

**HIGH COURT OF CHHATTISGARH, BILASPUR****(Judgment Reserved on 03.03.2021)****(Judgment Delivered on 26.03.2021)****WPS No. 2007 of 2019**

- Saifan Khan S/o Shri Hidayat Khan Aged About 24 Years R/o F -10, Old DFO Compound, Near 4th Bridge, Napier Town, District Jabalpur Madhya Pradesh

---- Petitioner**Versus**

- High Court Of Chhattisgarh Through Registrar General, High Court Of Chhattisgarh, Bilaspur, Chhattisgarh

---- Respondent

For Petitioner

:

Shri Anshuman Singh & Shri Shreyankar
Nandy, Advocates

For Respondent

:

Shri B.P. Sharma, Advocate with Ms. Trishna
Das, Advocate**Hon'ble Shri Justice Goutam Bhaduri****CAV Judgment**

1. Heard.
2. Learned counsel for the petitioner would submit that pursuant to an advertisement of 2018 for recruitment against 60 vacant posts of Stenographer, the examination was conducted. He would further submit that the petitioner in response to the advertisement filled up the application form, thereafter, the list of eligible and non-eligible candidates was uploaded in the website of the High Court of Chhattisgarh. Thereafter on 16.12.2018 as many as 373 eligible candidates appeared in the examination and after the examination the result

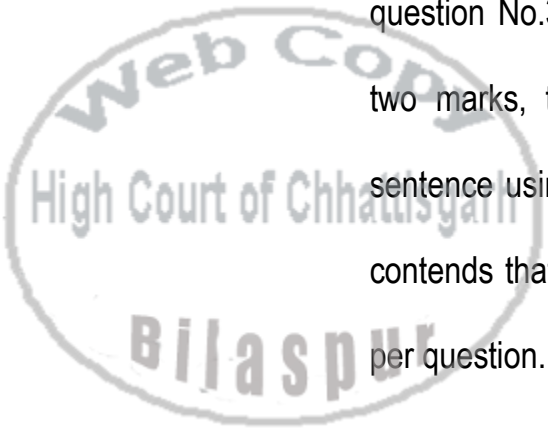




was declared on 08.01.2019. Apart from the reserved category, the common merit list of 58 candidates, who secured minimum 50% marks in the skill test was declared, wherein 24 candidates were selected and 28 candidates were in the waiting list. The petitioner claimed his candidature for the unreserved category. He secured 67 marks; 36 in the written examination and 31 in the skill test and his name appeared at serial No.28 in the common merit list.

3. The counsel would further submit that though the advertisement was meant for 60 vacant posts but select list was issued only for 21 candidates. Since the petitioner was not happy with the marks given in the written test i.e. 36 out of 60, he sought his answer-sheet under the RTI. Petitioner's case is that question No.3 which carried 20 marks in total and each sub question carried two marks, thereby one who attempts one question and makes a simple sentence using one word then he would secure one full mark. The petitioner contends that he has attempted all the questions and framed the sentence as per question.

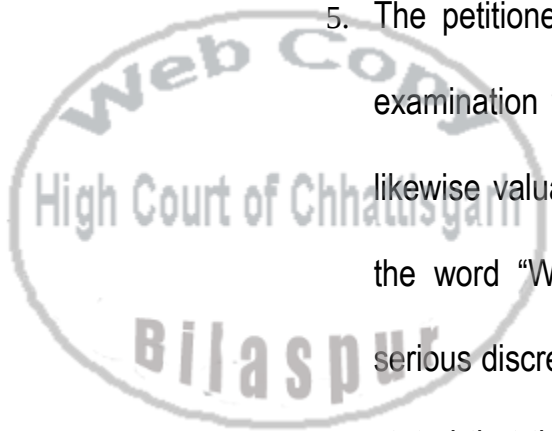
4. He would further submit that according to the answer-sheet received, the question No.3(i) the word “**hear, here**” were given to make the sentence. Wherein the petitioner from the word 'hear' made the sentence 'We Heard The Sound of Riot' and from the word 'here' he made the sentence 'Come Here With Me'. It is the grievance of the petitioner that for the sentence made from the word “hear” he was not given marks for the reason while making the sentence the tense was used. Then comes the question No.3 (v) wherein the word “**right, write**” were given to make the sentence. Wherein the petitioner from the word “right” framed the sentence “The Judge Gave The Right Order/Direction” and from the word “write” he had framed the sentence “He Is Writing An Essay”.





