

HIGH COURT OF ORISSA : CUTTACK

**W.P.(C) Nos.20691, 20941, 20795, 26697, 26202, 25766, 25736,
24144, 22980, 22230, 22099, 22095, 22089, 20785, 22080,
22076, 21110, 20800, 20685, 29179 and 21762 of 2020**

Applications are under Articles, 226 and 227 of the
Constitution of India.

W.P.(C) No.20691 of 2020

Bibhudananda Pratap Hati Petitioner.

Versus.

Secretary, Board of Secondary
Education, Odisha and others Opp.parties

Counsel for the petitioner : M/s.Karunakar Rath,
P. Panda & R. Pagal,
Advocates.

Counsel for opposite party : M/s. S.S. Rao, Advocate.
No. 1

W.P.(C) No.20941 of 2020

Manoranjan Nayak Petitioner.

Versus.

State of Odisha & another Opp.parties

Counsel for the petitioner : M/s.Md. G. Madani, P.S.
Nayak, S. Hota & B.K.
Ram, Advocates.

Counsel for opposite party : M/s. S.S. Rao, Advocate.
No.1

W.P.(C) No.20795 of 2020

Suchismita Nayak Petitioner.

Versus.

Secretary, Board of Secondary
Education, Odisha and others Opp.parties

Counsel for the petitioner : M/s.Karunakar Rath,
P. Panda & R. Pagal,
Advocates.

Counsel for opposite party : M/s. S.S. Rao, Advocate.
No. 1

W.P.(C) No.26697 of 2020

Sujata Kumari Bhunya Petitioner.

Versus.

Secretary, Board of Secondary
Education, Odisha and others Opp.parties

Counsel for the petitioner : M/s.Kuresh Prasad Dash,
P. C. Behera & N. Samal,
Advocates.

Counsel for opposite party : M/s. S.S. Rao & B.K.
Mohanty, Advocates.
No. 1

W.P.(C) No.26202 of 2020

Arpita Manalisha Petitioner.

Versus.

Secretary, Board of Secondary
Education, Odisha and another Opp.parties

Counsel for the petitioner : M/s.Anjan Kumar Biswal,
& R.K. Muduli,
Advocates.

Counsel for opposite party : M/s. Bibhudhendra Dash,
No. 1 P.K. Mohanty & S. Dash,
Advocates.

W.P.(C) No.25766 of 2020

Kedar Sahukar Petitioner.

Versus.

Secretary, Board of Secondary
Education, Odisha and others Opp.parties

Counsel for the petitioner : M/s.Karunakar Rath,
P. Panda & R. Pagal,
Advocates.

Counsel for opposite party : M/s. S.S. Rao & B.K
Nos.1 to 3 Nayak, Advocate.

W.P.(C) No.25736 of 2020

Alpha Mohanty Petitioner.

Versus.

Secretary, Board of Secondary
Education, Odisha and others Opp.parties

Counsel for the petitioner : M/s.Karunakar Rath,
P. Pal & R. Pagal,
Advocates.

Counsel for opposite parties: M/s. S.S. Rao & B.K. Nayak, Advocates.

W.P.(C) No.24144 of 2020

Jyotirmayee Sahoo Petitioner.

Versus.

Secretary, Board of Secondary Education, Odisha and another Opp.parties

Counsel for the petitioner : M/s.Prajit Kumar Pradhan & B. Panda, Advocates.

Counsel for opposite parties: M/s. S.S. Rao, Advocate.

W.P.(C) No.22980 of 2020

Krushnadaipayan Ray & Others Petitioners.

Versus.

Secretary, Board of Secondary Education, Odisha and others Opp.parties

Counsel for the petitioners : M/s.Karunakar Rath, & G. Moharana, Advocates.

Counsel for opposite party : M/s. S.S. Rao, Advocate.
No. 1

W.P.(C) No.22230 of 2020

Sumit Kumar Bishi & Others Petitioners.

Versus.

Secretary, Board of Secondary
Education, Odisha and others Opp.parties

Counsel for the petitioners : M/s.Karunakar Rath,
G. C. Moharana P. Panda
& R. Pagal,
Advocates.

Counsel for opposite party : M/s. S.S. Rao, Advocate.
No. 1

W.P.(C) No.22099 of 2020

Chandrakanta Behera Petitioner.

Versus.

Secretary, Board of Secondary
Education, Odisha and others Opp.parties

Counsel for the petitioner : M/s.Karunakar Rath,
P. Panda, G.C. Moharana
& R. Pagal,
Advocates.

Counsel for opposite party : M/s. S.S. Rao, Advocate.
No. 1

W.P.(C) No.22095 of 2020

Sarita Nanda Petitioner.

Versus.

Secretary, Board of Secondary
Education, Odisha and others Opp.parties

Counsel for the petitioner : M/s.Karunakar Rath,
P. Panda, G.C. Moharana
& R. Pagal,
Advocates.

Counsel for opposite party : M/s. S.S. Rao, Advocate.
No. 1

W.P.(C) No.22089 of 2020

Ratikanta Panda Petitioner.

Versus.

Secretary, Board of Secondary
Education, Odisha and others Opp.parties

Counsel for the petitioner : M/s.Karunakar Rath,
P. Panda, G.C. Moharana
& R. Pagal,
Advocates.

Counsel for opposite party : M/s. S.S. Rao, Advocate.
No. 1

W.P.(C) No.20785 of 2020

Reena Giri Petitioner.

Versus.

Secretary, Board of Secondary
Education, Odisha and others Opp.parties

Counsel for the petitioner : M/s.Karunakar Rath,
P. Panda & R. Pagal,
Advocates.

Counsel for opposite party : M/s. S.S. Rao, Advocate.
No. 1

W.P.(C) No.22080 of 2020

Gayatri Pattnaik Petitioner.

Versus.

Secretary, Board of Secondary
Education, Odisha and others Opp.parties

Counsel for the petitioner : M/s.Karunakar Rath,
P. Panda, G.C. Moharana
& R. Pagal,
Advocates.

Counsel for opposite party : M/s. S.S. Rao, Advocate.
No. 1

W.P.(C) No.22076 of 2020

Anita Panda Petitioner.

Versus.

Secretary, Board of Secondary
Education, Odisha and others Opp.parties

Counsel for the petitioner : M/s.Karunakar Rath,
& G.C. Moharana
Advocates.

Counsel for opposite party : M/s. S.S. Rao, Advocate.
No. 1

W.P.(C) No.21110 of 2020

Topha Tripathy & Others Petitioners.

Versus.

Secretary, Board of Secondary
Education, Odisha and others Opp.parties

Counsel for the petitioners : M/s.Karunakar Rath,
P. Panda & R. Pagal,
Advocates.

Counsel for opposite party : M/s. S.S. Rao, Advocate.
No. 1

W.P.(C) No.20800 of 2020

Manasmini Das Petitioner.

Versus.

Secretary, Board of Secondary
Education, Odisha and others Opp.parties

Counsel for the petitioner : M/s.Karunakar Rath,
P. Panda & R. Pagal,
Advocates.

