

**ORISSA HIGH COURT: CUTTACK.**

**W.P.(C) NOs. 5473, 3351, 3352, 4423, 6045 and 6062 of 2009**

In the matter of applications under Articles 226 and 227 of the Constitution of India.

Dr. Gautam Patnaik	(WP(C) 5473/09)	
Manas Ranjan Samantray	(WP(C) 3351/09)	
Dr. Sunita Mohanty	(WP(C) 3352/09)	
Dr. Paresh Ku. Acharya	(WP(C) 4423/09)	
Dr. Mohan Barik	(WP(C) 6045/09)	
Dr. Sunita Behera	(WP(C) 6062/09)	
	.....	Petitioners

-Versus-

State of Orissa & Others (In all)	.....	Opp. parties
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For Petitioners : M/s. V. Narasingh, S.K. Senapati,  
B.P. Pradhan, A. Sahoo,  
D.K. Mohapatra, P.R. Dash,  
S. Mohapatra, K. Raj

For opp. parties : Addl. Government Advocate

Mr. R.C. Mohanty  
(For M.C.I.) (In all)

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Date of Judgment: 20.05.2009  
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**PRESENT :**

**THE HONOURABLE SHRI JUSTICE M.M. DAS**

**M. M. Das, J.** As common questions of fact and law arise in all the writ petitions, they were heard together on the question of law and the learned counsel for the respective petitioners also individually raised contentions in support of the facts of the respective cases, and are disposed of by this common judgment.

2. All the petitioners in the aforesaid writ petitions have called in question the marks awarded to them by the opp. parties while evaluating their answer scripts in the P.G. (Medical) Entrance Examination, 2009. The petitioners in W.P.(C) Nos. 3351, 3352, 4423,

5473 and 6045 of 2009 appeared in the said examination as in-service candidates and the petitioner in W.P.(C) No. 6062 of 2009 appeared in the said examination as direct candidate to take admission into the P.G. (Medical) Course.

3. A counter affidavit has been filed by the Convenor, P.G. (Medical) Selection Committee, 2009-cum-Principal, M.K.C.G. Medical College, Berhampur in W.P.(C) No. 5473 of 2009, which has been adopted in other writ petitions.

4. From the procedure adopted in the said Entrance Examination, it appears that a Question Answer Booklet was given to each of the candidates consisting of 300 questions. Four answers were suggested for each of the questions as A, B, C and D, and empty boxes were printed by the side of each of the questions wherein the candidates were to write the correct answer out of the suggested answers, i.e. they were to write the alphabet A or B or C or D therein representing the correct answer according to them. Each question correctly answered was to be valued with 4 marks and if any answer is found to be incorrect or more than one response is given or the box is left blank, it would entail a negative mark of one mark i.e. there would be a deduction of one mark for each such answer.

5. The moot question raised before this Court is as to whether the Court is entitled to reassess the marks awarded to the candidates in the entrance test and if so, under what circumstances, the writ Court has jurisdiction to do so. Since this is the common question of law raised by the opp. parties, the said question is to be gone into in order to find out as to whether the correctness of the answers given by the petitioners can be examined by this Court or not. Similar question was raised in the cases of **Kanpur University and others –v- Samir Gupta**

**and others**, AIR 1983 SC 1230, **Abhijit Sen and others –v- State of Uttar Pradesh and others**, (1984) 2 SCC 319, a batch of writ petitions in the case of **Priyadarshini Acharya and others –v- State of Orissa and others**, 1991 (1) OLR 514 and another batch of writ petitions in the case of **Raghunath Pradhan and others –v- State of Orissa and others**, 1992 (II) OLR 317.

6. It is trite to mention that in Multiple Choice Test, the key answer should be the correct or most appropriately correct answer and the rest of the answers should either be wholly in correct or incorrect though appear to be correct.

7. In all the aforesaid cited cases, the Court while exercising its plenary jurisdiction examined the specific answers claimed by the petitioners therein in order to find out as to whether the said answers given are most appropriately correct answers and as to whether the suggested answers given by the Committee for evaluation, were wrong. It is now a settled position of law that if the petitioners in a given case can demonstratively show that the answers given by them in such type of test are most appropriately correct answers and the answers suggested in the key answer are incorrect, the writ Court can interfere in the matter by issuing a direction to allot the marks to which such petitioners are entitled to.

8. This question is, therefore, answered in the affirmative that the writ Court can examine as to whether the answer given by the petitioners is most appropriately correct answer and the key answer suggested is incorrect, if the same is exemplified by disclosing the materials.

