

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2024:AHC:117007

RESERVED

A.F.R.

Judgment Reserved on : 02.07.2024

Judgment Delivered on : 23.07.2024

Court No. - 9

Case :- WRIT - A No. - 52949 of 2016

Petitioner :- Ajay Kumar Shukla

Respondent :- State Of U.P. And Anr.

Counsel for Petitioner :- Shreya Gupta

Counsel for Respondent :- C.S.C.,A.K.S.Parihar,Ashok Kumar
Yadav

Hon'ble Subhash Vidyarthi J.

1. By means of the instant writ petition filed under Article 226 of the Constitution of India, the petitioner has challenged validity of selections made on the post of Post Graduate Teachers (English) for the year 2013, held in pursuance of Advertisement No.2-2/2013 dated 04.01.2013 issued by the Secondary Education Services Selection Board. An alternative prayer has been made for revision of the final answer key and issuance of select list on the basis thereof.
2. Briefly stated, facts of the case are that the Secondary Education Selection Service Board, Uttar Pradesh (herein referred to as 'the Selection Board') had issued a notification dated 04.01.2013 for making selections for appointments to various posts of Lecturers, including 97 Posts of Lecturers (English) in boys category and 13 posts of Lecturer (English) in girls category. The petitioner had applied and participated in the written examination held on 22.02.2015 in furtherance of the aforesaid advertisement.
3. The dispute involved in the present writ petition relates to question Nos. 59, 81 and 107 of 'A' Series question paper of English, which were as follows:-

“Question No.59. Shakespeare’s The tempest is a -

- (A) Tragedy*
- (B) Comedy*
- (C) Tragic Comedy*
- (D) History play*

Question No.81. Thomas hardy started his literary career as -

- (A) Novelist*
- (B) Short story writer*
- (C) Poet*
- (D) Dramatist*

Question No.107. Fill in the blank with suitable preposition:-

Some trains run ___ electricity

- (A) from*
- (B) on*
- (C) with*
- (D) by”*

4. The Selection Board published a provisional answer key wherein the correct answer of question No.59 was shown as option ‘C - Tragic Comedy’, the correct answer of question No.81 was shown as option ‘C – Poet’ and correct answer of question No.107 was shown as option ‘D - By’.
5. After publication of the provisional answer key, some candidates filed objections against the answers of nine questions and thereafter, the Selection Board published a revised answer key dated 20.5.2015 wherein it revised answers of question Nos. 36, 59 and 81. Further question Nos.1, 28, 46, 48, 67 and 117 (of ‘A’ series question paper) were marked “F” indicating that the questions either contained more than one correct answer or no correct answer and, therefore, all the candidates were awarded full marks for the aforesaid questions. This resulted in serious prejudice to the petitioner and some other candidates and, therefore, the petitioner filed Writ A No.45977 of 2015 in this court along with another petitioner.
6. Some other writ petitions were also filed with the same grievance. One of such writ petitions bearing Writ A No.37051 of 2015; *Atender*

Kumar and another Vs. State of U.P. and another, was disposed of by means of an order dated 09.07.2015 directing the Selection Board to take a decision on the objections filed by the petitioners. Writ A No.45977 of 2013 was also disposed of by means of an order dated 31.08.2015, permitting the petitioners to file objections before the Selection Board and the Selection Board was directed to take a decision on the same expeditiously, after receiving a report from the expert body.

7. In furtherance of the aforesaid order passed by this Court, the Selection Board referred sought an expert's opinion from the University of Allahabad. The petitioner had filed detailed objections before the Selection Board on 08.09.2015.
8. After receiving the report of the expert body, the Selection Board published the second revised answer key on 20.04.2016, wherein apart from the questions, whose answers had been challenged, revised answers were issued in respect of some other questions also. The Selection Board had marked "F" in front of three new questions No. 23, 30 and 46 in the second revised answer key and it revised the answer of question No.117, which was not in dispute. Answers of question Nos. 28, 36, 48, 59 and 81 given in the first revised answer key remain unaltered.
9. The petitioner contends that the answers mentioned in the provisional answer key contain correct answers to all the questions and the Selection Board wrongly entertained some objections filed by some candidates in a mechanical manner and the revised answer keys published on 20.05.2015 and 20.04.2016 have resulted in serious prejudice to the interests of the petitioner. As per the petitioner, correct answers to question Nos.1, 23, 28, 30, 36, 46, 48, 67 and 117 were available in the question paper and yet, all the aforesaid questions have been marked "F", due to which all the candidates were awarded full marks for the aforesaid questions.

