

*These writ petitions are taken up for hearing and the Court  
has passed following:*

**ORDER**

Writ Petition No.5866/2022 (Abhijeet Chaudhary & Others versus Madhya Pradesh Public Service Commission) is taken as leading writ petition as the issue involved in this batch of writ petitions is common, therefore, they all are being decided by this common order & the order passed in Writ Petition No.5866/2022 (Abhijeet Chaudhary & Others versus Madhya Pradesh Public Service Commission) shall be applicable *mutatis mutandis* to the facts & circumstances of the connected writ petitions also.

Shri Prashant Singh, learned Senior Counsel for the respondent/Madhya Pradesh Public Service Commission has filed an application seeking clarification/modification of the order dated 31.03.2022 whereby this Court had directed the Experts of the Public Service Commission to file their personal affidavits.

Shri Prashant Singh submits that identity of the Experts is sacrosanct for the Madhya Pradesh Public Service Commission and it is never disclosed. If Experts are asked to file their personal affidavits that will amount to disclosure of their personal identity, which may cause serious breach in the confidentiality required to be maintained by the Madhya Pradesh Public Service Commission. He, therefore, submits that the order dated 31.03.2022 may be modified to the extent it speaks about the Experts of the Madhya Pradesh Public Service Commission to file their personal affidavits.

In view of aforesaid submission made by Shri Prashant Singh, learned Senior Counsel for the respondent/Madhya Pradesh Public Service Commission, which is not opposed by learned counsel for the petitioners, the order dated 31.03.2021 is modified to the extent that the direction to the Experts of the Madhya Pradesh Public Service Commission to file their personal affidavits is omitted but rest to the order shall remain intact.

This batch of writ petitions raises a common question, namely, whether the Answer to Question No.81 (As Per Set-A) What percentage of total forest area of Madhya Pradesh Teak Trees are found? (A) About 15% (B) About 20% (C) About 25% (D) About 30%. According to the petitioners, they had filled Option (D) About 30% whereas the Madhya Pradesh Public Service Commission had accepted Option (B) About 20%.

Learned counsel for the petitioners submits that as per the data available from the website of the Indian State of Forest Report, 2019 issued by the Forest Survey of India, Ministry of Environment, Forest & Climate Change, Government of India, it is provided in Table 11.15.9 thus:-

Serial No.	Forest Type	% Forest Cover
1	3B/C1C Slightly Moist Teak Forest	2.28
2	3B/C2 Southern Moist Mixed Deciduous Forest	2.29
3	3C/DS1 Moist Sal Savannah	0.4
4	3C/C2e(i) Moist Peninsular High Level Sal	3.25
5	4E/RSI Riparian Fringing Forest	0.02
6	5/1S2 Khair-Sissu Forest	1.67

7	5/E1/DS1 Anogeisus Pendula Scrub	0.39
8	5/DS1 Dry Deciduous Scrub	8.10
9	5/DS2 Dry Savannah Forest	0.00
10	5/DS4 (Dry Grass Land)	0.01
11	5/E1 Anogeissus Pendula Forest	3.43
12	5/E2 Boswellia Forest	0.49
13	5/ES Butea Forest	0.24
14	5/E9 Dry Bamboo Brake	0.90
15	5A/C1a Very Dry Teak Forest	0.86
16	5A/C1b Dry Teak Forest	26.40
17	5A/C3 Southern Dry Mixed Deciduous Forest	24.55
18	5B/C1c Dry Peninsular Sal Forest	5.10
19	5B/C2 Northern Dry Mixed Deciduous Forest	18.55
20	6B/C2 Ravine Thorn Forest	0.23
21	8A/C3 Central Indian Subtropical Hill Forest	0.00
22	Plantation/TOF	1.20
	TOTAL	100.00

### 11.15.3.1 Assessment of Biodiversity

Findings of the Rapid Assessment of Biodiversity carried out at the national level for natural forests during September 2018 to May 2019 as part of the forest type mapping exercise is summarized below in table 11.15.10 and table 11.15.11 in respect of Madhya Pradesh

**TABLE 11.15.10 Number of Species observed during the rapid assessment**

Plant Type	Number of Species
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Tree	146
Shrub	79
Herb	72

Learned counsel for the petitioners submits that in view of the aforesaid Table, it is apparent that there is 2.28 percentage of forest cover of 3B/CLC slightly moist teak forest and similarly the percentage of forest cover of 5A CLA very dry teak forest is 0.86 and the percentage of forest cover of 5A CLB dry teak forest is 26.40 and when these three are added then the total percentage will come out to 29.54% against the report of the State of Madhya Pradesh showing 19.36% and, therefore, the Option (D) About 30% to the Question No.81 What percentage of total forest area of Madhya Pradesh, Teak Trees are found, is correct answer and, therefore, the petitioners should have been awarded marks for the said Option.

