

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPO No. 3171 of 2022
Ganesh Tiwari & Anr.

Vs.

The Coal India Limited & Ors.

With

WPO No. 1386 of 2023

Abhishek Sharma & Ors.

Vs.

The Coal India Limited & Ors.

For the writ petitioners	:-	Mr. Arjun Ray Mukherjee, Adv. Ms. Debapriya Mitra, Adv. Mr. Joyjeev Medhi, Adv.
For the respondents	:-	Mr. Pradip Kumar Roy, Sr. Adv. Mr. Varun Kedia, Adv. Ms. Avey Jaiswal, Adv.
Judgment reserved on	:-	25.06.2026
Judgment delivered on	:-	10.08.2026

Amrita Sinha, J.:-

1. The petitioners, in both the writ petitions, are serving under Bharat Coking Coal Ltd. which is a subsidiary of Coal India Ltd. ('CIL' for short). They are aggrieved by the manner in which selection for promotion was made. The facts of the case and the issues involved in both the writ petitions being more or less the same, both the writ petitions were heard analogously and

both the writ petitions are being disposed by this common judgment. Minor difference in facts is also addressed in this judgment.

2. In response to a notice published by CIL for selection/promotion from non-executive cadre to executive cadre in various disciplines in the year 2015, the petitioners applied for the same. The written test was conducted in January, 2016 but, the said examination stood cancelled vide notice dated 11th July, 2017 wherein it was mentioned that the written test will be re-conducted with the same set of candidates. The date for re-examination would be notified in CIL website.
3. Re-test was held on 31st July, 2021. CIL published a number of frequently asked questions along with their corresponding answers prior to the re-examination. The petitioners successfully passed the written examination.
4. Model answer key was published in August, 2021. The recruitment division of CIL published a notice inviting comments/objections from candidates who appeared in the re-test held on 31st July, 2021 which was a Computer Based online test. The Response Query Management Portal remained operational with effect from 4th August, 2021 to 8th August, 2021.
5. The petitioners in WPO No. 3171 of 2022- Ganesh Tiwari and Dilip Kumar Mahato did not raise any objection, but the petitioners in WPO No. 1386 of 2023- Abhisekh Sharma and others raised certain objections.
6. A list of candidates provisionally short-listed for interview was published and the names of the petitioners appeared in the said list. The petitioners were requested to appear in the interview on 24th November, 2021.

7. In February, 2022 CIL published a list of candidates recommended for selection to the promotional post. The names of the petitioners did not appear in the recommended list. The petitioners are aggrieved by the same.
8. The petitioners have made out a case that CIL conducted the promotional examination with the help of an outside Agency. The said Agency changed the marking pattern of the questions. The same amounts to changing the rules of the game after the game had begun. The change was made without obtaining any consent and behind the back of CIL.
9. The petitioners contend that the decision of the Agency to award marks to all candidates irrespective of the fact whether a candidate attempted the disputed questions or not, was not made known to the candidates prior to conducting the examination. On the contrary, the admit card issued by CIL stipulated that no marks will be awarded for the un-attempted questions.
10. As the examination is competitive in nature, awarding marks to all candidates irrespective of whether a question is attended or not, amounts to violation of Article 14 of the Constitution. There is no concept of awarding grace marks to candidates appearing in a competitive written examination. A candidate who attempted a question and the one who did not, constitute two distinct classes. Un-equals ought not to be treated equally.
11. It has been submitted that the questions which have been found to be out of syllabus and marks awarded to all, were actually in the syllabus. The Agency erroneously concluded that the questions were out of syllabus and

awarded full marks to all candidates. The same has diminished the competitive edge of the candidates appearing in the competitive examination.

12. The timeline fixed by the Hon'ble Bombay High Court, Nagpur Bench in WP No. 4315/2017 (Sanjay s/o Vitthalrao Dhobe & Anr. Vs. Government of India & Ors.) in the order dated 21st January, 2020 for completion of the entire selection process has not been adhered to by CIL. The undertaking given before the Hon'ble Bench has been violated.
13. The petitioners, inter alia, pray for setting aside the entire selection process and a further direction upon the respondent authority to reconduct the same de novo. Prayer has also been made to constitute an independent committee to look into the issue of the wrong questions to evaluate its correct position.
14. In support of the aforesaid prayer learned advocate for the petitioners rely on the following judgments:
 - a) ***Tej Prakash Pathak & Ors. vs. Rajasthan High Court & Ors.*** reported in ***(2025) 2 SCC 1***.
 - b) ***K. Manjusree vs. State of Andhra Pradesh & Anr.*** reported in ***(2008) 3 SCC 512***.
 - c) ***Director General, Indian Council for Agricultural Research & Ors. vs. D. Sundara Raju*** reported in ***(2011) 6 SCC 605***.

