

(2018) 06 MP CK 0105

In the Madhya Pradesh High Court

Case No : Writ Petition No.12314, 12409, 12447, 12534, 12221, 12294, 12302, 12308, 12426 Of 2018

Gaurav Shukla & Others

APPELLANT

Vs

Madhya Pradesh Public Service Commission & Anr

RESPONDENT

Date of Decision : 25-06-2018

Acts Referred:

Indian Evidence Act, 1872 — Section 45
Code of Civil Procedure, 1908 — Order 26 Rule 10A

Citation : (2018) 06 MP CK 0105

Hon'ble Judges : S. C. SHARMA, J

Bench : Single Bench

Advocate : Anshuman Shrivastava, Akash Sharma, R. S. Yadav, Kirti Patwardhan, Pankaj Sohani, Ajay Mimrot, Rishi Tiwari, V. P. Khare, Vibhor Khandelwal

Final Decision : Dismissed

Judgement

Regard being had to the similitude in the controversy involved in the present cases, the writ petitions were analogously heard and by a common order,

they are being disposed of by this Court. Facts of Writ Petition No.12314/2018 are narrated hereunder.

02- The petitioners before this Court have filed present petition on 31/05/2018 being aggrieved by the result declared by Madhya Pradesh Public

Service Commission in respect of Preliminary Examination. The petitioners have stated that the answers to certain questions were wrong or there was

discrepancy in the key answers and therefore, this Court should direct constitution of an independent body to reassess the answers and to declare the

result of the petitioners. Further prayer has been made restraining the respondent to declare the final result till a reassessment is carried out and the

petitioners be permitted to appear in the main examination (written).

03- Reply filed by the Madhya Pradesh Public Service Commission reveals that Madhya Pradesh Public Service Commission has published a notice

on 21/02/2018 inviting objections from candidates in reference to Clause-2 of their advertisement and the petitioners did not submit any objection in

respect of any question and as many as 3485 candidates did submitted their online objections and they were placed before the seven members Expert

Committee and thereafter, the Expert Committee has examined the matter thoroughly and has published final / amended key answers on 12/03/2018

and the result was declared in respect of State Civil Service Preliminary Examination 2018 on 17/04/2018.

04- The respondents have stated that the experts were Senior Subject Experts working as Professor in different Colleges and Universities and they

are not the employee of the Madhya Pradesh Public Service Commission.

05- It has also been stated that similar controversy was raised before the Principal Seat in Writ petition Nos.7089/2018, 7176/2018 and 8140/2018 and

by an order dated 03/05/2018 the Principal Seat has dismissed the writ petitions relying upon the Full Bench decision in the case of Nitin Pathak Vs.

State of M. P. & Others (Writ Appeal No.581/2017). The petitioners have placed reliance upon two judgments delivered by the apex Court in the

case of Richal & Ors. Vs. Rajasthan Public Service Commission & Ors. (Civil Appeal Nos.4695-4699 of 2018, decided on 03/05/2018) and

U.P.S.C. through its Chairman & Anr. Vs. Rahul Singh & Anr. (Civil Appeal No.5838 of 2018, decided on 14/06/2018) and their contention is that

reevaluation should be ordered / Expert Committee should be constituted.

06- In the present case, identical writ petitions have been dismissed by the Division Bench and a coordinate Bench of this Court in Writ Petition

No.10867/2018 (Badrilal Panwar Vs. The State of M. P. & Anr.) has dealt with a similar issue in respect of same examination and has dismissed the

writ petition. The order dated 18/05/2018 passed by the coordinate Bench of this Court reads as under:-

â??W.P.No.10867/2018

(Badrilal Panwar Vs. The State of M.P. & Another)

Indore, Dated: 18.05.2018

Shri C.B. Patne, learned counsel for the petitioner.

Shri A.S. Sisodia, learned counsel for the respondent No.1.

Shri V.P. Khare, learned counsel for the respondent No.2.

