2024:DHC:7901-DB

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ LPA 985/2024

STAFF SELECTION COMMISSION AND ANR ....Appellants
Through: Ms. Pratima N. Lakra, CGSC with Mr. Chandan Prajapati and Mr. Ashesh Chaudhary, Advs.

versus

SHUBHAM PAL ANR ORS .....Respondents
Through: Mr. Ankur Chhibber, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGEMENT (ORAL)

% **07.10.2024**

C.HARI SHANKAR, J.

1. This Letters Patent Appeal at the instance of the Staff Selection Commission[1] assails the judgment dated 16 February 2024, passed by a learned Single Judge in WP (C) 16593/2023[2].

2. The facts of the case are set out in sufficient detail in the judgment of the learned Single Judge and, for the limited purposes of the present appeal, it is not necessary to advert to all of them. Suffice it to state that the dispute relates to the Combined Graduate Level Examination[3] Tier-II, 2023 conducted by the SSC for recruitment to various civil posts under the Union. The respondents assailed the

[1] "SSC", hereinafter
[2] **Shubham Pal and Ors. v. Staff Selection Commission & Anr.**
[3] "CGLE", hereinafter

correctness of the answers provided in the final Answer Key released by the SSC in respect of the CGLE. According to the respondents, the Answers provided in the final Answer Key to Question IDs 264330172912, 264330164754, 264330162641, 264330164417, 264330172352, 264330173697 and 264330171997 were incorrect. It was submitted that, if the suggested answers in the final Answer Key were corrected as sought by the respondents, it would result in the respondents obtaining as many as 21 additional marks, which would radically alter their result in the CGLE.

3. The learned Single Judge rejected the challenge laid by the respondents, save and except in respect of Question ID 264330171997. In other words, of the seven questions, forming subject matter of challenge in the writ petition, the challenge succeeded in respect of one question alone and failed in respect of the remaining six questions.

4. At this juncture, we deem it necessary to note that, in our view the respondents were not entitled to have instituted the writ petition before this Court at all, in view of the judgment of 7 Hon'ble Judges of the Supreme Court in ***L. Chandra Kumar v UOI***[4]. In the said decision, the Supreme Court has held, with no equivocation whatsoever, that matters which fall within the jurisdiction of the Central Administrative Tribunal[5], as delineated in Section 14[6] of the

[4] **(1997) 3 SCC 261**

[5] "the learned Tribunal", hereinafter

[6] **14. Jurisdiction, powers and authority of the Central Administrative Tribunal**. –

(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court) in relation to –

Administrative Tribunals Act, 1985[7] have necessarily to be instituted before the learned Tribunal alone and that the High Court cannot entertain such challenges as a court of first instance. Section 14 of the AT Act includes, within its ambit, all disputes relating to recruitment and matters concerning recruitment, to civil posts under the Union. "Recruitment" includes all stages from the point of issuance of advertisement till actual selection of the candidates. It is obvious, therefore, that the challenge laid by the respondents relates to matters

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(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning—

(i) a member of any All-India Service; or

(ii) a person not being a member of an All-India Service or a person referred to in clause (c) appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian not being a member of an All-India Service or a person referred to in clause (c) appointed to any defence services or a post connected with defence,

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation or society or other body, at the disposal of the Central Government for such appointment.

Explanation. – For the removal of doubts, it is hereby declared that references to "Union" in this sub-section shall be construed as including references also to a Union Territory.

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations or societies owned or controlled by Government, not being a local or other authority or corporation or society controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations or societies.

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation or society, all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court) in relation to –

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation or society; and

(b) all service matters concerning a person other than a person referred to in clause (a) or clause (b) of sub-section (1) appointed to any service or post in connection with the affairs of such local or other authority or corporation or society and pertaining to the service of such person in connection with such affairs.

[7] "the AT Act", hereinafter

concerning recruitment to civil posts under the Union and is, therefore, amenable to adjudication by the learned Tribunal in terms of Section 14 of the AT Act. Ergo, by application of the law laid down in ***L. Chandra Kumar***, this Court would not have the jurisdiction to entertain the petition.

5. We were, therefore, inclined to hold that the writ petitions instituted by the respondents were themselves not maintainable and on that ground, to set aside the impugned judgment of the learned Single Judge. However, we are constrained from doing so as, against the unsuccessful challenge to six questions, as raised by them, the respondents filed LPA 202/2024, which stands dismissed on merits by a detailed judgment of a Coordinate Division Bench of this Court on 27 May 2024. Against the said decision, some candidates have also petitioned the Supreme Court by way of Special Leave Petitions in which, too, notices stand issued.

