Rajasthan High Court Web Copy - Not Official

For Petitioners : Mr. Anil Kumar Sharma, Advocate
Mr. Vivek Joshi, Advocate with
Ms. Preeti Sharma, Advocate
Mr. Arvind Kumar Arora, Advocate with
Ms. Komal Kumari Giri, Adv.
Mr. Mukesh Kumar Meena, Advocate
Mr. Girraj P. Sharma, Advocate
Mr. Sandeep Singh Shekhawat, Adv.
With Ms. Priya Pareek, Advocate
Mr. Mahendra Singh Rathore, Adv.
Ms. Nidhi Khandelwal, Advocate with
Mr. Nikhil Kumar Jain, Advocate
Mr. Ram Pratap Saini, Advocate,
Mr. Aamir Khan, Advocate and
Mr. Giriraj Rajoriya, Advocate
Mr. Aditya Jain, Advocate with
Ms. Gyamlani Neha, Advocate
Ms. Bhavya Golecha, Advocate
Mr. Vinodi Lal Mathur, Advocate
Mr. Mohit Balwada, Advocate with
Ms. Gayatri, Advocate
Mr. R.K. Mathur, Senior Advocate
assisted by Mr. Ved Prakash Sogarwal,
Advocate
Mr. Manoj Kumar Avasthi, Advocate
Mr. Prem Chand Dewanda, Advocate
with Mr. Hemraj Rodiya, Advocate
Mr. Bajrang Lal Choudhary, Advocate
Mr. Satya Pal Poshwal, Advocate with
Mr. Vinod Choudhary, Advocate
Mr. Chandra Kant Chauhan, Advocate
Mr. Saurabh Jain, Advocate with
Ms. Shivali Katara, Advocate
Mr. Rajesh Kumar, Advocate with
Mr. Vishesh Sharma, Advocate
Mr. Ravi Gupta, petitioner in person

For Respondents : Mr. A.K. Sharma, Sr. Adv. assisted by
Mr. Vishnu Kant Sharma, Advocate

HON'BLE THE ACTING CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE SAMEER JAIN

Order

REPORTABLE

8/04/2022

By the Court:(Per Manindra Mohan Shrivastava, Acting CJ.)

Petitioners, in this batch of petitions, call in question the correctness and validity of the merit list prepared after Preliminary

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Examination in the matter of selection to the post of Civil Judge Cadre. The petitioners had appeared in Preliminary Examination. After declaration of the result of Preliminary Examination on 11.01.2022 in the matter of recruitment to 120 posts of Civil Judge Cadre, notified vide Advertisement dated 22.07.2021, when model answer keys were published, inviting objections, the petitioners, as claimed by them, submitted objections. A Committee of Experts was constituted to examine various objections. The objections were with regard to either questions itself being vague, incorrect and misleading or answer keys alleged to be incorrect. In some cases, objection was raised that more than one answer keys are correct, yet there were cases where objection was to the effect that none of the answer keys are correct. All these objections were considered by the Committee of Experts constituted by the official respondents. While the Committee decided to delete four questions, objections with regard to other questions were overruled. Aggrieved by deletion of four questions as also rejection of objections with regard to other questions, the petitions have been filed by unsuccessful candidates, which are being disposed off by this common order.

2. The respondents issued an Advertisement on 22.07.2021 under the Rajasthan Judicial Service Rules, 2010 (As Amended) [hereinafter referred to as 'the Rules of 2010'] for direct recruitment to the posts of Civil Judge Cadre. The advertisement invited applications from eligible candidates. Under the Rules of 2010 read with the advertisement, the process of selection compromised of two stages, i.e., Preliminary Examination and Main Examination as specified in Schedule IV appended to the Rules of 2010. The marks obtained in Preliminary Examination by the candidates, declared

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qualified for admission to Main Examination, were not to be counted for determining their final merit.

Under the Rules of 2010 and the advertisement, the number of candidates to be admitted to the main examination was 15 times the total number of vacancies (category wise) to be filled in the year, but in the said range, all those candidates, who secure the same percentage of marks, as may be fixed by the Recruiting Authority for any lower range, were to be admitted to Main Examination. Main Examination comprised of written examination as well as interview. The Rules of 2010 and the advertisement further provided that on the basis of marks secured in Main Examination, candidates to the extent of three times of total number of vancancies (category wise) shall be declared qualified to be called for interview.

3. The petitioners and large number of candidates submitted their applications. All the candidates including the petitioners were screened through Preliminary Examination on the pattern of multiple choice for every question. Preliminary Examination did not comprise of any question requiring writing of answer, but was confined only to options by way of multiple choice. The question papers were prepared in four different sets described as A, B, C and D Series. Preliminary Examination was held on 28.11.2021. Thereafter, provisional answer key/model answer key of question papers of all the series, i.e., A, B, C and D Series was published on 29.11.2021. A notice was published inviting objections from the candidates, who had objections regarding answers mentioned in the model answer key by uploading those objections with the authentic proof, on the official website of the High Court, between the period from 04.12.2021 (from 01:00 P.M.) to 11.12.2021 (up to 05:00 P.M.).

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It also stated that objections received or submitted after the stipulated period or by any other mode or without paying requisite fee, shall not be entertained. The notice further declared that after due consideration of the objections received, if any, the final answer key (if required) and result of Preliminary Examination shall be published on the official website of the High Court.

4. In response, various objections were received. The respondents, thereafter, constituted a Committee of Experts. After examining the objections, the Committee was of the view that out of all the objections, four questions be itself deleted or any other appropriate decision be taken in the interest of examinees. All other objections were rejected. Pursuant to the recommendations made by the Committee of Experts, the respondents decided to delete four questions and vide notification dated 11.01.2022, final answer key of question papers of all the series, i.e., A, B, C and D Series of Preliminary Examination was published indicating the questions deleted. Copy of that notification has been placed on record as Annexure-6 in D. B. Civil Writ Petition No. 2253/2022 (Kavita Bhargava Vs. Registrar Examination, Rajasthan High Court, Jodhpur). Based on the aforesaid exercise, after getting objections decided and finalising the model answer key, a merit list (category wise) was also published. As the petitioners did not find place in the merit list, they have approached this Court by filing aforesaid writ petitions.

5. We have heard learned counsel for the respective writ petitioners in elaborate details. The challenge made to correctness and validity of deletion of four questions, rejection of representation for deleting more questions on various grounds and some other

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common grounds of challenge to the process of selection in these petitions is as below:

(i) Question No. A-44/B-44/C-53/D-47 has been wrongly deleted as it cannot be said to be vague inasmuch as Hindi version being right. Merely because English version was vague, the deletion could not have been made as in that eventuality, it could work injustice and unfair treatment to those candidates, who correctly attempted and gave correct answer on the basis of Hindi version.

(ii) Question No. A-79/B-74/C-84/D-84 has been wrongly deleted as option (3) is correct but the Committee has wrongly treated as incorrect and therefore, arbitrarily deleted the question.

(iii) Question No. A-81/B-81/C-74/D-75 has been wrongly deleted by wrongly treating the same as being out of syllabus. The question was well within the syllabus, therefore, the decision of the Committee is wrong.

(iv) Question No. A-84/B-71/C-80/D-74 has been wrongly deleted. Even though option (3) is the correct answer, the Committee has wrongly deleted the question. In this regard reliance has been placed on certain texts.

(v) Question No. A-47/B-51/C-57/D-62 ought to be deleted as in view of Amendment Act, all the given options were wrong.

(vi) Question No. A-78/B-76/C-82/D-77 gave four options out of which, option (1) and (2) both are correct. Therefore, it being a case of more than one correct answer, it ought to be deleted. This is sought to be supported on the basis of certain texts.

(vii) Question No. A-100/B-89/C-88/D-94 ought to be deleted as it was out of syllabus. Referring to the contents of syllabus for the subject (English Proficiency), the question was with regard to correct

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spelling of the word with multiple choices. This was not included as per syllabus of English Proficiency as specified in the advertisement.

(viii) Question No. A-66/B-49/C-58/D-39 provided four options. The key answer was rightly marked as option (3) [25 September 1987] but later on it was wrongly changed as option (1) [23 December 1986].

(ix) Question No. A-95/B-88/C-95/D-98 ought to be deleted because both options (1) and (3) were correct and it was a case of multiple correct answers.

(x) Question No. A-21/B-33/C-22/D-28 is highly vague and all the options are possibly correct answers. Therefore, the question was required to be deleted.

(xi) In respect of Question No. A-80/B-77/C-73/D-81, the respondents have wrongly provided option (2) as the correct answer. Therefore, evaluation of the candidates and award of marks to those, who have opted for option (2) is illegal, arbitrary and unfair.