Counsel for opposite party : M/s. S.S. Rao, Advocate.
No. 1

W.P.(C) No.20685 of 2020

Jyoti Ranjan Balabantaray Petitioner.

Versus.

Secretary, Board of Secondary
Education, Odisha and others Opp.parties

Counsel for the petitioner : M/s.Karunakar Rath,
P. Panda & R. Pagal,
Advocates.

Counsel for opposite party : M/s. S.S. Rao, Advocate.
No. 1

W.P.(C) No.29179 of 2020

Madhuchhanda Das Petitioner.

Versus.

State of Odisha and others Opp.parties

Counsel for the petitioner : M/s.Biplaba P.B. Bahali,
R.K. Routray & K.K.
Mohapatra, Advocates.

Counsel for opposite party : M/s. S.S. Rao, Advocate.
No.2

W.P.(C) No.21762 of 2020

Swapna Rani Acharya Petitioner.

Versus.

Secretary, Board of Secondary
Education, Odisha and another Opp.parties

Counsel for the petitioner : M/s.Gopinath Sethi,
C.K. Pradhan & D.K. Rath,
Advocates.

Counsel for opposite party : M/s. S.S. Rao & B.K.
Mohanty, Advocates.
No.1

PRESENT :

THE HON'BLE SHRI JUSTICE P. PATNAIK

Date of Hearing : 22.01.2021 : Date of judgment: 04.02.2021

P.PATNAIK, J. The above mentioned writ applications are founded on similar facts and with the consent of the respective counsels, the matters have been heard analogously and all the writ applications are disposed of by this common order/judgment.

2. The petitioners in different writ applications being aggrieved with the marks awarded in the Odisha Secondary Teachers Eligibility Test, hereinafter referred to in short as 'OSTET' filed the aforesaid writ applications contending common plea and praying inter alia for re-evaluation of answer sheets once again and for awarding of extra marks, solely on the ground that some of the key answers being wrong and the petitioners are entitled to grace marks

which would result in all the petitioners being qualified in the said test because the petitioners have been prejudiced for being unsuccessful due to lack of 1 to 3 marks only.

WRIT PETITIONS

3. The petitioner in **W.P.(C) No.20691 of 2020** has challenged the action of the opposite parties in not awarding proper marks in the answer scripts for 'OSSTET' Examination, 2019 with regard to Paper-I Set-'C'. The petitioner being Science graduate appeared the 'OSSTET' examination on 22.01.2020. As per the result sheet, he was awarded 74 marks and he became unsuccessful for one mark only and the grounds stated in the writ application is that Question No.22 in Set-'C' although correct answer on the basis of Oxford Dictionary i.e., Leizy, there is no choice given in the Booklet. So, the petitioner is entitled to get one grace mark. Accordingly he would get 75 marks to be declared as pass in the aforesaid examination. Due to inaction of the opposite parties, the petitioner has approached this Court under Articles 226 and 227 of the Constitution of India for redressal of his grievance.

4. The petitioner in **W.P.(C) No.20941 of 2020** has challenged the action of the opposite parties in not awarding proper marks in Question No.37 in English Compulsory, Question No.57, Section-III in English Optional, Question No.120 Section C/IV. The grievance of the petitioner is that she became disqualified having secured 89 marks due to lack of one mark only. The petitioner is entitled to three grace mark in addition to the marks obtained as declared by the Board. The petitioner has prayed for a direction to the opposite parties to rectify the defect found in the question pattern and with regard to question Nos. 37, 57 and 120 in 'OSSTET' Examination, 2019 Paper I Set-'D' conducted by the Board of Secondary Education and direction be made to opposite party no.2 to declare the petitioner as a qualified awarding three marks in addition to the marks objection i.e. $89+3=92$ marks.

5. In **W.P.(C) No.20795 of 2020**, the petitioner has been aggrieved by the award of marks in the answer scripts for 'OSSTET' Examination, 2019 with regard to Paper-I Set-'D'. The petitioner has been awarded 87 marks and she became unsuccessful due to want of three marks. The petitioner has averred in the writ petition that though she has given correct answer in Question Nos.119, 120, 123 and 13 in Odia whereas she has not been awarded marks. The petitioner has prayed for award of marks in Question Nos.119, 120, 123 and 13 in Odia and to declare the petitioner to have qualified in 'OSSTET' Examination, 2019.

6. In **W.P.(C) No.26697 of 2020** the petitioner has challenged the action of the opposite parties in not awarding proper marks in the 'OSSTET' Examination, 2019 with regard to Paper-I Set-'A', the petitioner became unsuccessful due to want of two marks only. It has been averred in the writ application that Question No.37 in Set-'A', Question No.8 in Odia, Question Nos.32 and 36 in English Compulsory and Question No.63 in English Optional, the petitioner has not been awarded marks. Had she been awarded marks properly she would have qualified in the said Examination. The grievance of the petitioner having not been redressed she has been constrained to approach this Court under Article 226 of the constitution of India for redressal of her grievance.

7. The petitioner in **W.P.(C) No.26202 of 2020** the petitioner having secured 73 marks became unsuccessful in the 'OSSTET' Examination, 2019. The petitioner has averred in the writ petition that though she has given correct answer in Question No.145 Section IV and No.8 Section-I but she has not been awarded marks. The petitioner has prayed for award of marks in Question Nos.8 and 145 in Set-3/C and to declare the petitioner to have qualified in 'OSSTET' Examination, 2019.

8. The petitioner in **W.P.(C) No.25766 of 2020** has been aggrieved by the improper award of marks in the answer scripts with regard to Paper-I Set-‘C’ which has resulted in her disqualification due to lack of three marks. The petitioner has averred in the writ petition that the Question Nos.3, 8, 22, 64, 66, 145 and 148 and Question No.22 in Set ‘C’ the petitioner has not been awarded marks for which he is entitled to grace marks. With the aforesaid grievance the instant writ application has been filed for redressal of grievance of the petitioner.

9. The petitioner in **W.P.(C) No.25736 of 2020** has been aggrieved by the improper marks in the answer scripts with regard to Paper I Set-‘A’. According to the petitioner, she is entitled to grace marks as she has given correct answer in Question Nos.13, 58, 105, 128, 135, but she has not been awarded any marks, as a result of which she has become unsuccessful due to lack of two marks only. Accordingly she has prayed for issuance of mandamus to opposite party No.2 to add more marks, at least two marks to declare the petitioner to have passed in ‘OSSTET’ Examination, 2019.

10. In **W.P.(C) No.24144 of 2020** the petitioner has challenged the action of the opposite parties in not evaluating the answer papers although the petitioner has given correct answer in Question Nos.103 and 115, but no mark has been awarded for which he was disqualified by just one mark. Accordingly, the petitioner has prayed for award of grace marks to declare him as qualified in ‘OSSTET’ Examination, 2019 I Paper-I CBZ. With the aforesaid grievance, the petitioner has approached this Court for redressal of his grievance.

