

**Judicial Review Cannot Be Totally Ousted When Key Answer Is Manifestly Erroneous, Court Cannot Shut Eyes To Obvious: Madras High Court**

**2022 LiveLaw (Mad) 459**

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**G.R. SWAMINATHAN; J.**

**W.P. (MD) No. 22129 of 2022 and W.M.P.(MD)No.16284 of 2022; 02.11.2022**

**K. Vinopratha versus Teachers Recruitment Board**

**Prayer :** Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus to direct the 1<sup>st</sup> respondent to award marks to the petitioner in respect of Question Nos.71 and 108 for the examination undergone by the petitioner on 18.02.2022 (2<sup>nd</sup> Batch – FN) for the post of PG Assistant in English pursuant to Advertisement No.01/2021 dated 09.09.2021.

*For Petitioner : Mr.K.Mahendran*

*For Respondents : Mr.V.R.Shanmuganthan, Standing Counsel.*

**ORDER**

Heard the learned counsel for the writ petitioner and the learned standing counsel for the respondents.

2. The writ petitioner is M.A (English) degree holder. She belongs to B.C (Woman) category. She took part in the recruitment process conducted by the Teachers Recruitment Board for the post of P.G. Assistant (English) for the year 2021. She scored 97.773003 marks out of 150. The cut-off mark for B.C (W) category was 98.196. Since the petitioner's mark was below the cut-off mark, she was not selected. Contending that she was erroneously awarded lower marks, the petitioner filed this writ petition.

3. The learned counsel for the petitioner took me through the averments set out in the affidavit filed in support of the writ petition and contended that the petitioner should have been awarded two more marks as her answers to Question Nos.71 and 108 are correct.

4. The Board filed counter affidavit and the learned standing counsel took me through its contents. The expert opinion was also made available. The respondents stick to their stand. Placing reliance on the decision of the Hon'ble Supreme Court reported in **(2018) 2 SCC 357 (Ran Vijay Singh Vs. State of U.P)**, the learned standing counsel submitted that the opinion expressed by the expert committee is final and that it is not open to this Court to second guess the correctness of the final key answers. He pressed for dismissal of the writ petition.

5. I carefully considered the rival contentious and went through the materials on record. The first question with which we are concerned in this writ petition is as follows :

*“Question No.71.Who is the narrator of 'Wuthering Heights' the novel written by Emily Bronte?*

*A : Mrs.Ellen*

*B : Heathcliff*

*C : Linton*

*D : Catherine”*

According to the writ petitioner, the correct answer is “Mrs.Ellen” and that she had answered the question correctly. It is in accord with the tentative key published by the Board. Her grievance is that the Board had erroneously deleted the question itself on the

ground that all the four options are incorrect. She pointed out that objection was received only from one candidate, namely, A.Sowmiya, out of 2,13,859.

**6.** I do not find any merit in the submission that there was only a solitary objection from among the thousands of candidates. What matters is not quantity. Numbers are determinative and decisive only in democratic politics. Not in all areas. Definitely not in academic matters. Number is irrelevant. Weight alone counts. I therefore do not fault the respondents for having acted on the representation from only one candidate.

**7.** Let me see if all the four options set out in the question paper with regard to aforesaid question are erroneous. Chapter I of the novel “Wuthering Heights” opens thus :

“1801.-I have just returned from a visit to my landlord – the solitary neighbour that I shall be troubled with. This is certainly a beautiful country! In all England, I do not believe that I could have fixed on a situation so completely removed from the stir of society. A perfect misanthropist's heaven: and Mr.Healthcliff and I are such a suitable pair to divide the desolation between us. A capital fellow! He little imagined how my heart warmed towards him when I beheld his black eyes withdraw so suspiciously under their brows, as I rode up, and when his fingers sheltered themselves, with a jealous resolution, still further in his waistcoat, as I announced my name

“Mr.Healthcliff?” I said.

A nod was the answer.

“Mr.Lockwood, your new tenant, sir. I do myself the honour of calling as soon as possible after my arrival, to express the hope that I have not inconvenienced you by my perseverance in soliciting the occupation of Thrushcross Grange: I heard yesterday you had had some thoughts-”

Thus, even a casual reader can conclude that the narrator is Mr.Lockwood. I got in touch with veteran writer Mrs.Malathi Rangarajan and put the question alone. The response was instant – Lockwood. I persisted “what about Mrs.Ellen?”. Not the main narrator, was the reply. She had narrated her experiences only to Mr.Lockwood who presents them to the readers. Therefore, the correct answer to that question was only Lockwood.

**8.** Let us visualize the position of the candidates. They would be under the justifiable impression that one out of the four options is correct. “Mrs.Ellen” comes closest and therefore, the writ petitioner justifiably hoped that she would get one mark for her answer.

**9.** While I endorse the action of the Board in deleting the question itself and rejecting the writ petitioner's contention, I fail to understand as to how the options were incorrectly framed in the first instance. The Board must not leave the issue. It must fix the responsibility. The question paper setters must be made accountable.

