
(2013) 10 MAD CK 0244

In the Madras High Court

Case No : M.P. (MD) No. 1 of 2013 in WP (MD) No. 13267 of 2013

J. Antony Clara

APPELLANT

Vs

The State of Tamilnadu and Others

RESPONDENT

Date of Decision : 01-10-2013

Acts Referred:

Citation : (2014) WritLR 113

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : T. Lajapathi Roy in WP 13267/2013 and Mr. J. Jeyakumaran in WP 14940/2013, for the Appellant; AL. Somayaji, Advocate General, Mr. K. Chellapanian, A.A.G., assisted by Mr. V.R. Shanmuganathan, Spl. Govt. Pleader for Respondents 1 to 3, Mr. G. Thalaimutharasu and Mr. Isaac Mohanlal, Amicus Curiae for Respondents 4 to 7, for the Respondent

Final Decision : Disposed Off

Judgement

S. Nagamuthu, J.—The Teachers Recruitment Board, Government of Tamil Nadu (in short "TRB"), issued an advertisement under Advertisement No. 02/2013, dated 09.05.2013, inviting applications for direct recruitment to the vacancies for the year 2012-2013 in the post of Post Graduate Assistants/Physical Education Directors Grade-I in the Tamil Nadu Higher Secondary Educational Service. According to the prospectus, the scheme of examination is that there will be a written examination, consisting of a single paper of 3 hours duration with 150 MCQs, each question carrying one mark. Marks to be allotted to the main subject, educational methodology and general knowledge are as follows:

Based on the marks secured in the said examination, candidates shall be ranked and thereafter, based on the cut-off marks to be fixed, the candidates shall be shortlisted and such shortlisted candidates will be called for certificate verification, followed by issuing of appointment orders.

The petitioners herein are post-graduates in the subject "Tamil". They made

applications and participated in the written examination held on 21.07.2013. As per the arrangement, question papers were to be printed in four series, namely "A" Series, "B Series, "C" Series and "D" Series. It is only the order of questions were to be changed in these series, though the questions are one and the same. The petitioners were supplied with "B" Series question paper in the examination hall.

2. According to the petitioners, out of the 150 questions, many questions were erroneous. Though in the writ petition they have mentioned that about 21 questions were erroneous, during the course of argument, the learned counsel for the petitioners pointed out that as many as 47 questions were wrong questions, incapable of understanding and answering. Since this Court was prima facie satisfied with the said submission, this Court granted interim injunction restraining TRB from publishing the results of the examination pertaining to "Tamil" subject alone.

3. The learned Government Advocate took notice and the learned Additional Advocate General later appeared in the case for the official respondents.

4. A detailed counter affidavit, dated 16.09.2013, was filed by the 3rd respondent. In the said counter, inter alia, it is stated that in respect of the question papers prepared under "A", "C" and "D" Series, there were no errors. It is further stated that insofar as "B" Series question paper is concerned, there were spelling mistakes which occurred at the end of the printing of question papers. It is further stated that TRB had handed over the manuscript copies of the question papers set by TRB to a confidential printer, through the Director of Government Examinations. Thereafter, there was no occasion for TRB to verify whether the question papers had been printed free from any error or not. TRB had no occasion to open the question papers before they were supplied in the examination centers to the candidates. Proof reading and ensuring accuracy in printing, according to the respondents, was the sole responsibility of the confidential printers who had been authorised by the Reserve Bank of India for such confidential works and who had been selected by the Director of Government Examinations, after careful scrutiny. Thus, according to the counter, it was the duty of the confidential printer to ensure the correctness and accuracy of the proof as per the manuscript provided to them.

5. It is further contended in the counter that there were number of complaints received from the candidates in respect of wrong questions found in "B" Series question papers. Thereafter, TRB formed an Expert Committee consisting of three members who are Associate/Assistant Professors in Government Arts and Science Colleges to examine and ascertain the said errors as pointed out by the candidates. It is further stated that the members of Expert Committee unanimously decided and offered their considered opinion that these are only errors in spelling but meaning and content are in no way affected and it also does not affect choosing right option by the candidates. In paragraph 7 of the counter, it is further stated that based on the Expert Committee Report, it is clear

that question Nos. 22, 35, 38, 45, 51, 52, 58, 70, 75, 76, 89, 91, 92, 96, 97, 109, 113, 115, 117, 128 and 145 in "B" Series question paper were only of typographical printing errors. In the counter, it is further stated that since errors had not materially affected the understanding of the candidates, there is no need for either deleting or awarding marks to the said questions or conducting re-examination for Tamil subject alone. It is also stated in the counter, if re-examination is conducted, the candidates who are being successful in getting higher marks will be affected. Thus, according to the counter, TRB may be permitted to go ahead with the release of the results and further process of selection.

