2023 STPL(Web) 26 HP
HIGH COURT OF HIMACHAL PRADESH

(HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN AND HON'BLE MR. JUSTICE SATYEN VAIDYA, JJ.)

ARPAN SHARMA

Petitioner

VERSUS

STATE OF H.P. & ORS.

Respondents

DHEERAJ SHARMA

Petitioner

VERSUS

STATE OF H.P. & ORS.

Respondents

CWP No. 2556 of 2019 a/w CWP No. 2561 of 2019-Decided on 13.07.2023

Service Law

Service Law – Answer Key – Dispute regarding answer key – Staff Selection Commission filed compliance report, giving therein a detailed explanation alongwith documents in support of their claim. However, the petitioners would still contend that the answers as given by the respondents are still incorrect and are thus required to be rectified. Question is: what would be the scope of judicial review in the given facts and circumstances of the case. Held:The petitioners have not been able to show any provisions governing the process of selection from which they may grab the reliefs as claimed, rather the reliefs are not permissible and therefore, cannot be granted to the petitioners. Petition dismissed

(Para 9)

Advocate(s): For the petitioner(s) : Mr. Pankaj Thakur, Advocate.
For the respondents : Mr. Anup Rattan, Advocate General with Mr. Ramakant Sharma, Additional Advocate General and Mr. J.S. Guleria, Deputy Advocate General, for respondents No. 1 and 2. Mr. Sanjeev Kumar Motta, Advocate, for respondent No. 3.

JUDGMENT

Tarlok Singh Chauhan, Judge (Oral)-Since common questions of law and facts arise for consideration in both these petitions, they are taken up together for consideration and are now being disposed of vide common judgment.

2. The respondents vide advertisement dated 19.12.2018, invited applications from the eligible candidates for filling up the post of TGT (Non-Medical). The petitioners being fully eligible applied for the same and appeared in the written test held for the said purpose. According to the petitioners, the respondents released the provisional answer key of all the series of question paper and invited objections. Since the

petitioners found some of key answers to be incorrect, they too raised objections. Later, the respondents on 28.6.2019 declared the result, wherein the petitioners were declared as successful and were called for written objective test. However, when the final result for the post was declared on 5.8.2019, the petitioners were stunned and surprised to see that their names do not find mention in the final select list only because the respondents have not considered the objections raised by the petitioners regarding the correctness of question Nos. 25 and 51 in the case of petitioner in CWP No. 2561 of 2019 and question Nos. 125 and 144 in the case of petitioner in CWP No. 2556 of 2019 constraining the petitioners to file the present petitions seeking direction to the respondents to re-consider and re-examine the answer key.

3. On 12th August, 2021, a Coordinate Bench of this Court passed the following order:-

> "The respondent-H.P. Staff Selection Commission shall submit a report as to why the answers as furnished by the petitioners are not acceptable to them, alongwith reasons."

4. In compliance to the directions, the respondents have now filed compliance report, giving therein a detailed explanation alongwith documents in support of their claim. However, the petitioners would still contend that the answers as given by the respondents are still incorrect and are thus required to be rectified.

5. In such circumstances, the moot question is: what would be the scope of judicial review in the given facts and circumstances of the case. This question has already been considered by the Court in CWP No. 4999 of 2021, titled Upanshu Sharma vs. State of Himachal Pradesh and another and connected matter, decided on 7th September, 2021, wherein this Court has observed as under:-

> "12. The powers of this Court to have opinion different to that of the experts, in the matter of evaluation of answers in competitive examination, is well defined. In this context, reference can be made to the judgment passed by the Hon'ble Supreme Court in Maharashtra State Board of Secondary and Higher Secondary Education and another vs. Paritosh Bhupeshkumar Sheth and others (1984) 4 SCC 27, wherein it has held as under:
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> > "29. Far from advancing public interest and fair play to the other candidates in general, any such interpretation of the legal position would be wholly defeasive of the same. As has been repeatedly pointed out by this court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice. It is unfortunate that this principle has not been adequately kept in mind by the High Court while deciding the instant case."
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> 13. In Himachal Pradesh Public Service Commission vs. Mukesh Thakur and another (2010) 6 SCC 759, the Hon'ble Supreme Court has held as under:
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> > "20. In view of the above, it was not permissible for the High Court to examine the question paper and answer sheets itself, particularly, when the Commission had assessed

> the interse merit of the candidates. If there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the examination and not for respondent No.1 only. It is a matter of chance that the High Court was examining the answer sheets relating to law. Had it been other subjects like Physics, Chemistry and Mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court. Therefore, we are of the considered opinion that such a course was not permissible to the High Court."