- d) ***Kanpur University, through Vice Chancellor & Ors. vs. Samir Gupta & Ors.*** reported in ***(1983) 4 SCC 309.***
- e) ***Rajesh Kumar Gupta & Ors. vs. State of UP & Ors.*** reported in ***(2005) 5 SCC 172.***
15. Learned advocate representing CIL opposes the submissions and prayers of the petitioners. It has been submitted that CIL being the holding Company of its subsidiary Companies, centrally conducted the limited departmental examination for filling up the vacancies in accordance with the applicable cadre scheme and notified procedure.
16. A notification was published in October, 2015 for filling up several vacancies. The petitioners applied pursuant to the said notification. The written examination held on 17th January, 2016 stood cancelled due to short comings attributable to the Agency conducting the selection process. In the interest of fairness and transparency, a fresh Computer Based Test was held on 31st July, 2021 with the same set of eligible candidates and on the same syllabus.
17. Post examination, the answer sheet with answer keys were disclosed by CIL. Each candidate had the opportunity to raise objections through the official Response Query Management Portal. Several objections were received. Ganesh Tewari and Dilip Kumar Mahato did not raise any objection, but Abhishek Sharma and others did. Upon considering the objections raised by several candidates, the examining body decided to give

marks to all candidates in respect of nineteen questions which were found to be either erroneous or out of syllabus.

18. A shortlist of candidates for interview in the prescribed ratio of 1:3 was published. The petitioners' name featured in the list of candidates shortlisted for interview. A final merit list was prepared on the basis of the marks obtained in the Computer Based Test and interview. Promotion order was issued on 21st February, 2022.
19. The cut off marks for the unreserved category were 144.88. All the petitioners secured marks less than the cut off. As the petitioners did not qualify on merit, they were rightly excluded from the final merit list of candidates selected for promotion.
20. The respondents contend that the petitioners appeared in the written examination which stood cancelled and also in the Computer Based Test and later in the interview without raising any objection with regard to the mode of conducting the selection. Only after the petitioners failed to emerge successful at the final stage, they have filed the writ petitions challenging the very process in which they voluntarily participated.
21. It has been submitted that the petitioners being unsuccessful in the selection process cannot be allowed to assail the selection process after having participated therein. They cannot be permitted to approbate and reprobate at the same time. The writ petition would be barred by the principles of acquiescence, waiver and estoppel.

22. The petitioners ought to be precluded from questioning the selection process after having failed to secure a place in the final list of selected candidates.
23. It has been argued that nineteen marks have been awarded to all the candidates with the sole intention of maintaining parity amongst all candidates. The questions where objections were filed, were referred to the subject experts for scrutiny and evaluation. After the experts opined that there are disputes in the said nineteen questions, full marks have been uniformly awarded to all. According to the respondents, by adopting such a method, none of the candidates have been prejudiced and each and every candidate was treated identically.
24. According to the respondents, awarding grace marks is an acceptable practice which has been taken recourse to by different examining bodies in competitive examinations when questions were found to be either wrong or out of syllabus. The petitioners have failed to establish that any particular candidate has been favoured or any of the petitioners suffered any prejudice for uniform awarding of marks to all candidates.
25. The respondents stress on the fact that nineteen questions were actually found to be wrong/ out of syllabus and, accordingly, the best recourse available to the authority was to award marks to all candidates irrespective of the fact whether the said questions were attempted or not.
26. The respondents submit that a total of 109 candidates have been selected and promoted in the subject selection process and all the candidates are

functioning in their promotional post since 2022. None of the selected candidates have been impleaded as parties in the instant writ petitions. Any order passed in the instant writ petitions may adversely affect the right of the successful candidates. The writ petition is liable to be dismissed for non-joinder of necessary parties.

