
(2019) 12 OHC CK 0012

In the Orissa High Court

Case No : Writ petition (C) No. 11094 Of 2019

Jitendra Palei And Others

APPELLANT

Vs

State Of Odisha & Others

RESPONDENT

Date of Decision : 03-12-2019

Acts Referred:

Citation : (2019) 12 OHC CK 0012

Hon'ble Judges : Dr. B.R. Sarangi, J

Bench : Single Bench

Advocate : A.K. Mohapatra, S.J. Mohanty, M.R. Muduli, B. Senapati, S. Das, A. Mohanty

Final Decision : Disposed Of

Judgement

Dr. B.R. Sarangi, J

1. The petitioners, who are the applicants for the posts of Lecturer in History in Non-Government Aided Colleges of Odisha, pursuant to

advertisement no.003 of 2018 issued by State Selection Board-opposite party no.2, have filed these writ petitions challenging the written examination

conducted, on the ground that the set up questions were defective, inasmuch as there were spelling mistakes, printing errors, wrong questions and

discrepancies in questions having doubtful answers.

2. The facts of the case, which are essential for the purpose of deciding this case, are that in order to fill up 81 vacancies in the post of Lecturer in

History, State Selection Board published an advertisement bearing No.003/2018 in its website. Out of 81 posts, 27 were reserved for women, 18 for

S.T. including 6 for women, 13 for S.C. including 4 for women, 9 for SEBC including 3 for women and 41 for U.R. including 14 for women. The

advertisement indicates that the selection shall be made on the basis of career 25 marks (Ph.D 25 and M. Phil & or NET 10), written 165 marks

(Objective Type), viva voce 10 marks and in total 200 marks. Written examination in the concerned subject shall be conducted as per the syllabus

given in the website (which may be considered as a model syllabus at par with the curriculum recommended by different Universities and leading

colleges of the State) carrying 165 marks and questions for this 165 marks shall be of objective type (multiple choice), which are to be answered in

OMR sheet and the examination will be of three hours duration.

2.1 Online applications were invited from the prospective candidates for recruitment of 833 posts of Lecturers (DP Posts, which includes 81 posts in

subject History in the scale of pay Rs.9,300-Rs.34,800/- carrying a Grade Pay of Rs.4,600/- (Matrix-10 as per 7th Pay Matrix) for the Non-

Government Aided Colleges of the State in different subjects. The posts are temporary but likely to be made permanent. Candidates were required to

apply online through website www.ssbodisha.nic.in at the link available on this site. No other means/mode of submission of applications would be

accepted. Opening date for online applications was fixed to 12.11.2018 and last/closing date & time for online applications was 11.12.2018 (Mid

Night).

2.2 In the advertisement, it was also indicated that the candidates belonging to PwD/Ex-Servicemen/Sports Person when selected as per reservation

provided for them (i.e. 4%, 1% & 1% respectively) would be adjusted against the categories to which they belonged. Out of 4% reservations for

Persons with Disabilities, one percent reservation would be earmarked for women with disabilities. The minimum age limit was prescribed for general

category as 21 years and maximum age would be 42 years as on 1st September, 2018. The upper age limit was relaxable by 5 years for candidates

belonging to the categories of Schedule Caste (SC), Scheduled Tribe (ST), Socially and Educationally Backward Classes (SEBC), Women, Ex-

Servicemen. Similarly, upper age limit was relaxable by 10 (ten) years for the candidates belonging to the PwD categories, whose disability is not less

than 40%.

2.3 As regards educational qualification, it was prescribed that a candidate should possess a Master's Degree in the concerned subject from a

recognized University with at least 55% marks or its equivalent grade with a second class in the Bachelor's Degree. Provided that candidate

belonging to the Scheduled Castes and Scheduled Tribes should possess a Master's Degree in the concerned subject from a recognized University

with at least 50% marks or its equivalent grade with a 2nd class in the Bachelors Degree.

