

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on: 30..07..2018
Orders Pronounced on: 09..08..2018

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN
and
THE HON'BLE MR.JUSTICE V.PARTHIBAN

Writ Petition No.18408 of 2018
and
W.M.P.Nos.21727 & 21728 of 2018

B.Parthiban

..... Petitioner

Versus

- 1.The Registrar General,
High Court of Judicature at Madras,
High Court Buildings,
Chennai 600104.
- 2.The Tamil Nadu Public Service Commission,
Rep. by its Secretary / Chairman,
TNPSC Road, VOC Nagar,
Park Town, Chennai.

..... Respondents

Writ Petition filed under Article 226 of The Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records of the 2nd respondent - Tamil Nadu Public Service Commission with respect to publication of final key answers published in their web-site on 05.07.2018 with reference to question Question Nos.76 and 78 in Series CJ/18 and to quash the same and consequently direct the respondents to the option 'D' as the correct answer for Question No.76 and option 'C' as the correct answer for Question No.78 and accordingly award 3 marks to the petitioner and declare him as 'Pass' in the preliminary examination conducted by the 2nd respondent commission for the post of Civil Judge under Notification No.08/2018 dated 09.04.2018.

For Petitioner : Mr.V.Lakshmi Narayanan
for Mr.P.Nethaji

For Defendants : Mr.B.Vijay for R1
Selvi C.N.G.Niraimathi for R2

ORDER

V.BHARATHIDASAN.J.,

The challenge in this writ petition is to correctness of the Key Answers set for the Questions 76 and 78 in Booklet series CJ/18 by the 2nd respondent-Tamil Nadu Public Service Commission [for short "the Commission"].

2. In order to appreciate the points raised before us, it is necessary to cull-out the essential facts which led to the filing of the writ petition:-

By Notification No.08/2008 dated 09.04.2018, the Commission had invited online applications for direct recruitment to the post of Civil Judge in the Tamil Nadu State Judicial Service as per the provisions prescribed under the Tamil Nadu State Judicial Service [Cadre and Recruitment] Rules, 2007 as amended. As per the notification, the selection is by way of a three stage process, consisting of preliminary examination for selection and short listing of candidates for the main written examination and viva voce test. Those candidates who clear the preliminary examination are entitled to appear in the main examination. The minimum marks for a pass in the preliminary examination is 30 for SCs/SC(A)s and STs, 35 for MBCs/DCs/BC (OBCM)s and BCMs and 40 for other categories.

3. The question paper for preliminary examination consists of 100 objective type questions with multiple choice answers which carried 100 marks. All questions carry equal marks and 1/2 (half) mark will be deducted for each incorrect answer. The preliminary examination was conducted on 09.06.2018.

4. The petitioner had appeared for the preliminary examination (Regn. No.010006043). According to the petitioner, he was expecting that he would secure 29 marks. Further, according to the petitioner, after the preliminary examination was over, tentative key answers were published on 12.06.2018 by the Commission. On verification of the key answers, the petitioner found that key answers given for Question Nos.76 & 78 are incorrect. According to the petitioner for Question No.76, the correct option is 'D' whereas in the key answer it has been wrongly shown as option 'A' and for Question No.78, the correct option is 'C' whereas in the key answer it has been wrongly shown as option 'A'. In the above said circumstances, he sent a representation to the Commission through E-mail as well as by way of Registered Post with Acknowledgment Due on 19.06.2018. His representations were rejected by the Commission holding that the key answers set for Question Nos.76 and 78 are correct.

Thereafter, the Commission had published final key answers in the website on 05.07.2018. The result of the preliminary examination was also published on 11.07.2018 by the Commission. The registration number of the petitioner did not find a place in the result published by the Commission.

5. The grievance of the petitioner is that the key answer provided for the Question Nos.76 & 78 are wrong and the option 'D' is the correct answer for Question No.76 and the option 'C' is the correct answer for Question No.78. Therefore, according to the petitioner, if 1 mark is awarded for each right answer opted by him to the Question Nos.76 and 78, he will get 3 more marks [including negative mark already deducted for Question Nos.76 & 78] and he would obtain the minimum qualifying marks. The representations given by him in this regard through E-mail as well as by way of Registered Post were not considered favorably, therefore, the petitioner is before this court with the present writ petition.

6. The 2nd respondent filed his detailed counter inter alia contending that after the preliminary examination was over, tentative key answers were uploaded on 12.06.2018 in the website of the Commission and aggrieved candidates were required to submit their objections, if any, to the key answers within a period of 7 days along with documentary proof to support their claim. Pursuant to the same, the 2nd respondent received a total number of 127 representations from the candidates in respect of 51 questions. All such representations were forwarded to the High Court and the High Court after having considered the objection reverted to the commission stating that the key answers provided are correct excepting for Question No.21 for which, according to the High Court, option 'C' is the correct answer instead of option 'B' as found in the tentative key answers uploaded on 12.06.2018. Thereafter, according to the 2nd respondent, all the papers were valued based on the key answers finalized by the High Court and the final key answers were also uploaded in the web-site of the Commission on 05.07.2018.