6. During the hearing on 16.09.2013, after going through the counter, this Court felt that the presence of the Chairman, TRB, might be necessary to get further clarification regarding the above erroneous questions. Accordingly, on 18.09.2013, the Chairman of TRB appeared before this Court. The Member-Secretary of TRB was also present.

7. During the course of hearing on 18.09.2013, the questions about which disputes were raised by the petitioners were closely scrutinized by this Court. It was found that more than 40 questions were erroneous. The Chairman, TRB, who was present in the Court, along with his officials, tacitly admitted before this Court that out of 150 questions, 40 questions are erroneous. The learned Additional Advocate General, on instructions from the Chairman, TRB, submitted that TRB was prepared to evaluate 110 questions, thereby deleting rest of the 40 erroneous questions. It was also submitted that the total number of marks will be reduced from 150 to 110 and thus TRB would re-value the answer sheets of the candidates for 110 right questions alone. It was opposed by the learned counsel for the petitioners on the ground that as per the views taken by the Hon'ble Supreme Court in similar situations, re-examination is the only possible course to be adopted. The learned Additional Advocate General submitted that the Chairman would discuss the matter with the Government and come-up with a statement as to whether TRB could conduct fresh examination for all the candidates who have appeared in the Tamil subject or not. This Court also expressed its prima facie view that since almost 1/3rd of the questions are erroneous, it would be in the interest of justice to consider to hold fresh examination which would only minimise the hardship to the parties.

8. Thereafter, the Chairman submitted in writing the decision of TRB on the questions under dispute in these writ petitions as erroneous. In the said report, it is stated as follows.

Table: 1 (B series Tamil Question Paper)

Teachers Recruitment Board decision on the questions pointed out by the writ petitioner Ms. Vijayalakshmi as mistakes.

Sl. No.

Question No.

Whether printing error in Question

Whether Printing error in right option

Board decision

1.

22

Yes

Yes

May be deleted

2.

35

Yes

Yes

May be deleted

3.

38

No

No

May be deleted

4.

45

No

Yes

May be deleted

5.

51

No

Yes

May be deleted

6.

52

No

Yes

May be deleted

7.

58

Yes

No

May be deleted

8.

70

Yes

Yes

May be deleted

9.

75

Yes

No

May be deleted

10.

76

Yes

No

May be deleted

11.

89

Yes

No

May be deleted

12.

91

Yes

No

May be deleted

13.

92

Yes

Yes

May be deleted

14

96

Yes

No

May be deleted

15.

97

Yes

No

May be deleted

16.

109

Yes

No

May be deleted

17.

113

Yes

No

Question need not be deleted as there is no error in the concept.

18.

115

Yes

Yes

May be deleted

19.

117

No

Yes

May be deleted

20.

128

Yes

No but all given options are wrong

Already deleted in the Tentative Key.

21.

145

Yes

No

May be deleted

Table: 2 (B series Tamil Question Paper)

Teachers Recruitment Board decision on the questions has printing errors.

Sl. No.

Question No.

Whether printing error in Question

Whether Printing error in right option

Board decision

1.

10

No

Yes

May be deleted

2.

17

No

No

May be deleted

3.

19

Yes

No

May be deleted

4.

22

Yes

Yes

May be deleted

5.

26

Yes

No

May be deleted

6.

35

Yes

No

May be deleted

7.

36

Yes

No

May be deleted

8.

45

No

Yes

May be deleted

9.

46

No

Yes

May be deleted

10.

47

Yes

No

May be deleted

11.

51

No

Yes

May be deleted

12.

52

No

Yes

May be deleted

13.

53

Yes

No

May be deleted

14

58

Yes

No

May be deleted

15.

62

No

Yes

May be deleted

16.

70

Yes

Yes

May be deleted

17.

75

Yes

No

May be deleted.

18.

76

Yes

No

May be deleted

19.

77

Yes

No

May be deleted

20.

83

Yes

Yes

May be deleted

21.

85

Yes

No

May be deleted

22.

87

No

Yes

May be deleted

23.

88

Yes

No

May be deleted

24.

89

Yes

No

May be deleted

25.

91

Yes

No

May be deleted

26.

92

Yes

Yes

May be deleted

27.

93

No

Yes

May be deleted

28.

96

Yes

No

May be deleted

29.

97

Yes

No

May be deleted

30.

101

Yes

No

May be deleted

31.

102

Yes

No

May be deleted

32

104

No

Yes

May be deleted

33.

105

Yes

No

May be deleted

34.

109

Yes

No

May be deleted

35.

115

Yes

No

May be deleted

36.

117

No

Yes

May be deleted

37.

137

Yes

No

May be deleted

38.

