

A.F.R.

Court No. - 33

Case :- WRIT - A No. - 3146 of 2022

Petitioner :- Anoop Kumar Singh And Another

Respondent :- State Of U P And 2 Others

Counsel for Petitioner :- Abhay Kumar Singh

Counsel for Respondent :- C.S.C., Gagan Mehta

Hon'ble Mrs. Manju Rani Chauhan, J.

1. Heard Mr. Abhay Kumar Singh, learned counsel for the petitioners, Mr. Gagan Mehta, learned counsel for respondent nos.2 & 3 and Mr. Shailendra Singh, learned Standing Counsel for the State-respondents.

2. The writ petition has been filed by the petitioners with the following prayer:-

“(i) Issue a writ order or direction in the nature of certiorari quashing the impugned result annexed as Annexure No.11 published on the 17.02.2022 by the Respondent no.2 Uttar Pradesh Higher Education Service Commission.

(ii) Issue a writ order or direction in the nature of mandamus commanding/directing the respondent no.2 to re-evaluate the answer sheet of the petitioners and declare a fresh result on the basis of re-evaluation.

(iii) Issue a appropriate writ order or direction to the respondent no.2 to consider the candidature of the petitioners for interview for post of Assistant Professor of Geography subject.”

3. In the present writ petition, counter and rejoinder affidavits have been exchanged between the parties, supplementary counter affidavit has been filed on behalf of respondent nos.2 & 3 is also taken on record. Both the parties agree that this petition be disposed of at this stage, without calling for any further affidavit.

4. Brief facts of the case are that the respondent-Commission published an advertisement for filling the vacancies of Assistant Professor in various subjects. The petitioners being eligible applied for the post of Assistant Professor in Geography subject. The petitioners appeared in written

examination scheduled on 30.10.2021 and attempted the questions to the best of their ability and knowledge. After the examination, the answer key inviting objections from the candidates in case of any wrong answer in the answer key was published by the respondent-Commission. The question papers were in four sets i.e. A, B, C, D and the petitioners were given 'D' Series of the booklet. The petitioners found that some of the answers given in the answer key published by respondent- Commission were wrong, therefore, they raised their objections separately with respect to questions at serial no. 2, 3, 14, 29, 34, 55, 56, 65, 66 and 79. Without considering the objections as raised by the petitioners, the final result was published by only correcting question no. 14 of 'D' series of the booklet, as suggested by the petitioners. Apart from the aforesaid, the Commission has also deleted one question i.e. question no.36 and corrected one question i.e. question no.43 of the 'D' series of the booklet. The revised and final result of the written paper of Assistant Professor (Geography) were declared on 11.02.2022 without correcting the answers as raised in the objections by the petitioners. The answers of 10 questions as stated above were said to be incorrect relying upon certain books as placed by the petitioners but respondent-Commission neither corrected the questions which was wrongly answered by the Commission in the answer key, as objected by the petitioners nor communicated the reason behind non consideration of rest 8 questions as suggested by the petitioners.

5. The petitioners found that question no. 29 of 'D' series of the booklet had two correct answers but the objection with respect to the same could not be raised prior to declaration of the result.

6. The questions which still need to be corrected as per the objections raised by the petitioners are as follows:-

Question No.3.

Which of the following is in pre-active stage of teaching?

- | | |
|----------------|-----------------|
| (A) Evaluating | (B) Diagnosis |
| (C) Sequencing | (D) Remediating |

As per the answer key, the correct answer is (C) whereas as per the books of UPKAR Prakashan and another book of Drishti for UGC NET JRF, available with the petitioner shows that both (B) and (C) answers are correct.

Question No.29

Reflecting teaching is:

- (A) Problem Centered (B) Practice Centered
(C) Making Association (D) Reproduction of thought

As per the answer key, the correct answer is (A) whereas as per the books of UPKAR Prakashan and another book of Drishti for UGC NET JRF, available with the petitioner shows that both (A) and (D) answers are correct.

Question No.34

Among the following scholars who first put forth the Global Strategic View Model?

- (A) A.T. Mahan (B) S.B. Cohen
(C) A.D. Seversky (D) N.J. Spiikeman

As per the answer key, the correct answer is (A) whereas as per the relevant pages of books of Political Geography written by Dr. S. Adhikari and Dr. Ratan Kumar and another book of Political Geography written by Ramesh Dutta Dikshit as well as by R.C. Tiwari, available with the petitioner, the correct answer is (B).

Question No.55

Which of the following types of spectrum of Remote Sensing would be best suited for locating deforestation?

