

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9089 of 2022

Amit Kumar, aged about 47 years, male, S/o Ram Bahadur Singh, resident of Village and Post-Bihat, Tola-Maksaspur, Near-Kali Sthan, District-Begusarai, Bihar, Pin-851135. At present resident of Mohalla-C-86, Rajpur Khurd Extention, P.S.-South Delhi, District-Delhi.

... .. Petitioner/s

Versus

1. The High Court of Judicature at Patna through its Registrar General.
2. The Registrar General, High Court of Judicature at Patna.
3. The Registrar, Appointment, High Court of Judicature at Patna.
4. The Selection Committee, District Judge (Entry Level), Direct from Bar Exam-2021, High Court of Judicature at Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Alok Kumar Jha, Advocate
For the Respondent/High Court : Mr. Piyush Lall, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 11-08-2022

Heard Mr. Alok Kumar Jha, the learned
Advocate for the petitioner and Mr. Piyush Lall, the
learned counsel for the respondent/High Court.

2. The issue involved in the present writ
petition is whether the key answer to Question No. 54
in the Preliminary Test of District Judge (Entry Level),



Direct from Bar Examination 2021, held under the Advertisement No. BSJS/1/2021, is incorrect.

3. Question No. 54 in the afore-noted examination is as follows:-

Q. 54. The concept of "equal protection of laws" enshrined under Article 14 of the Indian Constitution finds its root from the -

- (A) British Constitution
- (B) American Constitution
- (C) German Constitution
- (D) Australian Constitution.

4. It is the contention of the petitioner that the correct answer is option-(B), *i.e.*, American Constitution, whereas the model key answer suggests option-(A), *i.e.*, British Constitution as the correct answer.

5. It has been urged on behalf of the petitioner that the equality clause of Indian Constitution has two components; (i) equality before law and (ii) equal protection of laws. Under the Indian Constitution, there is a provision for protective



discrimination which actually is the outcome of the phrase "equal protection of laws". This is an exception to the equality clause. Various treatises on the subject clearly indicate that the phrase "equal protection of laws" is similar to one embodied in the 14th Amendment to the American Constitution (*refer to Dicey; the Law of Constitution - 10th Edition*).

6. It is a matter of common knowledge that the concept of equality does not envisage absolute equality as *Dr. Jennings*, in the Law of Constitution - 3rd Edition, has explained it: "equality before law means that amongst equals, law should be equally administered".

7. The exact words of the 14th Amendment of the American Constitution, which was adopted in 1868, is being extracted hereinbelow:-

"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall



make or enforce any law which shall abridge the privileges or amenities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without the due process of law; nor deny to any person within its jurisdiction, the equal protection of laws.

(Emphasis provided)

8. This forms part of Section-1 of the Amending Act.

9. The other sections of the Amending Act are not being extracted as they may not be necessary for the purpose here.

10. In the aforesaid backdrop, we, *prima facie*, find that the correct answer to the Question No. 54 is option-(B), viz., American Constitution. However, we would hasten to add that in the event of another answer having been provided in the model key answers, which has been approved by the Expert Committee along with the Appointment and Selection Committee, it would be more appropriate to request for its re-look and review by such Committee of



Experts.

11. The facts which have led this petition to be filed before this Court are as hereunder:-

A preliminary test was conducted on 06.03.2022 for the selection of District Judge (Entry Level) in which hundred (100) objective questions were asked. Each question contained three (3) marks for correct answer and one (1) negative mark for wrong/incorrect answer. Against the advertisement for holding such examination, 2077 candidates were issued the Admit Cards, out of which only 1417 number of candidates appeared in the examination.

The model key answer of the Preliminary Test (P.T.) was uploaded after four days of the holding of the examination, *i.e.*, on 10.03.2022. Simultaneously, objections from the aspirants were invited. After the receipt of the representations/objections, the Appointment and Selection Committee referred those objections to the



Expert Committee of the Hon'ble Judges. On a careful scrutiny of such objections/representations, four questions out of hundred were deleted from the purview of evaluation. Key answers to seven questions were revised. And for Question No. 92, a suggestion was made to mark affirmatively two options, namely, (B) and (C).

