

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

**CWP No.24195 of 2013 (O&M)
Date of decision: March 19, 2018**

Nidhi

.....Petitioner

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Ms. Nidhi, Petitioner in person with
Mr. Anurag Jain, Advocate.

Mr. Vivek Saini, DAG Haryana.

Mr. Sumeet Mahajan, Advocate with
Mr. Deepak Suri, Advocate for respondent No.2.

Mr. Brijesh Khosla, Advocate for respondent No.3.

A.B. CHAUDHARI, J (Oral)

By the present petition, the present petitioner-Nidhi has prayed for quashing of the result dated 11.10.2013 (Annexure P-5 & P-6) of preliminary examination of Haryana Superior Judicial Preliminary Exam-2013 held on 22.09.2013 and with a direction to revise answer-keys for question Nos.13, 64, 73 and 114 of question booklet 'A' code series.

FACTS

The Punjab and Haryana High Court had issued notification No.64 dated 29.04.2013 advertising 17 posts for appointment to the posts in Haryana Superior Judicial Services by way of direct recruitment out of which, 8 posts were meant for General Category. For the selection

process, 3 stages were indicated, namely (i) Preliminary Examination, (ii) Main examination, & (iii) Viva-Voce. As per said notification, the preliminary exam would be of objective type of questions with multiple choice answers. The answer-sheet was to be evaluated with the help of computer. There would be 125 questions and each question shall carry 4 marks and for every wrong answer, 1 mark will be deducted. There was no minimum pass marks. The marks obtained in preliminary examination would not have any effect for computing the final result. The petitioner applied and appeared in the preliminary examination. On 27.09.2013, by publishing notice, objections were invited by respondent No.2 in relation to the answer-key on question paper of code 'A' series. Pursuant to the said notice, the petitioner submitted objection for question No.16 on the ground that the answer could not be option 'c', but ought to be option 'b'. Accordingly, the answer-key was corrected. The result of the preliminary examination was declared on 11.10.2013. The petitioner obtained 276 marks which were less than the cut-off marks provided for General Category which were 278. Thus, she missed the final examination.

On 24.10.2013, respondent No.2 had floated standard answer-key for code 'A' series question papers on the website. In so far as the question Nos.13, 64 and 114 are concerned, answer to those questions in the provisional answering key for 'A' code series were correct, but then they were made incorrect. In so far as the answer key for question No.73 of the same series is concerned, the same was incorrect in provisional answer-key so also in final answer-key. Providing wrong answer-key adversely affected the petitioner.

The petitioner has, in Paras 12, 13, 14 and 15 of the petition, described as to how wrong answer-key was provided to the question Nos.13, 64, 73 and 114. It is in the above background, the petitioner prayed for the reliefs as stated above. The petition was lodged in this Court on 31.10.2013 and by order dated 15.11.2013, she was allowed to appear provisionally in the main examination that was scheduled to be held on 22.11.2013. But the result was to be produced in sealed cover. The petition was admitted on 15.09.2014 with an order to hear the same within three months. The petitioner approached the Hon'ble Apex Court which directed, vide order dated 24.10.2016, to hear the petition and accordingly, this Court had fixed the petition for arguments. Respondent No.2 has filed the written statement to the present petition and has opposed the same.

ARGUMENTS

In support of the petition, learned counsel for the petitioner submitted that the petitioner was allowed by this Court provisionally to appear in the main examination and what remains to be declared is result of the same. This Court having found that the case was made out by the petitioner, she was allowed to appear in the main examination and therefore, now this Court may declare the result. We do not agree as we will have to decide the petition on its own merit.

The petitioner is mainly aggrieved by wrong answer-key to the question Nos.13, 64, 73 and 114 which has affected the result as the petitioner received only 2 marks less than the cut-off marks and could have been a successful candidate. The petitioner should not be allowed to

suffer because of the wrong answer-key and therefore, it is necessary to

grant relief prayed for by her. Demonstrating as to how answer-key were wrong relying on the certain decisions of the Hon'ble Apex Court and High Court, learned counsel for the petitioner strenuously contended that all these questions pointed out above provided for wrong answer-key and therefore, the petitioner should not be allowed to suffer for the mistake of respondent No.2.