6. In that view of the matter, the situation has reached a point of no return, and it would be futile as well as unjust and equitable to relegate the petitioners to seek their remedies before the learned Tribunal.

7. We had observed as much in a brief order penned by us on 04 October 2024, in which we noted that given these circumstances, we had no option but to decide the present appeal on merits.

8. The present appeal is, therefore, directed only against the

decision of the learned Single Judge to reject the challenge laid by the petitioners to the correctness of the answer provided in the final Answer Key in respect of Question ID 264330171997.

9. We have heard Ms. Pratima N. Lakra, learned CGSC for the appellants and Mr. Ankur Chhibber, learned counsel for the respondents.

10. Before we advert to the specific question under challenge, we may address a preliminary objection raised by Ms. Lakra to the effect that courts are ordinarily proscribed from interfering with answers suggested in Answer Keys to examinations, as these pertained to the academic sphere, which is, to some extent, no man's land to the Judge. This is especially so in cases where the challenge has been examined by subject experts, whose opinion is ordinarily entitled to deference. There are several decisions which hold that Courts do not possess the requisite expertise to sit in appeal over the decisions of the subject experts and that therefore, such challenges should, if at all, be entertained with a pinch of salt.

11. That said, however, it is equally obvious that the sphere of judicial review cannot be all together foreclosed when such challenges arise. There may be gross cases, or cases in which it is evident without any necessity for ratiocination or intricate reasoning that the answer under challenge is palpably incorrect. In such case, the interests of substantial justice have to prevail, and students who have attempted the examination cannot be allowed to suffer merely because of an obviously incorrect answer suggested by the subject experts.

12. One of us (C. Hari Shankar J.) has had an occasion to examine the law on this aspect in considerable detail in ***Om Prakash Verma v National Testing Agency***[8]. After a chronological excursion through ***Kanpur University v Samir Gupta***[9], ***Manish Ujwal v Maharishi Dayanand Saraswati University***[10], ***Guru Nanak Dev University v Saumil Garg***[11] ***H.P. Public Service Commission v Mukesh Thakur***[12], ***Rajesh Kumar v State of Bihar***[13], ***Ran Vijay Singh v State of UP***[14], ***Rishal v Rajasthan Public Service Commission***[15] and ***UPPSC v Rahul Singh***[16], the following takeaway emerged:

> (i) Circumspection is the general rule, especially where experts have considered the objections raised to the answer key.
>
> (ii) It is, however, equally the rule that there is no absolute proscription against courts examining the challenge to the key answers, even where experts have opined. The law does not commend, or even recommend, a "hands-off approach".
>
> (iii) In an appropriate case, the court can even examine, for itself, the correctness of the key answers under challenge, in which process the court is also empowered to refer to authoritative textbooks on the subject, especially those which

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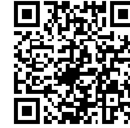
[8] **2024 SCC OnLine Del 909**
[9] **(1983) 4 SCC 309**
[10] **(2005) 13 SCC 744**
[11] **(2005) 13 SCC 749**
[12] **(2010) 6 SCC 759**
[13] **(2013) 4 SCC 690**
[14] **(2018) 9 SCC 357**
[15] **(2018) 8 SCC 81**
[16] **(2018) 7 SCC 254**



form part of the students' curriculum.

(iv) Where the question is simple, and not admitting of any complexity, and can command only one answer, which is apparent to the court, the court is not proscribed from taking a view based on its own perception of the question to take an extreme example, the sum of two and two. That, however, would have to be in a rare case in which the answer is so apparent that there can be no doubt about it, and not one where the opinion of someone with greater expertise would help, or where there is ambiguity.

(v) In any case, the guiding principle is that the general rule against accepting the suggested answer key stands relaxed only where the suggested answer is proved to be wrong, not by an inferential process of reasoning or rationalisation, but clearly and demonstrably wrong, in that no reasonable body of men well-versed in the subject would regard the key answer as correct.

(vi) Another guiding principle, which the court was required to bear in mind in such cases, is that, where it was beyond doubt that the key answer was wrong, it would be unfair to penalise students for not giving the suggested, demonstrably wrong answer. Any refusal on the part of the court to interfere, even in such a case, would amount to a serious illegality.

(vii) Where questions were unacceptably vague, the principle advocated in ***Saumil Garg*** is required to be followed. Any

student who attempted all or some of said vague questions would be entitled to be marked out of a total after deleting the marks assigned to the questions which she, or he, had attempted.

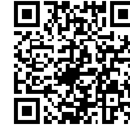
(viii) Even where a large number of key answers were found to be incorrect as in ***Rajesh Kumar***, which involved 45 wrong key answers out of 100 it would not be justifiable to direct cancellation and re-holding of the examination. Revaluation of the papers on the basis of the corrected answer keys would still be the only correct approach.