(xii) For every deletion, bonus marks ought to be awarded to those who had correctly answered the deleted questions.

(xiii) Action of the respondents in inviting objections and referring the disputed questions/answer keys to the Committee of Experts is de-hors the governing rules, i.e., Rules of 2010 and otherwise not envisaged under Rule 20 thereof and Schedule IV B thereof.

(xiv) Schedule IV B inasmuch as under the scheme of Preliminary Examination, it has been provided that 70% weightage would be given to the subjects prescribed in syllabus for Law Paper-I and Law Paper-II and 30% weightage would be given to test proficiency in Hindi and English Language. The result/effect of deletion of four

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questions would be that the aforesaid ratio was disturbed and thus, the entire examination is vitiated.

(xv) Even though, the respondents upon consideration of objections, decided to delete four questions, the mechanism adopted after deletion was not legally permissible in law. Instead of evaluating the merits of candidates on the basis of answers against 96 questions, pro-rata distribution of marks of deleted questions ought to be worked out.

(xvi) Question No. A-83/B-79/C-73/D-76 was required to be deleted as out of four options, three options, i.e. option (1), (2) and (3) are correct answers to the question. Therefore, it being a case of multiple correct answer keys, the only option was deletion of the question.

An additional ground has been taken that all those candidates, who had attempted any of the three options, i.e. option (1), (2) and (3), were entitled to grace marks.

(xvii) As exercise of deletion of questions affected the cut off marks, the preparation of the merit list based on cut off marks itself renders the select list illegal and, therefore, the merit list calling the candidates for Main Examination is bad in law.

(xviii) Question No. A-59/B-66/C-46/D-69 with four multiple choices had more than one correct answer as option (1) and option (3). Therefore, it was required to be deleted.

(xix) Question No. A-46/B-59/C-68/D-40 was also required to be deleted as according to the petitioners-candidates, it had two correct multiple choice answers as option (1) as well as option (4).

(xx) In the examination hall, the restriction with regard to watch was also arbitrary and contrary to the terms of the advertisement.

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While according to the advertisement, the prohibition so imposed was with regard to bringing smart watch, there being no objection to normal watch, even then the same was also not allowed. This prejudicially affected time management and in that regard, representation was also made.

(xxi) Question No. A-41/B-40/C-59/D-54 was liable to be deleted as option (1) was not correct answer and remaining all three options are correct.

In support of contention that bonus marks/grace marks ought to be awarded as a result of deletion of questions, learned counsel for the petitioners have placed reliance upon the decision of the Hon'ble Supreme Court in the case of **Kanpur University, through Vice-Chancellor & Others Vs. Samir Gupta & Others, (1983) 4 SCC 309** and judgment of Division Bench of this Court in the case of **Arti Meena Vs. Rajasthan High Court, Jodhpur (D. B. Civil Writ Petition No. 10022/2019 and batch of petitions decided vide order dated 18.07.2019)**.

6. Per contra, learned Senior Counsel appearing on behalf of the respondents would argue that the respondents have acted not only with utmost transparency, but also in accordance with the rules and constitutional requirement of fair procedure. He would submit that model answer keys prepared by the respondents were first published by inviting objections from the candidates. Upon receipt of objections, a Committee of Experts was constituted. It meticulously examined the objections and after close scrutiny thereof, decided to delete four questions, i.e., Question Nos. A-44, A-79, A-81 and A-84.

As far as Question No. A-66 is concerned, the Committee opined that the correct answer be changed to option (1) or any

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other appropriate decision be taken in the interest of examinees. Accordingly, option of that question was changed as option (1) being the correct answer key and the candidates were evaluated on the basis of the answers given by them, taking upon option (1) as the correct answer.

7. Learned Senior Counsel would further submit that once the objections were considered by the Committee of Experts, it was not open for the petitioners to seek further review/revaluation of the answer keys through judicial process except in very rare circumstances where the answer keys as finalised by the respondents or the decision taken by the respondents with regard to deletion of questions or refusing to delete the questions or even changing answer keys is demonstrably and palpably wrong and without involving any inferential process of reasoning or by a process of rationalisation. He would further argue that it has been held in various decisions that once the questions are found to be wrong or incorrect, one of the proper course of action would be deletion of those questions and evaluating the merit of the candidates on the basis of answers provided by them against deleted disputed questions. Further contention of learned Senior Counsel is that claim of bonus marks is not permissible as such directions in the cases of **Kanpur University, through Vice-Chancellor & Others (supra)** and **Arti Meena (supra)** were given in different factual context.

8. Learned Senior Counsel appearing for the respondents would further argue that it had become necessary to evolve a just and fair procedure to ensure that examinees are not subjected to any unfair process of evaluation of merit on the basis of questions which itself

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were vague or incorrect. It had, therefore, become necessary to accord fairness by deleting four questions and if in that process, slight deviation results insofar as Law subjects and Language subjects are concerned, as provided in Schedule IV (B) appended to the Rules of 2010, that would not give any candidate a right to question the process of selection as the effect of deletion has percolated to all the examinees alike.

9. Next submission of learned Senior Counsel for the respondents is that objection with regard to cut off marks is also liable to be rejected because it does not affect inter se merit of the candidates as the merit list has been prepared strictly in accordance with the marks obtained by the candidates keeping in view the provisions contained in Rule 20 of the Rules of 2010. Replying further, it has been argued that even though the Rules do not clearly envisage course of action to be adopted where some of the questions are found incorrect and therefore, requiring deletion, rules of fairness and procedure have to be read into the rules and the permissible course of action in such cases, as has been laid down in plethora of decisions by the Hon'ble Supreme Court, which has been followed by the respondents in letter and spirit.

10. As regards the argument that after deletion, pro-rata distributions of marks was required to be adopted and such course having not been adopted, selection process has rendered illegal, it is contended that whether or not pro-rata distribution of marks takes place, as was directed in the peculiar facts and circumstances of the case of **Kanpur University, through Vice-Chancellor & Others (supra)**, it does not affect the inter se merit of the candidates including the petitioners as even if, pro-rata distribution of marks

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takes place, inclusion of the candidates would depend only upon their comparative merit and the marks obtained by them in Preliminary Examination.

11. Lastly, learned Senior Counsel would submit that the objection raised by one of the petitioner regarding not allowing the normal watch during examination does not deal with the petitioner in any discriminatory manner because all the candidates were subjected to examination under the same restriction and there are no pleadings in the petition that different treatment was given in the sense that at some places facility of keeping normal watch was provided and at some other places, such facility of keeping normal watch was not allowed. He would further submit that as far as Question No. A-21/B-33/C-22/D-28 is concerned, no objection was received, therefore, the Committee had no occasion to examine the same. However, the petitioners have failed to establish that the question was demonstrably and palpably wrong, vague and incorrect, so as to require its deletion. He would submit that the petitioners have sought to question the correctness of the aforesaid question for the first time before this Court and, therefore, only on that count, it is required to be rejected.

12. As far as challenge to decision of the Committee with regard to Question No. A-81/B-81/C-74/D-75 and Question No. A-80/B-77/C-73/D-81 is concerned, the challenge to the action of the respondents has already been repelled and petition filed by one Ashwini Chaturvedi has been dismissed by Division Bench of this Court at Principal Seat, Jodhpur in **D. B. Civil Writ Petition No. 1226/2022 (Ashwini Chaturvedi Vs. High of Judicature for Rajasthan, Jodhpur) decided on 28.01.2022**.

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13. In support of various submissions made before us, learned Senior Counsel for the respondents has placed reliance upon the decisions of the Hon'ble Supreme Court in the cases of **Ran Vijay Singh and Others Vs. State of Uttar Pradesh and Others (2018) 2 SCC 357; Uttar Pradesh Public Service Commission, through its Chairman and Another Vs. Rahul Singh and Another (2018) 7 SCC 254; Richal and Others Vs. Rajasthan Public Service Commission and Others, (2018) 8 SCC 81; Kanpur University, through Vice-Chancellor & Others (supra);** judgment of Division Bench of this Court in the case of **Kanhya Lal Sain Vs. Registrar Examination, R.H.C. 2016 (2) RLW 1370 (Raj.)** and order dated 21.02.2022 passed by Division Bench of this Court in **Rajkamal Basitha Vs. Rajasthan High Court, Jodhpur and Others (D.B. Civil Writ Petition No. 11347/2021 and batch of petitions)**.