139

No

Yes

May be deleted

39.

145

Yes

No

May be deleted

40.

148

No

Yes

May be deleted

Table: 3 (B series Tamil Question Paper)

Teachers Recruitment Board decision on the questions, which are having printing error neither in question nor in correct option.

Sl. No.

Question No.

Whether printing error in Question

Whether printing error in right

Board decision

1.

21

No

No

Question need not be deleted as printing error is only in the wrong option D

2.

25

No

No

Question need not be deleted as printing error is only in the wrong option B

3.

38

No

No

Question need not be deleted as printing error is only in the wrong option D

4.

43

No

No

Question need not be deleted as printing error is only in the wrong option D

5.

48

Yes

No

Question need not be deleted as there is no error in the concept

6.

50

Yes

No

Question need not be deleted as there is no error in the concept

7.

95

No

No

Question need not be deleted as printing error is only in the wrong option D

8.

113

Yes

No

Question need not be deleted as there is no error in the concept

9.

116

No

No

Question need not be deleted as printing error is only in the wrong option D

10.

118

No

No

Question need not be deleted as printing error is only in the wrong option A

11.

131

No

No

Question need not be deleted as printing error is only in the wrong option C

12.

138

Yes

No

Question need not be deleted as printing error is only in the wrong option C

13.

144

Yes

No

Question need not be deleted as there is no error in the concept

14.

No

No

Question need not be deleted as printing error is only in the wrong option B

Question need not be deleted as printing error is only in the wrong option B.

9. Subsequently, when the matter came-up for hearing on 24.09.2013, M.P. (MD) No. 2/2013 was filed by four candidates who had participated in the examination. According to them, the writ petitions should be dismissed as the errors have not materially affected the understanding of the candidates who appeared in the examination. The said miscellaneous petition was allowed and the petitioners in the said miscellaneous petition were added as respondents 4 to 7 in the writ petitions as well as in the interlocutory applications, on 24.09.2013. During the course of hearing, learned Additional Advocate General appearing for the official respondents submitted that TRB is ready to allot pro rata marks to the 110 questions by deleting 40 erroneous questions or to reduce the total marks to 110 and to value the answer sheets. Since any decision which may be taken ultimately in these writ petitions may have a greater impact on the future of thousands of candidates, I deemed it appropriate to appoint amicus curiae to assist the Court. Accordingly, this Court requested Mr. Isaac Mohanlal, learned counsel, to assist the Court as amicus curiae.

10. When the matter again came-up for hearing on 25.09.2013, learned amicus curiae assisted the Court by bringing to the notice of the Court a number of judgments wherein the Hon"ble Supreme Court had occasion to deal with similar situations. He also submitted that it would be in the interest of justice to order re-examination for the candidates in Tamil subject. But the learned Additional Advocate General submitted that the Board will take a decision in consultation with the Government as to whether to conduct re-examination for all the candidates who appeared in the Tamil Subject. He, accordingly, requested for an adjournment. Therefore, the matter was adjourned to 30.09.2013.

11. On 30.09.2013, I heard the learned counsel for the petitioners. Learned Advocate General Mr. AL. Somayaji appeared for the official respondents and made his submissions. I also heard the learned amicus curiae Mr. Isaac Mohanlal as well as Mr. G. Thalaimutharasu, learned counsel for private respondents. I have gone through the records carefully.

12. At the outset, I have to state that it is painful to note that in an examination which would decide the fate of thousands of candidates who have been competing for getting Government job, TRB has not ensured that the question paper is free from mistakes so that the candidates could have a common platform, with equal fair opportunity to compete so as to prove their competence and merit. In a competitive examination of this nature, one man's trash is another man's treasure. Though, according to the petitioners, around 47

questions in the Tamil subject in "B" series question papers are erroneous, TRB has tacitly admitted before this Court 40 such questions are erroneous and therefore TRB has decided to delete the 40 erroneous questions to evaluate only rest of the 110 questions. Though it is submitted by the learned Advocate General that TRB cannot be held responsible for the said mistakes in the questions, I am not persuaded by the said submission. It may be true that in order to ensure secrecy of the question paper, several steps are to be taken by TRB at various levels, including at the printing press. For that matter, it may not be proper for this Court to give allowance to TRB so as to justify the mistake in 40 questions. The explanation offered by TRB is like a poor man always blaming his tools.

