

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT
JABALPUR**

Case No. Parties Name	
	WRIT PETITION NO.10070/2021 <i>ANKIT TIWARI AND OTHERS</i> vs. <i>HIGH COURT OF MADHYA PRADESH & ANOTHER</i>
	WRIT PETITION NO.10186/2021 <i>RAJESHWAR PAL</i> vs. <i>HIGH COURT OF MADHYA PRADESH & ANOTHER</i>
	WRIT PETITION NO.10221/2021 <i>ANKIT SONI AND OTHERS</i> vs. <i>HIGH COURT OF MADHYA PRADESH & ANOTHER</i>
	WRIT PETITION NO.10232/2021 <i>ANANT KHANDELWAL</i> vs. <i>HIGH COURT OF MADHYA PRADESH</i>
	WRIT PETITION NO.10445/2021 <i>NIKHAT JAMAL</i> vs. <i>THE STATE OF MADHYA PRADESH & OTHERS</i>
	WRIT PETITION NO.10916/2021 <i>ISHAN PHOGAT</i> vs. <i>HIGH COURT OF MADHYA PRADESH & ANOTHER</i>
	WRIT PETITION NO.10971/2021 <i>PRAVESH KUMAR GUPTA AND OTHERS</i> vs. <i>HIGH COURT OF MADHYA PRADESH & ANOTHER</i>
	WRIT PETITION NO.11048/2021 <i>AMAN PARASHAR AND OTHERS</i> vs. <i>HIGH COURT OF MADHYA PRADESH & ANOTHER</i>

	<p>WRIT PETITION NO.11049/2021 <i>DEVASHISH JOSHI</i> vs. <i>HIGH COURT OF MADHYA PRADESH</i></p> <p>WRIT PETITION NO.11155/2021 <i>ISHAN TIWARI</i> vs. <i>HIGH COURT OF MADHYA PRADESH & ANOTHER</i></p> <p>WRIT PETITION NO.11196/2021 <i>DEVASHISH PANDEY</i> vs. <i>HIGH COURT OF MADHYA PRADESH & ANOTHER</i></p> <p>WRIT PETITION NO.11197/2021 <i>KITABULLAH</i> vs. <i>HIGH COURT OF MADHYA PRADESH & ANOTHER</i></p> <p>WRIT PETITION NO.11266/2021 <i>AYUSHMAN GUPTA</i> vs. <i>HIGH COURT OF MADHYA PRADESH & ANOTHER</i></p> <p>WRIT PETITION NO.11272/2021 <i>KAUTILYA TRIPATHI AND ANOTHER</i> vs. <i>HIGH COURT OF MADHYA PRADESH & ANOTHER</i></p> <p>WRIT PETITION NO.11391/2021 <i>DIVYA SHRIVASTAVA</i> vs. <i>HIGH COURT OF MADHYA PRADESH & ANOTHER</i></p> <p>WRIT PETITION NO.11415/2021 <i>DIVYANSH THAKUR</i> vs. <i>HIGH COURT OF MADHYA PRADESH & ANOTHER</i></p> <p>WRIT PETITION NO.11650/2021 <i>AMAN MEHTA</i> vs. <i>THE STATE OF MADHYA PRADESH & OTHERS</i></p>
Date of Order	14/07/21

