



2026:DHC:5211-DB



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

Reserved on: 7 April 2026

Pronounced on: 01 July 2026

+ W.P.(C) 11249/2019, CM APPLs. 46320/2019 & 28328/2021

GOVT. OF NCT OF DELHI & ANRPetitioners

Through: Mrs. Avnish Ahlawat, SC with
Mr. Nitesh Kumar Singh, Ms. Aliza Alam
and Mr. Mohnish Sehrawat, Advs. for
GNCTD

versus

VANDANA GUPTA & ORSRespondents

Through: Mr. Amit Anand Tiwari, Sr.
Adv. with Ms. Mary Mitzy and Ms. Vatsala
Chandra Chaturvedi, Advs.

Mr. Naresh Kaushik, Sr. Adv. with Mr.
Anand Singh, Adv, Mr. Archit Gautam,
Adv, Ms. Saumya Johari, Adv

Mr. Ashok Agarwal, Mr. Kumar Utkarsh,
Mr. Manoj Kumar and Ms. Ashna Khan,
Advs. for Applicant/Respondent in CM
53867/2019

Mr. Puneet Rathi, Adv. for R-16, R-28 & R-
45

Mr. Sachin Chauhan with Ms. Ridhi Dua
and Mr. Abhimanyu Baliyan, Advs. for
Private Respondents

+ W.P.(C) 4178/2022 & CM APPL. 12523/2022

GOVT OF NCT OF DELHI & ANR.Petitioners

Through: Mrs. Avnish Ahlawat, SC with
Mr. Nitesh Kumar Singh, Ms. Aliza Alam
and Mr. Mohnish Sehrawat, Advs. for
GNCTD



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versus

PREETI & ORS.

.....Respondents

Through: Mr. Naresh Kaushik, Sr. Adv.
With Mr. Bhoop Singh, Mr. Anand Singh,
Mr. Archit Gautam, Ms. Saumya Johri, Mr.
Manoj Johri and Ms. Shikha Johri, Advs.

+ W.P.(C) 4533/2022 & CM APPL. 13576/2022

GOVT OF NCT OF DELHI & ANR.

.....Petitioners

Through: Mrs. Avnish Ahlawat, SC with
Mr. Nitesh Kumar Singh, Ms. Aliza Alam
and Mr. Mohnish Sehrawat, Advs. for
GNCTD

versus

ASHISH KANCHAP

.....Respondent

Through: Mr. Naresh Kaushik, Sr. Adv.
With Mr. Bhoop Singh, Mr. Anand Singh,
Mr. Archit Gautam, Ms. Saumya Johri, Mr.
Manoj Johri and Ms. Shikha Johri, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

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JUDGMENT

01.07.2026

C. HARI SHANKAR, J.

A. Facts, and the *lis*

1. Examinations for recruitment of Primary Teachers in the Delhi Government¹ were conducted by the Delhi Subordinate Services

¹ Government of National Capital Territory of Delhi/GNCTD



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Selection Board² in four phases, on 30 September 2018, 13 October 2018, 14 October 2018 and 28 October 2018, following advertisements dated 7 August 2017 for Post Code 16/17 and 26 June 2018 for Post Code 1/18. The respondents participated in the examination. Having failed to obtain success, the respondents instituted OA 612/2019³, OA 815/2019⁴ and OA 2151/2019⁵ before the Central Administrative Tribunal⁶. OA 612/2019 was disposed of, by the Tribunal, by order dated 14 October 2019, whereas OA 815/2019 and OA 2151/2019 were disposed of, *vide* order dated 12 November 2021. The GNCTD has, in these writ petitions, assailed the said orders of the Tribunal.

2. The nature of the challenge by the applicants in OA 612/2019, who are the respondents in WP (C) 11249/2019 is different from the nature of the challenge by the applicants in OA 815/2019 and OA 2151/2019, who are the respondents in WP (C) 4533/2022⁷ and WP (C) 4178/2022⁸. As a result, the nature of the orders passed by the Tribunal in these OAs is also distinct and different.

3. Certain basic facts are, however, common to all these writ petitions and to the parent OAs and we may, therefore, straightaway allude to them.

