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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 27.05.2024***

+ LPA 202/2024, CM APPL. 14488/2024 –Stay, CM APPL. 21033/2024 –Impleadment, CM APPL. 28569/2024 –Impleadment, CM APPL. 28573/2024 –Impleadment, CM APPL. 30239/2024 – Addl. doc. (A), CM APPL. 30228/2024 –Dir. & CM APPL. 30273/2024 –Impleadment, CM APPL. 30611/2024 –Impleadment

SHUBHAM PAL & ORS.

..... Appellants

Through: Mr. A. Gupta, Mr. Rohit Pandey, Ms. Munisha Anand, Ms. Ashtha Srivastava, Mr. Nikhin, Mr. Prajjwal Chand and Mr. Amit Kumar Mishra, Advocates

versus

STAFF SELECTION COMMISSION & ANR. Respondents

Through: Ms. Pratima N. Lakra, CGSC with Ms. Vanya Bajaj, Advocate, Mr. Chandan Prajapati, Advocates for SSC alongwith Mr. Ashish Choudhary, SSC and Mr. Parimal Karan, Under Sec./SSC

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE SAURABH BANERJEE****SAURABH BANERJEE, J (ORAL)****FACTUAL BACKGROUND:**

1. The facts involved disclose that pursuant to a Notification for Combined Graduate Level Examination, 2023¹ issued by the Staff Selection Commission of the Department of Personnel and Training under the Ministry of Personnel, Public Grievances and Pensions on 03.04.2023, the

¹ Hereinafter referred to as “CGLE 2023”



appellants, after clearing tier-1 of the examination, appeared for tier-2 of the examination on 26.10.2023. Thereafter, the respondent no.1/ Staff Selection Commission² published the provisional answer key and instructed the candidates to ascertain their preliminary scores. Subsequent to which, the appellants carefully calculated their scores, which as per the appellants, surpassed the determined threshold.

2. On 04.12.2023, the respondent no.1 published the final result based on the revised answer key dated 30.11.2023, wherein, to utter dismay of the appellants, their names did not appear. Subsequently, the appellants submitted a formal request to the Chairman, SSC for an elucidation on the final result of tier-2 of CGLE 2023. This led to the SSC promulgating a definitive answer key on 16.12.2023.

PROCEEDINGS BEFORE THE LEARNED SINGLE JUDGE:

3. Aggrieved thereby, the appellants filed a writ petition, being W.P.(C) 16593/2023 tiled *Shubham Pal & Ors. vs Staff Selection Commission & Anr.*, before the learned Single Judge seeking the following prayers:-

“a. ISSUE an appropriate Writ, Order or Direction in the Nature of MANDAMUS or any other Writ to the Respondents thereby declaring that SSC CGL Examination-2023 is erroneous, faulty, defective & discriminatory and violative of Article 14, 19 and 21 of the Constitution of India;

b. ISSUE an appropriate Writ Order or Direction in the Nature of MANDAMUS or any other Writ to the Respondents thereby directing the Respondent No. 1 to re-evaluate/ rechecking/ re-totalling the Question ID: 264330172912, Question ID: 264330164754 and Question ID: 264330162641, Question ID: 264330164417, Question ID: 264330172352, Question ID: 264330173697, and Question ID: 264330171997 and its corresponding questions asked in SSC CGL Examination-2023 and release a fresh result dated 15.12.2023 for one Hours;

² Hereinafter referred to as “SSC”



c. The petitioner respectfully requests that this Hon'ble court, in its wisdom, may constitute an expert committee for the purpose of rechecking the answer key pertaining to the questions raised by the petitioner in the present petition.

d. Issue a Writ of Mandamus Or Any Other Appropriate Writ, Order or Direction Under Article 226 of the Constitution directing the Respondent No.1 to permit re-evaluation of answer scripts of candidates who appeared in Examination conducted on 26.10.2023.

e. Pass appropriate writ, order or direction(s) to the Respondent No.1 to re-evaluate/re-checking/retotalling the Petitioners papers.

f. Stay on ongoing joining procedure until the answer key is reevaluated or link the joining procedures final outcome to the courts final decision in this petition case.”

4. The learned Single Judge, after hearing the learned counsels for both parties and after considering the documents on record before him, vide the impugned judgement dated 16.02.2024³ dismissed the writ petition of the appellants, *albeit*, granted them relief qua one of the questions i.e. Question ID-264330171997 in their favour.

5. It is under these circumstances that the appellants have now approached this Court by preferring the present appeal for setting aside of the impugned judgment passed by the leaned Single Judge.

