

Court No. - 39

Case :- WRIT - A No. - 657 of 2024

Petitioner :- Shivam Singh

Respondent :- State Of Up And 2 Others

Counsel for Petitioner :- Alok Dwivedi

Counsel for Respondent :- C.S.C.,M.N. Singh

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Donadi Ramesh,J.

1. Heard Shri Ashok Khare, learned Senior Advocate assisted by Shri Alok Dwivedi, learned counsel for the petitioner and Shri G.K. Singh, learned Senior Advocate, assisted by Shri M.N. Singh, learned counsel for the Commission.

2. Present writ petition has been filed for the following relief:-

"I- To issue a writ, order or direction in the nature of mandamus commanding the respondent no.2 and 3 to produce Answer Book of General Knowledge Paper of U.P. Judicial Service Civil Judge (Junior Division) Examination 2022 of the petitioner bearing Roll Number 026678 and registration number 40500170728.

II- Issue a writ, order or direction in the nature of mandamus commanding the respondent no.2 and 3 to suitably place the petitioner in final list dated 30.08.2023 (Annexure No.7 to this writ petition) after considering the answers of Question No.9 (a), (b), (d), (e) & 10 (D)(i) of the petitioner as correct by awarding 6 marks in the aforesaid questions."

3. Pleadings have been exchanged and the matter heard.

4. Petitioner applied for selection under the UPPCS(J), 2022. For that Uttar Pradesh Public Service Commission (hereinafter referred to as the Commission) issued the advertisement No.A-5/E-1/2022 dated 10.12.2022. Undoubtedly the petitioner qualified the preliminary examination and also the written examination. He participated in the interview test as well. Thereafter, final result was declared by the Commission on 30.08.2023, In that the

petitioner was not successful. At that stage, the petitioner sought inspection of his answer copies for the paper General Knowledge. He was allowed the inspection on 22.11.2023. In the course of that inspection, amongst others the petitioner discovered that he had been awarded zero marks against his answer responses to Question No.9(d) and Question No.10(D)(i), though he had answered those questions correctly. It is the case of the petitioner that he ought to have been awarded two marks against Question No.9(d) and one mark against Question No.10(D)(i). By awarding zero marks, the petitioner has been awarded three marks less. Since the cut-off for the general category was 590 marks whereas the petitioner was awarded 588 marks, if three more marks were awarded to the petitioner, the petitioner would have been selected.

5. As to the relief, it has been submitted that 10 posts are still lying vacant. Therefore the petitioner may be accommodated against one of the existing vacancies without disturbing the last selected candidate under the general category.

6. Other submissions have also been advanced, with respect to less marks awarded to the petitioner for his answer responses to Question No.9(a), (b), (e). According to the petitioner his answer responses were entirely correct. Therefore he ought to have been awarded 2 marks each for those answer responses in place of 1 mark each, awarded.

7. On the other hand, learned Senior Advocate appearing for the Commission would contend, evaluation of answer responses and award of marks falls within the expert domain of the Commission. The Courts may always refrain from reaching any judgment as to the correctness or otherwise of the evaluation of the answer responses and consequential marks awarded by the Commission.

Therefore in the first place, he would submit, there is no room to contend that less marks were awarded to the petitioner for his answer responses to Question Nos. 9(a), (b) and (e).

8. As to the answer responses to Question No.9(d), it has been submitted, instead of answering that question in 10 words as indicated in the question paper, petitioner answered the same in more than 10 words. As to the answer response to Question No.10(D)(i) it has been submitted that the petitioner did not answer the same correctly.

9. Having heard learned counsel for the parties and perused the record, we find that the answer copy of the petitioner for the paper General Knowledge had been summoned under the earlier order. Today Shri M.N. Singh, has produced the same in sealed cover. We have perused the same and returned it to Shri Singh. Question No.9(d) reads as below:-

*"9. Why the following places of India were in news recently?
(d) Kuno National Park"*

The petitioner answered the same in the following terms:-

"Ans- (d) Kuno National Park is situated in Madhya Pradesh where African Cheetahs are reintroduced on 17 September, 2022. Prime Minister Narendra Modi introduced 8 Cheetahs in it."

