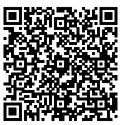
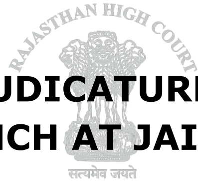
VERDICTUM.IN





HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

(1) D.B. Special Appeal Writ No. 986/2022

1. Mahendra Kumar Jat Son Of Shri Kalyan Mal, Aged About 28 Years, Resident Of Village Akodiya, Post Santhli, Tehsil Deoli, District Tonk (Raj.)
2. Laxman Farroda Son Of Shri Ram Niwas, Aged About 25 Years, R/o Mukhyabas, Village Gajoo, District Nagaur (Raj.)
3. Kuldeep Sharma Son Of Shri Ramesh Chand Sharma, Aged About 26 Years, Resident Of Village Dobla Khurd, Post Ganglywas, Tehsil Ramgarh, Pachwara, District Dausa (Raj.)
4. Manish Kumar Nagar Son Of Shri Dhanraj Nagar, Aged About 26 Years, Resident Of Village And Post Katawar, Tehsil Atru, District Baran (Raj.)
5. Narendra Meghwal Son Of Shri Nana Lal, Aged About 35 Years, Resident Of 11/112, Nakoda Nagar, Dhulji Ki Bawari, Debari Road, District Udaipur (Raj.)
6. Het Ram Godara Son Of Shri Rugha Ram Godara, Aged About 27 Years, Resident Of Village And Post Surnana, Tehsil Loonkaransar, District Bikaner (Raj.)

----Appellants

Versus

1. State Of Rajasthan, Through Its Secretary Department Of Revenue, Govt. Secretariat, Jaipur (Raj.)
2. Secretary, Rajasthan Service Selection Board, Rajasthan State Agriculture Managing Institution Campus, Durgapura, Jaipur.
3. President, Rajasthan Service Selection Board, Rajasthan State Agriculture Managing Institution Campus, Durgapura, Jaipur.
4. Kapil Kumar Sharma Son Of Shri Mahesh Chand Sharma, Aged About 27 Years, Resident Of Village Dangarwara, Post Shrichandpura, Tehsil Rajgarh, District Alwar (Raj.)
5. Manoj Kumar Dagur Son Of Shri Vijay Singh Dagur, Aged About 28 Years, Resident Of Village And Post Khedi Haiwat, Tehsil Hindauncity, District Karauli (Raj.)

(Downloaded on 22/07/2024 at 12:27:55 PM)

VERDICTUM.IN

6. Hariom Singh Gurjar Son Of Shri Girraj Prasad Gurjar, Aged About 26 Years, Resident Of Village Murlipura, Post Pancholi, Tehsil Sikrai, District Dausa (Raj.)
7. Kalpit Sharma, Son Of Shri Jagdish Prasad Sharma, Aged About 27 Years, Resident Of Village And Post Kolana Bandikui, Tehsil Baswa, District Dausa (Raj.)
8. Lal Chand Jakhar Son Of Shri Ganpat Ram, Aged About 32 Years, Resident Of 182, Ward No.03, Mandir Ki Guwar, Tejrasar, Bikaner (Raj.)
9. Manish Kumar Seju Son Of Shri Jagjivan Ram, Aged About 25 Years, Resident Of Sandhawa, Fatehgarh, District Jaisalmer (Raj.)
10. Kanhaiya Lal Choudhary Son Of Shri Raj Lal Choudhary, Aged About 23 Years, Resident Of Village Khalilpura Papra, Post Bamor, District Tonk (Raj.)
11. Manphool Singh Saran Son Of Shri Jeet Ram Saran, Aged About 31 Years, Resident Of Chak-39, LNP Colony, P.o. Baeenjhbayala, Teshil Padampur, District Sri Ganganagar (Raj.)
12. Praveen Kumar Son Of Shri Omprakash, Aged About 25 Years, Resident Of Village Dhani Poonia, Post Jharsar Chhota, Tehsil Taranagar, District Churu (Raj.)
13. Prakash Jandu Son Of Shri Baksha Ram, Aged About 25 Years, Resident Of Janewa East, Village And Post Janewa East, District Nagaur (Raj.)
14. Kailash Son Of Shri Rajuram, Aged About 32 Years, Resident Of Village And Post Farrod, Tehsil Jayal, District Nagaur (Raj.)
15. Nilesh Katara Son Of Shri Varsingh, Aged About 23 Years, Resident Of Village Kushalipada, Post Jalimpura, Tehsil Sajjangarh, District Banswara (Raj.)

----Respondents

WITH

(2) D.B. Special Appeal Writ No. 782/2022

1. Prakash Vishnoi S/o Shri Pukhraj, Aged About 26 Years, R/o Vishnoiyo Ka Bas, Bisalpur, District Jodhpur (Rajasthan)

(Downloaded on 22/07/2024 at 12:27:55 PM)

