

(2012) 02 AHC CK 0101

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No"s. 61659, 60169, 62613, 64413, 65600, 66119, 61413, 66594, 63748, 65448, 65463 and 66469 of 2010

Ranjeet Kumar Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-02-2012

Acts Referred:

Constitution of India, 1950 — Article 124(4), 124(5), 14, 16, 21
Evidence Act, 1872 — Section 56, 57, 6

Citation : (2012) 3 ADJ 242

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Judgement

Hon"ble Sudhir Agarwal, J.—The factual and legal dispute being common, as agreed and requested by teamed counsel for parties, all these writ petitions filed under Article 226 of the Constitution of India have been beard together and are being decided at this stage, under the Rules of the Court, by this common judgment.

2. Petitioners are candidates having appeared in written test conducted for selection for the post of Trained Graduate Teachers (Social Science). The Selection has been held by respondent No. 2, U.P. Secondary Education Selection Board (hereinafter referred to as "Selection Board"). Result was declared on 18.6.2010. The interview thereafter was held between 16 to 26 July 2010. The final result was declared on 14.9.2010 which consists of marks obtained by candidates in written examination and interview.

3. The dispute relates to the correctness of key-answers in respect to six questions of History and one of Civics. The question papers consist of multiple choice questions. The respondent No. 2 awarded marks testing the correct answers of candidate according to key-answers prepared by it. It is not in dispute that all the petitioners were declared successful in written test and called for interview but they have suffered in final list due to preparation of merit which

consists of the total marks of written test and interview, as alleged on account of wrong assessment of their answers in regard to seven questions, by Selection Board for which either multiple choice given or key-answers maintained by Selection Board were incorrect.

4. On behalf of respondents it is not disputed that Selection Board made advertisement No. 1/2009 on 15.1.2009 advertising a large number of vacancies of Trained Graduate Teachers in 14 subjects which included Social Science. It had advertised 532 vacancies of Trained Graduate Teachers in boys group and 72 vacancies in girls group. Out of 532 vacancies, 140 were reserved for Other Backward Classes, 255 for Scheduled Caste and 1 for Scheduled Tribes while in the girls group, 22 were reserved for Other Backward Classes and 25 for Scheduled Caste. All other facts are not in dispute except the allegation that alleged seven questions have been assessed wrongfully which fact has been seriously disputed by respondent-Selection Board.

5. The scope of adjudication in these cases is therefore very limited. It is no doubt true that in education matters, where selection is conducted under aegis of experts in subject, or by a body considered to be expert in the matter, interference in judicial review is extremely limited. The Court would not normally interfere with the opinion of experts unless it is shown that in a particular case such opinion is *ex facie* perverse, not supported by the documents accepted widely by all experts of high standard and accuracy, or that decision is otherwise such as no person having ordinary prudence and common knowledge in the subject would have arrived at.

6. The questions which are disputed in this case are multiple choice questions relating to History and Civics in respect where to any person having general common knowledge may give correct reply.

Therefore, if perversity in the answers of said questions has been committed which has resulted in depriving an otherwise able and well conversant candidate, it is difficult to desist a Court of law not to interfere in that matter else it would result in a sheer arbitrary kind of selection denying equal consideration for employment to the candidates concerned. The Court normally does not enter in the territory of judging correctness of opinion of experts except when there is a glaring error going to the extent of perversity or a blunder on the part of selection body in preparing key-answer sheet of multiple choice questions which has caused discriminatory treatment to the candidates.

7. Though respondents have filed counter-affidavit but on this aspect they have opted to refrain from giving any specific reply. Instead the stand of respondents is that there is no provision of revaluation or reassessment or scrutiny, hence Court cannot direct the Selection Board for reassessment or revaluation or scrutiny of answer sheets of petitioners. Reliance has been placed on Apex Court decision in *H.P. Public Service Commission v. Mukesh Thakur and another*, (2010) 6 SCC 759.

8. I will deal with legal objection raised by respondents a bit later but at this stage, first would like to examine key-answers prepared by respondent-Selection Board to assess the answers given by candidates, whether ex facie are perverse or form a possible view. If the answer comes in the category of later one, this Court is well aware that in such a case, when a possible view has been taken by experts, and all candidates have been examined accordingly, the Court may not interfere but where the view taken by Selection Board is palpably perverse and against the well published authenticated books on the subject, the Court would be under constitutional obligation to interfere otherwise it would amount to confer an immunity to a Selection Board in the matter of conducting a selection in a wholly illegal and arbitrary manner. Section 57 of Evidence Act entitles the Court to take judicial cognizance of published books of History, Arts, etc. in order to examine a matter of public History, Literature, Science or Arts and there is no legal or otherwise bar. At least none has been shown by respondents to this Court which may deprive it from going into the question whether action of respondents in preparing key-answers of the disputed seven questions is possibly correct or is ex facie perverse and incorrect.