13. At this juncture, I have to state that this is not the first occasion that I have come across with such an experience with TRB. In the Teachers Eligibility Test conducted during the year 2012, when I was sitting in the Principal Bench at Madras, there were a number of writ petitions filed challenging the key answers in respect of around 87 questions. On a deep analysis, with the help of Experts, I found that key answers for more than 70 questions were wrong. In the said case in K.R. Shanthi Vs. The Secretary to Government, Education Department, Fort St. George, Chennai 9 and The Chairman, Teachers Recruitment Board, 4th Floor, E.V.K. Sampath Maaligai, DPI Compound, College Road, Chennai 6, , I was impelled to pass certain adverse remarks against TRB irked by the number of questions carrying wrong key answers. After the judgment was delivered in the open Court, the learned Additional Advocate General appeared and assured this Court that TRB shall ensure that there shall be no such mistakes in future. Accordingly, he requested the Court to withdraw the said adverse remarks. Accordingly, adverse remarks were withdrawn by this Court. Despite the said assurance given to this Court, hardly within one year, in the present case, this Court finds that TRB has allowed 40 questions to be printed erroneously in "B" Series question paper of the Tamil Subject. This, in my view, is highly deplorable. On instruction from the present Chairman of TRB, who has assumed charge very recently, the learned Additional Advocate General submitted that this kind of errors or mistakes will not be allowed to occur in future. I am hopeful that in the examinations to come, let there be no such mistakes causing so much of hardship to candidates.

14. Now, having taken note of the admitted position that 40 questions are erroneous, this Court has to examine the course to be adopted. This Court has kept in mind that any course to be adopted by this Court shall be an attempt to minimise the hardship to be caused to the candidates. Admittedly, the total number of candidates who appeared in the Tamil subject examination were about 32000. Out of these candidates, about 8000 have been supplied with "B" series question papers. The rest of the candidates have not suffered in any manner because there were no errors in any question in "A" "C" and "D" series question papers. Therefore, they had the benefit of answering as against 150 questions. But, the candidates who were supplied with "B" series question paper alone have

suffered.

15. The learned Advocate General would submit that despite the errors in the questions, many candidates have understood the questions and answered them. In my considered opinion, there is no justification in the said submission, as it is the bounden duty of TRB to ensure that there is no mistake in any question, materially affecting the understanding of the candidates.

16. During the course of the hearing, this Court made every endeavour to find a course which would comparatively result in minimum hardship to the candidates. The learned Advocate General submitted that after deleting the above 40 questions, the rest of the 110 questions would be valued and for every candidate 40 marks would be given as grace marks as against the 40 questions deleted and thus, the total number of marks will still be maintained at 150. This course is not agreeable to this Court, because, this will certainly materially and drastically affect the results. This will pave way for meritorious candidates to sink in the sea of confusion. This can be illustrated in the following manner.

There are two candidates who have answered "A" series question paper. The first candidate has answered 40 questions, other than the questions which are now under dispute. He has also answered all the 40 questions under dispute, rightly. Thus, he has secured 80 marks.

The second candidate has similarly answered 50 questions, other than the questions under dispute. So far as the 40 questions which are under dispute, he has not answered correctly. Thus he has secured only 50 marks.

If by following the process suggested by the learned Advocate General if 40 questions under dispute are omitted, then as per the illustration, the first candidate will maintain the same 80 marks; whereas the second candidate will now get 40 grace marks, thus making the total 90.

This illustration will squarely demonstrate as to how a candidate who had originally secured 50 marks will now rise upto 90 and compete with the candidate who has secured 80 marks. Thus, this less meritorious candidate will get selected and the meritorious candidate will not.

17. If wrong questions are negligible, in my considered opinion, the above process may not materially affect the outcome, though it will cause minimum imbalance. But, here, in this case, almost 1/3rd of the questions are wrong and, therefore, if the above method suggested by the learned Advocate General is followed, it will surely cause prejudice to the meritorious candidates and therefore this course cannot be followed.

18. The second method suggested by the learned Advocate General is that after deleting 40 questions, 40 marks equivalent to the said 40 omitted questions shall be equally distributed to the remaining questions on pro-rata basis. For this purpose, the learned Advocate General placed reliance on the judgment of the Hon'ble Supreme Court in *Vikas Pratap Singh and Others vs. State of*

Chhattisgar and Others in Civil Appeal Nos. 5318-5319 of 2013, date 09.07.2013. In that case, before the Hon''ble supreme Court, it was found that 8 questions were incorrect and model answers for valuation of answer scripts to another 7 questions of the same paper were incorrect. So far as the wrong answer key is concerned, there can be no difficulty in correcting errors with the help of experts and ordering for re-valuation based on the correct key answers. In the said judgment before the Hon''ble Supreme Court, so far as 8 key answers relating to 8 questions, the Hon''ble Supreme Court ordered for revaluation based on the correct key answers. So far as the incorrect questions numbering 7 are concerned, the Hon''ble Supreme Court directed for deletion of such incorrect questions and in the consequence pro-rata distribution of marks allocated to them. The learned Advocate General himself very fairly conceded before this Court that in the said judgment, the Hon''ble Supreme Court relied on Clause 14 of the Rules therein. Clause 14 of the Rules reads as follows:

Clause 14. Wrong (Defective) objective type question, its cancellation and marks to be allotted in lieu of it.