Learned counsel for the petitioners also submits that an Advertisement Bearing No.03-2020 dated 28.12.2020 was issued for holding the State Service & Forest Service Examination, 2020, the Preliminary Examination was held on

25.7.2021. As per the Scheme of the Examination, there were two papers. The first paper is of General Studies and second paper is of General Aptitude Test. Paragraph 5(2) of the advertisement Annexure P/1 provides for the method to deal with the correction of model answer key to be published on the website of the Madhya Pradesh Public Service Commission, which reads thus:-

(2) प्रारम्भिक परीक्षा उपरांत परीक्षा में पूछे गए प्रश्नों की पेपर सेटर/मॉडरेटर द्वारा तैयार प्रावधिक उत्तर-कुंजी आयोग की वेबसाइट [www.mppsc.nic.in](http://www.mppsc.nic.in) तथा [www.mppsc.com](http://www.mppsc.com) पर प्रकाशित कर ऑनलाइन पद्धति से 07 दिवस की अवधि में आपत्तियां प्राप्त की जायेंगी। इस अवधि के पश्चात प्राप्त किसी भी अभ्यावेदन पर कोई विचार नहीं किया जाएगा। प्रति प्रश्न आपत्ति हेतु 100 रुपये शुल्क देय होगा तथा प्रति सत्र पोर्टल शुल्क (रुपये 40/-) पृथक से देय होगा। आपत्ति सही पायी जाने पर आपत्ति शुल्क वापस किया जाएगा किन्तु पोर्टल शुल्क किसी भी स्थिति में वापस नहीं किया जाएगा।

प्राप्त आपत्तियों पर विषय विशेषज्ञ समिति द्वारा विचार किया जायेगा। समिति द्वारा आपत्तियों पर विचार कर निम्नलिखित अनुसार कार्यवाही की जायेगी :-

1. ऐसे प्रश्न जिनका प्रावधिक उत्तर-कुंजी में दिये गये विकल्पों में से गलत उत्तर दिया गया है और विकल्पों में अन्य विकल्प सही है तब प्रावधिक उत्तर-कुंजी को संशोधित किया जायेगा।
2. प्रश्न के हिन्दी तथा अंग्रेजी अनुवाद में भिन्नता की स्थिति में केवल हिन्दी अनुवाद ही मान्य होगा।
3. ऐसे प्रश्न जिसका दिये गये विकल्पों में एक से अधिक सही उत्तर है, सभी सही उत्तरों को मान्य किया जाएगा।
4. ऐसे प्रश्न जिसका दिये गये विकल्पों में एक भी सही उत्तर न हो को प्रश्नपत्र से विलोपित किया जायेगा।
5. विषय विशेषज्ञ समिति द्वारा समस्त अभ्यावेदनों पर विचार करने के पश्चात अंतिम उत्तर कुंजी बनाई जाएगी तथा आयोग द्व

रा वेबसाइट [www.mppsc.nic.in](http://www.mppsc.nic.in), [www.mppscdemo.in](http://www.mppscdemo.in) तथा [www.mppsc.com](http://www.mppsc.com) पर प्रकाशित की जाएगी। अंतिम उत्तर—कुंजी के प्रकाशन के पश्चात कोई भी आपत्ति/पत्र—व्यवहार मान्य नहीं किया जाएगा। विषय विशेषज्ञ समिति का निर्णय अंतिम होगा।

6. उपरोक्तानुसार समिति द्वारा विलोपित किए गये प्रश्नों को छोड़कर शेष प्रश्नों के आधार पर अंतिम उत्तर कुंजी के अनुसार अभ्यर्थियों की उत्तर पुस्तिकाओं का मूल्यांकन कर प्रारम्भिक परीक्षा परिणाम घोषित किया जायेगा।

Learned counsel for the petitioners submits that the Scheme for Examination itself provides that if there are more than one correct Option to a Question then all Options will be treated to be correct. He also submits that though as per the Model Answer Key Annexure P/5, the Madhya Pradesh Public Service Commission had marked “About 20%” to be correct Answer to the Question No.81 that What percentage of total forest area of the Madhya Pradesh, the Teak Trees are found? But there is variance in the data furnished by the Experts of the Madhya Pradesh Public Service Commission and the data available on the website of the Government of India and, therefore, both the answers should have been treated to be correct as per the Scheme and the petitioners should have been awarded marks for the same.

