

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.612/2019

Monday, this the 14th day of October 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Vandana Gupta & others

..Applicants

(Mr. M K Bhardwaj and Mr. Virendra Kumar, Advocates)

Versus

Govt. of NCT of Delhi & others

..Respondents

(Mr. Amit Anand, Advocate for respondent Nos. 1 & 2, Mr. Manjeet Singh Reen, Advocate for respondent No.3, Mr. R K Jain, Advocate for respondent No.4 and Ms. Punam Singh, Advocate for respondent No.5)

O R D E R (ORAL)

Justice L. Narasimha Reddy:

The Government of National Capital Territory of Delhi (GNCTD), the 1st respondent herein, initiated steps for selection / appointment of various categories of teachers, including the post of Teacher (Primary), with Post Code Nos.16/17 & 01/18. The matter was entrusted to Delhi Subordinate Services Selection Board (DSSSB), the 2nd respondent herein. Advertisement in this behalf was issued on 01.02.2019 and the applicants responded to the same. The process involved conducting of written test and then verification of documents of the successful candidates. The examination was held in four

phases, i.e., 30.09.2018, 13.10.2018, 14.10.2018 and 28.10.2018. It comprised of Parts C & B, with 100 questions each. It is essential that a candidate must get qualified in both the parts.

2. Before the declaration of results, the respondents issued notice dated 01.02.2019. It was proposed to delete certain questions from the question papers, referable to the examinations conducted on 4 days, mentioned above. The number of questions, which were sought to be deleted, were 09, 05, 01 & 15, for the 1st, 2nd, 3rd and 4th phases, respectively. It was stated that certain questions were repeated in different phases. This O.A. is filed challenging the notice dated 01.02.2019.

3. The applicants contend that the very approach of the respondents was fallacious, inasmuch as there is no possibility of any question being repeated in the 1st phase, held on 30.09.2018. It is also stated that even though no question from the 1st phase was repeated in the 2nd phase, as many as 5 questions were deleted from that phase, on the ground that they occurred in the last phase. The facts pertaining to the other phases are also analyzed.

4. The respondents filed separate counter affidavits, opposing the O.A. It is stated that after the examination was

conducted in 4 phases and on an overall verification, it was found that certain questions were repeated in different phases, and accordingly, it was decided to exclude all the questions from consideration, and to award *pro rata* marks, to all the candidates, with reference to those questions. According to them, if a candidate, who took part in 4th phase, has secured 60% marks vis-à-vis 85 questions after excluding 15 questions, which were found to have been repeated, he was awarded 60% marks for the omitted questions also, and same thing was repeated as regards other phases.

5. We heard Mr. M K Bhardwaj, learned counsel for applicants, Mr. Amit Anand, learned counsel for respondent Nos. 1 & 2, Mr. Manjeet Singh Reen, learned counsel for respondent No.3, Mr. R K Jain, learned counsel for respondent No.4 and Ms. Punam Singh, learned counsel for respondent No.5, at length.

6. The examination for selection of candidates for the post of Teacher (Primary), with Post Codes No.16/17 & 01/18, was held in four phases, on the dates indicated above. Each question paper contains two parts, with 100 questions each. There is a provision for awarding negative marks if the question is answered wrongly. The level of competition can easily be imagined, having regard to the number of candidates, who have

responded to the Advertisement. After the examination was held, the impugned notice dated 01.02.2019 was issued. It reads:-

“Notice

1. Delhi Subordinate Services Selection Board had conducted exam for the post of Teacher (Primary) Post 1/18 & 16/17 in four batches on 30/09/2018, 13/10/18, 14/10/18 and 28/10/18. Information had been received by the Board that certain questions had been repeated.
2. Matter was considered and it was found that questions mentioned in table below were either exact replica or had similar wordings and same options in different batches of examinations for said post code.

