

Vikesh Kumar Gupta vs The State Of Rajasthan on 7 December, 2020

Equivalent citations: AIRONLINE 2020 SC 867

Author: L. Nageswara Rao

Bench: Ajay Rastogi, Hemant Gupta, L. Nageswara Rao

Non-Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos.3649-3650 of 2020
(Arising out of SLP (C) Nos.20512-20513 of 2019)

Vikesh Kumar Gupta & Anr. Appellant(s)

Versus

The State of Rajasthan & Ors. Respondent (s)

WITH

Civil Appeal Nos.3652-3657 of 2020
(Arising out of SLP (C) Nos.29990-29995 of 2019)

Civil Appeal No.3651 of 2020
(Arising out of SLP (C) No.21935 of 2019)

Civil Appeal Nos.3658-3659 of 2020
(Arising out of SLP (C) Nos.10035-10036 of 2020)

Civil Appeal No.3660 of 2020
(Arising out of SLP (C) No.9819 of 2020)

JUDGMENT

L. NAGESWARA RAO, J.

Leave granted.

1. Mr. Vikesh Kumar Gupta and Mr. Mahesh Kumar Meena, the Appellants herein, have filed SBCWP 1 | Page No.10992 of 2019 in the High Court of Judicature for Rajasthan, Jaipur Bench

aggrieved by their non-selection to the post of Senior Teacher (Grade II) in Social Science. By an order dated 10.07.2019, the High Court stayed the appointments to the post of Senior Teachers (Social Science) pursuant to the Advertisement dated 13.07.2016 till further orders. The said order was challenged by some of the candidates who were selected. By an order dated 24.07.2019, the Division Bench of the High Court set aside the interim order dated 10.07.2019. While doing so, the Writ Petition filed by Mr. Vikesh Kumar Gupta and Mr. Mahesh Kumar Meena was disposed of along with a connected Writ Petition filed by Mr. Mukesh Kumar Sharma and others. The Appellants challenged the said judgment of the Division Bench dated 24.07.2019 in the appeals.

2. For the sake of convenience, we refer to the facts of the Appeals arising out of SLP (C) Nos. 20512-20513 of 2019. An advertisement was issued by the Rajasthan Public Service Commission (for short "the RPSC") on 13.07.2016 for selection of 9,551 Senior Teachers (Grade 2 | Page II) in Social Science, Sanskrit, Hindi, English and Mathematics. Written examinations were conducted on 01.05.2017 and 02.07.2017 in General Knowledge and Social Science respectively. The RPSC issued the 1st Answer Key on 06.02.2018 and declared the results. The names of the Petitioners were mentioned in the list of selected candidates but they could not be appointed due to certain defects in the detail forms filed by the Petitioners after their selection. On 25.04.2018, a Single Judge of the High Court of Judicature for Rajasthan, Jaipur Bench referred 3 questions in the 1st Answer Key to be reconsidered by an Expert Committee. Shortly thereafter, a Single Judge of the High Court of Judicature for Rajasthan, Jodhpur Bench referred another 8 questions for reconsideration by an Expert Committee on 05.05.2018. An Expert Committee constituted by the RPSC revised the Key Answers for 2 questions in Social Science and 1 question in General Knowledge. A revised Key Answer, which shall be referred to as the 2nd Answer Key, was issued pursuant thereto, and the Merit List was also 3 | Page revised on 17.09.2018. The names of the Petitioners were not included in the revised Merit List.

3. The judgment dated 05.05.2018 of the learned Single Judge of the High Court of Judicature for Rajasthan, Jodhpur Bench by which 8 questions were referred to the Expert Committee for reconsideration was the subject matter of appeal before a Division bench of the High Court. The grievance of the Appellants therein was that they had challenged the correctness of 33 questions which required to be referred to an Expert Committee. The High Court examined the correctness of the disputed questions by itself and came to a conclusion that the answers to 5 questions were wrong. After being informed that the results have been announced and the selection process was completed, the Division Bench of the High Court by its judgment dated 12.03.2019 in D.B. Special Appeal Writ No.922 of 2018 directed revision of the Select List and give benefit of the revision only to the Appellants before the Court. The Appeal arising out of SLP (C) Nos.10035-36 of 2020 4 | Page is filed questioning the correctness of the judgment dated 12.03.2019.

