

(2018) 07 MP CK 0009

Madhya Pradesh High Court (Indore Bench)**Case No:** Writ Petition No.12567 Of 2018

Shailendra Singh Thakur & ors

APPELLANT

Vs

State of Madhya Pradesh & Anr

RESPONDENT

Date of Decision: July 2, 2018**Hon'ble Judges:** Vivek Rusia, J**Bench:** Single Bench**Advocate:** J.P.Kero, V.P.Khare**Final Decision:** Dismissed

Judgement

,,,,,

The petitioner in this writ petition had appeared in the State Services Preliminary Examination 2018 conducted by MPPSC. Since the petitioner could,,,,,

not secure the qualifying marks for further appearance in final examination therefore, he approached this Court by challenging the revised model" ,,,,,

answer key in which 5 questions have been deleted on the ground of incorrect answers and decision to prepare a merit list on the basis of answers,,,,,

given in 95 questions.,,,,,,

The candidate was supplied four sets of question papers in the preliminary examination in which all these five questions were at different serial,,,,,

numbers. According to the petitioner, he had attempted these questions since the MPPSC has cancelled all these 5 questions, therefore, he has not" ,,,,,

been awarded the marks.,,,,,,

The contentions of the Counsel for the petitioner is that he had been awarded the marks for these 5 questions, he would have secured the position in" ,,,,,

the select list for his further participation in the main examination. The petitioner has filed any material in the writ petition to establish that the MPPSC,,,,,

has wrongly cancelled these answers. In all the writ petitions, general grounds have been raised that the respondent has illegally, unconstitutionally and" ,,,,,

without jurisdiction cancelled the questions.,,,,,,

After notice, the respondent filed the return to the show-cause notice to justify the impugned action." ,,,,,

According to the MPPSC a notice dt. 21.2.2018 was published inviting objections from the candidates in compliance of the sub-clause (2) of Clause 5,,,,,

of the advertisement. None of the petitioners submitted any objection. In response to the aforesaid notice 3485 candidates had submitted Online,,,,,

objections and the same were placed before the seven Member Committee of Senior Subject Expert. The Committee examined all questions, model" ,,,,,

answers and objections submitted by the candidates and thereafter published the final/amended answer key on 12.3.2018. Later on, the result of" ,,,,,

preliminary examination 2018 was published on 17.4.2018.,,,,,,

The respondent has also filed the photocopies of various judgments passed by this Court as well as by the Apex Court in respect of the scope of,,,,,

judicial review and prays for dismissal of the petition.,,,,,,

I have heard Shri Jitendra Agrawal, learned Counsel for the petitioner and Shri V.P. Khare, learned Counsel for the respondent/MPPSC." ,,,,,

The petitioner who appeared in the State Services Preliminary Examination 2018 could not secure the adequate marks for further appearance in main,,,,,

examination. As per Clause 5.2 of the advertisement the MPPSC invited objections from the candidates in respect of the questions and its model,,,,,

answers.,,,,,,

Clause 5.2 is reproduced below:-,,,,,

Â¼2Â½ izkjfEHkd ijh{kk mijkar] ijh{kk esa iwNs x, iz'uksa vkSj mlds ekMy mRrjksa dh dqath rS;kj dj vk;ksx dh osolkbV www.mppsc.nic.in rFkk" ,,,,,

www.mppsc.com ij izdkf'kr dj vkWuykbu i)fr ls 07 fnol dh vof/k esa vkifRr;ka izkIr dh tk;saxhA bl vof/k ds i'pkr izkIr fdlh Hkh vH;kosnu ij dksbZ,,,,,

fopkj ,oa i=kpkj ugha fd;k tk,xkA izfdr" ,,,,,

iz'u vkifRr gsrq 100 ;i;s 'kqYd ns; gksxk rFkk izfr l= iksVZy 'kqYd,,,,,

i'Fkd ls ns; gksxkA vkifRr gsrq fn;k x;k 'kqYd rFkk iksVZy 'kqYd fdlh,,,,,

Hkh fLFkfr esa okil ugha fd;k tk,xkA" ,,,,,

izkIr vkifRr;ksa ij vk;ksx }kjk xfBr fo'ks""kK lfefr }kjk fopkj fd;k" ,,,,,

tk;sxkA lfefr }kjk vkifRr;ksa ij fopkj dj fuEuifyf[kr vuqlkj dk;Zokgh dh tk;sxhA, ,,,,,