In this question also for the sentence made from the word “write” he was not given any mark. Thereafter for the question 3 (ix) the word “**wear, where**” were given to frame sentence. Wherein the petitioner for the word “wear” framed the sentence “She Is Wearing A Red Dress” and from “where” he framed the sentence “Where Are The Children”. In this question too he was not given any marks. Likewise in the question 3 (x) the words “**wait, weight**” were given wherein the petitioner from the word “wait” framed the sentence “He is Waiting For You In the Lift” and from the word “weight” he framed the sentence “She has Lost 8 KG Weight In Two Months”. Wherein for the sentence made from the word “wait” the petitioner was not given any mark.

5. The petitioner contends that because of tense was used, the valuer of the examination wrongly evaluated the answer, whereas in respect of the similar likewise valuation of another candidate in respect of the sentence made from the word “Where” i.e. “Where is Your Car” one mark is given. Therefore, serious discrepancy appeared in respect of the valuation by the examiner. It is stated that the study of english homophones would show that the use of word forming the sentence would not render the sentence invalid and in these respect difference of opinion exists. It is therefore, contended that since the examination as aforesaid was not a skill test, the answers which were given by the candidate would be correct as it would lead to show that the petitioner had understood the meaning and answered correctly. The reliance is placed in the case of **President, Board of Secondary Education, Orissa and another vs. D. Suvankar and another {(2007) 1 SCC 603}** and **Taniya Malik Vs. Registrar General of the High Court of Delhi {(2018) 14 SCC 129}** and would submit that the answer given by the petitioner should be re-evaluated as the



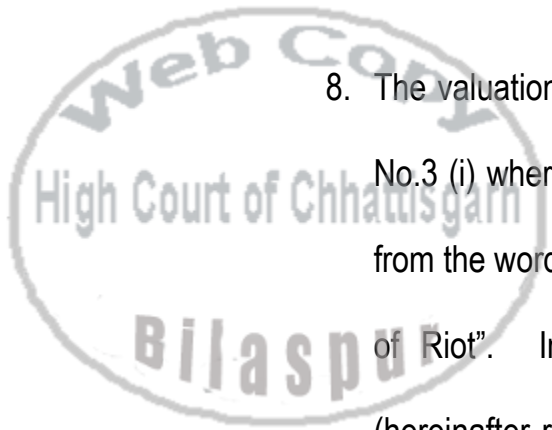


persons who evaluated the answers were not the expert of the subject and no moderation was carried out as such discrepancy existed in two similar nature of answers. Consequently, the paper of the petitioner be re-evaluated with respect to question No.3 by a body of expert and he be given the marks and accordingly if he finds merit in the select list, he may be selected.

6. Per contra, learned counsel for the respondent opposes the arguments and would submit that the examiners according to their own skill have evaluated the paper and further would submit that one post of English Stenographer is kept vacant by interim order dated 13.05.2019.

7. I have heard learned counsel for the parties and perused the documents.

8. The valuation which is under challenge is for written examination. In question No.3 (i) wherein the petitioner was not given the marks for the sentence made from the word 'hear'. The petitioner formed the sentence "We Heard The Sound of Riot". In the Collins Cobuild Advanced Learner's English Dictionary (hereinafter referred to as 'Dictionary') to explain the word hear the tense has been used. Likewise, for the word write, the petitioner framed the sentence "He is Writing An Essay" for which he was not given any mark. In the Dictionary word 'Write' has been explained with the word "Writes, Writing, Wrote Written" means tense has been used. Likewise for the word 'wear', the petitioner has framed the sentence "She Is Wearing A Red Dress". In the dictionary the tense has been used to explain the word "wear". For the word 'wait', the petitioner has framed the sentence 'He Is Waiting For You In The Lift'. In the dictionary the tense has been used with continuous tense to explain the word 'Wait'. Prima facie, therefore, it appears that since it was not a skill test and it was for





the post of English Stenographer, the petitioner understood the word and used the same in correct prospective, however, he was not given the marks. At the same time, the document which is filed as Annexure P-7 which is the answer-sheet of another candidate, would show that for the word 'where' when the sentence was framed 'Where Is Your Car' one mark is given to the said candidate.