9. Though I have referred to Section 57 of Evidence Act, I may clarify that the pen ultimate paragraph of Section 57 neither says that the Court may or may not take judicial notice of any fact nor does it say that Court shall or may take judicial notice of every matter which comes under the heads of description given therein. It only talks of a situation when a Court does take the judicial notice of the fact of which it is bound to take judicial notice under Clause 1 to 13, then it may refer to appropriate books about that fact. Matters of History, Literature, Science and Arts are not mentioned in the Section as matters of which the Court must take judicial notice. However, as has been laid down time and again, the Section is not exhaustive of facts of which the Court may take judicial notice. It can take judicial notice not of all matters of History, Literature, Science and Arts indiscriminately but of only such matters of Public History, Science and Arts as are such notorious that may be presumed as part of common knowledge of every educated person. The Court can take judicial notice only of what, may be regarded as notorious fact of Public History and while referring to such reference book it must be shown or known or admitted that the Writer has some special knowledge of subject.

10. In *Onkar Nath v. Delhi Administration*, AIR 1977 SC 1108, referring to Section 56 of Evidence Act, the Court said that no fact of which the Court will take judicial notice need be proved. In the present case while the petitioners have disputed correctness of model key-answers maintained by respondents of the question and multiple choice given thereto and have also supported their stand by referring to certain extracts of the published books, respondents have kept total silence on the matter and have chosen not to contest these allegations at all and have not placed anything on record to show otherwise. It appears that respondents themselves are satisfied with the correctness of the claim of petitioners and therefore instead of contesting the same on merits straight, they

have opted to plead against the petitioners on a pure and simple technical ground. Even during the course of argument, learned counsel appearing for Selection Board did not advance any submission with respect to correctness of six questions of History and one question of Civics.

11. The seven questions which are sheet anchor and foundation of entire dispute are as under:

12. These questions have been reproduced from the photocopy of booklet of Booklet Series A filed as Annexure-6 to Writ Petition No. 61659 of 2010, correctness whereof has not been disputed by the respondents.

13. In support of Question No. 24, petitioners have relied on the extract of the Book "Madhyamik Bharat Bhoomi Ka Itihas (2)" written by Shiv Narain Singh Rana. At page 43 it deals with Ahmadnagar victory in 1600 A.D. by Emperor Akbar and says that Chand Bibi was queen of Bijapur.

14. Besides the material placed by petitioners, the Court finds that in most of the Books of authority in History, the facts stated are same and common. There is no discrepancy. There is no other view available. A well renowned History Book published by Bharatiya Vidya Bhavan titled as "The Mughul Empire" Vol. VII edited by Sri. R.C. Majumdar, J.N. Chaudhari and S. Chaudhari, 4th Edn. 2007, Chapter V (Section 6), commences at page 160 but at page 162, says that Chand Bibi also known as Chand Sultan was daughter of Husain Nizam Shah, Ruler of Ahmadnagar. She was married to Ali Adil Shah, Ruler of Bijapur. As an off-shoot of Bahmani Empire in Deccan, there were five territories, namely, Ahmadnagar, Bijapur, Golconda, Berar and Bidar. Berar later on annexed by Ahmadnagar in 1574 A.D. Chand Sultan (Chand Bibi) being the wife of Ali Adil Shah, Ruler of Bijapur was queen of Bijapur. She entered the affairs of Ahmadnagar later on in different circumstances in May 1595-96.

15. Chand Bibi has been described as sister of Nizamu-I Mulk in Akbar-Nama of Shaikh Illahdad, Faizi Sirhindi as translated in "The History of India As Told By its own Historians" (by Sir H.M. Elliot and John Dowson) Vol. 6 page 144 where it reads as under:

On the 21st Safar news arrived of the capture of Ahmadnagar on the 18th. The fortress had long been defended by Chand Bai, the sister of Nizamu-1 Mulk,...

16. Burhan-ud-din who was younger brother of Murtaza Nizam Shah, Ruler of Ahmadnagar was murdered on 14.6.1558 by his son Husain. He was also murdered on 1.4.1589 by his Nobles. Burhan-ud-din came to throne of Ahmadnagar in May 1591. Burhan was a refugee at Akbar's Court and therefore was regarded as his prot?g? but after becoming Ruler of Ahmadnagar, Burhan did not give honourable treatment to Emperor Akbar as a result whereof Emperor Akbar sent an expedition appointing Khan Khanan and Sultan Murad to the command assisted by Mirza Shah Rukh and Shahbaz Khan. Before they could reach Ahmadnagar, Burhan (deposed himself as Burhan Nizam Shah IT) also died

in April 1595 whereafter his elder son Ibrahim succeeded the throne but he was also slain in a battle. When Akbar's force reached Ahmadnagar, the then Ruler Miyan Manjhu retired therefrom whereafter Chand Sultan (Chand Bibi) took the helm of affairs of Ahmadnagar in her own hand and the battle was fought under her leadership.

