

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.37263 of 2021

Swetalina Patra

....

Petitioner

Mr. S.C. Nath Sharma, Adv.

-versus-

State of Odisha and Anr.

....

**Opposite
Parties**

*Mr. S. Mishra, SC
(For S & ME Deptt.)*

CORAM:

Mr. JUSTICE S.K. PANIGRAHI

**Order
No.**

**ORDER
31.05.2022**

7.

1. This matter is taken up by hybrid mode.
2. Heard learned counsel for the petitioner and learned counsel for the State.
3. The present petition has been directed against the improper evaluation and preparation of question cum answer key in the Computer Based Test (CBT) for the recruitment of Contractual Hindi, Sanskrit and Physical Education Teachers in Govt. Secondary Schools of the State of Odisha, 2021, pursuant to Advertisement dated 13.08.2021 issued by the Directorate of Secondary Education, Odisha, Bhubaneswar; whereby the Petitioner assailing the the evaluation method, preferred this Writ Petition invoking Articles 226 and 227 of the Constitution of India.

4. Shorn of unnecessary details, the substratum of the matter presented before this Court remains that the Petitioner is a resident of Chudanga Sahi, P.O- Puri Town, Dist- Puri. The Petitioner, pursuant to Advertisement dated 13.08.2021, applied for the post of Hindi Teacher and appeared for the designated Computer Based Test (CBT) at College of Management and Technology, Puri (CMT), Balighat, Puri-Konark Marine Drive Road, Near Dena Bank, District- Puri.
5. The petitioner was quite hopeful and confident of getting qualified owing to her satisfactory performance in the CBT. However, to her dismay, she had scored 22.25 marks out of 90, falling short of only 0.25 marks from the qualifying marks (22.50) by less than one mark.
6. Further, learned counsel for Petitioner contended that question no.2786705 is out of syllabus and against question no.2786694 the opposite parties have chosen wrong answer. Therefore, it constitutes a plausible ground for awarding grace marks to the Petitioner. Moreover, the learned counsel submits that the petitioner being 32 year old would be barred by age and rendered ineligible to appear for examinations of similar kind in future.
7. In the counter-affidavit filed by the opposite party No.2, it has been stated that the petitioner had not raised objection to any question or answer at the

appropriate time of submission of representation/objection to Question Paper and Answer Key before publication of result. But so far as question no.2786694 is concerned, while considering the objections to this question raised by other candidates, Merit Trac Services Private Limited, Bangalore had defended the declared answer of question no.2786694 with justification. Further, regarding the allegation of question No.2786705, the agency has rejected the claim of the petitioner and they have confirmed the question to be within the syllabus.

8. It appears that if the petitioner had grievance of the questions being out of syllabus, such a discrepancy could have been addressed in the stipulated time frame i.e., 06.10.2021-08.10.2021 (3 days). Moreover, the opposite party in the counter-affidavit has categorically stated that they disposed off 577 representations in respect of 76 questions, out of which two questions i.e., Q. 126 & 149 were nullified for having wrong answers and grace marks were provided to all candidates in that respect. It can be ascertained from the petitioner's rejoinder affidavit that she had not submitted her representation/objection against the alleged two questions i.e. question Nos.2786694 and 2786705. This Court needs to see what is legally possible and not what possibly dehors the legal process. A thing that may seem plausible on the grounds of natural justice, may not be possible legally. As succinctly put by Mathew, J. in his

judgment in the ***Union of India v. M.L. Kapur***¹, "it is not expedient to extend the horizon of natural justice involved in the Audi alteram partem rule to the twilight zone of mere expectations, however great they might be".

9. The prayer of the petitioner to re-evaluate the answer script is also unsustainable as the candidates selected for the concerned examination have been engaged since 15.12.2021. Moreover, the Supreme Court in the case of ***Maharashtra State Board of Secondary and Higher Secondary Education and Anr. v. Paritosh Bhupesh Kurmarsheth***² had opined that:

"It is in the public interest that the results of public examinations when published should have some finality attached to them. If inspection, verification in the presence of the candidates and revaluation are to be allowed as of right it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking etc. of the candidates, besides leading to utter confusion on account of the enormity of the labour and time involved in the process. The Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments

¹ 1974 AIR 87

² 1984 AIR 1543.

controlling them. It would be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded, in the above premises, it is to be considered how far the Board has assured a zero defect system of evaluation, or a system which is almost fool-proof.”

10. Further, In the case of ***Bismaya Mohanty And Ors. vs Board Of Secondary Education***³, the court observed that it is not in dispute that the Regulations of the Board do not permit review, and as such no review of the answer-script can be done. It cannot be denied that an examiner has a right to fair-play and get appropriate marks according to his performance. What constitutes fair-play depends upon the facts and circumstances relating to each particular given situation. If it is found that every possible precaution has been taken and all necessary safeguards provided to ensure that the answer scripts inclusive of supplements are kept in safe custody so as to eliminate the danger of their being tampered with and that the evaluation is done by the examiners applying uniform standards with checks and cross-checks at different stages, and that measures for detection of

³ 1996 I OLR 134.

malpractice has also been effectively adopted in such cases it would not be proper for the Court to interfere.

11. Since the present set of facts suggest that the examination was a computer-based test, it eliminates any possibility for human intervention in both examination and evaluation phase. Due to lack of evidence suggesting possible malpractice, it is imperative that the due process involved in evaluation of answer scripts be followed without hinderance from courts. In the case of ***H.P Public Service Commission v. Mukesh Thakur & Anr***⁴, the Supreme Court held that it was not permissible for the High Court to examine the question paper and answer sheets itself, particularly, when the Commission had assessed the inter-se merit of the candidates. If there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the examination and not for respondent no.1 only. It is a matter of chance that the High Court was examining the answer sheets relating to law. Had it been other subjects like physics, chemistry and mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court.

12. Having considered the matter in the aforesaid perspective and guided by the precedents cited hereinabove, this Court allows and upholds the

⁴ (2010) 6 SCC 759.

defence of the Opposite Party No.2 and rejects the prayer of the petitioner.

13. The Writ Petition is, accordingly, disposed of being dismissed.

14. Urgent certified copy of this order be granted on proper application.

BJ

