

UTTAR PRADESH SUBORDINATE SERVICE SELECTION COMMISSION & ANR. A

v.

BRIJENDRA PRATAP SINGH & ANR.

(Civil Appeal No. 7720 of 2021) B

DECEMBER 14, 2021

[K. M. JOSEPH AND  
PAMIDIGHANTAM SRI NARASIMHA, JJ. ]

*Service Law: Examination held for the post of Gram Panchayat Adhikari – Awarding of marks – Advertisement issued for filling up the post of Gram Panchayat Adhikari – Examination for said post took place on 21.02.2016 – In Examination, one of the question was asked about the name of the Panchayati Raj Minister of State in which option ‘B’ was ‘Kailash Yadav’ – However, Minister for Panchayati Raj of State ‘Kailash Yadav’ passed away on 09.02.2016 i.e. few days prior to examination – After the release of answer key, appellant Commission decided that the candidates who chose option ‘B’ as correct answer or did not mark any option for the said question be awarded 01 (one) mark and no action was required in respect of the candidates who chose option ‘A’, ‘C’, ‘D’ of this question – Respondent-candidate, who offered option ‘A’, challenged the decision of the Commission by filing writ petition before High Court – Division Bench directed the appellant either to delete the said question or award marks to respondent – Instant appeal filed by Commission – Held: The decision of the appellant commission to award marks to those who answered option B or did not mark any option is rationale – Respondent represented those section of candidates who gave an answer which was not correct at any point of time – Distinction drawn between the categories by Commission cannot be characterised as palpably arbitrary – Appellant made out a case for interference.* C D E F G

Allowing the appeal, the Court

**HELD: 1. This is a case where as on the date when the examination took place, actually none of the answers which were given as options were correct. On the date when the questions were, in fact, set, one answer was correct (Option ‘B’). It is this** H

A rationale which apparently has weighed with the appellant Commission in deciding to award marks to those who have answered by ticking Option 'B'. Those who did not answer any of the options, were given marks on the appellant's premise that none of the answers were right. The respondent, on the other hand, represented a section of those candidates who went ahead and gave an answer which was not correct by any yardstick, at any point of time. So, it is here that the Commission drew a distinction between the categories which would not therefore, in short, be characterised as palpably arbitrary. [Para 13][143-D-F]

C *Kanpur University Through Vice Chancellor v. Samir Gupta* (1983) 4 SCC 309 : [1984] 1 SCR 73 – referred to.

*Guru Nanak Dev University v. Saumil Garg and Others* (2005) 13 SCC 749 – held inapplicable.

#### Case Law Reference

D [1984] 1 SCR 73 referred to Para 9  
(2005) 13 SCC 749 held inapplicable Para 10

CIVIL APPELLATE JURISDICTION: Civil Appeal No.7720 of 2021.

E From the Judgment and Order dated 18.02.2021 of the High Court of Judicature at Allahabad in Special Appeal No.78 of 2019.

M. R. Shamshad, Arijit Sarkar, Ms. Nabeela Jamil, Niaz A. Farooqui, Zaki Ahmad Khan, Advs. for the Appellant.

F Piyush Singh, Aditya Parolia, Akshay Srivastava, Sourav Sharma, Rajesh Kumar, Gaurav Goel, Adarsh Upadhyay, Advs. for the Respondents.

The Judgment of the Court was delivered by

**K. M. JOSEPH, J.**

G (1) Leave granted.

(2) In June, 2015, the appellant issued an advertisement calling for applications for filling up the post of Gram Panchayat Adhikari. The Minister for Panchayati Raj, Department in the State of Uttar Pradesh,

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was one Shri Kailash Yadav. Examination, pursuant to the advertisement, was scheduled to take place on 21.02.2016. Shri Kailash Yadav passed away on 09.02.2016.

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(3) In the examination, question No. 46 was as follows:

“46. Presently who is the Panchayati Raj Minister in Uttar Pradesh?”

