
(2014) 03 MAD CK 0042

In the Madras High Court

Case No : W.P. No. 28998 of 2012 and M.P. No. 1 of 2012

K. Nirmal

APPELLANT

Vs

Chairman, Tamil Nadu Public Service Commission

RESPONDENT

Date of Decision : 07-03-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 9, 141
Constitution of India, 1950 — Article 12, 14, 142, 16, 226

Citation : (2014) 3 MLJ 150

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Judgement

M. Venugopal, J.—The Petitioner has preferred the present Writ of Mandamus praying of passing of an order by this Court in directing the Respondent to revalue the Question Nos. 112, 47, 69, 27, 29, 84 & 157 Booklet Series D of Group II Examination for the post included in CSSE-1 Services 2010 conducted on 30.07.2011 and to proceed with selection and allocation of post based on the revaluation and consequently direct the Respondent to revalue the answer book of the Petitioner (Register No. 00904134) and to select him for the post included in CSSE-1 Service 2010 based on such revaluation within the time frame to be fixed by this Court. The Writ Facts:

(i) The Petitioner is an Engineering Graduate completed his graduation during the year 2009. He belongs to Backward Class Community. He applied for the examination notified by the Respondent/Tamil Nadu Public Service Commission for selection to the post of Group - II Services included in CSSE-I 2010 (Service Code No. 004). He was assigned with the No. 00904134 and he took part in the examination held on 30.07.2011. The process of selection to Group II Services involved two successive stages 1. Written Examination; and 2. Oral Test. The final selection would be made on the basis of total marks obtained by the candidates in the written examination and oral test taken together, in respect of interview post. In regard to the non interview post, the selection would be made on the basis of total marks obtained by the candidate in the written examination.

In the written examination conducted, there were 200 questions and each question would be valued for the total marks of 300. Later, the oral test would be conducted for the interview post for 40 marks. Therefore, in terms of the selection process, the total marks is 340 (300 + 40) in respect of interview post.

(ii) The Petitioner had given correct answers for 159 questions out of 200 questions and thereby fared well in the written examination. But without publishing the mark statements of all the candidates as well as cut off marks for each category after following Rule of Reservation, the Respondent proceeded to call for individual candidates on selective basis on personal intimation. As such, he was not in a position to know his ranking as well as eligibility to be considered for selection. He found that there were serious discrepancies in the process of selection including application of Rule of Reservation. Hence, he filed W.P. No. 22815 of 2012 before this Court seeking issuance of direction to the Respondent to produce OMR sheets and key answers to direct the Respondent to include his name in the selection list of candidates in backward class category.

(iii) On 11.09.2012, an interim order was passed by following the orders passed earlier in another batch of Writ Petitions, directing the Respondent to forthwith publish the marks of the candidates who appeared in the written examination and to publish the key answers for the objective type questions and to publish the cut off marks prescribed for various categories within a stipulated time. As against the interim order dated 11.09.2012, the Respondent preferred W.A. Nos. 2267 and 2268 of 2012 and the same was dismissed on 10.10.2012 as infructuous by recording the statements of the counsel appearing for the Respondent that the order dated 11.09.2012 was duly complied with.

(iv) On 10.10.2012 the Respondent published the mark statements of the written examination in interactive mode enabling each candidate to know his marks alone by entering the register number. Therefore, one candidate may not be in a position to know the marks secured by other candidates particularly selected candidates in order to ascertain the comparative merit. Further, on 10.10.2012 itself, the Respondent released the key answers of the written examination for the first time.

(v) Although several representations were made by the Petitioners and others, the key answers were not published by the Respondent nor any details were given earlier. Only after the orders of this Court, the Respondent published the key answer for the written examination for the first time on 10.10.2012. On seeing the key answer furnished by the Respondent, the Petitioner was completely shocked to see that the key answers for five questions were "ex-facie" wrong which could be borne out by referring to the standard text books and text books approved by the State of Tamil Nadu. The details of key answers wrongly given to the concerned questions were as follows:

BOOK LET-D SERIES

General Knowledge with General Tamil

General Knowledge - 100 questions

General Tamil - 100 questions

Question No. 112-

For the above question the key answer given by the Respondent is (A) but the correct answer is (D) as per the standard text books of State of Tamil Nadu. X standard Text Book for Tamil Grammar Text Book for IX standard Tamil Grammar.

From the above description and illustration, it is amply clear that the answer for Question No. 112 is Option (D) and not Option (A) as stated by the Tamil Nadu Public Service Commission.

Question No. 27

27. The net resistance of a voltmeter should be large to ensure that

- (A) it does not get overheated
- (B) it does not draw excessive current
- (C) it can measure large potential differences
- (D) it does not change the potential difference to be measured.

The answer key given is Option (D). The correct answer provable based with Text Book is Option (C).

Physics Text Book for Higher Secondary

"Objective Physics" by Magesh Jain

From the above stated extracts it is amply clear that Question No. 27 should resistance of Voltmeter should be large to increase the range of measurement in order to measure large potential difference.

Question No. 69

69. The anti-defection law was enacted as early as 1979 in

- A) Kerala
- B) Jammu and Kashmir
- C) West Bengal
- D) Tamil Nadu

The correct answer for the question is Option (B) Jammu & Kashmir where as the Tamil Nadu Public Service Commission has given key answer as Option (C) West Bengal. The question itself has been extracted from the Agarwal Guide and even as per the guide and the answer given as Option (B) Jammu & Kashmir.

Question No. 47.

47. What is the rank of Tamil Nadu in economic growth among the states in India during 2009-10?

- A) 3rd
- B) 4th
- C) 5th
- D) 6th

The correct answer for the question is Option (D) whereas the Tamil Nadu Public Service Commission has given the key answer as Option (B). The particulars availed based on the source of data published by Directorate of Economic & Statistics of respective State Government for All India Released by Central Statistical Organization and on reference of Planning Commission Government of India as well as Ministry of Statistics and the Programme Implementation would disclose the fact that Tamil Nadu is in 6th place in Economic Growth among the states in India during 2009-2010.

Question No. 29

29. Consider the following statements:

- I. Glucagon increases the blood sugar level.
- II. Glucagon lowers the blood calcium level.

Of these

- A) I & II are correct
- B) I & II are wrong
- C) I is correct but II is wrong
- D) I is wrong but II is correct

XII Standard Zoology Text Book

As per the Text Book, it is amply clear that the 1st statement is correct but the 2nd statement is wrong. Therefore, the correct answer for the question is Option (C) whereas the Tamil Nadu Public Service Commission has given Option (A). Which is incorrect.

(vi) From the above mentioned questions and answers, it is clear that the key answers furnished for the said questions were incorrect and the same came to be established based on the text books/standard books related to the subject. Hence the key answers were palpably and demonstrably wrong. As per the orders passed by the Hon"ble Supreme Court of India in Kanpur University and Others Vs. Samir Gupta and Others, and other catena of judgments, the concerned questions are liable to be revalued and with correct answers and marks are to be awarded accordingly in order to arrive at the comparative merit

of the candidates for selection. Otherwise, the merit in the examination would be completely under-mind and the candidates should have answered correctly may not be get into selection whereas the candidates who furnished wrong answers would have been selected. Any such discrepancy in the valuation would be violative of Article 14 & 16 of the Constitution of India and the entire selection would be unconstitutional.

(vii) In order to avoid such anomaly in the process of selection particularly in respect of valuation of written examination, normally, after the conduct of examination, the recruiting agency ought to have released the key answers calling for objections from the candidates, if any. Thereafter, it should be placed before a committee comprising of experts to finalise the correct key answers. Subsequently, the valuation should be carried out based on the revised key answers as confirmed by the committee. But the Respondent had not followed any such procedure in respect of the examination of Group II Services for the post included in CSSE-1 Services 2010 as per Group II Examination conducted on 30.07.2011. On the other hand, the key answers were published in the official website only on 10.10.2012 in pursuant to the orders passed by this Court.

(viii) Although the key answers were published only on 10.10.2012 without finalising the same with reference to correctness of the key answers, the Respondent was proceeding to conduct interview and thereafter to conduct counseling for selection and allotment of post. Since the questions for which wrong key answers furnished are liable to be revalued and revised the marks to be arrived at in order to assess comparative merit of the candidates to ensure the selection was based on merits in a level playing field. The selection and allocation of post without compliance of any such procedure would be ex facie illegal and arbitrary and violative of the provisions of Constitution.

2. The Respondent's Counter Averments:

(i) The Respondent/Tamil Nadu Public Service Commission had invited applications for recruitment to 6695 posts out of which 3475 posts were called for interview posts and the remaining 3220 posts were called for non-interview posts included in the Combined Subordinate Service Examination - I and the necessary details are as under:

(ii) The Petitioner had not claimed preference for interview post nor even for any posts, in the application and left relevant column 24 of the OMR application as blank. The register number of the Petitioner is 00904134. He appeared for the written examination held on 30.07.2011 and the list of register numbers of the candidates who were summoned for Oral Interview for Interview Post was published in the Commission's website on 08.06.2012. He was not called for the interview post. He belongs to Backward class category. He secured 234.50 marks in the written examination.

(iii) The Oral Interview for the interview post commenced on 20.06.2012 and was completed on 27.07.2012. The list of register numbers of the candidates

provisionally selected for counseling was published in the Commission's website on 01.08.2012. The marks of all the candidates who appeared for the written examination were published in the Commission's website on 10.10.2012. The schedule of counseling for interview post was communicated in the Commission's website on 10.10.2012. The counseling for the interview post commenced on 15.10.2012 and was over on 20.10.2012. For the left over unfilled vacancies, counseling took place on 10.11.2012, 12.11.2012 and 16.11.2012 after the Division Bench of this Court passed an order on 07.11.2012 in W.A. No. 2498 of 2012 vacating the interim order dated 19.10.2012 made in W.P. No. 28998 of 2012 and M.P. No. 1 of 2012 wherein a direction was issued to keep one interview post.

(iv) The mark of the last candidate summoned for oral interview in the BC category for all post is 235.50. The Petitioner had not reached the zone of consideration. The procedure of selection is being followed as provided in paragraph 8 of the Commission's notification. Having failed in securing higher marks, the Petitioner as an afterthought filed the Writ Petition with untenable grounds, seeking revaluation of 5 + 2 questions.

(v) The Writ Petitioner was provided with D series of the question paper. He answered 198 questions only out of 200 leaving Question No. 19 and 81 unanswered. He shaded correct answers to 155 and wrong answers to 41 questions. The marks for 155 questions came to 232.50. Three marks were added for two questions to all the candidates who appeared for the written examination on the opinion of the Expert Committee. Hence, the total marks of the Petitioner was 235.5. However, one mark was deducted for wrong entry of Register number in his answer sheet as per instructions contained in the OMR answer sheet itself. Therefore, the total mark of the Petitioner became 234.5, which was less than the mark obtained by the last candidate summoned for oral test under B.C. (General) category. As such, he was not called for the oral test. The answer sheet, key answers, cut off marks and marks of all candidates who wrote the examination including the Petitioner was published by virtue of general orders passed in W.P. Nos. 22814 and 22815 of 2012. Originally, the marks of the candidates were hosted in an interactive mode, apart from the cut off marks of various categories. Later, the marks were hosted in PDF format of all the candidates and key answers.

(vi) The Commission in the first instance took the interim general orders in appeal while interactive mode of publication of marks was in force. However, by publication of marks in PDF format. The subsequent development was reported to the Division Bench of this Court and the Writ Appeals were dismissed as infructuous. The objective type of questions, options and correct key answers to each question was set by the Experts in the respective subjects in the first instance. Thereafter, the questions were referred to different Experts of the subjects concerned for moderation. The moderated questions with optional answers in a book form was provided to the candidates in the examination hall

for writing the exam. The method of answering the question is prescribed in paragraph 8 of the question booklet. The provision for deduction of mark was mentioned in the OMR answer sheets.

(vii) The Petitioner was provided with D series booklet in the examination. After the examination, the question papers on each subject in the question booklet were sent for Expert Committee consisting of two or three persons for their opinion on key answers before valuation of the OMR answer sheets of all the candidates who wrote the examination. Representation if any received from the candidates also used to be referred to the said Committee for their opinion. Based on the Expert's opinion, the key answers are finalized and thereafter computer valuation of answers are carried out by the Commission. The Commission took earnest steps in setting question papers with options and key answers. In Para 41 of the Instructions to the candidates appeared for the Objective Type Examinations stipulates that within 7 days from the date of writing the examination, the candidates were entitled to make representation pertaining to the Questions and options, they need not wait for publication of the key answers. The Petitioner had not availed this opportunity. As an afterthought, he filed the Writ Petition.