27. The scope of judicial review in evaluating the correctness of a question in a competitive examination is extremely limited. The writ court ought not to interfere in ascertaining as to whether the questions and answers of the selection process are proper or not. Judicial review ought to be restricted only to ascertain as to whether the selection process was rightly conducted or not.
28. The respondents pray for dismissal of the writ petition.
29. In support of the aforesaid submissions, the respondents rely on the following precedents:
 - a) ***State of Uttar Pradesh vs. Karunesh Kumar*** reported in **2022 SCC Online SC 1706; 2022 INSC 1274.**
 - b) ***Gujrat Public Service Commission vs. Gnaneshwary Dushyantkumar Shah & Ors.*** reported in **2026 INSC 70.**
 - c) ***State of UP through Principal Secretary (Basic Education) Lko & Ors. vs. Mohd. Riswan & Ors.*** reported **2019 SCC Online All 4741.**
 - d) ***Prem Ranjan & Ors. vs. Jharkhand State Staff Selection Commission & Ors.*** reported in **2023 SCC Online Jhar 2958.**

- e) ***Md. Abdul Wahid Sekh & Ors. vs. State of West Bengal & Ors.*** reported in ***2025 SCC Online Cal 549.***
 - f) ***Ramesh Chandra Saha & Ors. vs. Anil Joshi & Ors.*** reported in ***(2013) 11 SCC 309.***
 - g) ***Union of India & Ors. vs. S. Vinodh Kumar & Ors.*** reported in ***(2007) 8 SCC 100.***
 - h) ***Poonam vs. State of UP & Ors.*** reported in ***2016 (2) SCC 779.***
 - i) ***Dhananjay Malik & Ors. vs. State of Uttaranchal & Ors.*** reported in ***(2008) 4 SCC 171.***
 - j) ***Ashok Kumar & Ors. vs. State of Bihar & Ors.*** reported in ***(2017) 4 SCC 357.***
 - k) ***Asit Kumar Kar vs. State of West Bengal & Ors.*** reported in ***(2009) 2 SCC 703.***
30. I have heard and considered the submissions made on behalf of both the parties and have perused the materials on record.
31. Admittedly, the selection process was initiated in the year 2015 and the written examination which was held in January, 2016 stood cancelled. The petitioners did not raise any objection at the time of cancellation of the written test. A fresh Computer Based Test was conducted in July, 2021 with the same set of candidates who participated in the written test in 2015-16 and on the same syllabus which was applicable in the selection

process of 2015-16. The petitioners participated in the re-scheduled test without any murmur.

32. After the model answers key were published and opportunity awarded to all candidates to submit objections, if any, Abhishek Sharma and others raised objection to a couple of questions, but Ganesh Tewari and Dilip Kumar Mahato did not raise any objection. The expert body considered the objections raised by the participating candidates and admitted that few of the questions were actually wrong and a few were out of syllabus.
33. The experts opined to award marks to all candidates in respect of the questions which were objected to by the candidates and marks were awarded to all candidates irrespective of the fact whether the disputed questions were attempted or not. The petitioners in the matter of Abhishek Sharma & others have actually been benefitted out of the decision to award marks to all candidates. None of the petitioners objected to such a decision being taken by the authority.
34. The petitioners were found eligible to be enlisted for participating in the next round of selection, i.e., the interview. At that stage also the petitioners never raised any objection. It is only after participating in the interview process and on being unsuccessful in the final stage, that the instant writ petitions have been filed alleging impropriety in the selection process.
35. Primary allegation of the petitioners is that awarding marks to all candidates, irrespective of whether the disputed questions have been attempted or not, amounts to changing the rules of the game after the game

had begun. It is too well settled that, in the midst of the selection process, new rules and/or procedure cannot be adopted.

36. It appears that in the Computer Based Test, where extra marks have been awarded to the candidates, there was no provision for negative marking. It is only when a question is correctly answered; marks are awarded. The same implies that none of the candidates would have lost any mark(s) in either attempting the question or giving a wrong answer to the same. At best, no marks would have been awarded for that question. When marks have been awarded in respect of such disputed questions to all candidates uniformly, it does not appear that any of the candidates, including the petitioners, have been prejudiced in any manner whatsoever.
37. Had wrong answers carried negative marking, then only there would have been some difference in the competitiveness of the candidates. In that case, any candidate who had given a wrong answer would have lost mark(s); but as there was no negative marking, adding marks uniformly to all candidates hardly makes any difference.
38. The contention of the petitioners that nineteen questions which were disputed were actually correct and within the syllabus cannot be adjudicated by the writ court. The same is in the exclusive domain of the expert examiners who opined that the questions were actually wrong/ out of syllabus for which uniform marks have been awarded to each and every candidate.

