

**A.F.R.****Court No.39****Case :-** WRIT - A No. - 58554 of 2015**Petitioner :-** Anurag Tripathi**Respondent :-** U.P.P.S.C. And 2 Others**Counsel for Petitioner :-** Anurag Tripathi in person**Counsel for Respondent :-** C.S.C.,Ajay Kumar,Mahendra Narain Singh,
Ms. Meenakshi Singh**Hon'ble Dilip Gupta, J.****Hon'ble Amar Singh Chauhan, J.**

The petitioner, who had responded to the advertisement issued by the U.P. Public Service Commission, Allahabad¹ inviting applications for appointments of Civil Judges (Junior Division) in the U.P. Judicial Service, has challenged the key answers published by the Commission for Question No.45 of General Knowledge (First Paper) - 'C' Series as also Question Nos.10 and 21 of the Law (Second Paper) - 'C' Series of the preliminary examination 2015.

The selections are made after holding a preliminary examination and then a main examination followed by interviews. The preliminary examination was conducted by the Commission on 6 September 2015. The preliminary examination consisted of General Knowledge and Law Papers. It was objective in nature, each question containing four options out of which one option had to be selected by the candidates as the correct answer. The General Knowledge paper was of 150 questions carrying one mark each, while the Law Paper contained 150 questions carrying two marks each. Thus, the total marks of General Knowledge

¹ the Commission

were 150 while that of Law Paper were 300. The result of the preliminary examination was declared on 29 September 2015.

Initially, the key answers of the aforesaid papers were displayed on the website of the Commission from 12 September 2015 and objections were invited from candidates. In order to examine the objections, two separate subject expert Committees were constituted by the Commission. The Expert Committee, after considering the objections raised by the candidates, deleted certain questions and marks have been awarded to them on the basis of a formula which is as follows:

$$\text{Total marks obtained} = \frac{\text{total number of marks X No. of correct answer given by the candidate}}{\text{total number of questions – number of deleted questions}}$$

The petitioner, who belongs to the general category, obtained 70 marks in General Knowledge Paper and 230 marks in Law Paper. Thus, in total he obtained 300 marks whereas the cut off mark for the general category was declared as 301. The main examination was conducted by the Commission on 29 October 2015 and the petitioner was permitted to appear at the main examination in view of the interim order dated 15 October 2015. The Court has been informed that interviews are being conducted.

The petitioner has raised doubts on the answers to Question No.45 of General Knowledge paper and Question Nos.10 and 21 of Law paper-'C' Series. Question 45 of General Knowledge (First Paper)-'C' Series with the four options is as follows:

“45. Badrinath is located in
(a) Kumaun Himalaya

- (b) Central Himalaya
- (c) Himadri
- (d) Trans-Himalaya”

The Commission had earlier declared option '(a)-Kumaun Himalaya' as the correct answer to Question No.45 of the General Knowledge Paper but subsequently the Expert Committee constituted by the Commission to examine the objections submitted by the candidates who had appeared in the preliminary examination, modified it to option '(b)-Central Himalaya'.

The contention of the petitioner, who has appeared in person, is that option '(a)-Kumaun Himalaya' which was earlier declared by the Commission is the correct answer and option '(b)-Central Himalaya' which was subsequently modified by the Commission is not the correct answer.

The Commission has produced the report submitted by the Expert Committee after examining the objections raised by the candidates. This report mentions that after the separation of Uttarakhand from Uttar Pradesh, the Central Himalaya in Uttarakhand has been divided into two (i) Garhwal Himalaya and (ii) Kumayun Himalaya. Since Badrinath is located in Chamoli District of Garhwal Himalaya which forms part of Central Himalaya and Central Himalaya includes Kumaun Himalaya, Garhwal Himalaya and Himadri, the nearest correct answer is Central Himalaya.