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A. Sh. Shivpal Yadav B. Sh. Kailash Yadav

C. Sh. Balram Yadav

D. Sh. Durga Prasad Yadav”

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(4) The answer key came to be published on 25.02.2016. As is clear from the decision of the Commission in regard to question No. 46, as on the date when the examination took place on 21.02.2016, Shri Kailash Yadav whose name is shown as the correct answer in terms of Option B had passed away and therefore, Option B would not be correct answer. In fact this was an un contemplated event as can be seen with the benefit of hindsight. The appellant Commission, accordingly, took the following decision on 29.03.2016:

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Sl. No.	Issue for consideration	Decision
01	Regarding objections raised by candidates against answer given in answer keys of the question paper of written examination of Gram Panchayat Adhikari (general Selection) Examination, 2015	<p>“During review/scrutiny of objections raised by the candidates against answer keys of written examination of Gram Panchayat Adhikari (General Selection) Examination-2015 held on 21 February, 2016 (Sunday), this face came to notice that the correct option of answer of one question (Set A-55, Set B-45, Set C-46 and Set D-63) is Shri Kailash Yadav, Panchayati Raj Minister of Uttar Pradesh State (Option-’B’), had Shri Yadav not expired on 09th February, 2016 i.e. prior to the date of written examination, i.e. 21 February, 2016.</p> <p>01 (one) mark is fixed for each question. In the position explained, after due consideration, it was unanimously decided that the candidates who have chosen option (‘B’) as correct answer or did not mark any option for the said question be awarded 01(one) mark and no action is required in respect of the candidates who have chosen option A, C, D as the correct answer of this question.</p>

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A (5) The results came to be declared on 24.12.2016. on 27.12.2016, based on the results, the appellant made recommendations for filling up the vacancies. The respondent was a candidate in the said examination. In regard to question No. 46, he offered option No. A. He secured 86 marks. The cut off marks for the category to which the respondent belonged (OBC) was 87. He fell short of the required cut off by one mark. He filed a writ petition which has finally culminated in the present appeal. The prayer sought for in the said writ petition may be noticed:

“It is, therefore, most respectfully prayed that this Hon’ble Court may graciously be pleased to:-

C A. Issue a writ, order or direction in the nature of writ of Mandamus directing and commanding the respondent nos. 2 & 3 to award the mark of question no. 46 of Booklet Series ‘C’ to the petitioner and prepare a fresh select list.

D B. Issue a writ, order or direction in the nature of writ of Mandamus directing the respondent no.2 and 3 to consider the candidature of the petitioner as selected candidate or petitioner may be adjusted on the post of Gram Panchayat Adhikari in Gram Panchayat Adhikari (General Selection) Examination-2015 (Advertisement no. 7(3)/2015.

E C. Issue any other writ, order or direction which this Hon’ble Court may deem fit and proper under the circumstances of the case, so as to secure the ends of justice or else, the Petitioners shall suffer irreparably.

D. To Award the cost of the petition to the petitioners.”

F (6) Learned Single Judge did not find merit in the contention of the respondent and the writ petition was dismissed.

G (7) By the impugned judgment, the Division Bench, however, allowed the appeal filed by the respondent. The Division Bench took the view that the ‘case at hand is not having any dispute that all the options of question no. 46 were incorrect on the date of the selection test which was due to the sad demise of the then minister’. Awarding of marks to those who did not give the answer to question cannot be accepted to be proper. So also the answer of marking option of Shri Kailash Yadav to be Minister it was found. The Division Bench proceeded to direct the appellant to take a decision to either delete question no. 46 of booklet series ‘C’ or to award the marks to the respondent also and if he came

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in the merit on awarding of marks then to take further appropriate action as per merit position. A

(8) We have heard learned counsel appearing on behalf of the appellant and learned counsel appearing on behalf of the respondent.

(9) Learned counsel appearing on behalf of the appellant would contend that the direction to delete question no. 46 would cause serious prejudice. On the basis of the selection which commenced in the year 2015 and after the examination took place on 21.02.2016 in regard to which results were published on 24.12.2016 and pursuant to which, appointments of number of candidates stood materialised would have to be reworked. Learned counsel for the appellant, no doubt, drew support from the view taken by the judgment of this Court in *Kanpur University Through Vice-Chancellor v. Samir Gupta* (1983) 4 SCC 309. It is his contention that the view taken by the appellant Commission cannot be characterised as palpably perverse. When arriving at such a finding, it may not be open in judicial review proceedings to substitute the view taken by the examining body. He would further justify the rationale in the following manner. It was pointed out that so far as the decision to award marks to those candidates who answered question no. 46 by approving option 'B' which is Shri Kailash Yadav, candidates were given the benefit, as the Commission, apparently, was of the view that the said person was indeed the minister and the answer would have been correct but for his passing away just 12 days prior to the date of the examination. As far as those candidates who did not attempt to answer the question concerned, the Court is persuaded to take the view that noticing that all the answers to the question were as on the date of the examination not correct, if a candidate did not answer the question, it should not work against him. This is in stark contrast with the case of the respondent who has undoubtedly, ticked option 'A' which at no point of time could be treated as the correct answer. In other words, the case of the respondent stands on a different footing from a candidate who has given an answer which clearly is palpably wrong. In such circumstances, he would commend for our acceptance the principle that in the matter of selection by a body, unless a decision taken is palpably perverse, the Court should adopt a hands off approach. B  
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(10) *Per contra*, learned counsel for the respondent strongly contended that the respondent who belongs to the OBC category had secured 86 marks which was only one mark short of the cut off marks. H

