
(2017) 05 P&H CK 0013
In the Punjab And Haryana At Chandigarh
Case No : CWP No.2822 of 2017

Monika Goyal

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 19-05-2017

Acts Referred:

Muslim Women (Protection of Rights on Divorce) Act, 1986 — Section 2 (b)
Transfer of Property Act, 1882 — Section 3

Citation : (2017) 3 SCT 283

Hon'ble Judges : Surya Kant and Sudip Ahluwalia, JJ.

Bench : Division Bench

Advocate : Sourabh Goel, Pankaj Jain, Mandeep Kumar Dhot, Harish Bhardwaj, G.S. Chahal, Animesh Sharma, D.D.Sharma, Lalit Singla, B.B. Sobti, Advocates, for the Petitioner; Rajesh Bhardwaj, Addl. A.G, Punjab, for the Respondent; Anurag Chopra, Advocate, for the High Court

Final Decision : Disposed Off

Judgement

Sudip Ahluwalia, J.—These Writ Petitions have been filed by various examinees who had appeared at the Preliminary Examination for selection to the Punjab Civil Service (Judicial) on 15.1.2017. They are aggrieved with both the Final Revised Answer Key to the multiple choice questions put to them, as well as the consequent list of successful candidates drawn up on February 7, 2017. As such they seek issuance of Writs in the nature of 'Certiorari' and 'Mandamus' to quash the impugned Revised Answer Key and List of successful candidates, with further directions upon the Respondents to modify/restore the originally published Answer Key, and to consequently revise/reissue the list of successful candidates.

2. Background of the matter is that after holding the preliminary Examination, the Respondent No. 1 on its website published its original Answer Key to the various questions and invited objections/responses of the candidates to the same, if any. A number of objections and counterobjections were received, after

considering which the authorised Committee of the Respondent made various changes to the original Answer Key and thereafter finally published the impugned Revised Answer Key followed by the list of successful candidates. It may also be mentioned that the Questionnaire Booklets provided to the examinees were themselves separately Code marked inasmuch as while the questions contained in the same were identical, yet their serial numbers differed in the various codified sets ostensibly to preclude any resort to unfair means in the Examination- Hall(s). However, a few typographical mistakes had crept in some of the Booklets, on account of which certain questions were directed to be deleted therefrom at the time of examination. The writ petitioners are also aggrieved that the answers given by them to the various questions were not only correct, but in some cases even tallied with the originally published Answer Key.

3. It may be observed at the outset that a Writ Court is normally not expected to revisit the `evaluation" done after any particular examination. However the matter involved in the present case is not exactly `evaluation", but an objective and a rather mechanical mode of assigning credit to the answers determined as `Correct" out of the various specified options. Further, being also a Court of Law, we find no inhibition in proceeding to test correctness of the answers mostly pertaining to the Legal/Law-related matters covered in the impugned examination.

4. We have noted that grievances of the various Writ Petitioners relate to certain questions which are generally common in the various Writ Petitions, but not totally identical. Those questions impugned in each individual writ petition on the basis of the Questionnaire Booklet bearing Code `A" are listed below -

CWP 3720 /2017 - Qs. 27 & 68;

CWP 4030/2017 - Qs. 22, 55, 58 & 86;

CWP 2822/2017 - Qs. 18, 22, 27, 55, 58, 68, 71 & 100;

CWP 4790/2017 - Qs. 22, 27, 55, 58, 65, 68 & 91;

CWP 4055/2017 - Qs. 55, 25, 27 & 28

CWP 3572/2017 - Qs. 22, 27 & 58

CWP 4892/2017 - Qs. 86, 58, 68 & 55

CWP 4509/2017 - Qs. 27, 58, 55, 73 & 22

CWP 4850/2017 - Qs. 22, 27, 55 & 58

CWP 6220/2017 - Qs. 22, 58, 68 & 55

CWP 2931/2017 - Qs. 86, 27, 22, 58, 68 & 55

CWP 2939/2017 - Qs. 86, 27, 22, 58, 68 & 55

CWP 3157/2017 - Qs. 86, 27, 22, 58, 68 & 55

CWP 3244/2017 - Qs. 86, 27, 22, 58, 68 & 55

CWP 3366/2017 - Qs. 86, 27, 22, 58, 68 & 55

CWP 3367/2017 - Qs. 86, 27, 22, 58, 68 & 55

CWP 3334/2017 - Qs. 22, 58, 55 & 68

CWP 3166/2017 - Qs. 27 & 58

5. It is thus seen that the impugned questions number Eleven (11) in all. These happen to be Question numbers 18, 22, 27, 55, 58, 65, 68, 71, 86, 91 and 100 of the aforesaid Questionnaire Booklet. But before proceeding further, it would be appropriate first to take note of the various grievances of the writ petitioners vis-a-vis the Final Revised Answer Key in order to determine the relative merit in each of those grievances. These happen to be-

