

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

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1.

**CWP-28691-2019**

**Date of Decision:06.11.2019**

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Harvinder Singh Johal

..... Petitioner

Vs.

Registrar General, Hon'ble Punjab and Haryana High Court and another

..... Respondents

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2.

**CWP-29212-2019**

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Tanisha Bindal

..... Petitioner

Vs.

State of Punjab and Others

..... Respondents

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3.

**CWP-28915-2019**

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Amandeep Kaur and others

..... Petitioners

Vs.

State of Punjab and Others

..... Respondents

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4.

**CWP-29814-2019**

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Jashanpreet Singh Benipal

..... Petitioner

Vs.

Punjab Public Service Commission and Another

..... Respondents

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5.

**CWP-31024-2019**

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Anshul Manchanda

..... Petitioner

Vs.

Punjab Public Service Commission and Another

..... Respondents

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6.

**CWP-29788-2019**

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Karnesh Verma and Others

..... Petitioners

Vs.

Hon'ble Punjab and Haryana High Court, Chandigarh and others

..... Respondents

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|------------------------------------------------------------|-------|-------------------|
| 7.                                                         | ***** | CWP-30363-2019    |
| Ramanpreet Singh                                           | ***** | ..... Petitioner  |
| Vs.                                                        |       |                   |
| Punjab Public Service Commission and Another               |       | ..... Respondents |
| 8.                                                         | ***** | CWP-29762-2019    |
| Kamaljeet Kaur                                             | ***** | ..... Petitioner  |
| Vs.                                                        |       |                   |
| State of Punjab and Others                                 |       | ..... Respondents |
| 9.                                                         | ***** | CWP-30032-2019    |
| Jatinderbir Singh                                          | ***** | ..... Petitioner  |
| Vs.                                                        |       |                   |
| Punjab and Haryana High Court and others                   |       | ..... Respondents |
| 10.                                                        | ***** | CWP-29648-2019    |
| Taranjit Singh                                             | ***** | ..... Petitioner  |
| Vs.                                                        |       |                   |
| State of Punjab and Others                                 |       | ..... Respondents |
| 11.                                                        | ***** | CWP-29966-2019    |
| Abhishek Verma                                             | ***** | ..... Petitioner  |
| Vs.                                                        |       |                   |
| Registrar Genral, Punjab and Haryana High Court and Others |       | ..... Respondents |
| 12.                                                        | ***** | CWP-29605-2019    |
| Priya Gupta                                                | ***** | ..... Petitioner  |
| Vs.                                                        |       |                   |
| State of Punjab and Others                                 |       | ..... Respondents |

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**13.** **CWP-29095-2019**

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Radhika Khosla  
..... Petitioner

Vs.  
Punjab Public Service Commission and Another  
..... Respondents

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**14.** **CWP-31367-2019**

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Jaypreet Singh  
..... Petitioner

Vs.  
State of Punjab and Others  
..... Respondents

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**15.** **CWP-28823-2019**

\*\*\*\*\*  
Neeraj Dhull  
..... Petitioner

Vs.  
High Court of Punjab and Haryana and Another  
..... Respondents

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**16.** **CWP-29694-2019**

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Manpreet Kaur  
..... Petitioner

Vs.  
Registrar General, Hon'ble High Court of Punjab and Haryana and Others

..... Respondents

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**17.** **CWP-29091-2019**

\*\*\*\*\*  
Simarpreet Sekhon  
..... Petitioner

Vs.  
Punjab Public Service Commissioner and Another  
..... Respondents

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**CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN**  
**HON'BLE MR.JUSTICE SUVIR SEHGAL**

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Present: Mr. Harkesh Manuja, Advocate,  
Mr. Atul Lakhanpal, Senior Advocate, with  
Mr. R.S. Chahal, Advocate,  
Mr. Saurabh Goel, Advocate,  
Mr. Vineet Kumar Jakhar, Advocate,

Ms. Manveen Narang, Advocate,  
 Mr. Hitesh Verma, Advocate,  
 Mr. Maninderjit Singla Matharoo, Advocate,  
 Mr. Anupam Bhardwaj, Advocate,  
 Mr. P.S. Khurana, Advocate,  
 Ms. Priyavrat Parashar, Advocate,  
 Mr. Bhupinder Bir Singh Randhawa, Advocate,  
 Mr. Kamal K. Sharma, Advocate,  
 Ms. Surabhi Kaushik, Advocate,  
 for the petitioners.

