

AFR
Reserved

In Chamber

Case :- SPECIAL APPEAL No. - 93 of 2023

Appellant :- Kapil Kumar And 7 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Appellant :- Prashant Mishra, Tarun Agrawal

Counsel for Respondent :- C.S.C.

With

Case :- SPECIAL APPEAL No. - 14 of 2023

Appellant :- Bablu Kumar And 9 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Appellant :- Shivendu Ojha, Sneh Pandey, Sr. Advocate

Counsel for Respondent :- C.S.C.

With

Case :- SPECIAL APPEAL No. - 15 of 2023

Appellant :- Samarjeet And 3 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Appellant :- Shivendu Ojha, Sneh Pandey, Sr. Advocate

Counsel for Respondent :- C.S.C.

With

Case :- SPECIAL APPEAL DEFECTIVE No. - 122 of 2023

Appellant :- Hari Shankar And 3 Others

Respondent :- State Of U P And 3 Others

Counsel for Appellant :- Shivendu Ojha, Sneh Pandey, Sr. Advocate

Counsel for Respondent :- C.S.C.

With

Case :- SPECIAL APPEAL DEFECTIVE No. - 163 of 2023

Appellant :- Desh Deepak

Respondent :- State Of U.P. And 4 Others

Counsel for Appellant :- Chandra Bhushan Singh, Punita Singh

Counsel for Respondent :- C.S.C.

Hon'ble Manoj Kumar Gupta, J.

Hon'ble Manish Kumar Nigam, J.

(Per Manoj Kumar Gupta, J.)

1. The present batch of intra-court appeals filed under Chapter VIII Rule 5 of the Allahabad High Court Rules seek to challenge identical orders and judgements of learned Single Judge dated 25.11.2022 dismissing the writ petitions filed by the appellants for a direction to

the respondents to declare them successful in the written examination held for the posts of Constables (Civil Police) and Provincial Armed Constabulary (PAC) in pursuance of advertisement dated 16.11.2018 issued by U.P. Police Recruitment and Promotional Board (respondent herein).

2. For sake of convenience, we treat Special Appeal No. 93 of 2023 as the leading case and the facts of that case are being noted. The facts of other cases are identical.

3. The selection was held as per the U.P. Police (Constable and Head Constable) Service Rules, 2015 as amended from time to time. It consisted of five stages i.e. (i) written examination (ii) documentary verification (iii) physical standard test (iv) physical efficiency test and (v) medical examination. A total of 31360 posts of Constables (Civil Police) and 18208 of Provincial Armed Constabulary (PAC) were advertised. The written examination was held on 27.01.2019 and 28.01.2019 in two separate shifts. The Recruitment Board notified the cut off marks of the written examination for each category on 20.11.2019 which are as follows:-

General	185.3465
OBC	172.3272
SC	145.3905
ST	114.1932

4. Thereafter by a notice dated 22.11.2019, the Recruitment Board intimated the appellants that document verification/physical standard test would be held for candidates numbering 2.5 times the total number of vacancies. Those who were successful, were made to undergo physical efficiency test. The appellants, being successful in document verification/physical standard test, were permitted to participate in physical efficiency test. The aforesaid exercise was held between 28.11.2019 and 28.1.2020.

5. The marks of individual candidates was notified on 20.02.2020 and simultaneously the list of candidates selected for medical examination was also uploaded on the website of the Recruitment Board. The final select list was uploaded on 2.03.2020 and the said list did not include the name of the appellants. All the appellants have obtained marks nearing the cut off marks in their respective category. There are eight appellants and the marks obtained by appellant nos. 1 to 8 therein are A1- 174.8497, A2-148.9982, A3-173.8156, A4-174.8497, A5-174.8497, A6-173.8156, A7-175.3667, A8-175.8837 respectively. Each correct answer was awarded plus two marks (+2) and a wrong answer minus 0.5 marks.

6. The writ petition was founded on the ground that key answer to Question No.68 of Test Booklet B, Series 17 pertaining to the candidates in Special Appeal No.93 of 2023 wrongly declares option

'D' as the correct answer, whereas the correct answer was option 'C'. Accordingly, if their contention would have been accepted by the Writ Court, they would have become successful to participate in the medical examination and if found fit therein, being appointed against the advertised posts.