² "DSSSB" hereinafter

³ **Vandana Gupta & ors v. GNTCD & ors**

⁴ **Ashish Kanchap v. GNCTD & ors**

⁵ **Preeti & ors v. GNCTD & anr**

⁶ "the Tribunal" hereinafter

⁷ Referred to, hereinafter, as **Ashish Kanchap**

⁸ Referred to, hereinafter, as **Preeti**



4. As already noted, the examination took place in four phases, held on 30 September 2018, 13 October 2018, 14 October 2018 and 28 October 2018. The Draft Answer Keys, of these examinations, were released on 17 October 2018, 30 October 2018, 31 October 2018 and 5 November 2018 respectively. The respondents in ***Preeti*** and ***Ashish Kanchap*** claim to have found certain errors in the questions and answers contained in the Draft Answer Key dated 17 October 2018, against which they submitted representations, within the time permitted, on 21 October 2018. The representations were rejected, resulting in the candidates approaching the Tribunal by way of OA 815/2019 and OA 2151/2019.

5. The Tribunal has disposed of OA 815/2019 and OA 2151/2019 by a common order dated 12 November 2021, by observing that the objections of the applicants before it were not properly considered by the examining authorities and, therefore, directing the examining authorities to reconsider the objections by co-opting experts and, thereafter, proceed to declare the results.

6. Adverting, now, to the challenge in OA 612/2019, which forms subject matter of consideration in WP (C) 11249/2019. The respondents contend that, after the fourth phase of examination was conducted on 28 October 2018, it came to their notice that some of the questions were common to the papers in different phases. This was required to be remedied. According to the respondents the matter was, therefore, considered by the DSSSB in its meeting on 29 October 2018, and a decision was taken (i) to delete, from the papers in all Phases, questions which figured in any other paper and (ii) to award



marks, across the Board, for the said questions on *pro rata* basis, depending on the percentage of marks scored by the candidate in the remaining questions. The petitioners also resorted to normalization using the “Score Normalisation Based on Deviation Method” with which we are not really concerned. This decision was communicated with a Public Notice dated 1 February 2019. The applicants in OA 612/2019 challenged this Public Notice dated 1 February 2019.

7. The Tribunal, *vide* order dated 14 October 2019, disposed of OA 612/2019, holding that (i) even if some of the questions were common to different phases, it was illogical to delete any question from phase I, as the candidates attempting that phase were seeing the questions for the first time and (ii) the *pro rata* marking method followed by the DSSSB was also unsustainable in law. The grant of marks on *pro rata* basis for deleted questions, based on the performance of the candidate in the remaining questions was, according to the Tribunal, illogical” and could, in a given case, even result in grant of marks to candidates who did not attempt the deleted questions at all, merely because they may have performed well in the remaining questions. The Tribunal, therefore, set aside the Public Notice dated 1 February 2019, with the observation that it was open to the DSSSB to evolve a lawful and objective mechanism to assess the papers and, thereafter, declare the results.

8. This decision of the Tribunal forms subject matter of challenge in WP (C) 11249/2019.

B. Issues



9. Thus, on merits, we are concerned,
- (i) in WP (C) 11249/2019, with the legality of the decision of the DSSSB to (a) delete, from the papers in all phases, questions which were common to any other phase and (b) adopt the pro rata method for awarding marks against the deleted questions and,
 - (ii) in *Preeti* and *Ashish Kanchap*, with the question of whether the Tribunal was justified in holding that the objections raised by the respondents in the said writ petitions, as the applicants before it, to the Draft Answer Key, were not properly considered and, therefore, directing a reconsideration of the objections after co-opting experts.

C. A Preliminary Issue

10. On 21 February 2019, the Tribunal issued notice in OA 612/2019 and restrained the DSSSB from declaring the results of the selection for a period of two weeks. However, on the next date, i.e. 12 March 2019, while adjourning the OA for 1 April 2019, the Tribunal did not extend the interim order. As a result, the results of the selection process for the post of Primary Teacher were declared on 28 March 2019, and e-dossiers of the selected candidates forwarded to the concerned user departments who, in many cases, had also conducted medical verification and issued appointment letters to the selected candidates, who had joined. Nonetheless, on 1 April 2019, the Tribunal, while adjourning the matter to 9 April 2019, directed continuance of the interim relief already granted. In the circumstances,



MA 1313/2019 was filed by the GNCTD/DSSSB before the Tribunal for recall of the order dated 1 April 2019, pointing out that, as the earlier interim order dated 21 February 2019 had not been continued on 12 March 2019, the results were declared and candidates had joined. The Tribunal, by order dated 12 April 2019, recalled the order dated 1 April 2019.