- (A) Thermal Infrared (B) Visible Spectrum Band 0.4
(C) Visible Spectrum Band 0.5 (D) False Colour Composite

As per the answer key, the correct answer is (D) whereas as per the relevant pages of books of Principle of Remote Sensing and Geographical Information System written by Dr. Devidutta Chounial and another book of Arihant Publication UGC NET as well as TATA McGraw-Hills written by D.R. Khullar, available to the petitioner, the correct answer is (A) .

Question No.65

Which of the following process is called by alternate wetting and drying of rocks?

- (A) Slaking (B) Sheeting
(C) Spalling (D) Flaking

As per the answer key, the correct answer is (A) whereas as per the relevant pages of books of Bhuaakriti Vigyan ka Swaroop written by Savindra Singh, available with the petitioner, the correct answer is (D).

Question No.66

With references to Endogenetic Forces, which of the following statement is/ are correct?

- (1) Extreme event like earthquake and volcanic eruptions are caused by diastrophic forces
(2) Tensional Forces cause up warping and down warping
(A) Only 1 (B) Only 2
(C) Only 1 and 2 (D) Neither 1 nor 2

The question paper is in diglot and the answers in hindi language is different from english language, therefore, the question may be deleted as there is no mechanism to know in which the language the aspirant has opted. In case, the said question is not deleted it will create anomaly.

अन्तर्जात बल के सन्दर्भ में निम्नलिखित कथनों में से कौन सा सही है/हैं?

(1) भूकंप और ज्वालामुखी विस्फोट जैसी आकस्मिक घटनाएं अन्तर्जात बलों द्वारा उत्पन्न होती हैं /

(2) उत्समवलन और असंवलन तनाव बलों द्वारा उत्पन्न होते हैं /

नीचे दिए गए कूट से सही उत्तर चुनिए:

- (A) केवल १ (B) केवल २
(C) १ और २ दोनों (D) न तो १ और न ही २

In support of their submission/objection, petitioners have placed reliance the relevant pages of books of Bhautik Bhoogol ka Swaroop written by Savindra Singh and another book of Arihant Publication UGC NET.

Question No.79

Which of the following is not correctly matched?

(Ocean Deposits)	(Source)
(A) Ooze	- Biotic
(B) Red Clay	- Biotic
(C) Tiktites	- Cosmogeneous
(D) Mud	- Volcanic

As per the answer key, the correct answer is (D) whereas relying upon the book of Samudra Vigyan written by Savindra Singh and another book of Bhautik Bhoogol ka Swaroop written by Savindra Singh, the correct answer is (B).

7. The petitioners are confident and self possessed that in case the answers as relied upon by the petitioners and raised in their objections, if taken into consideration, the petitioners will qualify in the written examination.

8. Learned counsel for the petitioners submits that the petitioners while raising their objections has placed reliance upon the reliable and renowned books, therefore, their objections should have been taken into consideration prior to declaration of the result. The conduct of the respondents to declare the result without considering the objections of the petitioners amounts to arbitrariness and hard-heartedness on their part, therefore, he submits that the selection of the petitioners on the post of Assistant Professor (Geography) has been denied by not taking into consideration the objections as raised by the petitioners, which in case done, the petitioners would have succeeded.

9. Thus, the present writ petition has been filed with the prayer to direct the respondents to re-evaluate the answer sheets on the basis of the answers as given by the petitioners in the objections placed before respondents-Commission and declare the result of the petitioners accordingly.

10. On the other hand Mr. Gagan Mehta, learned counsel for respondent nos. 2 & 3 and Mr. Shailendra Singh, learned Standing Counsel for the State respondents submit that the relief as prayed on behalf of the petitioners cannot be granted by this Court while exercising its power under Article 226 of the Constitution of India. The request of the petitioners for re-evaluation of the answer sheets regarding question no.3, 29, 55, 65, 66 and 79 cannot be

accepted as the correctness of the option given in the answer key is based upon experts opinion as obtained by the respondent-Commission and in the opinion of the subject experts, the answer key has been rightly uploaded. Since the answer key has been examined by the subject experts and the petitioners have not pleaded mala fide as against the respondents, as such no judicial review would lie and the writ petition is liable to be dismissed.

11. Learned counsel for respondent-Commission has specifically mentioned that panel of examiners and experts is an independent body as the same has been constituted under Regulation 12 of the U.P. High Education Service Commission (Procedure for Selection of Teachers) Regulations, 2014, which reads as follows:-

“(1) The Chairman Examination Committee shall prepare for every subject, a list of persons qualified for appointment as examiners and submit the same for approval to the Commission, such list shall be revised at least once in every two years:

Provided that a person included in the previous list shall be eligible for inclusion in the revised list.

