

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

**Civil Writ Petition No. 3049 of 2018 (O&M)
Date of Decision: 23.02.2018**

Rahul

..... Petitioner

Versus

Department of Local Government Punjab (Recruitment Cell),
Chandigarh through Director Local, Govt. Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Pankaj Kumar Gupta, Advocate
for the petitioner.

Mr. Manoj Bajaj, Additional Advocate General, Punjab
for the respondent.

JASWANT SINGH, J.

1. Petitioner (Rahul) has filed present writ petition under Article 226 of the Constitution of India seeking quashing of merit list dated 17.12.2015 (**Annexure P-5**), prepared for the post of Legal Assistant, Municipal Corporation in the Department of Local Government Punjab.

2. The brief facts emerging from record of the case and arguments of the Counsel of both the parties are that the respondent-Department of Local Government of Punjab (Recruitment Cell) vide advertisement dated 01.07.2015 and online invited applications for Legal Assistant in the Office of Municipal Corporation. The petitioner with Roll No. 1520400264 appeared in the examination which was held on 15.11.2015. There were 4 different sets of paper bearing Code A, B, C and D. The respondent uploaded question paper and answer key the official website. As per petitioner, the correct answer of Question no. 62 should be Option (A),

whereas as per answer key loaded on the website, answer is Option (B).

3. The petitioner secured 68.75 marks whereas candidate declared at Serial No. 1 secured 69.25 marks and if contention of the petitioner is accepted that correct answer of Question No. 62 is Option (B), the merit list would change. The Question No. 62 of paper with Code-A reads as under:-

“Q.No. 62-- What is the status of minor marriage under Hindu Marriage Act, 1955?

Ans. (A) Valid Under (B) Voidable (C) Void (D) Perfect ”

4. Notice of Motion was issued on 14.02.2018 and Mr. Manoj Bajaj, Additional Advocate General, Punjab accepted notice on behalf of the respondent and prayed time to verify the facts. Today in Court Mr. Manoj Bajaj, produced a letter dated 20.02.2018 issued by Chief Coordinator, University Institute of Applied Management Sciences, South Campus, P.U, Chandigarh. The comments of the paper setter/subject expert are enclosed with said letter and it is addressed to Chairman. Selection Committee (Director of Local Government Punjab), Recruitment Cell, Chandigarh. The opinion of paper setter/subject expert reads as under:-

“ In reference to the query on validity of minor marriage, the following observations are important to consider:-

1. The provisions of HMA, 1955 and the decisions of various Hon’ble High Courts on minor marriage were considerable before the enactment of Prohibition of Child Marriage Act, 2006. This law has been enacted to curb the loopholes of personal laws and to curb the menace of child marriage in India.

*2. The status of minor marriages is voidable which is explicitly mentioned in section- 3(1) of PCM Act 2006. The same has been reinstated by the Hon’ble High Courts in case of **Lajja Devi vs NCT of Delhi, 2012 delhi high court**. The hon’ble Court has beautifully explained the reasons of declaring minor marriage as voidable after PCM Act in para 16, 17, 18, 19, 20, 21, 22, 23, 24 by giving reference of all*

*earlier held decisions of different High Courts on the matter. And consequently held in para 21 that **section- 3 of PCM, Act would have an overriding effect on section 5(iii) of HMA, 1955.***

*3. In this reference of case of **Tehra Begum vs State of Delhi AIR 2012(4) CCC 324(kerla) DB** and case of **T. Siva Kumar vs Inspector of police AIR 2012 Mad.62 (FB)** are also very important to take into account. Because these cases have not only criticized the opinion of retaining the status of minor marriages as valid but also emphasized on declaring the minor marriages as **voidable as per section- 3(1) of PCM, Act 2006.***

4. Hence, despite the fact that the personal laws have contrary opinion, the status of minor marriages is voidable. ”

5. Having scrutinized record of the case and opinion of paper setter/subject expert, this Court is of the opinion that present writ petition is bereft of merit and deserves to be dismissed. As per the petitioner, marriage of minor under Hindu Marriage Act, 1955 is valid whereas, as per subject expert, marriage is voidable. The contention of the petitioner is based upon only Hindu Marriage Act, 1955 whereas subject expert has considered Prohibition of Child Marriage Act, 2006 (for short PCM Act) which under Section 3(1) explicitly declares marriage of minor voidable. The argument of the petitioner appears to be correct, if ‘only’ Hindu Marriage Act, 1955 is considered, because there is no provision under HMA which declares marriage of a minor void or voidable, however, legality of any act or conduct cannot be considered in the light of one Statute when same act or conduct is also subject matter of another Statute. The Court cannot ignore Prohibition of Child Marriage Act, 2006 which specifically declares marriage of minor as voidable. Section 3 of the PCM Act, 2006 reads as

under:-

3. Child marriages to be voidable at the option of contracting party being a child.-

(1) Every child marriage, whether solemnized before or after the commencement of this Act, shall be voidable at the option of the contracting party who was a child at the time of the marriage:

Provided that a petition for annulling a child marriage by a decree of nullity may be filed in the district court only by a contracting party to the marriage who was a child at the time of the marriage.

(2) If at the time of filing a petition, the petitioner is a minor, the petition may be filed through his or her guardian or next friend alongwith the Child Marriage Prohibition Officer.

(3) The petition under this section may be filed at any time but before the child filing the petition completes two years of attaining majority.

(4) While granting a decree of nullity under this section, the district court shall make an order directing both the parties to the marriage and their parents or their guardians to return to the other party, his or her parents or guardian, as the case may be, the money, valuables, ornaments and other gifts received on the occasion of the marriage by them from the other side, or an amount equal to the value of such valuables, ornaments, other gifts and money:

Provided that no order under this section shall be passed unless the concerned parties have been given notices to appear before the district court and show cause why such order should not be passed.

6. The conjoint reading of Hindu Marriage Act and PCM Act makes it clear that marriage of a minor is voidable. This Court is not concerned to hold that whether marriage is voidable or not whereas Court is confined to examine that whether contention of the petitioner can be accepted when there is contrary view of subject expert. Court cannot substitute opinion of expert unless and until opinion is *prime facie* contrary

to material available on record. On the contrary this Court is *prima facie* satisfied with the opinion of subject expert. Even otherwise Hon’ble Supreme Court in the case of ***Kanpur University and Others Versus Sameer Gupta and Others, 1983(4) SCC 309***, in para 16 has held that answer key 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 rationalization. It must be clearly demonstrated to be wrong, that is to say, it must be such no reasonable body of men well versed in the particular subject would regard as correct.

In the present case, the petitioner has not placed on record any material which could vindicate his stand rather opinion of subject expert is based upon different judgments which are delivered after considering PCM Act, 2006 which had come into force much later than HMA, 1955.

In view of aforesaid findings, this Court is of the opinion that present petition needs to be dismissed and accordingly is **dismissed**. No order as to costs.

February 23, 2018
'dk kamra'

(JASWANT SINGH)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No