287

GAHC040012442019

Application No.	Application Received on	Date on which copy was made ready	Fees paid (Rs.)	Posting date to Delivery Desk
103941	17/02/2022	17/02/2022	100.00	17/02/2022

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WA 12/2019

1:MISS HAGE MAMUNG
D/O HAGE RANKA, R/O HARI VILLAGE, PO/PS ZIRO, DIST. LOWER SUBANSIRI, AP. MOBILE NO. 9856822504

VERSUS

1:THE STATE OF A.P. AND OTHERS
REPRESENTED BY ITS SECRETARY, DEPTT. OF AGRICULTURE, GOVT. OF AP, ITANAGAR.

2:THE DIRECTOR OF AGRICULTURE
GOVT. OF AP
ITANAGAR.

3:THE APPSC
ITANAGAR
REP. BY ITS SECRETARY ITANAGAR.

4:THE DEPUTY SECRETARY-CUM-CONTROLLER OF EXAMINATION
APPSC
ITANAGAR.

5:TAGE LAMPUNG
C/O SECRETARY
APPSC
ITANAGAR.

6:JOYMONI BEYONG
C/O SECRETARY
APPSC
ITANAGAR

Advocate for the Petitioner : Shri D. Panging, Advocate

Advocate for the Respondents : Shri A. Apang, Senior Advocate,
Smt. A. Anju, Standing counsel APPSC.

18/2/2022

Shri K. Tari, Adv. for respondent no. 5

BEFORE
HONBLE MR. JUSTICE KALYAN RAI SURANA
HONBLE MR. JUSTICE ROBIN PHUKAN

Date of hearing : 11.11.2021
Date of Verdict (CAV) : 10.02.2022.

VERDICT (CAV)

(R. Phukan, J)

1. In this Writ Appeal, the appellant has put to challenge the judgment and order dated 05.10.2018 by the learned Single Judge in W.P. (C) No. 62 (AP) of 2018, by which the said writ petition was dismissed as devoid of merit.

2. The factual background leading to filing of this writ appeal is adumbrated herein below:-

"On 21.09.2016, the Arunachal Pradesh Public Service Commission ('APPSC' for short) had issued an advertisement for filing up of 22 (twenty two) posts of Agriculture Development Officer (for short, 'ADO'). The petitioner, who was pursuing B.Sc. (Honors) (Agriculture) under the Central Agricultural University, Imphal had applied for and was successful in the written examination. She was called for the viva-voce test which was conducted on 3rd & 4th of May, 2017 and 10th of October, 2017. Thereafter, the APPSC has published the result by short listing as many as 22 (twenty two) candidates. However, the petitioner was unsuccessful. Thereafter, the petitioner had filed one RTI application on

31.10.2017, and the concerned authority had furnished her with the answer sheet and statement of marks. According to the petitioner, some anomalies and discrepancies were committed by the authorities in not awarding marks for the correct answers given by her in the written examination in respect of question Nos. 1(a) and 7(b) in the Agriculture Science Paper I, and also in connection with question Nos. 12 and 31 in the General Knowledge paper. It is the contention of the petitioner that had she been awarded marks for the correct answers given by her, then her aggregate marks would have been 280.45, and amongst the short listed candidates, she would have been placed in 2nd position. But, she was given only 241.75 in the written examination and 26.7 marks in viva-voce test, and altogether she was awarded 268.45 marks for which her name did not figure in the select list of 22 candidates. She then submitted a representation dated 14.12.2017, before the respondent No. 3, thereby highlighting the anomalies and enclosing therewith the correct answers to substantiate her claim and made a request for evaluation of marks in (i) General Knowledge, and (ii) Agriculture Science Paper-I. In response, the Deputy Secretary, APPSC vide letter dated 08.02.2018, informed the petitioner that marks were awarded to candidates on the basis of answer keys provided and it was further stated that in the event of re-evaluation of her General Knowledge paper, then the answer script of all the candidates would also have to be re-evaluated and therefore, because of the mistake in answer key provided by the resource person, the authority had taken a decision to award marks against the question Nos. 12 and 31 to all the candidates on pro-rata basis by taking into account the marks obtained by each of the candidates out of 98 questions excluding the question nos. 12 & 31 and it was informed that after such exercise, with corresponding increase in the marks of all the candidates, their respective rank/merit remained the same and as such the petitioner's name finds no mention in the short listed candidates. But, the

respondent authorities remained silent in respect of Agriculture Science Paper No. I, which reflect their mala-fide intention in not awarding marks in question No. 1(a) and 7(b). "

3. Being aggrieved, the petitioner had approached this Court by filing a writ petition, which was registered as W.P. (C) No. 62 (AP)/2018. Upon hearing the learned Advocates of both the sides and upon considering the pleadings of the parties and the documents placed on record, the learned Single Judge was pleased to dismiss the said petition vide judgment and order dated 05.10.2018.

