

**Rohit Kumar Vs Delhi Subordinate Services Selection Board.**

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**Court :** Delhi

**Decided On :** Aug-25-2010

**Judge :** Mr. ManMohan. J.

**Appeal No. :** LPA 595/2010.

**Appellant :** Rohit Kumar

**Respondent :** Delhi Subordinate Services Selection Board.

**Advocate for Def. :** Mrs. Zubeda Begum, Ms. Sana Ansari, Adv.

**Advocate for Pet/Ap. :** Mr. Ajay Kumar, Adv.

**Judgement :**

1. Whether reporters of the local papers be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

## **ORDER**

1. In this intra-Court appeal preferred under Clause 10 of the Letters Patent, the legal substantiality and defensibility of the order dated 7th July, 2010 passed by the learned Single Judge in WP(C) No. 11522/2009 is called in question.

2. The facts, as have been uncurtained, are that the appellant-petitioner (hereinafter referred to as 'the appellant') invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for issuing a writ of mandamus commanding the respondent to produce the record of the evaluators and all answer scripts of the 13 toppers of the Pre- Exam/Part-I of the impugned primary teacher examination and 10 copies of the toppers of the Main Exam/Part-II of the impugned primary teacher examination and to set an enquiry against the respondent to check the drastic irregularities in the examination pattern and the irregularity in the appointment of evaluators and further to hold that the evaluators are non- experts of the subjects in respect of the questions set and, hence, they were not eligible to evaluate the answer scripts.

3. It was pleaded in the writ petition that the respondent-Delhi Subordinate Services Selection Board (for short 'the Board') published an advertisement in various newspapers with regard to the vacancies for the post of Primary Teachers in the schools run by the Municipal Corporation of Delhi (for short 'the MCD'). An examination was carried out for the posts in question on 15th February, 2009 which consisted of two parts, namely, Part-I which comprised of objective type questions meant for the qualifying test and Part-II, subjective type of questions which was for determination of inter se merit. The petitioners undertook the Part-II examination after getting qualified in the Part-I examination and despite their excellent performance, could not become successful. It was contended that there was a disparity of great magnitude in the marks obtained by them in Part-I and Part-II and that was because the papers of the Part-II examination were corrected by non-subject experts. It was urged that no instructions or key answers were supplied to any of the examiners to aid them in the process of correcting the answer scripts as a result of which the entire method of evaluation had become fallacious. It was highlighted that the Part-II main examination contained subjects pertaining to psychology, philosophy, educational technology, school management, methods of teaching, etc. but the evaluators were trained graduate teachers in subjects like English, Mathematics, Geography, History, etc. and, hence, the entire evaluation was basically erroneous.

4. Resisting the said stand of the appellant, the respondent-Board put forth that there was no irregularity in the appointment of the examiners of the answer scripts inasmuch as the selection process was absolutely transparent and the Directorate of Education had forwarded the names of responsible teachers for conducting the evaluation work. It was set forth that when the names of the teachers were recommended by the Directorate of Education, the grievance that they were disqualified was totally sans substance. It was further highlighted that the selection process undertaken by the respondent was for the post of school teachers at the primary level, that is, upto class V and, therefore, the examiners were eligible to correct the answer scripts. The allegation of disparity in the awarding of marks was disputed. The appointment of the examiners who evaluated the answer scripts was justified on the foundation that the evaluators were qualified persons.

5. The learned Single Judge, after adverting to the material brought on record, came to hold that there was no irregularity in the appointment of the examiners and that the prayer for re-evaluation of answer scripts in the absence of rules or regulations was impermissible and, accordingly, dismissed the writ petition.

6. We have heard Mr. Ajay Kumar, learned counsel for the appellants, and Mrs. Zubeda Begum, learned counsel for the respondent Board.