? Wrong deletion of certain questions from the Questionnaire Booklet, causing prejudice to some Petitioners - Qs. 27, 55 & 86;

? Wrong alteration of the correct answers shown in the Original Key - Qs. 22, 65, 68 & 71, and,

? Wrong answers being treated as correct in the Revised Answer Key - Qs. 18, 58, 91 & 100,

6. It may now be mentioned that after service of Notices of motion upon the respondents, we had directed them to consider the objections of the Writ Petitioners in relation to the aforesaid impugned questions, and to come up with their responses. In compliance, the Respondent No. 1 in its short Reply has conveyed the decision of the Recruitment Committee in the light of the aforesaid objections along with their reasonings/justifications. The same are now reproduced verbatim vis-a-vis the aforesaid three types of grievances raised by the Writ Petitioners, followed by our own observations -

7. Re: Questions Deleted from consideration (Qs. - 27, 55 & 86) -

7A) "Question No. 27

Which amongst the following f immovable property as per Section 3 of Transfer of Property Act, 1882?

- a. Standing Timber
- b. Grass
- c. Fruit Trees
- d. Growing Crops
- e. None of these

(Legal Position under Transfer of Property Act)

3. Interpretation clause.—In this Act, unless there is something repugnant in the subject or context, immovable property does not include standing timber, growing crops or grass;

Proposed Answer Key

C

Objections and Cross Objections :

Answer(s) suggested by Objector(s)/Cross Objector(s)

E, A, delete the question

Respondents' Reply -

Entire stress is given in the synopsis that answer C is correct. Even a judgment in *Shanta Bai v. State of Bombay* AIR 1958 SC 532 is cited. It is submitted that deletion of the question was not appropriate. The issue is being considered by the writ petitioners not in the proper perspective. Some objectors who attempted question paper booklet code A pointed out that word 'can be' is missing between the word 'following' and 'immovable property' in question No.27 which was present in corresponding question in booklet Code B, C and D. Misprint word f at the given place did not convey any sense. It could mean anything. They insisted a prejudice is caused to them in selecting right answer option.

On checking of question booklets of all codes it was found that objections are correct. Due to omission, question 27 either made no sense or made a different sense to the candidate who attempted question booklet Code A vis-a-vis candidates who attempted question booklets code B, C and D. It is not out of place to mention here that a similar typographical mistake was reported during the examination in a question No.26 of Code B (86 of Code A) and it was ordered to be deleted to avoid any disadvantage to any candidate. On the same analogy, question No.27 has been deleted finding the objections as valid. On deletion of question, no marks have been awarded or deducted.

Accordingly, the Recruitment Committee found to change the decision already taken.

Our decision -

It transpires that there was a printing mistake in this question only in the Booklet Code "A", which has also been highlighted by us in Bold Font while reproducing the question earlier. Undoubtedly, the Question as printed in the concerned Booklet is Grammatically incorrect, although a common sense inference might be drawn that what was being asked is which of the given Answers could be described as "Immovable Property" under Section 3 of the Transfer of Property Act. The Committee however chose to play safe and therefore deleted this question altogether on the premise that it could have prejudiced some of the

candidates, who were provided with the Booklet Code "A". Admittedly, there was no printing mistake in relation to this question in Booklets `B", `C" and `D". It emerges that the question was deleted only after the examination had already been completed. Consequently, three quarters (3/4ths) of the candidates in whose booklets, where there was no mistake, surely stand to be prejudiced for deletion of this question after they had attempted it and presumably given the correct answer. Even in relation to the small typographical error in the question where the letter "f" has been printed in place of the words "is" or "can be", our view is that question was certainly capable of being understood by any average student of Law conversant with the relevant Section of the Transfer of Property Act. We therefore, are of the opinion that total deletion of this question was not justified. On the other hand, we can protect the interest of any affected candidates who were supplied with the question booklet "A" by awarding full marks to those of them who had answered this question correctly by choosing the initial correct option of "C" and not penalizing with negative marking in case of the candidates from this particular segment (supplied with booklet-A) who had chosen an incorrect option, to preclude any prejudice to anyone due to the visible printing error.

7B) Question No. 55

Which of the following statement is incorrect in the light of Transfer of Property Act, 1882?

- a. Right of Redemption belongs to mortgagor
- b. Right of Foreclosure belongs to mortgagor
- c. Right of Redemption can be abrogated by parties
- d. Right of Foreclosure cannot be abrogated by parties
- e. None of these

(Legal Position under Transfer of Property Act)

"60. Right of mortgagor to redeem.—At any time after the principal money has become [due], the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (a) to deliver [to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee] of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished: xxxxxxxxxxxxxx"

"67. Right to foreclosure or sale.—In the absence of a contract to the contrary, the mortgagee has, at any time after the mortgage-money has become

[due] to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid or deposited as hereinafter provided, a right to obtain from the Court [a decree] that the mortgagor shall be absolutely debarred of his right to redeem the property, or [a decree] that the property be sold. xxxxxxxxxxxxxxxxx"

Proposed Answer Key

B

Objections and Cross Objections:

Answer(s) suggested by Objector(s)/Cross Objector(s)

C, D, delete the question

Respondents' Reply -

Original answer key option was B. Answer key option was changed to E on consideration of objections and cross objections. No worthwhile reason is given in the synopsis against the deletion of the question. It is simply submitted that most appropriate answer option is B. Therefore, the candidates who attempted B ought to have been given marks. Further, there was no occasion to delete the question to disadvantage of the writ petitioners who selected the most appropriate answer. Answer option B is a right option as right of foreclosure belongs to mortgagee and not to mortgagor. Only a mortgagee can apply for foreclosure on expiry of mortgage period.

