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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 3453/2016

Reserved on : 27th April, 2016
Date of decision: 9th May, 2016

SUMIT KUMAR

..... Petitioner

Through: Mr. Prashant Manchanda with Mr.
Montu Bhagwana, Advocates.

Versus

HIGH COURT OF DELHI & ANR.

.... Respondent

Through: Mr. Rajiv Bansal, Advocate with Ms.
Arpita, Mr. Siddhant Gupta, Ms. Keshav and Ms.
Ritu, Advocates for respondent-DHC.

W.P.(C) 2104/2016

MANISH GUPTA

..... Petitioner

Through: Mr. Arpit Bhargava and Ms. Hina
Bhargava, Advocates.

Versus

REGISTRAR GENERAL, HIGH COURT
OF DELHI & ANR.

.... Respondent

Through: Mr. Rajiv Bansal, Advocate with Ms.
Arpita, Mr. Siddhant Gupta, Ms. Keshav and Ms.
Ritu, Advocates for respondent-DHC.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J.:

This common judgment would dispose of the afore-stated two writ petitions calling in question some of the questions and answer key included in the Delhi Judicial (Preliminary) Examination held on 20th December, 2015.

2. With the consent of the learned counsel for the respondent-Delhi High Court, we have also heard arguments, though no counter affidavit was filed in W.P.(C) No. 3453/2016, Sumit Kumar Vs. High Court of Delhi & Another.

3. The High Court of Delhi (hereinafter referred to as the respondent) vide advertisement dated 6th October, 2015 had invited applications from eligible candidates for filling up 100 vacancies in the Delhi Judicial Service. The selection is by way of a three stage process, consisting of preliminary examination for selection and short listing of candidates for the mains written examination and viva voce. The preliminary examination was “multiple choice objective type” with the stipulation that there would be 25% negative marking for an incorrect answer.

4. The preliminary examination had 200 objective type multiple choice questions and candidates were required to mark the correct answer in the answer or scoring sheet. For each correct answer, the candidate was awarded 1 mark and for a wrong answer 0.25 marks were deducted. General candidates were required to secure a minimum of 60% or 120 marks out of 200, and obtain a rank within 10 times the number of vacancies advertised for being short listed for the main written examination. For reserved category the eligibility requirement was 55% marks.

5. By public noticed dated 26th December, 2015, the model answer key for the preliminary examination was released and objections were invited. The two petitioners submitted their objections to some of the questions and the model answer key. On 16th February, 2016, the respondent released the revised model answer key for five questions. They had also deleted eight questions. On 23rd February, 2016, a corrigendum to the revised answer key was released, correcting one answer.

6. On 5th March, 2016, a select list of 849 candidates who had secured at least the qualifying marks in the preliminary examination and a rank within 10 times the number of vacancies advertised, was made public. The last ranked candidate mentioned belonging to general category in the said select list had secured 131.75 marks out of 200.

7. Before we examine the questions and answers to which objections have been raised, we must elucidate and reflect on the legal position as to the scope and ambit of judicial review when a multiple choice question paper and answer key are questioned. The law on the point is no longer *res integra* and stands lucidly and clearly expounded in ***Salil Maheshwari Vs. High Court of Delhi & Anr.***, 2014 (145) DRJ 225 in the following words:-

“11. Before recording a decision on the merits, the scope of judicial review of an answer key in a test for law graduates, such as for the DJS examination, must be recognised. The law prevailing in this regard is laid down in *Kanpur University* (supra), in respect of the answer key in a combined medical test in which the four subjects tested were physics, chemistry, zoology and botany. The Court in that case held:

“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. The contention of the University is falsified in this case by a large number of acknowledged text-books, which are commonly read by students in U.P. Those text-books leave no room for doubt that the answer given by the students is correct and the key answer is incorrect.

17. ...Certain books are prescribed for the Intermediate Board Examination and such knowledge of the subjects as the students have is derived from what is contained in those text-books. Those text-books support the case of the students fully. 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.”