14. We have heard extensive and elaborate arguments and submissions made by learned counsel for the parties and have taken into consideration the pleadings made by the parties in the writ petitions, return of the respondents, rejoinder and legal submissions with reference to several decisions cited at the Bar.

15. At the outset, insofar as challenge to decision of the respondents with regard to Question No. A-81/B-81/C-74/D-75 and Question No. A-80/B-77/C-73/D-81 is concerned, the same is liable to be dismissed because the correctness of the decision of the respondents with regard to aforesaid two questions has already been repelled by Division Bench of this Court in the case of **Ashwini Chaturvedi (supra)**.

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16. Before adverting to various factual submissions and the grounds urged by the petitioners, we consider it apposite to first deal with the settled legal position in the matter of challenge to the correctness of the process of revaluation of answer keys and the scope of judicial review in such cases.

17. To begin with, it is well settled legal position that in absence of there being a provision of revaluation, revaluation of answers is not permissible in law, as held in plethora of decisions.

18. The settled legal position in this regard was reiterated by the Supreme Court in the case of **Himachal Pradesh Public Service Commission Versus Mukesh Thakur & Another, (2010) 6 SCC 759** and it was held as below:-

> "24. The issue of re-evaluation of answer book is no more res integra. This issue was considered at length by this Court in Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupesh Kurmarsheth, wherein this Court rejected the contention that in absence of provision for re-evaluation, a direction to this effect can be issued by the Court. The Court further held that even the policy decision incorporated in the Rules/Regulations not providing for rechecking/verification/re-evaluation cannot be challenged unless there are grounds to show that the policy itself is in violation of some statutory provision. The Court held as under: (SCC pp.39-40 & 42, paras 14 & 16)
>
> "14...It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy, how the provisions of the statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act...
>
> 16...The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any draw-backs in the policy incorporated in a rule or

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regulation will not render it ultra vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act....”

25. This view has been approved and relied upon and re-iterated by this Court in Pramod Kumar Srivastava v. Bihar Public Service Commission observing as under:(SCC pp.717-18, para7)

“7. ... Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for re- evaluation of his answer-book. There is a provision for scrutiny only wherein the answer-books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totalling of marks of each question and noting them correctly on the first cover page of the answer-book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. In the absence of any provision for re- evaluation of answer-books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re- evaluation of his marks.

(emphasis added)

A similar view has been reiterated in Muneeb Ul Rehman Haroon (Dr.) v. Government of J & K State, Board of Secondary Education v. Pravas Ranjan Panda, Board of Secondary Education v. D. Suvankar, West Bengal Council of Higher Secondary Education v. Ayan Das and Sahiti v. Dr. N.T.R. University of Health Sciences.

26. Thus, the law on the subject emerges to the effect that in absence of any provision under the statute or statutory rules/regulations, the Court should not generally direct revaluation.”

19. The aforesaid legal position has been further affirmed in the cases of **Ran Vijay Singh & Others (supra)** and **High Court of Tripura through The Registrar General Versus Tirtha Sarathi Mukherjee & Others, (2019) 16 SCC 663**.

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20. However, a situation where key answers itself are found to be incorrect, requiring necessary course correction has also been considered by the Supreme Court.

In the case of **Kanpur University, through Vice-Chancellor & Others (supra)**, controversy arose with regard to some questions that the key answers for those questions were not correct. On facts, upon examination of authentic texts, it was held that the key answers itself were not correct. The High Court issued direction for re-assessment of particular questions. Such direction was affirmed. It was held that if there is a case of doubt, key answers already provided have to be adhered to but if the matter is beyond the realm of doubt, it would be unfair to panelize the students for not giving an answer which accords with the key answer which is demonstrated to be wrong. It was importantly observed:-

> "**15.** The findings of the High Court raise a question of great importance to the student community. Normally, one would be inclined to the view, especially if one has been a paper setter and an examiner, that the key answer furnished be the paper setter and accepted by the University as correct, should not be allowed to be challenged. One way of achieving it is not to publish the key answer at all. If the University had not published the key answer along with the result of the test, no controversy would have arisen in this case. But that is not a correct way of looking at these matters which involve the future of hundreds of students who are aspirants for admission to professional courses. If the key answer were kept secret in this case, the remedy would have been worse than the disease because, so many students would have had to suffer the injustice in silence. The publication of the key answer has unravelled an unhappy state of affairs to which the University and the State Government must find a solution. Their sense of fairness in publishing the key answer has given them an opportunity to have a closer look at the system of examinations which they conduct. What has failed is not the computer but the human system.

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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.

17. Students who have passed their Intermediate Board Examination are eligible to appear for the entrance Test for admission to the Medical Colleges in U.P. Certain books are prescribed for the Intermediate Board Examination and such knowledge of the subjects as the students have is derived from what is contained in those text-books. Those text-books support the case of the students fully. If this were a case of doubt, we would have unquestionably preferred the key answer. But if the matter is beyond the realm of doubt, 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."

21. In another case of **Manish Ujwal & Others Versus Maharishi Dayanand Saraswati University & Others, (2005) 13 SCC 744**, similar challenge was raised where student community filed a writ petition before the High Court challenging ranking in the entrance tests conducted by the University for admission to medical and dental courses with the grievance that various key answers on the basis whereof, answer sheets were evaluated, itself were wrong and consequently wrong and erroneous ranking was prepared.

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22. The opinion of the experts was sought. The opinion of experts was unanimous that key answers of disputed questions were erroneous. The Supreme Court in Para 8 of its order observed as below:-

> "8. xxxxxxxxxxxx. It is possible that the fresh evaluation by feeding correct key answers to the six questions may have adverse impact also on those who may have already secured admission on the basis of the results declared and ranking given by feeding incorrect keys in relation to these questions. Though we are of the view that the appellants in particular and the student community in general, whether one has approached the court or not, should not suffer on account of demonstrably incorrect key answers but, at the same time, if the admissions already granted as a result of first counselling are disturbed, it is possible that the very commencement of the course may be delayed and the admission process for the courses may go beyond 30-09-2005, which is the cut-off date, according to the time schedule in the Regulations and as per the Law laid down by this Court in Mridul Dhar (Minor) v. Union of India. In this view, we make it clear that fresh evaluation of the papers by feeding correct key answers would not affect the students who have secured admissions as a result of the first counselling on the basis of ranking given with reference to the results already declared."

Considering that the matter related to admission of students and many admissions had already been granted, in peculiar facts of that case, it was made clear that fresh evaluation of the papers by feeding correct answers would not affect students who have secured admission as a result of first counseling on the basis of ranking given with reference to the results already declared. However, the exercise of examination of disputed key answers by a committee of experts was upheld.

23. The decision in the case of **Kanpur University through Vice Chancellor & Others (supra)** was also relied upon, principle was

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restated as above and the permissible course of action was reiterated by the Supreme Court in the case of **Manish Ujwal & Others (supra)** as below:-

> "9. In Kanpur University v. Samir Gupta considering a similar problem, this Court held that there is an assumption about the key answers being correct and in case of doubt, the court would unquestionably prefer the key answer. It is for this reason that we have not referred to those key answers in respect whereof there is a doubt as a result of difference of opinion between the experts. Regarding the key answers in respect whereof the matter is beyond the realm of doubt, this Court has 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. There is no dispute about the aforesaid six key answers being demonstrably wrong and this fact has rightly not been questioned by the learned counsel for the University. In this view, students cannot be made to suffer for the fault and negligence of the University."

In a subsequent decision in the case of **Ran Vijay Singh & Others (supra)**, the law on the subject was propounded as below:-

> "30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are:
> 30.1 If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it;
> 30.2 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 re-evaluation or scrutiny only if it is demonstrated very clearly, without any "inferential process of reasoning or by a process of rationalisation" and only in rare or exceptional cases that a material error has been committed;
> 30.3 The Court should not at all re-evaluate or scrutinize the answer sheets of a candidate-it has no expertise in the matter and academic matters are best left to academics;

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30.4 The Court should presume the correctness of the key answers and proceed on that assumption; and
30.5 In the event of a doubt, the benefit should go to the examination authority rather than to the candidate."

In one of the latest decisions in the case of **High Court of Tripura through The Registrar General (supra)** while re-iterating and re-affirming settled legal position that in the absence of there being a provision for re-evaluation, re-evaluation could not be done or ordered, cases of exceptional nature as noticed earlier in the case of **Kanpur University through Vice Chancellor & Others (supra), Manish Ujwal & Others (supra) & Ran Vijay Singh & Others (supra)**, were taken into consideration and permissible course of action to deal with such exceptional cases, even though there was no provision for re-evaluation as such, was evolved.