11. The petitioners in **W.P.(C) No.22980 of 2020**, being aggrieved by the award of marks in the answer scripts with regard to Paper-I Sets ‘A’, ‘B’, ‘C’ & ‘D’ have challenged the action of the

opposite parties in not awarding grace marks since they were disqualified due to lack of 1 to 3 marks only owing to wrong evaluation of answer sheets. The grievances of the petitioners having not been redressed, have been compelled to approach this Court under Article 226 of the Constitution of India for redressal of their grievances.

12. The petitioners in **W.P.(C) No.22230 of 2020** have challenged the action of the opposite parties in not awarding proper marks in the answer scripts for 'OSSTET' Examination, 2019 with regard to Paper-I Sets 'A', 'B', 'C' and 'D'. The petitioners became disqualified due to want of 1 to 3 marks only basing on wrong evaluation of the answer sheets. The petitioners averred in the writ application that the question in answer scripts in Paper-I Sets 'A', 'B', 'C' and 'D' being wrong they are entitled to grace marks which would entitle them to be successful in the 'OSSTET' Examination, 2019. Left with no alternative, the petitioners have approached this Court under Article 226 of the Constitution of India.

13. The petitioner in **W.P.(C) No.22099 of 2020** has challenged the action of the opposite parties in not awarding proper marks in the answer scripts with regard to Paper-I Set-'B'. According to the petitioner, although he has given correct answer in Question Nos.13, 18 and 60, but he has not been awarded marks as a result of which he has become unsuccessful because of one less mark. With the aforesaid grievances, the instant writ application has been filed.

14. The petitioner in **W.P.(C) no.22095 of 2020** has challenged the action of the opposite parties in award of improper marks with regard to Paper-I Set-'B' in 'OSSTET' Examination, 2019. The petitioner having secured 89 marks became unsuccessful due to one less mark although there are wrong question and answer in the Booklet like Question Nos.13, 18 and 27. Therefore, the petitioner is

entitled to grace mark. With the aforesaid grievances, the instant writ application has been filed.

15. In **W.P.(C) No.22089 of 2020** the petitioner has been aggrieved by the award of marks in the answer scripts for 'OSSTET' Examination, 2019 with regard to Paper-I Set-'D'. The petitioner has been awarded 89 marks and he became unsuccessful due to one less mark. The grievance of the petitioner is that due to wrong question and answer in the Booklet like Question Nos.18, 119 and 120 the petitioner is entitled to grace mark. Since the grievance of the petitioner has not been redressed, he has filed the aforesaid writ application.

16. The petitioner in **W.P.(C) no.20785 of 2020** has challenged the award of improper marks in 'OSTET' Examination, 2019 with regard to Paper-I Set-'C'. The petitioner has become unsuccessful because of one mark. The petitioner has averred in the writ application that she has given correct answers in Question Nos.139, 140, 148, No.3 in Odia and 57 in English etc. whereas the petitioner has not been awarded marks. The petitioner further has averred in the writ application that Question No.22 in Set-'C' though correct answer on the basis of Oxford Dictionary i.e., Leizy in place of laizy there is no choice in the Booklet. So, the petitioner is entitled to one grace mark. With the aforesaid grievance the instant writ petition has been filed.

17. The petitioner in **W.P.(C) No.22080 of 2020** has assailed the action of the opposite parties in not awarding proper marks in answer scripts of 'OSTET' Examination, 2019 with regard to Paper I Set-'C'. As per the averments in the writ application, she is entitled to grace marks because of wrong question and answer in the Booklet like Question Nos.8, 22, 140 and 148 in Set-'C'. The petitioner was awarded 88 marks and due to lack of 2 marks, she has become

unsuccessful. With the aforesaid grievances, the instant writ application has been filed by the petitioner.

18. The petitioner in **W.P.(C) No.22076 of 2020** being aggrieved by the award of improper marks in the answer scripts in 'OSTET' Examination, 2019 with regard to Paper-I Set-'B' . The petitioner has averred in the writ application that the petitioner has given correct answer in Question No.13, 18, 128, 129, 134, 135, but she has not been awarded marks and she has been given 88 marks. Had she secured 90 marks she would have been declared pass. With the aforesaid grievances, the instant writ application has been filed.

19. The petitioners in **W.P.(C) No.21110 of 2020** have challenged the action of the opposite parties in not awarding proper marks in the answer scripts of 'OSSTET' Examination, 2019 with regard to Paper-I Sets 'A', 'B', 'C' & 'D'. The petitioners have become unsuccessful due to 1 to 3 less marks. So far as the case of the petitioner No.1 is concerned, it has been contended that the Question No.3 and 18 in Odia, 17 and 115 in question Booklet are wrong. So, the petitioner is entitled to grace marks. So far as the case of the petitioner No.2 is concerned, some answers of multiple questions like Question Nos. 13, 18, 58 and 135 given in Question Booklet are wrong. So the petitioner No.2 is entitled to grace mark. So far as the case of the petitioner No.3 is concerned, he has also the similar grievance. So far as the case of the petitioner No.4 is concerned, he has given answer of multiple choice in some question vide Question Nos. 8, 22, 64 and 66 in Question Booklet are wrong. So, the petitioner no.4 is entitled to grace mark. So far as the case of the petitioner No.5 is concerned, Question Nos.8, 22, 64 and 139 in Question Booklet are wrong. So, the petitioner No.5 is entitled to grace marks. So far as the case of the petitioner No.6 is concerned Question Nos.18, 37, 57 and 119 of Question Booklet are wrong. So, the petitioner no.6 is entitled to get grace marks. With the aforesaid

grievances, the petitioners have approached this Court under Article 226 of the Constitution of India.

20. The petitioner in **W.P.(C) No.20800 of 2020** being aggrieved with the award of marks in the answer scripts for 'OSSTET' Examination, 2019 with regard to Paper-I Set-'B' has challenged the action of the opposite parties that she became unsuccessful as she secured 88 marks. Had she secured 90 marks, she would have become successful. The contention of the petitioner is that in Question No.27 she is entitled to get one grace mark in place of Set-'B'. The petitioner has averred in the writ application that she has given correct answer in Question Nos.18 and 27 in Odia whereas she has not been awarded marks. With the aforesaid grievances, the petitioner has knocked the doors of this Court under Article 226 of the Constitution of India.

21. The petitioner in **W.P.(C) No.20685 of 2020** has challenged the action of the opposite parties in not awarding proper marks in answer scripts for 'OSTET' Examination, 2019 with regard to Paper-I Set-'D'. As per the contention of the petitioner, the Question No.37 in Set-'D' although correct answer is on the basis of the Oxford Dictionary the word Leizy in place of Laizy, there is no choice given in the Booklet. So, the petitioner is entitled to one grace mark, but surprisingly when the result was published he was awarded only 74 marks instead of 75 marks which would have resulted in passing of the aforesaid examination. Apart from this, the petitioner has also contended that in Question Nos. 119,120, 123, 13 in Odia and 57 in English, the petitioner has not been awarded proper marks. With the aforesaid grievances, the petitioner has challenged the action of the opposite parties in the instant writ application.