4. On 13.03.2019, a direction was issued by a learned Single Judge of the High Court of Judicature for Rajasthan, Jaipur Bench that the names of the ineligible candidates should be deleted from the Select List and a revised Select List shall be issued. The 3rd Answer Key was published by the RPSC on 08.04.2019 but the benefit of the said revision was given only to the Appellants in the D.B. Special Appeal Writ No.922 of 2018. The direction issued by the learned Single Judge of the High Court of Judicature for Rajasthan, Jaipur Bench on 13.03.2019 was implemented and the Select List

was revised on 21.05.2019 by excluding ineligible candidates. The names of 124 candidates were included in the said revised Select List which was prepared on the basis of the 2nd Answer Key. A Waiting List was prepared on 22.05.2019 by the RPSC, again on the basis of the 2nd Answer Key.

5. The grievance of the Appellants in the Writ Petition was the preparation of the revised Select List of 5 | Page 21.05.2019 on the basis of the 2nd Answer Key. In the Appeal preferred against the interim order passed by the learned Single Judge on 10.07.2019 in the Writ Petition filed by the Appellants, the Division Bench of the High Court considered the matter in detail and disposed of the Writ Petition filed by the Appellants. The interim order in favour of the Appellants in the Writ Petition was set aside.

6. While taking note of the entire gamut of the litigation arising out of the Notification issued on 13.07.2016 for selection to the posts of Senior Teachers, the Division Bench was of the considered opinion that there was confusion that was caused due to divergent directions given by different Benches of the High Court. The Division Bench found that the judgment of the Division Bench in D.B. Special Appeal Writ No.922 of 2018 dated 12.03.2019 was not brought to the notice of the learned Single Judge when he issued a direction to revise the Select List on 13.03.2019. It was held that the Appellants were not entitled to any relief as the direction given by the Division Bench in its judgment dated 6 | Page 12.03.2019 to revise the Select List on the basis of the findings recorded therein was made applicable only to the Appellants therein and not to other candidates. The Select List that was issued on the basis of the 2nd Answer Key was approved by the Division Bench and the RPSC was directed to proceed with the selection and issue appointments on the basis of the List published on 16.04.2019. The Waiting List that was prepared on 22.05.2019 was also upheld by the Division Bench.

7. As the points that arise for consideration in all the above Appeals are the same, it is not necessary to refer to the facts of the other Appeals. The main point that arises for consideration in the case is whether judgment dated 12.03.2019 of the Division Bench of the High Court in D.B. Special Appeal Writ No.922 of 2018 can be restricted only to the Appellants therein. The grievance of the Appellants is that the Select List should have been revised by applying the 3rd Answer Key which was prepared on the basis of the judgment dated 12.03.2019.

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8. Mr. Akhilesh Kumar Pandey, Mr. Rakesh Karela and Mr. Ranbir Yadav, learned counsel for the Appellants submitted that there was no reason for the Division Bench to have restricted the operation of its judgment dated 12.03.2019 only to the Appellants therein. Mr. Pandey submitted that the Appellants would have been included in the list of 124 candidates prepared on 21.05.2019 if the 3rd Answer Key was given effect to in respect of all candidates without the same being restricted only to the Appellants in the said Appeal. He submitted that the waiting list was also prepared on the basis of the 2nd Answer Key and not the 3rd Answer Key. The learned counsel appearing for the Appellants suggested that there are vacancies which can be filled up by appointment of the Appellants.

9. Dr. Manish Singhvi, learned Senior Counsel appearing for the State of Rajasthan submitted that every selection process undertaken by the State is subject matter of litigation and in view of the pendency of cases in the Court for long period of time, the State is put in a difficult situation as appointments to public 8 | Page posts are delayed. The thrust of the submissions made by the learned Senior Counsel is that the Select List prepared on the basis of the 2 nd Answer Key on 07.09.2019 should be final and such of those persons who did not approach the court at the earliest point of time are not entitled to relief. Dr. Singhvi submitted that the benefit of the judgment of the Division Bench dated 12.03.2019 was extended only to the 21 Appellants as per the direction of the Division Bench. Any relief that is granted to the Appellants at this stage would create confusion and result in unsettling the appointments that have already been made pursuant to the advertisement issued in 13.07.2016. Mr. Amit Lubhaya, learned counsel appearing for the RPSC stated that the Merit List was prepared on the basis of the directions issued by the High Court and no interference is warranted at this stage. After exclusion of 124 eligible candidates, a revised Select List was prepared on the basis of the 2 nd Answer Key and 51 persons have already been appointed. The remaining appointments could not be made in view of the interim order passed by this Court on 06.09.2019. Pursuant to instructions from the Public 9 | Page Service Commission, a Note was filed by the learned counsel appearing for the RPSC showing the number of posts which are vacant. He further submitted that the judgment of the Division Bench dated 12.03.2019 was implemented only in respect of the Appellants before the High Court. Mr. Shariq Ahmed and Mr. Shadan Farasat, learned counsel appearing for the contesting Respondents argued that this Court should not interfere with the judgement of the Division Bench as no relief can be granted to the Appellants who are fence sitters. They submitted that the High Court was right in upholding the judgment of the Division Bench dated 12.03.2019 by which the relief was restricted only to the Appellants therein.