Mr. Gurminder Singh, Senior Advocate with  
 Mr. Kanwal Goyal, Advocate and  
 Mr. Rajeev Anand, Advocate,  
 for the respondent-High Court.

Mr. Amit Mehta, Senior DAG, Punjab.

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***RAKESH KUMAR JAIN, J.***

This order shall dispose of a bunch of 17 petitions bearing ***CWP-28691-2019, CWP-29212-2019, CWP-28915-2019, CWP-29814-2019, CWP-31024-2019, CWP-29788-2019, CWP-30363-2019, CWP-29762-2019, CWP-30032-2019, CWP-29648-2019, CWP-29966-2019, CWP-29605-2019, CWP-29095-2019, CWP-31367-2019, CWP-28823-2019, CWP-29694-2019 and CWP-29091-2019*** in which common question of law and facts are involved. However, for the sake of convenience, the facts are being extracted from ***CWP-28691-2019*** titled as ***“Harvinder Singh Johal Vs. Registrar General, Hon’ble Punjab and Haryana High Court and Another”***.

In brief, the Punjab Public Service Commission [for short ‘the Commission’], issued an advertisement No.17 on 05.04.2019, inviting online applications from the eligible candidates to fill up 75 posts of Civil Judges (Junior Division)-cum-Judicial Magistrates in the State of Punjab, by conducting the Public Civil Service (Judicial Branch) Examination 2019 jointly with the Punjab and Haryana High Court [for short ‘the High Court’].

The examination was to be conducted in three stages, namely,

(i) preliminary examination, (ii) main examination; and (iii) viva voce.

The category-wise breakup of 75 posts offered by the Commission is as under: -

| <i>Sr.<br/>No.</i> | <i>Category<br/>Code</i> | <i>Name of Post/Category</i>                           | <i>Total Posts</i>             |
|--------------------|--------------------------|--------------------------------------------------------|--------------------------------|
| 1                  | 71                       | General                                                | 34                             |
| 2                  | 72/73                    | Ex-Servicemen/Lineal<br>Dependent of Ex-<br>Servicemen | 4                              |
| 3                  | 74                       | Freedom Fighter, Punjab                                | 01                             |
| 4                  | 75                       | Sports person, Punjab                                  | 02                             |
| 5                  | 76A<br>76B               | Visually Impaired<br>Hearing Impaired                  | 01<br>01                       |
| 6                  | 77                       | Scheduled Caste others,<br>Punjab                      | 09<br>(including 1<br>backlog) |
| 7                  | 78/79                    | Scheduled Caste others,<br>ESM/LDESM, Punjab           | 02                             |
| 8                  | 80                       | Scheduled Caste others<br>Sport person, Punjab         | 01                             |
| 9                  | 81                       | Balmiki/Mazhbi Sikh,<br>Punjab                         | 09<br>(Including 2<br>backlog) |
| 10                 | 82/83                    | Balmiki/Mazhbi Sikh,<br>ESM/LDESM Punjab               | 01                             |
| 11                 | 85                       | Backward Classes, Punjab                               | 09                             |
| 12                 | 86/87                    | Backward Classes,<br>ESM/LDESM Punjab                  | 01                             |
|                    |                          | Total                                                  | 75                             |

The preliminary examination was conducted for short-listing the candidates for the main written examination. It was an objective type test containing multiple choice questions. The question paper was in a set of four

codes i.e. ‘A’, ‘B’, ‘C’ & ‘D’, with same questions in different sequence. It contained 125 multiple choice questions carrying 4 marks each with a negative marking of 0.80 marks for every wrong answer. The maximum marks were 500.

