

SUPREME COURT OF INDIA

Richal

Vs.

Rajasthan Public Service Commission

C.A.No.4695-4699 of 2018

(A.K.Sikri and Ashok Bhushan,JJ.,)

03.05.2018

JUDGMENT

Ashok Bhushan,J.,

SLP(C)No.14306-14310/2017

1. Delay Condoned. Leave granted.

2. This batch of appeals questions the judgment delivered by Special Appeal Benches of the Rajasthan High Court. The Special Appellate judgment of Rajasthan High Court dated 08.03.2017 delivered at Jodhpur and Judgment dated 13.04.2017 delivered at Jaipur Bench, affirming the judgments of learned Single Judge dismissing the writ petitions filed by the appellants are under challenge.

3. The appellants had appeared in School Lecturer Exam - 2015 conducted by Rajasthan Public Service Commission (hereinafter referred to as "Commission"), in which they could not be declared successful. Brief facts giving rise to these appeals are:-

“(i) The Rajasthan Public Service Commission vide its advertisement dated 16.10.2015 advertised 13,000 posts of School Lecturers for various subjects under Secondary Education Department, Government of Rajasthan. The examination consisted of two papers — Paper-I — General Awareness and General Studies, and Paper-II of respective subjects. The examination was conducted on 17.07.2016. On 12.08.2016, answer keys were published inviting objections regarding the answer key. Many candidates submitted objections with regard to different subjects, with regard to Paper-I as well as Paper-II. On 22.09.2016, the Commission declared the result, against which several writ petitions were filed questioning various answers as per final answer key. The learned Single Judge vide its judgment and order dated 08.11.2016 in Writ Petition No. 15028/2016 - *Arvind Kumar & Ors. Vs. RPSC & Ors*¹. disposed of the writ petition with various directions. One of the directions was

to upload the revised answer key along with report of Experts on the website within one week. In pursuance of directions of learned Single Judge dated 08.11.2016, final answer key was published on 18.11.2016 and 18 questions in Paper-I were deleted. Second round of litigations was started by filing various Writ Petitions by the candidates raising various objections to the answer key. The learned Single Judge vide its judgment dated 08.02.2017 at Jodhpur dismissed the bunch of writ petitions after considering the objections raised by several writ petitioners. Learned Single Judge accepted the Expert Committee's report on various answers.

(ii) Against the judgment dated 08.02.2017, writ appeals were filed by various candidates at Jodhpur. The Division Bench vide its judgment dated 08.03.2017 dismissed the writ appeals confirming the judgment of learned Single Judge. While dismissing the writ appeals, various directions were issued by the Division Bench to the Commission with regard to preparation and publication of answer key and action to be taken against those who are entrusted with the preparation of key answers. At Jaipur also, writ petitions were dismissed, against which writ appeals were filed and vide judgment dated 13.04.2017, following the judgment dated 08.03.2017 delivered at Jodhpur, the Division Bench also dismissed the different writ appeals.

(iii) Following judgment dated 08.03.2017, the Division Bench both at Jodhpur and Jaipur dismissed several other writ appeals. Before us, the appeals filed against the judgment dated 08.03.2017 and judgment dated 13.04.2017 and various other judgments following earlier judgments have been filed. The judgment dated 08.03.2017 delivered at Jodhpur Bench is the main judgment which has been followed by the High Court in several judgments for deciding this batch of appeals. It shall be sufficient to refer to and consider the Division Bench judgment dated 08.03.2017 giving rise to the Civil Appeal arising out of SLP (C) Nos. 14306-14310 of 2017 — *Richal & ors. etc.etc. Vs. Rajasthan Public Service Commission & ors. etc. etc.* for deciding this batch of appeals.

4. In this batch of appeals, various applications for impleadment and intervention have been filed. We allow all the impleadment and intervention applications. This Court after hearing the matter on 16.01.2018 passed the following order:-

"The Rajasthan Public Service Commission (RPSC) had issued an advertisement for filling up of more than 13,000 posts of school lecturers in the State of Rajasthan. The written test was conducted pursuant thereto.

The key to the answers was also published.

