

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2021

CORAM :

The Hon'ble Mr.SANJIB BANERJEE, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.1301 of 2021
and W.M.P.No.1442 of 2021

Master Ganesh. R

.. Petitioner

-vs-

1.The State of Tamilnadu,
Rep. by its Principal Secretary,
Public (Special-A) Department,
Secretariat, Chennai.

2.The Madras High Court,
Rep. by Registrar General,
Chennai-104.

3.The Registrar (Recruitment),
Madras High Court,
Chennai-104.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus to direct the 3rd respondent to revise the key answers in respect of Question No.20, 52, 72 and 98 in Paper-I, Booklet series A, accordingly direct the respondents to give valid marks to the petitioner in respect of questions No.20, 52, 72 and 98 in Paper-I of Booklet A series in connection with Notification No.02.2019 dated 12.12.2019 and consequently permit the petitioner to participate in the further process of selection.

For Petitioner

: Mr.V.Prakash
Sr. Counsel
for Mr.K.Krishnamoorthy

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For Respondents : Mr.G.K.Muthukumar
Spl. Govt. Pleader for R-1

: Mr.B.Vijay for RR 2 and 3

ORDER

(Made by The Hon'ble Chief Justice)

A candidate who has failed to clear the qualifying hurdle questions the correctness of some of the answers in Paper-I of the preliminary examinations.

2.The petitioner seeks direct entry into the cadre of District Judge (Entry level). He obtained 33 marks out of 100 in Paper-I based on objective-type questions. The qualifying mark was 35. Each question carried one mark and every wrong answer resulted in 0.25 marks being deducted by way of negative marking.

3.The petitioner claims that he ought to have obtained at least 37 marks since the answers to four of the questions were wrong and if the negative marking is discounted, he may have got another half mark.

4.According to the petitioner, the answers to questions 20, 52, 72 and 98 were clearly erroneous. He wants such errors to be corrected and the marks in respect of such questions awarded to him as his answer in each case was the more appropriate. The petitioner asserts that he does not want any ranking, but merely an opportunity to qualify to take part in the competitive leg of the examinations.

5.Question 20 of the paper pertained to marshalling by the subsequent purchaser as provided for in Section 56 of the Transfer of Property Act, 1882. The question was: "What is 'Marshalling in favour of purchaser'?" Two options were given by way of propositions followed by four possibilities as to whether the first option was the more appropriate or the second or both were correct or neither.

6.Question 52 pertained to the Supreme Court judgment in which secularism was recognised to be one of the basic structures of the Indian Constitution. Of the four options, the judgments in Kesavananda Bharathi v. State of Kerala and S.R.Bomma v. Union of India were indicated. The petitioner

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opted for S.R.Bomma, but the correct answer indicated by the High Court was Kesavananda Bharathi.

7.Question 72 of the relevant paper pertained to a reward being announced and the person who performed the contract not being aware of the announcement. The four options pertained to whether the relevant person was entitled to the reward though he had no knowledge of the offer.

8.Question 98 was in respect of an appellate order in a civil matter. Instead of the appeal provision being indicated as Order XLI, the provision was mistakenly indicated as Order XXXXI. It is not in dispute that the petitioner did not attempt to answer question 98, though the petitioner had answered questions 20, 52 and 72 but was found to have furnished incorrect answers in the light of the master key prepared by the High Court.

9.It is of some relevance that in terms of a Supreme Court judgment, the answers to the objective-type questions are indicated prior to the evaluation of the papers and objections are invited in such regard. In this case objections were received, including from the petitioner herein. The petitioner's objections pertained to questions 18 20, 75, 76 and 49. Of the five, the objections pertaining to questions 18, 74 and 49 were accepted and the two others were rejected. Indeed, in respect of question 49, the High Court observed that due to the vagueness or mistaken nature of the question, all those who had attempted the same would get the one mark irrespective of the answer.

10.To begin with, it must be noticed that the petitioner had no grievance in respect of questions 52 and 72; nor could the petitioner have had any grievance in respect of question no.98 which he did not attempt to answer. At any rate, it is not the petitioner's case that the answer to question 98 was wrong; but only that Order XLI of the Code was erroneously represented in the Roman numerals.

