

(2019) 05 RAJ CK 0228

In the Rajasthan High Court

Case No : Civil Writ Petition No. 18570 Of 2018, 6026, 6167, 6172, 6174, 6183, 6483, 6523, 6559, 6991 Of 2019

Sonam Choudhary And Ors

APPELLANT

Vs

State Of Rajasthan Ad Ors

RESPONDENT

Date of Decision : 29-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 05 RAJ CK 0228

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Manoj Bhandari, Kuldeep Mathur, S.L. Kumawat, J.S. Bhaleria, Hemant Bhati, Tarun Joshi, Khet Singh

Final Decision : Partly Allowed

Judgement

These writ petitions have been filed by the petitioners aggrieved against the action of the respondents in reiterating the final answer as correct after directions by this Court in Rameshvri Kumari v. State of Raj. & Ors.: SBCW No.3083/2018, decided on 05.05.2018 to get the same re-examined by experts, seeking declaration that the answer/s suggested by them is/are correct and for consequential reliefs.

At the outset, it may be noticed that the petitioners in SBCW Nos. 18570/2018, 6026/2019, 6174/2019, 6183/2019, 6523/2019, 6559/2019 and 6991/2019 have challenged the validity of the determination made qua the question No.37 of paper pertaining to subject - General Knowledge ('G.K.') and the petitioners in SBCW Nos. 6167/2019, 6172/2019 and 6483/2019 have also challenged besides the above, the validity of the determination made qua the question Nos. 43 and 109 of paper pertaining to subject - Sanskrit.

The Rajasthan Public Service Commission ('RPSC') issued an advertisement dated 13.07.2016 for recruitment to the post of Senior Teachers / Teacher Grade

- II for various subjects. Competitive exam was held in two parts. The first paper was of G.K. having 100 questions and having maximum marks upto 200, there was negative marking upto 1/3rd of each wrong answer given by the candidates followed by subject paper for which candidates had applied.

After conducting the written test, the respondent-RPSC issued answer key for paper of G.K. on 21.08.2017 and for paper of Sanskrit on 30.08.2017, wherein model answers were published objections, if any, were called from the candidates, who had appeared in the examination. Objections were submitted by several candidates questioning the validity of questions/answers/ suggested model answers. The respondents after scrutinizing/ dealing with the objections, issued the revised answer key dated 03.02.2018 and 08.02.2018 for paper of G.K. and on 14.02.2018 for the paper of Sanskrit alongwith the cut-off for the purpose of recruitment.

Feeling aggrieved by the revised answer key, certain petitioners approached this Court. The various writ petitions filed were decided by a common judgment in the case of Rameshvri Kumari (supra), wherein the following directions were given qua various questions, which were subject-matter of dispute before the Court:-

"65. In light of the aforesaid observations, the present writ petitions are disposed of with the direction to the respondent-Rajasthan Public Service Commission to constitute an expert committee afresh, comprising of three or more members, other than the ones, who have remained members in the earlier expert committee pertaining to the recruitment in question. The said Committee shall re-examine the correct answers to the questions, pertaining whereto, in the foregoing paragraph, this Court has observed, "Therefore, the correct answer to this question needs to be re-examined by the experts". Such fresh expert committee shall be constituted by the respondent-Commission within a period of seven days from today. The expert committee to be constituted by the respondent-Commission, in pursuance of this judgment, shall submit its report, within a period of fourteen days from the date of its constitution by the respondent-Commission, regarding correctness of the questions/answers, which have been found to be 'demonstrably wrong' by this Court, as hereinabove, in this judgment. To reiterate, this Court, by this judgment, has not granted any relief to those petitioners, who have directly approached this Court under Article 226 of the Constitution of India, without even raising any objection with regard to the earlier answer key, which they cannot do now, at this belated stage, as already observed hereinabove. However, it is made clear that the next phase of the recruitment in question shall be conducted, only after making compliance of this judgment. It is further made clear that after this judgment, no further objections shall be entertained by this Court, except in rarest of rare cases."