Some of the candidates questioned that the aforesaid key does not give correct answers to some of the questions. It was mentioned that few questions were not even correctly framed. On that basis, a writ petition was filed in the High Court. Learned Single Judge after going into the said grievances of those candidates gave a direction 4 for constituting the Expert Committee to examine as to whether the key to the

answers is correct. The Expert Committee gave its report recommending deletion of 18 questions which according to the Expert Committee were not correctly framed and, therefore, needed to be deleted. It also corrected the answers to some other questions.

This led to second round of litigation as the petitioners herein (who were the writ petitioners in the High Court) submitted that even the aforesaid report of the Expert Committee was not correct. It was submitted that 13 questions were wrongly deleted. In support of this, the petitioners refer to the text books of the NCERT as per which those questions were rightly framed and there was no question to delete them. It was also submitted that five questions were still wrongly framed, which needed to be deleted or correct answers as suggested by the Expert Committee be corrected. The High Court has dismissed this writ petition. It has inter alia observed that the matter be given quietus inasmuch as it would be in the public interest not to delay the appointment of 13,000 teachers in the State of Rajasthan.

We are informed that after declaration of the result, successful candidates have already been given appointment. It is pointed out by the learned counsel for the petitioners that many posts are still lying vacant. They further submit that they have no objection if the candidates who have already been appointed, their appointment is not disturbed and at the same time the grievances as pointed out by the petitioners be looked into by the Expert Committee again and if it finds justification in the claim of the 5 petitioners, fully or partially, only cases of other candidates who have not been appointed be re-examined on the basis of the report that would be given by the Expert Committee's recommendations on these aspects. The learned counsel for RPSC wants some time to take instructions in this behalf.

List the matters on 06.02.2018."

5. In pursuance of our directions dated 16.01.2018, an Expert Committee was appointed to re-examine the grievances of writ petitioners/appellants. An affidavit dated 14.04.2018 sworn by Ramdev Siroya has been filed by the Commission. It is stated in the affidavit that on the basis of reports of Experts, overall 22 answers in all the nine subjects for which these Experts were appointed has been re-examined and the answers were revised. It shall be useful to extract Paragraphs 5 and 6 of the affidavit, which is to the following effect:-

"5. On the basis of reports of Experts, overall 22 answers in all the nine subjects for which these experts were appointed to re-examine claims of petitioners, were reported to be revised.

6. In the subjects of General Knowledge (Paper-I) answers to five questions were required to be revised; in Paper-II (subject) in commerce answers of three questions were required to be revised; three questions in subject Geography, Two Questions in subject Hindi (Teaching method); in subject History one question; in subject Political Science four question; and in subject Rajasthani three questions were reported to be

revised. A chart showing question numbers subject, answer in final key and new Expert Report is being filed herewith and marked as ANNEXURE A-1 (Pages 5) True and correct copies of reports of Experts in nine subjects is being filed herewith and marked as ANNEXURE A-2 (Pages 6-46). It is stated that identity of Experts is not being disclosed. That on the basis of reports of the experts the result of candidates who have not been appointed was revised by the Rajasthan Public Service Commission."

6. In the affidavit, it has also been stated that out of total number of posts in all the subjects, 729 candidates who were offered appointment did not join. Further, 316 candidates who were although selected but their candidature were rejected. Thus in all 1045 post remained vacant. A detailed chart subject wise showing all the details of posts advertised, candidates selected and recommended and appointments, number of candidates who did join and such candidates whose candidatures were rejected etc. has also been annexed along with the affidavit. It has been further stated in the affidavit that in the present batch of appeals, there are in all 311 candidates. It is stated in the revised results prepared after Report by Experts Committee 48 petitioners from all the Special Leave Petitions are found to be in merit for selection, which candidates are spread over in nine subjects.

7. A reply affidavit to the affidavit filed by Commission dated 14.04.2018 has also been filed in Civil Appeal of Richal & Ors. In the reply affidavit, it has been stated that the Commission has not disclosed the actual marks secured by the last selected candidate in terms of the first selection in various categories. It was stated that the Commission is required to prepare a Revised Notional Select List of candidates presently selected in light of the revision undertaken by Experts based on actual marks secured by the last selected candidates in various categories. The appellants have also brought on record the copy of representation dated 23.01.2018 submitted by them after the order of this Court dated 16.01.2018.