4. Highly aggrieved by the aforesaid judgment and order, the appellant has preferred this Writ Appeal, amongst others, by projecting that the materials available on record were not appreciated in its proper perspective; and that in view of the admission made by the respondent Nos. 3 and 4 in their affidavit-in-opposition that the answer key to question Nos. 12 and 31 of the General Knowledge paper were wrong and therefore, the finding in the impugned judgment that the appellant had failed to demonstrate the answer key to be wrong which no reasonable person can regard as correct was not sustainable; and that no reason was assigned as to why the ratio laid down in *Kanpur University, through Vice Chancellor and Ors. v. Samir Gupta and Ors.,* reported in *(1983) 4 SCC 309* was not applicable in the case in hand and that it was not appreciated that answer key given by the official respondent is palpably wrong which is beyond the realm of doubt and therefore, it would be unfair to penalize the appellant being one of the candidates appeared for the selection to the post of ADO for not giving an answer which accords with the answer key i.e. with an answer which is demonstrated to be wrong even though her answer is correct; and that the learned Single Judge had erred in law and facts while passing the impugned order inasmuch as whether a candidate who has answered the

question in controversy correctly be penalize or whether the right to get legitimate marks for the correct answer given by him be taken away if the answer, even through is correct, but it does not accord with the answer supplied by the paper setter. Therefore, it has been contended that this writ appeal be allowed by setting aside the impugned judgment and order dated 05.10.2018.

5. We have heard Mr. D. Panging, the learned counsel for the appellant and also heard Mr. A. Apang, the learned senior counsel, assisted by Ms. A. Anju, learned standing counsel for the APPSC as well as Mr. K. Tari, the learned counsel for private respondent No. 5.

6. The learned counsel for the appellant has submitted that answer key relating to question nos. 12 and 31 in the General Knowledge paper were admittedly wrong and that in their affidavit-in-opposition, the APPSC (respondent no.3) had admitted the same. It was further submitted that the respondent no. 3 had provided marks to all the candidates on pro-rata basis for the said 2 (two) questions in respect of which the answer keys were wrong. In the said context, it was submitted that the learned Single Judge had failed to appreciate that awarding of pro-rata marks to all the candidates is illegal. It was also submitted that though the learned Single Judge had dealt with issue in para-7, and the finding that the wrong answer key for the said 2 (two) questions did not affect any one in particular as it was same for all the candidates was not sustainable. In support of his submissions, the learned counsel for the appellant has relied on a decision of Hon'ble Supreme Court in the case of *Kanpur University (supra)*. It was further submitted that the impugned judgment suffers from infirmity and/or illegality and therefore, it is contended that the same be interfered with. The learned counsel for the petitioner further submits that the petitioner had obtained the result sheets and

the answer script by filing RTI application and having found correct answers marked wrong in her answer script, the petitioner had filed one representation before the respondent No.3 and in response to the same, the respondent No. 3 had informed her by a letter that pro-rata mark was given to all the candidates. It has been submitted that the question before this Court are (a) whether awarding pro-rata marks to all the candidates for the wrong answer key to 2 (two) questions i.e. question Nos. 12 and 31 by the respondent No. 3, when the process of selection is over and the result had been declare was the correct approach and in accordance with law, and (b) that if the approach of the respondent no. 3 was incorrect, whether this Court can order for re-evaluation of the answer script.

7. On the other hand the learned senior counsel appearing for the APPSC submits that for the wrong answer key pro-rata marks has been given to all the candidates and after giving pro-rata marks to all the candidates, the position of the petitioner remained in the same position in the list of short listed candidates and accordingly, it was submitted that re-evaluation of the answers was not permissible. It was submitted that the learned Single Judge had rightly decided the points which arose for consideration in the writ petition and the decision requires no interference by this Court.