7. It is submitted by the learned counsel for the appellant that the learned Single Judge has failed to appreciate that when the question papers related to various subjects like psychology, philosophy, educational technology, school organization and management and Hindi language, the experts who did not belong to the said streams, could not have been appointed. It is urged by him that the issue that was propounded before the learned Single Judge was not the process of appointment of the evaluators or examiners but their capability and ability to examine the answer scripts which has not been answered. It is canvassed by him that the respondent-Board has made a maladroit endeavour to pass on the responsibility to the Directorate of Education without itself looking into the aspect that competent examiners are required to examine the answer papers. The learned counsel further submitted that when the appellant had secured high marks in the objective test and has been awarded extremely less marks in the subjective test, it creates a

lurking suspicion in the method of evaluation and, therefore, the learned Single Judge should have addressed to the said facet taking a different approach and should not have expressed the view that in the absence of a rule or regulation, re-evaluation is totally impermissible although in special circumstances, re-evaluation is allowable. The learned counsel further submitted that when a defective method for selection is adopted, the same becomes arbitrary and this Court, in exercise of power of judicial review, should interfere with the same.

8. Mrs.Zubeda Begum, learned counsel for the respondent, submitted that the order passed by the learned Single Judge is impregnable inasmuch as the appellant cannot claim to get his answer script re-evaluated in the absence of a rule or regulation in that regard and further in absence of any specific and precise particulars to warrant such an action. It is her further submission that the appellant had taken a chance to get himself selected and after his non-selection, he cannot pave the path of tergiversation and challenge the selection process as the same is in the realm of impermissibility. It is contended by her that if the questions are seemly scrutinized, it would be clear that the same can be evaluated by the category of persons who are being chosen by the Directorate of Education and the submission that it required experts is totally bereft of any substratum. It is also canvassed that the method of selection is not arbitrary for the simple reason that there is distinction between an objective test and a subjective test and the said aspect cannot be entered into by applying the parameters of judicial review.

9. First, we shall address ourselves to the question whether the teachers who were selected for evaluating the answer scripts of the examinees were required to be experts in the concerned subjects or not. The submission of Mr.Ajay Kumar, learned counsel for the appellant, is that when the subjects relate to philosophy, psychology, education and such other subjects, a teacher who teaches English, history, geography, Hindi or mathematics cannot be an evaluator. To appreciate the said aspect, we enquired from the learned counsel for the appellant to point out the nature of questions an examinee was required to answer. The learned counsel has drawn our attention to Annexure A-4 which relates to the question paper of Part-II. To appreciate the controversy in completeness, we think it apt to reproduce the questions:

1. That the main aim of the education is not earning. Describe it. Tell about the basis education of Mahatma Gandhi. What is the difference between naturalism, progressivism and idealism, discuss it. (Philosophy)
2. What is called community resources. And write about the community and school? (School organization and management)
3. How will you maintain the Discipline in the Class Room without punishment? (School organization and Management)
4. What do you mean by School Discipline? What should be done by a Teacher to maintain the Discipline in the Class Room and what is the importance of Discipline in the Class Room? (School organization and Management)
5. What are the problematic children. These are of how many kinds. How a teacher will teach such children in the class? (Education Psychology)
6. Why the mid-day meal is useful at the primary level? What is effect of the mid-day meal on the primary education? (Education)
7. That the education and learning at the primary level should be in mother tongue describe it. (Learning education/teaching of Hindi).
8. Which methods you will use at the primary level to teach the mathematics educational and which Assistance Educational Material you will choice? Explain with example. (Educational Technology)
9. How many teaching methods are there. Describe it? (Education Technology)
10. How Field trip/Excursion method is useful in the education. Draw a outline for Field trip/Excursion method. (Educational Technology)
11. What are the methods of teaching? (Educational technology)
12. What is called the discipline and how many kind of discipline are there? (Psychology)

13. How you will describe to the children in the class about sphere, Globe and Map. Differentiate between rotation and revolution and between globe and map. (Teaching of Geography)

14. What is Helping Educational Material? Explain with the help of example, the importance of Helping educational Material in the Teaching learning. (Educational Technology)

