

# **Kanchan Bala And 172 Others vs State Of U.P. And 4 Others on 29 January, 2018**

**Author: Mahesh Chandra Tripathi**

**Bench: Mahesh Chandra Tripathi**

HIGH COURT OF JUDICATURE AT ALLAHABAD

Judgment reserved on 18.1.2018

Judgment delivered on 29.1.2018

Case :- WRIT - A No. - 841 of 2018

Petitioner :- Kanchan Bala and 172 others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Siddharth Khare,Ashok Khare,Shantanu Khare

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

Connected with

WRIT - A Nos.61074 of 2017; 62850 of 2017; 62877 of 2017; 62846 of 2017; 63077 of 2017;

Hon'ble Mahesh Chandra Tripathi,J.

1. Heard Shri Ashok Khare, Senior Advocate assisted by Shri Siddharth Khare, Alok Mishra for the petitioners and Shri M.C. Chaturvedi, learned Additional Advocate General assisted by Dr. Rajeshwar Tripathi, CSC-II and Shri Bipin Bihari Pandey, ACSC for the State respondents as well as Shri Ashok Kumar Yadav for Secretary, U.P. Basic Education Board, Allahabad.

2. In this group of cases, the petitioners have prayed for a writ, order or direction in the nature of mandamus directing the respondents to get their answer sheets of U.P. Teachers' Eligibility Test-2017 (in brevity, TET 2017) evaluated and to declare their result of TET 2017 after rectifying

the mistake. In Writ A Nos.1713 of 2018 and 1868 of 2018 the petitioners have prayed for evaluating question nos.41 and 50 of the question booklet series and award the marks of the said questions to them.

3. For the sake of convenience, the facts of Writ A No.841 of 2018 are being noted below:-

4. Kanchan Bala and 172 others are before this Court with the following prayer:-

"(i) a writ, order or direction in the nature of certiorari quashing the declaration of the result of the petitioners by the Examination Regulatory Authority, U.P. Allahabad by treating their OMR sheet to be invalid and not having proceeded to evaluate the same.

(ii) a writ, order or direction of a suitable nature commanding the respondents to forthwith get the answer sheets of the petitioners pertaining to U.P. Teachers Eligibility Test 2017 evaluated and to declare the result within a period to be specified by this Hon'ble Court.

(iii) a writ, order or direction of a suitable nature commanding the respondent to permit the petitioners' participation/consideration in the forthcoming recruitment of Assistant Teacher for Junior Basic Schools in the State of UP."

5. Record in question reflects that U.P. Basic Education Board constituted under the U.P. Basic Education Act, 1972 is running various Junior Basic Schools and Senior Basic Schools from Classes-I to VIII. The criteria and procedure for selection is regulated by the U.P. Basic Education (Teachers) Service Rules, 1981. For achieving planned and coordinated development of the teacher education system throughout the country and for the regulation and proper maintenance of norms and standards in the teacher education system and for matters connected therewith, the National Council for Teachers Education Act, 1993 was enacted by the Parliament. The Right of Education having been recognised as a fundamental right under the Constitution of India and the State being responsible to provide free and compulsory education to the children up to 6 to 14 years, Parliament enacted the Right of Children to Free And Compulsory Education Act, 2009 (in short, the Act of 2009). Under Section 23 of the Act of 2009 the National Council for Teacher Education has been authorised by the Central Government to lay down minimum qualifications for appointment of teachers. The National Council for Teacher Education vide notifications dated 23.8.2010 and 29.7.2011 laid down various qualifications for appointment of teachers. Passing of Teachers' Eligibility Test has been laid down as one of the qualifications, which is to be possessed by a candidate for appointment as a teacher. On 11.2.2011, the National Council for Teacher Education has also issued guidelines for conducting Teachers Eligibility Test and in pursuance, thereof the State Government has been holding U.P. Teachers' Eligibility Test (UPTET). The first such test was held in the year 2011 by the Board of High School and Intermediate Education, U.P. Allahabad. Thereafter the State Government issued Government order dated 7.9.2011 notifying the modalities for holding UPTET-2011 by the Board of High School and Intermediate Education. On 9.11.2011, Rules of 1981 were amended by 12th Amendment Rules incorporating passing of Teachers Eligibility

Test as one of the minimum qualifications in the Rules of 1981. Rule 14(3) as amended further provides that selection shall be made on the basis of marks in the Teachers Eligibility Test. Thereafter, UPTET was conducted in the years 2013, 2014, 2015-16 and lastly in the year 2017.

