

Vinita

**IN THE HIGH COURT OF BOMBAY AT GOA.
WRIT PETITION NO.5 OF 2024.**

Mrs. Halarnkar Reeha Adish Alias
Rawal Reeha Vasudev Wife of Mr.
Adish Vinod Halarnkar Aged about 33
years, Married, Advocate, Indian
National, Resident of House No.
114/B, Ward V, Zariwado, Davorlim,
Goa-403 707 Mob:+91-7875229390 ...Petitioner.

VERSUS

1. The Hon'ble High Court of
Bombay at Goa Through the
Registrar (Administration)
Porvorim, Goa.
2. Public Information Officer High
Court of Bombay at Goa Porvorim,
Goa. ...Respondents.

Mr S. D. Padiyar and Ms Akshata Rane, Advocate for the petitioner.

Mr. D. Pangam, Mr Ajay Borkar and Mr. A. Arlekar, Advocate for the
Respondents.

**WITH
WRIT PETITION NO. 24 OF 2024**

Ms. Madhuja Devanand Vernekar Aged
about 26 years, unmarried, Advocate, Indian
National, Resident of House No. 2144,
Awanti Nagar, Tisk-Usgao, Ponda-Goa 403
406 Mob:+91-9370765196

..... Petitioner.

Versus

1. The Hon'ble High Court of Bombay at Goa Through the Registrar (Administration) Porvorim, Goa.
2. Public Information Officer High Court of Bombay at Goa Porvorim, Goa Respondents.

Mr Gaurish Agni and Mr Kishan Kavlekar, Advocate for the petitioner.

Mr. D. Pangam, Mr Ajay Borkar and Mr. A. Arlekar, Advocate for the Respondents.

**CORAM: BHARAT P. DESHPANDE, &
VALMIKI SA MENEZES, JJ.**

**Reserved on : 23rd February 2024
Pronounced on: 1st March 2024.**

JUDGMENT : (Per BHARAT P. DESHPANDE,J)

1. Both these petitions are taken up together for final disposal at the admission stage with consent since the issue involved is the same.
2. Rule. Rule is made returnable forthwith. Heard matter finally at the stage of admission with consent.
3. Petitioner in Writ Petition No.5/2024 is a practicing Advocate

who applied for the post of Civil Judge, Junior Division and Judicial Magistrate, First Class in view of the advertisement dated 7.6.2022 (Goa Judicial Service Rules, 2013). Petitioner appeared for the written examination which consisted of two papers, one on the Civil side and other on the Criminal side. Result of the examination was declared wherein the petitioner is shown as passed in paper I (Civil) whereas failed in paper II (Criminal). The petitioner then applied for copies of answer sheets under Right to Information Act which were furnished to her. Being not satisfied with the marks given in paper II (Criminal), she filed present petition basically seeking direction to re-evaluation/re-correction of her paper II (Criminal) of the main examine, on the ground that evaluation was done very strictly and secondly, key answers were not provided though asked for which prevented her from raising specific grounds.

4. Petitioner in Writ Petition No.24/2024 is also a practicing Advocate who applied for the same examination for the post of Civil Judge, Junior Division and Judicial Magistrate, First Class and appeared for the written examination. Result of the petitioner was declared showing that petitioner passed in paper I (Civil) but was declared unsuccessful in paper II (Criminal). She then asked for the

copies of the above answer sheets which were furnished to her. Petitioner being unsatisfied with the marks given by evaluator and moderator, is praying for quashing of the result with regards to paper II (Criminal) with a direction to the respondent no.1 to re-evaluate.

5. Mr Padiyar and Mr Agni learned counsel appearing for the petitioners strongly contended that first of all assessment carried out is unjustified and evaluation of the papers have been carried out very harshly. Since the answer key is not provided, the petitioners are unable to demonstrate the grounds as to how marks are not properly evaluated or given on the steps or on the specific answers. It is then claimed that though papers have been evaluated by the evaluator and thereafter by moderator, marks of the evaluator and the moderator are surprisingly equal in most of the questions which shows that moderator failed to apply its mind. It is claimed that moderator has to give separate marks then the evaluator so as to demonstrate that moderator had also applied its mind to the answers of a candidate.

6. Both the learned counsel would then submit that even though they are not making allegations of any malafides or otherwise against the examiners and moderators, matters need to be re-looked since

petitioners who are young Advocates, tried to give answers as per their understanding and in such circumstance, very strict examination or evaluation of the papers would result in eliminating probable candidate. It is further contended that passing percentage in the said examination is very low and only one candidate was declared successful in the written examination.