Bench Constituted	Division Bench : Justice Prakash Shrivastava Justice Vishal Dhagat
Order passed by	Justice Prakash Shrivastava
Whether approved for reporting	Yes
Name of counsels for parties	<p>Shri Ayushman Gupta, Shri Ashok Kumar Chourasia, Shri Deepak Tiwari, Shri Vikas Rathi, Shri K.S. Jha, Shri Gaurav Mishra, Shri Aayush Pandey, Shri Raghvendra Singh Raghuvanshi, Ms. Aditi Sharma, Shri Ajeet Kumar Rawat, Shri Somit Raizada, Shri Shashikant, Shri Prashant Manchanda, Shri Mohit Saroha, Shri Vishal Ishkari, Ms. Varsha Parashar, Ms. Varsha Sharma, Shri Shivam Hazari, Ms. R. Radha, Shri B.D. Singh and Shri Rohan Harne, learned counsel for the petitioners in the respective petitions.</p> <p>Shri Aditya Adhikari, learned Senior counsel with Shri Anshuman Singh, learned counsel for the respondent/High Court of M.P.</p>
Law laid down	<p>(i) Publication of key answers along with the result of the test is desirable in the interest of fairness and that correctness of key answers should be ascertained from the standard and prescribed text books and not merely on the basis of inferences.</p> <p>(ii) In a competitive examination candidates cannot be made to suffer on account of the errors committed by the examining body and to avoid any such gross injustice, re-evaluation can be directed.</p> <p>(iii) Such re-evaluation and revision on the ground of incorrect model answer key should not be limited only to those candidates who had approached the court but should be extended to all candidates because the fault did not lie with the candidate but with the examining body.</p> <p>(iv) If for any justifiable reason some questions are deleted and marks are re-</p>

	<p>distributed uniformly giving benefit to all the candidates, then the same cannot be said to be arbitrary or irrational.</p> <p>(v) Even if the rules do not permit re-evaluation, the court may permit the same only if it is demonstrated very clearly without any inferential process of reasoning or by process of rationalization, in rare or exceptional cases when material error has been committed.</p>
Significant paragraph numbers	7, 8, 9, 10, 11 & 12

ORDER
(14.07.2021)

Per : Prakash Shrivastava, J.

This order will govern the disposal of W.P. Nos.10070/2021, 10186/2021, 10221/2021, 10232/2021, 10445/2021, 10916/2021, 10971/2021, 11048/2021, 11049/2021, 11155/2021, 11196/2021, 11197/2021, 11266/2021, 11272/2021, 11391/2021, 11415/2021 and 11650/2021 as it is jointly submitted by counsel for all the parties that these petitions involve same issue on identical fact situation.

2. For convenience facts are noted from W.P. No.10070/2021. In this petition as many as 68 petitioners have challenged the list of selected candidates dated 24.05.2021 declared for the purpose of appearing in the main written examination. They have also prayed for a direction to recompute the marks afresh based on the corrections/amendments/restoration of wrongly deleted questions, in the test for Civil Judges Class-2 (Entry Level – Direct Recruitment) online preliminary examination.

3. The advertisement dated 05.09.2020 was issued by the respondent-High Court inviting applications to fill up the post of Civil Judges Class-2 (Entry Level – Direct Recruitment). The advertisement was to fill up 252 posts which include 60 backlog posts from previous year. As per the scheme disclosed in Part-B of the advertisement, the examination is to be held in three phases, firstly, online preliminary examination; secondly, main examination; and finally, interview. The preliminary examination was conducted for the purpose of screening the candidates for main examination. The marks obtained in the preliminary examination are not to be added in the final examination. The syllabus of the preliminary examination was disclosed and total marks assigned in the preliminary examination was 150. As per the scheme, the examination was objective type and each objective question had four options. There was no negative marking. For the purpose of convenience of the candidates, a mock test was also made available in the website. The candidate was expected to select the best possible option out of the four options. The procedure for the purpose of valuation and result of online preliminary examination was also disclosed in the advertisement by mentioning that after the preliminary examination the proposed model answers was to be made available in the M.P. High Court website www.mphc.gov.in. The candidates had the opportunity to give their option/suggestion, if any, in respect of the proposed model answer within seven days from the date of publication of model answer in the website. The objection/suggestion could be given in writing under his own signature by post or through e-mail to the Principal Registrar (Exams) along with all the

material relating to the source/document on which the objections/suggestions were based. No objection/suggestion was acceptable after seven days. It was also made clear that if no objection was received in respect of model answer key then it would be treated to be final. The valuation of the online preliminary examination was computer based and as per advertisement maximum 10 times (which could be less also) candidates category-wise were to be declared qualified/eligible to appear in the main examination with the further condition that the candidates obtaining equal marks will be permitted even if for this reason the number of eligible candidates may be slightly more than 10 times. The minimum marks prescribed for general category and OBC candidates was 90 and for reserved (scheduled tribe and scheduled caste) candidates as 82. The result of the online examination was to be declared by uploading it in the High Court website. The applications along with the self-attested documents were to be called for the main examination from the candidates who qualify the preliminary examination. The main examination is a written examination. The advertisement also makes it clear that after the commencement of the recruitment process at any stage if the need arises for any clarification or amendment, the same will be done by issuing a corrigendum.