15. What is the difference between Classical Conditioning and Operant Conditioning? (Psychology)

16. Write about case and adjective. (Hindi)

17. Write the meaning of prose and poetry. (Hindi)"

10. On a perusal of the aforesaid questions, we really fail to fathom how the questions actually pertain to the field to be dealt with alone by the experts in the said field. The questions that have been framed relating to subjects of philosophy, psychology, educational technology, education, educational psychology, ex facie, are absolutely in general terms and an experienced teacher would face no difficulty whatsoever in examining them. We are absolutely clear in our minds that we are not experts to decide about the expertise but we cannot be oblivious of the fact that the Directorate of Education has selected teachers with experience in subjects like English, Mathematics, Hindi, Geography, History, etc. The questions have to be answered by the candidates who are seeking selection for the post of teachers who would impart education to the students prosecuting their studies at the primary level. The question relating to philosophy fundamentally pertains to the aim of education and the basis of education conceived by Mahatma Gandhi. The second part of the said question relates to educational concept which every teacher is expected to know. Although the question has been termed as 'philosophy', yet even a student who has studied philosophy to some extent can say without any kind of hesitation that it does not relate to any philosophical concept. It has nothing to do with Kantian rigorism, existentialism, nihilism, Vedantic conceptualism, Upanishadic abstraction, monism, dualism, uniformity in diversity, transcendentalism, theory of ascendance, hedonism, doctrine of

'Charvak', Descarte's concept of thought and existence, philosophy of Gita, the principle of total non-permanence of Buddhism, Spinoza's theory of single substance, and knowledge of God in a holistic sense, ideas of Confucius, cyclical theory of metaphysics, doctrine of Sankhya or Yoga, Socratic principles of dialectics or anything remotely connected with it. Similarly, the questions on education-psychology or psychology do not have any kind of subtleties or intricacies in the proper sense of the term 'psychology'. It has nothing to do 'id', ego or super ego. It is not connected with psycho-analysis, analysis of thought, negative psychology, understanding and analysing of dreams, Freudian scanning of sub-conscious or Jung's ideas. It basically pertains to teaching. Similar would be the analogy in respect of learning education, teaching Hindi, educational technology and such other things. A teacher who is expected to teach young children is required to know how to instill discipline and also understand how discipline helps in structuring the mind of a young child. A child leaves home and goes to school. The school becomes his second home but the school demands a disciplined conduct. A school in a way mothers children. A teacher has the status of 'Loco parentis'. The colossal complaint made by the learned counsel for the appellant that the evaluators were not competent to examine the answer papers is totally unacceptable. We may repeat at the cost of repetition that we have adverted to this facet only to highlight that the nature of questions framed really do not require any kind of subject experts, as urged with immense vehemence by Mr. Ajay Kumar, learned counsel for the appellant, and, accordingly, we find no fault with the decision taken by the Directorate of Education in choosing the expert examiners who have experience in teaching.

11. The learned counsel for the appellant has submitted that the total evaluation has gone erratic inasmuch as the appellant has secured high marks in objective test but has not been awarded proper marks in the subjective test in spite of his best performance. The learned counsel has pressed hard that the sample paper should be called and a direction should be issued for re-evaluation including the paper of the present appellant.

12. It is not disputed that there is no rule or regulation for evaluation. In this context, we may refer with profit to the decision in Maharashtra State Board of

Secondary and Higher Secondary Education v. Paritosh Bhupesh Kurmarsheth, AIR 1984 SC 1543, wherein the Apex Court, upholding the provisions contained in Maharashtra Secondary and Higher Secondary Education Board Regulation, 1977 which prohibited re- evaluation, especially Regulation 104 that only provided for verification of the answer scripts, expressed thus: "The High Court has relied upon the fact that the University of Bombay and some other Universities have recently made provisions permitting candidates to demand revaluation. In our opinion, this has little relevance for the purpose of deciding about the legal validity of the impugned regulations framed by the Board. We do not know under what circumstances, the University of Bombay has decided to recognise a right in the examinees to demand a revaluation. As far as the Board is concerned it has set out in the counter-affidavit the enormity of the task with which it is already faced, namely, of completing twice during each year the process of evaluation and release of results of some 3 lakhs of candidates appearing for the S.S.C. and H.S.C. examinations to be held in an interval of only a few months from one another. If the candidates are at all to be given inspection of their answer books or the revaluation of the answer papers is to be done in the presence of the candidates, the process is bound to be extremely time consuming and if such a request is made by even about ten per cent of the candidates who will be 30,000 in number, it would involve several thousands of man hours and is bound to throw the entire system out of gear. Further, it is in the public interest that the results of Public examinations when published should have some finality attached to them. If inspection, verification in the presence of the candidates and revaluation are to be allowed as of right, it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking etc. of the candidates, besides leading to utter confusion on account of the enormity of the labour and time involved in the process."