9. As a matter of fact, in the case of Raghunath Pradhan and others (supra), this Court referring to all the earlier decisions including

the decisions in the case of Kanpur University (supra) and Priyadarshini Acharya (supra) while meeting the contentions of the opp. parties that the Court being not an expert in technical matters should not tinker with the view of the examiners of the Examining Body, held that such argument is attractive but it is not sound and where the method adopted or decision taken is clearly unreasonable, perverse and demonstratively wrong, the Court has to act and should not shun to interfere because the key answer has been suggested by experts or the examining body. In the case of Priyadarshini Acharya (supra), this Court in order to find out the correctness of the answers given by the examinees and the key answers suggested, also referred to various text books in respect of which all the questions which were subject of the examination in the said case, in order to find out as to whether the answers given by the candidates were the most appropriately correct or not. As the petitioners in each case were supplied with different sets of Question-Answer Booklets and have called in question the correctness of evaluation of particular answers given by them referring to the question papers in their respective Question Answer Booklets, it would be appropriate to deal with each of the writ petitions separately for coming to a conclusion as to whether the respective petitioners will be entitled to marks in respect of such questions as claimed by them to have been correctly answered.

10. The petitioner, Dr. Goutam Patnaik, in the aforesaid writ petition, being W.P.(C) No. 5473 of 2009 has claimed that the answers given by him to the question nos. 129, 187, 225, 59, 84, 163 and 184 are correct but he has been deprived of four marks each for the said questions and also seven marks have been deducted by way of negative marking for the answers given to the said questions by him. A counter affidavit has been filed on behalf of the Convenor in this case. The

Convenor instead of meeting the specific allegations made by the petitioner with regard to the aforesaid seven questions has taken a stand relying on Clause – 10.17 of the P.G. Prospectus, 2009, which prescribes as follows:

“Any challenge or genuine complaint regarding the Questions and Choices asked in the Entrance Examination shall reach the Convenor by Registered Post only within 7 (seven) days from the date of Entrance Examination. The said challenges/complaints will be scrutinized by an Expert Committee formed for this purpose by the Selection Committee to examine the genuineness of such challenges/complaints and their decision will be taken into consideration during the evaluation.”

Therefore, according to the Convenor, it is inappropriate to say that the answers (four choices) are out dated and the petitioner would have brought the allegations now made, before the Selection Committee challenging the correctness of the Choice answers provided against a particular question.

11. It is needless to mention that there is no scope for the candidate to raise a complaint regarding the Questions and Choices asked in the Entrance Examination, since the Question Answer Booklet is to be returned by the candidate after giving the answers and it is humanly impossible for a candidate to remember 300 questions, set for the Entrance Examination and the suggested answers numbering 1200 (4 for each question). Hence, Clause- 10.17 of the P.G. Prospectus is totally redundant and unworkable. Such contention raised in the counter affidavit by the Convenor is, therefore, unacceptable.

12. Since the counter affidavit having been filed in W.P.(C) No. 5473 of 2009, it would be convenient to take up the said writ petition as the first case.

14. **In W.P.(C) No. 5473/2009**

The petitioner has claimed that he has answered question nos. 129, 187, 225, 59, 84, 163 and 184 correctly, but he has not been awarded marks for the seven questions totaling to 28 and 7 marks have been deducted by way of negative mark.

Question No. 129 is as follows:-

“Abandoning of child is a crime, under section:

- A. 302 IPC
- B. 304 IPC
- C. 317 IPC
- D. 318 IPC

Model Key Answer - D              Candidate's answer – C”

The petitioner mentioned “C” as the correct answer. Section 317 I.P.C. deals with abandonment of child under 12 years by parent or person having care of it and is the most appropriately correct answer to the above question. The model answer as produced by the opp. Parties shows that section 318 I.P.C. was suggested as the correct answer for which the petitioner has not been awarded with any mark and “1” mark has been deducted by way of negative marking.

Section 318 I.P.C. deals with concealment of birth by secret disposal of dead body and does not relate to abandonment of child. Therefore, section 318 I.P.C., which was mentioned as choice “D” cannot be the correct answer. Hence, the petitioner in question no. 129 is entitled to “4” marks as well as one negative marking. Therefore, in toto, he is entitled to “5” marks for the said question.

“Question No. 187 is as follows:

Plaster of Paris is:

- A. Hemihydrated calcium sulphate.
- B. Hydrated calcium carbonate.
- C. Hemihydrated calcium phosphate.
- D. Hemihydrated calcium gluconate.

Model Key Answer - C      Candidate's Answer - A."

The petitioner gave "A" as the answer, but the answer suggested by the opp. Parties in the model answer is "C". In the "Essential Orthopaedics" by J. Maheswari, a Specialists in Orthopaedics formerly working in the All India Institute of Medical Sciences at page 14 indicated plaster paris (Gypsum salt) is  $\text{CaSO}_4 \cdot 1/2 \text{H}_2\text{O}$  in dry form, which becomes  $\text{CaSO}_4 \cdot 2\text{H}_2\text{O}$  on wetting.

Answer "A" as suggested clearly states Hemihydrated. The dictionary meaning of which is "half Hydrated" Calcium sulphate. Therefore, it refers to plaster paris in dry form, which has half molecule of water with calcium sulphate and the said answer "A" is the most appropriately correct answer. The answer "C" as suggested is not plastic paris. The petitioner having given 'A' as the correct answer, is, therefore, entitled to "4" marks for the said question plus '1' mark deducted as negative mark. Therefore, in toto, he is entitled to "5" marks for the said question.