VERDICTUM.IN

2. Krishankant Sharma S/o Shri Jagdish Prasad, Aged About 29 Years, R/o Virhata, Khunda, District Karauli (Rajasthan)

----Appellants

Versus

1. State Of Rajasthan, Through the Secretary, Department Of Revenue, Govt. Secretariat, Jaipur (Rajasthan).
2. Secretary, Rajasthan Service Selection Board, Rajasthan State Agriculture Managing Institution Campus, Durgapura, Jaipur (Rajasthan)
3. President, Rajasthan Service Selection Board, State Agriculture Managing Institution Campus, Durgapura, Jaipur (Rajasthan)
4. Prema Ram S/o Shri Shankra Ram, Aged About 25 Years, R/o Janiyon Ki Dhaniyan, Ramsar, Karnu, District Nagaur (Rajasthan)
5. Mahendra Singh S/o Shri Dola Ram, Aged About 23 Years, R/o Kamediya Ka Bass, Khera Kishanpura, District Nagaur (Rajasthan)
6. Ashish Kumar Sharma S/o Shri Rajendra Prasad, Aged About 22 Years, R/o Devnagar, Bansur, Alwar (Rajasthan)
7. Hemaram S/o Shri Bajrang Lal, Aged About 22 Years, R/o Shekhpura, Riyan Badi, District Nagaur (Rajasthan)

----Respondents

For Appellant(s)	:	Mr. J.M. Saxena, Advocate with Mr. Sanjeev Kumar Singhal, Advocate Mr. Vishal Raj Mehta, Advocate & Ms. Vandana, Advocate on behalf of Mr. Chaitanya Kumar Gehlot,Advocate through VC
For Respondent(s)	:	Mr. Nalin G. Narain, Advocate Mr. Rajesh Maharshi, AAG assisted by Mr. Udit Sharma, Advocate Mr. Sunil Beniwal, AAG through VC Mr. Vinit Sanadhya, Advocate through VC Mr. Tananjay Parmar, Advocate through VC

(Downloaded on 22/07/2024 at 12:27:55 PM)

VERDICTUM.IN

HON'BLE THE CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA
HON'BLE MRS. JUSTICE SHUBHA MEHTA

(THROUGH V.C.)

Judgment

PRONOUNCED ON :: 10/07/2024

Rajasthan High Court Web Copy - Not Official

REPORTABLE

BY THE COURT : (PER HON'BLE THE CHIEF JUSTICE)

1. This order shall govern the disposal of aforesaid two intra-court appeals.

2. D.B. Civil Special Appeal (Writ) No.782/2022, filed at the Principal Seat of this Court at Jodhpur, arises out of a common order dated 27.05.2022 passed in a batch of writ petitions including the writ petition filed by the appellants.

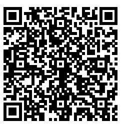
D.B. Special Appeal (Writ) No.986/2022, filed at Jaipur Bench, Jaipur, arises out of a common order dated 19.07.2022 passed in a batch of writ petitions including the writ petition filed by the appellants.

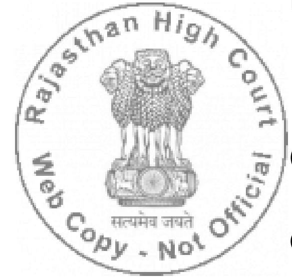
3. Both the appeals were heard analogously at Jaipur Bench, Jaipur.

4. An advertisement was issued on 17.01.2020 by the Rajasthan Subordinate and Ministerial Service Selection Board (hereinafter referred to as 'the Board') inviting online applications for direct recruitment to the post of Patwari. The competitive written examination was held on 23.10.2021 and a preliminary answer key was issued by the Board on 23.10.2021 itself inviting online objections towards preliminary answer key. Final answer key was issued by the Board on 25.01.2022 based on the decision of the Expert Committee on various objections raised by the

(Downloaded on 22/07/2024 at 12:27:55 PM)

VERDICTUM.IN





candidates with regard to the answer key proposed by the Board. It followed publication of select list.

5. At this stage, the appellants-writ petitioners filed their respective writ petitions at the Principal Seat at Jodhpur as well as Bench at Jaipur, questioning the decision taken by the Expert Committee with regard to the correctness of the answer key, as decided by the Expert Committee. The learned Single Judge while deciding the writ petitions filed at the Principal Seat at Jodhpur, vide order dated 27.05.2022, examined the issue relating to correctness of the answer key of various questions. It came to the conclusion that except for question Nos.69 and 98 of Question Booklet Series-104D, wherein for question No.98 of Question Booklet Series-104D, based on concession by the Board, none of the objections raised by the candidates fall within the parameters of interference, as laid down by the Hon'ble Supreme Court and Division Bench of this Court and, therefore, held that except for the two questions, no case for interference is made out. The petitions were accordingly partly allowed. However, appellant-Prakash Vishnoi and another (DBSAW No.782/2022), felt aggrieved by the order insofar as correctness of answer key of question No.135 of Question Booklet Series-104C is concerned and filed the intra-court appeal.

6. As batch of petitions including the writ petition of appellant-Mahendra Kumar Jat (DBSAW No.986/2022) and other petitions came to be dismissed by a Single Bench at Jaipur Bench, Jaipur vide order dated 19.07.2022, in the light of the order passed by the Single Bench at the Principal Seat at Jodhpur in another batch

(Downloaded on 22/07/2024 at 12:27:55 PM)

VERDICTUM.IN

Rajasthan High Court Web Copy - Not Official

of petitions involving identical issue, this appeal has also been preferred by Mahendra Kumar Jat.

7. In both the appeals, the only question which arises for consideration of this Court is whether the order passed by the learned Single Judge that decision of the Expert Committee regarding correct answer key of question No.135 of Question Booklet Series-104C, warrants interference. No other issue was raised during the course of arguments by learned counsel appearing for the parties in both the appeals.

8. Question No. 135 of Question Booklet Series-104C reads as below:-

"135. Where is the cave of 'Saint Peepa'?

