



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 04.10.2023

+ **W.P.(C) 12613/2023 & CM APPL. 49773/2023**

ABHISHEK SINGH

..... Petitioner

Versus

**HONBLE HIGH COURT OF DELHI
THROUGH ITS REGISTRAR GENERAL**

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Akbar Siddique, Mr. Animesh Mishra,
Mr. Parwez Akhtar & Mr. Abhishek Singh,
Advocates.

For the Respondent : Ms. Padmapriya & Mr. Karan Bhootra,
Advocates.

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HON'BLE MR JUSTICE VIBHU BAKHRU

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner, pursuant to a notice dated 14.07.2023, inviting applications for filling up sixteen vacancies (three in the General Category and thirteen in Reserved Categories) by way of direct recruitment to the Delhi Higher Judicial Service (hereafter '**DHJS**'), had applied for the same. The applicants were required to appear for the Delhi Higher Judicial Service Examination–2023 (hereafter '**DHJS Examination–2023**').



2. DHJS Examination – 2023 entails a three stage selection process. The first being the Preliminary Examination, which is a multiple-choice objective type examination. The examinees are awarded one [01] mark for the correct answer and one fourth [0.25] negative marks for an incorrect answer.
3. The examinees were required to secure a minimum of 50% marks for qualifying the said examination. Further, a maximum of twenty times of the vacancies would be admitted to the DHJS Mains (Written) Examination, which is the second stage of the selection process.
4. The petitioner appeared for the Preliminary DHJS Examination-2023 held on 20.08.2023. He was provided with Test Booklet Series ‘C’. In all, there were 150 objective type multiple choice questions.
5. After the said examination was conducted, the respondent (hereafter ‘**the DHC**’) published the Model Answer Keys and invited objections. According to the petitioner, some of the questions were *ex facie* erroneous and he submitted his objections to the same in the manner as stipulated.
6. On 16.09.2023, the DHC published the revised Model Answer Keys amending the answers to three questions. Further, two questions were deleted. It was further declared that no marks would be awarded for the deleted questions and that the candidates would be marked out of a maximum score of 148 marks.
7. Since the number of vacancies in the General Category were only three, sixty candidates (being twenty times the number of vacancies)



were admitted to the DHJS Mains Examination (Written). The cut-off mark of the last candidate, in the order of merit was 78.5 marks.

8. The petitioner has filed the present petition impugning the Model Answer Keys in respect of seven questions (questions nos. 21, 49, 62, 74, 87, 89 and 128) of the Test Booklet Series 'C'. According to him, some of the questions are vague and the model answers are erroneous.

9. The present petition was taken up for hearing on 27.09.2023 and the petitioner confined this petition to assailing question no.128 of the Test Booklet Series 'C'. According to the petitioner the said question is vague and incapable of an answer.

10. Thus, the only question to be addressed is whether question no. 128 of the Test Booklet Series 'C' is demonstrably flawed and incapable of an appropriate answer.

11. It is, at this stage, relevant to refer to question no.128 of the Test Booklet Series 'C' and the model answer to the said question. The same are set out below:

“128. Within how many days of the service of the notice by the Commissioner, an employer is required to submit a statement giving the circumstances attending the death of the employee?

(1) 15 (2) 30

(3) 45 (4) 69

** ** * ** *

The Answer as per model answer key of the respondent is – Option (2)”



12. Mr. Akbar Siddique, the learned counsel appearing for the petitioner contended that the said question is incomplete and ambiguous and therefore was liable to be deleted. He submitted that the question did not mention any statute, which rendered the question incomplete and ambiguous. He submitted that the examinees were completely unaware as to the reference of the statute and therefore, the question is incapable of eliciting an answer.

13. He referred to the decision of this Court in *Salil Maheshwari v. High Court of Delhi & Anr.*¹ and on the strength of the said decision submitted that in cases where an answer is *ex facie* incorrect, the Court is required to intervene.