Question No. 225 is as follows:

"A sneeze from an untreated lepromatous patient may contain:

- A.  $>5^{10}$  AFB
- B.  $> 10^{10}$  AFB
- C.  $> 10^5$  AFB
- D. None of the above.

Model Key answer - B      Candidate's Answer - C".

The petitioner answered "C" as the correct answer, whereas the model key answer suggested is "B". In the Text Book of Dermatology Vol.II, 3<sup>rd</sup> Edition, edited by R.G. Valia, Professor and Former Head, Department of Dermatology, Venereology of L.T.M. College and L.T.M.G. Hospital, Mumbai along with Ameet R. Valia, Honorary Dermatologist have mentioned at page 2021 thereof as follows:-

Ulceration of the nasal mucosa is seen in untreated lepromatous patients, providing an important route of exit of the organisms. Nasal secretions from such patients may contain  $10^6$  to  $10^8$  organisms/ml.<sup>32</sup> Thus, the answer given by the petitioner being correct, the petitioner is entitled to 5 marks for this question.

Question No. 59 is as follows:

“Oesophagus enters into abdomen through-

- A. Right crus of diaphragm.
- B. Left crus of diaphragm.
- C. Behind the Median arcuate ligament.
- D. Muscular part of diaphragm.

Model Key Answer - A Candidate's Answer - D”

The petitioner has answered “D” as the correct answer and the model key answer given is “A”.

In the book Human Anatomy, Vol. II by B.D. Chaurasia, the author under the heading openings in the Diaphragm mentions that the Oesophageal opening lies in muscular part of the diaphragm. It is, therefore, demonstratively shown that the answer given by the petitioner, i.e., “D” is the correct answer and the answer suggested is not correct.

Hence, the petitioner, therefore, as earlier stated including the mark allotted to the question and the negative mark, is entitled to 5 marks for this question.

Question No. 84 is as follows:

“First Plasma Protein to appear in embryonic life is:

- A. Prothrombin
- B. Globulin
- C. Albumin
- D. Fibrinogen.

Model Key Answer - A Candidate's Answer - C”.

The petitioner has answered “C” as the correct answer and the model key answer given is “A”.



In the book “Text Book of Medical Physiology by Indu Khuran , Associate Professor , Department of Physiology, Post Graduate Institute of Medical Sciences, Rohtak, mentions as follows:-

“In embryo, the plasma proteins are synthesized by the mesenchymal cells through a process of secretion or dissolution of their substances. First, the albumin is produced and then the other proteins are synthesized .....”

It is, therefore, also demonstratively shown that the answer given by the petitioner is correct and the model answer given is incorrect. As in the above question likewise in this question, the petitioner is entitled to 5 marks.

Question No. 163 is as follows:

“Formed visual hallucination are seen in lesion of.

- A. Occipital lobe.
- B. Temporal lobe.
- C. Arcuate fasciculus.
- D. Dentate nucleus.

Model Key Answer - C.      Candidate’s Answer – A”.

The petitioner gave the answer “A” as the correct answer and the model key answer suggested is “C”.

In Principles of Neurology, 8<sup>th</sup> Edition, Allam H. Ropper M.D. Professor and Chairman of Neurology at Boston and Robert H.Brown, D.Phil. M.D. Professor of Neurology, Harvard Medical School state that formed hallucinations are related to lesions of the occipital lobe. Thus, it is demonstratively shown that the answer “A” is the correct answer, which has been given by the petitioner and the model answer suggested as ‘C’ is incorrect.

Hence, the petitioner in this question is also entitled to 5 marks.

Lastly, question No.184 is as follows:

“Most common cause of acute pancreatitis.

- A. Biliary.
- B. Alcoholic
- C. Dietary
- D. Idiopathic.

Model Key Answer – A    Candidate’s Answer - B”.

The petitioner gave “B” as the correct answer, but the model answer suggested is “A”.

In Harrison’s Principles of Internal Medicine Vol. II Edition by a group of U.S. Specialized doctors of United States have mentioned as follows:

“ There are many causes of acute pancreatitis (Table 307-1), but the mechanisms by which these conditions trigger pancreatic inflammation have not been identified. Gallstones continue to be the leading cause of acute pancreatitis in most series (30-60%). Alcohol is the second most common cause.....”.

Hence, the most appropriate answer to this question is “B” and cannot be “A” as suggested. The petitioner having the answer as “B” is entitled to five marks in this question as he having answered correctly, the negative mark is also to be added.

Thus, from the above discussions, it is evident that the petitioner is entitled to 35 marks, in toto, more than what he has secured in the entrance test.

