

**In Chamber**

**Case :-** SERVICE SINGLE No. - 8056 of 2020

**Petitioner :-** Rishabh Mishra & Others

**Respondent :-** State Of U.P. Thru. Secy. Basic Edu. Lko & Others

**Counsel for Petitioner :-** Laltaprasad Misra,Amit Kr. Singh Bhadauriya

**Counsel for Respondent :-** C.S.C.,Ajay

Alongwith

(1) **Case :-** SERVICE SINGLE No. - 8224 of 2020

**Petitioner :-** Amit Kumar Patel & Anr.

**Respondent :-** State Of U.P. Thru Addl. Chief Secy. Basic Education & Ors.

**Counsel for Petitioner :-** Meenakshi Singh Parihar,Divyanshu Pratap

**Counsel for Respondent :-** C.S.C.,Ajay Kumar

(2) **Case :-** SERVICE SINGLE No. - 8225 of 2020

**Petitioner :-** Rajesh Kumar Tripathi And Ors.

**Respondent :-** State Of U.P.Through Addl.Chief Secy.Basic Education & Ors.

**Counsel for Petitioner :-** Onkar Singh

**Counsel for Respondent :-** C.S.C.,Ajay Kumar

(3) **Case :-** SERVICE SINGLE No. - 8233 of 2020

**Petitioner :-** Kumari Shikha Tiwari & Ors.

**Respondent :-** State Of U.P. Thru Prin. Secy. Basic Education & Ors.

**Counsel for Petitioner :-** I.M. Pandey Ist,Rudra Kumar Tiwari

**Counsel for Respondent :-** C.S.C.,Ajay Kumar

(4) **Case :-** SERVICE SINGLE No. - 8236 of 2020

**Petitioner :-** Rashmi Rai

**Respondent :-** State Of U.P. Through Prin.Secy.Basic Education And Ors.

**Counsel for Petitioner :-** Ranjana Agnihotri

**Counsel for Respondent :-** C.S.C.,Rahul Srivastava

(5) **Case :-** SERVICE SINGLE No. - 8241 of 2020

**Petitioner :-** Smt. Shikha Singh

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Basic Edu. Lko & Ors

**Counsel for Petitioner :-** Avinash Pandey,Raj Kumar Upadhyaya (R.K.,Sudhir Singh

**Counsel for Respondent :-** C.S.C.,Ajay

(6) **Case :-** SERVICE SINGLE No. - 8057 of 2020

**Petitioner :-** Rajeev Kumar Shukla And Ors.

**Respondent :-** State Of U.P.Through Addl.Chief Secy.Basic Education And Ors

**Counsel for Petitioner :-** Vinay Misra,Ashish Verma,Mukesh Kumar Tewari

**Counsel for Respondent :-** C.S.C.,Ajay Yadav

(7) **Case :-** SERVICE SINGLE No. - 8062 of 2020

**Petitioner :-** Anurag Yadav & Another

**Respondent :-** State Of U.P. Thru Secretary Basic Education & Others

**Counsel for Petitioner :-** Amit Kr. Singh Bhadauriya

**Counsel for Respondent :-** C.S.C.,Ajay

(8) **Case :-** SERVICE SINGLE No. - 8063 of 2020

**Petitioner :-** Amita Tripathi & Others

**Respondent :-** State Of U.P. Thru Prin. Secretary Basic Education & Others

**Counsel for Petitioner :-** Avdhesh Shukla

**Counsel for Respondent :-** C.S.C.

(9) **Case :-** SERVICE SINGLE No. - 8071 of 2020

**Petitioner :-** Mahesh Kumar & Others

**Respondent :-** State Of U.P. Thru Addl.Chief Secy. Basic Education & Ors.

**Counsel for Petitioner :-** Onkar Singh

**Counsel for Respondent :-** C.S.C.,Ajay Kumar

(10) **Case :-** SERVICE SINGLE No. - 8085 of 2020

**Petitioner :-** Pradeep Kumar & Others

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Basic Edu. Lko & Ors.

