

(2019) 05 RAJ CK 0078

In the Rajasthan High Court

Case No : Civil Writ Petition No. 15068, 17574, 18466, 18516, 18519, 18526, 18529, 18543, 18619, Of 2018, 1242, 2613 Of 2019

Arun Kumar And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 10-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2019) 05 RAJ CK 0078

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Kailash Jangid, S.P. Sharma, D.S. Gharsana, B.S. Sandhu, Aruna Negi, Inderjeet Yadav, Kailash Choudhary, Manish Vyas

Final Decision : Dismissed

Judgement

These writ petitions have been filed by the petitioners questioning the validity of final select list for the post of Constable pursuant to the advertisement dated 25/5/18 & seeking issuance of fresh answer key considering the objections submitted by the petitioners as per the proof submitted and re-determine the merit list by constituting an expert committee and correcting the answer key.

It is inter alia indicated in the writ petitions that as per the advertisement, petitioners were required to appear in written examination and on clearing the written examination they were to undergo Physical Standard Test/ Physical Efficiency Test (PST/PET) and based on the merit they were to be selected. In terms of the advertisement dated 25/5/18, the written examination was to be held for 75 marks having 120 objective type questions which was comprised of three parts, (a) reasoning & logical ability having 30 questions of 30 marks (b) general awareness having 30 questions of 15 marks and (c) Rajasthan history having 60 questions of 30 marks. It was indicated that for passing the written test the candidates were required to obtain 40% marks in each part and with relaxation for candidates belonging to reserved category. It was also indicated

that negative marking was provided at 25% marks for each wrong answer.

The petitioners appeared in the written examination which was held in four shifts on 14th and 15th July 2018. The Model Answer Key was published on 19/8/18 calling for objections to the said Model Answer Key to which it is claimed that the petitioners raised objections qua several questions / answers. It is alleged by the petitioners that the respondents without deciding the objections which were raised qua model answer key published the list of selected candidates for PST/PET and scheduled the same at various places and in the case of Civil Writ No. 18519/2018 the same was scheduled on 14th September, 2018 and the final select list was published on 27/9/2018. It is alleged that after the issuance of the final select list the respondents issued revised answer key of the written examination on 31/10/18, wherein, for certain questions full marks were awarded. It is alleged that for certain questions, for which objections were raised the consideration was not made. As per the result declared, as the petitioners could not obtain the requisite marks / requisite minimum marks as required by the advertisement, the present petitions have been filed.

In Civil Writ Petition Nos. 18519/18, 18466/18, 18516/18, 18619/18 and 18543/18 submissions have been made that the procedure adopted by the respondents in publishing the final answer key after the recruitments was over is wholly erroneous and contrary to the law laid down in *M/s Utkarsh Classes vs State of Rajasthan & Ors.* : DB Civil Writ Petition (PIL) No. 12720/11 decided on 25/10/2012. Further objections were raised pertaining to three questions alleging the same to be incorrect / suggested answers being incorrect and, therefore, the candidates being entitled for award of full marks for the said questions and consequent revision of their result and determination of their merit.

In Civil Writ Petition No. 15068/18, 18519/18, 18526/18, 1242/19 and 2613/19 objections have been raised qua one question only regarding which objections have been raised by other petitioners also and the said question forms part of three questions regarding which they have raised objections.

It is inter alia submitted by learned counsel for the petitioners that the action of the respondents in issuing the select list without dealing with the objections as raised by the petitioners and publishing the revised answer key after the selection was over is per se illegal and, therefore, action in this regard deserves to be set aside.

Further, submissions were made that petitioners have raised objections qua several questions, few of which have been accepted by the respondents, however, three questions which were ex facie incorrect / suggested answers were incorrect have not been appropriately dealt with by the respondents and, therefore, the revised answer key to the said extent deserves to be set aside / modified.

