

(2009) 04 P&H CK 0214
In the Punjab And Haryana At Chandigarh

Gourav Jain and Others

APPELLANT

Vs

Haryana Public Service Commission and Others

RESPONDENT

Date of Decision : 01-04-2009

Acts Referred:

Citation : (2009) 156 PLR 161

Hon'ble Judges : Ajay Tewari, J

Bench : Single Bench

Judgement

Ajay Tewari, J.—Civil Writ Petitions bearing Nos. 678 of 2009, 975 of 2009, 21152 of 2008, 180 of 2009, 4686 of 2009, 5022 of 2009, 5108 of 2009 and 5132 of 2009 involve common questions of law and fact and are being decided by a common order. On the last date learned Counsel for the respondent No. 2 had sought time for filing reply which has not been filed even today and time is again sought. However, when arguments were being addressed on the question of the interim relief I came to the opinion that reply of the said respondent may not be necessary by reason of the view I am proposing to take.

2. The petitioners have challenged the conduct of the preliminary examination for the HCS (Judicial Branch) by way of these writ petitions. The ground of challenge are primarily two: firstly that 84 questions have been set out of the prescribed syllabus and that there are some questions which are palpably wrong, that is to say they either have no correct answer or more than two correct answers.

3. Adverting to the first argument it is stated that that the syllabus prescribed was as follows:

The syllabus of the Examination will be as contained in Schedule under Rule 9 of part C of Rules relating to the appointment of Civil Judge (Junior Division) in Haryana, which is appended below:

Sr.No.

Paper (All Compulsory)

Description of Subjects

Max. Marks

1

Civil Law-1

Code of Civil Procedure, Punjab Courts Act, Indian Sales of Goods Act, Indian Partnership Act, Specific Relief Act and Indian Evidence Act, Indian Contract Act

200

2

Civil Law-II

Hindu Law, Mohammedan Law & Customary Law, Law of Registration and Limitation

200

3

Criminal Law

Indian Penal Code, Code of Criminal Procedure and Indian Evidence Act

200

4

English composition

A choice of three essays of general topics

200

5

Language

Hindi (in Devnagri Script)

100

SUB TOTAL

900

6

Viva Voce

To judge the personal qualities of the candidate

120

TOTAL

1020

NO BOOKS ARE PRESCRIBED FOR ALL THESE PAPERS

SCHEME OF EXAMINATION

The examination shall be conducted in three stages namely,

(i) Preliminary examination (ii) Main examination and (iii) Viva voce

(a) Preliminary Examination :

The preliminary examination will be of two hours duration and will have 120 questions. Each correct answer will carry four marks and for every wrong answer one mark will be deducted. However, no credit or discredit will be given for the questions not attempted. Questions in preliminary examination shall be from the syllabus prescribed for the main examination. Candidates shall be expected to have a general and basic knowledge of the main subjects and also the ability to answer questions on current events of National and International importance, Indian Legal and Constitutional History and governance. Candidates shall also be tested for their analytical skills and aptitude.

4. Learned Counsel for the petitioners have argued that as many as 84 questions were such as could not be stated to be within the ambit of the prescribed syllabus. Reliance is placed on *Neeraj Sharma v. High Court of Delhi and Anr.* W.P. (C) No. 8272 of 2008 decided on 20.11.2008. In that case the instruction comparable to sub para (a) of para 12 (supra) was as follows:

The Preliminary Examination will be a screening test and will consist of one paper of multiple objective type questions carrying maximum of 200 marks. In the preliminary examination questions on general knowledge and aptitude of the candidate, candidate's power of expression, flair in English, knowledge of objective type legal problems and their solutions covering Constitution of India, Code of Civil Procedure, Code of Criminal Procedure, Indian Penal Code, Contract Act, Partnership Act, principles governing Arbitration Law. Evidence Act, Specific Relief Act and Limitation Act, etc. will be included.

5. The argument sought to be raised by the respondents therein was that the word "etc." would encompass the other statutes out of which the paper was set. The Division Bench, however, held as follows:

We are of the opinion that the use of the word "and" contradicts the submission raised on behalf of the High Court of Delhi. Furthermore, keeping in view the number of statutes mentioned in the instructions, prima facie it would suggest that questions will be asked from within these statutes alone. Otherwise the comparatively comprehensive or extensive enumeration would become otiose.

6. In the present case, however, para 12 (a)(supra) is couched in much wider terms. The precise contention of the learned Counsel appearing for the

respondent-commission is that the decision of the Delhi High Court is distinguishable on the basic premise that over there the argument was only with regard to the fact whether the instructions given to the candidates encompassed the questions set in the paper and it was in view of the specific words used that the Division Bench had come to the conclusion that the questions were out of syllabus. As per learned Counsel the questions set in the present paper would be covered by the stipulation made in para 12(a) (supra).