(viii) The key answers to the five Questions in Booklet D series raised by the Petitioner was remarked as follows:

(i) Question No. 112

The question relates to grammatical formation of the Tamil sentence. The questions setter Tmt. A. Varalakshmi, Government Higher Secondary School, Palani Road, Dindigul has given the key as option But the moderator Thiru A. Purushothaman, St. Annes Higher Secondary School, Tindivanam, Villupuram District, had changed it as The Expert Committee consisting of the following Personnel had also confirmed the key as

1. Tmt. Anjali Sulochana, P.G.T. in Tamil, Lady Willington Hr. Sec. School, Chennai -600 005.
2. Selvi. R. Saraswathy, P.G.T. in Tamil, Little Flower Hr. Sec. School for Deaf, Chennai - 600 006.
3. Tmt. C. Sathya, P.G.T. in Tamil, P.A.K. Palaniswamy Hr. Sec. School, Chennai - 600 021.

The Commission had considered and adopted the Expert Committee's opinion as correct option as "A for this Question No. 112 and that no exception could be taken by the Petitioner. He filed, in the typed set of papers, a few pages of extracts of two Tamil Text books. In these pages, the grammatical words, required for and used in formation of sentences was illustrated and the same in no way advances his case. The Petitioner had not given any justification for demonstrating that the key answer furnished by the Experts was not correct.

(ii) Question No. 27

The net resistance of a voltmeter should be large to ensure that

- A) It does not get overheated
- B) It does not draw excessive current
- C) It can measure large potential differences
- D) It does not change the potential difference to be measured

The question relates to physics subject. The question setter (Dr. N. Gautham, Professor, C.A.S. in Crystallography & Biophysics, University of Madras, Chennai - 600 025) gave the key as option "D". It was moderated by the Expert (Thiru G. Prabakaran, Associate Professor, Department of Physics, Government Arts College, Nandanam, Chennai - 35) without any change. The Expert Committee consisting of the following Personnel had also confirmed the key as option "(D)".

1). B.M. Sornamurthy, Assistant Professor of Physics, Presidency College, Chennai. 2) Dr. D. Uthra, Assistant Professor and Head, Department of Physics, D.G. Vaishnav College, Chennai. 3) Dr. R. Mohan, Associate Professor of Physics, Presidency College, Chennai.

The standard Text book of "Concepts of Physics 2" authored by H.C. Verma, Professor, Department of Physics. IIT, Kanpur was used as source materials.

The Commission had considered and adopted option "D" as correct key answer as concurrently confirmed by question setter, moderator and expert committee, The Writ Petitioner had enclosed study materials compiled as objective physics for Engineering and Medical Entrance Examination and that the Petitioner was not entitled to assert his opinion on the basis of this study materials to contend that option "D" was not correct.

(iii) Question No. 69.

The anti-defection law was enacted as early as 1979 in

- A) Kerala
- B) Jammu and Kashmir
- C) West Bengal
- D) Tamil Nadu

The question setter Dr. T. Krishnakumar, Assistant Professor of Political Science, Presidency College, Chennai - 5 had given the key as option "C" and it was moderated by the Expert (Thiru N.M. Hariharan, Associate Professor, Department of Political Science, Madras Christian College, Tambaram, Chennai - 59) without any change. The Expert Committee consisting of the following Personnel had also confirmed the key as option "C) West Bengal".

1. Dr. V. Manimegalai, Associate Professor, R.V. Govt. Arts College, Chengalpet.
2. Dr. E. Chitra, Lecturer, Political Science, Presidency College, Chennai
3. R. Sridhar, Associate Professor, Dept. of Political Science, Madras Christian College, Tambaram, Chennai - 59.

The Text book of "Indian Polity" authored by M. Lakshmikanth was used as source material. The assumption of the Petitioner - option "B" (Jammu & Kashmir) was not correct. The writ petitioner had relied on a downloaded materials prepared and published by bazaar guide under the caption "IAS Exam". The same could not be an authentic source or could not be treated as substitute for expert's opinion in this regard.

The Commission had considered and adopted option "C" as correct key answer as concurrently opined by question setter, moderator and expert committee.

(iv) Question No. 47

What is the rank of Tamil Nadu in economic growth among the States in India during 2009-10?

A) 3rd B) 4th C) 5th D) 6th

The question setter (Dr. D. Govindappa Naidu, Professor & Head, Department of Economics, Presidency College, Chennai) had given the key as option "B" and it was moderated by the Expert (R. Malliga, Professor and Head, Department of Economics, Chellammal Women's College, Guindy) without any change. The Expert Committee consisting of the following Personnel had also confirmed the key as "B".

- 1) Dr. V. Manimigalai, Associate Professor, R.V. Govt. Arts College, Chengalpet.
- 2) Dr. E. Chitra, Lecturer, Political Science, Presidency College, Chennai.
- 3) R. Sridhar, Associate Professor, Department of Political Science, Madras Christian College, Tambaram, Chennai - 59.

The Government publication of "jkhHuR" was used as a source material. Even the extract of Statistical data filed in the typed set of papers filed by the Petitioner also confirmed the same. The Commission had considered and adopted option "B" as correct key answer as concurrently confirmed by question setter, moderator and expert committee.

(v) Question No. 29

Consider the following statements:

- I) Glucagon increases the blood sugar level
- II) Glucagon lowers the blood calcium level

Of these

- A) I & II are correct
- B) I & II are wrong
- C) I is correct but II is wrong
- D) I is wrong but II is correct

The question setter (Dr. Ezhilarasi Balasubramaniam, Associate Professor, Ethiraj College for Women, Egmore, Chennai - 8) had given the key as option "A" and it was moderated by the Expert (Dr. A.V. Natarajan, Associate Professor and Head, Department of Zoology, Erode Arts and Science College, Erode) without any change. The Expert Committee consisting of the following Personnel had also confirmed the key as option "A"

1. V. Prabakaran, Associated Professor of Zoology, Dr. Ambedkar Govt. Arts College, Vyasarpadi, Chennai - 39.
2. Dr. Kasturi Jayaraman, Associate Professor, Department of Zoology, Ethiraj College, Chennai-34.
3. Dr. K. Sivakumari, Associate Professor of Zoology, Presidency College, Chennai - 5.

The Commission had considered and adopted option "A" as correct key answer as concurrently confirmed by question setter, moderator and expert committee. The text book of Animal Physiology by P.S. Verma, B.S. Tyagi and V.K. Agarwal. A standard text book prescribed for B.Sc., Honours and M.Sc., course by all Universities in India. The Writ Petitioner extracted a few pages of Zoology text book prescribed for Higher Secondary -Second year. That extract furnished by him in this regard could not be considered as correct answer for this question No. 29 (D Series).

(ix) For Question Nos. 84 and 157, all the four options given were considered and opined by the Expert Committee as "wrong". The Expert's opinion was again referred to the question setter, who has also agreed with the expert's opinion. The Commission had decided to award marks to all the candidates who wrote the examination. Accordingly, three marks were added for this two questions, at time of valuation of answer sheets of 3,76,325 candidates.

(x) In the said process only, the Writ Petitioner obtained three marks and total questions become 157 (155+2) and resultant mark was 234.50 after deduction of one mark as penalty as stated above. The contention of the petitioner that he found out that the answers for two more questions were wrong was not correct.

(xi) The Petitioner had not reached the zone of consideration in the B.C. category with reference to the cut off mark for calling him for the oral test and therefore he could not make out infringement of Fundamental Right under Article 14 and 16 of the Constitution of India. Further, he cannot substitute his view for assuming as correct option for the five questions in substitution of the correct

key answers given by the question setter, moderator and committee of experts. The relief prayed for by him in the Writ Petition is not maintainable and as such, the Writ Petition is devoid of merits.

3. Reply Pleas of the Petitioner:

(i) The examination was conducted by the Respondent for the post included in CSSE-I services 2010 on 30.07.2011. In the written examination, there were 200 questions out of which 100 questions allotted for General Tamil/General English and 100 questions for General Knowledge. The examination was conducted for maximum mark of 300 marks by allotting 1.5 marks for each question. As per the procedure established by the Respondent/Tamil Nadu Public Service Commission, the tentative answer key for the objective type examination would be hosted in the Commission's web site immediately after the examination was over calling for any objections or claims. Thereafter it would be placed before the Expert Committee for scrutiny and the corrected final answers would be published in the Commission's web site again, based on which the candidates can self evaluate their answers with answer keys. The procedure contemplated by the Respondent/Commission is stated as under:

The tentative Answer keys for the Objective type Examinations will be hosted in the Commission's website immediately after the examination is over and the candidates will be given seven days time to file claims and objections, if any to the Commission.

The same will be placed before the Experts Committee for scrutiny and the corrected final answers will be published in the Commission's web site again. Candidates can self evaluate their answers with the answer keys.

The scanned copy of the answer sheets of all the students will be uploaded in the Web site after the publication of results enabling the candidates to download the same.

The candidates will be permitted to peruse their descriptive type answer scripts in the Commission's office, which will ensure more transparency in the activities of the Commission.

(ii) In respect of CSSE-1 examination conducted on 30.07.2011, the Respondent/Commission had not published the answer key nor published the marks secured by the candidates as well as cut of marks in each category after applying Rule of Reservation. However, the Respondent proceeded to call the list of candidates for oral interview for selection to the interview post. At that stage, the Writ Petitions were filed by the Petitioner and Another candidate seeking for publication of results, in order to ascertain his status with regard to the selection based on comparative merit, this Court was pleased to pass orders in W.P. No. 22814 and 22815 of 2012 dated 24.09.2012 directing the Respondents to forthwith publish the marks of the candidates appeared in the written examination and also to publish simultaneously the key answers for the objective type questions and

further to publish the cut off marks prescribed for various categories. However, the Respondent published the marks and cut off marks and further releasing the key answers belatedly only on 10.10.2012. After publication of the results and key answers it was found that there were serious discrepancies in respect of answer key given by T.N.P.S.C. for 7 questions. Hence, he was constrained to file the aforesaid Writ Petition questioning the correctness of key answers by producing approved text materials. This Court was pleased to admit the Writ Petition and further granted an interim order on 19.10.2012.

(iii) The Respondent, as an aggrieved person, as against the interim order preferred W.A. No. 2498 of 2012 in which this Court was pleased to pass orders on 07.01.2012 modifying the interim order by directing the Respondent/Service Commission to keep one interview post vacant for him till the disposal of the Writ Petition. Further, in the orders passed in the Writ Appeal, the correctness of key answers were directed to be adjudicated only at the time of final disposal in the Writ Petition.

(iv) There was no publication of key answer immediately after the examination was over by the Service Commission. Hence, there is a failure of mandatory requirement on the part of the Respondent in making publication of key answer after the examination calling for claims and objections. When the key answer results were published only on 10.10.2012, the Respondent proceeded to conduct interview for the list of chosen candidates on 15.10.2012 itself. The Respondent had not adhered to the procedure established by law. In respect of the prospectus issued for Group II services post included in CSSE-1 services 2010, there is no provision for calling for representation to the questions and key answers within 7 days from the date of writing the examination. Even otherwise, without publication of the key answers, the Respondent cannot expect anyone to claim or suggest with regard to correctness of the key answers.

(v) The Respondent has not in a position to deny the discrepancies raised in respect of key answers for the question are supported by valid materials and the text books published by the Government of Tamil Nadu. He had also obtained information's from Tamil University, Thanjavur, Anna University, Chennai, Thanjavur Medical College. Therefore, when the wrong key answers were chosen by the Respondent for the purpose of awarding marks, it is understood that merit in selection was subverted and there is no level playing field to proceed with selection on merits. That apart, apart from denying marks for the candidates who had written the correct answer, the candidates who had written wrong key answers would be given marks and thereby the entire selection was vitiated by errors of law and facts.

(vi) As per prospectus for the selection even if any candidate does not give any preference for any post in column 24 of the application form or does not fill the said column correctly, the correct order of preference should be obtained from the candidate at the time of oral test. The relevant clause in the prospectus is stated as under:

A candidate who applies for more than one post is advised to indicate those posts in the order of preference in column 24 of his/her application form. In case he/she does not given any preference for any post in column 24 of the application form or does not fill the said column correctly, the correct order of preference shall be obtained from the candidate at the time of oral test. For the posts for which Oral test is not prescribed, the order of preference of posts as per the Commission's notification shall be followed. The Commission, however, reserves the right to assign a successful candidate to any of the posts for which he/she is considered by it as qualified and suitable.