14. In Central Board of Secondary Education through Secretary, All India Pre-Medical/PreDental Entrance Examination and others vs. Khushboo Shrivastava and others (2014) 14 SCC 523, the Hon'ble Supreme Court while noticing the judgment in Maharashtra State Board of Secondary and Higher Secondary Education case (supra) has held as under:

> "11. In our considered opinion, neither the learned Single Judge nor the Division Bench of the High Court could have substituted his/its own views for that of the examiners and awarded two additional marks to Respondent 1 for the two answers in exercise of powers of judicial review under Article 226 of the Constitution as these are purely academic matters……."

15. A Division Bench of this Court in Rustam Garg and others vs. Himachal Pradesh Public Service Commission, ILR 2016 Vol. (2), 591, while dealing with an identical proposition has held as under:

> "17. In view of the aforesaid exposition of law, we have no doubt in our mind that even when the revised key answers are impugned with respect to questions relating to the subject of law, it is not permissible for this Court to examine the question papers and answer sheets itself, particularly when the Commission has assessed the inter se merit of the candidates. It is not for the Court to take upon itself the task of the statutory authorities and substitute its own opinion for that of the experts."

6. The similar reiteration of law can be found in another decision of the learned Division Bench of this Court, authored by one of us (Justice Tarlok Singh Chauhan) in Bhupinder Singh vs. State of Himachal Pradesh and another 2021 (1) Him. L.R. (DB) 6 and in CWP No. 5524 of 2021 titled Smt. Mamta Thakur vs. State of H.P. and Others, decided on 27.09.2021.

7. We may, at this stage, refer to a fairly recent judgment rendered by three Judges of the Hon'ble Supreme Court in Vikesh Kumar Gupta and another vs. State of Rajasthan and others (2021) 2 SCC 309 wherein the Hon'ble Supreme Court held that though re-evaluation can be directed, if rules permit, however, deprecated the practice of re-evaluation and scrutiny of the questions by the Courts which lack expertise and it was further held that it was not permissible for the High Court to examine the question papers and answer sheets itself, particularly, when the Commission had assessed the inter se merit of the candidates. Courts have to show deference and consideration to the recommendations of the Expert Committee, who have expertise to evaluate and make recommendations. It shall be apposite to refer to the relevant observations as contained in paragraphs 13 to 17 which read as under:-

> "13. The point that arises for the consideration of this Court is whether the revised Select List dated 21.05.2019 ought to have been prepared on the basis of the 2nd Answer Key. The Appellants contend that the Wait List also should be prepared on the basis of the 3rd Answer Key and not on the basis of the 2nd Answer Key. The 2nd Answer Key was released by the RPSC on the basis of the recommendations made by the Expert Committee constituted pursuant to the directions issued by the High Court. Not being satisfied with the revised Select List which

included only a few candidates, certain unsuccessful candidates filed Appeals before the Division Bench which were disposed of on 12.03.2019. When the Division Bench was informed that the selections have been finalized on the basis of the 2nd Answer Key, it refused to interfere with the Select List prepared on 17.09.2018. However, the Division Bench examined the correctness of the questions and Answer Keys pointed by the Appellants therein and arrived at a conclusion that the answer key to 5 questions was erroneous. On the basis of the said findings, the Division Bench directed the RPSC to prepare revised Select List and apply it only to the Appellants before it.

14. Though re-evaluation can be directed if rules permit, this Court has deprecated the practice of reevaluation and scrutiny of the questions by the courts which lack expertise in academic matters. It is not permissible for the High Court to examine the question papers and answer sheets itself, particularly when the Commission has assessed the inter se merit of the candidates (Himachal Pradesh Public Service Commission v. Mukesh Thakur (2010) 6 SCC 759. Courts have to show deference and consideration to the recommendation of the Expert Committee who have the expertise to evaluate and make recommendations (See- Basavaiah v. H.L. Ramesh (2010) 8 SCC 372.

