

A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.33961 of 2021

Rabindra Panigrahi

....

Petitioner

-versus-

State of Odisha and Ors.

....

Opposite Party

Mr. S. Mishra, SC

(For S & ME Deptt.)

CORAM:

Mr. JUSTICE S.K. PANIGRAHI

ORDER

20.05.2022

Order No.

8. 1. This matter is taken up by hybrid mode.
2. Heard learned counsel for the petitioner and learned counsel for the State.
3. The present petition has been directed against the improper evaluation and preparation of question cum answer sheet in the Computer Based Test (CBT) for the recruitment of Contractual Teachers in Govt. secondary school, pursuant to Advertisement dated 13.08.2021; whereby the Petitioner assails the evaluation method and has preferred an application under Articles 226 and 227 of the Constitution of India.
4. Shorn of unnecessary details, the substratum of the matter presented before us remain that the petitioner is a resident of Bandhagaon, P.S- Bhadrak, Dist- Bhadrak. The Petitioner, pursuant to Advertisement dated 13.08.2021, applied for the post of Hindi Teacher and appeared for the designated Computer Based Test (CBT) at upper floor of Bansal Classes, Jaydev Vihar, Bhubaneswar on 04.10.2021.

5. The petitioner was quite hopeful and confident of getting qualified owing to his satisfactory performance in the CBT. However, to his dismay, he had scored 21.75 marks out of 90, falling short of only 0.75 marks from the qualifying marks (22.5) by less than one mark.
6. Further, the learned Counsel for petitioner has contended that Q.63 is out of syllabus and therefore, constitutes a plausible ground for awarding grace marks to the petitioner. Moreover, the Ld. counsel submits that the petitioner being 32-year-old would be barred by age and rendered ineligible to appear for examinations of similar kind in future.
7. However, it is to be noted that the petitioner had alleged discrepancies in relation to three questions i.e., Q.63, 64 and 89. In the rejoinder affidavit, the petitioner having been satisfied by the explanation provided by the expert committee, retracted his claim in relation to Q. 64 and 89. It is also pertinent to mention that the petitioner had previously alleged Q. 63 and Q. 89 to be out of syllabus.
8. In the counter-affidavit filed by the opposite party, Merit Trac Services Pvt. Ltd., through the letter dated 17.02.2022, has systematically explained as to how Q.63 is a part of “Child Development-Process of growing up” and “Learning Process-understanding Learning Process/Learning as a Process and outcome”. Moreover, the scheme & syllabus for Computer Based Recruitment Examination (CBRE) published by the Directorate of Secondary Education, Odisha also includes “Information Processing Approach- Sternberg” under the heading “Approaches to Understanding the Nature of Intelligence” in Section-IV of the syllabus.

9. It appears that if the petitioner had grievance of the questions being out of syllabus, such a discrepancy could've been addressed in the stipulated time frame i.e., 06.10.2021-08.10.2021 (3 days). Moreover, the opposite party in the counter-affidavit has categorically stated that they disposed off 577 representations in respect of 76 questions, out of which two questions i.e., Q. 126 & 149 were nullified for having wrong answers and grace marks were provided to all candidates in that respect. It can be ascertained from the petitioner's rejoinder affidavit that he was providing medical attention to his relatives on the designated dates for addressing discrepancy in relation to the question paper and hence, was unable to make his representation. The court needs to see what is legally possible and not what possibly dehors the legal process. A thing that may seem plausible on the grounds of natural justice, may not be possible legally. As succinctly put by Mathew, J. in his judgment in the *Union of India v. M.L. Kapur*¹, "it is not expedient to extend the horizon of natural justice involved in the Audi alteram partem rule to the twilight zone of mere expectations, however great they might be".

10. The prayer of the petitioner to re-evaluate the answer script is also unsustainable as the candidates selected for the concerned examination have been engaged since 15.12.2021. Moreover, the Supreme Court in the case of *Maharashtra State Board of Secondary and Higher Secondary Education and Anr. v. Paritosh Bhupesh Kurmarsheth*² had opined that:

"It is in the public interest that the results of public examinations when published should have some

¹ 1974 AIR 87

² 1984 AIR 1543.

finality attached to them. If inspection, verification in the presence of the candidates and revaluation are to be allowed as of right it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking etc. of the candidates, besides leading to utter confusion on account of the enormity of the labour and time involved in the process. The Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It would be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded, in the above premises, it is to be considered how far the Board has assured a zero defect system of evaluation, or a system which is almost fool-proof."

11. Further, In the case of ***Bismaya Mohanty And Ors. vs Board Of Secondary Education***³, the court observed that it is not in dispute that the Regulations of the Board do not permit review, and as such no review of the answer-script can be done. It cannot be denied that

³ 1996 I OLR 134.

an examiner has a right to fair-play and get appropriate marks according to his performance. What constitutes fair-play depends upon the facts and circumstances relating to each particular given situation. If it is found that every possible precaution has been taken and all necessary safeguards provided to ensure that the answer scripts inclusive of supplements are kept in safe custody so as to eliminate the danger of their being tampered with and that the evaluation is done by the examiners applying uniform standards with checks and cross-checks at different stages, and that measures for detection of malpractice has also been effectively adopted in such cases it would not be proper for the Court to interfere.

12. Since the present set of facts suggest that the examination was a computer-based test, it eliminates any possibility for human intervention in both examination and evaluation phase. Due to lack of evidence suggesting possible malpractice, it is imperative that the due process involved in evaluation of answer scripts be followed without hinderance from courts. In the case of **H.P Public Service Commission v. Mukesh Thakur & Anr**⁴, the Supreme Court held that it was not permissible for the High Court to examine the question paper 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 no.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.

⁴ (2010) 6 SCC 759.

13. Having considered the matter in the aforesaid perspective and guided by the precedents cited hereinabove, this Court allows and upholds the defence of the Opposite Party No.2 and rejects the prayer of the petitioner.

14. The W.P.(C) is, accordingly, disposed of being dismissed.

15. The sealed cover answer sheet of the petitioner be returned back to the learned Standing Counsel for the Department of School and Mass Education.

16. Urgent certified copy of this order be granted on proper application.