4. In continuation of the advertisement dated 05.09.2020, the advertisement (Annexure P/2) dated 09.02.2021 was issued notifying that the online preliminary examination would be held on 20.03.2021 between 14:00 to 16:00 in single shift. The petitioners had appeared in pursuance to the said advertisement in the online preliminary examination held on

20.03.2021. The proposed model answer keys were published by the Examination Cell of the High Court vide notification dated 22.03.2021 for the valuation of response answer sheets. By this notification, the objections/clarifications etc. were also invited from the candidates in respect of the model answer key along with the source document/proof on the basis of which objection/clarification was raised. The objections were required to be submitted within seven days. The candidates having objection to model answers key had submitted the same. By order dated 25.03.2021, the Chairman of the Examination-cum-Selection and Appointment Committee constituted an Expert Committee to finalize the model answers after considering the objections received in respect of each model answer. The Expert Committee consists of the Principal Registrar (Vigilance) and Special Judge/IV Additional District & Sessions Judge, Jabalpur. On the basis of the report dated 17.05.2021 submitted by the Expert Committee, a final answers key was prepared and after approval by the Examination-cum-Selection and Appointment Committee, the results of the online preliminary examination was prepared and published on 24.05.2021. Along with the results, the decision on the objections in respect of various proposed model answers was also published. The decision of the Expert Committee on the objection to model key answers have been divided into three categories, which are as under :

(i) Firstly, the objections in respect of following questions were rejected :

Q. Nos.	5, 6, 12, 13, 14, 15, 18, 19, 20, 25, 26, 31, 32, 33, 34, 38, 44, 47, 48, 49, 54, 56, 59, 63, 66, 70, 73, 77, 79, 83, 84, 86, 89, 94, 96, 98, 106, 107, 108, 109, 116, 118,
------------	---

129, 133, 147 & 150

(ii) Secondly, the model key answers for which the objections were accepted and model key answers have been modified. :

Q. No.	Modifications
4	Option 1 & 2 in place of option 2
28	Option 2 in place of option 4
50	Option 1 in place of option 2
62	Option 2 & 3 in place of option 4
75	Option 3 in place of option 1
88	Option 4 in place of option 3

(iii) Thirdly, the questions in respect of which the objections have been accepted and the questions have been cancelled and prescribed 01 mark has been awarded to each candidate :

Q. Nos.	1, 16, 17, 60, 82, 99, 103, 114, 128, 136
---------	---

The respondents on the basis of the aforesaid modification in question/model key answer have declared the result of preliminary examination. The category-wise cut off marks and number of qualified candidates in the examination are as under :

Cat.	Cut-off Marks	No. of qualified candidates
UR	115	1132
OBC	105	314
SC	88	337
ST	82	159

Total		1942
--------------	--	-------------

5. The petitioners have approached this Court with the grievance that the key answers of as many as 06 questions have wrongly been changed on the basis of the recommendation of the Expert Committee whereas in respect of these questions the original key answers were correct. They have further raised grievance that objections in respect of as many as 03 questions have been wrongly rejected whereas the model key answers for these questions is incorrect. Their further grievance is in respect of deletion of 10 questions and awarding 01 mark each to all the candidates.

6. We have heard the learned counsel for the parties and perused the record.

7. Before proceeding further, we deem it proper to have a look at the legal position in respect of scope of judicial review in such matters. The Supreme Court in the matter of **Kanpur University, through Vice Chancellor and others v. Samir Gupta and others, (1983) 4 SCC 309** while holding that the publication of the key answers along with the result of the test is desirable in the interest of fairness has further held that the correctness of key answer should be ascertained from the standard and prescribed text books and not merely on the basis of inferences.