8. Opposing this appeal, the learned counsel for the respondent No. 5 has submitted in support of the impugned order that the respondent No. 5 had given correct answer to the question No. 31, which was apparent from the answer key, therefore, she should not suffer for the same and that if re-evaluation is at all directed, the same should confined to only two candidates of the selection list.

9. Having heard the submission of the learned senior counsel/ counsel of both the sides, we have gone through the pleadings and documents of the parties and the case laws referred to at the Bar, as well as the judgment and order impugned herein.

10. For better appreciation of the dispute in question, we are tempted to reproduce below para-7 of the impugned judgment:-

> *"It is the further contention of the petitioner that the answer keys of question Nos. 12 and question No. 31 of the General Knowledge paper carried wrong answers, the APPSC, however, contended that in view of the wrong answer keys, they have decided to award marks to all the candidates pro-rat by taking into account the marks secured by each candidates out of 98 questions and excluding question Nos. 12 & 31. The merit/ranks after such process remain the same. Thus, the two wrong answer keys did not affect anyone in particular as it was the same for all the candidates."*

11. While holding so, the learned Single Judge has discussed and relied upon the case of *Kanpur University (supra)*, and proceeded to hold that the answer key should be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by and inferential process of reasoning or by a process of rationalization. It must not be demonstrated to be wrong, so much so that no reasonable body of men, well versed in particular subject, would regard as correct. It was then held that – "... *this decision in my considered opinion and with utmost respect cannot be applied to the instant case, in as much as observed earlier, the two questions with wrong answer keys have been omitted by the APPSC and thereafter, marks were to all the candidates on pro-rata basis."*

12. In order to appreciate the finding as indicated in the foregoing paragraph, we extract herein below para 16 and 17 of the case of *Kanpur University (supra)*:-

> "***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 text-books, which are commonly read by students in U.P. Those text-books 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 text-books. Those text-books 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.*"

13. In the present case in hand, the appellant had not only successfully demonstrated that the answer keys of the two questions, i.e. question nos. 12 and 31 of the General Knowledge paper was wrong, which is also admitted by the respondent no. 3 in its affidavit-in-opposition. In view of the clear admission of the respondent no. 3, we find no good reason as to why the ratio laid down

by the Supreme Court of India in the case of *Kanpur University (supra)*, would not be applicable in this case. What eschewed from consideration of the learned Single Judge is the admission made by the APPSC (respondent No.3) in its affidavit in opposition. In the conspectus of facts and circumstances discussed above, we are of the considered view that the ratio laid down in the case of *Kanpur University (supra)* is squarely applicable in this case.

14. We find substance in the submission made by the learned counsel for the appellant that marks awarded to all the candidates in pro rata basis was not the proper course adopted by the respondent no. 3 because in our considered opinion, the candidates who had given wrong answers could not have been awarded marks to which they would have not been otherwise entitled to.

15. In view of the wrong answer key of question nos. 12 and 31, the respondent no. 3 had awarded marks to all the candidates on pro-rata basis after taking into account the marks secured by each candidate by excluding question nos. 12 and 31 out of 100 questions. Therefore, only 98 questions were accounted for by allotting marks on pro-rata basis against the 98 questions and by this method the final score was prepared. The learned counsel for the petitioner is right in submitting that this ingenious method would never affect the scoring of the marks of any candidates, as marks would remain the same for all the candidates.

16. In support of his submissions, the learned counsel for the respondent No. 3 had relied on the ratio laid down in the case of *Vikash Pratap Singh & Ors. Vs. State of Chhattisgarh & Ors., (2013) 14 SCC 494*. In the said case, the Supreme Court of India had considered Clause-14 of the Examination Conduct

Rules of the State of Chhattisgarh, which provides for the procedure in case of discrepancies in question only. It does not leave any room for inclusion of the exigency, such as error in answer/model-answer and therefore, it was held that the respondent Board had rightly re-evaluated only eight incorrect questions as per Clause 14. In the case in hand, admittedly the answer key to the question Nos. 12 and 31 were wrong and not the questions. Therefore, we are of the view that the ratio laid down in the cited case of *Vikash Pratap Singh (supra)*, would not come into aid of the respondent No. 3 in any manner.

