
(2019) 10 JH CK 0060
In the Jharkhand High Court
Case No : Writ Petition (C) No. 682 Of 2018

Kumari Chanda

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 17-10-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 10 JH CK 0060

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Abhay Prakash, Sanjay Piprawall

Final Decision : Dismissed

Judgement

I.A. No.5031 of 2019

Mr. Abhay Prakash, learned counsel for the petitioner at the outset, has submitted that before going to the issues as has been agitated in the writ petition he may be allowed to press interlocutory application being I.A. No.5031 of 2019.

This Court after considering the fact that interlocutory application being I.A. No.5031 of 2019 is pending which has been filed seeking leave of this Court to allow the petitioner to make necessary amendment in the writ petition to incorporate the fact which has occurred in course of pendency of the writ petition.

It has been submitted by the learned counsel for the petitioner that the petitioner came to know after filing of the counter affidavit that serious irregularities have been committed in conducting the examination since there are ten disputed questions and as such direction has been sought for to conduct and scrutiny by an impartial expert body.

Mr. Sanjay Piprawal, learned counsel for the respondents-Commission has seriously objected to such prayer made in the interlocutory application by

submitting that the said amendment is not fit to be allowed since the grievance as has been agitated by the petitioner in the writ petition has already been redressed, as would appear from the stand taken by the respondent in the counter affidavit, whereby and whereunder the decision has been taken by the Commission to award marks in all seven questions whose answer keys were subsequently been found to be incorrect.

This Court after hearing the learned counsel for the parties and taking into consideration the fact as also the ground as has been agitated in the interlocutory application, is of the view that the amendment sought for is required to be allowed, so that the question which has been raised by the petitioner may not be unanswered, and also to avoid multiplicity of proceeding.

In view thereof, the amendment sought to be incorporated in the writ petition is allowed and the same is treated to be part of the writ petition.

Accordingly, the I.A. No.5031 of 2019 stands allowed.

W.P.(C) No.682 of 2018

1. The writ petition is under Article 226 of the Constitution of India, wherein originally the following prayers have been made:

(a) Issuance of appropriate writ/writ(s), order/order(s), direction/direction(s) particularly in nature of certiorari for quashing the 'final answer key' which has been notified on the website of the Jharkhand Staff Selection Commission in relation to 'Hindi subject' is wrong so far the question no.19, 53, 54, 72, 107, 112 & 114 are concerned on the basis of fact that either the question framed is false or the answers does not match with the authentic books published by the JCERT or IGNOU.

(b) Upon quashing the aforesaid 'final answer key' of the Hindi subject, further prays for issuance of appropriate writ/writ(s), order/order(s), direction/direction(s) upon the Jharkhand Staff Selection Commission to re-scrutinize the final answer key related to Hindi Subject and notify the correct answer key on the website of the Commission.

After making addition of prayer in the writ petition by virtue of allowing the I.A. No.5031 of 2019, the further prayer has been made to the effect to quash the final result of the selected candidates for 'Hindi Subject' in Ranchi district as published by the Jharkhand Staff Selection Commission and to command the respondents for appointment of impartial expert body for scrutiny of ten disputed questions which are subject matter of the writ petition.

2. The brief fact of the case of the petitioner as per the pleading made in the writ petition is that the Jharkhand Staff Selection Commission has come out with an advertisement being Advertisement No.21 of 2016 calling upon the eligible candidates for the Combined Graduate Trained Teachers Competitive Examination, 2016 specifying the eligibility criteria and details related to the said

examination.

The petitioner being eligible for the said examination for consideration of her candidature applied online for 'Hindi Subject' and after due verification the Commission has issued Admit Card to the petitioner, in the examination scheduled to be held on 19.11.2017 for the compulsory subject and for Hindi on 26.11.2017.

The petitioner had appeared in the examination on schedule dates. The Commission after conclusion of the aforesaid examination has published the answer keys of the different subjects and has also invited objections on unanswered questions from the candidates to be made online in between the period 30.11.2017 to 07.12.2017.

