

07.03.2025
Court No.23
DL/Item No.-2
[Milan/PP]

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

WPA 4644 of 2025

Pratik Bhattacharyya

versus

The Hon'ble High Court at Calcutta

Mr. Aniruddha Chatterjee,
Ms. Gargi Goswami,
Mr. Sourav Guchhait

....for the Petitioner

Mr. Kallol Basu

....for the High Court Administration

The petitioner has appeared in the examination for direct recruitment to the cadre of District Judge (Entry Level) from members of the Bar in the West Bengal Judicial Service for the year 2024.

The petitioner says that in Paper V of the syllabus for the preliminary examination, the 6th item is Motor Vehicles Act without the year being specified therein. According to the petitioner, the question no.25 in the preliminary written examination is a wrong question. The said question is set out hereunder:-

“25) What is the amount of compensation payable on the death of any person arising out of use of a motor vehicle on the principle of “no fault”?-

There were four options as an answer thereto, which are as follows:-

“(A) Twenty five thousand rupees:

(B) Fifty thousand rupees;

- (C) Seventy five thousand rupees;
- (D) None of the above”.

The petitioner says that under the un-amended Motor Vehicles Act, 1988 sub-Section (2) of Section 140 provided for a fixed sum of Rs.50,000/- payable under sub-Section (1) of Section 140. The Sections 140 to 144 have been omitted by the Motor Vehicles Act (Amendment) 2019. According to the petitioner, the provision of un-amended Section 140 has been incorporated with some modification in Section 164. Under the amended provisions of Section 164 in case of death or grievous heart, etc., a compensation of sum of Rs.5 Lakhs has been provided in case of death and Rs.2.5 Lakhs and in case of grievous heart payable to the legal heirs/heiresses of the victim, as the case may be. The Section 140 under the un-amended Act enumerated liability to pay compensation in certain cases on principle of “no fault” under Section 140 (2) Rs.50,000/- was in case of death while Rs.25,000/- was on account of permanent disability of any person.

It is also the case of the petitioner that “no fault” as used in question no.25, indicates towards Section 140 of the un-amended Act, which is no more in existence on having been deleted by the 2019 amendment. As Section 164 refers to death or grievous heart, etc. the “no fault” Clause will relate to the said Section wherein Rs.50,000/- is no more the stipulated

amount. The petitioner refers to the provisional Answer-Key dated 24th December, 2024, uploaded in website. The petitioner says that in the provisional Answer-Key, the answer to question no.25 was “B”, which is Rs.50,000/-. The petitioner raised an objection in writing regarding the correctness of the question nos. 18, 24 & 25 being outside the prescribed syllabus. The protest letter is at page 29 of the writ petition being ‘Annexure P-4’ thereof.

It is the further case of the petitioner that in the revised Answer-Key dated 27th March, 2023, the answer to question no.25 has been provided as “D”, which is “None of the above”.

The petitioner also refers to the final answer – Key and in particular the note after the box providing the answers and submits that two marks will be awarded uniformly to all candidates whether attempted or not against the asterisk. It also provides for hash, under that option “D” is the correct answer in respect of question no.25. The petitioner says that he has 24 marks in the written examination wherein the cut-off marks is 25 marks. The petitioner ought to have been given two marks as per the note against the asterisk in final answer-Key. Question no.25 is outside the syllabus. On such marks being awarded, the petitioner would have qualified for the main examination.

The petitioner, therefor, submits that he should be two given two marks against the question no.25 and should further be allowed to participate in the main examination, which is scheduled to commence on and from 11th March, 2025. The petitioner also says that due to age bar this will be the last attempt for the petitioner.

On behalf of the respondent, it is submitted that neither the question no.25 was an erroneous question nor was it tainted with any ambiguity. Assuming without admitting, for the sake of argument it is taken note of that Section 140 has been deleted from the Motor Vehicles Act, 1988 by the 2019 Amendment, then also the answer is contained in “D” – “None of the above” is the correct answer. A candidate, even if, had found that the amount mentioned in question no.25 is incorrect then also he or she could have answered as “None of the above” – “D”.

It is further submitted by the respondent that a candidate who is intending to join at the District Judge (Entry Level), is expected to be clear in his or her thought process and as such any such candidate with ordinary prudence would have answered the question, since the correct answer was provided in option “D”.