The preliminary examination was held on 25.08.2019 in which 4339 candidates had appeared.

The model answer key, supplied by the paper setter was published on 26.8.2019, inviting objections from the candidates’ uptill 28.8.2019. According to the respondents, 3433 emails were received from the candidates, including the petitioners, containing objections in respect of 88 questions. The recruitment committee (Subordinate Judicial Service of the High Court) [for short ‘the recruitment committee’] constituted an expert panel on 29.8.2019 to consider the said objections and referred the said objections to the panel of experts in its meeting held on 4.9.2019. The expert panel submitted its report to the recruitment committee and while accepting the same, the recruitment committee took the following decision on 17.9.2019: -

*“Meeting note and Report of the Panel at Annexure ‘R’ perused. As per report, the following two questions be deleted with the consequences that no credit or discredit in respect of these question be given irrespective of the fact whether these have been attempted or not:-*

|  | Code | Code | Code | Code |
|--|------|------|------|------|
|  | ‘A’  | ‘B’  | ‘C’  | ‘D’  |

|              |     |    |    |    |
|--------------|-----|----|----|----|
| Question No. | 56  | 41 | 26 | 8  |
| Question No. | 101 | 86 | 71 | 53 |

The Panel also finds certain anomalies in the Proposed Answer Key in respect of the following questions:-

|              | Code<br>'A' | Code<br>'B' | Code<br>'C' | Code<br>'D' | Proposed<br>Answer<br>key | Proposed<br>change |
|--------------|-------------|-------------|-------------|-------------|---------------------------|--------------------|
| Question No. | 15          | 125         | 110         | 92          | A                         | D                  |
| Question No. | 87          | 72          | 57          | 39          | B                         | C                  |
| Question No. | 102         | 87          | 72          | 54          | B                         | A                  |
| Question No. | 104         | 89          | 74          | 56          | B                         | A                  |
| Question No. | 109         | 94          | 79          | 61          | D                         | A                  |
| Question No. | 119         | 104         | 89          | 71          | D                         | C                  |

The committee resolves to accept the report of the Panel.”

The answers were accordingly revised. The revised answer key was published on 17.9.2019 on the website of the High Court and cross-objections were again invited in respect of the aforesaid 8 questions which were supposed to be changed/revised.

According to the respondents, 64 emails were received containing cross-objections in respect of the 8 questions which were proposed to be changed in the answer key. The recruitment committee, vide its order dated 19.9.2019, referred the cross-objections to the panel of experts for their examination/consideration but the panel did not find any substance in the said cross-objections and ultimately, the recruitment committee in its meeting held on 24.9.2019 accepted the report of the experts panel and finalized the answer key on 24.9.2019 itself.

The final result was accordingly generated and declared on 25.9.2019 and on the basis thereof total 710 candidates were short-listed from each category on the basis of the cut off marks. A chart in this regard, supplied to the Court by the respondents during the course of hearing, is also reproduced as under: -

| <i>Sr. No.</i> | <i>Category</i>                           | <i>Posts Earmarked</i> | <i>Shortlisted candidates</i> | <i>Cut Off</i> |
|----------------|-------------------------------------------|------------------------|-------------------------------|----------------|
| 1              | GENERAL                                   | 34                     | 340                           | 324            |
| 2              | ESM (PB)                                  | 4                      | 3                             | 189.6          |
| 3              | LD ESM (PB)                               | Four                   | 40                            | 111.2          |
| 4              | WARDS OF<br>FREEDOM<br>FIGHTER,<br>PUNJAB | 1                      | 10                            | 229.6          |
| 5              | SPORTS<br>PERSON,<br>PUNJAB               | 2                      | 7                             | 116.8          |
| 6              | PH-<br>VISUALLY<br>IMPAIRED,<br>PUNJAB    | 1                      | 2                             | 138.4          |
| 7              | PH-<br>HEARING<br>IMPAIRED,<br>PUNJAB     | 1                      | 1                             | 140.8          |
| 8              | PH-ORTHO,<br>PUNJAB<br>(UNDER             | Nil                    | 5                             | 205.6          |