2.4 Adhering to the conditions stipulated in the advertisement, the petitioners along with others, have applied for the post of Lecturer in History. After

due scrutiny, they were issued with admit cards, appeared in the written examination conducted by the State Selection Board on 10.03.2019, pursuant

to notice issued on 08.02.2019. They were provided with questions of objective type (Multiple Choice) which were to be answered in OMR sheet. It is

alleged that several questions set in the examination paper were not only out of syllabus but also contained spelling mistakes, grammatical errors,

wrong construction of the word and contained questions in which answers were not there in the option.

2.5. In paragraph- 7 and 8 of the writ petition it has been specifically pleaded as follows:

7. That while the matter stood thus, as per the schedule, the petitioners appeared in the examination for the post of lecturer in History discipline on

10.03.2019. The petitioners found that there are total 165 number of questions in question papers and out of 165 questions, the petitioners found that

there are 31 numbers of questions were mistake having 06 mistaken questions and similarly in 25 questions there are wrong construction of the

answer key and no answer also provided.

8. That, it is pertinent to mention here that there are 6 questions namely Question Nos. 2, 39, 81, 116, 129 and 154 are wrong and there are also 25 no.

of question answers are wrong in answer key namely Question Nos. 1, 5, 6, 18, 20, 24, 40, 52, 61, 66, 68, 69, 71, 74, 79, 84, 96, 104, 108, 126, 132, 133,

139 and 153 are controversial/ambiguous questions and it cannot be answered to these questions.

2.6. In view of above pleadings, 31 questions out of 165 are said to be wrong, ambiguous, out of course, or options are not given in proper manner.

After examination is over, the petitioners filed their representation, but the State Selection Board did not pay any heed to the same. The State

Selection Board, on 16.03.2019 published key answers of the questions, on verification of which, the petitioners found wrong in the said answer key in respect of question nos.12, 39, 81, 116, 129 and 154. The whole process of examination, which was conducted by opposite party no.2, based upon wrong and ambiguous questions, especially questions no. 1, 5, 6, 18, 20, 24, 40, 52, 61, 66, 68, 69, 71, 74, 79, 84, 96, 104, 108, 126, 132, 133, 139 and 153 are controversial/ ambiguous questions.

2.7. The admit cards issued to the candidates in Clause-11 stipulate that there would be 165 questions in the test booklet. Each question will comprise of 4 responses (answers). The correct answer has to be darkened in the answer sheet (OMR sheet) by black ball point pen. For each correct response (answer), one (01) mark will be awarded and each wrong response (answer) will result in negative marking of 0.25 mark. Since there is provision of negative marking, in the event of wrong or ambiguous and out of course question, it will cause prejudice to the candidates. As such, being aggrieved by such stipulation, the petitioners have approached this Court by filing the present writ application.

3. Mr. A.K. Mohapatra, learned counsel for the petitioners strenuously urged that when a large chunk questions are demonstrably and palpably wrong, ambiguous, out of course, or options are not given in proper manner, and it which attracts negative marking, the result of examination should be cancelled and the petitioner should be allowed to sit in the fresh examination to be conducted for determination of their merits and eligibility. It is further contended that if a large chunk of questions are wrong, ambiguous or otherwise not in consonance with the syllabus prescribed and there is provision for awarding of negative marking, in that case, awarding of pro-rata mark would cause grave prejudice to the examinees and it would be detrimental to their own interest. It is further contended that due to indifferent attitude of the State Selection Board (SSB), the examinees suffer from casualty. To substantiate his contention, he has relied upon the judgment of this Court in *Madhumala Bisoyee & others v. Odisha Public Service Commission*, 2015 (II) OLR 413 and *Rajesh Kumar and others v. State of Bihar and others*, AIR 2013 SC 2652.

4. Mr. B. Senapati, learned Addl. Government Advocate appearing for the State opposite parties in both the writ petitions, with reference to the

counter affidavit, has admitted that advertisement was issued in respect of 81 posts of Lecturer in subject History, pursuant to advertisement no.

