
(2015) 12 CHH CK 0011

In the Chhattisgarh High Court

Case No : Writ Petition (S) Nos. 1329, 1733, 2042, 2242 and 1494 of 2015

Prem Prakash Sinha and Others

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 11-12-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 1 CGLJ 463

Hon'ble Judges : Sanjay K. Agrawal, J.

Bench : Single Bench

Advocate : Vinay Pandey, Advocate, for the Appellant; Dheeraj Kumar Wankhede, Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay K. Agrawal, J.—The Chhattisgarh Public Service Commission (for short "the Chhattisgarh PSC"), the respondent herein, advertised the post of Assistant Director (Public Instructions) in advertisement dated 11-6-2014 and the posts of Registrar, Deputy Registrar and Assistant Registrar in advertisement dated 25-6-2014 inviting applications for the said posts in the Department of Public Instructions and the Department of Higher Education, respectively, prescribing syllabus for the same. Written examination was conducted jointly for all the posts on 12-10-2014. The Chhattisgarh PSC published model answers of both the papers i.e. General Studies and Aptitude Test inviting objections vide notification dated 25-10-2014 and last date for submission of objections was 20-11-2014. The petitioners submitted their objections relating to question Nos. 116 to 130 stating that such questions are outside the syllabus and are not included in the Aptitude Test prescribed in the syllabus and, therefore, appropriate action be taken for deletion and award of bonus marks. The Chhattisgarh PSC immediately constituted an expert committee consisting of three members for consideration of those objections raised by the petitioners including other candidates and by the said committee of subject experts, the questions were held to be within the

syllabus prescribed. Accordingly, the Chhattisgarh PSC turned down their objections and published notification on 19-2-2015. Thereafter, result of the examination was declared on 7-4-2015. The writ petitions were filed on or after 15-4-2015 challenging the result of examination and seeking bonus marks for disputed questions, for conducting fresh examinations and setting aside the examination already held. In the meanwhile, interview for the post of Assistant Director was concluded.

2. In this batch of writ petitions, it has been stated that within the meaning of Aptitude Test second paper, question Nos. 116 to 130 asked were out of syllabus as they are relating to English language/grammar. The petitioners' case is that knowledge of English language is not prescribed in the syllabus as mentioned in Schedule-II appended to the advertisement, therefore, above-stated fifteen questions could not have been asked under the said language and as such, appropriate reliefs be granted, granting bonus marking or directing the Chhattisgarh PSC to hold fresh examinations for the said posts cancelling the examination held for those posts.

3. The Chhattisgarh PSC has filed its return stating inter alia that the said questions are well within the four corners of syllabus prescribed since these questions fall within the purview of "Interpersonal skills including communication skills" which is prescribed in serial No. 1 of the syllabus prescribed for Aptitude Test. It has further been averred that objections regarding questions being out of syllabus were placed before the expert committee duly constituted for that purpose. The expert committee of subject concluded that aforementioned questions are as per the prescribed syllabus and as such, those are within the syllabus prescribed for Aptitude Test. The Chhattisgarh PSC has also placed the syllabus of different Universities to substantiate the fact that in the syllabus prescribed by various Universities also the question paper of "Communication Skill" consists the questions in English language. Therefore, it has been submitted that the writ petitions deserve to be dismissed, as such objections by unsuccessful candidates are based on afterthought.

4. Rejoinders have been filed opposing the returns.

5. Opening the arguments in this batch of writ petitions, Mr. Vinay Pandey, learned counsel for the petitioners appearing in W.P.(S)No. 1329/2015 (Prem Prakash Sinha v. State of Chhattisgarh and others) and W.P.(S) No. 2242/2015 (Rajesh Kumar Shukla v. State of Chhattisgarh and others), would submit that question Nos. 116 to 130 were out and out from the syllabus prescribed for Aptitude Test. Interpersonal skills means the way to communicate one's expression to others and complicated questions were asked in shape of question Nos. 116 to 130 which cannot be said to be included within the prescribed syllabus of "Interpersonal skills and Communication skills". He would further submit that the petitioners were very well prepared for the matters prescribed in the syllabus under the head "Aptitude Test". Since in the prescribed syllabus, intensive knowledge of English language was not prescribed, therefore, they

were not well prepared for the questions relating to English language/English grammar and, therefore, the Chhattisgarh PSC is absolutely unjustified in holding that the questions were not out of syllabus and as such, the petitioners are entitled for bonus marks against question Nos. 116 to 130 or in alternative, fresh examinations be directed to be held for above-stated posts.

6. Mr. U.R. Koshaley and Mr. Ajay Shrivastava, learned counsel for the petitioners appearing in W.P.(S) No. 2042/2015 (Praveen Kumar Lata v. State of Chhattisgarh and another) and W.P.(S)No. 1494/2015 (Rajesh Chandrakar v. State of Chhattisgarh and another), would also vehemently submit that questions Nos. 116 to 130 were out of syllabus and were never included in the syllabus, therefore, their petitioners were also not prepared to answer those questions as such, that has seriously prejudiced their result in the examination and, therefore, the examination held for the said posts be set aside and fresh examination be directed to be held for the said posts, and the writ petitions be allowed.