Pursuant to the said directions, the respondent-RPSC undertook the exercise of re-examination of the questions/suggested answers; whereafter, in supersession of the earlier result, fresh result alongwith merit list and cut-off was issued by

the respondents.

It may also be noticed at this stage that qua the question No.37 of subject-G.K. and question Nos. 43 and 109 of subject-Sanskrit, the respondent-RPSC reiterated the final answer key i.e. despite the re-examination directed by this Court, the final answer key was reiterated.

It may also be noticed here that though in the case of Rameshvri Kumari (supra), the coordinate Bench of this Court had confined its determination/relief only qua the candidates, who had raised objections pertaining to particular questions, however, respondent-RPSC based on the expert opinion and its decision after revising the final answer key, applied the same qua all the candidates irrespective of fact whether they had raised any objection against the model answer key or not.

It is submitted by learned counsel for the petitioners that despite this Court in the case of Rameshvri Kumari (supra) coming to a specific conclusion regarding the answer being demonstrably erroneous qua question No.37 for subject-G.K., option (4) also seemed correct qua question No.43 for subject-Sanskrit and option (1) and (2) both being correct for question No.109 for subject-Sanskrit and directed re-examination, the action of the respondent-RPSC in reiterating the answers is not justified.

Submissions were made with the aid of material placed on record that besides the fact that once a direction was given by the Court after determination, the respondent-RPSC was bound by the same, even as per the material produced, the determination is factually incorrect and, therefore, the respondent-RPSC be directed to revise the answer key by incorporating the correct answers/deleting the question and after revising the result, do the needful.

Learned counsel for the respondent-RPSC vehemently opposed the submissions made by learned counsel for the petitioners, it was submitted that the directions of the Court in Rameshvri Kumari (supra) were specific requiring the respondents to re-examine the correct answer by the experts and, therefore, it was open for the experts to come to the same conclusion after re-examination and as the experts after re-examination came to the same conclusion, it is not open for the petitioners to question the validity only on the ground that the same answer could not be reiterated.

Further submissions were made that none of the petitioners except petitioner in SBCW No.18570/2018 qua question No.37 in subject-G.K. and the petitioners in SBCW No.6483/2019 (except petitioner Nos.8, 11, 12 and 13) qua question No.43 in subject-Sanskrit, raised any objection to the model answer key and, therefore, in view of the directions given in para-47 in the case of Rameshvri Kumari (supra), the petitions at the instance of other petitioners qua the question/s for which no objection was raised is not maintainable.

Further submissions were made with reference to the opinions of the experts

that the same does not call for any interference by this Court in view of the principles laid down by Hon'ble Supreme Court in various judgments and reiterated in UPPSC & Anr. v. Rahul Singh : (2018) 7 SCC 254.

An alternative submission was also made that if this Court comes to the conclusion that any variation in the final answer key is required to be made, the same be confined to the petitioners and that the rest of the result, which has already become final and appoints having been granted based on the said revised result, be not affected. For the said purpose, reliance was placed on judgment in Bhunda Ram v. State of Raj.: DBSAW No.922/2018, decided on 12.03.2019, which appeal arose out of judgment in the case of Rameshvri Kumari (supra).

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

At the outset, the guiding principles for similar nature matters as laid down in the case of Rahul Singh (supra), may be noticed as under:-

"8. What is the extent and power of the Court to interfere in matters of academic nature has been the subject matter of a number of cases. We shall deal with the two main cases cited before us.

9. In Kanpur University v. Samir Gupta, this Court was dealing with a case relating to the Combined Pre Medical Test. Admittedly, the examination setter himself had provided the key answers and there were no committees to moderate or verify the correctness of the key answers provided by the examiner. This Court upheld the view of the Allahabad High Court that the students had proved that 3 of the key answers were wrong. Following observations of the Court are pertinent:-

16.....We agree that the key answer should be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by an inferential process of reasoning or by a process of rationalization. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well-versed in the particular subject would regard as correct.