(2) The list referred in sub-section (1) shall contain, as far as possible, information about the persons included therein regard to their academic qualifications, teaching experience at the degree and the postgraduate levels or professional experience and, the particulars, of the earlier examinations conducted by the Commission in which they acted as examiners.

(3) The Chairman Examination Committee shall, with the prior approval of the Commission, appoint Paper Setters and Moderators from amongst the persons included in the list referred to in sub-section (1).

(4) In making such appointments every care shall be taken to ensure that no person as so appointed who was found guilty of misconduct by any university, Government or Government body, or against whom any inquiries or investigations are pending or allegations of misconduct, or whose integrity is doubtful. Any person whose work as Head Examiner, Paper Setter or Valuer is found to be unsatisfactory by the Commission shall not be reappointed for that purpose.”

12. The examiners as well as experts being an independent body, their decision cannot be interfered as the same is given after proper consultation and research. They further submit that in case of any mistake, the benefit of

change in the answer key is given to each and every candidate, after following due process. The change in the tentative answer key can be made only after the expert opinion, the Commission takes into consideration the objections as raised by the candidates and after placing the same before the experts, the answer key is uploaded. The deletion of answer can be possible only after the experts opinion and benefit of deleted question is given to each and every candidate, in such a manner that there is no discrepancy or discrimination with any candidates.

13. As regards the issue regarding discrepancy between English and Hindi version, the instruction no.15 of the question booklet itself provides that the English version will be taken as final, Instruction No.15, reads as follows:-

“यदि हिंदी या अंग्रेजी विवरण में कोई विसंगति हो तो अंग्रेजी विवरण अंतिम माना जायेगा /

In case of any discrepancy between the English and Hindi version, English version will be taken as final.”

14. They further submit that the objections as raised by the candidates to the answer key was taken into consideration and the duly appointed experts of the subjects submitted their opinion on the same before the Commission placing reliance upon books like fundamentals of remote sensing by George Joseph and physical Geography by Sunil Singh from which specially question no.55, 65, 66 and 79 were verified.

15. Only after taking into consideration the experts opinion, after considering the objections raised by the candidates, the final key was published on 11.02.2022.

16. Lastly, learned counsel for respondents submit that there is no provision of re-evaluation, therefore, the re-evaluation of answer sheets cannot be permitted as prayed by the petitioners. In support of their submission, they relying upon the judgement of **High Court of Tripura Vs. Tirtha Sarathi Mukherjee and Others**, reported in 2009 II SCALE 708, H.P. **Service Commission Vs. Mukesh Thakur and Others**, reported in AIR 2010 SC 2620 and **Ran Vijay Singh and Others Vs. State of U.P. and Others**, reported in AIR 2018 SC 52.

17. Therefore, learned counsel for respondents submit that the writ petition is not maintainable and the same is liable to be dismissed.

18. I have considered the submissions made on behalf of learned counsel for the parties and have gone through the records of the present writ petition.

19. Learned counsel for the petitioners has not brought to this Court's attention any Rules, Regulations or any guidelines framed by the respondents, notification or circular issued by the respondents or any authority of law that may permit re-evaluation.

20. The issue of re-evaluation of answer book or sheet is no more res integra. This issue has been considered by the Apex Court in the case of **Maharashtra State Board of Secondary and Higher Secondary Education & Anr. Vs. Paritosh Bhupesh Kurmarsheth & Ors.**, reported in AIR 1984 SC 1543, wherein the Apex Court rejected the contention that in absence of provision for re-evaluation, a direction to this effect can be issued by the Court. The Apex Court further held that even the policy decision incorporated in the Rules/Regulations providing for rechecking/ verification/ re-evaluation cannot be challenged unless there are grounds to show that the policy itself is in violation of some statutory provision. The Apex Court held as under:-

"In our opinion, this approach made by the High Court was not correct or proper because the question whether a particular piece of delegated legislation - whether a rule or regulation or other type of statutory instrument - is in excess of the power of subordinate legislation conferred on the delegate as to be determined with reference only to the specific provisions contained in the relevant statute conferring the power to make the rule, regulation, etc. and also the object and purpose of the Act as can be gathered from the various provisions of the enactment. It would be wholly wrong for the court to substitute its own opinion for that of the legislature or its delegate as to what principle or policy would best serve the objects and purposes of the Act and to sit in judgment over the wisdom and effectiveness or otherwise of the policy laid down by the regulation-making body and declare a regulation to be ultra vires merely on the ground that, in the view of the Court, the impugned provisions will not help to serve the object and purpose of the Act. So long as the body entrusted with the task of framing the rules

or regulations acts within the scope of the authority conferred on it, in the sense that the rules or regulations made by it have a rational nexus with the object and purpose of the Statute, the court should not concern itself with the wisdom or efficaciousness of such rules or regulations. It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy, how the provisions of the Statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act. It is not for the Court to examine the merits or demerits of such a policy because its scrutiny has to be limited to the question as to whether the impugned regulations fall within the scope of the regulation-making power conferred on the delegate by the Statute.