11. In these circumstances, it was, to our mind, incumbent on the applicants in these OAs to implead the selected candidates, especially those who had already joined service consequent on selection. This was never done. The Tribunal has proceeded to dispose of all three OAs without ensuring that selected candidates were impleaded.

12. We might have been inclined to allow these writ petitions, and set aside the orders passed by the Tribunal on this sole ground. However, in view of the following order which came to be passed by this Court while issuing notice in WP (C) 11249/2019 on 21 October 2019, the Court was informed that, pursuant to selection, appointment letters had been issued and the successful candidates have also undergone medical examination, following which some of them had joined service. Nonetheless, the Court issued notice, making all appointments subject to the final order in the writ petition. It was further directed that the successful candidates who had joined service be informed about the pendency of the writ petition and that no special equity would enure to their benefit.

13. Following this, during the course of these proceedings, various applications have been filed by candidates who have sought to



intervene, or be impleaded, in the proceedings, and all have been allowed. Some have supported the impugned order; others have opposed it. Considerable confusion, we are constrained to observe, could have been avoided, had the Tribunal required impleadment of affected parties before deciding the *lis*. Be that as it may, we have, before us, now, various submissions on either side, and, in their light, we have to adjudicate on the appeal.

D. Facts

14. Let us reconnoitre the facts.

15. Advertisements for recruitment to the post of Teacher Primary in schools under the GNCTD, under Post Codes 16/17 and 1/18, were issued on 7 August 2017 and 26 June 2018, to be conducted by the DSSSB. Selections for recruitment under both Post Codes were held simultaneously. The candidates had to undergo written examinations which, owing to the number of candidates who had applied, were held in four batches/phases on 30 September 2018, 13 October 2018, 14 October 2018 and 28 October 2018.

16. On 31 May 2018, before any of the examinations were held, the DSSSB issued a Public Notice, from which the following passage is relevant:

“Due to infrastructural constraints, it is possible that the examination could be held in multiple shifts involving different set of question. In such a scenario, normalisation of marks obtained by the candidates in various states would be done to account for



variation in difficulty level as per the normalisation formula to be notified by the Board on the website.”

17. Pursuant thereto, the DSSSB, on 11 July 2018, issued the following Notice, notifying the Normalisation Formula:

“F.No.10(271)/Sec.Cell/DSSSB/18/989 Dated:-11/07/18

NOTICE

As mentioned in the public notice F.No.10(271)/Sec. Cell/DSSSB/18/718 dated 31/05/2018 regarding partially shifting to online exam, in case of an exam being held in multiple shifts, normalisation of marks obtained by candidate will be done to account for variation in difficulty level. Normalisation will be done by using "Score Normalisation Based on Deviation Method" formula which is as under;

$$X_n = (S_2/S_1) * (X - X_{av}) + Y_{av}$$

(X _n)	Normalized Score for each candidate
S ₂	Is the SD of the shift with the Highest Average Score taken as base for normalization
S ₁	Standard Deviation for the corresponding shift (to be scaled to S ₂)
X	Raw score of a candidate
X _{av}	Simple average of the Shift
Y _{av}	Average corresponding to shift with highest Average (taken as base for normalization)

Clearly, therefore, *the Normalisation Formula was intended to cater only to variation in difficulty levels among the papers held on various dates, as the questions were intended to be different.*

18. Draft Answer Keys for the papers held on the aforesaid dates were released on 17 October 2018, 30 October 2018, 31 October 2018 and 5 November 2018 respectively. The respondents in ***Preeti*** and



Ashish Kanchap submitted representations, challenging the Draft Answer Key dated 17 October 2018, in respect of certain questions. The representations were rejected on 5 December 2018, without citing any reason. Following this, final answer keys were issued on 4 December 2018 and 11 December 2018. This forms of subject matter of challenge in the OAs instituted by Preeti and Ashish Kanchap, from which the corresponding writ petitions emanate.