7. Mr. Vinod Deshmukh and Mr. K.P.S. Gandhi, learned counsel for the petitioner appearing in W.P.(S) No. 1733/2015 (Deepak Kumar Tiwari v. State of Chhattisgarh and another), would submit that model answers of question Nos. 81, 108 & 119 were wrong model answers, though objections were raised, but same were rejected without any basis which is per se illegal and bad in law and, therefore, result of the examination already declared be set aside and fresh examination be directed to be held for the said posts, and the writ petition be allowed.

8. Mr. Anurag Dayal Shrivastava, learned counsel for the interveners, who are selected candidates, in W.P.(S) Nos. 1494/2015 and 2042/2015, would submit that the expert committee has already held question Nos. 116 to 130 to be within the prescribed syllabus, but no writ has been sought seeking quashment of the report of the expert committee and decision of the Chhattisgarh PSC accepting report of the expert committee and turning down their objections as such, the writ petitions framed and filed without seeking quashment of the decision of the Chhattisgarh PSC accepting the report of the expert committee, no relief can be granted to the petitioners. Elaborating his submission, he would further submit that the petitioners after having appeared in the examination and having been declared unsuccessful, by way of writ petitions are challenging the vagueness in the syllabus stating that English language and grammar are not included in the syllabus as the syllabus is absolutely vague. He would also submit that vagueness in the syllabus, if any, cannot be challenged by the petitioners after having appeared in the examination and having been declared unsuccessful in the said examination. He would also submit that the syllabus is absolutely clear, unambiguous and specific and the syllabus of examination prescribed cannot be read like a statute and it has to be construed liberally. He would lastly submit that the interveners are selected candidates and have already appeared in the interview, and such challenge suffers from delay and laches, the interveners have also not been impleaded as party respondents and they are

bound to suffer by the outcome of writ petitions, and therefore, the writ petitions deserve to be dismissed.

9. Mr. Dheeraj Kumar Wankhede, learned Government Advocate appearing on behalf of the State, would also oppose the writ petitions and would submit that the questions asked particularly, question Nos. 116 to 130 clearly relate to syllabus within the meaning of "Interpersonal skills and Communication skills" and clearly include the knowledge of General English. He would further submit that in competitive test, there are bound to be some difficult questions to test the merit of candidates, but it was faced by all the candidates, it cannot be held that such questions could not have been asked, as the posts advertised were of the Director, Public Instructions and Registrar, Deputy Registrar and Assistant Registrar of a University, which are key posts under the Department of Higher Education of the State Government. Mr. Wankhede would also submit that by virtue of Section 16 of the Chhattisgarh Vishwavidyalaya Adhiniyam, 1973, the Registrar shall be a whole time salaried officer of the University and shall discharge his duties under the Act and he shall act as the Secretary of the Court, of the Executive Council, of the Academic Council and of the Academic Planning and Evaluation Board. Therefore, looking to the key post which a Registrar is supposed to occupy important position in a University, the knowledge of English is a must and it cannot be held that the questions were out of the syllabus. In the circumstances, all the writ petitions deserve to be dismissed with cost.

10. Mr. Y.C. Sharma, learned counsel appearing for the Chhattisgarh PSC, would submit that the objections received pursuant to the notification of the model answers were placed for consideration before the expert committee of the subject, duly constituted by the Chhattisgarh PSC for consideration of objections and the expert committee after due examination has submitted its report which has been filed as Annexure R-2/1 which would show that all the questions No. 116 to 130, as per the expert committee report, were found as within the prescribed syllabus. He would further submit that in respect of question No. 146 (set one), it was found incorrect and that question was deleted and marks of that question was equally distributed among other questions which is apparent from Annexure R-2/2. Question Nos. 116 to 130 come within the syllabus of Aptitude Test Class-I i.e. interpersonal skills including communication skills. Elaborating his submissions, he would also submit that the advertised posts of Assistant Director (Public Instructions), Registrar, Deputy Registrar and Assistant Registrar are gazetted posts and it is expected from the candidates claiming aforesaid posts to have good communication skills and interpersonal skills. He would also submit that in the syllabus prescribed by Chhattisgarh Swami Vivekanand Technical University, Bhilai, Communication Skills has been prescribed as one of the Course Titles divided in two Chapters, wherein Chapter-2 provides for Applied Grammar which includes Basic Sentence Pattern, Infinitives, Narration, Common Errors, Modifiers and Paragraph Writing. He would also submit that Kurukshetra University, Kurukshetra has also prescribed one year course in which Communication Skills is taught there and in which Written Communication - Unit

III includes Applied Grammar. Similarly, R.T.M. Nagpur University, Nagpur has also prescribed knowledge of Applied Grammar in Communication Skill. Mr. Sharma referring to the definition of Communication Skills given by Chip Rose (Annexure R-2/4, page 114), supports that questions No. 116 to 130 were within the prescribed syllabus. He would also submit that the scope of interference in the decision of experts who have already held the questions to be within the prescribed syllabus duly accepted by the Chhattisgarh PSC, has not been challenged in this batch of writ petitions and, therefore, that has become final and same cannot be quashed in absence of challenge to it and writ petitions deserve to be dismissed.