1- ,sls iz'u ftudk ekWMy dqth esa xyr mRrj fn;k x;k gS vkSj iz'u ds oSdfYid mRrjksa esa nwljk lgh mRrj miyC/k gS rc ekWMy daqth dks" ,,,,,

la'kksf/kr fd;k tk;sxkA, ,,,,,

2- vkifRr;ksa ds vk/kkjk ij fuEuifyf[kr vuqlkj ik;s x;s iz'uksa dks iz'ui= ls foyksfir fd;k tk;sxk %&, ,,,,,

,sls iz'u ftldk fn;s x;s fodYiksa esa lgh mRrj u gksA" ,,,,,

,sls iz'u ftldk fn;s x;s fodYiksa esa ,d ls vf/kd lgh mRrj gksA" ,,,,,

iz'u ds fgUnh rFkk vaWxzsth vuqokn esa fHkUurk gks, ,,,,,

3- fo""k; fo'ks""kKksa }kjk leLr vH;kosnuksa ij fopkj djus ds i'pkr" ,,,,,

vafre mRrj dqath cukbZ tk,xh rFkk vk;ksx }kjk osclkbZV www.mppsc.nic.in rFkk www.mppsc.com ij izdkf'kr dh tk,xhA" ,,,,,

4- vijksDrkuqlkj lfefr }kjk foyksfir fd, x;s iz'uksa dks NksM+dj 'ks""k iz'uksa ds vk/kkjk ij vafre mRrj dqath ds vuqlkj vH;kfFkZ;ksa dk ewY;kadu dj" ,,,,,

izkfEHkd ijh{kk ifj.kke ?kksf""kr fd;k tk;sxkA" ,,,,,

The MPPSC received 3485 objections and all were placed before the seven Members Expert Committee. The Committee published the final model, ,,,,,

answer and decided to cancel the 5 questions. The Committee has also amended the answer key in respect of 10 questions. The questions were, ,,,,,

deleted and the details of the questions deleted and amended are reproduced below:- ,,,,,

jkT; Isok izkjafHkd ijh{kk&2018 esa foyksfir fd;s x;s, ,,,,,

iz'uksa ds mRrjksa dk fooj.k, ,,,,,

lkekU; v/;;u&izFke iz'ui=, ,,,,,

SET- SET- SET- SET- MODEL AMENDED, ,,,,,

A B C D ANSWER ANSWER KEY, ,,,,,

SET-A,SET-B,SET-C,"SET-

D","MODEL

ANSWER","AMENDED

ANSWER KEY

19,47,74,1,A,D

21,49,76,3,B,C

23,51,78,5,C,A

24,52,79,6,D,A

25,53,80,7,B,C

26,54,81,8,C,A

27,55,82,9,B,A

45,73,100,27,B,A

80,8,35,62,B,C

81,9,36,63,A,D

India too. In Chapter XI of his book The Spirit of Laws Montesquieu writes:,,,,,

“When the legislative and executive powers are united in the same person, or in the same body of Magistrates, there can be no liberty; because” ,,,,,

apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.” ,,,,,

Again, there is no liberty, if the judicial power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty” ,,,,,

of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might” ,,,,,

behave with violence and oppression. There would be an end of everything, were the same man or the same body, whether of the nobles or of the” ,,,,,

people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals.” ,,,,,

(Emphasis supplied),,,,,

We fully agree with the view expressed above. Montesquieu’s warning in the passage abovequoted is particularly apt and timely for the Indian ,,,,,

judiciary today, since very often it is rightly criticised for “overreach” and encroachment into the domain of the other two organs.” ,,,,,

28. The scope of interference in academic matters has been examined by the Supreme Court in many cases. In *Basavaiah (Dr.) v. Dr H.L. Ramesh*," ,,,,,

(2010) 8 SCC 372 : (2010) 2 SCC (L&S) 640, the Court held as under:-" ,,,,,

â€œ38. We have dealt with the aforesaid judgments to reiterate and reaffirm the legal position 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 normally be 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 academic matters.,,,,,

29. Supreme Court in another judgment reported as *University Grants Commission v. Neha Anil Bobde*, (2013) 10 SCC 519, held that in academic" ,,,,,

matters, unless there is a clear violation of statutory provisions, the regulations or the notification issued, the courts shall keep their hands off since" ,,,,,

those issues fall within the do-main of the experts the Court. The Court held as under:,,,,,

â€œ31. We are of the view that, in academic matters, unless there is a clear violation of statutory provisions, the regulations or the notification issued," ,,,,,

the courts shall keep their hands off since those issues fall within the domain of the experts. This Court in *University of Mysore v. C.D. Govinda Rao*,,,,,

AIR 1965 SC 491; *Tariq Islam v. Aligarh Muslim University* (2001) 8 SCC 546; and, *Rajbir Singh Dalal v. Chaudhary Devi Lal Uni-versity* (2008) 9" ,,,,,