On further consideration of objections, answer options C and D were also found to be right answer options to the question. Right of redemption under Section 60 of Transfer of Property Act could not be abolished/abrogated by the parties as no contract to the contrary will be valid. Once a mortgage, is always mortgage. Right to redemption comes to an end only by the action of mortgagee when he secures orders for sale or foreclosure. Nevertheless the parties are debarred from entering into any agreement not to claim redemption which is a statutory right.

Section 67 of Transfer of Property Act clearly makes right to foreclosure subject to contract to the contrary between the parties which means they can by agreement abrogate the right of foreclosure.

In this way options B, C and D all are right options/ answers. Candidates have definitely been prejudiced in selecting right answer out of options B, C and D. Therefore, the Recruitment Committee was of the considered opinion that decision to delete this question (without awarding or deducting any marks) is justifiable and there is no need to change the same.

Our decision -

The decision was taken to delete this question since on considering the Objections/Counter Objections, the Committee found that while answer "B" was

also a correct option, but on a closer analysis of Section 60 of the Transfer of Property Act, as noted in the highlighted extracts, Answers "C" and "D" are also correct. Consequently, we therefore find no impropriety in deletion of this question.

7C) Question No. 86 (Question No. 26 in Code B)

Under Section 148-A of Code of Civil Procedure, a caveat shall not remain in force after the expiry of _____ days.

- a. 30
- b. 60
- c. b
- d. 120
- e. None of these

Respondents' Reply -

The correct answer option C i.e. 90 days was missing in question booklet Code B. It was submitted by Shri Harish Bhardwaj, Advocate that his client attempted Code C and there was no such omission. She has attempted answer option C which is correct one. If there is fault on the part of High Court, she must not be penalized. She deserves to be given 4 marks for her correct answer.

The Recruitment Committee was inspecting the Centre No. 5 i.e. D.A.V. Senior Secondary School Sector-8C, Chandigarh, when it was brought to its notice that Question No. 26 of Code `B" bears a printing mistake, whereas no such mistake was there in the same question appearing at Sr. No. 86 (Code `A"), No. 121 (Code `C") and No. 26 (Code `D"). In the interest of fair play and to avoid any prejudice to the candidates attempting Question Booklet Code `B", the Committee ordered to delete the question. The announcement of order of deletion of Question No. 26 (Code `B") and the same question appearing at Sr. No. 86 (Code `A"), No. 121 (Code `C") and No. 26 (Code `D") was made in all the Examination Centres/rooms at about 12.00 noon during the currency of the examination.

The question has been deleted for all the candidates. No marks for this question have been awarded or deducted. No specific and special prejudice or loss is caused to any candidate. Therefore, the decision of deletion of the question is proper and sound in law."

Our decision -

As noted earlier, the correct answer to the question being `90 days" was missing in the Question Booklet Code "B". The printing error in this case is not as simple as in case of the earlier Question No. 27. We say so, because, in that question at least the correct answer was available among the various options specified,

which would have enabled any Law student of ordinary prudence to comprehend the question notwithstanding the typographical error. But, in relation to the present question, since the actual answer "90 days" was itself missing in the specified Booklet, so the candidates provided with that particular Booklet surely stood to be prejudiced in comparison to the others in whose Booklets the same was actually printed. It has been argued before us by some of the Writ Petitioners that they had spent their valuable time in analyzing and answering this question correctly, and so its deletion causes prejudice to them. We are however, not in agreement with this assertion. We say so because when there was clearly a risk of the other candidates being prejudiced on account of misprinting in their relevant Question Booklet, or in view of an incorrectly framed Question (No.55), the rational and proper option for the Selecting Authorities was obviously to do away with those questions altogether so as not to cause any prejudice to the candidates overall.

8. Re: Answers Changed after objections against Original Answer Key (Qs. 22, 58, 65, 68, 71 & 91) -

8A) "Question No. 22

The Propositions are:-

I. Where a partner of a professional business partnership borrows money in the usual and regular course of business stating that the money is to be used for partnership business but misappropriates it, the other partners shall be liable.

II. Where money has been borrowed by a partner without authority, but has been applied to the legitimate business needs of the firm, the firm is liable.

III. Where the act is within the scope of the implied authority of a partner, but it has been done by him, to the knowledge of the third party, not for the firm but for his own purposes, the firm is liable.