17. The question is a little tricky one. It asks of place, Chand Bibi was queen. Her husband being Ali Adil Shah, Ruler of Bijapur, she would obviously was queen of same territory. Therefore the simple and correct answer of the question is that she was queen of Bijapur. Had it been the question, which territory Chand Bibi ruled, answer could have been Ahmadnagar.

18. The correct answer therefore of Question No. 24 would be Option 1. It is said that respondents treated option-3 as the correct answer which obviously is not so. The option selected by Selection Board as correct key-answer is clearly perverse and against the books of history on the subject.

19. The Question No. 25 requires adjustment of various battles with relevant years. It is said that Selection Board has treated the correct combination as under:

20. The first battle of Panipat fought by Babar with Ibrahim Lodi. The battle continued for about a week from 12th April 1526 and ultimately Babar defeated Ibrahim Lodi on 21st April 1526. The details have been given in Mughul Empire by R.C. Majumdar etc. (supra) at page 34. The next major battle he fought was with Rana Sangram Singh (also known as Rana Sanga of Mewar). On page 36/37 of Mughul Empire (supra) it is said that this battle took place on 17.3.1527. It is said on page 38 of the said book that battle of Gogra was the third great battle in Hindustan fought by Babar on 6.5.1529. It reads as under:

Babur, however, was bent on chastising the Afghan rebels, and as he moved eastward, he found the Bengal troops standing in his way at the confluence of the Ganga (Ganges) and the Gogra. On 6 May, 1529, was fought the battle of Gogra, Babur's third great battle in Hindustan...The battle of Gogra frustrated the last stand of the Afghans...

21. In the "Babur-Nama (Memoirs of Babur) translated by A.S. Beveridge the events with respect to three battles fought by Babar are also given in the same order. Thus correct combination of four battles in Question No 25 would be as follows:

22. Any other combination if taken to be correct by respondent-Selection Board is clearly incorrect and perverse since it is not supported by any authenticated History book on the subject.

23. Since out of four combinations given in Question 25, option (2) tally with the above combination, which is (iii) (iv) (ii) (i), other options are incorrect.

24. Coming to Question No. 36, petitioners in writ petition No. 61659 of 2010

have said that option No. 2, i.e. Tajmahal is the correct answer though respondent-Selection Board has taken option No. 1 as correct answer, i.e. Red Fort of Delhi.

25. In support of the submission, petitioners have relied on the extract of the book "Bharat" edited by Sri Harishchandra Verma published by Hindi Madhyam Karyanvay Nideshalaya, Delhi Vishvavidyalaya which says that Sri Wayne E. Begley after viewing Tajmahal said Somewhat similar statement are also expressed in respect to Tajmahal at page 798 in the book "Mughul Empire" (supra).

26. With regard to the Red Fort of Delhi constructed by Shahjahan between 1638 to 1648 when establishing a new capital city Shahjahanabad (present Delhi), there is a Percian couplet, inscribed on the Diwan-i-Khas that "if there is a paradise on the face of the earth, it is this, it is this, it is this". With regard to Rangmahal, part of Red Fort of Delhi, on page 790/791 of "Mughul Empire" (supra) statement of Court Chronicler, contained in Percy Brown's, Indian Architecture (Islamic) page 112 has been quoted as under:

in excellence and glory it surpasses the eight-sided throne of heaven and in lustre and colour it is far superior to the palaces in the promised paradise.

27. Fergusson, the historian of Architecture, about the Place of Shah-Jahan i.e. Red Fort in Delhi said that "it was most magnificent in the East-perhaps in the world". It is so quoted on Page 340 of the book "Mediaeval India under Mohammedan Rule (A.D. 712-1764)" by Stanley Lane-Poole first published in 1903 reproduced in 1994 by Low Price Publications, Delhi.

28. Respondents have not placed anything before this Court to show option No. 1 as correct answer of question No. 36 of History paper. All the petitioners have placed on record extract of History book written by Sri Harishchandra Verma. In the absence of any authority, contrary in regard to this question also, I find that option selected by respondents is clearly incorrect and perverse. The correct answer of Question 36 would be option-2.

29. The 4th question i.e. question No. 37 relates to philosophical discussion of Buddhism whether contained in Sutta Pitaka, Vinaya Pitaka, Abhidhamma Pitaka or Jatak Katha. The Selection-Board has taken option 2 as correct answer while petitioners claim that it ought to be option 3 i.e. "Abhidhamma Pitaka".

30. Options 1, 2 and 3, i.e. Sutta Pitaka, Vinaya Pitaka and Abhidhamma Pitaka have been explained in Vol. 2 "The Age of Imperial Unity" by R.C. Majumdar, A.D. Pusalker and A.K. Majumdar, published by Bharatiya Vidya Bhavan and at page 396 it considers "Vinaya Pitaka", at page 398 it considers "Sutta Pitaka" and at page 407 it considers "Abhidhamma Pitaka". Before the Court, dispute is confined option 2 and 3, I confine myself to consider only these two options.