11. Mr. Vinod Deshmukh, learned counsel for the petitioner in W.P.(S)No. 1733/2015, in rejoinder would submit that model answers to questions No. 81, 108 & 119 are incorrect to which Mr. Y.C. Sharma, learned counsel for the Chhattisgarh PSC, would submit that they were referred to the expert committee of the subject and they found the model answers to be correct answers.

12. I have heard learned counsel for the parties and given anxious consideration to the submissions raised therein and also gone through the record with utmost circumspection.

13. In order to resolve the controversy involved herein, following factual matrix in nutshell is required to be noticed herein:--

14. The Chhattisgarh PSC issued two advertisements dated 11-6-2014 and 25-6-2014 inviting applications for the post of Assistant Director (Public Instructions) in the Department of Public Instructions and Registrar, Deputy Registrar and Assistant Registrar in the Department of Higher Education, respectively. Number of posts advertised/notified are as under:--

15. The scheme of examination and the syllabus prescribed in Schedule-I and Schedule-II of the advertisement are as under:--

Part-I - General Studies

1. History of India and Indian National Movement
2. Physical, Social and Economics Geography of India
3. Constitution of India and Policy
4. Indian Economy
5. General Science and Technology
6. Indian Philosophy, Art and Culture
7. Current Affairs & Sports

Part-II - General Knowledge of Chhattisgarh

1. History of Chhattisgarh and contribution of Chhattisgarh in freedom movement

2. Geography, Climate, Physical status, Census, Archaeological and Tourist Centres of Chhattisgarh
3. Literature, Music, Dance, Art and Culture, Idioms and Proverbs, Puzzle/roddle, singing of Chhattisgarh
4. Tribes, Special Traditions, Teej and Festivals of Chhattisgarh
5. Economy, Forest and Agriculture of Chhattisgarh
6. Administrative Structure, Local Government and Panchayat Raj of Chhattisgarh
7. Industry of Chhattisgarh, Energy, Water and Mineral Resources of Chhattisgarh
8. Current affairs of Chhattisgarh

Aptitude Test:

1. Interpersonal skills including communication skills
2. Local reasoning and analytical ability
3. Decision making and problem solving
4. General Mental ability
5. Basic numeracy (numbers and their relations, orders of magnitude etc.) (Class X level), Data interpretation (charts, graphs, tables, data sufficiency etc. - Class X level)
6. Knowledge of Hindi Language (Class X level)
7. Knowledge of Chhattisgarhi Language

Knowledge of Hindi Language and Chhattisgarhi

Language will be tested in Hindi and Chhattisgarhi

Language only, without providing translation."

16. Written examination was held jointly for all the above stated posts on 12-10-2014. The Chhattisgarh PSC had issued model answers for both the papers (General Studies and Aptitude Test) and invited objections on the same vide notification dated 25-4-2014 indicating the last date of submission of objections as 20-11-2014. The petitioners promptly raised their objections regarding question Nos. 116 to 130 asked under the second question paper under the head Aptitude Test stating that these questions are related to English language and, therefore, they are out of syllabus prescribed for the examination. The Chhattisgarh PSC constituted expert committee consisting of three members of the subject for consideration of the objections raised by the candidates including the petitioners. So far as the objections raised by the petitioners are concerned, the said committee unanimously opined that all the questions are according to the prescribed syllabus. Thereafter, the PSC on the basis of report of

the expert committee regarding question Nos. 116 to 130 and question Nos. 81, 108 & 119, turned down the objections of the petitioners and accepted the report of expert committee and result of their objections was published in the notification dated 19-2-2015 and, thereafter, after two months, result of the said examination was declared on 7-4-2015.

17. The first writ petition W.P.(S)No. 1329/2015 by petitioner Prem Prakash Sinha came to be filed only on 15-4-2015. Interview for the post of Assistant Director (Public Instructions) commenced and concluded on 21-5-2015. Thereafter, pursuant to the interim order, interview for the post of Registrar, Deputy Registrar and Assistant Registrar was stayed.

18. In these factual matrix of the case, now the submissions of the petitioners are required to be examined including the question that whether question Nos. 116 to 130 in second paper Aptitude Test, were out of syllabus.

19. The first and foremost submission raised on behalf of the petitioners in this batch of writ petitions is question Nos. 116 to 130 asked in second paper under Aptitude Test were out of syllabus being related to English language/grammar. Their submissions are that since the knowledge of English grammar is not prescribed in the syllabus Part-II under the heading "Aptitude Test" as mentioned in Schedule-II appended to the advertisement, these questions could not be asked under the said language and, therefore, they are entitled for the reliefs prayed for.