Which of the following is true in accordance with Indian Partnership Act, 1932 as to the aforesaid propositions?

- a. I is correct, II and III are incorrect
- b. I & II are correct, III is incorrect.
- c. I, II & III, all are correct
- d. II & III are correct, I is incorrect
- e. None of these

(Legal Position under the Indian Partnership Act, 1932)

18. Partner to be agent of the firm. Subject to the provisions of this Act, a partner is the agent of the firm for the purpose of the business of the firm

19. Implied authority of partner as agent of the firm.(1) Subject to the provisions

of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.

The authority of a partner to bind the firm conferred by this section is called his implied authority.

(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to

- (a) submit a dispute relating to the business of the firm to arbitration,
- (b) open a banking account on behalf of the firm in his own name,
- (c) compromise or relinquish any claim or portion of a claim by the firm,
- (d) withdraw a suit or proceeding filed on behalf of the firm,
- (e) admit any liability in a suit or proceeding against the firm,
- (f) acquire immovable property on behalf of the firm,
- (g) transfer immovable property belonging to the firm, or
- (h) enter into partnership on behalf of the firm.

21. Partners authority in an emergency A partner has authority, in an emergency, to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm

26. Liability of the firm for wrongful acts of a partner Where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefore to the same extent as the partner.

27. Liability of firm for misapplication by partners. Where

- (a) a partner acting within his apparent authority receives money or property from a third party and misapplies it, or
- (b) a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

Proposed Answer Key

B

Objections and Cross Objections:-

Answer(s) suggested by Objector(s)/Cross Objector(s)

A, C, D, no option is correct

On consideration of objections and cross objections, the answer option was changed from B to E.

In the synopsis, it is submitted that reading of the bare provisions of Partnership Act show that even for wrongful act or omission of a partner acting in ordinary course of business of a firm, loss or injury caused to third party or any penalty is incurred, the firm is liable to the same extent as the partner.

The operative part of the proposition No.1 states "the other partners shall be liable" which gives impression that all partners excluding the partner who misappropriated will be liable. Section 27 of Partnership Act clearly shows that firm (meaning all partners) shall be liable in case of misappropriation by any one of the partners. Thus the proposition no.1 is incorrect in the light of section 27 of the Partnership Act. Section 19 of the Partnership Act regarding implied authority of partner is not applicable as there is specific and separate provision dealing with the situation. The net result is that proposition No.1 and 3 are incorrect, and proposition No.2 is correct. Therefore, the most appropriate option is E (None of these). Resultantly, the option E needs no change. (Emphasis by us).

Our decision -

In the original Answer Key, option "B" was projected as a correct answer according to which propositions I and II are correct, while proposition III is incorrect. Proposition I makes "other partners" of a Firm liable for an act of misappropriation by one partner of the Firm. However, according to Section 26, the "Firm" as a whole is liable in such eventuality and not merely "the other partners", who were not involved in the act of misappropriation. The term "Firm" must necessarily have to include the culprit partner as well, according to the definition. Consequently, there is no impropriety in changing of proposed original answer "B" to "E" by the Respondents.

8B) Question No. 58

What is "iddat" period prescribed for a widow under Muslim Law?

- a. Four lunar months and ten days,
- b. Four lunar months
- c. Three lunar months and ten days,
- d. Three lunar months
- e. None of these

Proposed Answer Key

A

Objections and Cross Objections :

Answer(s) suggested by Objector(s)/Cross Objector(s)

E, wrong option given, no option is correct

The proposed answer option was A. Answer key option was changed to E on consideration of objections and cross objections. In the synopsis, Advocates have relied upon the book "Muslim Law in Modern India" by Dr. Paras Diwan and one other writing of Dr. Rakesh Kumar Singh which mention that iddat period prescribed for Muslim widow was four lunar months and ten days. They further referred to definition of iddat as given in Section 2 (b) of the Muslim Women (Protection of Rights on Divorce) Act, 1986. It is argued that Muslim Law is un-codified. Therefore, the iddat period as defined under the Muslim Women (Protection of Rights on Divorce) Act, 1986 in terms of "lunar month" shall be accepted to avoid any confusion. Interestingly Shri Harish Bhardwaj, Advocate has referred to text book "Mohammedan Law", 23rd Edition by Aqil Ahmad reviewed by Iqbal Ali Khan in which iddat period of a widow is defined four months and ten days. The same author has also been relied upon by the objectors when they questioned the proposed answer key. The same was considered by the Committee while correcting the answer option. It is added that every month in Islamic Calendar is a lunar month. But no authority or citation is given to this effect. Numerous objectors insisted that there is difference between "lunar month" and ordinary "month". They relied upon commentary "MULLA Principles of MAHOMEDAN LAW", and "Mohammedan Law" by Ahmad Aquil revised by Prof. Khan I.A. Edition: 2013, where commentators had used expression "month" to describe iddat period for widow without prefixing it with word "lunar". Cross objectors submitted that there is no difference between "lunar month" and a "month" under Islamic Law. But the cross objectors did not cite any authority on the point.