003/2018 dated 06.11.2018, and also admitted that the written examination in all subjects, including History, was held on 10.03.2019. In order to

maintain transparency, the answer keys to individual questions subject-wise, as provided by the paper setters for the written examination, were kept in

sealed cover and opened after the written examination and uploaded on 19.03.2019 in the official website of the State Selection Board for information

of the candidates as per the notice no. 338/SSB, dated 16.03.2019 wherein objections, if any, were called for from the candidates in both online and

offline modes to be submitted to the State Selection Board by 25.03.2019. It was also further clarified that objection, if any, received beyond the

stipulated date 25.03.2019, the same would not be entertained. So far as the objections received in respect of subject History, the same was

scrutinized by three subject experts in History as well as the answer keys in the captioned subject were examined minutely. After review of all the

questions, the subject experts gave their opinion, as has been detailed in paragraph-7 and 8 of the counter affidavit, which reads as follows:

7. It is humbly submitted that after receipt of objection from the candidates in the subject History, the four subject experts in History

scrutinized the questions as well as the answer keys in the caption subject minutely. Such a task was completed by four Subject Experts and after

reviewing all the questions the subject experts opined that:-

i) Three nos. of questions are out of syllabus Qns. No. 56, 68 and 71.

ii) Wrong Questions-

Three questions are irrelevant Qns. No. 13, 122, & 125

Five questions for which no correct/appropriate answers given- Qns. No. 2, 27, 77, 126 & 129.

For thirty questions the answers are modified.

The review committee for the subject History have suggested that 10 questions are having correct multiple answers & credit will be given to the

candidates who answered any one of the correct answers for those ten questions i.e. for Qns. No. 20, 39, 48, 53, 92, 96, 106, 108, 133 and 141. The

Review Committee also have suggested that credit will be given to the candidates by applying P/Q method for 11 questions No. 2, 13, 77, 122, 125,

126, 129 and 154. The copy of the review committee suggestion dtd .09.04.2019 is annexed herewith as Annexure-A/3.

The review committee have also provided the modified & corrected answer keys for all the questions in subject History. Copy of the revised answer

Key is annexed herewith as Annexure- B/3.

8. That it is humbly submitted that after receipt of the report from the subject experts, the Selection Board took decision that full credit shall be given

in case of captioned 11 number of questions in the subject History for all the candidates appeared in Written Examination. Accordingly instructions

were issued to the Processor for valuation, copy of which is annexed herewith as Annexure-C/3

In view of the said report of the review committee, the SSB took a decision that full credit shall be given in case of captioned 11 numbers of questions

in subject History for all the candidates appeared in the written examination. Accordingly, instructions were issued to the processor for valuation. The

modified and corrected answer keys furnished by the review committee in respect of subject History was accepted by the SSB for necessary follow

up action, consequentially evaluation was undertaken. Therefore, the petitioners, having not come out successful, cannot challenge the same by filing

present writ application and at their behest the examination so conducted cannot be cancelled. To substantiate his contention, he has relied upon the

judgment of the apex Court in Pankaj Sharma v State of Jammu and Kashmir & others, (2008) 4 SCC 273.

5. Though applications for intervention had been filed, but the same were not allowed, in view of the fact that even though the result of selection has

been published, no right has been accrued in their favour. But, however, learned counsel appearing for the interveners has been allowed to address the

Court. In course of hearing, Mr. S. Das, learned counsel for intervenors contended that he adopts the arguments advanced by Mr. B. Senapati,

learned Addl. Government Advocate, but added that in view of the law laid down by the apex Court, in Richal and Ors. v. Rajasthan Public Service

Commission and Ors., (2018) 8 SCC 81, the intervener-petitioners having been selected on the result declared by the SSB, if direction would be given

to revise the entire result of remaining candidates, it will not cause prejudice to the intervener-petitioners and more particularly, it is contended that the

petitionersâ?? name does not find place in the select list.

6. This Court heard A.K. Mohapatra, learned counsel for the petitioners; Mr. B. Senapati, learned Addl. Government Advocate appearing for the

State including State Selection Board, opposite parties no. 2 and 3; and Mr. S. Das, learned counsel for intervenors; and perused the records.

Pleadings having been exchanged between the parties and with the consent of the learned counsel for the parties, this writ petition is being disposed of

finally at the stage of admission.

7. Considering the gravity of the allegations made by the petitioners, this Court issued notice on 27.06.2019 and passed an interim order in I.A No.

