

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.07.2020

Delivered on: 13.08.2020

C O R A M

The Hon'ble Mr. A.P.SAHI, THE CHIEF JUSTICE
and
The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition No. 3716 of 2020

P.Balamurugan

.... Petitioner

Vs

- 1.The Controller of Examinations
The Tamil Nadu Public Service Commission,
Park Town, Chennai-600 003.
2. The Secretary,
The Tamil Nadu Public Service Commission,
Park Town, Chennai-600 003.
3. The Registrar General,
High Court of Madras, Chennai-600 104.

(R3-impleaded as per order dated 17.02.2020
made in WMP No.5129 of 2020 in
WP.No.3716 of 2020)

.... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus directing the respondents to consider the petitioner's representation dated 01.02.2020, 04.02.2020 and the petitioner's key answer challenge reference Nos.25-2019-280002021-001-068, 25-2019-280002021-001-069, 25-2019-280002021-001-099 with regard to allow the petitioner to write Main Examinations to be held on 28.03.2020 and 29.03.2020 within a reasonable time period to be fixed by this Court.

For Petitioner: Mr.E.Sathiyaraj

For Respondents: Ms.C.N.G.Niraimathi for R1 and R2
Mr.B.Vijay for R3

O R D E R

SENTHILKUMAR RAMAMOORTHY J.,

The Petitioner is an advocate of about nine years standing in the profession. The second Respondent/the Tamil Nadu Public Service Commission issued a Notification No.25/2019 dated 09.09.2019 and invited on-line applications for direct recruitment to the post of civil judge in the Tamil Nadu State Judicial Service. As per the Notification, the selection was to be made through a three stage process consisting of a: (i) preliminary examination; (ii) main written examination; and (iii) viva voce test. The minimum pass mark in the preliminary examination was 35 marks for candidates belonging to MBC/DC/BC. The preliminary examination consisted of 100 objective type questions with multiple choice answers carrying one mark each aggregating 100 marks, and with negative marks for wrong answers. The Petitioner appeared for the preliminary examination on 24.11.2019 and answered 48 questions. As per the tentative answer key published on 27.11.2019 by the second respondent, 37 answers of the Petitioner were correct and 11 answers were incorrect. As a result, the Petitioner secured 34.25 marks as against the cut-off of 35 marks. According to the Petitioner, the answer key provided by the Respondents to three questions, viz., question Nos.68, 69 and 99 was incorrect. Therefore, he objected to the same through the official website of the Respondents.

2. Subsequently, the Respondents published a final answer key wherein both options A and D were treated as correct as regards question No.68. Eventually, when the preliminary examination result was published in the official website on 31.01.2020, the Petitioner was not selected. Consequently, the Petitioner submitted representations to the Respondents on 01.02.2020 and 04.02.2020 requesting that he should be permitted to write the main written examination. In spite of receipt of the said representations, the Respondents did not accede to his request. The present writ petition is filed in these facts and circumstances.

3. At the time of admission on 17.02.2020, the Division Bench of this Court examined the three questions in respect of which the Petitioner has a grievance. Upon such examination, the Division Bench recorded the prima facie view that question No.99 and the answer key relating thereto warrants examination. The relevant paragraphs of the order dated 17.02.2020 are as follows:

"2. To substantiate his contention, the learned counsel for the petitioner states that for question No.99, which is

"Joseph, a watchman of a factory, was allowed to occupy the factory quarters and from his salary, a portion was deducted as charges for the quarters",

the answer given in the answer key is 'A' which is 'The fee deducted would come within the definition of rent' which is incorrect. He states that the apt answer would be (C), which is "It is only permissive occupation. Hence, the question of payment of rent would not arise".

3. He would state that an identical question was also given in the entrance examination for the District Judges, as Question No.36, wherein the correct answer does not match with the answer key in the instant case and the answer is that the amount deducted from salary cannot be taken as rent in the absence of a landlord-tenant relationship and therefore, it was only permissive occupation.