19. In the interregnum, the DSSSB contends that, on 29 October 2018, it came to its notice that some of the questions already raised in earlier phases were repeated in later Phases. On the same day, the DSSSB, in its meeting, took a decision to delete, from all phases, questions which were repeated in any other phase. The following Public Notice was, accordingly, issued by the DSSSB on 29 October 2018:

“F.No.10(293)/Sec. Cell/DSSSB/2018/ 1670

Dated 29/10/18

Public Notice

Delhi Subordinate Services Selection Board conducted examinations for the post of Primary Teacher (Post Code 16/17 and 1/18) in four batches on 30/09/2018, 13/10/2018, 14/10/2018 & 28/10/18.

Now, it has been brought to the notice of the Board that a few questions were exact replica both in wordings of the question and their response options in certain question papers.

The matter has been considered by the Board and in the interest of fairness and for providing a level playing field to all the candidates, it has been decided to delete these questions from the different batches of examination. These questions shall not be counted for the purposes of evaluation.

S/d



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Dy. Secretary, DSSSB”

20. In accordance with the above decision, questions which were found to be common to more than one phase were deleted from all papers and Notice dated 1 February 2019 issued in that regard:

“F.10(305)/Sec.Cell/DSSSB/2018/114

Dated 01/02/2019

NOTICE

1. Delhi Subordinate Services Selection Board had conducted exam, for the post of Teacher (Primary) Post 1/18 & 16/17 in four batches on 30/09/2018, 13/10/18, 14/10/18 and 28/10/18. Information had been received by the Board that certain questions had been repeated.

2. Matter was considered and it was found that questions mentioned in table below were either exact replica or had similar wordings and same options in different batches of examinations for said post code.

Sl. No.	Question Numbers as per Master Set already uploaded on website of DSSSB			
	30/09/18	13/10/18	14/10/18	28/10/18
1.	104	-	-	104
2.	-	-	124	113
3.	-	128	-	121
4.	-	183	-	127
5.	170	-	-	128
6.	-	119	-	155
7.	147	-	-	159
8.	152	-	-	164
9.	102	-	-	173
10.	141	-	-	176
11.	114	-	-	193
12.	118	-	-	195
13.	124	-	-	196
14.	-	193	-	146
15.	-	126	-	171
Total	09	05	01	15

3. Apart from the above, DSSSB was also in receipt of information that one question with casteist undertone had appeared in the question paper for the exam held for the post of Pr. Teacher



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Post Code 1/18 & 16/17 held on 13/10/18. It was also decided to delete this question as well. Details of the question is as under;

Date of exam	Question Number as per the master set already uploaded on the website of DSSSB
13/10/18	73

4. Accordingly, questions from master set viz. 09 questions of exam dated 30/09/18; 06 of exam dated 13/10/18; 01 of 14/10/18 and 15 of exam dated 28/10/18, as detailed in tables at para 2 & 4 above, shall stand deleted and shall not be considered for the purpose of evaluation.

This issues with the approval of the Competent Authority.

Sd/-
Dy. Secretary
DSSSB”

21. This Notice, dated 1 February 2019, formed subject matter of challenge before the Tribunal in OA 612/2019, from which WP (C) 11249/2019 emanates.

E. Impugned Orders

I. Order dated 14 October 2019 in OA 612/2019

22. The Tribunal has, in the impugned order dated 14 October 2019, held that the exercise conducted by the DSSSB, in order to remedy the repetition of questions in the papers relating to different phases, suffered from various infirmities. There was no justification for deleting any question from Phase one which was conducted on 30 September 2018, as all questions in the paper in this phase were being



asked for the first time. None of the questions in phase one could, therefore, be treated as “repeats”.

23. The mechanism of granting *pro rata* marks for the deleted questions, on the basis of the performance of the candidate in the remaining questions, also did not find favour with the Tribunal. This method, as the impugned judgment holds, would result in rank discrimination, as a candidate who did not even attempt the deleted questions, but performed well in the remaining questions, would get the benefit of his performance in the remaining questions and even for the deleted questions which he did not attempt, whereas a candidate who may not have performed so well in the remaining questions, but answered all deleted questions correctly, would suffer only because of his performance in the remaining questions. The Tribunal did not find this to be sustainable in law.

24. Accordingly, the Tribunal set aside the notice dated 1 February 2019 and left it open to the DSSSB to evolve an alternative lawful and objective mechanism to deal with the situation of repeat questions and, thereafter, declare the results.

