nos. 3, 8, 10, 26 and 31, he had rightly marked the correct answers, however, the respondents, based on the expert opinion, have refused to award marks for him.

5. The grievance of the appellant before the learned Judge was two-fold. Firstly, as per the Government approved text book, he had marked the correct answers and therefore, the third respondent has to award him more marks so as to enable him to get a pass certificate of TET examination. Secondly, in spite of the fact that the appellant had established that the answers given by



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him to the disputed questions are correct, mark has not been awarded, with the result, he is unable to apply for the post of B.T. Assistant notified by the respondents. Without properly appreciating the same, the learned Judge dismissed the writ petition filed by the appellant, by the order impugned in this appeal.

6. When the appeal filed by the appellant along with other similarly placed person viz., appellant in W.A. No. 3464 of 2023 was taken up for hearing, this Court passed an order dated 13.12.2023 permitting the appellants to submit their online applications along with the registration numbers as required by the Teachers Recruitment Board enabling them to apply for the post in question, however, such permission granted is subject to the result of the writ appeals. Based on the same, the appellant also submitted his application online for selection and appointment to the post of Graduate Teacher.

7. (i) The learned counsel for the appellant would vehemently contend that the appellant prepared for the examination by reading the text books recommended by the respondents. Therefore, the various questions set by the respondents have been answered by the appellant as provided in the text books approved by the Government of Tamil Nadu. The learned counsel further submitted that even though the appellant sought for five marks for question Nos.



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3, 8, 10, 26 and 31, she confines her relief to award two marks so as to enable

him to get a pass certificate of TET examination. That apart, the learned counsel invited the attention of this Court to question no.26 and submitted that the translation of the answer options given in Q.No.26 itself are wrong as the said answers have not been translated but transliterated; the appellant being a Tamil medium student and answering the paper in Tamil, was not able to understand the nature of the question and the answer to be marked; and as per the Master Key, the correct answer is A3, but the appellant answered A2. Insofar as question No.31, the learned counsel submitted that none of the answers provided thereof by the respondents is correct. Even though the appellant marked A2 as the correct answer, for having attended the question, he has to be awarded one mark. When the answers given to Question No. 31 are incorrect, the respondents are not justified in declining to award one mark for question No.31 on the ground that A4 is the correct answer. In this context, the learned counsel placed reliance on the decision of the Honourable Supreme Court in the case of **Kanpur University, through vice Chancellor and others vs. Samir Gupta and others** reported in **AIR 1983 SC 1230** wherein it was held that for the mistake committed by the educational authorities, the student cannot be penalised. In Para Nos.16 and 17, it was held as follows:-

"16. Shri. Kacker, who appears on behalf of the university, contended that no challenge should be allowed to be made to the correctness of a key answer unless, on the face of it, it is wrong. We agree that the key-answer should be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by an



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inferential process of reasoning or by a process of rationalisation. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well-versed in the particular subject would regard as correct. The contention of the University is falsified in this case by a large number of acknowledged text books, which are commonly read by students in U.P. Those text-books leave no room for doubt that the answer given by the students is correct and the key answer is incorrect.

17. *Students who have passed their intermediate Board examination are eligible to appear for the entrance test for admission to the medical colleges in U.P. Certain books are prescribed for the Intermediate Board Examination and such knowledge of the subjects as the students have is derived from what is contained in those text-books. Those text-books support the case of the students fully. If this were a case of doubt, we would have unquestionably preferred the key answer. But if the matter is beyond the realm of doubt, it would be unfair to penalise the students, for not giving an answer which accords with the key answer, that is to say, with an answer which demonstrated to be wrong."*

(ii) The learned counsel for the appellant also relied on the decision of the Honourable Supreme Court in the case of **Ran Vijay Singh and others vs. State of U.P. and others** reported in **AIR 2018 SC 52**. In that case, the High Court dismissed the writ petitions on the ground that there is no provision for re-evaluating the question papers. On appeal, the Honourable Supreme Court held that even in the absence of provision for re-evaluation, if it is established that the selection Board has failed to discharge their statutory obligation to hold the selection carefully and meticulously, then, the Court can step in and permit re-evaluation. Thus, it was held that if a statute, Rule or regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet, then the Court may permit re-evaluation or scrutiny if it is demonstrated very clearly that a material error has been committed in the conduct of the examination.