The petitioner has filed the present petition being aggrieved by the final answer key issued by the MPPSC on 12.03.2018 in respect of Set - ""B"" of

Question Paper -1 i.e. General Studies in the examination called State Services Preliminary Examination, 2018.

The petitioner participated in the examination in pursuant to the advertisement dated 12.12.2017. The preliminary examination was held on 18.02.2018

consisting of two papers i.e. General Studies and General Aptitude Test. The petitioner appeared in both the papers and fared well as is evident from

his OMR answer sheet. The marks obtained in the preliminary examination are only qualifying marks for appearance in the main examination. The

qualifying marks prescribed for Scheduled Caste Candidate is 40% marks and for Scheduled Tribe Candidate is 30% marks. According to the

petitioner, he obtained 55% marks in the second paper of General Aptitude Test. The petitioner was given Set-""B"" question paper of General Studies.

The respondent issued a provisional answer key vide notification 21.02.2018.

According to the petitioner, he has answered question Nos.8, 47 and 84 of Set-""B"" correctly. Vide final answer sheet answer key dated 12.03.2018

the respondent illegally deleted the question No.84. The respondent has issued the result on 17.04.2018, where in the petitioner has shown to have

scored 116 marks for attempting 58 questions correctly. The petitioner has been deprived from qualifying to appear in the main examination only by 2

marks. The petitioner has filed the present petition seeking revaluation and awarding of 2 marks as he has correctly answered the question Nos.8 and

47.

According to the petitioner, he has been preparing for the said examination since last 10 years. He has qualified the preliminary examination in the

year 2016 and 17 both. Now, he has already attained the age of 48 years and this is his last opportunity to qualify the said Civil Services Examination,

hence, petition be entertained and relief be granted.

The respondent has filed the return by submitting that the similar petitions were filed before the Principal Bench of this High Court and in pursuant to

the same examination and vide order dated 03.05.2018 the writ petitions have been dismissed in light of the judgment passed by the full bench of this

Court in case of Nitin Pathak Vs. State of Madhya Pradesh, passed in W.A.No.581/2017, therefore, in order to maintain the parity and judicial

discipline, this petition be also dismissed.

All the three writ petitions i.e. W.P.Nos.7089/2018, 7176/2018 and 8140/2018 were filed by the petitioner and appeared in the preliminary examination

of the year 2018 conducted in pursuant to the advertisement dated 12.12.2017. The petitioners there in were awarded the model answer to the

question No.39, 59, 80, 72, 11, 74, 39, 34, 95, 97 etc of Set - "C". The respondent/MPPSC has filed the chart to show that these questions are same as

challenged by the petitioner in this petition. The co-ordinate bench of this Court vide order dated 03.05.2018 has dismissed the writ petitions placing

reliance over the judgement passed in case of Nitin Pathak (supra) as well as judgment passed by the Division Bench in W.A.No.653/2016 decided on

19.05.2017.

The judgment passed by the Coordinate Bench in W.P.Nos.7089/2018, 7176/2018 and 8140/2018 is reproduced below:

The law in this regard is well settled that in the matter of opinion of experts in academic matters, the Courts do not sit in appeal as the judicial review

is of the decision making process and not of the decision. The full Bench in the matter of Nitin Pathak Vs. State of M.P. and others passed in WA

No.581/2017 has taken note of earlier judgments of the point and has held us under:-

14. We have heard learned counsel for the parties.

15. Learned counsel for the appellant could not refer to any judgment of the Hon'ble Supreme Court wherein the Court has interfered with the model

answer key on the basis of opinion of a Court appointed Expert. However, it is argued that in terms of Section 45 of the Evidence Act and the

provisions of Order 26 Rule 10A of CPC and also in exercise of inherent writ jurisdiction of this court, to do complete justice, this Court has

jurisdiction to appoint an Expert and direct the Commission to re-tabulate result on the basis of opinion of such Expert. As mentioned above, the

appellant derives support in Samir Gupta's case.