4. This is sufficient to impel us to issue notice to the respondent/Tamil Nadu Public Service Commission, to reply to the questions raised in the petition."

4. We heard the learned counsel for the Petitioner, the learned counsel for Respondents 1 and 2 and the learned counsel for Respondent 3.

5. The learned counsel for the Petitioner contended that the answer key as regards question Nos.68, 69 and 99 was incorrect and that, if the answers of the Petitioner to those questions had been accepted, the Petitioner would have qualified for the main written examination. In support of his contention, the learned counsel invited our attention to the said questions and answers thereto. The said questions and the answers thereto (by adding emphasis), as per the answer key, are set out below:

Q.No.68. Which of the following is not an actionable claim?

- (A) Right of Dower of Muslim women.
- (B) Right to recover insurance money after death or on maturity.
- (C) A claim for arrears of rent.
- (D) The right to recover damages for breach of contract or tort.

Q.No.69. A person who has been ousted by a trespasser from the possession of immovable property to which he has merely possessory title, files a suit for recovery of possession after six months from the date of dispossession.

- (A) Remedy for seeking possession extinguishes
- (B) Can maintain a suit for possession

(C) Can file a suit for possession with a petition explaining the delay with sufficient cause.

(D) Can only claim damages.

Q.No.99. Joseph, a watchman of a factory, was allowed to occupy the factory quarters and from his salary, a portion was deducted as charges for the quarters.

(A) The fee deducted would come within the definition of rent.

(B) Unless the payment is specific towards the rent for the premises, the payment is not towards rent.

(C) It is only the permissive occupation, hence, the question of payment of rent would not arise.

(D) When no receipt was issued for the payment made, it is not rent.

6. The learned counsel contended that the answer to question No.68 was initially shown as option 'A', whereas, subsequently, both options 'A' and 'D' were accepted as the correct answer. With regard to question No.69, he submitted that option 'B', namely, "can maintain a suit for possession" is not the correct answer, whereas option 'B' was shown as the correct answer in the answer key provided by the second Respondent. The focus of the challenge by the Petitioner was, however, on question No.99. As regards this question, the learned counsel contended that the correct answer is option 'C' whereas the answer key shows option 'A' as the correct answer. In order to substantiate his contention, the learned counsel referred to a similar question from the preliminary examination for district judges conducted by the High Court on 23.03.2019. In particular, he pointed out that question No.36 in the said examination is, in substance, the same as question No.99 in the impugned examination. The said question No.36 and the multiple choice options relating thereto, with emphasis added to the correct answer, are as under:

Q.No.36. Thangavel, watchman of Man and Ar Company was permitted to reside out-house of the company and Rs.500/- was deducted every month as rent from his salary. He was terminated from service and was directed to vacate the out-house also. The employee resisted the eviction proceedings as he was paying the rent from his salary.

(A) There is no landlord and tenant relationship between parties.

(B) There is landlord and tenant relationship between the parties.

(C) Rent being deducted is sufficient proof of landlord and tenant relationship.

(D) Both (B) and (C).

7. As per the answer key, option 'A' was shown as the correct answer, namely, that there is no landlord and tenant relationship between the parties. By referring to and relying upon the said answer, the learned counsel contended

that option 'C' namely, "it is only permissive occupation, hence, the question of payment of rent would not arise", is the correct answer to question No.99 in the impugned examination.