22. In **W.P.(C) No.29179 of 2020**, the petitioner has been aggrieved by the improper award of marks with regard to Paper-I Set- 'B' which has resulted in her being disqualified due to lack of two marks. According to the petitioner, the Question Nos.13, 18 and 96 in the Booklet are wrong and the petitioner is entitled to grace marks. Accordingly, the petitioner has prayed for a direction to opposite party no.1 to award grace marks and to declare the petitioner to have passed in 'OSSTET' Examination, 2019.

23. The petitioner in **W.P.(C) No.21762 of 2020** prayed inter alia for a direction to opposite party No.2 for re-addition of the marks of the petitioner in Question Nos.32,83, 104, 128 in Category-I, Question Set I of 'OSSTET' Examination, 2019. Since the petitioner having secured 87 marks became not qualified due to lack of three marks. Accordingly, the petitioner has prayed for consideration of representation and for a direction to opposite party no.2 to re-check and re-add the marks properly in Question Nos.32, 83,104 and 128 and to supply the correct marks sheet to the petitioner within a stipulated period of time.

24. Passing of 'OSSTET' Examination is a condition precedent for being appointed or regularized as Secondary School Teacher. Guidelines have been framed by the Government of Odisha.

Board of Secondary Education is only an Examining Body to conduct the examination. Board has framed guidelines for conducting examination in which it has been stipulated that there is no restriction for a candidate to appear on any number of attempts for acquiring the pass certificate. This being an eligibility test minimum 60% for general candidate, 50% for S.C./S.T./SEBC/PH have been prescribed. Passing of the test would not confer a right on any person for recruitment or employment. As per the guidelines of

OSSTET' examination, which has been annexed as Annexure-A to the counter affidavit filed in W.P.(C) No.20691 of 2020.

25. Section 3 of Right of Children to Free and Compulsory Education Act, 2009 envisages that a child has a right to get free and compulsory education. Under Section 8(g) thereof, it is the duty of the Government to provide good quality of education confirming to prescribed standards and norms. To achieve the objective behind the said provisions Government have laid down guidelines to ensure quality education by making teachers competent to impart quality education. Therefore, a test to a teacher has been made compulsory for appointment or regularization. In the process, Board of Secondary Education was chosen as a professional examining body with liberty to frame guidelines for conduct of examinations. The guidelines as mentioned in Annexure-A to the counter affidavit stipulates for conduct of 'OSSTET' examination.

STAND OF THE OPPOSITE PARTIES

26. Counter affidavit has been filed in the lead case, i.e., W.P.(C) No.20691 of 2020 by the Board of Secondary Education repelling the contentions made in different writ applications. The Board of Secondary Education has adopted the counter affidavit filed in W.P.(C) No.20691 of 2020 in all the aforesaid writ applications.

In the counter affidavit, it has been inter alia submitted that the grievances of the petitioners in different writ applications, are not sustainable. Such a prayer cannot be entertained in law more particularly, in absence of a provision for evaluation in the guidelines. Preliminary objection has been made to the maintainability of the writ application on various grounds that; firstly, this Court cannot be called upon to assess the correctness of the answers given to questions nor can be called upon to compare and decide which of the answer is correct and the scope of jurisdiction cannot be extended to such prayers of the petitioners. Secondly, the object of teachers eligibility test is to uplift the standards of teachers and the questions

are required to be so set that the examinee's ability to analyse, interpret and to apply if the subject matter is tested. The petitioners in the writ applications have not been able to make out a case that the answers given by the petitioners meet the required standard in furtherance of the object and purport of the scheme. For which such test is being conducted. Thirdly, the writ petitions are not maintainable in law in absence of Government of Odisha in School and Mass Education Department, who have framed guidelines and entrusted the jobs of conducting the examination to the professional body, Board of Secondary Education. Fourthly, no challenge should be allowed to be made to the correctness of the award of marks, as the Board has offered an effective alternative remedy to each of the candidate. It has been submitted that the Board soon after the examinations, published a scoring key, enabling the candidates to challenge in the event of any objection to the proposed answers to the questions. Upon publication of notification, several candidates have raised their objections to different suggestive answers published in the scoring key. All the challenges along with the materials supplied by the candidates were placed before the experts of the relevant subject and the experts have analysed the objections and gave their views indicating if the answer as suggested in the scoring key is correct or not. In cases where the challenge received is accepted, they have also suggested so. Upon receiving the reports from the experts, in all the subjects in which objections have been received, the Board finalized the answer keys and published the results in accordance with the same. Thus, several questions which are raised in different writ applications have already been placed before the experts and were tested before the results are published. Thus, the Board of Secondary Education has taken all possible steps to ensure proper award of marks. Fifthly, as per the scheme the answers given by the petitioners to each of the question cannot be judged like that of the answers given by the students appearing for regular courses. Rather,

the petitioners herein are required to be fit teacher and therefore, the answers given must be perfectly correct. Otherwise the very object of eligibility test would get frustrated. Perfect teaching ability is a boon for healthy education system and future education system and nation building depends on the same. Strict consideration are required to be applied while evaluating the answer scripts of candidates, no laxity is contemplated. Sixthly, the challenge to the evaluation of answer papers cannot be called in question in the writ jurisdiction of this Court even if some difference arises with regard to the answers by two different authors, the answer that has been chosen by the examiner which is unambiguously correct is to be accepted as the examiner considering relevance and correct of the answer accepts one. Seventhly, since there is no provision for re-valuation of answer books in the relevant Rules or Regulations, the examinees have no right to claim or demand re-valuation.

27. The petitioners have not been able to show that the answers given by the petitioners are correct and that the key answers are wrong. It is the position of law that the key answers should be assumed to be correct unless it is proved to be wrong more so in the present case, where the scoring key was further put to strict test. It is also the law that finality has to be attached to the result of the examination. It has further been averred in the counter affidavit that when no mala fide is attributed to the examiners who have evaluated the answer scripts and experts who were teachers with wide experience teaching ability in academic matters, who have reexamined the answers that were subjected to challenge by the some candidates and teaching having wide experience in academic matters. There is no further scope to invoke the jurisdiction under Article 226 of the Constitution of India.

28. The origin and reason for introducing the eligibility test for teachers, by virtue of Article-21-A of the Constitution of India,

children are given a right to have free education up to elementary stage. To achieve the constitutional mandate, an Act namely, Right to Children Education in Elementary Schools, 2009, for short, RTE Act, 2009 has been promulgated by the Central Government which came into force from August, 2009. Section 13(1) of the 2009 Act stipulates teachers who teach the children should have the eligibility, qualification and ability to teach the children. In furtherance of the object of the Act and in accordance with the provisions in Section 23(1) of the RTE Act, 2009 National Council of Teachers Education in short, NCTE, a statutory body laid down educational qualification without which no candidate will be eligible to be appointed as Teacher at elementary level. As per NCTE Notification dated 23.08.2010, one of the essential qualification for any candidate for appointment as Teacher is that he/she should pass the Teachers Eligibility Test which has to be conducted by the Government. Several guidelines were also laid down for implementation of RTE Act, 2009.