16. The reliance of the Appellant is upon the Judgment in Institute of Chartered

Financial Analysts of India case (Supra), wherein the court held as under:-

35. Interpretation of law is the job of the superior court. An opinion of an expert is not beyond the pale of judicial review. It would certainly not be so when the statutory authority transgresses its jurisdiction. A decision taken in excess of jurisdiction would render the same a nullity. (See: Vasu Dev Singh v. Union of India (2006) 12 SCC 753)

17- In Buddhi Nath Chaudhary's case (supra), the appointment as Motor Vehicle Inspector conducted by Bihar Public Service Commission was subject matter of challenge before the Patna High Court. The High Court directed the matter to be considered by the Transport Commissioner. The Supreme Court held that if the selection of the candidates was improper, the same should have been set aside with appropriate directions to redo the process of selection, but the Transport Commissioner cannot be entrusted with the process of examining the qualification of the candidates. It was held as under:-

5. We fail to understand as to how the matter of selection and appointment to a post could have been entrusted to the Transport Commissioner when the Commission had been specifically entrusted with such a job and such Commission, which is an autonomous authority having a constitutional status, has selected the candidates whose appointments were in challenge. If the selection of these candidates was improper the same should have been set aside with appropriate directions to redo the process of selection or at best, the High Court could have directed the Government, which is the appointing authority, to take appropriate steps in the matter. However, in the facts and circumstances of this case, we need not dilate on this aspect nor do we need to examine various elaborate contentions addressed by either side. Suffice to say that all the selected candidates, who are in employment, except one, possess necessary qualification and in regard to that one excepted candidate, it cannot be disputed that he possesses equivalent qualification. Thus the dispute narrows down to one aspect, that is, the selected candidates may not possess necessary experience which is now required to be examined by the Transport Commissioner.

18. In Mukesh Thakur's case, one of the question examined was whether it is permissible for the Court to take upon itself the task to examine

discrepancies and inconsistency in question paper and evaluation thereof assigned to examiner " selection board. The Supreme Court held that the Court cannot take upon itself the task of statutory authority. It was held as under:-

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 inter se 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.

19. The Court also held that in the absence of any provisions under the Statute or statutory Rules and Regulations, the Court should not generally direct re-evaluation. Reference was made to (1984) 4 SCC 27 (Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth); and, (2004) 6 SCC 714 (Pramod Kumar Srivastava v. Bihar Public Service Commission) and other judgments.

20. In a judgment reported as (2014) 14 SCC 523 (Central Board of Secondary Education through Secretary, All India Pre- Medical/Pre-Dental Entrance Examination and others v. Khushboo Shrivastava and others), the Supreme Court held that the High Court in exercise of power under Article 226 of the Constitution could not have substituted its own views of the answers of the candidates for that of the examiners and thus High Court has exceeded its power of judicial review under Article 226 of the Constitution. The Court 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. This Court in Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth (1984) 4 SCC 27) has observed: (SCC pp.

56-57, para 29)

29. 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 grassroots 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.

21. In another judgment reported as (2007) 8 SCC 242 (Secy. W.B. Council of Higher Secondary Education v. Ayan Das and others) considering the Samir Gupta's case it was found that revaluation is a rarity and can be done only in exceptional cases. The Court held as under:-

11. Same would be a rarity and it can only be done in exceptional cases. The principles set out in Maharashtra Board case [(1984) 4 SCC 27] has been followed subsequently in Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission [(2004) 6 SCC 714], Board of Secondary Education v. Pravas Ranjan Panda [(2004) 13 SCC 383] and President, Board of Secondary Education v. D. Suvankar [(2007) 1 SCC 603].

12. In view of the settled position in law, the orders of the learned Single Judge and the Division Bench cannot be sustained and stand quashed.