7. It may be noticed at the outset that the whole idea in a competitive examination is to provide level playing field. The sacrosanctity of a prescribed syllabus depends upon the attendant circumstance. For instance, the consequence of an out of syllabus paper where it may entail a loss of an academic year may be different than the consequence of an out of syllabus paper in a competitive examination. Which is of course not to say that the prescribed syllabus can be rendered defunct. The arguments of learned Counsel appearing for the petitioners are that some of the questions may not necessarily come within the ambit of the expression "general and basic knowledge" of the main subjects and also the ability to answer questions on current events of National and International importance, Indian Legal and Constitutional History and Governance and would necessitate somewhat deeper study than the general and basic knowledge mentioned. However, as noticed above this standard of difficulty would have been faced by all the candidates. Additionally it would also be profitable to notice that the instructions in the question paper mentioned that the most appropriate answer would be deemed to be correct and thus it can be argued that it was not a case only of memorising but also of analytical skills and aptitude.

8. In this view of the matter I am constrained to decline the plea of the petitioners that the questions being out of syllabus has resulted in a situation where undeserving candidates have made the cut while deserving candidates have been left out.

9. As regards the second contention I find substance in the same. Questions No. 26, 67, 72 and 111 (along with the multiple choice answers) are quoted herein below:

26. In Ancient India the following was not a mode of Punishment

- (A) Admonition (B) Remonstrance
- (c) Fine (D) Flogging

67. A marriage between an unmarried woman and a married man is:

- (A) null (B) void (C) voidable (D) valid

72. The early releasee of a prisoner is called:

- (A) Bail (B) Parole (C) Lease (D) Lien

111. Freedom of Information under the Freedom of Information Act

- (A) right to obtain information from any public authority
- (B) right to information about fundamental right in constitutional
- (C) right to information as constitutional right
- (D) None of the above

10. Learned Counsel for the respondent-Commission was not in a position to deny that either these questions were palpably wrong (that is to say none of them could have a correct answer or that they were such for which there could be two or more equally correct answers). Learned Counsel for the petitioners have relied upon the case of Kanpur University and Others Vs. Samir Gupta and Others, and the case of Abhijit Sen and Ors. v. State of U.P. and Ors. reported as (1984)3 SCC 319. It may be noticed that both these judgments dealt with the PMT examination. In the case of Kanpur University and Ors. v. Samir Gupta and Ors. (supra) the Hon''ble Supreme Court held as follows:

If this were a case of doubt, we would have unquestionably preferred the key answer. But if the matter is beyond the realm of doubt, it would be unfair to penalize the students for not giving an answer which accords with the key answer that is to say, with an answer which is demonstrated to be wrong.

11. The Hon''ble Supreme Court reiterated the decision in the case of Abhijit Sen and Ors. v. State of U.P. and Ors. (supra).

12. Faced with the situation the question which arises is as to what is the relief which can be granted. No doubt these four questions could have impacted not only the petitioners or the selected candidates alone but others also. However, there have been various judgments wherein Courts have restricted the relief only to such persons who have approached the Court by a particular date. Reference may be made to the case of Virender Singh Hooda and Ors. v. State of Haryana and Anr. 2005(1) SLR 10 and the case of Sandeep Singh v. State of Haryana and Anr. Civil Appeal No. 7422 of 1999. In Sandeep Singh's case (supra) the Hon''ble Supreme Court held as follows:

We make it clear that if any other persons, who had appeared at the said examination and, who had not approached the Court till today, will not be entitled to file any such application for getting this relief in question so far as the examination of the year 1993 is concerned.

13. In view of the dictum of law mentioned above it is directed that these four offending questions would be deleted as regards the petitioners and their merit will be accordingly recomputed. Learned Counsel appearing for the answering respondents has informed me that the cut off in the main examination was 346 out of 480 marks viz. 72.08 %. Such of the petitioners whose merit goes beyond 72.08% after recomputation would be entitled to take part in the main examination scheduled for 11.4.2009. It is made clear that this exercise will be

done only for the petitioners and will not be resorted to either for the selected candidates or those who have not approached this Court till today.

14. Before parting with this judgment I am constrained to observe that even though the allegation that the paper is vitiated because questions have been prescribed from outside the syllabus has been repelled yet it cannot be gainsaid that the reason for that was not so much that the questions were strictly within the syllabus but that special prejudice has not been said to have been caused to the petitioners. However, it cannot be denied that prejudice was caused to all the examinees across the board. The prescription of a syllabus obviously intends to bind the examiner. Not only this, the four questions extracted above also reveal the cavalier attitude with which the paper has been set. It is indeed regrettable that a premier constitutional authority like the Public Service Commission would let such a carelessly drafted question paper be inflicted on the examinees for a premier service of the State. In the circumstances the Commission is directed to devise some in house mechanism to ensure that wherever a syllabus is prescribed the questions should be prescribed strictly from within its four corners. It is also the duty of the Commission to make certain that there are no questions which are either demonstrably wrong or "tricky".

15. With these observations these writ petitions are disposed of.

16. A copy of this order be supplied to learned Counsel for the parties dasti under the signatures of the Court Secretary.

17. A copy of this order be also placed on the files of all connected cases.