A reply to the writ petitions has been filed by the respondents and it is submitted by learned counsel for the respondents that the allegations made by the

petitioners pertaining to the procedure adopted by the respondents is baseless. Submissions were made that written examination was held on 14th and 15th July 2018 in four shifts, model answer key was published on 19/7/18 calling for online objections, which were received by the respondents and after dealing with the same i.e seeking expert opinion qua each question regarding which objections were raised, a final answer key was prepared by the respondents around 14/8/18, however, looking to the nature of recruitment where another stage in recruitment i.e PST/PET was yet to be held, the final answer key and the marks of the candidates were not declared and the select list for the purpose of holding PST/PET was issued along with the cut off in each category. After the select lists were published for various Commissionerates after holding PST/PET, on 3/11/18 the final answer key as well as mark sheets of candidates all over the State were uploaded and as such the objection raised regarding preparation of the final answer key after the select list was prepared is baseless.

As soon as the objections were received they were got examined by the experts and expert committee after carefully considering the objections of the candidates came to the conclusion that the objections for six questions were valid out of which answer for one question was changed in the answer key and full marks were awarded for five questions to all the candidates. It is submitted that the very fact that even in case of petitioners, who had raised objections regarding other questions, which objections have been accepted and reflected in their mark sheets clearly shows that the objections were determined by the respondents before the marks were awarded and select list for appearance in PST/PET was issued by the respondents and, therefore, the objections with regard to procedure adopted by the respondents is baseless.

Further submissions were made that the objections raised by the petitioners qua the three questions have been duly considered by the expert committee and as no substance was found, the objections raised by the petitioners were rejected by the expert committee. Submissions were also made that as per the parameters laid down by Supreme Court in several cases, the decision of the expert body, in absence of very strong reason, does not call for any interference.

Reliance was placed on *Ran Vijay Singh vs. State of U.P.* : (2018) 2 SCC 357 and observations made in *Rameshvri Kumari vs. State of Rajasthan & Ors.* : SB Civil Writ Petition No. 3083/18 decided on 5/5/18.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

One of the objections which have been raised by the petitioners in few petitions pertain to the procedure adopted by the respondents and allegations have been made on the assumption that the respondents awarded the marks based on model answer key and then decided the objections and issued revised answer key after the appointments were given which is an incorrect procedure. The submissions made in this regard are apparently based on incomplete facts

inasmuch as it is evident that the written examinations were held on 14/15 July 2018 and the model answer key was published on 19/7/18 calling for the objections. Whereafter, the select list of the candidates, who were eligible to participate in the PST/PET based on the cut off declared in this regard in written examination was published, the candidates participated in the PST/PET whereafter, the final select list was published by the respondents and once the said exercise was over for all the Commissionerates in the State, along with uploading the revised answer key, marks obtained by the candidates in the written examinations were uploaded. The revised answer key indicated deletion of five questions/award of full marks in those questions and one answer from the model answer key was changed. It is not the case of any of the candidates that the marks uploaded does not take into consideration the full marks which have been awarded for five questions and one changed answer and, therefore, to contend that revised answer key was prepared by the respondents after the candidates were called for PST/PET is per se incorrect / baseless.

It is well settled that where recruitment is held in more than one stages, the recruitment agency is justified in not declaring the marks of the candidates eligible for the second stage of selection and mere publication of the cut off in this regard is sufficient. In the present case also, while issuing the select list the cut off has been declared by the respondents and in fact several other candidates at that stage also had challenged few of the answers indicated in the model answer key by the respondents on not finding their names in the select list. As such, the plea raised in this regard regarding adoption of incorrect procedure has no substance.

Coming to the challenge to questions/answers, Hon'ble Supreme Court in the case of *Ran Vijay Singh (supra)* has laid down the parameters for interference in such matters, which are as under:

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

(ii) 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; (iii) 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; (iv) The Court should presume the correctness of the key answers and proceed on that assumption; and (v) In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.

31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation 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.

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."

The three questions regarding which the objections have been raised in few petitions out of which one question is common in all the cases are question no. 337, 343 and 357 in Civil Writ Petition No.18519/2018, which are different in different petitions because of change in shift in which the petitioners have appeared. The questions along with options, model answer in three questions and objections thereof and determination are as under:

Question No.337.

