



2024:DHC:5362



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

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Date of Decision: 12th July, 2024

+ W.P.(C) 3504/2024, CM APPL. 14299/2024 and 17814/2024

MAHIPAL SINGH

.....Petitioner

Through: Mr. Pradeep Kumar Yadav, Advocate

versus

UNION OF INDIA & ORS.

.....DFCCILs

Through: Ms. Avshreya Pratap Singh Rudy,
Senior Panel Counsel with Ms. Usha Jamnal,
Advocate for R-1 and 2.Mr. V.S.R. Krishna and Mr. V. Shashank Kumar,
Advocates for R-3.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India seeking the following reliefs:-

"a. Issue a Writ, or direction in the nature of Mandamus directing the DFCCILs to declare answer in question no. 74 is correct and be marked accordingly.

b. Issue a writ or direction in the nature of Mandamus to direct the DFCCIL to issue fresh result after the holding the petitioner answered correctly question no. 74.

c. Issue a writ or direction in the nature of Mandamus to direct the DFCCIL to declare to the petitioner eligible for process i.e. document verifications and medical examinations."

2. Factual matrix to the extent necessary and relevant for adjudication of the present writ petition as put forth by the Petitioner is that Dedicated Freight Corridor Corporation of India Limited ('DFCCIL') is a Schedule 'A' Public Sector Undertaking under the administrative control of Ministry of



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Railways, Government of India. By an Advertisement No.01/DR/2023 dated 20.05.2023, DFCCIL invited online applications for recruitment to the posts of Executive and Junior Executive in various disciplines. Total vacancies advertised for the post of Executive (Civil), Post Code-11 were 50, which included the reserved vacancies. Petitioner applied for the post of Executive (Civil) under the OBC category. For the said post, the Screening Test i.e. CBT-1 (Computer Based Test) was conducted on 25.08.2023 and the result was announced on 14.11.2023. Petitioner scored 76.7677 out of 100 marks. Admit Card was issued to him for appearing in CBT-2, which was scheduled for 17.12.2023.

3. It is averred that as per the procedure prescribed in the advertisement, provisional answer keys of Computer Based Examination were to be displayed on the website of DFCCIL. Candidates could go through the provisional answer keys and submit online objections within the stipulated time. Objections were to be considered and scrutinized before finalizing the answer keys. It was provided that after Objection Management exercise, if any question was found to be incorrect like Ambiguous Questions/Multiple Correct Options/No Correct Options/Error in Questions, etc., such questions were to be omitted from the scope of evaluation.

4. Petitioner states that after CBT-2 was conducted, a Response Sheet was issued on 23.12.2023 by DFCCIL announcing that if any question or answer was wrong, it could be challenged on the DFCCIL website. According to the Petitioner, Question No.74 had two answers/multiple options and therefore, he filed his objections on 24.12.2023 pointing out that the question was ambiguous/had Multiple Correct Options. Result of CBT-2 was announced on 09.02.2024 and Petitioner scored 102.75 out of



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120 marks, while the cut-off for the OBC candidates was 103.75. However, no heed was given to his objection and the selected candidates were called for verification of documents on 11th and 12th March, 2024, compelling the Petitioner to approach this Court.

5. Learned counsel for the Petitioner submits that it was mentioned in the advertisement that provisional answer keys of the Computer Based Examination will be displayed on the website of DFCCIL and in case any question or answer was found to be wrong, the candidate could submit online objections, which will be scrutinized before finalizing the answer keys and if any question was found to be incorrect, the same shall be omitted from the scope of evaluation. As Question No.74 was ambiguous/having Multiple Correct Options, Petitioner filed his objections but the same have not been correctly assessed. Drawing the attention of the Court to Question No.74, it is urged that Petitioner had opted for Option 3 i.e. ‘specific gravity’ and this was the correct answer. To support this submission, reliance is placed on allegedly similar question Nos. 276 and 80 respectively, in examinations conducted by Gujarat Public Service Commission and Rajasthan Subordinate and Ministerial Services Selection Board. Further reliance is placed on a textbook named “Soil Mechanics and Foundations” authored by Dr. B.C. Punmia, Er. Ashok Kumar Jain and Dr. Arun Kumar Jain and book titled “Basic and Applied Soil Mechanics” authored by Gopal Ranjan and A.S.R. Rao, wherein it is mentioned that Pycnometer method is used to measure specific gravity of soil. The contention is that Petitioner had given the right answer and in the alternative, since Pycnometer method is used to measure both water content and specific gravity of the soil, the question should have been omitted from evaluation having Multiple Correct



Options. For ready reference, Question No.74 is extracted hereunder:-

“74. Pycnometer method is used to determine, which of the following property of soil sample?