The petitioner has subsequently filed an additional affidavit claiming that the answers given in Question Nos. 45, 122, 196, 72, 161, 14 and 273 are the most appropriate choice and also the correct answers but he has been deprived of 4 marks in each of the questions as well as there has been 7 marks deducted by way of negative marks for the above

said questions. On that ground, he claims that he should be awarded 35 marks more for the aforesaid questions.

Question No. 45 is as follows:

- “All are features of ITP except  
 A. Increase megakaryocytes in bone marrow.  
 B. Thrombocytopenia  
 C. Splenomegaly  
 D. Giant Platelet”

The petitioner answered the choice ‘D’ as the correct answer but the model answer has been suggested as ‘C’.

As per the reference from Harrison’s principles of Internal Medicine (17<sup>th</sup> Edition) Page No. 374 (Table No. 60-2) shows one of the cause of Splenomegaly is Immune thrombocytopenia (ITP). Again in de Gruchy’s Clinical Haematology in Medical Practice (5<sup>th</sup> Edition) Page No. 379 shows increased megakaryocyte and thrombocytopenia are common features of ITP. Whereas regarding giant platelet de Gruchy clearly mention that abnormal small, big and atypical platelets are sometime seen. Under the circumstances compare to all other option, Answer D is least common and hence, the same is the most appropriately correct answer. The petitioner, therefore, would be entitled to 5 marks for this question.

Question No. 122 is as follows:

- “The colour of postmortem abrasion is  
 A. Red  
 B. Yellow  
 C. Black  
 D. Reddish Brown”

The petitioner suggested ‘D’ as the correct answer but the model answer has been given as ‘B’.

In Parikh’s Text book of medical Jurisprudence, Forensic Medicine and Toxicology (6<sup>th</sup> Edition), the author has mentioned that “a postmortem abrasion may appear dark brown or even black, and

parchment like, as a result of the drying of the moist exposed surface, when it may be mistake for burns.

It is, therefore, clear that the suggested answer 'B' can never be the correct answer and the answer given by the petitioner is the most appropriately correct answer. Hence, the petitioner is entitled to 5 marks for this question.

Question No. 72 is as follows:

"Rhabdomyolysis is associated with

- A. Haemorrhagic shock
- B. Traumatic shock
- C. Septic shock
- D. Anaphylactic shock"

The petitioner suggested 'C' as the correct answer but the model answer has been given as 'B'.

In Harrison's Internal Medicine (17<sup>th</sup> Edition), Volume I, the author state at page-801 that acute rhabdomyolysis predictably occurs with clostridial and streptococcal myositis but may also be associated with influenza virus, echovirus, coxsackievirus, Epstein-Barr virus, and Legionella infections. In Vol. II of the said book at page-1698, the author states that a third pathogenesis may be represented by severe sepsis due to superantigen-producing Staphylococcus aureus or Streptococcus pyogenes, since the T cell activation induced by those toxins produces a cytokine profile that differs substantially from that elicited by gram-negative bacterial infection.

It is, thus, demonstratively shown that the answer 'C' i.e. Septic shock is the most appropriately correct answer to the above question and, therefore, the petitioner is entitled to 5 marks for the said question.

Question No. 196 is as follows:

“All are true about Giant Cell Tumour of Bone except:

- A. Occurs in epiphysis
- B. Multiple lesion never occur
- C. Soap bubble appearance on X-Ray
- D. Pathological fracture can occur.

Key Answer – B      Candidate’s Answer – D”

The petitioner answered “D” as the correct answer and the key answer was suggested as “B”.

In an extract of the Book “Apley’s System of Orthopaedics and Fractures (8<sup>th</sup> Edition), a group of Doctors, namely, Louis Solomon, Emeritus Professor of Orthopaedic Surgery, University of Bristol, David Warwick, Former Lecture in Orthopaedic Surgery, University of Bristol, Selvadurai Nayagam, Royal Liverpool Children’s Hospital and Royal Liverpool University Hospital, it is stated that in Giant-Cell Tumour of bone multiple lesions occur but rarely and pathological fracture occurs in 10-15% of cases, the author writes that in Giant Cell Tumour, a history of trauma is not uncommon and pathological fracture occurs in 10-15% of cases. Hence, the given answer by the petitioner, i.e., “D”, cannot be the correct answer. The petitioner is, thus, not entitled to any mark for this question.

Question No. 161 is as follows:

“Which neurotransmitter is responsible for suicide behaviour.

- A. Dopamine
- B. GABA
- C. Serotonin
- D. Histamine

Key Answer – C      Candidate’s Answer – C”.

The petitioner gave the answer “A” as the correct answer, whereas the key answer given was “C”.

The petitioner has referred to a portion of Harrison's Principles of Internal Medicine which has not been shown demonstratively that the answer given by the petitioner is correct and the key answer suggested is wrong. Therefore, the petitioner is not entitled to any mark for this question.