"19. We have noticed the decisions of this Court. Undoubtedly, a three Judge Bench has laid down that there is no legal right to claim or ask for revaluation in the absence of any provision for revaluation. Undoubtedly, there is no provision. In fact, the High Court in the impugned judgment has also proceeded on the said basis. The first question which we would have to answer is whether despite the absence of any provision, are the courts completely denuded of power in the exercise of the jurisdiction Under Article 226 of the Constitution to direct revaluation? It is true that the right to seek a writ of mandamus is based on the existence of a legal right and the corresponding duty with the answering respondent to carry out the public duty. Thus, as of right, it is clear that the first respondent could not maintain either writ petition or the review petition demanding holding of revaluation.

20. The question however arises whether even if there is no legal right to demand revaluation as of right could there arise circumstances which leave the Court in any doubt at all. A grave injustice may be occasioned to a writ applicant in certain circumstances. The case may arise where even though there is no provision for revaluation it turns out that despite giving the correct answer no marks are awarded. No doubt this must be

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confined to a case where there is no dispute about the correctness of the answer. Further, if there is any doubt, the doubt should be resolved in favour of the examining body rather than in favour of the candidate. The wide power Under Article 226 may continue to be available even though there is no provision for revaluation in a situation where a candidate despite having giving correct answer and about which there cannot be even slightest manner of doubt, he is treated as having given the wrong answer and consequently the candidate is found disentitled to any marks.

21. Should the second circumstance be demonstrated to be present before the writ court, can the writ court become helpless despite the vast reservoir of power which it possesses? It is one thing to say that the absence of provision for revaluation will not enable the candidate to claim the right of evaluation as a matter of right and another to say that in no circumstances whatsoever where there is no provision for revaluation will the writ court exercise its undoubted constitutional powers? We reiterate that the situation can only be rare and exceptional.

22. We would understand therefore the conclusion in paragraph 30.2 which we have extracted from the judgment in Ran Vijay Singh v. State of U.P. only in the aforesaid light. We have already noticed that in H.P. Public Service Commission v. Mukesh Thakur, a two Judge Bench in paragraph 26 after survey of the entire case law has also understood the law to be that in the absence of any provision the Court should not generally direct revaluation.

23. xxxxxxxxx. Even in the judgment of this Court in *Ran Vijay Singh v. Rahul Singh* which according to the first respondent forms the basis of the High Court's interference though does not expressly stated so, what the Court has laid down is that the Court may permit revaluation inter alia 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 on the commission of material error. xxxxxxxx."

24. In the case of **Uttar Pradesh Public Service Commission, through its Chairman and Another Vs. Rahul Singh and Another (supra)**, the Hon'ble Supreme Court examining the extent

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and power of the Court to interfere in the matter of academic nature, relying upon the decisions in the cases of **Kanpur University, through Vice-Chancellor & Others (supra)** and **Ran Vijay Singh and Others (supra)**, held as below:

> "**9.** In *Kanpur University v. Samir Gupta*, this Court was dealing with a case relating to the Combined Pre-Medical Test. Admittedly, the examination setter himself had provided the key answers and there were no committees to moderate or verify the correctness of the key answers provided by the examiner. This Court upheld the view of the Allahabad High Court that the students had proved that three of the key answers were wrong. The following observations of the Court are pertinent:
>
> "16……..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 Court gave further directions but we are concerned mainly with one that the State Government should devise a system for moderating the key answers furnished by the paper setters.
>
> **10.** In *Ran Vijay Singh v. State of U.P.*, this Court after referring to a catena of judicial pronouncements summarised the legal position in the following terms: (SCC pp. 368-69, para 30)
>
> "30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are:
>
> 30.1. If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it;
>
> 30.2. 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 re-evaluation or scrutiny only if it is demonstrated very clearly, without any "inferential process of reasoning or by a process of rationalisation" and only in rare or exceptional cases that a material error has been committed;

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30.3. The court should not at all re-evaluate or scrutinise the answer sheets of a candidate—it has no expertise in the matter and academic matters are best left to academics;

30.4. The court should presume the correctness of the key answers and proceed on that assumption; and

30.5. In the event of a doubt, the benefit should go to the examination authority rather than to the candidate."

The Hon'ble Supreme Court then referred to observations made in para 31 and 32 in the case of **Ran Vijay Singh and Others (supra)** to demonstrate and highlight why the constitutional Courts must exercise restraint in such matters and held as below:

"11. We may also refer to the following observations in paras 31 and 32 which show why the constitutional courts must exercise restraint in such matters:(Ran Vijay Singh case, SCC p.369)

"31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse — exclude the suspect or offending question.

32. It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the

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examination and the examination authorities. The present appeals are a classic example of the consequence of such interference where there is no finality to the result of the examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination — whether they have passed or not; whether their result will be approved or disapproved by the court; whether they will get admission in a college or university or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion being worse confounded. The overall and larger impact of all this is that public interest suffers."

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Finally, the principles as propounded in earlier decisions were reiterated as below:

"**12.** The law is well settled that the onus is on the candidate to not only demonstrate that the key answer is incorrect but also that it is a glaring mistake which is totally apparent and no inferential process or reasoning is required to show that the key answer is wrong. The constitutional courts must exercise great restraint in such matters and should be reluctant to entertain a plea challenging the correctness of the key answers. In *Kanpur University case*, the Court recommended a system of:
(1) moderation;
(2) avoiding ambiguity in the questions;
(3) prompt decisions be taken to exclude suspected questions and no marks be assigned to such questions.

13. As far as the present case is concerned, even before publishing the first list of key answers the Commission had got the key answers moderated by two Expert Committees. Thereafter, objections were invited and a 26-member Committee was constituted to verify the objections and after this exercise the Committee recommended that 5 questions be deleted and in 2 questions, key answers be changed. It can be presumed that these Committees consisted of experts in various subjects for which the examinees were tested. Judges cannot take on the role of experts in academic matters. Unless, the candidate demonstrates that the key answers are patently wrong on the face of it, the courts cannot enter into the academic field, weigh the pros and cons of the arguments given by both sides and then come to the conclusion as to which of the answers is better or more correct."

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Further it was noticed that the challenge pertained to three questions which noted a long process of reasoning and it was noticed that the stand taken by the Commission was supported by certain text books. In that factual scenario, it was held that in case of conflicting views, the Court must bow down to the opinion of the experts. It was held as below:

> "**14.** In the present case, we find that all the three questions needed a long process of reasoning and the High Court itself has noticed that the stand of the Commission is also supported by certain textbooks. When there are conflicting views, then the court must bow down to the opinion of the experts. Judges are not and cannot be experts in all fields and, therefore, they must exercise great restraint and should not overstep their jurisdiction to upset the opinion of the experts."

25. In the case of **Richal and Others (supra)**, principles stated and restated time and again were reaffirmed by the Hon'ble Supreme Court while dealing with correctness of final key answers as decided by the Expert Committee after taking into consideration the objections received. While placing reliance upon the judgments in the cases of **Kanpur University, through Vice-Chancellor & Others (supra)**, **Manish Ujwal & Others (supra)**, the Hon'ble Supreme Court also relied upon its earlier decisions in the cases of **Guru Nanak Dev University Vs. Saumil Garg and Others (2005) 13 SCC 749** and **Rajesh Kumar & Others Vs. State of Bihar & Others (2013) 4 SCC 690** and held as below:

> "**17.** To the same effect, this Court in Guru Nanak Dev University v. Saumil Garg, had directed the University to revaluate the answers of 8 questions with reference to key answers provided by CBSE. This Court also disapproved the course adopted by the University which has given the marks to all the students who had participated in the entrance test irrespective of whether someone had answered questions or not.
>
> **18.** Another judgment which is referred to is Rajesh Kumar v. State of Bihar, where this Court had occasion to consider the case pertaining to erroneous evaluation

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using the wrong answer key. The Bihar Staff Selection Commission invited applications against the posts of Junior Engineer (Civil). Selection process comprised of a written objective type examination. Unsuccessful candidates assailed the selection. The Single Judge of the High Court referred the "model answer key" to experts. Based on the report of the experts, the Single Judge held that 41 model answers out of 100 are wrong. The Single Judge held that the entire examination was liable to be cancelled and so also the appointments so made on the basis thereof. The letters patent appeal was filed by certain candidates which was partly allowed by the Division Bench of the High Court. The Division Bench modified the order passed by the Single Judge and declared that the entire examination need not be cancelled. The order of the Division Bench was challenged wherein this Court in para 19 has held:(SCC p.697)

"19. The submissions made by Mr Rao are not without merit. Given the nature of the defect in the answer key the most natural and logical way of correcting the evaluation of the scripts was to correct the key and get the answer scripts re-evaluated on the basis thereof. There was, in the circumstances, no compelling reason for directing a fresh examination to be held by the Commission especially when there was no allegation about any malpractice, fraud or corrupt motives that could possibly vitiate the earlier examination to call for a fresh attempt by all concerned. The process of re-evaluation of the answer scripts with reference to the correct key will in addition be less expensive apart from being quicker. The process would also not give any unfair advantage to anyone of the candidates on account of the time lag between the examination earlier held and the one that may have been held pursuant to the direction of the High Court. Suffice it to say that the re-evaluation was and is a better option, in the facts and circumstances of the case."