7. Learned Counsel for the petitioner relied on the following decisions:

1. ***Pranav Verma and others Vs The Registrar General of the High Court of Punjab and Haryana at Chandigarh and another,***¹
2. ***The Institute of Chartered Accountants of India Vs Shaunak H. Satya and ors.***²
3. ***Navneet Kaur Dhaliwal and ors Vs The Registrar General of the High Court of Punjab and Haryana at Chandigarh and anr.***³
4. ***Ran Vijay Singh and ors Vs State of U.P. and ors.***⁴

8. Per contra, learned Advocate Mr Pangam appearing for the respondents would submit that first of all Goa Judicial Service Rules,

1 (2019) 15 S.C.R. 43

2 (2011) 14 (ADDL) S.C.R. 328

3 Writ Petition(s)(Civil) No(). 143/2020

4 (2017) 12 S.C.R. 95

2013 nowhere provides re-evaluation of the papers and therefore, prayers in the petition cannot be granted. Secondly, it is his contention that question papers were evaluated by sitting Additional District Judge and Additional Sessions Judge whereas moderation was carried out by the Principal District Judges. In such circumstances and the fact that in both the petitions no malafides have been pleaded, this Court should not venture into the aspects of re-looking the answer sheets placed along with the petitions for the purpose of considering the grounds in the petition. According to him, when the re-evaluation is nowhere provided under the Rules, such relief cannot be granted by way of filing a petition.

9. Learned Advocate would then submit that the questions papers for the main examination consist of only six questions which were properly divided in marks and the answer to such questions requires subjective satisfaction of the knowledge of the petitioners. He would then submit that question of providing key answers to the petitioners would not arise as the main examination is a subjective examination and not on objective basis. Candidate was required to answer the questions subjectively by answering it on the specific ingredients. Learned Advocate would then submit that as far as

prayer no.2 is concerned regarding refusal to provide answer key under the Right to Information Act, petitioners are having alternative efficacious remedy by way of filing an appeal. He would then submit that petitioners' prayer cannot be allowed since evaluation has been carried out by the experienced Judicial Officers and moderation has been done by the Principal District Judges.

10. Learned Advocate Mr D. Pangam, placed reliance on the following decisions:-

1. ***Dr B. R. Ambedkar University, Agra Vs Devarsh Nath Gupta and others,*** ⁵
2. ***Ran Vijay Singh and others Vs State of Uttar Pradesh and others,*** ⁶

11. Rival contentions fall for consideration.

12. An advertisement was issued by the High Court bearing advertisement no.HCB/Goa/CJJD&JMFC/2020/2022/553 inviting applications for the post of Civil Judge, Junior Division and Judicial Magistrate First Class in Goa Judicial Service Rules, 2013, to fill up four posts. Copy of this advertisement is placed at annexure "A" colly which gives detailed criteria of eligibility, last date for filing of the

⁵ 2023 SCC Online SC 970

⁶ (2018) 2 SCC 357.

application as well as scheme of the examination.

13. Paragraph 8 of the advertisement which deals with scheme of examination reads thus:-

8. The Scheme of Examination The examination will be held in the following three stages

<i>Preliminary Examination (if any)</i>	<i>100 Marks</i>
<i>Main Examination</i>	<i>200 Marks</i>
<i>Viva voce</i>	<i>50 Marks</i>

*(a) **Preliminary written Examination** (if any), shall comprise of multiple choice objective type questions, carrying 100 marks. The medium of preliminary examination (if any) shall be English. The aim of the Preliminary Written Examination (if any) is to shortlist the candidates appearing for the final written examination. The preliminary examination (if any) being a screening test, its marks will not be taken into consideration for final selection and will not be communicated to the candidates. If the Preliminary Written Examination is conducted, then, amongst the successful candidates, ten times the number of vacancies in the order of merit shall be allowed to appear for the Main Written Examination.*

(b) **Main Examination** - Main written examination shall comprise of two papers carrying 100 marks each, having a duration of 3 hours each in Civil Laws and Criminal Laws respectively. The medium of the written examination shall be either Konkani or Marathi or English. The candidate shall specifically mention in the candidate's Application Form about his choice of medium. Choice once given shall not be allowed to be changed subsequently under any circumstances.

(c) **Viva voce** -The High Court shall hold viva voce examination carrying 50 marks for the candidates who secure not less than 50% of marks in each paper at such final written examination.

Provided that the candidates belonging to the Scheduled Castes and Scheduled Tribes and Other Backward Classes who secure not less than 45% marks in each paper shall be eligible for the viva voce.

The candidate shall be called for the viva voce in the order of their merit by maintaining a ratio of 1:3 of the available vacancies from amongst the successful candidates. If more than one candidate secures the same marks in the proportion of 1:3, then all such candidates shall be called for the viva voce.