13. In Pramod Kumar Srivastava v. Chairman, B.P.S.C., Patna, AIR 2004 SC 4116, a three-Judge Bench of the Apex Court has held as follows: " There is no dispute that under the relevant rule of the Commission there is no provision entitling a candidate to have his answer-books re-evaluated. In such a situation, the prayer made by the appellant in the writ petition was wholly untenable and the learned single Judge had clearly erred in having the answer-book of the appellant

re-evaluated."

14. In this regard, it is fruitful to refer to the pronouncement in *The Secretary, West Bengal Council of Higher Secondary Education v. Ayan Das & Others*, AIR 2007 SC 3098, wherein their Lordships held to the following effect: "The courts normally should not direct the production of answer scripts to be inspected by the writ petitioners unless a case is made out to show that either some question has not been evaluated or that the evaluation has been done contrary to the norms fixed by the examining body. For example, in certain cases examining body can provide model answers to the questions. In such cases the examinees satisfy the court that model answer is different from what has been adopted by the Board. Then only the court can ask the production of answer scripts to allow inspection of the answer scripts by the examinee ".

15. We may also refer with profit to a three-Judge Bench decision in *Sahiti v. Dr. N.T.R. University of Health Sciences*, (2009) 1 SCC 599. It is worth noting that in the said case, the Apex Court was dealing with a situation where the Vice Chancellor of Dr. N.T.R. University of Health Sciences had directed re-evaluation of the answer scripts and in that context, their Lordships have opined thus:

"37. Award of marks by an examiner has to be fair and considering the fact that re-evaluation is not permissible under the Statutes at the instance of candidate, the examiner has to be careful, cautious and has the duty to ensure that the answers are properly evaluated. Therefore, where the authorities find that award of marks by an examiner is not fair or that the examiner was not careful in evaluating the answer scripts, re-evaluation may be found necessary.

38. There may be several instances wherein re- evaluation of the answer scripts may be required to be ordered and this Court need not make an exhaustive catalogue of the same. However, if the authorities are of the opinion that re-evaluation of the answer scripts is necessary then the Court would be slow to substitute its own views for that of those who are expert in academic matters."

16. Recently, in *H.P. Public Service Commission v. Mukesh Thakur & Another*, MANU/SC/0401/2010, their Lordships, after referring to earlier decisions, have

expressed thus:

"27. Thus, the law on the subject emerges to the effect that in absence of any provisions under the Statute or Statutory Rules/Regulations, the Court should not generally direct revaluation." 17. In view of the aforesaid enunciation of law, we have no trace of doubt that ordinarily a Court, in the absence of any statutory rule or regulation, should not direct for re-evaluation. The only ground urged by the learned counsel for the appellant is that the questions were evaluated by the examiners who were not experts in the subjects. The examiners were chosen by the Directorate of Education. We have referred to the questions and are of the considered opinion that the decision of the Directorate of Education cannot be flawed by not appointing a professor in philosophy or a lecturer in psychology or an expert in the field of education to examine the answer papers. In the case at hand, the authorities have not directed for re- evaluation. No case had been made out for re-evaluation. What has been urged is that the examiners were not eligible to examine the answer scripts. We have already dealt with the same in detail. In our considered view, this is also not even a case for verification of the answer scripts as no real foundation has been laid or no proper edifice has been built. Thus, the submission is bound to be repelled and, accordingly, we do so.

18. In view of our preceding analysis, we perceive no merit in this appeal and resultantly, the same stands dismissed without any order as to costs.

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