Sl. No.	Question Numbers as per Master Set already uploaded on website of DSSSB			
	30/09/18	13/10/18	14/10/18	28/10/18
1.	104	---	---	104
2.	---	---	124	113
3.	---	128	---	121
4.	---	183	---	127
5.	170	---	---	128
6.	---	119	---	155
7.	147	---	---	159
8.	152	---	---	164
9.	102	---	---	173
10.	141	---	---	176
11.	114	---	---	193
12.	118	---	---	195
13.	124	---	---	196
14.	---	193	---	146
15.	---	126	---	171
Total	09	05	01	15

3. Apart from the above DSSSB was also in receipt of information that one question with casteist undertone had appeared in the question paper for the exam held for the post of Pr. Teacher Post Code 1/18 & 16/17 held on 13/10/18. It was also decided to delete this question as well. Details of the question is as under:-

Date of exam	Question Number as per the master set already uploaded on the website of DSSSB
13/10/18	73

4. Accordingly, questions from master set viz. 09 questions of exam dated 30/09/18; 06 of exam dated 13/10/18; 01 of 14/10/18 and 15 of exam dated 28/10/18, as detailed in tables at para 2 & 4 above, shall stand deleted and shall not be considered for the purpose of evaluation.”

7. Through the said notice, the respondents proposed to omit 09 questions from 1st phase, 05 questions from 2nd phase, 01 question from 3rd phase and 15 questions from 4th phase.

8. Wherever an examination is conducted in different phases, the possibility of some questions being repeated in different phases cannot be avoided. In such cases, the question of the 1st phase examination being vitiated, in any manner, does not arise. The reason is that the questions occur, for the first time, in that phase and repetition if at all, can be only in subsequent phases. The omission of questions in the 1st phase, on the ground that some of them were found to have been repeated in subsequent phases, does not stand the test of either logic or law. On the other hand, it would be a clear case of discrimination and arbitrariness. A candidate, who did not even have an inkling idea about the question, cannot be penalized on the ground that the question came to be repeated one month later, in a different phase.

9. Further, the lack of uniformity in the context of deletion is also turning out to be a boon for some, and bane for others. The theory adopted by the respondents that each candidate would be awarded the *pro rata* marks for the omitted questions, would lead to gross injustice. For example, in the 4th phase as many as 15 questions were omitted. If a candidate had secured fairly good marks in the remaining 85, but has wrongly answered or failed to answer the omitted 15 questions, he would stand to the maximum benefit. In contrast, the candidates, who answered the omitted questions correctly, would stand to lose.

10. Similar situation arose before the Madras High Court in W.P. (MD) No.13267/2013 & batch - **J. Antony Clara v. The State of Tamilnadu & others**. The issue was discussed at length in the judgment dated 01.10.2013. The submission made in this behalf by the learned Advocate General was discussed by the High Court in paragraph 17 of the judgment, as under:-

“17. During the course of the hearing, this Court made every endeavour to find a course which would comparatively result in minimum hardship to the candidates. The learned Advocate General submitted that after deleting the above 40 questions, the rest of the 110 questions would be valued and for every candidate 40 marks would be given as grace marks as against the 40 questions deleted and thus, the total number of marks will still be maintained at 150. This course is not agreeable to this Court, because, this will certainly materially and drastically affect the results. This will pave way for meritorious candidates to sink in the sea of confusion. This can be illustrated in the following manner.

There are two candidates who have answered 'A' series question paper. The first candidate has answered 40 questions, other than the questions which are now under dispute. He has also answered all the 40 questions under dispute, rightly. Thus, he has secured 80 marks.

The second candidate has similarly answered 50 questions, other than the question under dispute. So far as the 40 questions which are under dispute, he has not answered correctly. Thus he has secured only 50 marks.

If by following the process suggested by the learned Advocate General if 40 questions under dispute are omitted, then as per the illustration, the first candidate will maintain the same 80 marks; whereas the second candidate will now get 40 grace marks, thus making the total 90.

This illustration will squarely demonstrate as to how a candidate who had originally secured 50 marks will now rise upto 90 and compete with the candidate who has secured 80 marks. Thus, this less meritorious candidate will get selected and the meritorious candidate will not.”