While holding that the key answers prepared by the paper-setter or the examining body is presumed to have been prepared after due deliberations, publication of key answers and grant of opportunity to assess correctness of answers by receiving objections to be considered by the examining body was considered as a step to achieve transparency. It was observed thus:

"**19.** The key answers prepared by the paper-setter or the examining body is presumed to have been prepared after due deliberations. To err is human. There are

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various factors which may lead to framing of the incorrect key answers. The publication of key answers is a step to achieve transparency and to give an opportunity to candidates to assess the correctness of their answers. An opportunity to file objections against the key answers uploaded by examining body is a step to achieve fairness and perfection in the process. The objections to the key answers are to be examined by the experts and thereafter corrective measures, if any, should be taken by the examining body. In the present case, we have noted that after considering the objections final key answers were published by the Commission thereafter several writ petitions were filed challenging the correctness of the key answers adopted by the Commission. The High Court repelled the challenge accepting the views of the experts. The candidates still unsatisfied, have come up in this Court by filing these appeals."

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26. The principles propounded and the legal position settled in the aforesaid decisions were reiterated by the Hon'ble Supreme Court in recent judicial pronouncements in the cases of **Bihar Staff Selection Commission and Others Vs. Arun Kumar and Others, (2020) 6 SCC 362** and **Vikesh Kumar Gupta and Another Vs. State of Rajasthan and Others (2021) 2 SCC 309**. In the case of **Vikesh Kumar Gupta and Another (supra)**, once again there was reference to the decision in the case of **Ran Vijay Singh and Others (supra)**. It was observed as under:

> **"16.** In view of the above law laid down by this Court, it was not open to the Division Bench to have examined the correctness of the questions and the answer key to come to a conclusion different from that of the expert committee in its judgment dated 12.03.2019. Reliance was placed by the Appellants on Richal v. Rajasthan Public Service Commission. In the said judgment, this Court interfered with the selection process only after obtaining the opinion of an expert committee but did not enter into the correctness of the questions and answers by itself. Therefore, the said judgment is not relevant for adjudication of the dispute in this case."

27. In view of the aforesaid decisions, it, therefore, emerges as settled legal position that though re-evaluation in the absence of there being any rule/scheme governing the examination is not

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permissible in law except in exceptional cases where the answers are found to be demonstrably wrong, the injustice caused to the candidates has to be undone. The course of action adopted in many cases referred to above, which was approved by the Courts, was that the complaints with regard to key answers or disputed questions have to be examined by a Committee of Experts and if the opinion of the Committee of Experts reflects that model answers are demonstrably wrong and some other option is correct, the answers given by the candidates is required to be reassessed with reference to the correct key answer. Where the questions itself were vague and wrong or where it is a case of multiple correct answers out of options given, the questions are required to be deleted and the candidates have to be evaluated on the basis of the answers given by them to the questions remaining after deletion. Scope of judicial review is limited, but in exceptional cases where the Court finds that model answer keys are demonstrably wrong on the face of it without involving inferential process of reasoning or by a process of rationalisation.

28. Keeping in forefront the aforesaid settled legal position as adumbrated in plethora of decisions, we shall now proceed to examine the submissions with reference to various questions and issues noted point wise from point (i) to point (xxi) except the issue with regard to questions, which have already been dealt with in the case of **Ashwini Chaturvedi (supra)**.

29. In the Advertisement dated 22.07.2021, Instruction (1) in Clause 22 provided that after Preliminary Examination is conducted, model answer key would be published on the official website of the High Court and objections would be allowed to be submitted within

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prescribed period. It further stated that objections received after the prescribed period or without payment of necessary charges or by a mode other than one prescribed would not be taken into consideration. It also stated that competent Committee would examine the objections and if necessary, revise the model answer key and the same may be published and result of Preliminary Examination would also be declared accordingly.

None of the petitioners objected to the aforesaid prescription, long drawn process of selection and the manner in which the objections to model answer key were to be examined.

The petitions as well as return filed by the respondents clearly show that after conduct of Preliminary Examination on 28.11.2021, consistent with the scheme of examination, model answer keys were published and objections were invited vide notification dated 29.11.2021. The return of the respondents further reveals that after receipt of objections against twenty questions, the Committee meticulously and thoroughly examined various objections and recommended deletion of four questions or such other action as may be taken. Acting on the recommendations of the Committee, the respondents deleted the following four questions:

(1) Question No. A-44/B-44/C-53/D-47

(2) Question No. A-79/B-74/C-84/D-84

(3) Question No. A-81/B-81/C-74/D-75

(4) Question No. A-84/B-71/C-80/D-74

As far as Question No. A-66/B-49/C-58/D-39 is concerned, the Expert Committee recommended that correct answer key be changed as option (1) which was accepted by the respondents and the same was changed accordingly.

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So far as all other disputed questions are concerned, as is revealed from the return, the Committee, after examination, rejected the objections whether it be with regard to the correctness of the questions or regarding correctness of model answer keys. The Committee also dealt with objections in various cases in respect of various questions that the questions offered more than one correct answer as option. The objections were, however, found baseless and rejected. After getting objections scrutinised and examined through the Committee of Experts, the respondents notified revised and final answer key vide notification dated 11.01.2022. It clearly stated that some of the questions as stated above have been deleted and OMR answer sheets have been evaluated on the basis of remaining 96 questions with maximum 96 marks. This procedure followed by the respondents was strictly in accordance with the selection process as embodied in Clause 22(1) of the advertisement. It is also noteworthy that the procedure of inviting objections by publishing model answer keys, getting a Committee of Experts constituted to examine the objections and then publishing revised model answer keys clearly stating the questions which were deleted, constitutes a fair and transparent procedure apart from being in accordance with the process of selection contained in the advertisement.

Challenge to the action of the respondents in inviting objections, referring the disputed questions/answer keys to the Committee of Experts has been made as de hors the governing rules, i.e., the Rules of 2010. It has been contended that such a procedure was neither envisaged under the Rules of 2010, nor in Schedule IV B thereof. This argument is liable to be rejected. True it

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is that consideration of objections with regard to model answer keys by constitution of the Committee of Experts is not stated in the Rules of 2010, nevertheless, this was clearly stated as one of the instructions in Clause 22(1) of the advertisement. None of the petitioners ever objected to such a procedure, but they all participated in the process of selection. Even after invitation of objections vide notification dated 29.11.2021, none of the petitioners raised any objection that the action of the respondents in inviting objections against published model answer keys was not permissible. The petitioners took somersault raising dispute with regard to the correctness of the procedure which they never objected to while participating in the process of selection. Therefore, the petitioners are barred from raising such objection that the process of inviting objections and revising model answer keys was illegal or opposed to law. Furthermore, such a process can neither be said to be in violation of the Rules of 2010, much less unfair or arbitrary. The instructions and the procedure devised to publish the model answer keys, obtaining objections and getting it examined by a Committee of Experts only intended to ensure that the examinees are not subjected to an arbitrary and unfair process of selection. The object was to ensure that the merit of the candidates is tested on the basis of correct questions and correct answer keys. The rules in this regard are silent. Therefore, the objection in this regard cannot be sustained and is rejected.

One of the arguments raised is that the effect of deletion of four questions disturbed the ratio of 70% weightage for Law subjects and 30% weightage for Language subjects. True it is that the process of revising the answer keys and deletion of four

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questions may have effect on the ratio of cases belonging to Law subjects to that of Language subjects, but it has to be seen that all the examinees were tested on their merit only with reference to 96 questions. This procedure and testing of merit of the candidates at the stage of Preliminary Examination with reference to 96 questions, does not, in any manner, rendered the process of selection vitiated.

