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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgement reserved on: 22.12.2021
% Judgement pronounced on: 03.03.2022

+ **W.P (C) 14014/2021 & CM APPL. 44215/2021**

NIJESH KUMAR

.....Petitioner

Through: Mr. D.N. Goburdhun, Sr. Adv.
with Mr. Hariharan and Ms. Jagriti,
Adv. alongwith petitioner in
person.

versus

REGISTRAR GENERAL OF THE HIGH COURT OF DELHI

.....Respondent

Through: Ms. Padmapriya, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

TALWANT SINGH, J.:

1. The petitioner has filed the present writ petition for issuing a writ of mandamus, directing the respondent i.e., the Registrar, Delhi High Court to re-evaluate the answer sheets of written test for the post of Administrative Officer (Judicial)/Court Master Examination, 2021 and also to quash the Memorandum No. 172/EC-4/Exams/DHC dated 11.11.2021.



2. The case of the petitioner is that, he is working as Senior Judicial Assistant and, on completion of the required number of years and after fulfilling the requisite criteria, he falls within the consideration zone for the post of Administrative Officer (Judicial)/Court Master through Departmental Examination.

3. Online applications were called for filling up 18 vacancies to the post of Administrative Officer (Judicial)/Court Master *vide* vacancy notice dated 22.02.2021 and he applied for the said post, along with other court officials qualified to apply. The examination for the subject post of Administrative Officers (Judicial)/Court Master under 65% test quota consists of Written Paper-I and Written Paper-II, and the candidates who would secure 50% marks in each paper, i.e., Written Paper-I and Written Paper-II would be called for interview. The final list/merit list would be prepared by adding the marks secured in both the papers, as well as in the interview, and the candidates would be recommended to be appointed for the post of Administrative Officers (Judicial)/Court Master.

4. Both the written papers were of 100 marks each. The syllabus for Written Paper-I was consisting of High Court Rules and Orders Vol. V, Delhi High Court (Original Side) Rules, 2018, Delhi High Court (Right to information) Rules, 2006; Notification/Practice Directions issued in respect thereof; and Right to Information Act, 2005 and Practice Directions and/or Rules issued by the Delhi High Court on different subjects including Electronic Filing (e-filing), Issuance of Summons/Notices through Speed Post; Public Interest Litigation Rules, 2010, and for Written Paper-II, the syllabus was Indian Limitation Act, 1963, Court



Fees Act, 1870, Civil Procedure Code Part VII and Part VIII, Code of Criminal Procedure (certain sections), and Constitution of India (certain parts), etc.

5. The petitioner appeared for the written examination of both the papers and obtained the following marks:

Paper I- 50.50

Paper II- 66.50

6. The petitioner was called for interview on 07.08.2021. The final result was declared on 12.08.2021. The petitioner was allotted 25 marks in the interview, and his aggregate total became 142 marks.

7. After the final result, the petitioner moved a representation dated 23.08.2021 seeking re-evaluation of certain questions in the written test for Paper-I and Paper-II on the ground that, allocation of marks for certain answers by the Examiner was not correct and certain questions were not in accordance with the specific Rules provided under the respective Rules and Orders or question itself was wrong. Moreover, in one case, the Answer Key did not pertain to the question so asked.

8. The objection was raised by the petitioner in respect of 15 questions and he had sought enhancement of marks in the said representation. The petitioner received Memorandum No. 172/EC-4/Exams/DHC dated 11.11.2021, whereby he was informed that his representation was considered and rejected by the Competent Authority and several reasons were given for rejection of the same.



9. In brief, the reasons given for the rejection of the representation are that, the petitioner had got the answer sheets soon after the declaration of results of written test and much before the interview but the petitioner did not challenge the evaluation; once he was not recommended for appointment, he filed the representation; the petitioner was satisfied with his marks so did not challenge the same at appropriate stage; there is no provision of re-checking/re-evaluation of answer sheets in the Delhi High Court (Appointment and Conditions of Service) Rules 1972; reliance placed by the petitioner on the cases of other court officials was of no help as their cases are distinguishable on facts; the grant of zero marks in respect of answers of the questions of which re-valuation has been sought is justified on the basis of the Answer Key provided by the Examiner; all the 18 vacancies of AOJ/ Court Master have already been filled and since the petitioner could not secure position in the merit list of 18 recommended candidates, he has filed the representation without any rhyme and reason.