22. The Division Bench of this Court in a case reported in 2012 (4) MPLJ 388 (Radika d/o Vinay Kumar Dubey and others v. Professional Examination Education Board, Bhopal and another) followed the earlier judgment of Division Bench reported as 2003 (3) MPLJ 368 (Neha Indurkha v. M.P. Board of Secondary Education, Bhopal) that when an Expert body has already examined the questions, it is not open for the Court to interfere into the matter. The Court held as under :-

12. Thus, in our considered view, when an expert body has already examined the questions, it is not open for the Courts to interfere into the matter. A Division Bench of this Court at Jabalpur in the case of Ankit Tiwari vs. State of M.P. and another (supra) has already dealt with the matter and has

reached to the conclusion that in view of the law laid down by the Supreme Court in the case of Secretary, All India Pre-Medical/Pre-Dental

Examination, C.B.S.E. and others vs. Khushboo Shrivastava and others, Civil Appeal No. 7024 of 2011 decided on 17-8-2011 no interference is

needed in the matter. We find no ground to take a different view. It is now well settled that the Court should not interfere in matters involving

academic expertise. It would not be right for the Court to sit in judgment over the decision of the University relating to the academic question because

it is not a matter on which the Court possesses any expertise. It is wise and safe for the Courts to leave the decision of academic matters to experts

who are more familiar with the problems they face than the Courts generally are. See "Rajendra Prasad Mathur vs. Karnataka University and

another, 1986 (suppl) SCC 740. The University of Mysore vs. C.D. Govinda, AIR 1965 SC 491, Tariq Islam vs. Aligarh Muslim University, 2001(8)

SCC 546.

23. The Division Bench of Patna High Court in Ashutosh Kumar Jha's case held that it is not permissible for the High Court in exercise of powers of

judicial review to take upon itself a task of constitutional/statutory bodies. The appointment of an Expert is for aid of the Court and therefore, the

question whether the High Court reexamines a question itself or through an Expert, it is impermissible for the High Court to take upon the task of a

Commission. The Court held as under:-

30. Mr. Lalit Kishore, learned Senior Counsel, appears to be right in his submission while placing his reliance on the Supreme Court's decision, in

Mukesh Thakur (supra), in order to make out a case that this Court, in exercise of power of judicial review under Article 226 of the Constitution of

India, may not get into the correctness or otherwise of the wisdom of the Experts Body, which has been accepted by the Commission. In our

considered view, it is not permissible for the High Court, in exercise of power of judicial review under Article 226 of the Constitution of India, to take

upon itself the task of the constitutional/statutory bodies.

The Court concluded as under:

43. In the background of aforementioned discussions, we conclude as follows:

(i) The appellants have failed to plead and make out a case that the action of the respondent-Commission of deletion of certain questions, which,

according to them, were wrongly deleted and Model Key Answers, which, according to appellants, were incorrectly suggested by the Expert Body, in

any manner, prejudiced their chance of being selected inasmuch as they have maintained silence with respect to their own response to such questions

in the examination hall or at the time of availing opportunity of raising objections invited by the Commission after the preliminary test was held.

(ii) Â xx xx xx xx xx xx xx xx

(iii) xx xx xx xx xx xx xx xx

(iv) In view of Supreme Court's decision, in Mukesh Thakur (supra) and the decision of this Court, in Ravindra Kumar Singh (supra), we are of the

considered view that it is not permissible for this Court to take upon itself the task of examiner/Selection Board and examine discrepancies and

inconsistencies in the question papers and evaluation thereof. The said decision of the Supreme Court, in Mukesh Thakur (supra), went unnoticed by

the Division Bench of this Court, in Kumod Kumar (supra), relied upon on behalf of the appellants.â??

