



2024:DHC:9372



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

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Date of Decision: 26th November, 2024

+ W.P.(C) 14638/2024 and CM APPL.61445/2024

VINAY KUMAR

.....Petitioner

Through: Mr. Sourabh Ahuja, Advocate.

versus

UNION OF INDIA AND ORS

.....Respondents

Through: Mr. Sourabh Gupta, Senior Panel Counsel and Mr. Chitvan Singhal, GP for Respondent No.1/UOI.

Mr. Somesh Chandra Jha and Mr. Akash Kishore, Advocates for Respondent No.2/NESTS.

Mr. M.A. Niyazi, Standing Counsel with Ms. Anamika Ghai Niyazi, Ms. Kirti Bhardwaj, Ms. Nehmat Sethi and Ms. Arquam Ali, Advocates for Respondents No.4 to 6/CBSE.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner under Articles 226 and 227 of the Constitution of India laying a challenge to order dated 09.09.2024 whereby representation of the Petitioner dated 02.09.2024 for awarding additional 1.25 marks for marking Option No.1 to Question No.57 and consequentially appointing him to the post of TGT (Maths) with consequential benefits, has been rejected. Writ of mandamus is sought for a direction to Respondent No.2 to constitute an independent expert committee for examining the objection raised by the Petitioner qua Question No.57 and



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consider his candidature as per merit and if found selected, to appoint him with all consequential benefits.

2. Factual narrative in the writ petition is that Respondent No.2/National Education Society for Tribal Students ('NESTS') published an advertisement in the year 2023 for filling up vacancies to various posts including TGT (Maths) in Eklavya Model Residential School ('EMRS'). Last date of receipt of the online applications was 18.08.2023. Essential qualifications prescribed for the post of TGT (Maths) was Bachelors Degree in Mathematics along with Physics and in any one out of Chemistry/ Electronics/Computer Science/Statistics from a recognised University/ Institution.

3. Petitioner applied for the post of TGT (Maths) before the closing date under Unreserved category. A total of 686 vacancies were advertised out of which 280 vacancies of TGT (Maths) were earmarked for UR category candidates. The examination was conducted on 23.12.2023 in which the Petitioner appeared. The examination was in 'OMR based (Pen-Paper) Mode' and was bifurcated in six parts. Part VI pertained to Language Competency General Hindi (10 Marks), General English (10 Marks) and Regional Language (10 Marks) and was qualifying in nature where minimum 40% marks were required in each language. It was prescribed in the advertisement that Part I to V of the candidate will not be evaluated, if he/she failed to attain qualifying marks in Part VI. As per the marking scheme, 01 mark was to be awarded for every correct answer and 0.25 marks were to be deducted for wrong answer. Unanswered questions were not to be given any marks.



4. Petitioner avers that he was given booklet with Code S-3 and in his perception, he fared well in the examination. On 03.01.2024, Respondent No.2 published the initial answer key and called for objections. Petitioner submitted his objection with regard to Question No.57 which reads as follows:

“Q. No. 57. The rank of Matrix

-1	2	5
2	-4	$a-4$
1	-2	$a+1$

is

(1) 1, if $a = -6$

(2) 1, if $a = 6$

(3) 2, if $a = 1$

(4) 3, if $a = 2$ ”

5. As per the Petitioner, both options, i.e. Option 1 and Option 3 qua Question No.57 were correct while NESTS had in the answer key only marked Option 3 as the correct answer. NESTS declared the final result for the post of TGT (Maths) on 22.01.2024 and the name of the Petitioner did not figure in the list of selected candidates. Final revised answer key was published on 27.02.2024 where again NESTS marked only Option 3 as the correct answer. Petitioner preferred an application under the Right to Information Act, 2005 requesting Respondent No.1 to provide him the marks in the written examination and copy of his OMR answer sheet. Both were made available to the Petitioner and on receipt of these documents, Petitioner learnt that he had secured 80.75 marks out of a total of 120 marks and the cut-off for TGT (Maths) in UR category was 81.25 marks. The cut-off marks were published by NESTS on its website on 15.05.2024.