The Court gave further directions but we are concerned mainly with one that the State Government should devise a system for moderating the key answers furnished by the paper setters.

10. In Ran Vijay Singh and Others vs. State of Uttar Pradesh and Others, this Court after referring to a catena of judicial pronouncements summarized the legal position in the following terms:-

30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are:

30.1. If a statute, Rule or Regulation governing an examination permits the re-

evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it;

30.2. If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any inferential process of reasoning or by a process of rationalisation and only in rare or exceptional cases that a material error has been committed;

30.3. The court should not at all re-evaluate or scrutinise the answer sheets of a candidate it has no expertise in the matter and academic matters are best left to academics;

30.4. The court should presume the correctness of the key answers and proceed on that assumption; and

30.5. In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.

11. We may also refer to the following observations in Paras 31 and 32 which show why the Constitutional Courts must exercise restraint in such matters:

31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse exclude the suspect or offending question.

32. It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates.

Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a classic example of the consequence of such interference where there is no finality to the result of the

examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination whether they have passed or not; whether their result will be approved or disapproved by the court; whether they will get admission in a college or university or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion being worse confounded. The overall and larger impact of all this is that public interest suffers.

12. The law is well settled that the onus is on the candidate to not only demonstrate that the key answer is incorrect but also that it is a glaring mistake which is totally apparent and no inferential process or reasoning is required to show that the key answer is wrong. The Constitutional Courts must exercise great restraint in such matters and should be reluctant to entertain a plea challenging the correctness of the key answers. In Kanpur University case (*supra*), the Court recommended a system of:

(1) moderation;

(2) avoiding ambiguity in the questions;

(3) prompt decisions be taken to exclude suspected questions and no marks be assigned to such questions."

So far as the issue raised by learned counsel for the respondent-RPSC regarding the right of the candidates to question the validity of the final answer key, once they have not raised any objection to the model answer key despite grant of opportunity by the respondent-RPSC is concerned, the said aspect has to be examined in the context and no strait-jacket principle can be laid down. In case a particular option is indicated in the model answer key, which despite objections raised by other candidates, the same option is reiterated in the final answer key and thereafter if the candidates, who had not raised any objection to the model answer key seek to raise objections, they may be estopped from raising the issue having failed to avail the opportunity provided. However, in case, the answer suggested in the model answer is changed in the final answer key and the candidates, who did not raised any objection to the model answer key have any objection to the revised answer/option in the final answer key, they can't be estopped from changing the final answer key on the ground that they did not raise objection qua the model answer key, inasmuch as, they had no occasion earlier to raise such objection.

In few cases, the petitioners have made submissions that they did not raise objections as they fall in the cut-off and on account of certain subsequent event as on account of the revised result they have been ousted from the select list now they can raise objections also apparently has no substance, inasmuch as, the objection, if any, to the model answer, which has not been altered in the final answer key, is required to be raised by the candidate, who feels aggrieved by the model answer key as at the said stage, the said candidate does not even know

as to based on the model answer key, whether he would be within the cut-off or not and, therefore, based on the above principles, the effect of the candidates not questioning the validity of the model answer key has to be examined.

In the present case qua the question No.37 of paper relating to G.K., the model answer suggested was option (3), which in the final answer key has been changed to option (1) and therefore even if, the petitioners herein had not raised any objection qua the model answer key, they can't be estopped from questioning the validity of the final answer key and/or reiteration thereof by the respondents after directions in the case of Rameshvri Kumari (supra), however, the situation is different in case of question Nos. 43 and 109 for subject-Sanskrit, wherein option suggested in model answer key has been reiterated in the final answer key and after direction to re-examine was given in the case of Rameshvri Kumari (supra) and, therefore, those petitioners, who had not raised any objections qua the model answer key/option suggested in the model answer key, cannot be now heard to question the validity of the determination made on re-examination by this Court.