31. Vinaya Pitaka has been explained as under:

1. Vinaya Pitaka

The Vinaya Pitaka, which has been placed at the head of the canon by the Buddhists themselves, comprises the following texts; Patimokkha, Sutta Vibhanga, Khandhakas, and Parivara.

(i) Patimokkha. The nucleus of the Vinaya is the parimokkha, which, as noted above, gives a list of rules of discipline together with atonements for transgressing them. An oft-repeated phrase says that the life of a good monk is checked by the restraints of the Patimokkha. It originally contained only 152 rules, which were later extended to 227, divided into then sections, as we now find in the Vinaya Pitaka.

(ii) Sutta Vibhanga, i.e. explanations of Suttas (of the Patimokkha), tells in a sort of historical introduction how, when, and why the particular rule in question came to be laid down. The words of the rule are given in full, followed by a very ancient word-for-word commentary, which in its turn is succeeded by further explanations and discussions of doubtful points. The Sutta Vibhanga comprises (1) Maha-vibhanga which has eight chapters dealing with eight classes of transgressions against discipline, and (2) Bhik-Khuni-Vibhanga, a much shorter work, being a commentary on the code for the nuns compiled on the lines of Patimokkha for the monks. The offences have been divided into those which were punishable with expulsion from the order (parajikas) and those punishable with expiation (pachittiyas).

(iii) The khandhakas (sections) comprises two divisions, Mahavagga and Chullavagga, and form a sort of continuation and supplement to the Sutta Vibhanga.

The Mahavagga (great section) in its ten sections furnishes us with the story of the formation of the Sangha, and lays down rules for admission to the Order, observance of the Uposatha ceremony, and the mode of life during the monsoon. There are also rules for the wearing of shoes, and for seats, conveyances, dress and medicine of the monks and for the regulations of legal proceedings and restoration of order in the Sangha. There are some serious narratives which embody the purest Buddhist morals in their simplest form. The incidental notices in the Mahavagga are valuable as they throw considerable light on the everyday life of ancient India. The sections dealing with thefts, sexual offences, crimes etc. have a special interest as they present a cross-section of the society of those days. The Chullavagga (smaller section) in its twelve sections contains a number of edifying anecdotes connected with the life of Buddha and the history of the Order. The first nine sections contain rules for the Bhikkhus while the tenth section describes the duties of nuns. The former deal with disciplinary proceedings and methods of settling disputes among monks; various offences, expiations and penances; the daily life of the Bhikkhus; their residence, furniture, etc. The tenth section prescribes the eight conditions precedent to the entry of a woman into the Order, and rules for the guidance of the Bhikkhuni

sangha (the order of nuns). The last two sections containing an account of the first two councils at Rajasthan and Vaishali, are regarded as later additions, and form rather an appendix of the Chullavagga.

(iv) Parivara, the last book of the Vinaya Pitaka, gives in the form of questions and answers and abstract of the other parts, and appears to be a later production, being probably the work of a Ceylonese monk. It consists of nineteen sections, catechisms, indices, appendices, lists, etc. reminiscent of the anukramanis and parishtas of the Vedic texts.

32. Abhidhamma Pitaka has been explained on page 407 as under:

Abhidhamma Pitaka

Contrary to the indications given by its name (Abhidhamma, higher religion or metaphysics), there are very little of metaphysics in the Abhidhamma Pitaka (basket of transcendental doctrine). It deals with the same subjects as the Sutta Pitaka, but in a more scholastic way. It is written mostly in the form of questions and answers like a catechism. The subject-matter of the Abhidhamma is chiefly derived from the Sutta Pitaka in which are found the beginnings of the Abhidhamma and the Vinaya Pitaka. The abhidhamma may be said to be merely the extension of the matikas or lists mentioned in the Vinaya. The Abhidhamma comprises seven books commonly known as Sattapakarana, viz. Dhammasanganj, Vighanga, Dhatukatha, Puggalapannatti, Kathavatthu, Yamaka and Patthana. All these books are later in date containing a more elaborate and classified exposition of the Dhamma than given in the Nikayas. There is hardly any originality or profundity in the Abhidhamma books. There is no trace of any scientific reasoning or research in the definitions and classifications; mere dogmatism appears to have formed their basis.

The Kathavatthu (points of controversy) or the Vijanapada, ascribed to Moggaliputta Tissa, President of the Third Council, is the only canonical work claiming definite authorship. Oldenberg, Rhys, Davids, Geiger and others accept the historicity of the tradition, but Barth, Keith, Minayeff and Walleiser reject it. According to Winternitz the Kathavatthu in its present form cannot be regarded as a work of the third century B.C. It is later than the Vinaya and the Sutta and the first two books of the Abhidhamma to which it refers. It is valuable for the light it throws on the development of Buddhist dogmatics during the later centuries.