6. After analysing the answer sheet, it was evident to the Petitioner that



NESTS had deducted 0.25 marks considering his Option 1 to Question No.57 as the wrong answer and therefore, if the Petitioner was awarded 01 mark then his total would be 82 marks and in which case, he would be above the cut-off marks in the UR category. Petitioner, therefore, preferred a representation dated 02.09.2024 to NESTS requesting to purge the error committed by treating Option 1 as the wrong answer and to support his plea, he also attached authenticated material published by renowned academicians and authors which indicated that both Options 1 and 3 were correct. However, the representation was rejected by the impugned order on the ground that challenges/objections against the answer key of Question No.57 had been verified by the subject expert and in Set 3, Option 3 was the only correct answer. Having no option, Petitioner has approached this Court.

7. Central Board of Secondary Education ('CBSE')/Respondent No.4 entered appearance on advance copy of the writ petition on 21.10.2024. After looking into the grievances ventilated by the Petitioner *qua* Question No.57, CBSE, on its own initiative, referred the question to a committee of subject experts, who were not a part of recruitment process of EMRS. Mr. Niyazi on written instructions from CBSE apprised the Court that after a detailed analysis of the question and the option and on due deliberation, the Committee was of the opinion that the concerned Question has two correct answers, i.e. Option 1 and Option 3. Mr. Niyazi has handed over the report of the subject experts in a sealed envelope, which has been opened with the consent of and in presence of counsels for the respective parties. It is clear from perusal of the report that as per the opinion of the expert committee, stand of the Petitioner is correct that both Options 1 and 3 were the correct answer to Question No.57.



8. Mr. Sourabh Ahuja, learned counsel for the Petitioner argues that since both Options 1 and 3 have been found to be correct *qua* Question No.57, Petitioner cannot be made to suffer on account of his having chosen Option 1 and must be awarded 1.25 marks i.e 01 mark for correct answer and 0.25 mark, which was deducted on account of negative marking and his result be revised accordingly and in this context, relies on the judgment of the Division Bench of this Court in ***Anjali Goswami and Others v. Registrar General, Delhi High Court, 2019 SCC OnLine Del 6829.***

9. On the issue of relief that can be granted to the Petitioner, at this stage, learned counsel for the Petitioner submits that there are several vacancies which are lying unfilled and since his stand is vindicated and he now scores above the cut-off marks in the UR category after 1.25 marks are awarded to him, NESTS be directed to issue an appointment letter to the Petitioner to the post of TGT (Maths). Reliance is placed on the judgment of the Allahabad High Court in ***Kapil Kumar and Others v. State of U.P. and Others, 2023 SCC OnLine All 4024,*** in this regard.

10. NESTS has filed an additional affidavit stating that at present 32 vacancies are unfilled in the UR category for the post of TGT (Maths) due to withdrawal of offers of candidates who did not join. It is further stated that if the answer key for Question No.57 is changed in the various booklets by treating the option chosen by the Petitioner as a correct answer, the merit list will have to be revised and 31 candidates, whose names are mentioned in the affidavit, will be excluded from the arena of selection and therefore, the writ petition be dismissed.

