A.F.R.

Court No. - 39

Case :- WRIT - A No. - 57187 of 2015

Petitioner :- Rohit Nandan Shukla
Respondent :- U.P.P.S.C., Allahabad And Another

Counsel for Petitioner :- Anil Sharma
Counsel for Respondent :- Ajay Kumar, Mahendra Narain Singh
Ms. Meenakshi Singh

Hon'ble Dilip Gupta,J.
Hon'ble Amar Singh Chauhan,J.

The petitioner, who belongs to general category, responded to an advertisement issued by the U.P. Public Service Commission[1] inviting applications for appointments of Civil Judges (Junior Division) in the Uttar Pradesh Judicial Service.

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. The General Knowledge paper was of 150 questions carrying one mark each, while the Law Paper also contained 150 questions but of two marks each. Thus, the total marks of General Knowledge were 150 while that of Law Paper were 300. The result of the preliminary examination was declared on 29 September 2015.

The petitioner has challenged the key answers of the preliminary examination of two questions namely, Question Nos. 52 and 73 in 'C'

1. the Commission

Series of General Knowledge Paper. The Commission proposed four options (a), (b), (c) and (d) for each of the 150 questions and the candidates were required to select the correct option.

Initially, the key answers of the aforesaid two 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 for these questions on the basis of a formula which is as follows:

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

The petitioner, who belongs to the general category, obtained 81 marks in the General Knowledge Paper and 219 marks in Law Paper. Thus, in total he obtained 300 marks, whereas the cut off mark for general category was 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 passed in this petition. The Court has been informed that now interviews are being conducted.

The answers to the two questions, on which doubts have been raised by the petitioner, are as follows:

"**52**. Consider the statements:

Assertion (A) : The State Election Commission is appointed by the State Government
Reason (R) : It has the responsibility of holding elections to the Panchayati Raj institutions.
Select the correct answer using the codes given below:
(a) Both (A) and (R) are true and (R) is the correct explanation of (A).
(b) Both (A) and (R) are true, but (R) is not the correct explanation of (A).
(c) (A) is true, but (R) is false.
(d) (A) is false, but (R) is true.

73. The largest Mica producing State in India is:
(a) Jharkhand
(b) Andhra Pradesh
(c) Madhya Pradesh
(d) Rajasthan"

In regard to Question No. 52, the Commission had initially published the key answer declaring (d) as the correct answer, but on certain objections having been filed by the candidates, the Commission revised the correct answer to option (a). According to the petitioner, the correct answer is option (d).

Likewise for Question No. 73, the Commission initially declared option (a) as the correct answer, but on objections having been raised by candidates who had appeared in the examination, the Commission revised the answer to option (b). According to the petitioner, the correct answer is option (a).

We have examined the matter on the basis of material submitted by Shri Anil Sharma, learned counsel appearing for the petitioner, Shri M.N. Singh, learned counsel for U.P. Public Service Commission and Ms.

Meenakshi Singh, learned counsel for the State, who has very ably assisted the Court in the proceedings.

We shall first deal with Question No. 52. Assertion (A) is that the State Election Commission is appointed by the State Government. Reason (R) is that it has the responsibility of holding elections to the Panchayati Raj institutions. Initially, the Commission declared option (d) as the correct answer, but later on revised it to option (a).

Article 243K (1) of the Constitution deals with the elections to the Panchayats and is as follows:

> "Art. 243K (1) The Superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor."

Learned counsel for the Commission has not been able to place before the Court any material to substantiate that the State Election Commission is appointed by the State Government. The State Election Commission is constituted under Article 243K of the Constitution and it is not appointed by the State Government. The State Election Commissioner is appointed by the Governor of the State. We also called upon Sri Tarun Agarwal, learned counsel for the State Election Commission to verify the correct facts from the State Election Commission. Learned counsel, on instructions, has categorically stated that the State Election Commission has not been appointed by the State Government and that it has been constituted under Article 243K of the

Constitution. The Commission had initially declared option (d) as the correct answer, but later on declared option (a) as the correct answer. The reason which has weighed with the Committee constituted by the Commission to hold that option (a) is the correct answer is that 'State Election Commission holds the responsibility of conducting election of municipalities also'. The Expert Committee completely failed to examine as to whether Assertion (A) is correct or not. Obviously if Assertion (A) is incorrect, then option (a) cannot be the correct answer because it says that both (A) and (R) are true. We, therefore, have no hesitation in concluding that option (a) cannot be the correct answer because Assertion (A) is evidently not correct. Option (d) of Question No. 52 states '(A)' is false.

