HIGH COURT OF MADHYA PRADESH : JABALPUR
(Division Bench)

CORAM :

Hon'ble Shri Justice Ajay Kumar Mittal, Chief Justice.
Hon'ble Shri Justice Vijay Kumar Shukla, Judge.

W.P. No.20290/2019

Pushpendra Burman and others
-Versus-
The State of M.P. and others

Shri Shyam Yadav, Advocate for the petitioners.
Shri Himanshu Mishra, Govt. Advocate for the State.
Shri Rahul Diwakar, Advocate for the respondent No.2.

W.P. No.20968/2019

Vigit Kumar Dwivedi and others
-Versus-
The State of M.P. and others

Shri Alok Kumar Gupta, Advocate for the petitioners.
Shri Himanshu Mishra, Govt. Advocate for the State.
Shri V.P. Nema, Advocate for the respondent No.2.

W.P. No.23855/2019

Gourav Singh Rajput
-Versus-
The State of M.P. and others

Shri Shyam Yadav, Advocate for the petitioner.
Shri Himanshu Mishra, Govt. Advocate for the State.
Shri Rahul Diwakar, Advocate for the respondent No.2.

W.P. No.24021/2019

Sandeep KumarYadav
-Versus-
The State of M.P. and others

Shri Anurag Sahu, Advocate for the petitioner.
Shri Himanshu Mishra, Govt. Advocate for the State.

W.P. No.23559/2019

Sachin Sahu and others
-Versus-
The State of M.P. and others

Shri V.D.S. Chauhan, Advocate for the petitioners.
Shri Himanshu Mishra, Govt. Advocate for the State.
Shri Rahul Diwakar, Advocate for the respondent No.2.

W.P. No.24503/2019

Mukesh Keshav Mahale
-Versus-
The State of M.P. and others

Shri U.S. Jayaswal, Advocate for the petitioner.
Shri Himanshu Mishra, Govt. Advocate for the State.
Shri Rahul Diwakar, Advocate for the respondent No.2.

W.P. No.24525/2019

Smt. Preeti Pandey
-Versus-
The State of M.P. and others

Shri Rakesh Dwivedi, Advocate for the petitioner.
Shri Himanshu Mishra, Govt. Advocate for the State.
Shri Rahul Diwakar, Advocate for the respondent No.2.

W.P. No.24292/2019

Uma Narware
-Versus-
The State of M.P. and others

Shri U.S. Jayaswal, Advocate for the petitioners.
Shri Himanshu Mishra, Govt. Advocate for the State.

Shri Rahul Diwakar, Advocate for the respondent No.2.

W.P. No.24294/2019

Smt. Arti Shrivastava
-Versus-
The State of M.P. and others

Shri U.S. Jayaswal, Advocate for the petitioner.
Shri Himanshu Mishra, Govt. Advocate for the State.
Shri Rahul Diwakar, Advocate for the respondent No.2.

W.P. No.24530/2019

Adittyendra Singh Bhadouriya
-Versus-
The State of M.P. and others

Shri C.P. Dwivedi, Advocate for the petitioner.
Shri Himanshu Mishra, Govt. Advocate for the State.

W.P. No.24673/2019

Deepa Pandey
-Versus-
The State of M.P. and others

Shri Neeraj Pathak, Advocate for the petitioners.
Shri Himanshu Mishra, Govt. Advocate for the State.
Shri Rahul Diwakar, Advocate for the respondent No.2.

W.P. No.23041/2019

Smt. Priyanka Patel
-Versus-
The State of M.P. and others

Shri Sanjeev Kumar Singh, Advocate for the petitioner.
Shri Himanshu Mishra, Govt. Advocate for the State.

<u>**W.P. No.24526/2019**</u>

Ku. Nirupa Rai
-Versus-
The State of M.P. and others

Shri U.S. Jayaswal, Advocate for the petitioner.
Shri Himanshu Mishra, Govt. Advocate for the State.
Shri Rahul Diwakar, Advocate for the respondent No.2.

<u>**W.P. No.24630/2019**</u>

Chandra Prakash Yadav
-Versus-
The State of M.P. and others

Shri D.K. Shukla, Advocate for the petitioner.
Shri Himanshu Mishra, Govt. Advocate for the State.
Shri Rahul Diwakar, Advocate for the respondent No.2.