ARGUMENTS OF THE APPELLANTS:

6. Learned counsel for the appellants submits that the answer key released by the SSC contained erroneous answers to 2 questions as they were in contradiction with the NCERT Textbooks. She also submits that though the appellants challenged them, but the SSC instead of correcting answers to those questions made changes in answers of 5 other questions.

³ Hereinafter referred to as “*impugned judgement*”



7. Placing reliance upon *Kanpur University, through Vice Chancellor & Ors. vs Samir Gupta & Ors.*⁴, learned counsel submits that in view of what has been held by the Hon'ble Supreme Court therein, it is settled law that an answer key should be presumed to be 'right' unless it is proved that an answer key is 'wrong' and should not be interfered with until then. It is, thus, her submission that taking into account the aforesaid, the respondents should not have interfered with answers to the 5 other questions.

8. Thence, placing reliance upon *Ran Vijay Singh vs State of Uttar Pradesh*⁵, she submits that the appellants have presented a clear case of manifest errors in the evaluation process of the CGLE 2023 by providing substantive evidence from standard reference materials which is in alignment with judicial precedents to allow for revaluation of the answer sheets by an independent committee.

9. Furthermore, placing reliance upon *Salil Maheshwari vs High Court of Delhi*⁶, she submits that when an answer key lacks a single, definitive resolution among the preferred options, the Court is empowered to confer additional marks upon candidates who have opted for a divergent, yet, plausible answer.

ARGUMENTS OF THE RESPONDENTS:

10. *Per-contra*, learned CGSC for the respondents submits that once the appellants have undergone the selection process under the CGLE 2023 examination without challenging it, they have acquiesced to the instructions thereof, they are now, estopped from challenging the rules of recruitment, especially by way of the writ petition before the learned Single Judge let

⁴ 1983 (4) SCC 309

⁵ AIR 2018 SC 52



alone the present appeal, which has been filed only after they have not qualified the said examination.

11. She further submits that since there is no provision anywhere in the advertisement issued by the respondents qua the CGLE 2023, entitling the appellants to seek revisions to the answer key, they are, in any way barred from doing so, that too at a belated stage.

12. For countering the overall/ other submissions made by the learned counsel for the appellants, she, placing reliance upon the law laid down by the Hon'ble Supreme Court in *H.P. Public Service Commission vs Mukesh Thakur & Anr.*⁷; *Ran Vijay Singh & Ors. (supra)*; *Pramod Kumar Srivastava vs Chairman, Bihar Public Service Commission, Patna & Ors.*⁸, submits that the Court may permit revaluation or scrutiny only if, it is demonstrated clearly that there is an error, without any inferential process of reasoning or by a process of rationalization, and only in rare or exceptional cases.

13. We have perused the documents on record and have heard the learned counsel for the parties and gone through the case laws cited by each of them in depth.

ANALYSIS AND CONCLUSIONS:

14. According to us the short, but, prime issue for consideration before this Court in the present proceedings in a nutshell is whether this Court is competent to consider the issues relating to examinations, especially, when the appellants herein are seeking revaluation of answers to the questions in the CGLE 2023 opposite to what has been provided by the respondents and

⁶ 2014 SCC OnLine Del 4563

⁷ (2010) 6 SCC 759



as to whether such claims of the appellants are falling within the purview of Article 226 of The Constitution of India or not.

15. At the outset, this Court emphasises that in view of the settled position of law laid down repeatedly by the Hon'ble Supreme Court as well as the various High Courts, the appellants have a very small window for seeking relief/s of the kind for which they have approached this Court and that too when they are in appellate jurisdiction, when their claims, barring one of them, have already been negated by the learned Single Judge. There can be no gainsaying about the factum that generally the Courts, as a matter of course, should be extremely circumspect in interfering with matters relating to competitive examination, especially since they are very much involving issues qua paper/s, article/s, question/s, procedure/s, answer/s, mark/s obtained or like and ought not to get into the realm of either doubting and or questioning their veracity and/ or (in)correctness save and except in rare and/ or exceptional circumstances whence it is found that there is something unnerving and/ or glaring staring at the face.

16. Meaning thereby, such interference by the Courts is only possible in case/s of some rare, exceptional and/ or under extreme circumstances which shocks the conscience of the Court or where there seems to be an apparent error on the face of the record or which starkly shows non application of mind or which is against the basic settled, well-established principles of law or which is against the principles of natural justice, fair play and/ or equity or like.

⁸ (2004) 6 SCC 714



17. What follows from the aforesaid is that, generally the Courts while exercising judicial review, should refrain from interfering with the evaluation of the answer/ questions by the experts.

