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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 05.09.2018

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W.P.(C)No.7054/2018

RUHI ARORA & ANR

..... Petitioners

Through : Mr. Prashant Manchanda, Adv.
versus

REGISTRAR GENERAL
DELHI HIGH COURT

..... Respondent

Through : Mr. Rajshekhar Rao, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

S. RAVINDRA BHAT, J.(ORAL)

1. The petitioners, who were candidates to the Delhi Judicial Service Examination held on 06.05.2018, contend that the answer keys to five questions i.e. Question Nos.48, 99, 130, 139 and 184 (of Booklet 'D'), were incorrect and that appropriate credit ought to be given to them. The Delhi High Court Establishment which is arrayed as the respondent resisted the proceedings. At the advanced stage, the court had required the ld. counsel for the respondent to obtain instructions. The court was informed during the proceedings that the concerned Committee has considered the overall circumstances and decided to contest these proceedings. Accordingly, the respondent filed its counter affidavit.

2. Arguing on behalf of the petitioners, ld. counsel submitted that the first issue i.e. question pertaining to proof of age under the Juvenile Justice (Care and Protection of Children) Act, 2015 presupposes the basic knowledge of that enactment and that the examination's syllabi as prescribed and put on the public domain did not spell out knowledge in this area. Besides, it is argued that in the case of question connected with provisions of the Transfer of Property Act, when the candidates had objected to, the examining authorities deleted it accepting the objections on the ground that the question was out of syllabus. Besides, it is also urged that apart from the petitioners, a large number of other candidates have objected to this question, as it was out of syllabus. Ld. counsel for the respondent contended that unless the candidate or the student concerned had read or was acquainted with Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015, the sequence of acceptable evidence, in terms of priority etc. would never be correctly answered.

3. The second question i.e. Q.No.99 pertained to use of appropriate expressions (from amongst 4 words i.e. "*curtails, proscribes, prevents and punishes*") which were to be used to fill the blank in an incomplete sentence that reads as follows :

"Section 144 of the Indian Penal Code _____ the gathering of more than 4 people in an area."

4. It is submitted that the answer key provided that the correct answer was "*proscribes*" whereas the 4th choice i.e. "*punishes*" is also another possibility. Ld. counsel, therefore, submitted that in view of this confusion, the petitioners are entitled to credit for this mark as

well.

5. The third question pertains to an example of a contract, emanating from a written agreement between the fathers of 'A' and 'B'. The two fathers by a written agreement agreed that their children 'A' and 'B' would get married on becoming majors. The choices were as to whether the contract was "voidable", "void", "valid" or "*valid in case 'A' and 'B' have agreed to be bound by the said agreement on becoming major*". The answer key stated that the correct option was option (2). Ld. counsel for the petitioners contended that a close reading of the case law, particularly, *Rose Fernandez v. Joseph Gonsalves*, (1924) ILR 48 BOM 673 and *Tulshiram s/o Maroti Kohad v. Roopchand s/o Laxman Ninawe*, AIR 2006 Bom 183 would show that the agreement is valid and that the correct option would be option No.3. Ld. counsel has explained that in the event of breach of such a contract, i.e. when upon attainment of majority of either the son or the daughter, if one of them did not wish to honour the contract which he or her father had entered into, then damages would be forthcoming and could be claimed.

6. The fourth disputed answer pertains to Q.No.130. This asked the candidates : whether a suit dismissed in default can be restored without notice to the defendant or his counsel, if the defendant or his counsel was not present on the date of dismissal of the suit in default. The options were that : (i) the suit once dismissed cannot be restored; (ii) such restoration was permissible without notice to the defendant or his counsel; (iii) principles of natural justice require that the defendant or his counsel must be heard and; (iv) only if the suit was pending in

the High Court, it could be restored without notice, but not if the suit was pending before any other lower court. The petitioners question the second option i.e. that the suit can be restored without notice to the defendant and state that the third option i.e. the principle of natural justice require that the defendant or his counsel ought to be issued notice. Ld. counsel explained that this option was more apt and accurate given that the defendant is likely to be prejudiced, who would necessarily have to be heard.

7. The last question in respect of which the answer key is disputed is Q.No.184, which deals with the liability of a guarantor. The options were that (i) joint and several with the principal debtor; (ii) guarantor is not liable, till the principal debtor is alive; (iii) guarantor is liable only if the principal debtor has absconded and left India and; (iv) guarantor is liable only if the principal debtor is unable to pay. It is submitted that the correct option indicated in the answer key i.e. that the liability is joint and several with the principal debtor, is not the only choice and that the fourth option i.e. that the guarantor would be liable only if the principal debtor defaulted, also applies.

8. Mr. Rajshekhar Rao, ld. counsel appearing for the Delhi High Court urged that the court's restricted jurisdiction to judicial review to appreciate the merits of the model question answer key, cannot extend to examining the correctness of the answer key especially, having regard to the circumstances that one of the petitioners did not object to the model answer key when the time was granted for this purpose. It is stated that the first petitioner, who has approached the court, merely questioned one of the answer key but not all, which are now sought to

be put in issue. The High Court also relies upon the judgments of the Supreme Court such as *Ran Vijay Singh v. State of U.P.*, (2018) 2 SCC 357 to state that the kind of inclusive inquiry which the petitioners have asked this court to undertake, is now barred; reliance is also placed upon *Uttar Pradesh Public Service Commission v. Rahul Singh & Anr.*, 2018 SCC OnLine SC 609.

9. It is argued in justification of Q.No.48 that though the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 were not specifically mentioned in the syllabi to be out for the purpose of candidates, it is essential that a judicial officer should be aware generally with the enactment and its provisions. Ld. counsel highlighted that these provisions are routinely used, particularly by Magistrates, who also are deputed as members of the Juvenile Justice Boards.