8. In the matter of **Manish Ujwal and others Vs. Maharishi Dayananda Saraswati University and others**, reported in **(2005) 13 SCC 744** while considering the selection process for admission to MBBS/BDS course through common entrance test wherein first round of counselling was

already over, the Hon'ble Supreme found that the 06 key answers provided by the University were undisputedly, palpably and demonstrably wrong and held that the student community cannot be made to suffer on account of errors committed by the University and has directed fresh evaluation with the rider that the admissions made in the first round of counselling will not be affected by the fresh evaluation. The Hon'ble Supreme Court directed for re-evaluation of all questions by feeding correct answers and thereafter preparing fresh ranking for second counselling. In the matter of **Manish Ujwal** (Supra), the Hon'ble Supreme Court has held that :

“8. It seems that nearly thirty thousand students appeared in the examination held between 9-5-2005 and 11-5-2005. It was an entrance examination for admissions in the Government medical and dental colleges as also for fifty per cent State quota in the said disciplines in private colleges and not for the remaining management quota. On the basis of the results declared and ranking given, the first counselling for admission to the aforesaid courses in Government colleges and fifty per cent State quota in private colleges has already taken place. It is possible that fresh evaluation by feeding correct key answers to the six questions may have adverse impact also on those who may have already secured admission on the basis of the results declared and ranking given by feeding incorrect keys in relation to these questions. Though we are of the view that the appellants in particular and the student community in general, whether one has approached the court or not, should not suffer on account of demonstrably incorrect key answers but, at the same time, if the admissions already granted as a result of first counselling are disturbed, it is possible that the very commencement of the course may be delayed and the admission process for the courses may go beyond 30-9-2005, which is the cut-off date, according to the time-schedule in the Regulations and as per the law laid down by this Court in *Mridul Dhar (Minor) v. Union of India*. In this view, we make it clear that fresh

evaluation of the papers by feeding correct key answers would not affect the students who have secured admissions as a result of the first counselling on the basis of ranking given with reference to the results already declared.

9. In *Kanpur University v. Samir Gupta* considering a similar problem, this Court held that there is an assumption about the key answers being correct and in case of doubt, the court would unquestionably prefer the key answer. It is for this reason that we have not referred to those key answers in respect whereof there is a doubt as a result of difference of opinion between experts. Regarding the key answers in respect whereof the matter is beyond the realm of doubt, this Court has held that it would be unfair to penalise the students for not giving an answer which accords with the key answer, that is to say, with an answer which is demonstrated to be wrong. There is no dispute about the aforesaid six key answers being demonstrably wrong and this fact has rightly not been questioned by the learned counsel for the University. In this view, students cannot be made to suffer for the fault and negligence of the University.

10. The High Court has committed a serious illegality in coming to the conclusion that "it cannot be said with certainty that answers to the six questions given in the key answers were erroneous and incorrect". As already noticed, the key answers are palpably and demonstrably erroneous. In that view of the matter, the student community, whether the appellants or intervenors or even those who did not approach the High Court or this Court, cannot be made to suffer on account of errors committed by the University. For the present, we say no more because there is nothing on record as to how this error crept up in giving the erroneous key answers and who was negligent. At the same time, however, it is necessary to note that the University and those who prepare the key answers have to be very careful and abundant caution is necessary in these matters for more than one reasons. We mention few of those; first and paramount reason being the welfare of the student and a wrong key answer can result in the merit being made a casualty. One can well understand the predicament of a young student at the threshold of his

or her career if despite giving correct answer, the student suffers as a result of wrong and demonstrably erroneous key answer; the second reason is that the courts are slow in interfering in education matters which, in turn, casts a higher responsibility on the University while preparing the key answers; and thirdly, in cases of doubt, the benefit goes in favour of the University and not in favour of the students. If this attitude of casual approach in providing key answer is adopted by concerned persons, directions may have to be issued for taking appropriate action, including disciplinary action, against those responsible for wrong and demonstrably erroneous key answers but we refrain from issuing such directions in the present case.