33. From the above description, in my view the option 2 taken by the Experts of Selection Board as a correct answer, i.e. Vinaya Pitaka, cannot be said perverse. Therefore, the contention of petitioners in this regard has to be rejected.

34. Question No. 40 asks which ill-tradition was not prevalent in Vedic Age. Reliance has been placed on extract of certain books which contains the following facts:

(Page 33, Madhyamik Bharat Bhoomi Ka Itihas (1)" written by Shiv Narain Singh

Rana)

(Page 116, Prachin Bharat Ka Rajnitik tatha Sanskritik Itihas Part-I by Vimal Chandra Pandey)

(Page 117, Prachin Bharat Ka Rajnitik tatha Sanskritik Itihas Part-I by Vimal Chandra Pandey)

(Page 118, Prachin Bharat ka Rajnitik tatha Sannskrit Itihas Part-I by Vimal Chandra Pandey)

(Page 78-79, "Madhyakalin Baharat"-Syllabus book for Class XI approved by National Conucil for Educational Research and Training)

(Page 67, "Prachin Bharat Ka Itihas tatha Sanskriti" by K.C. Srivastava)

35. About marriage and position of women in Vedic age, The History and Culture of Indian People Vol. I Vedic Age by R.C. Majumdar published by Bharatiya Vidya Bhavan at page 392-393 says as under:

all these evidences speaks in favour of girls normally marry long after they had reached puberty...

Perfect harmony and happiness are prayed for in conjugal life which (it is hoped) will be long enough to bless the couple with sons and grandsons (VIII. 31 5-9; X. 34. 11:85. 18, 19 42 ff.) X. 85. 46 describes the newly married wife as taking up a most respected position as the mistress of her new household, wielding authority over the husband's father, brother, and unmarried sisters. This verse envisages the case (very probably) of the marriage of the eldest son in the family, when the old father has retired from active life. The authority exercised must have been more or less the rule of love. The wife participated regularly in the sacrificial offerings of her husband...

There is very little evidence of the prevalence of the custom of Sati or Window-burning in the Rigveda, though we may detect a semblance or reminiscence of this ancient custom in X. 18.8, where the widow is asked to descend from the funeral pyre of her dead husband on which she was first made to lie. The only safe conclusion would be that the practice, even if known, was not widely prevalent, or at best was confined to the Rajanya Class, if Indo-Germanic parallels are a correct guide. Rigveda, X. 40. 2 and X. 18. 7, 8 point to the practice of requiring a childless widow to cohabit with her brother-in-law until the birth of a son. This niyoga is a kind of short-term levirate. These passages (and I. 124.7 also which mentions a garta-ruh) are clear evidence that the remarriage of widows was permitted in certain circumstances, though there is no clear or definite reference to it in RV.

The Rigveda certainly permits polygamy.

36. The above quote shows that child marriage and veil as such was not prevalent in Vedic age. Regarding Sati pratha also an exception has been

referred which is not treated to be a prevalent practice but regarding polygamy it says that it was permitted. All the four options referred to in this question are not considered to be a socially well acceptable practice or custom and they are in the realm of bad practices or bad customs. At least two out of four were absolutely absent; one, there is exceptional existence; and, one was definitely permitted. It appears that either the question has wrongly been formulated inasmuch it wanted to ask to which bad practice was prevalent but the word "not" has been added therein may be mistakenly, or the options have not been given properly.

37. It is said that respondents have treated option No. 4 as correct answer though it is evident that this was the practice actually prevalent and permitted in Rigveda age also. This entire question thus is incorrect. It must be excluded, and, all the candidates deserve an extra mark in respect of this question since those who have attempted, must have taken a chance, and those who have not attempted, may be for the reason of confusion caused due to wrong framing of question and wrong options.

38. The next question is about the establishment of Indian Communist Party and the four options are 1921, 1922, 1924 and 1923. Petitioners contend that there is some variation about the correct year in certain books of History and therefore the options given include more than one correct answer. According to them 1922 and 1924 both are correct options and, therefore, option 2 and 3 both are correct. About the correct option taken by Selection Board, petitioners are not very clear but according to them respondent-Selection Board might have taken either option 1 or 4 as correct answer. Reliance on behalf of petitioners has been placed on the extract of a Book "Adhunik Bharat Ka Itihas, Ek Naveen Mulyankan 1707 Isvi. Se Vartman Samay Tak" by B.L. Grover and Yashpal which at page 341 says that in 1920 Sri M.N. Roy and some other Indians residing at Tashkand declared to form Indian Communist Party. A criminal case known as Kanpur Conspiracy was initiated against the petitioners having communist followance and with the end of the case in 1924 one Satya Bhakt declared that he has formed and established Indian Communist Party and designated himself as Secretary thereof. This issue has also been discussed in "Communism in India" by G.D. Overstreet and M. Windmiller and "The Communist Party of India" by M.R. Masani. Both these Books have been considered and relied on in Bharatiya Vidya Bhavan's publication "History and Culture of Indian People Vol. XI Struggle for Freedom" and on page 421 it says that attempts were made to organize a Communist Party in India since 1921 by M.N. Roy and others who followed the traditional and now well known methods of organizing the working classes in Unions teaching them principles of Communism inciting them to strikes etc. A Communist Party of India and four Workers and Peasants parties in Bombay, Bengal, the Punjab and the United Provinces were formed. These bodies were given financial aid from Moscow and their policy was dictated from Moscow, both directly as well via England Continent. No conspicuous and success attended the efforts of M.N. Roy and his colleagues till the Communist party in Britain took up

