

Special Appeal Defective No. 3 of 2019

Himanshu Gangwar and others

Vs.

State of U.P. and another

And

Special Appeal No. 11 of 2019

Aqueel Ahmad and others

Vs.

State of U.P. and others

And

Special Appeal No. 8 of 2019

Abhishek Singh

Vs.

State of U.P. and another

And

Special Appeal No. 10 of 2019

Anshika Singh and others

Vs.

State of U.P. and another

Hon'ble Pankaj Mithal, J.**Hon'ble Rohit Ranjan Agarwal, J.**

Heard Sri Ashok Khare and Sri R.K. Ojha, learned Senior Advocates assisted by Sri Seemant Singh, Sri S.C.Tripathi and Sri Ritesh Srivastava, learned counsel for the appellants and Sri Pankaj Rai, learned counsel for respondent nos.1 and 2.

All these appeals have been preferred challenging the judgment dated 19.12.2018 passed by the learned Single Judge.

By order dated 19.12.2018 a bunch of writ petitions relating to U.P. Teachers Eligibility Test Examination, 2018 (for brevity "U.P.T.E.T. Examination, 2018") conducted by the Secretary Examination Regulatory Authority U.P., Prayagraj were decided.

After the aforesaid examination objections were invited in respect of the answers to the various questions and after referring those objections to a panel of experts, the key answers were published/declared on 30.11.2018.

The candidates were not satisfied and filed various writ petitions disputing the correctness of 15 question/answers through different writ petitions. The writ petitions were entertained and writ petition No.25791 of 2008 was treated to be a leading petition. The Court vide order dated 6.12.2018 directed the Secretary of the Examination Regulatory Authority to appear before the Court on 13.12.2018 along with all the relevant material and with the subject experts so that the correctness of the answers to the above questions could be examined.

On the date fixed the Secretary along with experts appeared before the Court and gave his opinion in respect to the said 15 questions.

The learned Single Judge on perusing the material and considering the opinion of the experts was satisfied that out of 15 questions answers to 13 were correct as per the authentic text books and as was explained by the Professors in the Court. However, in respect of two questions the Secretary of the Examination Regulatory Authority was directed to obtain further expert opinion and to place it in sealed cover.

Learned Single Judge, on the basis of the opinion of the expert so received finally decided the petitions by the impugned judgment and order dated 19.12.2018 with certain directions to the Secretary, Examination Regulatory Authority, U.P., Allahabad/Prayagraj.

Sri Ashok Khare, learned Senior Counsel appearing in Special Appeal Defective No.3 of 2019 had made only two submissions. The first is that the learned Single Judge acted in an arbitrary manner in seeking opinion of the experts only in respect of two questions when the dispute was in respect of 15 questions. Secondly, one of the question was out of syllabus as it was not covered under any of topics

on which the candidates were to be examined.

Sri R.K.Ojha, learned senior counsel appearing in Special Appeal No.11 of 2019 adopting the arguments of Sri Khare, added that key answers to various other questions other than those on which expert opinion was taken are incorrect. He even made an effort to demonstrate with reference to those questions that the key answers are incorrect.

Sri Ritesh Srivastava, learned counsel appearing in Special Appeal Nos.8 and 10 of 2019 endorsing the argument of the two Senior Advocates added that there two other questions which was out of syllabus.

Sri Pankaj Rai, learned standing counsel vehemently opposed the arguments made by the counsels for the appellants and defended the order dated 19.12.2018 passed by the learned Single Judge and also pressed upon the judgment of the Apex Court in the case of Rahul Singh (supra). He further argued that it was in pursuance of the Courts orders that the opinion of the subject experts were taken and he further invited the attention of the Court to paragraph 11 of the judgment whereby the learned Single Judge had observed, that after hearing the opinion orally and explained before this Court and with the assistance of material in the form of Text Books and other expert opinion placed before the Court in other subjects the Court found that the expert opinion to be correct, hence no interference in the said order was required.

In rejoinder to the argument of the Standing Counsel, Sri R.K.Ojha, Senior Advocate placed a copy of the interim order passed in Special Appeal No.672 of 2018 dated 2.1.2019 passed by the Lucknow Bench where the candidates were provisionally allowed to appear in the examination scheduled to be held on 6.1.2019.

