

W.A. No.247 OF 2021

C O R A M:

***SHRI JUSTICE S. K. MISHRA
AND
MISS JUSTICE SAVITRI RATHO***

**W.A. Nos. 247, 246, 254, 255, 257, 258, 259, 264, 265, 266
and 291 of 2021**

W.A. No.247 of 2021

Kedar Sahukar Appellant.
- Versus-
Secretary, Board of Secondary
Education, Odisha, Cuttack
& Ors. Respondents.

For Appellant : Mr. Budhadev Routray,
Sr. Adv.,
Mr. S. Routray,
B.R. Pattanayak, J. Biswal,
A.K. Das and M. Panda.
For Respondents : Mr. S.S. Rao, Sr. Adv.

W.A. No.246 of 2021

Reena Giri Appellant.
- Versus-
Secretary, Board of Secondary
Education, Odisha, Cuttack
& Ors. Respondents.

For Appellant : Mr. Budhadev Routray,
Sr. Adv.,
Mr. S. Routray,
B.R. Pattanayak, J. Biswal,
A.K. Das and M. Panda.
For Respondents : Mr. S.S. Rao, Sr. Adv.

W.A. No.254 of 2021

Chandrakanta Behera Appellant.
 - Versus-
 Secretary, Board of Secondary
 Education, Odisha, Cuttack
 & Ors. Respondents.

For Appellant : Mr. Subhadutta Routray,
 J. Biswal, M. Panda, B.R.
 Pattanayak, S.Sekhar and
 S. Routray.

For Respondents : Mr. S.S. Rao, Sr. Adv.

W.A. No.255 of 2021

Manasmini Das Appellant.
 - Versus-
 Secretary, Board of Secondary
 Education, Odisha, Cuttack
 & Ors. Respondents.

For Appellant : Mr. S.P. Nath, S.S. Routray,
 J. Biswal, M. Panda, B.R.
 Pattanayak, S. Sekhar and
 A.R.Das.

For Respondents : Mr. S.S. Rao, Sr. Adv.

W.A. No.257 of 2021

Jyoti Ranjan Balabantaray Appellant.
 - Versus-
 Secretary, Board of Secondary
 Education, Odisha, Cuttack
 & Ors. Respondents.

For Appellant : Mr. S.P. Nath,
 B.R. Pattanayak, S. Sekhar,
 A.K. Das, S. Routray,

S.S. Routray, J. Biswal
and M. Panda.

For Respondents : Mr. S.S. Rao, Sr. Adv.

W.A. No.258 of 2021

Ratikanta Panda Appellant.

- Versus-

Secretary, Board of Secondary
Education, Odisha, Cuttack
& Ors. Respondents.

For Appellant : Mr. Subhadutta Routray,
J. Biswal, M. Panda, B.R.
Pattanayak, S. Sekhar and
A.K. Das.

For Respondents : Mr. S.S. Rao, Sr. Adv.

W.A. No.259 of 2021

Suchismita Nayak Appellant.

- Versus-

Secretary, Board of Secondary
Education, Odisha, Cuttack
& Ors. Respondents.

For Appellant : Mr. Subhadutta Routray,
S. Routray, J. Biswal,
M. Panda, B.R. Pattanayak,
S. Sekhar and A.K. Das.

For Respondents : Mr. S.S. Rao, Sr. Adv.

W.A. No.264 of 2021

Sarita Nanda Appellant.

- Versus-

Secretary, Board of Secondary
Education, Odisha, Cuttack
& Ors. Respondents.

For Appellant : Mr. Subhadutta Routray,
B.R. Pattanayak, S. Sekhar,
A.K. Das and J. Biswal.
For Respondents : Mr. S.S. Rao, Sr. Adv.

W.A. No.265 of 2021

Anita Panda Appellant.
- Versus-
Secretary, Board of Secondary
Education, Odisha, Cuttack
& Ors. Respondents.

For Appellant : Mr. S. P. Nath, S. Routray,
B.R. Pattanayak, S. Sekhar,
A.K. Das and J. Biswal.
For Respondents : Mr. S.S. Rao, Sr. Adv.

W.A. No.266 of 2021

Bibhudhendra Pratap Hati Appellant.
- Versus-
Secretary, Board of Secondary
Education, Odisha, Cuttack
& Ors. Respondents.

For Appellant : Mr. S. P. Nath,
B.R. Pattanayak, S. Sekhar,
A.K. Das, S. Routray and
J. Biswal.
For Respondents : Mr. S.S. Rao, Sr. Adv.

