(2015) 02 RAJ CK 0248

In the Rajasthan High Court

Case No : Special Appeal(Writ) Nos. 343, 411, 417, 459, 530 and 531 of 2014

Ravi Prakash Gupta and Others — APPELLANT

Vs

Pawan Kumar Swami and Others — RESPONDENT

Date of Decision : 26-02-2015

Acts Referred:

Citation : (2015) 02 RAJ CK 0248

Hon'ble Judges : Sunil Ambwani, A.C.J;J.K. Ranka, J

Bench : Division Bench

Advocate : Ashok Gaur, Senior Counsel assisted by Vijay Dutt Sharma, Ashwini Jaiman and Achintya Kaushik, for the Appellant; S.R. Surana, Senior Counsel assisted by Abhishek Kumar Bhargava, Rajendra Prasad, Additional Advocate General and Ashish Sharma, S.P. Sharma,

Final Decision : Allowed

Judgement

Sunil Ambwani, Acting C.J—The applications seeking leave to file the Special Appeals are allowed. The requirement of removal of formal defects is dispensed with.

2. We have heard learned counsel appearing for the parties at length.

3. All these connected D.B. Civil Special Appeals, arise out of the judgment dated 15.01.2014, passed by learned Single Judge, disposing of all the writ petitions, with directions to the Revenue Board, Rajasthan to refer all the objections raised by the petitioners in reference to various questions and answers in two question papers of the departmental competitive examination for promotion, held by the Revenue Board, in pursuance to the advertisement dated 17.06.2011 for selection amongst eligible persons serving as Patwaris'' in the revenue services of the State of Rajasthan, for training for appointment to the post of Land Record Inspector under Rule 284(ii) of the Rajasthan Land Revenue(Land Records) Rules, 1957.

4. The unsuccessful candidates filed writ petitions, both at Principal Seat of the

High Court at Jodhpur, and its Bench at Jaipur, alleging that there were large number of inaccuracies in the question papers and Key answers in the examination conducted on 21.04.2013, of which the result was declared on 16.05.2013. The examination was divided into two objective type papers of 50 questions each, carrying 100 marks. It was alleged that there were large number of inaccuracies in setting of the question papers inasmuch as some of the questions with multiple options as answers, had more than one correct answer, or had no correct answer at all. The serial number of the questions was not changed in four different series, but the order in which options were placed as answers were changed, and in some of which, ''none of the above'' was given as very first option, resulting into a number of inaccuracies. The petitioners gave details of the defects in the question papers in different groups, some of which were out of syllabus, and some were taken out of a question bank of a popular guide book available in the market, namely ''Saraswati Guide''.

5. The matter was referred by the Revenue Board to an Expert Committee, which made recommendations, after scrutinizing the answers, to give bonus marks in respect of some questions for which wrong answers were given in the key and in respect of some questions, which were out of the syllabus prescribed for the examination. The petitioners challenged the award of bonus marks and the revised answer key, which resulted in change of the answers.

6. Learned counsel appearing for the State-respondents submitted before learned Single Judge, that the Revenue Board had referred the matter to an Expert Committee, and on receiving its report, the result was revised with the help of the final answer key prepared in pursuance to the report. If there was any further defects or inaccuracies, the petitioners should have approached the Revenue Board, to consider the objections submitted by the petitioners with open mind and to do the needful, as warranted by law.

7. Learned Single Judge disposed of the writ petitions with directions to the Revenue Board, to refer the objections raised by the petitioners in two question papers to an Expert Committee consisting of at least two members, preferably those having expertise in the field of revenue laws, and who may have served as members of Revenue Board in the past. Further the directions were given that on filing of the objections, an Expert Committee will be nominated within seven days, and it will submit its report within fifteen days. The Board may take final view on receipt of such report within next seven days.

8. A prayer was made by the petitioners before learned Single Judge that since the respondents have gone ahead with the process of selection and sent the selected candidates for training, the Court may restrain the selected candidates to complete the training, and to give appointments until the results are revised. Learned Single Judge observed that an interim order was passed by a coordinate Bench of the High Court at Principal Seat at Jodhpur, in S.B. Civil Writ Petition No. 6098/2013- Hinglaj Dan Charan and Others v. State of Rajasthan and Others, on 12.11.2013, by which the respondents were permitted to go ahead

with the appointments, subject to the final outcome of the writ petition. At Jaipur Bench of the High Court, similar orders were passed in the present matters on 30.05.2013. Learned Single Judge observed in the impugned order that the training of the selected candidates will not confer them any right, to claim appointment or promotion, if eventually their result is revised, or the Board decides otherwise.

