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

+ W.P.(C) 2541/2025 & CM APPLs. 11992/2025, 24464/2025

NARENDRA KUMAR KUMAWAT .....Petitioner

versus

UNION OF INDIA AND ORS .....Respondents

+ W.P.(C) 2546/2025 & CM APPLs. 12044/2025, 24748/2025

RAHUL KUMAR YADAV AND ORS .....Petitioners

versus

UNION OF INDIA AND ORS .....Respondents

**Appearances:**

Mr. Sourabh Ahuja, Advocate for petitioners.

Mr. Gopesh Jindal, Ms. Anjali, Advocates for UOI in item No. 73 [8527922777].

Mr. Anju Gupta, Mr. Sarvesh P. Srivastava, Mr. Bhuvan Goel, Advocates for UOI in item No. 74.

Mr. M.A. Niyazi SC for CBSE with Ms. Anamika Ghai Niyazi, Ms. Kirti Bhardwaj, Ms. Nehmat Sethi and Mr. Arquam Ali, Advocates.

Mr. Somesh Chandra Jha and Mr. Akash Kishore, Advocates for NESTS.

**CORAM:**

**HON'BLE MR. JUSTICE PRATEEK JALAN**

**ORDER**

% **28.04.2025**

1. The petitioners were candidates for the post of Trained Graduate Teacher (Maths) in the Eklavya Model Residential School ["EMRS"], pursuant to an advertisement issued by National Education Society for Tribal Students ["NESTS"] in the year 2023. They were not successful in

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the examination, and have filed these petitions challenging the answer to one question, which was numbered as Question No. 113 in Set R-3 [W.P.(C) 2541/2025] and Question No. 100 in Set P-3 [W.P.(C) 2546/2025]. It is made clear that the impugned question is the same question, but the question numbers in the two sets of question papers were different. The petitioners seek consequential directions that they be awarded an additional 1.25 marks, after correcting the answer key, and that they be appointed “*as per their merit and if they are FIT, ELIGIBLE and SUITABLE*”.

2. I have heard Mr. Sourabh Ahuja, learned counsel for the petitioners, Mr. Somesh Chandra Jha, learned counsel for NESTS, and Mr. M.A. Niyazi, learned counsel for CBSE.

3. The subject recruitment was conducted in accordance with an examination known as EMRS Staff Selection Exam – 2023, which was entrusted to CBSE. CBSE first issued a merit list in January-February 2024, pursuant to which NESTS appointed candidates in March 2024.

4. In May 2024, a writ petition was filed before the Rajasthan High Court, being W.P.(C) 9427/2024, challenging the same question, which is the subject matter of the present proceedings, on the same ground taken by the petitioners herein. Although that writ petition remains pending before the Rajasthan High Court, CBSE looked into the matter and agreed with the submission of the petitioner therein. It therefore issued a revised merit list [“second merit list”] after correcting the answer to the impugned question. In the second merit list, one of the four petitioners before this Court, namely – Mr. Rahul Kumar Yadav [petitioner No. 1 in W.P.(C) 2546/2025], finds place amongst the meritorious candidates, but

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the other three petitioners do not. Although another petitioner– Shiva Rathour [petitioner No. 2 in W.P.(C) 2546/2025] also secured the same marks as Mr. Rahul Kumar Yadav, Mr. Jha states that a number of candidates were placed at the same marks in the second merit list, and the merit list has therefore been prepared by ordering them according to their date of birth, drawing an analogy from the provisions of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The cut-off was then determined, according to the number of vacancies in the relevant category.

5. In the meanwhile, another unrelated question was also challenged by another candidate before this Court, in *Vinay Kumar vs. Union of India And Ors.* [W.P.(C) 14638/2024, decided on 26.11.2024]. The Court found in favour of the petitioner therein, and relied upon a Division Bench judgment of Allahabad High Court in *Kapil Kumar and Others v. State of U.P. and Others* [2023 SCC OnLine All 4024], to pass the following operative direction:

*“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 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***

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**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.”*

[Emphasis supplied.]

6. As noted in order dated 27.03.2025 in these writ petitions, Central Board of Secondary Education [“CBSE”], which conducted the examination, had ultimately prepared a “*re-revised merit list*” [“third merit list”]. This is stated to be on the basis of the correction upheld in *Vinay Kumar* (supra). NESTS had thereafter sought further time to work out the appropriate course of action.

7. The correctness of the contention of the petitioners, on the question itself is concerned, is admitted by the respondents. It is therefore not necessary to adjudicate upon the said issue. The only question is as to the consequential relief which ought to be granted.

8. NESTS, in compliance with the said order, has filed affidavits dated 28.04.2025, which have been handed up in Court and are taken on record. These deal with the further course of action proposed by NESTS.

9. It is stated in the said affidavits that, in the third merit list, marks of all candidates were re-computed as a consequence of two incorrect questions – the question challenged in the present petitions, and the question challenged in *Vinay Kumar* (supra). It is also stated that in the third merit list, none of the four petitioners herein fell within the cut-off.

10. As far as the third merit list is concerned, I am of the view that it

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should not come in the way of the petitioners herein. This Court, in *Vinay Kumar* (supra), did not direct a wholesale revision of the merit list, but only that the petitioner therein would be awarded 1.25 marks for the concerned question. The Court, in fact, specifically directed that other candidates would not be entitled to the same relief and those who have been selected would not be disturbed. The consequence of the decision in *Vinay Kumar* (supra) was therefore limited to the appointment of the petitioner therein.

11. Turning now to the revision on account of the question which the petitioners herein have challenged, the position which emerges is that one of the four petitioners would have made it if the question had been rightly marked from the inception, whereas the other petitioners would not have made it.

12. The submission of Mr. Ahuja is that the operative direction in *Vinay Kumar* (supra) should be followed, and these four petitioners should be awarded extra marks, which takes them above the cut-off list. The contention, in my view, is incorrect. The petitioners themselves have contended that the answer key for this question was incorrect, and sought consideration of their candidature on merit after correction of the question. I do not find any arbitrariness or unreasonableness in NESTS's contention that the petitioners cannot be given the benefit of the correction, if they have not made it to the merit list on that basis.

13. Mr. Ahuja relies upon the course adopted in *Vinay Kumar* (supra). However, the ratio of *Vinay Kumar* (supra) is only that candidates who did not approach the Court need not be given appointment, by displacing those who have already been appointed. It does not indicate that the

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petitioner therein would be given the benefit, even if he would not have found himself in the merit list, on the basis of the very same contentions, which he had placed before the Court. In fact, Mr. Jha states, upon instructions, that factually *Vinay Kumar* (supra) was placed in the third merit list, which was prepared on the basis of correction in the question he had raised.

14. Consequently, the relief sought in these writ petitions can be granted only in favour of Mr. Rahul Kumar Yadav [petitioner No. 1 in W.P.(C) 2546/2025]. NESTS is directed to issue a letter of appointment and a posting order to him, within a period of three months from today, subject to document verification. It is made clear that no candidate, who had already been appointed, is required to be disturbed; indeed, those candidates are not party to the present petitions.

15. The writ petitions, alongwith the pending applications, is disposed of with the aforesaid directions.

**PRATEEK JALAN, J**

**APRIL 28, 2025**

*'Bhupi/AD'*

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