20. The Chhattisgarh PSC had categorically replied that the said questions are within the four corners of syllabus since these questions are within the purview of "Interpersonal skills including communication skills" which is mentioned at serial No. 1 in the syllabus prescribed for "Aptitude Test". Objections regarding questions being out of syllabus were placed before the expert committee of the subject for decision/opinion and the committee has opined that those objections are within the purview of "Interpersonal skills including communication skills" and as such, those are within the syllabus prescribed in Aptitude Test. It has also been brought to the notice of the Court that communication skills include Verbal Messages, Para-verbal Messages and Nonverbal Messages. Verbal Messages contain the words chosen by a person as such, question Nos. 116 to 130 relate with the component "Verbal Messages". The Chhattisgarh PSC has also placed the syllabus of different Universities to substantiate the fact that in various Universities "Communication Skills" consist the questions in English language. The said questions relate to English knowledge under the Aptitude Test.

21. "Aptitude" means capability, ability or acquired capacity for something, talent, readiness or quickness in learning intelligence. Thus, the term "aptitude" is a natural or acquired ability for performing a "task". "Aptitude test" means a standardized test designed to measure the ability of a person or test designed to assess a person's ability to do a particular type of work (extract from Collins Dictionary).

22. "Interpersonal Skills" are people skills or communication skills, life skills, soft skills [unlike specialized and technical skills (hard skills)] used by everybody to communicate and interact with other people, both individually and in groups. Persons who have "strong interpersonal skills" are considered to be more successful in both their professional and personal lives. Persons with good interpersonal skills are usually perceived as optimistic, calm, confident and charismatic. Interpersonal skills include verbal communication (effective speech, conversational skills, questioning), non-verbal communication, listening skills, negotiation, problem solving, decision making (exploring and analyzing options to make sound decisions) and assertiveness. The selecting authority/recruiters often seeks to employ staff with "strong interpersonal skills" as they want the persons who will work well in a team and be able to communicate effectively with colleagues, students and all concerned and such skills are extremely important in the workplace, and in order to measure interpersonal skills of candidates aspiring for such a high office, which includes "verbal communication" and decision making.

23. Similarly, "Communication Skills" is an ability to communicate effectively and is most important of all life skills. Communication skills are ranked first among a job candidate's must have skills and qualities. The ability to communicate information accurately, clearly and as intended, is a vital life skill. Communication skills include (i) presentation skills, that is to present information to a group of people, either in a formal or informal setting; and (ii) writing skills, the ability to be able to write clearly and effectively is key to communication. This set of skills should be possessed not only by professionals and authors, but also by persons aspiring for high office/statutory office. "Writing skills" include pages on Spelling, Grammar, the Importance of Structure and Formal and Informal Writing Styles. Thus, Communication Skills which is part of syllabus under 2nd paper of Aptitude Test includes "Writing Skills" stated herein and includes knowledge of spelling, grammar of a language, importance of structure etc..

24. English is the prime and major means for communication and can often serve as global language between two people from two different cultures, wherein English is not the native tongue. English is taught as part of multilingual education in India. English has become the ascendant language internationally being the most widespread and is cited as the major language of business, diplomacy & science and professions. Deficiency in this area may result in barriers for graduates, personally and professionally. Thus, English language maintains extremely strong relevance now and in future, particularly in acting as a connection for communication between two cultures. English language skills become very important to facilitate communication between cultures and this is why, recruiters now seek graduates with skills beyond the standard of paper degree (qualification).

25. The importance placed on oral communication skills by employers has been noticed for a decade and across disciplines. Knowledge and technical know-how

are equally important, but these must be presented with an excellent standard of communication skills, particularly oral, communication and presentation skills are considered one of the best career enhancers and to be single biggest factor in determining one's career for success or failure as such, communication skills, including written and oral presentation as well as ability to work with others is the prime requirement of recruiters.

26. In substance, "Aptitude Test" is a tool to fathom one's creative faculties such as academic acumen, decision making capacity, interpersonal or communication skill with harmonious blending of exactitude, promptitude and certitude therewith. English language is universally acclaimed as lingua franca and has become the most fascinating means of expression by one and all and even by a layman. Grammar in English language equally plays a pivotal role particularly when it is put on parchment as a means of expression. To put it differently, English language and grammar are inextricably woven with each other and if stay apart, pragmatic communication would always be an elusive mirage. Therefore, I do not have slightest hesitation in my mind to hold that English language and grammar come within the range of communication skill forming the part of "Aptitude Test" and it cannot be held that question Nos. 116 to 130 do not fall within the meaning of Interpersonal and Communication Skills. It is held accordingly.

27. There is an additional reason for holding so, the posts advertised are the posts of Registrar, Deputy Registrar and Assistant Registrar under the Higher Education Department and Assistant Director (Public Instructions) under the Public Instructions Department. These are Class-I and Class-II posts. Duty and responsibility attached with the said posts require/demand skilled persons to handle such a statutory and responsible posts. The duty of Registrar is a statutory post under the Chhattisgarh Vishwavidyalaya Adhiniyam, 1973 itself and he has to discharge various duties under the general superintendence and control of Vice-Chancellor of University, he has to act as the Secretary of the Court, of the Executive Council, of the Academic Council and of the Academic Planning and Evaluation Board. Thus, it is expected from a person who holds the important post that he should be acquainted with English to discharge the duty of the said post effectively and efficiently. The field of Communication Skills includes "Writing Skills" and it was open for the examiner to ask questions under it to search out the best talented/able person to men the said posts and, therefore, it cannot be held that such questions (116 to 130) related to English/English grammar were out of syllabus and as such, submissions raised on behalf of the writ petitioners deserve to be rejected.