11. The second counselling for the admission abovementioned, we are informed, is fixed from 25-8-2005, onwards. We direct re-evaluation of all the questions by feeding correct answers, as above noticed, and on that basis correct number of marks obtained by all the students should be assigned and their ranking prepared. This exercise shall be completed within a period of three days from today. List so prepared shall be put on internet soon thereafter as also be published in the newspapers wherein it was earlier published. The second counselling and admissions hereinafter in the medical and dental courses in the State of Rajasthan in Government colleges as also in the private colleges insofar as the State quota is concerned would be made on the basis of ranking as per the list which will now be prepared by the University pursuant to the directions of this Court. The merit list shall be prepared for the same number of students as it was prepared earlier while declaring the results on 22-5-2005 and 23-5-2005.”

9. It is settled that publication of key answer is done to achieve transparency and objections to the key answers are to be examined by experts and thereafter corrective measures are to be taken and that the revision on the basis of the correct answer should not be limited only to

those candidates who had approached court but should be extended to all candidates since the fault does not lie with them but with the examining body. The Supreme Court in the matter of **Richal and others Vs. Rajasthan Public Service Commission and others**, reported in **(2018) 8 SCC 81** has reiterated the above position and upheld the re-distribution of marks with regard to the deleted questions by holding that the same cannot be said to be arbitrary or irrational because Commission had adopted uniform method of dealing with all candidates and all candidates were benefited thereby. In the matter of **Richal** (supra), it has been held that :

“17. To the same effect, this Court in *Guru Nank Dev University v. Saumil Garg*, had directed the University to reevaluate the answers of 8 questions with reference to key answers provided by CBSE. This Court also disapproved the course adopted by the University which has given the marks to all the students who had participated in the entrance test irrespective of whether someone had answered questions or not.

18. Another judgment which is referred to is *Rajesh Kumar v. State of Bihar*, where this Court had occasion to consider the case pertaining to erroneous evaluation using the wrong answer key. The Bihar Staff Selection Commission invited applications against the posts of Junior Engineer (Civil). Selection process comprised of a written objective type examination. Unsuccessful candidates assailed the selection. The Single Judge of the High Court referred the "model answer key" to experts. Based on the report of the experts, the Single Judge held that 41 model answers out of 100 are wrong. The Single Judge held that the entire examination was liable to be cancelled and so also the appointments so made on the basis thereof. The Letters Patent Appeal was filed by certain candidates which was partly allowed by the Division Bench of the High Court. The Division Bench modified the order passed by the Single Judge and declared that the entire

examination need not be cancelled. The order of the Division Bench was challenged wherein this Court in paragraph 19 has held:

“19. The submissions made by Mr. Rao are not without merit. Given the nature of the defect in the answer key the most natural and logical way of correcting the evaluation of the scripts was to correct the key and get the answer scripts re-evaluated on the basis thereof. There was, in the circumstances, no compelling reason for directing a fresh examination to be held by the Commission especially when there was no allegation about any malpractice, fraud or corrupt motives that could possibly vitiate the earlier examination to call for a fresh attempt by all concerned. The process of re-evaluation of the answer scripts with reference to the correct key will in addition be less expensive apart from being quicker. The process would also not give any unfair advantage to anyone of the candidates on account of the time lag between the examination earlier held and the one that may have been held pursuant to the direction of the High Court. Suffice it to say that the re-evaluation was and is a better option, in the facts and circumstances of the case.”

19. 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. The objections to the key answers are to be examined by the experts and thereafter corrective measures, if any, should be taken by the examining body. In the present case we have noted that after considering the

objections final key answers were published by the Commission thereafter several writ petitions were filed challenging the correctness of the 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 in this Court by filing these appeals.

It has further been held that :

“25. One of the submissions raised by the appellants is that marks of deleted questions ought not to have been redistributed in other questions. It is submitted that either all the candidates should have been given equal marks for all the deleted questions or marks ought to have been given only to those candidates who attempted those questions.

26. The questions having been deleted from the answers, the question paper has to be treated as containing the question less the deleted questions. Redistribution of marks with regard to deleted questions cannot be said to be arbitrary or irrational. The Commission has adopted a uniform method to deal with all the candidates looking to the number of the candidates. We are of the view that all the candidates have been benefited by the redistribution of marks in accordance with the number of correct answers which have been given by them. We, thus, do not find any fault with redistribution of marks of the deleted marks (*sic* questions). The High Court has rightly approved the said methodology.”