8. Mr. B. Vijay, the learned counsel for Respondent 3 made submissions in response and to the contrary. He contended that the correct answer to question No.99 is option 'A' because question No.99 in the present examination cannot be equated with question No.36 in the preliminary examination for district judges. In support of this contention, he invited our attention to question No.36 in the preliminary examination for district judges and pointed out that the services of the watchman had been terminated, as per the fact situation in question No.36, and upon such termination, the licence to use the out-house of the company stood revoked. In that context, the correct answer was that there is no landlord and tenant relationship between the parties. By contrast, the fact situation in Question No.99 of the present preliminary examination was that the watchman continued to be in employment at the factory. Moreover, he was in occupation of the quarters and not an out-house. In this context, the correct answer is option 'A' and not option 'C'. In order to further buttress his contentions, the learned counsel relied upon the following judgments which are set out along with the context and principle:

(i) H.S.Rikhy and others v. The New Delhi Municipal Committee (MANU/SC/0340/1961), wherein the question was whether the allottee of shops constructed by the New Delhi Municipal Committee qualified as a tenant. The Hon'ble Supreme Court concluded that the relationship of landlord and tenant would exist only if an interest in the property, however limited in duration, is created in favour of the allottee.

(ii) B.M.Lall (Dead) by LRs. v. Dunlop Rubber & co. Ltd. and others (MANU/SC/0334/1967). In this case, the question was whether the occupation of company owned flats by its officers would amount to occupation as a tenant or licensee. After examining the agreement, the Hon'ble Supreme Court concluded that the officer is permitted to use the flat as a licensee and that there is nothing in the agreement by virtue of which, the jural relationship of landlord and tenant is created.

9. By relying on the aforesaid judgments, the learned counsel for the third Respondent contended that the existence of the jural relationship of landlord and tenant would depend on the nature of the contract or understanding between the parties. In light of the difference in the fact situation as between question No.36 of the preliminary examination for district judges and question No.99 of the preliminary examination for civil judges, he concluded that option 'A' is the correct answer as regards question No.99.

10. The learned counsel for the first and second Respondents adopted the arguments of the learned counsel for the third Respondent and contended that the answer key is correct.

11. We considered the submissions of the learned counsel for the respective parties and examined the records. Before examining the matter in detail, the law on the subject should be taken note of. In *Kanpur University v. Samir Gupta*, (1983) 4 SCC 309, the Hon'ble Supreme Court examined the standard of judicial review of an answer key and held as follows in paragraphs 16 and 17:

"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 textbooks, which are commonly read by students in U.P. Those textbooks 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 textbooks. Those textbooks 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."

Thus, after setting out the principle that the Court would assume that the answer key is correct and interfere only if it was demonstrated that the answer key is clearly wrong, on the facts of that case, the Supreme Court did interfere because the answer key was clearly wrong. In *Ran Vijay Singh v. State of U.P.*, (2018) 2 SCC 357, the Supreme Court surveyed the law in respect of judicial review of examinations and concluded as follows in paragraph 30:

"30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are:

30.1. 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;

30.2. 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;

30.3. The court should not at all re-evaluate or scrutinise the answer sheets of a candidate—it has no expertise in the matter and academic matters are best left to academics;

30.4. The court should presume the correctness of the key answers and proceed on that assumption; and

30.5. In the event of a doubt, the benefit should go to the examination authority rather than to the candidate. "

From the above, it is clear that this Court does not sit in appeal over the conduct of the examination. Instead, the scope of judicial review is limited to assessing whether the decision making process was arbitrary or flawed. In the specific context of an answer key, the standard of scrutiny would be to check whether the answers to questions 68, 69 and 99, as per the key, have been demonstrated to be clearly wrong or patently incorrect. As is evident from the discussion with regard to the rival contentions, the learned counsel for the Petitioner proceeded on the basis that the fact situation and legal principles applicable in respect of question No.36 of the preliminary examination for district