6. Shri Ashok Khare, Senior Advocate appearing for the petitioners submitted that the petitioners applied for U.P. Teachers Eligibility Test -2017 through on-line application and appeared in the examination conducted by the third respondent i.e. Examination Regulatory Authority, U.P. Allahabad on the schedule date, time and place but due to human error/mistake, they could not successfully mark the circle/bubble in the OMR sheets showing correct registration number, roll number, booklet series or language-II attempted. Therefore, the result of the petitioners have been declared as invalid registration number/roll number. He further submitted that the petitioners at the time of applying and submitting their application forms, had clearly mentioned the attempted language and other details but at the time of attempting the question, they could not mark the bubble of correct registration number, roll number, booklet series or language-II attempted and the same was not deliberate. It occurred due to mistake, therefore, the petitioners have prayed for declaring their result after evaluating the O.M.R. answer-sheet of petitioners by the Secretary, Examination Regulatory Authority, U.P.

7. Shri Ashok Khare, Senior Advocate further submitted on the basis of averments contained in the writ petitions that most of the petitioners secured more than the cut of marks and they are entitled to be declared qualified in the examination in their respective categories. The result of the examination was declared on 15.12.2017 in which it has been shown that the OMR sheet of each of the petitioners had been treated to be invalid on the grounds of invalid registration number/roll number, invalid booklet series, & invalid language column and the OMR sheets of the petitioners have not been evaluated. It has also been claimed that candidatures of 99 petitioners were rejected on the ground of invalid registration number/roll number and only in few cases the candidatures have been rejected on the ground of invalid booklet series and invalid language-II. He submitted that so far as the TET examination is concerned, the same is merely qualifying in nature for being considered for appointment on the post of Assistant Teacher and it is not a competitive examination. No person is going to be affected in any manner in case the OMR sheets of the petitioners are evaluated and their results are declared afresh. It has also been argued that most of the petitioners were initially appointed as Shiksha Mitras and finally absorbed as Assistant Teachers but eventually their appointments were quashed by the Division Bench of this Court and the same was upheld by Hon'ble Apex Court but while deciding the matter relating to Shiksha Mitra Hon'ble Supreme Court had directed that the incumbents are entitled for preferential marks on the basis of their working as Shiksha Mitra for selection as Assistant Teachers. In case the result of the petitioners is not declared, for all practical purposes their one chance stands exhausted due to human error. In the aforesaid circumstances, it is urged that the error was not deliberate and being human error the petitioners may be permitted to mark blank column of the OMR sheets or whatever errors/discrepancies occurred in the OMR sheets, it may be condoned, and the OMR sheet of the petitioners may be reevaluated. He has also referred to the guidelines which refer the responsibility of the class invigilator to ensure filling up all the columns by the individual candidate in accordance with the specification contained in the admit card as well as in the instructions. In support of his submission, he has placed reliance on the judgement of Hon'ble Supreme Court in Price Waterhouse

Coopers Private Limited vs. Commissioner of Income Tax, Kolkata-I and another<sup>1</sup>. Relevant paras 14 and 15 are reproduced herein below:-

"14. The fact that the Tax Audit Report was filed along with the return and that it unequivocally stated that the provision for payment was not allowable under Section 40A (7) of the Act indicates that the assessee made a computation error in its return of income. Apart from the fact that the assessee did not notice the error, it was not even noticed even by the Assessing Officer who framed the assessment order. In that sense, even the Assessing Officer seems to have made a mistake in overlooking the contents of the Tax Audit Report.