W.A. No.291 of 2021

Topha Tripathy Appellant.
- Versus-
Secretary, Board of Secondary
Education, Odisha, Cuttack
& Ors. Respondents.

For Appellant : Mr. Jagadish Biswal and
S.S. Routray.
For Respondents : Mr. S.S. Rao, Sr. Adv.

ORDER

03. 23.04.2021
& 11.06.2021

These matters are taken up through Video Conferencing mode.

02. Heard Mr. B. Routray, learned Senior Advocate appearing for all the Appellants and Mr. S.S. Rao, learned Senior Advocate appearing for all the Respondents in all the bunch of writ appeals.

03. These bunch of appeals have been preferred by the unsuccessful Petitioners in a bunch of writ petitions disposed of by the learned Single Judge vide the common judgment passed on 04.02.2021 rejecting their prayer to correct the marks awarded in their favour and to award marks properly and further to declare them as pass candidates in the Odisha Secondary School Teachers Eligibility Test (hereinafter referred to as “the OSSTET” for brevity) Examination, 2019. They also prayed for a direction to the Opposite Parties more particularly the Respondent/Opposite Party No.2-Controller of Examination, Odisha, Bhubaneswar, District- Khurda to award more marks and grace marks to declare them as pass candidates in OSSTET Examination, 2019.

04. The Appellants/ Petitioners claimed that they appeared in the OSSTET Examination, 2019 and as per their performance they should have been awarded the pass marks. Their specific grievance is that the answers key published by the Board of Secondary Education, Odisha, Cuttack (hereinafter referred to as “the Board” for brevity) was wrong in certain questions which needs to be corrected and grace marks should be given to them. Specific instances have been cited by different Petitioners being candidates in the aforesaid examination.

05. The Respondents/Opposite Parties filed counter affidavit in the lead case i.e. in W.P.(C) No.20691 of 2020 against which W.A. No.266 of 2021 has been preferred wherein they submitted, *inter alia*, that the Court cannot be called upon to assess the correctness of the answers given to the questions nor can recall upon to compare and decide which of the answer is correct and the scope of jurisdiction cannot be extended to such prayers of the Petitioners. The Respondents/ Opposite Parties further pleaded that no challenge should be allowed to be made to the correctness of the award of marks, as the Board has offered an effective alternative remedy to each of the candidates. It has also been submitted that the Board soon after the examinations, published a scoring key enabling the candidates to challenge in the event of any objection to the proposed answers to the questions. Upon publication of the

Notification, several candidates have raised their objections, to different suggestive answers published in the scoring key. All the challenges along with the materials supplied by the candidates have been placed before the experts of the relevant subjects and the experts have analyzed the objections and gave their views indicating if the answer as suggested in the scoring key is correct or not. In the cases where the challenge received is accepted, they have also suggested so. Upon receiving the reports from the experts in all the subjects in which objections were received, the Board finalized the answer keys and published the result in accordance with the same. Thus, several questions which have been raised in the different writ petitions were already placed before the experts and were tested before publication of the results. The Board has taken all steps to ensure proper award of marks.

It was further pleaded that as per the Scheme, the answers given by the Petitioners to each questions cannot be judged like that of answers given by the students appearing for regular courses. Rather, the Petitioners therein were required to be found fit to be a teacher and, therefore, the answer given must be perfectly correct.

It was also pleaded that the challenge to the evaluation of the answer papers cannot be called in question in the writ jurisdiction of the High Court. Even if some difference arises with regard to the answers by two different authors, the answer

that has been chosen by the examiner which is unambiguously correct is to be accepted as the examiner considering relevance and correctness of the answer accepts one.

Since there is no provision for revaluation of the answer books in the relevant Rules or Regulations, the examinees have no right to claim or demand revaluation.

06. In order to substantiate their case, the Board relied upon the reported cases of the Hon'ble Supreme Court passed in the cases of **Maharashtra State Board of Secondary and Higher Secondary Education and another –vrs.- Paritosh Bhupesh Kurmarsheth, etc. etc.:** AIR 1984 SC 1543, **Pramod Kumar Srivastava –vrs.- Chairman, Bihar Public Service Commission, Patna and Others:** (2004) 6 SCC 714, **Himachal Pradesh Public Service Commission –vrs.- Mukesh Thakur and Another:** (2010) 6 SCC 759 and prayed for dismissal of all the writ petitions.

07. Rejoinder has been filed by the Appellants/ Petitioners claiming that the Respondents/ Opposite Parties have not filed counter affidavit in proper perspective and they have resorted to mis-representation of facts and materials in order to escape from the wrong committed.

