



2024:DHC:1490



\$~55

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 19.02.2024

+ W.P.(C) 2078/2024, CM APPL. 8630/2024 & CM APPL. 8631/2024

MOHD HARIS PASHA & ORS.

..... Petitioner

versus

CENTRAL BOARD OF SECONDARY EDUCATION.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Nehal A. Siddiquee, Mr. Adnan Yusuf and Mr. Arif Hussain, Advocates.

For the Respondent : Ms. Anamika Ghai Niyazi, Mr. M.A. Niyazi, Ms. Kirti Bhardwaj, Ms. Nehmat Sethi and Mr. Arquam Ali, Advocates for R-1
Mr. Neeraj and Mr. Vedansh Anand, Central Govt. Counsels for R-2, R-3 and R-5.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. This is a writ petition filed under Article 226 of the Constitution of India, 1950, *inter alia*, seeking the following reliefs:-



“a. Issue a writ of Mandamus or a writ of any other nature or order/direction thereby directing that an added mark of 1 and remove the deduction of 0.25 marks for the question under challenge be awarded to the Petitioners and consequent consideration of their answer papers after carrying out the necessary corrections in the answer key;

b. Issue a writ of Mandamus or a writ of any other nature or order/direction thereby directing that the cut-off marks for the qualifying examination of Eklavya Model Residential School Staff Selection Examination (ESSE), 2023 be published by Respondent No. 2;”

2. It is the case of the petitioners that *vide* the notification dated 02.06.2023, the respondent No.2 had issued the Recruitment Rules in respect of various posts for Eklavya Model Residential School (hereinafter referred to as ‘EMRS’) and for the conduct of EMRS Staff Selection Exam, 2023 (hereinafter referred to as “ESSE”).

3. On 28.06.2023, a notice was issued inviting applications for the recruitment of multiple positions within its teaching and non-teaching staff. The petitioners had applied for the post of Graduate Teacher.

4. Learned counsel submits that the admit cards were released on 14.12.2023 and they appeared in the ESSE on 16.12.2023.

5. The petitioner claims that the answer key for the ESSE, 2023 was released on 03.01.2024 and challenge subsequently was made to the answer key in respect of following question :-

“Question No.133 of SET S2”

6. Petitioner submits that the result was declared on 22.01.2024 without consideration of the challenge made by the petitioners to the



answer key being demonstrably and palpably incorrect.

7. Learned counsel submits that the examination that the petitioners had attempted is only a qualifying examination. In case this Court is inclined to agree with the contentions of the petitioners the petitioners would be entitled to receive one mark, so as to enable them to qualify for sitting in the examinations for the recruitment of the aforesaid posts.

8. Learned counsel draws attention of this Court to the question at the question No. 133 of SET S2 is as under :-

“Mrs. Kanwal is ____ Principal of this School.

- (1) no article*
- (2) a*
- (3) an*
- (4) the”*

9. Learned counsel submits that the petitioners had entered the option (4) which is “the”, whereas the answer key of the respondent, as uploaded, designates option (1) which is “no article”, as the correct answer, which has led to the disqualification of the petitioners from the Language Competency Test.

10. Learned counsel invites attention of this Court to the “Essentials of English Grammar and Composition” by one Mr. Rajendra Pal and Mr. H.C. Katyal, who according to the petitioners are the subject experts in the English Grammar and particularly to page No. 262 of the present petition.

11. Learned counsel submits that the example given on the said page of page No. 262 is an exact requirement of the same question, however, in the said expert’s textbook, the article “the” is placed before the word



Principal.

12. He reiterates the aforesaid submissions by inviting attention to page No. 264, which is also according to the learned counsel a well-known grammar book called “Current English Grammar and Usage with Composition” by one Mr. R.P. Sinha. On page No. 264, learned counsel invites attention of this Court, particularly to the sub-Clause (vi), to submit that the word “the” is used before a noun, for example, the President, the Prime Minister, the Principal and the Postman etc.

13. He further relies upon on the rules of “English Grammar and Composition” by Mr. SC Gupta placed at page No. 265. According to him, the rule 10 at page No. 266 would be applicable, which is in respect of as to where, the word “the” is to be used in respect of a person.

14. He submits that it is manifest that ample textbooks on English Grammar establish that the answer key is palpably and demonstrably, wrong. As such, this Court either would allow the petition or at least refer it to the Independent Subject Matter Expert, so as to confirm whether the answer key of the respondent, is correct or not.

