

* **HIGH COURT OF DELHI : NEW DELHI**

+ **WP (C) No. 11522/2010**

Nand Kishore & Ors. Petitioners
Through: Mr. Ajay Kumar, Adv.

Versus

Delhi Subordinate Services
Selection Board Respondent
Through: Ms. Zubeda Begum with
Ms. Sana Ansari, Adv.

AND

WP (C) No. 12461/2009

Sheetal & Ors. Petitioners
Through: Mr. Ajay Kumar, Adv.

Versus

Delhi Subordinate Services
Selection Board Respondent
Through: Ms. Zubeda Begum with
Ms. Sana Ansari, Adv.

AND

WP (C) No. 14071/2009

Sandeep Rana & Ors. Petitioners
Through: Mr. Ajay Kumar, Adv.

Versus

Delhi Subordinate Services
Selection Board Respondent
Through: Mr. S.Q. Kazim with Mr. Alim
Mizaj and Mr. Haris Usmani, Adv.

Judgment reserved on : June 02, 2010

Judgment pronounced on : July 07, 2010

Coram:

*WP (C) No. 11522/2010, WP (C) No. 12461/2009
& WP (C) No. 14071/2009*

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HON'BLE MR. JUSTICE MANMOHAN SINGH

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MANMOHAN SINGH, J.

1. The present writ petitions have been filed by the petitioners under Article 226 of the Constitution of India against the respondent for carrying out arbitrary and incorrect marking by ill-equipped teachers in the examination conducted on 15.02.2009 for the post of Assistant Teacher (Primary). Following is the relief sought by the petitioners :

- a. call the record of the evaluators and all the answer sheets of the Petitioners, first thirteen toppers of the Pre-Exam/Part-I of the impugned primary teacher exam and ten copies of the toppers of the Main Exam/Part-II of the impugned primary teacher examination.
- b. to set an inquiry against the respondent to check the drastic irregularity in the examination pattern and irregularity in the appointment of the evaluators of the Part-II main impugned examination A-1.
- c. if the evaluators are non-expert of the subjects/questions given in question paper of Part-II of the impugned primary teacher examination then either direct the re-evaluation of the whole of the Part-II Answer sheets by competent subject experts or strike

(sic) down the impugned examination A-1.

2. The petitions under consideration are inter-connected as the petitioners in all three petitions appeared for the above mentioned examination in the hope of being appointed to the post of Assistant Teacher (Primary) and therefore, as the facts and contentions as well as the allegations are similar, the petitions shall be considered and adjudged by this common order and it is not necessary to exposit them separately.

3. The common facts on which the petitions have been filed are that the defendant published an advertisement in various newspapers with regard to vacancies for the post of primary teachers in MCD schools which was responded to by the petitioners. An exam was carried out for the said post on 15.02.2009 which consisted of two portions, Part-I which had objective type questions and was a qualifying test and Part-II which had subjective type questions and was merit based.

4. The main grievance of the petitioners is that there is a wide disparity between the marks obtained by them in Part-II of the above said examination which are shockingly less and the marks obtained by them in Part-I of the same examination as well as by the marks obtained by most other examinees in Part-II of the exam. This disparity has been underscored by various details including the fact that the first thirteen toppers of Part-I of the exam have not been selected in Part-II of the exam. Thus the present writ petitions have been filed.

5. It is alleged by the petitioners that the answer sheets of Part-II

of the examination have been checked by non subject experts who are not qualified enough to check the same and in fact have no connection with the subjects concerned which is why the marking has been incongruent and arbitrary. Further, no instructions or key-answers were given to any of the examiners to aid them in the process of correcting the answer sheets, thereby resulting in wrong and random checking. Various other allegations have been leveled at the respondent such as that there was lack of planning the logistics of the examination, the language in which the questions were to be answered was changed from the option of English or Hindi to mandatorily Hindi on the day of the examination etc. Further, the teachers who checked the answer sheets have been alleged to not have been connected to the Hindi language as well, making it impossible for them to correctly check the same.

6. On these grounds the petitioners have sought that the answer sheets of the petitioners, toppers of Part-I of the examination and toppers of Part-II of the examination be called along with the record of the evaluators who checked the same; that an inquiry be initiated against the respondent to check the irregularity in the examination pattern and in the appointment of the evaluators of Part-II of the examination and if it is found that the examiners were non experts, to direct re-evaluation of Part-II of the examination or to strike down the entire examination. The petitioners have also placed on record copies of the Part-II question papers, list of petitioners with the marks secured by them in Part-I and Part-II of the examination, typed copy of the result of the first thirteen

toppers of Part-I and Part-II of the examination, copies of part of the result and copies of answer sheets of Gayatri and Nikita Gupta and their own answer sheets as well.

7. I have perused the record and submissions made by both the parties. The questions on which this entire matter hinges are (i) whether there was any irregularity in the appointment of the examiners who checked the answer sheets of the petitioners, (ii) whether the said examiners were non experts and whether if so, re-evaluation of Part-II of the examination can be directed or the entire exam struck down.