10. The petitioner further submits that answers to the question Nos. 36, 59, 81 and 107 given in the provisional answer key were correct and the same have wrongly been altered by the Selection Board while revising the answer keys.
11. In the provisional answer key, answer to question No.59 was that “Shakespeare’s ‘The tempest’ is a ‘Tragic comedy’, which has been changed to ‘Comedy’ in the revised answer keys. The petitioner contends that the answer to question No.59 shown in the provisional answer key was correct and to support the submission, the petitioner has annexed copies of extracts of a book titled “*A Norton Critical Edition - William Shakespeare - The Tempest*” containing criticism of The Tempest, wherein the authors have written in the preface of the book that:-

*“The editors of the first folio divided Shakespeare’s plays into three generic groupings- Comedies, Histories and Tragedies. They placed ‘The Tempest’ in the first of three categories, but few modern readers have been entirely content to leave it there. The play shares some of the other wordily settings and romantic playfulness of A Midsummer Night’s Dream, and it moves, like other Shakespearean comedies, toward reconciliation and marriage; but the seriousness of its tone, the suffering experienced by all of the play’s characters, and the presence of themes such as exile, enslavement, and mortality have led **many modern critics to label it a tragicomedy** or to group it with Shakespeare’s other late plays in a special category called the “romance”.”*

12. The petitioner has also annexed extracts from another book titled “Shakespeare’s The Tempest” published in accordance with the latest syllabi of various Universities in India, annotated and edited by Mr. J.P. Goel, M.A. (English), LL.B., wherein it is written that “*The Tempest has been regarded as a very popular tragi-comedy a Shakespeare’s last phase of his writing career.*”
13. The answer to question No.81 given in the provisional answer key was that *Thomas Hardy started his literary career as a ‘Poet’* whereas in the revised answer keys, the answer was changed so as to make it *Thomas Hardy started his literary career as a Novelist.*

14. The petitioner contends that the answer given in the provisional answer key was correct and to buttress this submission, the petitioner has annexed copies of extracts from a book titled “*An Anthology of English Poetry*”, which has been edited by ‘*The Board of Editors Department of English and Modern European Languages, University of Allahabad*’ and is prescribed for the B.A. II English Literature Course of the University of Allahabad. In the preface to the book, Professor Deepika Srivastava, Head of the Department of English and Modern European Languages, University of Allahabad, has written that different teachers have edited different portions of the book. Chapter 4 of the book is titled “Thomas Hardy” and it is written in the book that:-

“Though his Novels made him famous, Hardy considered himself a Poet and started his literary career with poetry. He turned to poetry again after the hostile reaction to his novel, ‘Jude the Obscure’ (1896). Hardy is regarded as a transitional poet whose poetry bridges the Victorian and Modern ages of literature.”

He produced eight volumes of poetry. These include Wessex Poems (1898), Times Laughing-Stocks (1909), Satires of circumstance (1914) and Winter Words (1928). The bulk of his poetry was written in his late fifties and up to his death at the age of eighty-eight.”

15. The petitioner has also annexed extracts of a book titled “*Thomas Hardy - Selected Poems*” (Edited with a critical introduction, texts, notes, questions and answers) by Ramji Lall, M.A., formerly Principal Dayal Singh College, University of Delhi, New Delhi. Chapter 3 of this book is titled “*Hardy’s Poetic Career*” and it is written therein that “*Hardy brought out his first volume of verse in 1898, after he had stopped writing novels. He had certainly written some poetry when he was yet a young man; and then he had taken to a novel-writing, and written a large number of novels which brought him fame and renown.*”
16. The petitioner has also annexed copies of extracts from a book titled “*A Critical Study of Thomas Hardy - TESS OF THE*

D'URBERVILLES" authored by Dr. B.P. Asthana, M.A. LLB., PhD, wherein the author has written in Chapter 7 titled "Hardy as a Poet" that "*Hardy is famous as a great novelist yet he started his career as a poet and also ended as a poet.*"

17. The petitioner has filed a supplementary affidavit annexing therewith extracts from a book titled "*A history of English Literature*" by Edward Albert, M.A. revised by J.A. Stone, M.A. published by George G. Harrap & Co. Ltd. (London, Toronto, Wellington, Sydney), wherein it is written that: -

"Hardy began as a poet, and, though for a long time he was unable to find a publisher for his verse, he continued to write poetry. After the public outcry against his two greatest novels, he wrote only verse."