The Committee has considered the objections and cross objections and corrected the answer option to E in the light of following paragraphs of celebrated commentaries on Muslim Law:-

"Mulla Principles of MAHOMEDAN LAW" by Sir Dinshaw Fardunji Mulla, 20th Edition, LexisNexis, Para 257, Pages 334-335 mentions:-

"When the marriage is dissolved by divorce, the duration of the iddat if the woman is subject to menstruation, is three course; if she is not so subject, it is three lunar months. If the woman is pregnant at the time, the period terminates upon delivery. When the marriage is dissolved by death, the duration of the iddat is four months and ten days."

"Mulla Principles of MAHOMEDAN LAW," by M. Hidayatullah and Arshad Hidayatullah, LexisNexis, 19th Edition, Butterworths Wadhwa, Nagpur, Para 257, Page 225 mentions:-

"When the marriage is dissolved by divorce, the duration of the iddat if the woman is subject to menstruation, is three course; if she is not so subject, it is three lunar months. If the woman is pregnant at the time, the period terminates upon delivery. When the marriage is dissolved by death, the duration of the iddat

is four months and ten days."

Thus, every month in the context of iddat period cannot be construed as lunar month. Otherwise these Commentators must not have used two expressions i.e. 'lunar month' for iddat period of divorcee and 'month' in the context of widow. It means they were fully aware of the difference in meaning and the distinction in both types of months.

Further, the following Commentators have not used word lunar month even in case of divorcee. However, they have used expression simple 'month' in case of widow. Therefore, it cannot be said 'lunar month' and 'month' are the same thing as regard iddat period of divorcee and widow. For this purpose, reference can be made as under:-

Statute-Law relating to Muslims in India by Tahir Mahmood, 1st Edition, Institute of Objective Studies, New Delhi - 25, Page 128 mentions:-

"There is a waiting period, iddat, for women before they remarry-for a widow four months and ten days since her husband's death; for a divorcee in most cases three menstrual courses since divorce [rounded off to three months]."

'Outlines of Muhammadan Law', by Asaf A.A. Fyzee, 4th Edition, Para B, Page 108 mentions:-

"If consummation of marriage has taken place and the marriage is dissolved by divorce, the duration of 'idda is three course, or if the woman is pregnant, till delivery. If the marriage is dissolved by death, the period of 'idda is four months and ten days or, if the woman is pregnant, till delivery, whichever is longer."

The expression 'menstrual courses' cannot be said to be exactly the same thing as lunar month.

The reliance placed upon The Muslim Woman (Protection of Rights on divorce) Act, 1986 is not relevant to the controversy in hand. Said definition of iddat period in terms of 'lunar month' is specifically given in reference to divorcee. The same will not be applicable to the case of widow which as is separately and distinctly stated by the learned Commentator on Muslim Law.

Reliance placed upon the Muslim Personal Law (Shariat) Application Act, 1937, by some objectors is also found to be out of place. There is no dispute with the proposition that Muslim are governed by Muslim Personal Law (Shariat) in cases of marriage in view of the Muslim Personal Law (Shariat) application Act, 1937. But the said Act does not codify what is Shariat. Even Muslim Law regarding marriage of widow is nowhere codified. To decipher as to what is Shariat rule regarding iddat period of widow, one has to turn to the Commentaries on Muslim Law and the reliance placed on Mulla's Principles of Mahomadan Law cannot be faulted.

Thus, there is no reason to change the final answer option.

Our decision -

In this case however, the Committee appears to have unnecessarily given in to the objections/counter objections raised against the original proposed answer "A". We say so for the reason that notwithstanding the position that Mohammedan Law is by and large un-codified, yet there can be no controversy on the position that the Calendar as applicable to the Muslims in the matter of their Personal Law must have to be in conformity with the Islamic principle according to which a "month" must have to mean only a "Lunar month". There is no conflict on this point in the views of the various jurists. Further, considering that the underlying purpose behind the concept of "Iddat" is to protect legitimacy of a child born to a Muslim woman after termination of her marriage, so the relevant prescribed duration of "Iddat" would apply depending upon the way in which the marriage has terminated, such as by way of divorce, or death of the husband. Undoubtedly, in case of death it is accepted that the period extends to "Four months and Ten days", if the child is not born in the meantime, and the term `month" in such situation would necessarily have to mean a `Lunar month". We therefore, find no ambiguity from various given optional answers to this question in holding for option "A" which mentioned "Four lunar months and Ten days", which was actually correct and had been rightly depicted as such in the original proposed Answer Key. There could have been some scope for confusion if a separate optional answer of "Four months and Ten days" was mentioned in any of the remaining options. But that is not the actual case here. Therefore, we find no justification in the High Court's decision to change the answer from the original proposed "A" to `E". Consequently, marking to all the candidates in relation to this question ought to be done by treating option "A" as the correct answer.