We shall now proceed to examine whether Reason (R) is true or not. As Article 243K, which constitutes the State Election Commission, provides that the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission, 'Reason (R)' that the State Election Commission has the responsibility of holding elections to the Panchayati Raj institutions is, therefore, correct. Option (d) states '(R)' is true.

The Expert Committee constituted by the Commission to examine the objections filed by the candidates failed to examine the issue in its correct perspective. It did not consider whether Assertion (A) is correct and it mainly relied upon the answer to Reason (R).

We, therefore, have no hesitation in concluding that option (d) which was the correct answer initially published by the Commission is the correct answer and the revision to option (d) as the correct answer on the basis of certain objections, is not justified.

The next answer that has been assailed by the petitioner is the answer to Question No. 73. According to the Commission, the largest Mica producing State in India is Andhra Pradesh, while according to the petitioner, it is Jharkhand. In this connection, it again needs to be noted that initially the Commission declared Jharkhand as the correct answer, but subsequently revised it to Andhra Pradesh.

In view of the conflicting versions placed before the Court by the learned counsel for the petitioner and learned counsel for the Commission, we called upon Shri Krishna Agarwal, learned counsel appearing for the Central Government to seek information from the Ministry of Indian Bureau of Mines, Government of India. Learned counsel has placed before the Court the communication dated 25 April 2016 sent by the Director (S) in the Ministry of Mines, Indian Bureau of Mines, Government of India, which is as follows:

> "1) This office receives returns of minerals covered under MCDR, 1988 in specified format. Based on the information received in the returns, the state-wise production details of crude Mica and Waste & Scrap Mica during 2010-11 to 2014-15 (P) is given below:

State-wise Production of Mica

(Quantity in tonnes)

Mineral	State	2010-11	2011-12	2012-13	2013-14	2014-15 (P)(@)
Mica (Crude)	**India**	**1333**	**1899**	**1256**	**1660**	**636**
Mica (Crude)	Andhra	1317	1784	1177	1660	636

	Pradesh*					
Mica (Crude)	Bihar	0	0	0	0	0
Mica (Crude)	Jharkhand	0	1	0	0	0
Mica (Crude)	Rajasthan	16	114	79	0	0
Mica(waste & Scrap)	**India**	**7311**	**14186**	**16255**	**19752**	**11852**
Mica (waste & Scrap)	Andhra Pradesh*	4648	7313	7415	7626	7644
Mica (waste & Scrap)	Bihar	1459	4632	2939	3381	1378
Mica (waste & Scrap)	Jharkhand	0	0	782	2110	0
Mica (waste & Scrap)	Rajasthan	1204	2241	5119	6635	2830

(P): Provisional: Source MCDR Returns: *: refers to the erstwhile Andhra Pradesh for 2010-11 to 2013-14 and refers to the newly formed Andhra Pradesh for 2014-15 @: upto January 2015.

It can be seen that Andhra Pradesh is the leading producer of Mica (Crude) and Waste & Scrap Mica during the last few years. Though Telangana was formed in June 2014, the production was reported only from the mines located in the newly formed Andhra Pradesh.

2) Subsequent to the release of IMYB 2013, this office has released the Indian Mineral Year Book 2014 which contains the production details of 2011-12, 2012-13 and 2013-14 (P). Monthly Statistics of Mineral Production for March 2015 which contains the revised date for 2013-14 and provisional date for 2014-15 was also released thereafter.

3) Vide notification GSR 423 (E) dated 10.02.2015, Mica has been declared as minor mineral and hence the production details for Mica is available till January 2015 for the year 2014-15."

Learned counsel has also placed before the Production of Mineral in March 2015 (excluding Atomic Minerals and Minor Minerals). Page 11 thereof deals with Mica. Both with regard to Mica (crude) and Mica (waste and scrap), it states that Andhra Pradesh is the leading State in the Country in the production of Mica.

Thus, from both the documents, it is more than apparent that it is Andhra Pradesh, even after bifurcation into Telangana and Andhra

Pradesh, that is the largest Mica producing State in the country. Thus, the answer declared by the Commission is correct.

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 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

2 (2010) 6 SCC 759
3 2016 (2) ADJ 701 (DB)
4 (1983) 4 SCC 309
5 (2013) 4 SCC 690

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.52 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.52 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.

We have concluded that the answer to Question No. 52 of General Knowledge 'C' Series has wrongly been determined by the Commission. This error has resulted in the preparation of an incorrect list prepared 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.52 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.52 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 applicable 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.58554 of 2015 (Anurag Tripathi Vs. U.P.P.S.C. And 2 Others), 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.52 of the General Knowledge 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.

Order Date :- 26.4.2016
Ishrat/SK

(Amar Singh Chauhan, J.) **(Dilip Gupta, J.)**