11. Heard learned counsels for the parties and examined their submissions.



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12. Facts are more or less undisputed between the parties to the *lis*. Petitioner had applied for the post of TGT (Maths) against an advertisement published by NESTS in 2023 in UR category and had undertaken the OMR based written examination on 23.12.2023. Initial answer key was published on 03.01.2024 and objections were called from the candidates. Petitioner raised objection *qua* Question No.57. As noted above, he had marked Option 1 as the correct answer but as per NESTS, Option 3 was the correct answer. Final result for the post of TGT (Maths) was declared on 22.01.2024, wherein name of the Petitioner did not figure. On 27.02.2024 final revised answer key was published where again Option 3 was shown as the correct answer. On receiving his OMR Sheet and other information under RTI Act, Petitioner learnt that he had secured 80.75 marks out of 120 marks while the cut-off marks in the UR category were 81.25 marks. Realising that Petitioner was short by 0.50 marks from the cut-off marks, he made a representation to purge the alleged error made by NESTS with the plea that both Options 1 and 3 were correct. He supported his representation with material published by renowned academicians and authors which reflected that the stand of the Petitioner was correct.

13. As noted above, CBSE on its own initiative re-visited the issue and referred Question No.57 to a committee of subject experts who were independent and in no way connected with the recruitment process of EMRS. The report of the subject experts is clearly in favour of the Petitioner to the extent that both Options 1 and 3 to Question No.57 in Booklet S-3 are the correct answers. To this extent, learned counsel for NESTS does not join issue.



14. Before proceeding further, it would be apposite to refer to a judgment of a Division Bench of this Court in ***Sumit Kumar v. High Court of Delhi and Another, 2016 SCC OnLine Del 2818***, wherein the Court examined the scope and ambit of judicial review in a case pertaining to an examination involving multiple choice question paper and where the answer key is questioned. The Division Bench observed that where the Court is convinced that the answer key is demonstrably wrong in the opinion of a reasonable body of persons well-versed with the subject, it will be permissible to exercise power of judicial review and in cases where answer key is indeed incorrect or more than one key to the answer could be correct, candidates should not be penalised for answers at variance with the key. This judgment was considered by another Division Bench in ***Anjali Goswami (supra)***, where 6 Petitioners had assailed some aspects of Delhi Judicial Service Examination, 2018. The Division Bench observed as follows:

“15. Secondly, we may take note of the judgment of the Division Bench in Sumit Kumar v. High Court of Delhi W.P. (C) No. 3453/2016 reported as (2016) 232 DLT 504, decided with another writ petition, Manisha Gupta v. Registrar General, High Court of Delhi W.P. (C) No. 2104/2016. In the said petitions, the petitioner had raised a challenge to some of the questions included in the Delhi Judicial (Preliminary) Examination held on 20.12.2015, and their answer key.

16. The examination scheme considered by the Division Bench in the said decision was, more or less, the same as the one with which we are concerned. Like in the present case, the examination scheme for the said examination also provided that for each correct answer, the candidate would be awarded one mark each and for each wrong answer, 0.25 marks would be deducted. The Division Bench proceeded to take note of the law with regard to the scope and ambit of judicial review when a Multiple Choice Question paper and its answer key are questioned. The Division Bench observed as follows:

“7. ... The law on the point is no longer res integra and stands lucidly and clearly expounded in Salil Maheshwari v. High Court of Delhi, (2014) 145 DRJ 225 in the following words:—



“11. Before recording a decision on the merits, the scope of judicial review of an answer key in a test for law graduates, such as for the DJS examination, must be recognised. The law prevailing in this regard is laid down in Kanpur University (supra), in respect of the answer key in a combined medical test in which the four subjects tested were physics, chemistry, zoology and botany. The Court in that case held:

“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 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. ...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 textbooks. 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 is demonstrated to be wrong.”

The aforesaid paragraph refers to a quotation from the decision of the Supreme Court in Kanpur University v. Samir Gupta, (1983) 4 SCC 309 and holds that three propositions of law emerge. These are:—

“12. Three propositions of law emerge from Kanpur University (supra), on the permissible extent of judicial review of an answer key. First, the answer key must be presumed to be correct and must be followed, even in the face of a mere doubt, second,



only if a key answer is demonstrably wrong, in the opinion of a reasonable body of persons well-versed in the subject, it may be subject to judicial review, and third, if the answer key is incorrect beyond doubt, then a candidate cannot be penalised for answers at variance with the key. This position was reiterated in Manish Ujwal v. Maharishi Dayanand Saraswati University, (2005) 13 SCC 744 and DPS Chawla v. Union of India, (2011) 184 DLT 96.”