The petitioner after performing the answer key to be published on the website, registered her objection to the answer key which was duly been registered.

The petitioner was anticipating for re-scrutiny of the answer key but it is to the utmost surprise to the petitioner that the Commission has published the final key to the questions in relation to the different subjects and series code of the question paper which still has several discrepancies and wrong answer and on scrutiny it has been found by the petitioner that the error in the final answer key still subsists.

The petitioner ultimately has approached before the Commission by filing representation on 29.01.2018 requesting therein to recheck the question and answer and thereafter republish the final answer key.

In the said representation the specific stand has been taken that question series Code 'C' of the Hindi subject is completely wrong and further submitted before the Commission that answer to Question No.19, 53, 54,72, 107, 112 and 114 were wrong in terms of authentic books published by the Jharkhand Council of Education Research and Training (JCERT) and Indira Gandhi National Open University (IGNOU) but the respondent Commission has not given any heed to the said revision and therefore, the petitioner having no objection has approached to this Court by way of present writ petition.

3. Counter affidavits have been filed by the respondent-Commission. The first one is in series dated 03.04.2018, inter alia, therein stand has been taken that the objection submitted by one or other candidates have been considered by placing the same before the experts by verification/correction of the model answers in the light of objection/suggestion of the candidates and in consequence to the decision of the expert committee, the Commission has put the correct model answers as would appear from Annexure-6 to the writ petition.

It would be evident from Annexure-6 to the writ petition that the model answers were finally corrected as per the opinion of the expert committee and therefore, submission has been made that the writ petition is not maintainable in view of the fact that when there is decision of the expert committee, there cannot be any

further opinion on the subject.

Further affidavits have been filed by way of supplementary counter affidavit on 18.07.2018, wherein inter alia stand has been taken that after publication of the corrected model answer key, several candidates including the petitioner have raised their grievance about model answer key about Question No.19, 53, 54,72, 107, 112 and 114 of Hindi paper (Series-C). So far as Question Nos.107 and 112 of Hindi paper (Series-C) is concerned the same has again been considered by the expert and on the basis of the experts' opinion, decision was taken to award full marks on Question Nos.107 and 112 to the candidates. So far as Question No.114, 19, 53, 54 and 72 are concerned, decision was taken to award full marks to the candidates for these questions.

4. Several affidavits have been filed by the petitioner wherein the opinion of the expert committee has been disputed on the basis of different sources.

5. The second supplementary counter affidavit has been filed on 28.06.2019 by the respondent-Commission, wherein it has been stated that the candidates who have awarded full marks belonging to the unreserved category to which the petitioner belongs have not been selected.

6. Mr. Abhay Prakash, learned counsel for the petitioner has argued vehemently alleging the following irregularity:

(i) That when in an examination process, if any wrong has been committed by the selecting agency, the candidates may not suffer.

(ii) The Expert Committee also came to conclusive opinion about wrong committed in the answer keys and therefore, the decision which has been taken for awarding full marks to all candidates irrespective of the fact whether a candidate has answered the said question or not, has caused serious prejudice to the petitioner.

(iii) Since the answer key are wrong not only for seven questions rather ten questions which is subject matter of the amendment petition, therefore, the further scrutiny is required to be made by impartial expert committee.

7. Learned counsel for the petitioner has relied upon the judgment rendered by the Hon'ble Apex Court in the case of Manish Ujwal and Ors. vs. Maharishi Dayanand Saraswati University and Ors. reported in (2005) 13 SCC 744 and Guru Nanak Dev University vs. Saumil Garg and Ors. reported in (2005) 13 SCC 749 has submitted that it is not in dispute that certain error has been committed in the answer keys and for that purpose objections have been accepted and considering the said objection the matter has been referred before the expert committee for its consideration to assess the genuineness of the complaint about the said question paper in which the expert committee has come to the opinion that the errors have been committed in the answer keys and basing upon the same decision has been taken by the Commission to award full marks to all the candidates for these questions and as such prejudice have been caused to the

petitioner since all the candidates have been treated at par in awarding full marks irrespective of facts as to whether these questions have been answered or not.