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(iii) The learned counsel for the appellant also relied on the decision of

the Honourable Supreme Court in the case of **Rishal and others vs. Rajasthan Public Service Commission and others** reported in *Manu/SC/1642/2018*. In that case the Honourable Supreme Court appointed an expert committee to re-evaluate the question papers. The report of the expert was served on the appellants. On scrutiny, the appellants submitted that certain answers given by the Expert Committee are still not correct and they have also demonstrated it before the Honourable Supreme Court. After perusing the opinion of the expert body and the submissions made by the counsel for the appellants, the Honourable Supreme Court directed the Rajasthan Public Service Commission to revise the result of all the candidates, including the appellants and to award marks thereof. It was also held that even those who have not approached the Court are also entitled to the benefit of the said order.

(iv) Further reliance was placed by the learned counsel for the appellant on the decision of the Honourable Supreme Court in **U.P.P.S.C. and others vs. Rahul Singh and others** reported in **AIR 2018 SC 2861** to contend that even the opinion given by the experts was on the basis of the reference made in the text books and therefore, reliance placed on the text book is justifiable. In Para No.14, it was held that the stand of the Commission is also supported by certain text books and therefore, it is reliable.



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(v) In effect, the learned counsel for the appellant submitted that even

the experts failed to take note of the nature of questions and the optional answers given for the same. The learned counsel for the appellant therefore submitted that the opinion of the expert is unjust and arbitrary and it need not be relied on and consequently, the respondents must be directed to award two more marks to the appellant for question Nos.26 and 31.

8.(i) The learned Additional Advocate General appearing for the third respondent would vehemently oppose the writ appeal and contend that the experts in the field have arrived at an opinion and based on the same, revised mark list was published by the third respondent. As far as the appellant is concerned, the answer provided by him to Question No.31 is not correct as per the opinion of the expert. When experts in the field have examined the objections raised by the candidates including the appellant and submitted their report, it cannot be subjected to judicial scrutiny under Article 226 of The Constitution of India. It is further submitted that after thorough scrutiny by the subject experts, the final key was arrived at on the basis of which the computer based examination for TET Paper II was evaluated. The revised and final key arrived at by the experts were published along with the results on 27.07.2023 in the official website of the third respondent/Board and it is final. The release of final key answers pertains to 84 objections made by the candidates, including the appellant



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and they were thoroughly scrutinised by the expert committee and a decision has been arrived at. As per the decision of the expert, re-verification was done for all sessions and all questions. On the basis of the report of the experts, 15 questions in 11 sessions were revised and the revised result was published on 27.07.2023. Thus, the question challenged by the appellant has already been scrutinised by the experts in the field.

(ii) The learned Additional Advocate General further submitted that the answer keys challenged by the appellant have already been scrutinised by the Board and revised mark list was published and it attains finality. Challenging the revised mark list, writ petitions were filed and they were dismissed. While so, at this stage, the relief sought by the appellant in this appeal to award two marks to him cannot be countenanced and it has to be rejected.

(iii) The learned Additional Advocate General placed reliance on the decision of the Honourable Supreme Court in the case of **Mahesh Kumar vs. Staff Selection Commission and another** passed in SLP (C) No. 1951 of 2022 wherein it was held as follows:-

"The grievance voiced by the petitioner before the High Court was that certain marks which were deducted ought not to have been deducted. Basically, the issue before the High Court was evaluation of the answer scripts of the petitioner. The High Court has rightly refused to entertain the writ petition by observing that when the conscious decision has been taken by the experts and the Courts have no expertise in the academic matter, cannot interfere with the same. Hence, the Special Leave Petition stands dismissed."