Question No. 14 is as follows:

"The drug approved for use in Premature labor is:

- A. Salbutamol
- B. Terbutaline
- C. Ritodrine
- D. Isoxuprine

Key Answer - C      Candidate's Answer - D"

The petitioner gave the answer "D" as the correct answer but the Key answer has been given as "C". A reference is made to a Text Book of Obstetrics by D.C. Dutta (6<sup>th</sup> Edition), wherein, in Chapter "Preterm Labour", which is synonym to Preterm Labour under the heading "Management of Preterm Labour". The author writes "the management includes: (1) to prevent preterm onset of labour, if possible, (2) to arrest preterm labour, if not contraindicated (3) appropriate management of labour (4) effective neonatal care. The author has further mentioned that the drugs which can be used for a short period as terbutaline, ritodrine and isoxsuprine. Thus, except the suggested answer "A", all the other three answers are correct. The Courts have held that if more than correct answer has been suggested in multiple choice questions and a candidate has given one of the said answers as correct, he cannot be denied the marks for the said questions. The petitioner, therefore, would be entitled to 5 marks for the said question (four for the answer given and one for deduction made by way of negative marks).

Question No. 273 is as follows:

“Mucocoele is common in which of the following sinuses:

- A. Maxillary sinus
- B. Frontal sinus
- C. Ethmoidal sinus
- D. Sphenoidal sinus

Key Answer - B                      Candidate's Answer - C”

The petitioner gave the answer “C”, whereas the key answer was given as “B”.

A reference to diseases of Ear, Nose and Throat , 4<sup>th</sup> Edition by P.L. Dhingra, formerly Director, Professor and head of the Department of Otolaryngology and Head & Neck Surgery, Maulana Azad Medical College shows that the sinuses commonly affected by mucocoele in the order of frequency, are the frontal, ethmoidal, maxillary and sphenoidal. It, therefore, appears that all the four answers given can be said to be correct answers. Therefore, the petitioner cannot be deprived of marks for the above question having given the answer “C” as the correct answer. Therefore, the petitioner would be entitled to 5 marks for this question.

It is, thus, found that the petitioner is entitled to 25 marks more with regard to the questions mentioned in the additional affidavit. Hence, in toto, the petitioner would be entitled to 60 marks more than what has been awarded to him in the said entrance examination.

15.                      **In W.P.(C) No. 3351 of 2009**

The petitioner alleges that expecting more marks in the entrance examination though he applied to the Convenor for supplying all copies of the answer keys under the R.T.I. Act, having not been

supplied with the same before the date which was fixed for counselling has approached this Court. By an interim order, learned counsel for the opp. parties was directed to produce the answer scripts of the petitioner. On verifying the same, the petitioner has filed a Misc. Case stating that he has been given 30 marks less than what he is entitled to as the answers given to Question Nos. 29, 59, 110, 225, 284 and 287 though were correct he has not been awarded with any marks for the aforesaid questions. He was supplied with a Question Answer Booklet differential from the petitioner in W.P.(C) No. 5473 of 2009 but continuing the same question with change in particulars. The answer given by the petitioner was 'C' and as such, for the reasons already stated above, the petitioner is entitled to 5 marks for the said question (4 marks for the answer given and one mark which has been deducted as negative marks). Same is the case with regard to Question No. 59 whether the petitioner answered correctly suggesting 'D' as the correct answer and he is entitled to 5 marks for the aforesaid question.

Question No. 110 is as follows:

"The net number of ATP molecules formed per molecule of glucose in aerobic glycolysis is –

- A. 2
- B. 6
- C. 18
- D. 36 "

The petitioner suggested 'A' as the correct answer but the model answer has been suggested as 'B'.

In the Textbook of Medical Biochemistry (6<sup>th</sup> Edition) by Dr. (Brig) MN Chatterjea, an Ex-Professor and Head of the Department of Biochemistry Armed Forces Medical College, Pune, it has been stated that the net number of ATP molecules formed as per molecule of glucose in aerobic Glycolysis is 8 ATP. Therefore, nothing of the answer suggested



for the above question is correct. Thus, applying the ratio of the decision in the case of Raghunath (supra), the petitioner will be entitled to 5 marks for the above question. The answer given by the petitioner to Question No. 225 being corrected as already discussed, he is entitled to 5 marks for the said question. Similarly, for the Question Nos. 284 and 287, the petitioner having answered correctly shall be entitled to 5 marks each in the above questions. Thus, the petitioner in toto will be entitled to 30 marks more than what has been awarded to him. The petitioner also claims that he is entitled to weightage of 10% of marks secured having served in KBK/Tribal/Backward areas as per Clause-11.2 of the Information Brochure. If, in fact, the petitioner has served for three years in the aforesaid area as per Clause-11.2, he shall be entitled to 10% of marks secured as weightage.