10. The point that arises for the consideration of this Court is whether the revised Select List dated 21.05.2019 ought to have been prepared on the basis of the 2nd Answer Key. The Appellants contend that the Wait List also should be prepared on the basis of the 3 rd Answer Key and not on the basis of the 2 nd Answer Key. The 2nd Answer Key was released by the RPSC on the 10 | P a g e basis of the recommendations made by the Expert Committee constituted pursuant to the directions issued by the High Court. Not being satisfied with the revised Select List which included only a few candidates, certain unsuccessful candidates filed Appeals before the Division Bench which were disposed of on 12.03.2019. When the Division Bench was informed that the selections have been finalized on the basis of the 2 nd Answer Key, it refused to interfere with the Select List prepared on 17.09.2018. However, the Division Bench examined the correctness of the questions and Answer Keys pointed by the Appellants therein and arrived at a conclusion that the answer key to 5 questions was erroneous. On the basis of the said findings, the Division Bench directed the RPSC to prepare revised Select List and apply it only to the Appellants before it.

11. Though re-evaluation can be directed if rules permit, this Court has deprecated the practice of re-evaluation and scrutiny of the questions by the courts which lack expertise in academic matters. It is not permissible for the High Court to examine the question 11 | P a g e papers and answer sheets itself, particularly when the Commission has assessed the inter se merit of the candidates (*Himachal Pradesh Public Service Commission v. Mukesh Thakur & Anr.*)¹ Courts have to show deference and consideration to the recommendation of the Expert Committee who have the expertise to evaluate

and make recommendations [See- Basavaiah (Dr.) v. Dr. H.L. Ramesh & Ors.)². Examining the scope of judicial review with regards to re- evaluation of answer sheets, this Court in *Ran Vijay Singh & Ors. v. State of Uttar Pradesh & Ors.*³ held that court should not re-evaluate or scrutinize the answer sheets of a candidate as it has no expertise in the matters and the academic matters are best left to academics. This Court in the said judgment further held as follows:

“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.

1 (2010) 6 SCC 759 2 (2010) 8 SCC 372 3 (2018) 2 SCC 357

12 | P a g e 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 13 | P a g e 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.”

12. 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 & Ors. v. Rajasthan Public Service Commission & Ors.* 4 In the said judgment, this Court interfered with the selection process only after obtaining the opinion of an expert 4 (2018) 8 SCC 81 14 | P a g e 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.

13. A perusal of the above judgments would make it clear that courts should be very slow in interfering with expert opinion in academic matters. In any event, assessment of the questions by the courts itself to arrive at correct answers is not permissible. The delay in finalization of appointments to public posts is mainly caused due to pendency of cases challenging selections pending in courts for a long period of time. The cascading effect of delay in appointments is the continuance of those appointed on temporary basis and their claims for regularization. The other consequence resulting from delayed appointments to public posts is the serious damage caused to administration due to lack of sufficient personnel.

14. The submission made by the Respondents that the Appellants are not entitled to any relief as there is inordinate delay in approaching the Court is not 15 | Page necessary to be adjudicated upon in view of the findings in the preceding paragraphs. It is clear from the statement filed by the RPSC that there are vacancies existing which can be utilized for appointing the Appellants. We are not inclined to give any direction except leaving it open to the RPSC and the State Government to fill up the existing vacancies from the Wait List in accordance with the merits of the candidates. The selection process which was stalled in view of the interim order passed by this Court should be completed within a period of 8 weeks from today. The Division Bench by its judgment dated 12.03.2019 committed an error in recording findings on the correctness of 05 questions by holding the opinion of the experts to be wrong. We are not setting aside the judgment as we are informed that 05 out of 21 appellants-therein have already been appointed and we are not inclined to upset their appointments.

15. We uphold the Select List dated 21.05.2019 and the Wait List dated 22.05.2019 prepared on the basis of the 2nd Answer Key.

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16. For the aforementioned reasons, the Appeals are dismissed.

.....J. [L. NAGESWARA RAO]J. [HEMANT GUPTA]
.....J. [AJAY RASTOGI] New Delhi, December 07, 2020.

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