Further, submission has been made that all the candidates under the unreserved category in whose favour full marks have been given in case of wrong questions, have been declared to be successful and even on this ground prejudice has been caused to the petitioner.

8. This Court after appreciating the aforesaid argument coupled with the document available on record, deem it fit and proper to deal with certain position of law as has been settled by the Hon'ble Supreme Court with respect to interference whether is to be made by the High Court sitting over the opinion of the expert committee, but prior to that judgment upon which learned counsel for the petitioner has relied upon in the case of *Manish Ujwal and Ors.* (supra) wherein the issue fell for consideration of comparative assessment of the one or other candidates pertaining to admissions in the Medical College and by putting reliance upon the judgment in the case of *Kanpur University vs. Samir Gupta* (1983) 4 SCC 309 it has been laid down therein that for the wrong committed by the examination body the students may not be allowed to suffer.

In the judgment rendered by the Hon'ble Apex Court in the case of *Guru Nanak Dev University* (supra) also a case for admissions in the Medical College wherein at paragraph 12 upon which the petitioner has given much emphasis awarding marks to a student who did not even attempt to those questions in case of wrong key answers, has been deprecated by making observation that if that would be allowed it would mean that student who did not answer the questions would still get marks as correct marks and therefore, it has been laid down that while allowing the marks the credit is to be given to only those candidates who attempted those questions or some of them.

So far the other judgments rendered by Hon'ble Apex Court are also required to be referred.

In the case of *Vikas Pratap Singh and Ors. vs. State of Chhattisgarh and Ors.* reported in (2013) 14 SCC 494 wherein the Hon'ble Apex Court by taking into consideration the case pertaining to wrong answer keys, has been pleased to hold at paragraph 18 as under:

"18. In respect of the respondent Board's propriety in taking the decision of re-evaluation of answer scripts, we are of the considered view that the respondent Board is an independent body entrusted with the duty of proper conduct of competitive examinations to reach accurate results in fair and proper manner with the help of experts and is empowered to decide upon re-evaluation of answer sheets in the absence of any specific provision in that regard, if any irregularity at any stage of evaluation process is found. (See *J&K State Board of Education v. Feyaz Ahmed Malik* and *Sahiti v. Dr N.T.R. University of Health Sciences*. It is settled law that if the irregularities in evaluation could be noticed

and corrected specifically and undeserving select candidates be identified and in their place deserving candidates be included in select list, then no illegality would be said to have crept in the process of re-evaluation. The respondent Board thus identified the irregularities which had crept in the evaluation procedure and corrected the same by employing the method of re-evaluation in respect of the eight questions, answers to which were incorrect and by deletion of the eight incorrect questions and allotment of their marks on pro rata basis. The said decision cannot be characterised as arbitrary. Undue prejudice indeed would have been caused had there been re-evaluation of subjective answers, which is not the case herein."

In the case of *Ran Vijay Singh and Ors. vs. State of Uttar Pradesh and Ors.* reported in (2018) 2 SCC 357 wherein it has been laid down at paragraph 30 which reads herein as under:

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

30.1. If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it;

30.2. If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any "inferential process of reasoning or by a process of rationalisation" and only in rare or exceptional cases that a material error has been committed;

30.3. The court should not at all re-evaluate or scrutinise the answer sheets of a candidate-it has no expertise in the matter and academic matters are best left to academics;

30.4. The court should presume the correctness of the key answers and proceed on that assumption; and

30.5. In the event of a doubt, the benefit should go to the examination authority rather than to the candidate."

It is evident from the aforesaid judgment that in the matter of reevaluation, the opinion of the expert is to be required by making interference of the expert.

