
(2012) 06 MP CK 0018
In the Madhya Pradesh High Court
Case No : Writ Petition No. 8783 of 2012

Ankit Khare

APPELLANT

Vs

The High Court of M.P.

RESPONDENT

Date of Decision : 27-06-2012

Acts Referred:

Contract Act, 1872 — Section 23, 32
Criminal Procedure Code, 1973 (CrPC) — Section 321
Dowry Prohibition Act, 1961 — Section 2
Madhya Pradesh Land Revenue Code, 1959 — Section 168, 168(1), 168(2)
Penal Code, 1860 (IPC) — Section 24, 300

Citation : (2012) ILR (MP) 2372

Hon'ble Judges : Sushil Harkauli, Acting C.J.; Alok Aradhe, J

Bench : Division Bench

Advocate : Anuwad Shrivastava, Vipin Yadav, M.A. Khan and Aditya Sanghi, for the Appellant; V.S. Shrotri with Vikram Johri, for the Respondent

Judgement

Sushil Harkauli, A.C.J.

1. Heard. In this batch of writ petitions since common questions of law and facts arise for consideration, they were heard analogously and are being decided by this common order.

2. The petitioners had appeared in the preliminary examination which was held for recruitment to the post of Civil Judge, Class II in Lower Judicial Service of the State. An advertisement was issued by which applications were invited for the post of Civil Judge, Class II. A preliminary examination was held on 6.5.2012, the result of which was declared on 12.5.2012. Three questions namely question No. 6, 61 and 95 were cancelled and consequently, revised result was declared in which marks of the aforesaid three questions were deducted from the total marks. The case of the petitioners is that model answers to question No. 5, 8, 15, 25, 67 and 89 are not correct. In the aforesaid factual background, the petitioners inter-alia have prayed for a direction to correct the answers to the aforesaid questions and to award them the marks in respect of the aforesaid

questions as well as to permit them to appear in the main examination.

3. Learned counsel for the petitioners while inviting the attention of this Court to question No. 5 submitted that correct answer to question No. 5 is option "C" whereas in the model answer the correct answer is mentioned as "D". Learned counsel for the petitioners while referring to the definition of Section 24 of the Indian Penal Code submitted that the word "dishonestly" as defined u/s 24 of the Indian Penal Code means that "whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly", whereas as per model answer, all the options are correct. It is further submitted that option "C" is correct answer to question No. 5. Similarly, while drawing the attention of this Court to question No. 8, it is submitted that intention to cause death is not essential u/s 300 of the I.P.C. in clause fourthly whereas in the model answer clause thirdly is mentioned as the correct answer. As per petitioners, the correct answer to the aforesaid question is "D" and not "C". Similarly, it is submitted that in respect of question No. 15, the correct answer is "D" whereas in the model answer, the correct answer is mentioned as "C". In respect of question No. 24, it has been urged that correct answer is option "D" whereas in the model answer, the same has been mentioned as option "B". It is also urged by the learned counsel for the petitioners that in respect of question No. 67, the correct answer is option "A" whereas in the model answer, the correct answer is described as option "C", which is incorrect. In respect of question No. 89, it has been submitted that all the options are correct whereas in the model answer, option "C" has been described to be the correct answer, which is incorrect. In support of their submissions, learned counsel for the petitioners have placed reliance on a Division Bench decision of Patna High Court in Civil Writ Jurisdiction No. 5300/11.

4. On the other hand, Shri V.S. Shroti, learned senior counsel for the respondents submitted that key answer is assumed to be correct unless the same is proved to be wrong and the same cannot be held to be wrong by an inferential process of reasoning or by process of rationalisation. It is further submitted that the question whether or not the key answer is correct has to be decided on the ground that key answer must be such as no reasonable body of men well versed in particular subject would regard as correct. It has been further submitted that there may be two correct answer in respect of a question. It is also urged that the key answers are correct and the petitioners have miserably failed to point out that key answers are either palpably incorrect or such that no reasonable body or men well versed in the particular subject would regard them as correct. Learned senior counsel for the respondents has also produced before us relevant extract from the book by William F. Ganong "Review of Medical Physiology", 22nd edition. In support of his submissions, learned senior counsel for the respondents has placed reliance on decisions of Supreme Court in Kanpur University and Others Vs. Samir Gupta and Others, , The Secretary, West Bengal Council of Higher Secondary Education Vs. Ayan Das and Others, and H.P. Public Service Commission Vs. Mukesh Thakur and Another,

5. We have considered the submissions made on both sides. Before proceeding further, it would be apposite to reproduce the questions No. 5, 8, 15, 24, 67 and 89 as under:-

Q.5 Word "Dishonestly" as defined in Section 24 of IPC means:

- (A) With the intention of causing wrongful gain to one person.
- (B) With the intention of causing wrongful loss to another person.
- (C) With the intention of causing wrongful gain to one person and with the intention of causing wrongful loss to another person.
- (D) All the above are true.

Q. 8 Intention of cause death is not essential under Sec. 300 (clause):

- (A) Firstly
- (B) Secondly
- (C) Thirdly
- (D) Fourthly

Q. 15 Any Public Prosecutor or Assistant Public Prosecutor in charge of a case may before the judgment is pronounced, withdraw from the prosecution of any person. For this he has to take consent of:

- (A) Central Government
- (B) State Govt.
- (C) Court
- (D) All of the three.