II. Order dated 12 November 2021 in OA 815/2019 and OA 2151/2019

25. The Tribunal, in its order dated 12 November 2021, allowed OA 815/2019 and OA 2151/2019 on the ground that the objections raised by the respondents – i.e., the applicants before the Tribunal – were not properly considered before rejection, and there was no



explanation as to why, in respect of certain questions, more than one correct answer could be found. The Tribunal, therefore, directed the objections raised by the respondents to be referred to experts, who were directed to consider them afresh and give reasons for their conclusions.

F. Rival contentions

I. Re. WP (C) 11249/2019

26. The submissions of Ms. Ahlawat, opposing the impugned order, have been echoed by some of the intervenors and newly impleaded respondents.

27. It is necessary, at the outset, to emphasise one fact. The respondents have, at various points in the writ petition as well as in the written submissions, stated that *pro rata* marks were awarded, in respect of the deleted questions, on the basis of the Score Normalisation Based on Deviation Method notified *vide* Notice dated 11 July 2018 *supra*. This, apparently, is not correct and, if it has been done, the entire exercise would be vitiated. The Score Normalisation Method notified *vide* Notice dated 11 July 2018 is specifically to deal with a situation in which there is difference in difficulty levels between different papers, as the papers are not supposed to contain similar questions. The Normalisation Method is not intended to be a matter of allotting marks in respect of deleted questions. A holistic reading of the pleadings indicates that the DSSSB adopted both methods; the *pro rata* marking method for awarding marks to the



deleted questions and the Normalisation Method in respect of differences in difficulty levels.

28. The challenge, in the OA from which this writ petition emanates is only with respect to the deleted questions. As such, the Normalisation Method, or its applicability, does not seriously concern the present controversy.

29. Ms. Ahlawat submits that the method of awarding *pro rata* marks to the deleted questions also stands approved by the Supreme Court. There was, therefore, no cause for the Tribunal to set it aside. She points out that no objection was raised to the Public Notice dated 29 October 2018 *supra*, whereby the decision to remove the deleted questions from consideration was communicated. *Pro rata* benefit for the deleted questions, she submits, was extended across the board to all 73,488 candidates who had attempted the examinations. Following this, 8673 candidates were shortlisted, and e-dossiers, obtained from them, were forwarded to the concerned user departments. Many of the candidates, thereafter, been appointed, and have been serving the user departments for years.

30. Ms. Ahlawat further submits that, even if the deleted questions were to be taken into consideration, the respondents, except for two who were selected, would not make the cut off or qualify for selection. As such, she exhorts this Court to set aside the impugned order of the Tribunal and uphold the manner in which the DSSSB evaluated the candidates.



31. The submissions of Ms. Ahlawat were echoed by learned Counsel for the intervenors.

32. Ms. Rashmi Chopra, learned Senior Counsel and Mr. M.K. Bharadwaj, learned Counsel, support the impugned order of the Tribunal. Additionally, it is sought to be pointed out that, as a result of the faulty method adopted by the DSSSB, the candidates who attempted the paper in the fourth phase on 28 October 2018 had a windfall, as the draft answer key for the paper which was held on 30 September 2018 in the first phase was uploaded on 17 October 2018, and several of the questions in the first phase were repeated in the fourth phase. As such, the candidates were at the benefit of the correct answers to the said questions, even as per the DSSSB. Otherwise, Ms. Chopra submits that there was no justification for deleting any questions from the first phase and that questions to have been deleted only from the second, third and fourth phases. It is also sought to be contended that the number of repeat questions has been wrongly calculated and that they are, in fact, much more than the number of questions worked out by the DSSSB.

II. WP (C) 4533/2022 (*Ashish Kanchap*) and WP (C) 4178/2022 (*Preeti*)

33. In these writ petitions, the DSSSB has merely stated that the objections raised by the respondents were referred to experts and that the final decision thereon was taken as per the opinion of the experts. Apart from this, the DSSSB places reliance on the judgment of the



Supreme Court in *Ran Vijay Singh v. State of Uttar Pradesh*⁹, which advocates against Courts re-evaluating or scrutinising answer sheets or examining whether the suggested answers are correct or not.