08. Learned Single Judge cast three issues in the aforesaid bunch of writ petitions which are as follows:

- “1. Whether in absence of any provision in the guidelines, reevaluation is permissible?
 2. Whether the Court of law by invoking Article 226 of the Constitution of India can re-assess the question and re-appreciate the views of the Expert Committee?
 3. Whether direction can be made for re-assessment of the question paper notwithstanding the fact that adequate precautions have been taken for rectification of the mistake by the expert body?”

09. Deciding the issue no.1, learned Single Judge taking into consideration the reported judgments of the Hon’ble Supreme Court passed in the cases of **Pramod Kumar Srivastava (supra)** and **Ran Vijay Singh and Others –vrs.- State of Uttar Pradesh and Others:** (2018) 2 SCC 357, has come to the conclusion that re-valuation in absence of any provision is not permissible. Hence, the learned Single Judge decided the issue no.1 in favour of the Board.

10. While deciding the issue nos.2 and 3, learned Single Judge took into consideration various judgments of the Hon’ble Supreme Court passed in the cases of **Ashwini Kumar Upadhyay –vrs. Union of India and Others:** (2020) 7 SCC 693; **Vikesh Kumar Gupta & Anr. vrs.- The State of Rajasthan & Ors.** (decided in Civil Appeal Nos.3649-3650 of 2020) and batch of Civil Appeals); **Maharashtra State Board of Secondary and Higher Secondary Education and another (supra)** and **Himachal Pradesh Public Service Commission**

(supra). While answering the issue nos.2 and 3 in favour of the Board, learned Single Judge also relied upon the judgment of the Hon'ble Supreme Court in the case of **Richal and Others –vrs.- Rajasthan Public Service Commission and Others**: (2018) 8 SCC 81 wherein at paragraph-19, the Hon'ble Supreme Court held that:- *“the key answers prepared by the paper-setter or the examining body is presumed to have been prepared after due deliberations. To err is human. There are various factors which may lead to framing of the incorrect key answers. The publication of key answers is a step to achieve transparency and to give an opportunity to candidates to assess the correctness of their answers. An opportunity to file objections against the key answers uploaded by examining body is a step to achieve fairness and perfection in the process. xx xx xx”*.

Such step has also been taken in these cases while assessing the answer sheets of the Petitioners/ candidates.

11. In pursuance to the queries and directions made by the learned Single Judge, an affidavit was filed by the Secretary of the Board, wherein it was categorically stated that in the aforesaid writ petitions, there are about 69 candidates. All the Petitioners except Sri Jayadev Lohar, the Petitioner in W.P.(C) No.22980 of 2020, have filed their challenges in response to Notification No.153 dated 07.02.2020, calling upon all the candidates to raise any challenge between 08.02.2020 to 14.02.2020 in case they feel any ambiguity in any key answer within the stipulated time and before the final scoring key was published. Objections given by all the candidates, who have

appeared in the OSSTET, 2019, were 363 in numbers. All the objections so received, were placed before the concerned subject experts. On re-examination of the challenges, eight of the challenges were accepted and rest 355 challenges were not accepted. Further, it was submitted that challenges were placed before the expert and after examination of the scoring keys by the experts, the final scoring key was uploaded in the website of the Board for examination of the candidates vide Notification No.613 dated 01.08.2020.

Learned Single Judge also took note of the submissions made by the Petitioners that all the Petitioners had failed in the OSSTET examination on very small marks. In some cases it is 1, 2 or 3 mark short less than the qualifying mark. However, learned Single Judge referred the judgment passed in the case of **Ran Vijay Singh and Others** (supra) wherein at paragraph-31, the Hon'ble Supreme Court held 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”*. Moreover, in the case of **Bihar**

Staff Selection Commission and Others –vrs.- Arun Kumar and Others: (2020) 6 SCC 362, the Hon’ble Supreme Court held that “*the unilateral exercise of re-valuation undertaken by the High Court has not solved, but rather contributed to the chaos*”. Therefore, the learned Single Judge held that in absence of any guideline, re-valuation would lead to utter confusion worst confounded. Hence, the learned Single Judge dismissed all the writ petitions.

12. In assailing the findings of the learned Single Judge, Mr. B. Routray, learned Senior Advocate appearing for all the Appellants in the aforesaid bunch of appeals, would argue that when it is accepted by the learned Single Judge that eight challenges were accepted by the Board out of 363 challenges and rejecting the rest 355 challenges, why this eight challenges or 8 marks should not be given to the candidates as grace marks or marks for wrong answers. He also cites the judgment of the Hon’ble Supreme Court passed in the case of **Guru Nanak Dev University –vrs.- Saumil Garg and Others:** (2005) 13 SCC 749 and submits that whenever it is demonstrated before the Writ Court that the model answer or the key answer is incorrect in view of the accepted position of law as revealed from standard and accepted text books, the writ applications should have been allowed and such direction will not be a re-assessment and/ or re-valuation of the answer sheets.