10. In the matter of **Ran Vijay Singh and others Vs. State of Uttar Pradesh and others**, (2018) 2 SCC 357, the Hon'ble Supreme Court has summarized the principles of the scope of judicial review in respect of correctness of answer key and re-evaluation in the recruitment process. It has been held that sympathy or compassion do not play any role in the matter of directing or not directing re-evaluation and that if the rule do not

permit re-evaluation then court may permit the same only if it is demonstrated very clearly without any inferential process of reasoning or by a process of rationalization and only in rare or exceptional cases when a material error has been committed. It has been observed that the court should never take upon itself task to re-evaluate the answer sheets. In this regard, it has been held that :

“**30.** The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are:

30.1 If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it;

30.2 If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the Court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any "inferential process of reasoning or by a process of rationalisation" and only in rare or exceptional cases that a material error has been committed;

30.3 The court should not at all re-evaluate or scrutinize the answer sheets of a candidate-it has no expertise in the matter and academic matters are best left to academics;

30.4 The court should presume the correctness of the key answers and proceed on that assumption; and

30.5 In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.

31. On our part we may add 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.”

11. In the matter of **Rajesh Kumar and others Vs. State of Bihar and others, (2013) 4 SCC 690** the Hon'ble Supreme Court has held that if there is a defect in the answer key, the most natural and logical way of correcting the evaluation of the scripts is to correct the key and get the answer scripts re-evaluated on the basis thereof. In this regard, it is held that :

“**19.** The submissions made by Mr. Rao are not without merit. Given the nature of the defect in the answer key the most natural and logical way of correcting the evaluation of the scripts was to correct the key and get the answer scripts re-evaluated on the basis thereof. There was, in the circumstances, no compelling reason for directing a fresh examination to be held by the Commission especially when there was no allegation about any malpractice, fraud or corrupt motives that could possibly vitiate the earlier examination to call for a fresh attempt by all concerned. The process of re-evaluation of the answer scripts with reference to the correct key will in addition be less expensive apart from being quicker. The process would also not give any unfair advantage to anyone of the candidates on account of the time lag between the examination earlier held and the one that may have been held pursuant to the direction of the High Court. Suffice it to say that the re-evaluation was and is a better option, in the facts and circumstances of the case.

20. That brings us to the submission by Mr. Rao that while re-evaluation is a good option not only to do

justice to those who may have suffered on account of an erroneous key being applied to the process but also to the writ petitioners, Respondents 6 to 18 in the matter of allocating to them their rightful place in the merit list. Such evaluation need not necessarily result in the ouster of the appellants should they be found to fall below the 'cut off' mark in the merit list. Mr. Rao gave two reasons in support of that submission. Firstly, he contended that the appellants are not responsible for the error committed by the parties in the matter of evaluation of the answer scripts. The position may have been different if the appellants were guilty of any fraud, misrepresentation or malpractice that would have deprived them of any sympathy from the court or justified their ouster. Secondly, he contended that the appellants have served the State efficiently and without any complaint for nearly seven years now and most of them, if not all, may have become overage for fresh recruitment within the State or outside the State. They have also lost the opportunity to appear in the subsequent examination held in the year 2007. Their ouster from service after their employment on the basis of a properly conducted competitive examination not itself affected by any malpractice or other extraneous consideration or misrepresentation will cause hardship to them and ruin their careers and lives. The experience gained by these Appellants over the years would also, according to Mr. Rao, go waste as the State will not have the advantage of using valuable human resource which was found useful in the service of the people of the State of Bihar for a long time. Mr. Rao, therefore, prayed for a suitable direction that while re-evaluation can determine the inter se position of the writ petitioners and the appellants in these appeals, the result of such re-evaluation may not lead to their ouster from service, if they fell below the cut off line.