17. It was urged by the learned senior counsel for the respondent No. 3 that there was no provision in the APPSC Examination Guidelines for re-evaluation of the answer-scripts. It was submitted that in absence of any rules or regulations, the Commission cannot undertake re-evaluation of the answer script, as any such venture will usurp the entire well settled procedure.

18. In light of the discussions above, the only question before this court is whether re-evaluation can be ordered by exercising power under Article 226 of the Constitution of India.

19. In this regard, the learned counsel for the appellant has submitted that re-evaluation can be ordered by this Court under Article 226 of the Constitution of India and in support of the said contention, reliance is placed on the two following cases, viz., (i) *Manish Ujwal & Ors. Vs. Maharishi Dayanand Saraswati University, (2005) 13 SCC 744*, and (ii) *High Court of Tripura (Through Registrar General) Vs. Tirtha Sarathi Mukharjee & Ors., (2019) 16 SCC 663.*

20. In the case of *Manish Ujwal (supra)*, while issuing directing for re-evaluation of all the questions by feeding correct answers, the Supreme Court of India had observed as under:-

> "*Though we are of the view that the appellants in particular and student community in general, whether one have approached the court or not, should not suffer on account of demonstrably incorrect key answers....*"

21. In the case of *High Court of Tripura (supra)*, after discussing its previous judgment on the subject, the Supreme Court of India had held in para 20 and 21 as under:–

> "*20. The question however arises whether even if there is no legal right to demand revaluation as of right could there arise circumstances which leaves the Court in any doubt at all. A grave injustice may be occasioned to a writ applicant in certain circumstances. The case may arise where even though there is no provision for revaluation it turns out that despite giving the correct answer no marks are awarded. No doubt this must be confined to a case where there is no dispute about the correctness of the answer. Further, if there is any doubt, the doubt should be resolved in favour of the examining body rather than in favour of the candidate. The wide power under Article 226 may continue to be available even though there is no provision for revaluation in a situation where a candidate despite having giving correct answer and about which there cannot be even slightest manner of doubt, he is treated as*

having given the wrong answer and consequently the candidate is found disentitled to any marks.

21. Should the second circumstance be demonstrated to be present before the writ court, can the writ court become helpless despite the vast reservoir of power which it possesses? It is one thing to say that the absence of provision for revaluation will not enable the candidate to claim the right of evaluation as a matter of right and another to say that in no circumstances whatsoever where there is no provision for revaluation will the writ court exercise its undoubted constitutional powers? We reiterate that the situation can only be rare and exceptional."

22. Here in this case, after hearing the learned counsel for the parties, and also considering the documents placed on the record, we have no doubt in our mind as to the correctness of the answers given by the appellant in respect of the two questions referred to herein before. The respondent No. 3 - APPSC, also admitted in no uncertain terms admitted such position that the answer key of two questions was wrong. There is no room for doubt about it. Therefore, having not disputed the correctness of the answers given by the appellant for two herein before referred questions, we are unable to countenance the act of the respondent No. 3 to deny the appellant the benefit of award of marks to which the appellant is found entitled to. This action of the respondent No. 3, in our considered opinion, would amount to penalizing the appellant for giving correct answers.

23. Thus, having tested the impugned judgment and order dated

05.10.2018 on the touchstone of the principles discussed herein above, we are unable to concur with the judgment and order impugned herein. Therefore, we are of the considered opinion that the appellant has been able to make out a case for ordering re-evaluation of the answer scripts in exercise of power under Article 226 of the Constitution of India. In this regard, we find support from the decisions rendered by the Supreme Court of India in the cases of (i) *Manish Ujwal (supra)*, and (ii) *High Court of Tripura (supra)*.

24. Accordingly, we are inclined to set aside the impugned judgment and order dated 05.10.2018, passed by the learned Single Judge in W.P.(C) No. 62 (AP) of 2018 and direct the Arunachal Pradesh Public Service Commission (respondent No.3) for re-evaluation of the papers of the appellant and of the respondent no. 5.

25. The appeal stands allowed to the extent as indicated above, leaving the parties to bear their own cost.

Sd- Robin Phukan
JUDGE

Sd- K.R. Sarma
JUDGE

Comparing Assistant

Registrar
High Court
Bench, Naha
of Act