The aforesaid paragraph refers to a quotation from the decision of the Supreme Court in **Kanpur University v. Samir Gupta**, (1983) 4 SCC 309 and holds that three propositions of law emerge. These are:-

“12. Three propositions of law emerge from *Kanpur University* (supra), on the permissible extent of judicial review of an answer key. *First*, the answer key must be presumed to be correct and must be followed, even in the face of a mere doubt, *second*, only if a key answer is

demonstrably wrong, in the opinion of a reasonable body of persons well-versed in the subject, it may be subject to judicial review, and *third*, if the answer key is incorrect beyond doubt, then a candidate cannot be penalised for answers at variance with the key. This position was reiterated in *Manish Ujwal and Ors. v. Maharishi Dayanand Saraswati University and Ors.*, (2005) 13 SCC 744 and *DPS Chawla v. Union of India*, 184 (2011) DLT 96.”

8. ***Salil Maheshwari*** (supra) also dealt with the question of re-valuation and has concluded that the question of re-valuation does not strictly arise when the examination comprises only multiple choice questions. The reason being that multiple choice question test is premised on the basis that there is only one, objective correct answer to every question. The system of multiple choice objective type test and scope and ambit of judicial review was examined in ***Kanpur University's*** case (supra), and illuminated the following words:

“18. ... Fourthly, in a system of 'Multiple Choice Objective- type test', care must be taken to see that questions having an ambiguous import are not set in the papers. That kind of system of examination involves merely the tick-marking of the correct answer. It leaves no scope for reasoning or argument. The answer is 'yes' or 'no'. That is why the questions have to be clear and unequivocal.”

In ***Salil Maheshwari*** (supra), after referring to the aforesaid quotation from ***Kanpur University*** (supra), it has been observed:-

“22. The very finding that a key answer is not the objective, single, correct answer of the four options provided, and that another answer is “correct” according to those well-versed in the subject, itself would merit the awarding of additional marks to candidates who had chosen the latter answer. There arises no need to “evaluate” or examine a response of a candidate for a second time, since all candidates who have answered in accordance with the answer key that the experts in the field affirm, are automatically entitled to the award of additional marks. The precedents on re-evaluation are only applicable in the context of examinations which permit subjective written answers, and not objective, multiple-choice questions that permit the selection of just one “correct” answer. There would be no infirmity in the approach of a Court that directs reassessment, such as in Kanpur University (supra) itself, on the ground that the answer key is incorrect. In the present case, this court has recorded findings on each of the three questions, to say that the answer keys used for correcting the question papers used one single correct answer; the alternative options cannot be said to be unambiguously clear answers, so as to result in confusion on the part of the examinee, who attempted the preliminary test.”

9. We have to apply the aforesaid standard or test when we examine the contentions of the two petitioners. In other words, only when we are convinced that the answer key is “demonstrably wrong” in the opinion of a reasonable body of persons well-versed with the subject, will it be permissible to exercise power of judicial review. *Albeit*, in cases where the answer key is indeed incorrect or more than one key to the answer could be correct, the candidates should not be penalized for answers at variance with the key. The expression “demonstrably wrong” and the clapham omnibus

standard or test on the second aspect (i.e. more than one correct key) is noticeably the corner stone of the said principle. While applying the said test, the Court should keep in mind that the answer key should be presumed as correct and should not be treated as incorrect on mere doubt.

10. The first issue which requires examination and is common to the two writ petitions pertains to question No.91 of Series B. The question and the suggested answers read as under:-

“Q91. B.B. King, who passed away in 2015 was a famous:

1. Singer
2. Musician
3. Writer
4. Cartoonist”

The correct answer as per the respondent is “Musician (2)”. The petitioners submit that there is sufficient material which acknowledges that B.B. King was a singer as well as a musician and, therefore, option 1 i.e. singer is also correct. Another contention raised is that the question and the answers suggested itself were ambiguous and, therefore, should be deleted as there were two correct answers. We, however, for several reasons find that the said contention has to be rejected. One of the reasons is that question paper booklet on the first page itself had informed and advised the candidates as under:-

“Choose the most appropriate option and darken the circle completely corresponding to (1), (2), (3) or (4) against the relevant question number.”