The Division Bench in W.P.(C) No.3931 of 2019 has taken into consideration both judgment rendered by the Hon"ble Apex Court *Manish Ujwal and Ors. (supra)* and *Ran Vijay Singh and Ors (supra)* and has declared to interfere with the opinion of the expert committee.

9. The fact in hand which is not in dispute in this case is that originally the writ petitioner has put-forth her claim by filing with petition to be conferred under Article 226 of the Constitution of India wherein the answer keys pertaining to

Hindi Subject to Question No. 19, 53, 54, 72, 107, 112 & 114 have been found to be wrong and on objection made by the candidates in this regard the expert committee has also come to opinion about the wrong answer keys.

The respondent-Commission has decided to award marks for these questions in Hindi subject to all candidates. The petitioner has got 220 marks but the last selected candidate under the unreserved category has got 232 marks and therefore, the petitioner remains unsuccessful candidate.

The original prayer made by the petitioner was to the effect to consider the marks by awarding marks in Question No. 19, 53, 54, 72, 107, 112 & 114 and after awarding marks all these questions virtually the grievance raised by the petitioner has been redressed since even though the marks awarded in these questions has been added, she has been found to have secured less marks in her category in comparison to that of last selected candidate who got 232 marks while the petitioner has got 220 marks.

The petitioner subsequent to filing of the counter affidavit has filed amendment for seeking leave of this Court for amending the prayer to the effect to refer the matter before the expert committee pertaining to further ten questions, since according to the petitioner the answer which has been answered by her pertaining to these questions is correct, based upon the authentic source, and thereby the petitioner has questioned the opinion of the expert who has selected the questions as also the answers.

10. Now the question here would be that whether High Court can interfere with the opinion expressed by the expert with respect to answer of these questions.

The said issue has been answered by the Hon'ble Apex Court in the case of *Ran Vijay Singh and Ors (supra)* wherein the said issue has been decided by laying down the position that there cannot be any re-evaluation questioning the opinion of the expert, therefore, this Court is not inclined to agree with the submission of the learned counsel for the petitioner with respect to consideration of the plea to award marks upon the ten questions on the basis of answer which has been made by her on its own source.

The other question which has been agitated by the petitioner that the marks upon the wrong answer keys which is the subject matter of the writ petition pertaining to Question No. 19, 53, 54, 72, 107, 112 & 114 ought not to have been allotted to the candidates without ascertaining one candidate having answer these questions or not, although no such pleading has been taken in the writ petition, however, petitioner by putting reliance upon the judgment rendered in the case of *Guru Nanak Dev University (supra)* has agitated this point emphatically but the question herein is, in absence of any pleading in the writ petition it cannot be expected from the respondent to come out with the stand to rebut the said stand.

11. Be that as it may, since it is admitted that all the candidates awarded marks

in Question Nos. 19, 53, 54, 72, 107, 112 & 114 and the candidates in whose favour the marks have been allotted, who are seven in numbers, as has been informed by the learned counsel for the Commission they have been found to be unsuccessful. For ready reference, they are:

Sl. no.

Roll No.

Category

Set No

Quest. No. not attempted

District

Merit

Remarks

6.

16115164714

Unreserved

A

120

RANCHI

267

Not Selected

7

30113273703

Unreserved

A

22, 100, 113 & 120

RANCHI

368

Not Selected

13

30116275105

Unreserved

D

67, 22, 11

RANCHI

625

Not Selected

1

16115164714

Unreserved

A

120

RANCHI

267

Not Selected

2

30113273703

Unreserved

A

22, 100, 113 & 120

RANCHI

368

Not Selected

3

30116275105

Unreserved

D

67, 22, 11

RANCHI

625

Not Selected

As such, no prejudice said to have been caused to the petitioner and further also

prejudice has not been caused since all the candidates have been treated at par by allotting marks on account of wrong answer keys.

12. This Court after going across the fact along with the position of law hereinabove, is of the view that the petitioner has failed to make out a case for passing any positive direction in her favour.

Accordingly, the writ petition fails and is hereby dismissed.