**Counsel for Petitioner :-** Ajay "Madhavan",Lalit Kumar Singh Yadav,Piyush Agnihotri,Vikram Sonal Singh

**Counsel for Respondent :-** C.S.C.,Ajay

(11) **Case :-** SERVICE SINGLE No. - 8095 of 2020

**Petitioner :-** Ashish Tiwari & Others

**Respondent :-** State Of U.P. Thru. Secy. Basic Edu. Lko & Others

**Counsel for Petitioner :-** Amrendra Nath Tripathi,Jitendra Bahadur

**Counsel for Respondent :-** C.S.C.,Ajay Yadav

(12) **Case :-** SERVICE SINGLE No. - 8096 of 2020

**Petitioner :-** Inder Dawan Singh Yadav

**Respondent :-** State Of U.P. Thru. Secy. Basic Edu. Lko & Others

**Counsel for Petitioner :-** Abhishek Srivastava, Devki Nandan Srivastava

**Counsel for Respondent :-** C.S.C., Ajay Kumar Yadav

(13) **Case :-** SERVICE SINGLE No. - 8099 of 2020

**Petitioner :-** Shivani Verma And Ors.

**Respondent :-** State Of U.P. Through Secy. Basic Education And Ors.

**Counsel for Petitioner :-** Amrendra Nath Tripathi

**Counsel for Respondent :-** C.S.C., Ajai Kumar

(14) **Case :-** MISC. SINGLE No. - 8125 of 2020

**Petitioner :-** Rakesh Kumar Tiwari

**Respondent :-** State Of U.P. Through Addl. Chief Secy. Basic Education & Ors.

**Counsel for Petitioner :-** Saryu Prasad Tiwari, Dharmendra Kumar Tiwari

**Counsel for Respondent :-** C.S.C., Neeraj Chaurasiya

(15) **Case :-** SERVICE SINGLE No. - 8101 of 2020

**Petitioner :-** Manoj Kumar Pal & Ors.

**Respondent :-** State Of U.P. Thru Prin. Secy. Basic Education & Ors.

**Counsel for Petitioner :-** Avdhesh Shukla

**Counsel for Respondent :-** C.S.C.

(16) **Case :-** SERVICE SINGLE No. - 8128 of 2020

**Petitioner :-** Sushil Kumar Mishra & 55 Ors.

**Respondent :-** State Of U.P. Thru Addl. Chief Secy. Basic Education Lko & Ors.

**Counsel for Petitioner :-** Onkar Singh

**Counsel for Respondent :-** C.S.C.

(17) **Case :-** SERVICE SINGLE No. - 8131 of 2020

**Petitioner :-** Abhishek Mishra

**Respondent :-** State Of U.P. Thru Secy. Basic Education Lucknow & Ors.

**Counsel for Petitioner :-** Onkar Nath Tiwari

**Counsel for Respondent :-** C.S.C.

(18) **Case :-** SERVICE SINGLE No. - 8189 of 2020

**Petitioner :-** Ram Suresh And Ors.

**Respondent :-** State Of U.P. Through Prin. Secy. Basic Education And Ors.

**Counsel for Petitioner :-** Shyam Mohan Upadhyay

**Counsel for Respondent :-** C.S.C.

(19) **Case :-** SERVICE SINGLE No. - 8190 of 2020

**Petitioner :-** Dinesh Kumar And Ors.

**Respondent :-** State Of U.P.Through Prin.Secy. Basic Education And Ors.

**Counsel for Petitioner :-** Avdhesh Shukla,Pramod Kumar Verma

**Counsel for Respondent :-** C.S.C.,Ajay Kumar

(20) **Case :-** SERVICE SINGLE No. - 8191 of 2020

**Petitioner :-** Himani Gupta And Ors.

**Respondent :-** State Of U.P.Through Secy. Basic Education And Ors.

**Counsel for Petitioner :-** Amrendra Nath Tripathi

**Counsel for Respondent :-** C.S.C.,Ajay Kumar

(21) **Case :-** SERVICE SINGLE No. - 8193 of 2020

**Petitioner :-** Sudhir Kumar

**Respondent :-** State Of U.P.Through Addl.Chief Secy.Basic Education And Ors

**Counsel for Petitioner :-** Saryu Prasad Tiwari

**Counsel for Respondent :-** G.A.

(22) **Case :-** SERVICE SINGLE No. - 8198 of 2020

**Petitioner :-** Milan Singh & Others

**Respondent :-** State Of U.P. Thru. Prin. Secy. Basic Edu. Lko & Others

**Counsel for Petitioner :-** O.P. Tiwari

**Counsel for Respondent :-** C.S.C.,Ajay

(23) **Case :-** SERVICE SINGLE No. - 8200 of 2020

**Petitioner :-** Akhilashwer Pratap Mishra & Others

**Respondent :-** State Of U.P. Thru. Prin. Secy. Basic Edu. Lko & Others

**Counsel for Petitioner :-** I.M. Pandey Ist,Pratyush Chaube

**Counsel for Respondent :-** C.S.C.,Ajay

(24) **Case :-** SERVICE SINGLE No. - 8205 of 2020

**Petitioner :-** Raj Kumar Mishra & Others

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Basic Edu. Lko & Ors

**Counsel for Petitioner :-** Onkar Singh,Nand Kishore Patel,Satya Narayan Yadav

**Counsel for Respondent :-** C.S.C.,Ajay

(25) **Case :-** SERVICE SINGLE No. - 8256 of 2020

**Petitioner :-** Deepshikha & Others

**Respondent :-** State Of U.P. Thru. Secy. Basic Education Lko. & Others

**Counsel for Petitioner :-** Amit Kr. Singh Bhadauriya

**Counsel for Respondent :-** C.S.C.,Ajay

(26) **Case :-** SERVICE SINGLE No. - 8258 of 2020

**Petitioner :-** Rachna Mishra & Others

**Respondent :-** State Of U.P. Thru. Secy. Basic Edu. Deptt. Lko & Others

**Counsel for Petitioner :-** Amit Kr. Singh Bhadauriya

**Counsel for Respondent :-** C.S.C.,Ajay

(27) **Case :-** SERVICE SINGLE No. - 8279 of 2020

**Petitioner :-** Shailini Yadav

**Respondent :-** State Of U.P. Thru Addl. Chief Secy. Basic Education & Ors.

**Counsel for Petitioner :-** Shri Narayan Pandey,Sachin Pratap Singh

**Counsel for Respondent :-** C.S.C.,J.B.S. Rathour

(28) **Case :-** SERVICE SINGLE No. - 8280 of 2020

**Petitioner :-** Saroj Pal & Ors.

**Respondent :-** State Of U.P. Thru Prin. Secretary Basic Education & Ors.

**Counsel for Petitioner :-** Avdhesh Shukla

**Counsel for Respondent :-** C.S.C.

(29) **Case :-** SERVICE SINGLE No. - 8145 of 2020

**Petitioner :-** Shobha Devi

**Respondent :-** State Of U.P.Thru Addl.Chief Secy.Basic Education Lko & Ors.

**Counsel for Petitioner :-** Ajay Sharma

**Counsel for Respondent :-** C.S.C.

(30) **Case :-** SERVICE SINGLE No. - 8146 of 2020

**Petitioner :-** Suresh Kumar Sonkar & Anr.

**Respondent :-** State Of U.P.Thru Addl.Chief Secy.Basic Education Lko & Ors.

**Counsel for Petitioner :-** Alok Kr. Misra,Shobh Nath Pandey

**Counsel for Respondent :-** C.S.C.

(31) **Case :-** SERVICE SINGLE No. - 8151 of 2020

**Petitioner :-** Vijaya Yadav

**Respondent :-** State Of U.P.Thru Addl.Chief Secy.Basic Education Lko & Ors.

**Counsel for Petitioner :-** Ajay Pratap Singh

**Counsel for Respondent :-** C.S.C.

**Hon'ble Alok Mathur,J.**

This bunch of writ petitions have been heard together as they have raised common challenge to the result of "Assistant Teacher Recruitment Examination"-2019 dated 13/05/2020 declared by the Examination Regulatory Authority, Uttar Pradesh. The said examination has been embroiled in quagmire of litigation since its very inception, and fresh controversies have erupted at each stage of the process which have engaged the attention of the High Court as well as the Hon'ble Supreme Court.

The grievance raised by the petitioner's in the present set of writ petitions is with regard to the "final answer key" issued by the respondent, after inviting objections. The petitioners have vehemently submitted and demonstrated that certain questions are on the face of it erroneous, certain answers are also incorrect and some questions are extremely ambiguous and a few of them are debatable and argumentative and therefore have multiple correct answers. It has been submitted that the benefit of the marks of such of these questions are liable to be awarded to the petitioner's, and if so awarded, they would cross the threshold qualifying marks and gain entry to the next round of the selection process.

