
(2013) 02 DEL CK 0346
In the Delhi High Court
Case No : LPA. No. 741 of 2012

RBI and Another		APPELLANT
	Vs	
Ramesh Singh and Another		RESPONDENT

Date of Decision : 22-02-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 135 DRJ 638

Hon'ble Judges : D. Murugesan, C.J;V.K. Jain, J

Bench : Division Bench

Advocate : Rajiv Nayyar, Mr. Kuldeep S. Parihar and Mr. H.S. Parihar, for the Appellant; Rani Chhabra and Ms. H. Hnunpnpuui for R 2/UOI, for the Respondent

Final Decision : Disposed Off

Judgement

V.K. Jain, J.—The Reserve Bank of India Services Board, held a Departmental Examination for promotion to the post of Staff Officer Grade-A. The aforesaid examination had three papers of 50 marks each and for qualifying in the said examination, every candidate was required to obtain 19 marks in each paper. The respondent no. 1 was awarded 18.5 marks in English and accordingly he was declared unsuccessful in the said examination. One question in the paper of English read as under:

(c) (ix) That herb is fit to be eaten, (Substitute a single word for the words underlined).

The answer given by the respondent no. 1 to the aforesaid question was as under:

(ix) That herb is eatable.

Since the representation made by respondent no. 1 to the appellant bank to award him marks for the aforesaid answer, did not yield any fruitful result, he filed a writ petition challenging the action of the appellant and sought directions

to the appellant to assign marks to him in respect of the aforesaid question. He also sought directions to the appellant to promote him to the post of SO Grade-I from the date similarly situated persons were promoted, with all consequential benefits.

The learned Single Judge, vide the impugned order dated 5.9.2012 held that the answer given by the respondent no. 1 was a correct answer and accordingly directed the appellant to add one mark in the total marks obtained by the respondent no. 1. The appellants were also directed to promote the respondent from the date his juniors were granted promotions, with all consequential benefits.

2. The contention of the learned senior counsel for the appellants is that the question paper was set by an External Expert designated as Chief Examiner and valuation was done by him or his co-examiner. This is also his submission that a common answer to all the questions was circulated to the examiners and as per the said answer, the correct answer would be "edible" and not "eatable". He also submitted that the learned Single Judge, in exercise of writ jurisdiction under Article 226 of the Constitution of India, could not have interfered with the view taken by the Chief Examiner as regards the correctness of the answers to the questions set by him. Yet another contention of the learned senior counsel for the appellants was that though the result of the examination was declared on 17.12.2007, the writ petition came to be filed in July, 2010, after more than two and a half years of declaration of the result and, therefore, should have been rejected on account of laches on the part of the respondent no. 1.

In response, the learned counsel for the respondent no. 1 submitted that it was only on receipt of information under RTI Act that respondent no. 1 came to know that the answer given by him to the aforesaid question was treated as a wrong answer and he was not awarded mark for the aforesaid question. It was further submitted by her that on receipt of information under RTI Act, the respondent no. 1 made representation to the appellants for redressal of his grievance and only when the representation made by him did not yield any result, the respondent no. 1 was constrained to file a writ petition.

3. A perusal of Oxford Dictionary would show that the word "edible" also means "eatable". Similarly, the word "eatable" has been defined in the aforesaid dictionary also to mean "edible". Thus, "edible" and "eatable" are synonymous words. We, therefore, cannot accept the contention that "eatable" was not a correct answer. In our opinion, no reasonable person can take a view that "eatable" is not a correct answer for "something which is fit to be eaten". Sometimes there can be two correct answers to such a question and, therefore, "edible" as well as "eatable", both are correct answers. It is correct that ordinarily, the Court should not interfere with the view taken by the Examiner who is supposed to be an expert in the field in which the question paper is set by him, as regards correct answer to the question set by him, but, when the view taken by the Board conducting an examination is not only wholly unreasonable

but also perverse in the sense that no reasonable person could have taken such a view, it is, in our opinion, be open to the Court, in exercise of its writ jurisdiction under Article 226 of the Constitution of India, to interfere with such a decision of the Board, so that there is no miscarriage of justice on account of a wholly unreasonable and untenable view taken by the concerned Board. When a writ Court finds an arbitrary and irrational exercise of power, resulting in denial of a legal right to a citizen, the Court would be failing to discharge its constitutional obligation to protect the legal rights of the citizens by refusing to interfere in the matter solely on the ground that the decision taken by the Board was based upon the answer framed by the examiner who set the question paper. The Board, in our view, in such a situation, should have independently applied its mind to the issue which arose in this matter and should have independently examine the answer given by the respondent no. 1 so as to ensure that no injustice was caused to him. Since the Board entrusted with the task of conducting examination failed to adopt such a course of action and the view taken by the appellants with respect to the answer given by the respondent no. 1 is found to be arbitrary, irrational and wholly unjustified, it would not be appropriate for us to interfere with the discretion exercised by the learned Single Judge in favour of the respondent no. 1.

