(2019) 01 P&H CK 0450

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No. 1459 Of 2018(O&M)

Hardeep Kaur And Another APPELLANT

Vs

Punjab Public Service Commission And Others RESPONDENT

Date of Decision : 14-01-2019

Acts Referred:

Citation : (2019) 01 P&H CK 0450

Hon'ble Judges : Krishna Murari, CJ;Arun Palli, J

Bench : Division Bench

Advocate : Mohit Sadana

Final Decision : Dismissed

Judgement

This is an intra-court appeal under Clause X of the Letters Patent, against an order and judgment dated 01.08.2018, rendered by the learned Single Judge, vide which the writ petition preferred by the appellants and four other connected petitions were dismissed.

A brief narration of facts that have led the appellants to the current proceedings would be expedient.

The Punjab Public Service Commission (for short, 'the Commission') issued an advertisement on 29.11.2016 to fill up 545 posts of Inspector Audit, Cooperative Societies in the Cooperation Department, Punjab. The written test/examination for the said posts was held on 09.07.2017. Although, the question paper was set in four different series i.e. Set 'A', 'B', 'C' and 'D', but all the questions in each series were same with the only difference of numbering of the questions in each of the series. The Commission uploaded the question booklet of series 'A' along with its answers on its official website, and vide a public notice, dated 09.07.2017, invited objections from the candidates to the answer key. Amongst other, objection was also raised to the answer to question No.95 in question booklet series 'A' (depicted below) for option (d) i.e. "All of the above" was not the right answer provided in the answer key and the correct answer was option

(b) and (c) :

"95. Which of the following income is taxable under the head of "Income from House Property"?

(a) If a person is engaged in a business of letting house properties

(b) House used for a business whose income is exempted

(c) Income from house situated outside India

(d) All of the above"

Opinion of the experts were obtained by the Commission and upon basis whereof it was concluded that option "(b) and (c)" was the right answer to question No.95. Resultantly, a revised answer key for series Set 'A' and along therewith a combined merit-list was uploaded by the Commission on 18.10.2017. Name of appellant No.1 figured at No.264 and appellant No.2 at No.251 in the merit and since 266 candidates were to be recruited in the General Category, they were well within the zone of being recruited as Inspector Audit, for there was no further process like interview etc. to be conducted. However, before the counselling could commence, a writ petition bearing CWP No.25502 of 2017 (Anubhav Vats v. Punjab Public Service Commission and another) was filed assailing the revised answer key and the combined merit-list on the ground that there could not be two correct answers to a question. The Commission, having caused appearance in those proceedings, submitted that a conscious decision was taken to withdraw question No.95 in booklet series 'A' itself and to grant equal marks to all the candidates. Accordingly, vide order dated 20.04.2018, the said writ petition was disposed of as infructuous. Whereafter, a public notice dated 04.05.2018 was issued by the Commission withdrawing question No.95 of booklet series 'A', and based thereupon the revised answer key and merit-list was circulated on 04.05.2018. And, for the Commission awarded 3 marks to all the candidates across the board for question No.95, the appellants, who were at merit position No.264 and 251, were now placed at No.297 and 280, respectively. It was against this background, the appellants filed a petition, as indicated above, and assailed the public notice dated 04.05.2018, withdrawing question No.95 of booklet series 'A' and the merit-list that was revised to their detriment.

In a nutshell, the case of the appellants before the learned Single Judge as also in these proceedings is that answer to question No.95 i.e. option "(d) All of the above", provided in the original answer key, was not the right answer, for answer contained in option (a) was wrong and, therefore, option (d) could never be the right answer. Which is why, vide revised answer key dated 18.10.2017, answer to question No.95 was declared as option (b) and (c). Further, if question No.95 suffered from no ambiguity and options (b) and (c) were the correct answers, there was no occasion for the Commission to have withdrawn question No.95.

Upon issuance of notice, the Commission caused appearance before the writ

Court and was directed to file an affidavit in respect of the opinion obtained from the experts qua question No.95. And, on 30.07.2018, the Secretary of the Commission by way of an affidavit set out the opinions stated to have been received from the subject experts:

"Expert 1: u/s Property is used for business, No annual value is determined under house property head and annual value is the basis for compo line taxable income from house property. Candidate 'C' answer is correct, annual value is the letting value of house, so no tax under the head house property, if properly used for business purpose of the assesses himself

Expert 2: option (b) and (c) will come under the head House Property, but (a) is doubtful. Candidate's objection is supported by Supreme Court judgement in which company assesses is there, Company has all income from business of letting out house property. Supreme Court held that it will be under the head Business or Profession. So, in this option i.e.