The counsel's appearing for on behalf of the petitioners have pressed the application for interim relief for the stay of the result of Assistant Teacher Recruitment Examination-2019 dated 13/05/2020 is the respondent no.4 and further to the

selection/appointment process for the post of assistant teacher in the final disposal of the writ petition. They have submitted the urgency in the matter is the counselling will commence from 03/06/2020.

The state of Uttar Pradesh accorded permission for filling up 68,500 posts of Assistant Teachers for Junior Basic Schools run by the Board of Basic Education in State of U.P. by conducting A.R.T.E-2018. According to the guidelines issued in the Government order it was provided that 45% marks would be required for qualifying the said examination for a candidate belonging to general and OBC category, while 40% marks were required for a candidate belonging to the scheduled caste/Scheduled Tribes category. The 1<sup>st</sup> examination known as the Assistant Teacher Recruitment Examination-2018 was conducted on 27/05/2018 as per directions of the Hon'ble Apex Court in the case of **Annand Kumar Yadav** and the result of the said examination was declared on 13/08/2018.

Thereafter, the Government Order dated 01/12/2018 was issued for conducting the Assistant Teacher Recruitment Examination-2019 for filling up 69,000 vacancies for the post of Assistant Teachers. The said examination was to be held on 06/01/2019. According to the guidelines the examination was to be conducted by the Examination Regulatory Authority, Uttar Pradesh. The question paper would contain 150 questions all carrying equal marks and the subjects were also specified which would be Hindi, Sanskrit and English, Science, Mathematics, and Environment and Social Science (class XII level) and also Teaching skills, Child psychology, Information Technology life-skill management and attitude.

The said guidelines also contained a timetable spelling out the date of the advertisement, last date for filling up forms etc. The key dates of the examination were that the advertisement would be issued on 05/12/2018, and last date for submission of the forms was 22/12/2018. The examination was to be conducted on 06/01/2019 and the answer key was

to be declared on the website on 08/01/2019. In clause 17 of the said timetable provided that by 11/01/2019 objections could be made with regard to the answer key published by the respondents, pursuant to which, clause 18 provided that the objections would be referred to a subject specialist and their response would be elicited by 18/01/2019 pursuant to which the fresh answer key would be published on 19/01/2019 and the final result will be published on 22/01/2019.

The above provisions clearly indicates that the entire process of evaluation was designed to be transparent and the candidates had full opportunity to compare the answers submitted by them, with the standard/correct answers provided by the examining authority. There was further provision of submitting objections in case a candidate was of the opinion that either, the question was wrong or there was discrepancy in the answer, or on any other ground which was available to him. The respondents had indicated they were open to such objections and the same were liable to be referred to specialist, who would render their opinion on the objections and only thereafter the final answer sheets was to be published.

The second Assistant Teacher Recruitment Examination -2019(hereinafter referred to as ATRE 2019) was conducted on 06.01.2019 and vide Government Order dated 07.01.2019 in exercise of powers conferred under the 1972 Act and Rule 2(1) (x) of the 1981 Rules fixing minimum qualifying marks as 65% for general category and 60% for reserve category.

Sri Raghvendra Kumar Singh, Learned Advocate General assisted by Sri Ran Vijay Singh, Learned Chief Standing Counsel have filed a short counter affidavit raising certain preliminary objections with regard to the maintainability of the writ petition and have submitted that the petition is liable to be dismissed on the ground inter alia, of non-joinder and misjoinder of parties, contradictory reliefs having been claimed by the petitioner's, and also that the petitioners after having attempted the questions in the examination, then it is not open



for them to challenge the correctness of the same subsequently by means of a writ petition.

Dr L.P. Mishra learned counsel appearing in writ petition number 8056 of 2020 (SS) has submitted that the Assistant Teachers Recruitment Examination – 2019 is a nature of a pre qualifying examination wherein according to rule 14(1)(a) of the U.P. Basic Education (Teachers) Service Rules, 1981 General Category candidates obtaining 65% marks, and Candidates Belonging to Scheduled Castes and Scheduled Tribe obtaining 60% marks would be considered for selection.

With regard to the preliminary objection that all the successful candidates have not been made a party to the writ petition, it was submitted by Dr Mishra that in as much as the ATRE-2019 was an qualifying examination no right vested in the candidates who had obtained marks over and above the qualifying marks and therefore it was not necessary to make all the candidates who have obtained over and above the qualifying marks as parties to the writ petition.

He further submitted that he has made three candidates as respondents in the representative capacity and therefore the writ petition does not suffer from the vice of non-joinder necessary parties and the preliminary objection raised by the Learned Advocate General deserves to be rejected at the very outset.

In support of his contention is regarding maintainability he relied upon the judgement of the Hon'ble apex court in the case of ***Prabodh Verma v. State of U.P., (1984) 4 SCC 251*** and submitted that where in the selection process there are large number of candidates, the law does not mandate that all the affected persons have to be made a party to the petition, even if some persons are in period parties that would be sufficient compliance of law with regard to implement of necessary parties, and therefore a writ petition deserves to be entertained and heard on merits.

It was further submitted that as per the methodology adopted by the respondents where after declaration of the

provisional answer key, objections were invited and the respondents themselves with regard to three questions, objections of the candidates were duly accepted and accordingly one mark for each such ambiguous and incorrect question was awarded to all candidates. He submitted that in case the plea of the petitioner is accepted, then for each incorrect or ambiguous question of additional mark be awarded to the candidates. In such a situation, marks of all the candidates are liable to be increased if the petitioners are successful, and no mark of any candidate would be liable to be reduced, even those candidates who have already been declared to have said qualified in the said examination. In this view of the matter the candidates who have qualified in the examination cannot be said to be adversely affected by the outcome of the present writ petition, and therefore there was no necessity of making them parties in the instant writ petition.

With regard to the preliminary objection raised by the Learned Advocate General, that there are contradictory reliefs prayed for in the petition, it was submitted by Dr Mishra, learned counsel, that the perusal of the reliefs no. IV and VI would indicate that they are not at all contradictory, but complement each other, and even otherwise the Hon'ble court has full power and jurisdiction to mold the relief in the interest of Justice, and no such objection can be sustained at the behest of the state.

A perusal of the relief claimed by the petitioner's, would clearly indicate that they are not at all contradictory and also we agree by the argument that at the stage of final hearing the court has full power to mold the relief and therefore the petitioners cannot be nonsuited at the very threshold on such a ground.