39. Had the petitioners been actually aggrieved by the awarding of extra marks, they ought to have raised objection at that very stage. A few of the petitioners are indeed beneficiaries of the extra marks awarded in their favour in response to the objection(s) raised by them. After obtaining the benefit, the petitioners ought not to contend that, such act of the authority is an illegal one.
40. It is apparent that all the petitioners qualified in the Computer Based Test and got the opportunity to appear in the interview. It is only after marks obtained in the Computer Based Test and interview was added that the petitioners failed to secure a position in the final merit list. There may be candidates who have received extra marks and have found a place in the final merit list. Had the petitioners been successful in the final stage, the writ petition would not have been filed. The issue of awarding extra marks would not have been raised at all.
41. It is evident that the writ petitions have been filed long after the promotion was actually given effect to. None of the promotees have been impleaded as parties herein. Several of them may have been awarded extra marks. If any order is passed in favour of the petitioners, the same will certainly affect the entire promotion list and the promotees adversely.
42. The change in the rules of the game, as heavily stressed by the petitioners, does not appear to have affected any of the candidates participating in the subject selection process. The decision of the authority to award marks to all candidates cannot be taken as any change in the rules of the game. The

alleged change does not have any material bearing in the marks obtained by any of the candidates.

43. The argument of the petitioners that the candidates who attempted the disputed questions and those who did not attempt the said questions forms two distinct classes and ought to be treated differently also loses its relevance as none of the classes were provided any extra benefit. Awarding extra marks to all candidates uniformly has ruled out the scope of providing advantage or causing disadvantage to either class of the candidates.
44. If marks in respect of the disputed questions would have been awarded to only those candidates who attempted the said questions, then an issue of prejudice could have been raised by the petitioners. It may have been that not attempting the disputed questions was a deliberate and intentional decision of the candidates. As marks have been awarded uniformly to all candidates, none of the candidates have been prejudiced.
45. The respondents have argued that the petitioners are guilty of delay and laches. According to the petitioners, final answer key was published six months after the date of promotion. Prior to publication of the final list of candidates selected for promotion, the petitioners never had an idea that extra marks were awarded to any candidate. It is only after the petitioners learnt about awarding extra marks; they filed representation before the authority.

46. Assuming that the aforesaid explanation given by the petitioners for not raising an objection prior to appearing in the interview is proper, even then it does not appear that the petitioners have either been discriminated or have suffered any prejudice for awarding the extra marks.
47. The petitioners deny the contention of the respondents regarding acquiescence, estoppel and waiver. The petitioners also deny the allegation to approbate and reprobate at the same time. There is nothing on record to suggest that the decision to award extra marks to all participating candidates was made known to the candidates prior to appearing in the interview; accordingly, the petitioners cannot be held guilty of acquiescence, estoppel and waiver. Neither can the petitioners be said to approbate and reprobate at the same time.
48. Regarding non joinder of necessary parties as alleged by the respondents, it is true that any order passed touching the selection process which stood concluded and acted upon in 2022, will certainly affect the promotees. Any order passed in favour of the petitioners would have a chance of adversely affecting the promotees who are not parties in the instant writ petition.
49. Non completion of the selection process within the timeline stipulated by the Hon'ble Nagpur Bench ought not to be a ground for interfering with the selection process for promotion at this stage. Allegation of violation of the direction passed by the Court ought to have been pointed out before the said Bench.

50. In *Sundara Raju* (supra) the Court was considering an issue where 50% marks were allocated for interview. It is under such circumstances, the Court was of the opinion that, it was unjustified to allocate 50% marks in the interview particularly when the candidates were not disclosed that interview would also be held to evaluate the suitability of the candidate. The Court was of the opinion that had the authority disclosed the method of evaluation, candidate may have challenged the same before participating in the selection process.
51. In the instant case, none of the candidates were aware about awarding of extra marks in respect of the disputed questions to all the candidates. None appears to have been prejudiced by such action of the authority.
52. The principle that the rules of the game cannot be changed after the game has begun as held in *Manjusree* (supra) and *Tej Prakash Pathak* (supra) is very well settled by now. The change that the petitioners allege is – awarding marks to all candidates in respect of the disputed questions. It has been discussed herein above that such awarding of marks to all candidates has neither given any extra privilege and/or benefit to any of the candidates. Had marks been awarded to only those candidates who attempted the disputed questions, then an issue of prejudice or discrimination could have been raised.
53. In *Samir Gupta* (supra) the Court was dealing with an admission process where negative marking was made for the incorrect answers. It is on such facts that the Court was of the opinion that, if there is any ambiguity in a

question set in the examination, then decision ought to be taken by the examining body to declare the subject question to be excluded from the paper and no marks assigned to it.