the matter and sent a few agents to India. One of them, Philip Spratt, who arrived in India in December, 1926 infused fresh life into the party which though started in 1924 had as yet very few members probably not even a dozen.

39. The above quote shows that either the correct answer would be 1921 or 1924. It is true that in some of Books it is 1920 and 1924 but 1920 not being an option given, it could have been 1921. No material on this aspect has been placed before this Court by respondents to show as to what answer they have taken as correct and the basis therefor.

40. Be that as it may, here is a question which is quite confusing and in view of divergent facts stated in different Books, 1921 and 1924 both can be said to be correct answer. Therefore, the candidates who have answered either of the aforesaid two i.e. option 1 or option 3 are entitled to be awarded marks in respect to this question.

41. Now I come to sole disputed question of Civics as to in which constitutional office, the procedure of impeachment for removal of the incumbent in office is not required. This is a question involving provisions of Constitution of India. Article 56 read with Article 61 of the Constitution lays down procedure of impeachment of President of India. The procedure of removal of Vice-President is contained in Article 67 Proviso (b). This procedure is short of impeachment and is not termed as "impeachment". The procedure of removal of the Judge of Supreme Court is provided in Article 124 (4) and (5) of the Constitution. However, commonly these procedures under Articles 67, 124 (4) and (5) are also termed as "impeachment". The terms "impeachment" has been defined in Black's Law Dictionary With Pronunciations Fifth Edition as "A criminal proceedings against a public officer, before a quasi political Court, instituted by a written accusation called "articles of impeachment". Therefore, whenever the political Court like Parliament in the context of Constitution of India is involved, the procedure may qualify the term "impeachment". This procedure is not available for removal of Chairman of Public Service Commission. He can be removed from the office in accordance with provision contained in Article 317 read with Article 316 (2) proviso (b) of the Constitution. The procedure provides that on a reference made to Supreme Court, an enquiry shall be conducted and if Supreme Court finds him guilty of misbehaviour, he can be removed. Besides, President may also remove the Chairman if he is adjudged insolvent, engaging himself during his term of Office in any paid employment outside the duties of his Office or in the opinion of President is unfit to continue in Office by reason of infirmity of mind or body. The Constitution uses the word "impeachment" as such only in respect to President of India but procedure followed for removal of Vice-President or the Judge of Supreme Court involves Parliament and therefore its procedure also considered to be a process of impeachment but such procedure is not followed at all in respect to the Chairman, Union Public Service Commission. The answer in respect to the above question, therefore, would be option 3, but it is said that as per the Key-answers of Selection Board, option 2 is correct which

is palpably incorrect, if that is so.

42. The above discussion, therefore, results in respect to above seven questions as under:

- (a) The correct answer of question No. 24 in History paper would be option (1).
- (b) For question No. 25, History paper, option (2) is correct.
- (c) Option (2) is the correct answer of question No. 36 of History paper.
- (d) Option (2) is correct answer in respect to question No. 37 of History paper.
- (e) Question No. 40 of History paper is wrongly framed, (f) In question No. 43, there may be two correct answers, i.e. options (1) and (3).
- (f) In question No. 43, there may be two correct answers, i.e. options (1) and (3).
- (g) In question No. 32 of Civics Paper, option (3) would be the correct answer.

43. Now I come to basic question whether the kind of judicial scrutiny this Court has taken above would be permissible or not.

44. Learned counsel appearing for respondent-Selection Board relying on the Apex Court decision in H.P. Public Service Commission (*supra*), contended that the Court cannot ask the Selection Board for reassessment, revaluation and scrutiny and therefore all the writ petitions which, in effect, require Selection Board to do so, deserve to be dismissed.

45. The submission is apparently misconceived and has to be rejected outright. The concept of revaluation, reassessment and scrutiny as is known in the field of education are all different. Whenever a scrutiny is permissible only the answer sheets of the candidates are seen to find out whether any answer given by candidate is not left unchecked by the Examiner and the totalling is correct. If all the answers have been examined, marks have been awarded, total thereof is correct, no interference is called for.