- 1. Density index*
- 2. Water content*
- 3. Specific gravity*
- 4. In-situ density”*

6. It is further urged by learned counsel for the Petitioner that grave prejudice has been caused to the Petitioner due to the illegal action of the Respondent in not omitting Question No.74, which carried one mark. Petitioner had applied in the OBC category, for which the cut-off marks were 103.75 and Petitioner has scored 102.75, thereby missing by a narrow margin of one mark. If Question No.74 is omitted from the scope of evaluation being ambiguous, Petitioner would be entitled to $102.75+0.25$ (negative marking) and his score will be 103. Alternatively, equal marks be given to each candidate, in which case Petitioner would score 104 marks ($102.75+1+0.25$) and in either case, his score would be above the cut-off score of 103.75 marks.

7. Counter-affidavit has been filed on behalf of DFCCIL. Relying on the affidavit, learned counsel argues that the recruitment process in question was conducted by engaging a reputed Exam Conducting Agency i.e. EdCIL, a Mini Ratna PSU of the Government of India under Ministry of Education. After conduct of CBT, Objection Management Portal was opened and objections given by the candidates were examined by Subject Matter Expert ('SME'). Each objection was thoroughly examined by the SME before rendering the opinion/comments. With regard to Question No.74, opinion of SME was that the question was correct since Pycnometer method is used for



determining specific gravity of coarse grain soils only whereas Question No.74 was a general question on soil samples. Pycnometer does not determine specific gravity of all types of soils. It is urged that Question No.74 was, in fact, a trick question which required careful analysis and application of mind by the candidates. The textbooks relied upon by the Petitioner do not aid his case as it is clearly stated therein that the Pycnometer is used for determining specific gravity only for coarse grain soils. In view of the assessment of the Expert, learned counsel submits that the petition deserves to be dismissed, as this Court cannot substitute its opinion for that of an expert opinion.

8. Heard learned counsel for the parties and examined their rival contentions.

9. Before embarking on the journey to examine the present case, it is imperative to delineate the ambit and scope of interference by this Court in matters relating to academics, particularly examinations, while exercising power of judicial review under Article 226 of the Constitution of India. It is beyond cavil that the Court does not have the expertise to evaluate or assess answers to questions in the examinations and the scope of commenting on independent assessments, analysis and conclusions of experts, who have evaluated the answers to the questions, is even more limited and circumscribed. Supreme Court has time and again observed that Constitutional Courts must exercise great restraint in matters where challenges are laid to the correctness of the answer keys concerning competitive examinations and should be reluctant to interfere. In ***Ran Vijay Singh and Others v. State of Uttar Pradesh and Others***, (2018) 2 SCC 357, the Supreme Court, after referring to several judicial precedents,



summarised the legal position as under:

“30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are:

30.1. If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it;

30.2. If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any “inferential process of reasoning or by a process of rationalisation” and only in rare or exceptional cases that a material error has been committed;

30.3. The court should not at all re-evaluate or scrutinise the answer sheets of a candidate—it has no expertise in the matter and academic matters are best left to academics;

30.4. The court should presume the correctness of the key answers and proceed on that assumption; and

30.5. In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.”

10. In ***Uttar Pradesh Public Service Commission, through its Chairman and Another v. Rahul Singh and Another***, (2018) 7 SCC 254, the Supreme Court was again examining the extent and power of the Court to interfere in academic matters. Reliance was placed on the earlier decisions of the Supreme Court in ***Kanpur University, Through Vice-Chancellor and Others v. Samir Gupta and Others***, (1983) 4 SCC 309 and ***Ran Vijay Singh (supra)***. Reference was made to paragraphs 30 and 32 in the case of ***Ran Vijay Singh (supra)*** to demonstrate and highlight why Constitutional Courts must exercise judicial restraint. Relevant paragraphs from the judgment in ***Rahul Singh (supra)*** are as follows:

“11. We may also refer to the following observations in paras 31 and 32 which show why the constitutional courts must exercise restraint in such matters: (Ran Vijay Singh case [Ran Vijay Singh v. State of U.P., (2018) 2 SCC 357 : (2018) 1 SCC (L&S) 297], SCC p. 369)



“31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse — exclude the suspect or offending question.

32. It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a classic example of the consequence of such interference where there is no finality to the result of the examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination—whether they have passed or not; whether their result will be approved or disapproved by the court; whether they will get admission in a college or university or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion being worse confounded. The overall and larger impact of all this is that public interest suffers.”

12. *The law is well settled that the onus is on the candidate to not only demonstrate that the key answer is incorrect but also that it is a glaring mistake which is totally apparent and no inferential process or reasoning is required to show that the key answer is wrong. 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. In Kanpur University case [Kanpur University v. Samir Gupta, (1983) 4 SCC 309], the Court recommended a system of:*



- (1) moderation;
- (2) avoiding ambiguity in the questions;
- (3) prompt decisions be taken to exclude suspected questions and no marks be assigned to such questions.