- A He was at pains to point out that all that the High Court has directed is to rework the position by giving him one mark for question no. 46 in case the Commission did not delete question no. 46 and thereafter, if he secured sufficiently high marks that he could secure selection, then alone, he would get the benefit. More importantly, he drew support from another development, one Ankur Srivastava and another person filed Writ Petition
- B No. 10779 of 2018. In the said case, the stand of the appellant was that it has been decided to allow one mark to the question to all candidates across the Board. He points out that perusal of the order passed in the said case reveals that the High Court dismissed the writ petition in view of the submission made by the appellant as grievance of the petitioners therein did not survive. He would further also contend before us that the Court may approach his problem bearing in mind the principle laid down by this Court in *Guru Nanak Dev University v. Saumil Garg and Others* (2005) 13 SCC 749. Therein, three learned Judges while dealing with the problem of incorrect answers or rather incorrect questions/
- C vague questions *inter alia* held that “It is wholly unjust to give marks to a student who did not even attempt to answer those questions”. He would therefore, point out that in the facts of this case, the principle is apposite and there is no rationale for the respondent to deny the mark which on all counts he is entitled to.
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- (11) The selection started in this case in the year 2015 by issuance
- E of the advertisement. The examination took place on 21.02.2016. Option ‘B’ to the question no. 46 would have been the correct answer but for the untimely death of the minister in question just 12 days prior to the examination. In other words, as on the date when the examiner settled the question with which we are concerned, this is not a case for a question
- F which was without the correct option. It was not a vague question at that time. Circumstances overtook both the Commission and the candidates, however, as on the date of the examination option ‘B’ would be a wrong answer. None of the options could possibly be the correct answer. The Commission, therefore, sat and took a decision. It is worthwhile to notice that the respondent has not chosen to impugn the said decision in the writ petition as such. Secondly, we cannot be oblivious to the fact that by the time, the Division Bench rendered the impugned judgment which is dated 18.02.21, much water has flown under the bridge in the form of selection being taken forward and appointments being made. Therefore, direction to delete the question at this stage may not
- G be an appropriate remedy though, we would not ordinarily have
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questioned the principle behind such a direction. As far as the other option which is couched as direction to the appellant is concerned which is to give a mark to the respondent, we have to necessarily sustain such a direction on the basis of the illegality of the decision taken by the appellant being successfully impugned.

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(12) We are of the view that the principle of judicial review which is apposite in such case is indeed that of power of the Court being supervisory in nature and the jurisdiction not being that of an appellate body. The challenge to the legality of the decision making process must be appreciated with reference to relevant well known inputs. Quite apart from the fact that the decision as such is not questioned as already noticed and even taking the decision as it is and proceeding to examine its legality, we may find it difficult to sustain the objection of the respondent on the basis that the appellant Commission has even decided to grant marks to those who have not attempted to give any answer.

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(13) We have already noticed the view expressed by the Bench of three learned Judges in *Guru Nanak Dev University* (supra). But we may not be justified in applying the said principle in the facts of this case. This is a case where as on the date when the examination took place, actually none of the answers which were given as options were correct. On the date when the questions were, in fact, set, one answer was correct (Option 'B'). It is this rationale which apparently has weighed with the appellant Commission in deciding to award marks to those who have answered by ticking Option 'B'. Those who did not answer any of the options, were given marks on the appellant's premise that none of the answers were right. The respondent, on the other hand, represented a section of those candidates who went ahead and gave an answer which was not correct by any yardstick, at any point of time. So, it is here that the Commission drew a distinction between the categories which would not therefore, in short, be characterised as palpably arbitrary.

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(14) As far as the other litigation in the form of the order passed by the High Court in which the counsel for the appellant commission took the stand that one mark is made available to all candidates across the Board and the contention based thereon by the respondent is concerned, the stand of the appellant is that no candidate in the position of the respondent who has given a wrong answer (answer other than option B) has been given one mark. We record this statement. It is stated to be part of the rejoinder affidavit also.

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A (15) In such circumstances, we are of the view that, in the facts of this case, the appellant has made out a case for interference. Appeal is allowed and the impugned judgment stands set aside.

No orders as to costs.

Devika Gujral

Appeal allowed.