

(2010) 09 P&H CK 0153
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 14553 of 2010

Surender Singh

APPELLANT

Vs

Haryana Public Service Commission and Another

Manu Goel Vs State of Haryana and Others

RESPONDENT

Date of Decision : 13-09-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Contract Act, 1872 — Section 217
Criminal Procedure Code, 1973 (CrPC) — Section 248(2), 255(2), 320, 320(8)
Evidence Act, 1872 — Section 64, 65, 65A, 65B
Penal Code, 1860 (IPC) — Section 141, 146

Citation : (2010) 09 P&H CK 0153

Hon'ble Judges : Ajai Lamba, J

Bench : Single Bench

Judgement

Ajai Lamba, J.—This bunch of petitions has been filed under Articles 226 and 227 of the Constitution of India praying for issuance of a writ in the nature of certiorari quashing the result declared by the respondents after conducting preliminary examination for selection in Haryana Civil Services (Judicial Branch), 2010. It has also been prayed that a writ in the nature of mandamus be issued directing the respondents to correct the answers in the "Answer Key" to the questions given out in the question paper.

2. In the writ petitions, the petitioners have specifically pleaded that the answers provided in the "Answer Key" to certain questions are wrongly given, therefore, the merit of the candidates has not been correctly determined. Different questions, in that context, have been referred to in different writ petitions. Since common questions of facts and law have been raised in context of same examination for determining a merit list of candidates, all the cases are being taken up together.

3. For reference to record, CWP No. 14553 of 2010 entitled Surender Singh v. Haryana Public Service Commission and Anr., in which counter affidavit on behalf

of respondent No. 2 i.e. Punjab and Haryana High Court (for short the "High Court") has been filed, is being taken up.

4. It seems that Haryana Public Service Commission advertised 83 (plus 30 anticipated/unforeseen) posts of Haryana Civil Services (Judicial Branch) vide advertisement No. 14 of 2010 to be conducted in accordance with the provisions contained in the Punjab Civil Services (Judicial Branch) Rules, 1951 as amended from time to time.

5. The issue raised before me is limited to the correctness of the answers provided in the "Answer Key" and, therefore, only the relevant portion from the advertisement that deals with the conduct of examination is reproduced and is being referred to:

13. Competitive Examination: The selection of suitable candidates for appointment in HCS (Judicial Branch) will be made by holding an examination. The examination shall be conducted in three stages namely.

(i) Preliminary Examination,

(ii) Main Examination,

(iii) Viva-Voce.

14. Syllabus for Preliminary Examination:

The Preliminary Examination shall be of objective type with multiple-choice (which can be scrutinized by Computer) as distinguished from the written examination which shall be subjective/narrative type.

The question paper for Preliminary Examination shall be of two hours duration. It shall consist of 125 questions and each question shall carry 04 marks and for every wrong answer one mark shall be deducted.

The objective type multiple-choice question for the Preliminary Examination shall be from the syllabus for the Main Examination. The candidate shall be expected to have a general and basic over view 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. The candidate shall also be tested for his analytical skills and aptitude. The standard of the question paper shall be of Law Graduate level. The object of the Preliminary Examination is to short list candidates for the Main Examination. There shall be no minimum pass marks in the Preliminary Examination. The marks obtained in the Preliminary Examination shall not be counted towards final result. Candidates equal to 10 times the number of vacancies advertised, selected in order of their merit in the respective categories shall become eligible to sit in the Main Examination. However, this number shall be subject to variation. If two or more candidates at the last number (the number at the end) get the equal marks, then all of them shall be considered eligible to sit for the Main Examination, warranting the corresponding increase in the stipulated ratio.

A candidate who qualifies for the Main Examination will have to apply again on separate application form for Main Examination. The application form can be down loaded from the website of State Govt./Commission.

Candidates thrice the number of advertised posts in order of merit of Main Examination will be called for Viva-Voce.

Note:- (i) The Schedule of examinations shall be intimated to the candidates in due course while sending the admit cards to them.

(ii) Details of the syllabus for Main Examination and other conditions are contained in the information sheet to be supplied with the application forms (OCR Sheet).

6. In accordance with the procedure provided, preliminary examination was conducted on 11.07.2010.

7. The writ petitions in the bunch have only given sketchy facts, therefore, the relevant facts have been taken from the learned Counsel appearing for the High Court.

8. It has been brought out by learned Counsel for the High Court that so as to maintain secrecy, 4 question booklets were given to different batch of candidates viz. "booklet A", "booklet B", "booklet C" and "booklet D". The questions contained in the booklets were the same, however, their sequence has been changed so as to conduct the examination in a fair manner.