9. The return which is filed would show that no model answer was issued. Admittedly, there may be different valuers, some may give higher marks and some may give less and as per the return, the Chief Valuer and Additional Chief Valuer randomly checked the answer sheets and wherever they found mistakes, they corrected the same. In respect of the petitioner, it is stated that the petitioner had made a mistake of not using the exact given word but has converted the same into tense. Whereas the petitioner was required to make sentence with the exact given word and was not supposed to make improvement/alteration in the given word.

10. The Supreme Court in the case of ***President, Board of Secondary Education, Orissa and another vs. D. Suvankar and another*** {(2007) 1 SCC 603} has emphasized that the examiners who make the evaluation of answer papers are really required to be equipped for the job. The paramount consideration in such cases is the ability of the examiner. Otherwise, the very purpose of evaluation of answer papers would be frustrated. It further observed that if for the same answer one candidate gets higher marks than another that would be arbitrary. It also observed that the scope of interference in matters of evaluation of answer papers is very limited. However, for compelling reasons and apparent infirmity in evaluation, the court can step in. It is further laid down





that care should be taken to see that the examiners who have been appointed for a particular subject belong to the same faculty. Therefore, one stream of valuer cannot be asked to evaluate the answer-sheet of other stream. Like the arts teacher cannot be asked to evaluate the answer-sheet of science subject. Therefore, in order to correct the same the Chief Examiner exists who is supposed to act as a safety valve in the matter of proper assessment. The Court also observed that the Court cannot lose sight of is the marginal difference of marks which decide the placement of candidates in the merit list.

11. In the instant case, the petitioner obtained 67 marks and the person who obtained 68 marks at serial No.26 was selected, therefore, if for marginal difference, the petitioner's candidature is rejected then certainly he would be aggrieved and the Court can step in as per the facts & circumstances of this particular case. The dictionary meaning which is referred for any query supports the answer given by the petitioner and the normal presumption of correctness would always be at higher degree than that of the valuer in the given case.

12. The Supreme Court further in the like nature case of **Taniya Malik Vs. Registrar General of the High Court of Delhi {(2018) 14 SCC 129}** following the ratio laid down in the case of **Sanjay Singh Vs. U.P. Public Service Commission {(2007) 3 SCC 720}** laid down that moderation is an appropriate method to bring about uniformity in evaluation. When several examiners manually evaluate answer scripts of respective/conventional type question papers in regard to the same subject, moderation is adopted as a method to reduce examiner's variability.





13. It further went on reiterating the law laid down in the case of Sanjay Singh (supra) and observed that each examiner will apply his own yardstick to assess the answer scripts. Inevitably therefore, even when experienced examiners receive equal batches of answer scripts, there is difference in average marks and the range of marks awarded, thereby affecting the merit of individual candidates. It further observed that this apart, there is “hawk-dove” effect. Some examiners are liberal in valuation and tend to award more marks. Some examiners are strict and tend to give less marks. Some may be moderate and balanced in awarding marks. Even among those who are liberal or those who are strict, there may be variance in the degree of strictness or liberality. This means that if the same answer script is given to different examiners, there is all likelihood of different marks being assigned. If a very well-written answer script goes to a strict examiner and a mediocre answer script goes to a liberal examiner, the mediocre answer script may be awarded more marks than the excellent answer script. In other words, there is “reduced valuation” by a strict examiner and “enhanced valuation” by a liberal examiner. This is known as “examiner variability” or “hawk-dove effect”. Therefore, there is a need to evolve a procedure to ensure uniformity inter se the examiners so that the effect of “examiner subjectivity” or “examiner variability” is minimised. The procedure adopted to reduce examiner subjectivity or variability is known as moderation. The Supreme Court at para 12 of the judgment has laid down the classic method of moderation, which is as follows:

- “(i) The paper-setter of the subject normally acts as the Head Examiner for the subject. He is selected from amongst senior academicians/scholars/senior civil servants/Judges. Where the case is of a large number of candidates, more than one examiner is appointed and each of them is allotted around 300 answer scripts for valuation.