18. The petitioner further contends that the answer to question No.107 mentioned in the provisional answer key was that "Some trains are run **by** electricity" whereas the Selection Board has wrongly revised the answer so as to make it read "Some trains are run **on** electricity". In support of this submission, the petitioner has annexed an extract from '*Oxford Dictionary, 8th Edition*' wherein while explaining the word 'Tram', it is mentioned in the Dictionary that as a Noun, Tram means "A vehicle driven **by** electricity", which implies that 'trains run **by** electricity and not **on** electricity'
19. The petitioner contends that in case evaluation is done on the basis of answers to the aforesaid questions mentioned in the provisional answer key, he would be selected.
20. The petitioner has filed a supplementary affidavit annexing therewith copies of extracts of some more books of some renowned authors. In "*A Practical Guide to English Grammar*" authored by K.P. Thakur, M.A. M.Ed., Ph.D, PGCTE, (CIEFL, Hyderabad), former Principal, RDS College, Muzaffarpur, the meaning of the word 'by' has been explained as per which the correct answer to question No.107 would be "Some trains are run **by** electricity".

21. As per the book ‘*How to right Correct English (Applied English Grammar)*’ authored by Shri Rajendra Prasad Sinha, M.A., Ex-Chairman, Bihar College Service Commission also, the correct answer would be ‘by’.
22. Extracts from another book titled “*The Advanced Learner’s Dictionary of Current English*” published by London Oxford University Press, have also been annexed with the supplementary affidavit, which explains the meaning of word ‘by’ with the help of an example that “*Machines are driven by steam (water-power, electricity, etc.). Our houses are lighted by electricity.*” which indicates that the correct answer to question No.107 will be - “Some trains are run **by** electricity”.
23. In a book titled “High School English Grammar & Composition” prescribed by the Board of High School and Intermediate Education, U.P. for High School Classes, it is written that - ‘Some trains are run **by** electricity’.
24. The Secretary, U.P. Secondary Education Service Selection Board, Allahabad has filed a counter affidavit stating that after receipt of the objections, the same were referred to a subject expert, who gave his opinion in support of the objections, a copy whereby has been annexed with the counter affidavit. A perusal of the opinion of expert, who is a Professor of English, University of Allahabad, reveals that regarding question No. A-59, the expert has opined:-

*“The Tempest is actually classified in Shakespeare’s first folio as a **comedy**, **Simply put**, William Shakespeare’s *The Tempest includes aspects of both tragedy and comedy*. Generally considered Shakespeare’s final play (believed to be written around 1610), it is considered the last of his late romance plays. Highly theatrical—better viewed on stage than through reading—*The Tempest includes the tragic element of the treacherous death plans followed by Prospero’s revenge in addition to the many comic moments; including the love interests of Miranda and Ferdinand, the trickster Ariel, and the monstrous Caliban. The comic moments far outweigh the tragic elements, making it one of Shakespeare’s most enjoyable and sometimes incongruous plays**

Objection overruled.”

25. Regarding question No. A-81, the expert has opined:-

“A distinction between “Career” and “literary career” needs to be made. The literary career of a person starts with his/her first publication. Hardy’s first published work is an essay (1865). His first unpublished book, a novel, is The Poor Man and the Lady (1867) while his first published book, again a novel, is Desperate Remedies (1871). His poems, Wessex Poems, got published much later in 1898. Thus, from the given options, Hardy’s literary career began as a novelist.”

26. Regarding question No. A-107, the expert has opined:-

“Why do trains run on electricity?”

Why don’t they run on Diesel? Of course in some places where there is no electricity infrastructure over the tracks the trains do run on diesel.

MACHINE/ENGINE

a) [intransitive] if a machine or engine runs, it operates:

She got out of the car and left the engine running.

Run on electricity/gas/petrol etc. (=get its power from electricity etc.)

Most cars run on unleaded fuel.”