"337. ??? ??? ?????? ?, ??, ?? ?? ?? ?? ??? ?????????? ???? ??? ?? ???? ???? ?? ????
?, ??, ??, ?? ?? ?? ?????? ?? ?????? ?? ?????? ?????? ???? ?????? ??? ?? ???? ?

A. ?? ?? ?

B. ?? ?? ??

C. ? ?? ??

D. ??? ?? ?????? ???? ???? ?

Model Answer indicated was (A).

It is submitted that the question is incorrect inasmuch as the ascending or descending order has not been indicated in the question. Reference has been made that till such time either the mass of each object is indicated and/or it is indicated as to the ascending or descending order qua the mass of each object, the question cannot be answered.

The expert committee on consideration of the objection raised by the petitioners came to the conclusion as under:

"Since density is mass/volume, for bodies having same mass the density will be more for body with less volume."

A perusal of the question clearly indicates that though the sequence of volume for four balls have been indicated as A, B, C & D, however, it is not indicated as to whether ball A is having least volume or ball D is having least volume and, therefore, of course there is a bit of confusion, but with little logic based on the options given, wherein, taking the volume of either A or D as having least/maximum volume, the only answer could be (A), as rest three answers were incorrect by any logic as the question clearly indicated the sequence of volume and, therefore, the objections raised in this regard, once the experts based on the material available before it came to the conclusion that option (A) as indicated was correct, does not call for any interference.

Question No. 343:

"343. ?????????????? ??, ?? ?????? ?? ???? ???? ??? ?? ?????? ?? ??? ?????? ?????? ?
? ?????? ?? ?????? ???? ?? ???? ?? ?

A. ????? ?????? B. ??????

C. ?????? D. ??????"

Model answer indicated was (C).

The said question has been challenged in all the writ petitions. It is submitted that as per the material produced, all the options given were wrong/incorrect and, therefore, the petitioners were entitled to full marks. Reference has been made to Science Book published for Class VIII, Class IX, wherein types of mixtures have been defined and submissions have been made that there is nothing like 'le:i feJ.k' and, as such, the decision of the respondents rejecting the objection raised by the petitioners is baseless.

In reply, the respondents have relied on the expert opinion, wherein, it has been

indicated as under:

"A homogeneous mixture is a mixture that is uniform in composition; components are evenly distributed and not easily distinguished whereas a heterogeneous mixture is neither uniform nor has indistinguishable components. The remaining options by definition also don't apply, hence there is only one specific answer to this very specific question; therefore there is no ambiguity and all objections are invalid."

A perusal of the decision of expert committee indicates that the objection has been dealt with by way of exclusion of the options given to the question, whereby, it has been found that all the three options other than option (C) were incorrect and, therefore, specific answer, which essentially was indicative in the question itself was correct. The logic applied by the expert committee appears to be justified from the circumstances of the case inasmuch as, though apparently the options suggested includes an option which has been indicated in the question itself, it cannot be said that either the question was incorrect and/or the model answer is incorrect and, therefore, the objection in this regard also has no substance.

Question No.357:

"357-????? ???? ??, ?? ?? ?????? ??? ???? ??????? ????????? ?? ???? ????????? ??? ??
?? ????????? ??? ???? ????????? ?? ??????? ?????? ?? ??????? ??????? ???? ?? ???, ????
? ?????? ???? (???????.???.?) ????? ???? ??"

A.20 ????? B. 25 ?????

C. 24 ????? D. 27 ?????"

Model answer indicated was (A).

The objection raised is that 20th March is not known as "fo"o fpfM+;k fnol" but is known as "fo"o xkSjs;k fnol" and, therefore, the question itself being incorrect, the petitioners are entitled for full marks.

The objection raised in this regard has been dealt with by the expert committee as under:

"There is very much a concept called "Sparrow Day" owing to its dwindling population, this is celebrated world wide on the 20th of March. World Sparrow Day is a day designated to raise awareness of the house sparrow and then other common birds to urban environments, and of threats to their population. Therefore all objections are invalid."