If on grant of marks to the said question, the petitioners qualify for the Main Examination then they should be permitted to participate in the Main Examination.

Shri Prashant Singh, learned Senior Counsel for the respondent/Madhya Pradesh Public Service Commission submits that firstly the petitioners of Writ Petition No.5866/2022 had not filed their objections within seven days from the date of uploading of the model answer key on the website and, therefore, the petitioners have waived their right to raise their objections at this stage. The Madhya Pradesh Public Service Commission has a Panel of Experts, the names of whom, are not disclosed with a view to maintain sanctity of the examination but as per the Experts, the correct answer is 20%. There are plethora of judgments of the Supreme Court as well as of this Court, which provides that no indulgence is required in the opinion of the Experts and that is binding on the Madhya Pradesh Public Service Commission.



At this stage, learned counsel for the petitioners submits that it is true that the petitioners in Writ Petition No.5866/2022 had not filed their objections within seven days from the date of uploading of the model answer key on the website of the Madhya Pradesh Public Service Commission but it is also true that the Madhya Pradesh Public Service Commission was also not oblivious of this fact that the answer to the question is in dispute inasmuch as admittedly in the connected Writ Petition No.8875/2022, the objection was raised by the petitioner therein to this question supported by the same material, which is being used by the petitioner, namely, the data collected from the Indian State Forest Report as is further clarified by the Indian Forest Status Report, 2021 published by the Ministry of Environment & Climate Change indicating total area of Teak Trees of Forest to be 29.79% as is evident from Annexure P/8....

Shri Anvesh Shrivastava, learned counsel for the respondent/Madhya Pradesh Public Service Commission

admits that the objection was though not raised by the present petitioners but the objection was raised by the similarly situated person(s) in Writ Petition No.8875/2022 to the said question. However, he submits that the decision of the Expert Committee is binding on the Madhya Pradesh Public Service Commission and, therefore, these writ petitions may be dismissed.

Vide order dated 31.3.2022, this Court had specifically formulated an issue that if there is mismatch in the data of the State of Madhya Pradesh Public Service Commission according to which the percentage of Teak Forest in the Madhya Pradesh comes out to 19.36% and that of the Union of India according to which the percentage comes out to Rs.29.54% then the forest being a subject in the concurrent list of the Constitution of India Vide Entry 17A of List 3 of Schedule 7 and in case of such discrepancies between the data of the Union and the State, which data is to be accepted?

In reply to the said issue though Shri Prashant Singh, learned Senior Counsel for the respondent/Madhya Pradesh

Public Service Commission has adverted to the provisions of the advertisement and stated that the no objection was raised by the present set of the petitioners and the opinion of the Expert Committee is sacrosanct but no specific answer has been given to the issue framed by this Court.

Shri Prashant Singh, learned Senior Counsel for the respondent/Madhya Pradesh Public Service Commission places reliance on Full Bench judgment of this High Court in **Nitin Pathak versus State of M.P. & Others, ILR 2017 MP 2314:2017 SCC OnLine MP 1824**, wherein it is held that in case of recruitment examination, in exercise of power of judicial review, the Court should not refer the matter to the 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 the model answer key and it would normally be prudent, wholesome and safe for the Courts to leave the decisions to the Academicians and Experts.

It is true that the opinion of the Expert Committee is to be given precedence over anything else but it is also true that the future of a candidate cannot be jeopardized merely because the Experts failed to take into consideration the authentic data of the Government of India without disclosing the reasons for not accepting that data.