27. It is significant to mention that the opinion regarding question No. A-107 as printed originally is “*Objection overruled*”, but afterwards, the expert has scored out the word “*overruled*” and has written in hand writing “*conceded*”.
28. In rejoinder affidavit, the petitioner has contended that the subject expert has not referred to any standard books on the subject and his opinion is contrary to the material published in authoritative works and textbooks. The petitioner contends that the expert has dealt with the matter in a confusing manner.
29. Although the petitioner has impleaded two selected candidates namely, Shri Santosh Kumar Shukla and Ms. Sapna as respondent Nos.3 & 4 on 17.11.2016 and notice was issued to respondent Nos.3 & 4 on the same date through registered post, which has not been

returned un-served, the respondent Nos.3 & 4 have not put in appearance to oppose the Writ Petition.

30. The learned Counsel for the petitioner has relied upon the judgments in the cases of **Kanpur University, Through Vice Chancellor and Others v. Samir Gupta and Others**: (1983) 4 SCC 309, **Saumitra Ginodia versus Union of India and Others**: 2017 SCC OnLine All 4303; (2018) 2 All LJ 98, **Manish Ujwal and Others v. Maharishi Dayanand Saraswati University and others**: (2005) 13 SCC 744 and **Rohit Nandan Shukla v. U.P.S.C. Allahabad And Another** 2016 (5) ADJ 485.
31. The learned Counsel for the respondent no. 2 has submitted that the U.P. Secondary Education Service Selection Board, Allahabad has revised the answer key on the basis of opinion of a subject expert and it has not committed any illegality in doing so. By placing reliance on the judgments in the cases of **Ran Vijay Singh and Others versus State of U.P. and Others**: (2018) 2 SCC 357, **U.P. Public Service Commission versus Rahul Singh**: (2018) 7 SCC 254, **Rishal v. Rajasthan Public Service Commission**: (2018) 8 SCC 81, **High Court of Tripura v. Tirtha Sarathi Mukherjee**: (2019) 16 SCC 663.
32. In **Kanpur University, Through Vice Chancellor and Others v. Samir Gupta and Others**: (1983) 4 SCC 309, the Hon'ble Supreme Court held that: -

“16.... 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.”

(Emphasis added)

33. The judgment in **Kanpur University, Through Vice Chancellor and Others v. Samir Gupta and Others** (Supra) was followed in **Manish Ujwal and Others v. Maharishi Dayanand Saraswati University and others**: (2005) 13 SCC 744, wherein the Hon'ble Supreme Court set aside an order passed by an Hon'ble Single Judge Bench of the High Court dismissing the Writ Petition and an order passed by a Division bench affirming the Single Judge Bench, and held that where the key answers are palpably and demonstrably erroneous, the student community, whether the appellants or intervenors or even those who did not approach the High Court or the Supreme Court, cannot be made to suffer on account of errors committed by the University. The University and those who prepare the key answers have to be very careful and abundant caution is necessary in these matters for more than one reason. First and paramount reason being the welfare of the student as a wrong key answer can result in the merit being made a casualty. The second reason is that the courts are slow in interfering in educational matters which, in turn, casts a higher responsibility on the University while preparing the key answers; and thirdly, in cases of doubt, the benefit goes in favour of the University and not in favour of the students. If this attitude of casual approach in providing key answers is adopted by the persons concerned, directions may have to be issued for taking appropriate action, including disciplinary action, against those responsible for wrong and demonstrably erroneous key answers.
34. A Division Bench of this Court deciding the case of **Rohit Nandan Shukla v. U.P.S.C. Allahabad And Another** 2016 (5) ADJ 485, followed the judgment in the case³ of **Kanpur University, Through Vice Chancellor and Others v. Samir Gupta and Others** (Supra).
35. In **Saumitra Ginodia versus Union of India and Others**: 2017 SCC OnLine All 4303: (2018) 2 All LJ 98, a Division Bench of this Court held that: -
- “20. Thus, we find that the opinion of the University or the expert, normally, should be accepted as it is assumed that such*

experts are well versed in their subject. We are further of the opinion that the decision of the examining body or the expert is not beyond judicial review. The prime consideration is to maintain the fairness of the examination and welfare of the students/candidates, inasmuch as, in the event a wrong answer key is accepted, it would alter the fate of many candidates. The object of conducting an examination is to assess the merit of the candidates and to find out as to who is most suitable one for admission. The object of conducting a test would be defeated in case a wrong answer given is held to be beyond judicial review.

21. Normally, the Court should be cautious in interfering with the opinion of the expert but where it is found that the answer keys are demonstrably wrong, that is to say, it cannot be such as no reasonable body of men, well versed in the particular subject, would regard it as correct, in that event the Court should exercise its writ jurisdiction and ensure that the error is rectified.”