(A) Peepar (B) Toda
(C) Dhanera (D) Gagron"

9. It is an admitted position that when the preliminary answer key was published by the Board, option "(B) Toda" was marked as correct answer key. However, when objections were made with regard to correctness of answer key by various candidates, who claimed that correct answer key was option "(D) Gagron", the Board constituted a committee of experts and referred this objection with regard to question No.135 along with objection to correctness of answer key of other questions. It is also not in dispute that the Expert Committee upon consideration of various objections, changed the answer key from option "(B) Toda" to option "(D) Gagron".

10. The learned Single Judge in the case of appellant-Prakash Vishnoi and others, relying upon the view of the Expert

(Downloaded on 22/07/2024 at 12:27:55 PM)

VERDICTUM.IN

Committee, repelled the objections. The finding in this regard, as recorded by the learned Single Judge, is quoted below:-

> "**View of the Expert Committee:** The Expert Committee referring to **राजस्थान का इतिहास एवं संस्कृति कक्षा 10** and **राजस्थान–इतिहास एवं संस्कृति एनसाइक्लापीडिया** by Dr. Hukamchand Jain and Narayan Mali, came to the conclusion that correct answer is (D).
>
> Though the petitioners have also placed on record certain material in support of their contentions that answer "B" is correct, however, as the Expert Committee has after taking into consideration the material, as noticed herein before, and the material produced by the petitioners, have come to a particular conclusion, there is apparently no reason for this Court to substitute its opinion."

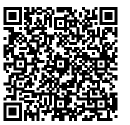
11. Learned counsel appearing for the appellants in both the appeals made common submissions. Referring to various materials placed on record, it has been argued that when various authentic texts recorded that cave of Saint Peepa was at Toda, the committee of experts ignored the same and without any authentic materials/texts, arrived at a conclusion that cave of Saint Peepa is situated at Gagron.

12. On the other hand, learned counsel for the respondents contended that though initially "Toda" was proposed as the correct answer key, but when various objections were raised and some of the candidates claimed that the cave of Saint Peepa is at Gagron, the matter was referred to a committee of experts and the committee of experts after taking into consideration various texts and objections, finally concluded that option "(D) Gagron", should be treated as the correct answer key.

13. Learned counsel for both the parties have relied upon various decisions in support of their contentions.

(Downloaded on 22/07/2024 at 12:27:55 PM)

VERDICTUM.IN



14. Learned counsel for the appellants would argue that even though the scope of judicial review is limited, present is a case where answer key, as finalized by the Expert Committee, is demonstrably wrong, which is reflected from the contents of various texts, information and materials placed by the appellants before this Court.

Learned counsel for the respondents would submit that scope of judicial review is extremely limited and this Court should not enter into any exercise of re-evaluation, much less substituting its opinion as to what could possibly be the correct answer to a given question, except in very rare circumstances where without any detailed process of rationalization, the answer key is established as demonstrably wrong, as laid down by the Hon'ble Supreme Court in plethora of decisions.

15. Before we delve into the factual aspects of the case, it is useful to refer to celebrated decisions on the issue with regard to the scope of judicial review in the matter of challenge to the correctness of the answer key in the competitive examination.

16. To begin with, it is well settled legal position that in absence of there being a provision of revaluation, revaluation of answers is not permissible in law, as held in plethora of decisions.

17. The settled legal position in this regard was reiterated by the Supreme Court in the case of **Himachal Pradesh Public Service Commission Versus Mukesh Thakur & Another, (2010) 6 SCC 759** and it was held as below:-

> "24. The issue of re-evaluation of answer book is no more res integra. This issue was considered at length by this Court in Maharashtra State Board of Secondary and Higher Secondary Education v.

(Downloaded on 22/07/2024 at 12:27:55 PM)

VERDICTUM.IN

Paritosh Bhupesh Kurmarsheth, wherein this Court rejected the contention that in absence of provision for re-evaluation, a direction to this effect can be issued by the Court. The Court further held that even the policy decision incorporated in the Rules/ Regulations not providing for rechecking/ verification/ re-evaluation cannot be challenged unless there are grounds to show that the policy itself is in violation of some statutory provision. The Court held as under: (SCC pp.39-40 & 42, paras 14 & 16)

"14...It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy, how the provisions of the statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act…

16...The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any draw-backs in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act...."

25. This view has been approved and relied upon and re-iterated by this Court in Pramod Kumar Srivastava v. Bihar Public Service Commission observing as under:(SCC pp.717-18, para7)

"7. ... Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for re- evaluation of his answer-book. There is a provision for scrutiny only wherein the answer-books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totalling of marks of each question and noting them correctly on the first cover

(Downloaded on 22/07/2024 at 12:27:55 PM)

VERDICTUM.IN

page of the answer-book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. In the absence of any provision for re-evaluation of answer-books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re- evaluation of his marks.

(emphasis added)

A similar view has been reiterated in Muneeb Ul Rehman Haroon (Dr.) v. Government of J & K State, Board of Secondary Education v. Pravas Ranjan Panda, Board of Secondary Education v. D. Suvankar, West Bengal Council of Higher Secondary Education v. Ayan Das and Sahiti v. Dr. N.T.R. University of Health Sciences.

26. Thus, the law on the subject emerges to the effect that in absence of any provision under the statute or statutory rules/regulations, the Court should not generally direct revaluation."