16. **In W.P.(C) No. 3352 of 2009**

The petitioner has made a prayer in the writ petition which is as follows:

“It is, therefore, prayed that this Hon’ble Court may graciously be pleased to:

- I) Admit the writ application;
- II) Call for the records;
- III) Issue a writ of mandamus or any other appropriate writ/writs, direction/directions directing the opposite parties, particularly Opp. Party No. 3 to verify the answer scripts of the petitioner regarding the coding and decoding, addition, subtraction in the total marks and allotment 10% of the secured marks for serving in KBK/Tribal/Backward areas as per Clause No. 11.2 of the Prospectus and accordingly the petitioner Rank No. in the merit list of in-service category candidates may be corrected;
- IV) And/or pass such other order/orders, direction/directions as this Hon’ble Court may think fit and proper for the ends of justice;”

During pendency of the writ petition, the petitioner has filed a misc. case in Court, inter alia, stating that she has correctly answered 5 questions being Question Nos. 129, 59, 10, 163 and 184 but has not

been awarded any marks for the aforesaid questions and 5 marks has been deducted by way of negative marks. She has also stated that with regard to Question No. 187, the question itself is ambiguous. For convenience, the Question No. 187 is dealt with first. The said question is the same as Question No. 187 in W.P.(C) No. 5473 of 2009. The said question is not ambiguous and therefore, the petitioner has rightly not been awarded with any marks for the said question and 1 mark has been deducted by way of negative marks. Now coming to the Question No. 129, the petitioner claims to have given 'C' as the correct answer. With regard to Question No. 59, the petitioner has given the answer 'D' as the correct answer. The above two questions are same as Question Nos. 129 and 59 in W.P.(C) No. 5473 of 2009. The petitioner having answered correctly and the Key Answers being suggested are wrong, therefore, she is entitled to 5 marks each for the above two questions.

Question No. 10 is as follows:

“The net number of ATP molecules formed as per molecule of glucose in aerobic glycolysis is :  
A. 2  
B. 6  
C. 18  
D. 36”

The petitioner has referred to the Textbook of Medical Biochemistry (6<sup>th</sup> Edition) which clearly states that 8 is the correct answer which is not suggested in any of the answers given. Thus, for the reasons stated with regard to the said Question No. 10 which is the same in W.P.(C) No. 3351 of 2009, the petitioner would be entitled to 5 marks for the said question. With regard to Question Nos. 163 and 184, which are same as the Question Nos. 163 and 184 in W.P.(C) No. 5473 of 2009, the petitioner having answered correctly for the said questions is entitled to 5 marks each for the said questions. Thus, in toto, the petitioner

would be entitled to 25 marks more than what has been awarded to her in the entrance examination.

17. **In W.P.(C) No. 4423 of 2009**

Though initially the petitioner did not claim any extra marks for having answered any of the questions correctly but subsequently he filed a misc. case in Court, inter alia, stating that on verification of the answers and the Key Answers, he found that he has answered Question Nos. 29, 284 and 287 correctly and has further stated that none of the suggested answer to Question No. 10 is correct and the question no. 59 is ambiguous. Question No. 59 is the same as Question No. 59 dealt with in W.P.(C) No. 5473 of 2009 and the said question is not ambiguous. Therefore, the petitioner is not entitled to 5 marks for the said question. However, with respect to Question No. 10 which is the same as Question No. 10 dealt with in W.P.(C) No. 3352 of 2009, none of the answer suggested being correct, the petitioner will be entitled to 5 marks for the said question. With regard to Question Nos. 29, 284 and 287 which are same as the Question Nos. 129, 184 and 187 dealt with in W.P.(C) No. 5473 of 2009, the petitioner having correctly answered the aforesaid questions will be entitled to 5 marks each for the said questions. Thus, in toto, the petitioner is entitled to 20 marks more than what has been awarded to him in the entrance examination.

18. **In W.P.(C) No. 6045 of 2009**

The petitioner claims to have given correct answers to Question Nos. 64, 122, 237 and 252.

Question No. 64 is as follows:

“The drug approved for use in premature labour is:

- A. Salbutamol
- B. Terbutaline
- C. Ritodrine
- D. Isoxuprine”

The petitioner gave the answer 'D' as the correct answer but the Key Answer has been given as 'C'. A reference is made to a Textbook of Obstetrics by D.C. Dutta (6<sup>th</sup> Edition) wherein in Chapter "Preterm Labour", which is synonym to Preterm Labour under the heading "Management of Preterm Labour". The author writes "the Management includes : (1) to prevent preterm onset of labour, if possible (2) to arrest preterm labour, if not contraindicated (3) appropriate management of labour (4) effective neonatal care. The author has further mentioned that the drugs which can be used for a short period as terbutaline, ritodrine and isoxsuprine. Thus, except the suggested answer 'A', all the other three answers are correct. The Courts have held that if more than correct answer has been suggested in multiple choice questions and a candidate has given one of the said answers as correct, he cannot be denied the marks for the said questions. The petitioner, therefore, would be entitled to 5 marks for the said question (4 for the answer given and 1 for deduction made by way of negative marks).