8. We have heard the learned counsel for the appellants at length as well as learned counsel appearing for the Commission, learned counsel appearing for the State of Rajasthan and learned counsel seeking impleadment and intervention.

9. Learned counsel for the appellants submits that although substantial grievances raised by the appellants in these appeals stand satisfied by the Expert Committee Report, which was appointed in pursuance of direction, there are still few grievances after revision carried out by the Experts. It is submitted that in revision also, certain mistakes have not been corrected. Learned counsel for the appellants in support of their submission has referred to few questions of Paper-I including question No. 58 and certain other questions.

10. One of the submissions raised by the learned counsel for the appellants is that the marks of 18 questions which were deleted from paper No.1 were redistributed in the rest of the questions whereas the marks should have been allocated to only those candidates who have attempted such questions. Those candidates, who even did not attempt those questions, were allocated the marks which was not in accordance with law. The marks should have been

allocated only to those candidates who attempted deleted questions, in alternative, it is submitted that full marks with regard to 18 deleted questions ought to have been given to all the candidates.

11. Learned counsel for the Commission refuting the submissions of the appellants submitted that almost all the grievances having been taken care of by the Expert Committee and the result of non-selected candidates having been revised, nothing more needs to be considered in these appeals. It is submitted that Experts having revised the key answers and having now submitted a Report, which has been accepted by the Commission, this Court shall not permit the appellants to re-challenge the decision of Expert Committee. It is submitted that out of all the Special Leave Petitioners, only 48 have been found selected.

12. We have considered the submissions of the learned counsel for the parties and perused the records.

13. The issue which has been canvassed in this batch of appeals relates to correctness of final key answers as uploaded by the Commission after considering objections thereto. The appellants' case is that the treatment of the objections by the Expert Committee was not based on authoritative text books on the subject and several errors crept into the answer key vitiating the merits of the candidates affecting the entire selection.

14. The issue pertaining to scope of judicial review of correctness of key answer had been considered by this Court time and again. This Court had entertained such challenges on very limited ground and has always given due weight to the opinions of subject experts. A three Judge Bench of this Court in *Kanpur University, through Vice-Chancellor and others vs. Samir Gupta and others*², had occasion to consider a case where challenge was made to the key answers supplied by the paper-setter with regard to multiple choice of the objective type test for admission in medical courses through combined Pre-Medical Test. The High Court while considering the challenge of the candidates to various key answers accepted the challenge to different questions. With regard to some of the questions the High Court held that the key answer is not the correct answer. This Court repelling the challenge made the following observations in paragraphs 15 and 16:

"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 by 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.

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 textbooks, which are commonly read by students in U.P. Those textbooks leave no room for doubt that the answer given by the students is correct and the key answer is incorrect."

12. Following the above judgment in Kanpur University (supra) this Court in *Manish Ujwal and others vs. Maharishi Dayanand Saraswati University and others*³, reiterated the principle in following words in paragraphs 9 and 10:

"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 answers. 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.

10. The High Court has committed a serious illegality in coming to the conclusion that "it cannot be said with certainty that answers to the six questions given in the key answers were erroneous and incorrect". As already noticed, the key answers are palpably and demonstrably erroneous. In that view of the matter, the student community, whether the appellants or intervenors or even those who did not approach the High Court or this Court, cannot be made to suffer on account of errors committed by the University. For the present, we say no more because there is nothing on record as to how this error crept up in giving the erroneous key answers and who was negligent. At the same time, however, it is necessary to note that the University and those who prepare the key answers have to be very careful and abundant caution is necessary in these matters for more than one reason. We mention few of those; first and paramount reason being the welfare of the student as a wrong key answer can

result in the merit being made a casualty. One can well understand the predicament of a young student at the threshold of his or her career if despite giving correct answer, the student suffers as a result of wrong and demonstrably erroneous key answers; the second reason is that the courts are slow in interfering in educational matters which, in turn, casts a higher responsibility on the University while preparing the key answers; and thirdly, in cases of doubt, the benefit goes in favour of the University and not in favour of the students. If this attitude of casual approach in providing key answers is adopted by the persons concerned, directions may have to be issued for taking appropriate action, including disciplinary action, against those responsible for wrong and demonstrably erroneous key answers, but we refrain from issuing such directions in the present case."

13. To the same effect, this Court in *Guru Nank Dev University vs. Saumil Garg and others*⁴, had directed the University to reevaluate 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.