True it is that in Clause B of Schedule IV referable to Rule 20 of the Rules of 2010, it was prescribed that 70% weightage shall be given to the subjects prescribed in syllabus for Law Paper-I and Law Paper-II and 30% weightage shall be given to test proficiency in Hindi and English language, but unavoidable circumstances leading to deletion of defective questions were required to be taken care of to ensure just and fair process of selection. If in that process, there is slight variation, no fault could be found in the process of selection only on that ground. Once some of the questions were found to be defective, the only course open for the respondents was to delete the questions, rather than subjecting the candidates to examination to test their merit by putting defective questions to them. Moreover, Instruction No. 22, Clause (1) of the advertisement, which prescribed process of inviting objections and likelihood of revision of model answer keys, clearly indicated that such a situation could arise. No one challenged the same.

It is well settled legal position that where the process of selection is not challenged, unsuccessful candidates cannot be permitted to question the process of selection, if they have remained unsuccessful. This is no longer res-integra and has been settled in plethora of decisions, some of them are; **K. A. Nagmani Vs. Indian Airlines and Others (2009) 5 SCC 515; Manish Kumar Shahi**

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Vs. State of Bihar and Others (2010) 12 SCC 576; Ramesh Chandra Shah and Others Vs. Anil Joshi and Others (2013) 11 SCC 309 and **Ramjit Singh Kardam and Others Vs. Sanjeev Kumar and Others AIR 2020 SC 2060**.

30. Another argument is that exercise of deletion of questions resulted in alteration of cut off marks and as the preparation of merit list was based on cut off marks, which were disturbed, the preparation of merit list for the purpose of screening itself is vitiated. This argument has been raised by petitioner in D. B. Civil Writ Petition No. 2059/2022 (Ravi Gupta Vs. High Court of Judicature for Rajasthan). True it is that for General Category, cut off marks were fixed as 72. It has to be kept in view that number of candidates to be selected for Main Examination could be only 15 times the number of vacancies in a particular category. This clearly means that all those candidates, who are in the list of the size of 15 times the number of vacancies in the General category, have obtained 72 or more marks. Further, it has to be noted that they have been awarded these marks on they having attempted, like the petitioner, 96 questions only because 4 questions were already deleted. We fail to comprehend as to how it has adversely affected the petitioner in the matter of preparation of merit list based on the marks obtained by the candidates. It was a competitive examination. The list of selected candidates in Preliminary Examination is based on merit of the candidates. Those, who obtained more marks than the petitioner, were kept in merit list of Preliminary Examination, which was 15 times the number of vacancies in the General category. The petitioner and all other candidates were tested on level playing field as they all were tested

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only against 96 questions. Therefore, there is no prejudice caused to the petitioner, much less any discrimination. The contention of the petitioner is on a fallacious premise that if he had given correct answers against deleted questions, he would have obtained 72 marks. This cannot be countenanced because as many as four questions itself have been found to be defective for one or the other reason and, therefore, deleted. No candidate can claim award of marks on the ground that he had given correct answer to a wrong question. Where the question, being wrong and defective, has been deleted, unless it is found that the deletion itself was not permissible in law, a candidate cannot claim marks against such deleted question on the ground that he had correctly answered the question. Therefore, petitioner's contention in this regard deserves to be rejected.

31. The aforesaid petitioner, Ravi Gupta has taken another curious objection that he was not permitted to use normal watch even though under the instructions there was prohibition to bring smart watch in the examination hall. According to him, this affected time management. Firstly, this is in the realm of disputed question of fact and secondly, it is not the case of the petitioner that he was discriminated and that he was not allowed to use normal watch and all other candidates or many of them were given this benefit. Not only the petitioner, but all the candidates were subjected to the same situation in the examination hall where no one was permitted to carry watch. The argument that at least a wall clock ought to have been provided by itself, without anything more, could not be made basis to declare entire examination vitiated. These arguments

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are arguments in despair as the petitioner could not succeed in the examination. All objections in this regard are accordingly rejected.

32. So far as deletion of four questions is concerned, the consideration on which deletion had taken place, as stated in the return filed by the respondents, is as below:

"**Question No. A-44/B-44/C-53/D-47**

Under the Juvenile Justice (Care and Protection of Children) Act, 2015, who may not be designated as a Child Welfare Officer?
(1) Head Constable
(2)Assistant Sub-Inspector
(3) Sub-Inspector
(4) All of the above.

किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2015 के अन्तर्गत बाल कल्याण पुलिस अधिकारी के रूप में कौन अभिहित नहीं किया जा सकेगा –
(1) हेड कांस्टेबल
(2) सहायक उप–निरीक्षक
(3) उप–निरीक्षक
(4) उपरोक्त सभी

Model Answer-(1)

It is submitted that English version of the question asks about "Child Welfare Officer" and then, all the options are wrong answer. Whereas, Hindi version asks about "Child Welfare Police Officer" and then, as per section 107 of Juvenile Justice (Care and Protection of Children) Act, 2015, the correct answer will be option (1). Hence, the candidates who had opted English medium would be at disadvantageous position as there is no correct answer available in any of four options. The discrepancy occurred in the Hindi and English language of aforesaid question does not fall within the ambit of instruction no. 10 given in the Question Paper Booklet. Therefore, the Committee was of unanimous opinion that objection was sustainable and either the question itself be deleted or any other appropriate decision be taken in the interest of examinees.

Question No. A-79/B-74/C-84/D-84

''निषेध'' शब्द का संधि विच्छेद है :–
(1) नि:+षेध
(2) निः+सेध
(3) नि+षेध
(4) निष+ऐध

मॉडल उत्तर — (2)

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''निषेध'' शब्द का संधि विच्छेद है :– नि+ सेध। इसमें व्यंजन संधि है। व्याकरण के नियमानुसार 'स' से पूर्व अ आ से भिन्न कोई स्वर हो तो 'स' का 'ष' हो जाता है। इस प्रश्न के उत्तर में दिये गये विकल्पों में सभी विकल्प सही नहीं है।

Question No. A-81/B-81/C-74/D-75

अनुप्रास अलंकार का कौन–सा उदाहरण है ?
(1) निधियों न्यारी
(2) मोल करेगा
(3) लहरकर यदि चूमे
(4) सब गजरे

मॉडल उत्तर –– (1)

इस प्रश्न के सम्बन्ध में अलंकार निर्धारित पाठ्यक्रम में समाहित नहीं होना बताते हुए आपत्तियां प्रस्तुत हुई। समिति की राय में अलंकार निर्धारित पाठ्यक्रम में समाहित नहीं है अतः आपत्तियां स्वीकार किये जाने योग्य पाई जाकर प्रश्न को निरस्त किया गया।

Question No. A-84/B-71/C-80/D-74

निम्न वाक्य की पूर्ति स्थानवाचक क्रियाविशेषण से कीजिएः––
मैं.....चला गया था।
(1) कल
(2) दस बजे
(3) दिल्ली
(4) अकेले

मॉडल उत्तर –– (3)

इस प्रश्न के सम्बन्ध में मॉडल उत्तर (3) को गलत बताते हुए कुल 3 आपत्तियां प्रस्तुत की गई। व्याकरण के नियमानुसार स्थानवाचक क्रिया विशेषण में क्रियाविशेषण के स्थान और दिशा का बोध होता है जैसेः यहां–वहां, ऊपर–नीचे। जिस शब्द से स्थान का बोध हो उसे स्थानवाचक क्रियाविशेषण कहते हैं। यथा– पास, दूर, नीचे, ऊपर, आगे, पीछे, यहीं, वहीं, इधर, उधर, आमने, सामने, यहाँ, वहाँ, कहाँ आदि। प्रश्न में दिये गये सभी विकल्प सही नहीं है क्योंकि ''कल'', ''दस बजे'' तथा ''अकेले'' स्थानवाचक नहीं है और ''दिल्ली'' संज्ञा शब्द जो क्रिया की विशेषता नहीं बताता है। अतः आपत्तियां स्वीकार किये जाने योग्य पाई व इस प्रश्न को निरस्त किया गया।''

33. It is not in dispute that the aforesaid consideration had taken place by a Committee of Experts as constituted by the respondents to consider various objections. The considerations, which have weighed in the mind of the experts to delete the aforesaid questions, cannot be said to be so irrational, demonstrably and palpably wrong that this Court should interfere with the exercise undertaken by the Committee of Experts while resolving and recommending to delete four questions, which was accepted and acted upon by the

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respondents. We have referred to various decisions hereinabove which delineated the scope of judicial review in such matters. It is for the experts to decide which question is to be deleted. Once the reasons, which have been assigned by the experts, are plausible and cannot be said to be based on extraneous considerations or clearly irrational, arbitrary or demonstrably and palpably incorrect, there is no scope of judicial review. An interference with the decision, in the absence of there being any defect in the decision making process, would amount to substituting the view as propounded and projected by the petitioners in place of the view which has been taken by the body of experts.