In Question No. 122, the petitioner has given the answer 'D' as the correct answer. This question is the same as Question No. 122 as discussed in W.P.(C) No. 5473 of 2009. Thus, for the reasons already stated, the petitioner is entitled to 5 marks for the aforesaid question. Question No. 237 is the same as Question No. 187 in W.P.(C) No. 5473 of 2009 and the petitioner having given answer 'A' as the correct answer is entitled to 5 marks for the aforesaid question.

Question No. 252 is as follows:

"Fetal post maturity is assessed by

- A. Loss of sole fat.
- B. Shining skin
- C. Loss of Lanugos hair
- D. Enzyme assays"

The petitioner answer 'C' as the correct answer but the Key Answer has been given as 'A'. A reference is made to a Nelson Textbook of Pediatrics (18<sup>th</sup> Edition) Vol. I where the author says that the post-term, post-mature infants often have increased birth-weight and are characterised by the absence of lanugo, decreased or absent vernix caseosa, long nails, abundant scalp hair, white parchment – like or desquamating skin and increased alertness. Reference to the above textbook shows that the answer suggested by the petitioner is the most appropriately correct answer to the said question, therefore, the petitioner is entitled to 5 marks for the aforesaid question. Thus, in toto, it has been demonstratively shown that the petitioner has given correct answer to the aforesaid 4 questions and is entitled to 20 marks more than what has been awarded to him.

19. **In W.P.(C) No. 6062 OF 2009**

The petitioner in this writ petition is a direct candidate, who appeared in the entrance examination for taking admission to P.G. Medical Courses, 2009. She claims to have answered question Nos. 13, 46, 129, 203, 204, 237 and 252 in the question answer book let supplied to her correctly, but has not been awarded four marks for each of the said questions and seven marks have been deducted by way of negative marking from her total marks.

Question No. 13 is as follows:

“Spinal root ganglion contains:

- A. Psudounipolar neurones
- B. Unipolar neurones
- C. Multipolar neurones
- D. Bipolar neurones.”

The petitioner gave choice 'B' as the correct answer, whereas the key answer was suggested as 'A'.

In A.K. Datta's Essentials of Human Anatomy and Neuroanatomy, the author states as follows:-

Unipolar neurons – The cell bodies of these neurons are located in the dorsal root ganglia of spinal nerves and corresponding ganglia of cranial nerves.

In the Text Book of Human Histology by Inderbir Singh, the author states as follows:-

“Sensory ganglia are present on the dorsal nerve roots of spinal nerves, where they are called dorsal nerve root ganglia or spinal ganglia. They are also present on the 5<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> cranial nerves. We have seen that the neurons in these ganglia are of the unipolar type.”

Thus, it is clear that the answer given by the petitioner is demonstratively shown to be correct. The petitioner is, therefore, entitled to five marks for the above question (four for the answer given and one as the mark which has been deducted by way of negative marking).

Question No. 46 is as follows:

“Which one of the following enzyme is functional in plasma ?

- A. Amylase
- B. Lipase
- C. Cholinesterase
- D. G.Glutamyl transpeptidase”

The petitioner gave the answer “B” as the correct answer. The key answer suggested was “C”. Reference has been made to Harper's Illustrated Biochemistry. The author in the said book states examples of these functional plasma enzymes include lipoprotein lipase, pseudocholinesterase and the proenzymes of blood coagulation and blood clot dissolution. It is, thus, seen that the answer “B”, i.e. lipase as given by the petitioner is most appropriately correct answer and the key

answer suggested cannot be said to be the correct answer. The petitioner will be entitled to five marks for this question.

Question No. 129 is the same as question No. 129 in W.P. (C) No. 5473 of 2009. The petitioner gave the answer “C”, whereas the key answer suggested was “D”. For the reasons assigned under the said question in the aforesaid writ petition (WPC 5437/2009), the petitioner will be entitled to five marks for this question.

Question No. 203 is as follows:

“At birth the Fetal hemoglobin level of normal term infant is:-

- A. 90%
- B. 80%
- C. 70%
- D. 60%”.

The petitioner gave “B” as the correct answer, whereas the key answer suggested was “C”.

In the Text Book of Obstetrics by D.C. Dutta, the author states that in the early period, the erythropoiesis is megaloblastic but near term it becomes normoblastic. The fatal blood picture at term shows RBC 5-6 million per cu mm; HB% 110-150%, reticulocytes – 5% and erythroblast-10%. During the first half, the haemoglobin is of fetal type (a- 2, y-2) but from 24 weeks onwards, adult type of haemoglobin (a-2, b-2) appears and at term about 75-80% of the total haemoglobin is of fetal type HbF.”

Thus, the answer given by the petitioner is demonstratively shown to be correct and the petitioner will be entitled to five marks for this question.

Question No.204 is as follows:

“Syndrome of inappropriate Anti-Diuretic hormone secretion occurs in all the conditions except:

- A. Diabetes insipidus
- B. Acute glomerulo nepmus
- C. Encephalitis
- D. Pneumonia”

The petitioner answered “A” as the correct answer. The key answer suggested was “B”.