28. In the matter of N. Lokananandham Vs. Chairman, Tele-Com. Commission and Others, , Their Lordships of the Supreme Court have held that ambiguity in the syllabus of examination, if any, it is for the experts to clear the ambiguity in the syllabus and no relief can be granted on assumptions. Their Lordships observed as under:--

"17..... Furthermore, assuming there was some ambiguity in the prescribed syllabus, it would have been for an expert body to clear the same and in the event it is found that any question has been put out of syllabus, only those who could not answer the same might have been entitled to any relief. No relief in a case of this nature could have been granted on assumptions. It was not for the Tribunal to pass an order only on the supposition that the appellant did not prepare themselves well owing to some misunderstanding in regard to the extent of syllabus."

29. In the matter of Bihar Public Service Commission and Others Vs. Kamini and Others, , Their Lordships of the Supreme Court have held in no uncertain terms that in the field of education, a court of law cannot act as an expert, and decision should be left to educational institutions especially when it is supported by an expert committee, and observed as under:--

"8. Again, it is well settled that in the field of education, a court of law cannot act as an expert. Normally, therefore, whether or not a student/candidate possesses requisite qualifications, should better be left to educational institutions (vide The University of Mysore and Another Vs. C.D. Govinda Rao and Another,). This is particularly so when it is supported by an Expert Committee..... "

30. In the present case, the Chhattisgarh PSC, in all fairness, invited objections of their model answers by its notification dated 25-10-2014 and after receipt of all objections including the petitioners' objections, an expert committee was constituted consisting of subject experts and the expert committee was asked to examine the objections relating to question Nos. 116 to 130 and all other objections also. The objections were duly examined by the experts and they had unanimously, after due examination, held that question Nos. 116 to 130 and other questions were within the prescribed syllabus and thereafter, result of the petitioners' objections including other objections was duly uploaded in the website of the Chhattisgarh PSC vide notification dated 19-2-2015. The petitioners did not take immediate steps to question the correctness of the decision taken by the expert committee holding question Nos. 116 to 130 to be within the syllabus and allowed the process of recruitment to go on and ultimately, the result of examination was declared on 7-4-2015. The first writ petition {W.P.(S) No. 1329/2015} was filed on 15-4-2015 that too challenging the result of examination to set-aside the same and bonus marks for question Nos. 116 to 130 be awarded to the petitioners. There is no challenge to the opinion of experts in which they had opined that question Nos. 116 to 130 were within the prescribed syllabus and that was duly accepted by the Chhattisgarh PSC. These writ petitions filed by the petitioners are blissfully silent to the report of expert committee, who have rejected the claim of the petitioners holding the fifteen disputed questions to be within the prescribed syllabus, which has duly been accepted by the Chhattisgarh PSC to be correct. The petitioners even did not aver the report of the expert committee to be bad by questioning the correctness and straightway filed writ petition on the premises that these

questions are out of prescribed syllabus and, therefore, either bonus marks be given to them or fresh examination for the said posts be held. In the considered opinion of this Court, once the Chhattisgarh PSC in all fairness constituted an expert committee consisting of subject experts and that committee gave report holding the questions to be within the syllabus, duly accepted by the Chhattisgarh PSC, which has not been either challenged or questioned to be incorrect, this Court in exercise of jurisdiction under Article 226 of the Constitution of India cannot sit over the finding of the expert committee as a super expert and hold that findings are wrong or incorrect and grant relief to the petitioner.

31. In the matter of Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, , the Supreme Court has held that the courts should not ordinarily interfere in purely academic matters and should not substitute its own views by observing as under:--

"29. Far from advancing public interest and fair play to the other candidates in general, any such interpretation of the legal position would be wholly defensive of the same. As has been repeatedly pointed out by this court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice. It is unfortunate that this principle has not been adequately kept in mind by the High Court while deciding the instant case."

32. The aforesaid decision has been followed with approval in a recent decision of the Supreme Court in the matter of Central Board of Secondary Education Through Secretary, All India Pre-Medical/Pre-Dental Entrance Examination and others v. Khushboo Shrivastava and others (2014) 14 SCC 523 holding that the High Court could not have substituted his/its own views for that of the examiners in exercise of powers of judicial review under Article 226 of the Constitution of India as these are purely academic matters. Thus, on the basis of above-stated analysis, it is held that the writ petitioners have demonstrably failed not only to plead but also to establish that the fifteen alleged disputed questions (question Nos. 116 to 130) asked were out of prescribed syllabus, whereas the Chhattisgarh PSC has been able to demonstrate that they acted fairly and

bonafidely, and referred the matter to the expert committee of subject, which evaluated the questions qua the syllabus prescribed and found it to be within the syllabus, which has not been questioned in this batch of writ petitions and, therefore, this Court would not like to sit over the decision of experts and substitute its own view as held by Their Lordships of the Supreme Court in Maharashtra State Board of Secondary and Higher Secondary Education (supra) reiterated in Central Board of Secondary Education (supra) particularly in absence of specific challenge to the finding of the expert committee duly accepted by the Chhattisgarh PSC.