8963 of 2019 that the process of selection so far as subject History may continue, but no finalization of selection be made without leave of this Court

till 24th July, 2019 and the interim order has been extended from time to time. As a consequence thereof, the selection, so far as subject History is

concerned, has not been finalized.

8. The allegations levelled by the petitioners were more or less found to be correct, in view of the objections raised by them soon after the examination

was over, by filing representation. The same were considered and a notification was issued on 16.03.2019 providing the answer keys of the questions.

The petitioners also raised objection to such answer keys and after realizing its mistake, the SSB constituted a review committee comprising of three

experts in subject History, namely, Dr. Kharabela Mahanti, Prof. B.K. Mallik, Dr. H.K. Mohapatra and Binodini Das, who on examination submitted

their report and also gave suggestions with regard to awarding of marks in respect of such defective questions. Not only in subject History, but also in

other subjects also similar mistakes were found to have been committed. In subject History, the review committee found that questions no. 56, 68, 71

were out of syllabus, and, therefore, suggested that PQ method is to be applied. So far as questions no.13, 122 and 125 are concerned, they were

found to be wrong/irrelevant. Questions no. 2, 27, 77, 126, 129 were found to be not given with correct/appropriate answers/options. So far as

questions no. 1, 5, 6, 20, 24, 39, 40, 48, 52, 53, 61, 66, 68, 69, 74, 79, 81, 84, 85, 92, 95, 96, 104, 106, 108, 123, 132, 133 and 141 are concerned, it was

found that there was change in answer key. Accordingly, the review committee recommended for adoption of PQ method for the questions no. 2, 13,

77, 122, 125, 126, 129 and 154, as either they are defective or the answer alternatives are inappropriate/defective. Therefore, the review committee submitted a revised answer key prepared by the subject expert committee and suggested that in future proper care should be taken for setting up questions in correct English. There should also be proper moderation and proof reading. The report of subject expert committee meeting in History held on 8th and 9th April, 2019, which has been annexed as Annexure-A/3 series; revised answer key, which has been annexed as Annexure-B/3; the sheet containing the instructions to the processor, which has been annexed as Annexure-C/3, and so far as 11 questions, which are pointed out by expert committee, indicating full credit will be given to all the candidates in respect of subject History, which has been annexed as Annexure-D/3, to the counter affidavit are reproduced hereunder on being scanned.

9. On perusal of the contention raised by learned counsel for the petitioner, vis-à-vis the report submitted by the expert committee in Annexure-A/3, it clearly indicates that the answers in original key in respect of 30 questions have been revised by the expert committee as per Clause-4 of their report and there is also indication that questions no. 13, 122, 125 were wrong/irrelevant, and no correct/ appropriate answer alternatives had been provided in questions no. 2, 27, 77, 126, 129. But recommendation was made to adopt PQ method in respect of questions no. 2, 13, 77, 122, 125, 126, 129 and 154 and also questions no. 56, 68 and 71, which were out of syllabus questions. In respect of these 11 questions, which were opined to be defective, the processor has been instructed to award marks instead of going for PQ method, from which it is evident that SSB admitted such defect. But, so far as 30 questions are concerned, in respect of which answer key has been revised, have not been taken care of by the authority concerned. Therefore, it is emphatically clear that the objections with regard to answer key, which had been raised by the petitioners soon after the examination, have not been adhered to, nor the said correct answer key has been notified to the candidates even after recommendation was made by the expert committee. Therefore, the SSB has not acted in consonance with the recommendation made by the expert committee. Even though in respect of 11 questions the SSB has decided to give full credit to all the candidate, that itself will not suffice to cover up all other

defects pointed out by the expert committee, more particularly, when answer key, as notified, was not correct in respect of 30 questions.

10. The petitioners have also given reply in paragraph-8 of their rejoinder affidavit to the following effect.

8. That, in reply to Para-7 of the counter affidavit it is humbly submitted that the averments made therein are not correct as the same is contrary

to the records. It is also a fact that the SSB has not taken any effective measures for maintaining transparency in the selection process. So far

constitution of the committee for different subjects by taking experts is concerned, it is respectfully submitted that the same is not at all correct. Had

there been really such an expert committee, then the mistakes which have occurred would not have happened. Further till date the SSB has not

published/uploaded the revised answer key in their website.