|    |                                        |     |     |       |
|----|----------------------------------------|-----|-----|-------|
|    | COURT<br>ORDERS)                       |     |     |       |
| 9  | SC OTHERS                              | 9   | 93  | 264.8 |
| 10 | SC ESM/LD<br>ESM                       | 2   | 19  | 100   |
|    | SC SPORTS<br>PERSON                    | 1   |     |       |
| 11 | BALMIKI<br>MAZHBI<br>SIKH,<br>PUNJAB   | 9   | 90  | 208.8 |
|    | BALMIKI<br>MAZHBI<br>SIKH<br>ESM/LDESM | 1   |     |       |
| 12 | BC, PUNJAB                             | 9   | 91  | 281.6 |
| 13 | BC ESM,<br>PUNJAB                      | 1   | 2   | 176.8 |
| 14 | BC LD ESM,<br>PUNJAB                   | One | 7   | 140   |
|    |                                        |     | 710 |       |

Although, the aforesaid exercise was carried out by the High Court twice yet the petitioners were not satisfied and have preferred these petitions to challenge the answers provided in the answer key on the ground that either they are ambiguous or incorrect.

Short written statement by way of an affidavit of Dharminder Paul Singla, OSD (Litigation), Punjab and Haryana High Court, has been filed.

Initially the petitioners raised a hue and cry in respect of sixteen questions but at last they were *ad idem* to project their grievance in respect of four questions i.e. questions No.28, 38, 81 & 105 which have been taken from set ‘A’.

Counsel for the petitioners has submitted that in the case of **“Kanpur University and Others Vs. Samir Gupta and others” 1983 (4) SCC**

309 rendered by 3 Judges Bench of the Hon'ble Supreme Court, while tackling a similar controversy about the ambiguity and correctness of the answer key of an objective type test, has held that the Court can intervene in such matter if the answer is palpably or demonstrably wrong. In this regard, he has referred to the following observations of the Hon'ble Supreme Court, which read as under: -

*“16. Shri Kacker, who appears on behalf of the University, contended that no challenge should be allowed to be made to the correctness of a key answer unless, on the face of it, it is wrong. We agree that the key answer 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 rationalisation. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well-versed in the particular subject would regard as correct. The contention of the University is falsified in this case by a large number of acknowledged text-books, which are commonly read by students in U.P. Those text-books leave no room for doubt that the answer given by the students is correct and the key answer is incorrect.*

*17. Students who have passed their Intermediate Board Examination are eligible to appear for the entrance Test for admission to the*

*Medical Colleges in U.P. Certain books are prescribed for the Intermediate Board Examination and such knowledge of the subjects as the students have is derived from what is contained in those text-books. Those text-books support the case of the students fully. If this were a case of doubt, we would have unquestionably preferred the key answer. But if the matter is beyond the realm of doubt, it would be unfair to penalise the students for not giving an answer which accords with the key answer, that is to say, with an answer which is demonstrated to be wrong.”*

He has further referred to a decision of the Hon’ble Supreme Court rendered in the case of **“Ran Vijay Singh and Others Vs. State of U.P. and Others”** 2018(1) SCT 334 which was also a case pertaining to the wrong answer key of an objective type test in which the following observations were made: -