Reasons and Conclusion

14. We are unable to accept that the question is incapable of eliciting an answer. It is correct that the question does not mention any enactment but it has sufficient clues so as to enable an examinee to respond to the question. As is apparent, the question relates to an obligation of an employer to submit a statement giving the circumstances regarding the death of an employee. The question also indicates that the said statement is to be made to the Commissioner pursuant to a notice issued by the said authority. An examinee well versed with the labour laws would be aware of the provisions of Section 10A of the Employees Compensation Act, 1923. Sub-section (1) of Section 10A of said Act reads as under:

¹ 2014 SCC OnLine Del 4563



“10A. Power to require from employers statements regarding fatal accidents.—(1) Where a Commissioner receives information from any source that a [employee] has died as a result of an accident arising out of and in the course of his employment, he may send by registered post a notice to the workman’s employer requiring him to submit, within thirty days of the service of the notice, a statement, in the prescribed form, giving the circumstances attending the death of the [employee], and indicating whether, in the opinion of the employer, he is or is not liable to deposit compensation on account of the death.”

15. It is apparent from the above that the subject question (question no.128 of the Test Booklet Series ‘C’) is fashioned on Section 10A of the Employees Compensation Act, 1923.

16. Undisputedly, the said question is not an easy one. Unless the examinee is aware of the provisions of the Employees Compensation Act, 1923, it would be difficult for the examinee to answer the said question. However, an examinee who is well versed with the said enactment may not find it difficult to respond to the question bearing in mind the provisions of Section 10A of the Employees Compensation Act, 1923.

17. The fundamental premise that a question must expressly refer to the statute to which it alludes, is erroneous. There is no requirement that a question must refer to the statute on which it is premised. It is sufficient that the question contains clues so as to enable an examinee to select the correct option. In the present case, the service of a notice by a Commissioner to an employer requiring him to submit a statement to give circumstances attending the death of an employee is contemplated only under the Employees Compensation Act, 1923. The



petitioner is unable to point out any other enactment which requires service of such a notice requiring an employer to submit a statement explaining the circumstances attending the death of an employee.

18. It is settled law that an examining authority has sufficient discretion to frame the questions for evaluating the knowledge of an examinee. The scope of judicial review in matters of examination is very narrow. In **Kanpur University through Vice-Chancellor & Ors. v. Samir Gupta & Ors.**², the Supreme Court had made observations to the effect that the court would intervene only if the “*matter is beyond the realm of doubt*”. In **Sumit Kumar v. High Court of Delhi and Anr.**³, a Coordinate Bench of this Court had held that it would be permissible to exercise power of judicial review only when the court is “*convinced that the answer key is ‘demonstrably wrong’ in the opinion of a reasonable body of persons well-versed with the subject*”.

19. In **Kishore Kumar v. High Court of Delhi**⁴, a Coordinate Bench of this Court had held that unless *ex facie* arbitrariness is established, the court would refrain from interfering with the decision of an examination body.

20. In the present case, the petitioner had full opportunity to object to the questions and his objections were considered. There is no allegation that the persons examining the objections were not well

² (1983) 4 SCC 309

³ (2016) SCC OnLine Del 2818

⁴ Neutral Citation No.2018: DHC:6954-DB



versed with the subject or that their decision was motivated by any malice or *mala fides*.

21. In similar circumstances, this Court in ***Vivek Kumar Yadav v. Registrar General, Delhi High Court***⁵ had examined the scope of judicial review and observed that there is always a possibility that questions relating to laws may be debated, however, if the examining body is sufficiently qualified and has examined the same, no interference would be warranted unless *ex facie* arbitrariness is established.

22. In the present case, we are unable to accept that there is any ‘demonstrable arbitrariness’ in including the question under challenge for examining the candidates.

23. We are also informed that a number of candidates have correctly responded to the said question and any interference by this Court would unfairly prejudice the said candidates.

24. The petition is unmerited and is accordingly dismissed. Pending application(s), if any, are also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

OCTOBER 4, 2023

‘gsr’

⁵ Neutral Citation No.2022:DHC:2169-DB