(vii) If the Petitioner had obtained two more marks, he would be the top ranker in the selection. Further, in the event of marks being revised based on the correct key answers, he would be eligible for interview post based on merit in selection. However, by taking into consideration of the same, the Division Bench of this Court while passing orders in the Writ Petition directing the Respondent to keep one interview post till the disposal of the Writ Petition. His rights in regard to claim selection based on merits would not be diluted for the reason that he had joined the non-interview post based on marks already awarded.

The Petitioner's Contentions:

4. The Learned Counsel for the Petitioner submits that in respect of Question No. 112 (mentioned supra), the correct answer given by the Petitioner is But the Respondent/Service Commission say in their counter in paragraph 14 that the correct answer is (Continuous Sentence).

5. To lend support to his contention that the answer given by the Petitioner for Question No. 112 as (News Sentence), the Learned Counsel for the Petitioner refers to the 9th standard Tamil Grammar Book (page 84 of the typed set of papers) wherein in Serial 9, it is mentioned as follows:

6. The Learned Counsel for the Petitioner refers to the Tamil Text Book (- Prose) for 10th standard of Tamil Nadu Text Book Society wherein in Serial No. 4, it is stated as follows:

For that, the Learned Counsel for the Petitioner seeks in aid of the relevant portion of the Tamil Konar Guide (for 10th standard Revised Edition) wherein at page 251, it is mentioned as under:

7. The Learned Counsel for the Petitioner places reliance on the Reply communication of Tamil University, Thanjavur, Tamil Nadu dated 04.01.2013 (for Ref. Letter of the Petitioner dated 13.12.2012 and the Letter of the Director, World Classical Tamil Higher Research Centre dated 4.1.2013) issued by the Registrar wherein it is stated that the Writ Petitioner had sought answers for his two questions under the Right to Information Act, 2005 as per his Ref. Letter No. 1, dated 13.12.2012 and the reply was furnished to him as follows:

and contends that the answer given by the Petitioner to Question No. 112 as is a correct one.

8. It is the submission of the Learned Counsel for the Petitioner that for Question No. 84 viz., Which one of the following is not an output device?

- (A) Speaker
- (B) Computer Monitor
- (C) CD
- (D) Laser Printer

according to the Respondent/Service Commission, all the four options given were considered and opined by the Expert Committee as "wrong" and the Respondent/Commission awarded 1.5 marks to every candidate. However, the Anna University, through Letter No. 472/PIO/AU-CHENNA/2012 dated 09.01.2013 addressed to the Petitioner (for his Letter dated 13.12.2012), in Annexure had, stated as under:

ANNEXURE

Answer to Question No. 1: The correct answer is option (D), it does not change the potential difference to be measured....

If the Voltmeter were to have low resistance, it would draw excessive current, magnitude comparable to the load current. Therefore, it would get heated up too. Also, only if it has large resistance, with the same limitation on coil current, it can be used to measure large potential differences. Therefore, all the three other statements are correct too. But they do not correctly answer the given question. The fact that Options (A) and (B) are correct statements, can be verified from A.K. Sawhney book chapter on "Analog ammeter, Voltmeter and Ohm-meters" first page, introduction section. But these options, (A), (B) and (C) do not answer the given question correctly.

The given question concerns error due to loading effect, which is explained in A.K. Sawhney book chapter on "Error in Measurements and their statistical analysis", section on Systematic error - Instrumental error - loading effect. Refer the sentence, "These examples illustrate that the voltmeter has a "loading effect" on the circuit, altering the actual, circuit conditions by the measurement process" and the examples of low/high resistance voltmeters (connected across the load as shown by the above circuit) given preceding this sentence, clearly explain that OPTION (D) - It does not change the potential difference to be measured is the most appropriate and correct answer, for the given question

Answer to Question No. 2: This question is on personal computer basics. Refer to the generic block diagram shown:

Input Computer Processor Output devices CPU/Micro Processor devices -

Memory

Any book on digital computers, give this generic block, diagram, giving examples

for all the peripherals to the CPU, Speaker, Printer, Visual Display (i. e., Monitor) are typical examples for output devices, whereas, the CD (Compact Disc Storage) is a storage device.

Hence, Option (C) is the correct answer.

9. The Learned Counsel for the Petitioner submits that for Question No. 157 viz., the Respondent/Commission, in their counter, had stated that all the 4 options given as key was wrong, as opined by the Expert Committee and that the Commission accordingly awarded marks to all the candidates who wrote the examination and 3 marks were added for Question Nos. 84 and 157 at the time of valuation of answer sheets of 3,76,325 candidates.

10. Proceeding further, the Learned Counsel for the Petitioner contends that the Petitioner addressed a letter dated 31.12.2012 to the Principal, Thanjavur Medical College, Thanjavur seeking information from the Right to Information Act and stated the following:

I want one information from R.T.I. Act Please help me sir.

Consider the Following Statements

I. Glucagon increases the blood sugar level.

II. Glucagon lowers the blood calcium level.

Of these

A) I & II are correct

B) I & II are wrong

C) I is correct but II is wrong

D) I is wrong but II is correct

Which answer is correct sir?

Kindly help me sir.

For which, the Public Information Officer, T.M.C.H., Thanjavur on 07.02.2013 replied to the effect that "The questions and required answer are in a multiple choice matter. In this case direct straightforward answer may not be given, and answer may be ambiguous. This is based on full information glucagon."

11. The Learned Counsel for the Petitioner contends that the Respondent, in paragraph 6 of the counter to the Writ Petition, had stated that the Petitioner had not claimed preference for interview post nor even for any posts, in the application and left relevant column 24 of the OMR application as blank and that merely because the Petitioner had not filled up he could not be invalidated and further that, it cannot be said that he is ineligible to the post.

12. In this connection, the Learned Counsel for the Petitioner, by referring to the General Information Regarding Examinations and Selections, submits that in Serial No. 3, under the caption "Preferences For Selection of Posts", sub-clause (ii), it is, inter alia, mentioned as follows:

(ii) A candidate who applies for more than one post is advised to indicate those posts in the order of preference in column 24 of his/her application form. In case he/she does not give any preference for any post in column 24 of the application form or does not fill the said column correctly, the correct order or preference shall be obtained from the candidate at the time of oral test.

13. Further, it is the submission of the Learned Counsel for the Petitioner that the Petitioner had not surrendered his right and in reality, he secured 235.5 marks and one mark was deducted for wrong entry of Register number in his answer sheet and consequently the total marks secured by him came to 234.5.

14. The Learned Counsel for the Petitioner brings it to the notice of this Court that in W.P. No. 22814 and 22815 of 2012 filed by S. Elango and the Petitioner, this Court on 11.09.2012, inter alia, passed the following order to the effect that "(1) The Respondent T.N.P.S.C. shall forthwith publish the marks of the candidates, who appeared in the written examination; (2) The Commission shall also publish simultaneously the key answers for the objective type questions; (3) The Commission shall also publish the cut-off marks prescribed for various categories. The same shall be complied within seven days from the date of receipt of a copy of this order.", and only at the instance of the orders passed by this Court in M.P. Nos. 1 and 1 of 2012 in W.P. No. 22814 and 22815 of 2012, the Respondent/Service Commission had published the D series key answer on 10.10.2012.

15. The Learned Counsel for the Petitioner refers to the paragraph 7 of the reply (filed by the Petitioner) wherein the Petitioner had stated that the Respondent had proceeded to conduct interview for the list of chosen candidates on 15.10.2012 itself and that the Respondent had not adhered to the procedure established by law. Further, in paragraph 8 of the reply, the Petitioner had, among other things, stated that "in respect of the prospectus issued for Group II services post included in CSSE-1 services 2010, there is no provision for calling for representation to the questions and key answers within 7 days from the date of writing of the examination. Even otherwise, without publication of the key answers, the Respondent cannot expect anyone to claim or suggest with regard to correctness of the key answers".

16. The Learned Counsel for the Petitioner relies on the decision of the Hon'ble Supreme Court in Kanpur University v. Shamir Gupta (supra), wherein it is observed and held as follows:

It is fair to publish the key answer of the questions along with the result of the test involving future of students who aspire for admission to professional courses.

The 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 rationalisation. It must be clearly demonstrated to be wrong that is, it must be such as no reasonable body of men well versed in the particular subject would regard as correct. Reliance can be placed on the prescribed text-books from which students derive their knowledge on the subjects. If it is beyond doubt that the key answer is incorrect, it would be unfair to penalise the students for not giving an answer which accords with such wrong key answer.

If the State Government wants to avoid a recurrence of such lapses, it should compile under its own auspices a text-book which should be prescribed for students desirous of appearing for the combined Pre-Medical Test.

In the present case if the answer-books are reassessed by awarding full marks to the correct answer given by the respondents instead of the incorrect key answer, they would be entitled to be admitted to the M.B.B.S. course. Accordingly, the directions given by the High Court in regard to the reassessment of the particular questions and the admission of the respondents to the M.B.B.S. course is confirmed.

17. He also cites the decision of the Hon"ble Supreme Court in *Manish Ujwal and Others Vs. Maharishi Dayanand Saraswati University and Others*, , wherein in paragraph 10, it is observed as follows:

10. The High Court has committed a serious illegality in coming to the conclusion that "it cannot be said with certainty that answers to six questions given in the key answers were erroneous and incorrect". As already noticed, the key answers are palpably and demonstrably erroneous. In that view of the matter, the student community, whether the appellants or intervenors or even those who did not approach the High Court or this Court, cannot be made to suffer on account of errors committed by the University. For the present, we say no more because there is nothing on record as to how this error crept up in giving the erroneous key answers and who was negligent. At the same time, however, it is necessary to note that the University and those who prepare the key answers have to be very careful and abundant caution is necessary in these matters for more than one reasons. We mention few of those; first and paramount reason being the welfare of the student and a wrong key answer can result in the merit being made a casualty. One can well understand the predicament of a young student at the threshold of his or her career if despite giving correct answer, the student suffers as a result of wrong and demonstrably erroneous key answer; the second reason is that the courts are slow in interfering in education matters which, in turn, casts a higher responsibility on the University while preparing the key answers; and thirdly, in cases of doubt, benefit goes in favour of the University and not in favour of the students. If this attitude of casual approach in providing key answer is adopted by concerned persons, directions may have to be issued for taking appropriate action, including the disciplinary action, against those responsible for wrong and demonstrably erroneous key answers but we refrain

from issuing such directions in the present case.

18. The Learned Counsel for the Petitioner brings it to the notice of this Court that the decision of the Hon"ble Supreme Court in *Abhijit Sen and Others Vs. State of U.P. and Others*, wherein it is held that:

In regard to the Multiple Choice Objective Type Test (in a Combined Premedical Test) where answer given by the candidate is wrong, then he is not entitled to the benefit of marks thereon even if the answer supplied by the paper-setter is also found to be wrong and further, where however his answer found to be correct and the key answer wrong, then the candidate must get full marks assigned to that answer and must be admitted, if on the basis of that addition he qualifies for admission.

19. The Learned Counsel for the Petitioner cites the common order dated 31.07.2008 passed by this Court in between *S. Senthil Kumar v. The Secretary, Tamil Nadu Public Service Commission, Chennai*, W.P. No. 12127 of 2008 and etc. batch whereby and whereunder, in paragraph Nos. 15 to 18, it is observed and held as follows:

15. The scope of interference, under Article 226 of Constitution of India, when there is violation of statutory duties and injustice caused to any person was considered by the Honourable Supreme Court in the following cases: (a) In *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, , a three-Judges Bench of the Supreme Court has held as follows:

Art. 226 is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression nature, for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the relief's to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself. To say this is not to say that the High Courts can function arbitrarily under this Article. Some limitations are implicit in the article and Others may be evolved to direct the article through defined channels.....

(b) In *Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others*, , the Supreme Court held that the expansive and extraordinary power of

the High Courts under Art. 226 is as wide as the amplitude of the language used indicates and so can affect any person even a private individual - and be available for any (other) purpose - even one for which another may exist, (c) In *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, , it has been held as follows:

17. ...Under Article 226, writs can be issued to any person or authority. It can be issued for the enforcement of any of the fundamental rights and for any other purpose.