7. Question no. 68 of test booklet-B, Series-17 was as under:

Q. 68. At 9 PM, the hour hand faces north, which direction will the minute hand face at 6:30 AM?

- A) North B) East
C) West D) South

8. The provisional key answers were initially uploaded on the website of the Board on 05.02.2019 and objections were invited on the same. According to the key answer uploaded on 05.02.2019, the correct answer to question no. 68 was option (C). Again on 12.03.2019, another set of provisional key answers was uploaded on the website and once again objections were invited by the Board. In second key answers uploaded on 12.03.2019 also, the correct answer of question no. 68 of test booklet-B, Series-17 was option (C). However, in the final answer key uploaded on 08.11.2019 on the website, the correct answer was changed to option (D). It is pertinent to mention that there was no provision for filing objections against the final answer key.

9. The writ petition filed by the appellants was dismissed by learned Single Judge with the finding that option (C) or (D) to question no. 68 (wrongly mentioned as question no. 69 in the impugned order) would be correct depending on how the question is interpreted and the Court is not well equipped to sit over the expertise of the expert body to take a decision with regard to correct answer unless some perversity and malafide is demonstrated.

10. By order dated 08.02.2023 this Court directed the respondents to file short counter affidavit disclosing the marks obtained by the appellants, cut off merit notified, whether the appellant would be above the cut off if answer is treated to be correct and how many seats remained vacant category wise.

11. In compliance of the aforesaid order, a short counter affidavit was filed by respondent no. 2, 3 & 4 and in which it is admitted that appellants 1, 2, 4, 5, 7 and 8 would obtain mark above the cut off marks of their respective category if option (C) would be taken as correct. In paragraph no. 6 of the short counter affidavit, a chart has been given to demonstrate the above stand. The same is reproduced below :

Sl. N.	Registration No.	Roll No.	Candidate Name	Category	Normalised marks	Category Cut-Off	Status of marks if Option C is treated as correct Option	Whether marks are above Category Cut-Off
1	10056929	2112060226	Kapil Kumar	OBC	174.8497	185.3465-CP 176.3834-PAC	177.3497	Yes
2	101242072	2412300281	Manoj Kumar	SC	148.9982	159.308-CP 149.5773-PAC	151.4982	Yes
3	101298772	2412190398	Manesh Kumar	OBC	173.8156	185.3465-CP 176.3834-PAC	176.3156	No
4	102060764	2482020516	Suraj Yadav	OBC	174.8497	185.3465-CP 176.3834-PAC	177.3497	Yes
5	100613831	2442020205	Jagmohan Yadav	OBC	174.8497	185.3465-CP 176.3834-PAC	177.3497	Yes
6	101186616	2122090280	Shashank Kumar	OBC	173.8156	185.3465-CP 176.3834-PAC	176.3156	No
7	100868755	2152060325	Ajit Kumar Yadav	OBC	175.3667	185.3465-CP 176.3834-PAC	177.8667	Yes
8	10059905	2112100019	Gaurav Singh	OBC	175.8837	185.3465-CP 176.3834-PAC	178.3837	Yes

12. It has been further stated in paragraph no. 9 of the short counter affidavit that TCS, the outsourcing agency, which conducted the examination, supported the change of answer key with the following explanations -

“Explanation:

The Question was in two Parts:

Part#1: At 9 p.m. the hour hand faces north.

Part#2: Which direction will the minute hand face at 6:30 a.m.?

There was no connection between these two Parts and neither did the Question indicate that it was referring to the same Clock referred in part 1. The Statement (or Part 1) was only meant as a misdirection to confuse candidates who would attempt the

answer without reading and analyzing the Question,

Actually, the Minute hand at 6.30 a.m. on all Clock always face South. Therefore, the correct answer was option D, 'South' and hence revised Answer Key assigned "D".

13. By order dated 06.04.2023, this Court directed the respondents to disclose the number of seats which had remained vacant in each category. The stand taken in the affidavit filed in compliance of said order is that after medical examination, 603 posts could not be filled up and these have been carried forward to the next recruitment, which admittedly has not been held so far.