15. Examining the scope of judicial review with regards to re-evaluation of answer sheets, this Court in Ran Vijay Singh v. State of U.P. (2018) 2 SCC 357 held that court should not reevaluate or scrutinize the answer sheets of a candidate as it has no expertise in the matters and the academic matters are best left to academics. This Court in the said judgment further held as follows: (Ran Vijay Singh case 9, SCC pp. 369-70, paras 31-32)

> "31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing reevaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse— exclude the suspect or offending question.
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> 32. It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but 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. The present appeals are a classic example of the consequence of such interference where there is no finality to the result of the examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination — whether they have passed or not; whether their result will be approved or disapproved by the court; whether they will get admission in a college or university or not; and whether they will get recruited or not.

> This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion being worse confounded. The overall and larger impact of all this is that public interest suffers."
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> 16. In view of the above law laid down by this Court, it was not open to the Division Bench to have examined the correctness of the questions and the answer key to come to a conclusion different from that of the Expert Committee in its judgment dated 12.03.2019. Reliance was placed by the Appellants on Richal v. Rajasthan Public Service Commission (2018) 8 SCC 81. In the said judgment, this Court interfered with the selection process only after obtaining the opinion of an expert committee but did not enter into the correctness of the questions and answers by itself. Therefore, the said judgment is not relevant for adjudication of the dispute in this case.
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> 17. A perusal of the above judgments would make it clear that courts should be very slow in interfering with expert opinion in academic matters. In any event, assessment of the questions by the courts itself to arrive at correct answers is not permissible. The delay in finalization of appointments to public posts is mainly caused due to pendency of cases challenging selections pending in courts for a long period of time. The cascading effect of delay in appointments is the continuance of those appointed on temporary basis and their claims for regularization. The other consequence resulting from delayed appointments to public posts is the serious damage caused to administration due to lack of sufficient personnel."

8. Similar issue came up recently before the Hon'ble Supreme Court in AIR 2022 SC 5523, titled Dr. NTR University of Health Sciences v. Dr. Yerra Trinadh and others, wherein Hon'ble Supreme Court deprecated the practice being followed by some of the High Courts where in absence of specific provisions in the relevant rules regarding re-evaluation, the Courts were still calling for the answer scripts/answer sheets and thereafter ordering re-evaluation of the answer scripts while exercising powers under Article 226 of the Constitution. It shall be apt to reproduce the relevant observations, as contained in paras-5, 8 and 9 of the judgment, which read as under:-

> "5. Learned counsel appearing on behalf of the University has vehemently submitted that in absence of any provision for re-evaluation, the High Court was not justified in ordering reevaluation of the answer sheets/answer scripts and that too while exercising powers under Article 226 of the Constitution of India. In support of his submission, heavy reliance is placed on the decision of this Court in the case of Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, Patna & Others, (2004) 6 SCC 714) (paragraph7 & 8); and the recent decision of this Court in the case of Vikesh Kumar Gupta & Another v. State of Rajasthan & Others, (2021) 2 SCC 309.
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> 5.1 Learned counsel appearing on behalf of the appellant-University has taken us to the affidavit of the Registrar, filed pursuant to the order passed by this Court on 17.01.2022, by which the University was permitted to file an affidavit giving the details of the digital evaluation of the answer sheets. It is submitted that the University has introduced digital evaluation (online evaluation) for the answer scripts of PG Degree/Diploma Examinations. It is submitted that initially the pilot project was entrusted to M/s. Globarena Technologies Pvt. Ltd., Hyderabad which had scanned the answer sheets for online evaluation and the same were evaluated online by the examiners. It is submitted that after satisfying the pilot project for digital evaluation, the University placed the same in 221st meeting of the Executive Council held on 13.07.2016 and the Executive Council verified the method of digital evaluation and the services of the nodal company under the supervision of the University. It is submitted that thereafter the resolution was passed by the Executive Council to go for digital evaluation. It is submitted that in pursuance of the said resolution, the University has evaluated the answer scripts digitally for every examination

and there is no manual evaluation after the resolution by the Executive Council for digital evaluation.

5.2 It is further submitted that thereafter and after passing the judgment by the High Court in Writ Petition No. 26929/2016, the University has taken steps to rectify the defects pointed out by the High Court and improved the system of digital evaluation. It is submitted that subsequently the present digital evaluation system after improvements and modifications has been approved by the High Court in the recent decision in Writ Petition No. 15865/2022.