The candidates, therefore, had to choose the most appropriate option. This position would be true when we examine other challenged questions and answer key. It is an accepted and admitted position that B.B. King was a reputed singer and equally a well-known electric guitarist, music composer and song writer. B.B. King, therefore, was a musician, rather than only a singer. The question framed and the answer as suggested would be the most appropriate answer out of the four options given. Suggestion 1 that B.B. King was a singer would indicate that he was a vocalist and not a known electric guitarist, composer or song writer. The choice of answers was indicative and was testing the candidate's awareness and knowledge of the talent of the person concerned and his ability to comprehend the distinction between a singer and a musician. Many a person know that B.B. King was a singer but may not know that he was equally a well-known and renowned electric guitarist, composer and song writer, for the first facet or talent is more prominent and advertised. The candidate also must know the difference between a broader term like "musician" and narrower term like "singer". The challenge, therefore, to question No.91 would fail.

11. Similarly, the challenge to question No.168 of Series B would also fail. The said question reads as under:-

“Q 168. Who was the first man to reach North Pole?

1. Roald Amundsen
2. Phu Dorji Sherpa
3. Robert Peary

4. Alexei Leonel”

As per the respondent, the correct answer is Robert Peary (3).

The petitioner, Manish Gupta, however, submits and has placed on record extracts from the online website of www.guinnessworldrecords.com, which states that there is controversy and debate as to the first person to reach the North Pole. Robert Peary travelling with Matt Henson (USA), it is stated, had reached the North Pole on 6th April, 1909, but one Frederick Cook has also made a claim that he had done so a year earlier on 21st April, 1908. Despite investigation into the claims, the website records that neither can be unquestionably proven. A careful reading of the said website indicates that initially the Royal Geographical Society had supported Peary’s claim, though subsequently they neither supported Robert Peary’s nor Frederick Cook’s claim. The National Geographic Society (USA), which had sponsored Peary’s expedition, had concluded and affirmatively supported Robert Peary’s claim.

12. We would observe that there are several websites and books, which clearly opine that Robert Peary was the first person to have reached the North Pole. When we examine question No.168 and the suggested answers, it is apparent that Robert Peary was the correct and the only answer. The reason is that the candidates were required to select the most appropriate answer from the suggested answers. In case and if Frederick Cook had been mentioned and included in the list of suggested answers, the situation would have been different. Pertinently, when we approach the question and suggested answers, we have to keep in mind the dictum in ***Kanpur University*** (supra) that the answer key should be assumed to be

correct unless it is proved to be wrong and the answer should not be held to be wrong by an inferential process of reasoning or by a process of rationalisation. We do not think that the model answer key is demonstrated to be wrong that no reasonable body of men well-versed in the subject would regard as correct. It is not ambiguous and it is not the case where more than one suggested answer was correct.

13. Now, we will deal with four questions where we feel that the petitioners have been able to make out a case for applying the *Kanpur University* test as mentioned above. We would deal with each question separately and elucidate and give our reasoning.

14. Question No.94 in Series B was as under:-

“Q 94 The Vice President of India is:

1. Directly elected by the people.
2. Elected by the same electoral college which elects the President.
3. Elected by the member of Lok Sabha and Rajya Sabha in a joint sitting.
4. Elected by the members of Rajya Sabha only.”