(ix) Interference has, therefore, to be only in "rare and exceptional cases", and to a "very limited extent".

(x) In the event of doubt, the benefit of doubt would go to the examining authority, not to the candidate.

(xi) The general principle is that relief cannot be restricted to the candidates who approached the court, but must be extended to all who are similarity situated. While so doing, the court can direct that the revaluation, would not result in any negative impact on candidates who had attempted the disputed questions and whose answers corresponded to the suggested answer key.

13. Thus, while circumspection is expected of courts while dealing with challenges to answer keys in examinations, a hands-off approach is not always advocated. If the Court is satisfied that the answer provided in the impugned answer key is obviously incorrect, so that



allowing the answer to remain would result in injustice, the Court has necessarily to step in and set aright the situation. Any judge who, perceiving obvious injustice taking place before him, professes inability to interfere, breaches his solemn oath of office. Howsoever circumspect an approach the law may advocate, the approach can never be so circumspect as would allow injustice to occur, unredressed.

14. This is what the learned Single Judge has attempted to do in respect of Question ID 264330171997. The appellants contend that the learned Single Judge has erred in doing so.

15. Question ID 264330171997 read thus :

> "How many meaningful English words can be formed with the second, fourth, fifth and sixth letters of the word HOCKEY (when counted from left to right) using each letter only once in each word?
>
> 1. Two.
> 2. One.
> 3. Zero.
> 4. Three."

16. The respondents contend that the correct answer is Option 2 i.e. "One". The final Answer Key released by the SSC, on the other hand, noted the correct answer to be "two" i.e. Option 1. According to the respondents, the only meaningful four letter word, which can be formed from the letters O, K, E and Y is "YOKE". The SSC contends, however, based on the opinion of subject experts, that *two* meaningful English words can be formed from the letters O, K, E and Y, i.e. "YOKE" and "OKEY".

17. The learned Single Judge has held that "OKEY" is not a meaningful English word and that therefore the only four letter meaningful English word which can be formed from the letters O, K, E and Y is in fact "YOKE". The impugned judgment, therefore, upholds the challenge raised by the respondents, and holds that the correct answer to Question ID 264330171997 is Option (2) i.e. "One".

18. The petitioner produced, before the learned Single judge, the analytical note of the subject experts as well as the explanation provided in the SME[17] Confidential report thus:

> **"Note/Analysis of the Subject Matter Experts**
>
> Two words can be formed from the letters o, k, e, y –
> Yoke – A yoke is a wooden beam sometimes used between a pair of oxen or other animals to enable them to pull together on a load when working in pairs, as oxen usually do; some yokes are fitted to individual animals.
> Okey-key (Turkish Pronunciation : [okej]) is a tile based game[1]. The aim of the game is to score points against the opposing players by collecting certain groups of tiles. Okey is usually played with four players, but can also be played with only two or three players. It bears resemblance to the game Rummikub, as it is played with same set of boards and tiles, but under a different set of rules.
>
> **Explanation provided in the SME Confidential Report:-**
>
> While "okay" is more commonly used, variations like "okey" may be informal or specific to certain contexts. "Okey" is a less common variant of the word "Okay", which is used to express agreement, approval, or acknowledgement. It's an informal term that signifies acceptance or understanding in a casual context. It is used as an adjective as another form of Ok. Please check the sentence in Oxford Dictionary page "everything is okey dokey now". This signifies that Okey is a word used as informal term that signifies acceptance or understanding in a casual context."

[17] "Subject Matter Expert"

19. The learned Single Judge has dealt with the challenge, thus, in para 32 of the impugned judgment:

> "32. However, with respect to Question ID – 264330171997 regarding how many meaningful English words can be formed from the specified 4 letters of the word "HOCKEY", the Tentative Answer Key referred to "One" as the answer. However, the Final Answer Key referred to "Two" as the answer. The Subject Matter Expert has reasoned that "Yoke" is one word and the other "okey-dokey" and also referred to a Turkish card game called "Okey". This Court is unable to agree with the Experts on this question. *What was asked was "meaningful English words" as per the question. The word "okey-dokey" appears in the Shorter Oxford English Dictionary (Sixth Edition), Volume – 2: N-Z, published by Oxford University Press, of the year 2007 and appears to be synonymous to the word "okay", but surely does not consist only of 4 letters of the word HOCKEY and the word "okey" read alone does not appear to be "meaningful". So far as the word "okey" stated to be a Turkish game is concerned, by no stretch of imagination, can the same be called a "meaningful word" of "English" language. Surely, the name of a game cannot be said to be a meaningful English word, particularly a Turkish game. The game originally may be pronounced in such manner but has no relevance to the doubted question. Thus, it is clear that the Final Answer Key in respect of this question, is incorrect. This Court has ventured to examine this question as the alternate word appeared to be, on the face of it, incorrect.*"
>
> (Emphasis supplied)

20. We have examined Question ID 264330171997, the suggested answers and the opinion of the subject matter expert and find no reason to interfere with the view expressed by the learned Single Judge.