*“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.”*

They have also relied upon a decision of the Hon’ble Supreme Court rendered in ***Civil Appeal Nos. 4695-4699 of 2018*** titled as ***“Richal and others etc. etc. Vs. Rajasthan Public Service Commission and others etc. etc.”*** decided on 03.05.2018 and a Division Bench Judgement of the Delhi High Court rendered in ***W.P. (C) 10592 of 2019*** titled as ***“Nishant Basoya Vs. Registrar General, The High Court of Delhi”*** decided on 01.10.2019 pertaining to the correctness of the answer key to some of the questions of the Delhi Judicial Services (Preliminary) Examinations 2019 in

which the result of the candidates, who had already declared eligible to appear in the main examination, was kept undisturbed/intact and in respect of the answer key which was found to be incorrect or erroneous, the High Court was directed to recompute the results in accordance with the decision taken by the Court by treating the marks obtained by the last of the 353 already short-listed candidates in the revised list as cut off marks. They have also relied upon a decision of a Division Bench of this Court rendered in **CWP-2943-2019** titled as **“Mahipal Singh and others Vs. State of Haryana and others”** decided on 13.02.2019, pertaining to the preliminary examination, conducted to fill up the posts of Civil Judge (Junior Division), in the cadre of Haryana Civil Services (Judicial Branch). In the said case, the objections were raised about the ambiguity and incorrect answer key provided by the recruitment committee of the High Court comprising of 5 Hon’ble Judges, who had decided to delete 6 questions and revised the answer key of 8 questions but still various writ petitions were filed to challenge the correctness of the answer key and ultimately after a detailed discussion, this Court had found that answer key of question No.117 was demonstrably and palpably erroneous and passed the order accordingly for its correction. It was further submitted that **SLP(C) No.7228 of 2019** titled as **“Pooja Arya Vs. The State of Haryana and others”** challenging the said judgment was dismissed by Hon’ble Supreme Court on 14.3.2019.

However, on the other hand, learned senior counsel, appearing on behalf of the respondents, has relied upon a recent order of the Supreme Court rendered in **Civil Appeal No.7727 of 2019** titled as **“Haryana Public Service Commission Vs. The State of Haryana and others”** decided on 30.9.2019 pertaining to the ambiguous or incorrect answer key of the objective type test conducted for the appointment of Assistant Professors of

Geography (College) Grade HES-II. It is submitted that the candidates, who had appeared in the said examination had identified 46 questions as defective which were referred to a committee of experts in the field for appraisal. The said committee concluded that 7 questions are ambiguous and are not having the answer key and the Commission after accepting the experts committee report deleted 7 questions and declared the result but the Single Judge, after going through the question paper found 4 more questions as ambiguous and ordered for deletion which was not found to be a correct approach by the Division Bench and ordered for another experts committee. It is submitted that the Hon'ble Supreme Court did not approve the approval of the learned Single Judge to act as an expert in the field of Geography and its decision to delete 4 questions was not accepted and also the decision of the Division Bench to send the matter again to an expert committee on the ground that there would be no finality to the selection process.

Learned counsel for the petitioners has submitted that the judgment relied upon by the respondents is pertaining to a subject of Geography in which the Hon'ble Court may not be comfortable but in the subject of law, the Hon'ble High Court of Delhi has intervened in the case of ***Nishant Basoya (Supra)*** and in the case of ***Mahipal Singh and others (Supra)*** this Court had also intervened the preliminary examination conducted by the Haryana Civil Services (Judicial Branch).

We have heard learned counsel for the parties in respect of their respective contentions, noticed hereinabove and found that there are decisions of the Hon'ble Supreme Court on both sides albeit ***Kanpur University and Others (Supra)*** and ***Ran Vijay Singh and Others (Supra)*** wherein it has been held that the Court can interfere if it is demonstrated very clearly without any inferential process of reasoning or by a process of

rationalization that the answer key is palpably wrong or demonstrated to be wrong even if the objections have been considered by the experts. Therefore, we have decided to consider the objections of the petitioners in regard to the answer key published by the paper-setter and also the report of the experts committee especially when the petitioners in all the cases have decided to reduce their objections from sixteen questions to four questions.