As per the respondent, the correct answer is “Elected by the members of Lok Sabha and Rajya Sabha in a joint sitting”. However, it is accepted that as per Article 66 read with Article 108 of the Constitution, Vice President is elected by the members of an electoral college consisting of members of both the Houses of Parliament by a system of proportional representation by means of a single transferable vote. The voting is by secret ballot. It may be relevant to state that by the Eleventh Amendment to the Constitution in 1961, the requirement of “members of both Houses of

Parliament assembled at a joint meeting” was substituted by the words “members of an electoral college consisting of the members of both Houses of Parliament”. Thus, the requirement that members of both Houses of Parliament should have assembled in a joint meeting was specifically deleted. Article 108 of the Constitution stipulates when there can be a joint sitting of both the Houses of Parliament, which is a rarity. We are not inclined and do not accept, the submission of the respondent that the suggested answer No.3 is the most appropriate answer, for the answer as suggested is incorrect. In such circumstances, a person marking option No.3 as correct would be marking an incorrect answer as correct. On the other hand, a candidate, who has read and examined history of Article 66 of the Constitution and is also aware of Article 108 of the Constitution, would get confused and perplexed, for he would be aware and conscious that Vice President is not to be elected by members of both the Houses of Parliament assembled in a joint meeting. Once we hold that all the four suggested answers were incorrect, then obviously a candidate could not have marked the most appropriate answer out of the suggested answers. Question No.94, therefore, should be deleted from the array of questions.

15. Question No.97 of Series B was as under:-

“Q 97. Which of the following statements is incorrect regarding Union Budget 2015-2016:

1. 5 more AIIMS in Jammu and Kashmir, Punjab, Tamil Nadu, Himachal Pradesh, Bihar and Assam,
2. University of Disability Studies will be established in Kerala,

3. 150 crore allotted for Atal Innovation Mission,
4. Direct Benefit Transfer (DBT) will be further be expanded to 2.3 crore from 1 crore.”

The aforesaid question required the candidates to mark the incorrect statement out of the four suggested answers. As per the respondent, answer No.4 is the correct answer. There are two difficulties in accepting the plea of the respondent that answer No.4 is the only incorrect statement. Firstly, answer No.4 itself is ambiguous, for it refers to numerical figures 2.3 crore and 1 crore, and does not specify whether it refers to rupees or number of persons. Secondly and importantly, answer No.1 is also incorrect. The answer refers to five more AIIMS in Jammu Kashmir, Punjab, Tamil Nadu, Himachal Pradesh, Bihar and Assam. If we count the states mentioned, they are six in number, whereas in the answer, reference is to 'five' more AIIMS. A candidate may assume that reference to six states instead of five as asked, would make Answer Choice No.1 incorrect. The contention of the respondent is that reference to Bihar is by mistake or by way of a typographical error. We would not accept the said contention, for the State of Bihar as mentioned is to be found after the State of Himachal Pradesh and before the State of Assam. Further, during the course of hearing before us, counsel for the respondent had filed a copy of the text of the Finance Minister's Budget Speech, the relevant portion of which reads as under:-

“80. Hon'ble Members will remember that in the Budget Speech of July, I had indicated my intention to provide one major Central Institute in each State. In the fiscal year 2015-16, I propose to set up All

India Institutes of Medical Sciences in J&K, Punjab, Tamil Nadu, Himachal Pradesh and Assam. Keeping in view the need to augment Medical Sciences in Bihar, I propose to set up another AIIMS like institution in these States.....In Kerala, I propose to upgrade the existing National Institute of Speech and Hearing to a University of Disability Studies and Rehabilitation.”

A reading of the actual text would show that the Finance Minister had stated that in view of the need to augment medical sciences in Bihar, it had been proposed to setup another AIIMS- like institution in these States. The answer choice No.1 as suggested, refers to five more AIIMS and not an AIIMS like institution. Thus, answer No.1 as suggested could be a wrong answer to a person, who had gone through the speech and carefully studied the same. The question, as posed, was with reference to the recent Budget Speech of the Finance Minister and was to ascertain a candidate’s interest in both finance as well as the field of medical science. When we apply the test stipulated in *Kanpur University* (supra), it is evident that this question, in view of the answers suggested, is clearly doubtful and ambiguous. We have to hold that the suggested key is demonstrably wrong as answer No.1 would also satisfy the said requirement. We would, therefore, delete the said question.