This report has been seriously disputed by the petitioner and it is sought to be contended that Badrinath falls in Kumaun Himalaya and not

Central Himalaya. In support of his contention, the petitioner has placed reliance upon certain books namely, 'Bhugol - Ek Samagra Addhyan' by Mahesh Kumar Barnwal, 'Encyclopaedia Britannica', 'Bharat Ka Bhugol' by R.C. Tiwari, 'Geography of India' by Ram Chandra Tiwari, 'Bharat Ka Bhugol' by Ramesh Singh and has contended that in all these books it has been clearly stated that Badrinath village and Shrine in northeastern Uttarakhand State is situated in Kumaun Himalaya. According to the petitioner, all these books emphasise that Kumaun Himalaya extends from river Satluj to the river Kali covering a length of about 320 kms. and its highest peak is Nanda Devi (7818 mts). The peaks also include Badrinath at 7069 mts, Kedarnath at 6940 mts, Trisul at 7120 mts and others. The petitioner also contends that these books also emphasise that Central Himalaya stretches from river Kali to river Tista covering a distance of about 800 kms. and major part of it lies in Nepal except the Sikkim Himalaya and Darjeeling Himalaya in West Bengal and does not include Badrinath.

Faced with the report submitted by the Expert Committee constituted by the Commission and the books placed before the Court by the petitioner in person in regard to the location of Badrinath in the Himalayas, we called upon learned counsel appearing for the Commission and the petitioner in person to place before the Court any other relevant material since the issue that is required to be decided is whether Badrinath falls in Kumaun Himalaya or Central Himalaya. Ms.

Meenakshi Singh, learned counsel for the State has also very ably assisted the Court in this matter and has placed the relevant material.

Himalayas have been divided on regional basis. They are Punjab Himalayas, Kumaun Himalayas, Nepal Himalayas, Assam Himalayas, Western Himalayas, Central Himalayas and Eastern Himalayas. We are concerned with the Kumaun Himalayas and Central Himalayas and they are described as follows:

“Kumaun Himalayas - Between the Satluj and the Kali rivers is the 320 km long Kumaun Himalaya. Its western part is called Garhwal Himalaya and the eastern part is known as Kumaun Himalaya. The general elevation is higher as compared to Punjab Himalaya. Nanda Devi, Kamet, Trisul, Badrinath, Kedamath and Gangotri are important peaks. Kumaun Himalaya is also the sources of sacred rivers like the Ganga and the Yamuna. There are several duns between the Middle Himalayas and Shiwalik Hills. Nainital and Bhimtal are important lakes.

Central Himalayas- The Central Himalayas extends from Kali river in the west to the Tista river in the east. It stretches from the distance of about 800 km. All the three Ranges of the Himalayas are present here. The Great Himalaya range attains maximum height in this portion. It is the abode of some of the highest and famous peaks of the world like Mount Everest, Kanchanjunga, Makalu, Annapurna and Dhaulagiri are located here. The Lesser Himalaya is known as Mahabharat Lekh in this region. The range is crossed by rivers like Ghagara, Gandak, Kosi, etc. In between the Great and the Lesser Himalayas, there are Kathmandu and Pokhra valleys which represent lacustrine deposit.”

With regard to the location of Badrinath vis-a-vis the State of Uttarakhand, the report of the Expert Committee mentions that since Badrinath is located in Chamoli District of Garhwal Himalaya which forms part of Central Himalaya and Central Himalaya includes Kumaun

Himalaya, Garhwal Himalaya and Himadri, the nearest correct answer is Central Himalaya. This is obviously a wrong reading. Central Himalaya does not include Kumaun Himalaya as they are two separate regions of Himalayas. The relevant books produced before the Court by the petitioner in person clearly support the position that Badrinath is located in Kumaun Himalaya which lies between Satluj and Kali rivers and not in Central Himalaya.

'Encyclopaedia Britannica' mentions that Badrinath is situated in Kumaun Himalayas and it is as follows :

“Badrinath, village (uninhabited in winter) and shrine in northeastern Uttarakhand state, northern India. It is situated in the Kumaun Himalayas along a headstream of the Ganges (Ganga) River, at an elevation of about 10,000 feet (3,000 metres). It is located along the twin mountain ranges of Nar and Narayan on the left bank of Alakananda River.”