10. Similarly Question No.10(D)(i) reads as below:-

*"Who were the recipients of the following awards?
(i) Major Dhyan Chand Khel Ratna Award 2022"*

The answer response given by the petitioner to that question reads as below:-

"(i) Major Dhyan Chand Khel Ratna Award- Achanta Sharath Kamal (Table Tennis)."

11. By way of principle it must be acknowledged that the Courts may not "judge" the correctness of the answer response and also not intervene with the scale of marks awarded. Those are well

recognized functions of the examiners who are experts for the purpose of examination of answer responses and award of marks. To that there can be no exception. However, where the examiner may have failed to evaluate an answer response, and the Court offers correction for the same, it may not be equated to "judging" the correctness of an answer response. Plainly, in the scheme of public examinations, a candidate is entitled to fair treatment. It would necessarily include honest exercise made by the expert be it the Commission or a University etc., to carefully evaluate the answer response that any candidate may write at an examination. That rule of fairness may remain non-negotiable and may be always enforced on the Commission to maintain fairness, public trust and transparency at public examinations. If the Court were to refrain from offering this necessary correction, it would only create permission for negligence and even open the door open for corrupt practices to develop. Therefore wherever the expert such as the Commission may have erred in not evaluating an answer response, the Court may always offer measured but necessary correction. In **Kanpur University and Others Vs. Samir Gupta and Others (1983) 4 SCC 309** it has been observed as under:-

"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.

17. Students who have passed their Intermediate Board Examination are eligible to appear for the entrance Test for admission to the medical colleges in U.P. Certain books are prescribed for the Intermediate Board Examination and such knowledge of the subjects as the students have is derived from what is contained in those textbooks. Those textbooks support the case of the

students fully. If this were a case of doubt, we would have unquestionably preferred the key answer. But if the matter is beyond the realm of doubt, 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."

12. Yet, it is also another recognized principle, marks awarded may not be justifiable. However, where arithmetical errors or plain errors are seen to exist, that principle may not apply, absolutely. The facts in the present case are peculiar and not usual. The question paper is one of General Knowledge and the questions involved, direct answers. The petitioner had given his answer responses as have been noted above. The correctness of the same is not disputed in the counter affidavit. Therefore, the facts in the present case warrant a direction to be issued to the Commission to make the necessary correction to award marks to the petitioner for his correct answer responses.

13. Thus, we find even as per the scale of marks awarded, if the petitioner were to be given 1 mark each, he would be entitled to 2 more marks (in all) for his answer responses to Question Nos.9(d) and 10(D)(i).

14. Two more marks is all that the petitioner needs to be selected. Therefore, no useful purpose may be served in requiring the Commission to make the corrections. Accordingly the writ petition is **allowed**. Let 2 more marks be awarded to the petitioner for the paper General Knowledge as may lead to total marks 78 being awarded to him in place of 76. Consequently, the total marks awarded to him for the examination would meet the cut-off marks 590.

15. At this stage, we required Shri Chandan Sharma, learned counsel for the High Court, Allahabad (who is present in Court) to inform us of the correct status of the vacancies, if any, for the

UPPCS(J), 2022. He states that at present 9 vacancies remain unfilled.

16. In view of the above without disturbing the result already declared and the selections made, let petitioner be declared successful and appropriate appointment letter be issued as expeditiously as possible as may not allow the training of the petitioner to be delayed. This order shall not operate for the purposes of seniority for which purpose the petitioner may be treated as the last selected candidate and therefore be placed at the bottom of the seniority list, he having been selected through litigation against marks equal to the cut off marks.

17. The writ petition is **allowed**. No order as to costs.

Order Date :- 13.5.2024

A Gautam

(Donadi Ramesh,J.) (S.D. Singh,J.)