14. These appeals were heard at length on 6.07.2023. It was contended on behalf of the appellants that the correct answer was option 'C' and for arriving at the aforesaid conclusion, no complex process of reasoning or rationalization is required. Even the Recruitment Board and the State does not dispute that when the hour hand faces North at 9:00 p.m. then minute hand would face West at 6:30 a.m. However, their contention that first part of the question was incorporated only to confuse the candidates and the same was to be ignored and only second part of the question should have been read in isolation, is wholly unsustainable in law. A question has to be read as a whole. A candidate is never expected to shut his eyes to or ignore any part of question and thereafter answer it. On the other hand, it was vehemently contended on behalf of the State respondents that Courts

should not assume the role of experts in such matters otherwise, it would result in overstepping its jurisdiction. Even in the event of doubt, the benefit should go to the Recruitment Board rather than to the appellants.

15. The aforesaid contentions were examined by this Court and a detailed order was passed on 6.07.2023 dealing with the arguments advanced by the parties. The relevant extract from the aforesaid order is extracted below:-

15. Learned Additional Advocate General and Additional Chief Standing Counsel places reliance on the judgment of Hon'ble Apex Court in **Ran Vijay Singh v. State of U.P.**¹, wherein it has been held as under:

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

30. 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 scrutinize the answer sheets of a candidate – it has no expertise in the matter and academic matters are best left to academics;”

Learned Additional Chief Standing Counsel vehemently

¹ (2018) 2 SCC 357

submitted that this Court should not embark upon an exercise to re-evaluate the question as the Court does not have expertise in the matter.

16. In response to the aforesaid submission, it is submitted by the learned counsel for the petitioner that if the petitioners are able to demonstrate ex-facie that the answer to question no. 68 was wrong then this Court may seek opinion of experts as was done by the Hon'ble Supreme Court in case of **Bihar Staff Selection Commission and others v. Arun Kumar and others**², wherein the Court has held as under:

“This court reiterates that the scope of judicial review under Article 226 in matters concerning evaluation of candidates-particularly, for purpose of recruitment to public services is narrow. The previous decisions of the court have constantly underscored that in the absence of any provision for re- evaluation of answer sheets, judicial review should be rarely exercised - preferably under exceptional circumstances.”

17. The Hon'ble Apex Court even in **Ran Vijay Singh and others** (Supra) did not altogether ruled out interference by the Court but held as under :

“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;”

(Emphasis supplied)

18. Again in paragraph 18 of the same judgement, the Supreme Court held that “a complete hands-off approach of no interference approach was neither suggested in **Himanchal Pradesh Public Service Commission vs. Mukesh Thakur and another**³ nor has it been suggested in any other decision of this Court-the case law developed over the years admits of interference in the result of an examination but in rare and

² 2020 SCC OnLine 1867

³ (2010) 6 SCC 759

exceptional situations and to a very limited extent.”

19. We have also examined the judgment of the Hon’ble Supreme Court in the case of **High Court of Tripura v. Tiratha Sarathi Mukherjee**⁴ wherein after considering number of judgements in this regard the Supreme Court has held that the Court can permit revaluation inter alia if it is demonstrated very clearly without any inferential process of reasoning or by a process of rationalisation and only in rare and exceptional cases that a material error has been committed.

20. We now proceed in the light of the principles enunciated by the Supreme Court. From the perusal of question no. 68 of the test booklet-B, Series-17, it is clear without undertaking any inferential process of reasoning that option 'C' was correct. When the hour hand faces 'North' at 09:00 P.M. then necessarily minute hand will face 'West' at 6:30 A.M. Even, respondents do not dispute that if the question is understood in its plain sense, the correct answer would be option 'C'

21. The question which now arises is whether a candidate appearing in the examination was required to interpret the question in the manner suggested by the respondents. We cannot lose sight of the fact that the examination was for selection of Constables. It was not an examination of Engineering students in respect to whom it can be assumed that their I.Q. level would be so high that they would not read the question in its natural sense, but answer it after ignoring the first part. In any event, if the direction of 'hour hand' was fixed by the first part of the question as facing North, there was no apparent reason to ignore the same and consider the latter part alone while answering the question. Would it not lead to confusion and ambiguity?

22. In our opinion, the question posed should be very clear and capable of one meaning only. The possibility of any other interpretation should be totally ruled out.

16. We thus held that a complete hands off approach of no interference has not been suggested in any of the judgments cited on behalf of the State otherwise it would be in derogation of the power of

4 (2019) 16 SCC 663

judicial review conferred on the Constitutional Courts. At the same time, interference should be in rare and exceptional situations where the mistake is apparent and where it does not involve any inferential process of reasoning or rationalization. It was also held that in fact, the issue was not regarding option 'C' being the correct answer when the question is read in plain sense, but whether a candidate appearing in the examination is supposed to answer the question after ignoring its first part, as suggested by TCS, the agency which conducted the examination on behalf of the Recruitment Board. This would amount to entering into realm of assumption, which, according to us, is simply not acceptable. A question has to be given its plain meaning and read as a whole. The candidates were being tested for reasoning and logic and not physics.