G. Analysis

I. Re. WP (C) 11249/2019

34. The Tribunal has, in the impugned order dated 14 October 2019, disapproved of the manner in which marks were allotted by the DSSSB for the deleted questions. Besides, the Tribunal has held that there was no justification for deleting any question from phase one, as no questions were repeats in the said paper.

35. We have to examine whether this decision of the Tribunal merits interference under Article 226 of the Constitution of India.

36. Insofar as repeated questions are concerned, we have to presume that there was an intent to ensure that there were no questions which were repeated in different phases. Indeed, this was the basis of the Normalisation Formula notified by the DSSSB on 11 July 2018. In the Public Notice dated 31 May 2018, which preceded the Notice dated 11 July 2018, it is clearly stated that, *as the examinations in different phases were to have different sets of questions*, infrastructural constraints were required for examination to be held in multiple shifts. This would result in a situation in which there was a possibility of difference in difficulty level in the examinations held in different

⁹ (2018) 2 SCC 357



phases, which was what prompted the second Notice dated 11 July 2018, notifying the Normalisation Formula, to neutralise the difference in difficulty level.

37. As such, as the questions in the different phases were intended, from the very beginning, to be different, it is clear that, when some of them were found to be the same, some remedy had to be devised.

38. Some of the intervenors have sought to contend that the number of repeat questions has been wrongly computed by the DSSSB. The affidavits filed in this regard also seek to point out other questions which, according to the said intervenors, were also repeat questions but were not included by the DSSSB in its evaluation of the number of questions which had been repeated.

39. We have gone through the submissions of the intervenors in that regard, as well as the questions other than those which were regarded as repeat questions by the DSSSB, and do not find any error in the decision of the DSSSB regarding the number of questions which were repeated. Even if there are minor differences in the questions, they cannot be regarded as repeat questions. In that view of the matter, we have to defer to the discretion of the DSSSB regarding the number of questions which were entitled to be treated as repeat questions. We, therefore, reject the submission of the intervenors to the effect that the number of repeat questions was wrongly computed by the DSSSB.

40. From a perusal of the documents on record, we have noticed a feature which seems to have escaped the attention of the Tribunal. The



decision to award *pro rata* marks to the deleted questions is contrary to the Public Notice dated 29 October 2018 and the subsequent Notice dated 1 February 2019 (which was impugned in OA 612/2019). Both these Notices stated that the repeat questions *would be deleted from the question papers and would not be considered for the purpose of evaluation*. The decision to evaluate the deleted questions and award *pro rata* marks to the deleted questions is, therefore, directly contrary to the decision communicated by the Public Notice dated 29 October 2018 and the subsequent Notice dated 1 February 2019.

41. Nonetheless, if the repeat questions were to be deleted from every phase, it would result in an iniquitous situation in which the number of questions from which the candidates were marked in different phases would be different. This would also, therefore, be impermissible. It is obvious that, when a selection is being made by conducting the examination in different phases, and the number of questions in the examinations are the same, the same number of questions have to constitute the basis for evaluating the merits of the candidates in all phases. The DSSSB could not, therefore, be permitted to delete different numbers of questions from the examinations conducted in different phases and evaluate the papers on the remaining balance.

42. The result would be that the evaluation of the papers in the different phases for all have to be on the basis of all 100 questions, including the deleted questions.



43. Which, then, throws up the issue of whether the decision to award pro rata marks for the deleted questions was legally sustainable.

44. The Tribunal has correctly relied on para 19 of the judgment of the High Court of Madras in *J. Antony Clara v. State of Tamil Nadu*¹⁰, which, in turn, relied on the judgment of the Supreme Court in *Vikas Pratap Singh v. State of Chhattisgarh*¹¹. In *Vikas Pratap Singh*, the Supreme Court upheld the evaluation of the deleted questions on *pro rata* basis though, in that case, there was a specific clause in the applicable Rules which provided for such evaluation. The specific clause in that regard, to the extent it dealt with the manner in which the deleted questions were to be evaluated, read thus:

“On such rejection of question upon the recommendation of Subject Expert Committee, on such questions the marks would be awarded by the Chhattisgarh Professional Examination Board (Vyapam) to the candidates in proportion to their marks obtained in the particular question paper. Whether the rejected question has been or not been attempted. *The question papers in which the questions have been rejected, their evaluation procedure would be as follows, if in any question papers out of 100 questions 2 questions are rejected and after evaluation candidate secures 81 marks out of 98 questions then in such case calculation of marks would be done as $(81 \times 100)/100 - 2 = 82.65$. On which basis merit would be determined.*”

The grant of marks for the deleted questions *pro rata* on the basis of the percentage of marks scored by the candidate in the remaining questions is precisely what the rule, which was before the Supreme Court in *Vikas Pratap Singh*, provided. It cannot, therefore, be said to be illegal in any manner.