It is further humbly submitted that, due to such erroneous questions, the present petitioners have already submitted their objections before 25.03.2019

i.e., on 23.03.2019 as per Annexure-6 of the writ petition.

As per the expert committee scrutiny relating to the discipline/subject of History, the following questions as well as answers key are found

incorrect/wrong/out of the syllabus/irrelevant:-

a. Questions No. 56, 68 & 71 are out of the syllabus.

b. Wrong Questions:-

i. Three questions are irrelevant-Questions No.13, 122 and 125.

ii. Five questions for which no correct/appropriate answers given Question No. 2, 27, 77, 126 and 129.

iii. For thirty questions the answers are modified- Question No. 1, 5, 6, 20, 21, 24, 39, 40, 48, 52, 53, 61, 66, 68, 69, 74, 79, 81, 84, 85, 92, 95, 96, 104, 106, 108, 123, 132, 133, 141.

The review committee has suggested that 10 numbers of questions are having multiple correct answers and credit will be given to the candidates who

answered anyone of the correct answers for the subject of history. Moreover, in the counter affidavit it is admitted that there are 11 questions instead

of 10 questions which are having multiple correct answers i.e., questions No. 20-B/D, 39-A/B/C, 48-C/D, 53-C/D, 92-A/B, 96-B/D, 106-C/D, 108-

A/D, 133-A/B, 139-B/C and 141-B/C.

The examination in question was held in MCQ format. Whereas each question comprises four answers and the candidates had to select one correct

answer out of four answers in their OMR answer sheet and all questions carry equal marks i.e., one mark for each correct answer and each wrong

answer would result in a negative marking of 0.25 marks. The questions having more than one/multiple correct answers have created a lot of

confusion in the mind of the appearing candidates and caused mental harassment to those who have appeared in the examination.

The review committee also have suggested that the credit would be given to the candidates by applying P/Q method for 11 questions No. 2, 13, 77,

122, 125, 126, 129 and 154 as per Annexure-A/3 of the Counter Affidavit, but here is a mistake that there are only 8 questions instead of 11 questions

i.e., questions no. 2, 13, 56, 68, 71, 77, 122, 125, 126, 129 and 154.

The above questions were dealt with by adopting P/Q method and marks were credited to all the candidates. Irrespective of their knowledge, talent

and accuracy, which is highly unfair, unreasonable, caused harassment to good candidates and above all such an approach destroys the competitive

spirit among the candidates.â??

The above pleadings have been answered in paragraph-5 of the reply filed by the opposite parties against the rejoinder affidavit filed by the petitioner,

to the following effect:-

â??That, in reply to the Paragraphs- 8 & 9 of the rejoinder it is humbly submitted in para-7 of the counter affidavit that the Subject Expert Committee

was constituted to address various objections raised by the candidates with regard to the Answer Key of the subject History which was uploaded by

the State Selection Board in its official website. In order to maintain fairness, the State Selection Board notify in its official website vide Notice No.

338 dt.16.03.2019 where in objections if any were invited from the candidates in both on-line and off-line mode by 25.03.19 (Annexure-7 of the writ

petition). On receiving the objections, including from the petitioners, the Subject Expert Committee was constituted which examined the questions with

answer key uploaded and recommended suitable modifications which came up as revised scheme of evaluation. The Subject Expert Committeeâ??s

revision of answer key is appended in the form of Annexures-B/3 & D/3 in the counter affidavit. The averment made by the petitioners that the SSB

has not uploaded the revised answer keys in its website has no merit.

