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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on : 30.08.2013

Judgment pronounced on : 02.09.2013

W.P.(C) 4953/2013

RAJ KUMAR JHA

..... Petitioner

Through: Mr I.C. Mishra, Adv.

versus

UNIVERSITY OF DELHI & ORS.

..... Respondents

Through: Mr Mohinder J.S. Rupal, Adv for DU

CORAM:

HON'BLE MR. JUSTICE V.K. JAIN

V.K. JAIN, J.

The only issue involved in this writ petition is as to whether the answers contained in the answer key in respect of question numbers 94 and 110 in the LLB Entrance Examination, 2013, held by University of Delhi are incorrect and if so, whether the petitioner is entitled a fresh computation of his result and admission to the said course in the Academic Year 2013-14.

The petitioner before this Court appeared in LLB Entrance Test of Faculty of Law, conducted by the respondents, for the academic year 2013-2014. In the result of the said examination, declared in June, 2013, the petitioner obtained 315 marks. Since the petitioner was not satisfied with the result, he obtained the copies of questions and answer sheets under the Right to Information Act. On perusal of the answer key, the petitioner felt that the answers contained in the answer key in respect of question no.94 and 110 were incorrect and the answers opted by him for the said questions were the correct answers. The grievance of the petitioner is that he has been denied 4 marks each in respect of the above referred two questions, besides being given 2 negative marks, thereby

depriving him of as many as 10 marks. The petitioner is, therefore, before this Court seeking the following reliefs:

- a. That this Hon'ble Court may kindly allow this petition thereby directing the respondents to rectify the errors made by the respondents in answer key set no.A-Q No.94 and 110 of the LLB entrance Test Examination in academic year of 2013-2014 and quash the wrong answer selected by respondents.
- b. That the respondents be directed to take the admission of petitioner and be kept at par of those students who have already taken the admission by qualifying marks at 325.

2. Question Nos.94 and 110 and the options given to the candidates in respect of the said questions read as under:

“94. Permission to vote in India by postal ballot is given to:

1. Members of the Armed Forces
 2. Foreign Service personnel posted abroad
 3. Officials on election duty
 4. Candidates who are touching their constituencies.
- (A) 2, 4
(B) 1, 3
(C) 1,2,3
(D) 2,3

110. Assertion (A): The constitution of India provides for the appointment of a Governor for a period of five years.

Reason (R): The Governor holds office during the pleasure of the President.

- (A) Both A and R are true and R is the correct explanation of A.
- (B) Both A and R are true but R is not the correct explanation of A.
- (C) A is true but R is false
- (D) A is false but R is true.

3. As regards question no.94, according to the petitioner, the correct answer is C whereas as per the answer sheet, the correct answer is D.

Considering the option given to the candidates, the only issue which arises, as far as, answer to question no.94 is concerned is as to whether the members of armed forces are permitted to vote by postal ballot or not.

4. As per Rule 18 Conduct of Elections Rules, 1961, the following persons shall, subject to their fulfilling the requirement specified therein be entitled to vote by post namely (i) special voters (ii) service voters, (iii) voters on election duty and (iv) electors subjected to preventive detention. The expression “service voters” has been defined in Rule 17 of the aforesaid Rules, which, *inter alia*, reads as under:

“17. Definitions.--In this Part,—

[(a) “service voter” means any person specified in clause (a) or clause (b) of section 60, but does not include “classified service voter” defined in rule 27M;]

(b) “special voter” means any person holding an office to which the provisions of sub-section (4) of section 20 of the Representation of the People Act, 1950 (43 of 1950) are declared to apply or the wife of such person, if he or she has been registered as an elector by virtue of a statement made under sub-section (5) of the said section”

Rule 27 M of the aforesaid Rule reads as under:

“27M. Definitions.—In this Part, unless the context otherwise requires,—

(a) “classified service voter” means any person specified in clause (a) of section 60, who opts to give his vote by proxy;

(b) “proxy” means the person appointed by a classified service voter as his proxy under rule 27N to give vote on his behalf and in his name;