(a) nature of assesses is not mentioned. So, it is little bit confusing. I think question should be withdrawn."

As per the stand of the Commission: predicated upon the opinion of the experts, the Commission Sub Committee decided the correct answer to be option (b) and (c). However, subsequently a Civil Writ Petition No.25502 of 2017 was filed assailing the veracity of question No.95 of booklet series 'A', for the said question was ambiguous/confusing and, thus, the Commission ought to have withdrawn the question itself. It was upon consideration of the opinion of the subject expert No.2: that albeit options (b) and (c) were correct answer, but still as in option - (a) nature of assessee was not mentioned and, therefore, it was little bit confusing and, thus, the question should be withdrawn, coupled with the grievance of the petitioners in CWP No.25502 of 2017, the Commission in the best interest of all the candidates or to avert any injustice withdrew question No.95. And, for Commission follow the norm "any benefit of doubt in the question paper should go in favour of all the candidates" all the candidates across the board were awarded three marks for the said question.

In the wake of the respective pleadings of the parties, learned Single Judge formulated the two questions for determination of the lis and concluded:

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(i) Whether the Punjab Public Service Commission has the power to grant marks to all the candidates for the question, which has been found to be ambiguous - incorrect by the Commission itself and deleted? and;

(ii) Whether the said power has been correctly applied in the facts of this case?"

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16. ...It is settled proposition of law, as held above, that where an Act or the Rules confer a jurisdiction, it impliedly also grants the power of doing all such acts and/or employing such means as are essentially necessary to its execution. Thus, it is concluded in response to question No. (i) for determination that respondent No. 1/Punjab Public Service Commission, is having the power to delete the incorrect questions and proceed to take further steps which should be reasonable and just in a given situation as in the present case.

17. The next question which requires determination is that whether such exercise of deletion/withdrawing of Question No. 95 has been undertaken in fair and just manner.

In the facts of the present case, the issue regarding Question No. 95 was considered by the Sub Committee of 2 members of the Commission based on the opinions rendered by the Subject Expert Committee consisting of 2 experts. Expert-2 gave a clear opinion that in option (a) nature of assesses is not mentioned, therefore, the Question itself becomes very confusing and casted a doubt on the Question No. 95 itself and recommended the same to be withdrawn. The contention of the petitioner that there was no ambiguity and there was only the issue of two correct answers is not correct in view of the subject expert opinion available with the Respondent No. 1 Commission.

Initially, the Commission Sub Committee decided that the correct answer to be declared as option 'B' and 'C'. However, upon filing of the Civil Writ Petition No. 25502 of 2017 against Question No. 95 of question booklet series 'A' that there is ambiguity in the Question, and consideration based on the opinion of Expert -2, a conscious considered decision was taken in consonance with the Commission norm that 'any benefit of doubt' in the question paper should go in favour of all the candidates. It was in the situation that since there was Expert Opinion regarding doubt in question and guided by the consideration that the degree of doubt in mind of the candidate cannot be quantified, whether it is small doubt or big doubt, and it may have confused most of the candidates or not, the decision to give the benefit of such a 'doubt' has to go to all the candidates was taken. For the deleted question all candidates have been granted three marks. This complete process including the remedial steps of the Commission is just and reasonable bereft of any bias or arbitrariness and thus approved.

18. It is settled law that in the cases, where no mala fide is alleged against the members of the Recruiting Agency / Selection Boards, the Courts should be slow to interfere in the selection process. In case of Dr. M.C. Gupta and others Vs. Dr. Arun Kumar Gupta and others, 1979 (2) S.C.C 339 the Hon'ble Supreme Court was considering a controversy regarding selection made by the State Public Service Commission for two posts of Professors of Medicines in the State Medical Colleges. Having considered the matter, the Hon'ble Supreme Court had observed as under:-

"When selection is made by the Commission aided and advised by experts having technical experience and high academic qualifications in the sophisticated field, probing to the research experience in technical subjects, the courts should be slow to interfere with the opinion expressed by experts unless there are allegations of malafides against them. It would normally be prudent and safe for the courts to leave the decision of academic matters to experts who are more familiar with the problem they face than the courts generally can be...."

In case of Dalpat Abasahed Solunke & Others V. Dr. B.S. Mahajan & others (1990) 1 S.C.C 305 the Hon'ble Apex Court had observed as follows:-

" It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the court, the High Court went wrong and exceeded its jurisdiction."