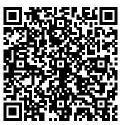
18. The aforesaid legal position has been further affirmed in the cases of **Ran Vijay Singh & Others (supra)** and **High Court of Tripura through The Registrar General Versus Tirtha Sarathi Mukherjee & Others, (2019) 16 SCC 663**.

19. However, a situation where key answers itself are found to be incorrect, requiring necessary course correction has also been considered by the Supreme Court.

In the case of **Kanpur University, through Vice-Chancellor & Others (supra)**, controversy arose with regard to some questions that the key answers for those questions were not correct. On facts, upon examination of authentic texts, it was held that the key answers itself were not correct. The High Court issued direction for re-assessment of particular questions. Such

(Downloaded on 22/07/2024 at 12:27:55 PM)

VERDICTUM.IN

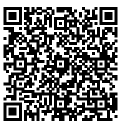


direction was affirmed. It was held that if there is a case of doubt, key answers already provided have to be adhered to but if the matter is beyond the realm of doubt, it would be unfair to penalize the students for not giving an answer which accords with the key answer which is demonstrated to be wrong. It was importantly observed:-

> "**15.** The findings of the High Court raise a question of great importance to the student community. Normally, one would be inclined to the view, especially if one has been a paper setter and an examiner, that the key answer furnished be the paper setter and accepted by the University as correct, should not be allowed to be challenged. One way of achieving it is not to publish the key answer at all. If the University had not published the key answer along with the result of the test, no controversy would have arisen in this case. But that is not a correct way of looking at these matters which involve the future of hundreds of students who are aspirants for admission to professional courses. If the key answer were kept secret in this case, 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 answer has unravelled an unhappy state of affairs to which the University and the State Government must find a solution. Their sense of fairness in publishing the key answer has given them an opportunity to have a closer look at the system of examinations which they conduct. What has failed is not the computer but the human system.
>
> **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

(Downloaded on 22/07/2024 at 12:27:55 PM)

VERDICTUM.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.

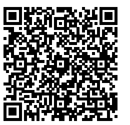
17. Students who have passed their Intermediate Board Examination are eligible to appear for the entrance Test for admission to the Medical Colleges in U.P. Certain books are prescribed for the Intermediate Board Examination and such knowledge of the subjects as the students have is derived from what 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."

20. In another case of **Manish Ujwal & Others Versus Maharishi Dayanand Saraswati University & Others, (2005) 13 SCC 744**, similar challenge was raised where student community filed a writ petition before the High Court challenging ranking in the entrance tests conducted by the University for admission to medical and dental courses with the grievance that various key answers on the basis whereof, answer sheets were evaluated, itself were wrong and consequently wrong and erroneous ranking was prepared.

21. The opinion of the experts was sought. The opinion of experts was unanimous that key answers of disputed questions were erroneous. The Supreme Court in Para 8 of its order observed as below:-

"8. xxxxxxxxxxxx. It is possible that the fresh evaluation by feeding correct key answers to the six questions may have adverse impact also on those

(Downloaded on 22/07/2024 at 12:27:55 PM)



> who may have already secured admission on the basis of the results declared and ranking given by feeding incorrect keys in relation to these questions. Though we are of the view that the appellants in particular and the student community in general, whether one has approached the court or not, should not suffer on account of demonstrably incorrect key answers but, at the same time, if the admissions already granted as a result of first counselling are disturbed, it is possible that the very commencement of the course may be delayed and the admission process for the courses may go beyond 30-09-2005, which is the cut-off date, according to the time schedule in the Regulations and as per the Law laid down by this Court in Mridul Dhar (Minor) v. Union of India. In this view, we make it clear that fresh evaluation of the papers by feeding correct key answers would not affect the students who have secured admissions as a result of the first counselling on the basis of ranking given with reference to the results already declared."

Considering that the matter related to admission of students and many admissions had already been granted, in peculiar facts of that case, it was made clear that fresh evaluation of the papers by feeding correct answers would not affect students who have secured admission as a result of first counseling on the basis of ranking given with reference to the results already declared. However, the exercise of examination of disputed key answers by a committee of experts was upheld.

22. The decision in the case of **Kanpur University through Vice Chancellor & Others (supra),** was also relied upon, principle was restated as above and the permissible course of action was reiterated by the Supreme Court in the case of **Manish Ujwal & Others (supra)** as below:-

> "9. In Kanpur University v. Samir Gupta considering a similar problem, this Court held that

(Downloaded on 22/07/2024 at 12:27:55 PM)

VERDICTUM.IN

there is an assumption about the key answers being correct and in case of doubt, the court would unquestionably prefer the key answer. It is for this reason that we have not referred to those key answers in respect whereof there is a doubt as a result of difference of opinion between the experts. Regarding the key answers in respect whereof the matter is beyond the realm of doubt, this Court has held that 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. There is no dispute about the aforesaid six key answers being demonstrably wrong and this fact has rightly not been questioned by the learned counsel for the University. In this view, students cannot be made to suffer for the fault and negligence of the University."

In a subsequent decision in the case of **Ran Vijay Singh & Others (supra)**, the law on the subject was summarised as below:-

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

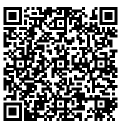
30.1 If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it;

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 scrutinize the answer sheets of a candidate-it has no

(Downloaded on 22/07/2024 at 12:27:56 PM)

VERDICTUM.IN



> 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."

