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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of judgment: 29.10.2018

+ W.P.(C) 9425/2018 & CM APPL. 36529-36530/2018, 40992/2018

KISHORE KUMAR

..... Petitioner

Through: Mr. Rakesh Tiku, Sr. Adv. with Mr.
Tarun Chandiok, Adv.

versus

HIGH COURT OF DELHI

..... Respondent

Through: Mr. Rajshekhar Rao, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A.K.CHAWLA

S.RAVINDRA BHAT, J.

1. The Delhi Higher Judicial Service Preliminary Examination was held on 20.05.2018; the Delhi High Court establishment (hereafter "DHC") on 05.06.2018 declared the result. Before that, it published the model answer key on 22.05.2018 and invited objections/comments. Based on these, the revised model key was published on 04.06.2018; based on it, the results were compiled and declared. The petitioner seeks quashing the list of shortlisted candidates notified by DHC on 28.08.2018 and further enjoin it to issue a revised Roll number wise result as well as the (fresh) list of the qualified candidates in consonance with the modified answer key, and the terms of its advertisement dated 28.12.2017.

2. The DHC on 28.11.2017, publicly advertised 11 vacancies in the cadre of Delhi Higher Judicial Services ("DHJS"); besides containing essential particulars relating to educational qualifications and experience, the

advertisements described the three-stage selection process for filling up the post as follows:

- (i) Delhi Higher Judicial Service Preliminary Examination (objective type with 25% negative marking) for selection to the main examination; and
- (ii) Delhi Higher Judicial Service Main Examination (Descriptive) for selection of candidates for calling for *viva voce*.

The advertisement also described the syllabus for the two tests as follows:

“The Syllabus for the Preliminary (Objective) Examination shall be as follows:-

General Knowledge, Current Affairs, English Language and topics on Constitution of India, Evidence Act, Limitation Act, Code of Civil Procedure, Criminal Procedure Code, Indian Penal Code, Contract Act, Partnership Act, Arbitration Law, Specific Relief Act, Hindu Marriage Act, Succession Law, Transfer of Property Act, Sale of Goods Act and Negotiable Instruments Act.

The Syllabus for the Main (Descriptive) Examination shall be as follows:-

General Knowledge, Current Affairs, English Language and topics on Constitution of India, Indian Evidence Act, Limitation Act, Code of Civil Procedure; Criminal Procedure Code, Indian Penal Code, Contract Act, Partnership Act, Arbitration Law, Specific Relief Act. Hindu Marriage Act, Succession Law, Transfer of Property Act, Sale of Goods Act and Negotiable Instruments Act.”

3. As stated earlier, the preliminary test was held on 17.05.2018; the model key was published on 22.05.2018. The candidates were provided the opportunity to object to the model answers; many did. The revised answer key was issued on 04.06.2018. Based on this revised answer key, the results of the preliminary test were compiled and published. The petitioner, a candidate, claims to be aggrieved by what he claims are wrong or erroneous questions and wrong answers based on which, the results were declared.

According to the petitioner, the roll number wise results so declared of the exam conducted on 20.05.2018 and the list of shortlisted candidates published who are enabled to appear in the main examination, are utterly arbitrary; he seeks a direction that the select list be quashed.

4. The petitioner argues that the deletion of five (05) questions *“without assigning any reason compounded by arbitrarily awarding one (01) mark each there against to every candidate who appeared in the Preliminary Examination as opposed to only to those who had attempted those purportedly ambiguous questions.”* It is argued that this action is contrary to the decision in *Guru Nanak Dev University v. Saumil Garg* (2005) 13 SCC 749.

5. The petitioner elaborates on the submissions, with specific reference to the “wrong questions” and wrong options provided in the answer keys, in support of his argument that the process is arbitrary. The questions, answer keys and the petitioner’s arguments are set out below. The first question objected to is No.58, which is as follows (with the answer key)

“Question no.58. A Professor employed with an unaided private college is sexually harassed. She filed a writ petition under Article 226 to trigger the provisions of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013. The private college resists the writ petition on the ground that it is neither a State nor an instrumentality of the State. Here:

- (1) Objection of the private college is maintainable.*
- (2) Objection is valid as writ petition is not maintainable against a private person.*
- (3) Objection of the private college would be maintainable only if it is able to show public law element in the matter.*
- (4) Objection of the private college would be maintainable only if the private college is able to show that there is a private law element in the matter.”*

6. It is next stated that the DHC furnished wrong answer key to the following question no.24 (culled out from Booklet Series D)

"Question no.24. They sat _____him_____being fined, they were imprisoned.