15. *Per contra*, Ms. Anamika Ghai Niyazi, learned counsel appearing for the respondent handed over the report of the Independent Subject Matter Expert on the last date of hearing i.e., on 15.02.2024.

16. Ms. Ghai, learned counsel submits that Independent Subject Matter Expert has given an appropriate rationale, as to why the answer would be “no article” instead of the word “the”.

17. She submits that having regard to the ‘Subject Matter Experts’ analysis and opinion, this Court ought not to interfere in the said answer key and relies upon the judgments of the Supreme Court in ***Ran Vijay***



Singh and Others vs. State of Uttar Pradesh and Others reported in (2018) 2 SCC 357 and *Uttar Pradesh Public Service Commission, Through its Chairman And Another vs. Rahul Singh And Another* reported in (2018) 7 SCC 254.

18. Learned counsel also submits that the Subject Matter Expert has also enclosed along with this report at the relevant page No.1205 of the 8th edition (2020) of the Oxford Advanced Learner's Dictionary, to submit that the analysis reached by the expert is in tune with what is stated in the Oxford Advanced Learner's Dictionary.

19. In rejoinder, learned counsel for the petitioners, submits that it is not the meaning of the word that was tested in the examination but the grammar, which is relevant and core to the issue.

20. According to learned counsel, the Subject Matter Expert, who has given the aforesaid analysis, would be incorrect in view of the fact that what has been filed on record by the petitioners, are the authorities for English Grammar and Composition.

21. He also submits that the Subject Matter Expert has also not given any plausible reason as to why he does not agree with the analysis or the textbooks, which have been placed on record.

22. Learned counsel submits that it's a bald averment that he does not agree that the Subject Matter Expert did not agree with the Authors of such books.

23. In that view of the matter, learned counsel submits that the said question be referred to the Third Independent Subject Matter Expert for analysis.

24. This Court has heard the arguments of the learned counsel for the



parties and also perused the documents on record.

25. It is beyond cavil that the Supreme Court in the judgment of ***Ran Vijay Singh (supra)*** as also ***Rahul Singh (supra)*** has categorically laid down that where there are two possibilities of answers, arising out of the analysis by the Subject Matter Experts, the Courts would be loath in interfering in such matters and in fact, would lean towards the results reached by the Subject Matter Experts of the Examinee Department.

26. Learned counsel for the petitioners has handed over the Court the Oxford Advanced Learner's Dictionary downloaded from the Computer in respect of the word "Vice Principal". He submits that the sentence given therein, i.e., "the Vice Principal agreed to deputize for the Principal of the College", vindicates the stand taken by the petitioner.

27. Learned counsel submits that when the same Oxford Advanced Learner's Dictionary gives a version, which is similar or akin to the one tendered by the petitioner, this Court in such circumstances, must refer the question to an Independent Third Party Subject Matter Expert for analysis.

28. In answer to the aforesaid submission, Ms. Ghai, learned counsel submits that the analysis is absolutely incorrect for reason that in the example quoted by the learned counsel for the petitioner, the sentence itself starts with the Article "the", whereas in the question that had been placed before this Court, the sentence commences with "Mrs. Kanwal".

29. This Court also had occasioned to deal with some similar matter, in ***Shubham Pal vs. Staff Selection Commission &Anr.*** reported in ***2024:DHC:1194***

30. Learned counsel for the petitioner also relied upon ***Shubham Pal***



(*supra*). The distinction between the matter in *Shubham Pal (supra)* and the present case is that so far as the question, which was allowed by this Court in *Shubham Pal (Supra)*, was an apparent error, which was palpable and there was no requirement of even a demonstration in that.

31. In the present case, though the Subject Matter Expert has not referred to any commentary on English Grammar, however, himself being an expert, as also by relying upon the Oxford Advanced Learner's Dictionary referred to above, has analyzed and concluded that the correct answer is "there is no article" to be placed in the aforesaid sentence, which is question No. 133.

32. In view of the above, since this Court finds that there could be two plausible views in respect of question No. 133, and keeping in mind the ratio of judgment of the Supreme Court in *Ran Vijay Singh (supra)* as also *Rahul Singh (supra)* and in *Shubham Pal (supra)*, it would not be appropriate for this Court to entertain the present petition and the same along with pending applications is dismissed with no orders as to costs.

TUSHAR RAO GEDELA, J.

FEBRUARY 19, 2024/nd