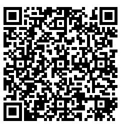
Rajasthan High Court Web Copy - Not Official

In one of the latest decisions in the case of **High Court of Tripura through The Registrar General (supra),** while re-iterating and re-affirming settled legal position that in the absence of there being a provision for re-evaluation, re-evaluation could not be done or ordered, cases of exceptional nature as noticed earlier in the case of **Kanpur University through Vice Chancellor & Others (supra), Manish Ujwal & Others (supra) & Ran Vijay Singh & Others (supra)**, were taken into consideration and permissible course of action to deal with such exceptional cases, even though there was no provision for re-evaluation as such, was evolved.

> "19. We have noticed the decisions of this Court. Undoubtedly, a three Judge Bench has laid down that there is no legal right to claim or ask for revaluation in the absence of any provision for revaluation. Undoubtedly, there is no provision. In fact, the High Court in the impugned judgment has also proceeded on the said basis. The first question which we would have to answer is whether despite the absence of any provision, are the courts completely denuded of power in the exercise of the jurisdiction Under Article 226 of the Constitution to direct revaluation? It is true that the right to seek a writ of mandamus is based on the existence of a legal right and the corresponding duty with the answering respondent to carry out the public duty. Thus, as of right, it is clear that the first respondent could not maintain either writ petition or

(Downloaded on 22/07/2024 at 12:27:56 PM)

VERDICTUM.IN



the review petition demanding holding of revaluation.

20. The question however arises whether even if there is no legal right to demand revaluation 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 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. We would understand therefore the conclusion in paragraph 30.2 which we have extracted from the judgment in Ran Vijay Singh v. State of U.P. only in the aforesaid light. We have already noticed that in H.P. Public Service Commission v. Mukesh Thakur, a two Judge Bench in paragraph 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 revaluation.

(Downloaded on 22/07/2024 at 12:27:56 PM)

VERDICTUM.IN

Rajasthan High Court Web Copy - Not Official

> 23. xxxxxxxxx. Even in the judgment of this Court in *Ran Vijay Singh v. Rahul Singh* which according to the first respondent forms the basis of the High Court's interference though does not expressly stated so, what the Court has laid down is that the Court may permit revaluation inter alia only if it is demonstrated very clearly without any inferential process of reasoning or by a process of rationalization and only in rare or exceptional cases on the commission of material error. xxxxxxxx."

23. In the case of **Uttar Pradesh Public Service Commission, through its Chairman and Another Vs. Rahul Singh and Another (supra)**, the Hon'ble Supreme Court examining the extent and power of the Court to interfere in the matter of academic nature, relying upon the decisions in the cases of **Kanpur University, through Vice-Chancellor & Others (supra)** and **Ran Vijay Singh and Others (supra)**, held as below:

> "**9.** In *Kanpur University v. Samir Gupta*, this Court was dealing with a case relating to the Combined Pre-Medical Test. Admittedly, the examination setter himself had provided the key answers and there were no committees to moderate or verify the correctness of the key answers provided by the examiner. This Court upheld the view of the Allahabad High Court that the students had proved that three of the key answers were wrong. The following observations of the Court are pertinent:
>
> "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 Court gave further directions but we are concerned mainly with one that the State Government should devise a system for moderating the key answers furnished by the paper setters.

(Downloaded on 22/07/2024 at 12:27:56 PM)

VERDICTUM.IN

10. In *Ran Vijay Singh v. State of U.P.*, this Court after referring to a catena of judicial pronouncements summarised the legal position in the following terms: (SCC pp. 368-69, para 30)

"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

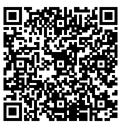
30.5. In the event of a doubt, the benefit should go to the examination authority rather than to the candidate."

The Hon'ble Supreme Court then referred to observations made in para 31 and 32 in the case of **Ran Vijay Singh and Others (supra)** to demonstrate and highlight why the constitutional Courts must exercise restraint in such matters and held as below:

"**11.** We may also refer to the following observations in paras 31 and 32 which show why the constitutional courts must exercise restraint in such matters:(Ran Vijay Singh case, SCC p.369)

(Downloaded on 22/07/2024 at 12:27:56 PM)

VERDICTUM.IN



"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."

(Downloaded on 22/07/2024 at 12:27:56 PM)

VERDICTUM.IN

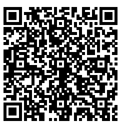
Finally, the principles as propounded in earlier decisions were reiterated as below:

> "**12.** The law is well settled that the onus is on the candidate to not only demonstrate that the key answer is incorrect but also that it is a glaring mistake which is totally apparent and no inferential process or reasoning is required to show that the key answer is wrong. The constitutional courts must exercise great restraint in such matters and should be reluctant to entertain a plea challenging the correctness of the key answers. In *Kanpur University case*, the Court recommended a system of:
>
> (1) moderation;
> (2) avoiding ambiguity in the questions;
> (3) prompt decisions be taken to exclude suspected questions and no marks be assigned to such questions.
>
> **13.** As far as the present case is concerned, even before publishing the first list of key answers the Commission had got the key answers moderated by two Expert Committees. Thereafter, objections were invited and a 26-member Committee was constituted to verify the objections and after this exercise the Committee recommended that 5 questions be deleted and in 2 questions, key answers be changed. It can be presumed that these Committees consisted of experts in various subjects for which the examinees were tested. Judges cannot take on the role of experts in academic matters. Unless, the candidate demonstrates that the key answers are patently wrong on the face of it, the courts cannot enter into the academic field, weigh the pros and cons of the arguments given by both sides and then come to the conclusion as to which of the answers is better or more correct."