Therefore, qua question No.37 in subject-G.K. regarding which the petitioners in all the writ petitions have raised objections, the same requires determination by this Court and as regarding question No.109 in subject-Sanskrit none of the petitioners in the writ petitions i.e. SBCW No.6167/2019, 6172/2019 and 6483/2019 had raised any objection to the model answer key, they can't be heard with regard to reiteration made by the respondent-RPSC. All the petitioners in SBCW No. 6483/2019 except petitioner Nos. 8, 11, 12 and 13 had raised objections qua question No.43 in subject-Sanskrit at the stage of publication of model answer key, they alone are not estopped from questioning the determination made.

Coming to the three questions as re-determined by the respondent-RPSC after directions in the case of Rameshvri Kumari (supra), the questionwise determination is as under:-

Question No.37 in subject-G.K.

In case of Rameshvri Kumari (supra), the coordinate Bench, inter alia, dealt with the issue in the following manner:-

"Q.37 Which of the following text on music were written by Rana Kumbha

(A) Sangeetraj (B) Sangeet Mimosa

(C) Sudhprabhanth (D) Kala Nidhi

Options:

(1) A,B (2) A, C, D

(3) A, B, C (4) A, B, C, D

Correct answer of RSPC (1) i.e. A, B

Analysis made in regard to the question and answer, with the assistance of learned counsel for both sides, and the observations made by this Court:

After a careful examination, this Court finds that the answer (1) i.e. A, B, of the RPSC, is demonstrably erroneous, as the reason for excluding (C) Sudhprabhanth is that the Granth 'Sudhprabhanth' has been misspelt, as the correct name of Granth is "Sudhprabandh", which renders the answer wrong.

[Therefore, the correct answer to this question needs to be re-examined by the experts.]"

A perusal of the above determination would reveal that the coordinate Bench came to the conclusion that option (1) was demonstrably erroneous as the reason for excluding option (3) that the Granth 'Sudhprabhanth' was miss-spelt renders the answer wrong and the Court directed that the correct answer to the question requires re-examination by the experts.

Under the directions of the Court, the respondent-RPSC has produced the expert committee report for perusal of the Court. A bare look at the report indicates that despite the finding of the Court that the option (1) was 'demonstrably erroneous' and the reasoning given had rendered the 'answer wrong', the expert committee simply opined as under:-

Question No. (Series A)

Answer

Remarks/Reference (Use proper arguments or references in support of your answers)

37

1

Commission's answer key is correct. Photo copy of prof. G.N. Sharma's book, राजस्थान का इतिहास, attached, Page No. - 235.

A perusal of the above report on re-examination by the expert committee, reveals that the opinion given is apparently in ignorance and without dealing with the finding recorded by this Court (supra). Once the coordinate Bench of this Court has found, the answer demonstrably erroneous, for reiterating the said answer, it was minimum required of the expert committee to deal with the aspect in some detail and merely observing that the Commission's answer key is correct with reference to a photocopy of extract from one more book was not sufficient to reiterate the same conclusion. Though the coordinate Bench did not record exhaustive reasons, apparently for leaving it open for the experts to re-examine the same, this much is apparent that the plea raised for excluding option (3) that the ग्रन्थ-सुधप्रबन्ध was incorrectly spelt was not accepted by the Court and, therefore, besides the fact that no reason has been indicated in the expert committee report, the fact that the learned counsel for the respondent-RPSC again

relied on the aspect of the option being miss-spelt, cannot be accepted as the earlier finding in the case of Rameshvri Kumari (supra) would operate as res-judicata qua the said aspect.