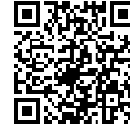
21. That "YOKE" is a meaningful English word, which can be formed from the letters O, K, E and Y is obviously not in dispute, and all parties are *ad idem* in that regard**.** The dispute is whether "OKEY" is also a meaningful English word. As the learned Single Judge has correctly observed, the analytical note of the Subject Matter Experts

first refers to "Okey-key", as the name of a tile-based game. The reference to "OKEY" later in the same paragraph is obviously an abbreviation of "Okey-key". The actual name of the tile-based game is not "OKEY" but "Okey-key" even as per the opinion of the Subject Matter Experts. Even otherwise, the use of a word as the name of a Turkish board game cannot, *ex facie*, be regarded as "meaningful English usage" of the word, as the learned Single Judge correctly holds.

22. The explanation provided in the SME Confidential Report refers to "OKEY" as an informal variation of "OKAY" used "in a casual context". This aspect is clarified by the sentence provided further in the passage as an example of use of the word "OKEY". The sentence reads "everything is okey dokey" now. The actual phrase that is used, therefore, is "okey dokey".

23. Even if "OKEY" by itself were to be regarded as a word, the SME Confidential Report clearly states that it is an informal variation, used in a casual context. The learned Single Judge is justified in the emphasis that he lays on the fact that the candidate was required to find out "meaningful English words" from the letters "OKEY", with stress on the word "meaningful".

24. The use of "OKEY-KEY" as the name of a Turkish game can obviously not be regarded as a meaningful English usage of the word. Nor can the manner in which the word "OKEY" is stated to be used as an informal variant of the word "OKAY", employed in casual context,



be regarded as a meaningful English usage of the word.

25. In such cases, the question has to be carefully examined. Every expression used in the question is supposed to have its own significance. The Court is required to be aware of the significance of the use of the word "meaningful", in the question. The obvious intent of the question is to exclude informal usages, colloquialism or slangs. Only words which can be regarded as "meaningful English usage" would qualify.

26. Viewed thus, we are in agreement with the learned Single Judge that the opinions of the Subject Matter Experts, on which the appellants relied, do not make out "OKEY" as a meaningful English usage of the letters O, K, E and Y. "YOKE", on the other hand, undoubtedly qualifies.

27. We, therefore, concur with the view expressed by the learned Single Judge in the impugned judgment with respect to Question ID 264330171997.

28. Before parting, we deem it necessary to enter an observation in respect of cases such as this.

29. Questions in examinations, which have serious and often pan-India ramifications on the candidates who undertake them, are required to be crafted both sensitively and sensibly. We have come across cases in which questions, and the suggested answers to the questions, are such as no person, instructed in the subject to which the

question pertains, would be able to answer. Take the present case itself, as an example. While we do not claim to be experts in the English language, neither of us has, over half a century of existence each, come across the word "OKEY", in any manner of usage in the English language. The word "OK" is either spelt "OK" or "OKAY". There may be a one-off instance, where the spelling "OKEY" is used. One wonders, however, whether anything meaningful is achieved by testing the ability of candidates in examination such as this, to qualify and obtain recruitment to civil posts, by testing whether they know that the word "OKEY", is used, rarely, as a vulgarism of "OKAY".

30. We wonder, equally, whether it is at all fair to pose such a question to candidates, and test their competence and ability to join civil posts, based on whether they are able to correctly answer the question – assuming, that, is, that "OKEY" is to be treated as one of the correct answers.

31. Even if, therefore, "OKEY" is a rare informal usage of the letters O, K, E and Y, we feel it totally unjust to treat a candidate, who is unaware of such usage, as having wrongly answered the question. To our mind, the only meaningful word which can be formed from the letters O, K, E and Y is "YOKE".

32. We, therefore, find ourselves entirely in agreement with the learned Single Judge, insofar as the view adopted by him in respect of Question ID 264330171997 is concerned.

Conclusion

33. For the aforesaid reasons, we see no reason to interfere with the impugned judgment of the learned Single Judge insofar as it has allowed the challenge raised by the respondent regarding Question ID 264330171997.

34. The appeal is accordingly dismissed.

C.HARI SHANKAR, J.

DR. SUDHIR KUMAR JAIN, J.

OCTOBER 7, 2024/*yg/dsn*

Click here to check corrigendum, if any