21. There is considerable merit in the submission of Mr. Rao. It goes without saying that the appellants were innocent parties who have not, in any manner, contributed to the preparation of the erroneous key or the distorted result. There is no mention of any fraud or malpractice against the appellants who have served the State for nearly seven years now. In the circumstances, while inter se merit position may be relevant for the appellants, the ouster of the latter need not be an

inevitable and inexorable consequence of such a re-evaluation. The re-evaluation process may additionally benefit those who have lost the hope of an appointment on the basis of a wrong key applied for evaluating the answer scripts. Such of those candidates as may be ultimately found to be entitled to issue of appointment letters on the basis of their merit shall benefit by such re-evaluation and shall pick up their appointments on that basis according to their inter se position on the merit list.”

12. From the above judicial pronouncements, it is clear that publication of key answers along with the result of the test is desirable in the interest of fairness and that correctness of key answers should be ascertained from the standard and prescribed text books and not merely on the basis of inferences. In a competitive examination candidates cannot be made to suffer on account of the errors committed by the examining body and to avoid any such gross injustice, re-evaluation can be directed. Such re-evaluation and revision on the ground of incorrect model answer key should not be limited only to those candidates who had approached the court but should be extended to all candidates because the fault did not lie with the candidate but with the examining body. If for any justifiable reason some questions are deleted and marks are re-distributed uniformly giving benefit to all the candidates, then the same cannot be said to be arbitrary or irrational. Even if the rules do not permit re-evaluation, the court may permit the same only if it is demonstrated very clearly without any inferential process of reasoning or by process of rationalization, in rare or exceptional cases when material error has been committed.

13. Having examined the present case in the light of the aforesaid judicial pronouncement and the limited scope of judicial review, we find that the grievance of the petitioners is now confined to 19 questions.

14. The petitioners have raised the grievance that in respect of following 06 questions the model key answers have been wrongly modified meaning thereby the modified model answer key to these questions are incorrect and on that basis the evaluation has resulted into miscarriage of justice. These questions are question No.4, 28, 50, 62, 75, 88.

15. The second set of objections is that in respect of three questions though the objections were raised and the original model key answer is incorrect, yet the objections have wrongly been rejected. These questions are question No. 19, 49 & 84.

16. In respect of the 10 deleted questions, the objection is that these questions have wrongly been deleted. These deleted questions are question No.1, 16, 17, 60, 82, 99, 103, 114, 128, 136.

17. The entire material has been enclosed by the petitioners along with the writ petitions in order to demonstrate that the above model key answers about which the objection has been raised in the petition are not correct.

18. During the course of arguments, a consensus has been arrived at between the counsel for the petitioners and the counsel for the respondent-High Court that the matter should be referred to a Committee of two retired High Court Judges having the expertise. Counsel for all the parties have accepted the names of Hon'ble Shri Justice (Retd.) K.K. Trivedi and Hon'ble Shri Justice (Retd.) C.V. Sirpurkar, the retired Judges of this Court as

members of the Committee for the purpose of re-examining the model answer keys of the questions about which the grievance has been raised in these petitions. It is undisputed that complete transparency and fairness is to be observed in the examination process especially when the examination is for the purpose of screening the candidates for the post of Civil Judges and also that even one incorrect model answer will change the list of selected candidates resulting into the inclusion or exclusion of some of the meritorious candidates. Hence, we are also of the opinion that interest of justice will be served by appointing a Committee of two eminent retired Judges of this Court to examine the disputed model key answers. Therefore, we appoint a Committee comprising of Hon'ble Shri Justice (Retd.) K.K. Trivedi and Hon'ble Shri Justice (Retd.) C.V. Sirpurkar, the retired Judges of this Court for the purpose of examining the correctness of the model key answers of the questions in respect of which the grievance has been raised in these petitions.

19. The matter does not end here because the list of selected candidates for the main examination has already been published vide notification dated 24.05.2021 and these selected candidates are not before this Court, therefore, any direction in these petitions which may *prejudicially* affects their right cannot be issued. The similar situation had arisen when the Delhi High Court by order dated 09.04.2012 had allowed W.P.(C) No.449/2012 by holding that some of the questions were not framed correctly and some answers in the model answer key were also not correct, therefore, directing re-evaluation of the answer sheets and further directing that the candidate whose names

appeared in the select list if secured lesser marks would not be excluded from the list of the eligible candidates appearing for the main examination. This resulted into anomalous position because some of the candidates in the revised list, who had obtained more marks than the last candidate of the earlier list were excluded, therefore, the Hon'ble Supreme Court in Civil Appeal No.4795/2012 in the matter of **PALLAV MONGIA Vs. REG. GENERAL DELHI HIGH COURT & ANR.** vide order dated 28.05.2012 while disposing of the appeal held that :

“ The appellants before us belong to general category and had secured more marks than the last candidate allowed to appear in the mains examination by the revised list.