19. In the present case, there is no ingredient which will require indulgence of this Court. In the present process, there is no illegality, patent material irregularity or proved mala fides affecting the Selection. The present case is the case where answer to Question No. 95 of Question Booklet Series 'A' was having answers in which Option 'B and C' were agreed to be correct answer but doubt was raised about the correctness of option 'A' thus leading to an anomalous situation. If the doubt about the Option 'A' that the same does not reflect the nature of the assessee then same is to be supported by a clarification. In that case if nature of assessee is given (clarified) then the answer may be correct for Option 'A' also as considered by the subject expert in case of the 'Company' and in that case 'D' i.e. 'all of the above' would also have been the correct answer. Once the expert has opined that there is a doubt in that question itself, that question has to be dropped for the sake of justice to all candidates and the actual competition is restricted to 'remaining questions only', which is equally fair to all the candidates. The various instances of other recruitments by respondent No. 1/Commission pointed by the petitioner, wherein in holding competitive examination for making the appointment on other posts in different departments, respondent No. 1/Commission has awarded marks to the candidates who have marked either of the two (02) correct options is not applicable on the facts of this case in view of the subject expert opinion referring to the doubt in the question,

thus the said ground raised by the petitioner is considered and rejected.

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21. Based on the submissions and the rival contentions, this Court is satisfied with the corrective steps taken by respondent No. 1/Commission for rectifying the mistakes, which crept in the process of the examination qua the Question No. 95 in question. Keeping in mind the principles, as laid down by the judicial precedents referred to above, this Court concludes the question at issue No. (ii) by holding that the action of the Commission is just and reasonable and the power to grant marks to all candidates for the ambiguous question No. 95 in issue has been correctly applied in the facts of the case. The impugned action cannot be faulted with and thus requires no interference in exercise of writ jurisdiction..."

We have heard learned counsel for the appellants and perused the record.

Ex facie, in the wake of the position, as sketched out above, it's apparent that some of the candidates while attempting question No.95 strictly focused on the technical formation and contents of option (a) per se "If a person is engaged in a business of letting house properties", and dehors the intent and the context in which the question was asked ticked options (b) and (c) being the correct answers. Whereas few others considering the nature and spirit of the question and its intended answer, notwithstanding the ambiguity or confusion contained in the contents of option (a) i.e. the nature of the assessee was not mentioned, ticked option (d) as the right answer. Which is why, as demonstrated above, even one of the experts opined:

"Expert 2: option (b) and (c) will come under the head House Property, but (a) is doubtful. Candidate's objection is supported by Supreme Court judgement in which company assesses is there, Company has all income from business of letting out house property. Supreme Court held that it will be under the head Business or Profession. So, in this option i.e. (a) nature of assesses is not mentioned. So, it is little bit confusing. I think question should be withdrawn."

The matter can be viewed from yet another perspective: assuming the nature of assessee was depicted in option (a), then without a doubt it would have been the correct answer. And it is in this context the observation of the learned Single Judge assumes significance, "...If the doubt about the Option 'A' that the same does not reflect the nature of the assessee then same is to be supported by a clarification. In that case if nature of assessee is given (clarified) then the answer may be correct for Option 'A' also as considered by the subject expert in case of the 'Company' and in that case 'D' i.e. 'all of the above' would also have been the correct answer."

In a nutshell, if the nature of the assessee was mentioned in option (a), then everything else would have fallen in place as then option

(d) "All of the above" would have been the right answer to question No.95. We are reminded to point out at this juncture that even in terms of the original answer key, option (d) was notified as the right answer. But the ambiguity, whether occurred owing to an accidental omission or otherwise, in option (a) led to an anomalous situation, which in turn caused an element of doubt as regards the veracity of the question itself. And, as observed by the learned Single Judge, once the question itself was found to be doubtful the only logical result it would entail: that there could not be any correct answer thereto. Further, the degree of doubt in the minds of the candidates cannot be quantified, whether it is a small doubt or big doubt, and it may have confused number of the candidates or not, and in the given situation, the Commission took a conscious decision to give benefit of the said doubt to all the candidates. And, based upon the expert's opinion, and in sync with its practice that "any benefit of doubt in the question paper should go in favour of all the candidates", question No.95 was withdrawn and the Commission awarded three (3) marks to all the candidates across the board for the said question.

On being pointedly asked, learned counsel for the appellants could not refer to anything on record to show if the conclusion recorded by the learned Single Judge was either contrary to the record or suffered from any material illegality.

In view of the above, we are dissuaded to interfere with the impugned order and judgment rendered by the learned Single Judge. The appeal being devoid of merit is accordingly dismissed.