29. In the backdrop of exhaustive guidelines of NCTE, the Government of Odisha in the School & Mass Education in furtherance of such Notification/guidelines have been conducting the OSSTET Examination by entrusting the job to Board of Secondary Education, which is conducting every year strictly following the guidelines. Guidelines formulated by the Board of Secondary Education pursuant to the guidelines of the Government of Odisha in School & Mass Education department has been annexed as Annexure-A to the counter affidavit.

30. In the counter affidavit, it has been submitted that in order to maintain transparency and to provide chance to the candidates, the proposed answer scoring key has been published in the internet inviting objections. In the process, all the objections received are re-examined and in cases where suggested questions are

found inappropriate, steps are also taken to correct the same. Copy of the Notification calling upon objections to be raised bearing No.152 dated 07.02.2020 has been annexed as Annexure-B to the counter affidavit.

31. In response to the notice under Annexure-B several objections were received by the Board challenging the key answers as published. The objections were placed before the examining body. The objections pertain to Question Nos.3 and 16 in Set 'A', Question No.13 in Set 'B' in Odia Paper, Question No.46 in Set 'A' in Hindi Paper, Question No.67 in Set 'A' in Botany paper in Group III Question No.85 in Set 'A', Question No.80 in Set 'B', Question no.75 in Set 'C', Question No.81 in Set 'D' of History and Pol.Science Paper-I. Question Nos.110 and 128 in Set 'A', Question No.105 in Set 'B' given in Pedogogy, Question No.88 in Set 'D', Question No.98 in Set 'B', Question No. 93 in Set 'C' which are identical in Mathematics, Paper-I and Question Nos.32 and 70 in Set 'C', Question No.27,58 in Set 'B', Question Nos.22 and 64 in Set 'C' and Question Nos.37 and 59 in Set 'D' in English Paper C/1. All the questions were referred to the expert and based on their report the final key answers were prepared and results were published based on such final answer. Thus, the Board has absolutely maintained transparency in the matter of conduct of examination and evaluation.

32. It is submitted in the counter affidavit that there is no scope for reexamining the correctness of the expert. The opposite party further submitted that the answers given by the petitioners are not correct and that answers given by the expert were taken into account. It may be relevant to submit that expert have in some cases accepted the challenges made by the candidates also. In the counter affidavit, the decision of the Hon'ble Apex Court reported in AIR 1984 S.C. 1543 (**State of Maharastra-vrs-State Board of Higher Secondary Education** and (2004) 6 SCC 714 (**Pramod Kumar**

Srivastav-vrs.-Chairman, Bihar Public Service Commission, Patna and Ors and Himachal Pradesh Public Service Commission-vrs.-Mukesh Thakur and another; (2010) 6 SCC 759 have been relied upon.

33. Rejoinder Affidavit filed by the petitioners to the counter affidavit filed by the opposite parties in W.P.(C) No.20685 of 2020. In the Rejoinder Affidavit, it has been submitted that the opposite parties have not filed the counter affidavit in proper perspective. They have resorted to misrepresentation of facts and materials in order to escape from the wrong committed.

i. In Set-‘A’ category Sumit Kumar Bisi, Ramakrushna Pradhan, Chandrakanta Sahu, Jagan Parida, Jyotikanti Sahu (Hindi), Amruta Khuntia, Balaram Sahu & Ashok Bisi are in W.P.(C) No.22230 of 2020. Similarly in the same Set-‘A’ Manoswini Das, Raj Nandini Mishra, Chandrabati Das, Sanjaya Kumar Jena, Millon Krushna Dhal, Rasmita Senapati are all in W.P.(C) No.22980 of 2020. Topha Tripathy in W.P.(C) No.21110 of 2020 and Alpha Mohanty in W.P.(C) No.25736 of 2020 if their questions under challenge are consolidated in Set-‘A’, the question nos.3, 8, 13, 29, 32,39,58,63,68, 70, 91 100, 103, 105, 110, 114, 115, 119, 120, 123, 131, 147 and 150 are found to be committing some mistakes to the multiple answers and the proper verification/re-evaluation/rechecking should have been done. But in the counter opposite parties have never stated that they are verified, rechecked, re-evaluated for which the above petitioners have been declared disqualified owing to wrong marking and due to deficient of one or two or three marks only.

ii. In Set-‘B’ category of Booklets Manas Ranjan Sahu, Deepak Kumar Sahu, Chinmaya Pradhan, Padmabati Soren, Basanti Gouda, Godhuli Lagna Nanda are the petitioners in W.P.(C) No.22230 of 2020. Similarly Sabitri Jena, Jayadev Lohar, Mahesh Ranjan Sahu, Snehapara Patra, Khista Majhi are all in W.P.(C) No.22980 of 2020, Manasmini Das in W.P.(C) No.20800 of 2020, Anita Panda in W.P.(C) No.22076 of 2020, Chandrakanta Behera in W.P.(C) No.22099 of 2020, Sarita Nanda in W.P.(C) No.22095 of 2020, Sibani Gurung and Sumitra Nayak in W.P.(C) No.21110 of 2020 if their questions under challenge are consolidated in Set-‘B’, the question Nos.6, 8, 13, 18, 27, 28, 58, 60, 67, 72, 96, 105, 128, 129, 132, 134 and 135 are found to be committing some mistakes to the multiple answers and the proper verification/re-evaluation/rechecking should have been done. But in the counter opposite party have never stated that they are verified, rechecked, re-evaluated for which the above petitioners have been declared disqualified owing to wrong marking and due to deficient of one or two or three marks only.

iii. In Set-‘C’ category of Booklets Sagarika Mohanty, Krupasindhu Das, Suchitra Mohanty, Banaja Nayak, Parijat Behera are the petitioner in W.P.(C) No.22230 of 2020. Similarly Krushna Daipayan Ray, Prativa Dash, Swagatika Swain, Bholanath Bishi, Sradhanjali Pradhan and Debadarsini Acharya are all in W.P.(C) No.22980 of 2020. Manisha Behera, Kumudini Swain in W.P.(C) No.21110 of 2020, Bibhudhendra Pratap Hati in W.P.(C) No.20691 of 2020, Reena Giri in W.P.(C)

No.20785 of 2020, Gayatri Patnaik in W.P.(C) No.22080 of 2020 and Kedar Sahukar in W.P.(C) No.25766 of 2020 if their questions under challenge are consolidated in Set-‘C’, the question nos.3, 8, 11, 13, 22, 24, 57, 58, 64, 66, 86, 95, 139, 140, 145 and 148 are found to be committing some mistakes to the multiple answers and the proper verification/re-evaluation/rechecking should have been done. But in the counter opposite parties have never stated that they are verified, rechecked, re-evaluated for which the above petitioners have been declared disqualified owing to wrong marking and due to deficient of one or two or three marks only.

iv. In Set-‘D’ category of Booklets Sumit Kumar Bishi, Prakash Chandra Prusty, Amarnath Jena, Sukanta Kumar Behera (Hindi), Sujata Naik, Radhakanta Sahoo, Arjuna Gadangi, Tapaswini Sukla are the petitioners in W.P.(C) No.22230 of 2020. Similarly Baburam Hembram in W.P.(C) No.22980 of 2020. Tapas Kumar Barik in W.P.(C) No.31110 of 2020, Suchitra Nayak in W.P.(C) No.20795 of 2020 and Ratikanta Panda in W.P.(C) No.22089 of 2020 if their questions under challenge are consolidated in Set-‘D’, the question nos.13, 18, 23, 37, 57, 59, 60, 83, 95, 96, 119, 120, 123, 129 and 150 are found to be committing some mistakes to the multiple answers and the proper verification/re-evaluation/rechecking should have been done. But in the counter opposite parties have never stated that they are verified, rechecked, re-evaluated for which the above petitioners have been declared disqualified owing to

wrong marking and due to deficient of one or two or three marks only.

