

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.2117 of 2015

Date of decision:9.2.2015

Ankita Mittal

....Petitioner

VERSUS

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Puneet Jindal, Senior Advocate with
Ms. Sakshi, Advocate for the petitioner.

HEMANT GUPTA, J.(Oral)

The challenge in the present writ petition is to the result declared on 29.01.2015 of the Preliminary Haryana Civil Services (Judicial Branch). The preliminary examination, a short-listing examination, was conducted on 10.01.2015 by giving 125 Objective Type Multiple Choice Questions. After putting proposed answer-key on the website, it has been decided to delete five questions out of the total 125 question i.e. Question Nos.10, 40, 108, 109, 114 from Code 'C' set.

Apart from the challenge to the deletion of five questions, the petitioner also challenged the final answer-key in respect of Questions No.42 and 90 for Code 'C' set. The said questions read as under:-

“42. 'A' beats his wife. She fell down and became unconscious. Believing her to be dead and to save himself from being arrested for murder A hanged her on the fan with rope. Post mortem report disclosed her death from hanging. A is liable for:

- | | |
|-----------|----------------------|
| a) murder | b) culpable homicide |
| c) hurt | d) grievous hurt. |

90. Who among the following is the first Chief Justice of Punjab High Court at Simla after independence?

- | | |
|----------------|-------------------|
| a) S.R. Das | b) Ram Lal |
| c) Eric Weston | d) G.D. Khosla .” |

In respect of deletion of five questions, we find as to whether a particular answer to a particular question is ambiguous or not or warrants any clarification is a decision which is required to be taken by experts on the basis of various inputs received by them. Once it has been decided to delete five questions, the deletion is applicable across all candidates. The result is that instead of 125 questions the candidates have been marked out of 120 questions. Thus, it cannot be said that the petitioner has suffered any prejudice since all candidates have been treated at par. We also do not find any merit in the argument raised that the examining body was not competent to delete any question. The preliminary examination is a short-listing examination for the candidates. The process of examination has been applied uniformly to all the candidates. If it has been found that five questions are such which have multiple answers or the frame of the questions is not clear, the same could very well be deleted. The consequences of deletion is that all candidates whether they have attempted such questions or not or attempted such questions rightly or wrongly are treated at par as no credit or discredit is given to any candidate of such questions. The decision to delete a question lies in the wisdom of the experts who in the process of finalization of the answer key have decided to delete such questions. It is not necessary that there should be a condition in the advertisement itself that an objective type question can be deleted by the examining body in the process of finalization of the answer key.

In respect of Question No.42, Mr. Jindal has relied upon the publication of Universal Law Publishing Co. Pvt. Ltd. of “Criminal Major Laws” wherein reference is made to the judgment of Madras High Court reported as (1919) I.L.R. 42 Mad. 547 : 37 M.L.J. 17 Palani Goundan v. Emperor as a commentary to Section 300 of Indian Penal Code to assert that the proposition is derived from the aforesaid case. In the aforesaid case, a finding was returned that it is a case of hurt. In fact that is Full Bench judgment of Madras High Court reported as AIR 1920 Madras 862, In Re: Palani Goundan.

In fact, the judgment in Palani’s case (supra) was not followed even in Madras High Court which is evident from a later judgment reported as (1933) 65 MLJ 597, In Re: Kaliappa Goundan and another v. Unknown, wherein it has been held to the following effect:-

“8. It is clear, therefore, that the Full Bench distinguish the two former cases from the case which was before them and seem to indicate an opinion that in these cases the offence, committed might have been murder. In my opinion, we are therefore free to consider the present case, which is, in my opinion, as near a case as could be found to The Queen-Empress v. Khandu (1890) I.L.R. 15 Bom. 194 as not being covered by the decision in Palani Goundan v. Emperor (1919) I.L.R. 42 Mad. 547 : 37 M.L.J. 17(F.B.). Accordingly I will refer again to The Queen-Empress v. Khandu (1890) I.L.R. 15 Bom. 194. In that case the accused confessed to having struck his father-in-law, the deceased, three blows with a stick, one on the back and one on each ear. The injured man immediately fell down on the ground and the accused said that he died. The accused then set fire to the hut. It was found that the deceased man died from the burns received and that the blows struck by the accused were not likely to cause death and did not do so. Sargent, C.J., to whom the case was referred owing to a difference of opinion between Birdwood and Parsons, JJ., held that as the accused had not intended to cause the death of the deceased by setting fire to the shed but had only done so after he thought that

the deceased was dead, the act of setting fire to the shed by which the death was caused was not done with such intent or knowledge as is contemplated in Section 299, Indian Penal Code. Parsons, J. took a different view. On page 200 he says:

“It is true that the accused says that immediately after he dealt the three blows, his father-in-law died and fell down on the ground, but he does not say that he in any way satisfied himself that he was actually dead or even that he thought that he was dead, still less does he say that his intention in setting fire to the hut was to conceal his crime. He does not say what his intention was. This being so, I think the presumption of law is that in all that he did he was actuated throughout by one and the same intention. There is no evidence or proof of any change therein. There is then the intention of the accused to cause death and there are two acts committed by him which together have caused death - acts so closely following upon and so intimately connected with each other that they cannot be separated and assigned the one to one intention and the other to another, but must both be ascribed to the original intention which prompted the commission of those acts and without which neither would have been done. In my opinion, the accused in committing those acts is guilty of murder.”

9. In my view, Parsons, J. was right. If the intention is to kill and a killing results, the accused succeed in doing that which they intended to do and if the acts follow closely upon one another and are intimately connected with one another such as they were in the Bombay case, then in my opinion the offence of murder has been committed. Similarly when the facts suggest that the accused acted with a reckless indifference and ignorance as to whether the body he handled was alive or dead.....

10. And later:

To sum up my reason, it is this, that one common intention of inflicting such injuries upon her as he must have known to be likely to cause her death is present throughout the case from the beginning to the end, and if this is the case I agree with Mr. Justice Parsons in his view of the facts in the Bombay case.”

Still further, in a judgment of Lahore High Court, the predecessor Court, reported as AIR 1931 Lahore 27, Emperor v. Gajjan Singh, the accused struck Bhagwan Das with a piece of wood.

He fell down and became unconscious. The accused then threw Bhagwan Das into a shallow pool of water face downwards and left him there. In these circumstances, it was found that the incidents ran into each other and action was continuous. The relevant extract from the said judgment reads as under:-

“.....The incidents ran into each other and the action was continuous. The accused struck Bhagwan Das and, as soon as he fell, he removed him and put him into the pool and, after taking what money there was on him, covered him with the branches of the ah bush. The action being continuous, and it being impossible to resolve the two incidents into two wholly separate actions, inspired by different motives and committed for different reasons, we are of opinion that the accused must be treated as having done one act with the intention of causing death and as having succeeded in carrying out his object. He is therefore guilty of murder of Bhagwan Das.....”

Similar was the view taken by Bombay High Court in judgment reported as 1986 (2) BomCR 554 titled Shobhana Manji Thakkar v. State of Maharashtra. Thus, the final answer key cannot be said to be incorrect merely because a private publishing house has chosen to report only one judgment and not the complete case law.

In respect of Question No.90, learned counsel for the petitioner relied upon the list of Chief Justices downloaded from the website of this Court to contend that the correct answer is option ‘b’ whereas in the final answer key the correct answer is option ‘c’.

We do not find any merit in the argument raised. There is a disclaimer on the website of this Court that though all efforts have been made to ensure the accuracy and concurrency of the content on this website, the same should not be construed as a statement of law or used for any legal purposes. In case of any ambiguity or doubts, users are advised to verify/check with the Department(s) and/or other

source(s), and to obtain appropriate professional advice. Apart from such fact, the question is ‘who is the first Chief Justice of Punjab Court at Simla?’ A perusal of the website of the High Court shows after independence, the name of the High Court was the East Punjab High Court. It came to be known as Punjab High Court after the commencement of the Constitution of India on 26.01.1950 when Hon’ble Mr. Justice Eric Weston was the Chief Justice. The High Court shifted to Chandigarh in the year 1955. Therefore, option ‘c’ in the final answer key is the correct answer relating to the first Chief Justice of Punjab High Court at Simla as the question is not who was the Chief Justice of East Punjab High Court.

For the aforesaid reasons, we do not find any merit in the writ petition. The same is dismissed.

(HEMANT GUPTA)
JUDGE

FEBRUARY 9, 2015
‘D. Gulati’

(HARI PAL VERMA)
JUDGE