We would narrate in details about arguments regarding wrong answer-key as contended by the counsel for the petitioner, at appropriate stage.

Learned counsel for the petitioner, in response to the objection about non-joinder of necessary party, submitted that, though, other candidates were selected at the relevant time and have also joined the posts for which they were selected, they would not be the necessary party to the petition as the petition was filed well in advance and at that time. There was no occasion to make them parties to the petition. The petition was filed at the earliest. The petition cannot be said to have become bad for non-joinder of necessary parties. At any rate, according to the counsel for the petitioner, out of 8 posts for General Category, only 7 posts have been filled up. That is one more reason why selected and appointed candidates would not be affected and hence, the objection as to non-joinder is misplaced. He, then contended that one post being still vacant, the petitioner can well be accommodated. Learned counsel for the petitioner cited number of decisions and we would quote the relevant decisions in the matter.

Per contra, learned counsel for the official respondents stoutly

opposed the petition by raising a preliminary objection that in matters relating to alleged inconsistencies in the question papers from the answer-key, writ jurisdiction cannot be invoked and rather the entire exercise has to be left to the body which undertakes the process of examination. There is hardly any scope to entertain the writ petition and issue any directions. The petition is also bad for non-joinder of necessary parties, namely the candidates selected and appointed during the pendency of the present petition who have joined the services in the year 2015 and have been working peacefully. The petition is therefore, liable to be dismissed for non-joinder of necessary parties.

Learned counsel for respondent No.2 then contended that even otherwise the submissions about alleged answer-key to the questions which have been narrated before this Court are factually incorrect and the petitioner is under misconception that wrong answer-key was provided. At any rate, the petitioner had never objected to or submitted any objection in relation to the questions about which she is making grievance now in this Court and therefore, the petitioner is not entitled to put to challenge on the ground that the answer-key were wrong. Learned counsel for respondent No.2-High Court also cited decisions which we would refer at appropriate stage to buttress his points.

CONSIDERATION

We have heard learned counsel for the rival parties at length. We have perused the entire record. As stated above, the challenge raised by the petitioner is on the ground that the answer-key to question Nos.13, 64, 73 and 114 of question booklet 'A' code series were incorrectly or

wrongly shown. We think it would be appropriate to deal with the submissions on merits instead of refusing to exercise the writ jurisdiction instead of accepting the objection by respondent No.2. With the above background, we proceed further.

As to the question No.13, vide Para 12 of the petition, the submission is based on Section 308 of the Code of Criminal Procedure, 1973 (for short 'Cr. P.C.') and the judgment of the Hon'ble Apex Court in the case of **Renuka Bai alias Rinku alias Rattan and another versus State of Maharashtra**, 2006 (4) R.C.R. (Criminal). Learned counsel for the petitioner led emphasis on Paragraph 33 of the said judgment and contended that the correct answer as per the said judgment would be as suggested by the present petitioner, namely answer '(a)' to question No.13.

Section 308 of Cr. P.C. Sub-Section (1) and proviso 2 thereof reads thus:-

“308. Trial of person not complying with conditions of pardon.-- (1) Where, in regard to a person who has accepted a tender of pardon made under section 306 or section 307, the Public Prosecutor certifies that in his opinion such person has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, such person may be tried for the offence in respect of which the pardon was so tendered or for any other offence of which he appears to have been guilty in connection with the same matter, and also for the offence of giving false evidence:

Provided that such person shall not be tried jointly with any of the other accused:

Provided further that such person shall not be tried for

the offence of giving false evidence except with the sanction of the High Court, and nothing contained in section 195 or section 340 shall apply to that offence.”