(c) “service voter” means any person specified in clause (a) of section 60 and registered as an elector in the last part of the electoral roll for the constituency”

Section 60 of the Representation of People Act, 1951, to the extent it is relevant, reads as under:

“60. Special procedure for voting by certain classes of persons.—Without prejudice to the generality of the provisions contained in section 59, provision may be made, by rules made under this Act, for enabling,—

(a) any of the persons as is referred to in clause (a) or clause (b) of sub-section (8) of section 20 of the Representation of the People Act, 1950 (43 of 1950), (hereinafter in this section referred to as the 1950-Act) to give his vote either in person or by postal ballot or by proxy, and not in any other manner, at an election in a constituency where poll is taken;

(b) any of the following persons to give his vote either in person or by postal ballot, and not in any other manner, at an election in a constituency where a poll is taken, namely:—

(i) any person as is referred to in clause (c) or clause (d) of sub-section (8) of section 20 of the 1950-Act;

(ii) the wife of any such person to whom the provisions of sub-section (3) of section 20 of the 1950-Act apply and such wife being ordinarily residing with that person in terms of sub-section (6) of that section;

(c) any person belonging to a class of persons notified by the Election Commission in consultation with the Government to give his vote by postal ballot, and not in any other manner, at an election in a constituency where a poll is taken subject to the fulfilment of such requirement as may be specified in those rules.”

Sub sections (3) and (8) of Section 20 of Representation of Peoples

Act, 1950, to the extent it is relevant, reads as under:

“20. (3) Any person having a service qualification shall be deemed to be ordinarily resident on any date in the constituency in which, but for his having such service qualification, he would have been ordinarily resident on that date.

(8) In sub-sections (3) and (5) "service qualification" means—

(a) being a member of the armed forces of the Union; or

(b) being a member of a force to which the provisions of the Army Act, 1950 (46 of 1950), have been made applicable whether with or without modifications; or

(c) being a member of an armed police force of a State, who is serving outside that State; or

(d) being a person who is employed under the Government of India, in a post outside India.”

5. It is quite evident from a conjoint reading of Rules 17, 27M and 18 of the Conduct Election Rules, 1961 read with Section 60 of the Representation of Peoples Act, 1951 of Section 20(3) and (8) of Representation of People Act, 1950 that since a member of the armed forces, is a person having a service qualification, he is entitled to vote by post, at an election in a Parliamentary or Assembly constituency. Therefore, the option D in respect of question no.94 is certainly a wrong answer and option C is the only possible correct answer to the said question.

6. It is true that ordinarily the Courts should not interfere with the answers notified by the examiners but, where the Court finds that the answer contained in the answer key in respect of a particular question cannot even be said one of the possible correct and appropriate answers, not to speak of the most appropriate answer, the Court would be failing in its duty, if it does not correct such patently wrong answer and leaves a wronged candidate remediless, particularly when the question under consideration relates to a field of law.

7. In Kanpur University, through Vice-Chancellor and Ors. vs. Samir Gupta and Ors. (1983)4 SCC 309, while considering challenge to correctness of key answers, the Apex Court, *inter alia*, held as under:-

“16. 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 would regard as correct.....

17.....If this were a case of doubt, we would have unquestionably preferred the key answer. But if the matter is beyond the realm of doubt, 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.”

In the aforesaid case, Supreme Court confirmed the direction given by the High Court for re-assessment to certain questions on the ground that the answers provided in the answer key were wrong.

Manish Ujwal and Ors. vs. Maharishi Dayanand Saraswati University and Ors. (2005) 13 SCC 744, some of the candidates, who appeared in the entrance test, disputed correctness of the answers to certain question in Physics, Chemistry and Biology. The High Court sought expert opinion from Jodhpur University and Udaipur University with respect to answers to the aforesaid questions. The unanimous opinion of the experts in respect of six questions was that the answers, notified by the University to those questions were erroneous. However, despite that no relief to the petitioners was granted by the High Court. Setting aside the decision of High Court, the Apex Court took the view that the student community could not be made to suffer on account of errors committed by the University. In this regard, the Court observed that first and paramount reason being the welfare of the students, wrong key answer can result in the merit being made a casualty.