13. As far as the present case is concerned, even before publishing the first list of key answers the Commission had got the key answers moderated by two Expert Committees. Thereafter, objections were invited and a 26-member Committee was constituted to verify the objections and after this exercise the Committee recommended that 5 questions be deleted and in 2 questions, key answers be changed. It can be presumed that these Committees consisted of experts in various subjects for which the examinees were tested. Judges cannot take on the role of experts in academic matters. Unless, the candidate demonstrates that the key answers are patently wrong on the face of it, the courts cannot enter into the academic field, weigh the pros and cons of the arguments given by both sides and then come to the conclusion as to which of the answers is better or more correct.”

11. In the case of **Vikesh Kumar Gupta and Another v. State of Rajasthan and Others, (2021) 2 SCC 309**, the Supreme Court restated as follows:

“**16.** In view of the above law laid down by this Court, 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 expert committee in its judgment dated 12-3-2019 [Bhunda Ram v. State of Rajasthan, 2019 SCC OnLine Raj 7416] . Reliance was placed by the appellants on *Richal v. Rajasthan Public Service Commission* [Richal v. Rajasthan Public Service Commission, (2018) 8 SCC 81 : (2018) 2 SCC (L&S) 456] . In the said judgment, this Court interfered with the selection process only after obtaining the opinion of an expert committee but did not enter into the correctness of the questions and answers by itself. Therefore, the said judgment is not relevant for adjudication of the dispute in this case.”

12. In **State of Tamil Nadu and Others v. K. Shyam Sunder and Others, (2011) 8 SCC 737**, the Supreme Court observed as under:

“**42.** Undoubtedly, the court lacks expertise especially in disputes relating to policies of pure academic educational matters. Therefore, generally it should abide by the opinion of the expert body. The Constitution Bench of this Court in *University of Mysore v. C.D. Govinda Rao* [AIR 1965 SC 491] (AIR p. 496, para 13) held that “normally the



courts should be slow to interfere with the opinions expressed by the experts". It would normally be wise and safe for the courts to leave such decisions to experts who are more familiar with the problems they face than the courts generally can be. This view has consistently been reiterated by this Court in Neelima Misra v. Harinder Kaur Paintal [(1990) 2 SCC 746 : 1990 SCC (L&S) 395 : (1990) 13 ATC 732 : AIR 1990 SC 1402] , Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity [(2010) 3 SCC 732 : AIR 2010 SC 1285] , Basavaiah (Dr.) v. Dr. H.L. Ramesh [(2010) 8 SCC 372 : (2010) 2 SCC (L&S) 640] and State of H.P. v. H.P. Nizi Vyavsayik Prishikshan Kendra Sangh [(2011) 6 SCC 597] ."

13. In view of the catena of judgments, some of which have been alluded to above, the legal position that emerges is that Courts must exercise restraint in interfering in academic matters, including those pertaining to examinations *albeit* in exceptional cases where questions are found to be demonstrably wrong, the resultant injustice to a candidate must be redressed and undone. Even in such an eventuality, the course of action should be to refer the answer keys/disputed questions to experts and if in the opinion of experts, model answers are demonstrably wrong and some other options are correct and answers given by candidates are required to be re-assessed with reference to the correct answer key or questions are vague or multiple answers are correct out of the options given, then the questions are required to be deleted and candidates have to be evaluated on the basis of answers given by them to the questions remaining after deletion. This is the view taken even recently by the Division Bench of Rajasthan High Court in ***Kavita Bhargava v. Registrar Examination, Rajasthan High Court, Jodhpur (Raj.)***, 2022 SCC OnLine Raj 3225, which was upheld by the Supreme Court in ***Komal Soni v. The High Court of Judicature for Rajasthan & Anr., SLP (C) No(s). 8128-8129/2022***, decided on 28.04.2022. It would be relevant to refer to the observations of the Supreme Court, which are as follows:-



“In the present case, there were some discrepancies in some of the questions and the answers found and therefore the matter was referred to the Expert Committee. The Expert Committee submitted the report and proposed the deletion of four questions. Therefore, when a conscious decision was taken thereafter by the High Court, relying upon the report submitted by the Expert Committee, and the four questions were deleted, we see no reason to interfere with the same. The objections raised by the individuals have been dealt with in extenso by the Expert Committee and only thereafter it was suggested to delete four questions.”

14. Keeping the settled legal position in the backdrop, I may now examine the grievance of the Petitioner in the present case, which is limited to Question No.74 in CBT-2. Broadly understood, it is the case of the Petitioner that Question No.74 is ambiguous/has two correct answers and was thus required to be omitted before evaluation of the scores. Petitioner states that Pycnometer method is used to determine both specific gravity and water content of soil samples and therefore, the option of ‘specific gravity’ was the correct answer. Alternatively, the Question had two correct answers and was thus, ambiguous as candidates did not have the option to choose more than one correct answer. As noted above, this submission is sought to be substantiated basis the allegedly similar questions in two other competitive examinations and some textbooks.