A perusal of the question as well as nature of objection raised by the petitioners indicates that the petitioners were seeking to only take advantage of the indication of a commonly used word for sparrow i.e. 'fpfM+;k' instead of 'xkSjs;k', which has been used in some literature for the word 'Sparrow Day' and as (MCY;w-,l- Mh-) was indicated in the question itself, the plea regarding wrong

use of word 'fpfM+;k' instead of 'xkSjs;k' and petitioners getting confused based on the said aspect, apparently has no substance.

So far as the petitioner Khivraj in S.B.Civil Writ Petition No. 17574/2018 is concerned, he has raised objections qua three different questions being question nos. 38, 39 and 46.

Question No.38:

"38 ?? ??? ?? ??? ?? ?? ????? ????? I ?? ??? ?????? ??? ??? ???????????, A= ?????????????, I= ?????????????, ??? N= ???

(?) ?????????? (?) ??????????

(??) ?????????? (??) ??????????"

Model answer indicated was (A).

The objection which has been raised is apparently academic inasmuch as it is claimed that although the petitioner indicated the answer as '(A)', but the same was incorrectly written as per the Hindi phonetic pronunciation.

There is no question of entering into the academic exercise regarding the use of phonetic pronunciation in marking the answers unless the same results in a wrong answer and as such the plea raised by the petitioner in this regard does not require any consideration.

Question No.39:

"39 ????? ??? ?????? ?????????? ????? ??? ?? ??, ?? ?????? ??? ?? ??? ??? ?????? ?? ?

(A) ????? ????? (B) ????? ?????

(C) K2/????? ?????? (D) ??????"

Model answer indicated was (B).

The said question has already been dealt with by this Court in Hamir Ram & Ors. vs. State of Rajasthan & Ors. : S.B.Civil Writ Petition No. 14006/2018 decided on 12/10/2018, wherein, this Court came to the conclusion that the model answer indicated by the respondents does not call for any interference. Consequently, the said objection also has no substance.

"46??? ?? ?? ?????? ?? ??? ??? ?? ?? ?????? ?? ?????????? ?????? ?? ?????, ?? ????? ???, ?
?? ????? ?????, ?????, ?????? ?????????? ?? ??-??? ?? ?????????? ?? ?????? ?? ?????? ??
?? ????? ???, ?? ?????? ??? ??? ??? ?????? ?? ?? ??? ?????? ?? ??? ??? ?????? ????? ?
?? ?????????????? ?????? ?? ?????? ?? ??? ?????? ?? ???

(A) ?????????????? (B) ??????????????

(C) ?????????????? (D) ??????????????"

It is submitted that both the answers (A) & (B) are correct as the options which

have been given, the spelling in English of both option (A) and option (B) would be same.

It is surprising that the petitioner, though has annexed the question paper in Hindi, based on the plea that the spelling of both the options would be same in English, has sought to question the validity of the answers. Such nature of objection which has been raised in the writ petition only deserves rejection, which has rightly been rejected by the respondents. Once the indication made in option (A) and (B) are different and the correct answer is

(A) only, the basis on which objection has been raised cannot be taken into consideration at all for disturbing the answer. In view thereof, the objection raised qua the said question also has no substance.

In view of the above, it is apparent that the action of the respondents, based on the expert opinion, rejecting the objections raised by the petitioners cannot be faulted.

Another ground has been taken in the writ petition that though the minimum qualification prescribed for different posts as per the advertisement were different, inasmuch as for some posts the same was 8th pass and for some it was 10+2 pass, despite that the candidates for all the posts were examined at the common level with similar written examination, which is violative of Articles 14 & 16 of the Constitution of India.

The ground raised is essentially baseless insofar as the petitioner is concerned, inasmuch as the petitioner is already senior secondary pass and, therefore, irrespective of the post for which the petitioner has applied, he had the highest qualification required. Besides the above, the petitioner was well aware of the requirements of syllabus and/or that common written examination shall be held for all the posts, however, the petitioner did not challenge such aspect before appearing in the examination and once the petitioner had appeared in the examination, the said aspect is not open to challenge by the petitioner.

In view thereof, the issue raised also has no substance.

In view of the factual as well as legal position, the action of the respondents in the present writ petitions, does not call for any interference.

In view of the above discussion, there is no substance in the writ petitions and the same are, therefore, dismissed.