24. A Single Bench of Karnataka High Court in a judgment in the case of Dr. Praveen Kumar I. Kusubi (supra) examined the scope of interference

in the answer-key finalized by the University. It was held that in academic matter the Universityâ??s word is the last word. The Court has neither

the necessary expertise nor infrastructure to go into the correctness of such decision. It was held as under in paragraph 20:-

â??20. As long as the procedure adopted in evaluation of these answer scripts are not arbitrary, reasonable, consistent, then the system cannot be

found fault with. As long as all the students who took the examination are treated equally, then they cannot have any grievance whatsoever. It is

settled law that in academic matter, the Universityâ??s word is the last word. Court neither has the necessary expertise nor infrastructure to go into

the correctness of such decision. This Court cannot sit in judgment over those findings and examine the material on record and arrive at its own

conclusion as a Court of appeal. It is also not possible in such circumstances to go on appointing the committees after committees to go into the

correctness of the decision of the committee. There wonâ??t be any end to this exercise. Therefore, a key answer should be assumed to be correct

unless it is proved to be wrong. It should not be held to be wrong by an

inferential process of reasoning or by a process of rationalization. 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. If it is a case of doubt, unquestionably key answer is to be preferred. Only if it is beyond the realm of doubt, possibly judicial review is permissible.â??

25. The argument of learned counsel for the appellant that in view of Section 45 of the Evidence Act and on the basis of principles of Order 26 Rule

10A of CPC, the Court is enjoined to seek opinion of the experts is not tenable. The role of this Court while exercising the power of judicial review is

not to collect evidence for and against any party. This Court in exercise of power of judicial review examines the decision making process and not the

decision itself. Reference may be made to *Tata Cellular v. Union of India*, (1994) 6 SCC 651, wherein, it is inter alia held that the power of judicial

review is in respect of decision making process. The Court held as under:-

â??74. Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but

the decision-making process itself.

75. In *Chief Constable of the North Wales Police v. Evans* [(1982) 3 All ER 141, 154] Lord Brightman said:

â??Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made.

* * *

Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is

observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power.â??

In the same case Lord Hailsham commented on the purpose of the remedy by way of judicial review under RSC, Ord. 53 in the following terms:

â??This remedy, vastly increased in extent, and rendered, over a long period in recent years, of infinitely more convenient access than that provided

by the old prerogative writs and actions for a declaration, is intended to protect the individual against the abuse of power by a wide range of

authorities, judicial, quasi-judicial, and, as would originally have been thought when I first practised at the Bar, administrative. It is not intended to take

away from those authorities the powers and discretions properly vested in them by law and to substitute the courts as the bodies making the decisions.

It is intended to see that the relevant authorities use their powers in a proper manner (p. 1160).â??

In R. v. Panel on Take-overs and Mergers, ex p Datafin plc (1987) 1

All ER 564, Sir John Donaldson, M.R. commented:

â??An application for judicial review is not an appeal.â??

In Lonrho plc v. Secretary of State for Trade and Industry (1989)

2 All ER 609, Lord Keith said:

â??Judicial review is a protection and not a weapon.â??

It is thus different from an appeal. When hearing an appeal the Court is concerned with the merits of the decision under appeal. In Amin v. Entry

Clearance Officer (1983) 2 All ER 864, Lord Fraser observed that:

â??Judicial review is concerned not with the merits of a decision but with the manner in which the decision was madeâ?|. Judicial review

is entirely different from an ordinary appeal. It is made effective by the court quashing the administrative decision without substituting its own decision,

and is to be contrasted with an appeal where the appellate tribunal substitutes its own decision on the merits for that of the administrative officer.â??

76. In R. v. Panel on Take-overs and Mergers, ex p Guinness plc (1990 1 QB 146: (1989) 1 All ER 509, Lord Donaldson, M.R. referred to the

judicial review jurisdiction as being supervisory or â??longstopâ?? jurisdiction. Unless that restriction on the power of the court is observed, the court

will, under the guise of preventing the abuse of power, be itself guilty of usurping power.â??

26. Therefore, while exercising the power of judicial review, this Court is not to take upon itself the revaluation of Model Answer Key either itself or

through Court appointed Expert, who is none else but a delegate of the Court. The Court in exercise of power of judicial review, if sufficient material

exists to return a finding that Model Answer Key is palpably incorrect that no reasonable person would find the same to be acceptable, than the Court

could direct the examining body to re-examine the answer key but cannot take over the function of the Commission in finalizing the answer key itself.

