

(2015) 03 SHI CK 0093
In the High Court Of Himachal Pradesh
Case No : CWP No. 9465 of 2013

Latika Sharma

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 19-03-2015

Acts Referred:

Citation : (2015) 03 SHI CK 0093

Hon'ble Judges : Tarlok Singh Chauhan, J.

Bench : Single Bench

Advocate : C.N. Singh, for the Appellant; V.K. Verma, Meenakshi Sharma and Rupinder Singh, Additional Advocate Generals, Advocates for the Respondent

Judgement

Tarlok Singh Chauhan, J.—The petitioner has claimed the following substantive reliefs:--

"i) Issue a writ of mandamus or other appropriate writ order or directions to the Respondent State to declare the question No. 27 and 63 of Series C, wrong and marks be awarded in favour of the petitioner.

ii) Issue a writ of mandamus or other appropriate writ order or direction to the Respondents to appoint an Expert Committee to look into the correctness of questions and answers in question Series C i.e. questions and answers No. 27 and 63 and submit its report before the Hon"ble Court within a time bound period.

iii) Consequently Issue a writ of mandamus or other appropriate writ order or directions to the Respondents on the basis of the report of the Committee devise a method to redraw the merit list by awarding the marks appropriately against the wrong questions and answers No. 37 and 63 within a time bound manner with all consequential benefits."

2. A specific objection has been raised by the respondents that this Court has no jurisdiction to interfere in such like matters, in view of the authoritative

pronouncement of learned Division Bench of this Court in Vivek Kaushal and others v. Himachal Pradesh Public Service Commission, CWP No. 9169 of 2013, decided on 17.7.2014. The learned Division Bench of this Court while dealing with the issue regarding interference of the Court with regard to key answers and/or opinion of experts has observed as under:--

"11. The Apex Court in a case titled as Pankaj Sharma Vs. State of Jammu and Kashmir and Others, , has held that the decision of the Public Service Commission in deleting the defective/wrong questions and to allot those marks on pro-rata basis and to call the persons for interview if a candidate gets in after getting additional marks on pro rata basis was legal one. It is apt to reproduce para 50 of the judgment herein:

"50. But there is an additional factor also which supports this view. It is clear from the fact that after the receipt of the complaints, the Commission had issued Press Note on 6-7-2005 and assured the candidates that the Commission would look into the matter and no injustice would be caused to them. The Commission also obtained expert advice and thereafter suo motu decided to delete certain questions by allotting those marks pro-rata to remaining questions. It is, therefore, clear that even according to the Commission, some action was necessary, after the examination was over." 12. The Apex Court in other cases titled as Kanpur University and Others Vs. Samir Gupta and Others, and Abhijit Sen and Others Vs. State of U.P. and Others, , has held that the Courts can pass appropriate directions in appropriate cases in order to avoid the delay and to avoid recurrence of such lapses.

13. The same view was taken by one of us (Mansoor Ahmad Mir, Chief Justice) while sitting in Single Bench as a Judge of the High Court of Jammu and Kashmir, in a case titled as Showkat Ahmad Dar and Ors. versus State and Anr., reported in 2012 (4) JKJ 141 [HC].

14. It would also be profitable to reproduce paras 6 to 9 of the judgment rendered by the Apex Court in a case titled as The Secretary, West Bengal Council of Higher Secondary Education Vs. Ayan Das and Others, , herein:

"6. The permissibility of re-assessment in the absence of statutory provision has been dealt with by this Court in several cases. The first of such cases is Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, . It was observed in the said case that finality has to be the result of public examination and, in the absence of statutory provision, Court cannot direct re-assessment/re-examination of answer scripts.

7. 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 the court can ask the production of answer scripts to allow inspection of the answer scripts by the examinee. In *Kanpur University and Others Vs. Samir Gupta and Others*, it was 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 would not be held to be wrong by an inferential process of reasoning or by a process of rationalization. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well versed in the particular subject would regard as correct. 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.

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 text-books. Those text books 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 penalize 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".