12. It further appears that one representationist who has not approached this Court in this instance namely, Shashi Shekhar had filed his representation urging that the correct answer to Question No. 54 is option-(B), *i.e.*, the equal protection of laws has its roots in American Constitution and not British Constitution. Such representation was though brought before the Appointment and Selection Committee but since Question No. 54 was one of the questions about which earlier objections were raised, but no suggestions was made in the key answer with respect to that question,



the Appointment and Selection Committee rejected such representation of aforesaid Shashi Shekhar.

13. The result of the P.T. Examination was uploaded on the website of the High Court on 26.05.20022.

14. A total of sixty five (65) candidates had passed; out of which thirty one (31) candidates were from the unreserved category.

15. The facts stated in the writ petition as also in the counter affidavit further discloses that the petitioner had obtained 179 marks.

16. The cut-off marks for the unreserved category was fixed at 181 marks. Since the petitioner had chosen answer (B) for Question No. 54, one (1) mark was deducted and he, otherwise, lost on three (3) more marks for such answer to be the correct answer.

17. That being the case, it has been contended by the petitioner that he would have



secured 183 marks if the model answer key to Question No. 54 were correct, making him stand above the cut-off marks.

18. Since the petitioner was not declared to have passed the Preliminary Examination entitling him to appear in Mains Examination, he approached this Court but for some reason or the other, his case could not be taken up for consideration. Thereafter, the petitioner approached the Hon'ble Supreme Court *vide* Writ Petition (Civil) No. 542/2022.

19. The Apex Court *vide* order dated 22.07.2022 directed that the petitioner be permitted provisionally to appear in the Mains Examination which was scheduled to be held on 24.07.2022, which candidature would be subject to the ultimate outcome of the main writ petition before the High Court. The Supreme Court also asked the High Court to decide the writ petition on its merits within four weeks from the date of passing of the aforesaid order.



20. With the afore-noted direction, the petitioner appeared in the Mains Examination which was held on 24.07.2022, the result of which examination has yet not been published.

21. Mr. Lall, the learned counsel for the respondent/High Court, on the basis of the statement made in the counter affidavit, has submitted that the matter be referred to the Hon'ble Expert Committee of the High Court to give a re-look on its decision within a stipulated time frame. Simultaneously, it has also been suggested that the benefit of reconsideration, if any, be directed to be limited to the case of the petitioner only as no other candidate has, till date, objected to the correctness of model answer to Question No. 54.

22. Mr. Lall submits that this could rightly be treated as acquiescence by such candidates who have not filed any representation in that regard.

23. A concern was also voiced that the



Mains Examination has already been successfully held on 24.07.2022 and any decision to upset the result of examination would be in teeth of the judgment of the Supreme Court in *Malik Mazhar Sultan & Anr. Vs. U.P. Public Service Commission & Ors.*; which has provided for a definite timeline for concluding the examinations for filling up the vacancies of Judicial Officers.

24. Though the aforesaid argument, on face of it, appears to be convincing, but cannot be accepted.

25. For no candidate except for the petitioner and one Shashi Shekhar having questioned the correctness of the model key answer to Question No. 54, it cannot be said that the other candidates who have either passed or have not passed the Preliminary Test have acquiesced. The issue of acquiescence will not arise in a case of this kind where if the model answer is *prima facie* found to be



incorrect; perforce, either the answer would be required to be corrected or the question would have to be deleted from the purview of evaluation. Not doing so would be unjust to abler persons. This cannot be the purpose and the scheme of the examination. It is quite late in the day to emphasize that examination for public office/judicial office is conducted to select the best amongst the candidates. Once it is found that the model key answer, for some reason or the other, is incorrect, it has to be reviewed.

26. Each question in the aforesaid Preliminary Examination carried three (3) marks for correct answer and one (1) negative mark for a wrong answer. Deleting such question from the purview of evaluation would lead to lessening of the cut-off marks and, therefore, if it is effected, it shall upset the apple cart.