The said proviso specifically makes the previous sanction of the High Court mandatory and therefore, in the absence of sanction of the High Court, there is no question of grant of any inherent power to the trial Court to proceed against the approver. The reliance placed by the petitioner on Para 33 of the judgment in Renuka Bai alias Rinku alias Rattan and another's case (supra) is wrong. Para 33 does not at all say or hold that the aforesaid sanction contemplated by proviso mandatorily is not required or is dispensed with nor there is any express opinion about it. On the contrary, Para 33 of the said judgment reads thus:-

“33. In the instant case, the approver Kiran Shinde was present when many of the murders had taken place and it is quite possible that he also must have been an active participant and the High Court was justified in saying that the approver had not given full details of the crimes. The approver was moving with the two appellants for a long period and despite the repeated criminal acts committed by them, the approver did not inform the police or any authorities. Some of the children kidnapped by the appellants were in the custody of the appellants and the approver, and later their bodies were found. In one case, the post-mortem examination showed that the child was subjected to some unnatural offence. The approver himself had admitted that he had bribed the police many times and saved these appellants from the clutches of law. Despite all these startling revelations, the approver could not be proceeded against and the Public Prosecutor had not taken any step to proceed

against the approver. We feel, under such circumstances the Court itself has inherent powers to proceed against the approver in case he is wilfully suppressing material facts or is giving false evidence.”

The last portion of the above Para shows that in the facts of the said case, the Hon'ble Apex Court observed accordingly, but then that is not the *ratio decidendi* or *obiter dicta* to say that the sanction contemplated by the proviso is not required. We, therefore, reject the submission made by the learned counsel for the petitioner on question No.13.

The next question referred by the learned counsel for the petitioner was with reference to question No.64 is that the gift in lieu of dower or Hiba-bil-iwaz would require compulsory registration. At the outset, it is the Registration Act, 1908 (for short 'Act') and in particular Section 17 of the Act which provides for compulsory registration of the instruments or the documents. In the first place what is required is an instrument of gift. There is no mention in Section 17 about oral gift or Hiba-bil-iwaz. Gift made orally or Hiba-bil-iwaz and not by instrument need not be registered. If it is by instrument or document, the same would be compulsorily registrable. To repeat, gift in lieu of dower or Hiba-bil-iwaz sans instrument both do not find mention in Section 17 of the Act for compulsorily registration. In this behalf, learned counsel for the petitioner has cited several decisions as to the meaning of gift in lieu of dower as 'Sale' and Hiba-bil-iwaz. The decisions are of various High Courts and we have gone through the said decisions and the portions pointed out

therefrom by the learned counsel for the petitioner, carefully. We think all those decisions would not have any application. Learned counsel for respondent No.2 has however, cited a recent decision of the Hon'ble Apex Court in the case of **Hafeeza Bibi and others versus Shaikh Farid (dead) by LRs and others**, (2011) 5 SCC 654. We have carefully gone through the said judgment. Paras 27 and 29 of the said decision read thus:-

“27. In our opinion, merely because the gift is reduced to writing by a Mohammadan instead of it having been made orally, such writing does not become a formal document or instrument of gift. When a gift could be made by a Mohammadan orally, its nature and character is not changed because of it having been made by a written document. What is important for a valid gift under Mohammadan Law is that three essential requisites must be fulfilled. The form is immaterial. If all the three essential requisites are satisfied constituting a valid gift, the transaction of gift would not be rendered invalid because it has been written on a plain piece of paper. The distinction that if a written deed of gift recites the factum of prior gift then such deed is not required to be registered but when the writing is contemporaneous with the making of the gift, it must be registered, is inappropriate and does not seem to us to be in conformity with the rule of gifts in Mohammadan Law.

.....

29. Section 129 of the TP Act preserves the rule of Mohammadan Law and excludes the applicability of Section 123 of the TP Act to a gift of an immovable property by a Mohammadan. We find ourselves in express agreement with the statement of law reproduced above from Mulla, Principles of Mahomedan Law (19th Edn.), p. 120. In other words, it is not the requirement that in all cases where the gift deed is

contemporaneous to the making of the gift then such deed must be registered under Section 17 of the Registration Act. Each case would depend on its own facts.”