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(iv) The learned Additional Advocate General also placed reliance on the judgment dated 08.09.2014 passed in the case of **B. Florance Mary and another vs. The Chairman, TRB in W.A. Nos. 1097 and 1099 of 2014** wherein a Division Bench of this Court held thus:-

"6. Coming to the contention of the learned counsel for the appellant in W.A. No. 1099 of 2014 that one question has not been covered by the earlier orders passed by the learned single Judge, we are not inclined to accept the same for the reason that the expert body, on an analysis, found that the answer given by the appellant in W.A. No. 1099 of 2014 was not a correct one. 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 experts.

(v) The learned Additional Advocate General appearing for the third respondent also placed reliance on the orders of this Court viz., (1) *Priya N vs. The Secretary to Government in WP (MD) No. 2527 of 2015* (2) *Order dated 21.02.2022* passed in the case of *Sumathi vs. The Chairman, TRB in WP No. 3063 of 2022* and (3) *Order dated 25.10.2016* made in *WP No. 4682 of 2015* in the case of *S. Jayalakshmi vs. TRB.*, to contend that when the final key answers have been examined and thoroughly scrutinised by an expert body constituted by the third respondent, the correctness of such opinion need not be subjected to judicial scrutiny. When the experts have zeroed in on a particular answer as the correct answer to disputed questions, interference of this Court is not warranted in directing the respondents to award one more mark to the appellant. The learned Additional Advocate General also submitted that the Government of Tamil Nadu



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has issued G.O. (Ms) No.149, School Education (TRB) dated 20.07.2018

introducing a competitive examination for selection and appointment to the post of B.T. Assistants from among the TET passed candidates. Challenging the said Government Order, writ petitions have been filed and they were dismissed by this Court. Thus, when the appellant did not secure the pass mark in the TET examination, he is ineligible to participate in the competitive examination. In such view of the matter, if the appellant is awarded two more marks as prayed for in the writ petition, the respondents will have to act contrary to the notification issued for recruitment to the post and against the policy decision taken by the Government. Therefore, the learned Additional Advocate General prayed for dismissing this appeal.

9. We have heard the learned counsel for the parties and also perused the materials placed on record.

10. At the outset, it must be stated that though the appellant has stated that he is entitled to 5 marks, this appeal is confined only in respect of awarding of two marks to the appellant for question Nos. 26 and No.31 in the TET examination conducted on 12.02.2023. Question Nos. 26 and 31 and the answers set by the respondents are noted below:-



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Question. No.26

According to Bruner, in which mode children's thinking is dominated by use of concepts?

புருணர் கூற்றுப்படி, எந்த நிலையில் குழந்தைகளிடையே கருத்து பயன்பாடு அவர்களின் சிந்தனையில் மேலோங்கியுள்ளது?

A1. Enactive

எனாக்டிவ்

A3. Symbolic

சிம்பாலிக்

A2. Iconic

ஐகானிக்

A4. Scaffolding

ஸ்கப்போல்டிங்

Question No.31

What is the value of the coin - Ana

- A1 Eight paise
- A2 Four Paise
- A3. Three Paise
- A4. Six Paise

11. According to the appellant, the translation of the answer options given in Q. No. 26 itself are wrong as the said answers have not been translated but transliterated. The appellant being a Tamil medium student and answering the paper in Tamil, was not able to understand the nature of the question and the answer to be marked. As per Master Key, the correct answer is A3 but the appellant answered A2. Similarly, for Question no. 31, the appellant marked A2 as the correct answer. It is stated that even A2 is not the correct answer and the



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correct answer is 6.25 paise. In this context, it was demonstrated by the learned counsel for the appellant from the text book - Tamil - 8 - published by School Education Department enclosed in page Nos.142 and 143 of the typed set of papers wherein it was stated as follows:-

"அணா, சல்லி, துட்டு என்பது அக்காலத்தில் இருந்து நாணயப் பெயர்கள் ஆகும். பதினாறு அணாக்கள் கொண்டது ஒரு ரூபாய். அதனால் தான் இன்றும் பேச்சுவழக்கில் அரை ரூபாயை எட்டணா என்றும் கால் ரூபாயை நாலணா என்றும் கூறுகின்றனர்."