15. The contents of the Tax Audit Report suggest that there is no question of the assessee concealing its income. There is also no question of the assessee furnishing any inaccurate particulars. It appears to us that all that has happened in the present case is that through a bona fide and inadvertent error, the assessee while submitting its return, failed to add the provision for gratuity to its total income. This can only be described as a human error which we are all prone to make. The calibre and expertise of the assessee has little or nothing to do with the inadvertent error. That the assessee should have been careful cannot be doubted, but the absence of due care, in a case such as the present, does not mean that the assessee is guilty of either furnishing inaccurate particulars or attempting to conceal its income."

8. Shri Alok Mishra, learned counsel for the petitioners appearing in Writ A No.835 of 2018 has also adopted the argument advanced by Shri Ashok Khare, Senior Advocate and at the same time he has also advanced his argument that inadvertently the petitioners committed minor error in darkening the correct circle/bubble regarding registration number and roll number but one thing is common in all the cases that the error has been committed in only one bubble of either registration number or roll number. Such error is not so grave that the screening of the answer booklet is not possible. The basic object for conducting the examination in question is to select meritorious students and the petitioners as per their own claim secured more than the qualifying marks in their respective categories and their result may be declared.

9. On the other hand, Shri M.C. Chaturvedi, learned Additional Advocate General assisted by Dr. Rajeshwar Tripathi, CSC-II and Shri Bipin Bihari Pandey, ACSC has vehemently opposed the writ petitions by submitting that all the petitioners participated in the aforesaid examination in question and result of the said examination was declared on 15.12.2017. The instructions of the question booklet series in question clearly provided that the candidates must fill up the essential columns namely his category, roll number, registration number, question booklet series at the space provided on OMR answer sheet, otherwise, the answer sheet will not be evaluated and the candidate will be solely responsible for it. This is moreover admitted case that all the petitioners have violated the clear cut instructions. It has also been apprised to the Court that in the present TET Examination 2017 more than 7.5 lakhs candidates appeared. In case there is any discrepancy regarding filling up the column in the OMR sheet, it is not possible for the computer to accept such OMR sheet and accord any mark. The configuration of the software/computer ensures that in case any such error is

there or any candidate does not follow the instructions, then in such situation the computer will out rightly reject the OMR sheet.

10. Shri M.C. Chaturvedi further submitted that the result in question has been declared and the petitioners are intending to get particulars changed in the OMR sheet and same is not at all permissible. The OMR sheet was required to be filled up correctly and there was a clear cut instructions that after filling of the same no change was permissible. Once the instructions were clear and categorical, then the relief, that has been claimed by the petitioners, running counter to the instructions that were mandatory in character, cannot be granted to the petitioners and all the writ petitions are liable to be dismissed. He has placed on record a copy of the judgment and order dated 5.2.2014 passed by a Division Bench of this Court in Smt. Arti Verma Vs. State of U.P. and 2 others<sup>2</sup> and submitted the Division Bench of this Court has refused to entertain such petitions as it creates grave uncertainty in the completion of the selection process, therefore, the petitioners are not entitled to get any relief from this Court.

11. Dr. Rajeshwar Tripathi, learned Chief Standing Counsel as well as Shri A.K. Yadav further apprised to the Court that in similar circumstances the TET-2013 was also under challenge in Km. Richa Pandey vs. Examination Regulatory Authority and another<sup>3</sup>, which was dismissed by learned Single Judge on 5.12.2013. The same was also subjected to challenge in Km. Richa Pandey vs. Examination Regulatory Authority and another<sup>4</sup> and a Division Bench of this Court had proceeded to dismiss the special appeal on 18.2.2014. The Division Bench, hearing the Special Appeal against the judgment of learned Single Judge dated 5.12.2013 in Writ Petition No.63870 of 2013, agreed with the reasons to dismiss the writ petition. It was held that despite clear instructions on the OMR sheets providing for option of language, failing which the OMR sheets will not be examined, the petitioner had left the options blank. The reasons given by the Division Bench in dismissing the Special Appeal are quoted as below:-

"The Secretary, Examination Controlling Authority, U.P., Allahabad, Incharge of TET Examination, 2013 has in her instructions given to learned Standing Counsel has stated that since the petitioner did not fill up the column of the language in which she has given answers, her answer book could not be evaluated. The instructions for the TET Examination, 2013 clearly provided that the candidate must fill up the essential columns namely column of roll number, answer book number, answer book series and the option of language without which the OMR answer sheet may not be evaluated.