18. In this regard, the said view has been recently reiterated by the Hon'ble Supreme Court in SLP (C) bearing no. 1951/2022 dated 28.02.2022 titled *Mahesh Kumar vs Staff Selection Commission & Anr.*; as also in *High Court of Tripura through the Registrar General vs Tirtha Sararathi Mukherjee & Ors.*⁹; *State of Uttar Pradesh vs Karunesh Kumar & Ors.*¹⁰; *Union of India vs N. Mugugesan Etc.*¹¹ which was also followed by this Court in *Mahesh Kumar vs Staff Service Commission & Anr.*¹² and *Ashish Singh & Ors. vs Union of India Ors.*¹³ wherein it has broadly been held that the Courts should not enter into evaluation of answer keys as it is for the experts of said field to deal with these aspects.

19. Reliance for the above proposition is placed upon the dicta of the Hon'ble Supreme Court in *H.P. Public Service Commission* (supra) wherein it has been held as under:-

“20. In view of the above, it was not permissible for the High Court to examine the question papers and answer sheets itself, particularly, when the Commission had assessed the inter se merit of the candidates. If there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the examination and not for Respondent 1 only. It is a matter of chance that the High Court was examining the answer sheets relating to Law. Had it been other subjects like Physics, Chemistry and Mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court. Therefore, we are of the considered opinion that such a course was not permissible to the High Court.

⁹ (2019) 16 SCC 663

¹⁰ (2022) SCC OnLine SC 1706

¹¹ (2022) 2 SCC 25

¹² 2021:DHC:861-DB

¹³ 2023:DHC:000778



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24. *The issue of revaluation of answer book is no more res integra. This issue was considered at length by this Court in Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth [(1984) 4 SCC 27 : AIR 1984 SC 1543] , wherein this Court rejected the contention that in the absence of the provision for revaluation, a direction to this effect can be issued by the Court. The Court further held that even the policy decision incorporated in the Rules/Regulations not providing for rechecking/verification/revaluation cannot be challenged unless there are grounds to show that the policy itself is in violation of some statutory provision. The Court held as under : (SCC pp. 39-40 & 42, paras 14 & 16)*

“14. ... It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy, how the provisions of the statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act. ...

16. ... The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act.”

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26. Thus, the law on the subject emerges to the effect that in the absence of any provision under the statute or statutory rules/regulations, the Court should not generally direct revaluation”

20. Reliance is further placed upon ***Pramod Kumar Srivastava*** (supra) wherein it has been held as under:-

“7. We have heard the appellant (writ petitioner) in person and learned counsel for the respondents at considerable length. The main question which arises for consideration is whether the learned Single Judge was justified in directing re-evaluation of the answer-book of the appellant in General Science paper. 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 totalling 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. This question was examined in considerable detail in *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth* [(1984) 4 SCC 27 : AIR 1984 SC 1543]. In this case, the relevant rules provided for verification (scrutiny of marks) on an application made to that effect by a candidate. Some of the students filed writ petitions praying that they may be allowed to inspect the answer-books and the Board be directed to conduct re-evaluation of such of the answer-books as the petitioners may demand after inspection. The High Court held that the rule providing for verification of marks gave an implied power to the examinees to demand a disclosure and inspection and also to seek re-evaluation of the answer-books. The judgment of the High Court was set aside and it was held that in absence of a specific provision conferring a right upon an examinee to have his answer-books re-evaluated, no such direction can be issued. There is no dispute that under the relevant rule of the Commission there is no provision entitling a candidate to have his answer-books re-evaluated. In such a situation, the prayer made by the appellant in the writ petition was wholly untenable and the learned Single Judge had clearly erred in having the answer-book of the appellant re-evaluated.

8. Adopting such a course as was done by the learned Single Judge will give rise to practical problems. Many candidates may like to take a chance and pray for re-evaluation of their answer-books. Naturally, the Court will pass orders on different dates as and when writ petitions are filed. The Commission will have to then send the copies of individual candidates to examiners for re-evaluation which is bound to take time. The examination conducted by the Commission being a competitive examination, the declaration of final result will thus be unduly delayed and the vacancies will remain unfilled for a long time. What will happen if a candidate secures lesser marks in re-evaluation? He may come forward with a plea that the marks as originally awarded to him may be taken into consideration. The absence of clear rules on the subject may throw many problems and in the larger interest, they must be avoided.