After the exams, the Chhattisgarh Professional Examination Board (VYAPAM) gets each question examined by the subject expert, if, upon examination by the subject experts, the questions are found defective/wrong, it is rejected. Questions may be rejected on the following reasons:

- i) if the structure of the question is wrong;
- ii) out of the options given as answers, if more than one options are correct.
- iii) If no option is correct.
- iv) If there is difference in Hindi and English translation of any question because of which different meaning is drawn from both and one correct answer could not be ascertained.
- v) If any other printing mistake is there because of which correct answer is not ascertainable or more than one option is correct.

On such rejection of question upon the recommendation of Subject Expert Committee, on such questions the marks would be awarded by the Chhattisgarh Professional Examination Board (VYAPAM) to the candidates in proportion to their marks obtained in the particular question paper. Whether the rejected question has been or not been attempted. The question papers in which the questions have been rejected, their evaluation procedure would be as follows, if in any question papers out of 100 questions two questions are rejected and after evaluation candidate secures 81 marks out of 98 questions then in such case calculation of marks would be done as $(81 \times 100) / 100 - 2 = 82.65$. On which basis merit would be determined.

19. It was only relying on the said rule, the Hon''ble Supreme Court directed deletion of 7 incorrect questions and ordered distribution of pro-rata marks. The

learned Advocate General would submit that though there is no such clause for allotment of pro-rata marks, indicated in the prospectus in the instant case, still, this Court, with a view to do justice to the parties, can, in its equity jurisdiction, order for such distribution of pro-rata marks. Regarding this submission, I have difficulty to agree. Apart from there being no such rule or clause in the prospectus for allotment of pro-rata marks after deleting wrong questions, there is yet another distinguishing factor. In the case before the Hon''ble Supreme Court, the questions were incorrect in respect of all the candidates who appeared in the examination. It is not as if these 7 questions were incorrect only in respect of a section of the candidates, as it has happened in the instant case. Apart from that, in that case, the incorrect questions were negligible in numbers; whereas in the case on hand, the incorrect questions forms almost 1/3rd of the total number of questions. As I have already pointed out, if pro-rata marks are allotted, after deleting the above 40 questions, this will materially affect the candidates who had appeared with "A" "C" and "D" series question papers. As I have already demonstrated, the candidates who had answered these 40 questions or some of the questions correctly will be deprived of the marks for the correct answers. Thus, the candidates who neither answered these questions nor incorrectly answered will be benefited by getting pro-rata marks.

20. It is needless to point out that in a competitive examination, always there should not be any discrimination. The candidates should be provided with a common platform with equal opportunity with equal advantage and disadvantage to prove their merit. The scale should always be equal. If pro-rata marks for 40 questions are distributed, as suggested by the learned Advocate General, many meritorious candidates who have answered these questions in "A", "C" and "D" series will be materially affected and thus candidates who have not answered these questions correctly will be benefited by getting marks. Thus, the non-meritorious candidates may even defeat the meritorious candidates. Therefore, in my considered opinion, it is not only on the ground of absence of a clause in the prospectus for granting pro-rata marks but also on the ground that incorrect question papers were not distributed to all the candidates uniformly, in my considered view, the said course also will not be an equitable measure to alleviate hardship to the candidates.

21. The learned Advocate General nextly relied on yet another judgment of the Hon''ble supreme Court in Pankaj Sharma Vs. State of Jammu and Kashmir and Others, . In that case, the Jammu and Kashmir Public Service Commission, on noticing spelling mistakes, printing errors, discrepancies, questions having doubtful answers and even wrong answers, etc. deleted those questions and added those marks pro-rata to the remaining questions. That course was challenged before the High Court. A learned Single of the High Court also directed to delete the questions and distribute the marks pro-rata to the remaining questions. An appeal made to the Division Bench was dismissed. As against the same, the matter was taken to the Hon''ble Supreme Court. It was contended before the Hon''ble Supreme Court that on noticing the above errors,

the Service Commission issued necessary instructions to the Supervisors of the Examination Centres in time and they in-turn announced the corrections and accordingly the candidates were not affected. But, the Hon''ble Supreme Court did not accept the said contention of the Commission. On facts, the Hon''ble Supreme Court found that the questions were incorrect and therefore they were to be omitted. The Hon''ble Supreme Court found that the approach of the Commission in deleting the questions as an appropriate remedial measure and adding pro-rata marks was correct. The Hon''ble Supreme Court made reference to the earlier judgment in Kanpur University and Others Vs. Samir Gupta and Others, . That was a case relating to wrong key answers. Finally, the Hon''ble Supreme Court, with a view to avoid further delay, was not inclined to order for re-examination, instead the Hon''ble Supreme Court confirmed the order of the learned Single Judge of the High Court directing deletion of incorrect questions and adding of pro-rata marks.