15. Before moving forward to examine the submission, it is relevant to refer to the opinion of the SME with respect to Question No.74, which is as follows:-

“Pycnometer method is only useful for coarse grain soil to determine the specific gravity. Density bottle method is standard method of determine the specific gravity of a soil sample. Density bottle method is most accurate method for specific gravity. Reference given by the candidate is only applicable for coarse grain soil. - In the given question we are talking about the general case, we are not talking about the special case. Pycnometer method can be used for specific gravity determination of coarse grained soils only, whereas the method can be used for water content determination of all type of soils. So as per the given references objection is invalid.”



16. It is evident that after examining the objection raised by the Petitioner, SME has carefully examined the same and opined that the question was correct. In light of the wealth of judicial decisions on the aspect of interference by the Courts in expert opinions, this Court is unable to substitute its views, lacking the expertise to do so. SME has observed that Pycnometer method is only used for coarse grain soil to determine the specific gravity. The given question was referring to a general case and not a special case, while the candidate has referred to specific gravity, which is only applicable if the sample is a coarse grain sample. He has clarified that Pycnometer method is used for specific gravity determination of coarse grain soils 'only', whereas the method can be used for water content determination of 'all types of soils' and therefore, the objection was invalid. Nothing has been placed on record by the Petitioner which persuades the Court to come to a different opinion. Insofar as reliance on Questions 276 and 80 pertaining to two different competitive examinations is concerned, in my view, the two questions are entirely different and permitted two options as the correct answer. Questions are as follows:-

"Question No.276

276. A pycnometer is used to determine which of the following?

- | | |
|-------------------------|-------------------------------|
| (i) Specific Gravity | (ii) Moisture Content |
| (iii) Dry Density | (iv) Void Ratio |
| (A) Only (i) | (B) (i) and (ii) |
| (C) (i), (ii) and (iii) | (D) (i), (ii), (iii) and (iv) |

Question No.80

80) A pycnometer is used to determine

- 1) Void ratio and dry density 2) Water content and void ratio
3) Specific gravity and dry density 4) **Water content and specific gravity**



17. As can be seen from a plain reading of the questions, the candidate was required to answer which of the properties of a soil could be generally determined by a Pycnometer and the correct options were '*(B) (i) and (ii)*' and '*4) Water content and specific gravity*' respectively. There is thus no similarity in the questions. Similarly, perusal of the relevant pages of the textbooks relied upon by the Petitioner also does not further his case and in fact, supports the opinion of the SME that Pycnometer determines the specific gravity of a coarse grain soil only. Pertinently, the SME has, while rendering his opinion, also relied upon paragraph 3.3 of the textbook "Soil Mechanics and Foundations" authored by Er. Ashok Kumar Jain, Dr. Arun Kumar Jain and Dr. B.C. Purnia, relevant portion of which is as follows:-

3.3. SPECIFIC GRAVITY

The specific gravity of soil solids is determined by : (i) a 50 ml density bottle, or (ii) a 500 ml flask, or (iii) a pycnometer. The density bottle method is the most accurate, and is suitable for all types of soils. The flask or pycnometer is used only for coarse grained soils. The density bottle method is the standard method used in the laboratory.

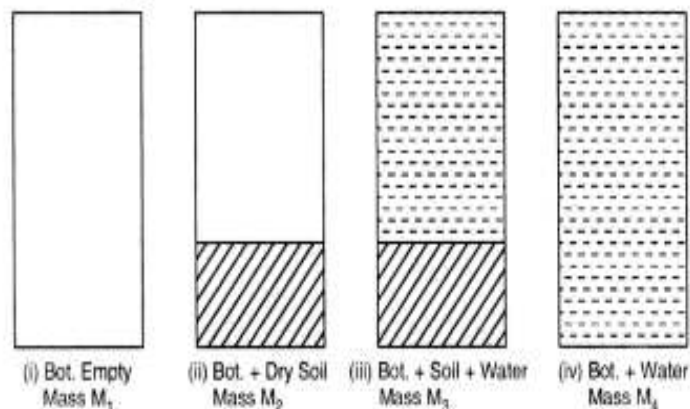


FIG. 3.3 SPECIFIC GRAVITY COMPUTATION.

18. In view of the aforesaid expert opinion based on text books, this Court is unable to hold that Question No.74 was ambiguous/had two correct answers and or the option chosen by the Petitioner was the correct option.



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The writ petition is dismissed being devoid of merit. Pending applications also stand disposed of.

JYOTI SINGH, J

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