Her answer is_____ the point.

The correct prepositions to be filled in the above sentences in order are:

(1) beside, besides, beside

(2) beside, besides, besides

(3) besides, beside, beside

(4) beside, beside, besides"

It is argued that the answer furnished by DHC by the impugned model answer key dated 22.05.2018 is (2) whereas, the correct answer option is (1), for the idiopathic phrase is "beside the point" instead of "besides the point".

7. It is submitted that question No. 26 is *"vague and deceptive inasmuch as is susceptible of admitting more than one answer key"*, and that it *"evokes a subjective response which is per se impermissible"* in an objective type examination. The question is as follows:

"Question no.26. The 'feminization' of teaching and nursing had occurred because such work was seen as an extension of the nurturing work that women do within home. Which one of the following best describes this statement?

(1) An analysis of women's majority in teaching and nursing.

(2) A description of teaching and nursing profession.

(3) A compliment to women as nurturers.

(4) An ironical take on teaching and nursing."

The argument made during the hearing was that while the impugned model answer key dated 22.05.2018 stipulated (1) as the correct answer option, however, answer options (2), (3), and even (4) are no less plausible. As it is an objective examination, the candidates in the likes of the Petitioner do not have the luxury of assigning cogent but subjective reasons

for his/her choice which, *ipso facto*, renders this question unsuitable for an objective examination.

8. The petitioner next argues that the DHC provided wrong answer keys to question nos. 29 and 30 (culled out from Booklet Series D), i.e.

"Read the following passage and answer questions from 27 to 31:

"They had been camping in this part of the Africa, undergoing exercises to familiarize themselves of the African war in grassland and small dense forests where the rule was fire first and apologize afterwards. In this land of swamps, they live among large mosquitoes that outnumbered them by a million to one. There were deaths from malaria. The condition of the white troops was worse, because they fell victim not just to malaria but to diarrhea and diseases as well. Many died without defining a shot. "

Question no.29. "Fire first and apologize afterwards" indicates:

- (1) they don't care for consequences*
- (2) their lives would be in danger if they did not fire*
- (3) they are unapologetic*
- (4) they have to learn to apologize."*

9. The petitioner urges that the answer furnished by the DHC, by the model answer key dated 22.05.2018 is (2) whereas, the correct answer option is (1), for insofar as the rule *"fire first and apologize afterwards"* only indicates absence of rule of law and therefore, two hoots to the consequences. Question No. 30 is as follows:

"Question no.30. How did many die without firing a shot?

- (1) they were killed by diseases*
- (2) they were killed by their enemies*
- (3) they died because of tough terrain*
- (4) mosquitoes killed them"*

10. It is urged that the answer furnished by DHC's answer key dated 22.05.2018 is (1) whereas, the correct answer option is (3), for insofar as

the deaths, in general, are attributed to malaria (caused by mosquitoes), but white troops fell victims to diarrhoea and skin diseases as well. Therefore, the only correct answer is option (3), i.e. they died because of tough terrain as opposed to (1) *per se*.

11. It is argued that the DHC also adopted the wrong answer key to the following question no.33 (Booklet Series D), namely-

"Read the following passage and answer questions from 32 to 36:

"At the end of the twentieth century we are living in a world saturated with music. Sounds accompanying us everywhere, and particularly when we are waiting in closed spaces - whether on telephone, on an aircraft or at the hair dresser's. The consumer society seems to consider silence a crime. So music has nothing to fear in the twenty-first century. Admittedly it will sound quite different by comparison with the twentieth century. Present day world has already been fundamentally revolutionized by electronics, which means that it is already largely independent of the inventive talent and technical skill of the artistic individual. "

Question no.33. According to the author, music in the twenty-first century:

- (1) is more blaring*
- (2) is not pleasant*
- (3) has become more popular*
- (4) is more electronic and less dependent on individual taste."*

12. The petitioner argues that the answer furnished by DHC through the impugned model answer key dated 22.05.2018 is (4) whereas, the correct answer option should be (1), for if the answer to question no.34 *"The consumer society seems to consider sounds silence a crime"* is option (4), i.e. satiric comment; and by question no.35, *"The twenty-first century society is characterized as consumerist"*, i.e. the answer option (3) then, by that token, music in the twenty-first century could only be *"more blaring"*, in the estimation of the author.