9. The selected candidates have filed these Special Appeals on the ground that the Revenue Board had referred the matter to an Expert Committee, after receiving objections in response to the provisional key, and had also revised the results. The answer key was published on 25.04.2013, to which 4397 objections were filed to question paper No. 1 and 3417 objections to question paper No. 2, by 400 candidates in respect of inaccuracies in the answers to a large number of questions in both the question papers. The Chairman of the Revenue Board, Rajasthan, Ajmer had constituted an Expert Committee consisting of Shri B.L. Nawal and Shri Pramil Kumar Mathur, Members of the Board of Revenue, who had considered all the objections, and after taking into consideration the syllabus, which was published along with the advertisement dated 03.10.2011 and the answers in the key, it was found that the options in the key answers in question paper No. 1, to question Nos. 6 and 12 were incorrect, and for question No. 26, none of the options were correct, and thus, all the candidates should be awarded bonus marks for question Nos. 6, 12 and 26. The answers for question Nos. 24, 31, 36, 37, 38, 39, 40, 41 and 42 in the first question paper, were found to be beyond the prescribed syllabus/curriculum, which was advertised, and thus, the Committee recommended to award bonus marks to all the candidates for these questions. For the remaining questions, the Committee did not accept the objections and recommended that the answer key did not require any change.

10. In question paper No. 2, the Committee considered 3417 objections filed by the 400 candidates, and recommended the key answer to be amended for question Nos. 13, 15, 21, 23. For question Nos. 2, 3, 4, 5, 26, 39, 41, 47, 48, 49 and 50, the Committee found that these questions were out of curriculum, and thus, recommended for award of bonus marks for these questions to all the candidates. For the remaining questions, the Committee did not find the objections, to be acceptable, and recommended that for the remaining questions, answer key be maintained.

11. On receiving the report submitted by the Experts, who were the experienced members of the Revenue Board, Ajmer, the result was revised, and accordingly the selected candidates were sent for training.

12. It is submitted for the selected candidates-appellants before us, and learned Additional Advocate General appearing for the State of Rajasthan and Revenue Board, that no prayer was made by the unsuccessful candidates to challenge the report submitted by the Experts. No material was placed for re-examination of the report of the Expert Committee, and that since no arbitrariness, malafides, of lack of confidence was alleged against the Experts, and on the acceptance of the

report of the Expert Committee by the Revenue Board, the Court should not have interfered in the matter. It is also submitted that the Court cannot go into the academic matters, which should be left for assessment of experts. They have relied on the judgment of the Apex Court in Dr. Basavaiah Vs. Dr. H.L. Ramesh and Others, (2010) 127 FLR 888 : (2010) 7 JT 558 : (2010) 7 SCALE 529 : (2010) 8 SCC 372 : (2010) 9 SCR 227 : (2011) 1 SLJ 170 : (2010) 5 SLR 105 : (2010) AIRSCW 5907 : (2010) 6 Supreme 18 , in which it was held that in the academic matters, the Courts have a very limited role particularly when no mala fides have been alleged against the experts constituting the Selection Committee. It would be normally prudent, wholesome and safe for the Courts to leave the decisions to the academicians and experts. As a matter of principle, the Courts should never make an endeavour to sit in appeal over the decisions of the experts. The Courts must realise and appreciate its constraints and limitations in such matters.

13. The appellants have also relied on the judgment of a Division Bench of this Court in Umesh Kumar Sharma and Ors. v. Sudarshan Gaur and Ors., 2014 WLC(Raj.) 709, dated 11.04.2014, in which the judgment of the Apex Court in Basavaiah (Dr.) v. Dr. H.L. Ramesh And Others

14. The respondents have defended the judgment of learned Single Judge and have argued at length, to point out the defects in the key answers. It is submitted that the departmental examination was last conducted 15 years ago in 1995. The respondents, serving for a long period of time, got an opportunity to participate in the departmental examination, in which a number of errors were made in the key answers, taking away their chance of selection and promotion. A system of negative marking was adopted. The answers were not randomized in four series, and that only answers were changed in all the four series, marked as ''A'', ''B'', C'' and ''D''. There was absolutely no logic in adopting change of answers. The options could not have been changed without randomizing the answers. It is submitted that large number of questions were out of the syllabus prescribed for the examination, and that most of the questions were picked up from a guide book, namely ''Saraswati Guide'', which was freely available in the market. It is submitted by the respondents that the unequals were treated as equals, relying upon the erroneous answers. They have referred to a large number of questions, for which wrong answers were provided, with the help of the revenue laws of the State of Rajasthan. They also made an attempt to challenge the report of the Expert Committee on the ground that absolutely no reasons have been given by the Expert Committee, much less logical reasons, and as such, learned Single Judge rightly ignored the report of the Expert Committee.

15. Learned counsel for the respondents have relied on the judgment the Apex Court in Guru Nanak Dev University v. Saumil Garg And Others, (2005) 13 SCC 749, in which reference of all key answers by the High Court, to be examined by any independent agency and the answers given by the students, to be

reevaluated, was approved, with observations in paragraph 11, that correct evaluation of answers is paramount interest of the student community. Merit should not be a casualty. The Supreme Court observed that the interests of the students would be adequately safeguarded, if directions were issued to the University to revaluate the answers of the eight questions with reference to the key answers provided by the CBSE and the University of Delhi, which are same and not with reference to the key answers provided by the appellant University.

