

Lalit Mohan Sharma Vs. Rpsc and ors.

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Court : Rajasthan

Decided On : Jul-29-2005

Reported in : RLW2005(4)Raj2725; 2005(4)WLC354

Judge : Shiv Kumar Sharma, J.

Acts : Rajasthan Panchayati Raj Rules, 1956

Appeal No. : S.B. Civil Writ Petition No. 1042 of 2005

Appellant : Lalit Mohan Sharma

Respondent : Rpsc and ors.

Advocate for Def. : G.S. Gill, Addl. Adv. General,; Arun Sharma, Dy. G.A.,;

Advocate for Pet/Ap. : Rajendra Soni,; Manish Bhandari,; R.P. Garg,;

Judgement :

Shiv Kumar Sharma, J.

1. The basic determinates of the Constitutional conception of PUBLIC SERVICE COMMISSION (for short 'RPSC') are impartiality and integrity. The founding fathers of the Indian Constitution provided for a PSC at the Union as well as the State level, as an autonomous body to carry on its functions independently, fairly and impartiality. Their Lordships of the Supreme Court in R/o Dr. Ram Ashray

Yadav v. Chairman Bihar PSC : [2000]2SCR688 restated the morals of the PSC. It was indicated in para 34 thus:

'The credibility of the institution of a Public Service Commission is founded upon the faith of the common man in its proper functioning. The faith would be eroded and confidence destroyed if it appears that the Chairman or the members of the Commission Act subjectively and not objectively or that their actions are suspect. Society expects honesty, integrity and complete objectivity from the Chairman and members of the Commission. The Commission must act fairly, without any pressure or influence from any quarter, unbiased and impartially, so that the society does not lose confidence in the Commission. The high Constitutional trustees, like the Chairman and members of the Public Service Commission must forever remain vigilant and conscious of these necessary adjuncts.'

2. Since most sensitive standard of behaviour is expected from Rajasthan P.S.C. and its morals have to be tested in a much stricter sense than the morals of a common man in the market place, it is necessary for me to closely scrutinise the allegations levelled against the Rajasthan P.S.C. in the instant writ petitions that are more than 500 in number.

3. It is averred by the petitioners that as many as 21 questions set in the Primary Teacher Examination 2004 conducted by the Rajasthan P.S.C. for the purpose of recruitment of Primary Teachers under Rajasthan Panchayati Raj Rules 1956, were either having more than one correct answer or answer accepted by the Rajasthan P.S.C. is wrong.

4. The examination was conducted by Rajasthan P.S.C. on September 12, 2004 and result of the same was declared on January 6, 2005 and answer key was published. The pattern of the examination was 'Multiple choice objective-type test'. One hundred questions were set in the paper and four alternative answers were indicated against each question. The candidates were required to tick the correct answer from out of those four. If the candidate ticked the correct answer, he was entitled to secure two marks. In determining which out of the four suggested answer was the correct answer, the paper-setter supplied the correct answer to each question, called the 'key-answer'. The key-answers were fed into a Computer

and the marking computerised. The Rajasthan P.S.C. intended to be frank and fair, therefore, it published the key-answers along with the result of the examination. The aspirants whose names did not figure in the lists of successful candidates filed writ petition in the High Court at Jodhpur contending that answers ticked by them were correct and key-answers wrong. The High Court did not accept their contention and the writ petitions were dismissed vide order dated July 25, 2005.

5. A bare look at the order rendered in *Shiv Dayal v. State* (S.B. Civil Writ Petition No. 606/2005, on dated July, 25, 2005) demonstrates that the High Court directed the Rajasthan P.S.C. to get suspected answers checked by a Competent Committee. The Committee submitted a report in favour of the Rajasthan P.S.C. After noticing that the Committee observed empty formality and finding given by the Committee was not supported by reasons, the High Court reconstituted the Committee that submitted a bulky report running in 393 pages. The Committee was of the view that key answers were correct. The High Court in the order observed that the Court on the basis of the report was neither going to hold the key answers as correct nor was going to declare those answers as wrong. In the ultimate analysis the High Court observed thus:

'As stated above and in the preceding paras the answers treated as correct by the Commission are referred as correct answers in various reference books authored by expert of the subjects, therefore, it cannot be said that the answers suggested by the petitioners are the only correct answers and the answers accepted by the Commission as correct answers are undoubtedly wrong answers. In this situation in view of law laid down by Hon'ble Supreme Court in the case of *Kanpur University* (supra) I must accept the answers given in the key as correct answers.'

6. In *Kanpur University v. Samit Gupta* : [1984]1SCR73 , the controversy arose in regard to three questions and the Hon'ble Supreme court dealt with those questions one by one without making its own guess as to which was the correct answer. In the course of arguments learned Counsel took me to the suspect questions, key answers, answers suggested by the petitioners as well as report of expert Committee constituted by the High Court at Jodhpur. Having carefully gone

through the relevant record. I noticed that as many as 21 questions were of such nature that each question had two correct answers. The key answer of the questions published by the Rajasthan PCS on one hand was supported by the various standard books, the different answer of the said question suggested by the petitioners, was also on the other hand shown correct by another set of standard books.

7. In Kanpur University case (supra) their Lordships of the Supreme Court propounded thus:

'If a paper-setter, commits an error while indicating the correct answer to a question set by him, the students who answer that question correctly can not be failed to for the reason that though their answer is correct, it does not accord with the answer supplied by the paper setter to the University as the correct answer.

The key answer should be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by an inferential process of reasoning or by a process of rationalisation. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well-versed in the particular subject would regard as correct.

Where it is proved that the answer given by the students is correct and the key-answer is incorrect the students are entitled to relief asked for. In case of doubt unquestionably the key answer has to be preferred. But if the matter is beyond the realm of doubt, it would be unfair to penalise the students for not giving an answer which accords with the key answer that is to say, with an answer which is demonstrated to be wrong.

In a system of 'multiple choice subjective type test', care must be taken to see that question having ambiguous import are not set in the papers. That kind of system of examination involves merely the tick-marking of the correct answer. It leaves no scope for reasoning or argument. The answer is 'yes' or 'no'. That is why the questions have to be clear and unequivocal. If the attention of University is drawn to any defect in a key answer or ambiguity in a question set in the examination, prompt and timely decision must be taken by the University to declare that the

suspect question will be excluded from the paper and no marks assigned to it.

8. As earlier notice learned Single Judge in *Shiv Dayal v. State* (supra) indicated that:

'It cannot be said that answers suggested by the petitioners are the only correct answers and the answers accepted by the Commission, as correct answers are undoubtedly wrong answers.'

This observation implies that answers suggested by the examiners as also the key-answers supplied by the Rajasthan PSC were both correct and could not be termed as wrong answers. In my opinion in such a situation, the key answers of the suspect questions ought to have been excluded from the paper and no marks should have been assigned to such questions. I, therefore, respectfully disagree with the finding arrived at by my learned brother in *Shiv Dayal v. State* (supra). It appears that para 18 of *Kanpur University case* (supra) escaped notice and could not be dealt with in *Shiv Dayal v. State* (supra).

9. In these circumstances, I refer following question for adjudication to the Division Bench:

'Where any defect or ambiguity in a key-answer of a question in the examination is shown, would it be just and proper to exclude suspect question from the paper and not to assign any marks to such question

10. Let the matters be placed before Hon'ble the Chief Justice for Constituting the Division Bench.