4. The learned senior counsel for the appellants placed reliance upon H.P. Public Service Commission Vs. Mukesh Thakur and Another, . In the case before the Supreme Court, the respondent had filed a writ petition seeking direction for re-evaluation of his paper and appointment to the post for which the examination was held. The Public Service Commission, in compliance of the directions issued by the High Court, produced the answer-sheet of the respondent before the Court. The High Court was of the view that there had been some inconsistencies in framing the question Nos. 5 and 8 and in evaluation of the answer to the said questions. However, the operation of the interim order of the High Court was stayed by the Supreme Court and the High Court was directed to decide the writ petition. On 22.11.2005, the High Court passed another order directing that the answer sheet of the respondent be sent to another examiner for re-valuation. In the meantime, the appellant challenged the order dated 22.11.2005 before the Supreme Court. The Examiner appointed under the order dated 22.11.2005 awarded 119 marks to the respondent. The High Court disposed of the writ petition on 26.12.2005 directing the Public Service Commission to issue letter of appointment to the respondent. The said order dated 26.12.2005 also came to be challenged before the Supreme Court, which vide interim order dated 13.1.2006 directed fresh re-evaluation of the answer sheet of the respondent by an eminent Professor of Law. Pursuant to the said order, the respondent was awarded only 82 marks in the paper in question. It was submitted on behalf of the appellant before the Supreme Court that the Rules do not provide for re-evaluation or re-checking of the answer-sheet and if there were some inconsistencies in framing of the questions/markings of a particular question, it would be the same in respect of all the candidates and, therefore, it is not

permissible for the Court to direct re-evaluation of answer sheet of a particular candidate. It was further submitted that in such an eventuality, the answer-sheet of all the candidates should be re-evaluated. The Supreme Court noticed that the regulations applicable to the examination in question did not provide for any re-evaluation. It was held that it was not permissible for the High Court to examine the question paper and answer sheets itself particularly when the Commission had assessed the inter se merits of the candidates. The Supreme Court, therefore, took the view that such a course of action was not permissible for the High Court.

5. In our opinion, the case before this Court is not a case of re-evaluation of the answer-sheet of a candidate. In the case before us, a correct answer has not been given marks and this has resulted for the respondent being denied of his legal right to obtain promotion to the post of Assistant Manager, Grade-I. Had there been two possible views with respect to the correctness of the answer given by the respondent, the Court probably would not be justified in substituting its own view over the view taken by the Examiner, but, when the answer given by the respondent is undisputedly correct, this cannot be said to be a case of re-evaluation, but would be a case of marks not being given against a correct answer. Obviously, no one can dispute that a candidate is entitled to a mark if the answer given by him is correct and an order directing correction of an omission to give mark for a correct answer cannot be said to be a direction for re-evaluation of the answer sheet.

6. As regards laches, we are of the view that since the respondent No. 1 did not approach the Court even immediately after obtaining the information under RTI Act, he is not entitled either to retrospective seniority or the financial benefits for the period he did not work as Assistant Manager Grade-A. Another reason why we cannot grant retrospective seniority to the respondent is that he has not impeached those persons who were promoted to the post of Assistant Manager Grade-A prior to his filing the writ petition and the seniority of those persons cannot be disturbed by the Court, without giving an opportunity of hearing to them. We, therefore, modify the order passed by the learned Single Judge by directing that though the respondent No. 1 would be awarded one mark for answer in question and consequently if he becomes entitled to promotion, he shall also be promoted, but the promotion shall be effected only from the date of filing of the petition and the persons appointed before that date shall rank senior to the respondent. We also make it clear that respondent No. 1 shall be entitled to salary and other benefits applicable to the post of Assistant Manager Grade-A only with effect from the date of filing of the petition. The appeal stands disposed of in terms of this order.