34. In the rejoinder affidavit, it has been submitted that the eligibility test is a test by which examinee is to be declared eligible/qualified to be a teacher up to his maximum age limit of 32 years as prescribed by the Government of Odisha in School & Mass Education Department in consonance with the RTE Act, 2009, of the Government of India. This Court may interfere with the action/inaction of the opposite parties who have not properly awarded marks. Therefore, the petitioners are entitled to proper marks.

35. It has further been submitted that the judgment cited by the opposite parties in the counter affidavit are in different context which are not applicable so far as the petitioners' cases are concerned. The decision reported in 1996(II) OLR-592 (**Manas Ranjan Dash & Ors-vrs.-Council of Higher Education & Ors**) has been referred to. Similarly in the case of **Pankaj Sharma-vrs.-State of Jammu & Kashmir & Ors**; reported in (2008) 4 SCC 273 have been cited in the Rejoinder Affidavit.

ISSUES

36 From the conspectus and constellation of facts the points for determination hinges on the following issues:

1. Whether in absence of any provision in the guidelines, reevaluation is permissible?
2. Whether the Court of law by invoking Article 226 of the Constitution of India can re-assess the question and re-appreciate the views of the Expert Committee?
3. Whether direction can be made for re-assessment of the question paper notwithstanding the fact

that adequate precautions have been taken for rectification of the mistake by the expert body?

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONERS

37. Mr. K.K. Rath, learned counsel for the petitioner in W.P.(C) No.20691 of 2020 and batch of cases strenuously urged that in spite of series of defects in question and answer papers, the petitioners have been disqualified by a whisker due to lack of 1 to 3 marks. Learned counsel for the petitioners submitted that the petitioners have made out a case for interference and the opposite party Board has not controverted the assertions made in the writ application in any unequivocal manner. Therefore, the submission of the petitioner is to be accepted on the principle of the doctrine of non-traverse. Learned counsel for the petitioners further submitted that the opposite parties have not replied to the pertinent question raised in the writ application and have tried to evade the moot point. Learned counsel for the petitioner relied on the decisions reported in 1996(II) OLR-592 and (2008) 4 SCC-273; (**Pankaj Sharma vs. State of Jammu and Kashmir and Others**).

38. Mr. Biplab P.B. Bahali, learned counsel for the petitioner in W.P.(C) No.29179 of 2020 submitted with vehemence that due to lack of two marks the petitioner being an examinee has been disqualified. Learned counsel for the petitioner further submitted that seeing the answer scripts the petitioner came to know that although she has performed well she has secured 73 marks and has been declared fail due to lack of very negligible two marks. After receiving the model/correct answer scripts in respect of Set-B/Set-2, she verified and matched with the answers in the test book, Grammar Book and Dictionary. Finally, she prepared an answer sheet which is very much correct so far as text book, grammar book and dictionary are concerned. True copies of the result model/correct answer sheet

and correct answer on the basis of the text book and dictionary have been annexed as Annexure-4, 5 series, 6 and 7 series to the writ application. Learned counsel for the petitioner further submitted that some answer of multiple choice in some questions like question nos.13, 18, 96 and some other questions given in the question booklet are wrong. Therefore, the petitioner is entitled to get grace marks. Learned counsel for the petitioner further submitted that in similar situation many examinees have allowed whereas the petitioner has been deprived of in violation of Article 14 of the Constitution of India. Learned counsel for the petitioner referred to the decisions of the Hon'ble Apex Court, i.e., in the case of **Kanpur University, through Vice-Chancellor and Others vrs. Samir Gupta and Others** reported in AIR 1983 S.C. 1230 paragraphs 15 and 16 of the said judgment are extracted herein below:-

“Para-15. The findings of the High Court raise a question of great importance to the student community. Normally, one would be inclined to the view, especially if one has been a paper-setter and an examiner, that the key answer furnished by the paper-setter and accepted by the University as correct, should not be allowed to be challenged. One way of achieving it is not to publish the key answer at all. If the University had not published the key answer along with the result of the Test, no controversy would have arisen in this case. But that is not a correct way of looking at these matters which involve the future of hundreds of students who are aspirants for admission to professional courses. If the key answer were kept secret in this case, the remedy would have been worse than the disease because, so many students would have had to suffer the injustice in silence.

The publication of the key answer has unraveled an unhappy state of affairs to which the University and the State Government must find a solution. Their sense of fairness in publishing the key answer has given them an opportunity to have a closer look at the system of examinations which they conduct. What has failed is not the computer but the human system.”

“Para-16 Shri Kacker, who appears on behalf of the University contended that no challenge should be allowed to be made to the correctness of a key answer unless, on the face of it, it is wrong. We agree that the key answer should be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by an inferential process of reasoning or by a process of rationalisation. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well-versed in the particular subject should regard as correct. The contention of the University is falsified in this case by a large number of acknowledged textbooks, which are commonly read by students in U.P. Those textbooks leave no room for doubt that the answer given by the student is correct and the key answer is incorrect.”

39. Learned counsel for the petitioners further relied upon the decisions rendered in the cases of **Bihar Staff Selection Commission and Ors. Vrs. Arun Kumar and others** (2020) 6 SCC 362. **Pranab Verma vrs. Registrar General of High Court of Punjab and Haryana** 2019(17) **SCALE-73, Rajesh Kumar and others vrs.**

State of Bihar and Ors. (2013) 4 SCC 690. **Richal and Ors vrs. Rajasthan Public Service Commission and Ors** reported in (2018) 8 SCC 81, **Manish Ujwal and Ors. Vrs. Maharishi Dayananda Saraswati University and Ors.** reported in (2005) 13 SCC 744. Apart from the aforesaid decision, learned counsel for the petitioner submitted in the case of **Prativa Mondal vrs. West Bengal and Ors.** (W.P. No.23006(W) of 2017, the decision rendered on 27.07.2018 by the Hon'ble Calcutta High Court and the decision in the case of **Guruvinder Kaur and others vrs. State of Punjab and Others**, in similar issue, Teachers Eligibility Test allowed the writ application for granting grace marks for wrong answer which squarely cover in the present case.