It was further submitted by the counsel of the petitioner that merely because they had attempted the question paper, they cannot be precluded from challenging the same. Merely by attempting to answer the question paper, the candidates cannot be deemed to have acquiesced to the correctness of

the questions so as to preclude them from challenging the same, and principle of estoppel would not apply in the present case.

I find force in the arguments raised by the petitioner's. The question paper can be challenged only after a candidate has appeared in the examination and by no stretch of imagination can it be argued that any candidate would give up his future prospects only on a possibility of a future successful spell of litigation. He has a right to challenge the wrongful inclusion of the questions on various grounds available to him.

I have considered the preliminary objection raised by the learned Advocate General with regard to the maintainability of the writ petition. The basic format of the scheme of examination of the Assessing Teacher Recruitment Examination – 2019 will have to be considered in order to determine as to whether any or all of 1,46,060 successful candidates should have been impleaded as opposite party or the challenge can be maintained only by impleading a few of them in their representative capacity.

The selection of Assistant Teachers as per the 1981 rules is made in accordance with "quality points" that may be obtained by the applicant computed in accordance with appendix-I to the 1980 rules. The total marks include proportional marks in relation to the marks obtained by the candidate in High School, Intermediate, Graduation, BTC Training, Assistant Teacher Recruitment Examination, and additional weightage is given to the Shiksha Mitra in accordance with the directions given by the Hon'ble apex court.

Therefore, merely obtaining the qualifying marks does not entitle a candidate for being appointed as an assistant teacher. It is true that a person has to obtain minimum marks as prescribed in the Assistant Teacher Recruitment Examination to qualify for appointment, but the final merit list is to be prepared on certain other additional academic qualifications as prescribed. In the peculiar facts of the

present case, after due consideration of the arguments by the parties, I am of the considered opinion that merely qualifying the Assistant Teacher Recruitment Examination does not bestow any indefeasible right in favour of the “qualified candidates” for appointment as Assistant teacher.

With regard to the controversy at hand, the petitioners have also alleged that certain questions and answers were either incorrect or ambiguous or out of syllabus, and in case this court returns a finding in favour of the petitioner, then according to the prayer made in the writ petition, the petitioners can validly claim one additional mark for every incorrect or ambiguous question, thereby all or the effected candidates would be granted the benefit irrespective of the fact as to whether they were awarded marks above the qualifying marks, or fell short of the qualifying marks. In sum and substance, in case the petitioner succeeds, then the candidates would be liable for additional marks, and in no eventuality the marks of any candidate would be liable to be reduced.

In such a situation, even if the petition succeeds, then the successful candidates/qualified candidates will not be adversely affected, and therefore taking into consideration the fact that challenge has been made by the petitioner’s only to the legality/validity of the answer key wherein certain questions set up by the examining authority who is responsible is answerable, on the other hand the successful/qualified candidates would not be adversely affected and are therefore not necessary parties to the present proceedings,

The Hon’ble Supreme Court in the case of ***Prabodh Verma v. State of U.P., (1984) 4 SCC 251*** while considering the issue in question have held:-

*28. The real question before us, therefore, is the correctness of the decision of the High Court in the Sangh case [1979 All LJ 178] . Before we address ourselves to this question, we would like to*

*point out that the writ petition filed by the Sangh suffered from two serious, though not incurable, defects. The first defect was that of non-joinder of necessary parties. The only respondents to the Sangh's petition were the State of Uttar Pradesh and its concerned officers. Those who were vitally concerned, namely, the reserve pool teachers, were not made parties — not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. The matter, therefore, came to be decided in their absence. A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least by some of them being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties.*

Considering the scheme of the examination along with rule 14(1)a of the rules governing the present examination it is apparent that any person who qualifies Assistant Teacher Recruitment Examination – 2019 would not be entitled for an appointment as an Assistant Teacher and this has been clearly spelt out by the respondents themselves in the guidelines dated 01/12/2018 in clause 7 (2) which further states that qualifying the said examination would only make a candidate eligible for appointment.

It is also clear from the pleadings and also from the short counter affidavit filed by the respondents that where the questions were found to be incorrect or ambiguous, one additional mark was awarded to all the candidates coupled with the fact that opposite party number 5 to 7 have been impleaded in the representative capacity in the petition, the objection raised by the State is without merits and is rejected.

Having duly examined the contentions raised by the petitioners as well as the State I am of the considered opinion that the present writ petitions are maintainable at the instance of the candidates who had appeared in the said examination and are aggrieved by the final answer key, which according to them is based on wrongly evaluation of the question paper and even the so-called specialists have returned incorrect answers due to which they have suffered, and in case the wrong committed by them is not remedied by this court they would suffer irreparable loss and injury.

The objections raised by the learned Advocate General regarding the misjoinder of parties is also bereft of merits. Undoubtedly, all the candidates who have approached this court, have appeared in the Assistant Teacher Recruitment Examination-2019 and have attempted some or all of the questions, and they have not secured minimum qualifying marks. Some have fallen short by 1 mark, some by 2 and some by little more, and they all claim that had the respondents conducted the valuation of the question paper fairly and had they not inserted/evaluated the wrong questions, wrong answers, ambiguous questions as well as argumentative questions they would have obtained higher marks enabling them to qualify the said examination, and opportunity would have been granted to them to proceed to the next level of recruitment.

The petitioners have raised a common challenge to the answer key published by the respondents. They have raised common issues, even though some petitioners have challenged a certain group of questions while others have

challenged certain other questions, but this in itself would not be such a distinguishing feature so as to disentitle them from filing a common petition, inasmuch as the relief claimed by them is the same.

The full bench judgement of this Court in the case of **Umesh Chand Vinod Kumar vs Krishi Utpadan Mandi Samiti** and others reported in 1984 (2)LCD 10 where it has been held that “a single petition under Article 226 of the Constitution by more than one petitioner, not connected with each other as partners or any other legally subsisting jural relationship, is maintainable where a right to relief arises from the same act or transaction and there is a common question of law or fact where though the right of claim does not arise from the same act or transaction, the petitioners are jointly interested in the cause or causes of action.”