16. In Vikas Pratap Singh and Others Vs. State of Chhattisgarh and Others, AIR 2013 SC 3414 : (2013) 138 FLR 567 : (2013) 9 JT 562 : (2013) LabIC 3779 : (2013) 8 SCALE 713 : (2013) 14 SCC 494 : (2013) 4 SCT 766 : (2013) 3 SLJ 155 : (2013) AIRSCW 4826 , it was held by the Supreme Court that the Board''s propriety in taking the decision of re-evaluation of answer scripts, could not be faulted. The Board is an independent body entrusted with the duty of proper conduct of competitive examinations to reach accurate results in fair and proper manner with the help of experts, and is empowered to decide upon re-evaluation of answer sheets in the absence of any specific provision in that regard, if any irregularity at any stage of evaluation process is found. The Board had identified the irregularities which had crept in the evaluation procedure and corrected the same by employing the method of re-evaluation in respect of the questions, the answers to which were incorrect and by deleting the incorrect questions and allotment of their marks on pro rata basis, the decision cannot be characterized as arbitrary. Undue prejudice would have been caused had there been re-evaluation of the subjective answers, which was not the case before the Court.

17. Learned counsel appearing for the respondents have also relied on the judgments of the Supreme Court in Manish Ujwal and Others Vs. Maharishi Dayanand Saraswati University and Others, (2005) 8 JT 382 : (2005) 13 SCC 744 , and Rajesh Kumar and Others etc. Vs. State of Bihar and Others etc., AIR 2013 SC 2652 : (2013) 137 FLR 507 : (2013) 4 JT 1 : (2013) LabIC 3246 : (2013) 3 SCALE 393 : (2013) 4 SCC 690 : (2013) 2 SCC(L&S) 359 : (2013) 3 SCT 449 : (2013) AIRSCW 4309 , in support of their submission that the judgment of learned Single Judge directing the Revenue Board to consider the objections, and to reevaluate the key answer, is correct and does not require any interference.

18. We have considered the submissions, and find that learned Single Judge failed to consider that immediately after the key answers were uploaded on the website of the Revenue Board, as many as 400 candidates had filed their objections raising 4397 objections on the key answers in question paper No. 1 and 3417 objections on key answers in question paper No. 2. The Chairman of the Revenue Board, Ajmer had, without wasting any time, appointed an Expert Committee consisting of two members of the Revenue Board, who had long experience in administering the revenue laws in the State of Rajasthan. The Experts considered the objections and submitted their report, in which they had considered each of the objections and had found only two incorrect answers for

question Nos. 6 and 12 in question paper No. 1, and four in question paper No. 2. They had also found that the question No. 26 in the first paper, did not have any correct answers in the key, and recommended to award bonus marks, to be given in respect of such questions. The Experts also examined the objections to other questions and had found that some of the questions were from subjects which were out of syllabus in question paper Nos. 1 and 2. They recommended award of bonus marks on such questions, namely question Nos. 24, 31, 36, 37, 38, 39, 40, 41 and 32 in question paper No. 1, to all the candidates, and similarly, for question Nos. 2, 3, 4, 5, 26, 39, 41, 47, 48, 49 and 50 in question paper No. 2. For the remaining questions, the Experts did not find any substance in the objections and rejected them with recommendations not to make any changes in the answer key for such questions. The Experts'' report was not challenged by the petitioners in the writ petitions, nor they have alleged any malafides or motive against them.

19. Learned Single Judge had, without examining the Experts'' report, which was not challenged, issued directions to refer the matter, all over again, to an Expert Committee, consisting of at least two members, preferably those having expertise in the field of revenue laws, who may have served as its member in the past, within seven days of filing objections, and the Expert Committee to submit their report within

20. By an interim order dated 06.02.2014, this Court directed the status quo on the process, to be maintained as on that date, if initiated in terms of the impugned judgment. The interim order was extended from time to time, and is still operative. The Revenue Board has, in view of the interim order, stayed the exercise of re-referring the matter to the Experts.

21. We find that the Revenue Board had taken prompt steps to refer the objections raised by 400 candidates, to the key answers in both the papers to an Expert Committee. All the objections were examined by the Expert Committee, consisting of two members of the Revenue Board, who had long experience in administering the revenue laws in the State. They had categorized the questions in respect of wrong key answers including those questions, which had no correct answers in the key; and of those which were taken out of the syllabus prescribed for the examination, and had made recommendations to correct the key answers. They recommended award of bonus marks to all the candidates in respect of those questions of which the answers were incorrect or were taken out of the subjects and topics prescribed in the syllabus. A conscious effort was made to consider all the objections. The detailed report of the Expert Committee was accepted by the Chairman of the Revenue Board, Ajmer, on which revised results were prepared.

22. In the absence of any challenge to the report of the Expert Committee, and the allegations of arbitrariness or malafides against the Experts, learned Single Judge committed a patent error in directing the objections to be referred, all over again, to a Committee of Experts for reconsideration.

23. The selected candidates have been sent for training. They are entitled to be appointed, after they complete their training

24. In view of the above discussion, all the Special Appeals are allowed and the judgment of learned Single Judge dated 15.01.2014, is set aside.

25. A copy of the judgment be placed in all the connected files.