(Emphasis added)

36. In **Ran Vijay Singh and Others versus State of U.P. and Others:** (2018) 2 SCC 357, also the Hon’ble Supreme Court referred to the judgment in the case of **Kanpur University v. Samir Gupta** (Supra) and further held that

“... the onus is on the candidate to clearly demonstrate that the key answer is incorrect and that too without any inferential process or reasoning. The burden on the candidate is therefore rather heavy and the constitutional courts must be extremely cautious in entertaining a plea challenging the correctness of a key answer. To prevent such challenges, this Court recommended a few steps to be taken by the examination authorities and among them are: (i) establishing a system of moderation; (ii) avoid any ambiguity in the questions, including those that might be caused by translation; and (iii) prompt decision be taken to exclude the suspect question and no marks be assigned to it.

* * *

30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are:

30.1. If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an

answer sheet as a matter of right, then the authority conducting the examination may permit it;

30.2. If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any “inferential process of reasoning or by a process of rationalisation” and only in rare or exceptional cases that a material error has been committed;

30.3. The court should not at all re-evaluate or scrutinise the answer sheets of a candidate—it has no expertise in the matter and academic matters are best left to academics;

30.4. The court should presume the correctness of the key answers and proceed on that assumption; and

30.5. In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.

31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse — exclude the suspect or offending question.

32. It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in

by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a classic example of the consequence of such interference where there is no finality to the result of the examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination — whether they have passed or not; whether their result will be approved or disapproved by the court; whether they will get admission in a college or university or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion being worse confounded. The overall and larger impact of all this is that public interest suffers.”

37. In **U.P. Public Service Commission v. Rahul Singh**: (2018) 7 SCC 254, the Hon'ble Supreme Court held that: -

“14. ...When there are conflicting views, then the court must bow down to the opinion of the experts. Judges are not and cannot be experts in all fields and, therefore, they must exercise great restraint and should not overstep their jurisdiction to upset the opinion of the experts.”

38. In **Rishal v. Rajasthan Public Service Commission**: (2018) 8 SCC 81, cited by the learned Counsel for the respondent no. 2, the Hon'ble Supreme Court had perused the answers given by the Expert Committee and had come to a conclusion that no error can be found with the answers of the Expert Committee. Thus even **Rishal** (Supra) relied upon by the learned Counsel for the respondent no. 2 does not lay down that the Courts cannot examine the correctness of opinion of an expert body.

39. In **High Court of Tripura v. Tirtha Sarathi Mukherjee**: (2019) 16 SCC 663, the Hon'ble Supreme Court examined t\and explained the ratio of law laid down in **Ran Vijay Singh** (Supra) in the following words: -

“20. The question however arises whether even if there is no legal right to demand re-valuation as of right could there arise circumstances which leave 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 re-valuation 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 re-valuation in a situation where a candidate despite having giving correct answer and about which there cannot be even the 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 re-valuation 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 re-valuation will the writ court exercise its undoubted constitutional powers? We reiterate that the situation can only be rare and exceptional.

22. We would understand therefore the conclusion in para 30.2 which we have extracted from the judgment in Ran Vijay Singh v. State of U.P. [(2018) 2 SCC 357] only in the aforesaid light. We have already noticed that in H.P. Public Service Commission v. Mukesh Thakur [(2010) 6 SCC 759], a two-Judge Bench in para 26 after survey of the entire case law has also understood the law to be that in the absence of any provision the Court should not generally direct re-valuation.”

40. The learned Counsel for the respondent no. 2 has relied upon the decision in the case of **Mahesh Kumar v. Staff Selection Commission and Another**: 2022 SCC OnLine SC 2290, which is being reproduced below: -

“1. The grievance voiced by the petitioner before the High Court was that certain marks which were deducted ought not to have been deducted. Basically, the issue before the High Court was evaluation of the answer scripts of the petitioner. The High Court has rightly refused to entertain the writ petition by observing that when the conscious decision has been taken by the experts and the courts have no expertise in the matter and academic matters are best left to the academics, we see no reason to interfere with the same. Hence, the Special Leave Petition stands dismissed.”