The other publications produced by the petitioner are in Hindi and are to the same effect.

Ms. Meenakshi Singh, learned counsel appearing for the State has produced materials which support the case of the petitioner that Badrinath is located in Kumaun Himalaya and not in Central Himalaya. The extracts of 'Geography of India' by R.C. Tiwari, which have been placed by the learned counsel in regard to Kumaun Himalaya and Central Himalaya, are as follows:

“3. The Kumaun Himalayas- The Kumaun Himalayas lie between the Satluj and the Kali rivers, stretching to a length of 320 km and occupying an area of about 38,000 sq. km. Its highest peak is Nanda Devi (7817 m). Among the other peaks Kamet (7756

m), Trisul (7140 m), Badrinath (7138 m), Kedamath (6940 m), Dunagiri (7066 m), Jaonli or Shiving (6638 m), and Bandarpunch (6320 m) and important. Gangotri, Milam and Pindar are the main glaciers of Uttarakhand. The important hill stations include Mussorrie, Nainital, Ranikhet, Almora and Bageshwar. The Kumaun Himalayas are connected to Tibet by a number of passes namely, Mulinga-La (5669 m), Pana Pass, Niti Pass (5068 m), Tun-Jun-La, Shalsal Pass, Balcha Dhura, Kungrinbingri Pass, Lampiya Dhura, Mangsha Dhura, Marhi La (4993 m) and Lipu Lekh.

4. The Central Himalayas – This range stretches from river Kali to river Tista for about 800 km occupying an area of about 1,16,800 sq. km). A major part of it lies in Nepal except the extreme part called Sikkim Himalayas and in the Darjeeling District of West Bengal. All the three Ranges of the Himalayas are represent here. The highest peaks of the world like Mount Everest (8850 m), Kanchanjunga (8598 m), Makalu (8481 m), Dhaulagiri (8168 m), Annapurna (8075 m), Gosaithan (8014 m) are situated in this part of the Himalayas. It has very few passes. The passes of Nathu-La and Jelep-La (4538 m in Sikkim) connect Gangtok (Sikkim) with Lhasa (Tibet, China)”

Learned counsel for the Commission has not been able to produce any document or extract from books which may substantiate the case of the Commission that Badrinath is situated in Central Himalaya. The report of the Expert Committee is neither based on any book nor on the location of Badrinath in relation to Himalaya. It is, therefore, evident that the answer declared by the Commission at the initial stage that Badrinath is located in Kumaun Himalaya is the correct answer. The Committee that was subsequently constituted by the Commission to examine the objections completely misdirected itself and without any supporting material wrongly determined that Badrinath is located in Central

Himalaya. In the face of overwhelming evidence that has been brought on record, we have no doubts that Badrinath is located in Kumaun Himalaya.

The next issue that has been raised by the petitioner is with regard to two questions of Law (Second Paper)- 'C' Series, being question Nos.10 and 21.

Question No.10 with its options is as follows;

“10. Under Indian Penal Code, 1860 the defence of 'Consent' is not available in cases of
 (a) Consent to cause death
 (b) Consent to cause grievous hurt
 (c) Both (a) and (b)
 (d) None of the above”

In regard to the aforesaid question, the correct answer indicated by the Commission is option '(c)'. According to the petitioner, the correct answer is option '(a)'. Objections had been invited and the Expert Committee also maintained the earlier view that option '(c)' is the correct answer. The defence of consent is not available in cases of consent to cause death and consent to cause grievous hurt both and, therefore, option '(c)' is the correct answer. The petitioner is, therefore, not justified in contending that option '(a)' is the correct answer.