10. The petitioner also obtained copy of the Answer Key, as was supplied to his co-applicant, under RTI. The same has also been placed on record. The petitioner has challenged the said rejection order dated 11.11.2021 by filing the present writ petition on the grounds that, the impugned Memorandum dated 11.11.2021 deserves to be quashed for being unreasonable, arbitrary, capricious, irrational and purely based on technicalities; it is a non-reasoned order; the authorities failed to appreciate that no challenge could have been raised by the petitioner before interview as it would have been premature; since the petitioner had qualified the written examinations, there was no occasion to challenge the



same; if the petitioner had approached the authorities before completion of entire examination, it would have amounted to interference in the examination schedule; there is no bar for submitting a representation for re-evaluation; answer sheets of the officers named by petitioner were re-evaluated and they were appointed to the respective posts; although the respondents have taken the stand that re-evaluation is not allowed, they have re-evaluated the answer sheets of the petitioner because the petitioner has moved the representation soon after the declaration of the final results.

11. The petitioner, in paragraph No. 11 of the writ petition has given the question- wise details in respect of which he had raised the objections. In all, there are 15 questions or answers in respect of which the petitioner has raised the objections. In prayer, the petitioner has prayed for the writ or direction to re-evaluate the answer sheets of the written test of the petitioner and to quash the impugned Memorandum dated 11.11.2021.

12. This matter was heard on 22.12.2021. The learned Advocate for the respondent/Registrar General-Delhi High Court was also present along with court officials. We have heard Mr D.N Goburdhun, learned Senior Advocate for the petitioner and Ms. Padmapriya, learned Advocate for the respondent in detail.

13. The learned counsel for respondent has also filed a detailed comparative chart showing the disputed questions, the answers given by the present petitioner, the marks of obtained by him, answers as per the answer key provided by the Examiner and the remarks. Similarly, the petitioner has also filed a chronology of questions for enhancement of his marks.



14. Although, at the time of commencement of the arguments Mr. Goburdhun had referred to 15 questions, however during detailed arguments he had confined himself only to the following three questions and the answers thereto. We have taken the details of these questions from the chronology of questions filed on behalf of the petitioner. The said details are reproduced here under:

- “1. What are the six powers delegated to the Registrar for disposal of certain judicial matters?
2. Mention whether under any circumstances the rights conferred by Part-III are applicable to non-citizens?
3. Under what circumstances a petition under Article 226 of the Constitution of India relation to habeas Corpus and preventive detention shall be placed before a Single Judge as provided in Rule 1(xx)Ch-3, Part-B, Vol-5?”

15. The details of these questions have been given in the comparative chart at point No. 2, 3 and 7. The same are also reproduced here under:

Sl. No.	Paper(s)	Questions asked In Paper-I & Paper-II	Answers given By the Candidate/ Representationist	Marks Obtained By the applicant	Answers (as per the Answer Key) provided by the Examiner	Remarks
2	Paper-I	Ques. 2 (i) Write any six powers delegated to the Registrar for disposal of	This question relation to Chapter III, Part (C) of Volume V. Six powers delegated to Registrar for disposal of certain	2 (Out of 3 mark)	The powers of the Registrar are given in (Ch-3, Part-C R-1 Vol.5 Pg. 1299)	A perusal of the answer sheet of the representationist would show that the Examiner has marked powers



		certain judicial matters.	Judicial matters are as under:- (i) To issue summons to the defendant/Respondent, to examine the serving offices under Order V Rule 19, to issue publication of summons under Order V Rule 20, and re-issue summon under Order V of Rule 9 & 9A and under order V Rule 30 of the Code. (ii) To appoint next friend and guardian of a minor plaintiff or defendant under XXXII of the Code. (iii) To implead the legal heirs of the deceased plaintiff and Defendant under Order XXII of the Code. (iv) To sign the complaint under Section 340(3). (v) To issue summons for proclamation of sale. (vi) To sign decree and transmit the same for execution.			written by the representation ist at point Nos. (iv) and (vi) as incorrect, as the same do not fall in Chapter-3, Part-C, Rule-1, Volume-V. Thus, deduction of one mark appears to be justified.
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3	Paper-II	Ques. 13 (iii) Mention whether under any circumstances the rights guaranteed under Part-III are applicable to non-citizens?	The right guaranteed under Article 22 is applicable to non-citizen. Under Article 22 the right against illegal detention and arrest have been provided in the Constitution.	½ (Out of 2 mark)	Article 14. Yes. Subject to reasonable restrictions as may be imposed in the interest of the security of the State or other important considerations. [Chairman Railway Board vs. Chandrima Das, AIR2000 SC 988; (2000) 2 SCC 465]	A conjoint reading of the answer given by the representationist and the model answer given by the Examiner would show that the answer given by the representationist is not up to the mark. Thus, deduction of one and a half marks appears to be justified.
7	Paper-I	Ques. 1 (iii) Under what circumstances a petition under Article 226 of the Constitution of India relating to habeas corpus and preventive detention shall be placed before a	This question relates to Chapter-III, Part-B Rule 1(xx). During vacations the Single Judge in charge of the vacation roster can hear a petition of Habeas Corpus and preventive detention. Provided that during the vacation the Hon'ble Judge holding vacation court has powers of both the civil and	0 (Out of 2 mark)	As per the Explanation to Rule-1(xx), Chapter-3, Part-B, Volume-V, a petition relating to habeas corpus or preventive detention has to be placed before a Division Bench and	A conjoint reading of the answer given by the representationist and the model answer given by the Examiner would show that the answer given by the representationist is not correct. Thus,