In this regard it is necessary to consider certain judgments of the Hon'ble Apex Court where there has been a challenge to the answer key and where the answer key has been duly considered to be incorrect and wrong by the courts or the expert bodies, then the benefit of the same has been given to all the candidates appearing in the said examination and relief cannot be limited to the persons approaching the court. The final tally would only be on the basis of the final answer key, and it is not possible to award marks to one set of candidates on the basis of one answer key, while awarding another set of candidates marks based on the answer key approved after judicial determination. All the candidates are therefore would be liable to be awarded marks on the basis of the answer key as determined after the judicial pronouncement. On the same reasoning, another objection raised by the Advocate General that candidates who have made objections to the particular question, would only be entitled to approach this court to challenge the validity of the said question/answer. This objection also deserves to be dismissed as the candidate who has appeared in the said examination can claim to be aggrieved by the answer key

which according to him may contain incorrect questions and answers. Such a candidate has sufficient locus to approach this Court for redressal of his grievance and he cannot be precluded from raising a ground which was not taken by him in the objections preferred at the earlier stage of the exam.

In any view of the matter looking to the large number of candidates who have approached this court, where doubt has been raised with respect to several questions. All the said questions were subjected to scrutiny in pursuance to the objections filed by one or more candidates. The final answer key has been published only after obtaining report of the experts. It is immaterial whether any particular candidate approaching this court had raised a specific objection after publication of the provisional answer key regarding to any questions referred by him in his writ petition or not.

The powers under Article 226 of the Constitution of India are wide enough to entertain a claim by an aggrieved person in case the Court comes to a conclusion that any of the rights guaranteed in part III of the Constitution have been violated. Undoubtedly the State itself has made the scheme of the examination in such a manner so as to ensure complete transparency and fairness, and therefore the candidates feeling themselves to be aggrieved in the manner of evaluation of the answer sheets have a right to legal remedies which cannot be denied.

This takes us directly to be set of questions which according to the petitioner's have certain infirmity due to which they have submitted that the same should be declared to be wrong and incorrect and the benefits of the marks with regard to these questions should be awarded to them.

At this stage the Learned Advocate General has drawn the attention of this court ***Ran Vijay Singh v. State of U.P.*, (2018) 2 SCC 357 : 2017 SCC OnLine SC 1448 : (2018) 1 SCC (L&S) 297 at page 368**



**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;*

He has vehemently submitted that the court should not embark on an exercise to re-evaluate the questions as the courts do not have the expertise in the matter. In response to the aforesaid submission it was submitted by the counsel for the petitioners that if they are able to demonstrate ex facei that the question paper has been wrongly evaluated then this court would proceed in a manner as was done by the Hon'ble Supreme Court in the case of ***Bihar Staff Selection Commission and Others vs Arun Kumar and others 2020 SCC online 1867*** where the Supreme Court has held:-

**"20.** *This court reiterates that the scope of judicial review under Article 226 in matters concerning evaluation of candidates-particularly, for purpose of recruitment to public services is narrow. The previous decisions of the court<sup>3</sup>; have constantly underscored that in the absence of any provision for reevaluation of answer sheets, judicial review should be rarely exercised - preferably under exceptional*

circumstances. A three judge Bench of this court, in *Pramod Kumar Srivastava (supra)* held as follows:

*”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 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.”*

*In Khushboo Shrivastava (supra) too, a similar view was echoed:*

*”7. We find that a three-Judge Bench of this Court in *Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, Patna (supra)* has clearly held relying on *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth (supra)* that in the absence of any provision for the re-evaluation of answers books in the relevant rules, no candidate in an examination has any right to claim or ask for re-evaluation of his marks. The decision in *Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, Patna (supra)* was followed by another three-Judge Bench of this Court in *Board of Secondary Education v. Pravas Ranjan Panda, (2004) 13 SCC 383* in which the direction of the High Court for reevaluation of answers books of all the examinees securing 90% or above marks was held to be unsustainable in law because the regulations of the Board of Secondary Education, Orissa, which conducted the examination, did not*

make any provision for reevaluation of answers books in the rules.

8. In the present case, the bye-laws of the All India PreMedical/Pre-Dental Entrance Examination, 2007 conducted by the CBSE did not provide for re-examination or re-evaluation of answers sheets. Hence, the Appellants could not have allowed such reexamination or re-evaluation on the representation of the Respondent No. 1 and accordingly rejected the representation of the Respondent No. 1 for re-examination/re-evaluation of her answer sheets. The Respondent No. 1, however, approached the High Court and the learned Single Judge of the High Court directed production of answer sheets on the Respondent No. 1 depositing a sum of Rs. 25,000/- and when the answer sheets were produced, the learned Single Judge himself compared the answers of the Respondent No. 1 with the model answers produced by the CBSE and awarded two marks for answers given by the Respondent No. 1 in the Chemistry and Botany, but declined to grant any relief to the Respondent No. 1. When Respondent No. 1 filed the LPA before the Division Bench of the High Court, the Division Bench also examined the two answers of the Respondent No. 1 in Chemistry and Botany and agreed with the findings of the learned Single Judge that the Respondent No. 1 deserved two additional marks for the two answers. In our considered opinion, neither the learned Single Judge nor the Division Bench of the High Court could have substituted his/its own views for that of the examiners and awarded two additional marks to the Respondent No. 1 for the two answers in exercise of powers of judicial review under Article 226 of the Constitution as these are purely academic matters. This Court in *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth* (supra) has observed:

... As has been repeatedly pointed out by this Court, the Court should be extremely reluctant to substitute its own views

*as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded....*

*9. We, therefore, allow the appeal, set aside the impugned judgment of the learned Single Judge and the Division Bench of the High Court and dismiss the writ petition. There shall be no order as to costs. We are informed that the first Respondent was admitted to the MBBS Course subsequently. If so, her admission in the MBBS Course will not be affected.”*

*21. The decision in Ran Vijay Singh (supra) n.2), after a review of all previous decisions, held as follows:*

*”30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are: (i) If a statute, Rule or Regulation governing an examination permits the reevaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it;*

*(ii) 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;*

*(iii) The Court should not at all re-evaluate or scrutinize the answer sheets of a candidate-it has no expertise in the matter and academic matters are best left to academics;*

*(iv) The Court should presume the correctness of the key answers and proceed on that assumption; and (v) In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.*

XXXXXXXXXXXXXXXXXXXX

*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.”*

Therefore, only with a view to form a prima facie opinion with regard to the contentions raised by the petitioner's, the submission regarding infirmity in the question paper deserves to be examined by this court, and therefore a limited scrutiny has to be being undertaken so as to determine the fate of the writ petitions, as well is further course of action required in this regard.