During the course of argument learned Standing Counsel pointed out that the petitioner did not even correctly spell the name of her college and that in the answer sheet on which she had written the spelling of the roll number in Hindi is also incorrectly spelled.

Learned counsel for the petitioner has relied upon the Division Bench judgment of this Court in Archana Rastogi (Km.) v. State of U.P. & ors., 2012 (3) ADJ 219 (DB) in which this Court granted relief in equity to the petitioner, where she had filled up

High School marks incorrectly on the ground that High School certificate was enclosed along with application and from which marks could be easily ascertained. The petitioner did not want to get any ulterior benefit as she had disclosed her marks, which were less than the actual marks secured by her.

In the present case we find that the petitioner despite clear instructions did not fill up the column of language for evaluation of answer sheets by computer.

We do not find that the petitioner has taken any ground that all the series of answers in three languages were same and thus computer could have evaluated answers even if option of language was not given by the candidate.

The OMR sheets are provided to the candidates to speed up evaluation through help of computer. In case we accept the argument of learned counsel for the petitioner that the language in which the petitioner had written essay could be checked up by the examiner before feeding answer book into computer, the entire process of expediting the results will be lost. Where OMR sheets are to be examined with aid of the computer, it is not advisable and practical to direct that each OMR sheet should be checked by the examiners and the columns, which have not been filled up may be filled up by the examiner himself with the aid of the language used by the candidates for writing essay. We are informed by Standing Counsel that about seven lacs candidates had appeared in the test.

With such large number of candidates appearing in TET Examination 2013 it would not have been possible nor it was feasible for examiners to look into the answer sheets individually before feeding them into computer for correcting any mistakes.

We agree with the reasoning given by the learned Single Judge that where the applicant is not capable of correctly filling up the form, she is not entitled to any discretionary relief from the Court.

The special appeal is dismissed."

12. Learned Chief Standing Counsel has also placed reliance on the order dated 4.5.2016 wherein, the result of TET-2016 was under challenge in Ishwar Chand vs. State of UP and 2 others<sup>5</sup> and the evaluation of the answer sheet had not been done on account of the fact that the petitioner had failed to mention the question booklet series on the OMR sheet. Learned Single Judge, relying upon the judgement passed by this Court in Km. Richa Pandey's case (supra), had proceeded to dismiss the writ petition on 4.5.2016 with following observations:-

"It is not disputed that instruction no.2 of the OMR sheet specifically requires a candidate to indicate question booklet number at the space provided on the OMR sheet. The OMR sheet gives four options to a candidate in relation to the question booklet series namely P, Q, R and S. One of the instructions to the candidates was

that the options are to be exercised by darkening one of the circles. Concededly, the petitioner had not exercised the choice by darkening any of the circle given as option in relation to question booklet series. Instruction no.9 specifically states that in case of any discrepancy in following the instructions, candidate's OMR sheet will be rendered invalid and will not be evaluated. It is in view of the same that the answer sheet of the petitioner was not evaluated.

The notice dated 6.2.2016, which the petitioner is relying, invites objections from the candidates to the provisional answer key notified on the official website. The aforesaid notice does not grant liberty to any candidate to supply any further information which was required to be furnished by the candidate by filling one or more of the columns of the OMR sheet, but which the candidate failed to supply. The representation of the petitioner dated 11.2.2016 was thus not referable to the notice dated 6.2.2016. No other provision has been shown by learned counsel for the petitioner whereunder a candidate, who had failed to fill the question booklet series number, can supply such information at a later point of time.

