



W.P.No.33243 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2023

C O R A M

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.No.33243 of 2023
and W.M.P.No.32964 of 2023

V.Anusha

... Petitioner

-VS-

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

2. The Registrar Recruitment,
High Court of Madras,
Chennai-600 104.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for a Mandamus, directing the respondents to evaluate the Questions 6, 13 and 26 of Paper II and award marks to the petitioner in Registration No.120231414 and further permit the petitioner to appear for the Main Examination to be held on 02.12.2023 and 03.12.2023 for the post of District Judge (Entry Level) in the Tamil Nadu State Judicial Service.

For Petitioner : M/s.V.Anusha
Party-in-Person



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ORDER
(By S.VAIDYANATHAN,J.)

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This Writ Petition has been filed for a direction to the respondents to evaluate the Question Nos. 6, 13 and 26 of Paper II and award marks to the petitioner in Registration No.120231414 and to further permit the petitioner to appear for the Main Examination to be held on 02.12.2023 and 03.12.2023 to the post of District Judge (Entry Level) in the Tamil Nadu State Judicial Service.

2. The case of the petitioner is that she applied for the post of Tamil Nadu District Judge (Entry Level) pursuant to the Notification No.1 of 2023 dated 01.07.2023 and had participated in the preliminary examination conducted on 30.09.2023. In the examination, she was given booklet “C” series. It is her further case that upon verification of answer keys uploaded in the website, it was found that some of the key answers are erroneous. Though she had written correct answers in respect of Question Nos.6, 13 and 26, there was an error apparent on the proposed key answers published by the second respondent, which had resulted in the petitioner sending a representation to the respondents on 09.11.2023. It is also her case that she



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had overall scored 79.75 out of 80 and lost paper-II by two marks. Had the answers to the above questions been in accordance with the relevant provisions of the act, she would have been qualified for the next stage. Though her objection in respect of Paper-I was considered, the objection raised in Paper-I was not considered, which she had come to know after declaration of results. Aggrieved by the same, the petitioner has come forward with this writ petition for a suitable direction.

3. At the first blush, we feel it appropriate to extract Question Nos.6, 13 and 26 of Paper II for the sake of convenience as under:

“Q.6 – Theft is committed when -

- (A) The moment one takes into possession another's Property
- (B) There is moving of property out of possession of another without his consent
- (C) There is dishonest taking of any movable property out of the possession of another
- (D) None of the above”

“Q.13 – Which of the following proposition is correct?

- (A) Nothing is an offence which is done by a Judge when acting judicially
- (B) Nothing is an offence which is done by any person who is justified by law
- (C) Nothing is an offence which is done by any person by accident in doing a lawful act



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(D) All the above”

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“Q.26 – the limitation for disposal of a case under the protection of women from Domestic Violence Act starts from date of -

- (A) Domestic Violence
- (B) Receipt of application under Section 12
- (C) Commencement of trial
- (D) None of the above.”

4. According to the petitioner, her assessment of the answer to

Question No.6 is both 'B' & 'C' and the most appropriate answer is option 'C', viz., (There is dishonest taking of any movable property out of the possession of another) and therefore, deprivation of one mark stating that Option 'B' is the correct answer led her impossible to move to the next stage.

5. A reading of Section 378 IPC and its illustrations given thereunder unfolds that option 'C' does not refer to any consent or intention, whereas in the option 'B', it has been mentioned that (There is moving of property out of possession of another without his consent), which would amount to 'Theft' in terms of Section 378 IPC and the option 'C' may fall in the case of misappropriation, cheating, etc., but definitely not under the definition of



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Section 378 IPC. Therefore, option 'B' is the correct answer to Question No.6.

6. Insofar as Question No.13 is concerned, the petitioner has stated that option 'D' (all the above) is the correct answer and she has also referred to Sections 77, 79 and 80 of IPC in support of her submission. Sections 77, 79 and 80 of IPC are extracted hereunder:

“77. Act of Judge when acting judicially - Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

79. Act done by a person justified or by mistake of fact believing himself justified, by law – Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it.

80. Accident in doing a lawful act – Nothing is an offence which is done by accident or misfortune and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.”

7. Though the argument of the petitioner appears to be attractive, before all else, when seen in depth, certainly option 'D' (all the above) is not the correct answer, for the reason that a tricky question has been framed to testify the extensive knowledge of the candidates to answer as to whether it



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is an offence, which a Judge has committed while acting judicially. If an offence is committed in the course of judicial action, it cannot be construed as an offence in the light of the provisions of Section 77 IPC and therefore, option 'A' (Nothing is an offence which is done by a Judge when acting judicially) is the correct answer.

8. The next contention of the petitioner is that though the correct answer to the Question No.26 is 'B', it has been wrongly stated in the key answer that 'C' is the best choice for answer, which, according to her, is contrary to the provisions of Section 12(5) of the Domestic Violence Act that contemplates that the limitation period is 60 days from the date of its first hearing and the first hearing is within three days from the receipt of application under Section 12 of the Act. Because of the wrong / incongruous perception arrived at by the second respondent, she has lost the opportunity of sailing smoothly so as to attend the final examination.

9. As regards Question No.26, we have elaborately dealt this issue in W.P.No.33166 of 2023 dated 24.01.2023, holding that as per Section 13 of



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the DV Act, notice will have to be served on the parties concerned and a date will have to be fixed for the parties to appear and only thereafter, the trial commences. Hence, it can be said that the limitation for disposal of a case under the DV Act commences only from the date of commencement of trial in terms of Section 12(4) and (5) of the DV Act and accordingly, option “C” is the correct answer for Question No.26.

10. For all the above reasons, we are of the view that the relief sought for by the petitioner has no legs to stand and accordingly, the Writ Petition fails. In fine, this Writ Petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

(S.V.N.J.,) (K.R.S,J.,)
05.12.2023

Speaking order/Non-speaking order

Index: Yes / No

Internet: Yes / No

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Note: Issue order copy on 07.12.2023

S.VAIDYANATHAN,J.
and
K.RAJASEKAR,J.



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