- (ii) To achieve uniformity in valuation, where more than one examiner is involved, a meeting of the Head Examiner with all the examiners is held soon after the examination. They discuss thoroughly the question paper, the possible answers and the weightage to be given to various aspects of the answers. They also carry out a sample valuation in the light of their discussions. The sample valuation of scripts by each of them is reviewed by the Head Examiner and variations in assigning marks are further discussed. After such discussions, a consensus is arrived at in regard to the norms of valuation to be adopted. On that basis, the examiners are required to complete the valuation of answer scripts. But this by itself, does not bring about uniformity of assessment inter se the examiners. In spite of the norms agreed, many examiners tend to deviate from the expected or agreed norms, as their caution is overtaken by their propensity for strictness or liberality or erraticism or carelessness during the course of valuation. Therefore, certain further corrective steps become necessary.
- (iii) After the valuation is completed by the examiners, the Head Examiner conducts a random sample survey of the corrected answer scripts to verify whether the norms evolved in the meetings of examiner have actually been followed by the examiners. The process of random sampling usually consists of scrutiny of some top-level answer scripts and some answer books selected at random from the batches of answer scripts valued by each examiner. The top-level answer books of each examiner are revalued by the Head Examiner who carries out such corrections or alterations in the award of marks as he, in his judgment, considers best, to achieve uniformity. (For this purpose, if necessary certain statistics like distribution of candidates in various marks ranges, the average percentage of marks, the highest and lowest award of marks, etc. may also be prepared in respect of the valuation of each examiner.)
- (iv) After ascertaining or assessing the standards adopted by each examiner, the Head Examiner may confirm the award of marks without any change if the examiner has followed the agreed norms, or suggests upward or downward moderation, the quantum of moderation varying according to the degree of liberality or strictness in marking. In regard to the top-level answer books revalued by the Head Examiner, his award of marks is accepted as final. As regards the other answer books below the top level, to achieve maximum measure of uniformity inter se the examiners, the awards are moderated as per the recommendations made by the Head Examiner.
- (v) If in the opinion of the Head Examiner there has been erratic or careless marking by any examiner, for which it is not feasible to have any standard moderation, the answer scripts valued by such examiner are revalued either by the Head Examiner or any other examiner who is found to have followed the agreed norms.
- (vi) Where the number of candidates is very large and the examiners are numerous, it may be difficult for one Head





Examiner to assess the work of all the examiners. In such a situation, one more level of examiners is introduced. For every ten or twenty examiners, there will be a Head Examiner who checks the random samples as above. The work of the Head Examiners, in turn, is checked by a Chief Examiner to ensure proper results.”

14. It further observed that the aforesaid procedure of “moderation” would bring in considerable uniformity and consistency. It should be noted that absolute uniformity or consistency in valuation is impossible to achieve where there are several examiners and the effort is only to achieve maximum uniformity.

15. In the case of the petitioner, petitioner used the word in the grammatical sense.

When the tense is used with a word whether it will change the meaning of the word, the Dictionary rules otherwise which is in conflict with the method of evaluation of the examiner. The simple reading of the answer given by the petitioner would show that he framed the sentence correctly. Mere by change of the tense in the english subject, it would not change the word and the petitioner should have been given marks. However, whether such exercise & opinion of Court should prevail over or fresh evaluation is to be ordered in field of academics the answer would be from the ratio laid down by the Courts in past. As per the principle laid down by the Supreme Court and further as laid down by the Full Bench of High Court of M.P. in the case of **Nitin Pathak Vs. State of M.P. & others (2017 (4) M.P.L.J.)** that while exercising the power of judicial review, this Court is not to take upon itself the revaluation of Model Answer Key either itself or through Court appointed Expert, who is none else but a delegate of the Court. The Court in exercise of power of judicial review can direct the examining body to re-examine the answer key. In view of such proposition, the respondent is directed to re-evaluate the answer-sheet of the petitioner for question No.3 by a team of expert within a reasonable time.





Thereafter, after revaluation of the answer-sheet by the expert, the fresh marks would be allotted to the petitioner and accordingly on the basis of fresh marks obtained his position may be changed/varied and consequence of it would follow with regard to selection.

16. With the aforesaid observation, the writ petition stands disposed of.

Sd/-

Goutam Bhaduri
Judge

Ashu