Question number 143 of the booklet “D” was examined by this court. Question 143 reads as under:-

143. “शैक्षिक प्रशासन उपयुक्त विद्यार्थियों को उपयुक्त शिक्षकों द्वारा समुचित शिक्षा प्राप्त करने योग्य बनाता है जिससे वे उपलब्ध साधनों का उपयोग करके अपने प्रशिक्षण से सर्वोत्तम को प्राप्त करने में समर्थ हो सकें” यह परिभाषा दी गयी है

- (1) एस० एन० मुखर्जी द्वारा
- (2) कैम्बेल द्वारा
- (3) वेलफेयर ग्राह्य द्वारा
- (4) डा० आत्मानंद मिश्रा द्वारा

143. “Educational Administration provides appropriate education to the appropriate student by appropriate teacher by which the can able to become the best by using available maximum resources” This definition is given by

- (1) S.N Mukherjee
- (2) Cambell
- (3) Welfare Graha
- (4) Dr Atmanand Mishra

The answer key issued by the respondents has given the correct answer as (3) Welfare Graha. The objections were referred to a specialist as submitted by the State and in the final answer key (3) has been maintained to be the correct answer.

It has been submitted that the name of educationist who gave the said definition is Graham Belfour while in the options to the said

question the name of Graham Belfour is missing and the respondents have declared Welfare Graha to be the correct answer.

It is further submitted that even the quotations given in the Hindi version is different from the English version, and the quotations is in itself incorrect when compared with the actual quotation which has been duly annexed by the petitioner. It was submitted that the question is erroneous, the correct answer is clearly not the answer as provided in the final answer key and therefore this question deserves to be deleted at the benefit of the same is liable to be given to the candidates.

Learned Advocate General on the other hand supported the final answer key. He agreed that the author of the quotation is Graham Belfour, but submitted that the candidates should have marked (3) at the correct answer as (1), (2) and (4) were clearly not the correct answers and using the method of deduction the candidate of ordinary prudence should have marked (3) at the correct answer.

It has also been agreed by the State that option given at (3) is not the author of the quotation as provided in the question 143. During the course of the arguments certain photocopies of papers were supplied to the court which were supposed to be the expert opinion sought by the examining authority after receipt of the objections to the answer key. A perusal of the report indicates that the same is totally unsatisfactory. None of the experts have given any sufficient reason in support of their decision but in the most cryptic manner in half a sentence given their opinion. A perusal of the expert report leaves much to be desired as to the manner of the functioning in such an important matter. Expert opinion cannot be an eyewash but serves a salutary purpose as per the scheme of the examination by the respondents themselves. In case the purpose was to give an opportunity to the candidates to ventilate their grievance, then the objections preferred by them deserve to be at least considered adequately by the subject specialist to whom they were referred. The expert opinion upholding (3) as the correct answer gives a fair idea about the manner and the quality of expert opinion sought by the respondents.

The next question which was submitted for the consideration of this court was question number 39 of "booklet D". The said question was as follows:-

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|--|--|
| 39. 'नाथपंथ' नामक सम्प्रदाय के प्रवर्तक कौन थे ? | 39. Who was the originator of cult named named "Nath Panth"? |
| (1) मत्स्येन्द्रनाथ                              | 1. Matsyendranath  |
| (2) गोरखनाथ                                      | 2. Gorakhnath  |
| (3) श्रीनाथ                                      | 3. Shri Nath   |
| (4) वासव   | 4. Vasav   |

According to the answer key the correct answer was alternative (1). According to the petitioner's alternative (2) is the correct answer

The counsel of the petitioner's have submitted that the various authors have given different answers. In some authoritative text Matsyendranath has been shown to be the originator of Nath Cult while in some Gorakhnath has been shown to be the originator. In support of the contentions they have enclosed and extract of a book written by Dr Baccha Singh where in the chapter relating to Nath Panth it has been indicated that Gorakhnath was the "Pravartak" of the Nath cult. To further canvas the points they also enclosed a extract of a book written by one Manoj Kumar Mishra where both Matsyendranath and Gorakhnath have been indicated to be "Pravartak" of the Nath Panth.

A copy of the book published by Uttar Pradesh Basic Siksha Parishad for class VI has also been enclosed wherein in the chapter pertaining to Guru Gorakhnath it has been mentioned that Gorakhnath was a disciple of Matsyendranath and he is believed to be the "Abhikarta" of Nath Panth.

It has further been submitted that there is clear discrepancy, and ambiguity bordering conflict in the Hindi and English version of the said question in the English version the word "originator" has been used while in the Hindi version "pravartak" has been used.



Relying on various dictionaries and books of translation it was submitted that there is a clear difference in meanings of both the words leading to utter confusion in the minds of the candidates and submitted that such ambiguity has to be avoided in any fair objective competitive examination.

Another extremely thought-provoking and strong argument has been raised by the petitioner's with regard to the question under consideration. It has been submitted that the same question was included in the TGT examination in a booklet series "A" as question number 120 which is as follows:

120. नाथ सम्प्रदाय के प्रवर्तक इनमें कौन थे ?

(A) गोरखनाथ

(B) महानाथ

(C) चर्पटनाथ

(D) नेमिनाथ

A perusal of the aforesaid question indicates that the correct alternative according to the respondents in the ATRE-2019 is "Matsyendranath" while in the TET question paper "Matsyendranath" is not even an option in the alternative answers , and "Gorakhnath" is the correct answer according to the answer key. It is extremely disturbing to notice that the same question is liable to be answered in two different ways in two different examinations, and this clearly militates against fairness and transparency and clearly does not demonstrate any fair degree of application of mind by a responsible person well-versed in the subject who has prepared the question paper.

The petitioner's have produced overbearing evidence in their support to contend that certain questions as highlighted by them in their petitions were incorrect or wrong answers, marked as correct or the answers were ambiguous, and therefore there is an imperative

need for a suitable direction from this court for revaluation after seeking proper advice from a panel of experts.

Learned Advocate General on the other hand submitted that the objections of the candidates were referred to the expert committee which has returned a finding that the originator of Nath Panth was Matsyendarnath and in case of a dispute or a difference of opinion then a presumption lies in favour of the examining authority.

Considering the aforesaid controversy with relation to question number 39 it is clear that the petitioner has produced several authorities which indicates that Gorakhnath was the “pravartak” of the Nath cult. Even the authoritative text published by the respondent themselves gives a strong presumption in favour of the petitioner’s about their contention with regard to the correctness of challenge to the validity of question no. 39. The expert report is woefully inadequate. Considering the arguments of both the sides and the material placed by the petitioner certainly the claim of the petitioner’s cannot be rejected in a casual and cavalier manner as seems to have been done by the expert report and deserves a fair determination. With regard to question no.39 the least which can be said is that it certainly deserves a relook where the authoritative texts as produced by the petitioner’s can be duly examined in a fair, independent and transparent manner.