In Special Appeal (Defective) No.117 of 2014 *Km. Richa Pandey Vs. Examination Regulatory Authority* and another decided on 18.2.2014 this Court upheld the stand taken by the Examination Controlling Authority U.P. Allahabad in not evaluating OMR sheet of a candidate who had failed to fill up the column relating to language on the OMR sheet.

In the totality of the facts and circumstances of the case, no ground is made out for issuing any mandamus as sought for in the instant writ petition. The petition lacks merit and is dismissed."

13. Learned Chief Standing Counsel has further apprised to the Court that in similar circumstances the TET Examination-2017 was also under challenge in *Ritu Chauhan vs. State of UP and 2 others*<sup>6</sup> and learned Single Judge had declined to interfere, as such on similar footings no indulgence is required. The Court has proceeded to dismiss the writ petition on 24.11.2017 with following observations:-

"In the facts of the given case, a candidate was required to mark the 'language attempted' option namely 'English', 'Urdu' and 'Sanskrit'. All the options were left blank by the petitioner. The Court in *Km. Richa Pandey* (supra) held as follows:

"The OMR sheets are provided to the candidates to speed up evaluation through help of computer. In case we accept the argument of learned counsel for the petitioner that the language in which the petitioner had written essay could be checked up by the examiner before feeding answer book into computer, the entire process of expediting the results will be lost. Where OMR sheets are to be examined with aid of the computer, it is not advisable and practical to direct that each OMR sheet should be checked by the examiners and the columns, which have not been filled up may be

filled up by the examiner himself with the aid of the language used by the candidates for writing essay. We are informed by Standing Counsel that about seven lacs candidates had appeared in the test. With such large number of candidates appearing in TET Examination 2013 it would not have been possible nor it was feasible for examiners to look into the answer sheets individually before feeding them into computer for correcting any mistakes."

The decisions relied upon by learned counsel for the petitioner would not apply to the facts of the case as the Court had granted relief in equity to the petitioners as they had incorrectly filled the marks obtained in B.Ed. or other examinations, therefore, Court was of the opinion that the petitioner did not want to get any ulterior benefit as she has disclosed marks, which cannot be less than actual marks secured by her in examination.

In Ram Manohar Yadav (supra), the Division Bench made the following observations:

"If prospective teacher can not even correctly fill up the simple on line application form for his employment, it is obvious what he is going to teach if appointed. There are certain decisions cited on this issue. But none of them deal with this aspect whether under the discretionary jurisdiction of the Court under Article 226 of the Constitution of India such incompetent persons should be allowed to play with the future of the next generation."

In the facts of the case at hand, petitioner has not filled the column "language attempted" in the OMR sheet, large number of students have taken the examination, it is not practical and advisable that each OMR sheet, which is to be examined by a computer, to be checked by the examiners whether the columns of the OMR sheet has been correctly marked. The omission to fill up the OMR sheet correctly is not a human error but reflects lack of alertness and casual approach of the petitioner in following the instructions. The error is of such a nature which cannot be permitted to be corrected by the authorities.

Having due regard to the facts and circumstances of the case, I find no merit in the writ petition.

The writ petition is, accordingly, dismissed."

14. Heard rival submission and perused the record.

15. In order to appreciate the controversy in hand the instructions relating to TET 2017 are reproduced herein below:-

#### "IMPORTANT INSTRUCTIONS

1. Answer all questions. All questions carry equal marks.



2. The candidate should indicate his Category, Roll No., Registration No., Question Booklet Series at the space provided on OMR Answer Sheet.

For Language-II from English, Urdu or Sanskrit, choose only one language which you have selected as an option in your registration and mark on the OMR Answer Sheet otherwise the Answer Sheet will not be evaluated and the candidate will be solely responsible for it.

3. This Question Booklet contains 150 questions. Each question has four alternative answers. The candidate has to darken only one circle/bubble on the answer sheet using black/blue ball point pen indicating the correct answer as shown below.

If more than one answers are marked, it would be treated as wrong answer and it will not be examined.

