

(2014) 08 DEL CK 0095

In the Delhi High Court

Case No : W.P.(C) 5219/2014, C.M. No.10377/2014 and 10378/2014

Seema Singhal

APPELLANT

Vs

Delhi Subordinate Service Selection Board

RESPONDENT

Date of Decision : 19-08-2014

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 19, 21, 21(1)
Constitution of India, 1950 — Article 226

Citation : (2014) 08 DEL CK 0095

Hon'ble Judges : Vipin Sanghi, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Aditya Agarwal and Divya Aggarwal, Advocate for the Appellant;
Zubeda Begum, Standing Counsel, GNCTD, Sana Ansari, Puja Kalra, G.D. Mishra,
Advocates and Kumar Rajesh Singh, Standing Counsel, Advocate for the
Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.

C.M. Nos. 10377/2014 (for exemption) and 10378/2014 (for exemption)

Allowed, subject to all just exceptions. W.P.(C) 5219/2014

1. In these writ proceedings under Article 226 of the Constitution of India, orders of the Central Administrative Tribunal (CAT) in T.A. No. 79/2013 dated 20.5.2014, and in R.A. No. 124/2014 dated 16.7.2014, are challenged on the ground that they are contrary to the law laid down in Kanpur University and Others Vs. Samir Gupta and Others, .

2. The facts are that the writ petitioner was a candidate appearing in the Delhi Subordinate Services Selection Board ("DSSSB") examination for the post of primary teachers, held on 15.06.2008. The result was published on 27.9.2008. The petitioner found that she had secured only 119 out of 200 marks, whereas the cut-off was 120/200. The petitioner submits that the evaluator of her

examination had wrongly marked as incorrect, her answer for question No. 13, in her part II Hindi paper. It is argued that the question was to provide a synonym for "kadali"; the petitioner's response was "kela". She avers that both words mean "banana" in reputed Hindi-English dictionaries. However, the evaluator did not award her any marks for this question, deeming the response to be incorrect. The petitioner argues, placing reliance on Kanpur University (supra) that, had she been awarded 1 mark for this question, she would have reached the cut-off mark of 120.

3. The respondent argued, relying on H.P. Public Service Commission Vs. Mukesh Thakur and Another, , that there existed no rules for re-evaluation of answer sheets; only re-totalling of the marks awarded i.e. verification was permitted. Since the questions were of a subjective type, there was no uniform yardstick to assess the quality of answers attempted, which the candidate could challenge as being incorrect. Any attempt to apply the decision in these facts, or even a comparison to Kanpur University (supra), would not be apposite, as there existed an objective yardstick in that case i.e. the "answer key", which could potentially be challenged as being incorrect.

4. The CAT held, without going into the question of the correctness of the petitioner's response, that it was nobody's case that the Rules provided for re-evaluation of answer sheets, owing to which it refused to direct re-evaluation of answer sheets, in accordance with the law in Mahesh Thakur (supra). It held that Kanpur University (supra) did not apply in this case, there being no "answer key", since the test in question was not comprised of objective/multiple choice questions. Thus, CAT could not possibly sit in review over the correctness of the answer key supplied for evaluation. In review proceedings, the CAT observed that review jurisdiction could not be invoked interchangeably with the appellate jurisdiction. Since the applicant petitioner had merely sought to re-argue the same case in review proceedings, as though they were appellate proceedings, the CAT affirmed its order in the transfer application.

5. Learned counsel for the petitioner argued that the CAT fell into error in not considering the fact that, after Central Board of Secondary Education and Another Vs. Aditya Bandopadhyay and Others, , the answer sheet could be obtained by the petitioner by recourse to the Right to Information Act. For this right of inspection of answer sheets to be meaningful, a right of review of the evaluation must also concomitantly be recognised. The information and material unambiguously pointed to the petitioner having furnished the correct answer. Therefore, her claim for re-valuation could not have been denied only on account of absence of rules permitting it. It was highlighted that since a right of inspection of answer sheets is permitted, not only the process of decision making, but also the correctness of the decision i.e. of award of marks could be gone into by the Court, when it is so flawed as to be called perverse and unreasonable.

6. This Court has considered the submissions. At the outset, this Court finds that

the petition must fail on account of delay and laches. The examination was conducted on 15.6.2008 and the results were published on 27.9.2008. However, this candidate chose to advance a challenge only on 28.1.2010, about 16 months later, and that too, before this Court in writ proceedings (in W.P. (C) no. 657/2010), and not before the Central Administrative Tribunal as required by the Administrative Tribunals Act, 1985. The matter was transferred by this Court to the Tribunal by the order of 05.09.2013, which records as follows:

3. Admittedly, MCD is covered in the schedule of institutions, disputes of which have to be decided by the Central Administrative Tribunal (CAT) in view of Sections 14 and 19 of the Administrative Tribunals Act, 1985.