14. Preliminary written examination is to shortlist the candidates appearing for final written examination. The main written examination comprises of two papers carrying 100 marks each having a duration of three hours each in Civil law and Criminal law respectively. Candidate who is entitled to call for viva voce has to secure not less than 50% of the marks in each paper at the final written examination. However, such contention is relaxed with regards to Scheduled Castes and Scheduled Tribes as well as other backward classes who secured not less than 45% of the marks in each paper.

15. Syllabus for main written examination is found mentioned in paragraph 10B as under:-

(B) The syllabus for the main written examination shall be as mentioned below:

Paper - I (100 Marks)

- i) The Indian Contract Act, 1872*
- ii) The Specific Relief Act, 1963*
- iii) The Limitation Act, 1963*
- iv) Sale of Goods Act, 1930*
- v) Indian Partnership Act, 1932*
- vi) The Code of Civil Procedure, 1908*
- vii) Transfer of Property Act, 1882*

viii) *The Easement Act, 1882*

ix) *Family Laws in Goa including Hindu Laws and Muslim Laws*

x) *Land Laws*

(a) *The Goa, Daman & Diu Agricultural Tenancy Act, 1964*

(b) *The Goa, Daman & Diu Mundkars (Protection from Eviction) Act, 1975*

(c) *The Goa, Daman & Diu Buildings (Lease, Rent & Eviction)*

Control Act, 1968 and Rules, 1969

xi) *Constitution of India*

Paper - II (100 Marks)

i) *The Code of Criminal Procedure, 1973*

ii) *The Indian Penal Code, 1860*

iii) *The Evidence Act, 1872*

iv) *The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989*

v) *The Negotiable Instrument Act, 1881*

vi) *Essay on Current Legal Topic (Approximately 800 words)*

16. Petitioners applied for the post in view of the above advertisement and their applications were accepted. Petitioners were then called for the final written examination which was scheduled on 3.9.2023. Paper I (Civil) was scheduled from 10.00 a.m to 1.00 p.m

whereas paper II (Criminal) was scheduled from 2.00 p.m to 5.00 p.m. Petitioners answered paper I and paper II and thereafter results were declared stating that both the petitioners succeeded/passed in paper I (Civil) and failed in paper II (Criminal).

17. Mr Padiyar and Mr Agni would submit that the evaluation method adopted was discriminatory and proper marks are not allotted with respect to paper II (Criminal) even though petitioners answered the questions properly. It is their contention that after receipt of the copies of the answer sheets, it was observed by the petitioners that evaluation and moderation has not been properly carried out and that such evaluation and moderation has been done very strictly.

18. Both the learned counsel would submit that they are not alleging malafides or otherwise as far as evaluators/moderators are concerned but their main contention is that marking pattern is not properly carried out and very strict evaluation has been resulted in denial of opportunity to the petitioners. It is their contention that both the petitioners succeeded in paper I (Civil) and by granting some grace marks, they could have been declared successful in paper II (Criminal).

19. Mr Padiyar while placing reliance in the case of ***Pranav Verma and others*** (supra) would submit that this Court is having power to verify the papers of the petitioners and consider whether revaluation is necessary. Mr Padiyar would then placed reliance in the case of ***Ran Vijay Singh and ors*** (supra) wherein Apex Court observed that if the statute, Rules or Regulation governing an examination does not permit re-evaluation or scrutiny of answer sheet then the Court may permit re-evaluation or scrutiny only if it is demonstrated very clearly and without any inferential process of reasoning or by a process of rationalization and only in rare or exceptional cases that material error has been committed. He would then submit that here the petitioners in absence of answer key, are unable to demonstrate material error in evaluation or moderation and, therefore, this Court should interfere and direct re-evaluation.

20. Mr Padiyar then by placing reliance on ***Navneet Kaur Dhaliwal and ors***(supra) would submit that possibility of marking is found quite strict and fairly low marks have been given which needs to be reconsidered.

21. Mr Padiyar would then submit that in the case of ***Institute of Chartered Accountant of India*** (supra), the Apex Court has

observed that answer keys are required to be furnished after the exam is over as it would not be proper to refuse it.

22. Learned Advocate while placing reliance on the decision of ***Dr. B. R. Ambedkar University Agra***(supra) would submit that in rare and exceptional circumstances, the Apex Court has considered granting grace marks however, no re-evaluation was granted and, therefore, prayer of the petitioners needs to be rejected.

23. While placing reliance in the case of ***Ran Vijay Singh and others*** (supra) the learned Advocate would submit that the Apex Court categorically refused to direct re-evaluation or re-scrutiny of the answer sheets and that Court should presume correction of the key answers and proceed on that assumption in the event of doubt, benefit should go to the examining authority rather than to the candidate.