8. Salil Maheshwari (*supra*) also dealt with the question of re-valuation and has concluded that the question of re-valuation does not strictly arise when the examination comprises only multiple choice questions. The reason being that multiple choice question test is premised on the basis that there is only one, objective correct answer to every question. The system of multiple choice objective type test and scope and ambit of judicial review was examined in Kanpur University's case (*supra*), and illuminated the following words:

“18. ... Fourthly, in a system of ‘Multiple Choice Objective-type test’, care must be taken to see that questions having an ambiguous import are not set in the papers. That kind of system of examination involves merely the tick-marking of the correct answer. It leaves no scope for reasoning or argument. The answer is ‘yes’ or ‘no’. That is why the questions have to be clear and unequivocal.”

In Salil Maheshwari (*supra*), after referring to the aforesaid quotation from Kanpur University (*supra*), it has been observed:—

“22. The very finding that a key answer is not the objective, single, correct answer of the four options provided, and that another answer is “correct” according to those well-versed in the subject, itself would merit the awarding of additional marks to candidates who had chosen the latter answer. There arises no need to “evaluate” or examine a response of a candidate for a second time, since all candidates who have answered in accordance with the answer key that the experts in the field affirm, are automatically entitled to the award of additional marks. The precedents on re-evaluation are only applicable in the context of examinations which permit subjective written answers, and not objective, multiple-choice questions that permit the selection of just one “correct” answer. There would be no infirmity in the approach of a Court that



directs reassessment, such as in Kanpur University (supra) itself, on the ground that the answer key is incorrect. In the present case, this court has recorded findings on each of the three questions, to say that the answer keys used for correcting the question papers used one single correct answer; the alternative options cannot be said to be unambiguously clear answers, so as to result in confusion on the part of the examinee, who attempted the preliminary test.”

9. We have to apply the aforesaid standard or test when we examine the contentions of the two petitioners. In other words, only when we are convinced that the answer key is “demonstrably wrong” in the opinion of a reasonable body of persons well-versed with the subject, will it be permissible to exercise power of judicial review. Albeit, in cases where the answer key is indeed incorrect or more than one key to the answer could be correct, the candidates should not be penalized for answers at variance with the key. The expression “demonstrably wrong” and the clapham omnibus standard or test on the second aspect (i.e. more than one correct key) is noticeably the corner stone of the said principle. While applying the said test, the Court should keep in mind that the answer key should be presumed as correct and should not be treated as incorrect on mere doubt.”

(emphasis supplied)

17. Thus, the Division Bench culled out the principle that, only when the Court is convinced with the answer key is “demonstrably wrong” in the opinion of a reasonable body of persons well-versed with the subject, will it be permissible to exercise power of judicial review. At the same time, in cases where the answer key is indeed incorrect, or more than one key to the answer could be correct, the candidates should not be penalized for answers at variance with the key. In a system of “Multiple Choice Question type test”, care is required to be taken to see that questions having an ambiguous import are not set in the question paper.”

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xxx

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31. In the aforesaid circumstances, we are of the view that the procedure adopted by the respondent of publishing the result of the preliminary examination without first uploading the answer key and inviting objections, cannot be faulted. No prejudice has been suffered by the petitioners, since answer key was uploaded well before the holding of the main examination on the basis of the result declared, and the petitioners have had their opportunity to ventilate their grievance before this Court. Their grievance that the General Instructions dated 04.01.2019 barred the



raising of objections to the questions or the answer key has not precluded them from approaching this Court. The respondent has not sought dismissal of this petition by relying upon the said clause. Thus, the said grievance is academic.

