

Allahabad High Court

U.P. Secondary Education Service ... vs State Of U.P. And Others on 2 November, 2015

Bench: Arun Tandon, Vikram Nath



HIGH COURT OF JUDICATURE AT ALLAHABAD

RESERVED ON 30TH JULY, 2015

DELIVERED ON 2ND NOVEMBER, 2015

A.F.R.

Court No. - 10

Review Petition No. 59691 of 2014

In

Case :- SPECIAL APPEAL No. - 442 of 2012

Appellant :- U.P. Secondary Education Service Selection Board

Respondent :- State Of U.P. And Others

Counsel for Appellant :- A.K. Yadav

Counsel for Respondent :- C.S.C., Ashok Khare, Manu Khare, Seemant Singh, Siddharth Khare

with

Case :- SPECIAL APPEAL No. - 571 of 2014

Appellant :- Ramesh Chandra And 6 Ors.

Respondent :- State Of U.P. And 14 Others

Counsel for Appellant :- Neeraj Shukla, Anil Tiwari

Counsel for Respondent :- C.S.C., Shiv Nath Singh

With

Case :- SPECIAL APPEAL No. - 628 of 2014

Appellant :- Dinesh Kuamr Yadav And 26 Others

Respondent :- State Of U.P. And 14 Others

Counsel for Appellant :- Avdhesh Pratap Singh, Amresh Kant Dwivedi, Ashok Khare, Siddharth

Counsel for Respondent :- C.S.C., Seemant Singh, Shiv Nath Singh

with

Case :- SPECIAL APPEAL No. - 629 of 2014

Appellant :- Ran Vijay Singh And 31 Ors.

Respondent :- State Of U.P. And 14 Ors.

Counsel for Appellant :- V.K. Singh, Neeraj Shukla

Counsel for Respondent :- C.S.C., Seemant Singh, Shiv Nath Singh

With

Case :- SPECIAL APPEAL No. - 1105 of 2014

Appellant :- Sarvesh Kumar

Respondent :- State Of U.P. And 15 Others

Counsel for Appellant :- Jay Babu Kesharwani

Counsel for Respondent :- C.S.C., Shiv Nath Singh

Hon'ble Arun Tandon, J.

Hon'ble Vikram Nath, J.

This Review Petition No. 59691 of 2014 filed in Special Appeal No. 442 of 2012 and the connected special appeals arise out of common judgment and order of the learned Single Judge dated 8th February, 2012 passed in a bunch of writ petitions leading being Writ-A No. 61659 of 2010 (Ranjeet Kumar Singh & Others vs. State of U.P. & Others). All the appeals have been clubbed together. The

review petition filed in Special Appeal No. 442 of 2012 had been nominated to this Bench for hearing under the order of the Hon'ble The Chief Justice dated 24th April, 2014.

Facts in short relevant for deciding the present matter are as follows:

U.P. Secondary Education Selection Board (hereinafter referred to as the "Board") published an advertisement no. 01 of 2009 on 15th January, 2009 inviting applications for the post of Trained Graduate Teachers in the subject of Social Science. Petitioners, before the Writ Court, are stated to have applied in response thereto and to have participated in the process of selections. Selections were held on the basis of multiple choice questions to be answered on OMR sheets. The result of written examination was declared on 18th June, 2010. Interview of short-listed candidates took place between 16th to 26th July, 2010. Final result was declared on 14th September, 2010 based on total of marks received by the candidates in written examination and interview.

Petitioners approached the Writ Court challenging the correctness of the key answers in respect of six questions of History subject paper and one question of Civics subject paper. It was the case of the petitioners that if the wrong answers of these seven questions are corrected and marks are awarded for correct answers, they would be successful in the selections. It was also the case of the petitioners that key-answers feeded in respect of aforesaid seven questions were incorrect, this resulted in a wrong select list being prepared.

The learned Single Judge noticed the seven questions which according to the petitioners had been accorded wrong key-answers. The learned Single Judge proceeded to himself examine the correctness of the key-answers to the aforesaid seven questions and ultimately disposed of the bunch of the writ petition vide judgment and order dated 8th February, 2012 by issuing six directions as contained in paragraph-59 of the judgment. The directions so issued read as follows:

"(i) Petitioners' answer-sheets in respect to above seven questions shall be examined in the manner as adjudicated above (summarised in para 41) and their marks in written test would be determined accordingly.