		Single Judge as provided in Rule 1 (xx) Ch-3 Part-B Vol.5?	criminal jurisdiction exercised by the Judges of High Court.		not before a Single Bench. (Explanation to Rule 1(xx) Ch-3, Part-B, Vol.5 Pg. 1297 also Ch-4 Part-F(a), R-3, Vol.5 Pg. 1307)	award of zero mark appears to be justified.
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16. The first question under challenge is regarding the six powers delegated to the Registrar for disposal of certain judicial matters. The answer given by the petitioner is as under:

“This question relation to Chapter of Volume V, I, Part (C)

Six powers delegated to Registrar for disposal of certain Judicial matters are asunder:

- (i) To issue summons to the defendant/Respondent, to examine the serving offices under Order V Rule 19, to issue publication of summons under Order V Rule 20, and re-issue summon under Order V of Rule 9 & 9A and underorder V Rule 30 of the Code.
- (ii) To appoint next friend and guardian of a minor plaintiff or defendant under XXXII of the Code.
- (iii) To implead the legal heirs of the deceased plaintiff and Defendant under Order XXII of the Code.
- (iv) To sign the complaint under Section 340(3).
- (v) To issue summons for proclamation of sale.
- (vi) To sign decree and transmit the same for execution.”



17. The Answer Key provided by the Examiner mentions that Chapter 3, Part C, R-1, Volume 5, Page No. 1299 does not refer to the powers mentioned by the petitioner at point No. (iv) and (vi).

18. In our view, the Register has power to sign the complaints under Section 340 (3) of CrPC and as such, the answer given by the petitioner to the said extent in point (iv), is correct. The reliance placed by the petitioner on Rule 2, Part (C), which deals with the powers under CrPC to sign complaints is also one of the powers given to the Registrar and as such the petitioner is rightly entitled to half mark, which was wrongly deducted.

19. The learned Senior Advocate for the petitioner has not insisted on granting any mark for power mentioned at serial No. (vi), i.e., to sign decree and transmit the same for execution as he has conceded that the said power is not available with the Registrar.

20. As far as the second question mentioned above, regarding the circumstances under which rights conferred by Part 3 of the Constitution are also applicable to the non-citizens, the answer given by the present petitioner is as under:

“The right guaranteed under Article 22 is applicable to non-citizen.

Under Article 22 the right against illegal detention and arrest have been provided in the Constitution.

A non-citizen if illegally detained or arrested without compliance by any of the statutory clause of Article 22 such, arrest without ground, non-production within 24 before M.M., not providing lawyer/advocate, no



serving grounds of detention or detention beyond a period of 3 months can invoke the provision under Article 22 of the Constitution.”

21. In this reply, the petitioner has relied upon Article 22 of the Constitution but as per the Examiner, the rights available to non-citizens are under Article 14, subject to reasonable restrictions. The view of the respondent is that the answer given is not up to the mark, so deduction of one and a half marks appears to be justified. However, we are of the view that the said rights are available to non-citizens under Article 22 as well as under Article 14. Hence, instead of granting half a mark, the petitioner ought to have been granted full one mark. So, the petitioner earns half a mark more here.

22. The third question relates to the circumstance under which the petition under Article 226 of the Constitution of India, relating to habeas corpus and preventive detention, shall be placed before a Single Judge as provided in Rule 1(xx), Chapter 3, Part B, Volume 5. The answer given by the present petitioner is as under:

“This question relates to Chapter-III, Part-B Rule 1(xx).