8 C) Question No. 65

According to Section 52 of Indian Penal Code, 1860, nothing is said to be done or believed in good faith which is done or believed without _____.

- a. due care or diligence
- b. due attention or bonafide
- c. due care or attention
- d. due diligence or bonafide
- e. None of these

Legal Position under Indian Penal Code

52. "Good faith".—Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention.

Proposed Answer Key

C

Objections and Cross Objections:-

Answer(s) suggested by Objector(s)/Cross Objector(s)

E

Answer option C was changed to correct answer option E because the correct answer as per Section 52 of Indian Penal Code was "due care and attention" not "due care or attention". The expression "or" cannot be considered equivalent expression "and". Both the expressions convey different sense of the answer.

Therefore, the correct answer to the aforesaid question was rightly changed to "E".

Our decision -

Here also, we are in agreement with the explanation of the Respondents that the expression "due care" or "attention" cannot be considered exactly equivalent to "due care and" attention as laid down in the definition of "good faith" in terms of Section 52 of the IPC. Therefore, there is no impropriety in the subsequent change of the original proposed answer "C" to "E" by the Respondents.

8D) Question No. 71

Non-registration of marriage under section 8 of Hindu Marriage Act, 1955:-

- ? invalidates the marriage and calls for imposition of penalty
- ? does not invalidate the marriage but calls for imposition of penalty
- ? neither invalidates the marriage nor calls for imposition of penalty
- ? makes the marriage voidable
- ? None of these

(Legal Position under Hindu Marriage Act) -

Registration of Hindu marriages.(1) For the purpose of facilitating the proof of Hindu marriages, the State Government may make [rules] providing that the parties to any such marriage may have the particulars relating to their marriage entered in such manner and subject to such conditions as may be prescribed in a Hindu Marriage Register kept for the purpose.

(2) Notwithstanding anything contained in sub-section (1), the State Government may, if it is of opinion that it is necessary or expedient so to do, provide that the entering of the particulars referred to in sub-section (1) shall be compulsory in the State or in any part thereof, whether in all cases or in such cases as may be specified, and where any such direction has been issued, any person contravening any rule made in this behalf shall be punishable with fine which may extend to twenty-five rupees.

(3) All rules made under this section shall be laid before the State Legislature, as

soon as may be, after they are made.

(4) The Hindu Marriage Register shall at all reasonable times be open for inspection, and shall be admissible as evidence of the statements therein contained and certified extracts there from shall, on application, be given by the Registrar on payment to him of the prescribed fee.

(5) Notwithstanding anything contained in this section, the validity of any Hindu marriage shall in no way be affected by the omission to make the entry.

Proposed Answer Key

C

Objections and Cross Objections:-

Answer(s) suggested by Objector(s)/Cross Objector(s)

B, D, question not clear, A

Original answer option was C which after consideration of objections and cross objections was changed to B. In the synopsis, Shri Goel, Advocate submitted that Section 8 (2) makes the Registration of Marriage compulsory and only in that case when such direction has been issued, any person contravening any rule made in this behalf shall be punishable with fine which may extend to Rs. 25/- can be imposed. Therefore, Section 8 itself does not call for imposition of penalty. As regards validity of the marriage there is no dispute.

Considered. Section 8 (2) provides that where registration of marriage is made compulsory, any person contravening the said rule shall be punishable with fine which may extend to 25/- rupees. Further, Section 8 (5) provides that failure to get the marriage registered will not affect its validity.

Further, in the PCS(JB) Preliminary Examination 2011 same question with same answer options and in the same format was asked at Serial No.102. High Court approved and prepared the result treating the correct answer option as B which is the same in this question as B.

Therefore, the final answer key option B is correct."

Our decision -

As can be seen from the bare perusal of Section 8(2) of the Hindu Marriage Act, a fine of Rs. 25/- has been prescribed as punishment in the event of contravention of any rule made by a State Government regarding compulsory registration of Hindu Marriages. As such, the original proposed answer (C) which stated that non-registration of such marriage under section 8 neither invalidates the marriage nor calls for imposition of (any penalty), is therefore, wrong on the face of it. Consequently, subsequent change of the answer from "C" to "B" by the Respondents is certainly in order.

8D) Question No. 68

Who started Sarvodaya Movement?