41. Neither the facts of the case, nor the law laid down in various precedents on the point was considered in **Mahesh Kumar**.
42. The learned Counsel for the respondent no. 2 has also placed reliance upon a Division Bench judgment of this Court in **Kaushlesh Mishra v. State of U.P. And 2 others** Special Appeal No. 42 of 2021 decided on 08.07.2021, whereby the Division Bench dismissed the Special Appeal and affirmed the judgment of the Single Judge Bench dismissing the Writ Petition by holding that the Court cannot take place of an expert to evaluate the correctness of the answer, where the petitioner - appellant had failed to place any material on record to show correctness of the answer given by him. This decision was based on the facts of the case, where the appellant had failed to place any material on record to show correctness of the answer given by him whereas in the present case, the petitioner has placed ample material on record to show that the answers given by him were correct.
43. The learned Counsel for the respondent no. 2 has also placed reliance on a Division Bench judgment in the case of **Uday Bhan Yadav v. State of U.P. And 2 Others**: Special Appeal No. 492 Of 2020 decided on 06.10.2020, wherein the Learned Counsel for the appellant was asked to indicate the last date for submission of objection to tentative answer key to find out whether objection were submitted on or before the last date, but he was unable to indicate the last date for submission of objection. The Court held that in absence of an indication about the last date either in the petition or appeal, it cannot be said that petitioner submitted objection before the last date and the Special Appeal was dismissed for this reason. This judgment is of no help to the respondent no. 2 as no such point is involved in the present case.
44. The principles of law which can be culled out from a cumulative reading of the aforesaid judgments on the point, are that: -
 - 44.1- The wide power under Article 226 are available where a candidate despite having giving correct answer is treated as having given the wrong answer and consequently the candidate is found disentitled to any marks.

- 44.2- However, the Court should be cautious in interfering with the opinion of the expert.
- 44.3- The key answer should be assumed to be correct unless it is clearly demonstrated to be wrong.
- 44.4- If the key answer runs contrary to the material published in a large number of acknowledged textbooks, which are commonly read by students in the State, it leave no room for doubt that the answer given by the students is correct and the key answer is incorrect.
- 44.5- Where the key answers are palpably and demonstrably erroneous, the student community cannot be made to suffer on account of errors committed by the University.
- 44.6- Where it is found that the answer keys are demonstrably wrong, the Court should exercise its writ jurisdiction and ensure that the error is rectified.
- 44.7- The decision of the examining body or the expert is not beyond judicial review. The prime consideration is to maintain the fairness of the examination and welfare of the students/candidates, inasmuch as, in the event a wrong answer key is accepted, it would alter the fate of many candidates. The object of conducting an examination is to assess the merit of the candidates and to find out as to who is most suitable one for admission. The object of conducting a test would be defeated in case a wrong answer given is held to be beyond judicial review.
- 45.** When we examine the facts of the present case in light of the above mentioned principles of law, it appears that in the provisional answer key published by the Selection Board, the correct answer of question No.59 was shown as option 'C - Shakespeare's 'The tempest' is a 'Tragic comedy', which has been changed to 'Comedy' in the revised answer keys.
- 46.** The Secretary, U.P. Secondary Education Service Selection Board, Allahabad has relied upon the opinion of a subject expert, who is a

Professor of English, University of Allahabad. The expert has also opined that the *Tempest* includes aspects of both tragedy and comedy, but the comic moments far outweigh the tragic elements. The expert's personal opinion regarding question no. 59, which apparently tilts both ways to some extent, is not supported by any material published in any book.

47. In a book titled "Shakespeare's *The Tempest*" published in accordance with the latest syllabi of various Universities in India, annotated and edited by Mr. J.P. Goel, M.A. (English), LL.B., it is written that "*The Tempest has been regarded as a very popular tragic-comedy.*" In another book titled "*A Norton Critical Edition - William Shakespeare - The Tempest*" containing criticism of *The Tempest*, the authors have written that many modern critics to label it a tragicomedy. The subject expert, whose opinion has been relied by the Selection Board, has himself expressed the view that the *Tempest* includes aspects of both tragedy and comedy. When the Selection Board and the subject expert have failed to refer to any other material to support the contrary view, the revision of answer to question 59 so as to make it 'The tempest' is a 'Comedy', in place of the original answer in the provisional answer key that 'The tempest' is a 'Tragic comedy', is manifestly wrong.
48. Similarly, in the provisional answer key published by the Selection Board, the answer to question 81 was that '*Thomas Hardy started his literary career as a Poet*' whereas in the revised answer keys, the answer was changed so as to make it '*Thomas Hardy started his literary career as a Novelist*'.
49. The petitioner contends that the answer given in the provisional answer key was correct and to buttress this submission, the petitioner has annexed copies of extracts from a book titled "*An Anthology of English Poetry*", which has been edited by '*The Board of Editors Department of English and Modern European Languages, University of Allahabad*' and is prescribed for the B.A. II English Literature Course of the University of Allahabad. Chapter 4 of the book is titled