Examining independent of the issue of res-judicata, the entire plea raised is that instead of सूडप्रबन्ध, which is the correct spelling, सुधप्रबन्ध was indicated in the options and, therefore, the same was incorrect. Mere miss-spelling in the options unless such miss-spelling is shown to have created confusion, say for example, a granth with such miss-spelt option is in existence, apparently cannot be a reason enough for holding an answer/option to be incorrect merely on account of it being miss-spelt as if the said reasoning given by the respondent-RPSC, only for the purpose of contesting the present litigation is accepted, the same would create innumerable issues qua the various recruitments, wherein unintended miss-spelling and/or allegations regarding miss-spelling are raised in large numbers which are not/cannot be accepted. Unless the RPSC/experts are able to show that ग्रन्थ in the name of सुधप्रबन्ध exists and had been written by somebody else, merely because the same was miss-spelt, cannot be a reason for ignoring the said ग्रन्थ which was written by Rana Kumbha.

In view thereof, the reiteration of revised answer option (1) by the RPSC pursuant to the directions issued by this Court in the case of Rameshvri Kumari (supra), cannot be sustained and the model answer option (3), shall have to be taken as the correct answer insofar as the petitioners are concerned.

Question No.43 in subject-Sanskrit

In case of Rameshvri Kumari (supra), the coordinate Bench, inter alia, dealt with the issue in the following manner:-

"43- हन् धातोः लङ्लकार मध्यमपुरुष एकवचने रूपं स्यात्

(1) अहत्

(2) अहः ३ वगु~

(4) अहन्

Option No.4 is the correct answer.

Analysis made in regard to the question and answer, with the assistance of learned counsel for both sides, and the observations made by this Court:

After a careful examination, this Court finds that the proof rendered by the petitioners clearly show that option (3) i.e. vgu~ is the correct answer. However, option (4) i.e. vgu~ of the RPSC also seems to be correct.

[Therefore, the correct answer to this question needs to be re-examined by the experts.]"

A perusal of the above finding would reveal that the Court came to the conclusion that besides option (3) determined by the respondent-RPSC in the

final answer key, option (4) also seemed to be correct and directed re-examination by the experts.

The experts with reference to the above question opined as under:-

Question No. (Series A)

Answer

Remarks/Reference (Use proper arguments or references in support of your answers)

43

3

प्रश्न संख्या 43 का प्रमाणित उत्तर विकल्प (3) अहन् है। सन्दर्भ सरसा, प्रौढ़ रचनानुसार कौमुदी, लघुद्धिन्त कौमुदी व्या. अर्कनाथ चौधरी, अतः आयोग द्वारा प्रदत्त उत्तर कुर्जिका विकल्प (3) प्रामाणिक एवं उचित उत्तर है। सन्दर्भ रूपचन्द्रिका, सम्पादक ब्रह्मानन्द त्रिपाठी चौखम्बा सुरभारती प्रकाशन, वाराणसी पुनर्मुद्रित संस्करण 2012, पृ.संख्या 296

The said question is being examined as few petitioners in SBCW No. 6483/2019 had raised objection qua the model answer option (3), which was reiterated in the final answer key.

It is interesting to note that in the earlier round of litigation based on the submissions made by the petitioners therein including the petitioners in the present writ petitions, the coordinate Bench came to the conclusion that option (4) of the RPSC also seemed to be correct, however, the submissions now sought to be made is that option (2) (vg%) is also correct. The petitioners cannot be permitted to take vacillating stands regarding the options. Once the determination in the earlier writ petition has been made qua option (4) and the expert committee on re-examination, came to the conclusion that option (3) was correct, now to contend that even option (2) is also correct cannot be countenanced and the petitioners themselves are bound by the determination made in the earlier writ petition and, therefore, the objection sought to be raised by the petitioners based on the expert committee opinion as well as the attempt to change the plea cannot be accepted and the change therefore qua question No.43 of subject-Sanskrit is, therefore, rejected.