33. Furthermore, in the matter of Ganapath Singh and Gangaram Singh Rajput Vs. Gulbarga University Rep. by its Registrar and Others, , it has also been held by the Supreme Court that when two views are possible and expert body has taken a possible view, same must be accepted. Their Lordships pertinently observed as under:--

"... There is no difficulty in accepting the broad submission that academic issues must be left to be decided by the expert body and the court cannot act as an appellate authority in such matters. It deserves great respect. When two views are possible and the expert body has taken a view, the same deserves acceptance. However, to say that expert body's opinion deserves acceptance in all circumstances and is not subject to judicial review does not appeal to us...."

34. This aforesaid determination further leads me to the question whether the writ petitions suffer from non-joinder of successful/selected candidates of the written examination as party respondents, though all the writ petitions were filed after declaration of result seeking quashment of whole examination, but the selected candidates have not been impleaded as party respondents as necessary party or proper party. As it has already been held, when two writ petitions {W.P. (S) Nos. 2042/2015 & 2242/2015} which relate to Assistant Director and Registrar were filed on 27-5-2015 and 24-6-2015, respectively, not only the result had already been declared but even the interview for the post of Assistant Registrar had already been concluded on 22-5-2015, yet the writ petitioners did not deem it appropriate to implead the selected candidates as party respondents in the writ petitions, as they are likely to be affected by the outcome of order in the writ petitions. In all the writ petitions except W.P.(S)Nos. 1329/2015 & 2242/2015, examination was sought to be annulled but, yet, the writ petitioners chose not to implead the selected candidate as party respondent in the writ petitions. Even in W.P.(S) Nos. 1329/2015 & 2242/2015, relief of quashing the result of examination has been sought but, importantly, selected candidates have not been impleaded as party respondents.

35. It is trite law that a necessary party is a person who ought to have been joined as a party and in whose absence no effective decision could be passed at all by the court. If a necessary party is not impleaded, the petition itself is liable to be dismissed. A proper party is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and

adequately adjudicate upon all matters in dispute in the petition, though he need not be a person in favour of or against whom the order is to be made. (See *Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre and Hotels Pvt. Ltd. and Others*, .)

36. In the matter of *Sadananda Halo and Others Vs. Momtaz Ali Sheikh and Others*, it has been held by the Supreme Court that selected candidates are necessary party. Paragraphs 63 and 64 of the report read as follows:--

"63. Similarly we are not satisfied with the course taken in inviting the objections of the selected candidates who were never bothered to be made parties to the writ petitions. This Court in *All India SC and ST Employees Assn. and Another etc. Vs. A. Arthur Jeen and Others etc.*, has stressed the necessity of joining the selected candidates as a party in paras 13 and 14 of its judgment, referring to the reported decisions in *Prabodh Verma and Others Vs. State of Uttar Pradesh and Others*, and *A.M.S. Sushanth v. M. Sujatha* (2000) 10 SCC 197 : 2000 SCC (L&S) 317. In these cases this Court has stressed the necessity of the selected candidates being joined as a party at least in the representative capacity. The Single Judge, after realising the fact that the selected candidates were not joined as a party, though the selection lists were available to the petitioner, had merely advertised about the dates of hearing of the petitions and when few of the selected candidates approached the High Court, they were not even supplied with the pleadings or the copies of the petitions in time. All this, in our opinion amounted to denial of an appropriate opportunity to the selected candidates. All this has been dealt with by both the courts below and particularly the Division Bench in a very casual manner holding that the decisions relied on by the appellants were individual cases. Even if they were so, the principles stated in those cases regarding the natural justice were most apposite particularly in *Canara Bank's case*¹, a reference of which has been made. In that case this Court held: (SCC pp. 560h-561a)

"Natural justice has been variously defined. It is another name for common sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form. Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice."

The Court further went on to say: (SCC p. 561e-f)

"Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance...."

(emphasis supplied)

64. The Division Bench thus could not have condoned the non-supply of copy of the writ petitions prior to the hearing of the writ petitions before the learned Single Judge. Similarly, after having noticed that the notice issued by the learned Single Judge was vague and that the impleaded selected candidates were constantly crying for the copies of the writ petitions, the Division Bench could not have simply brushed aside those weighty objections. We also do not understand the alleged stand taken by the counsel for the selected candidates before the Division Bench regarding their readiness to argue. It is for this reason that we have extensively quoted the arguments by the counsel in paras 19 to 22 of this judgment where the non-supply of copies of petitions was criticised."

37. In a more recent decision in the matter of H.C. Kulwant Singh Vs. H.C. Daya Ram, it has been held by the Supreme Court that candidates having appeared in competitive examination and being selected, belong to an identifiable category are necessary party and has held in paragraph 48 as under:--

"48. In Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar, , opined 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. Reliance was placed on Prabodh Verma and Others Vs. State of Uttar Pradesh and Others, and Tridip Kumar Dingal v. State of W.B. 7 to express the view that if a person challenges the selection process, successful candidates or at least some of them are necessary parties."