<u>**W.P. No.24902/2019**</u>

Ram Mohan Singh and another
-Versus-
The State of M.P. and others

Shri U.S. Jayaswal, Advocate for the petitioners.
Shri Himanshu Mishra, Govt. Advocate for the State.
Shri Rahul Diwakar, Advocate for the respondent No.2.

J U D G M E N T
(Jabalpur, dtd.29.11.2019)

<u>**Per : Vijay Kumar Shukla, J.-**</u>

Regard being had to the similitude of prayers and considering the commonality of issues exposited in these writ petitions, they were finally heard together. The principal issue raised is disposed of by this singular order.

2.   The petitioners in this batch of writ petitions having failed to qualify in the High School/Higher Secondary Schools Teachers Eligibility Test, 2018 in the subjects of Economics, Mathematics, Chemistry, Social Science and Sanskrit, have challenged the cancellation of question papers and sought for a direction to the respondents, to apply the Rules called, Madhya Pradesh Rajya School Shiksha Seva (Shaikshnik Samvarg) Seva Sharten Evam Bharti Niyam, 2018 *[hereinafter referred to as "the Rules 2018"]* and to award marks for cancelled question and prepare a final list afresh.   In some petitions formula contained in Clause 2.9.A of the Examination Rules has also been questioned.

3.   The facts in all these petitions are almost same.   In a nutshell, the petitioners appeared in the Eligibility Test, 2018 held for different subjects.   The Examination was conducted in three shifts in some subjects.   After declaration of the results the candidates raised grievances that some questions were incorrect as per the answer key prepared by the respondent – Professional Examination Board and some questions were out of syllabus. Therefore, the petitioners are entitled for award of additional marks. It is also contended that the formula adopted by the Professional Examination Board is defective and arbitrary.   The main arguments

advanced on behalf of the petitioners are crystallised in different petitions, subject-wise.

4. **(i)** The petitions relating to posts in the subject of *Economics* : **W.P. No. 20290/2019, W.P. No.20968/2019, W.P. No.23855/2019 and W.P. No.24021/2019**. In W.P. No.20290/2019, it is urged that the Professional Examination Board has cancelled 34 questions on the ground of out of syllabus questions and translation mistakes. Out of 100 questions in the subject of Economics 29 questions were out out of syllabus, therefore, the petitioners could not attempt those questions and be awarded full marks for not attempting the said questions. In other petitions it is urged that the marks have not been awarded by adopting formula under clause 2.9 of the Rules and if the marks of the petitioners are proportionately rationalised as per formula, they shall qualify the same.

Combating the aforesaid submissions, learned counsel for the respondents submitted that the formula in the examination Rules was published much prior to the said Examination and the candidates were well aware of the scheme of the examination. The validity of formula has already been examined by this Court and the Supreme Court. The marks reflected in the mark-sheets are proportionate/rationalised marks after applying the formula.

(ii) The petitions pertaining to posts in the subjects of *Mathematics and Social Science* : **W.P. No.23559/2019, W.P. No.24292/2019, W.P. No.24294/2019, W.P. No.24503/2019, W.P. No.24525/2019, W.P. No.24530/2019 and W.P. No.24673/2019**. In these petitions the petitioners have challenged the award of marks stating that the same has been awarded without following the prescribed formula under the Rules 2018. Learned counsel for the Professional Examination Board has submitted that the marks awarded to the petitioners were after applying the prescribed formula in the Rules. Other similar points were also argued.

(iii) The petitions relating to the subject of **Science** : **W.P. No.24526/2019 and W.P. No.24630/2019**. In these petitions the petitioners have questioned the formula contained in Clause 2.9 of the Rules 2018. Learned counsel for the Professional Examination Board stated that the formula has already been examined by this Court and the Apex Court as well.

(iv) In **W.P. No.24525/2019 and W.P. No.24902/2019**, the reliefs claimed by the petitioners are vague and not specific. However, the arguments advanced in these petitions are the same, which have been canvassed in other cases.

5. In reply learned counsel appearing for the Professional Examination Board stated that there is no defect in the process of normalisation. They have adopted a proper procedure and protocol with regard to answer-key and after uploading the Model Answer-sheets, they have given 7 days time to raise objections and after receiving the objections/submissions the expert body has examined the same. He further argued that the validity of formula has already been upheld by a Division Bench of this Court in the case of **Vivek Jain vs. The Professional Examination Board, Madhya Pradesh, Bhopal and others, AIR 1994 MP 164** and by the Supreme Court in the case of **Vikas Pratap Singh and others vs. State of Chhattisgarh and others, (2013) 14 SCC 494**. He further urged that similar petitions in respect of posts in the subjects of Economics, Mathematics, Social Science and Chemistry have already been dismissed.