18.

19.

20. The term authority used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words any person or authority used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists, mandamus cannot be denied. (d) In *Union of India (UOI) and Others Vs. R. Reddappa and Another*, , the Supreme Court has observed that once the Court is satisfied of injustice or arbitrariness, then the restriction, self-imposed or statutory, stands removed and no rule or technicality on exercise of power, can stand in way of rendering justice, (e) In *B.C. Chaturvedi Vs. Union of India and others*, , the Supreme Court approving the decision of the Orissa High Court in *Krishna Chandra Pallai Vs. Union of India (UOI) and Another*, held as follows: "High Court being a Court of plenary jurisdiction has inherent power to do complete justice between parties similar to Supreme Court's power under Art. 142"; (f) In *Air India Statutory Corporation, etc. Vs. United Labour Union and others* [overruled], , the Supreme Court has reiterated the Court's power under Art. 226 as follows: "No limitation except self imposed - the arm of Court long enough to reach injustice wherever it is found. The Court as sentinel on the qui vive is to mete out justice in given facts."; (g) Following the said decisions, *K. Sampath, J.* in the decision reported in *S. Sudarshan Kumar Vs. University of Madras and Another*, ordered re-scrutiny/ proper valuation of B.E. degree paper (Electrical and Electronics Engineering) conducted by the Anna University wherein the candidate was originally given 30% of the marks and after re-assessment one Examiner awarded 78% and Another examiner awarded 69% and this Court ordered to take average of the said two i.e., 15% and by virtue of that re-assessment a brilliant candidate who

was declared fail in the B.E. degree was declared pass with distinction. The examination regulations of Anna University prohibits re-assessment/re-scrutiny. The learned Judge further observed in paragraph 12 as follows: "...The amendment to Art. 226 in 1963 inserting Art. 226(1-A) reiterate the targets of the writ power as inclusive of any person by the expressive reference to the "residence of such person". The Supreme Court has spelt out wise and clear restraints on the use of this extraordinary remedy and High Courts will not go beyond those wholesome inhibitions except where the monstrosity of the situation or other exceptional circumstances cry for timely judicial interdict or mandate. The mentor of law is justice and a potent drug should be judiciously administered. Speaking in critical retrospect and portentous prospect, the writ power has, by and large, been the people's sentinel on the qui vive and to cut back on or liquidate that power may cast a peril to human rights....

(emphasis supplied)

(h) When allegations of large scale malpractice was made re-valuation was ordered to be done by the Bangalore University, Department of Commerce and Management. Even though it was not found in the scheme of examination the same was upheld by the Supreme Court in the decision reported in Karnataka Power Corporation Ltd. and Another Vs. A.T. Chandrashekar, . (i) The question of not submitting objection in time is also considered by the Supreme Court in the decision reported in C. Tulasi Priya Vs. A.P. State Council of Higher Education and Others, , wherein in the Medical Entrance Examination the candidate was initially supplied with wrong paper and only after 20 minutes, on discovery of the mistake, Invigilator supplied correct question paper, that is after 30 minutes of commencing of the examination. The non-submitting of protest was not found favour with the Supreme Court in granting relief to the said candidate and the Supreme Court in paragraph 10 observed as follows: "...The refusal of the High Court to interfere on this ground has, regrettably, compounded the injustice done to the appellant...."

(j) In the decision reported in Abhijit Sen and Others Vs. State of U.P. and Others, in paragraph 2, the Supreme Court considered the implications of supplying wrong key answers, which reads thus, "2. At the outset it may be stated that Civil Appeal No. 4116/83 (filed by appellant Abhijit Sen) and Civil Appeal No. 4118/83 (filed by appellant Satyendra Vikram Singh) were not pressed before us and have to be dismissed. Kumari Shivani Aggarwal and Kumari Sunita Khare (the appellants in Civil Appeal Nos. 4117 and 4119 of 1983) have challenged the University's decision (which decision has been upheld by the Allahabad High Court) of refusing them admission to the M.B.B.S. course in any of the seven Medical Colleges. Learned Counsel appearing for them contended that the key-answer supplied by the paper-setter to Question 31 in Zoology paper (being alternative No. 2) was wrong or incorrect and the answer given by both the appellants (by ticking alternative No. 4) was the correct answer according to recognized text-books and therefore each one of these appellants

was entitled to an addition of four marks (three marks for giving correct answer plus one mark which had been wrongly deducted by treating their answers as wrong) and if such addition of four marks was made each one was entitled to get admission. In the case of Kumari Sunita Khare (appellant in Civil Appeal No. 4119/83) her counsel raised a further similar contention with regard to Question 100 in Zoology paper, as according to him the key-answer supplied by the paper-setter (being alternative No. 3) was clearly wrong or incorrect while the answer given by that appellant (by ticking alternative No. 4) was the correct answer according to recognized text-books and therefore so far as she was concerned even if her contention with regard to Question 31 was not accepted she was entitled to addition of four marks (three for giving correct answer plus one mark which was wrongly deducted by treating her answer as incorrect) in regard to Question 100 and even on this basis she would be entitled to get admission. Counsel for the respondents did not dispute before us that if the two appellants or either of them is found entitled to an addition of four marks as suggested on their behalf they will have to be given admission to M.B.B.S. course but counsel disputed the validity of the contention urged on behalf of the appellants that key-answer supplied by the paper-setter to either Question 31 or Question 100 in Zoology paper was wrong or that the answers furnished by the appellants were correct. Counsel urged that since the Court was embarking upon a course of finding out and determining the correct answer having regard to the recognized text-books or authoritative books on the subject it would be immaterial whether the key-answer supplied by the paper-setter was found to be wrong, not being in conformity with the correct answer determined by the Court but the appellants would not be entitled to addition of four marks unless their answers were in conformity with the correct answers found by the Court. In other words according to counsel for the respondents if a situation was reached where both the answers, namely, the one given by the appellants as well as the key-answer supplied by the paper-setter, were found to be wrong with reference to the correct answer as determined by the Court the appellants should not succeed. We think there is considerable force in this last submission made by the counsel for the respondents." In the said decision the Supreme Court granted relief to one candidate.

(k) Ordering re-valuation of answer books only to the candidates approaching the High Court till the date of the decision is also upheld by the Supreme Court in the decision reported in *State of Orissa v. Prajnaparamita Samanta* (1996) 7 SCC 106 wherein at para 8 the Supreme Court held thus, "8. Admittedly, the petitioners and the appellants in question had approached either the High Court or this Court after the decision of the High Court on 27-3-1992. The High Court has rightly set down the said date as a cut-off limit and directed consideration of the answer books only of those examinees who had approached the High Court till that date. It is only those who are diligent and approach the court in time who can be given such relief. The academic year cannot be extended for any length of time for the benefit of those who choose to approach the court at their sweet

will. The consideration on the basis of which relief is granted in such cases is always circumscribed by the tenure of the academic year(s) concerned. We, therefore, do not see anything wrong if the High Court has laid down the said date as the cut-off date for the purpose. In the circumstances, there is no merit in these writ petitions and the civil appeals, and they are dismissed with no order as to costs.

(emphasis supplied)

(l) In the recent decision of the Supreme Court reported in *The Secretary, West Bengal Council of Higher Secondary Education Vs. Ayan Das and Others*, the Supreme Court gave a caution to entertain writ petition seeking re-valuation and direction to produce answer papers. In paragraph 10 (SCC) it is held as follows: "10. The courts normally should not direct the production of answer scripts to be inspected by the writ petitioners unless a case is made out to show that either some question has not been evaluated or that the evaluation has been done contrary to the norms fixed by the examining body. For example, in certain cases examining body can provide model answers to the questions. In such cases the examinees satisfy the court that model answer is different from what has been adopted by the Board. Then only can the court ask for the production of answer scripts to allow inspection of the answer scripts by the examinee...."

(m) In *Guru Nanak Dev University v. Saumil Garg* (2005) 13 SCC 749 in paragraph 6 the Supreme Court held that paper setters and those who finalise the key answers must see that only one correct answer out of four options given and if none of the answer is correct, it is their duty to say so. Paragraph 6 reads as follows: "6. The University is in appeal on grant of leave. We have also before us both sets of students one, students who support the University in their challenge to the directions contained in the impugned judgment, and two, the students who support the impugned directions for reexamination of the key answers in respect of all 200 questions. The High Court has also issued directions for appropriate action to be taken against those who are responsible for the entire confusion and the mess. The High Court has also issued directions for fixing responsibility on the paper-setters and those who have been vested with the responsibility to finalise the key answers and consequential steps to be taken. The said direction of the High Court does not call for any interference. Those who set the papers and those who finalise the key answers have to bear in mind that what is at stake is the career of the young students at the very threshold of their attempt to get entry into professional courses where there is cut-throat competition. The questions posed must have only one correct answer out of the four options given. Likewise, there is responsibility on those who finalise the key answers. If none of the answers is correct, it becomes their duty to say that none of the answers is correct, so that if any remedial action is to be taken, it should be taken before the answers are valuated. It is evident that on both these aspects, there was serious lapse which resulted in litigation which is otherwise avoidable.

(emphasis supplied)

Again in para 12, if the questions are vague or incapable of having a correct answer the persons who attended the said questions alone can be awarded marks. The same is held in paragraph 12 of the said judgment thus, "12. There is yet another problem, namely, that of seven questions which are so vague 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."

(emphasis supplied)

(n) While preparing the key answers how much care should be taken by the Examiner/person setting the question paper and the consequences arising out of the said wrong key answers was considered by the Supreme Court in the decision reported in *Manish Ujwal v. Maharishi Dayanand Saraswati University* (supra) (para 10). (o) The same is the view taken by the Supreme Court in the decision reported in *Kanpur University v. Samir Gupta* (supra). In paragraphs 16 and 17 the Supreme Court held as follows: 16. Shri Kacker, who appears on behalf of the University, contended that no challenge should be allowed to be made to the correctness of a key answer unless, on the face of it, it is wrong. We agree that the key answer should be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by an inferential process of reasoning or by a process of rationalisation. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well-versed in the particular subject would regard as correct. The contention of the University is falsified in this case by a large number of acknowledged textbooks, 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.

17. Students who have passed their Intermediate Board Examination are eligible

to appear for the entrance Test for admission to the medical colleges in U.P. Certain books are prescribed for the Intermediate Board Examination and such knowledge of the subjects as the students have is derived from what is contained in those textbooks. Those textbooks support the case of the students fully. If this were a case of doubt, we would have unquestionably preferred the key answer. But if the matter is beyond the realm of doubt, it would be unfair to penalise the students for not giving an answer which accords with the key answer, that is to say, with an answer which is demonstrated to be wrong." (p) Similar issue with regard to the wrong questions or wrong key answers or more than one answer is correct for one question with regard to the entrance examination conducted for M.B.B.S. and B.D.S. course for the academic year 2004-2005 was considered by this Court in the decision reported in D. Shylaja Vs. The Secretary to Government, Education Department, The Secretary, TNPCEE 2004, Anna University and The Secretary, Selection Committee for admission to MBBS Course . In paragraph 52 this Court directed the Anna University to re-value the answer papers for certain questions, though under the scheme revaluation was not permitted, which reads as follows: "52. In the result, the writ petitions are allowed in part. The University is directed to revalue all the answer papers. Question Nos. 27 and 33 in Biology question paper in version code MA-7, question Nos. 11, 64 and 77 of version code BS6 relating to physical science shall not be deleted and mark should be awarded to any student who has indicated any of the correct choices. It is further directed question No. 76 in version code BS6 should be evaluated and credit should be given to the students who have given the correct option as per the key answer provided by the paper setter. Question No. 105 in version code MA-7 is to be revalued and option No. 4 should be taken as the correct answer and not option No. 3 as indicated by the committee. Question No. 117 in version code BS6 should be deleted from consideration. The necessary revaluation may be done within a period of three days from the date of receipt of a copy of this Judgment and revised marks may be furnished to the selection committee immediately to enable the selection committee to finalise the selection. The selection committee may fix suitable dates for counselling. There is no order as to costs. Consequently, the connected miscellaneous petitions are closed." The said decision was confirmed by a Division Bench of this Court in W.A. No. 2476 of 2004 etc., batch by Judgment dated 2.8.2004 G. Nanthini v. The Registrar, Anna University, Chennai-25 with slight modification with regard to the number of question. While disposing of the writ appeals, in paragraph 6 the Division Bench held as follows: "6. Before parting with the case, we want to address the respondents something in the interest of students and their parents in the context of quality of examination. The very object of bypassing the descriptive type examination and choosing the objective type multiple choices examination is to enhance the standard of education so that the student is made ready to answer more questions just by ticking the correct answer out of four alternative answers. For that purpose, he is made to read comprehensively, absorb the contents and then come to a quick decision. When quick decision with such precision is the objective, among the

alternative answers provided, one should be the correct answer while the remaining three should not be correct. Only then the correct answer can be called as the key answer. There cannot be a concept of more than one key answer. Key answer shall be only one. The courts have been doing this exercise and sometimes, in the interest of the career of the students, direct the awarding of marks for more than one question. But that should be only an exception and not the rule. But, unfortunately, the exception has become a rule and the rule an exception because of the falling standards in the conduct of examinations. We do not understand as to why there should be an appellate forum, even at the threshold, by setting up an expert committee. The paper setter chooses questions from question bank where the key answers are already provided. By setting up the expert committee, the paper setter is reduced to just a clerk, as the key answer which is indicated has got absolutely no weightage as against the opinion of the expert committee as the University conducting the examination only takes note of the views of the expert committee for awarding marks. This practice has to be discontinued. When the papers are set, choosing questions from the question bank already carrying the key answers, experts in the various disciplines have to be chosen to form the question bank and that should be a step before conducting the examination and not like the instant one in setting up the expert committee ex post facto. All the questions should be definite and so also the answers provided. All efforts should be taken that there should not be more than one correct answer as a key answer and no room is given for creating any confusion.