Question No.109 in subject-Sanskrit

In case of Rameshvri Kumari (supra), the coordinate Bench, inter alia, dealt with the issue in the following manner:-

"109. पठनकौषलाभिवृद्धौ कोयं विधिः प्राथमिकतां भजते?

(1) पदपद्धतिः

(2) वाक्यविधिः

(3) कथापद्धति:

(4) वर्णसमाम्नायविधि:

Option No.2 is correct answer.

Analysis made in regard to the question and answer, with the assistance of learned counsel for both sides, and the observations made by this Court:

After a careful examination, this Court finds that the relevant proof indicate that option (1) and option (2) both are correct answers.

[Therefore, the correct answer to this question needs to be re-examined by the experts.]"

Though as already noticed hereinbefore none of the petitioners had raised objections qua the option (2) to question No.109 of subject-Sanskrit at the stage of model answer key and, therefore, they are not entitled to raise any objection now, even if the plea raised is examined, the same would reveal that this Court came to the conclusion that option (1) and (2) both were correct and directed re-examination by the experts.

On re-examination, the experts after referring to certain standard text books, came to the following conclusion:-

"प्रश्न संख्या 109 का साधु उत्तर वाक्यविधि है जो संलग्न प्रमाणों के आधार पर सिद्ध हो जाता है छात्रों की आपत्ति निराधार है"

Once a categorical conclusion has been arrived at by the experts as noticed hereinbefore and the submissions made by learned counsel for the petitioners only at best suggest only a possible option, in view of law laid down by Hon'ble Supreme Court in the case of Rahul Singh (supra), no case is made out to interfere with the determination made on re-examination qua question No.109 of subject-Sanskrit.

In view of the above determination made, while answer to question No.37 of subject-G.K., does require interference, wherein answer option (3) as suggested in the model answer key would be taken as the correct answer, the challenge laid to the determination made on re-examination qua question No.43 and 109 of subject-Sanskrit does not call for any interference.

In the case of Bhunda Ram (supra), which as noticed, arose from the appeal against the judgment in the case of Rameshvri Kumari (supra), on noticing the contention of the respondent-RPSC that not only the result has been published, the Commission has forwarded the list of selected candidates to the State Government and even appointments made, the Division Bench directed as under:-

"Hence, with a view to give quitus to the dispute and to give finality to the selections already made, we hold that the adjudication made by us will be

confined to the appellants involved in the present appeals only. Their assessment shall be carried out in line with the adjudication made by us in the present appeals. For the sake of convenience, we are setting out the particulars of question(s) cataloging the question(s) and corresponding answer/direction which need to be rechecked:

Subject

Q. No.

Direction

Reasons set out in para

General Knowledge

8

Delete

1

General Knowledge

84

Option (2) is correct

3

Social Science Group-II Paper-II

21

Option (3) is correct

4

General Knowledge-I

98

Option (2) is correct

9

Sanskrit

104

Option (1) is correct

13

As a result, all the appeals are allowed, as indicated above.

Needless to observe that after re-appraisal of their result in the light of the

findings given by us, if the appellants march ahead of the last selected candidate, they shall be given appointment, subject of course, to their other eligibilities. The respondent Commission shall carry out the requisite exercise and declare the result of the appellants within a period of three weeks from today."

(emphasis supplied)

In view of the above fact situation and the principles laid down by the Division Bench in the case of Bhunda Ram (*supra*) in the same recruitment, the adjudication made hereinbefore by this Court, will be confined to the petitioners in the present writ petitions only. Their assessment shall be carried out in line with the adjudication made by this Court in the present writ petitions i.e. qua Question No.37 of subject-G.K., the correct answer would be option (3). On re-appraisal of the result of the petitioners in light of the above directions, if the petitioners secure more marks than the last selected candidate, they shall be accorded appointment subject to their being otherwise eligible.

The respondents shall carry out the requisite exercise and would do the needful within a period of four weeks from today.

The petitions stands allowed/partly allowed as directed above.