14. Another judgment which is referred to is *Rajesh Kumar and others vs. State of Bihar and others*⁵, where this Court had occasion to consider the case pertaining to erroneous evaluation 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. Single Judge of the High Court referred the "model answer key" to experts. Based on the report of the experts, 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 Division Bench was challenged wherein this Court in paragraph 19 has held:

"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."

15. 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 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.

16. This Court while hearing the appeals found substance in some of the submissions raised before us and appellants having satisfied this Court that certain questions need re-examination by experts, this Court issued directions on 16.01.2018. As noted above, pursuant to the directions of this Court the Expert Committee re-examined the questions with regard to which objections were raised in these appeals. After the order of this Court dated 16.01.2018 the Commission adopted Expert Committee Report which re-examined the questions with regard to which objections were raised before us in these appeals. An affidavit dated 17.04.2018 has been filed by the Commission. The affidavit contains the following statements:

“(i) on the basis of the Report of Experts, Answers to 22 Questions across 9 subjects were corrected and revised. [p.2-3 pr.6 of Affidavit] [Chart has been annexed at p.5]

(ii) A perusal of the Revision conducted by Experts w.r.t. Questions in Paper I(General Awareness & General Studies) as per Chart [p.5 of Affidavit] reveals that:

(a) Experts accepted Petitioner's Representation and retained 3 questions (Q Nos. 53, 57, 60) of 18 earlier deleted questions.

(b) Experts accepted Petitioners' Representation and corrected the answer of 1 question (Q.No.3) in the remaining 57 questions.

(c) Experts rejected Petitioners' Representation seeking correction of answer of 5 questions (Q. Nos. 25, 28, 33, 49, 58).

(iii) RPSC has stated that out of the total number of Advertised posts(13,098) 1045 vacancies in the post of School Lecturers still exist. [p.3 pr.7 of Affidavit] [Chart has been annexed at p.47]

(iv) RPSC has stated that 48 of 311 Special Leave Petitioners before this Hon'ble Court are within merit for selection as School Lecturers after revision of their answer scripts.[p.3-4 pr.8 of Affidavit]

17. By our order dated 02 . 04 . 2018, we have directed to supply the Report of the Expert Committee to all the parties. The copies of the Report have been supplied. During the course of hearing, learned counsel for the appellants submitted that substantial grievances raised in these appeals have been redressed by the Expert Committee. The representations made by the appellants have been substantially accepted as noted above. However, learned counsel for the appellants have contended that certain answers given by the Expert Committee are still not correct. Before us certain questions have been pointed out which according to the appellants have not been satisfactorily dealt with by the Expert Committee. It shall suffice to refer to the question No.58 of paper No.1. Learned counsel for the appellants submit that the Expert Committee has accepted option No.4 as correct option whereas correct option is option NO.3. Learned counsel for the appellants has to make his point home has placed before us the following chart:

Question No.58	Option Answers	RPSC Answer	Expert Report (p.15)	Petitioner Answer	Evidence in support
Minimum Number of Working Hours per week for the teacher in RTE Act, 2009 is	(1) 35 Teaching Plus Preparation Hours (2) 40 Teaching Plus preparation Hours (3) 45 Teaching Hours (4) 45 Teaching Plus preparation hours	option 4	option 4	option 3	1. The RTE Act specifies that <i>“Minimum number of working hours per week for the teacher : Forty Five including preparation hours”</i> 2. RPSC asked same question in School Lecturer Exam 2013 and considered <i>“45 Teaching Hours”</i> as correct Answer. Expert Committee has itself at p.15 quoted the RTE Act, 2009 quoted the minimum teaching hours as <i>“45 Teaching including Preparation Hours”</i>

18. At the time of hearing on 24 . 04 .2018, at the first blush, we also observed that there may be substance in what is contended by the learned counsel for the appellants with regard to question No.21, however, when we thoroughly examined the question and its answer given by the Expert Committee, we are inclined to agree with the answer given by the Expert Committee. The reason for our accepting the opinion of the Expert Committee is as follows: The question No.58 which was asked was:"Minimum Number of Working Hours per week for the teacher in RTE Act, 2009 is".