46. The concept of revaluation and reassessment is overlapping. It is like re-computation. Wherever it is permissible, requires the examining body to get the answer sheet of candidate assessed again by another set of Examiner(s) and thereafter to find out the marks obtained by the candidate. If there appears to be a substantial difference, to give appropriate marks to the candidate in the light of reassessment or revaluation. This Court has no manner of doubt, whether scrutiny or revaluation or reassessment, all these can be required to be performed by examining body if it is so permitted under the Rules applicable to the concerned examination and not otherwise. This is what has been considered and held by Apex Court in H.P. Public Service Commission (*supra*).

47. As long back as in Maharashtra State Board of Secondary and Higher Secondary Education and another v. Paritosh Bhupesh Kurmarsheth etc., AIR

1984 SC 1543, it was held that in absence of provisions for revaluation, a direction to this effect cannot be given by Court.

48. In *Pramod Kumar Srivastava v. Chariman, Bihar Public Service Commission and others*, AIR 2004 SC 4116, the Court said that in absence of any provision for revaluation of answer books in the relevant rules, no candidate has got any right to claim for revaluation of his marks. In para 7, the Court said as under:

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 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 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.

49. In *Board of Secondary Education v. Pravas Ranjan and another*, (2004) 13 SCC 383, it was held:

It is an admitted position that the regulations of the Board of Secondary Education, Orissa do not make any provision for re-evaluation of answer books of the students. The question whether in absence of any provisions to that effect an examinee is entitled to ask for re-evaluation of his answer books has been examined by us in *Pramod Kumar Srivastava v. Chariman, Bihar Public Service Commission*, decided on 6.8.2004. It has been held therein that in absence of rules providing for re-valuation of answer-books, no such direction can be issued.

50. In *President, Board of Secondary Education, Orissa and another v. D. Suvankar and another*, (2007) 1 SCC 603, the Court said:

The scope for interference in matters of evaluation of answer papers is very limited. For compelling reasons and apparent infirmity in evaluation, the Court steps in.

51. In *Secretary, West Bengal Council of Higher Secondary Education v. Ayan Das and others*, AIR 2007 SC 3098, it was held:

The Courts normally should not direct the production of answer scripts to be inspected by the writ petitioners unless a case is made put 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.

52. Following the consistent view taken by Apex Court in catena of cases, some of which have been referred to hereinabove, in *H.P. Public Service Commission (surpa)* the Court said in para 27:

..in absence of any provision under the Statute or Statutory Rules/ Regulations,

the Court should not generally direct revaluation.

53. This Court is bound by above authorities of law and even on its own has no doubt or dispute about the above legal proposition. But in view of the Court the cases in hand do not require the Selection Board to go either for scrutiny of revaluation or reassessment. The above legal obstruction is not attracted at all in the case in hand.

54. Here the petitioners have raised a totally different kind of dispute. It cannot be doubted that being a selection body for appointment of Teachers in Secondary Schools, the Selection Board was under a pious as well as statutory obligation to hold selection very carefully, meticulously and in the most honest and correct manner. The job of selection Board could not have been completed by mere holding a selection without caring whether examination is being conducted correctly and properly, whether all the questions have been framed in a proper manner, whether the answer(s), if it is multiple choice examination, have been given with due care and caution so as to leave no scope of error or mistake therein etc. In fact if such a mistake is committed, it causes a multi-edged injury to an otherwise studious, intelligent and well conversant student who understand the subject, well knows the relevant details and correct answers but suffers due to sheer negligence of the examining body. The obligation of examining body cannot be allowed to whittle out in any manner for any reason whatsoever. For the fault of examining body, a candidate cannot be made to suffer. In this regard, I find it convenient to refer the observations of Apex Court in *Manish Ujwal and others v. Maharishi Dayanand Saraswati University and others*, JT 2005 (8) SC 382, to the following effect:

Regarding the key answers whereof the matter is beyond the realm of doubt, this Court has held that 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..... As already noticed, the key answers are palpably and demonstrably erroneous. In that view of the matter, the student community, whether the appellants or interveners 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....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 reason. 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.

55. The aforesaid observations apply with full force to the cases in hand also. For the fault of Selection Board in selecting Papers Setters, who have not discharged their duties efficiently, honestly and by meticulous care and caution by framing paper sets of questions and answers, the studious and meticulous intelligent students cannot be made to suffer sheer on account of their capacity and intelligence of having correct information and knowledge. Can it be said that an examining body even if ask a question and treat a patently perverse answer to be correct as a model answer, yet the Court would not interfere on the sheer pretext that it would amount to crossing the border line of Experts' opinion in academic matters. For example, if a question is asked as to when the Constitution of India was adopted and enforced by the people of India and instead of 26.1.1950, the correct answer is taken as 15.8.1947, shall Court refuse to interfere only for the objection raised by Examining body that it is the opinion of Subject Experts in the matter and in such academic matter, the Court should not interfere. The answer would be obviously "No". Such a preliminary objection is bound to be rejected. If this kind of fault committed by Selection Board is allowed to remain untouched, this Court would be failing in its Constitutional obligation to prevent arbitrariness, illegality in the matter of right of consideration for employment as it would amount to an arbitrary kind of selection denying equal opportunity of employment to all concerned and would be infringing Article 14 and 16 read with Article 21 of Constitution.