13. It is argued that DHC furnished the wrong answer key to question no.66 (Booklet Series D):

"Question no. 137. When a new party to a suit is added then can the suit qua that party be taken to be instituted from the date of filing of the suit?"

(1) No. The suit is taken as filed by or against a party only when the order of impleadment is made.

(2) No. The suit is taken as filed by or against a party only from the date of filing of the application for impleadment.

(3) Yes. It is correct, provided that the court is satisfied that the omission to implead the person was due to a mistake in good faith.

(4) Yes, provided that when the suit was originally filed, it was filed on behalf of a minor and who after becoming a major pendente lite ratifies the filing of the suit from the original date."

14. It is stated that the query pertains to Section 21 of the Limitation Act, 1963 and therefore, the correct answer option should be (1) and not (3) furnished by the DHC impugned model answer key dated 22.05.2018, for even if it is assumed that the court is satisfied that the omission to implead the person was due to a mistake in good faith even then, as per the proviso to Section 21, it shall be deemed to have been instituted on any earlier date which, may or may not, necessarily coincide with the original date of filing of the suit. The petitioner also states that question no.40 (Booklet Series D) is improperly framed and therefore, ought to have been deleted in the revised answer key dated 04.06.2018 by the DHC namely -

"Question no.40. A power of attorney is presumed to be correct:

(1) if it is attested by the Oath Commissioner.

(2) if it is executed before and authenticated by a Notary Public.

(3) if it is attested by two witnesses.

(4) if it is registered."

15. The petitioner argues that DHC deemed the above to be a query pertaining to Section 85 of the Evidence Act, 1872 and indicated that option (2) is the correct answer, however, overlooked that by virtue of Section 33 (1) (a) read with Section 33 (4) of the Registration Act, 1908 even a registered power of attorney is presumed to be correct without further proof when it purports to have been executed before and authenticated by the person or court therein mentioned. And since, the query did not limit to a particular statute, the question admits of both the answer keys and therefore, should be deleted but marks there for could only be awarded to those candidates who attempted it as opposed to all those who have appeared in the examination. The petitioner also argues that similarly, DHC furnished a wrong answer key to the following question no.121 (booklet D), i.e.

“Question No.121. The power to make laws vests in the Parliament and State legislatures by virtue of which provisions in the Constitution of India?

(1) Article 245

(2) Seventh Schedule

(3) Article 246

(4) None of the above.”

16. The petitioner’s contention is that the option (1) is the correct answer key whereas, the Five Judge Constitution Bench of the Supreme Court in *Kuldip Nayar v. Union of India*, AIR 2006 SC 3127 stated that

“Article 245 generally states that the Parliament, subject to the provisions of the Constitution, may make laws for the whole or any part of the territory of India. Article 246 vests in the Parliament “the exclusive power” to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (“Union List”, hereafter).”

17. It is argued, therefore, that the correct option ought to be (3) instead of (1) expressed in the impugned answer key dated 22.05.2018. Lastly, it is

argued that question nos.114, 115 and 116 (of the Booklet Series D) are out of syllabus and ought to have been excluded /deleted from evaluation.

18. The DHC states that on 22.05.2018, the model answer key was uploaded on its website. It expressly noted provided that *“If any candidate has any objections regarding the answer(s) mentioned in the Answer Keys, he/she may send objections through online mode on the link provided on the website of this Court, i.e. http://apply.career.co.in/dhc/dhjse2017/HighCourt2018DHJSE_Answerkey.aspx within 5 days from the date of this Notice, i.e. upto 27.05.2018. **Objections received thereafter shall not be entertained.** Any representation regarding objections other than online mode will not be entertained. The Link shall be available from 22.05.2018 (5.00 PM) till 27.05.2018 (11.59 PM)”*. In this regard, it is urged that the petitioner not only failed to submit any objection(s) to the Model Answer Key within the prescribed time period, but also chose not to oppose them till approaching this court. Moreover, DHC states it received objections from other candidates during the permissible time for filing the same and thereafter scrutinized all the objections received during the said period. It deleted five questions after having received and examined every objection in the time permitted for it. The DHC argues that the Model Answer Key, published by it, thus expressly provided the opportunity to all the eligible candidates to object to the answers.