16. Question No.197 of Series B was as under:-

“Under Section 60A of the CrPC, a person can be arrested

1. In case of commission of offence in the presence of a police officer
2. On credible information about commission of an offence punishable with imprisonment for more than seven years
3. On a complaint by a victim, when a police officer has reason to believe that the concerned person has committed the offence
4. Under all these circumstances”

Section 60A of the Code of Criminal Procedure, 1973 reads as under:-

“60A. Arrest to be made strictly according to the Code. –
No arrest shall be made except in accordance with the provisions of this Code or any other law for the time being in force providing for arrest.”

A reading of the said section would show that it does not refer to a specific provision of law and is a general provision which simply stipulates that a person can be “only” arrested in accordance with the provisions of the Code or any other law in force providing for arrest. In other words, a police officer does not have power of arrest, unless the said power is specifically conferred and stipulated by the Code or a provision of law. As per the answer key, answer choice No.4 i.e. “under all these circumstances” is the correct answer. In other words, a person can be arrested under the three circumstances mentioned and stated in suggested answer Nos.1, 2 and 3. Answer No.1, however, is an incorrect suggestion. A police officer has the power to arrest when a cognizable offence is committed in his presence. A police officer does not have the power to arrest when a non-cognizable

offence is committed in his presence. The difference between the term “cognizable” and “non-cognizable” is extremely important and relevant to a candidate appearing in the judicial examination. Thus, answer No.1 would be wrong, for a police officer does not have power to arrest when he sees a non-cognizable offence being committed. This is clear from Section 41(1) (a) of the Code of Criminal Procedure, 1973, which stipulates that a police officer may, without an order from a Magistrate and without a warrant, arrest a person, who commits in his presence a cognizable offence. As per Section 41(2) of the Code of Criminal Procedure, 1973, in cases of all non-cognizable offences, a police officer is required to obtain warrant from a Magistrate to arrest the accused. The said question would, therefore, fail the test as stipulated in *Kanpur University* (supra) and has to be deleted.

17. Having dealt with the questions raised in Manish Gupta’s case, we would now refer to question No.113 highlighted and referred to by Sumit Kumar. The said question and the suggested answers read as under:-

“Q.113 Choose the word which best expresses the meaning of the given word.

RISQUE

- (1) Slightly humorous
- (2) Slightly improper
- (3) Slightly risky
- (4) Very risky.”

The correct answer as per the respondent is option (3)-“Slightly risky”.

As per the Oxford English New Dictionary, meaning of the word/term “risqué” is as under:-

“Of a joke, story, etc.: slightly indecent, liable to shock slightly.”

The word “risque”, on the other hand is:

“noun, verb *see* RISK noun, verb”

The word ‘risk’ has been defined as:-

- “1. Endanger, put at risk, expose to the chance of injury or loss
2. Venture on; accept the chance of (a thing, *doing*)”

The word “risque”, as per the Oxford Dictionary New 8th Edition, means:-

“slightly indecent and liable to shock, especially by being sexually suggestive : his *risqué* humour.”

As per the Cambridge Dictionary, meaning of the word “risqué” is :-

“of jokes or stories slightly rude or shocking, especially because of being about sex.”

As per the ‘Instant Grammar Checker’ at <http://www.thefreedictionary.com>, meaning of the words “risqué” and “risque” is as under:

‘risqué’

“Suggestive of or bordering on indelicacy or impropriety.”

‘risque’

“obsolete another name for risk”

Other dictionaries like Collins also define the term/word “risque” as a French word referring to or bordering on impropriety or indecency in a

rude and slightly shocking way. Learned counsel for the respondent had highlighted in the shorter Oxford English Dictionary the words “risque” and “risqué”, which were separately mentioned. The latter was with an “accent” mark over the letter ‘e’. The word “risque” has been described as a verb or a noun and refers to the word risk. On the other hand, the term “risqué” with an “accent” mark has been described as an adjective and means: “of a joke, story etc., slightly indecent, liable to shock slightly”.