34. As far as Question No. A-47/B-51/C-57/D-62 is concerned, it has been argued that this question was required to be deleted as all the given options are wrong. Reply of the respondents clearly shows that objection has been raised on the basis that Section 86 of the Juvenile Justice (Care and Protection of Children) Act, 2015 had been amended by Juvenile Justice (Care and Protection of Children) Amendment Act, 2021 and hence, in view of Amendment Act, all the given options were wrong. This aspect was examined by the Committee and the Committee found that Section 1, sub-section (2) of the Amendment Act provided that the Amendment Act, 2021 shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. However, in exercise of the powers conferred by Section 1 (2) of the amendment Act, 2021, no notification was published by the Central Government till that day. Even, no objector uploaded such a notification in support of his/her claim, therefore, the objection clearly is misconceived in law

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and decision of the respondents to reject the objection does not call for any interference.

35. With regard to Question No. A-78/B-76/C-82/D-77, it has been contended that model answer no. 1 is not correct or in any case, both the options, i.e. option (1) and option (2) are correct. In this regard, the respondents have stated in their reply that upon consideration of the objection by reference to various texts on Hindi Grammar, the Committee unanimously resolved that option (1) alone is the correct answer. On the other hand, some other text books have been referred to suggest that option (2) would possibly be correct answer. This exercise would involve inferential process through rationalisation and certainly does not fall in the category of "demonstrably wrong". Moreover, at the most, it could be treated to be a case of doubt and in view of various decisions, which have been referred hereinabove, it is well settled by the Hon'ble Supreme Court that in case of doubt, the benefit would always go to the examiner.

36. Objection with regard to Question No. A-100/B-89/C-88/D-94 has been taken on the ground that it ought to be deleted as it was out of syllabus. Referring to contents of syllabus of English Proficiency, it has been vehemently argued that testing knowledge of the candidate by requiring them to give correct spelling of the word does not form part of the syllabus of English Proficiency. At the threshold, this argument cannot be accepted. Subject English Proficiency, without even being specifically mentioned, would obviously include the knowledge of the candidates regarding correct spelling of a word in English. This does not require any specific mention in the syllabus. The question required the candidates to choose correctly spelled word and four options of the word

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'Monotonous' were given. Such a question cannot be said to be out of syllabus when test is regarding proficiency in English. The Committee of Experts unanimously resolved that aspirants are supposed to have awareness/knowledge of spelling of common words. The said recommendation of the Committee was accepted by the respondents and objection was rejected and rightly so. Therefore, objection in this regard is liable to be rejected.

37. As far as Question No. A-66/B-49/C-58/D-39 is concerned, initially model answer was marked as option (3) being 25 September, 1987 as the date of publication of the Indecent Representation of Women (Prohibition) Act, 1986 in the Gazette of India. Upon consideration of the objections, the Committee found that as a matter of fact, the said Act was actually published in the Gazette of India on 23 December, 1986. Upon perusal of material on record including Gazette of India dated 23 December, 1986 and 25 September, 1987, the Committee found that the Act of 1986 was published in the Gazette of India on 23 December, 1986, whereas it was brought into force by issuance of another notification as contemplated under Section 1, sub-section (3) of the Act on the appointed date, i.e., 2 October, 1987. Thus, the date of publication of the Act and the date on which the Act came into force were different. The objection raised in this regard was therefore, rightly upheld by the Committee and accepted by the respondents.

38. As far as Question No. A-95/B-88/C-95/D-98 is concerned, for choosing correct synonym of the word, "Lethargy", four options were given. The model answer chosen by the respondents was option (3), "Listlessness". The objection was that "Laxity" is also a synonym of "Lethargy". The Committee involving experts examined

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the objection, but was of the view that "Lethargy" is inaction but "Laxity" also has some degree of negligence attached to it. "Laxity" means lack of strictness whereas "Lethargy" means the state of not having any energy or enthusiasm for doing things and "Listlessness" means the state of being without energy or enthusiasm. Thus, the experts opined that the word, "Lethargy" and "Listlessness" have the same meaning and interchangeable whereas "Laxity" and "Lethargy" are not interchangeable. The Committee reported that option (3) alone is the correct answer and the objections were rejected. The view which has been taken by the experts could not be shaken by the petitioners by referring to any authentic and universal acceptance of the view in this regard to the view taken by the experts, so as to constitute the same as demonstrably wrong answer key. No material has been placed by the petitioners. Accordingly, no ground is made out to interfere with the decision of the experts and the argument in this regard is liable to be rejected.

39. As far as Question No. A-21/B-33/C-22/D-28 is concerned, it has been argued that the same is highly vague and all the options are possibly correct answers and therefore, the question ought to be deleted. In this regard, emphatic reply has been given by the respondents that no objection was submitted by any candidate including any of the petitioners. We have also verified and found that none of the petitioners has filed any document along with their petitions or rejoinder or any other supplementary affidavit to prove that any objection with regard to Question No. A-21/B-33/C-22/D-28 was ever taken. We have verified from the original records placed before us in sealed cover, which contained minutes of meetings, deliberations and resolution of the Committee of Experts.

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There also, there is no mention of any objection received from any candidate with regard to the correctness or otherwise of Question No. A-21/B-33/C-22/D-28.

The instructions, which were binding on all the candidates including the petitioners, particularly, Instruction 22(1) as contained in the advertisement that only those objections, which are filed within the prescribed period in the prescribed manner with requisite fee as per direction, would be considered. The notification publishing model answer keys and inviting objections clearly states that any candidate may submit objections. But none of the petitioners raised any objection with regard to correctness or otherwise of Question No. A-21/B-33/C-22/D-28. Not only this, the records placed before us also do not reflect that any candidate other than the petitioners submitted any such objection. Therefore, the Committee of Experts had no occasion to examine the correctness of the same.

40. Otherwise also, we find that in order to satisfy this Court that there could be more than one possible correct answer, the petitioners have virtually submitted their case in argumentative form. Thus, what the petitioners seek to do is to satisfy the Court by a long drawn inferential process of reasoning and rationalisation, which cannot be categorized as demonstrably or palpably wrong. Question No. A-21/B-33/C-22/D-28 gave four options with regard to requisite for a valid ratification under the Indian Contract Act, 1872. Section 198 of the Indian Contract Act, 1872 under the heading "Knowledge requisite for valid ratification" reads that no valid ratification can be made by a person whose knowledge of the facts of the case is materially defective. It was in the context of the

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provisions contained in Section 198 of the Indian Contract Act, 1872 that the question was set up requiring the examinees to give correct answer. First option was knowledge of the correct facts of the case. The long drawn process of argumentative nature as contained in the submissions made by the petitioners does not constitute a case of demonstrably wrong question, wrong answer and not even that all other options are possibly correct. The petitioners in this regard have failed to understand the context in which Question No. A-21/B-33/C-22/D-28 was set up. An attempt has been made to create confusion. Therefore, this Court in the absence of there being any opinion expressed by the Committee of Experts, for which the petitioners alone have to be faulted, finds that it is beyond the scope of judicial review as adumbrated in catena of decisions. At the most, even if it could be a case of doubt as per settled legal position, the benefit of doubt would always go in favour of the examiner and not in favour of the candidates and the same does not warrant any interference by the Court.

41. So far as Question No. A-41/B-40/C-59/D-54 is concerned, the objection is completely misconceived. The question was while releasing the offender after admonition under the Probation of Offenders Act, 1958, which of the act (given under four options) need not be taken into consideration by the Court? Argument of learned counsel for the petitioners that option (1) is incorrect and all other options are correct is based on complete misreading and understanding of the question itself. Experts after taking into consideration the provisions of Section 3 of the Probation of Offenders Act, 1958 have held that while releasing the offender after admonition, the Court is required to consider the facts, i.e., nature

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of offence, character of offender and punishment provided for the offence. It does not include consideration of number of previously registered cases against the accused. Thus, what is not required to be taken into consideration was obviously option (1). The objection is simply frivolous being based upon misreading of the question itself and has no legs to stand.

42. As far as Question No. A-83/B-79/C-73/D-76 is concerned, objection is that Option (1), (2) and (3) all are correct answers. Therefore, the question itself was required to be deleted. This objection was considered by the Committee and the same has been rejected holding that only option (1) is the correct answer. The view of the Expert Committee in this regard was accepted and the objection was rejected by the respondents. No emphatic and specific material has been placed on record by the petitioners to satisfy the legal requirement of the answer key being demonstrably that options other than option (1) were apparently, with reference to specific texts, were also covered in the category of "कर्मवाच्य". The objection, therefore, is without any basis falling short of it being demonstrably and clearly wrong without any inferential process of reasoning or by process of rationalisation. Therefore, the action of the respondents acting upon the recommendation of the Committee of Experts which included Professor in Hindi, warrants no interference.