54. In the instant case, there was no negative marking and the examining body awarded extra marks to all candidates. Thus, neutralizing the effect of the wrong questions.
55. In *Rajesh Kumar Gupta (supra)* the Court, after noticing that the full effect of the result would be given only after verification of the testimonial, certificates and documents mentioned in the application and mere publication of the select list did not result in accrual of any right in favour of any candidate whose name has been placed in the select list held that, the writ petitions would be maintainable without the selected candidates being impleaded as parties. Such is not the case here. The promotees of the impugned selection have already served in the promotional posts for more than four years by now. Any order passed in respect of the impugned select list for promotion will cause prejudice to the promotees. Any order passed behind their back will suffer from the vice of violation of the principle of natural justice.
56. In *Karunesh Kumar (supra)* the Court, inter alia, held that an employer shall always have adequate discretion with an element of flexibility in selecting an employee. Interference can only be made when the selection is arbitrary or contrary to law. Here, on a perusal of the facts of the case, it does not appear that the selection process has been conducted in an

arbitrary manner or contrary to law. On the other hand, it appears that the Agency adopted a very reasonable and balanced approach to deal with the objections raised by the candidates after the publication of the model answer key. The examining body uniformly awarded marks to all candidates in respect of the disputed questions so that none could complain.

57. In *Gnaneshwary (supra)* the settled principle of law that, a candidate having participated in the selection process, without protest, cannot challenge the rules of the game after being declared unsuccessful, has been reiterated. The Court held that a recruitment concluded in 2015 cannot be reopened in 2025 on the basis of the regulations that never applied to it. In the case at hand, the promotion process stood concluded in the year 2022. It will be highly improper to interfere with the same in the absence of any glaring defect and/or illegality on the part of the respondents.
58. In *Md. Abdul Wahid Sekh (supra)* and *Mohd. Riswan (supra)* the Court accepted the stand of the authority in awarding marks to all candidates in respect of the disputed questions. The same step has been taken by the Agency engaged by the employer in the present case by awarding uniform marks to all candidates.
59. In *Prem Ranjan (supra)* the Court accepted awarding full marks to all candidates in respect of the disputed questions. The Court was of the opinion that the scope of judicial review in matters concerning evaluation of candidates for public services is narrow. The Court reiterated that the

Court should be very slow in interfering with expert opinion. In the instant case, submission of the petitioners that the disputed questions were actually correct and within syllabus cannot be adjudicated by the writ court. The expert body found the disputed questions to be either wrong or out of syllabus. It will not be proper for the writ court to test such conclusion.

60. In *Asit Kumar Kar (supra)* and *Poonam (supra)* the Court held that it is basic principle of justice that no adverse order should be passed against a party without hearing him. In the instant case, the petitioners have not impleaded any of the promotees as parties. Interfering with the promotion process will affect the right of the promotees adversely.
61. In *Ashok Kumar (supra)*, *Dhananjay Malik (supra)*, *Ramesh Chandra Saha (supra)* and *Vinodh Kumar (supra)* the Court reiterated the settled legal principle that a person who consciously takes part in a selection process cannot, thereafter, turn around and question the method of selection and its outcome. Here, challenge to the promotion process has been thrown by the petitioners after the promotion was given effect to. Interference at this stage by the Court may not be proper.
62. In view of the discussions made hereinabove, the Court is of the considered opinion that the petitioners have failed to make out any case to show that the act of the respondents in conducting the promotion process was in any manner arbitrary or illegal. The Court is of the opinion that the authority

adopted a fair and balanced approach to proceed and conclude the promotion process. The Court is not inclined to interfere with the same.

63. The writ petitions fail and are hereby dismissed.
64. There will, however, be no order as to costs.
65. All parties to act on the basis of the server copy of this judgment duly downloaded from the official website of this Court.
66. Certified server copy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)