27. The Honâ??ble Supreme Court in a judgment reported as Aravali Golf Club v.

Chander Hass, (2008) 1 SCC 683 that in the name of judicial

activism judges cannot cross their limits and try to take over functions which belong to another organ of the State. The Court held as under:-

17. Before parting with this case we would like to make some observations about the limits of the powers of the judiciary. We are compelled to

make these observations because we are repeatedly coming across cases where judges are unjustifiably trying to perform executive or legislative

functions. In our opinion this is clearly unconstitutional. In the name of judicial activism judges cannot cross their limits and try to take over functions

which belong to another organ of the State.

18. Judges must exercise judicial restraint and must not encroach into the executive or legislative domain, vide *Indian Drugs & Pharmaceuticals Ltd.*

v. Workmen (2007) 1 SCC 408; and *S.C. Chandra v. State of Jharkhand* (2007) 8 SCC 279 (see concurring judgment of M. Katju, J.).

19. Under our Constitution, the legislature, the executive and the judiciary all have their own broad spheres of operation. Ordinarily it is not proper for

any of these three organs of the State to encroach upon the domain of another, otherwise the delicate balance in the Constitution will be upset, and

there will be a reaction.

20. Judges must know their limits and must not try to run the Government. They must have modesty and humility, and not behave like emperors. There

is broad separation of powers under the Constitution and each organ of the State—the legislature, the executive and the judiciary—must have

respect for the other and must not encroach into each other's domains.

21. The theory of separation of powers first propounded by the French thinker Montesquieu (in his book *The Spirit of Laws*) broadly holds the field in

India too. In Chapter XI of his book *The Spirit of Laws* Montesquieu writes:

“When the legislative and executive powers are united in the same person, or in the same body of Magistrates, there can be no liberty; because

apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.

Again, there is no liberty, if the judicial power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty

of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might

behave with violence and oppression.

There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers,

that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals.â??

(Emphasis supplied)

We fully agree with the view expressed above. Montesquieuâ??s warning in the passage abovequoted is particularly apt and timely for the Indian

judiciary today, since very often it is rightly criticised for â??overreachâ?? and encroachment into the domain of the other two organs.â??

28. The scope of interference in academic matters has been examined by the Supreme Court in many cases. In *Basavaiah (Dr.) v. Dr. H.L. Ramesh*,

(2010) 8 SCC 372 : (2010) 2 SCC (L&S) 640, the Court held as under:-

â??38. We have dealt with the aforesaid judgments to reiterate and reaffirm the legal position that in the academic matters, the courts have a very

limited role particularly when no mala fides have been alleged against the experts constituting the Selection Committee. It would normally be prudent,

wholesome and safe for the courts to leave the decisions to the academicians and experts. As a matter of principle, the courts should never make an

endeavour to sit in appeal over the decisions of the experts. The courts must realise and appreciate its constraints and limitations in academic matters.

29. Supreme Court in another judgment reported as *University Grants Commission v. Neha Anil Bobde*, (2013) 10 SCC 519, held that in academic

matters, unless there is a clear violation of statutory provisions, the regulations or the notification issued, the courts shall keep their hands off since

those issues fall within the domain of the experts the Court. The Court held as under:

â??31. We are of the view that, in academic matters, unless there is a clear violation of statutory provisions, the regulations or the notification issued,

the courts shall keep their hands off since those issues fall within the domain of the experts. This Court in *University of Mysore v. C.D. Govinda Rao*

AIR 1965 SC 491; *Tariq Islam v. Aligarh Muslim University* (2001) 8 SCC 546; and, *Rajbir Singh Dalal v. Chaudhary Devi Lal University* (2008) 9

SCC 284, has taken the view that the court shall not generally sit in appeal over the opinion expressed by the expert academic bodies and normally it is

wise and safe for the courts to leave the decision of the academic experts who are more familiar with the problem they face, than the courts generally

are. UGC as an expert body has been entrusted with the duty to take steps as it may think fit for the determination and maintenance of standards of

teaching, examination and research in the university. For attaining the said standards, it is open to UGC to lay down any â??qualifying criteriaâ?,

which has a rational nexus to the object to be achieved, that is, for maintenance of standards of teaching, examination and research. The candidates

declared eligible for Lectureship may be considered for appointment as Assistant Professors in universities and colleges and the standard of such a

teaching faculty has a direct nexus with the maintenance of standards of education to be imparted to the students of the universities and colleges.