8. Same would be a rarity and it can only be done in exceptional cases. The principles set out in *Maharashtra Board*" case (supra) has been followed subsequently in *Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission and Others*, *Board of Secondary Education v. Pravas Ranjan Panda and Anr.* (2004 (13) 714) and *The President Board of Secondary Education, Orissa and Another Vs. D. Suvankar and Another*, .

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

15. This Court in a case titled as *Mukesh Thakur Vs. State of H.P. and Others*, , interfered and quashed the result made by the Commission, was subject matter of Civil Appeals No. 907 and 897 of 2006 before the Apex Court, titled as *H.P. Public Service Commission Vs. Mukesh Thakur and Another*, . It is apt to reproduce paras 23 to 26 of the judgment herein:

"23. The situation will be entirely different where the court deals with the issue of admission in mid-academic session. This Court has time and again said that it is not permissible for the courts to issue direction for admission in mid-academic session. The reason for it has been that admission to a student at a belated stage disturbs other students, who have already been pursuing the course and

such a student would not be able to complete the required attendance in theory as well as in practical classes. Quality of education cannot be compromised. The students taking admission at a belated stage may not be able to complete the courses in the limited period. In this connection reference may be made to the decisions of this Court in *Dr Pramod Kumar Joshi Vs. Medical Council of India and Others*, ; *State of Uttar Pradesh and others Vs. Dr. Anupam Gupta, etc.*, ; *State of Punjab and others Vs. Renuka Singla and others*, , *Medical Council of India Vs. Madhu Singh and Others*, ; and *Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others*, .

24. The issue of revaluation 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 the absence of the provision for revaluation, 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/revaluation 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: (SCC pp. 39-40 and 42, paras 14 and 16)

"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 drawbacks 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 revaluation 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 totaling 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 revaluation of answer books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for revaluation of his marks." (emphasis added)

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*, (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*, .

26. Thus, the law on the subject emerges to the effect that in the absence of any provision under the statute or statutory rules/regulations, the Court should not generally direct revaluation."

16. The Apex Court, after discussing the authorities, which were governing the field till the date of the decision in the case, has used the words : "..... the Court should not generally direct revaluation". Meaning thereby, it suggests that if there is some mistake apparent on the face of it, the Court may interfere and may direct for revaluation.

17. In the instant case, the Rules do prescribe for inviting objections before the Examiner examines the papers and before declaring the result, if the candidates files objections within seven days from displaying the key on the website. It appears that the purpose is just to examine those objections before declaring the result.

18. Applying the test to the instant case, it is specifically averred by the respondents, as discussed hereinabove, that they have invited the objections, asked the Experts to examine the objections, objections were examined, some mistakes were found, were rectified, the Examiners were asked to examine the papers in light of the Expert's opinion and thereafter, the result was declared. Thus, there is no case for interference. Had the Commission not invited the objections or had failed to take into account the said objections and the Expert's opinion, in that eventuality, the judicial review was permissible. Thus, on this count, these writ petitions are not maintainable.

19. The respondents have specifically pleaded that some of the petitioners have filed objections, but some have not filed the same. The respondents have furnished CWP-wise list of the petitioners, who have not represented/filed objections before the Commission, made part of the file. The respondents have also furnished opinion of Experts of Key-Committee on objected questions/key answers of the General Studies and Aptitude Test.

20. It is beaten law of land that the Courts are not Experts, have to honour the

opinion of the Experts and cannot substitute the same. In the instant cases, the Experts have examined the questions and given their opinion."

3. Since the Court is not an expert on the subject, it cannot be interfere and substitute its opinion for the one given in the key answers, as has been laid down by the learned Division Bench of this Court in Vivek Kaushal's case (supra), which judgment is otherwise binding on this Court.

4. In view of the aforesaid discussion, particularly the judgment delivered by learned Division Bench of this Court in Vivek Kaushal's case (supra), the case calls for no interference and is accordingly dismissed along with pending application(s), if any, leaving the parties to bear their costs.