12. The learned counsel for the appellant has also quoted from the materials made available in internet wherein it is stated that *an anna was a currency unit formerly used in British India, which is equal to 1/6 of a rupee. It was sub-divided into four pies or twelve pies (thus there were 192 pies in a rupee). When the rupee was decimalised and sub-divided into 100 new paise, one anna was therefore equivalent to 6.25 paise.*

13. Therefore, it is evident and demonstrated by the learned counsel for the appellant that the four answers set by the respondents themselves are incorrect and it has caused confusion in the minds of the candidates who have attended the question. In none of the four answers, "6.25 paise" was given, and therefore, the candidates cannot be expected to write "6.25 paise". It is also demonstrated by the learned counsel for the appellant from the text book as well



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as the material from the internet that one ana is equal to 6.25 paise.

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14. It is true that the respondents have constituted an expert committee and the committee had concluded that 15 questions in 11 sessions asked in the competitive examination are not correct and recommended for change of the key answers. However, insofar as question No.31 is concerned, the experts have opined that answer No.A4 is correct. But, from the text book material furnished by the appellant, it is clear that *one ana* is equal to 6.25 paise and it was not given as one of the optional answers to question No.31 set by the respondents. Therefore, the conclusion reached by the experts that A4 is the correct answer to the question No.31 cannot be accepted and it is proved to be incorrect.

15. It is well settled that this Court has no expertise to examine the correctness or otherwise of the answer set by the respondents. For this purpose, an expert was constituted. However, the expert opinion need not be always relied on as a gospel truth by this Court. This is more so that the appellant placed heavy reliance on the approved text book which was also enclosed in the typed set of papers along with the memorandum of writ appeal. It is needless to mention that the book has been approved by the Tamil Nadu Open University and the candidates, including the appellant, who appeared for the competitive examination must have relied on the same. Even otherwise, on going through the



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question No.31 and the answers made available from the text book material as well as internet, we feel that the appellant has to be awarded one more mark for having attended question No.31. Merely because the experts have opined the correct answer as A4, we need not blindly accept it knowing full well that it is wrong and dismiss the appeal of the appellant.

16. Time and again, it was reiterated by this Court as well as the Honourable Supreme Court that the Courts should be slow in interfering with expert opinion in academic matters. However, there is no embargo for the Courts to disregard the opinion of the experts, if it is demonstrated that the opinion so rendered may not be correct and unreliable. In this regard, in the decision of the Honourable Supreme Court reported in **Kanpur University** case mentioned *supra*, it was held that judicial review cannot be totally ousted in certain circumstances where it was established that the answer set by the respondents is palpably wrong. In this case, on perusal of questions No. 26 and No.31 and the materials placed before us, we are of the view that none of the four answers given to question No.31 is correct. When the mistake is on the part of the respondents in setting the answers, the appellant cannot be found fault with. While so, we see no reason to reject the contentions urged on behalf of the appellant to award two more marks to him for Question Nos.26 and 31. Thus, on the strength of the approved text book produced by the appellant, we are of the



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definite and clear view that none of the answers given to question Nos. 26 and 31

is correct and therefore, for having attended both questions, the appellant must be awarded two more marks. Accordingly, we hold that the appellant is entitled to two more marks for questions No.26 and No.31.

17. In the result, the writ appeal is allowed by setting aside the order dated 17.11.2023 passed in WP No. 32453 of 2023. The respondents are directed to award two more marks to the appellant for questions No.26 and No.31 and consequently declare him as having passed the TET examination held on 12.02.2023. No costs. Consequently, connected miscellaneous petitions are closed.

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

04.06.2024

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Index: Yes / No.

Speaking order/ Non-speaking order

Neutral Citation: Yes / No.

To

1.The Principal Secretary to Government
Government of Tamil Nadu
School Education Department
Fort St. George, Chennai - 600 009.

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



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3. Teachers Recruitment Board
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THE HON'BLE ACTING CHIEF JUSTICE

and

MOHAMMED SHAFFIQ, J

rsh

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