On scrutiny, it is found that the said matter relates to the result of T.E.T. Examination of 2017, which was challenged before the Lucknow Bench of this Court through Writ Petition No.28222 (S/S) of 2017 and

by judgment and order dated 6.3.2018 the result of the T.E.T. Examination, 2017 was quashed and a direction was issued to the Examination Regulatory Authority to make fresh evaluation of answer sheets. The said order dated 6.3.2018 was challenged by the State through Special Appeal No.93 of 2018. Four other Special Appeals were also filed against the judgment dated 6.3.2018 by individuals who felt aggrieved by the said judgment. By order dated 17.4.2018 the said bunch of appeals were decided and the judgment and order dated 6.3.2018 was modified and, accordingly, it was provided that instead of 14 questions, as directed by the Single Judge to be deleted, only 3 questions would be deleted and, accordingly, the Examination Regulatory Authority awarded grace marks for those three questions.

Against the said judgment dated 17.4.2018 a Special Leave Petition was filed before the Hon'ble Apex Court. The Hon'ble Apex Court by order dated 26.10.2018 set aside the order dated 17.4.2018 and remanded back the matter to the Division Bench for reconsideration on merits afresh. Since then the said Special Appeal is pending before the Lucknow Bench of this Court.

Thus, the order placed by Sri Ojha is of no use as the order dated 2.1.2019 passed by the Lucknow Bench permitting the candidates to appear provisionally are for those candidates who had appeared and challenged the T.E.T. Examination of 2017, while the present controversy is in regard to the T.E.T. Examination of 2018.

The Supreme Court in ***Kanpur University, through Vice Chancellor and Others vs. Samir Gupta and Others (1993)4 SCC 309***, in relation to public examination while dealing with the correctness of the key answers observed as under:

"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 rationalization. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well-versed in the particular subject would regard as correct....."

In **In Ran Vijay Singh and Others vs. State of Uttar Pradesh and Others (2018) 2 SCC 357**, the Supreme Court after referring to a catena of judicial pronouncements while summarising the legal position with regard to scope of the judicial review in respect of such public examination *inter alia* observed as under:

“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.”

In **U.P. Public Service Commission vs. Rahul Singh and another, 2018(7)SCC 254** in a controversy of similar nature pertaining to public examination, the Supreme Court observed as under:

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 (supra), 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 9 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 answer is better or more correct."

In view of the above legal position it is the acknowledged principle of law that onus is on the candidate to prove that the key answers are not only incorrect but there is/are such a glaring mistake which by no inferential process or reason is required to be demonstrated to prove the question or the answer to be wrong and that the constitutional courts should ordinarily restrain themselves in the matter of challenge to the correctness of the key answers of the public examination, particularly when the experts have given their opinion, which forms the basis for finalising the key answers. It is also pertinent to mention here that judges are not supposed to clothe themselves with role of experts in such academic matters.

The contention, that when the key answers to 15 questions were disputed the learned Single Judge was not justified in only referring two questions/keys answers for the opinion of the expert is without any substance.

The learned Single Judge on consideration of the entire material on record including the opinion of the experts found that in respect of all other questions other than two which were referred for the opinion of the experts, the key answers are based on text books and the Court is satisfied that the same are correct as has also been explained by the Professors present in the Court. However, in respect of the other two questions as there were clarity in the opinion, the learned Single Judge thought it proper to invite further opinion of the experts.

The learned Single Judge has given appropriate reasoning for referring the above two questions for the further opinion of the experts in its order dated 12.12.2018. He has mentioned that in respect of Urdu question No.65 of series 'A' (question no.75 of series 'B') no opinion of any expert has been obtained and, therefore, it is necessary to have an expert opinion on that question. Similarly, in respect of question No.66

of 'A' series, he opined that Professor present in the Court as an expert has opined that the option no.2 to the above question may also be correct in addition to the key answer no.4. Thus, it was considered essential to have a second expert opinion in the above two questions only.

The observation in this regard of the learned Single Judge are reproduced herein under:

“ After hearing their opinion orally explained before this Court with the assistance of material in the form of text books and other expert opinion placed before the Court in other subjects, the Court found that the expert opinion in respect of question No.-71 of 'A' series (Sanskrit), question No.- 115 of 'A' series (Mathematics), question No.- 116 of 'A' series (Mathematics), question No.- 139 of 'A' series (Environmental Studies), question No.- 133 of 'A' series (Environmental Studies), question No.- 44 of 'A' series (Hindi), question No.- 51 of 'A' series (Hindi), question No.- 53 of 'A' series (Hindi), question No.- 6 of 'A' series (Child Development and Teaching Method), question No.- 23 of 'A' series (Child Development and Teaching Method), question No.- 25 of 'A' series (Child Development and Teaching Method), question No.- 30 of 'A' series (Child Development and Teaching Method), question No.- 17 of 'A' series (Child Development and Teaching Method), rendered was based on text books and was also explained away by the Professors in Court properly to be convinced with the options that were opined them to be correct.”