(ii) In case, it is found that petitioners or any one or more of them have secured total marks more than last selected and appointed person, they shall be given appointment. (iii) The above appointments will be made against the advertised vacancies on the post of Trained Graduate Teachers. The persons already appointed in service shall not be made to suffer in any manner, except to the extent one or more of the petitioners on account of increase in his total marks is required to be appointed and in that case, persons last in merit would have to suffer and their appointments, if already made, shall be terminated. I am constrained to give this direction for the reason that vacancies of Teachers advertised for selection are pursuant to requisitions received from the individual secondary institutions and, therefore, only those vacancies which were requisitioned and advertised in the above selection can be made to be governed by this judgment and the subsequent and other vacancies not included in the above selection cannot be taken into consideration to give benefit to any of petitioners by protecting the appointments already made.

(iv) The appointment, if any, made pursuant to this order of petitioners, for the purpose of actual payment of salary shall take effect from the date of appointment but for the purpose of pay fixation, seniority etc. it shall relate back from the date the person lower in merit to the respective petitioner was appointed. If there is no person lower in merit to petitioner(s) and he/they are last in merit, then this date would be the same as the person next above these petitioner(s).

(v) Petitioners shall be entitled to cost which I quantify to Rs. 10,000/- for each set of writ petition against U.P. Secondary Education Service Selection Board.

(vi) Selection Board, respondent no. 2, is directed to find out the person(s) responsible for committing the aforesaid errors/ mistakes/ blunders in setting of question papers with multiple choice answers and to take appropriate action against them in accordance with law. It shall be at liberty to recover the amount of cost it has to pay under this judgement from such persons found responsible as above."

The judgment of the learned Single Judge dated 8th February, 2012 was subjected to challenge by means of various special appeals filed by the Board and other persons aggrieved by the directions so issued. The appeal filed by the Board was numbered as Special Appeal No. 442 of 2012. This appeal came to be dismissed vide judgment and order of the Division Bench dated 13th March, 2012.

Three of the earlier selected candidates, namely, Ram Chandra Yadav and two others who stood excluded because of the revision of the select list under order of the learned Single Judge dated 8th February, 2012, filed Special Leave to Appeal (Civil) No.(s) 34435-34436 of 2012 before the Apex Court. This special leave to appeal came to be dismissed vide judgment and order dated 7th October, 2013 with liberty to approach the High Court.

Applicant, before this Court, Ram Chandra Yadav filed Special Appeal Defective No. 1156 of 2013 before the Division Bench of this Court, wherein an interim order was granted by a Division Bench on 20th November, 2013. Special Leave to Appeal (Civil) No.(s) 36862 of 2013 filed before the Apex Court against the interim order dated 20th November, 2013 was dismissed vide judgment and order dated 16th December, 2013. Special Appeal Defective No. 1156 of 2013 ultimately came to be dismissed on 28th January, 2014 with liberty to file a review application in Special Appeal No. 442 of 2012.

Accordingly, review petition no. 59691 of 2014 has been filed in the said special appeal by one Ram Chandra Yadav along with Civil Misc. Leave Application No. 59686 of 2014, Civil Misc. (Delay Condonation) Application No. 59688 of 2014 and Civil Misc. (Stay) Application No. 59695 of 2014.

Dinesh Kumar Yadav along with 26 others, who also stood excluded from the select list because of the order of the learned Single Judge dated 8th February, 2012, filed Special Appeal Defective No. 500 of 2014 (now Special Appeal No. 628 of 2014). This special appeal was directed to be connected with Special Appeal No. 442 of 2012 and in the meantime interim order was granted restraining the respondents from terminating the appointment of the appellants. The order of the Division Bench passed in Special Appeal Defective No. 500 of 2014 (now Special Appeal No. 628 of 2014) dated

20th May, 2014 was subjected to challenge before the Apex Court by Ranjit Kumar Singh by means of Special Leave to Appeal (C) No (s). 20294 of 2014. The special leave to appeal was disposed of vide judgment and order dated 25th August, 2014 requiring the High Court to dispose of the review application no. 5969 of 2014 (corrected no. 59691 of 2014) filed in special appeal no. 442 of 2012 expeditiously preferably within three months.