In **D.P.S. Chawla v. Union of India & Ors.** 184(2011) DLT 96, a Division Bench of this Court found that the answer, contained in the answer key in respect of one question, was wrong. The Court, accordingly, enhanced the marks secured by the petitioner in the first paper from 49% to 50%, thereby declaring him successful in the examination and eligible for promotion.

In **Gunjan Sinha Jain vs. Registrar General, High Court Of Delhi,** W.P.(C) No. 449/2012 and connected matters, decided on 09.04.2012, a Division Bench of this Court found certain answers contained in the answer key in respect of Delhi Judicial Service Examination to be incorrect and accordingly substituted those incorrect answers by what the Court felt were correct answers.

8. As regard question No. 110, according to the petitioner, the correct option is 'B', whereas, according to the respondent 'A' is the correct option.

Article 156 of the Constitution reads as under:-

“156. Term of office of Governor

(1) The Governor shall hold office during the pleasure of the President

(2) The Governor may, by writing under his hand addressed to the President, resign his office

(3) Subject to the foregoing provisions of this Article, a Governor shall hold for a term of five years from the date on which he enters upon his office

(4) Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office”

A careful perusal of the Article would show that the provisions of clause 3 have been expressly made subject to the provisions of clause 1 and 2, meaning thereby that clause 1 prevails over clause 3. What it really means is that though ordinarily a Governor will hold office for a term of five years from the date he assumes charge of the office, his continuance in the said office being at the pleasure of the President, he can be removed from the said office even before expiry of the aforesaid term of five years.

The following view taken by the Supreme Court in this regard in **B.P Singhal v. Union of India: (2010) 6 SCC 33** is relevant:

“A plain reading of Article [156](#) shows that when a Governor is appointed, he holds the office during the pleasure of the President, which means that the Governor can be removed from office at any time without notice and without assigning any cause. It is also open to the Governor to resign from office at any time. If the President does not remove him from office and if the Governor does not resign, the term of the Governor will come to an end on the expiry of five years from the date on which he enters office. Clause (3) is not intended to be a restriction or limitation upon the power to remove the Governor at any time, under Clause (1) of Article [156](#). Clause (3) of Article [156](#) only indicates the tenure which is subjected to the President's pleasure.

... Clause (3) prescribing a tenure of five years for the office of a Governor, is made subject to Clause (1) which provides that the Governor shall hold office during the pleasure of the President. Therefore, it is not possible to accept the contention that Clause (1) of Article [156](#) is subjected to an express restriction or limitation under Clause (3) of Article [156](#)”

Therefore, the statement that the Governor holds office during the pleasure of the President is, in fact, the correct explanation of the statement “the Constitution of India provides for the appointment of a Governor for a period of five years”. Hence, option ‘A’ and not option ‘B’ is the most appropriate answer to question No.110. I, therefore, find no merit in the challenge to the answer in respect of question No. 110.

9. For the reasons stated hereinabove, the respondents are directed to compute and declare the result of the petitioner afresh within one week from today, awarding him marks in respect of question No. 94, if option ‘D’ was the answer chosen by him in respect of the said question. If any negative mark has been awarded to the petitioner for answer given by him to question No. 94, that shall also be deleted while computing the result of the petitioner.

10. Vide order interim dated 05.08.2013, it was directed that if any seat in the LLB course in the General Category remains unfilled after the counseling for that day or any seat falls vacant thereafter, one out of those seats can be reserved for the petitioner. If any seat was kept reserved for

the petitioner in terms of the interim order dated 05.08.213, he shall be admitted to the LLB course against that seat, if considering the fresh result to be declared in terms of this order, he was entitled for admission to the said course in the General Category.

The writ petition stands disposed of accordingly.

There shall be no order as to costs.

V.K.JAIN, J

SEPTEMBER 02, 2013

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