There can be no justification in the process to allow the candidates, who had secured lesser marks to appear in the mains examination and to exclude those who had secured higher marks, whatever may be the reason.

Thus, in view of the above, we allow the appeals and direct that any candidate whether he has approached the court or not, who has secured equal or higher marks than the last candidate who has been permitted to take mains examination, be permitted to participate in the mains examination.

With these observations, the appeals stand disposed of.”

20. It is also worth noting that the Rajasthan High Court in the matter of **Arti Meena V. Rajasthan High Court, 2019 SCC OnLine Raj 2000** when the issue was raised that some of the model key answers to the questions in the preliminary examination for the post to Civil Judge cadre were wrong had directed to delete certain question papers and recompute the marks and prepare the fresh list of eligible candidates including all such candidates

therein who secured more marks than the last candidate originally allowed to appear in the main examination keeping in view the judgment of the Supreme Court in the case of **PALLAV MONGIA** (supra).

21. On the examination of the record, we have also found that in the original list of qualified candidates published on 24.05.2021, 1942 candidates have been found to be qualified whereas as per the advertisement candidates up to 10 times of the vacancies i.e. 2520 could be qualified for the purpose of main examination and in certain circumstances it could even be more. Therefore, if additional candidates are permitted to appear in the main examination then that will not result into breach of the condition of the advertisement. We make it clear that no additional candidate who has obtained marks less than the prescribed minimum marks can be permitted to appear in the main examination.

22. In view of the above analysis, we dispose of the present writ petitions with the following directions :

- (i)** Since the petitioners have enclosed the relevant material in the writ petitions in respect of their plea relating to correctness of model key answers in issue, therefore, the present writ petitions are treated as representations on behalf of the petitioners and Principal Registrar (Exam) is directed to place all these writ petitions before the two-member Committee constituted by this order forthwith.
- (ii)** The two-member Committee will examine the grievance of the petitioners raised in these petitions in respect of the

model answer keys and will submit its proposal to revise the model answer keys, if any, to the Examination Committee of the High Court within a period of two weeks from the date of placing the petitions before it.

- (iii) Thereafter, the Examination Committee will take an appropriate decision on the proposal to revise the model answer keys and will take steps to get the fresh select list of the candidates prepared for the purpose of main examination within one week.
- (iv) While preparing the fresh select list for permitting the candidate to appear in the main examination, the Examination Committee will keep in view the ratio of the judgment of the Supreme Court in the case of **PALLAV MONGIA** (supra) and recompute the marks so as to prepare a fresh list of eligible candidates by including all such candidates therein who secured more marks than the last candidate originally allowed to appear in the main examination.
- (v) The candidates whose names have been included in the select list published vide notification dated 24.05.2021 will not be excluded and in addition to them the newly included candidates by way of above process will be permitted to appear in the main written examination for recruitment to the Civil Judges Class-II.

(vi) Since the last date of submission of the form for the main examination is 09.02.2021 and the aforesaid process will take time, therefore, the respondent may take an appropriate decision for extending the last date of submission of the application form for the main examination.

(vii) The members of the Committee so appointed by this order will be paid appropriate honorarium by the respondent-High Court.

23. The signed order be placed in the record W.P. No.10070/2021 and a copy thereof be placed in the record of connected W.P. Nos.10186/2021, 10221/2021, 10232/2021, 10445/2021, 10916/2021, 10971/2021, 11048/2021, 11049/2021, 11155/2021, 11196/2021, 11197/2021, 11266/2021, 11272/2021, 11391/2021, 11415/2021 and 11650/2021.

(PRAKASH SHRIVASTAVA)
JUDGE

(VISHAL DHAGAT)
JUDGE

DV