22. As I have already pointed out, the said course of deletion of questions and allotment of pro-rata marks was found appropriate by the Hon''ble Supreme Court, because incorrect question papers were supplied to all the candidates. The Hon''ble Supreme Court had no occasion to examine a case where a section of the candidates alone were supplied with such incorrect questions. Therefore, this judgment cannot be taken as a binding precedent to decide the issues involved in the present writ petitions. As I have already pointed out, the candidates who have written examinations in respect of "A", "C" and "D" series question papers stand in a different footing than the candidates who have suffered by the supply of wrong questions under "B" series.

23. Very recently, the Hon''ble Supreme Court had an occasion to deal with wrong key answers in the examination held during the recruitment process in Rajesh Kumar and Others etc. Vs. State of Bihar and Others etc., . That was also a case where the question paper was set in series like A, B, C, D as in the instant case. It was contended before the learned Single Judge of the High Court that in respect of "A" series question paper, 45 key answers out of 100 were wrong. The learned Single Judge held that the entire examination was liable to be cancelled and so also the appointments made on the basis thereof. As against the same, an appeal was made to a Division Bench. The Division Bench also concurred with the learned Single Judge that key answers for 45 questions were wrong. The Division modified the order passed by the learned Single Judge and declared that the entire examination need not be cancelled, as there was no corrupt motive or mal-practice with regard to other question papers. Thus, the Division Bench directed fresh examination in Civil Engineering paper only, to rectify the defects and to prevent injustice to the candidates. This matter was taken to the Hon''ble Supreme Court. The Hon''ble Supreme Court also found that 45 questions out of a total of 100 questions contained in "A" series question paper were erroneous. The Hon''ble Supreme Court having concurred with the same found fault with the direction of the High Court for re-examination and instead, the Hon''ble Supreme Court directed revaluation of the answer sheets of "A" series question paper, by

correcting the key answers. In my considered view, this Judgment, in no way, helps the case of the respondents. As I have already pointed out in the previous paragraphs, if the error is in respect of key answers, in order to rectify the same, it would be possible to correct the key answers and to go for revaluation of the answer sheets in respect of "B" series question paper alone. But, here, in the case on hand, the error is not in respect of key answers but the questions themselves were incorrect only in respect of "B" series question paper. Therefore, it is not at all possible to rectify the error in any manner to avoid re-examination.

24. The learned Advocate General suggested a third course also. According to him, after deleting the above 40 erroneous questions, total number of marks may be reduced to 110 and the correct 110 questions may be valued. This action, in my considered opinion, will not serve the purpose. The prospectus states that the question paper is for 150 marks. It cannot be reduced to 110, because it will be against the prospectus. Assuming that this Court could permit the said course in exercise of its equity jurisdiction, even then, as I have already pointed out, this will only result in injustice to the meritorious candidates. This again can be illustrated in the following manner.

There are two candidates who answered "A" series questions. The first candidate answered 10 questions other than the erroneous questions and 40 questions which are under dispute. Thus he has secured 50 marks.

The second candidate has answered 25 questions other than the questions under dispute. He has offered no answer or incorrect answers for the 40 questions under dispute. Thus he has secured only 25 marks. Now, if the above method suggested by the learned Advocate General is adopted, the 1st candidate will lose 40 marks and thus will get only 10 marks and the second candidate will retain 25 marks. Thus, in respect of two candidates who answered "A" series question paper, a meritorious candidate is pushed back and the non-meritorious candidate goes to the top. Therefore, this method also will not create a common platform. This is because the incorrect question papers were not distributed to all the candidates as had happened in the examinations dealt with in the judgments of the Hon"ble Supreme Court cited supra. Therefore, this course also is not possible to be adopted.

25. The learned Advocate General made a fervent appeal to this Court to avoid ordering re-examination. To make this submission, the learned Advocate General submitted that in these writ petitions, the relief sought for by the petitioners themselves is for only awarding grace marks for these erroneous questions. The learned Advocate General would therefore submit that it may not be appropriate for this Court to order for re-examination, since such a relief has not been prayed for at all. In this regard, I may again refer to the judgment of the Hon"ble Supreme Court in Rajesh Kumar and Others etc. Vs. State of Bihar and Others etc., . In paragraph Nos. 14 and 15, the Hon"ble Supreme Court has made the following observation.