18. The difference in the two words and the meaning assigned to them in the dictionaries is predicated on the presence of diacritical over the alphabet ‘e’ in one and absence in the other. Diacritical is a mark, point or a sign attached to the letter to indicate its exact phonetic value, or to distinguish it from another letter. Diacritical as micron (long) or breve (short) have a phonetic value and relate to pronunciation. In the context of the question as framed, the suggested answers include meanings assigned to the said word with or without diacritical. This has undoubtedly caused confusion. This being the situation and as two or more suggested answers examined from the eye of a reasonable man well conversant with the field, are equally plausible and acceptable, the answer key has to be rejected. As two or more of the suggested answers are correct, the model answer key and the question would falter as only one suggestion was to be marked. We accordingly hold and observe that this question and suggested answers fall foul of the test stipulated in *Kanpur University (Supra)* and should be deleted.

19. In the writ petition filed by Sumit Kumar, he has objected to question No.189 in Series D, which reads:-

“Question No.189

The doctrine of subrogation enables

- (1) A third party to stand in the shoes of a creditor.
- (2) Creditor to sue the debtor.
- (3) The debtor to postpone the payment.
- (4) Includes all these.”

The objection is on the ground that the question was out of syllabus, for the doctrine of subrogation is postulated under the Transfer of Property Act. We reject the said contention, for the doctrine of subrogation is well recognized even in insurance law and can well be treated as a part of the general body of law. When we apply the test stipulated in *Kanpur University* (supra), the objection raised by Sumit Kumar to this question must fail.

20. Similarly, the challenge to deletion of question No.61 has to fail. The said question and the answers suggested read as under:-

“Q.61 An Arbitration agreement is deemed to be in writing if it is contained in

- (A) a document signed by the parties
- (B) an exchange of letters, telegram or other means of telecommunication, including communication through electronic means providing a record of agreement,
- (C) an exchange of submissions in which the existence of the agreement is alleged by one party and not denied by the other.

- (1) Only (A) and (B) and not (C)
- (2) Only (A) and not (B) and (C)
- (3) All the three above.
- (4) None of the above.”

The question, as posed does not refer to an arbitration agreement in writing, but an agreement which is deemed to be in writing though not in writing. The suggested answers have been examined and selected with reference to the question. Therefore, reliance placed by the petitioner on Section 7(4) of the Arbitration and Conciliation Act 1996 is inconsequential and fallacious. The High Court had rightly deleted the said question.

21. Challenge is also made to deletion of Question No. 69, which reads as under:-

“5. Q. 69 An arbitration award given on 21st August 1996 can be challenged under: (Booklet Series D)

1. Arbitration and Conciliation Act, 1996
2. Arbitration Act, 1940
3. Code of Civil Procedure, 1908
4. High Court Rules”

Our attention was drawn to Section 85 of the Arbitration and Conciliation Act, 1996, which is the repeal and saving clause. The said question was rightly deleted for applicability of the Arbitration and Conciliation Act, 1996 or Arbitration Act, 1940 depends primarily upon date of commencement of arbitration proceedings unless the parties agree that the 1996 Act shall apply in relation to proceedings which had commenced before the 1996 Act was enforced. The challenge on this account must fail.

22. The last issue and question relates to the final order or direction which should be passed. In *Kanpur University* (supra) in paragraph 18, the

Supreme Court had directed that the suspected questions should be excluded from the paper and no marks should be assigned to them. In *Gunjan Sinha Jain Vs. Registrar General, High Court of Delhi*, 188 (2012) DLT 627 (DB), a Division Bench of this Court had directed that 12 questions should be removed/deleted from the purview of consideration for the purpose of “re-evaluation”. In *Gunjan Sinha* (supra), it was directed that minimum qualifying marks would undergo a change as the general category candidates were required to secure at least 60% marks and the reserved category at least 55% marks after excluding the invalid or deleted questions. Referring to the number of candidates who in terms of their ranking would qualify for the second stage mains examination, i.e. ten times the total number of vacancies in each category advertised, it was observed and held as under:-