40. Learned counsel for the petitioner prayed for issuance of writ of mandamus directing the opposite parties more particularly opposite party no.2 to award grace mark and more marks in question nos.13, 18 and 96 and to declare the petitioner as the pass in the OSSTET Examination, 2019.

41. Mr. Prajit Kumar Pradhan, Mr. Anjan Kumar Biswal, Mr. Kuresh Prasad Dash and Gopinath Sethi, learned counsel for the petitioners in W.P.(C) No.21762 of 2020 have more or less adopted the argument advanced by Mr. K.K. Rath and Mr. Biplab P.B. Bahali, learned counsel for the petitioners.

**SUBMISSION OF LEARNED COUNSEL FOR THE SECRETARY,
BOARD OF SECONDARY EDUCATION, ODISHA**

42. As against the submission of learned counsel for the petitioner in respect of the writ petitions Mr. S.S. Rao, learned counsel for the Board of Secondary Education, Odisha relied upon the counter affidavit and vociferously raised preliminary objection on the maintainability of the writ applications on the ground that the

State Government being author of the scheme has not been made as a party, secondly, the guideline framed by the State Government has not been challenged. Thirdly, no mala fide has been alleged against in the examiners in the writ applications. Apart from raising preliminary objection maintainability of the writ applications, learned counsel further submitted that it is settled position of law that in absence of any provision in the guideline, no re-valuation is permissible. In order to advance his argument learned counsel referred to various decisions of the Hon'ble Apex Court which will be dealt with later on.

ISSUE NO.1 AND SCOPE OF JUDICIAL REVIEW

43. In order to deal with issue no.1, it is reiterated that on perusal of the guidelines (Annexure-A) to the counter affidavit there is absolutely no doubt or debate that there is no provision in the guideline for re-valuation of the answer sheets. The petitioners in different writ applications have pointed out various wrong questions and answer keys and the same have been dealt with in the counter affidavit filed by the Board of Secondary Education, Odisha wherein it has been specifically submitted that after publication of the answer keys, objections were invited from different candidates and after receipt of objections the same has been sent to the expert committee and the expert committee minutely scrutinized question papers and answer sheets and in case of any defects the same has been rectified and proper marks have been added. Therefore, all possible steps have been taken by the Board of Secondary Education, Odisha to rectify the defects, if any, in the question papers or in the answer sheets and averments of the petitioners have already been answered as disclosed in the counter affidavit.

44. It is no more *res integra* that in absence of any provision in the guideline no re-valuation is permissible. The Hon'ble Apex Court in (2004) 6 SCC 714 (**Pramod Kumar Srivastava vs. Chairman, Bihar Public Service Commission, Patna & Ors**) has

been pleased to hold and the relevant portion in paragraph-8 is extracted hereunder for ready reference:-

“Para-8. Adopting such a course as was done by the learned Single Judge will give rise to practical problems. Many candidates may like to take a chance and pray for re-evaluation of their answer books. Naturally, the court will pass orders on different dates as and when writ petitions are filed. The commission will have to then send the copies of individual candidates to examiners for re-evaluation which is bound to take time. XXXX xxx What will happen if a candidate secures lesser marks in re-evaluation? He may come forward with a plea that the marks as originally awarded to him may be taken into consideration. The absence of clear rules on the subject may throw many problems in the larger interest, they must be avoided.”

45. The Hon’ble Apex Court in (2018) 2 SCC 357(**Ranvijay Singh vrs. State of Uttar Pradesh and Ors**) at para-32 held that:-

“Para-32. It is rather unfortunate that despite several decision of this Court, some of which have been discussed above, there is interference by the courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally

great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a classic example of the consequence of such interference where there is no finality to the result of the examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination—whether they have passed or not; whether their result will be approved or disapproved by the court; whether they will get admission in a college or university or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion being worse confounded. The overall and larger impact of all this is that public interest suffers.”

46. This Court having gone through the various decisions cited by learned counsel for the petitioner (supra) and learned counsel for the Board of Secondary Education, Odisha is of the considered view that the re-valuation in absence of any provision is not permissible. Accordingly, the issue no.1 is answered in favour of the opposite party-Board of Secondary Education, Odisha.

ISSUE Nos.2 and 3

47. Issue Nos.2 and 3 are taken up together for better appreciation and convince.

The Hon'ble Apex Court in the case of **Ashwini Kumar Upadhyay vrs. Union of India and others**; reported in (2020) 7 SCC 693 has been pleased to hold that the policy matters regarding primary education and matters which fall within the domain of experts. The decisions rendered on 07.12.2020 in Civil Appeal Nos.3649-3650 of 2020 wherein case at paragraphs-11 and 13 the Hon'ble Supreme Court **Vikesh Kumar Gupta and Anr. Vrs. State of Rajasthan and Ors.** held that though re-evaluation if re-appreciated, there scope of power in the matter of assessment of question held that the same is not permissible. Therefore, decision of the Hon'ble Apex Court leaves no scope for interference by invoking extra ordinary jurisdiction under Article 226 and 227 of the Constitution of India for re-assessment of the answer scripts in absence of any provision in the guidelines.

48. In order to delve to the issue nos.2 and 3 as formulated (supra) , the Court having gone through the counter affidavit is of the considered view that adequate precautions have been taken before valuation of the answer scripts and when the expert committee has already taken the decision, this court will be at loath to substitute its own view in case of the view taken by the technical expert can evaluate the answer when there is mistake in question and answer scripts it is for all the candidates there will be no discrimination. Therefore, it would be profitable to refer to the decision in the case of **Maharashtra State Board of Secondary and Higher Secondary Education and another vrs. Paritosh Bhupash Kumarsheth** reported in AIR 1984 S.C. 1543

The paragraphs-26 and 29 are extracted hereunder for ready reference:-

“Para-26. We are unable to agree with the further reason stated by the High Court that since "every student has a right to receive fair play in examination and get appropriate marks matching his performance" it will be a denial of the right to such fair play if there is to be a prohibition on the right to demand revaluation and unless a right to revaluation is recognised and permitted there is an infringement of rules of fair play. What constitutes fair play depends upon the facts and circumstances relating to each particular given situation. If it is found that every possible precaution has been taken and all necessary safeguards provided to ensure that the answer books inclusive of supplements are kept in safe custody so as to eliminate the danger of their being tampered with and that the evaluation is done by the examiners applying uniform standards with checks and cross-checks at different stages and that measures for detection of malpractice, etc. have also been effectively adopted, in such cases it will not be correct on the part of the Courts to strike down the provision prohibiting revaluation on the ground that it violates the rules of fair play. It is unfortunate that the High Court has not set out in detail in either of its two judgments the elaborate procedure laid down and followed by the Board and the Divisional Boards relating to the conduct of the examinations, the evaluation of the answer books and the compilation and announcement of the results. From the affidavit filed on behalf of the Board in the High Court, it is seen that from the