14. Appearing for the appellants, Mr. P.P. Rao, learned senior counsel, argued that the High Court had committed an error in quashing the entire selection process even when the petitioners had not made any prayer to that effect. Mr. Rao was at pains to argue that a relief which was not even prayed for by the writ petitioners could not be granted by the Court whatever may have been the compulsion of equity, justice and good conscience. Reliance in support of that proposition was placed by him upon *Bharat Amratlal Kothari Vs. Dosukhan Samadkhan Sindhi and Others*, and *State of Orissa and Another Vs. Mamata Mohanty*, .

15. There is, in our view, no merit in that contention of Mr. Rao. The reasons are not far to seek. It is true that the writ petitioners had not impleaded the selected candidates as party respondents to the case. But it is wholly incorrect to say that the relief prayed for by the petitioners could not be granted to them simply because there was no prayer for the same. 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.

26. In view of the above legal position, as reiterated by the Hon'ble Supreme Court in *Rajesh Kumar's* case, in the instant case, though the petitioners have sought for only awarding of grace marks, I am of the view that such relief cannot be granted to the petitioners, as the same would materially affect other candidates. Therefore, by moulding the relief, in my considered opinion, this Court could order only for re-examination.

27. I am conscious of the fact that all the candidates who have written the examination in "A", "C" and "D" Series question papers have not been added as

parties to these writ petitions. It is true that in the event this Court orders for re-examination, it may cause hardship to them. But, as held by the Hon''ble Supreme Court in Rajesh Kumar's case, adopting any one of the methods suggested by the learned Advocate General, as dealt with herein above, would only result in injustice to the meritorious candidates. In any selection process, the merit should not be a victim. Every endeavour should be made to give weightage for the merit and to select meritorious candidates. Simply because it will cause some hardship for TRB to conduct re-examination, the meritorious candidates cannot be allowed to suffer.

28. The learned Advocate General would take me through paragraph 19 of the judgment in Rajesh Kumar's case cited supra to make submission that unless there are compelling reasons like mal-practice, fraud or corrupt motives, thereby vitiating the entire examination, ordering for fresh examination may not be appropriate. At this juncture, it will be necessary to have a look into paragraph 19 of the judgment, which reads as follows:

19. The submissions made by Mr. Rao are not without merit. Given the nature of the defect in the answer key the most natural and logical way of correcting the evaluation of the scripts was to correct the key and get the answer scripts re-evaluated on the basis thereof. There was, in the circumstances, no compelling reason for directing a fresh examination to be held by the Commission especially when there was no allegation about any malpractice, fraud or corrupt motives that could possibly vitiate the earlier examination to call for a fresh attempt by all concerned. The process of re-evaluation of the answer scripts with reference to the correct key will in addition be less expensive apart from being quicker. The process would also not give any unfair advantage to anyone of the candidates on account of the time lag between the examination earlier held and the one that may have been held pursuant to the direction of the High Court. Suffice it to say that the re-evaluation was and is a better option, in the facts and circumstances of the case.

29. A reading of the above judgment would go to show that the Hon''ble Supreme Court has not laid down it as a law that only in cases where malpractice, fraud or corrupt motive is found, there shall be an order for reexamination. The Hon''ble Supreme Court has only held that events like malpractice, fraud or corrupt motives are some of the compelling reasons. What constitutes a compelling reason depends on the facts and circumstances of each case. In the instant case, though it is not alleged that there was fraud, corrupt practice or mal-practice, I find that there are compelling reasons to order for re-examination. As I have extensively narrated herein above, any method suggested by the learned Advocate General to avoid re-examination will only result in injustice to meritorious candidates. As a matter of fact, I made every endeavour to find an amicable course so as to avoid re-examination. But, unfortunately, I find no such viable course.

30. The learned Advocate General would submit that for conducting

reexamination it will take another six months in the following manner.

PG Tamil re-exam work could be started during December 2013.

Sl.

Work description

Time required

1

Question paper setting

3 weeks

2

Standardisation

2 weeks

3

Handing over of QPs to DGE

4

Printing of OMR answer sheets

2 weeks

5

Exam Centres finalization, Hall tickets generation & uploading

2 weeks

6

Printing of Question Papers

4 weeks

7

Despatching of materials and pre-exam arrangements

1 week

8

Examination

1 week

9

Scanning of OMRs

10

Publishing tentative answer keys and receiving of candidates representations

2 weeks

11

Key scrutiny

3 weeks

12

Finalisation of results

2 weeks

13

Certificate verification

2 weeks

Total time required

(approximately 6 months)