4. This Question Booklet contains five Parts. Each question carries 1 mark. Attempt all the questions selecting any one language from Language-II in Part-III. All questions are multiple choice types. There will be no negative marking.

5. This Question Booklet consists of the following Parts:

Part-I Child Development Teaching Method Q. Nos.

01/01/30 Part II Language-I Hindi Q. Nos.

31-60 Part-III Language-II English or Urdu or Sanskrit Q Nos.

Q. Nos.

Q.Nos.

31-90 61-90 61-90 Part-IV Mathematics Q. Nos.

91-120 Part-V Environmental Studies Q. Nos.

121-150

6. Do not write anything on the cover page and inside the question booklet.

7. If you happen to find that the booklet issued to you does not have all the pages properly printed or it has any other deficiency, then you need to approach the invigilator to get another booklet of same series and code.

8. The number of questions attempted must be written in words and figures in the specified place on the OMR sheet.

9. In case of any ambiguity in Hindi version, English version shall be considered authentic."

16. The instructions were also given in detail on the next page as under:-

"INSTRUCTIONS PLEASE READ ALL THE INSTRUCTIONS CAREFULLY BEFORE MARKING ANY ENTRY ON THE OMR ANSWER SHEET

1. This answer sheet consists of three copies, the original copy, the Board copy and the candidate's copy. Do not separate or displace them.

2. Use Black/Blue Ballpoint Pen only. Use of Pencil/Gel pen is strictly prohibited. Do not darken the Board copy and candidate's copy separately.

3. Do not fold or put any stray marks anywhere on the OMR answer sheet. Use of any other paper, calculating machine, mobile etc. is prohibited and will lead to disqualification.

4. Your OMR answer sheet will be evaluated through electronic scanning process. Incomplete or incorrect entries may render your OMR answer sheet invalid.

5. Carefully fill in all the necessary particulars on the OMR answer sheet. Change of OMR answer sheet is not permitted.

6. If you darken more than one circle in your answer, your answer will be treated as wrong. While darkening the appropriate circle (s) in the boxes, darken the chosen circle (s) fully as given below.

7. Candidates have to answer questions from the multiple choice of answers 1, 2, 3 and 4. Select the right answer of each question and darken the correct circle on the OMR answer sheet. Once darkened changes are not permitted. Use of eraser, nail, blade, white fluid/whitener etc. to smudge, scratch, damage in any manner on the OMR answer sheet during examination is strictly prohibited.

8. Candidates must hand over the OMR Answer Sheet without separating the three copies to the invigilator at the end of examination. Invigilator will hand over the Candidate's copy after separating it. The candidate can taken away the Candidate's copy of OMR Answer Sheet with him/her.

9. In case of any discrepancy in following the instructions, candidate's OMR Answer Sheet will be rendered invalid and will not be evaluated."

17. This much is reflected from the aforesaid instructions in question that instruction no.2 of the OMR sheet in question specifically requires a candidate to indicate his category, roll number, registration number, question booklet series at the space provided on the OMR answer sheet. The Question Booklet contains 150 questions and each question has four alternative answers. The number of questions attempted must be written in words and figures in the specified place on the OMR sheet. In case of any ambiguity in Hindi version, English version shall be considered authentic. Para-4 of the instruction provides that the OMR answer sheet will be evaluated through electronic scanning process and incomplete or incorrect entries may render your OMR answer sheet invalid. In paras 5 and 6 it is advised to the candidates to carefully fill in all the necessary particulars on the OMR answer sheet and change of OMR answer sheet is not permitted. If any candidate darkens more than one circle in his answer, his answer would be treated as wrong. The candidates have to answer questions from the multiple choice of answers 1, 2, 3 and 4 and select the right answer of each question and darken the correct circle on the OMR answer sheet. Once the circle is darkened, then changes are not permitted and use of eraser, nail, blade, white fluid/whitener etc. to smudge, scratch, damage in any manner on the OMR answer sheet during examination was strictly prohibited.