17. For testing logic and reasoning, often questions are based on a given assumption. The assumption on which question is founded is different from the actual state of affairs. The candidates are not supposed to import their understanding of the actual state of affairs, but answer the question on basis of the assumptive premise. A few illustrations of such questions are noted herein below:-

1. The square root of a number is defined as division of that number by 4. What shall be the square root of 64?
2. The gravitational pull on moon is one third of that of Earth. A man is able to jump 1 m on Earth with a certain effort. What

height he will be able to jump to at Moon, with the same effort?

18. A square root of a number is that number which when squared gives the original number. In other words, it is the number whose product by itself gives the original number. According to the definition of square root, the answer to the first question would be 8, but in the question asked, an artificial definition has been given to “square root” and according to which, correct answer would be 16. Likewise, it is known to every one that gravitational pull of Moon is one sixth that of Earth and therefore, a man would jump 6 meters on Moon with the same effort, but according to the question asked, answer would be 3. In such kind of questions, it is preposterous to suggest that first part of the question should be ignored for the reason that statement of fact contained therein is not correct.

19. Thus, it is not one of those cases where the dispute was with regard to correctness of the key answer but whether the stand of the Recruitment Board to ignore first part of the question should be accepted or not. This, in our opinion, was something which this Court itself was empowered to decide, but we preferred to proceed with extra caution and therefore, we referred the question for opinion of subject expert of repute. Accordingly, we requested Director, Indian Institute of Technology, Kanpur to nominate an expert from the

Faculty of Mathematics or any other field, who having regard to the nature of controversy, would be in position to assist this Court.

20. The Director, Indian Institute of Technology, Kanpur nominated Dr. Amit Mitra, Professor, Department of Mathematics and Statistics, IIT Kanpur as the expert. According to his report, it is option 'C' which is correct and not option 'D'. The relevant extract from his opinion is extracted below:-

“My observation regarding the question number 68 of Test Booklet B is:

It is obvious that if at 9 pm, the hour hand of the clock faces north (i.e. points towards north), then at 6:30 am the minute hand would face west. Hence, as per the statement and option list of question number 68 of Test Booklet B, the correct option should be (C) and NOT (D).”

21. Thereafter, counsel for the parties were supplied with the copy of his report. Learned counsel for the State and Recruitment Board submitted that even though the expert has opined in favour of the appellants, but this Court should dismiss the appeals as there has been considerable delay and vacancies have been carried forward to the next recruitment. In support of the said contention, reliance has been placed on the judgement of the Supreme Court in **State of U.P. and others Vs. Pankaj Kumar (Civil Appeal No.6860 of 2021)** decided on 18.11.2021 and **Civil Appeal No.1924 of 2010 Sankar Mondal**

Vs. State of West Bengal and others, decided on 15.02.2022. It is also submitted that in case of interference, it would adversely affect those who have already been selected and appointed.

22. On the other hand, counsel for the appellants submitted that the appellants approached this Court immediately after their individual scores were uploaded on the official website. It is also contended on their behalf that the Recruitment Board admits that after medical examination, 603 posts could not be filled up. It is submitted that the advertisement for the next recruitment has yet not been issued and therefore, there are sufficient vacant posts still available against which the appellants can be appointed. Thus, in pith and substance, the issue which remains unresolved is whether this Court should interfere in the matter or not and if yes, the relief to which the appellants are entitled to.

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 and another Vs. U.P. Public Service Commission, Allahabad and another**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 Vs. Samir Gupta and others**⁷ where the combined Pre-Medical Test was under scrutiny, the Supreme Court held key answers to various questions to be incorrect. While granting

5 (2007) 3 SCC 720

6 (2003) 12 SCC 709

7 (1983) 4 SCC 309

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 and others Vs. State of U.P. and others**, 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 Vs. V. Manoharan and others**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

8 (2011) 1 SCC 484

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. Vs. 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 judgement 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.

Order Date :- 31.10.2023

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(Manish Kumar Nigam, J.) (Manoj Kumar Gupta, J.)