The Secretary of TRB was present in the Court. To a specific query made by the Court, he submitted that an alternative question paper set already is ready with TRB and it is to be given only for printing purpose. As has been stated in the statement, it will take only four weeks hardly. Thereafter, within one week examination could be conducted. So far as the time mentioned herein above in the table for re-examination, valuation, finalisation of results, certificate verification etc., even if any one of the modes suggested by the learned Advocate General is adopted, this time will be consumed for screening OMR answer sheets, publishing results, certificate verification, etc. Therefore, if reexamination is ordered, a minimum time of 4 to 5 weeks alone is required, additionally. In order to avoid the delay of five weeks, this Court cannot allow the meritorious candidates to fall as victims at the hands of TRB due to the above 1/3rd of erroneous questions in "B" series alone. As I have already pointed out, the endeavour of this Court, all through, was to minimise the hardship to the candidates, to create a common platform for the candidates to compete where no candidate will be put into any advantage or disadvantage and to provide equal opportunity to prove their merit. Having made such an endeavour, with pains, I find no other option but to order for re-examination. This is the only viable solution which will serve the purpose.

31. Yet another judgment of the Hon'ble Supreme Court in *Guru Nanakadev University vs. Saumil Garg and others*, reported in (2005) 15 SCC 749, was also brought to my notice. In that case, the competitive examination was for admission to medical colleges. In that case, the questions were objective type.

The key answers for 8 questions were found wrong. The Hon''ble Supreme Court held reasonable procedure to be followed would be to give credit to those who attempted the questions or some of them. In paragraph 12 and 13, the Hon''ble Supreme Court has held as follows:

12. There is yet another problem, namely, that they are incapable of having a correct answer. The appellant University, in respect of those seven questions, has given the credit to all the students who had participated in the entrance test irrespective of whether someone had answered the questions or not. We do not think that that is the proper course to follow. It is wholly unjust to give marks to a student who did not even attempt to answer those questions. This course would mean that a student who did not answer say all the seven questions would still get 28 marks, each correct answer having four marks. The reasonable procedure to be followed, in our opinion, would be to give credit only to those who attempted the said questions or some of them. Having regard to the circumstances of the case, we direct that for the students who attempted those questions or some of those questions, insofar as they are concerned, the said questions should not be treated to be part of the question paper. To illustrate, if a student answered all the said seven vague questions, insofar as that student is concerned, total marks would be counted out of 772 i.e. 800 less 28 and likewise depending upon number of such questions, if any, answered by the student. The seven vague questions are Question 4 in Physics, Questions 76 and 89 in Chemistry, Questions 147 and 148 in Botany and Questions 156 and 163 in Zoology of Question Paper Code A.

13. In view of the aforesaid, we modify the directions contained in the impugned judgment of the High Court and direct the appellant University to reevaluate the answer-books in terms of the aforesaid directions and on that basis, prepare the ranking of the students, within two days.

32. This judgment does not help the respondents in any manner, for the reason that first of all that judgment relates to wrong key answers. Secondly, the wrong key answers were applied as against all the candidates. Thus either advantage or disadvantage was uniform to all. But, in the instant case, the wrong questions were only in "B" series question paper. Unfortunately, except 8000 candidates, around 24 thousand candidates have been benefited with correct question papers. Therefore, either advantage or disadvantage will not be uniform if the above method adopted by the Hon''ble Supreme Court is followed in the instant case.

33. In view of foregoing discussions, though it will cause some hardship for TRB to conduct re-examination and though the candidates have to once again burn their night oil to prepare for their examination and though it may cause financial burden considerably to the official respondents, on that score this Court cannot allow injustice to be caused to candidates by allowing TRB to value the answer sheets by adopting any one of the methods suggested by the learned Advocate General. I find that ordering for re-examination is the only equitable relief this

Court could grant to the parties.

34. I regret that this Court is made to take such a hard line. This Court is able to foresee the hardship and sufferings that the candidates are going to experience. This Court is also conscious of the fact that the candidates who have fared well in the present examination may not do so well in the re-examination and ultimately suffer. All these hardships are, in my considered view, because of the indifferent attitude of TRB, as narrated above. Judiciary, being the institution which has been established under the Constitution to enforce equality and to protect the other rights of the citizens, cannot show any reluctance to take a hard line to order for re-examination. After all, as the English proverb goes, "one cannot make omlet without breaking few eggs". In the result, the writ petitions are disposed of in the following terms:

(i) The written competitive examination for recruitment of Post Graduate Assistants in Tamil subject held on 21.07.2013 is hereby set aside.

(ii) The official respondents, more particularly the Teachers Recruitment Board, is directed to conduct fresh examination as early as possible, in any event, not later than six weeks from the date of receipt of a copy of this order.

(iii) For such a fresh examination, fresh hall tickets need not be issued to the candidates. Old Hall Tickets downloaded from the Teachers Recruitment Board Website can be considered as sufficient.

(iv) There shall be no fresh calling for applications. No costs. Connected miscellaneous petitions are quashed.