7. It is further contended by the 2nd respondent that in the representation sent by the petitioner had pointed out certain discrepancies with regard to Question No.8, 19,35 and 65 which include Question Nos.76 & 78 in Series CJ/18 which are now under challenge in this writ petition. Question Nos.76 & 78 were also considered by the High Court and after having satisfied with the correctness of the key answers the High Court held that the key answers provided to the questions excepting for Question No.21 were all correct. The representation of the petitioner was therefore rejected by the commission.

8. It is further stated by the 2nd respondent that even if 3 marks as urged by the petitioner is awarded, still the petitioner will not obtain the minimum qualifying marks of 30 which was prescribed for a pass and hence, he is not entitled to be short-listed for admission to the next stage of selection process in his category viz., SC(A).

9. We have heard Mr.V.Lakshmi Narayanan , the learned counsel appearing for the petitioner; Mr.B.Vijay, the learned counsel appearing for the 1st respondent and Selvi C.N.G.Niraimathi for the 2nd respondent and also perused the records carefully.

10. The learned counsel appearing for the petitioner would submit that besides key answers for Question No.76 and 78, the key answers published in the web-site for several other questions were found to be incorrect. Question No.76 in series CJ/19 relates to "express contract". According to the learned counsel, out of four options given for Question No.76, option 'D' is the correct answer, but, in the key answer, it was wrongly given as option 'A'. Insofar as Question No.78 is concerned, it relates to transfer of suits pending in various District Munsif Courts within the same Taluk for a joint trial and out of four option given for this question, option 'C' is the correct answer, but, in the key answer option 'A' has been marked as if the same was correct answer.

11. The learned counsel for the petitioner elaborately argued to substantiate his contentions. He submitted that because of the wrong key answers provided for Question No.76 and 78 , the prospects of so many candidates including the petitioner herein have been seriously affected and hence, he prayed for indulgence of this court to declare option 'D' for Question No.76 and option 'C' for Question No.78 and award 3 marks to the petitioner and consequentially direct the 2nd respondent to publish the result of the of the petitioner taking into account the mark being awarded for Question Nos.76 and 78.

12. Per contra, the learned counsel appearing for the 2nd respondent Commission would vehemently contend that after the preliminary examination was over, tentative key answers were uploaded in the web-site of the Commission and the candidates were required to submit their objections if any to the key answers. Many representation were received in respect of 51 questions and all such representations were sent to the High Court for opinion and the High Court upon considering the same held that excepting key answer for Question No.21, all other key answers provided in the web-site of the Commission were correct and based on such opinion of the High Court, the answer sheets for the preliminary examination were valued and 1 mark was

awarded for the candidates who have attended the question No.21.

13. The learned standing counsel for the Commission would further submit that even if three marks are awarded to the petitioner as claimed in the writ petition , still he will not obtain the qualifying marks and thus, he is not entitled to be short listed for admission to the main examination. She further submitted placing reliance on the recent judgement of the Hon'ble Supreme Court that the court should presume that the key answers given by the examination authorities are correct and even if any doubt arises, the benefit of such doubt should go to the examination authorities.

14. The petitioner challenged the correctness of the key answers provided by the Commission for Question Nos.76 and 78. The law on the subject is very clear and the Hon'ble Supreme Court has consistently held that the key answers provided by the examination authorities should be presumed to be correct. Even if any doubt has arisen regarding the correctness of the key answers so published, the benefit of doubt should be given to the examination authorities and the Constitutional Courts must exercise great restraint in the matters like this one and also it must be reluctant to entertain any writ petition challenging the correctness of the key answers.

15. Recently, the Hon'ble Supreme Court in *Ran Vijay Singh v. State of Uttar Pradesh* , (2018) 2 SCC 357 has held thus:

30.1. If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it;

30.2. If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any "inferential process of reasoning or by a process of rationalisation" and only in rare or exceptional cases that a material error has been committed;

30.3. The court should not at all re-evaluate or scrutinise the answer sheets of a candidate—it has no expertise in the matter and academic matters are best left to academics;

30.4. The court should presume the correctness of the key answers and proceed on

that assumption; and

30.5. In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.

[Emphasis supplied]

16. In yet another recent judgement in U.P.S.C., through its Chairman v. Rahul Singh , 2018 SCC Online SC 609, while following the decision in Ran Vijay Singh case [cited supra] the Hon'ble Supreme Court has held that the court should not normally entertain any plea challenging the correctness of the key answers. The Hon'ble Supreme Court in para 14 of the judgement has held as follows:

"14. The law is well settled that the onus is on the candidate to not only demonstrate that the key answer is incorrect but also that it is a glaring mistake which is totally apparent and no inferential process or reasoning is required to show that the key answer is wrong. The Constitutional Courts must exercise great restraint in such matters and should be reluctant to entertain a plea challenging the correctness of the key answers. In Kanpur University case(supra), the Court recommended a system of - (1) moderation; (2) avoiding ambiguity in the questions; (3) prompt decisions be taken to exclude suspected questions and no marks be assigned to such questions.