Further it is humbly submitted that in Para 8 of the counter affidavit submitted by the Opp. Parties, that after receipt of the report from the Subject

Expert, the State Selection Board took a decision that full credit shall be given against 11 questions i.e. (Qn. No. 02, 13, 56, 68, 71, 77, 122, 125, 126,

129 and 154, erroneous and irrelevant or out of syllabus questions) to all the candidates who appear in the written examination of the subject History

which is annexed in the counter affidavit as Annexure C/3. The State Selection Board adopted the principle of uniformity in awarding full marks to all

the candidates appeared in the Written Examination including the petitioners and therefore the averment made by the petitioners that P/Q process for

awarding marks against these 11 questions doesn't arise because P/Q method was not adopted at all. On the contrary 11 marks are added against

these 11 questions to all the candidates in the subject History, including the petitioners, irrespective of their performance in rest of the questions of the

Test Booklet, which is mentioned in para 8 of the counter affidavit and appended in the form of Annexure-C/3 in the counter affidavit.

Again further as per rejoinder of the petitioners to the counter affidavit avers that the Subject Expert Committee in Subject History set up by SSB, to

scrutinize the questions and answer keys of the test, has suggested that 10 numbers of questions have multiple correct answers and marks/credit will

be awarded to those candidates who answered anyone of the correct answers for the these questions, whereas the SSB awarded points for 11 no. of

questions having multiple correct answers, which the petitioners claim to be contrary to the recommendation of the Expert Committee. However, in

the counter affidavit it is submitted that there are 11 questions instead of 10 questions which are having multiple correct answers i.e., question no. 20-

b/d, 39-a/b/c, 48-c/d, 53-c/d, 96-a/b, 96-b/d, 106-c/d, 108-a/d, 133-a/b, 139-b/c and 141-b/c.

Xx xx xâ??

In view of the pleadings available on record, it is evident that the opposite parties have tried to justify their action by filing counter affidavit and further

reply to the rejoinder affidavit, but that itself cannot suffice the ground reality of the problems faced by the candidates, who appeared in the

examination with great hope that in the event of success, they may get job

under the State authority. In view of such admitted position in the pleadings and the report given by the expert committee, it appears that the SSB has committed grave irregularities and illegalities in the matter of setting up of the questions and also preparing the answers key for the candidates and more so, having admitted its fault, even though in respect of 11 questions the SSB has decided to award but so far as other questions are concerned, there is no such positive response to that extent, particularly when in case of questions carrying negative marking each question has its own importance for a candidate.

11. Mr. B. Senapati, learned Addl. Government Advocate appearing for the State has placed reliance on Pankaj Sharma (*supra*), in which the selection process was initiated by Jammu & Kashmir Public Service Commission for filling up 132 posts of eighteen Gazetted Services as notified on April 1, 2005 for Jammu & Kashmir Combined Competitive Examination. The examination was held on July 3, 2005 in which the writ petitioners appeared for the Preliminary Examination, but could not become successful for being considered eligible and qualified in the process of short listing and were not appeared at the Main Examination as also at Oral Interview. The selection process at the Preliminary Examination was challenged, *inter alia*, on the ground that it was defective, inasmuch as there were spelling mistakes, printing errors, discrepancies, questions having doubtful answers and even wrong answers; etc., the course adopted by the Commission of deleting certain questions and adding those marks pro-rata to the remaining questions was not proper; the decision was also illegal and invalid as it was not taken by majority of Members of Commission. The learned Single Judge considering the controversy in its proper perspective and in the light of the mistakes, errors and inaccuracy, issued certain directions which benefited the students' community. The said order of the learned Single Judge was confirmed by the Division Bench. Challenging such order of the learned Single Judge of Jammu & Kashmir High Court and confirmed by the Division Bench, Civil Appeal No. 1997 of 2008 was filed wherein the Apex Court held that the learned Single Judge was right in not setting aside the preliminary examination and directing main examination to be conducted by the Commission and further held that the directions issued by the learned Single Judge were in the interest of the

candidates as also in the larger interest of the administration, thereby dismissed the Civil Appeal. It is contended that since the process of pro-rata

awarding of marks for remaining questions has been approved by the apex Court in aforementioned cases, the same principle is applied to the present

context, but such contention is contrary to the pleadings made available on record, more particularly the reply affidavit filed by opposite parties no. 1, 2

and 3, reason being though the review committee recommended for awarding marks in the examination on P.Q. method, but the same has not been

applied, which has been candidly admitted in reply affidavit, which reads as follows:-

“Further the averment made by the petitioners that such a scheme for awarding marks to two or three probable answers have created a lot of

confusion in the mind of the appearing candidates and caused mental harassment to those who have appeared in the examination is a contrive because

the Test Booklet in instruction 3 (submitted in Annexure-5 of the writ petition) clearly states;

“The Test Booklet contains 165 questions. Each question comprises four answers. You have to select the correct answer which you want to mark

(darken) on the Answer Sheet. In case, you feel that there is more than one correct answer, you should mark (darken) the answer which you consider

the best. In any case choose ONLY ONE answer for each question. If more than one answer is darkened it will be considered as wrong”.