Mr. Harkesh Manuja, Advocate, appearing on behalf of the petitioners, has submitted that out of the 4 questions i.e. questions No.28, 38, 81 and 105, taken from set 'A', he would first refer to question No.105 which is reproduced as under: -

*105. Under which of the following condition(s) a writ of mandamus can be granted ? Give correct answer by using the codes;*

- a) There must be a public duty;*
- b) There must be a specific demand and refusal;*
- c) There must be a clear right to enforce the duty;*
- d) The right must be subsisting on the date of the petition.*

*Codes:*

- A) All (a), (b), (c) and (d) are correct.*
- B) Only (a), (b) and (c) are correct.*
- C) Only (a) and (c) are correct.*
- D) Only (a) and (b) are correct.*

According to the respondents and the answer key, the correct answer is option 'B' whereas according to the petitioners, the correct answer is option 'A'. In order to give support to their stand, the petitioners have

relied upon a decision of the Hon'ble Supreme Court rendered in the case of ***“Director of Settlements, A. P. and others Vs. M.R. Apparao and another”*** 2002 (4) SCC 638 in which the following observations have been made:

*“A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition.”*

Similarly, they have relied upon an other decision of the Supreme Court rendered in the case of ***“State of U.P. and others Vs. Harish Chandra and others”*** 1996 (9) SCC 309 in which it has been held that “

*“Under the Constitution a mandamus can be issued by the Court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and said right was subsisting on the date of the petition.”*

On the other hand, learned senior counsel for the respondents has submitted that the candidates, as per note given on opening sheet of the question booklet, while filling up the blanks/answering the questions, were required to choose the best option out of the given options and has further submitted that before attempting the question the candidates were required

to understand the language of the question. It is submitted that the question put to the candidate is that “*under which of the following condition(s) a writ of mandamus can be granted?*” He has laid emphasis on the word ‘grant’ and contended that the question was not “as to in which of the following conditions a writ of mandamus can be ‘filed’”. In support of his arguments, he has requested the Court to allow him to open the sealed cover containing the report of the experts panel to peruse the same before forming an opinion. We have allowed him to open the sealed cover containing the report of the experts and after perusing the report, are of the considered opinion that there is no substance in the argument of the counsel for the petitioners because even if the right to seek a mandamus is subsisting on the date of the petition, the writ of mandamus cannot be granted if after filing of the writ petition the right is abrogated or otherwise becomes extinct.

Thus in view thereof, the contention of the petitioners in respect of question No.105 is hereby repelled.

Next is question No.81, which is reproduced as under: -

81. *The Mc Naughten’s is test applied to which of the following?*
- A. *Insanity*
  - B. *Intoxication*
  - C. *Both (A) and (B)*
  - D. *None of the above*

According to the respondents, based on the report of the experts committee, the correct answer of this question is option ‘C’ whereas according to the petitioners, the correct answer of this question is option ‘A’.

Counsel for the petitioners has submitted that Mc Naughten’s test has been evolved from the case of Queen against Mc Naughten in which Daniel Mc Naughten was tried for the willful murder of Edward Drummond,

who was the Private Secretary of Sir Robert Peel, the then Prime Minister of England. The insane delusion was set up as defence and Mc Naughten was held to be not guilty and acquitted. It is submitted that Mc Naughten test was not evolved on account of the state of mind of the said accused due to intoxication but because of a mental disease. In this regard, he has argued that there are separate provisions in Chapter IV (General Exceptions) of the Indian Penal Code, 1860 [for short 'the IPC'] in respect of the act of a person of unsound mind and the act of a person incapable of judgment by reason of intoxication caused against his will. He has referred to Sections 84 and 85 of the IPC, which read as under: -

*“84. Act of a person of unsound mind.—*

*Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.*

*85. Act of a person incapable of judgment*

*by reason of intoxication caused against his will.— Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law; provided that the thing which intoxicated him was administered to him without his knowledge or against his will.”*