It has come on record and as has been accepted by Shri Prashant Singh, learned Senior Counsel for the respondent/Madhya Pradesh Public Service Commission that another set of petitioners had raised the said objection before the Madhya Pradesh Public Service Commission duly supported by the material, which is available on record. Thus, the Experts were having knowledge of this fact and had two options either to discard the material produced by the petitioners saying it to be not authentic as they have done in regard to other question by producing authentic material like Gazetteer of India or the data available on website of the Institution in regard to which the question was asked like in case of discrepancies in regard to the question as to who was

the founder of Adi Bramha Samaj to support their answer but in the present case no such material has been brought on record on the basis of which the data procured from the Ministry of Environment, Forest & Climate Change, Government of India can be discarded

In that view of the matter, I am of the opinion that the Option (D), to Question No.81 (As Per Set-A) that what percentage of total forest area of Madhya Pradesh Teak Trees are found, filled by that set of the petitioners as 30% is also to be treated to be correct and there is a provision in the Scheme of Examination itself as reproduced above, which provides that in case of two answers being correct then the marks will be awarded for both the answers. The Madhya Pradesh Public Service Commission cannot be allowed to deprive of their genuine & legitimate right for the failure of their so called Experts in not referring to the material produced by the similarly situated persons while dealing with a subject in the concurrent list.

A Coordinate Bench of this Court in the case of **Rohit Jain versus M.P.P.S.C & Another (Writ Petition No.9519/2017) vide order dated 28.8.2018** has rejected the contention of the Madhya Pradesh Public Service Commission raising the issue of “estoppel” as has been raised by the learned Senior Counsel for the respondent/Madhya Pradesh Public Service Commission in this batch of writ petitions also. The Coordinate Bench also held that “a constitutional body is obliged to evaluate the answer sheet of the candidate with accuracy and precision. If it commits a mistake or illegality then it cannot take shelter of “estoppel”. Putting it differently, the Constitutional Body like Public Service Commission is under a constitutional obligation to examine the answer sheet of the candidate(s) with fairness, seriousness and due care. If it fails to discharge the said constitutional obligation then it cannot hide behind “the doctrine of estoppel”.

Infact the ratio of the judgments of the Supreme Court in **H.P.Public Service Commission versus Mukesh Thakur**

**& Another (2010) 6 SCC 759** so also in **U.P.P.S.C & Another versus Rahul Singh (2018) 7 SCC 254** is quite clear and I only propose to highlight a few significant conclusions. They are: (i) If a statute, rule or regulation governing an examination permits the reevaluation of an answer sheet or scrutiny of an answer sheet as a matter of right then the authority conducting the examination may permit it; (ii) If a statute, rule or regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the Court may permit reevaluation or scrutiny only if it is demonstrated very clearly, without any “inferential process of reasoning or by a process of rationalization” and only in rare or exceptional cases that a material error has been committed; (iii) The Court should not at all reevaluate or scrutinize the answer sheets of a candidates and it has no expertise in the matter and academic matters are best left to academics; (iv) The Court should presume the correctness of the key answers and proceed on that assumption; and (v) In the event of a

doubt, the benefit should go to the examination authority rather than to the candidate. Thus, it is evident that where error is glaring, apparent and tacitly admitted, the direction for rechecking and reevaluation can be issued.

In view of the above discussion and taking into consideration a fact that in relation to a subject in the concurrent list, the data of Union of India will have supremacy over the data of State, these writ petitions deserve to and are allowed. It is directed that the petitioners and all other similarly situated persons, who have filled Option (D) Above 30% as the Answer to Question No.81 (As Per Set-A) and similar option in identical Question in different sets that what percentage of total forest area of Madhya Pradesh, Teak Trees are found, will have to be awarded marks and if after award of marks, the petitioners qualify for the Main Examination then they be permitted to participate in the Main Examination either by issuing them the roll number or entry pass or by holding the separate examination as the case may be inasmuch as it will not be out of place to mention that



hearing of these writ petitions was delayed on the request of the Madhya Pradesh Public Service Commission, which sought time when the matters were listed before this Court on 12.4.2022.

In above terms, these writ petitions stand allowed & disposed of.

Let the order being passed today be transmitted by the Registrar (Judicial) through e-mail to the Madhya Pradesh Public Service Commission and a free typed copy of this order be supplied to the learned counsel for the petitioners, learned Government Advocate for the State and learned Senior Counsel for the respondent/Madhya Pradesh Public Service Commission.

Let a copy of the order dated 21.4.2022 passed in Writ Petition No.5866/2022 (Abhijeet Chaudhary & Others versus Madhya Pradesh Public Service Commission) be retained in the record of connected writ petitions.

(VIVEK AGARWAL)

JUDGE

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