16. The judgments cited by the learned Standing Counsel for the respondent to the proposition that the instructions given to the candidates are binding on the candidates like prospectus, is the general rule. But the above referred judgments are rendered taking exception to the said general rule.

17. All these petitioners have appeared in the screening test, which was conducted after seven years. The petitioners may not be in a position to appear for the Group-I selection in any subsequent selection due to their over age and they having secured good marks in the screening test and lacking behind by only 1.5 to 9 marks, by awarding marks for 1 to 6 questions, there is possibility for them to get qualified for the main written examination. The respondent in the counter affidavit raised only a technical objection i.e., not raising objection within three days of the examination and not authenticated stated that there is no mistake in the key answers, the petitioners are entitled to succeed in these writ petitions to a limited extent.

18. In the light of the above findings and having regard to the judgments cited supra, I am inclined to pass the following orders:

(i) The petitioners herein are directed to submit representation pointing out the number of questions where the questions are not correctly asked, more number of answers are found correct as per leading text books and whether key answer to the questions are correctly given on or before 7.8.2008. (ii) On receiving the

said representations the respondent/TNPSC is directed to place the disputed questions/answers before the Expert Committee to be constituted by it for verification as to whether the questions pointed out are correct, if more than one answer given in the choice are correct and whether the key answers given to any question pointed out by the petitioners are wrong, (iii) On verifying the same, the Expert Committee is directed to award marks to such of those petitioners who attempted the said questions and on that basis determine the final marks of the petitioners in the preliminary examination.

(iv) Since the above said exercise will take some time and in view of fixation of date for the main written examination as 16.8.2008 and 17.8.2008, the respondent/T.N.P.S.C. is directed to permit the petitioners herein to write the main written examinations along with 1750 candidates, who are already found eligible to write main written examination. (v) By following the above process, if the petitioners are getting the required cut-off marks prescribed for the respective category, their final written examination papers shall be valued. If the petitioners are not getting the required cut-off marks, their final written examination papers need not be valued. (vi) Since the preliminary examination results were published as early as on 25.4.2008, and the main written examination is to be held on 16.8.2008 and 17.8.2008, the benefit of this order is restricted to the writ petitioners herein, as no general directions could be issued at this belated stage. All The writ petitions are ordered accordingly. No costs. Connected miscellaneous petitions are closed.

19.(a) The Learned Counsel for the Petitioner relies on the decision of this Court in A. Eswaramoorthy Vs. The Secretary to Government Home (Police IV) Department, The Director General of Police/Chairman, Tamil Nadu Uniformed Services Recruitment Board, The Director General of Police Dr. Radhakrishnan Salai and R. Arjun Kumar Sub Inspector of Police Security Branch CID, , wherein it is held as follows:

A selection process would require transparency and fairness. When the said process is found to be demonstrably wrong and in view of the same candidates who are otherwise eligible are not selected, then the power under Article 226 of the Constitution will have to be necessarily exercised by the High Court.

Each candidate has got a right to be considered for a post. The right to be considered would also include the right to be considered properly. Hence, when facts are not in dispute and the admitted position is that the respondents have committed mistakes in the process of evaluation due to which the eligible candidates have lost their chances, then the eligible candidates are entitled to be considered for the post in question.

20. The Learned Counsel for the Petitioner invites the attention of this Court to the Division Bench Judgment of this Court dated.... 12.2010 in between the Secretary to Government v. A. Eswaramoorthy Writ Appeal Nos. 1719 to 1739 of 2010 and etc. batch wherein in paragraph Nos. 29 and 33, it is held as follows:

29. As found in the impugned order that letter dated 30.1.2009 itself would show that the second respondent did not verify the answers even after the examination. This Court found that there was bona fide mistake committed in setting key answers, and the verification was not done only to prevent leakage of question papers....

33. However, it is seen that the litigations are due to mistakes committed during setting up question paper. The petitioners are not responsible for wrong key answers. Though this Court found the mistake/wrong committed was unintentional and bona fide, the second Respondent has to bear in mind that it is conducting exams to recruit persons for uniformed services. Any irregularity in the process of selection would affect morale of the force and interest of the public. In future the second respondent board should be very seriously and carefully and responsibly conduct exams without giving any room for challenge. In this regard, the learned judge issued general guide lines to be followed in future in para 25 vi. Vii of the impugned order and the same are confirmed.

21. Also, the Learned Counsel for the Petitioner cites the order of this Court dated 04.08.2011 in W.P. No. 19015 of 2010 wherein in paragraph 4, it is observed as follows:

4. Learned Counsel for the respondent has produced a sealed cover relating to cut of marks (both oral and written test) for various categories under 5% quota to Ex-Service-men. Learned Counsel for the respondent states that the cut off marks for all the categories including the Ex-servicemen were published. As far as the publication of the select list is concerned, learned counsel for the respondent submits that the select list was not published. I am not able to understand as to why the respondent has not chosen to publish the cut off marks for all the categories in T.N.P.S.C. Group - II (Posts included in combined subordinate services Examination - I/CSSE-1), 2008, when the respondent has been publishing cut off marks in other cases. Further more, the respondent is expected to be transparent in the matter of selection to public office and therefore, the mere handing over the details of cut off marks to the court, is not sufficient.

22. That apart, the Learned Counsel for the Petitioner refers to the interim order dated 19.10.2012 passed in this Writ Petition wherein in paragraph 10, it is observed as follows:

10. In my considered opinion, if, at last, key answers for some of the questions are found to be incorrect, and if the entire selection process is completed, then, it will be too difficult to set right the wrong done to the candidates who have written the correct answers. As has been held by the Hon'ble Supreme Court in Kanpur University v. State, (supra), if the key answers demonstrably wrong then, it is for the Court to interfere with the same. In this case, prima facie, the learned counsel for the petitioner has demonstrated with the help of the textbooks that the key answers are wrong. I hasten to add that this is not a final

conclusion, which I have arrived at supra. I only state that for the purpose of finding out prima facie case only, I held in this interim order that the key answers are wrong.

23. Continuing further, the Learned Counsel for the Petitioner submits that in W.A. No. 2498 of 2012 (filed by the Respondent/Service Commission as against the order dated 19.10.2012 made in W.P. No. 28998 of 2012 and M.P. No. 1 of 2012) the impugned order of the Learned Single Judge was set aside and the Respondent/Service Commission was directed to keep one interview post till the disposal of the Writ Petition etc.

24. The Learned Counsel for the Petitioner contends that for Question Nos. 27, 29, 47 & 69, the Petitioner has given the answers and according to him, they are correct but the key answers for the said questions relied on by the Respondent/T.N.P.S.C. are incorrect one. Under these circumstances, the Petitioner prays for passing of an order by this Court in directing the Respondent to revalue the Question Nos. 112, 84, 157, 47, 69, 27 and 29 in Booklet Series D of Group II Examination for the post included in CSSE-I held on 30.07.2011.

The Respondent's Submissions:

25. Per contra, it is the submission of the Learned Counsel for the Respondent that there is no dispute in regard to the Notification No. 258 (Supplemental Notification Nos. 265, 280 issued to Notification No. 258) for the Combined Subordinate Services Examination - I issued by the Respondent/Service Commission and that the Petitioner applied for any one common category post in his application without marking any preference and further that the written examination was held on 30.07.2011. Further, the Petitioner was given the Booklet "D" Series General Knowledge with General Tamil Question and on 30.07.2011 the key answers were furnished by the Respondent/Service Commission and that on 07.06.2012 the candidates who obtained cut off marks were called for oral test for interview post and the Petitioner was not called for the interview since he had not opted for the interview post and also had not reached the zone of consideration.

26. The Learned Counsel for the Respondent contends that the Petitioner submitted his representation dated 11.06.2012 to the Respondent/Commission to provide him xerox copy of his OMR sheet and that oral interview was conducted for the interview post from 20.06.2012 to 27.07.2012 and on 14.08.2012 the Petitioner made further representation for the OMR answer sheet.

27. In this connection, the Learned Counsel for the Respondent submits that the Petitioner originally filed in W.P. No. 22815 of 2012 seeking the relief of mandamus in directing the Respondent/Service Commission to produce the OMR sheet and answer key for the questions in Group - II examination and evaluate the same and direct the respondent to include his name in the selection list of candidates under BC category and on 11.09.2012 this Court passed an interim order to publish the marks, key answer and cut off marks for all candidates in

respect of all categories and on 10.10.2012, the Respondent/Commission published the marks, key answer and cut off marks for all categories of candidates.

28. Moreover, the Petitioner on 10.10.2012 made a representation to the Commission to know his position in the rank list and on 13.10.2012 he was informed through a reply about his non-selection to the interview post and also about the 71 number of candidates who had scored more than him but not called for interview.

29. On 16.10.2012 the Petitioner filed M.P. No. 3 of 2012 in W.P. No. 22815 of 2012 seeking the relief of injunction restraining the Commission from making any selection and appointment to the Group-II post and on 17.10.2012 the Respondent/Commission filed a counter to M.P. No. 3 of 2012. Further, on 18.10.2012 the Petitioner filed M.P. No. 4 of 2012 in W.P. No. 22815 of 2012 for amending the prayer in the Writ Petition as a Mandamus directing the Respondent to conduct the selection in accordance with rule of reservation confirmed as per the Hon"ble Supreme Court Judgment in Rajesh Kumar Daria Vs. Rajasthan Public Service Commission and Others, . The Respondent/Commission on 19.10.2012 filed a counter in M.P. No. 4 of 2012 in W.P. No. 22815 of 2012.

30. The Learned Counsel for the Respondent brings it to the notice of this Court that the Petitioner filed W.P. No. 28998 of 2012 seeking Writ of Mandamus in directing the respondent to revalue the question Nos. 112, 47, 69, 27 & 29 Booklet Series D of Group II Examination for the post included in CSSE-1 Services 2010 conducted on 30.07.2011 and to proceed with the selection and allocation of post based on the revaluation and consequently to direct the Respondent to revalue the answer book of the Petitioner (Register No. 00904134) and to select him for the post included in CSSE-1 Service 2010 based on such revaluation within the time frame to be determined by this Court. Also that, this Court on 19.10.2012 in M.P. No. 1 of 2012 in W.P. No. 28998 of 2012 granted the interim order in directing the Respondent/Commission to keep all further process in abeyance and not to issue appointment orders to the candidates who were called for counseling. The Respondent/Service Commission, being aggrieved against the interim orders dated 19.10.2012, preferred W.A. No. 2498 of 2012 and this Court, on 07.11.2012 in W.A. No. 2498 of 2012 set aside the interim order passed by the Learned Single Judge and directed one interview post to be kept vacant and on 14.11.2012 the Respondent filed its counter and on 28.11.2012 the Petitioner attended the counseling for non-interview post and selected for the post of Assistant in Rural Development and Panchayat Raj and also gave a declaration accepting the post and joined in the selected post on 26.12.2012.