He has also referred to a decision of the Hon'ble Supreme Court in the case of ***"Sudhakaran Vs. State of Kerala"*** 2010 (10) SCC 582 in which the following observations have been made" –

*"Section 84 of the Indian Penal Code recognizes the defence of insanity. It is defined as under:-*

*"Nothing is an offence which is done by a person who at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."*

*A bare perusal of the aforesaid section would show that in order to succeed, the appellant would have to prove that by reason of unsoundness of mind, he was incapable of knowing the nature of the act committed by him. In the alternate case, he would have to prove that he was incapable of knowing that he was doing what is either wrong or contrary to law. The aforesaid section clearly gives statutory recognition to the defence of insanity as developed by the Common Law of England in a decision of the House of Lords rendered in the case of R. Vs. Daniel Mc Naughten 1843 RR 59:*

*8ER 718(HL). In that case, the House of Lords formulated the famous Mc Naughten Rules on the basis of the five questions, which had been referred to them with regard to the defence of insanity. The reference came to be made in a case where Mc Naughten was charged with the murder by shooting of Edward Drummond, who was the Pvt..Secretary of the then Prime Minister of England Sir Robert Peel. The accused Mc Naughten produced medical evidence to prove that, he was not, at the time of committing the act, in a sound state of mind. He claimed that he was suffering from an insane delusion that the Prime Minister was the only reason for all his problems. He had also claimed that as a result of the insane delusion, he mistook Drummond for the Prime Minister and committed his murder by shooting him. The plea of insanity was accepted and Mc Naughten was found not guilty, on the ground of insanity.”*

On the other hand, learned senior counsel appearing on behalf of the respondents, while referring to the report of the experts committee, has submitted that Mc Naughten test would apply in the case of intoxication as well wherein it has been observed that ‘wordings’ of both Sections 84 &

85 of the IPC being similar inasmuch as the accused is incapable of knowing the nature of offence or what he is doing is either wrong or contrary to law, by reason of unsoundness of mind and in the other by reason of intoxication, would attract the Mc Naughten Rule.

We have heard learned counsel for the parties in this regard and are of the considered opinion that the contention of the respondents is not acceptable. We would again refer to the note appended with the opening sheet of the question paper in which it is provided that “*for filling up the blanks/answering the questions, choose the best option out of the given options*” and in our view the best option of question No.81 by all means would be option ‘A’ i.e. “insanity” which actually was the case of Mc Naughten, who was suffering from some insane delusion and not from intoxication. Thus we propose to give benefit of this question to the petitioners and direct that the answer to this question should be considered as option ‘A’ instead of ‘C’.

Counsel for the petitioners has then referred to question No.38 which read as under: -

38.        *The maxim “*falus in uno, falus in omnibus*” is*

\_\_\_\_\_

*A. As sound rule of evidence*

*B. As sound rule of law*

*C. Both (A) and (B)*

*D. None of the above.*

The respondents have provided the answer as option ‘A’ whereas the petitioners are claiming it to be option ‘D’.

Counsel for the petitioners has submitted that the maxim is not applicable to the Indian jurisprudence and has referred to the observation

made by the Hon'ble Supreme Court in the case of "***Amrik Singh Satnam Singh and another Vs. State of Rajasthan***" 1994(1) SCC 563 in which it has been held that *falsus in uno falsus in omnibus* has never been accepted either as a rule of law or evidence.

On the other hand, learned senior counsel for the respondents, while referring to the report of the experts committee, has submitted that the petitioners have not read the question carefully before attempting the same because the examiner has only asked about the meaning of the maxim and not its applicability in context with the Indian jurisprudence. It is submitted that had the question been asked about the applicability of this maxim in context with the Indian jurisprudence then the answer proposed by the petitioners as option 'D' would have been correct but the bare meaning of the maxim asked from the examinee would have the answer as option 'A' and in this regard they have also referred to the Black's Law Dictionary which also supports their contention.