**10.** The other question is Question No.108. It is as follows :

“Question No.108. *According to Allen Tate the meaning of good poetry, “is its \_\_\_\_\_, the full organized body of all the extension and intension that we can find in it.”*”

A : Confusion

B : Stress

C : Tension

D : Depression”

The petitioner has mentioned “C” (Tension) as the correct answer. The key published by the Board mentions “A” (Confusion) as the correct alternative. In response

to the objections, the experts have taken the stand that the setters' key answer is correct and that it does not warrant any change.

11. Now two issues arise before me. The first is whether I can undertake the exercise of finding out the correct answer. The other is what is the correct answer.

12. It is not as if I am entering an untrodden land. A three Judges Bench of the Hon'ble Supreme Court in the decision reported in **(2021) 2 SCC 309 (Vikesh Kumar Gupta v. State of Rajasthan)** held that courts should be very slow in interfering with expert opinion in academic matters and in any event, assessment of the questions by the courts itself to arrive at correct answers is not permissible. The Hon'ble Supreme Court relied on its earlier decision reported in **(2018) 2 SCC 357 (Ran Vijay Singh Vs. State of U.P)** in which it was held that the court should presume the correctness of the key answers and proceed on that assumption and in the event of a doubt, the benefit should go to the examination authority rather than to the candidate. It was laid down that in exercise of powers of judicial review under Article 226 of the Constitution, the High Court cannot substitute its own views for that of the examiners.

13. A three Judges bench of the Hon'ble Supreme Court in the decision reported in **(1983) 4 SCC 309 (Kanpur University v. Samir Gupta)** had held that it would be unfair to penalise the students for not giving an answer which accords with the key answer, that is to say with an answer which is demonstrated to be wrong. It was laid down that the key answer should be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by an inferential process of reasoning or by a process of rationalization. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well-versed in the particular subject would regard as correct.

14. "Truth alone triumphs; not falsehood" is the declaration found in Mundaka Upanishad. "Satyameva Jayate" is the national motto. Judicial review cannot be totally ousted in certain circumstances. Where the key answer is manifestly and patently erroneous, interference will be warranted. In other words, the court, without looking at extraneous materials, must be able come to definite and clear conclusion on the strength of the materials relied on by the academic experts themselves. Otherwise, absurd consequences will ensue as a matter of logical necessity (*reductio ad absurdum*). Let me demonstrate. Assume, the question is "who is now the Prime Minister of India?". The candidate writes "Shri.Narendra Modi". If the key answer is "Shri.Rahul Gandhi", will it not be absurd?.

15. I called upon the learned standing counsel to make available the basis on which the experts came to the conclusion that the correct alternative is "confusion" and not "tension". It is too obvious from the record that the experts have arbitrarily taken the stand that the key answer is correct and does not require change. Even the extract enclosed in the sealed cover indicated that "tension" is the right answer. "Contemporary Literary Critics" by Elmer Borklund published by Palgrave Macmillan while dealing with Allen Tate reads as follows :

"The true poet, on the other hand, "is responsible for the virtue proper to him as a poet, for his special *arete* for the mastery of a disciplined language which will not shun the full report of the reality conveyed to him by his awareness." The poet achieves this condition by means of what Tate calls "tension". the meaning of poetry is its "tension", the full organized body of all the extension and intension that we can find in it....."

The respondents merely passed on a slim sealed cover. When I clearly indicated that the material enclosed therein does not support the key answer but rather supports the answer given by the writ petitioner, there was no demurrer. No endeavour was made by the Board to even indicate that their answer could possibly be right. In the counter affidavit also, the accent was on questioning the jurisdiction of the court to entertain the writ petition. The counter affidavit is silent as to how the key answer is correct. Respectfully applying the decision of the Hon'ble Three Judges Bench of the Hon'ble Supreme Court in Kanpur University case, I hold that the petitioner has demonstrated that the key answer to Question No.108 is manifestly, demonstrably and patently wrong. The court cannot shut its eyes to what is too obvious and apparent. Only an ostrich donning judicial robes will hide its head in the sand.

**16.** Here is a case the petitioner is a woman belonging to backward class. Her future is at stake. Her fundamental rights guaranteed under Article 14 of the Constitution of India are involved. The paper setters had shown a wrong answer in the key. The experts have arbitrarily refused to correct the same while publishing the final key. I have already given a finding that the experts not only have not placed any material to show that the key answer is correct but even the material passed on to the court shows that the petitioner's answer is correct. The petitioner should therefore be awarded one more mark. She was wrongfully denied an extra one mark. The petitioner will be treated as having scored 98.773003 out of 150 marks. It is above what was scored by the last ranked selected candidate. I direct the respondent Board to send a communication to the Director of School Education Department mentioning the marks of the writ petitioner as 98.773003 and by including her in the appropriate place in the selection list. The Director of School Education Department shall issue an appointment order to the petitioner as P.G Assistant (English) without delay.

**17.** I grant relief to the petitioner because she had filed the writ petition on 16.09.2022 itself. On 20.09.2022, I passed an interim order in the presence of the standing counsel that any appointment made pursuant to the selection list will abide by the outcome of the writ petition. Now that the process is over I will not entertain any further writ petitions even if the petitioners are placed on the same footing. I do not want to open the flood gates. Grant of relief shall remain confined to the petitioner alone.

**18.** The writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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