31. To lend support to the contention that the Petitioner cannot be allowed to contend that his key answer is correct for which he had moved the Tamil University and Anna University and according to him, these parameters are to be

applied, the Learned Counsel for the Respondent relies on the decision of the Hon'ble Supreme Court in *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, wherein in paragraph 11 and 13, it is observed as follows:

11. Let us briefly indicate the findings recorded by the High Court before examining the merits of the contentions raised by the appellants in these appeals. In this connection, it is necessary to recall the four qualifications prescribed by the notification. The last one which relates to the knowledge of the Kannada language is not in dispute and may be left out of consideration. The first qualification is that the applicant must have a First or a high Second Class Master's Degree of an Indian University or an equivalent qualification of a foreign University in the subject concerned. It appears that appellant No. 2 secured 50.2 percent marks in his Master's Degree examination. It was urged by the respondent before the High Court that when 50 percent is the minimum required for securing a second class, it would be idle to suggest that a candidate, who obtains 50.2 percent, has secured a high Second Class Master's Degree, and so the respondent pleaded that the first condition had not been satisfied by the appellant No. 2. The High Court has upheld this plea. In regard to the second qualification, it appears that appellant No. 2 has obtained a Degree of Master of Arts of the University of Durham. The High Court has held that in regard to this qualification, if the Board took the view that the appellant No. 2 satisfied that qualification, it would not be Just for the Court to differ from that opinion. In other words, the High Court did not make a finding in favour of the respondent in regard to qualification No. 2. In regard to the third qualification, the matter appears to have been debated at length before the High Court. Evidence was led by both the parties and the respondent seriously disputed the claim made by both the appellants that appellant No. 2 satisfied the test of five years experience of teaching Degree classes. The High Court examined this evidence and ultimately came to the conclusion that though the material adduced by the appellants on this point was unsatisfactory, it could not make a finding in favour of the respondent. In this connection, the High Court has severely criticised the conduct of appellant No. 1 to which we will refer later. Thus, it is clear that substantially the High Court decided to quash the appointment of appellant No. 2 on the ground that it was plain that he did not satisfy the first qualification. In this connection, the High Court has also criticised the report made by the Board and has observed that the Members of the Board did not appear to have applied their minds to the question which they were called upon to consider.

13. Before we part with these appeals, however, reference must be made to two other matters. In dealing with the case presented before it by the respondent, the High Court has criticised the report made by the Board and has observed that the circumstances disclosed by the report made it difficult for the High Court to treat the recommendations made by the experts with the respect that they generally deserve. We are unable to see the point of criticism of the High Court in such academic matters. Boards of Appointments are nominated by the

Universities and when recommendations made by them and the appointments following on them, are challenged before courts, normally the courts should be slow to interfere with the opinions expressed by the experts. There is no allegation about mala fides against the experts who constituted the present Board; and so, we think, it would normally be wise and safe for the courts to leave the decisions of academic matters to experts who are more familiar with the problems they face than the courts generally can be. The criticism made by the High Court against the report made by the Board seems to suggest that the High Court thought that the Board was in the position of an executive authority, issuing an executive fiat, or was acting like a quasi-judicial tribunal, deciding disputes referred to it for its decisions. In dealing with complaints made by citizens in regard to appointments made by academic bodies, like the Universities, such an approach would not be reasonable or appropriate. In fact, in issuing the writ, the High Court has made certain observations which show "that the High Court applied tests "Which would legitimately be applied in the case of writ of certiorari. In the judgment, it has been observed that the error in this case is undoubtedly a manifest error. That is a consideration which is more germane and relevant in a procedure for a writ of certiorari. What the High Court should have considered is whether the appointment made by the Chancellor had contravened any statutory or binding rule or ordinance, and in doing so, the High Court should have shown due regard to the opinions expressed by the Board & its recommendations on which the Chancellor has acted. In this connection, the High Court has failed to notice one significant fact that when the Board considered the claims of the respective applicants, it examined them very carefully and actually came to the conclusion that none of them deserved to be appointed a Professor. These recommendations made by the Board clearly show that they considered the relevant factors carefully and ultimately came to the conclusion that appellant No. 2 should be recommended for the post of Reader. Therefore, we are satisfied that the criticism made by the High Court against the Board and its deliberations is not justified.

32. The Learned Counsel for the Respondent cites the decision of the Hon'ble Supreme Court in *Kanpur University, Through Vice Chancellor and Others v. Samir Gupta and Others* (supra) wherein in paragraph Nos. 4, 5, 9, 11, 13, 15, 16, 18, it is observed and laid down as follows:

4. The difficulty which arose in these cases is not due to the failure of the computer, which is quite encouraging. The habit of man is to blame the machine. The difficulty arose because the key answers furnished by the paper-setters turned out to be wrong. The students got to know the key answers out of the generosity of the University. If wanted, rightly, to be frank and fair. Therefore, it published the key answers along with the result of the test. Respondents, whose names did not figure in the list of successful candidates, filed writ petitions in the High Court of Allahabad, contending that the answers ticked by them were correct and the key answers wrong. The High Court has accepted their contention and that is how the Kanpur University has come to file these appeals.

There cannot be a more telling instance of "Shishyat Ichhet Parajam" (Wish for defeat from your pupil). But the Gurus contend that the Shishyas are wrong and do not deserve to win.

5. There is no controversy over the questions set in the Physics paper. The controversy arises in regard to three questions, one each in the papers in Chemistry, Zoology and Botany. We will deal with those three questions one by one, without making our own guess as to which is the correct answer. Any way, we cannot indicate the true answer to these appeals by merely ticking off one of the two options open to us, either to allow or to dismiss the appeals. Ticking is the privilege of the new generation of students. We have to give reasons in support of our answer.

9. With their born knowledge of Hindi, the learned Judges of the Allahabad High Court have gone into the linguistic niceties with some proficiency. Their judgment shows that in Medical Sciences Glossary I, which is published by the Standing Commission for Scientific and Technical Terminology, Ministry of Education, Government of India, the Hindi equivalent of the word "Electrolysis" is given as "Vidyutap aghatana" and of the word "Dissociation" as "Viyojan". The High Court has quoted several acknowledged text books in Hindi which show that though the law of "Electrolysis" was first formulated by Faraday in 1834, the theory of Electrolytic Dissociation" was evolved by Arrhenius 1887 which is known as "Ionic-dissociation Theory". Amongst the authorities quoted by the High Court is a text-book prescribed for Intermediate classes by the "Madhyamik Shiksha Parishad, U.P." The High Court has accepted the respondents' contention that there is a "marked difference" in the English and Hindi version of question No. 24.

11. In support of its contention that the English and Hindi versions of the question convey the same meaning, the University produced the opinion of two experts, Prof. R.P. Singh of the Department of Chemistry, Delhi University, and Dr. B.R. Agarwal, an ex-Vice-Chancellor. These two gentlemen are undoubtedly well-versed in their specialty but the controversy turns more on the knowledge of Hindi than of chemistry. Dr. Agarwal has himself stated in his opinion that: "Even now the Hindi terminology is not so well defined as in English and the Hindi terminology for the same English concepts differs from author to author". In any event, as stated in the judgment of the High Court, the standard text- books which the students consult, or are expected to consult, make a distinction between "Vidyutapaghatan" on the one hand and "Vidyutapaghataniya viyojan" on the other. We must, therefore, uphold the finding of the High Court that the key answer to question No. 24 is correct in so far as the English version is concerned but that, the correct answer to the Hindi version of that question is the 1st option, namely, "Faraday".

13. The University produced the opinion of Shri H. S. Vishnoi of the Department of Zoology, University of Delhi. We agree with the High Court that though Shri Vishnoi is a knowledgeable person in his specialty, he was evidently under some confusion while giving his opinion. Profundity sometimes creates confusion. In

the very opening sentence of his opinion, Shri Vishnoi says: "The point is about free ammonia". That is not the point. The question which the students were asked to answer was not "about free ammonia" but which of the four alternatives was not present in free form when life originated. Shri Vishnoi has also not given specific citations from the two books to which he has referred in support of his opinion. We therefore agree with the conclusion of the High Court that the answer to question No. 23 in the Zoology paper is "oxygen" as contended for by the respondents and not "Ammonia" as stated in the key answer.

15. The findings of the High Court raise a question of great importance to the student community. Normally, one would be inclined to the view, especially if one has been a paper setter and an examiner, that the key answer furnished by the paper setter and accepted by the University as correct, should not be allowed to be challenged. One way of achieving it is not to publish the key answer at all. If the University had not published the key answer along with the result of the test, no controversy would have arisen in this case. But that is not a correct way of looking at these matters which involve the future of hundreds of students who are aspirants for admission to professional courses. If the key answer were kept secret in this case, the remedy would have been worse than the disease because, so many students would have had to suffer the injustice in silence. The publication of the key answer has unravelled an unhappy state of affairs to which the University and the State Government must find a solution. Their sense of fairness in publishing the key answer has given them an opportunity to have a closer look at the system of examinations which they conduct. What has failed is not the computer but the human system.

16. Shri Kacker, who appears on behalf of the University, contended that no challenge should be allowed to be made to the correctness of a key answer unless, on the face of it, it is wrong. We agree that the key-answer should be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by an inferential process of reasoning or by a process of rationalisation. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well-versed in the particular subject would regard as correct. The contention of the University is falsified in this case by a large number of acknowledged text-books, which are commonly read by students in U.P. Those text-books leave no room for doubt that the answer given by the students is correct and the key answer is incorrect.

18. If the State Government wants to avoid a recurrence of such lapses, it should compile under its own auspices a text-book which should be prescribed for students desirous of appearing for the combined Pre-Medical Test. Education has more than its fair share of politics, which is the bane of our Universities. Numerous problems are bound to arise in the compilation of such a text-book for, various applicants will come forward for doing the job and forces and counter-forces will wage a battle on the question as to who should be commissioned to do the work. If the State can succeed in overcoming those difficulties, the

argument will not be open to the students that the answer contained in the text-book which is prescribed for the test is not the correct answer. Secondly, a system should be devised by the State Government for moderating the key answers furnished by the paper setters. Thirdly, if English questions have to be translated into Hindi, it is not enough to appoint an expert in the Hindi language as a translator. The translator must know the meaning of the scientific terminology and the art of translation. Fourthly, in a system of "Multiple Choice Objective-type test", care must be taken to see that questions having an ambiguous import are not set in the papers. That kind of system of examination involves merely the tick-marking of the correct answer. It leaves no scope for reasoning or argument. The answer is "yes" or "no". That is why the questions have to be clear and unequivocal. Lastly, if the attention of the University is drawn to any defect in a key answer or any ambiguity in a question set in the examination, prompt and timely decision must be taken by the University to declare that the suspect question will be excluded from the paper and no marks assigned to it.

33. The Learned Counsel for the Respondent submits that the Petitioner obtains an answer from the Tamil University and Anna University and wants an inference to be drawn to the effect that answers given by him are correct.

34. The Learned Counsel for the Respondent banks on the decision of the Hon"ble Supreme Court in *Manish Ujwal and Others Vs. Maharishi Dayanand Saraswati University and Others*, , in paragraph Nos. 5 and 6, it is held as follows:

5. On the aforesaid three dates, examinations were held for Physics, Chemistry and Biology subjects respectively. The results were declared on 22-5-2005 on internet and published in the newspapers on 23-5-2005. The total marks allotted to each subject were 300, i. e., 900 in total. Each paper had 100 questions of trade marks each. The marking system provided for reducing one mark for each wrong answer, which means that negative marking system was adopted. The answers were objective giving multiple choices to the students, i.e., A/B/C/D. The controversy before the High Court and again agitated before this Court by the students after being unsuccessful before the High Court is the wrong key answers pertaining to various answers in all the three subjects of Physics, Chemistry and Biology. The learned Single Judge sought for the expert opinion of Jodhpur University and Udaipur University. For the present purpose, we are not noticing and considering those key answers in respect/whereof there is a difference of opinion. We are considering only those key answers or which there is unanimity. Admittedly, six key answers; one in relation to Physics; two in relation to Chemistry; and three in relation to Biology were incorrect and erroneous. The opinion of the experts of both Jodhpur and Udaipur Universities as regards the said questions was same, according to which the key answers, as provided by the respondent-University, were erroneous. The question as to whether in respect of these questions, the key answers provided by the University were erroneous and wrong has not presented any difficulty to this

Court in view of a fair stand taken by the learned counsel for the University before us. The learned counsel, has admitted that the key answers Were wrong. The said six questions and the key answer's, as provided, and the correct answers are as under:

6. We are not referring to the answers given by the experts from the Jodhpur and Udaipur Universities in respect of other questions in view of the difference of opinion and are proceeding only on the basis of the erroneous key answers in relation of the aforesaid six questions. As to the impact of evaluating answers by feeding incorrect keys, at present, it may not be exactly possible to comment, also keeping in view the adopting of negative marking system and a very tough cutthroat competition amongst the students.