“Thomas Hardy” and it is written in it that **“Hardy considered himself a Poet and started his literary career with poetry. He turned to poetry again after the hostile reaction to his novel, ‘Jude the Obscure’ (1896). Hardy is regarded as a transitional poet whose poetry bridges the Victorian and Modern ages of literature.”**

50. Chapter 7 of the book - *“A Critical Study of Thomas Hardy - TESS OF THE D’URBERVILLES”* authored by Dr. B. P. Asthana, M.A. LLB., PhD, is titled “Hardy as a Poet” and it is written in it that *“Hardy is famous as a great novelist yet he started his career as a poet and also ended as a poet.”*
51. In another book titled *“A history of English Literature”* by Edward Albert, M.A. revised by J.A. Stone, M.A. published by George G. Harrap & Co. Ltd. (London, Toronto, Wellington, Sydney), it is written that *“Hardy began as a poet, and, though for a long time he was unable to find a publisher for his verse, he continued to write poetry. After the public outcry against his two greatest novels, he wrote only verse.”*
52. Regarding question No. A-81, the expert has opined that *“A distinction between “Career” and “literary career” needs to made. The literary career of a person starts with his/her first publication. Hardy’s first published work is an essay (1865). His first unpublished book, a novel, is The Poor Man and the Lady (1867) while his first published book, again a novel, is Desperate Remedies (1871). His poems, Wessex Poems, got published much later in 1898. Thus, from the given options, Hardy’s literary career began as a novelist.”* This opinion of the expert is his personal opinion and he has not referred to any book.
53. When *“An Anthology of English Poetry”* edited by ‘The Board of Editors Department of English and Modern European Languages, University of Allahabad’, which is prescribed for the B.A. II English Literature Course of the University of Allahabad professes that **“Hardy considered himself a Poet and started his literary career with poetry”** the personal unpublished opinion of an expert which is

not supported by any published material, will not overrule the published source of knowledge. The students who gave answer to question 81 as per the published book cannot be faulted.

54. The petitioner further contends that the answer to question No.107 mentioned in the provisional answer key was that “Some trains are run **by** electricity” whereas the Selection Board has wrongly revised the answer so as to make it read “Some trains are run **on** electricity”. In ‘*Oxford Dictionary, 8th Edition*’, it is published that as a Noun, Tram means “A vehicle driven **by** electricity”, which implies that ‘trains run **by** electricity and not **on** electricity’.
55. In “*A Practical Guide to English Grammar*” authored by K.P. Thakur, M.A. M.Ed., Ph.D, PGCTE, (CIEFL, Hyderabad), former Principal, RDS College, Muzaffarpur, the meaning of the word ‘by’ has been explained as per which the correct answer to question No.107 would be “Some trains are run **by** electricity”.
56. In the book titled “*High School English Grammar & Composition*” prescribed by the Board of High School and Intermediate Education, U.P. for High School Classes, it is written that - ‘Some trains are run **by** electricity’.
57. As per the book ‘*How to right Correct English (Applied English Grammar)*’ authored by Shri Rajendra Prasad Sinha, M.A., Ex-Chairman, Bihar College Service Commission also, the correct answer would be ‘by’.
58. “*The Advanced Learner’s Dictionary of Current English*” published by London Oxford University Press, explains the meaning of word ‘by’ with the help of an example that “*Machines are driven by steam (water-power, electricity, etc.). Our houses are lighted by electricity.*” which indicates that the correct answer to question No.107 will be - “Some trains are run **by** electricity”.
59. Regarding question No. A-107, the expert had originally printed his opinion as “*Objection overruled*”, but afterwards, he scored out the word “*overruled*” and has written in hand writing “*conceded*”, which

shows that he himself was initially of the view that the answer to question 107 published in the provisional answer key was correct. He has not referred to any standard books on the subject which may support the alteration of his opinion and his altered opinion is contrary to the material published in authoritative works and textbooks. Therefore, the altered opinion which is contrary to his own original opinion and which is contrary to the information published in various books is manifestly wrong.