The books referred by the petitioner for substantiating her case is Harrison’s Principles of Internal Medicine and Review of Medical Physiology, 21<sup>st</sup> Edition, but from the portion, which has been relied upon from the aforesaid book, it is not clear as to whether the answer given by the petitioner is correct or as to whether the key answer suggested was incorrect. Therefore, this Court feels that the petitioner will not be entitled to any mark in this question, i.e., question no.204.

Question No. 237 is the same as question No. 187 in W.P.(C) No. 5473 of 2009, wherein it has already been discussed that the answer “A” is the corrected answer and key answer suggested, i.e., “C” was incorrect. The petitioner having given “A” as the correct answer, she would be entitled to five marks for this question.

Question No. 252 is the same as question no. 252 in W.P. (C) No. 6045 of 2009, wherein as already discussed, the answer “C” is the correct answer and the key answer given as “A” was incorrect. The petitioner having given her choice as “C” would be entitled to five marks for this question. Thus, in toto, the petitioner will be entitled to 30 marks more than what has been secured by her.

20. On the above analysis, these writ petitions are disposed of with the following directions:

The petitioner-Gautam Patnaik in W.P.(C) No. 5473 of 2009 will be awarded 60 marks more than what has been awarded to him in the entrance examination.

Similarly, the petitioner-Manas Ranjan Samantaray in W.P. (C) No. 3351 of 2009 will be awarded 30 marks more than what has been awarded to him in the entrance examination..



Likewise the petitioner-Dr. Sunita Mohanty in W.P.(C) No. 3352 of 2009 will be awarded 25 marks more than what has been awarded to her in the entrance examination.

The petitioner-Dr. Paresh Kumar Acharya in W.P.(C) No. 4423 of 2009 will be awarded 20 marks more than what has been awarded to him in the entrance examination.

The petitioner-Dr. Mohan Barik in W.P.(C) No. 6045 of 2009 will be awarded 20 marks more than what has been awarded to him in the entrance examination.

The petitioner-Dr. Sunita Behera in W.P.(C) No. 6062 of 2009 will be awarded 30 marks more than what has been awarded to her in the entrance examination.

21. The Convenor of the P.G. (Medical) Selection Committee, 2009 is directed to add the above marks in respect of each of the petitioners to the marks already secured by them and, accordingly, find out their ranking in the merit list before the counselling commences on production of a certified copy of this judgment. The counselling shall be continued thereafter in accordance with the merit list of the selected candidates.

22. It would be worthwhile to refer to the anxiety of this Court expressed in the case of Pariyadarshini Acharya (supra) as well as in the case of Raghunath Pradhan (supra). This Court in the case of Priyadarshini Acharya (supra) referring to the decision in the case of Kanupur University (supra) of the Apex Court observed as follows:

“A large number of cases are being filed every year for verifying the valuation made by the examining body. In some years, there was change in valuation after the key answers were produced and the performance of the candidate was verified with reference thereto. To avoid this, a demand has been raised for publication of the key result after the examination. There is understandably opposition by the State to this demand. It is

urged by the latter that the key answer furnished should not be challenged. Considering this, the Supreme Court observed in Kanpur University case (AIR 1983 SC 1230) that was not the correct way of looking at these matters which involved the future of hundreds of students who were aspirants for admission to professional courses. If the key answers were kept secret, 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 answers unravelled an unhappy state of affairs to which the University and the State Government must find a solution. We have noticed the controversy in relation to the answers to certain questions in this case. Such controversy and lapses can be avoided if the State Government complies under its auspices a text book which should be prescribed for students desirous of appearing at the entrance examinations. This was precisely the recommendation of the Supreme Court in Kanpur University –v- Samir Gupta, AIR 1983 SC 1230. The Supreme Court recommended and we reiterate that henceforth the questions should be modulated by a body of experts chosen by the State Government and objective type questions should be set in such a manner that questions having ambiguous import are not set. Answers should contain one correct answer and the rest should be either incorrect or nearly correct leaving no scope for reasoning or argument except merely involving tick-marking the correct answer. The question, therefore, has to be clear and unequivocal and, as was recommended by the Supreme Court, we direct that if attention of the Government or the examining body is drawn to any defect in the key answer or to any question, timely decision should be taken to declare the exclusion of the suspect question from the paper so that no marks are assigned to it.”

23. In the case of Raghunath Pradhan (supra), this Court reiterated the anxiety of this Court expressed in the case of Priyadarshini Acharya (supra) which has been quoted above.

24. Since in all probabilities many other candidates, who have not approached this Court, may now think up approaching this Court after delivery of this judgment, it would be apt on the part of this Court to close such flood gate and, accordingly, this Court directs that the writ petitions filed after 19.5.2009 in this regard claiming more marks shall not be entertained by this Court.

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**M.M. Das, J.**