The petitioner has also assailed the answer to Question No.21 of Law Paper. Question No.21 with its options is as follows:

“21. In a case of breach of terms on which injunction was granted under Civil Procedure Code, 1908 the Court may pass an order of
 (a). attachment and sale of property,
 (b). attachment of property and detention in civil prison
 (c). arrest and detention in civil prison for 3 months
 (d). (a) and (c) both”

The correct answer initially published by the Commission to the aforesaid question is option '(b)' and this was maintained even after the objections. According to the petitioner, the correct answer is option '(d)'. The answer declared by the Commission is correct because in a case of breach of terms on which injunction was granted, the Court may pass an order for attachment of the property and detention in civil prison. The petitioner is, therefore, also not justified in asserting that option '(d)' is the correct answer.

The issue before the Court is whether it would be appropriate for the Court to interfere with the answers given by an Expert Body. Learned counsel for the Commission has placed reliance upon the judgment of the Supreme Court in **H.P. Public Service Commission Vs. Mukesh Thakur and another**² and a Division Bench of this Court in **Gulab Chand Bharati Vs. U.P. Public Service Commission, Allahabad and another**³, to support his contention that the Court should restrain itself from entertaining pleas regarding correctness of answers as it is for the expert body like the Public Service Commission to determine them.

Learned counsel for the petitioner has, however, placed reliance upon the decisions of the Supreme Court in **Kanpur University, through Vice-Chancellor and others Vs. Samir Gupta and others**,⁴ and **Rajesh Kumar and others Vs. State of Bihar and others**⁵, to support his contention that the key answers given by the expert body can be examined by Courts on the basis of information contained in the text

² (2010) 6 SCC 759

³ 2016 (2) ADJ 701 (DB)

⁴ (1983) 4 SCC 309

⁵ (2013) 4 SCC 690

books and other documents and that it would be unfair to penalize students because of wrong key answers.

In the instant case, it needs to be emphasised that the preliminary examination was an objective test in which one of the four options were required to be marked by the candidates as the correct answer. Thus, the answer would either be correct or wrong. It was not a subjective test where different examiners may award different marks for the same answer.

In **Kanpur University** (supra), the Supreme Court examined the key answer to questions which were doubted by the candidates and observed:

“16. Shri Kacker, who appears on behalf of the University, contended that no challenge should be allowed to be made to the correctness of a key answer unless, on the face of it, it is wrong. We agree that the key-answer should be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by an inferential process of reasoning or by a process of rationalisation. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well-versed in the particular subject would regard as correct. The contention of the University is falsified in this case by a large number of acknowledged text-books, which are commonly read by students in U.P. Those text-books leave no room for doubt that the answer given by the students is correct and the key answer is incorrect.

17. Students who have passed their Intermediate Board Examination are eligible to appear for the entrance Test for admission to the medical colleges in U.P. Certain books are prescribed for the Intermediate Board Examination and such knowledge of the subjects as the students have is derived from what is contained in those text-books. **Those text-books support the case of the students fully. If this were a**

case of doubt, we would have unquestionably preferred the key answer. But if the matter is beyond the realm of doubt, it would be unfair to penalise the students for not giving an answer which accords with the key answer, that is to say, with an answer which is demonstrated to be wrong.”

(emphasis supplied)

In the instant case, we have seen that the key answer supplied by the Commission to Question No.45 has been proved to be wrong not by an inferential process of reasoning but it has clearly been demonstrated to be wrong as no reasonable person well versed in that subject would regard the answer given by the Commission to Question No.45 as correct.

Thus, when the matter is beyond any doubt, it would be very unfair to penalise students, if they had opted for an answer, which is demonstrated to be correct, but has not been found to be correct by the Commission.

In **Rajesh Kumar** (supra), the Supreme Court examined an examination, where 45 model answers out of 100 were found to be incorrect but the list of selected candidates had already been sent to the State Government for issuing appointment orders. The writ petitioners had specifically averred that model key answer which formed the basis for evaluation was erroneous. The High Court examined as to whether the model answer was correct or not and the Supreme Court in this connection observed that the High Court aptly examined the matter and, on the basis of opinion of experts, found fault with the key answer. It, therefore, upheld the view taken by the High Court that the result of the

examination was vitiated. The Supreme Court also observed that if the result of the examination was vitiated by application of a wrong key answer, any appointment made on the basis of such a key answer would be unsustainable. However, as appointments had already been made and such persons had worked for seven years, the Supreme Court protected the appointments of such persons who had given wrong answers but which was declared to be correct by the Examining Body and placed them at the bottom of the select list. Persons whose answers were found to be correct by the Court were given the benefit.