8. The respondent has submitted that there has been no irregularity in appointing the examiners of the answer sheets as the selection process is very transparent and it is the Directorate of Education which considers various parameters and then forwards the names of responsible officers for conducting evaluation work to be done by the respondent. The teachers recommended for selection work under the domain of the Directorate of Education and the same cannot be disregarded as not qualified enough to carry out the work they are selected to do. Further, it must be kept in mind that the selection process undertaken by the respondent was for the post of school teachers at the Primary level i.e. up to Class V.

9. It has been argued that there can be no question of bias in the minds of the examiners and no disparity in their evaluation as the policy followed by the respondent in this regard is that the examiners never know the identities of the examinees as the respondent follows a

confidential system of dummy roll numbers. Further, the evaluated answer sheets are counter checked by another examiner to minimize the chances of any error or discrepancy.

10. As regards the disparity between the scores obtained in Part-I and Part-II of the examination, the respondent has countered that both Parts have different consequences insofar as Part-I is only a qualifying exam and the competency of the examinees cannot be adjudged on Part-I as the same only qualifies which examinees shall be eligible to appear for Part-II. It is Part-II which is the sole criteria to decide the suitability of the examinees vis-à-vis the post.

11. As far as the allegation of changing the language in which the examination was to be held to Hindi is concerned, the respondent has submitted that as per the advertisement for the post, passing of Hindi as a subject at the secondary level was mandatory and thus the candidates were required to be proficient at Hindi.

12. It appears to me that there has been no irregularity in the selection/ appointment procedure of the examiners who evaluated the answer sheets of the petitioners as the entire process is very clear cut and simple. A policy of transparency is followed by the respondent and the onus of selecting adequately qualified persons lies on the Directorate of Education and seems to have been carried out satisfactorily by the same.

13. Nothing has been placed on record to prove that the examiners were lacking in the standard of qualifications required by the Directorate of Education to make them eligible for selection. It is also very pertinent

to note that the examination was conducted to fill the post of an Assistant Teacher of primary school, i.e. the said examination was not a highly technical or unyieldingly competitive examination which would require top notch experts in their respective fields/ subjects to be evaluating the answer sheets and further, the Directorate of Education would have its own guidelines to decide what qualifications are necessary for evaluators/ examiners to be able to responsibly and correctly evaluate answers for each post. Therefore, I am of the considered view that no irregularity has occurred in the appointment process of the examiners, therefore, this Court feels that it is not needful or proper to discuss and compare the answer sheets of the petitioners with those of the successful candidates.

14. As regards the question of directing re-evaluation of the answer sheets of the petitioners, reliance can be placed on the case of ***H.P. Public Service Commission Vs. Mukesh Thakur & Anr.***, Civil Appeal No. 907/2006 decided on 25.05.2010 by a Division Bench of the Supreme Court wherein the question of re-evaluation of answer sheets has been laid to rest. The relevant paragraph of the said judgment is reproduced hereunder :

“24. The issue of re-evaluation of answer book is no more *res integra*. This issue was considered as length by this Court in **Maharashtra State Board of Secondary and Higher Secondary Education & Anr. Vs. Paritosh Bhupesh Kurmasheth etc. AIR 1984 SC 1543**, wherein this Court rejected the contention that in absence of provision for re-evaluation, a direction to this effect can be issued by the Court. The Court further held that even the policy decision incorporated in the Rules/ Regulations not providing for rechecking/ verification/ re-evaluation cannot be challenged unless there are grounds to show that the policy itself is in violation of some statutory provision.”

The judgment then goes on to cite several cases wherein this view has been upheld and followed.

15. Another pertinent case which can be referred at this point is titled *Nirbhesh Saxena Vs. Central Board of Secondary Education Through Secretary*, WP (C) No. 10374/2004 decided on 06.08.2004 wherein this Court held that the dispute as to re-evaluation poses no constitutional question or significance as “*the right to the information even as a facet of the right to freedom of speech and expression cannot possibly be claimed by a candidate in relation to the evaluation of his performance in a competitive examination. The concept of freedom of speech and expression or the philosophy underlying the extension of the said right to newer areas like receipt or dissemination of information does not have any correlation or nexus with the process of evaluation of an answer script of the assessment of the merit of a candidate who has appeared in a competitive test or examination. ...*”

16. In the present petition, no statutory provision or any Rule has been placed on record or referred which provides for re-evaluation of the answer sheets. In such case where the requisite provision is not there, clearly the Court cannot direct for re-evaluation when no statutory authority provides for the same. The same judgment of *H.P. Public Service Commission* (supra) states in paragraph 19 that the Courts may not examine answer sheets from which the Commission had assessed the merit of the candidates. Further, in case of any discrepancy in evaluation, the same would be for all the candidates appearing and not the

petitioners only.

17. In the facts and circumstances of the present matter, this Court is bound by precedent and no direction as to re-evaluation of the petitioners' answer sheets or striking down of the examination can be given.

18. There is no merit in the present petitions. Writs dismissed. No costs.

MANMOHAN SINGH, J.

JULY 07, 2010