38. In the instant case, admittedly and undisputedly, although all the writ petitions were filed after the result of examination was declared and two writ petitions were filed after interview for the post of Assistant Director has already been held, and relief of quashing the entire examination/result of examination has been claimed, but yet, none of the petitioners thought it appropriate to implead the selected candidates as party respondents in the writ petition and as such, if the result of examination/examination itself is set aside, as claimed by them, the selected candidates are bound to suffer, as they being selected candidates are identifiable as necessary party and in absence of necessary party the writ petitions deserve to be dismissed.

39. This ultimately brings me to the final relief claimed by the petitioners in W.P. (S)Nos. 1494/2015, 1733/2015 & 2242/2015 in which they have claimed that the examination held on 22-10-2014 be quashed and fresh examination be directed to be held on the ground that question Nos. 116 to 130 relate to English subject and they are out of syllabus. It has already been held that questions Nos. 116 to 130 are within the prescribed syllabus duly opined by the subject experts on being referred by the Chhattisgarh PSC and accepted by the Chhattisgarh PSC. The petitioners seek quashment of the whole examination in these writ petitions. Apart from the basis on which the examination is sought to be quashed, it is appropriate to note that the examination was held on 12-10-2014 and thereafter, after invitation of objections by the Chhattisgarh PSC to the model answers and evaluating the petitioners' objections, result was declared on 7-4-2015. There is enormity of labour and time involved in the process. The petitioners have not averred any ground for seeking quashment of examination except the questions to be out of syllabus which has not been found favour by the subject experts by the Chhattisgarh PSC and also by this Court in the foregoing paragraphs. Challenge to public examination has to be based on certain weighty reasons based on materials. Public service examination cannot be brushed-aside lightly unless it is conducted arbitrarily or contrary to statutory rules, as cancellation of public service examinations affects public cause and it would be against the public interest. The Supreme Court in Maharashtra State Board of Secondary and Higher Secondary Education (supra) has clearly held that public interest requires the result of public examination once published should attend finality and observed as under:--

"... Further, it is in the public interest that the results of public examinations when published should have some finality attached to them....

40. Similarly, in a decision in the matter of Anamica Mishra and Others Vs. U.P. Public Service Commission, Allahabad and Others, , the Supreme Court has held that recruitment examination, particularly written examination should not be cancelled lightly and observed as under:--

"4. We have heard counsel for the parties and are of the view that when no defect was pointed out in regard to the written examination and the sole objection was confined to exclusion of a group of successful candidates in the written examination from the interview, there was no justification for cancelling the written part of the recruitment examination....

6. The State Public Service Commission should have been more careful in dealing with the matter so that four years in the process of recruitment would not have been lost and the public cause would not have suffered; public time would not have been wasted in requiring redoing of what had once been done and the litigation could have been avoided. We have also not been able to appreciate the justification for cancellation of the written part of the recruitment examination and drive the candidates to litigation...."

41. Celebrated judgment of the Supreme Court in Maharashtra State Board of Secondary and Higher Secondary Education (supra) has been followed by the Supreme Court with approval in the matter of The Secretary, West Bengal Council of Higher Secondary Education Vs. Ayan Das and Others, and also in the matter of The President Board of Secondary Education, Orissa and Another Vs. D. Suvankar and Another, .

42. In a recent decision in the matter of East Coast Railway and Another Vs. Mahadev Appa Rao and Others, , the Supreme Court has also held that examination and its result is not to be cancelled in arbitrary manner, as finality to the examination or the selection process is essential and has observed in paragraphs 24 and 26 as under:--

"24. In the instant case the order passed by the competent authority does not state any reasons whatsoever for the cancellation of the typing test. It is nobody's case that any such reasons were set out even in any contemporaneous record or file. In the absence of reasons in support of the order it is difficult to assume that the authority had properly applied its mind before passing the order cancelling the test.

26. If a test is cancelled just because some complaints against the same have been made howsoever frivolous, it may lead to a situation where no selection process can be finalized as those who fail to qualify can always make a grievance against the test or its fairness. What is important is that once a complaint or representation is received the competent authority applies its mind to the same and records reasons why in its opinion it is necessary to cancel the examination in the interest of purity of the selection process or with a view to preventing injustice or prejudice to those who have appeared in the same. That is precisely what had happened in Dilbagh Singh case³. The examination was cancelled upon an inquiry into the allegations of unjust, arbitrary and dubious selection list prepared by the Selection Board in which the allegations were found to be correct."

43. Applying the law laid down in aforesaid cases, it is quite vivid that the petitioners have demonstrably failed to make out a ground for quashment of examination which had taken place long back and there is no evident reason for interfering with the examination conducted by the Chhattisgarh PSC, as the examination has been conducted in fair and transparent manner except some challenge mounted by the petitioners which has been considered and rejected by this Court in the earlier paragraphs.