56. Now remains the question as to how and in what manner, relief is to be granted. It is true that while entertaining this writ petition, this Court directed that any further action by the respondents would be subject to result of this writ petition. (See order dated 7.10.2010 passed by this Court in Writ Petition No. no 61659 of 2010), the fact remains that these writ petitions were filed after declaration of final result when petitioners were declared unsuccessful. The appointment of all selected candidates have already been made as told in para 16 of counter-affidavit. The appointment and selection, though already made, have not been questioned. The persons already appointed are not before this Court. Petitioners, after appearing in written test, were well aware about the alleged mistakes and inaccuracies in multiple choices given in respect to above questions. It cannot be assumed that they could not have visualised that on account of wrong choice or wrong answers or wrong questions, they may suffer in preparation of ultimate merit list. They chose to wait not only till interview is held but even till final result is declared. It is true that normally a candidate does not come to file an academic litigation or a futile litigation and it is only when a cause of action arises, he comes to the Court to challenge an illegality which has already been committed but then all other attending circumstances have to be seen.

57. Moreover, though this Court itself has examined correctness of multiple choice options in respect to above mentioned seven question, normally it ought to have been left to be examined by ex-perts on the subject and one of the mode could have been that the Selection Board could have asked to constitute a separate panel of Experts to get the seven questions examined and obtain a report and thereafter proceed accordingly. This Court, however, proceeded in the matter to consider correctness of the questions on its own for the reason that earlier methodology would have consumed further time and delayed the matter particularly when the questions involved in the matter were not so technical as that could have not been examined effectively by this Court. Moreover, the Apex Court has also directed this Court to expedite hearing of the matter. All the parties agreed that the expeditious disposal of the matter is in the interest of all. The Judges are considered to be Experts of Experts and when the appropriate material is available, in the facts and circumstances there is no complete embargo to their authority. They can look into facts themselves and form an opinion on a subject-matter. The standard of questions in this matter was of graduation and therefore in totality of circumstances, this Court proceeded to follow the procedure which would have saved time, expedite the matter and can adjudicate the issues without any unreasonable delay.

58. The cases like present one sometimes require more a balancing act instead of just a straight-way decision or allowing or dismissing writ petition in one or the other way. The variances have already been filled in. It may be that some of the candidates selected and appointed may not have been so if appointed, if questions could have contained correct key answers, and the composition of selection might have been different. Further those who have not come to the Court but are similarly circumstanced with petitioners, also in normal circumstances, need be protected but that would cause in upsetting the entire selection.

59. Looking to over all factors and circumstances and discussion as above, in my view, the ends of justice would meet by disposing of all these writ petitions with the following directions:

(i) Petitioners' answer-sheets in respect to above seven questions shall be examined in the manner as adjudicated above (summarised in para 41) and their marks in written test would be determined accordingly.

(ii) In case, it is found that petitioners or any one or more of them have secured total marks more than last selected and appointed person, they shall be given appointment.

(iii) The above appointments will be made against the advertised vacancies on the post of Trained Graduate Teachers. The persons already appointed in service shall not be made to suffer in any manner, except to the extent one or more of the petitioners on account of increase in his total marks is required to be appointed and in that case, persons last in merit would have to suffer and their

appointments, if already made, shall be terminated. I am constrained to give this direction for the reason that vacancies of Teachers advertised for selection are pursuant to requisitions received from the individual secondary institutions and, therefore, only those vacancies which were requisitioned and advertised in the above selection can be made to be governed by this judgment and the subsequent and other vacancies not included in the above selection cannot be taken into consideration to give benefit to any of petitioners by protecting the appointments already made.

(iv) The appointment, if any, made pursuant to this order of petitioners, for the purpose of actual payment of salary shall take effect from the date of appointment but for the purpose of pay fixation, seniority etc. it shall relate back from the date the person lower in merit to the respective petitioner was appointed. If there is no person lower in merit to petitioner(s) and he/they are last in merit, then this date would be the same as the person next above these petitioner(s).

(v) Petitioners shall be entitled to cost which I quantify to Rs. 10,000/-for each set of writ petition against U.P. Secondary Education Service Selection Board.

(vi) Selection Board, respondent No. 2, is directed to find out the person(s) responsible for committing the aforesaid errors/ mistakes/ blunders in setting of question papers with multiple choice answers and to take appropriate action against them in accordance with law. It shall be at liberty to recover the amount of cost it has to pay under this judgment from such persons found responsible as above.

60. I order accordingly. All the writ petitions are disposed of with the above directions.