initial stage of the issuance of the hall tickets to the intending candidates right upto the announcement of the results, a well-organised system of verification, checks and counter-checks has been evolved by the Board and every step has been taken to eliminate the possibility of human error on the part of the examiners and malpractices on the part of examinees as well as the examiners in an effective fashion. The examination centres of the Board are spread all over the length and breadth of each Division and arrangements are made for vigilant supervision under the overall supervision of a Deputy Chief Conductor in charge of every sub-centre and at the conclusion of the time set for examination in each paper including the main answer book all the answer books and the supplements have to be tied up by the candidate securely and returned to the Supervisor. But before they are returned to the Supervisor, each candidate has to write out the title page of main answer books in the pages provided for the said particulars, the number of supplements attached to the main answer book. The, Supervisor is enjoined to verify whether the number so written tallies with the actual number of supplements, handed over by the candidate together with his main answer book. After the return of all the answer books to the Deputy Chief Conductor, a tally is taken of the answer books including supplements used by the candidates by the Station Supervisor who is posted by the Board at each sub-centre. This enables the supervisory staff at a sub-centre to verify and

ensure that all answer books and supplements issued to the candidates have been turned in and received by the supervisory staff. At this stage of checking and double-checking, if any seat number has been duplicated on the answer books by mistake or by way of deliberate malpractice it can be easily detected and corrective measures taken by the Deputy Chief Conductor or the Chief Conductor. The answer books are then sent by the Deputy Chief Conductor to the Chief Conductor in charge of the main centre. He sorts out the answer books according to the instructions issued by the Board and sends them to the examiners whose names had been furnished in advance except in the case of the science subjects, namely, "mathematics and statistics, physics, chemistry and biology". The answer books in the science subjects are forwarded by the Chief Conductor under proper guard to camps in Pune already notified to the Chief Conductors. The further procedure followed in relation to the valuation of the answer books has been explained in paragraphs 22 to 26 of the counter affidavit dated 10th July 1980 filed in the High Court by the Joint Secretary to the Pune Divisional Board of Secondary Education. We do not consider it necessary to burden this judgment with a recapitulation of all the details furnished in those paragraphs, and it would suffice to state that the procedure evolved by the Board for ensuring fairness and accuracy in evaluation of the answer books has made the system as fool proof as can be possible and it meets with our entire satisfaction

and approval. Viewed against this background, we do not find it possible to agree with the views expressed by the High Court that the denial of the right to demand a revaluation constitutes a denial of fair play and is unreasonable. The Board is a very responsible body. The candidates have taken the examination with full awareness of the provisions contained in the Regulations and in the declaration made in the form of application for admission to the examination they have solemnly stated that they fully agree to abide by the regulations issued by the Board. In the circumstances, when we find that all safeguards against errors and malpractices have been provided for, there cannot be said to be any denial of fair play to the examinees by reason of the prohibition against asking for revaluation.

Para-29. Far from advancing public interest and fair play to the other candidates in general, any such interpretation of the legal position would be wholly defeasive of the same. As has been repeatedly pointed out by this court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root

problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice. It is unfortunate that this principle has not been adequately kept in mind by the High Court while deciding the instant case.”

49. In the case of Mukesh Thakur and another vrs. Himachal Pradesh Public Service Commission reported in (2010) 6 SCC 759.

The Paragraphs 20 and 26 are extracted hereunder for ready reference:-

“Para-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. Therefore, we are of the considered opinion that

such a course was not permissible to the High Court.

Para-26. Thus, the law on the subject emerges to the effect that in absence of any provision under the statute or statutory rules/regulations, the Court should not generally direct revaluation.”

50. In a similar situation when the key answers published and grievances were considered, the Hon’ble Supreme Court in the case of **Richal and Ors vrs. Rajasthan Public Service Commission and Ors** reported in (2018) 8 SCC 81 not only appreciated the attempt to achieve fairness and transparency did not interfere with the case. The relevant portion in paragraph-19 is extracted hereunder for ready reference:-

“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. xxxx”

51. Therefore, an effective and alternative remedy has been provided vide Annexure-B to the counter affidavit and those petitioners who have not availed the same cannot raise any objection now and cannot be allowed to raise objection in the writ application and in case of those who have raised objection, the same has been considered by the expert committee. So, the petitioners those who have lost the opportunity of raising the objection at the opportune

time cannot invoke the jurisdiction under Articles 226 and 227 of the Constitution of India to ask for re-evaluation of the answer paper and for award of grace marks in absence of any provisions in the guidelines.

Accordingly, issue nos.2 and 3 are answered in favour of Board of Secondary Education, Odisha. Moreover, from the perusal of the pleading made in different writ applications, no mala fide has been alleged or corrupt practice has been attributed to the examiners but only bald pleadings have been made for wrong answers and on that basis prayer has been made for re-examination and re-evaluation which is not panacea for the malady of incorrect key answers.

52. In pursuance to queries and direction made by this Court, an affidavit has been filed by the Secretary, Board of Secondary Education, Odisha wherein it has been categorically stated that in the aforesaid writ petitions, there are about of 69 candidates. All the petitioners except Sri Jayadev Lohar, the petitioner in W.P.(C) No.22980 of 2020, have filed their challenges in response to Notification No.153 dated 07.02.2020, calling upon all the candidates to raise any challenge between dated 08.02.2020 to 14.02.2020 in case, they feel any ambiguity in any key answers within the stipulated time and before the final scoring key was published. Objections given by all the candidates, who have appeared in the OSSTET, 2019, were 363 in numbers. All the objections so received, the same were placed before the concerned subject experts when on re-examination of the challenges, eight of the challenges were accepted and rest 355 were not accepted.

53. Further, it has been submitted that challenges were placed before the expert and after the experts have examined, the scoring keys, final scoring key was uploaded in the website of the

Board for information of the candidates vide Notification No.613 dated 01.08.2020.

54. It would be relevant to refer to decision reported in (2018) 2 SCC 357; (**Ranvijay Singh and Others vrs. State of Uttar Pradesh and Others**) where at paragraph-31, the Hon'ble Apex Court has been pleased to inter alia hold that sympathy has no role to invoke extra-ordinary jurisdiction under Articles 226 and 227 of the Constitution of India. Another point which cannot be lost sight that the Hon'ble Apex Court in the case of **Bihar Staff Selection Commission and Ors. vrs. Arun Kumar and others** (2020) 6 SCC 362 at paragraph-26 has been pleased to inter alia hold that re-evaluation undertaken by the High Court has not solved but contributed to chaos. Therefore, in absence of any guideline, re-evaluation would lead to utter confusion worst confounded.

55. After giving anxious consideration to the rivalized submissions of the respective parties and on perusal of the decisions cited at the Bar, this Court is not persuaded to accede to the prayer of the petitioners. Accordingly, the writ petitions sans merit are dismissed.

As restrictions are continuing due to COVID-19 pandemic, learned counsel for the parties may utilize the soft copy of this order available in the High Court's official website or print out thereof at par with certified copies in the manner prescribed, vide Court's Notice No. 4587 dated 25.03.2020.

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P.Patnaik,J.

Orissa High Court, Cuttack
The 4th February, 2021/R&JB