UGC has only implemented the opinion of the experts by laying down the qualifying criteria, which cannot be considered as arbitrary, illegal or

discriminatory or violative of Article 14 of the Constitution of India.â??

30. Thus, we are of the opinion that the judgment of this Court in Chanchal Modiâ??s case (supra) does not lay down correct law.

31. In view of the discussion above, we hold that in exercise of power of Judicial Review, the Court should not refer the matter to court appointed

expert as the courts have a very limited role particularly when no mala fides have been alleged against the experts constituted to finalize answer key.

It would normally be prudent, wholesome and safe for the courts to leave the decisions to the academicians and experts.

32. In respect of the second question, this Court does not and should not act as Court of Appeal in the matter of opinion of experts in academic

matters as the power of judicial review is concerned, not with the decision, but with the decision-making process. The Court should not under the guise

of preventing the abuse of power be itself guilty of usurping power.

Hence, the issue which the petitioners are raising before this Court has already been settled by the full Bench against the petitioners.

The Division Bench also vide order dated 19/5/2017 in WA No.653/2016 in a case where the writ Court had directed the PSC to delete the marks

given to the candidates for a particular question had set aside the order of the Single Bench by holding as under:-

â??Shri Prashant Singh with Shri Saurabh Parmar, counsel for the appellants.

Shri Shreyas Pandit, counsel for the respondent.

The challenge in the present appeal is to an order passed by the learned Single Bench on 26.8.2016, whereby the writ petition was allowed and Public

Service Commission was directed to delete the marks given all candidates for Question No.100 and thereafter revised mark-sheet be issued.

We find that the order passed by the learned Single Bench is not correct. The entire dispute is in respect of Question No.100, which is given as

under:-

â??100. In which Section of Human Rights Protection Act, 1993 is â??Public Servantâ?? defined?

(A) Section 2 (B) Section 3

(C) Section 2(H) (D) Section 2(M).â??

The respondent/petitioner opted for Option (A), whereas â??model answer-keyâ?? shows Option (D) to be the correct answer.

The correct answer is Section 2(1)(m), of the Human Rights Protection Act, 1993 (hereinafter referred to as the â??Actâ??). In respect of multiple

choice questions, the principle is that the answer which is closest to the correct answer is the correct â??answerâ??.

Section 2 of the Act, is a provision dealing with various definitions where section 2(1)(m) is the provision defining â??public servantâ??.

It is only omission of sub-clause (1) in the Option (D), but the closest answer to the correct answer is infact Option (D) only.

The Supreme court in the case of Kanpur University and others Vs. Samir Gupta and others reported as AIR 1983 SC 1230 examined the issue of

correctness of answer key in respect of multiple choice questions. The Court held as under:-

â??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 textbooks

leave no room for doubt that the answer given by the students is correct and the key answer is incorrect.â??

The Supreme Court in the case of Central Board of Secondary Education Vs. Khushbu Srivastava and others reported as (2014) 14 SCC 523,

wherein the Court held that that in the absence of any provision for the re-evaluation of answers books in the relevant rules, no candidate in an

examination has any right to claim or ask for re-evaluation of his marks. The Court held as under :-

â??We find that a three-Judge Bench of this Court in Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, Patna & Ors.

(supra) has clearly held relying on Maharashtra State Board of Secondary and Higher Education & Anr. v. Paritosh Bhupenshkumar Sheth & Ors.