With regard to question no. 70 of booklet “D” it was submitted that the same contains more than one correct answer and therefore this question also deserves to be set aside and the marks should be awarded to the candidates. Question number 70 is as follows:-

70. निम्नलिखित में से कौन सा एक सामाजिक प्रेरक है ?

- (1) आत्मगौरव
- (2) गौरव
- (3) भूख
- (4) प्यास

70. Which of the following is a social motive?

1. Self pride
2. Love
3. Hunger
4. Thirst

It has been submitted by the counsel of the petitioner that the word motivation is derived from the word motive which means of need, desire, want or drives within the individuals. As per the definition of “Social Motivation” given in NCRET book it has been indicated that social motivation is learned in an environment of society itself like-efficient, love, satisfaction, knowledge, leadership etc. In support of their contention, they have enclosed a copy of the book published by State Education Council, Uttar Pradesh.

In the answer key published by the respondents alternative (1) has been indicated to the correct answer. The claim of the petitioner’s is evident from the material placed by them as mentioned in the books published by the respondent themselves.

Learned Advocate General has submitted with regard to all the questions which have more than one correct answer, that in this regard in light relied upon the judgement of the Hon’ble apex court in the case of **Ran Vijay Singh vs State of U.P (2018)2 SCC 357** wherein it has been held that in case of any doubt in the correctness of the answers, the benefit to the examining authority, and therefore submitted that in case there are more than one correct answers, then there is no necessity of interference by this court or any other authority and the question is liable to be maintained as correct, and the claim of the candidates was also rejected.

Sri H.G.S. Parihar, learned Senior Advocate a sale the correctness of question number 131 which was as follows :-

<p>131. इनमें से भारतीय संविधान सभा के अध्यक्ष कौन थे</p> <p>(1) डॉ० सच्चिदानन्द सिन्हा</p> <p>(2) डॉ० राजेन्द्र प्रसाद</p> <p>(3) डॉ० बी० आर० अम्बेडकर</p> <p>(4) प्रो० एच० सी० मुखर्जी</p>	<p>131. Who among the following was the first President of the Constituent Assembly of India?</p> <p>1. Dr. Sachidananda Sinha</p> <p>2. Dr Rajendra Prasad</p> <p>3. Dr BR Ambedkar</p> <p>4. Professor H.C Mukherjee</p>
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It was submitted by Shri Parihar that option number 1 has been shown to be the correct answer in the final answer key, despite the fact that all the authoritative texts as well as the official website of Lok Sabha indicates that Dr Rajendra Prasad was the first President of the Constitution assembly, and Dr Sachidananda Sinha was appointed as a temporary chairman to conduct the proceedings of the first day of the Constitution assembly. In support of his contention, also placed on record is an extract of a book of SCRT prescribed for class VI which clearly shows that Doctor Rajendra Prasad was the 1<sup>st</sup> President of the Constituent assembly.

He further drew the attention of the Court to a question paper where the same question was put up for the 2011 PCS(Judicial) examination and question number 2 was as follows:-

2. Who was the 1<sup>st</sup> President of the constituent assembly of India?

- (a) Dr BR Ambedkar                      (b) Dr K.N Katju  
(c) Dr Rajendra Prasad                (d) C Rajagopalachari

The answer key which was published indicated (c) as the correct answer. The contention raised by the petitioner with regard to question number 131 merits serious consideration. The petitioners have submitted that Dr Rajendra Prasad was the 1<sup>st</sup> President of the Constituent assembly by adducing authoritative texts, material from the website of Lok Sabha. The same question was also included in a very important examination of PCS(Judicial) for the year 2011 where the correct answer was marked as Dr Rajendra Prasad and it is further pertinent to note that Dr Sachidananda Sinha was not even an option. The expert report is a cryptic reply about the mention of the book written by Subhash Kashyap. They have not even bothered to write a full sentence in relation to the question, and have virtually abdicated the duty cast on them.

That Sri Sudeep Seth learned Senior Advocate drew the attention of the court to question number 137 of booklet series "D" which is as follows:-

<p>137. पढ़ने लिखने की अक्षमता है</p> <p>(1) ऑटिज्म</p> <p>(2) डिस्लेक्सिया</p> <p>(3) डिस्पेक्सिया</p> <p>(4) एप्रेक्सिया</p>	<p>137. Disability to read and write is</p> <p>1. Autism</p> <p>2. Dyslexia</p> <p>3. Dyspraxia</p> <p>4. Apraxia</p>
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The answer key shows the answer is alternative (2) i.e dyslexia which according to him is contrary to the answer provided in the book Bal Vikas avam Siksha Shastra according to which dyslexia is related with reading disability and writing disability is known as dyspraxia. During the course of the arguments various meaning in the dictionary have been shown with regard to the meaning of the words as stated above.

It was urged that the UPTET examination conducted by the respondents themselves, and stated that in question no. 18 which is as follows:-

18. Dyslexia is related with:-

1. problem in writing
2. problem in reading
3. problem in calculating
4. language disorder

the answer key indicates the correct answer to be alternative (2) i.e problem in reading.

It is evident from the material placed before this court about the dictionary meaning of the words occurring in the said question that there is force in the arguments of the petitioner. Further, the same

question appearing in an earlier examination of UPPTTE a different result was arrived at. All these discrepancies which have been pointed out by the candidates in the various petitions deserves to be reconciled, and process of recruitment, should not only states that it is fair, but it should be reflected from the procedure adopted by the examining body. In the present instance, the procedure prescribed in the guidelines would indicate that the procedure was meant to be extremely fair and transparent, but in its actual working as observed above, the fairness is clearly lacking.

That similarly number of other questions and answers were placed before this court by the counsel appearing for the respective candidates including question number 130, 131. Once it is settled proposition of law that this court cannot substitute its opinion with that of the expert body with regard to the correctness of the answers to the respective questions posed to the candidates in the examination, then only with a view to prima facie satisfy about the claim of the candidates a limited enquiry was conducted to examine the claims of the petitioners as dealt with hereinabove.