SCC 284, has taken the view that the court shall not generally sit in appeal over the opinion expressed by the expert academic bodies and normally it is" ,,,,,

wise and safe for the courts to leave the decision of the academic experts who are more familiar with the problem they face, than the courts generally" ,,,,,

are. UGC as an expert body has been entrusted with the duty to take steps as it may think fit for the determination and maintenance of standards of,,,,,

teaching, examination and research in the university. For attaining the said standards, it is open to UGC to lay down any â€œqualifying criteriaâ€œ," ,,,,,

which has a rational nexus to the object to be achieved, that is, for maintenance of standards of teaching, examination and research. The candidates" ,,,,,

declared eligible for Lectureship may be considered for appointment as Assistant Professors in universities and colleges and the standard of such a,,,,,

teaching faculty has a direct nexus with the maintenance of standards of education to be imparted to the students of the universities and colleges.,,,,,

UGC has only implemented the opinion of the experts by laying down the qualifying criteria, which cannot be considered as arbitrary, illegal or",,,,,,

discriminatory or violative of Article 14 of the Constitution of India.â€",,,,,

30. Thus, we are of the opinion that the judgment of this Court in Chan-chal Modiâ€™s case (supra) does not lay down correct law.",,,,,

31. In view of the discussion above, we hold that in exercise of power of Judicial Review, the Court should not refer the matter to court appointed",,,,,

expert as the courts have a very limited role particularly when no mala fides have been alleged against the experts constituted to finalize answer key.,,,,,

It would normally be prudent, wholesome and safe for the courts to leave the decisions to the academicians and experts.",,,,,

32. In respect of the second question, this Court does not and should not act as Court of Appeal in the matter of opinion of experts in academic",,,,,

matters as the power of judicial review is concerned, not with the decision, but with the decision-making process. The Court should not under the guise",,,,,

of preventing the abuse of power be itself guilty of usurping power.,,,,,

Similar issue came up for hearing before the Apex Court in case of UPPSC and ano. vs. Rahul Singh and ano.(Civil Appea INo.5838/2018) vide,,,,,

judgment dt. 14.6.2018 the Apex Court has held that the Constitutional Court must exercise great restraint in such a matter and should be reluctant to,,,,,

entertain the plea challenging the correctness of the key answer.,,,,,

Para 12 to 14 are reproduced below:-,,,,,

â€œ12. 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.,,,,,,

13. As far as the present case is concerned even before publishing the first list of key answers the Commission had got the key answers moderated.,,,,,,

by two expert committees. Thereafter, objections were invited and a 26 member committee was constituted to verify the objections and after this",,,,,,

exercise the 9 Committee recommended that 5 questions be deleted and in 2 questions, key answers be changed. It can be presumed that these",,,,,,

committees consisted of experts in various subjects for which the examinees were tested. Judges cannot take on the role of experts in academic.,,,,,,

matters. Unless, the candidate demonstrates that the key answers are patently wrong on the face of it, the courts cannot enter into the academic field,",,,,,

weigh the pros and cons of the arguments given by both sides and then come to the conclusion as to which of the answer is better or more correct.,,,,,,

14. In the present case we find that all the 3 questions needed a long process of reasoning and the High Court itself has noticed that the stand of the.,,,,,,

Commission is also supported by certain text books. When there are conflicting views, then the court must bow down to the opinion of the experts.",,,,,

Judges are not and cannot be experts in all fields and, therefore, they must exercise great restraint and should not overstep their jurisdiction to upset",,,,,,

the opinion of the experts.â€",,,,,,

Shri J.P.Kero, learned Counsel for the petitioners have placed reliance over the judgment passed by the Apex Court in case of Richal & ano vs.",,,,,

Rajasthan Public Service Commission & ors.reported in 2018(2) SCT 773 in which the Apex Court has directed the Rajasthan Public Service.,,,,,,

Commission to revise the result of all the candidates including the appellants on the basis of report of Expert Committee.,,,,,,

In this case, by way of interim order dt. 16.1.2018 the Apex Court had already directed to constitute a Committee of expert to examine themodel",,,,,,

answer and thereafter by way of final order has directed for revision of the result on the basis of report but in the present cases, the MPPSC as per",,,,,

Clause 5.2 of the advertisement had already constituted an Committee and examined the model answers. None of the petitioners submitted any.,,,,,,

objection therefore, they are now estopped from challenging the decision of Committee.",,,,,

In view of the above, no case for interference is made out. The writ petition is, accordingly, dismissed.",,,,,