43. In so far as Question No. A-59/B-66/C-46/D-69 is concerned, objection raised was that both option (1) and (3) are correct. In this regard, the Committee of Experts was of the view that as the question was with specific reference of Section 41 of the Code of Criminal Procedure, 1973, which speaks of commission of offence in

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the presence of a police officer, therefore, in the context of the question and specific reference of the provision of law, with reference to which options were given, it was only option (1), which was held to be correct. The petitioners have failed to make out a case of interference because the reasoning adopted by the body of experts does not appear to be so irrational or outrageous as to hold that the decision was palpably wrong and patently arbitrary. Therefore, no interference is called for within the limited scope of judicial review on settled legal position.

44. As far as Question No. A-46/B-59/C-68/D-40 is concerned, the objection was that it had not only one but two correct multiple choice answers both as option (1) as well as (4). The Committee of Experts was of the view that the objection, which was based on the premise that Section 101 of the Juvenile Justice (Care and Protection of Children) Act, 2015 had been amended by Juvenile Justice (Care and Protection of Children) Amendment Act, 2021, therefore, in view of the Amendment Act, both options (2) and (4) were correct, was misconceived as the Committee after perusal of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2021 found that Section 1, sub-section (2) provides that the Amendment Act, 2021 shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. However, in exercise of powers conferred by Section 1, sub-section (2) of the Amendment Act, 2021, no notification has been published by the Central Government till the day, objection was considered. Even no objectors uploaded such notification in respect of his/her claim. Therefore, after due deliberations and thoughtful consideration, the Committee was unanimously of the opinion that Juvenile Justice

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(Care and Protection of Children) Amendment Act, 2021 has not come into force. Accordingly, option (1) alone was treated to be correct and objection rejected. Therefore, there is no merit in this argument.

45. There are two more objections to the procedure adopted after deletion. One of the arguments is that when the questions were deleted, bonus marks ought to be awarded. This submission has been made on the basis of judgment of Division Bench of this Court in **Arti Meena (supra)**. In that case, no direction was given for award of bonus marks. The respondent-examiner therein were directed to delete three questions from the question paper and keeping in view the judgment of the Hon'ble Supreme Court in the case of **Pallav Mongia Vs. Registrar General, Delhi High Court Civil Appeal No.4794/2012 decided on 28.05.2012,** directions were issued to recompute the marks, so as to prepare fresh list of eligible candidates by including all such candidates therein, who secured more marks than the last candidate originally allowed to appear in the main examination and apart from originally allowed candidates, also permit the candidates newly included in the eligibility list to appear in the main examination, for recruitment to Civil Judge Cadre. Petitioners seems to rely upon the said judgment where the Court dealt with the judgment of Delhi High Court in the case of **Anjali Goswami and Others Vs. Registrar General, Delhi High Court, Writ Petition (C) No.963/2019**. On facts, that was a case where the Court, while deciding writ petition, found that there were two correct answers to a question; one which was accepted as correct by the Examination Committee. In such a situation, direction was issued to award one mark to the candidate,

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who had opted for the other option as the correct answer. Present is not a case where the petitioners have succeeded in demonstrating in any of the cases that there was more than one correct answer out of multiple choice answers to any particular disputed question. Therefore, the prayer for grant of bonus marks cannot be accepted.

Reliance has also been placed upon the judgment of the Hon'ble Supreme Court in the case of **Kanpur University, through Vice-Chancellor & Others (supra)**. On facts, that was a case where the key answers as supplied by the paper setter to the University were wrong. The version of the examinees that it were not the key answers which were the correct options but the options chosen by them were the correct answers. On facts, it was not a case where finding that key answers were wrong, the question was deleted. The examinees were put to test with reference to wrong key answers. It was in this background that the High Court held that the examinees would be entitled to be given three marks for each of the questions correctly ticked by them and in addition they were entitled to one mark for those very questions, since one mark was deducted from their total for each of the questions wrongly answered by them. It was observed as below:

> "**20.** Twenty-seven students in all were concerned with these proceedings, out of whom 8 were admitted to the B.D.S. course, 3 were admitted to the M.B.B.S. course last year itself in place of the students who dropped out and 5 have succeeded in getting admission this year. Omitting 8 of the respondents who have been already admitted to the M.B.B.S. course, the remaining 19 shall have to be given admission as directed by the High Court. If the key answer was not wrong as it has turned out to be, they would have succeeded in getting admission. In view of the findings of the High Court, the question naturally arose as to how the marks were to be allotted to the respondents for the three questions answered by them and which were wrongly assessed by the University. The High Court has held that the respondents would be entitled to be given 3 marks for each of the questions correctly ticked by them, and in

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addition they would be entitled to 1 mark for those very questions, since 1 mark was deducted from their total for each of the questions wrongly answered by them. Putting it briefly, such of the respondents as are found to have attempted the three questions or any of them would be entitled to an addition of 4 marks per question. If the answer-books are reassessed in accordance with this formula, the respondents would be entitled to be admitted to the M.B.B.S. course, about which there is no dispute. Accordingly, we confirm the directions given by the High Court in regard to the reassessment of the particular questions and the admission of the respondents to the M.B.B.S. course."

On principles, in that case also, the Hon'ble Supreme Court was of the view that if attention of the University is drawn to any defect in a key answer or any ambiguity in a question set in the examination, prompt and timely decision must be taken by the University to declare that the suspect question will be excluded from the paper and no marks assigned to it. That is what has been done in the present case. The suspect questions have been excluded, which action has been found just and proper in view of our discussion and no marks have been assigned for those deleted questions.

46. Such a course of action has been held to be legally permissible in the event questions are required to be deleted being defective for one reason or the other in the case of **Uttar Pradesh Public Service Commission, through its Chairman and Another Vs. Rahul Singh and Another (supra)** as is clear from observations made in Para 13 of the said judgment, already referred to and reproduced hereinabove.

In the case of **Richal and Others (supra)**, redistribution of marks with regard to deleted questions was upheld on the principles that the Commission had adopted uniform method to deal with all the candidates looking to the number of the candidates and that the

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questions having been deleted from the answers, question paper has to be treated as containing the questions less the deleted questions. In above referred cases, a uniform treatment to all the candidates by deleting questions and no marks assigned has been upheld and another mode of giving uniform treatment to all the candidates by redistributing the marks of the deleted questions equally to all the candidates has also been upheld. Hence, the treatment to all the candidates is uniform and both the modes have been upheld. Therefore, only on the ground that pro-rata distribution of marks was not adopted even though some questions were deleted, cannot have any vitiating effect on the process of selection.

47. In the case of **Subhash Chandra Verma and Others Vs. State of Bihar and Others 1995 Supp (1) SCC 325,** in Para 25 of the report, the Hon'ble Supreme Court observed as under:

> "25. We will now examine, whether these grounds had been made out by those candidates who took the objective test as well as the viva voce and yet could qualify for selection.
> (1) xxxxxxxxxx
> 2. xxxxxxxxxxx
> 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 all the candidates."

The Hon'ble Supreme Court, therefore, clearly emphasised that in an objective type test where more than one answers are given, the candidates are required to tick mark the answer which is the most appropriate out of the plurality of answers. It was further highlighted that the questions and answers were prescribed by the

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experts in the field with reference to standard books. Therefore, it is incorrect to say that the question will have more than one correct answer. Even if the answer could be more than one, the candidates will have to select the one which is more correct out of the alternative answers, though in the present case, on facts, no case of there being more than one option being correct answer is found.

48. Having dealt with all the issues as raised in these petitions and relying upon dictum of the Hon'ble Supreme Court in plethora of decisions cited hereinabove which restrict the scope of judicial review and interference is warranted only in exceptional cases of the nature as stated and restated in various judicial pronouncements, we are not inclined to interfere with the decision taken by the body of experts as it was acted upon by the respondents. We have carefully examined the original records which contained deliberations of subject experts and discussions, as also the conclusion arrived at by the experts of the subjects in the Expert Committee. All the recommendations made by the Committee of Experts have been acted upon and the decision to delete four questions and alter option in one of the question was taken while rejecting all other objections.

49. In the result, all the petitions fail and are hereby dismissed.

50. A copy of this order be placed on record of each connected writ petition.

(SAMEER JAIN),J (MANINDRA MOHAN SHRIVASTAVA),ACTING CJ

MANOJ NARWANI.

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