Further it was noticed that the challenge pertained to three questions which noted a long process of reasoning and it was noticed that the stand taken by the Commission was supported by certain text books. In that factual scenario, it was held that in case of conflicting views, the Court must bow down to the opinion of the experts. It was held as below:

(Downloaded on 22/07/2024 at 12:27:56 PM)

VERDICTUM.IN



> "**14.** In the present case, we find that all the three questions needed a long process of reasoning and the High Court itself has noticed that the stand of the Commission is also supported by certain textbooks. 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."

Rajasthan High Court Web Copy - Not Official

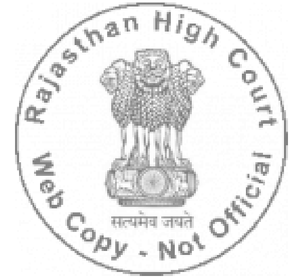
24. In the case of **Richal and Others (supra)**, principles stated and restated time and again were reaffirmed by the Hon'ble Supreme Court while dealing with correctness of final key answers as decided by the Expert Committee after taking into consideration the objections received. While placing reliance upon the judgments in the cases of **Kanpur University, through Vice-Chancellor & Others (supra)**, **Manish Ujwal & Others (supra)**, the Hon'ble Supreme Court also relied upon its earlier decisions in the cases of **Guru Nanak Dev University Vs. Saumil Garg and Others (2005) 13 SCC 749** and **Rajesh Kumar & Others Vs. State of Bihar & Others (2013) 4 SCC 690** and held as below:

> "**17.** To the same effect, this Court in Guru Nanak Dev University v. Saumil Garg, had directed the University to revaluate the answers of 8 questions with reference to key answers provided by CBSE. This Court also disapproved the course adopted by the University which has given the marks to all the students who had participated in the entrance test irrespective of whether someone had answered questions or not.
>
> **18.** Another judgment which is referred to is Rajesh Kumar v. State of Bihar, where this Court had occasion to consider the case pertaining to erroneous evaluation using the wrong answer key. The Bihar Staff Selection Commission invited applications against the posts of Junior Engineer (Civil). Selection process comprised of a written objective type examination. Unsuccessful candidates assailed the selection. The Single Judge of the High Court referred

(Downloaded on 22/07/2024 at 12:27:56 PM)

VERDICTUM.IN

the "model answer key" to experts. Based on the report of the experts, the Single Judge held that 41 model answers out of 100 are wrong. The Single Judge held that the entire examination was liable to be cancelled and so also the appointments so made on the basis thereof. The letters patent appeal was filed by certain candidates which was partly allowed by the Division Bench of the High Court. The Division Bench modified the order passed by the Single Judge and declared that the entire examination need not be cancelled. The order of the Division Bench was challenged wherein this Court in para 19 has held: (SCC p.697)



"19. The submissions made by Mr Rao are not without merit. Given the nature of the defect in the answer key the most natural and logical way of correcting the evaluation of the scripts was to correct the key and get the answer scripts re-evaluated on the basis thereof. There was, in the circumstances, no compelling reason for directing a fresh examination to be held by the Commission especially when there was no allegation about any malpractice, fraud or corrupt motives that could possibly vitiate the earlier examination to call for a fresh attempt by all concerned. The process of re-evaluation of the answer scripts with reference to the correct key will in addition be less expensive apart from being quicker. The process would also not give any unfair advantage to anyone of the candidates on account of the time lag between the examination earlier held and the one that may have been held pursuant to the direction of the High Court. Suffice it to say that the re-evaluation was and is a better option, in the facts and circumstances of the case."

While holding that the key answers prepared by the paper-setter or the examining body is presumed to have been prepared after due deliberations, publication of key answers and grant of opportunity to assess correctness of answers by receiving objections to be considered by the examining body was considered as a step to achieve transparency. It was observed thus:

"**19.** The key answers prepared by the paper-setter or the examining body is presumed to have been prepared after due deliberations. To err is human. There are various factors which may lead to framing of

(Downloaded on 22/07/2024 at 12:27:56 PM)

VERDICTUM.IN

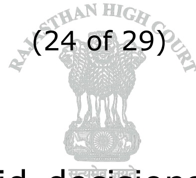
the incorrect key answers. The publication of key answers is a step to achieve transparency and to give an opportunity to candidates to assess the correctness of their answers. An opportunity to file objections against the key answers uploaded by examining body is a step to achieve fairness and perfection in the process. The objections to the key answers are to be examined by the experts and thereafter corrective measures, if any, should be taken by the examining body. In the present case, we have noted that after considering the objections final key answers were published by the Commission thereafter several writ petitions were filed challenging the correctness of the key answers adopted by the Commission. The High Court repelled the challenge accepting the views of the experts. The candidates still unsatisfied, have come up in this Court by filing these appeals."

25. The principles propounded and the legal position settled in the aforesaid decisions were reiterated by the Hon'ble Supreme Court in recent judicial pronouncements in the cases of **Bihar Staff Selection Commission and Others Vs. Arun Kumar and Others, (2020) 6 SCC 362** and **Vikesh Kumar Gupta and Another Vs. State of Rajasthan and Others (2021) 2 SCC 309**. In the case of **Vikesh Kumar Gupta and Another (supra)**, once again there was reference to the decision in the case of **Ran Vijay Singh and Others (supra)**. It was observed as under:

> "**16.** In view of the above law laid down by this Court, it was not open to the Division Bench to have examined the correctness of the questions and the answer key to come to a conclusion different from that of the expert committee in its judgment dated 12.03.2019. Reliance was placed by the Appellants on Richal v. Rajasthan Public Service Commission. In the said judgment, this Court interfered with the selection process only after obtaining the opinion of an expert committee but did not enter into the correctness of the questions and answers by itself. Therefore, the said judgment is not relevant for adjudication of the dispute in this case."