18. Instruction no.9 specifically states that in case of any discrepancy in following the instructions, candidate's OMR sheet will be rendered invalid and will not be evaluated. It is in view of the same that the answer sheets of the petitioners were not evaluated. The OMR sheet was required to be filled up by the candidates correctly and this is the material in the OMR sheet on the basis of which the result has been prepared by the Computer. If the petitioners failed to darken a particular column or a particular circle or a particular bubble correctly, they cannot be permitted to correct the OMR sheets after the declaration of the result nor can any such direction be issued to the respondents to correct the OMR sheet. The petitioners have also requested for doing manual evaluation of the papers. When the evaluation is required to be done by the Computer on the basis of the shading/darkening of the circles in the OMR sheet, the question of giving any direction for manual evaluation merely to assist the petitioners is not permissible. It is a question of principle and policy of a particular selection irrespective of the fact whether it is a qualifying examination or a competitive examination. Such instructions are issued to ensure fairness in the examination.

19. In the fast deteriorating standards of honesty and morality in the society the insistence by the respondents for adhering the instruction was to minimise any possibility or chance of any abuse. Larger public interest demands of observance of instruction rather than its breach. In today's competitive era maximum examinations and tests conducted are of multiple choice questions and hence OMR sheets are being checked by using the OMR (Optical Mark Reader) machines. The main aim of evaluation of OMR answer sheet having multiple choice questions is to reduce the time duration and increase the efficiency of evaluation. Normally, a person requires about 10-15 minutes for evaluating a single OMR answer sheet but the software in this regard needs just 5-7 minutes for evaluation of 50-60 OMR answer sheet, thus, decreasing human errors and saving the cost and time in the evaluation.

20. In Smt. Arti Verma (supra), a Division Bench of this Court has held as under:

"Each candidate necessarily must bear the consequences of his failure to fill up the application form correctly. No fault can, therefore, be found in rejecting the application for correction when the candidate himself has failed to make a proper disclosure or where, as in the present case, the application is submitted under a wrong category. Interference of the High Court under Article 226 of the Constitution is clearly not warranted in such matters as it creates grave uncertainty since the selection process cannot be finally completed. Moreover, in the present case, the appointment was of a contractual nature for a period of eleven months. Hence, considering the matter from any perspective, the learned Single Judge was not in error in dismissing the petition under Article 226 of the Constitution.

The Special Appeal is, accordingly, dismissed."

21. Another Division Bench, also of this Court in Ram Mahohar Yadav Vs. State of U.P. and others<sup>7</sup> has held as under:

"If prospective teacher can not even correctly fill up the simple on line application form for his employment, it is obvious what he is going to teach if appointed. There are certain decisions cited on this issue. But none of them deal with this aspect whether under the discretionary jurisdiction of the Court under Article 226 of the Constitution of India such incompetent persons should be allowed to play with the future of the next generation.

Therefore, we are of the opinion that the petitioner/appellant should wait till he attains sufficient maturity and learns to be more careful in filling up the applications for jobs. The appeal is therefore, dismissed."

22. In case of G.V. Nutan Vs. The Bihar Combined Entrance Competitive Examination Board & Ors.<sup>8</sup> a Division Bench of Patna High Court has held as under:-

"12. From careful reading of the important instructions, which have been re-produced above, it becomes clear that every candidate was required to correctly fill up, amongst others, his/her roll number in the OMR answer sheet making it clear that the answer sheet will be processed by electronic means and invalidation of answer sheet due to incorrect method of filling up, will be the sole responsibility of the candidate. In other words, the instructions aforementioned make it abundantly clear that in case a candidate does not follow the instructions and any entry, in the OMR answer sheet, is found to be incorrect/incomplete/untrue/fraudulent, the answer sheet shall be liable to be rejected.