This is how all these matters have come up for hearing before us.

On behalf of the appellants it is submitted that the learned Single Judge had decided the writ petitions without affording opportunity of hearing to the appellants, who had already been appointed under the original select list and therefore, the impugned judgment of the learned Single Judge was bad. It was contended before us that even if the learned Single Judge was of the opinion that there was some doubt with regard to the correctness of the key-answers to the 7 questions (six questions in the subject of history and one question in the subject of civics), the learned Single Judge should not have acted as an expert in the subject. He could have at best appointed a team of experts to revisit the keys-answers as provided by the Board to the seven questions and to submit its opinion in the matter to the Court.

Before examining the correctness or otherwise of the challenge made to the judgment of the Hon'ble Single Judge, this Court may take note of the law as has been explained by the Apex Court in the matter of key-answers supplied by the paper setters being assumed to be right unless demonstrated to be wrong with reference to the standard and prescribed text-books. It is worthwhile to refer to the judgment of the Apex Court in the case of Kanpur University, Through Vice-Chancellor & Others vs. Samir Gupta & Others, reported in (1983) 4 SCC 309, specifically Paragraph-16, which reads as follows:

"16. Shri Kacker, who appears on behalf of the University, contended that no challenge should be allowed to be made to the correctness of a key answer unless, on the face of it, it is wrong. 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 rationalisation. 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 contention of the University is falsified in this case by a large number of acknowledged text-books, which are commonly read by students in U.P. Those text-books leave no room for doubt that the answer given by the students is correct and the key answer is incorrect."

The Apex Court in the case of Subash Chandra & Ors. Etc. vs. State of Bihar & Ors., Etc. reported in 1995 Suppl. (1) SCC 325, has explained that normally the High Court should appoint an expert body and obtain its opinion in the matter of confusing or controversial nature of questions. Relevant paragraph reads as follows:

"Normally speaking, the High Court should have appointed an expert body and obtained its opinion about the confusing or controversial nature of questions. For reasons best known, it was not done. It has merely chosen to accept the version of the writ petitioners before it. The reason why this Court

has repeatedly pointed out such matters being referred to an expert body and its opinion sought, is that in academic matters like this, courts do not have the necessary expertise."

It is also worthwhile to refer to paragraph-25 of the Judgment of the Apex Court in the case of Subhash Chandra (Supra), which provides that if controversial questions have been set and in relation to some questions, there could be more than one answer. In an objective type of test, more than one answers are given. The candidate is required to tick mark the answer, which is the most appropriate out of the plurality of answers. For ready reference relevant portion of paragraph-25 of the judgment of the Apex Court in the case of Subhash Chandra (supra) is being quoted herein below:

"25. ....

3. Several controversial questions were set and in relation to some questions, there could be more than one answer: In an objective type of test, more than one answer are given. The candidates are required to tick mark the answer which is the most appropriate out of the plurality of answers. The questions and answers were prescribed by the experts in the field with reference to standard books. Therefore, it is incorrect to say that a question will have more than one correct answer. Even if the answers could be more than one, the candidates will have to select the one which is more correct out of the alternative answers. In any event, this is a difficulty felt by ail the candidates.

....."

Having regard to the background of the litigation and conflicting claim of the candidates, who had appeared in the written examination as also in view of the law declared by the Apex Court referred to above, this Court vide order dated 28th April, 2015 referred the seven disputed questions for the expert opinion of Professor V.C. Pande, Professor (Retired), Department of Medieval & Modern History, University of Allahabad. Confidential report submitted under the letter of the Expert dated 18th May, 2015 reads as follows:

"CONFIDENTIAL HIGH COURT OF JUDICATURE AT ALLAHABAD Special Appeal No. 442 of 2012 REPORT The undersigned is profoundly grateful to the Learned Bench for being accorded the opportunity of offering his opinion on a significant matter of public interest. He is also deeply regretful and apologetic for not completing the task within the time assigned, which was not for paucity of time but on account of certain personal difficulties of a medical nature.