15. As far as the present case is concerned even before publishing the first list of key answers the Commission had got the key answers moderated by two expert committees. Thereafter, objections were invited and a 26 member committee was constituted to verify the objections and after this exercise the Committee recommended that 5 questions be deleted and in 2 questions, key answers be changed. It can be presumed that these committees consisted of experts in various subjects for which the examinees were tested. Judges cannot take on the role of experts in academic matters. Unless, the candidate demonstrates that the key answers are patently wrong on the face of it, the courts cannot enter into the academic field, weigh the pros and cons of the arguments given by both sides and then come to the conclusion as to which of the answer

is better or more correct."

17. Admittedly, in the instant case, soon after the preliminary examination was over, tentative key answers were uploaded by the Commission in its web-site and the commission had invited objections, from the candidates who felt aggrieved by the key answers published in the website. There were number of representations received by the Commission in respect of 51 questions and those objection were placed before the High court for verification of the objections. On verification of the key answers the Committee consisting of the experts in the legal field had found that out of 51 keys answers against which representations were received, except the key answer provided for Question No.21, all other key answers were correct. Insofar as the wrong key answer for Question No.21 is concerned, according to the learned standing counsel for the Commission, it was suggested by the Committee to give full mark to candidates who had attended the question and the Commission accordingly valued the OMR sheets. In the above circumstances and in the light of the law laid down by the Hon'ble Supreme Court in this regard, we can safely presume that the key answers given for Question No.76 and 78 were correct and this court cannot take the role of the experts and verify the correctness of the answers. Even assuming that there exists any doubt regarding key answers for Question Nos.76 and 78, benefit arising out of such doubt should be given only to the examination authorities and not to the candidates. Thus, the contention of the learned counsel for the petitioner cannot be countenanced.

18. That apart, as rightly brought to the notice of this court by the learned standing counsel for the Commission, even if full mark is awarded to the question Nos.76 & 78, still the petitioner will not qualify for admission to the next stage of selection process. On that ground also, the petitioner is not entitled for any relief.

19. For the foregoing discussions, we find no merits in the writ petition and the same deserves only to be dismissed.

20. In the result, the writ petition is dismissed. No costs. Consequently, connected WMPs are closed.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

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To

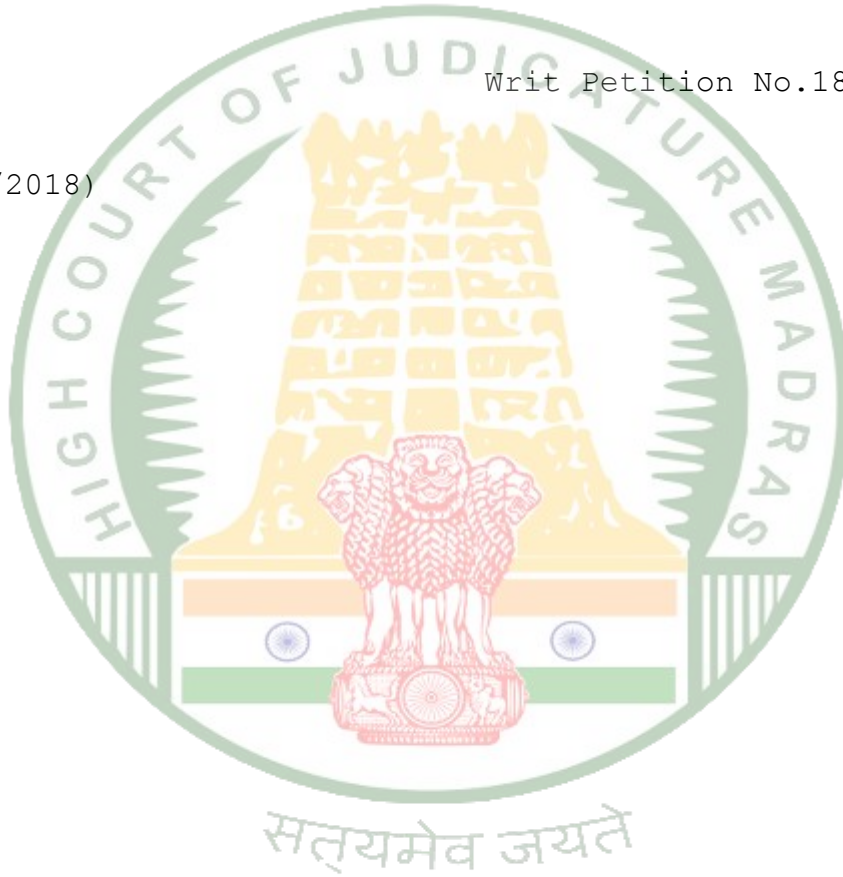
1.The Registrar General, High Court of Judicature at Madras,
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2.The Secretary / Chairman,Tamil Nadu Public Service Commission,
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+1cc to Mr.P.Nethaji, Advocate, S.R.No.55454

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NM(CO)
GSP(06/09/2018)



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