(Downloaded on 22/07/2024 at 12:27:56 PM)

VERDICTUM.IN



26. In view of the aforesaid decisions, it, therefore, emerges as settled legal position that though re-evaluation in the absence of there being any rule/scheme governing the examination is not permissible in law, in exceptional cases, where the answers are found to be demonstrably wrong, the injustice caused to the candidates has to be undone. The course of action adopted in many cases referred to above, which was approved by the Courts, was that the complaints with regard to key answers or disputed questions have to be examined by a Committee of Experts and if the opinion of the Committee of Experts reflects that model answers are demonstrably wrong and some other option is correct, the answers given by the candidates is required to be reassessed with reference to the correct key answer. Where the questions itself were vague and wrong or where it is a case of multiple correct answers out of options given, the questions are required to be deleted and the candidates have to be evaluated on the basis of the answers given by them to the questions remaining after deletion. Scope of judicial review is limited to exceptional cases where the Court finds that model answer keys are demonstrably wrong on the face of it without involving inferential process of reasoning or by a process of rationalization.

27. We shall now examine the facts of the case in the light of the aforesaid legal position.

28. The appellants have relied upon the following materials:-

(i) Letter dated 04.05.2022 of Executive Officer, Nagar Palika, Todaraisingh, providing information under the Right to Information Act on the application of one Kushal Bharadwaj that

(Downloaded on 22/07/2024 at 12:27:56 PM)

VERDICTUM.IN

the cave of Saint Peepa Ji is situated on the hills of Buddha Sagar Talaab, Todaraisingh.

(ii) Certificate issued by the Vice Chairman, Nagar Palika, Todaraisingh, Tonk, certifying that photographs placed before the authority depict that cave of Saint Peepa is situated on the hills of Buddhar Sagar Talaab at Todaraisingh, Tonk.

(iii) Website contents of Archaeological Survey of India, Jaipur Circle, displaying that Peepa Ji Temple is situated at Todaraisingh.

(iv) Page 532 of the textbook, namely, **राजस्थान इतिहास एवं संस्कृति एनसाइक्लपीडिया** by Dr. Hukam Chand Jain and Dr. Narayan Mali, on which the committee of experts has placed reliance, itself mentions that the cave of Peepa Ji is situated in Todaraisingh.

(v) In the book namely, **राजस्थान राजर्षि संत पीपाजी**, written by Lalit Sharma, it is mentioned that Saint Peepa Ji had constructed a cave in Buddha Sagar Sarovar Hills in Toda Nagar.

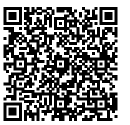
(vi) In one of the earlier examinations held in 2008 for recruitment to the post of Executive Officer also, correct answer key was accepted as "Toda" and not "Gagron" as the place where Saint Peepa's cave is situated.

29. The learned Single Judge upheld the decision of the Expert Committee taking into consideration that the Expert Committee upon due consideration of the material available with it, came to the conclusion that the correct answer key would be option (D) i.e. Gagron as the place where the cave of Saint Peepa Ji is situated.

30. The report of the Expert Committee has been placed before us in a sealed cover with regard to decision on correct answer key

(Downloaded on 22/07/2024 at 12:27:56 PM)

VERDICTUM.IN



of question No.135. Following objection was placed before the committee:-

> "OPTION B INCORRECT AND OPTION D CORRECT ACCORDING TO RAJASTHAN KA ITIHAS SANSKRITI PARAMPARA AVAM VIRASAT RAJASTHAN HINDI GRANTH AKADAMI BY DR. HUKAM CHAND JAIN AND DR. NARAYAN LAL MALI EDITION 2020 PAGE NO.373 AND KSHITIJ CLASS 10 ANIVARYA HINDI MADHYAMIK SHIKSHA BOARD PAGE NO 102 PLEASE CONSIDER THIS QUESTION AND GIVE ME BONUS MARKS."

Rajasthan High Court Web Copy - Not Official

The Committee decided as below:-

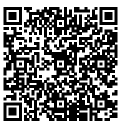
> "Objection Accepted" - "Proof attach- **राजस्थान इतिहास एवं संस्कृति एनसाइक्लपीडिया, डा. हुकुम चन्द जैन, डा. नारायण माली.** P.196"

31. The committee accordingly accepted the objection and finalized option "(D) Gagron" as the correct answer key. The last column of the consideration chart shows that the committee, in order to arrive at its conclusion, has relied upon the contents of **राजस्थान इतिहास एवं संस्कृति एनसाइक्लपीडिया,** written by Dr. Hukam Chand Jain and Dr. Narayan Mali (page-196). The sealed cover contains relevant excerpts of the aforesaid text/encyclopedia relied upon by the Expert Committee. The relevant contents read as below:-