Therefore, the ratio laid down in Pankaj Sharma (supra) having neither been followed nor the suggestions given by the review committee, this Court is

of the considered view that the SSB has acted in a manner prejudicial to the interest of the candidates.

12. Mr. A.K. Mohapatra, learned Counsel appearing for the petitioners referring to judgment of this Court in Madhumala Bisoyee (supra), wherein

this Court observed in paragraphs-12, 13 and 14, as follows:

“12. In Manish Ujjwal and others (supra) the Apex Court has held that the University and those who prepare the key answers have to be careful

and abundant caution is necessary in these matters for the reasons stated below:

(i) paramount reason being the welfare of the student as a wrong key answer can result in the merit being made a casualty.

(ii) Reluctance by courts in interfering in educational matters which in turn casts

a higher responsibility on the University while preparing the key answers;

(iii) In case of doubt the benefit goes in favour of the University and not in favour of the students.

13. In *J. Antony Clara (supra)* the Madras High Court has also expressed the same view that pro-rata marking should not be encouraged and

consequently, the written competitive examination held for recruitment of Post Graduate Assistants in Tamil subject on 21.7.2013 was set aside and

the official respondents were directed to conduct fresh examination as early as possible.

14. *Gourav Jain and others (supra)*, the Punjab and Haryana High Court observed as follows :

“Before parting with this judgment I am constrained to observe that even though the allegation that the paper is vitiated because questions have

been prescribed from outside the syllabus has been repelled yet it cannot be gainsaid that the reason for that was not so much that the questions were

strictly within the syllabus but that special prejudice has not been said to have been caused to the petitioners. However, it cannot be denied that

prejudice was caused to all the examinees across the board. The prescription of a syllabus obviously intends to bind the examiner. Not only this, the

four questions extracted above also reveal the cavalier attitude with which the paper has been set. It is indeed regrettable that a premier constitutional

authority like the Public Service Commission would let such a carelessly drafted question paper be inflicted on the examinees for a premier service of

the State. In the circumstances the Commission is directed to devise some in house mechanism to ensure that wherever a syllabus is prescribed the

questions should be prescribed strictly from within its four corners. It is also the duty of the Commission to make certain that there are no questions

which are either demonstrably wrong or 'tricky'.”

13. Reference has been made to *Manish Ujjwal and others v. Maharishi Dayanand Saraswati University and others*, (2005) 13 SCC 74,4 *J. Antony*

Clara vs. The State of Tamilnadu in W.P.(MD) No.13267 of 2013 and batch decided on 1st Oct, 2013 by the Hon’ble High Court of Madras,

Gourav Jain and Ors. Vs. Haryana Public Service Commission and others, (2009), 156 PLR 16, 1 which have been dealt with in paragraph 12 of the

judgment rendered in *Madhumala Bisoyee* (supra), but every questions have been answered in *Tanvi Sarwal v. Central Board of Secondary Education*

and others, Writ Petition (Civil) No. 298 of 2015 decided by the Apex Court on 15.6.2015, reported in (2015) 6 SCC 573 where the apex Court held as

follows:

“We are aware, that the abrogation of the examination, would result in some inconvenience to all concerned and that same extra time would be

consumed for holding a fresh examination with renewed efforts therefor. This however, according to us, is the price, the stakeholders would have to

suffer in order to maintain the impeccable and irrefutable sanctity and credibility of a process of examination, to assess the innate worth and capability

of the participating candidates for being assigned inter se merit positions commensurate to their performance based on genuine and sincere

endeavours.”