It is correct that in case of doubt with regard to any question the benefit should go to the examining authority rather than to the candidate, but certain questions/answers have been examined by this court just to test the claim of the candidates, whether the same are frivolous or merits any serious consideration , inasmuch as the fate of large number of candidates would be affected. The material placed by the petitioner's does not leave much room for doubt, and clearly question number 143, 39,137,130, 131 which on the face of it seem to be incorrect/debatable and deserve revaluation. The petitioners have clearly made out a case for interference by this Court under Article 226 of the Constitution of India.

The facts which have been placed before this court with regard to certain questions posed to the candidates for the Assistant Teacher Recruitment Examination-2019 clearly indicate that any reasonable person of ordinary prudence would have difficulty in either understanding the questions or understanding the answers and in

either situation would be unable to point out the correct answer as per the examining authorities.

No reason is forthcoming from the respondents where identical or nearly identical questions have been put up in other examinations and different answers have been marked as correct,.

It has been submitted that number of candidates are falling short of 1 or 2 etc. marks, and had it not been for the incorrect question/answer then they would also have been entitled to participate in the next round of the selection process.

In the case of ***Bihar Staff Selection Commission and others Vs Arun Kumar and others, 2015 SCC Online SC 1868*** the Hon'ble Apex Court had deprecated the finding recorded by the High Court with regard to the correctness of the answer key, but had itself referred the answers to a panel of experts, and based on the recommendation directed the revision in the results of the examination and only thereafter the final result was published.

The petitioners before us has also approached this court at the earliest, after declaration of the answer key and before the next stage of selection has taken place. It has been informed by the counsel for the parties that as per the approved timetable dated 13.05.2020 given by the respondents the counselling/handing of appointment letters is to commence on 03/06/2020. In the counselling only the candidates who had obtained marks over and above the qualifying marks would be allowed to participate. The petitioners here in who have not obtained the qualifying marks would not be allowed to participate and according to them they have not qualified only because of the infirmities in the answer key some of which have been highlighted hereinabove.

The Hon'ble Supreme Court in the case of ***Ran Vijay Singh vs State of U.P (2018)2 SCC 357*** has also stated in paragraph 18 of the said judgement *that a complete hands-off approach of no interference approach was neither suggested in Mukesh Thakur not has it been suggested in any of the decision of this court-the case of the writ over the years and admits of interference in the result of an*

*examination but in rare and exceptional situations and to a very limited extent.*

Even in the case of ***Kanpur University v. Samir Gupta, (1983) 4 SCC 309*** at page 316 the Hon'ble apex court has held:-

*"16. Shri Kacker, who appears on behalf of the University, contended that no challenge should be allowed to be made to the correctness of a key answer unless, on the face of it, it is wrong. We agree that the key answer should be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by an inferential process of reasoning or by a process of rationalisation. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well-versed in the particular subject would regard as correct. The contention of the University is falsified in this case by a large number of acknowledged textbooks, which are commonly read by students in U.P. Those textbooks leave no room for doubt that the answer given by the students is correct and the key answer is incorrect."*

We have also examined the judgment of the Hon'ble Supreme Court in the case of High Court of ***Tripura vs Tiratha Sarathi Mukherjee*** in civil appeal number 1269 of 2019 decided on 06/02/2019 wherein after considering number of judgements in this regard the Supreme Court has held that the court can permit reevaluation inter alia if it is demonstrated very clearly without any inferential process of reasoning or by a process of rationalisation and only in rare and exceptional cases that a material error has been committed.

A bare perusal of the questions examined by this court leave no room for doubt that the petitioners have a prima facie case with regard to the fact that certain answers as per the final answer key are clearly incorrect. With regard to some questions as discussed above it has clearly been demonstrated that the same questions were also included in certain other examinations, where a different answer was held to be correct. Some of these examinations were conducted by



the respondent themselves. Now in the present set of petitions the candidate have assailed the final answer key prepared on the opinion of the experts. As noted above the experts have not lived up to their reputation and have submitted a cryptic and unreasoned opinion which cannot at any stretch of imagination be said to be an expert report. Probably, in the said circumstances despite the direction for the Court the said report in its entirety was not filed by the respondents.

In the present case the Court have examined certain questions as stated above and I am of the considered opinion that there has been a material error in evaluation of the question paper due to which a large number of candidates are liable to suffer for no fault of theirs. The State in the counter affidavit while agreeing that there may be certain questions which may be argumentative which may have more than one correct answer, but maintained that this Court need not interfere, as much as the presumption should go in favour of the examining authority.

Once it is clear that there could be more than one correct answers in an objective type question where several options have been provided by the examining authority, the candidate is required to select only one correct answer, then it is incumbent, necessary and mandatory that there in fact should only one correct answer which could be selected by the candidate, otherwise, he would liable to for additional marks for the negligence of the examining authority and he need not be made to suffer. In an objective of type question paper there is no scope for any deduction or inference nor is there any provision for giving reasons for the answer therefore argumentative questions clearly have to be avoided and have no place in an objective question paper.

In light of the above, I am clearly of the opinion that a case for interim relief has been made out by the petitioners. The notification dated 08/05/2020 whereby the final answer key has been issued is hereby stayed, and all proceedings pursuant to notification dated 08/05/2020 are also stayed until next date of listing.

In the aforesaid circumstances, I deem it appropriate to refer all the objections raised by the candidates pursuant to publication of the

provisional answer key to a panel of experts. The examining authority after receiving the report of the expert/subject specialists are directed to file the same before this Court on affidavit.

Looking into the magnitude and the scale of the examination and the number of persons whose future is at stake, I deem it appropriate to refer the provisional answer key along with the objections to experts to be appointed by the Secretary, University Grants Commission, New Delhi. The Examination Regulatory Authority, Uttar Pradesh is directed to send the question paper, provisional answer key along with the objections received from the candidates to the Secretary, University Grants Commission, New Delhi within a period of 10 days from today. On receipt of the papers by the Secretary, University Grants Commission, he shall proceed to appoint a panel of experts within one week, from amongst persons who have adequate knowledge in the subjects in relation to which opinion has been sought. The experts are required to give their opinion within a period of 2 weeks from the date of receipt of the papers and, therefore, the Secretary University Grants commission, New Delhi is directed to submit the expert opinion to the Examination Regulatory Authority of Uttar Pradesh who shall bring he same on record by filing an affidavit before this Court .

Issue notice to respondent's number 5, 6 and 7. The counsel for the petitioner is directed to take steps within a period of 10 days from today. The respondents shall have 3 weeks to file a counter affidavit. List this case on 12 July.

**Order Date :- 03.06.2020**

**(Alok Mathur, J.)**

A. Verma/RKM