
(2012) 08 MP CK 0203

In the Madhya Pradesh High Court

Case No : Writ Petition No. 12674 of 2012

Dharmender Singh Goyat

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 21-08-2012

Acts Referred:

Contract Act, 1872 — Section 72
Evidence Act, 1872 — Section 164

Citation : (2012) 08 MP CK 0203

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

Bench : Division Bench

Advocate : Mukesh Kumar Agrawal, for the Appellant; Kumaresh Pathak, Learned D.A.G. for Respondent No.1 and Shri. V.S. Shroti, Learned Senior Counsel with Shri. Vikram Johri, Learned Counsel, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard on the question of admission. The petitioner in this petition inter-alia has prayed for a direction to the respondents to revise the result of the preliminary examination which was held for recruitment to the post of higher judicial services and to declare the petitioner qualified in the preliminary examination. The petitioner also seeks a writ of mandamus to permit him to appear in the main examination which is scheduled to be held on 26.8.2012. In order to appreciate the petitioner's grievance, few facts need mention, which are stated infra.

2. The petitioner had appeared in the preliminary examination held for recruitment in the cadre of higher judicial service by direct recruitment. The petitioner secured 98 marks out of 150 marks. The last candidate who has qualified for the main examination has secured 99 marks. It is the case of the petitioner that model answers to questions No.22, 38, 56, 64, 102 and 119 are not correct.

3. Learned counsel for the petitioner submitted that correct answer to question

No.22 is "A" whereas in the model answer, the same is indicated as "D". It is further submitted that correct answer to questions No.38, 56, 64 and 102 as well as 119 are options "A", "A", "D", "A" and "C" respectively which have wrongly been indicated in model answers and, therefore, the petitioner is entitled to six marks. It is also submitted that illustration appended to Section 164 of Indian Evidence Act, 1872 shows that correct answer to question No.38 is option "A". It is urged by learned counsel that Question No.56 is based on Section 72 of the Indian Contract Act, 1872 and, therefore, correct answer is option "A" On the other hand, learned senior counsel for respondent No.2 has submitted that model answers to the aforesaid questions are correct and the petitioner has given wrong answers. It is further submitted that key answer should be assumed to be correct unless the same is shown to be palpably wrong.

4. We have considered the submissions made by learned counsel for the parties. Before proceeding further, it would be apposite to take note of questions No.22, 38, 56, 64 and 102 as well as 119, which read as under:-

Q.22 The general defenses provided in General Exceptions in the Indian Penal Code (IPC) can be pleaded -

- (A) for IPC offences only
- (B) for IPC offences and offences under local law only
- (C) for IPC offences and offences under special law only
- (D) for IPC offences and offences under local or special law.

Q.35 It is correct to state that within the meaning of Section 3 of the Indian Evidence Act ? :

- (A) A caricature is not a document.
- (B) An inscription on a stone is a document.
- (C) An inscription on a metal plate is not a document.
- (D) Only a writing on a paper is not a document.

Q.56 : X purchases a bag of rice and leaves it in the house of "B" his friend by mistake. B's wife started using the rice, what remedy has X against the B.

- (A) X can claim the cost of the rice from B.
- (B) X can ask for a bag of rice from B.
- (C) X can sue B for compensation.
- (D) X and B are friends so there contractual right or remedy.

Q.64 In which of the following cases, performance of the contract would be specifically enforced by the Court ?

- (A) A contract to marry
- (B) A contract to give money on loan
- (C) A contract to refer a dispute to arbitration
- (D) A contract to sell a painting by a well known dead painter.

Q.102 In India right to work is a -

- (A) Directive principles
- (B) Constitutional duties
- (C) Fundamental right
- (D) None of the above

Q.119 Suit for partition and possession of Joint Hindu Family property which is ancestral by son/ plaintiff. Plaintiff having one brother and three sisters apart from parents. In the suit property the plaintiff is entitled for -

- (A) 1/7th share
- (B) 1/3rd share
- (C) 1/6th share
- (D) 1/4th share

5. In the case of Kanpur University and Others Vs. Samir Gupta and Others, and H.P. Public Service Commission Vs. Mukesh Thakur and Another, the Supreme Court has been 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 Vs. State of Bihar and others, 1995 Suppl. (1) SCC 325, 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.

6. Bearing in mind, the aforesaid well settled legal principles, we may now proceed to deal with the issue of correctness of the model answers. Section 40 of the Indian Penal Code defines the expression "offence". The relevant extract of Section 40 reads as under:

Except Chapter IV (Chapter VA) and in the following sections namely..... the word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined" Therefore, the correct answer to question No.22 is option "D" which is also provided in model answer. Question No.38 is

based on Section 164 of the Indian Evidence Act, 1872. Section 164 reads as under:

164 - Using as evidence, of document, production of which was refused on notice - When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court.

7. It is trite law that if there is a conflict between the illustration appended to a section and the section itself, the section of the Act would prevail. From perusal of Section 164 of the Evidence Act, the correct answer to question No.38 is "D" and not "A" as has been given by the petitioner. Similarly, question No.56 is based on Section 70 of the Contract Act, 1870. Section 70 of the Contract Act provides that where a person lawfully delivers anything to another person not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of or to restore the thing so done or delivered. Section 72 of the Indian Contract Act, 1872 provides that a person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it. In question No.56, question of repayment or return does not arise therefore, Section 72 of the India Contract Act, 1872 has no application in the context of question No.56. Therefore, the answer which is indicated in the model answer i.e. option "C" is correct.

8. The petitioner has given option "B" as correct answer to question No.64. The answer which has been mentioned in the model answer is option "C" whereas according to the petitioner himself the correct answer is option "D". Since, in the return, the respondent No.2 has specifically stated that petitioner has given answer as option "B" to question No.64 and the same has not been controverted by the petitioner by filing the rejoinder, therefore, in the absence of any rebuttal on behalf of the petitioner, the fact that petitioner has given answer as option "B" to question No.64 shall be taken to be admitted. Since, it is the stand of the petitioner that the correct answer is option "D", therefore, we need not examine whether the option provided to the aforesaid question in the model answer is correct or not.

9. The petitioner has given answer to question No.102 as "A", which according to the petitioner is the correct answer whereas the option which is indicated in the model answer is option "C". The answer given by the petitioner cannot be treated as correct, as Part IV of the Constitution which contains Directive Principles of State Policy casts an obligation on the State. Article 41 provides that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. Therefore, right to work cannot be treated as directive principle. The right to work is also not a fundamental right. Infact, the correct option is option "D". However, the same has no bearing on the result of this case,

as the petitioner has given option "A" as correct answer to question No.102, which is not correct answer.

10. So far as question No.119 is concerned, the option which is provided in the model answer is option "A" i.e. 1/7th share whereas, the petitioner has given the answer as option "C". On family partition, wife also gets equal share to that of a son. The daughters have also been recognised as co-parceners after the amendment in the Hindu Succession Act in the year 2005. Therefore, the daughters are also entitled to equal share to that of son. Thus, the correct answer to the aforesaid question is "A" and not "C".

11. For the aforementioned reasons, it cannot be said that key answers provided in the model answer is such which no reasonable body of men well-versed in the particular subject would regard as correct. In the result, we do not find any merit in the writ petition. The same fails and is hereby dismissed.