14. Much reliance has been placed in *Richal and Ors.* (supra) by Mr. S. Das, learned counsel appearing for the intervenor-petitioners and it is

contended that since the results have been published and intervenor-petitioners have been selected, the ratio decided in the case mentioned supra

should be followed, excepting the candidates whose results has already been published, and confined to other candidates, which will be on the basis of

the recommendation made by the expert committee. But fact remains, this Court is not able to accept such contention, as the ratio decided in *Richal*

and *Ors.* (supra) may not have any application to the present context. Meaning thereby, if a large chunk of questions has been found to be defective

by the expert committee, which has been admitted by the SSB itself, instead of opting for rechecking, it would be in the great interest of justice if

opportunity is given to all the candidates to participate in the fresh examination so that best out of best candidates can be found out.

15. In this backdrop of the case, the role of State Selection Board has to be considered, which is free to evolve the procedure for conduct of the

examination. While conducting the examination in a fair and transparent manner as also following the principles of fair play, it cannot completely shut

its eyes and cause prejudice to the candidates as such, the SSB would judge the merit of a candidate in its function, and unless the procedure adopted

by it is held to be arbitrary or against the known principles of fair play, the Court

will not ordinarily interfere. The absolute transparency is required to be maintained and demonstrated in its function. The paramount consideration for conducting selection process is to find out best and finest talent for imparting education in the prescribed subject. The credibility of selection by the SSB, which is an institution, is founded upon the faith of the common man in its proper functioning. The faith would be eroded and confidence destroyed, if it appears that the SSB acts subjectively and not objectively or that its actions are suspicious. The society expects honesty, integrity and complete objectivity from the members of the SSB. The SSB must act fairly without any pressure or influence from any quarter, unbiased and impartially so that the society does not lose confidence on it.

16. In view of the foregoing discussions, this Court is of the considered view, though it would cause some hardship to conduct re-examination in subject History, but in the interest of justice, equity and fair play, the Court cannot allow injustice to be caused to the candidates by allowing the SSB to act in a manner which likes to mean neither it has acted on the basis of the suggestions given by the review committee nor the principle laid down in Pankaj Sharma mentioned above. Therefore, when the candidates are facing negative marks with various counts and large chunk of questions are defective, it would be equitable if the fresh written examination would be conducted in subject History only. No doubt the candidates have burnt their night oil to prepare for the examination and re-examination though it may cause financial burden totally on the SSB on that score, but considering the situation, this Court is of the considered view that instead of awarding marks in all 23 questions equitable to the candidates ignoring the objections made in various counts by the petitioners and admitting that there are certain errors in questions, as has been dealt with in this manner, if the fresh written examination would be conducted for recruitment of Lecturer in History taking precautionary measures as per suggestions given by the review committee, it would be in the interest of justice, equity and fair-play.

17. This Court is able to perceive the hardship and sufferings that the candidates are going to experience. But such kind of hardship the candidates could have to suffer, in order to maintain the sanctity and credibility of the process of examination and to assess the relative merit of the participating candidates for being assigned the inter se merit positions commensurate with

their performance based on genuine and sincere efforts. All these hardships are, in my considered opinion, because of the indifferent attitude of the SSB, which has not discharged the duty assigned to it satisfying requirement of law. This Court being an 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.

18. In the result, the writ petitions are disposed of with the following terms:

(i) The written examination held on 10.03.2019 in subject History for the post of Lecturers in Non- Government aided colleges of Odisha, pursuant to advertisement no. 003/2018 is hereby set aside.

(ii) The SSB is directed to conduct fresh written examination in subject History as early as possible, preferably within a period of six weeks from the date of receipt of copy of the judgment.

(iii) In the fresh examination, no fresh admit card shall be issued and the examination should be confined to the candidates, who have appeared at the said examination held on 10.03.2019.

(iv) All possible steps should be taken by the SSB to see that the question papers are set flawlessly and with all accuracy with positive answer and without any ambiguity or confusion.

(v) The result of written examination should be published as expeditiously as possible soon after it is over, and follow up action should be taken to complete the process of selection in consonance with the advertisement, so far it relates to subject History.

19. The writ petition is thus disposed of with aforementioned directions. No order to costs.