11.The petitioner relies on the reference to a Supreme Court judgment contained in a Division Bench judgment of this Court relied upon by the High Court administration. In the relevant High Court judgment, there is a reference to the Supreme Court decision reported at (2018) 2 SCC 357 (Ran Vijay Singh v. State of U.P.). Paragraph 30 of the Supreme Court report is of relevance in the present context, particularly in its first two clauses, which are quoted:

"30.The law on the subject is therefore, quite clear

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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;
..."

12. Apropos question 20 of the paper pertaining to marshalling, the petitioner contends that the matter was only governed by Section 56 of the Act of 1882 and the High Court's reliance on some other provision in addition to Section 56 was misplaced. The petitioner seeks to place Section 56 of the Act of 1882 and the framing of the question to suggest that the answer furnished by the petitioner was the most appropriate and it is such answer which has to be given credit and not any other.

13. Regarding question 52, the petitioner asserts that the judgment in S.R.Bommai was rendered in the context of the Union through the Governor dismissing an elected Government and one of the grounds cited was the reference to Ram Janma Bhoomi in the manifesto of the Government. The petitioner says that it is in such context that secularism being a basic structure of the Constitution was discussed by the Supreme Court and, to such extent, the ground for dismissal of the State Government was not interfered with. On the other hand, the petitioner argues, the issue of secularism did not squarely arise in Kesavananda Bharathi, but in enunciating the basic structure doctrine, the Supreme Court indicated secularism as one of the basic features of the Constitution. Thus, according to the petitioner, his answer that it was in S.R.Bommai that secularism was recognised as a basic feature of the Constitution ought to be given credit ahead of the answer of Kesavananda Bharathi chosen by the High Court.

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14. Question 72 of the paper pertained to the award of a price for recovering something stolen or lost. The petitioner refers to a judgment of the Allahabad High Court of 1913 vintage reported at 1913 (11) ALJ 489, (Lalman Shukul vs. Gauri Dat), to indicate that the answer suggested by the High Court in respect of relevant question is contrary to the dictum of the Allahabad High Court judgment. In the Allahabad case, the defendant sent his munib in search of his lost nephew. The costs of the journey were paid by the master. A few days after the munib left, the master announced a price of Rs.501/- for anyone who could bring his nephew back to him. It was the munib who found the nephew and caused the nephew to return to the munib's master. The munib was rewarded, but with several sovereigns and not with the cash award of Rs.501/-. The munib did not complain immediately, but waited till his services were terminated and then sued the master for the balance amount of Rs.499/-. It was in such context that the Allahabad Court was of the opinion that the munib was not entitled to the balance amount. The munib was not aware of the announcement of the price; he had left before such announcement was made and even when he discovered the nephew and caused the nephew to return to the munib's master, the munib was not aware of the bounty. It must also be noticed that the judgment also hinged on the master-servant relationship between the offerer and the performer. At any rate, it is possible to hold that when an offer is made at large, and not to a person in particular in the kind of situation envisaged in Section 4 of the Contract Act, 1872, notwithstanding the performer not being aware of the offer, the performer may be entitled to the benefit of the offer upon performing the act called for.

15. Since the petitioner has referred to the extract of the Supreme Court judgment noticed in a judgment of this Court cited by the High Court administration, it is such aspect which has to be referred to. Paragraph 30.2 from the relevant report prohibits the High Court from acting as a kind of an expert to sit in appeal over the judgment of an exclusive body which conducts the examination. The principle will not be altered even if the question pertains to a legal issue and the High Court, in such a scenario, may possess the expertise to deal with the issue.

16. At any rate, none of the answers to the three questions - 20, 52 and 72 - can be said to be utterly erroneous. A subjective view based on reasons furnished therefor has been expressed, particularly in respect of the modified answers; and it is evident that the mind of the appropriate authority was applied to the matters in issue to arrive at a correct solution

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in this case. It is possible that there could have been a different answer, based on some inflection; but what is of importance is that all candidates had been tested on the same basis.