(From Judgment and order dated 19.12.2018).

“It is to be noticed that in respect of Urdu question no. 75 of Series- B which is also question no. 65 of series-A, no opinion has been obtained and it is needed to be examined by an expert. Similarly question no. 66, part 3 of Series-A is needed to be examined by the expert afresh as Associate Professor Sri Satya

Pal Tiwari, who is present in Court as an expert claimed that the option no. 2 in respect of above question No. 66 is also correct apart from the option no. 4, which is given in the answer key.”

(From order dated 12.12.2018)

In respect of the two questions referred for further opinion, the opinion of the experts were received in a sealed cover and on the basis of the same, the matter was finally decided.

Thus, we find that no arbitrariness was committed by the Court in not referring the rest of the questions for further opinion, more particularly when the key answers were finalised on consideration of the objections of the candidates in consultation with the experts and the experts have also explained the correctness of the answer to the Court.

Sri Ojha made an attempt to demonstrate that despite the opinion of the experts, the key answers to some of the questions are still incorrect.

We do not consider it appropriate to enter into the aforesaid domain of the correctness or incorrectness of the key answers as according to the mandate of the Supreme Court the scope of judicial review in such matters is very limited and can be exercised only when the key answers are demonstrated to be patently illegal on the face of it, which is not the case herein. The Court after considering the opinion of the expert and the authentic text books was satisfied that the key answers to the other questions are correct and, therefore, we find not good reason to interfere with the said conclusion.

Now we take up the second argument advanced on behalf of the appellants that some of the questions particularly three in number one as pointed out of Sri Khare and other two as pointed out by Sri Ritesh Srivastava were out of syllabus. “The following are three questions which are said to be out of course.

Question No.121 of C series -

Who among the following is the present Chairperson of the National Commission for Women?

- (1) Girija Vyas
- (2) Rekha Sharma
- (3) Malini Bhattacharya
- (4) Yasmeen Abrar

Question No.86 of A series-

The antonym of 'innocent' is

- (1) clever
- (2) ignorant
- (3) active
- (4) guilty

Question No.87 of A series-

The synonym of 'significant' is

- (1) prominent
- (2) magnificent
- (3) efficient
- (4) important

The syllabus for the examination is in several heads such as Child development and education methods, Language-(Hindi/English/Urdu/Sanskrit) Maths, Environmental Education (Science, History, Geography, Civics and Environment).

The above heads have further been classified and various topics are included therein. The topic Environment Education also includes apart from other things Administration at all levels.

The first question which is said to be out of syllabus pertains to Chairperson of National Commission for women which in fact is a question relating to Administration and as such cannot be said to be out of syllabus.

The learned Single Judge has held that the aforesaid question is of general awareness and the argument that it is out of course is not

appealing. We do agree with the opinion of the learned Single Judge as the aforesaid question is too general in nature which every candidate taking such a public examination is supposed to know and answer. Infact it is covered by the topic "Administration" under the head Environmental Education is not out of the syllabus prescribed.

The other two questions are contained in the English part of the question paper and as common sense would have it both the said questions relate to English Language and are not out of syllabus.

The said questions are too elementary in nature and if they have been asked in the examination of which English is part of the syllabus it cannot be said that the said questions are beyond the syllabus. The learned Single Judge has held that the said two questions are subject matter of English Language.

In view of above, the contention of the appellants that some of the questions fall outside the syllabus is not established and is held to be devoid of merit.

Apart from the above, the U.P. Teachers Eligibility Test is held every year and the appellants who may not have qualified this year may appear again next time so as to qualify it which may enable them to participate in the recruitment examination if any for the appointment of Assistant Teacher (Primary Level).

Thus, in the over all facts and circumstances of the case, we do not find that any injustice or prejudice has been caused to the appellants as they have not been declared successful in the U.P. T.E.T.-2018 which could have warranted for the exercise of extraordinary jurisdiction by the writ court.

The Special Appeals lack merit and are **dismissed** with no order as to costs.

Dated:4.1.2019
AKJ/piyush