8. While considering the aforesaid issue/question, few decisions of this Court including two, referred to hereinabove, which have been relied upon by the learned counsel appearing on behalf of the University, are required to be referred to and considered.

8.1 In the case of Pramod Kumar Srivastava (supra), it is observed and held by this Court that in absence of any provision for re-evaluation in the relevant rules, examinees have no right to claim or demand reevaluation. In paragraphs 7 & 8, it is observed and held as under:

> "7. We have heard the appellant (writ petitioner) in person and learned counsel for the respondents at considerable length. The main question which arises for consideration is whether the learned Single Judge was justified in directing re-evaluation of the answer-book of the appellant in General Science paper. Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for reevaluation 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 noting 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. This question was examined in considerable detail in Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth [(1984) 4 SCC 27: AIR 1984 SC 1543]. In this case, the relevant rules provided for verification (scrutiny of marks) on an application made to that effect by a candidate. Some of the students filed writ petitions praying that they may be allowed to inspect the answer-books and the Board be directed to conduct re-evaluation of such of the answer-books as the petitioners may demand after inspection. The High Court held that the rule providing for verification of marks gave an implied power to the examinees to demand a disclosure and inspection and also to seek reevaluation of the answer-books. The judgment of the High Court was set aside and it was held that in absence of a specific provision conferring a right upon an examinee to have his answerbooks re-evaluated, no such direction can be issued. There is no dispute that under the relevant rule of the Commission there is no provision entitling a candidate to have his answer-books re-evaluated. In such a situation, the prayer made by the appellant in the writ petition was wholly untenable and the learned Single Judge had clearly erred in having the answer-book of the appellant re-evaluated.
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> 8. Adopting such a course as was done by the learned Single Judge will give rise to practical problems. Many candidates may like to take a chance and pray for re-evaluation of their answerbooks. Naturally, the Court will pass orders on different dates as and when writ petitions are filed. The Commission will have to then send the copies of individual candidates to examiners for re-evaluation which is bound to take time. The examination

conducted by the Commission being a competitive examination, the declaration of final result will thus be unduly delayed and the vacancies will remain unfilled for a long time. What will happen if a candidate secures lesser marks in re-evaluation? He may come forward with a plea that the marks as originally awarded to him may be taken into consideration. The absence of clear rules on the subject may throw many problems and in the larger interest, they must be avoided."

8.2 In the case of Ran Vijay Singh v. State of U.P., (2018) 2 SCC 357, in paragraph 32, it is observed and held as under:

> "32. It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but 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. The present appeals are a classic example of the consequence of such interference where there is no finality to the result of the examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination - whether they have passed or not; whether their result will be approved or disapproved by the court; whether they will get admission in a college or university or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion being worse confounded. The overall and larger impact of all this is that public interest suffers."

8.3 In the case of Vikesh Kumar Gupta (supra), after considering catena of decisions on scope of judicial review with regard to reevaluation of the answer sheets, it is observed and held that the court should not re-evaluate or scrutinise the answer sheets of a candidate as it has no expertise in the matter and the academic matters are best left to academics.

9. Applying the law laid down by this Court in the aforesaid decisions to the facts and circumstances of the case on hand, we are of the opinion that the High Court was not at all justified in calling the record of the answer scripts and then to satisfy whether there was a need for reevaluation or not. As reported, the High Courts are calling for the answer scripts/sheets for satisfying whether there is a need for reevaluation or not and thereafter orders/directs reevaluation, which is wholly impermissible. Such a practice of calling for answer scripts/answer sheets and thereafter to order re-evaluation and that too in absence of any specific provision in the relevant rules for re-evaluation and that too while exercising powers under Article 226 of the Constitution of India is disapproved."

9. Keeping in view the aforesaid exposition of law, the reliefs, as claimed by the petitioners cannot be granted. In fact, there were no necessity for the Court to have passed the order dated 21.8.2019 keeping in

view the restrictive scope of judicial law in such matters. The petitioners have not been able to show any provisions governing the process of selection from which they may grab the reliefs as claimed, rather the reliefs are not permissible and therefore, cannot be granted to the petitioners.

10. In view of the aforesaid discussion and for the reasons stated above, we find no merit in these petitions and the same are accordingly dismissed, leaving the parties to bear their own costs. Pending miscellaneous application(s), if any, shall also stand disposed of.