35. The Learned Counsel for the Respondent refers to the Division Bench Judgment of this Court dated 16.12.2008 in W.P. No. 28501 of 2008 wherein it is observed as follows:

The stand of the Commission is that if more persons obtain the same mark in the written test, then among those persons, persons who are higher in age are called for the viva voce test and are given preference over those who are lesser in age.

36. Apart from the above, the Learned Counsel for the Respondent cites the following decisions:

(i) In the decision of the Hon'ble Supreme Court in H.P. Public Service Commission Vs. Mukesh Thakur and Another, wherein in paragraph Nos. 2 to 4, 7, 8, 12, 14, 15, 24 and 25, it is laid down as follows:

2. Facts and circumstances giving rise to these appeals are that the appellant herein, H.R. Public Service Commission (hereinafter called as, "the Commission") advertised 13 vacancies of the Civil Judge (Junior Division) on 2nd April, 2005, providing the eligibility criteria and mode of selection. The respondent No. 1 applied in pursuance of the said advertisement along with other candidates. The result of the written papers was declared on 04.09.2005. Respondent No. 1 was not found eligible to be called for interview/viva-voce for the reason that he failed to secure 45% marks in the paper of Civil Law - II, though he had secured 50% marks in aggregate. Being aggrieved, the said respondent filed writ petition seeking direction for revaluation of the paper of Civil Law - II and appointment to the said post as a consequential relief.

3. The High Court vide order dated 3.10.2005 directed the appellant-Commission to produce his answer sheets before it and the appellant produced the answer sheets of that paper before the High Court on 05.10.2005. The High Court passed an order dated 05.10.2005 directing the appellant to arrange for a special interview for the said respondent in view of the fact that the High Court was of the view that there had been some inconsistency in framing the Question Nos. 5 and 8 and in evaluation of the answer to the said questions. However, the operation of the said interim order was stayed by this Court vide order dated

7.11.2005 in SLP (C) 21511 of 2005 and further direction was issued to the High Court to dispose of the writ petition expeditiously.

4. The appellant filed the reply before the High Court submitting that there was no provision of revaluation in the Himachal Pradesh Judicial Service Rules, 2004 (hereinafter called the "Rules 2004") as well as in Himachal Pradesh Judicial Service (Syllabus and Allocation of Marks) Regulations, 2005 (hereinafter called "Regulations 2005") and as the respondent No. 1 failed to secure 90, qualifying marks in the said paper, he was not eligible to be called for interview or to be considered for appointment.

7. Shri Anil Nag, learned counsel for the appellant, has submitted that the Rules 2004 and Regulations, 2005 do not provide for revaluation or rechecking of the answer sheets. Comparative merit of the candidates is assessed and if there is some inconsistency in framing of the questions/marking of a particular question, it would be the same in the case of all the candidates and therefore, it is not permissible for the court to direct revaluation of the answer sheets of a particular candidate. In such an eventuality, the answer sheets of all the candidates should be revalued. The respondent No. 1 admittedly failed to secure the qualifying marks in one paper, therefore, the judgment and order of the High Court is liable to be set aside.

8. On the contrary, Mr. L.N. Rao, learned Senior counsel for the respondent has submitted that as the High Court found inconsistency in question Nos. 5 and 8, it was justified to direct for revaluation and as the respondent No. 1 secured 119 marks, being very high in merit list i.e. at No. 2, no fault could be found with the order of the High Court. Thus, appeals are liable to be dismissed.

12. The advertisement clarified as under:

Re-evaluation or Rechecking of the answer books (Scripts) is not permissible nor the Commission enters into correspondence in this behalf.

14. In the facts and circumstances of the aforesaid case, three basic questions arise for consideration of this Court: (i) As to whether it is permissible for the court to take the task of Examiner/Selection Board upon itself and examine discrepancies and inconsistencies in the questions paper and valuation thereof?

(ii) Whether Court has the power to pass a general order restraining the persons aggrieved to approach the court by filing a writ petition on any ground and depriving them from their constitutional rights to approach the court, particularly, when some other candidates had secured the same marks, i.e., 89 and stood disqualified for being called for interview but could not approach the court?

(iii) Whether in absence of any statutory provision for revaluation, the court could direct for revaluation?

15. In the instant case, the High Court has dealt with Question Nos. 5(a) and (b) and 8(a) and (b) and made the following observations:

We perused answer to Question No. 5(a) and 5(b) and found that the petitioner has attempted both these answers correctly and the answer to Question No. 5 (b) was as complete as it could be. Despite the petitioner having attempted a better answer to Question No. 5(b) than the answer to Question No. 5(a), the petitioner has been awarded 6 marks out of 10 in answer to Question No. 5(b) whereas he has been awarded 8 marks in answer to Question No. 5(a). Similarly in answer to Question No. 8(a) and 8(b) the petitioner has fared better in attempting an answer to Question No. 8(b) rather than answer to Question No. 8(a) and yet he got 4 marks out of 10 marks in answer to Question No. 8(b) whereas he got 5 marks out of 10 marks in answer to Question No. 8(a).

24. The issue of re-evaluation of answer book is no more *res integra*. This issue was considered at length by this Court in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, , wherein this Court rejected the contention that in absence of provision for re-evaluation, a direction to this effect can be issued by the Court. The Court further held that even the policy decision incorporated in the Rules/ Regulations not providing for rechecking/verification/re-evaluation cannot be challenged unless there are grounds to show that the policy itself is in violation of some statutory provision. The Court held as under:

14. ...It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy, how the provisions of the Statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act...

16. ...The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any draw-backs in the policy incorporated in a rule or regulation will not render it *ultra vires* and the Court cannot strike it down on the ground that in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act.

25. This view has been approved and relied upon and re-iterated by this Court in Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission and Others, observing as under(SCC pp. 717-18, para 7):

7. ...Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for re-evaluation of his answer-book. There is a provision for scrutiny only wherein the answer-books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totalling of marks of each question and noting them correctly on the first cover page of the answer-book. There is no

dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. In the absence of any provision for re-evaluation of answer-books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re-evaluation of his marks.

(emphasis supplied)

A similar view has been reiterated in *Dr Muneeb-ul-rehman Haroon and Others Vs. Government of Jammu and Kashmir State and Others*, ; *Board of Secondary Education v. Pravas Ranjan Panda and Another* (2004) 13 SCC 383; *The President Board of Secondary Education, Orissa and Another Vs. D. Suvankar and Another*, ; *The Secretary, West Bengal Council of Higher Secondary Education Vs. Ayan Das and Others*, ; and *Sahiti and Others Vs. The Chancellor, Dr. N.T.R. University of Health Sciences and Others*, ."

(ii) In the decision of the Hon"ble Supreme Court in *Dr. Basavaiah Vs. Dr. H.L. Ramesh and Others*, , wherein in paragraph Nos. 13, 18, 38 to 40, it is held as follows:

13. The Committee appointed by the University thoroughly scrutinized the qualification, experience and published works of both the candidates and made its unanimous recommendations in favour of their appointments. The University also clearly stated that the appointments of the appellants were made in consonance with the terms of the provisions of the Act. Admittedly, for the selections to the post of Readers, an Expert Committee was constituted and thereafter, its recommendations were accepted by the University and issued orders accordingly. No one had any grievance so far as the constitution of Experts Committee was concerned and no mala fides have been levelled against any member of the expert committee.

18. The learned Single Judge dismissed the writ petition filed by respondent no. 1 on the ground that selection had taken place in 1999 and the appellants were working in their respective teaching posts and the court did not deem it appropriate to disturb the existing arrangement and dismissed the petition.

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 fide has 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 realize and appreciate its constraints and limitations in academic matters.

39. In the impugned judgment, the High Court has ignored the consistent legal position. They were expected to abide by the discipline of the precedents of the courts. Consequently, we are constrained to set aside the impugned judgment of the Division Bench of the High Court and restore the judgment of the Single

Judge of the High Court.

40. The University of Mysore, respondent herein, is directed to give regular pay-scale to the appellants from 1st August, 2010. To avoid any further litigation, we may make it clear that the appellants would not be entitled to claim any arrears or benefits for the past period.

37. The Learned Counsel for the Respondent submits that the Question No. 112 is a Compound Sentence and not a single sentence. Further, the Learned Counsel for the Respondent emphatically submits that the words is a and as such, it is a Compound Sentence - and in fact, the Expert of the Government Higher Secondary School, Arumbakkam, Chennai - 106 had clearly stated that for Question No. 112, the answer is That apart, the answers given by the Expert cannot be doubted by the Petitioner.

38. The Learned Counsel for the Respondent seeks in aid of the 10th standard Tamil Textbook issued by the Tamil Nadu Book Society in part II under the caption in serial No. 14 it is stated as under:

Also, he refers to the 9th Standard Tamil Textbook under the caption wherein it is mentioned as follows:

39. It is the contention of the Learned Counsel for the Respondent that the Petitioner has not sought reasons as to why he wanted replies in respect of the two questions, he cited in his letter dated 13.12.2012 and merely sought the answers for the two questions.

40. It is the submission of the Learned Counsel for the Respondent that the Respondent/Commission adopted a reasonable procedure which cannot be questioned by the Petitioner. Further, the Learned Counsel for the Respondent submits that in Kanpur University v. Shamir Gupta (supra), five questions were wrong and hence, the said decision is not applicable to the facts of the present case.

41. The pivotal submission of the Learned Counsel for the Respondent/Service Commission is that in the absence of Rules, no revaluation can be done by the Service Commission and in the event of key answers being wrong, there is a provision for rectifying the discrepancies in the method of questions and key answers.

42. The Learned Counsel for the Respondent submits that the Respondent/Service Commission had issued Instructions to Candidates appearing for Objective Type Examinations and in Serial No. 41, it is mentioned as follows:

41. Candidates are advised to write to the Controller of Examination within seven days from the date of Examination on items or questions, which are considered to be defective by the candidate in the Question Booklet such as question is wrong options are wrong, more than one answers are correct. In such representations, Register Number, Name and address of the candidate, Question

Number, Question Booklet Series etc., should invariably be quoted. Any representation received after seven days from the date of examination or without any of the required particulars will receive no attention.

and the Petitioner has not addressed any communication to the Service Commission within seven days from the date of examination as per the instructions issued.

43. The Learned Counsel for the Respondent submits that the Petitioner, by placing reliance on the Bazar Notes and Books of his choice, is making an endeavour to state that for the 7 questions (involved in the Writ Petition), he had correctly given the answers which according to him are correct and as a matter of fact, the Petitioner cannot substitute his view even assuming as a correct option for the 5 questions in substitution of the correct key answers furnished by the question setter, moderator and committee of Experts.

44. The Learned Counsel for the Respondent/Service Commission contends that the Experts had given the following opinions for key answers to Question Nos. 27, 29, 47, 69 and 112. They are stated as under:

(i) For Question No. 27:

The Expert had given the correct answer as option "(D) it does not change the potential difference to be measured" and further stated as follows:

As is clear from the evidence provided (pg. 183, Concepts of Physics, H.C. Verma, Bharati Bhavan, Second reprint for 2011), when a voltmeter is connected in a circuit, it is connected in parallel. This will change the overall current in the circuit, since some current will flow in the voltmeter also. Thus the measured potential difference will also change. To avoid this, and to enable a correct measurement of the potential difference (i.e. voltage), the current through the voltmeter is minimized by setting a large net resistance in the voltmeter. Thus Answer (D) is correct. - The net resistance of the voltmeter, which measures the potential difference, is set large, to minimize the current through the voltmeter and therefore to not change the potential difference to be measured.

Answer C is not correct, since whether the potential difference to be measured is large or small, the current through the voltmeter must be small.

In fact, the Expert had furnished the aforesaid answer with supporting source material from the book "Concepts of Physics" by H.C. Verma at page Nos. 182 & 183.