32. In the light of the aforesaid, we partially allow this petition. We direct the respondent to treat option (1) i.e. "is an equitable principle" and option (4) i.e. "is codified in Indian Law" as equally "most appropriate answers" in respect of question No. 183 in the series "B" question booklet.

33. Thus, all those candidates, who have marked option (1) as the correct answer, as well as those candidates who have marked option (4) as the correct answer for the said question, should be awarded 1 mark.

34. The respondent should re-draw the result of the preliminary examination after taking into account the decision arrived at by the Examination-Cum-Judicial Education and Training Programme Committee in its meeting held on 29.01.2019, which has been approved by the Hon'ble The Chief Justice, as well as in the light of our present decision before proceeding to hold the main examination.

35. If, as a consequence of the aforesaid exercise, any of the petitioners meet the eligibility for being permitted to take the main examination and they also rank within the 10 times number of vacancies advertised, they should be permitted to do so."

15. Having found that two options to the same question were correct, the Division Bench directed the Respondent therein to treat both the options as correct and award requisite marks to the candidates who had opted for either of the two options. In the present case, the expert committee appointed by CBSE has opined that both Option 1 and Option 3 are correct *qua* Question No.57 and therefore, following the judgment of the Division Bench in **Anjali Goswami (supra)**, in my view, Petitioner deserves to be awarded 1.25 marks against the said question and in which case his total marks would be 82 i.e. above the present cut-off marks of 81.25.

16. The next issue that arises is with respect to the relief that can be granted to the Petitioner and this, to my mind, poses no challenge. Learned counsel for the Petitioner has rightly relied on the judgment of the Allahabad



High Court in *Kapil Kumar (supra)* in this regard, where the Court was dealing with the batch of intra-Court appeals laying a challenge to the correctness of the answer key. Case of the Appellants was that answer key to Question No.68 wrongly declared Option D as the correct answer whereas the correct answer was Option C. Since Petitioners were close to the cut-off marks, their plea was to accept Option C as the correct answer and direct the Respondents to proceed with the further process of medical examination etc. Writ petitions were dismissed by the learned Single Judge on the ground that Options C or D would be correct depending on how the question was interpreted and the Court was not well equipped to sit over the expertise of an expert body and take a decision with regard to correct answer unless some perversity and *mala fide* was demonstrated.

17. During the pendency of the appeals, the Division Bench directed the Respondents to disclose the marks obtained by the Appellants; cut-off merit notified; and the number of seats which were vacant in each category. Respondents filed an affidavit disclosing that 603 posts could not be filled up and vacancies had been carried forward to the next recruitment year *albeit* no examination had taken place.

18. During the pendency of the appeals, the Division Bench also referred the matter to Director, IIT, Kanpur to nominate an expert to assist the Court. Director, IIT nominated a Professor from the Department of Mathematics and Statistics, IIT, Kanpur, as the expert and as per the report rendered, Option C was found to be the correct answer, which favoured the Appellants. After perusal of the report, counsels for the Respondents contended that even though the expert had opined in favour of the Appellants, but the Court should dismiss the appeals as there was



considerable delay and the vacancies had been carried forward to the next recruitment year. Appellants, on the other hand, urged that they had approached the Court immediately after their individual scores were uploaded and the vacancies were lying unfilled and they should not be deprived of the appointments once their answer was found to be correct.