In **H.P. Public Service Commission** (supra), the dispute was with regard to revaluation of answer sheets. It is as a result of revaluation that the candidate secured 119 marks and, therefore, was found eligible to be called for interview. This decision would, therefore, not help the Commission. The High Court had found that there had been some inconsistency in framing Question Nos.5 and 8 and in evaluation of the answer to the said questions. The questions were not objective but subject in nature. It is in this context that the Supreme Court observed that it was not permissible for the High Court to re-examine question paper and the answer sheet itself.

In **Gulab Chandra Bharati** (supra), the Expert Committee had proceeded to delete four questions and marks were awarded on the basis of a formula that had been determined by the Commission. The deletion of these four questions was called in question. Since no material could be

placed by the petitioner to assail the finding of the Expert Committee, the opinion of the Expert Committee was relied on by the Court.

In the present case, what needs to be noticed is that appointments have not been made as yet and, as stated by the learned counsel, only interviews are being held. It is on the basis of the marks declared by the Commission in the preliminary examination that candidates were called to appear at the main examination and they have been called for interview on the basis of the marks awarded in the main examination.

It is clear from the aforesaid discussions that the Commission has wrongly declared option '(b)' to Question No.45 of General Knowledge C-Series paper of the preliminary examination to be correct, whereas the correct answer is 'Kumaun Himalaya'. This error has resulted in the preparation of an incorrect list prepared by the Commission for calling candidates to appear at the main examination. The petitioner has appeared at the main examination on the basis of the interim order passed in this petition but his result has not been declared.

The issue before the Court is whether relief should be granted to the petitioner alone or to all the candidates who had appeared at the preliminary examination but had not been permitted to appear at the main examination even though they may have secured sufficient marks if the Commission had determined the correct key answer to Question No.45 of General Knowledge 'C'-Series.

It is contended by the learned counsel appearing for the Commission that only the petitioner should be granted the relief as other candidates have not approached the Court.

In our considered opinion, it is the duty of the Commission to award marks on the basis of a correct key answer. When large number of candidates appear at an examination for seeking appointments and the selection is very competitive, even one wrong answer to a question can alter the fate of many candidates. The petitioner may be entitled to appear at the main examination if he gets 301 marks because the answer to one question is correct but the Commission has marked it wrong. There may be number of candidates who could have appeared in the main examination because of the correct answer given by them to Question No.45 but which has been found to be incorrect by the Commission. We are conscious that the main examination has already been held and interviews are going on but it is also a fact that the final result has not been prepared. It would be wholly unjust to deprive such candidates who could not appear at the main examination for this reason. The purity in the selection process has to be maintained. The mistake committed by the Commission has to be rectified and the candidates who appeared at the preliminary examination cannot be made to suffer because of the mistake of the Commission. Such a course is being adopted as at present appointment orders have not been issued and only interviews are being conducted on the basis of the marks of candidates who had appeared at the main examination and the criteria determined by the Commission. In

such circumstances, it is considered appropriate to direct that relief should not be confined to the petitioner alone but to all the candidates who had appeared at the preliminary examination.