6. We have heard the learned counsel appearing for the parties and bestowed our anxious consideration on the issues involved in the writ petitions.

7. A Co-ordinate Bench of this Court has already dismissed similar writ petitions viz. **W.P. No.23296/2019 (Amit Nigam vs. State of M.P. and others; W.P. No.23669/2019**

(Pushpraj Singh Raghuvanshi vs. State of M.P. and others); W.P. No.20197/2019 (Arun Kumar Shukla vs. State of M.P. and others); and **W.P. No.22643/2019 (Dashrath Patel vs. State of M.P. and others)** in respect of the posts in the subjects of Economics, Social Science, Mathematics and Chemistry respectively, after referring to Formula in clause 2.9.A of the Examination Rules. The relevant part of the order passed in the case of **Amit Nigam (supra)** is reproduced :

> "It is seen from record that clause 2.9 v of the examination Rules (filed as Annxure P/6) empowers the examining body to cancel the questions in case of the eventualities therein. The said clause stipulates:
>
> "2.9 अ. त्रुटिपूर्ण प्रश्न, उसका निरस्तीकरण एवं बदले में दिया गया अंक :–
>
> परीक्षा उपरांत मंडल द्वारा अभ्यर्थियों से प्रश्न पत्र के विषय में आपत्तियॉ आहूत की जाती है तदनुसार विषय विशेषज्ञों से प्रश्नपत्र के आपत्तियुक्त प्रश्न का परीक्षण कराया जाता है। निम्नलिखित कारणों से प्रश्न निरस्त किए जा सकते है:
>
> (i) प्रश्न निर्धारित पाठयक्रम से बाहर का हो।
> (ii) प्रश्न की सरं चना गलत हो।
> (iii) उत्तर के रूप में दिये गये विकल्प में ऐक से अधिक विकल्प सही हों।
> (iv) कोई भी विकल्प सही न हो।
> (v) यदि प्रश्न–पत्र के किसी प्रश्न के अंग्रेजी एवं हिन्दी अनुवाद में भिन्नता हो जिस कारण दोनों के भिन्न–भिन्न अर्थ निकलते हों और सही एक भी उत्तर प्राप्त न होता हो।
> (vi) कोई अन्य मुद्रण त्रुटि हुई हो जिससे सही उत्तर प्राप्त न हो या एक से अधिक विकल्प सही हो।
> (vii) अन्य कोई कारण, जिसे विषय विशेषज्ञ समिति द्वारा उचित समझा जाये।
> (viii) प्रश्न पत्र विषय विशेषज्ञ समिति द्वारा की गई अनुशंसा अनुसार ऐसे निरस्त किए गए प्रश्नों के लिए सभी को इस

प्रश्न–पत्र में उनके द्वारा अर्जित अंकों के अनुपात में पी.ई.बी. अंक प्रदान करता है। भले ही उसने निरस्त किए गए प्रश्नों को हल किया हो या नहीं।

उदाहरण 01. :– यदि किसी 100 प्रश्नों के प्रश्न पत्र में 2 प्रश्न निरस्त किए जातें हैं और मूल्यांकन के बाद यदि अभ्यर्थी 98 प्रश्नों में 90 अंक प्राप्त करता है, तो उसके अंकों की गणना निम्नानुसार होगी,

$$\frac{90 \times 100}{(100-2)} = 91.83$$

उदाहरण 02:– यदि किसी 150 प्रश्नों के प्रश्न पत्र में 2 प्रश्न निरस्त किए जाते हैं और मूल्याकंन के बाद यदि अभ्यर्थी 148 प्रश्नों में 140 अंक प्राप्त करता है, तो उसके अंकों की गणना निम्नानुसार होगी।

$$\frac{140 \times 150}{(100-2)} = 141.89$$

उदाहरण 03 :– यदि किसी 200 प्रश्नों के प्रश्न पत्र में 2 प्रश्न निरस्त किए जाते हैं और मूल्याकंन के बाद यदि अभ्यर्थी 198 प्रश्नों में 190 अंक प्राप्त करता है, तो उसके अंकों की गणना निम्नानुसार होगी।

$$\frac{190 \times 200}{(200-2)} = 191.91$$

नोट :– सभी गणना को दशमलव के दो अंकों तक की जायेगी। (आदेश क्र.पी.ई.बी. / 5–प–1 / 48 / 5279 / 2016 भोपाल दिनांक 29.08. 2016 के अनुसार)''

In the case at hand also as 32 questions in Economics were found to be either out of course, mistake of translation (the examination being in bilingual) and wrong options it was within the competence of the Professional Examination Board to cancel the same and rationalize the total marks as per example No.2 of Clause 2.9."