17.The further underlying submission of the petitioner that the answers to some of the questions were changed to the petitioner's detriment after the examination was over, does not hold any water since the petitioner could not have been aware of the answers selected by the High Court before the petitioner took the relevant examination.

18.Since none of the grounds raised by the petitioner results in an overwhelming answer from the Court that an absolutely incorrect answer was furnished by the examining authority in respect of the relevant questions, in exercise of the limited authority of judicial review available in this jurisdiction, the Court has to yield to the examining authority and not supplant its opinion over that of the examining authority. It is precisely because of the principle enunciated at paragraph 30.2 of the report in Ran Vijay Singh that the petitioner cannot obtain what the petitioner seeks. It must also be appreciated that in matters pertaining to law, there can almost never be an absolute or an only answer. In such a scenario, when the veracity of answer is questioned, the Court would be excited to interfere only if the answer is found to be absolutely erroneous even to the meanest mind.

19.For the reasons indicated above, the challenge launched by the petitioner does not appear to be worthy. The petitioner is wished well to attempt again to join the cadre at the next available opportunity, subject to age qualification. As far as the present year is concerned, the petitioner has to sit it out, outside.

W.P.No.1301 of 2021 is dismissed. There will, however, be no order as to costs. Consequently, W.M.P.No.1442 of 2021 is also dismissed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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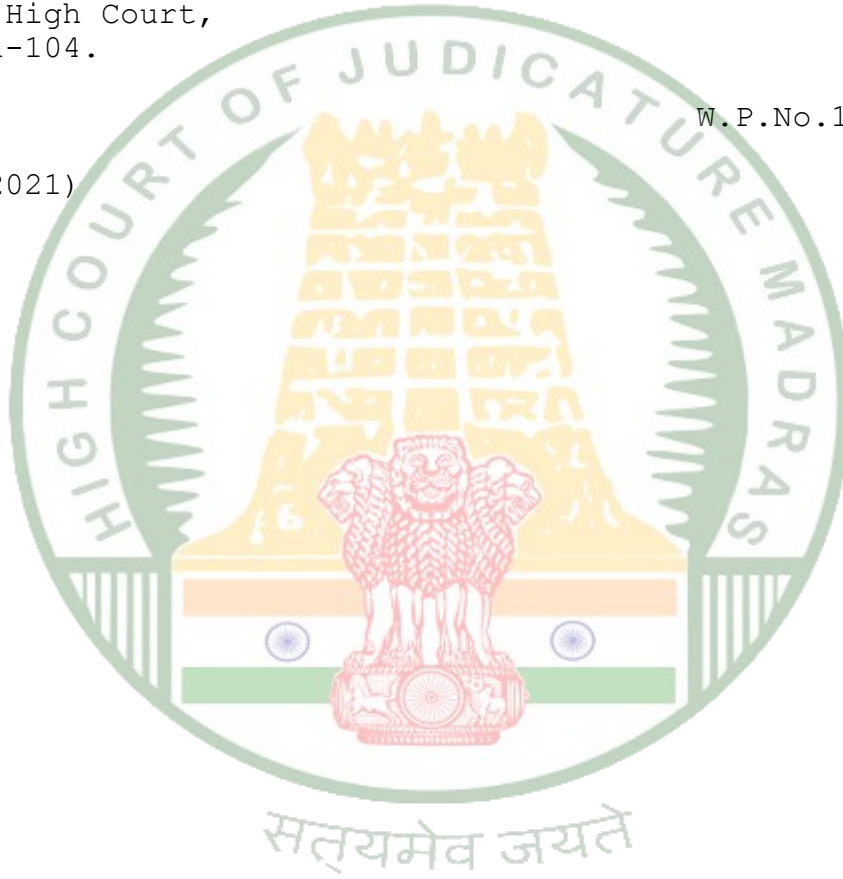
1.The Principal Secretary to Govt. of Tamilnadu,
Public (Special-A) Department,
Secretariat, Chennai.

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