13. In the backdrop of the above instructions, Mr. Vikas Kumar, learned Counsel, appearing on behalf of the respondent-Board, has contended that if at all any indulgence is granted to the appellant, it would lead to cascading affect inasmuch as it would destroy the entire selection or admission process inasmuch as there are

other candidates, too, whose candidature stand rejected, because of errors committed in incorrectly filling up OMR answer sheet. It was also submitted, on behalf of the respondent-Board, that the last date fixed for final allotment of seats was 18.08.2014 and the appellant, on account of her own mistake, could not be brought to the zone of consideration.

14. Having considered the submissions, which had been made on behalf of the parties concerned, we find that the appellant's case cannot be considered and no order could be issued directing the respondent-Board to consider evaluation of the appellant's OMR answer sheet of Chemistry paper, which has been rejected by the respondent-Board, because of the fact that the roll number was incorrectly mentioned by the appellant in the OMR answer sheet, both in digits as well as in bubbles, more particularly, when candidates, who have committed similar mistakes, have already been disqualified.

15. Further-more, an OMR answer sheet is evaluated by computer and the computer would not evaluate an OMR answer sheet, which does not correctly mention the roll number of the candidate concerned.

16. In the circumstances indicated above, giving any indulgence to the appellant would have far reaching consequences inasmuch as those, who have not approached the Court, would be adversely affected and those, who have already been selected and taken admission, their selection and admission would have to be interfered with.

17. Coupled with the above, we are clearly of the view that the action taken by the respondent-Board was neither arbitrary nor illegal. In such circumstances, it is not legally permissible to interfere with the decision of the respondent-Board.

18. It is needless to mention that any order, if, now, issued in favour of the appellant, would involve displacement of candidates, who have already taken admission in different medical colleges, and would, thus, cause serious prejudice to the selected candidates, who do not stand impleaded in the writ petition or in the appeal.

19. We are, therefore, clearly of the view that any direction permitting evaluation of the appellant's OMR answer sheet of Chemistry paper, despite her having mentioned wrongly her roll number, would lead to making of fresh writ applications for the similar directions by those candidates, whose OMR answer sheets have been treated as invalid.

20. Because of what has been discussed and pointed out above, we find and hold that there is no illegality and/or arbitrariness in the action taken by the respondent-Board, when the appellant's case for evaluation was rejected, and the learned single Judge has duly considered all aspects of the matter and committed no error in upholding the decision of the respondent- Board.

21. For the reasons indicated above, this appeal is not admitted and shall stand accordingly dismissed."

(emphasis supplied)

23. The Court has proceeded to examine the record in question and found that clear instructions were given in the first page of question booklet directing the candidates to correctly fill up the OMR sheet and any error committed by the candidate cannot be corrected by the authority. The petitioners could not successfully mark the circle/bubble on the answer sheet showing correct registration number, roll number, booklet series or language-II attempted. Consequently, the result of the petitioners have been declared as invalid registration number/roll number. After the declaration of the result in question, they have proceeded to make a request that the correction is required. It is too late in the day to make such request by the petitioners, inasmuch as, OMR sheet is examined by the computer on the basis of columns that have been filled up by an incumbent and, in view of this, once final result has been declared and there is no provision to carry out any correction in the OMR sheet, then no relief can be accorded to the petitioners, especially keeping in view the dictum of Division Bench of this Court in Smt. Arti Verma Vs. State of U.P. & others and the judgment of learned Single Judge in Ritu Chauhan's case (supra), wherein once the Division Bench as well as learned Single Judge had already rejected the similar arguments as well as the claim set up by the candidates appeared in the TET-2013, 2016 and 2017, then there is no reason or occasion for this Court to take a different view in the matter.

24. The Court is also conscious that in the garb of minor discrepancy for rectifying such human error in the OMR sheet, the Court cannot give any liberty to the respondent to intervene in the matter at this stage, which would also have very serious consequence for the fairness of entire selection. Coupled with the above, I am clearly of the view that the action taken by the respondent is neither arbitrary nor illegal. In such circumstances, it is not legally permissible to interfere with the decision of the respondent.

25. For the aforesaid reasons and the law laid down, I do not find any merit in the aforesaid writ petitions and they are accordingly dismissed.

Order Date :- 29.1.2018 RKP