In our opinion, the aforesaid approach made by the High Court is wholly incorrect and fallacious. The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any draw-backs in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution."

21. This view referred to above has been approved, relied upon and reiterated by the Apex Court in the case of **Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission, Patna & Ors**, reported in **J.T. 2004 SC 380** observing as under:

"Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for re-evaluation of his

answer-book. There is a provision for scrutiny only wherein the answer-books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totalling of marks of each question and nothing them correctly on the first cover page of the answer-book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. In the absence of any provision for re-evaluation of answer-books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re-evaluation of his marks."

22. This Court feels that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheets. The law is well settled that the burden is on the candidates, not only to demonstrate that the key answer is incorrect but also to show 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. The Court should not over step its jurisdiction by giving the directions for re-evaluation which would amount to judicially reviewing the decision of the expert in the field.

23. The legal position in this respect has been summarised in case of **Ran Vijay Singh and Ors. Vs. State of U.P. and Ors.**, reported in (2018) 2 SCC 357 which is follows:-

"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.”

24. Undoubtedly, the Courts cannot judicially review the expert opinion unless and until the key answer is patently wrong.

25. There is no doubt that the candidates put in dreadful efforts while preparing for an examination, it must not be unremembered that even the examination authorities as well as experts put in equally great efforts to successfully conduct the examination, therefore 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.

26. Therefore, the Court should restrain in interfering with the efforts put in by the candidates as well as the examination authorities unless and until the mistake is apparent on the face of record and no research has to be done in proving the same, as the same will be an unending process resulting in uncertainty and confusion.

27. Keeping in mind the aforesaid, the Court in case of **U.P.S.C. and Ors. Vs. Rahul Singh and Ors.** reported in **AIR 2018 SC 2861** has observed as follows:-

“Unless the candidate demonstrate that the key answers are patently wrong on the fact of it, the Courts cannot enter into the academic field, weigh the pros cons of the arguments given by both sides and then come to the conclusion as to which of the answer is better or more correct.”

28. Indubitably, conducting and holding of examinations in a most fitting and fair manner is peremptory and is solemn duty of examining body to provide for fair procedure, rules, regulations or bye-laws, keeping in mind

that the career and fate of the students depends upon the result of the examinations.

29. A Constitution Bench of the Apex Court in the case of **University of Mysore Vs. C.D. Govinda Rao & Anr.**, reported in AIR 1965 SC 491, has held that where the decision under challenge has been taken by the Committee of Expert, "normally the Courts should be slow to interfere with the opinion expressed by the experts" unless there are allegations of mala fide against any of the Members of the Expert Committee. The Court further observed as under:-

".....It would normally be wise and safe for the Courts to leave the decisions of academic matters to experts who are more familiar with the problems they face than Courts....."

30. It is settled law that when a decision is taken by the Committee of Expert having high academic qualifications and long experience in the specialised field, the Courts should not normally interfere in the matters unless there are compelling circumstances for doing so.

31. The aforesaid issue is also well settled in view of the judgement of Apex Court in case of **Bihar Staff Selection Commission Vs. Arun Kumar**, reported in (2020) 6 SCC 362. There are otherwise catena of judgements of Supreme Court holding that in the competitive selection test, prayer for re-evaluation of marks cannot be accepted unless a rule for it exists.

32. Taking into consideration the settled position of law in the matters where the answer key is disputed, this Court in case of **Jitendra Singh Vs. Union of India and Another**, passed in Writ C No. 53877 of 2017, has held that the Court has to proceed on the assumption and presumption that the answer key is correct as the same is based on experts opinion given by the persons specialised. In the event of any doubt, benefit should go to the examination authority rather than to the candidate. It is with a rider that the Court should not re-evaluate or scrutinize the answer sheets of the

candidates as it has no expertise in the matter, the academic matters are best left to the academicians there being no scope of judicial review in the matter.

33. Appropriately, considering the capitulations made by learned counsel for respondent no.2 and law laid down by the Apex Court, established position of law, this Court finds no good ground to interfere in the present petition, the same is accordingly dismissed.

Order Date :- 31.05.2022

Rahul.