judges can be equated with Question No.99 of the preliminary examination for civil judges. In our view, the correctness or otherwise of the answer, as per key, to question No.99 has to be tested in isolation and not by comparing it to question No.36 in the preliminary examination for district judges. When Question No.99 is examined, it appears that it relates to a person who is currently employed as a watchman at the factory. This person is in occupation of the factory quarters and the charges for such occupation are deducted from his salary. In that fact situation, the answer key provided that option 'A', which is "the fee deducted would come with the definition of rent", is the correct answer. The judgments of the Hon'ble Supreme Court, which were referred to and relied upon by the learned counsel for the third Respondent, are to the effect that the existence of the legal relationship of landlord and tenant would depend upon the nature of the relationship and whether interest in the property is transferred to the occupant. Given the fact situation in Question No.99, we are of the view that it is plausible to conclude that there is a landlord-tenant relationship between the watchman and his employer. Consequently, the Petitioner has failed to demonstrate that the answer key is clearly or patently incorrect. Once it is concluded that option 'A' is a plausible answer, we are of the opinion that no interference is warranted in the exercise of discretionary jurisdiction.

12. Similarly, the learned counsel for the Petitioner has failed to demonstrate that the answer key in respect of Question Nos. 68 and 69 is clearly wrong. On the contrary, there is reasonable basis to conclude that the answers provided by the second Respondent in respect of Question Nos.68, 69 and 99 are plausible answers, which are not clearly or patently wrong, and, therefore, the examination process is not vitiated by arbitrariness or perversity. Hence, in our view, no interference is warranted.

13. In the result, the writ petition fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar (CS)

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Sub Assistant Registrar

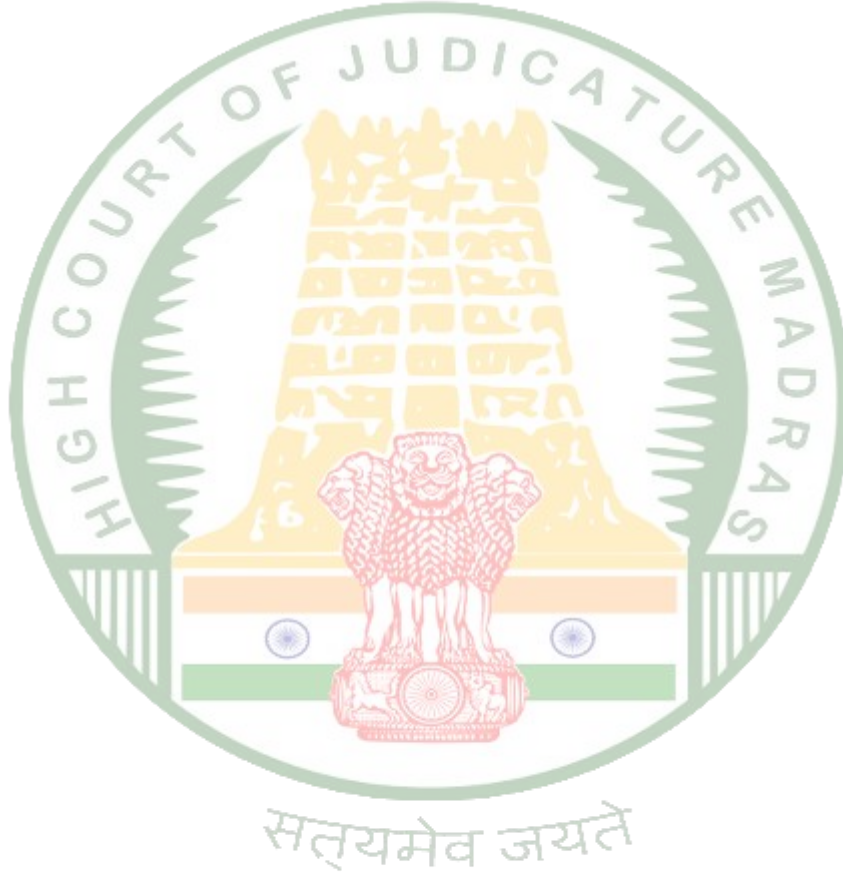
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To

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3. The Registrar General,
High Court of Madras, Chennai-600 104.

+1cc to Mr.E.Sathiyaraj , Advocate SR.No. 26668
W.P.No.3716 of 2020
A.SK(21/08/2020)



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