- a. Mahatma Gandhi
- b. J P Narayan
- c. Vinoba Bhave
- d. Bhagat Singh
- e. None of these

Proposed Answer Key

C

Objections and Cross Objections:-

Answer(s) suggested by Objector(s)/Cross Objector(s)

B, A

Proposed answer option was C (Vinoba Bhave) which after consideration of objections and cross objections was changed to A (Mahatma Gandhi). In the synopsis, Shri Goel, Advocate has relied upon observation of Dr. Usha Thakkar and Dr. Shubhangi Rathee to insist that Sarvodaya movement was started by Vinoba Bhave and not by Mahatma Gandhi. The quoted observations of Dr. Usha Thakkar and Dr. Shubhangi Rathee do not indicate that the movement was infact started by Vinoba Bhave. Rather it is stated that Sarvodaya ideals have lasted well beyond the life of Mahatma Gandhi and carried forward by Vinoba Bhave etc. At the time of change of option, the Committee has considered the Article 'Gandhiji and Sarvodaya' appearing on the official website of the Gandhi Research Foundation i.e. <http://www.gandhifoundation.net/about%20gandhi7.htm> where it has been clearly mentioned in the first line that "Sarvodaya is Gandhiji's most important social political movement." Further, an article of S. Narayansamy titled 'Sarvodaya Movement - A Critical Analysis' published in Journal of Extension and Research Vol.III Nos.1 & 2 Jan, 2001 of Gandhigram Rural Institute is available on the <http://gandhianentrepreneur.in/pdf/articles/sarvodayamovement.pdf> - an official website where in second para he categorically stated, "The foundations of the sarvodaya movement have been firmly laid by Gandhi based on the principles of truth, non-violence and love all of which have eternal value, Success of any movement depends on its leadership."

In view of the clear cut authoritative sources mentioned above. The final answer Option-A is correct. For the kind perusal of this Hon"ble Court, the literature and various other articles available online as also the official website of the Gandhi Research Foundation supporting the stand of the Answering Respondent that the Sarvodaya Movement was started by Mahatma Gandhi is being annexed herewith as Annexure R/1.

Our decision -

This question does not involve any application or interpretation of Law but seeks to test the candidates' general awareness/knowledge. Interestingly in this case, the original proposed answer of the Committee itself was option "C", which was subsequently changed to "A". To defend this decision, the Committee has quoted from a particular Article appearing on the Official Website of the "Gandhi Research Foundation". From their side, the Writ Petitioners have also placed ample material in the form of old Articles, publications and Literature to assert that the correct answer would actually have been "C" as initially proposed by the Respondents themselves. We are of the opinion that this is a needlessly controversial question and certainly does not go about testing a candidate's "analytical ability" in the same fashion as in case of a question involving Law. In the given circumstances, we cannot be unmindful of the fact that this particular question legitimately invites diverse answers depending upon the source from which information leading to an answer has emanated, since the objectivity otherwise associated with a codified Law/Statute is not available here. For this reason, we are of the opinion that in all propriety this potentially controversial question ought to have been deleted by the Committee to preclude prejudice to any given section of candidates, more so when only a Preliminary Screening Test of the candidates was being conducted.

8E) Question No. 91

Choose the correct chronological order (Latest first) of following cases.

? Maneka Gandhi v. Union of India

? A.D.M. Jabalpur v. S.Shukla

? Indira Gandhi v. Raj Narain

? Kesavananda Bharati v. State of Kerala

Answer:-

a. IV II III I

b. IV I II III

c. III II IV I

d. IV III II I

e. None of these

Proposed Answer Key

D

Objections and Cross Objections:-

Answer(s) suggested by Objector(s)/Cross Objector(s)

E, C, delete the question

Respondents" Reply -

As per the question, the candidates were supposed to give the correct chronological order, beginning from the latest case as the first entry and the earliest pronouncement as the last entry. The above mentioned cases were decided on the following dates:-

S. No.

Title of Case

Date of Decision

I.

Maneka Gandhi v. Union of India

25.1.1978

II.

A.D.M. Jabalpur v. S. Shukla

28.4.1976

III.

Indira Gandhi v. Raj Narain

7.11.1975

IV.

Kesavananda Bharati v. State of Kerala

24.4.1973

Thus, correct order was I II III IV and accordingly, Answer `E" was the right answer option. Therefore, the representation of Ms. Banni Khanna, Roll No. 14018 in respect of Question Nos. 65 and 91, in addition to Question Nos. 22, 27, 55, 58 and 68 was considered by the Hon"ble Recruitment Committee in the right earnest and rejected.

Our decision -

Here again, the analytic ability of the candidate was sought to be tested by choosing the reverse Chronological order (Latest first) of the four decided cases. The correct answer in such eventuality would have been 1, 2, 3 and 4 in that order, and it was not in any of the given options. Therefore "E" i.e. "None of these" was the right answer and it was correctly changed after objections.

9. Re: Retained Original Answers (Qs. 18 & 100) -

9A) "Question No. 18

In which of the following the right of private defence of property under Indian Penal Code, 1860, does not extend to causing death?

