

**HIGH COURT OF MADHYA PRADESH : JABALPUR**

**(Division Bench)**

**Writ Petition No.26346/2018**

*Ku. Surabhi Baghel*

***-Versus-***

*High Court of Madhya Pradesh, Jabalpur*

Shri Mohan Sausarkar, Advocate for the petitioner.

Shri Ashish Barnard, Advocate for the respondent.

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**CORAM :**

**Hon'ble Shri Justice S.K. Seth, Chief Justice.**

**Hon'ble Shri Justice Vijay Kumar Shukla, Judge.**

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<b><i>Whether approved for reporting ?</i></b>	Yes.
<b><i>Law laid down</i></b>	Scope of interference – In academic matters in framing of questions, evaluation of answers and finalisation of model answers – the Court cannot and should not act as Court of appeal, but to leave the same to academicians and experts.
<b><i>Significant paragraph Nos.</i></b>	7 & 8.

**ORDER**

**(Jabalpur, dtd.16.11.2018)**

**Per : Vijay Kumar Shukla, J.-**

Invoking extraordinary jurisdiction under Article 226 of the Constitution of India, the petitioner who had appeared in the Civil Judge Class-2 (Entry Level) Examination – 2018 [in short “Exam. 2018”] and did not succeed in the Preliminary Examination,

has sought a writ of mandamus, directing the respondent to correct Question Nos.51,55,76 and 78 of the said Examination.

2. The respondent – High Court of Madhya Pradesh published an advertisement dated 01-8-2018 inviting online applications for the post of Civil Judge Class-2 (Entry Level-Direct Recruitment). The petitioner appeared in the said Examination held on 29-9-2018. The result of Online Preliminary Examination was declared through website on 12-10-2018. The petitioner has scored 100 marks out of 150. Whereas the cut-off marks to qualify the Main Examination was 101 marks.

3. Contention of the petitioner is that in the advertisement itself it was clarified that if any candidate having any objection/suggestion in respect of any question, he/she may prefer a representation in that regard within a period of 7 days from the date of issuance of the model answer paper. The model answer in the website was published on 16-10-2018 and within the scheduled period of 7 days the petitioner has preferred a representation on 22-10-2018 stating that answers of Question Nos.51, 55, 76 and 78 are incorrect in the Model Answer, whereas the petitioner had attempted them rightly, but the respondent did not correct the aforesaid answers.

4. On the premises of the aforesaid allegations, the petitioner has sought for a direction to the respondent to correct the aforesaid answers and to award number for the same and further permit her to appear in the Main Examination – 2018.

5. It is contended that this Court in exercise of writ jurisdiction can issue directions to correct the incorrect answers and award marks for them. To bolster his submissions he relied the judgment passed by the Division Bench of this Court in the case of **Ajay Kumar Gupta and another vs. High Court of M.P., 2012(3) MPHT 502 (DB)**, wherein this Court after taking into consideration certain incorrect questions, passed directions to the examining authority to re-examine correctness of certain questions and thereafter re-tabulate the results.

6. The petitioner has filed a Notification dated 11-10-2018 (Annexure-P/3) issued by the respondent whereby it has been informed to all the candidates appearing in the Examination that question Nos.51 and 93 are not correct and clarification has been given that as regards question No.51, who had given Option No.1 or Option No.2, one (01) mark will be awarded. Similarly in regard to question No.93 it was clarified that since there is variation in Hindi

and English version, therefore, question No.93 is treated as cancelled and one (01) mark has been awarded to the candidates who had attempted the said question. Thus, the clarification itself is axiomatic that in respect of aforesaid questions general marks have been awarded to all candidates who had attempted those questions. Thus, no prejudice is caused to the petitioner.

7. In regard to scope of interference in writ jurisdiction in respect of correctness of question in Examination the Apex Court in **H.P. Public Service Commission vs. Mukesh Thakur, (2010)6 SCC 759** examined the question whether it is permissible for the Court to take upon itself the task to examine discrepancies and inconsistency in question paper and evaluation. The Supreme Court held that the Court cannot take upon itself the task of statutory authority. It was held as under:

“20. In view of the above, it was not permissible for the High Court to examine the question paper and answer sheets itself, particularly, when the Commission had assessed the inter se merit of the candidates. If there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the examination and not for respondent No.1 only. It is a matter of chance that the High Court was examining the answer-sheets relating to law. Had it been other subjects like Physics,

Chemistry and Mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court.”

8. The scope of interference in academic matters has been examined by the Supreme Court in many cases. In **Basavaiah (Dr.) vs. Dr. H.L. Ramesh, (2010) 8 SCC 372 : (2020) 2 SCC (L and S) 640**, the Court held as under:

“38. We have dealt with the aforesaid academic judgments to reiterate and reaffirm the legal position that in the academic matters, the Courts have a very limited role particularly when no mala fides have been alleged against the experts constituting the Selection Committee. It would normally be prudent, wholesome and safe for the Courts to leave the decisions to the academicians and experts. As a matter of principle, the Courts should never make an endeavour to sit in appeal over the decisions of the experts. The Courts must realise and appreciate its constraints and limitations in academic matters.”

9. Scope of judicial review in the matter of Model Answer Key by the Examination Body has been considered in a recent judgment passed by the Full Bench of this Court in the case of **Nitin Pathak v. State of M.P. and others, 2017(4) MPLJ 353**, wherein the following issues were referred to the Larger Bench :

“(1) Whether this Court in exercise of power of judicial review can refer the matter to a Court chosen Expert ?

(2) Whether in exercise of power of judicial review, this Court can act as Court of appeal to take a different view than what has been finalized as the model answer key by the Examination Body ?

(3) Any other question, which the Larger Bench may think it appropriate at the time of hearing on the basis of assistance fo the learned counsel for the parties .”

The Full Bench laid down the law in regard to power of judicial review in the matter of Model Answer Key, as under:

“31. In view of the discussion above, we hold that in exercise of power of Judicial Review, the Court should not refer the matter to Court appointed expert as the Courts have a very limited role particularly when no mala fides have been alleged against the experts constituted to finalize answer key. It would normally be prudent, wholesome and safe for the Courts to leave the decisions to the academicians and experts.

32. In respect of the second question, this Court does not and should not act as Court of Appeal in the matter of opinion of experts in academic matters as the power of judicial review is concerned, not with the decision, but with the decision-making process. The Court should not under the guise of

preventing the abuse of power be itself guilty of usurping power.”

**10.** In view of the aforesaid law laid down by the Full Bench, the judgment referred by the counsel for the petitioner in the case of **Ajay Kumar Gupta (supra)** by Division Bench would not render any assistance to his contentions. Further, no prejudice is caused to the petitioner, as general marks have been awarded to all the candidates in the aforementioned questions, who had attempted them and no malafide has been alleged, we do not find any merit in the writ petition. **It is accordingly dismissed.** No order as to costs.

**(S.K. Seth)**  
**Chief Justice**

**(Vijay Kumar Shukla)**  
**Judge**

*ac.*