



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

LPA No.536 of 2021 (O&M)
Date of Decision: 18.09.2024

National Testing Agency

...Appellant

Versus

Nikhil Kaushik and others

...Respondents

CORAM: *HON'BLE MR. JUSTICE G.S. SANDHAWALIA*
 HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Arun Gosain, Advocate
 for the appellant.

 Mr. Gurminder Singh Phull, Advocate
 for respondent No.1.

 Mr. Abhishek Singh, Advocate for
 Mr. Salil Sabhlok, Advocate
 for respondents No.2 and 3.

G.S. Sandhawalia, J.(Oral)

CM No.4912-LPA of 2024

Application under Section 151 CPC for placing on record the reply to the application for vacation of interim stay granted by this Court vide order dated 29.06.2021, is allowed. Registry is directed to tag the same at the appropriate place.

LPA No.536 of 2021

The present Letters Patent Appeal is directed against the order passed by learned Single Judge in *CWP No.11700 of 2019* on 28.04.2021, whereby the writ petition filed by the petitioner, being Law graduate, was



allowed and a direction was issued that 02 questions, the answers of which were in dispute, deserved to be deleted from the question paper and the marks were to be accordingly calculated. The present appeal has, thus, been filed at the instance of the appellant, which is the examination conducting body.

2. The reasons as such, which prevailed with the learned Single Judge to take the view, was on account of the fact that the material had been placed on the record in the form of Annexures P-7 and P-8 regarding 02 questions, which were the subject matter of dispute. On the basis of the same, the petitioner therein as such was claiming that if the benefit is to be granted and the proposed answer given was wrong then, he would necessarily make the cut off percentage which was fixed for the General Category at 60.67%. It is not disputed that the petitioner himself had secured 60%, i.e 130 marks out of total 300 marks.

3. The learned Single Judge, thus, relying upon the said material, came to the conclusion that the options, which were given by the Testing Agency, were wrong and the answers could not be termed to qualify for the grant of marks. In sum and substance, the learned Single Judge took over the role of a Subject Expert, which has been castigated by the Apex Court on several occasions. It had been brought to the notice of learned Single Judge that the law had been laid down by the Apex Court in clear cut terms in **H.P. Public Service Commission vs. Mukesh Thakur and anr., AIR 2010 Supreme Court 2620**. However, the learned Single Judge held that the ratios were at much variance and did not help in the case of the appellant and since they were holding the onerous task of conducting the



examination, the wrong answer-keys were, rather, misleading and could not properly adjudicate the intelligence of the examinee. It was held that nothing had been placed on the record of the proceedings of the Moderation Committee to show as to how the objections made by the examinees were dealt with and brushed aside and therefore, the findings were recorded that the conduct of the present appellant smacked of vindictiveness, arrogance which had resulted in illegality and caused great prejudice to the candidates.

4. It is pertinent to notice that the proceedings were conducted during the time of Covid through Video-Conferencing. It is to be noticed and not disputed that the test was held on 19.12.2018 and the objections were called on 28.12.2018 and thereafter, the result was declared on 05.01.2019. The final answer-key was released on 17.01.2019. It is not disputed that the stand of the present appellant in the written-statement was categorical that the objections had been invited and after settling all the objections, the result was finally declared and the writ petition was filed after a delay of 04 months.

5. The UGC-NET examination is conducted twice a year and all the selected candidates had been adjudged on the basis of final answer-key and had been given selection letters. The said answer-key was, thus, applied evenly to 9,56,837 candidates, who had registered for the examination, in 598 examination centres across the country in 235 cities in 85 subjects. The question paper was stated to be prepared by the subject experts and the published answer-key, along-with public notice inviting objections, had remained on the website for about 05 days as per the procedure prescribed



under Clause 12.1 of the Information Bulletin: UGC-NET. In the reply, it has specifically been mentioned that the challenges so received were put to the subject experts and the objections were duly examined and therefore, the answer-key would be notified and thus, published. The challenge as such raised by some of the students, had not been found to be correct by the subject experts. Apparently, in the writ petition, no replication was filed to the pleadings taken by the present appellant and no such plea was taken that the report should be brought before the Court and thus, the Court had proceeded adversely by commenting upon the appellant. Merely because the prayer had been made in the writ petition but not pressed for calling of the record, would not justify the findings which have been recorded keeping in view the large number of candidates evenly assessed across the country and who all are equally placed and had also secured cut off marks on the basis of a common objective standard maintained by the examining body.

6. The law stands settled by the Apex Court in **Ran Vijay Singh and others vs. State of U.P. and others, AIR 2018 SC 52** and while dealing with the appointment of Trained Graduate Teachers, which was the case of the written examination based on multiple choice answers, the Apex Court held that it was, rather, unfortunate that despite several decisions of the Apex Court, there was interference by the Courts in the result of examinations and it leads to an air of uncertainty. It was also held that the examination authorities put in equally great efforts to successfully conduct an examination and the Court must keep in mind the internal checks and balances put in place by the examination authorities.



7. In ***U.P.P.S.C. through its Chairman vs. Rahul Singh & Anr., AIR 2018 SC 2861***, it was held by the Apex Court that the Court should not attempt to re-evaluate or scrutinise the answer sheets of a candidate as it has no expertise in the matter and academic matters are best left to academics. The Court must bow down to the opinion of the experts and the Judges are not and cannot be experts in all fields and they must exercise great restraint and should not overstep their jurisdiction to upset the opinion of the experts.

8. In ***Vikesh Kumar Gupta and anr. Vs. The State of Rajasthan and ors., 2021(2) SCC 309***, the Three Judges' Bench of the Apex Court has held that it was not open to the Division Bench to have examined the correctness of the questions and the answer-key to come to a conclusion different from that of the Subject Expert Committee in its impugned judgment while holding that the conclusion, which was arrived at that the answer-key to 05 questions was erroneous while following the method by the Division Bench, was against the settled principles.

9. In ***Tushar vs. State of Haryana and another, LPA No.893 of 2024 decided on 09.04.2024***, while upholding the order passed by learned Single Judge, the Division Bench, in which one of us (G.S. Sandhawalia, J.) was the Member, has held that the methodology, which is of the objections called for and duly dealt with by the Expert Committee, comes within the purview of the examining body, i.e Haryana Staff Selection Commission therein. We, thus, noticed that once persons are competing for the number of posts and there necessarily will be heart-burn as the competition levels are very high and even one mark difference can make the candidate



ineligible and many scores of candidates having obtained the additional mark, would come in the zone of consideration and the said exercise should not be gone into and it is not for the Court to opine about the correctness of the answer-key which had gone through the rigmarole of the subject experts.

10. Thus, keeping in view the law as has been laid down, we are of the considered opinion that the interference by Learned Single Judge, may be on account of the fact that the petitioner therein was not making the cut off by 0.67%, was not justified as the directions which have been issued that the answers to 02 questions were to be deleted from the question paper would have far wide ranging ramifications which would alter the whole merit list and bring a new merit list across the country. In such circumstances, this is exactly what the Apex Court has cautioned the Courts from doing so.

11. Resultantly, the present appeal is allowed and the judgment dated 28.04.2021 passed by learned Single Judge in **CWP No.11700 of 2019** is set-aside.

12. All the pending application(s), if any, stand disposed of accordingly.

(G.S. SANDHAWALIA)
JUDGE

18.09.2024
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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable: No