44. Now, coming to the question of delay in filing the writ petitions, model answers were published on 25-10-2014 and objections were invited on 20-11-2014. The petitioners' objections were turned down on 19-2-2015 by the subject experts of the Chhattisgarh PSC. The petitioners having been noticed the rejection of their objections regarding question Nos. 116 to 130 did not raise any alarm for redressing their grievance by resorting to legal means and allowed the

result of said examination to be declared on 7-4-2015 and when they did not find their names figured in the list of successful candidates, they turned up and approached this Court after the declaration of result. The instant writ petitions were filed on following dates:--

"W.P.(S)No. 1329/2015: 15-4-2015

W.P.(S)No. 1494/2015: 22-4-2015

W.P.(S)No. 1733/2015: 4-5-2015

W.P.(S)No. 2042/2015: 27-5-2015

W.P.(S)No. 2242/2015: 24-6-2015"

45. In W.P.(S)Nos. 1494/2015, 1733/2015 & 2242/2015, the petitioners have sought relief of cancellation of examination and for holding fresh examination. These writ petitions have been filed on 22-4-2015, 4-5-2015 & 24-6-2015, respectively. Relief of cancellation of examination was available to the petitioners immediately after their participation in the examination as back as on 12-10-2014. After participating in the examination, they simply kept quite raised no voice by raising objections and did not challenge the examination so held till the aforesaid dates by which the entire selection process including consideration of objections and declaration of result of examination as well as interview for the post of Assistant Director (Public Instructions) came to be concluded and thereby, third party right stands created and as such, delay of even few months assumes importance in this case.

46. It is well settled law that the petitioner willing to invoke jurisdiction of a writ court, should come to the Court at the earliest reasonably possible opportunity. The underlying object of this principle is not to encourage agitation of stale claims and exhumate matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime. (See State of Madhya Pradesh Vs. Bhailal Bhai and Others, and Tridip Kumar Dingal and Others Vs. State of West Bengal and Others,)

47. Likewise, in the matter of Shankara Co-op Housing Society Ltd. Vs. M. Prabhakar and Others, , the Supreme Court has held that delay and laches is one of the factors that requires to be borne in mind by the High Courts when they exercise their discretionary power under Article 226 of the Constitution of India. In an appropriate case, the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his rights taken in conjunction with the lapse of time and other circumstances.

48. Very recently, in the matter of Chennai Metropolitan Water Supply and Sewerage Board and Others Vs. T.T. Murali Babu, , Their Lordships of the Supreme Court with regard to delay very pertinently observed as under:--

"16.... a litigant who has forgotten the basic norms, namely "procrastination is

the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.

17.... A court is not expected to give indulgence to such indolent persons - who compete with "Kumbhakarna" or for that matter "Rin Van Winkle". In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold."

49. Thus, in this case, admittedly and undisputedly, the petitioners sat in fence awaiting favourable result of the examination and finding the result unpalatable after declaration of result on 7-4-2015, decided to question the validity of the examination on the ground that question Nos. 116 to 130, 81, 108 & 119 were out of syllabus. In the meanwhile, results were declared and even for the post of Assistant Director (Public Instructions), interview was completed and writ petitions came to be filed on 26-5-2015 {W.P.(S)Nos. 2042/2015 & 2242/2015}, as such, though there is delay of two months, but in the meanwhile, third party rights in the form of selected candidates have been created on account of delay in questioning the same. The petitioners by their conduct allowed the declaration of result and accrual of rights in favour of selected candidates and only thereafter, they have approached to put-forward their claim belatedly with a view to unsettle the settled matter which is impermissible in law on the ground of delay also.

50. Thus, in sum and substance, this Court is of the considered opinion that question Nos. 116 to 130 relate to English language which is within the syllabus as held by the expert committee of the subject duly notified and accepted by the Chhattisgarh PSC well in time. The petitioners have neither challenged the report nor sought quashment of the same, as such, it has become final and it would be a case for interference had the Chhattisgarh PSC not invited objections or failed to take into account the said objections through its expert. Further, keeping in mind the petitioners' conduct in keeping quiet for fairly long time i.e. from 19-2-2015 to 15-4-2015, allowing the result to be declared, opinion of experts to have become final and allowing the interview to be concluded thereafter, filing the writ petitions without impleading selected candidates who are not only proper but necessary party without questioning the decision of the Chhattisgarh PSC accepting report of the expert committee holding question Nos. 116 to 130 within the syllabus, that too after appearing in the examination with open eyes and keeping in view the binding decisions of Their Lordships of the Supreme Court, the scope of jurisdiction vested in the Court to interfere in academic matters particularly in Maharashtra State Board of Secondary and Higher Secondary Education (supra), this Court is of the considered opinion that the writ petitioners have failed to make out a case for interference in the selection process and examination conducted by the Chhattisgarh PSC and the writ petitions deserve to be dismissed.

51. As a fall out and consequence of the aforesaid discussion, the writ petitions

are liable to be dismissed and are accordingly, dismissed. No order as to costs.

1 Canara Bank and Others Vs. Shri Debasis Das and Others,

2 Public Service Commission, Uttaranchal Vs. Mamta Bisht and Others,

3 Union Territory of Chandigarh Vs. Dilbagh Singh and others, .