19. Thus answer had to indicate the number of working hours. Notification has been issued under the RTE Act where minimum teaching hours for a week is mentioned as :

"45 Teaching including Preparation Hours". Thus minimum number of working hours per week has been provided as 45 which figure includes both teaching and preparation hours. The statutory provision uses the word teaching including preparation hours whereas answer uses the words teaching plus preparation hours. There is no dispute that figure 45 is a correct figure only issue is with regard to whether option No.3 is correct or option No.4. Option No.3 mentions "45 Teaching Hours". The answer No.3 is obviously not according to the statutory prescription which provides "45 Teaching including Preparation Hours". Correct answer, thus, is option No.4 which mentions "45 Teaching plus preparation hours". Instead of using the word including as used in statutory provision the answer uses word plus. When the figure 45 includes teaching as well as preparation hours the use of word teaching plus preparation hours connotes the same meaning. We, thus do not find any substance in the above submission.

20. Learned counsel for the appellants have also pointed out several other questions in paper No.1 which according to the learned counsel for the appellants have not been correctly answered by the Expert Committee. We have considered few more questions as pointed out and perused the answers given by the Expert Committee and we are of the view that no error can be found with the answers of the Expert Committee with regard to three more questions which have been pointed out before us. The Expert Committee, constituted to validation of answer key, has gone through every objection raised by the appellants and has satisfactorily answered the same. The Commission has also accepted the Report of the Expert Committee and has proceeded to revised the result of 311 appellants before us. We, thus, are of the view that Report of the Expert Committee which has been accepted by the Commission need to be implemented.

21. One of the submissions raised by the appellants is that marks of deleted questions ought not to have been redistributed in other questions. It is submitted that either all the candidates should have been given equal marks for all the deleted questions or marks ought to have been given only to those candidates who attempted those questions.

22. The questions having been deleted from the answers, the question paper has to be treated as containing the question less the deleted questions. Redistribution of marks with regard to deleted questions cannot be said to be arbitrary or irrational. The Commission has adopted a uniform method to deal with all the candidates looking to the number of the candidates. We are of the view that all the candidates have been benefited by the redistributed of marks in accordance with the number of correct answers which have been given by them. We, thus, do not find any fault with redistribution of marks of the deleted marks. The High Court has rightly approved the said methodology.

23. In the affidavit filed by the Commission it is mentioned that the result has been revised of only 311 appellants who are before this Court. We are of the view that key answers having been corrected, merit of all the candidates except those who have already been selected needs to be redetermined. In our order dated 16.01.2018 it is mentioned that this exercise shall not affect those who have already been selected. We, thus, are of the view that the Commission should revise the entire result of all the candidates except those who have been selected on the basis of the report of Expert Committee and publish revise result of all the candidates. When the key answers are correct of the candidates who appeared in the examination, they are entitled for revision of their result, since, fault does not lie with the candidates but lies with the examination body. It shall not be equitable to not extend the benefit to those candidates who have not come to the Court being satisfied with the steps taken by the Commission and its earlier Expert Committee which was given the task of revising the key answers.

24. In view of the foregoing discussions, we dispose of these appeals with the following directions:

“(1) The Rajasthan Public Service Commission is directed to revise the result of all the candidates including all the appellants on the basis of Report of the Expert Committee constituted in pursuance of our order dated 16.01.2018 and publish the revised result.

(2) While carrying the above exercise the Commission need not revise the result of all those candidates whose names were included in the Select List earlier published. We having already pointed out that the appointments shall not be affected by this exercise, there is no necessity to revise their result. Thus, this exercise shall be undertaken excluding all the candidates who are included in the Select List.

(3) The Commission shall also publish the cut off marks of the last selected candidates in the respective categories who were included in the Select List on the basis of which appointments have been made by the Commission.

(4) On the basis of the revised result, those candidates who achieve equal or more marks in their respective categories shall be offered appointments against 1045

vacancies as has been mentioned by the Commission in paragraph 7 of the affidavit, noted above.

(5) The entire exercise of revising the result and making recommendations for appointments shall be completed by the Commission within a period of three months from today. The State shall take necessary consequential steps thereafter.

Judgment Referred.

²(1983) 4 SCC 0309

³(2005) 13 SCC 0744

⁴(2005)13 SCC 0749

⁵(2013) 4 SCC 0690