The undersigned is submitting synoptic statements on each question, but would be privileged to provide detailed reference for the facts / implied conclusions set out therein.

History:

Q 24. pkanchch jkuh Fkh& 1/41 1/2 chtkiqj dh 1/42 1/2 cjkj dh 1/43 1/2 vgenuxj dh 1/44 1/2 xksydq.Mk dh  
OPINION: The life and work of Khanzadi Humayun Sultana or Chand Bibi ( 1550-1599) is well-documented in the works of contemporary chroniclers and later historians. Her father, Hussain



Accordingly, Option (2) is the correct answer.

36. ,d izR;{kn'khZ us Hkkjr dh fdl bekjr ls mRizsfjr gksdj dgk Fkk fd mls tUur ls /

$\frac{1}{4}1\frac{1}{2}$  fnYyh ds yky fdys dk Hkou

$\frac{1}{4}2\frac{1}{2}$  rktegy

$\frac{1}{4}3\frac{1}{2}$  ghjk egy

$\frac{1}{4}4\frac{1}{2}$  fnYyh dh tkek efLtn

OPINION: The Italian writer and traveller Niccalao Manucci has written the following, in his memoir of the Mughal Empire, "Storia do Mogor", translated by William Irvine as MOGUL INDIA 1653-1708 (published in 1907):

This princess [Jahanara Begum, the eldest daughter of the Emperor Shahjahan], to preserve her memory, gave orders for the construction of a sarae [Sarai] in the square which is between the fortress [Red Fort] and the city [Shahjahanabad]. This is the most beautiful sarae in Hindustan, with upper chambers adorned with many paintings, and it has a lovely garden, in which are ornamental reservoirs. In this sarae there put up none but great Mogul and Persian merchants. The king went to view the work that had been done for his beloved Begom Saeb (Begam Sahib), and he praised her energy and liberality. Sadulacan [Sa'dullah Khan, the Grand Wazir of Sahjahan], who never allowed an occasion to escape without the customary flattery, said: 'Aguer ferdus berrui ziminas, aminas, aminas' [Agar Firdaus bar rue zamin ast, hamin ast, wa hamin ast, wa hamin ast] that is to say, "If the terrestrial paradise is on earth, it is here, it is here".

Accordingly, Option (1) would appear to be the correct answer.

Q 37. ckS} /keZ dk nkf'kZfud foospu fdl xzUFk esa gS?

$\frac{1}{4}1\frac{1}{2}$  lqRrfiVd  $\frac{1}{4}2\frac{1}{2}$  fou; fiVd  $\frac{1}{4}3\frac{1}{2}$  vfHk/kEe fiVd  $\frac{1}{4}4\frac{1}{2}$  tkrd dFkk OPINION: The reputed work Buddhism: Its History and Literature by T. W. Rhys Davids (London, 1907), affirms that the first of the three Pitakas, the Vinaya Pitaka contains all that relates to the Order of Mendicant Recluses [Bhikkhus and Bhikkunis], how it came about that the Order was founded; the rules which the Brethren and Sisters have to observe, and so on. The second, the Sutta Pitaka, contains the truths of the religion itself presented from very varied points of view, and in very varied style; together with



the discussion and elucidation of the psychological system on which those truths are based. The third, the Abhidhamma Pitaka, contains a further supplementary and more detailed discussion of that psychological system, and of various points arising out of it. This explanation is broadly endorsed in *Studies in the Origins of Buddhism* by G.C.Pande (Delhi, 1955). According to the entry on Buddha in the Internet Encyclopedia of Philosophy, the Sutta Pitaka "is of particular importance in reconstructing the philosophy of Buddha for four main reasons. First, it contains the oldest texts of the only complete canon of early Indian Buddhism, which belong to the only surviving school of that period, namely, the Theravada school, prevalent in Sri Lanka and Southeast Asia. Second, it has been preserved in a Middle Indo-Aryan language closely related to various Prakrit dialects spoken in North of India during the third century B.C.E., including the area where the Buddha spent most of his teaching years (Magadha). Third, it expresses a fairly consistent set of doctrines and practices. Fourth, it is strikingly similar to another version of the early Sutta Pitaka extant in Chinese (Agamas)." It is well known that the Jataka tales are a voluminous body of literature concerning the previous births (jati) of the Buddha.