¹⁰ 2013 SCC OnLine Mad 3023

¹¹ (2013) 14 SCC 494



45. The decision to award *pro rata* marks to the deleted questions, based on the performance of the candidate in the remaining questions in that particular paper is, therefore, upheld.

46. The only issue which remains to be considered is with respect to whether the Tribunal was correct in its view that deletion of questions should have taken place only from the second, third and fourth phases, and not from the first phase. The Tribunal has sought to justify this decision on the ground that there would be no repeat questions in the first phase, so that the decision to delete questions from that phase was illogical.

47. Though the reasoning appears facially attractive, on a deeper analysis, it would result in discrimination and inequity. If the repeat questions were to be deleted only from the second, third and fourth phases, it would result in a situation in which all questions in the paper in the first phase would be evaluated, including those questions which were repeated in later phases, whereas the candidates who attempted the later phases would be evaluated only in respect of the questions which were not deleted. A different methodology of evaluation of the candidates who attempted the first Phase, *vis-à-vis* those who attempted the remaining three phases, is *ex facie* unsustainable in law and would amount to discriminating between persons identically situated, which would infract Articles 14 and 16 of the Constitution of India. It would result in candidates in different phases being evaluated in respect of different numbers of questions.



48. A holistic perspective, balancing the equities would, therefore, justify the decision of the DSSSB to delete the questions from all four phases, to the extent they were repeated.

49. We, therefore, cannot sustain the impugned order of the Tribunal, to the extent it holds that no questions from the first phase ought to have been deleted. We sustain the decision of the DSSSB to delete the repeat questions from all four phases.

50. As a result, in our view, the decision of the DSSSB to delete the repeat questions from all phases, as well as to award *pro rata* marks to the deleted questions, has to be upheld in totality.

51. Resultantly, we have no option but to set aside the impugned order dated 14 October 2019 passed by the Tribunal in OA 612/2019.

52. The OA would, therefore, stand dismissed.

II. WP (C) 4533/2022 and WP (C) 4178/2022

53. The only ground on which the Tribunal has proceeded, in this case, is that the objections raised by the respondents were not considered properly by experts. The Tribunal has, therefore, directed that the objections be referred to experts and a fresh decision be taken.

54. During the course of the present proceedings, this Court, *vide* order dated 6 February 2025, directed the DSSSB to place, on affidavit, the opinion of the experts with respect to Questions 75, 118,



130, 133, 134, 141, 144, 181, 184 and 192 in respect of which the Tribunal has directed re-examination by experts.

55. The DSSSB has, in compliance therewith, placed on record, under affidavits dated 5 March 2025, the opinions of the experts with respect to the aforementioned questions. We find, therefrom, that the experts have not only given reasons for their view, but have also referred to the relevant texts, as well as provided extracts therefrom, to support their conclusions.

56. It does not appear, from the record, that the above material was placed on record before the Tribunal. Had it been, the Tribunal might not have passed the order which it came to pass, and we would have been spared the necessity of dealing with these writ petitions.

57. Be that as it may, in such circumstances, we are not inclined to allow a re-visitation of the correctness of the decision of the DSSSB, based on the opinion of the experts, with respect to the aforementioned Questions 75, 118, 130, 133, 134, 141, 144, 181, 184 and 192 especially at this late day, when the recruitment process has been closed, results have been declared, communicated to the user departments, selected candidates have been appointed and have been continuing in service for a number of years.

58. Resultantly, the impugned judgment of the Tribunal in these writ petitions is also quashed and set aside.



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H. Conclusion

59. Resultantly, we quash and set aside the impugned order dated 14 October 2019 in OA 612/2019 and the order dated 12 November 2021 in OA 815/2019 and OA 2151/2019. The OAs would, therefore, stand dismissed.

60. The writ petitions stand allowed accordingly with no orders as to costs.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

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