Q.24 Name of the vitamin that needs no support for its digestion, is:

- (A) Vitamin A
- (B) Vitamin B
- (C) Vitamin C
- (D) Vitamin D

Q.67 "A" contracts to pay "B" a sum of money when "B" marries "C". This is a type of:

- (A) Contingent Contract
- (B) Vested Contract
- (C) Illegal Contract
- (D) Voidable Contract

Q.89 Who among the following is not authorised under the code to transfer the land through lease:

- (A) Widow
- (B) Unmarried woman
- (C) Married woman
- (D) Cooperative Society

6. Before proceeding to deal with the issue involved in the instant writ petitions, at this stage, it would be apt to note relevant decisions of the Supreme Court. In *Kanpur University and others, supra*, the Supreme Court has held that key answer should be assumed to be correct unless it is proved to be wrong and it should not be held to be wrong by an inferential process of reasoning or by a process of rationalisation. It must be clearly demonstrated to be wrong. That is to say, it must be such as no reasonable body of men well versed in the particular subject would regard as correct. In *Subhash Chandra Verma and others, etc. Vs. State of Bihar and others, etc.*, it has been held that a question may have more than one correct answer and the candidate will have to select the one which is more correct out of the alternative answers. In *H.P. Public Service Commission, supra* it has been held that the Court cannot take upon itself the task of the statutory authorities.

7. Bearing in mind, the aforesaid well settled legal principles, we may now proceed to deal with the issue relating to correctness of the key answers. Section 24 of the I.P.C. defines the word "dishonestly". Section 24 provides that "whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly". From a careful scrutiny of Section 24 of the I.P.C., it is apparent that if a person does anything with the intention of causing wrongful gain to one person or causing wrongful loss to another person, the same would be covered u/s 24 of the I.P.C. The action of doing something with intention of causing wrongful gain to one person or causing loss to another person is not mutually exclusive. Therefore, the key answer to question No. 5 i.e. "D" is correct. Question No. 8 pertains to Section 300 of the I.P.C. Intention to cause death is not essential under clause "thirdly" of Section 300 of I.P.C. which is apparent from illustration "C" appended to the section. Therefore, the key answer "C" is correct. Question No. 15 deals with withdrawal of any public prosecutor or Assistant public prosecutor. Section 321 of Cr.P.C. provides that public prosecutor or Assistant public prosecutor incharge of the case may with consent of the Court at any time before judgment is pronounced, withdraw from the prosecution. Therefore, the key answer namely option "C" is the correct answer to the aforesaid question. Question No. 67 deals with nature of contract. As per the petitioners, it is a contingent contract whereas as per key answer, it is an illegal contract. In *ILR 1889 13 131 (Bom.)*, it has been held that marriage brokers should not be given a legal status such as would enable them to enforce their contracts by law. The

tendency of such a decision would be to still further degrade the position of women and to perpetuate the inequality of their relations with the other sex. Accordingly, it has been held that payment of money to a person in lieu of marriage is void u/s 23 of the Contract Act. Thus, the contract which has been referred to in question No. 67 is obviously an illegal contract and not a contingent contract. For yet another reason, we are inclined to hold that option "C" i.e. illegal contract is the correct answer to question No. 67. Section 2 of the Dowry Prohibition Act reads as under:

"Dowry" means any property or valuable security given or agreed to be given either directly or indirectly -

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties.

8. Thus the contract in question would be covered under the definition of dowry as defined u/s 2 of the Dowry Prohibition Act, 1961. Therefore, the contract referred to in question No. 67 is illegal contract. So far as reliance placed by learned counsel for the petitioners on illustration to Section 32 of the Contract Act, 1872 is concerned, the same is misconceived as the Dowry Prohibition Act was enacted much later i.e. in the year 1961 whereas, the Indian Contract Act was enacted in the year 1872.

9. Question No. 89 pertains to M.P. Land Revenue Code. Section 168(1) of the M.P. Land Revenue Code provides that except in cases provided for in sub-section 2 no bhumiswami shall lease any land comprised in his holding for more than one year during any consecutive period of three years. Sub-section 2 enumerates the bhumiswamis who are exempted from the rigors of subsection (1) of Section 168. In Section 168(2) of the Code, married woman is not mentioned. Therefore, a married woman is not authorised under the Code to transfer the land through lease. Therefore, the option "C" given in the key answer is correct. The contention of the petitioners that all the persons can lease out the land cannot be accepted. Learned counsel for the petitioners were unable to satisfy this Court that model answers in respect of the questions except question No. 24 are such as no reasonable body of men well versed in the particular subject would regard as correct.

10. Now we may advert to question No. 24 which pertains to the vitamins that needs no support for its digestion. In support of the key answer which is mentioned as "Vitamin D", learned senior counsel for the respondents has produced the book by William F. Ganong "Review of Medical Physiology", 22nd edition. The relevant extract is as under:

Those that are water-soluble (vitamin B complex, vitamin C) are easily absorbed, but the fat-soluble vitamins (vitamins A, D, E and K) are poorly absorbed in the

absence of bile or pancreatic lipase.

11. Thus, from perusal of the relevant extract of the book, it is apparent that both the options i.e. option "B" namely Vitamin B and option "C" namely Vitamin C are correct answers. If the candidate has marked Vitamin C as correct answer, he would not get one mark though he is entitled to one mark as his answer to the question is correct.

12. Accordingly, it is directed that the respondents shall take out the answer books of all the candidates who have failed to secure cut-off marks by one mark and shall examine whether their answer to question No. 24 is option "C". If the answer to question No. 24 given by such candidates is option "C", then they shall be awarded one mark. Accordingly, the result of the preliminary examination of the Civil Judge, Class II shall be re-tabulated and an intimation shall be sent to the concerned candidates for their appearance in the main examination. The aforesaid exercise shall be carried out within a period of ten days from today. The writ petitions are accordingly disposed of. Let a photocopy of this order be placed in the record of connected cases.

C.C. within 24 hours.