19. It is urged that the practice of inviting objections to the questions has been in place for a considerable period and it has proved to be a successful endeavour in as much as it provides to all the eligible candidates, an opportunity to place on record their *rationale* of attempting any given question. Regardless of the number of objections received, the DHC examines the merit of each challenge before revising, if so required, the

Model Answer Key. It was only after the complete satisfaction of the DHC that the Model Answer Key was updated and the Revised Answer Key was uploaded on 04.06.2018 on its website.

20. It is further submitted that the period stipulated for receiving and for consideration of objections has to be respected in a time bound manner as delay(s) at any stage could completely upset the cumulative schedule of the entire process. Therefore, keeping in mind that the next stage of examination, i.e. Delhi Higher Judicial Service Main Examination (Written) is to be held in 04/05.11.2018, the DHC specifically invited all objections to the questions within 5 days from the date of the publication of the Model Answer Key (i.e. up to 27.05.2018). Crucially, in this case, the Petitioner did not object to any questions. The DHC submits that even the slightest alteration in the carefully carried out calculations of the Preliminary Examinations at such a stage, would have a cascading effect on all the candidates who appeared for the same and would be a precursor for the potential slew of challenges alleging impropriety, unprofessionalism or even *mala fides*. It must also be noted that the entire process is based on a strict timeline and any deviation therefrom would ultimately prevent the timely filling of the vacancies for the Delhi Higher Judicial Service.

21. It is submitted that having regard to the limited nature of judicial review, an Answer Key should be presumed to be correct unless it is proved wrong. Furthermore, while discussing the threshold for the proof required for the same, the Courts note that the answers should not be held wrong by an inferential process of reasoning or by a process of rationalization. It is submitted that any presumptive method of “rationalization” and “inferential” process forms the very premise for the present challenge, and therefore, must be dismissed for this reason as well.

22. Besides these substantial objections to the maintainability of the petition, the DHC also refutes the merits of the petitioner's arguments. It submits that a bare reading of the reasoning provided for the fresh challenges brought forth by the Petitioners would also lay to rest the challenge on merits; for this purpose it has set out in a tabular form, the answers to the objections (of the petitioner, in his pleadings), which is extracted below.

<i>Objection to questions from Question Paper Set</i>	<i>Response to the objections</i>
58	• <i>The question raises the grievance that the DHC, while deleting the said question, awarded one mark each to every candidate instead of to only those who attempted the same.</i> • <i>It is submitted that such a contention is completely misplaced in as much as, presumably the Petitioner, is aware that the present examination carries 25% negative marking for every incorrect answer.</i> • <i>Therefore, a candidate who has not attempted the same cannot by any stretch be made to suffer for deciding not to attempt a question that it would be uncertain about rather than taking a chance to answer it.</i>
24	• <i>This question pertains to the English subject.</i> • <i>It is provided that "English Language" was also a criteria on which the candidates were to be tested.</i> • <i>A bare reading of the question itself would demonstrate that the test herein was to find out the correct 'proposition' in the given statement as opposed to the most appropriate idiomatic phrase.</i> • <i>The petitioner has failed to appreciate that English grammar must be differentiated from conversational English.</i> • <i>It is submitted that the word 'beside' means 'by the side</i>

	<i>of', 'next to', or 'irrelevant to the issue'. Further, for the correct usage of 'beside' in a sentence, it would necessarily require either a physical positioning or a context in the same sentence from which its irrelevancy is depicted.</i> <i>• It is stated that the third statement in the question is independent of the first and the second statement and does not provide any context against which its relevancy could be judged. Moreover, the third statement does not include any connotation of physical positioning and further lacks any sort of context.</i> <i>• Furthermore, 'besides' signifies various meanings such as 'other than', 'together with', 'as well as', in addition to', 'moreover' etc., which has wider connotations and does not require a 'context' to test its relevancy.</i> <i>• Therefore, the most appropriate 'proposition' would be 'besides' and not 'beside'.</i> <i>• The correct answer would also show the clarity of mind and thought process.</i>
26.	<i>• As submitted above, the examination instructions seek the 'best' description of the given options.</i> <i>• Pertinently, the passage and question discusses influx of women in teaching and nursing, thereby making it clear that the subject matter of the discussion is not the professions of teaching and nursing, rather an inquiry into the historical reason for the influx of large number of women in those professions.</i> <i>• Like question number 24, the correct answer would also show the clarity of mind and thought process.</i> <i>• Therefore, the suggestion that all the options to this question were plausible cannot be sustained and must be rejected.</i>
29.	<i>• It is submitted that the petitioner's suggestion that the correct answer was "they don't care for consequences" has no logical basis whatsoever.</i> <i>• Further, a reading of the very first line of the passage highlights that 'they' referred to therein were outsiders, who were undergoing training to 'familiarize' themselves in a particular part of Africa, during the African war in 'grassland and small dense forest'.</i> <i>• Therefore, the contention of the petitioner is completely</i>