> **"संत पीपा गागरोन के खींची राजपूत राजा थे। इनका राज्यकाल 1362 से 1377 ई. तक माना जाता है। बाल्यावस्था से ही इन्हें ईश्वर भक्ति में गहरी रुचि थीं। संत पीपा राजकार्य छोड़कर बनारस चले गये और वहाँ पर रामानंद के शिष्य बन गये। रामानंद ने पीपा को माया छोड़कर भक्ति करने और साधुसंतों की सेवा करने का उपदेश दिया। संत पीपा गुरु के बताये मार्ग पर चलने लगे। संत पीपा के विशेष अनुरोध पर कबीर के साथ रामानंद गागरोन आये। कुछ समय तक संत पीपा अपने गुरु के साथ रहे। संत पीपा घूम–फिरकर पुनः गागरोन आये और एक गुफा में रहने लगे। ये उच्च कोटि के संत थे। संत पीपा ईश्वर भक्ति को मोक्ष प्राप्ति का मार्ग मानते थे। इन्होंने मूर्तिपूजा, बाह्य आड़म्बरों, छूआछूत आदि का विरोध किया। संत पीपा मानते थे कि ईश्वर की दृष्टि मे सभी प्राणी समान हैं।"**

(Downloaded on 22/07/2024 at 12:27:56 PM)

VERDICTUM.IN



32. It would thus be seen that while several materials from different texts and other materials along with objections were placed for consideration of the Expert Committee, the Expert Committee in its wisdom, which undoubtedly consists of experts in the subject, has taken a decision that option "(D) Gagron" should be treated as correct answer key being the place where the cave is situated. Curiously enough, in the same book (राजस्थान इतिहास एवं संस्कृति एनसाइक्लपीडिया) at page 532, it has been stated as below:-

> "ऐतिहासिक कस्बा टोडारायसिंह में बुध सागर तालाब, पीपाजी की गुफा, सातोलाव तालाब, लल्ला पठान का किला, हाड़ी रानी का कुण्ड तथा दो कलात्मक बावड़ियाँ दर्शनीय हैं।"

33. Learned counsel for the respondents has also placed before us another textbook namely, राजस्थान में भक्ति आंदोलन, written by Professor Pemaram and published by राजस्थान हिंदी ग्रंथ अकादमी. In that textbook also, details with regard to Saint Peepa have been given to the effect that Saint Peepa was born in 1425 ई. (वि. सं. 1482) and was a *Kheenchi Rajput* Ruler of Gagron State of Rajputana. The text further details regarding various places travelled by Saint Peepa, and that Saint Peepa came back to Gagron and again moved away. It also mentions that during his visit to several places, Saint Peepa also went to Toda and finally came back to Gagron and started residing in a cave situated at the confluence of rivers *Aahu* and *Kalisindh* and the place is famous for his temple, residence and cave.

34. This Court would not assume the role of expert to arrive at a decision different from that taken by the Expert Committee, particularly when the decision taken by the Expert Committee is based on an authentic text, on which not only the appellants but

(Downloaded on 22/07/2024 at 12:27:56 PM)

VERDICTUM.IN

the respondents, both rely. It however is quite apparent that the place where the cave of Saint Peepa is situated, is a historical fact and there is no unanimity as to where that cave is situated. Undoubtedly, some of the texts which have been produced before this Court by the appellants, indicate that Saint Peepa's cave is situated at Toda, at the same time the other authentic text from the book "(राजस्थान इतिहास एवं संस्कृति एनसाइक्लपीडिया)", written by Dr. Hukam Chand Jain and Dr. Narayan Mali, also reveals that Saint Peepa had stayed in a cave in Gagron.

35. Without entering into the correctness of the historical fact concerning question No.135, which essentially is a matter to be considered only by experts and not by the Court, more so when it is a historical fact with regard to the movement and stay of Saint Peepa during the period from 1362 to 1377, we find from a bare reading of these texts that Saint Peepa moved from one place to other and he not only stayed at Toda, but also at Gagron. However, on the conspectus of the aforesaid relevant information given in various texts, which both the parties have referred to, the Experts of the subject decided to hold that option "(D) Gagron", should be treated as the correct answer key.

36. In our considered view, in the light of the principles which have been laid down by the Hon'ble Supreme Court in catena of decisions, referred to hereinabove, the Writ Court finds itself unable to further go into this question and the enquiry must stop here only. In the celebrated decisions, referred to above, it has been authoritatively laid down that interference by the Court with regard to correctness of the answer key would be permissible within the scope and scrutiny/re-evaluation, only if it is

(Downloaded on 22/07/2024 at 12:27:56 PM)

VERDICTUM.IN

demonstrated very clearly, without any inferential process of reasoning or by a process of rationalization and only in rare or exceptional cases that a material error has been committed. It has also been held that Court should not at all re-evaluate or scrutinize the answer sheets of a candidate as it has no expertise in the matter and academic matters are best left to academics. Further, it has also been settled as a clear legal position that Court should presume correctness of the key answers and proceed on that assumption and in the event of a doubt, benefit should go to the examination authority, rather than to the candidate.

37. Applying the aforesaid principles, at best, it can be said to be a case of doubt and, therefore, benefit should go to the examination authority, rather than to the candidate.

38. As an upshot of the above discussion, we do not find any ground to interfere with the decision of the learned Single Judge.

39. Both the appeals are accordingly dismissed. Pending application, if any, also stands dismissed.

40. A copy of this order be placed in the connected file.

(SHUBHA MEHTA),J (MANINDRA MOHAN SHRIVASTAVA),CJ

KAMLESH KUMAR /12

(Downloaded on 22/07/2024 at 12:27:56 PM)