19. The Division Bench posed to itself a question as to whether the Court should interfere in the matter and if yes, what relief could be granted to the Appellants. Relying on and referring to the judgments of the Supreme Court in *Sanjay Singh and Another v. U.P. Public Service Commission, Allahabad and Another*, (2007) 3 SCC 720; *Kanpur University, Through Vice-Chancellor and Others v. Samir Gupta and Others*, (1983) 4 SCC 309; and *Ran Vijay Singh and Others v. State of Uttar Pradesh and Others*, (2018) 2 SCC 357, the Division Bench allowed the appeals directing the Recruitment Board to revise the result of the written examination of such of the Appellants who were short by 2.5 or less marks from the cut-off marks in their respective categories and to proceed for medical examination. For the candidates who would be finally selected, it was directed that they will be appointed *albeit* placed at the bottom of the seniority list while maintaining their *inter-se* seniority merit position and granted pay and allowances from the dates of their actual appointments. However, it is important to note that the relief was restricted only to the Appellants since they had approached the Court soon after the cut-off marks were notified with a clear direction that those who did not approach the Court, would not be granted any relief. It was also directed that those who had been selected should not be disturbed as this would balance the interest of all sides, without causing prejudice to anyone. Relevant passages are as follows:-



“23. Before we advert to the precedents on the above aspect, we reiterate some basic facts which are not in dispute:—

(a) The final answer key was uploaded on the website on 8.11.2019. The individual marks of the appellants were disclosed on 20.2.2020 and final select list was notified on 2.3.2020. The appellants thereafter came to know that they have not been selected and were falling short by few marks in their respective category from being selected. They filed the writ petition before this Court in the month of July, 2020. Thus, there was no delay on part of the writ petitioners in approaching this Court.

24. In *Sanjay Singh v. U.P. Public Service Commission, Allahabad*⁵, the unsuccessful candidates for selection on the posts of Civil Judge (Junior Division) challenged the legality of the statistical scaling system adopted by the U.P. Public Service Commission. The Supreme Court held that the scaling system approved in *S.C. Dixit*⁶ case would not be valid for the recruitment in question. Thereafter, the Supreme Court proceeded to answer question no. 4 as to whether it should interfere in the matter or not. The Supreme Court did not disturb the appointments of the selected candidates, but at the same time, granted relief to the candidates whose aggregate of raw marks in the written examination and interview was more than the last selected candidate in their respective category by directing their appointment against future vacancies. It was subject to the rider that the said relief would be available only to such petitioners who had approached the Court before 31.08.2005 (final result of the said selection was declared on 1.5.2005).

25. In *Kanpur University v. Samir Gupta*⁷ where the combined Pre-Medical Test was under scrutiny, the Supreme Court held key answers to various questions to be incorrect. While granting relief to the students before it, the Supreme Court placed embargo on entertainment of fresh petitions. The relevant observations in this behalf are as follows:—

22. We understand that some petitions are pending in the High Court on these very points. Those petitions will be disposed of by the High Court in the light of this judgment, provided that the petitioners therein make out a case for interference as the students in these appeals have done. We however, direct that no fresh petitions should be entertained by the High Court and, of course, none will be entertained by us hereafter on the questions involved in these appeals arising out of the test which was held in 1982. The new academic session is due to commence within the next few days and these questions cannot be allowed to be raised in a leisurely fashion so as to disorganise the scheme of fresh admissions.



26. Again in **Ran Vijay Singh**, the Supreme Court, while permitting candidates who were successful before the High Court in assailing the key answers to be appointed by creating supernumerary posts, saved the appointment of the candidates already made.

27. A Division Bench of this Court in **Special Appeal Defective No. 343 of 2021 Abhishek Srivastava v. State of U.P.**, again issued similar directions and limited the relief to candidates who had filed writ petitions by that time and not to any other candidate, while not disturbing those already appointed.

28. In **M. Sudakar v. V. Manoharan**⁸, the Supreme Court recognised the power of the writ court to mould relief depending upon the facts and circumstances of the case in order to do complete justice between the parties.

29. In **Sankar Mondal** (supra), cited by counsel for the State, the Supreme Court did not grant relief to the candidates who approached the writ court after seven years and also having regard to the fact that twenty four years had elapsed by the time the case was decided by the Supreme Court. In **State of U.P. v. Pankaj Kumar**, the Supreme Court did not accept the contention of the candidates that intimation sent to them by SMS regarding stage of selection would not be sufficient and rejected the contention that intimation should have been given through post. While rejecting the claim on merits, it was also observed that the candidates had not been vigilant in approaching the High Court at the earliest opportunity, although in respect of same selection, certain other persons had approached the High Court much earlier.