27. In order to ensure utmost probity and fairness in the conduct of examination for the post of



Judicial Officers, especially when it is being conducted by the institution, *i.e.*, High Court itself, we deliberated over the matter in greater details and before referring the matter to the Expert Committee for a re-look and reconsideration over the issue of correctness of the model key answer to Question No. 54, we thought it prudent as also expedient to ask for certain exercise to be done by the High Court to find out as to what would be the situation if Question No. 54 is deleted from the purview of evaluation.

28. The High Court appears to have carried out such exercise with the assistance of the agency/Ms. C.S. Datamation Research Services Pvt. Ltd., Gurugram, Haryana, which had conducted the examination on behalf of the respondent/High Court end-to-end. After deleting the Question No. 54 and evaluating the answers of the candidates on 95 questions, the cut-off marks for unreserved category comes to 180; unreserved (female) category 156 and



Backward Class category 148. With this projected cut-off marks, after removal of Question No. 54 from the realm of consideration, three persons from U.R. category, five persons from the E.B.C. and three persons from B.C. categories, who had not hitherto passed the Preliminary Examination become eligible to write the Mains Examination. This includes the case of the petitioner, who has, as noted above, already appeared provisionally in the Mains Examination under the orders of the Hon'ble Supreme Court.

29. What is now disquieting to note is that with this such projected difference in the cut-off marks for various categories, three (3) candidates from unreserved category and one (1) from B.C. category fall out of the line of cut-off marks, all of whom have already written the Mains Examination.

30. A tabulation chart has been provided by the respondent/High Court. Let it be kept on record.



31. On perusal of the aforesaid tabulation chart with the revised marks after deleting question no. 54 and consequently the revised cut-off marks in each category, we find that all such four (4) candidates have only one (1) mark less than the cut-off marks for the respective category.

32. Considering such low margin of these four (4) candidates who have already appeared in the Mains Examination, we do not wish to disturb their candidature.

33. Thus, for all practical purposes, if this exercise is taken to a logical conclusion, ten (10) persons (11 - 1) are required to be given an opportunity of appearing in the Mains Examination. As noted above, such exercise has been directed and carried out by the respondent/High Court is on our *prima facie* finding that the model answer key to Question No. 54 is incorrect and it be deleted from the purview of evaluation.



34. Since the objection with respect to Question No. 54 had crossed the consideration of the Expert Committee, we deem it appropriate to refer the matter to the then existing Expert Committee for a reconsideration of Question No. 54 and the model key answer to the question.

35. We also request the Appointment and Selection Committee of the High Court to sit in-tandem with the Expert Committee for the aforesaid purpose.

36. If it is found by the Expert Committee that the model answer key to Question No. 54 is incorrect and the correct answer is American Constitution, which is option-(B), then we direct for a fresh Mains Examinations for ten (10) candidates to be taken at the earliest, whose result be published simultaneously with the Mains Examination, which was held on 24.07.2022.

37. We have given such directions, keeping



in mind that no unfairness has been alleged in the conduct of the examination and that the objections to other questions were promptly evaluated and necessary corrective measures were carried out by deleting the questions from consideration or changing the model key answer or moderating the correct answer for a fairer result.

38. We have, in the larger interest of justice, thought of not disturbing the candidature of four (4) persons of different categories, who have, on fresh cut-off marks would stand excluded on the basis of aforesaid exercise by falling short of the same by one (1) mark only.

39. We have also taken note of the fact that for a long time after such objections /representations were considered by the respondent / High Court, no further complaints/ objections were raised till the conclusion of the Mains Examination on 24.07.2022.



40. With such an exercise, thus, both the P.T. and the Mains Examination would stand salvaged, which otherwise have been conducted without any flaw.

41. In case of holding a separate examination for the ten (10) candidates, necessary formalities regarding communication to the concerned candidates, fixing of reasonable time and preparation of same level and standard of question papers shall be followed, so that the end result does not appear to be anomalous on any score whatsoever.

42. With the aforesaid observations /directions, the writ petition stands disposed off.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

Praveen-II/Sunil

AFR/NAFR	AFR
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