- 60.** When the answers run contrary to the material published in a large number of acknowledged textbooks, which are commonly read by students in the State, it leave no room for doubt that the answer given by the students is correct and the key answer is incorrect. The key answers are palpably and demonstrably erroneous, the petitioner cannot be made to suffer on account of errors committed by the Selection Board and it calls for interference by this Court in exercise of the Writ jurisdiction so that the error is rectified and the wrong answers do not adversely affect the fate of the candidates and their merit is tested in a proper manner.
- 61.** Now comes the question regarding the relief which can be granted in this case. The advertisement for the selection was issued on 04.01.2014. The examination was held on 22.02.2015. After entertaining objections against the provisional answer key, the revised answer key was published on 20.05.2015. the petitioner had filed Writ A No. 45977 of 2015 on 13.08.2015, which was disposed off on 31.08.2015 after recording the submission of the respondents that the matter had already been referred to the English Department of the Allahabad University for verifying the correctness of the answers and permitting the petitioner to file objections, which should be decided after receiving the report from the Expert Body. The second revised answer key was published on 20.04.2016 in which answers to question nos. 59 and 81 were not revised in spite of the petitioner's objections and answer to question 117 was revised, although the same

was not in dispute. Thereafter the final result was published and the petitioner filed this Writ Petition on 04.11.2016.

62. On 17.11.2016, this Court had passed an interim order that if any selection is made in the meantime, the same shall be subject to the final order to be passed in this Writ Petition. Notices were issued to the selected candidates – the respondent nos. 2 and 3, but they did not come forward to contest the Writ Petition and the same has been contested by the U. P. Secondary Education Service Selection Board. In these circumstances, when the petitioner has been pursuing his rights diligently, the mere fact that the respondent nos. 3 and 4 did not come forward to contest the Writ Petition and meanwhile appointments have been made and they are continuing in service, will not disentitle the Petitioner to be granted any relief for this reason.
63. In **Rajesh Kumar v. State of Bihar**: (2013) 4 SCC 690, while upholding interference in the result of selection on the ground that certain answers were incorrect, the Hon'ble Supreme Court had granted the following reliefs: -

“22.1. Answer scripts of candidates appearing in ‘A’ series of competition examination held pursuant to Advertisement No. 1406 of 2006 shall be got re-evaluated on the basis of a correct key prepared on the basis of the report of Dr (Prof.) C.N. Sinha and Prof. K.S.P. Singh and the observations made in the body of this order and a fresh merit list drawn up on that basis.

22.2. Candidates who figure in the merit list but have not been appointed shall be offered appointments in their favour. Such candidates would earn their seniority from the date the appellants were first appointed in accordance with their merit position but without any back wages or other benefit whatsoever.

22.3. In case the writ petitioners, Respondents 6 to 18 also figure in the merit list after re-evaluation of the answer scripts, their appointments shall relate back to the date when the appellants were first appointed with continuity of service to them for purpose of seniority but without any back wages or other incidental benefits.

22.4. Such of the appellants as do not make the grade after re-evaluation shall not be ousted from service, but shall figure at the bottom of the list of selected candidates based on the first selection in terms of Advertisement No. 1406 of 2006 and the

second selection held pursuant to Advertisement No. 1906 of 2006.

22.5. The needful shall be done by the respondents, State and the Staff Selection Commission expeditiously but not later than three months from the date a copy of this order is made available to them.”

64. In view of the aforesaid discussion, the writ petition is ***allowed***. The revised answer key published in furtherance of the notification dated 04.01.2013 for making selections for appointments to the Posts of Lecturers (English) is quashed and a mandamus is issued directing the respondent no. 2 to re-evaluate the answer sheets keeping in view the observations made in the preceding parts of this judgment. If the petitioner figures in the merit list, he shall be offered appointment and he will be given seniority from the date the first appointments were made, but without any back wages or other benefit whatsoever. Other candidates, who do not make the grade after re-evaluation shall not be ousted from service, but shall figure at the bottom of the list of selected candidates based on the first selection in terms of Advertisement No. 1-1/2013 issued on 04.01.2014. The needful shall be done by the respondents 1 and 2 – State of U. P., Department of Secondary Education and the U. P. Secondary Education Service Selection Board expeditiously but not later than three months from the date a copy of this order is made available to them.
65. The parties shall bear their own costs of litigation.

(Subhash Vidyarthi J)

Order Date: 23.07.2024

-Amit K-