	<i>misplaced and accordingly, the only correct option was that “their lives would be in danger if they did not fire” in as much as ‘they’ are clearly in a hostile environment.</i>
30.	• <i>Petitioner’s contention is that the many died on account of “tough terrain”, which is untenable in as much as the passage clearly mentions that “The condition of the white troops was worse, <u>because they fell victim not just to malaria but to diarrhea and diseases as well..</u>” which were afflicted on them and resultantly, they died.</i> • <i>Therefore, the most appropriate answer would be that “they were killed by diseases”.</i>
33.	• <i>The Petitioner’s reasoning is flawed even in this case in as much as the petitioner asserts that the correct answer would be that the music in the twenty-first century “is more blaring”.</i> • <i>It is submitted that perusal of the last line of the passage in question justifies that the correct answer is the one mentioned on the Revised Answer Key by the Respondent.</i> • <i>The last sentence of the said passage is indicative of direct evidence of the stand taken by the author and leaves no room for doubt.</i>
137.	• <i>The petitioner has further erred to assert that the correct answer to the present question is option (1) and not what the Revised Answer Key suggested (i.e. option (3)).</i> • <i>It is submitted that the question is plainly worded and inquires about the ‘power’ of the Court to declare the institution of the suit qua a new party to the suit to be from the date of filing of the suit.</i> • <i>It is further stated that a reading of the proviso to Section 21 of the Limitation Act, 1963 is evidence of such authority that vests in the Court.</i> • <i>Moreover, the use of the word ‘only’ in the option (1) itself demonstrates that the same could not be legally tenable in as much as the proviso to Section 21 itself qualifies the bar suggested in option (1).</i> • <i>Therefore, the answer in the Revised Answer Key suffers from no infirmity.</i>
40.	• <i>The challenge to this question is devoid of any legal basis and deserves to be rejected as such.</i> • <i>A bare reading of Section 85 (titled as “presumption as to</i>

	<i>powers-of attorney” under the Chapter-Presumptions as to Documents) of the Evidence Act, 1872 indicates that a power of attorney is presumed to be correct if it is executed before and authenticated by a Notary Public.</i> • <i>Moreover, it is reiterated that the Petitioner has placed reliance on the provisions of the Registration Act, 1908 while being fully aware that the Registration Act, 1908 did not form part of the syllabus of the Examination, whereas the Evidence Act, 1872 was expressly included therein.</i>
121.	• <i>The Petitioner further contends that the answer to the present question is option (3) i.e. Article 246 and not Article 245 (i.e. option (1)).</i> • <i>It is submitted that the question inquires the provision under which “the power to make laws vests in the Parliament and the State Legislatures”.</i> • <i>Article 245, which falls under the heading “Distribution of Legislative Powers” clearly provides that “Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State”.</i> • <i>Additionally, the reliance placed by the petitioner upon the Constitutional judgment of the Hon’ble Supreme Court of India in Kuldeep Nayar v. Union of India does not substantiate the contention of the Petitioner because the quoted sentence from the said judgment also provides that <u>“Article 245 generally states that the Parliament, subject to the provisions of Constitution, may make laws for the whole or any part of the territory of India.</u> Article 246 vests in the Parliament “the exclusive power” to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule...” The sentence is being read out of context.</i> • <i>The question under challenge inquired the provision under which “the Parliament and State Legislatures have the power to make law” and is clearly devoid of the word “exclusive” as provided for in the referred judgment by the Petitioner. Moreover, the very heading of Article 246 is “Subject matter of laws made by Parliament and the Legislatures of States”, whereas ‘subject matter’ is nowhere mentioned in the challenged questions, rather it is the ‘power’ which is being questioned.</i>