From the reading of the aforesaid paragraph what is clear is that merely because a gift deed is made even by writing, one cannot jump to a conclusion that it must be registered. But such a gift must be registered if the writing is contemporaneous with the making of the gift. It is therefore, clear that when a question is asked whether gift in lieu of dower and Hiba-bil-iwaz are compulsorily registrable documents, in the circumstances and in the light of the law laid down in Paras 27 and 29 aforesaid, would by itself, be not required to be registered compulsorily, nor one can jump to answer in the affirmative. But it depends on the contingencies expressed by the Hon'ble Apex Court above. We are therefore, of the firm opinion that the answer-key to question No.64 could not be said to be wrong as alleged by the petitioner.

Now coming to question No.73 with reference to Section 34 of the Specific Relief Act, 1963 (for short' Specific Relief Act'), in our opinion, the submission made by learned counsel for the petitioner that the proviso to Section 34 of the Specific Relief Act contemplates suits for injunctions and suits for specific performance, is misconceived. Atleast in so far as suits for specific performance is concerned, the same cannot be read or interpreted to be the meaning of proviso to Section 34 of the Specific Relief Act. Therefore, the standard answer-key provided was correct and the submission that the proviso would attract all three (a), (b), (c) is not correct. The submission is rejected.

The next question No.114 is regarding Section 6 of the Hindu Minority and Guardianship Act, 1956 (for short 'Hindu Minority Act'). Learned counsel for the petitioner vehemently contended that the natural guardian of the minor child is only the 'father' and in no case, the 'mother' would be a natural guardian. Therefore, the correct answer was 'b' according to the petitioner and the answer-key 'c' was wrong. In our opinion, the submission is again misconceived and misplaced from the bare reading of Section 6 of the Hindu Minority Act. Following portion of Section 6 of the Hindu Minority Act reads thus:-

“6. Natural guardians of a Hindu minor.—The natural guardians of a Hindu minor, in respect of the minor’s person as well as in respect of the minor’s property (excluding his or her undivided interest in joint family property), are—
(a) in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;
”

From a bare reading of the aforesaid provision, it is clear that the perception carried by the petitioner is totally wrong that it is only the 'father' who is the natural guardian. The provision says that in case of boy or unmarried girl, the 'mother' is also a guardian and at any rate, for a minor below age of 5 years ordinarily, 'mother' is the guardian. In the light of the above provision, the answer-key that both 'mother' and 'father' would be the natural guardian is correct. To say that only 'father' is the natural guardian would be contrary to the above provision. In that view of the matter, we hold that the answer-key given by learned counsel for respondent No.2 was correct. Learned counsel for the petitioner cited decision of the Hon'ble Apex Court in the case of **Geeta Hariharan**

versus Reserve Bank of India, 1999 (2) R.C.R. (Criminal) 59. We have gone through the said decision of the Apex Court and we find that the same is not at all relevant in the light of the discussion made by us above.

It is not in dispute that during the pendency of the above petition, the entire process of selection, appointment was undertaken as there was no interim order and the selected candidates have been working on their respective posts. All of them have not been made parties to the present petition. We dealt on merits and we find that the very terra-firma of the petitioner's case is weak. Hence, the submissions about existence of one vacancy out of 8 posts would be of no avail. We do not decide the issue about the non-joinder of necessary parties as there is no need to do it.

The upshot of the above discussion is that there is no merit in the present writ petition. We, therefore, make the following order:-

ORDER

- (i) CWP No.24195 of 2013 is dismissed;
- (ii) Interim orders, if any, are vacated;
- (iii) No order as to costs.

(A.B. CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

March 19, 2018

mahavir

Whether speaking/ reasoned: Yes/No
Whether Reportable: Yes/No