30. These judgments, in our opinion, were based on facts of those cases. In the instant case, as noted above, the appellants have approached the Court immediately after their marks were notified and final result was uploaded and they came to know that they were short by a marginal difference. We have already held that the Recruitment Board has acted in a completely irrational manner in changing the key answer to Question No. 68 of Test Booklet B, Series 17 at the time of notifying the revised answer key. Admittedly, there was no provision for filing objection after the changes made in the final answer key. There are still 603 posts vacant after final round of selection. Although it is alleged that these posts have been carried forward to the next recruitment, but even advertisement for fresh recruitment has not been issued so far. Therefore, we are of considered opinion that those appellants who are short of 2.5 marks (2 marks for correct answer and 0.5 marks deducted for negative marking) or less from the cut off marks in their respective categories, are entitled to be appointed against vacant posts, provided they qualify the medical examination or any other norm prescribed in this behalf. But this benefit would be available only to those candidates who had filed the writ



petitions before this Court soon after the cut off marks were notified and not to anyone who now approaches this Court. Those who have already been selected should also not be disturbed. This would balance the interest of all sides, without causing prejudice to any one.

31. *Accordingly, we set aside the judgment of learned Single Judge and dispose of the instant appeals with the following directions:—*

(a) The Recruitment Board will revise the result of written examination of such of the appellants who are short of 2.5 or less marks from the cut off marks in their respective categories.

(b) The Recruitment Board will hold their medical examination and in case they succeed on all other parameters, they shall be appointed against the posts which remained vacant after the final round of recruitment. The aforesaid exercise shall be carried out within six weeks from today after due intimation and public notice to all concerned.

(d) These candidates, if selected finally, will be placed at the bottom of the seniority list, while maintaining their inter-se merit position and they shall be entitled to salary and allowances only from the date of their actual appointment, as admissible under the Service Rules.

(e) The aforesaid benefits shall only be available to those who have approached this court so far and not to any other candidate.”

20. Applying the observations of the Allahabad High Court to the present case, in my view, Petitioner has made out a case for appointment to the post of TGT (Maths), subject to medical examination and/or any other modality of antecedent verification etc. Petitioner has approached this Court diligently as soon as he received information under the RTI Act with respect to his marks and once his stand is vindicated that he had opted for the correct answer, he should not be denied the relief of appointment. NESTS has filed an affidavit stating that 32 vacancies are lying unfilled in the unreserved category for the post of TGT (Maths) due to withdrawal of offer by candidates who did not report for joining. On a pointed query to the counsel for NESTS, he had fairly submitted that these vacancies have so far not been



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carried forward to the next recruitment year. Needless to state that the benefit of awarding 1.25 marks will not be available to those candidates who may have not approached the Court and are merely fence sitters. Those who have been selected will not be disturbed and as held by the Allahabad High Court, this would balance the interest of all sides, without causing prejudice to anyone.

21. Accordingly, this writ petition is allowed directing NESTS to revise the result of the Petitioner by awarding him 1.25 marks. Petitioner will be offered appointment subject to his clearing the medical examination and any other modality which is a part of the recruitment process, prior to appointment. On being offered appointment, Petitioner will be entitled to consequential benefits of seniority, in accordance with law. Salary and allowances shall be paid from the date of actual appointment as per service rules of NESTS.

22. Writ petition along with pending application are disposed of.

23. Before drawing the curtains, I must place on record my appreciation for the initiative taken by CBSE and Mr. M.A. Niyazi, Standing Counsel for CBSE in referring the matter to an independent expert committee to ensure that no injustice is done to a candidate.

JYOTI SINGH, J

NOVEMBER 26, 2024

B.S. Rohella