- a. Robbery
- b. House breaking by night
- c. Mischief giving apprehension of death or grievous hurt
- d. Mischief by fire
- e. None of these

Respondents' Reply -

Legal Position under Indian Penal Code, 1872

103. When the right of private defence of property extends to causing death—The right of private defence of property extends, under the restrictions mentioned in Section 99, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely:-

First - Robbery

Secondly - House breaking by night;

Thirdly - Mischief by fire committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or as a place for the custody of property;

Fourthly - Theft, mischief or house-trespass, under such circumstances as may reasonable cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

Proposed Answer Key

E

Objections and Cross Objections:-

Answer(s) suggested by Objector(s)/Cross Objector(s)

D, C

On consideration of objections and cross objections, proposed answer option E was maintained as correct one. In the synopsis, it is submitted that option D 'mischief by fire' is of wider ambit. According to 'thirdly' clause of Section 103 IPC the right of private defence of property extends to causing death only in cases of 'mischief by fire' and too in case of any building, tent or vessel. Unqualified expression 'mischief by fire' does not convey complete sense.

Therefore, right to causing death in private defence of property does not extend to the cases of simple 'mischief by fire'. So the correct option is D. There is no ambiguity either in the question or in the answer options. Section 103 IPC deals with the entire four situation as given in the options A to D. There is no scope for confusion in the option D as there is only one provision under Indian Law which deals with right of private defence of property extending to cause death. Had there been more than one such provisions, the plea of confusion could have carried some weight. Moreover, a candidate cannot dictate as to what should be the format of question/answer. Questions are meant to test the analytical ability of the candidate and therefore need not be mere reproduction of the bare Act language. The candidates are supposed to analyze the question in all respects and choose best answer out of given options which in this question is only the option E. The submission is not acceptable. Resultantly, the right answer option E needs no change.

Our decision -

As can be seen from the Third situation covered in Section 103 of the IPC, the right of private defence to the extent of causing death in the event of 'Mischief by fire' in certain surroundings/places is authorised. The logical answer therefore would have to be 'D' alone since 'Mischief by fire' is specifically covered as an enabling situation in the statute. Undoubtedly, Mischief by fire 'inside' a specified building or premises as described in the 3rd situation of Section 103, itself falls within the broad ambit of the expression 'Mischief by fire' used in answer 'D'. Therefore, the insistence that the specifications described in the statute by any logic amount to doing away with the basic and broad ingredient of 'Mischief by fire', in our view is a needlessly hair - splitting and far-fetched proposition. We thus find no impropriety in the answer 'E'.

9B) Question No. 100

Under Section 54 of Indian Evidence Act, 1872 previous bad character is irrelevant, but becomes relevant if :

- ? the bad character of a person is itself a fact
- ? the bad character of a person is itself a fact-in-issue
- ? the bad character is evidence to a previous conviction.
- ? Both (b) and (c)
- ? None of these

Respondents' Reply -

Legal Position under Indian Evidence Act

54. Previous bad character not relevant, except in reply.—In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it

becomes relevant.

Explanation 1. - This section does not apply to cases in which the bad character of any person is itself a fact in issue.

Explanation 2. - A previous conviction is relevant as evidence of bad character.

Proposed Answer Key

D

Objections and Cross Objections:-

Answer(s) suggested by Objector(s)/Cross Objector(s)

B, C, E

In synopsis, it is submitted that question only talks about of the previous conviction as evidence of bad character, whereas option C of the question 54 says that bad character is evidence of a previous conviction which is reverse of the Explanation 2 and moreover it nowhere says that how the previous character which otherwise is irrelevant would become relevant. The candidates appearing in a competitive examination having multiple choice options are expected to choose the best possible answer and the only the accurate answer in the present question is D. But the plea is without any substance. Explanation 2 clearly shows the bad character as evidence to a previous conviction.

Therefore, the proposed answer key `D' is in accordance with Section 54 of the Indian Evidence Act, 1872 and is the correct answer."

Our decision -

In relation to these questions also, we find no fault in the reasonings of the Committee in retaining the originally depicted answer as correct. As done in relation to Question Nos. 22, 65 and 71 earlier, we have likewise highlighted in Bold Font the relevant reasonings which have convinced us to come to this conclusion, while considering the Respondents' Submissions in this regard.

10. For the aforesaid reasons, we find that by and large, the revised Key of the Respondents uploaded on 7.2.2017 is correct. However, the Question No. 68 is liable to be deleted, while the original proposed answers in relation to Questions 27 and 58 are to be retained, and marks awarded to the candidates in the manner directed by us in relation to these questions.

11. The Writ Petitions are therefore, disposed off with a direction upon the Respondents to delete Question No. 68 from the Questionnaire / Revised Answer Key, and to award marks to the candidates in terms of our observations/directions in relation to Question Nos. 27 and 58, as recorded in the preceding paragraphs 7A and 8B of this judgment. Consequently a fresh list of the candidates qualifying the Preliminary Examination will be drawn up by the respondents on the basis of such revised marking.

12. We however make it clear that pursuant to these directions, those candidates who have already been declared qualified to appear at the main examination, shall not be affected. Only those additional candidates who reach the score of the last qualified candidate in the original result as a consequence of such re-marking shall be treated as qualified to so appear at the main examination. This benefit of being declared qualified after such remarking shall be applicable to all candidates irrespective of whether or not they had approached the Court for not having been declared qualified in the original result.