(ii) For Question No. 29:

The Expert had given the key answer by stating the following:

With reference to the effects/functions of glucagon the primary function is to increase the blood sugar level. Along with this, it is also responsible for lower blood calcium level, high calcium excretion and increased heart rate and cardiac

contraction.

by referring to Animal Physiology Book by P.S. Verma, B.S. Tyagi and V.K. Agarwal and enclosed the said book material.

At this stage, a perusal of the aforesaid material at page 331 under the caption "Effects of Glucagon", it is mentioned as under:

1. Glucagon increases blood sugar levels by stimulating the dissolution of glycogen granules and the consequent movement of soluble glucose into the blood.
2. It enhances the uptake of amino acids, the deamination of amino acids within the liver, and the conversion of the carbon skeleton of amino acids and fatty acids into glucose. It is thought that it is a hormone involved in regulation of carbon metabolism.
3. Its essential function is to provide a continuous and immediately available supply of energy fuels (particularly glucose) in accord with bodily needs.
4. It is responsible for lower blood levels of calcium, higher excretory levels of calcium, an increase in heart rate, and an increase in the force of cardiac contraction.

In addition to these, several other physiological actions have also been attributed to glucagon and these are following:

1. Reduction of intestinal motility and gastric secretion.
2. Enhanced excretion of electrolytes by kidneys.

(iii) For Question No. 47:

The Expert had given the answer as "(B) 4th" Rank from the source Tamil ARASU and in support of the same, enclosed the xerox copy of the Economy of Tamil Nadu from Wikipedia, the free encyclopedia and he had also further stated that he was trying to produce the original Tamil Arasu.

(iv) For Question No. 69:

The Expert had given the key answer is "(C) West Bengal" and further stated that he verified the answer from an authentic source.

(v) For Question No. 112:

The Expert, P.G. Assistant, Government Higher Secondary School, Arumbakkam, Chennai - 106 (by referring to the Additional Typed Set of Papers filed on 05.11.2012 on behalf of the Respondent), had given the correct answer as option "(A)" and stated the following:

The Expert had given the opinion that the key answer with supporting source material from for 8th standard (issued by the Tamil Nadu Textbook Society) at

page 72 (as evidenced from the Index to Additional Typed Set of Papers dated 05.11.2012).

45. The Learned Counsel for the Respondent/Commission brings it to the notice of this Court the Learned Single Judge allowed W.P. No. 6114 of 2011 and W.P. No. 7948 of 2011 batch, by means of an order dated 06.03.2012 and in W.A. Nos. 486, 487, 502, 575, 576 and 907 of 2012 filed by the Private Candidates, the Government and the Service Commission, the Division Bench of this Court passed the Judgment on 27.09.2012 and later the recruitment commenced and completed in Notification No. 258 of 2010 etc. Further, the Learned Counsel for the Respondent proceeds to submit that the Respondent/Commission in its meeting that held on 10.10.2011 after the examination for the current Notification was over on 30.07.2011. As such, the tabular statement published in the website produced by the Petitioner is relating to the period prior to the decision taken by the Commission on 25.09.2011. Therefore, the column in the present recruitment relating to publishing of key answers was kept blank and shown as 10.10.2012.

46. In this connection, the Learned Counsel for the Respondent/Service Commission relies on the Division Bench Judgment of this Court dated 27.09.2012 in W.A. Nos. 486, 487, 502, 575, 576, 907, 1315 and 1317 of 2012 whereby and whereunder, in paragraph 58 to 60, it is observed and held as follows:

58. In Public Service Commission, Uttaranchal Vs. Mamta Bisht and Others, the Supreme Court while dealing with the concept of necessary parties and the effect of non-impleadment of such a party in the matter when the selection process is assailed observed thus: "9. ...in Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar, wherein the Court has explained the distinction between necessary party, proper party and pro forma party and further held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order 1 Rule 9 of the Code of Civil Procedure, 1908 (hereinafter called "CPC") provides that non-joinder of necessary party be fatal. Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141 CPC but the principles enshrined therein are applicable. (Vide Gulabchand Chhotalal Parikh Vs. State of Bombay (Now Gujarat), Babubhai Muljibhai Patel Vs. Nandlal Khodidas Barot and Others, and Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others, ."

59. In the prayer in the writ petitions, petitioners have sought for writ of mandamus forbearing the Government and T.N.P.S.C. from in any manner recruiting and filling up 186 posts of Assistant Section officer in Tamil Nadu Secretariat Service under Post Code No. 1072. The relief sought for in the writ petitions is likely to affect all those candidates who attended interview and who opted for Assistant Section Officer post in Code 1072. But the writ petitioners

have not chosen to implead the persons who are likely to be affected.

60. The principles laid down in *Public Service Commission v. Mamta Bishi* (supra) are squarely applicable to the facts of the case on hand. Hence, we are of the opinion that non-impleading of the selected candidates is against the principles of natural justice they have not been given a reasonable opportunity of being heard. Therefore, we are not inclined to accept the submissions made by the learned senior counsel for the writ petitioners in this regard and on this ground also, the writ petitions are liable to be dismissed.

47. By way of Reply, the Learned Counsel for the Petitioner submits that in respect of 22 examinations, the Respondent/Commission published key answers immediately after examination and for the CSSE -12010 examination the Respondent/Service Commission had not released the tentative key answers immediately after the examination and in fact, the same was published on 10.10.2012 only after the orders passed by this Court in M.P. No. 1 of 2012 in W.P. No. 22815 of 2012 dated 11.09.2012. In this regard, the Learned Counsel for the Petitioner refers to T.N.P.S.C. Organisation Chart (its Vision and Mission Role and Functions Organisation) and under the caption "Answer Keys", it had mentioned the following:

The tentative Answer Keys for the Objective type Examinations will be hosted in the Commission's website immediately after the examination is over and the candidates will be given seven days time to file claims and objections, if any to the Commission.

48. According to the Learned Counsel for the Petitioner, in respect of Question No. 27, for the key answer furnished by the Petitioner, in support of the same the Petitioner had enclosed the Physics Textbook for Higher Secondary and Objective Physics for Engineering and Medical Entrance Examinations written by Magesh Jain; in respect of Question No. 29, for the key answer furnished by the Petitioner, he had placed reliance on the 12th Standard Zoology Textbook; for Question No. 47, he had referred to the particulars availed based on the source of data published by the Directorate of Economics Statistics of respective State Governments, for All India -released by the Central Statistical Organisation and on references to Planning Commission, Government of India as well as Ministry of Statistics and the Programme Implementation; in respect of Question No. 69, the Petitioner had stated that the said question was extracted from the Agarwal Guide and even as per the Guide, the answer given was option "(B) Jammu & Kashmir".

49. At this stage, it is to be pertinently pointed out that this Court is alive to the fact that the Principles of Natural Justice cannot be carried to such an extent so as to make it necessary that a candidate who has taken up the examination in respect of a particular post and to be allowed to participate in the process of evaluation of his performance or to verify the correctness of evaluation made by the Examiner in order to find out whether there has been a fair and proper

valuation of the answers by the Examiners. In fact, these principles cannot traverse beyond a reasonable limit, as opined by this Court.

50. To put it precisely, the rule of ""Audi Alteram Partem"" cannot be extended in order to make it applicable to the "twilight zone of mere expectations", in the considered opinion of this Court.

51. It is to be noted that an evaluated answer book of a candidate is a document or record which contains the opinion of the Examiner. In fact, the term "Re-assessment" means that already it was once assessed and the assessment is to be reviewed or reconsidered again.

52. At this juncture, this Court worth recalls and recollects the decision of the Hon"ble Supreme Court in Bhushan Uttam Khare Vs. The Dean, B.J. Medical College and others, wherein it is held as follows:

In deciding the matters relating to orders passed by authorities of educational institutions, the Court should normally be very slow to pass orders in its jurisdiction because matters falling within the jurisdiction of educational authorities should normally be left to their decision and the Court should interfere with them only when it thinks it must do so in the interest of justice. In this case there had been sufficient material before the Executive Council to proceed in the manner in which it has done. The University had not acted on non-existent rule for ordering revaluation. Ordinance 146 is comprehensive enough to include revaluation also for further action. The fact that two examiners were also members of the Committee which recommended for revaluation cannot result in any bias even if they had been directly concerned with the original evaluation. Though in the second revaluation also there had been some changes between the original valuation and the revaluation results, but it is not so glaring or demonstrably unconscionable as seen in the first revaluation.

However, the case of the Petitioner, who alone has come before the Court and who had secured higher marks in the first revaluation and is, therefore, aggrieved by the cancellation of the same, would be duly considered in the selection for post-graduate course.

53. In the decision of the Hon"ble Supreme Court in K. Channegowda and Others Vs. Karnataka Public Service Commission and Others, , wherein it is observed and held as follows;

The present case is not one where the examination deserves to be cancelled. The High Court has meticulously examined the material on record and the finding recorded by it that there was really no allegation imputing unfairness in the matter of examination of answer scripts by the examiners, is justified. The allegations, if any, related to the stage of moderation by the Chief Examiners, and in particular confined to the conduct of Chief Examiner S. It has been concurrently held by the Tribunal as well as the High Court that it is not necessary to hold the examination afresh. However, the High Court has upheld

the evaluation of papers in some subjects while it has directed re-evaluation in some others. Moreover, it has directed re-evaluation only at the Head Examiners"/Chief Examiners" level that is at the stage of moderation/random review. There was really no justification for fresh evaluation of all the answer scripts by the examiners, and the finding of the High Court has to be upheld. The High Court has recorded reasons for directing re-evaluation in only some of the subjects. In regard to other subjects the High Court has found that sufficient number of answer scripts were randomly evaluated and moderated, and further there was no conspicuous variation in the award of marks by the examiners and the Head Examiners. Obviously, therefore, there was no need to get such answer scripts re-evaluated. However, where sufficient number of answer scripts were not re-evaluated by the Head Examiner/Chief Examiner as required by the Rules, the High Court was certainly justified in directing compliance with the Rules.

Conclusions and Directions:

Be that as it may, on a careful consideration of respective contentions and although in the absence of any provision for revaluation of answer books in the relevant rules of the Respondent/Commission in respect of Group II Examination for the post included in CSSE-1 Services 2010, this Court opines that no individual candidate has any indefeasible or vested or enforceable legal right whatsoever to claim or pray for revaluation of his marks. However, in view of the peculiar attendant, exceptional facts and circumstances of the present case (which float on the surface), this Court opines that there appears to be a divergent view between the Petitioner and the Respondent/Service Commission in regard to the key answers for Question Nos. 112, 27, 47, 69 & 29 and both sides have placed respective materials to project their versions. At this stage, this Court very relevantly points out that there cannot be a principle/concept of more than one key answer. It is an axiomatic principle that a key answer shall be confined to only one. No wonder, all endeavours must be taken to the effect that there ought not to be more than one correct answer as key answer, leaving no cause or room for any complaint, confusion, cloud or shroud whatsoever. Viewed in that perspective and also this Court, bearing in mind that the Employment Carrier of the Petitioner is concerned with/involved in the present Writ Petition, without going into merits and demerits of the subject matter in issue involved between the parties and also not delving deep into the same, on the basis of Equity, Fair Play, Good Conscience and even as a matter of prudence, directs the Petitioner to submit a qualitative and quantitative detailed Memorial mentioning the questions and answers furnished by him together with necessary supporting book materials he relies upon, within a period of two weeks from the date of receipt of copy of this order and on receipt of such Memorial, the Respondent/Service Commission is directed to constitute an Expert Committee of their choice (drawn from various fields concerning the subjects involved in the present Writ Petition (other than the one relied upon by the Commission in the present case)), in order to find out whether the answers given by the Petitioner are correct for the disputed Question Nos. 112, 47, 69, 27 & 29 and also they are to find out

whether the key answers given to the aforesaid Questions by the Question Setter are an incorrect/wrong ones. The Expert Committee, on scrutiny/perusal of the answer sheet of the Petitioner in regard to the disputed questions/answers, is to come to its subjective and independent conclusion in a fair, dispassionate manner and to submit a complete and comprehensive Report to the Respondent/Service Commission as to whether the answers furnished by the Petitioner to the disputed Questions viz. 112, 47, 69, 27 & 29 are correct one or otherwise and based on that, the Respondent/Service Commission is to finalise the final marks of the Petitioner (by reviewing the answer papers of the Petitioner, if situation so warrants), in the Group II Examination for the post included in CSSE-1 Services 2010, as it deems fit and proper, within a period of six weeks thereafter.

With the aforesaid observations and directions, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.