Accordingly, Option (1) would appear to be the correct answer.

Q 40. oSfnd ;qx esa dkSu lh lkekftd dqizFkk izpfyr ugha Fkh?

¼41½ cky fookg ¼42½ lrh izFkk ¼43½ inkZ izFkk ¼44½ cgqiRuh izFkk OPINION : Historians, Indologists and other scholars have surmised the social practices of the Vedic Age on the basis of constructive interpretations of the Vedic texts, and such interpretations have varied as the exact contents of the texts themselves and the meaning of several Vedic words are disputed in some instances. As such, it is not possible to give definitive answers to questions about the prevalence or otherwise of specific social practices. The question is therefore problematic and may have to be discarded.

Q 43. dc Hkkjrh; lke;oknh ny LFkkiuk gqbZ?

¼41½ 1921 bZO esa ¼42½ 1922 bZO esa ¼43½ 1924 bZO esa ¼44½ 1923 bZO esa OPINION : The actual formation of The Communist Party of India was preceded by the gradual development of a Communist movement, entailing the coming together of individuals influenced by Communist ideas and ideals. These individuals were the forerunners of an organised Communist Party. In this context, the following excerpt from *INDIA'S STRUGGLE FOR INDEPENDENCE 1857-1947*, by Bipan Chandra, Mridula Mukherjee, Adhitya Mukherjee, K. N. Panikkar and Sucheta Mahajan (Penguin Books India, 1989, pp. 300-01) is instructive :

Attracted by the Soviet Union and its revolutionary commitment, a large number of Indian revolutionaries and exiles abroad made their way there. The most well-known and the tallest of them was M. N. Roy who along with Lenin, helped evolve the communist International's policy towards the colonies. Seven such Indians, headed by Roy, met at Tashkent in October, 1920 and set up a Communist Party of India. Independently of this effort, as we have seem, a number of left-wing and communist groups and organisations had begun to come into existence in India after 1920. Most of these groups came together at Kanpur in December 1925 and [page 301] founded an

all-India organisation under the name the Communist Party of India (CPI). After some time, S. V. Ghate emerged as the general secretary of the party. The CPI called upon all its members to enroll themselves as members of the Congress, form a strong left-wing in all its organs, cooperate with all other radical nationalists, and make an effort to transform the Congress into a more radical mass-based organisation.

Accordingly, none of the Answer Options appear to be accurate.

Civics :

Q 32. fuEufyf[kr esa ls fdl laoS/kkfud inkf/kdkjh dks mlds in ls inP;qr djus ds fy, egkfHk;ksx dh izfdz;k dk ikyu vko';d ugha gS?

1/41 1/2 jk"V~zzifr 1/42 1/2 mi&jk"V~zzifr 1/43 1/2 la?k yksd lsok vk;ksx dk v/;{k 1/44 1/2 loksZPp U;k;ky; dk U;k;k/kh'k OPINION: The Constitution has not defined impeachment and the term (or a grammatical variation) occurs only in Article 56(b) and Article 61. Articles 56(b), 61, 62 and 65(1) refer to removal of the President, obviously pursuant to impeachment. However, there is no ambiguity in respect of the impeachability of the President. The provisions for removal of a Judge of the Supreme Court under Article 124 (4), as explicated in the Judges Inquiry Act, 1968, are commonly characterised as impeachment. This is so perhaps because a Legislative Entity is empowered in this regard. By the same token, the process for removal of the Vice-President is also regarded as impeachment. On the other hand, the provisions for the removal of the Chairman of the Union Public Service Commission, under Articles 316 (2) and 317, do not posit any reference to a Legislative Entity, and therefore, cannot be classified as impeachment.

Accordingly, Option (3) would appear to be the correct answer.

Sd/-

(V.C. Pande)"

From the above, it follows that:

"In the subject of History, for question no. 24, the option (1) may be regarded as the best answer. For question no. 25, option (2) was the correct answer. For question no. 36, option (1) was the correct answer. For question no. 37, option (1) was the correct answer. Question no. 40 is problematic and may have to be discarded. For question no. 43, it was opined that none of the answers given to the question were accurate.