The plea as to the *pro rata* basis, was also discussed in paragraph 19 of the judgment, as under:-

“19. The second method suggested by the learned Advocate General is that after deleting 40 questions, 40 marks equivalent to the said 40 omitted questions shall be equally distributed to the remaining questions on pro-rata basis. For this purpose, the learned Advocate General placed reliance on the judgment of the Hon'ble Supreme Court in *Vikas Pratap Singh and Others vs. State of Chhattisgarh and Others* in Civil Appeal Nos.5318-5319 of 2013, date 09.07.2013. In that case, before the Hon'ble supreme Court, it was found that 8 questions were incorrect and model answers for valuation of answer scripts to another 7 questions of the same paper were incorrect. So far as the wrong answer key is concerned, there can be no difficulty in correcting errors with the help of experts and ordering for re-valuation based on the correct key answers. In the said judgment before the Hon'ble Supreme Court, so far as 8 key answers relating

to 8 questions, the Hon'ble Supreme Court ordered for revaluation based on the correct key answers. So far as the incorrect questions numbering 7 are concerned, the Hon'ble Supreme Court directed for deletion of such incorrect questions and in the consequence pro-rata distribution of marks allocated to them. The learned Advocate General himself very fairly conceded before this Court that in the said judgment, the Hon'ble Supreme Court relied on Clause 14 of the Rules therein. Clause 14 of the Rules reads as follows:

"Clause 14. Wrong (Defective) objective type question, its cancellation and marks to be allotted in lieu of it.

After the exams, the Chhattisgarh Professional Examination Board (VYAPAM) gets each question examined by the subject expert. If, upon examination by the subject experts, the questions are found defective/ wrong, it is rejected. Questions may be rejected on the following reasons:

- i) if the structure of the question is wrong;
- ii) out of the options given as answers, if more than one options are correct.
- iii) If no option is correct.
- iv) If there is difference in Hindi and English translation of any question because of which different meaning is drawn from both and one correct answer could not be ascertained.
- v) If any other printing mistake is there because of which correct answer is not ascertainable or more than one option is correct.

On such rejection of question upon the recommendation of Subject Expert Committee, on such questions the marks would be awarded by the Chhattisgarh Professional Examination Board (VYAPAM) to the candidates in proportion to their marks obtained in the particular question paper. Whether the rejected question has been or not been attempted. The question papers in which the questions have been rejected, their evaluation

procedure would be as follows, if in any question papers out of 100 questions two questions are rejected and after evaluation candidate secures 81 marks out of 98 questions then in such case calculation of marks would be done as $(81*100)/100-2= 82.65$. On which basis merit would be determined."

The same situation prevails in the instant case.

11. Mr. Amit Anand, learned counsel for respondent Nos. 1 & 2 placed reliance upon the judgment of High Court of Judicature at Allahabad in Writ-A No.15588/2018. That was also a case in which the examination was held in four phases. The writ petitioners pleaded that the entire examination deserves to be scraped since certain questions were repeated in different phases. It appears that during the pendency of writ petition, a Committee was constituted and on finding that one question from 1st phase was repeated in 2nd phase, a decision was taken to require the candidates in 2nd phase, to take the examination afresh. After referring to various judgments on the subject and the scope of judicial review in general, the Allahabad High Court made the following observations:-

"65. In view of the law settled by the Hon'ble Supreme Court with regard to the maximum leeway being given to the Administrator in taking a decision at the first instance and for the courts to apply a limited review in such matters, this Court finds that the decision taken by the Recruitment Board on the basis of the report submitted

by the TCS with regard to the conduct of retest of only those candidates who appeared in the second shift on 18.06.2018 and 19.06.2018 to be appropriate and proportionate decision in the matter, so as to avoid the further delay and exorbitant expenses incurred in conducting the whole written examination all over the State of U.P. again for nearly 19 lac of candidates. The cancellation of examination for the second shift alone substantially deals with the grievance of certain candidates allegedly gaining an advantage at those centres where the trunks carrying papers for the second shift were inadvertently opened. It also takes care of the grievance regarding misprinting in Question Paper Booklet Series 39 which was distributed only in the second shift examination at some centres.”

In a way, a reverse situation obtains in the instant case.

12. Whatever maybe the justification for excluding the questions, that occurred in the subsequent examinations, one hardly comes across, the instances where the questions in the earlier examinations, are deleted, on the sole ground that they came to be repeated in subsequent examinations. In a way, it amounts to treating the un-equals as equals.

13. If, in fact, there was any repetition in the subsequent examinations, the adequate mechanism ought to have been evolved in such a way that the examinations, where the questions were not repeated, are not adversely affected.

14. We, therefore, allow the O.A. and set aside the impugned notice dated 01.02.2019. It is, however, left open to the

respondents to evolve a mechanism, which is objective, lawful and logical, and then to declare the results of the candidates.

There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

October 14, 2019

/sunil/