24. First and foremost aspect in the present matter is that petitioners are not alleging any malafides against examiner or moderators or even the administration. Their only contention is that there was very strict evaluation of the papers which resulted in giving very less marks. Since the petitioners were not provided key answer sheets, they are unable to raise proper grounds.

25. The Goa Judicial Service Rules, 2013 nowhere provides re-evaluation of the answer sheets of the main examination. Secondly, the Ape Court in the case of **Ran Vijay Singh** (supra) while dealing with such aspect has observed in paragraph 30 to 32 as under:-

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

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

30.2. *If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any “inferential process of reasoning or by a process of rationalisation” and only in rare or exceptional cases that a material error has been committed;*

30.3. *The court should not at all re-evaluate or*

scrutinise the answer sheets of a candidate —it has no expertise in the matter and academic matters are best left to academics;

30.4 The court should presume the correctness of the key answers and proceed on that assumption; and

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

31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse —

exclude the suspect or offending question.

32 *It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a classic example of the consequence of such interference where there is no finality to the*

result of the examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination — whether they have passed or not; whether their result will be approved or disapproved by the court; whether they will get admission in a college or university or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion being worse confounded. The overall and larger impact of all this is that public interest suffers.

26. In that matter, written examinations for the candidate for the post of trained graduate teacher for the Social Science in the State of Uttar Pradesh were held based on multiple choice answers. Successful candidates were called for interview and results were pronounced. Unsuccessful candidates filed petitions in Allahabad High Court which were dismissed mainly on the ground that there is no provision for re-evaluation of the answer sheets in the Act or

Rules framed thereunder.

27. Another batch of petitions were listed before another Single Judge of Allahabad High Court which were allowed directing to conduct re-examination of the answer sheets of those 77 writ petitioners. Said decision was challenged before the Division Bench of Allahabad High Court by the Board which were dismissed. Decision of the learned Single Judge to re-evaluate 77 answer sheets of the candidates were implemented and result of re-evaluation was declared. Such results show that some of the candidates who were earlier declared successful, were now declared unsuccessful. Said unsuccessful candidates preferred a special leave petition before the Apex Court. In that context observations in paragraphs 30 to 32 as quoted above are relevant.

28. The case of the ***Institute of Chartered Accountants of India***(supra) is distinguishable. First of all it does not relate to judicial service wherein main written examination is subjective and the candidate has to answer questions in detail by elaborating ingredients and the principles laid down under the Statue. Examination of the Chartered Accountants contains mathematical calculations wherein answer key would be essential. Therefore,

decision in the above case will not be helpful to the petitioners.

29. In the case of *Navneet Kaur Dhaliwal and ors* (supra) decision is purely on the facts of that matter and thus will not be of any help to the petitioners.

30. Matter in hand would clearly go to show that the examination papers disclose that the candidate is required to answer all questions. There are in all six questions. Question No.1 carries 20 marks whereas remaining questions carry 16 marks each. Instructions further show that the answer of the candidate must be to the point and wherever possible the candidate has to quote specific provisions of law. Question no.1 in paper II (criminal) is with regards to drawing of a judgment on the facts disclosed therein. Instructions show that the candidate is required to adhere to the contents of the judgment as required under Code of Criminal Procedure, 1973. Candidate was also directed to frame points and answer them. Similarly the candidate was required to give legal, logical and proper reasons for his/her findings and lastly to conclude the judgment with a proper order. Thus, instructions are quite clear and there is no confusion created in the mind of the particular candidate about such instructions. Besides, there is no ground raised

in the present petition about such instructions.

31. Evaluation of papers were carried out by the sitting Additional District and Sessions Judges whereas moderation has been carried out by the Principal District Judges, having vast experience in the field.

32. The contention that no separate marks are given by the moderators and that similar marks are found as given by the evaluator and moderators which lead to non application of mind by moderator needs to be out rightly rejected. First of all, the job of moderator is only to monitor and find out whether answers have been properly examined or evaluated. In case it is observed by moderator that such answer is not properly evaluated or higher or less marks are given, in that case, moderator may in his/or capacity may reduce or enhance such marks.

33. Answer sheets produced by the petitioners and more particularly the first page itself shows that marks given by the evaluator and that of the moderator are separately mentioned against each question/answer. Thus, the contention of the petitioners needs to be out rightly rejected. No extraordinary case is made out to interfere with the selection process as held in paragraph

30 to 32 in ***Ran Vijay Singh and others*** (supra) and thus prayer for re-evaluation cannot be accepted.

34. For the above reasons, we are not inclined to accept the contention raised by the petitioners in both these petitions. Accordingly, petitions stand dismissed.

35. Rule is discharged. In the above circumstances, no order as to costs.

VALMIKI SA MENEZES, J

BHARAT P. DESHPANDE, J