(supra) that in the absence of any provision for the re-evaluation of answers books in the relevant rules, no candidate in an examination has any right

to claim or ask for re-evaluation of his marks. The decision in Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, Patna &

Ors. (supra) was followed by another three-Judge Bench of this Court in Board of Secondary Education v. Pravas Ranjan Panda & Anr. [(2004) 13

SCC 383] in which the direction of the High Court for re-evaluation of answers books of all the examinees securing 90% or above marks was held to

be unsustainable in law because the regulations of the Board of Secondary Education, Orissa, which conducted the examination, did not make any

provision for re-evaluation of answers books in the rules.â??

Within this Court, the matter has been examined by Division Bench in a judgment reported as (2012) 4 MPLJ 388 â?" Radhika Vs. Professional

Examination Education Board, Bhopal and another, wherein relying upon the aforesaid judgment of the Supreme Court in the case of Kanpur

University the Court has held as under :-

â??12. Thus, in our considered view, when an expert body has already examined the questions, it is not open for the Courts to interfere into the

matter. A Division Bench of this Court at Jabalpur in the case of Ankit Tiwari vs. State of M. P. and another (supra) has already dealt with the matter

and has reached to the conclusion that in view of the law laid down by the Supreme Court in the case of Secretary, All India Pre-Medical/Pre-Dental

Examination, C.B.S.E. and others vs. Khushboo Shrivastava and others, Civil Appeal No. 7024 of 2011 decided on 17-8-2011 no interference is

needed in the matter. We find no ground to take a different view. It is now well settled that the Court should not interfere in matters involving

academic expertise. It would not be right for the Court to sit in judgment over the decision of the University relating to the academic question because

it is not a matter on which the Court possesses any expertise. It is wise and safe for the Courts to leave the decision of academic matters to experts

who are more familiar with the problems they face than the Courts generally are. See -Rajendra Prasad Mathur vs. Karnataka University and

another, 1986 (suppl) SCC 740. The University of Mysore vs. C. D. Govinda, AIR 1965 SC 491, Tariq Islam vs. Aligarh Muslim University, 2001(8)

SCC 546.â??

In another judgment a Single Bench in W.P. No.6932/2012 â?" Rakesh Singh Jadon Vs. State of M.P. decided on 5.8.2013 rejected the contention to

seek revaluation of the answer sheets. The Court placed reliance upon Supreme Court judgment reported as (2010) 6 SCC 759 â?" Himanchal

Pradesh Public Service Commission Vs. Mukesh Thakur, wherein, the Court held as under :-

â??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 inter-se 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.â??

Therefore, not only the most appropriate answer is the option 'D', but also in exercise of power under judicial review this Court cannot sit in the

armchair of the Public Service Commission and take a decision that the answer key is incorrect and the correct answer is option 'A'. As mentioned

above, option 'A' is not dealing with a â??Public Servantâ??, but all the definitions

which cannot be treated to be the correct answer.

In view of the above, the order passed by the learned Single Bench cannot be sustained. The same is set aside.

Accordingly, the appeal is allowed and the writ petition is dismissed.â??

So far as the judgment in the matter of Kanpur University (supra) relied upon by learned counsel for the petitioners is concerned, in that case, the

matter was not referred to the experts, therefore, the interference of the High Court was affirmed. Hence, the said judgment is distinguishable on its

own fact.

Having regard to the aforesaid factual and legal position, I am of the opinion that no case for interference in the present writ petitions is made out. The

writ petitions are found to be devoid of any merits which are accordingly dismissed.

The signed order be placed in the record of WP No. 7089/2018 and copy whereof be placed in the record of connected writ petitions.

C.C. as per rules.

Since, this Court has already dismissed the writ petition pertaining to the same examination, therefore, the present petition is also dismissed.â??

07- In light of the aforesaid judgment of coordinate Bench and also in light of the judgment delivered by the Division Bench in Writ Petition

No.7089/2018, as the controversy involved in the present case stands concluded, the writ petition deserves to be dismissed and is accordingly

dismissed.

08- All other identical matters connected with this petition are also stand dismissed.

Certified copy as per rules.