It is also submitted by the respondent that the entire list has been prepared and published on 13th February, 2025 and the writ petition has been filed only

on 25th February, 2025. The examination for the mains is “scheduled to take place” on or before 11th March, 2025. The list of the selected candidates has been published in the website with due approval and, the admit cards to the candidates those who have qualified in the preliminary examination, have also been dispatched. The petitioner, therefor, has approached the Court at a belated stage and as such should not be entertained. That apart and in any event, if two marks, as submitted by the petitioner, is granted to all the participants, there may be some of the candidates, who, on having obtained 24 like the petitioner or 23 marks, will qualify. Had the Selection Committee faced this situation earlier, then the cut-off marks could have been also differently set instead of 25 marks as presently fixed.

Responding to the submission made by the respondent, it is contended by the petitioner that none of the candidates, as per the marks displayed, one has obtained 23 marks (Serial No.48). Three persons apart from the petitioner has got 24 marks and as such only 5(five) candidates will be benefitted. It is also submitted by the petitioner that the preliminary examination was held on 22nd December, 2024 and the provisional answer key was published on 24th December, 2024. The petitioner lodged his protest on 30th December, 2024. The final answer key and the list of qualifying

candidates were published on 13th February, 2025. The petitioner, therefor, has approached this Court at the earliest.

After hearing the parties and considering the materials on record, I find that question no.25 is tainted with ambiguity. Firstly, the word “no fault” was therein Section 140 which subsequently stood deleted by the 2019 Amendment. This word “no fault”, however, did not find place in Section 164 of the Amended Act. The main thrust in question no.25 was the word “no fault”, which has been used in “quoted form” in question no.25.

Even if, we consider that the amount as indicated in Section 140, had stood modified in the amended Section 164 for which the sum of Rs.50,000/- as indicated in the answer “B” was no more in the statute and a candidate could have answered it by selecting answer “D”, then also the ambiguity is not taken away because the language used in Section 140 with the pivotal word “no fault” is no more present in Section 164.

The heading of Section 140 was “liability to pay compensation” in certain cases on the principle of “no fault” while the heading in Section 164 is payment of compensation in case of death or grievous hurt. Although, the word death is common in Section 140 as also in Section 164 but “permanent disablement” does

not find place in Section 164 where the word, as indicated hereinabove used, is “grievous heart”.

That apart and in any event, the Selection Committee was also not sure about the answer when the examination took place. In the provisional answer-Key, the answer to question no.25 was option “B”. The petitioner had officially lodged a complaint on 30th December, 2024. Subsequent to which, the answer has been changed in the final answer-Key as “D”.

It is, therefor, apparent that the framers of the question were not sure about the answer as a result whereof the option “B” – Rs.50,000/- was changed to option “D” – “None of the above”.

In the aforesaid facts and circumstances, I am inclined to give the benefit of doubt to the petitioner even though the correct answer that is option “D” – “None of the above” was there.

In view of discussion hereinabove, particularly when the framers of the question were not sure about the answer which resulted in change, the petitioner, therefor, should get two marks along with all participating candidates as has been provided in respect of question no.24 in the notification dated 13th February, 2025 providing the final answer key, irrespective of having attempted or not.

As the time is too short, since we are on 7th March, 2025 and the final examination is to commence

from 11th March, 2025, with the weekend intervening in between, the respondent is directed to prepare a fresh list of all the selected candidates by changing the marks obtained by them by adding 2 marks to their individual tally.

In this process, the petitioner's marks (serial no.43) will be 26. Similarly, other three candidates (serial nos.1, 24 & 30) who have obtained 24 marks will have in their individual tally 26 marks. Since the cut-off marks has been fixed at 25, apart from those who have qualified for the main examination as indicated in the selection list the petitioner along with 3 others (i.e. serial nos.1, 24, 30 and 43) will qualify. There is one candidate who has obtained 23 marks (serial no.48). She will also qualify on her tally coming to 25 marks with the addition of 2 marks thereto.

Although, only the petitioner has approached the Court but keeping in mind the transparency and the principle of law borrowed from the service jurisprudence that a benefit granted by the Court to a candidate should also be passed on to similarly placed candidates I extend the relief for others who also qualify due to increase of 2 marks to their individual tally even though they have not approached this Court.

The respondent shall make all necessary arrangements so that the candidates (serial nos.1, 24,

30, 43 and 48) who on being given 2 marks qualify for the main examination to sit for the said examination.

Nothing further remains to be adjudicated in this writ petition. The same is disposed of accordingly.

Since I have not called for any affidavit apart from the instructions placed by the respondent, the allegations contained in the writ petition are deemed to have not been admitted by the respondents.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Arindam Mukherjee, J.)