10. In these circumstances, working knowledge of these provisions, cannot be alien to the entire examination process since they are the integral part of the criminal justice system. As far as the correct answer with respect to Section 144 and the incomplete sentence dealing with Section 144 is concerned, ld. counsel submitted that the correct answer was “*proscribes*” because generically speaking, the incomplete sentence was directed generally towards what was the provision intended and not specifically dealt with. In other words, that Section 144 prescribed a certain kind of behaviour, whereas juveniles are part of the species (one carrying arms and being part of an unlawful assembly) was not a natural answer. In other words, what the examiners wished to test in the candidates was their language

proficiency in the description of the provision rather than the specific penalty it provided for.

11. As far as the third question i.e. Q.No.139 relating to the marriage agreement between the parents of minors to solemnize the marriage of their wards/children on attaining their majority is concerned, ld. counsel submitted that the correct option was the second one since such a contract lacked consideration - an essential pre-requisite for a valid contract.

12. As far as the fourth question i.e. Q.No.130 with respect to the dismissal in default and whether there was a necessity to issue notice to the defendant who is unrepresented like the plaintiff is concerned, ld. counsel stated that the terms of Order IX Rule 4 did not oblige issuance of notice since a particular situation was one where both parties are unrepresented and not likely to issue notice to the defendant if the suit was restored. Besides, ld. counsel relied upon *Eino S Mehta vs Sanmati Motors & Anr.*, 2017 SCC OnLine Del 10053 which had also relied upon an older decision in *V. Bhagat Vs. Usha Bhagat*, 1986 (30) DLT 307, which has categorically stated that in the event of dismissal of a suit in default of the plaintiff where the defendant was also unrepresented, the suit can be restored without issuing notice to the defendant upon the plaintiff's request.

13. Dealing with the last issue i.e. the liability in a bank guarantee under Section 126 of the Contract Act, ld. counsel explained that the first option was the correct one because the inability to pay could be either unwillingness or the fourth option i.e. the inability to pay could signify either unwillingness or the default of the principal debtor -

both of which are unknown events and are in any case cannot be called as correct answers like in the case of second and third option. However, the first answer i.e. the liability of both, the principal debtor and the guarantor being joint and co-extensive cannot be disputed. Ld. counsel also further points out that the instructions given to the candidates was to identify “*most appropriate answer to any given question*”.

14. This court has considered the issue, given the limited scope of judicial review. Unless the mistake alleged, facially, is of such magnitude as to strike the court as one which is a plain and manifest error, the question of interference with the view of the examining body, which *inter alia* comprises of six High Court Judges who supervise and oversee the examination system for recruitment of judicial officers, cannot be undermined. If we keep this in mind, the objection with respect to Q.No.48 i.e. it is out of syllabus, though appealing, cannot be accepted. The Juvenile Justice (Care and Protection of Children) Act, 2015 is a comprehensive legislation that deals with not only the issues of care but also of juveniles in conflict with law i.e. juvenile offenders who routinely are produced, often times even before the Magistrates. Given these realities, it would be reasonable to accept that the candidates who wish to become Magistrates eventually should have some rudimentary knowledge of the elements of this law. So far as Q.No.99 i.e. relating to Section 144 is concerned, the court is of the opinion that the petitioner’s objections are unsustainable. The incomplete question sought to test the language proficiency rather than the technical knowledge of the

candidates; thus Section 144 is described as one prescribing certain kind of behaviour which is punishable, however, the expression “*punishes*” cannot generally answer the tenor of the incomplete sentence as a whole. Coming next to the question of the written agreement between the parents of minor children to solemnise their marriage, this court is of the opinion that the High Court’s position that such contract *per se* is void, is reasonable. The analogy given by the petitioner’s counsel particularly, relying upon *Tulshiram s/o Maroti Kohad v. Roopchand s/o Laxman Ninawe*, AIR 2006 Bom 183, that in such event, a betrothal would also apply on the part of the bride given the social realities of our country, cannot be accepted. In this day and age, it is hardly expected that such contracts should be treated as valid and enforceable in some manner under law. In these circumstances, the answer key to the extent it states that the agreement is void, for it lacked consideration, appears to be correct.

15. As far as the Q.No.130, i.e. dismissal in default, is concerned, neither does the plain terms of the provision permit the interpretation which the petitioners urged i.e. that principles of natural justice require notice to the unrepresented defendant; nor it is a correct statement of law at least as far as this court goes as the High Court points out that two previous judgments are forthright on this aspect. The judgments of this court also held that the Punjab and Haryana High Court in *Sewa Singh v. Harbans Singh*, AIR 2004 P&H 19 was of the same opinion.

16. The last question pertains to the liability of a guarantor. Here again, the correct answer indicated by the High Court i.e. the option

(1), that the liability is co-extensive (of a guarantor with the principal debtor), is correct because the 4th option is ambiguous and not categorical as in the case of option nos.(2) and (3).

17. During the course of hearing, ld. counsel submitted that the candidates cannot be at fault if the questions, which are out of syllabus or pertain to another era, which are not mentioned at times, are posed to them. Undoubtedly, the endeavour of the examining body should be to ensure that the candidate get a fair chance to prepare and attempt the examination in the best possible manner. In that sense, posing questions that are likely to be ambiguous or based on some archaic decisions would not be appropriate. This is however, not to mean that those questions (particularly, such as the ones herein relating to bank guarantee and incomplete sentence) which really test the analytical skills of the candidates, should be clearly spelt out.

18. For the above reasons, the court is of opinion that there is no merit in this writ petition which is therefore, dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

SEPTEMBER 05, 2018

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