8.   The validity of the formula has already been examined by the Division Bench of this Court in the case of **Vivek Jain (supra)**. Para 16 of the judgment being relevant is extracted hereunder :

> "16. With respect to a cancelled question, the rule of the Board in 2.3, already quoted in a preceding paragraph, is that candidates are given proportionate marks for that question in relation to the marks earned by the candidate in that paper, irrespective of whether that question was or was not attempted by him. The rationale behind this course is quite discernible. It is deemed as if the cancelled question was not included in the paper. For example, if 5 questions out of 100 questions in a paper, say of Physics, are cancelled, it is deemed as if that paper consisted of only 95 questions. Then, the marks obtained by the candidate in relation to 95 questions are only considered. Supposing a candidate had scored 220 marks in relation to 95 questions, his score is 220/95. This score is then converted into 100 questions. That score would then come to Converted into round figure 220/95x100/1 = 231.57. Converted into round figure it will be 232 marks. This score of 232 marks is proportionate marks in relation to the marks earned by the candidate in the paper. The contention put forward by learned counsel for the petitioners that even with respect to a cancelled question a candidate should be awarded full marks for the marking done by him, is unreasonable and cannot be accepted. Proportionate marks are properly awarded by the Board with respect to such questions and with respect to question cancelled by the Court, it is proper to direct award of proportionate marks as was also directed by the Division Bench of this Court in Rekha Sanghi's case (supra).

9.   Apart from that, the Apex Court has also examined the formula in the case of **Vikas Pratap Singh and others (supra)** and in para 16 of the judgment ruled thus :

"16. It is not in dispute nor it can be disputed that for the purposes of re-evaluation, the eight questions found incorrect were deleted and their marks were rightly allotted on a pro-rata basis in accordance with Clause 14 of the Rules which reads as under:

"Clause 14. Wrong (Defective) objective type question, its cancellation and marks to be allotted in lieu of it.

After the exams, the Chhattisgarh Professional Examination Board (VYAPAM) gets each question examined by the subject expert. If, upon examination by the subject experts, the questions are found defective/ wrong, it is rejected. Questions may be rejected on the following reasons:

(i) if the structure of the question is wrong;

(ii) out of the options given as answers, if more than one options are correct.

(iii) If no option is correct.

(iv) If there is difference in Hindi and English translation of any question because of which different meaning is drawn from both and one correct answer could not be ascertained.

(v) If any other printing mistake is there because of which correct answer is not ascertainable or more than one option is correct.

On such rejection of question upon the recommendation of Subject Expert Committee, on such questions the marks would be awarded by the Chhattisgarh Professional Examination Board (VYAPAM) to the candidates in proportion to their marks obtained in the particular question paper. Whether the rejected question has been or not been attempted. The question papers in which the questions have been rejected, their evaluation procedure would be as follows, if in any question papers out of 100 questions two questions are rejected and after evaluation candidate secures 81 marks out of 98 questions then in such case calculation of marks would be done as (81x100)/100-2= 82.65. On which basis merit would be determined. "

The other eight questions whose answers were found incorrect in the earlier model answers key were re-evaluated on the basis of revised model answers key. In Paper I, only the objective type questions were re-evaluated with the aid of model answers key

> prepared and provided to the examiners for the first
> time after the inquiry by the respondent-Board."

10. In view of the aforesaid, since all the issues canvassed before us, have already been examined by the Co-ordinate Bench and the Supreme Court as well, we do not perceive any merit in these writ petitions. Accordingly, all the **writ petitions are dismissed.** However, in the facts and circumstances of the case there shall be no order as to costs.

(Ajay Kumar Mittal)   **(Vijay Kumar Shukla)**
      Chief Justice   **Judge**

ac.