13. Coming to the first contention raised by the learned counsel for the Appellants, we have carefully examined some of

the memorandum of appeals filed by the Appellants. We have especially examined the memorandum of appeal in W.A. No.266 of 2021 which arises out of the lead writ petition bearing W.P.(C) No.20691 of 2020, but do not find any such specific plea was raised by the Appellants/ Petitioners in the appeal memo. In course of hearing also, Mr. B. Routray, learned Senior Advocate appearing for the Petitioners does not point out that such plea has been specifically raised either in the writ petitions or in the appeal memos. Secondly, it is the case of the Board that in view of the exhaustive guidelines of the National Council for Teacher Education (NCTE) and as per the provisions of the Right of Children to Free and Compulsory Education Act, 2009, the Board has been conducting OSSTET examination every year strictly following the guidelines.

It is further pleaded that to maintain transparency and to provide a chance to the candidates, the proposed answers, scoring key are published in the internet inviting objections. In the process all the objections received are reexamined and in the cases where the suggested answer is found inappropriate, steps are also taken to correct them. This system has been followed to avoid any grievance of the candidate that there has been any defect in the answer. This system is meant for a healthy mode of examination and because the result will bind upon the candidate and finality will be attached to the same.

In response to the notice under Annexure-B, several objections were received by the Board, challenging the key answers as published. The objections were placed before the examining body. All the questions were referred to the experts and basing on their report, the final key answers were prepared and results were published basing on such final answers. Thus, the Board has maintained absolute transparency in the matter of conducting examinations and evaluations.

14. The second contention of Mr. B. Routray, learned Senior Advocate is that when it can be demonstrated on the face of the record that the key answers given by the Respondents/ Opposite Parties are incorrect in view of publication of contents of a standard text book like Oxford Dictionary, for example, the Court should have accepted the plea of the Appellants/ Petitioners and allowed the writ petitions. He relies upon the judgment passed in the case of **Guru Nanak Dev University** (supra).

15. We have gone through the judgment relies upon by the learned Senior Counsel for the Appellants/ Petitioners. In that case the procedures of inviting objection, referring the objection to a body of experts and after the experts' opinion, publication of a revised or corrected key answers has not been followed. So, the said judgment cannot be stated to be squarely applicable to the present case.

16. Moreover, when a process of examination is challenged, it is proper on the part of the Courts to leave the matters to the experts, though the Courts are considered experts of all experts. Such principle cannot be stretched to such an extent to overcome the opinion of an expert which is patently not absurd. In the cases where the Court finds that experts were consulted, they have applied their mind and have come to a conclusion, such final conclusion of the experts should not be interfered with by the Court on the drop of hat or on mere submission, unless it is shown that experts' opinion were tainted with malafide and/ or extraneous considerations. It may be stated that in this case, the Appellants/ Petitioners have not alleged malafide or have imputed extraneous considerations on the part of the Board or its experts. So, we are of the opinion that no valid ground has been made even if to issue notice in the aforesaid appeals. In that view of the matter, we are not inclined to interfere with the matters.

17. The Appellants-Writ Petitioners have not put-forth a case that upon their objections, the matters were not considered by the experts. In fact, this plea raised by the Board is not challenged. What their challenge is that since eight objections were accepted, grace marks should have been awarded in favour of the Appellants/Petitioners. We again take note of the fact that such a plea of acceptance of eight objections and not awarding the benefit of such eight objections to the Appellants/

Petitioners has not been specifically raised either in the writ petitions or in the appeals.

18. Moreover, it is not the case of the Appellants/ Petitioners that after their objections were considered and final key answers sheets were published, their answers sheets were corrected ignoring the eight objections. It is not demonstrated by them that their answers, in the light of accepted objections, were not included in their final results. It is also not demonstrated by them that they had actually answered those eight questions in their answer papers correctly, according to the revised key answer sheets. We further take note of the fact that in the writ petitions, the Petitioners have only annexed a part of the answer sheets. The entire answer sheets have not been annexed as Annexure to the writ petitions. So, it is impossible to find out whether the eight questions were in fact answered by them, rightly, as per the accepted objections and the recast answers key.