The Court may have taken a different view in restricting the relief to the petitioner alone if appointments had been offered after the interviews and such persons had worked for some period of time. If any mistake can be corrected before the appointment is made, it should be corrected because candidates should not be made to suffer on account of such discrepancy. In **Rajesh Kumar** (supra), the Supreme Court pointed out that the High Court was justified in moulding the relief prayed for and issuing directions considered necessary not only to maintain the purity of the selection process but to also ensure that no candidate earned an undeserved advantage over others by application of an erroneous key. The observations of the Supreme Court are as follows:

“15.The writ petitioners, it is evident, on a plain reading of the writ petition questioned not only the process of evaluation of the answer scripts by the Commission but specifically averred that the “Model Answer Key” which formed the basis for such evaluation was erroneous. **One of the questions that, therefore, fell for consideration by the High Court directly was whether the “Model Answer Key” was correct. The High Court had aptly referred that question to experts in the field who, as already noticed above, found the “Model Answer Key” to be erroneous in regard to as many as 45 questions out of a total of 100 questions contained in ‘A’ series question paper.** Other errors were also found to which we have referred earlier. **If the key which was used for evaluating the answer sheets was itself defective the result prepared on the basis of the same could be no different. The Division Bench of the High Court was, therefore, perfectly justified in holding that the result of the examination insofar**

as the same pertained to ‘A’ series question paper was vitiated. This was bound to affect the result of the entire examination qua every candidate whether or not he was a party to the proceedings. It also goes without saying that if the result was vitiated by the application of a wrong key, any appointment made on the basis thereof would also be rendered unsustainable. The High Court was, in that view, entitled to mould the relief prayed for in the writ petition and issue directions considered necessary not only to maintain the purity of the selection process but also to ensure that no candidate earned an undeserved advantage over others by application of an erroneous key.”

(emphasis supplied)

It is in this context that the Supreme Court also observed that the most natural and logical way for correcting the evaluation of the scripts was to correct the key and get the answer scripts re-evaluated on the basis thereof and there was no necessity of holding a fresh examination. Such a process would also not give any unfair advantage to any candidate. However, the Supreme Court protected the interest of the candidates who had already been appointed and had worked for seven years and the observations are :

“21. It goes without saying that the appellants were innocent parties who have not, in any manner, contributed to the preparation of the erroneous key or the distorted result. **There is no mention of any fraud or malpractice against the appellants who have served the State for nearly seven years now. In the circumstances, while inter-se merit position may be relevant for the appellants, the ouster of the latter need not be an inevitable and inexorable consequence of such a re-evaluation. The re-evaluation process may additionally benefit those who have lost the hope of an appointment on the basis of a wrong key applied for evaluating the answer scripts. Such of those candidates as may be ultimately found to be entitled to issue of appointment letters on the basis of their merit shall**

benefit by such re- evaluation and shall pick up their appointments on that basis according to their inter se position on the merit list.”

(emphasis supplied)

It also needs to be noted that only a very limited number of candidates will be disturbed. Each question of General Knowledge paper is of one mark only and only answers to two questions, one in this petition and other in the connected petition bearing Writ Petition No.57187 of 2015 (Rohit Nandan Shukla Vs. U.P.P.S.C. & Anr.), which has also been decided by order of date, have been found to be incorrect.

It would, therefore, be just and proper for the Court to direct the Commission to determine the marks of all the candidates, who had appeared at the preliminary examination, on the basis of the correct answer to Question No.45 of the General Knowledge 'C' Series paper. In case, candidates who have not been able to appear at the main examination but are found to be entitled to on the basis of a fresh revaluation done by the Commission, the Commission would have to take appropriate steps for conducting the main examination for such candidates and consequently hold interviews, if they are entitled to be called, in accordance with the marks awarded to them at the main examination and the procedure and guidelines set out for this purpose. The Commission need not hold the main examination or interviews for the candidates who have already appeared at the said examination and are found to be eligible to appear even after the declaration of the revised result of the preliminary examination but if any candidate has appeared and is not found to be eligible as he has not secured the requisite marks

after the revised result, his candidature can always be cancelled. The main examination, it is reiterated, should be held only for such candidates who now become eligible to appear at the main examination after revision of marks in the preliminary examination but could not appear earlier. This process should be undertaken at the earliest.

The writ petition, accordingly, succeeds and is allowed to the extent indicated above.

Date:26.04.2016

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(Dilip Gupta, J.)

(Amar Singh Chauhan, J.)