In the subject of Civics for question no. 32, it was opined that option (3) would be the correct answer."

We may record that the expert has given reasons in support of his conclusions in respect of each of the question.

The report of the expert was made available to the learned counsel for the parties and they were given a right to object to the same. Objections have been filed to the report with reference to the certain books. The opinion of the Expert was sought to be questioned.

We, after careful consideration of the report of the expert and the material, which has been brought on record by way of objections to the same by the petitioners, do not find any good reason to take any different view than one which has been expressed by the expert, Professor V.C. Pande specifically in view of the law laid down by the Apex Court in the case of Subhash Chandra Verma (Supra) which has been quoted herein above.

None of the counsels for the objectors to the report of the Expert could demonstrate before us that the opinion of the Expert on the particular question was wrong to the extent that no reasonable man well versed in the subject could record it as correct. What has been suggested before us is that answers as suggested by the objectors could also be one of the correct answers with reference to the text books referred by them.

In our view, the opinion of the expert, which is supported by reasons, recorded with reference to various material, reflect the closest correct answers to the questions, which a candidate was expected to answer in multiple choice question. Similarly we find that cogent reasons have been recorded in respect of the questions which have been found to be troublesome or incorrect by the expert. We need not reiterate the reasons, which have been recorded by the expert in his opinion.

Once we arrive at the said conclusion qua the seven disputed questions, it necessarily follows that the evaluation of the answer-sheets of the candidates has to be undertaken afresh, in light of the expert's opinion.

We are further of the opinion that same principle in the matter of evaluation has to be applied in respect of all the candidates, who had appeared in the written examinations irrespective of the fact that they had approached the High Court or not, inasmuch as there cannot be two standards for judging of the answer-sheets of the candidates appearing in the same examination, with reference to the fact that they had approached the High Court, vis-a-vis the others, who had not approached the High Court.

We therefore, in the facts of the case, grant the Review Petition No. 59691 of 2014 filed in Special Appeal No. 442 of 2012, allow the special appeals and set aside the judgment of the learned Single Judge dated 8th February, 2012 passed in a bunch of writ petitions leading being Writ-A No. 61659 of 2010 (Ranjeet Kumar Singh & Others vs. State of U.P. & Others). We issue following directions:

Answer-sheets of the candidates, who had appeared in the written examination conducted by the U.P. Secondary Education Selection Board with reference to Advertisement no. 01 of 2009 for the post of trained graduate teachers in the subject of Social Science shall be evaluated afresh in light of the opinion of the Expert on the 7 disputed questions which has found approval of this Court i.e. in respect of question nos. 24, 25, 36, 37, 40, 43 of History subject and question no. 32 of Civics subject. Such exercise shall be completed within two months from the date a certified copy of this

order is filed before the Secretary of the Board. A fresh list of the successful candidates shall be declared immediately thereafter. The marks received after such evaluation by the individual candidate shall be uploaded on the website of the Board. The selected candidates shall be offered appointment strictly in accordance with merit disclosed after such evaluation of the answer-sheets as directed above.

Persons who are working as on date in pursuance to the earlier select list may be permitted to continue as such till results are declared afresh as directed above.

In case any of the said appointee stands excluded from the select merit list, then his appointment shall cease automatically.

The exercise as aforesaid shall be completed within fifteen days of the declaration of the select list afresh.

All applications filed in the aforesaid special appeals are also disposed of.

(Vikram Nath, J.)

(Arun Tandon, J.)

Order Date :- 02.11.2015

Sushil/-

Review Petition No. 59691 of 2014

In

Case :- SPECIAL APPEAL No. - 442 of 2012

Appellant :- U.P. Secondary Education Service Selection Board

Respondent :- State Of U.P. And Others

Counsel for Appellant :- A.K. Yadav

Counsel for Respondent :- C.S.C., Ashok Khare, Manu Khare, Seemant Singh, Siddharth Khare

Hon'ble Arun Tandon, J.

Hon'ble Vikram Nath, J.

Granted.

For orders, see order of date passed on the separate sheets.

(Vikram Nath, J.)

(Arun Tandon, J.)

Order Date :- 02.11.2015

Sushil/-