4. Therefore, this writ petition is transferred for decision to the CAT, Principal Bench, New Delhi."

7. There is no explanation on record, or in W.P. (C) no. 657/2010, for the 16 month delay in moving the Court. Since the CAT ought to rightly have been approached, the limitation period stipulated in Section 21 of the Administrative Tribunals Act, 1985 is instructive in this regard. Section 21(1) requires that proceedings should be moved before the CAT, within one year of a final order of the Government, or authority, or officer, to whom a representation has been made by the aggrieved employee. This Court notes that no representation to the DSSSB has been placed on record, which could possibly justify the lapse of 16 months from the date of publication of the results of the examination, before the filing of the writ petition. There is nothing on record to indicate that the effort to obtain the answer sheets through the RTI was so time-consuming as to merit a 16 month delay. Even the RTI applications are not filed on record. In any event, any public authority in receipt of an RTI application must supply the information within 30 days of the application. This makes it highly unlikely that the RTI efforts itself caused the delay. On this count alone, this Court finds that this writ petition must fail.

8. Moreover, this Court notes that the petitioner argues, invoking Kanpur University (*supra*), that the answer provided by her in the exam is correct, and hence must be awarded marks. In effect, the petitioner seeks to have this Court direct a re-evaluation of her answer sheet. This Court finds that it is bound by the position of law laid down in Mukesh Thakur (*supra*), and cannot direct re-evaluation of answer sheets in absence of rules/regulations permitting the same.

9. The position of law in this regard began with Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, , in which the Court held that a court cannot direct re-evaluation (by striking down rules prohibiting it) on the ground that every student has the right to receive marks fairly and in a manner commensurate to his or her performance. The Court held that it could not create a right of inspection, disclosure, and re-evaluation of answer sheets, in light of the express rule that forbade re-evaluation while only permitting verification of

answer sheets (whether all questions have been awarded marks and the marks have been totalled correctly, etc.). This position was affirmed in *Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission and Others*, in which the Court held that in absence of a rule permitting re-evaluation, the Court could not possibly direct it, since there existed safeguards to ensure that answer books are not tampered with, and that a uniform method is used for marking all the answer books of various candidates. Pertinently, it was observed that if Courts started directing re-evaluation, then candidates would start approaching courts to "take a chance" and seek re-evaluation through writ proceedings; Courts would then direct individual answer books back to the evaluation committee for a second opinion, which would ultimately add to delays in declaration of final results. Should some candidates secure lower marks on re-evaluation, there would be no rules clearly stating whether the marks after re-evaluation would be binding, thus leading to an impractical situation in an area where the rules are nebulous at best, and non-existent at worst. These are the reasons for which re-evaluation in particular is not permitted by Courts, where the rules do not admit of such a mechanism. These cases make it clear that the overriding interest sought to be protected is preventing random claims for re-evaluation by candidates who are willing to venture a chance that their answers might receive higher marks than initially awarded. If this were to be permitted, there would be no method to ensure that all the other candidates who were denied marks in similar circumstances, would equally be beneficiaries of higher marks. This is because there exist no objective criteria by which re-evaluation can possibly be directed, as the responses would be subjectively evaluated. These cases were similar to the case at hand, in that there was no answer key to indicate a single, objective, correct answer, since the questions were not Multiple Choice Questions ("MCQ").

10. In this conspectus, the decision in *Kanpur University* (supra) would be inapplicable. In that case, and others where the testing was by MCQs, the question of re-evaluation does not even arise for consideration, since a possible finding by a Court that the key answers are indeed incorrect, or that more than one key answer could be correct, does not occasion a "re-evaluation". This follows from the fact that MCQs are premised on the assumption that there is only one, objective, correct answer to every question. As recognised in *Kanpur University* (supra):

"18. in a system of "Multiple Choice Objective- type test", care must be taken to see that questions having an ambiguous import are not set in the papers. That kind of system of examination involves merely the tick-marking of the correct answer. It leaves no scope for reasoning or argument. The answer is "yes" or "no". That is why the questions have to be clear and unequivocal."

11. In MCQ tests, akin to that in *Kanpur University* (supra), the very finding that a key answer is not the objective, single, correct answer of the four options provided, and that another answer is "correct" according to those well-versed in

the subject, itself would merit the awarding of additional marks to candidates who had chosen the latter answer. There arises no need to "evaluate" or examine a response of a candidate for a second time, since all candidates who have answered in accordance with the answer key that the experts in the field affirm, are automatically entitled to the award of additional marks. On the other hand, the cases laying down the rule against directing re-evaluation, are in the context of examinations which require candidates to write out answers in long-form, and not select one of four choices as the correct answer. Each candidate would style his or her answer's content subjectively, and each response would be evaluated by standards subjective to each examiner. Therefore, there is no possible method by which an objective standard can be determined to judicially review candidates' answers as being "correct" or incorrect, and then direct a consequent re-evaluation.

12. For the above reasons, the writ petition is dismissed. No order as to costs.