9. Even otherwise, the manner in which the learned Single Judge had the answer-book of the appellant in General Science paper re-evaluated cannot be justified. The answer-book was not sent directly by the Court either to the Registrar of Patna University or to the Principal of Science College. A photocopy of the answer-book was handed over to the Standing Counsel for Patna University who returned the same to the Court after some time and a



statement was made to the effect that the same had been examined by two teachers of Patna Science College. The names of the teachers were not even disclosed to the Court. The examination in question is a competitive examination where the comparative merit of a candidate has to be judged. It is, therefore, absolutely necessary that a uniform standard is applied in examining the answer-books of all the candidates. It is the specific case of the Commission that in order to achieve such an objective, a centralised system of evaluation of answer-books is adopted wherein different examiners examine the answer-books on the basis of model answers prepared by the Head Examiner with the assistance of other examiners. It was pleaded in the letters patent appeal preferred by the Commission and which fact has not been disputed that the model answer was not supplied to the two teachers of Patna Science College. There can be a variation of standard in awarding marks by different examiners. The manner in which the answer-books were got evaluated, the marks awarded therein cannot be treated as sacrosanct and consequently, the direction issued by the learned Single Judge to the Commission to treat the marks of the appellant in General Science paper as 63 cannot be justified.

We are, therefore, of the opinion that the view taken by the Division Bench of the High Court is correct and calls for no interference.”

21. From the records before this Court as also from what has been argued by the learned counsel for the appellants, it is apparent that, the appellants have not been able to show and/ or exhibit anything of that sort which is/ can be rare and/ or which is/ can shock the conscience of this Court or which is/ can be against the basic tenets of law or which shows any non-application of mind by the respondents or which is/ can be against the established principles of natural justice, fair play and/ or equity or the like for interfering with the answer keys of tier-2 of the CGLE 2023 as formulated by the respondents and allow the present appeal.

22. Therefore this Court, cannot interfere with the opinion of the experts by simply presuming that the answers sought to be now substituted by the appellants can be ‘right’ as they have nowhere been able to prove that the answers as per the revised answer key are ‘wrong’. The same by itself and that too on the basis of analysis by the appellants can certainly not be



sufficient for this Court to accept what is contended by them for entering the domain of evaluation of answer key by the experts and seek to alter the answers in the CGLE 2023 as formulated by the respondents.

23. Besides the aforesaid, the appellants have neither been able to show or exhibit anything which is and/ or can be glaring and/ or which depicts any manifest error, in the evaluation process of the CGLE 2023 undertaken by the respondents, for this Court to interfere with the impugned judgment passed by the learned Single Judge.

24. In the present case, it is not in dispute that the respondents have to setup an expert body/ committee consisting of skilled and specialist minds, which/ who have the expertise in their respective field/s and therefore this Court cannot venture to reevaluate the answers by giving its own interpretation.

FINDINGS:

25. In view of the present factual scenario as also the settled position of law, we are of the view that this Court ought not to reassess the answers of the appellants in the CGLE 2023 when the said exercise has already been done by an expert body appointed by the respondents. This Court can neither substitute the actions of the respondents nor sit over appeal and/ or adjudicate over the decisions taken by the respondents, especially in matters of the present nature involving competitive examination where final decisions are left upon the insight and consideration of such expert/s, body or committee like the respondents involved. At the end of the day, the experts are the best judges in such matters and no interference is called for and that too merely because another interpretation and/or meaning can be carved out or is possible as urged by the appellants.



26. In the considered opinion of this Court, this Court can surely not enter into speculation of any of the above discussions once taken and arrived at by the respondents involving such a body/ committee of experts.

27. At the cost of repetition, it may be observed that this Court cannot be called upon to adjudicate on one of the interpretations as being correct merely because it is favouring the appellants. The same, thus, cannot be given precedence, more so, whence the same is based only on basic unauthorised reading materials produced by the appellants. In our considered view, even otherwise, the appellants have been unable to show as to how and why the answers provided by the respondents are, in fact, arbitrary or irrelevant or inappropriate, if at all.

28. We may also note that since there is no stipulation of revaluation as sought by the appellants anywhere in the concerned advertisement issued by the respondents for the CGLE 2023, the same leaves hardly any scope for this to Court scrutinise/ or interfere at all, and that too with respect to questioning the competence of the adjudicating authority i.e. the respondents.

29. The aforesaid, without fail draws this Court to conclude that there is no occasion for this Court to interfere with the impugned judgement passed by the learned Single Judge in the present appeal.

30. Lastly, needless to mention, this Court, while hearing the learned counsels for the parties at length, despite being well aware that there was no such necessity of going into the merits of the type of questions or the type of the answers, still had the occasion to go through them coupled with the summary given by the appellants as well as the documents in support thereof. This Court was however unable to find any such infirmity with the



answer key provided by the respondents to the 6 questions under challenge by the appellants.

31. We are, therefore in consonance with the finding of the learned Single Judge in the impugned judgement and find no reason to interfere with the same.

32. Accordingly, in view of the aforesaid, the present appeal is dismissed alongwith pending applications, if any. No orders as to cost.

**(SAURABH BANERJEE)
JUDGE**

**(REKHA PALLI)
JUDGE**

MAY 27, 2024/akr