During vacations the Single Judge in charge of the vacation roster can hear a petition of Habeas Corpus and preventive detention.

Provided that during the vacation the Hon'ble Judge holding vacation court has powers of both the civil and criminal jurisdiction exercised by the Judges of High Court.”

23. The marks obtained by him are zero. The Answer Key provided by the Examiner states that the said petition can only be placed before a Division Bench and not before a Single Bench as per the explanation to Rule 1 (xx), Chapter 3,



Part B, Volume 5, Page 1297 and also Chapter 4, Part F(a), R-3, Volume 5, Page 1307 and in remarks, it has been submitted that the answer given by the petitioner is not correct, so, award of zero mark appears to be justified.

24. After hearing both the sides, we are of the view that the question as framed, itself is not correct as this question has not been properly worded. There cannot be any circumstances under which a petition of Habeas Corpus and preventive detention can be placed before a Single Judge. The answer given by the petitioner in this case is vague, as he refers to vacation roster and hearing of petitions of habeas corpus and preventive detention. In our view, this approach is not correct and the petition under Article 226 of the Constitution of India is to be placed only before a Division Bench and not before a Single Bench, whether in regular course or during vacations.

25. If this question was to be asked, it ought to have started as 'Whether a petition under Article 226' so that the Examinee would know that he has to answer this question directly in 'yes' or 'no' form and thereafter explain the circumstances. The question as framed, prompts the Examinee to detail the circumstances under which the Habeas Corpus petition has to be placed before the Single Judge, without giving an option to the Examinee to state that no, the same cannot be placed before the Single Judge.

26. In our view, this question ought not have been there in the present form. As such the 2 marks allotted for this question ought to be taken out from the total marks and the calculation is to be done for the marks obtained by the petitioner out of 98 marks and not 100 marks for Paper-I.



27. The stand of the petitioner is that, he has obtained 142 marks. If we add half mark for the first question and half mark for the second question, his total becomes 143 marks. For question No. 3, two marks have to be taken out from the total marks. The last appointed candidate had obtained 145 marks and on query, we were informed that the said candidate had not attempted question No. 3 above regarding the Habeas Corpus and preventive detention petition. So, the petitioner cannot claim to have obtained more marks than the marks obtained by the last candidate as marks of both of them have to be proportionately reviewed.

28. Paper-I was of 100 marks, which is now reduced to 98 marks for the sake of calculation. The total marks obtained by the petitioner (after giving him extra 1 mark) comes down to 141.57 marks and the total marks obtained by the last candidate will be reduced to 143.55. Even then, the petitioner does not qualify to be there in the merit list.

29. Although, the learned Senior Advocate for the petitioner had initially confined his arguments only to these three questions, but later on he tried to expand the scope of his arguments by including the other questions, which does not find favour with us. It is pertinent to note here that there is no provision for re-evaluation under the Delhi High Court (Appointment and Conditions of Service) Rules 1972 and we have done this exercise of re-evaluating these three questions only for the purpose of satisfying our conscience, that no deserving candidate was left out and the selection process as carried out was fair and impartial.



30. Learned senior counsel for the petitioner has also relied upon the judgement dated 30.08.2017 and 04.12.2017 in W.P.(C) 4260/2017 titled '**Durgesh Nandan v. High Court of Delhi**' and batch of connected writ petitions. In these batch petitions, Hon'ble the Chief Justice of Delhi High Court had constituted a Special Committee to examine issues regarding re-evaluation. In the present case, no such committee has been constituted by the respondent, hence the ratio of this judgment is not applicable to the facts of this case.

31. In the case of '**Ran Vijay Singh & Ors v. State of U.P & Ors (2018) 2 SCC 357**', the principles regarding scope of judicial review in respect of re-evaluation has been laid down by Hon'ble Supreme Court as under:

"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."



31. Clearly, the relevant Rules do not permit re-evaluation but we went to the extent of re-evaluating the 3 questions and answers highlighted by the learned counsel for petitioner for our satisfaction, and even if we agree with the submissions of the learned senior counsel for petitioner, the net result, as discussed in detail above, is that the petitioner does not find place in the selected list of candidates.

32. In view of the above, we do not find any merit in the petition. Hence, the same is hereby dismissed. Pending applications are also closed.

TALWANT SINGH, J

RAJIV SHAKDHER, J

MARCH 03, 2022/pa

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