“80. We now come to the second condition which stipulates that the number of candidates to be admitted to the main examination (written) should not be more than ten times the total number of vacancies of each category advertised. Let us take the case of general vacancies which were advertised as 23 in number. Ten times 23 would mean that up to 230 general candidates could qualify. But, as mentioned above, 235 general candidates have already been declared as qualified for taking the Main Examination (Written). We are, therefore, faced with a problem. If we strictly follow this condition then there is no scope for any other candidates (other than the 235 who have been declared qualified) to qualify. But, that would be unfair to them as the question paper itself, as we have seen above, was not free from faults. Hypothetically speaking, a candidate may have left the 12 questions, which are now to be removed, and, therefore, he would have scored a zero

for those questions. What is worse, he may have answered all those 12 questions wrongly (in terms of the Answer Key) and, therefore, he would have received minus (-) 3 marks because of 25% negative marking. And, all this, for no fault on his part as the 12 questions ought not to have been there in the question paper. Therefore, it would be unfair to shut out such candidates on the basis of the second condition.

81. We must harmonize the requirement of the second condition with the requirement of not disturbing the candidates who have been declared as qualified as also with the requirement of justice, fairness and equity insofar as the other candidates are concerned. We feel that this would be possible:

- (1) by re-evaluating the OMR answer sheets of all the general category candidates on the lines summarized in the table set out above;
- (2) by selecting the top 230 candidates in order of merit subject to the minimum qualifying marks of 112.8; and
- (3) by adding the names of those candidates, if any, who were earlier declared as qualified but do not find a place in the top 230 candidates after re-evaluation.

In this manner, all persons who could legitimately claim to be in the top 230 would be included and all those who were earlier declared as having qualified would also retain their declared status. Although, the final number of qualified candidates may exceed the figure of 230, this is the only way, according to us, to harmonize the rules with the competing claims of the candidates in a just and fair manner. A similar exercise would also have to be conducted in respect of each of the reserved categories. The entire exercise be completed by the respondents within a period of two weeks. Consequently, the Main Examination (Written) would also have to be re-scheduled

and, to give enough time for preparation, we feel that it should not be earlier than the 26.05.2012.”

23. The Supreme Court in Civil Appeal No. 4794/2012, ***Pallav Mongia versus Registrar General, Delhi High Court and Another*** had examined the question of fresh short-listing consequent to deletion of some questions or correction of the model answer key. Noticing that the candidates in the first eligible list had not been excluded from the list of eligible candidates for appearing in the mains examination, even if the said candidate had come down in rank in view of deletion of some questions or change in the model answer key; it was directed that the other candidates, who upon re-evaluation pursuant to deletion of questions and modification of the model answer key had secured more marks than the last candidate allowed to appear in the main examination vide revised list, would also qualify and will be included in the eligibility list.

24. We would not like to give any specific direction on the said aspects to the respondent for it would be more appropriate if we leave this issue and question to be decided by the High Court for any direction may cause confusion or could result in unequal treatment. Pertinently, the respondent must have followed a particular method when they had themselves deleted certain questions and issued a corrigendum. While fixing the method and publishing the list of eligible candidates, the respondent will keep in mind the decision of the Delhi High Court in ***Gunjan Sinha Jain*** (supra) and the order of the Supreme Court dated 28th May, 2012 passed in ***Pallav Mongia*** (supra). The respondent will also have to re-fix a date for the main

examination so as to ensure that the newly added eligible candidates are given sufficient time to prepare for the mains written examination.

25. In view of the aforesaid discussion, we partly allow the writ petitions with the direction that question Nos.94, 97, 113 and 197 in the Multiple Choice Question Paper shall be deleted. Accordingly, the respondents would proceed to recompute the marks and the eligibility list in accordance with the ratio of the decision in *Gunjan Sinha (Supra)* and the order of the Supreme Court in *Pallav Mongia (Supra)*. A suitable date for holding of the mains written examination will be fixed. In the facts of the case there will be no order as to costs.

(SANJIV KHANNA)
JUDGE

(NAJMI WAZIRI)
JUDGE

MAY 09th, 2016
NA/ssn