Thus keeping in view the aforesaid facts and circumstances, we are of the considered opinion that no benefit can be given to the petitioners in this regard and their contention is thus hereby rejected.

The last question pressed by the petitioners is question No.28, which reads as under: -

28. *Partnership firm gets dissolved when*
- A. A partner has become of unsound mind*
- B. A partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of the business regard being had to the nature of the business.*

*C. A partner has been adjudicated as insolvent*

*D. The business of the firm cannot be carried on save at a loss.*

As per the answer key and in the opinion of the experts, relied upon by the respondents, the answer to this question is option 'C' whereas according to the petitioners, the question by itself is ambiguous. In this regard, counsel for the petitioners has submitted that Chapter VI of the Indian Partnership Act, 1932 [for short 'the Act'] deals with the 'Dissolution of a Firm' in which Section 40 provides 'Dissolution by agreement', Section 41 of the Act deals with 'Compulsory dissolution', Section 42 of the Act refers to 'Dissolution on the happening of certain contingencies', Section 43 of the Act provides 'Dissolution by notice of partnership at will' and Section 44 of the Act provides 'Dissolution by the Court.

According to the respondents, the question asked by the paper-setter/examiner is about the automatic dissolution of the firm qua which option 'C' is the correct answer because it would be on the happening of one of the contingencies which is provided in Section 42(d) of the Act but it appears that the examiner has lost sight of the fact that dissolution on its own is dealt in Section 41 of the Act as it deals with 'compulsory dissolution' whereas Section 42 deals with the dissolution on the happening of contingencies which is subject to the contract between the parties for the firm to dissolve.

Counsel for the petitioners has submitted that Section 41(a) of the Act has been omitted by Act No.31 of 2016 which was earlier read as "Compulsory Dissolution – A firm is dissolved – (a) by the adjudication of all the partners or of all the partners but one as insolvent". Whereas Section

42 of the Act provides dissolution of the firm subject to the contract between the parties on the happening of certain contingencies which includes the contingency provided under Section 42(d) of the Act and it is not automatic.

In view of the aforesaid facts and circumstances, we are of the considered opinion that question No.28 is ambiguous, deserve to be deleted and we order accordingly.

As a sequel to the above discussion, we hold that correct answer key to question No.81 of Question Paper Code 'A' is option A and that question No.28 of Question Paper Code 'A' is vague and deserves to be deleted.

Accordingly, all the 17 writ petitions are hereby disposed of with the following directions: -

- (i) The result of 710 candidates, who were short-listed in pursuance to the declaration of result on 25.9.2019, be not disturbed.
- (ii) In respect of the remaining candidates (whether they have approached the High Court or not), their results be recomputed by giving them benefit of correct answer key to question No.81 of Question Paper Code 'A' and by deleting question No.28 of Question Paper Code 'A', from the total questions. Similar exercise be also carried out for corresponding questions of other series i.e. Question Paper Code 'B', 'C' and 'D'.
- (iii) After carrying out the above exercise, the result of the remaining candidates be

prepared and uploaded on the website of the High Court within one week from the date of pronouncement of this judgement.

- (iv) On the basis of the above declaration, without disturbing 710 already short-listed candidates, the above-said candidates, as per their respective categories, who have become eligible, be permitted to sit for the main written examination.
- (v) Besides uploading the list of additional eligible candidates on the website, High Court shall also inform them by way of SMS on their respective mobile numbers as well as through their e-mail IDs provided by them to the High Court, of their having qualified the preliminary examination and about their eligibility for appearing in the main written examination.

A photocopy of this order be placed on the file of connected cases.

**(RAKESH KUMAR JAIN)**  
**JUDGE**

**(SUVIR SEHGAL)**  
**JUDGE**

**06.11.2019**  
*Vivek*

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