	• Therefore, the suggestion that Article 246 would be the correct answer is devoid of any merit and must be rejected.
114-116	• The petitioner has further challenged these questions on the ground that the same are “out of syllabus”. • However, since the Petitioner has failed to produce these of reference, questions in the present petition, for ease of reference, they are produced as follows : • <u>Q.No.114. Probate of a Will is compulsory in Delhi.</u> • <u>Q.No.115. An ex-parte Letters of Administration granted with respect to a Will can be revoked.</u> • <u>Q.No.116. Probate or Letters of Administration granted by the District Judge in one State will have operation throughout the country with respect to all properties wherever situated.</u> • The syllabus for the Preliminary Examination is as follows : PART-II ...(3)...<u>The Preliminary Examination (Objective Type) shall carry 150 marks and Syllabus for Preliminary Examination (Objective) shall comprise General Knowledge, Current Affairs, English Language and Topics on Constitution of India, Evidence Act, Limitation Act, Code of Civil Procedure, Criminal Procedure Code, Indian Penal Code, Contract Act, Partnership Act, Arbitration Act, Specific Relief Act, Hindu Marriage Act, Succession Law, Transfer of Property Act, Sale of Goods Act and Negotiable Instruments Act....</u> <i>The syllabus expressly provides for ‘Succession Law’ and therefore, the present challenge to these questions, viz. the same being “out of syllabus” deserves to be rejected.</i>

23. It is evident from the above discussion that the petitioner’s grievance is with respect to the merits of the marks provided in the answer keys and the nature of questions which the candidates had to answer (or attempt) in the objective type preliminary examination, for selection to the DHJS. At the outset, this court notices that the petitioner had not objected to the

answer key uploaded on the court's website. Almost all the objections which are articulated in these proceedings relate to the answer keys that were uploaded in the first instance, i.e. on 22nd May, 2018. Having not chosen to avail a legitimate opportunity which the examination or selection procedure afforded, the petitioner cannot now in fairness complain that the respondent authorities acted arbitrarily in providing "wrong answers". The object behind publishing the answer keys in such cases, is to avoid disputes and litigation.

24. This court recollects, in this context, the decision in *Ran Vijay Singh and Ors. vs. State of U.P. & Ors.*(2018) 2SCC 357 which discussed the scope of judicial review and the limits of the court's inquiry, under Article 226 and summarized it as follows:

"30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are: (i) 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; (ii) 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; (iii) The Court should not at all re-evaluate or scrutinize the answer sheets of a candidate-it has no expertise in the matter and academic matters are best left to academics; (iv) The Court should presume the correctness of the key answers and proceed on that assumption; and (v) In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.

31. *On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse-exclude the suspect or offending question.*

32. *It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the Courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the Court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a classic example of the consequence of such interference where there is no finality to the result of the examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination-whether they have passed or not; whether their result will be approved or disapproved by the Court; whether they will get admission in a college or University or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results*

in confusion being worse confounded. The overall and larger impact of all this is that public interest suffers.

25. Keeping the above principles in mind, this court is of the opinion that the petitioner's argument that the objections to five questions should have been treated differently, and that irrespective of whether candidates had attempted them, all should not have been awarded grace marks. This court finds that such an argument is insubstantial; to award marks only to those who attempt the question, and not to those who do not, may also expose the respondents to the odium of arbitrariness, because it could then arguably be contended – by those who do not attempt the questions, that they did not do so, because of ambiguity and more importantly, the potential negative marking. In these circumstances, the approach (of awarding marks uniformly to all) is reasonable.

26. As far as the attack to the answer keys on the merits goes, possibly, the court may on a close analysis conclude that on one or two questions, the answer keys were inapt. However, this has to be weighed in with the fact that the court exercises judicial review jurisdiction. Absent demonstrably facial arbitrariness, its approach should be circumspect and deferential (to the examining body). In this case, the questions for which answer keys were published that are sought to be disputed do not relate to legal issues- except regarding the one on Constitution of India (i.e. source of law making). The rest relate to language usage, propositions and comprehension. This court also is of the considered view that the explanation given for adopting the answer keys, by the DHC establishment is not *per se* arbitrary or unreasonable. The court cannot don the hat of a primary decision maker having regard to the overall circumstances and facts of the case.

27. In view of the foregoing discussion, it is held that no relief can be granted in these proceedings; the writ petition is dismissed as unmerited. No costs.

Dasti under the signatures of the Court Master.

S. RAVINDRA BHAT
(JUDGE)

A.K.CHAWLA
(JUDGE)

OCTOBER 29, 2018