19. Thus, in the ultimate analysis having considered the undisputed fact that after the examination, a key answer sheets were published in the internet inviting objections; a total of 363 objections were received. Experts were consulted. As per their advice and experts' opinion, eight objections were accepted. A total of 355 objections were not accepted. Then on the basis of the opinion of the experts, the final key answer sheets were published. At the cost of repetition, we again take note of the

fact that it is not the case of any of the Petitioners that their answer sheets were not evaluated as per second answer sheets, i.e. the corrected key answers after consideration of the objections and experts' opinion.

20. The facts of the reported case i.e. of the case of **Guru Nanak Dev University** (supra) are distinguishable. In that case, no objections were invited on the first publication of the key answers. From paragraphs- 3 and 4 of the said case, it is abundantly clear that the Punjab Medical Entrance test was conducted by the appellant University on 30.06.2005. About 10,000 students appeared in the said test. The results were declared on 02.07.2005. There were 200 questions in the objective form- 50 each for Physics, Chemistry, Botany and Zoology. There were multi-choice answers; four options were available to the students. They had to opt for one correct answer from A to D. These facts of the case of **Guru Nanak Dev University** (supra) are similar to the present case.

However, the distinction arises on the following aspects:- after declaration of the results, writ petition was filed by some of the students, inter alia, alleging that the key answers to 21 questions were incorrect. The High Court appointed the Central Board of Secondary Education (for short "CBSE") to examine the correctness of key answers of the said 21 questions. Against the orders passed by the High Court so directing in terms of its orders dated 18.07.2005 and 22.07.2005, the appellant University filed special leave petitions but, for the present purpose, it is not necessary to go into those aspects since the High Court has finally decided the matter and these appeals are against the final judgment of the High Court.

21. So, in the cases in hand, the multiple choice questions were given to the candidates. They took part in the examination. Thereafter, the Board published the key answer sheets and invited objections. After objections were received, the objections were again referred to the experts. So, what the High Court of Punjab and Haryana at Chandigarh did by appointing the Central Board of Secondary Education to examine the correctness of key answers in respect of 21 questions in fact has already been done by the Board in these cases. So, the reported case of **Guru Nanak Dev University** (supra) is not applicable to the present case.

22. Rather, the observations of the Hon'ble Supreme Court in the case of **Richal and Others** (supra) are more pertinent to the present cases. In the reported case of **Richal and Others** (supra), Rajasthan Public Service Commission conducted examination; after completion of examination, key to the answers was published inviting objections regarding the answer key. Many candidates submitted objections with regard to different subjects, with regard to Paper-I and Paper-II. Then, the Commission declared the result, against which several writ petitions were filed questioning various answers as per final answer key. Dealing with such matters, at paragraph-19, the Hon'ble Supreme Court has held that "the key answers prepared by the paper-setter or the examining body is presumed to have been prepared after due deliberations. To err is human. There are various factors which may lead to framing of the incorrect key answers. The publication of key

answers is a step to achieve transparency and to give an opportunity to candidates to assess the correctness of their answers. An opportunity to file objections against the key answers uploaded by examining body is a step to achieve fairness and perfection in the process. xx xx xx” The objections to the key answers were examined by the experts and thereafter corrective measures should have been taken by examinees. In the reported case of **Richal and Others** (supra), the Hon’ble Supreme Court noted that after consideration of the objections, final key to the answers was published by the Commission. Thereafter, several writ petitions were filed challenging the corrected key answers adopted by the Commission. The High Court repelled the challenge accepting the views of the experts. The candidates still unsatisfied, have come up to the Hon’ble Supreme Court by filing the appeals.

23. The procedures followed by the Hon’ble Supreme Court in the reported case of **Richal and Others** (supra) have, in fact, been followed by the Board in these cases. After publication of the key answers which were open to objections, objections were received and referred to the experts. The experts evaluated the objections and gave their suggestions, and in accordance to their suggestions, final key answers were published. It is not the case of the Appellants/ Petitioners and not they have demonstrated that that their answer sheets were not evaluated as per the revised final key answers. So, we are not inclined to interfere with the matters.

24. In that view of the matter, we are of the opinion that the Appellants/ Petitioners have not established or have not demonstrated conclusively that they were not given benefits of eight incorrect answers stated to be published in the first answer sheets which were open to objection. Therefore, we are not inclined to accept the contention raised by Mr. B. Routray, learned Senior Advocate for the Appellants/Petitioners.

25. Accordingly, all the aforesaid Writ Appeals are dismissed in *limine*.

26. As the restrictions due to resurgence of Covid-19 are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by concerned Advocate, in the manner prescribed vide Court's Notice No.4587 dated 25th March, 2020 as modified by Court's Notice No.4798 dated 15th April, 2021.

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(S. K. Mishra)
Judge

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(Savitri Ratho)
Judge