9. Complete list of candidates alongwith their marks obtained by them in preliminary examination was published. Candidates equal to 10 times the number of vacancies advertised, selected in order of their merit in the respective categories who are eligible to sit in the main examination, has also been published. The petitioners are persons who do not fall within the category of persons who have been invited to take the main examination.

10. Learned Counsel for the petitioners in essence have argued that the "Answer Key" provided by the respondents reflects wrong answers and, therefore, the merit as adjudged by the respondents has not been judged correctly causing manifest injustice to the petitioners. Learned Counsel for the petitioners in various petitions have drawn the attention of the Court towards 11 questions, the answers given to the said questions in the "Answer Key" as also the reasons/basis of saying that the answers reflected in the "Answer Key" are wrong.

11. Learned Counsel for the respondent-High Court contends that there is a clerical error in the "Answer Key" given for question at Sr. No. 99 in "Question Booklet A" and the answers to the other questions, as provided in the "Answer Key", are correctly given.

12. Learned Counsel states that in view of the fact that answer provided in the "Answer Key" to question No. 99 is wrongly indicated, all the question papers would be rechecked, and subjected to the redrafted "Answer Key".

13. Learned Counsel for the respondents contend that the change in "Answer Key" in answer to question No. 99 itself would change the comparative merit. While the last person selected had 364 marks, on re-evaluation/rechecking, after substituting the correct answer in the "Answer Key", the merit might go higher thereby including more candidates in the scope for consideration for inviting them for the main examination. Some candidates would be ousted on account of the changed merit.

Question No. 99 from question "Booklet A" reads as under:

99. Admissibility of electronic record has been prescribed under

- (a) Section 64 of Evidence Act
- (b) Section 65 of Evidence Act
- (c) Section 65B of Evidence Act
- (d) Section 65A of Evidence Act

14. As per the "Answer Key", the answer given is at "b". It, however, transpires that correct answer as per the Evidence Act would be "c".

15. Learned Counsel for the respondent-High Court has further contended that the candidates have been subjected to negative marking. For every question wrongly answered, 1 mark is deducted. However, for every question correctly answered, 4 marks have been awarded.

16. Learned Counsel for the High Court further states that the main examination would be scheduled some time in 1st week of October.

17. Learned Counsel appearing for the petitioners have vehemently argued that some other questions which are wrongly phrased, could not have been included in an objective type question paper. In some questions, two options provided would constitute correct answers and, therefore, only one answer given in the "Answer Key" would not reflect the correct position. If only one answer in such circumstances is considered as the correct answer, it would not correctly assess the merit of the candidate in question. The result would be materially affected.

18. In the context of certain questions, learned Counsel appearing for the petitioners have pointed out that none of the answers suggested in the question paper indicates correct answer. Learned Counsel contend that in some of the cases, the answer given reflects wrong answer. The answer that is suggested by learned Counsel for the petitioner, in such circumstances, is based on established source.

19. In the above context, learned Counsel for the petitioners have addressed arguments in regard to specific questions and answers. Learned Counsel for the petitioners have drawn the attention of the Court towards the following questions from Question "Booklet A":

Question No. 1:

1. The meaning of "Audi alteram Partem" is

- (a) Rights are associated with the duties
- (b) Everybody has a right to defend himself
- (c) Everybody should be given a reasonable opportunity to defend himself
- (d) none of the above

20. Learned Counsel for the petitioners contend that the correct answer, in the context of the question, would be "d" in view of the dictionary meaning of the maxim. Learned Counsel contend that since meaning of Audi alteram Partem is sought in the question paper, none of the options a, b or c gives out the correct meaning. In such circumstances, the answer given in the "Answer Key" i.e. "c" is the incorrect answer. The correct answer to the effect that "no man should be condemn unheard" has not been provided anywhere in the question paper.

Question No. 30:

The right to Constitutional remedies in India is available to

- (a) Citizens of India only
- (b) All persons, in case of infringement of any Fundamental Right
- (c) All people, for enforcing any of the fundamental Rights, conferred on them
- (d) An aggrieved individual alone

21. Learned Counsel for the petitioners contend that although the "Answer Key" provides the correct answer as "c", however, the correct answer would be "b" in so much as even a juristic person would have the right to constitutional remedies in India. "All persons" would include an individual and a juristic person. Learned Counsel further contend that the Hon"ble Supreme Court of India has delivered a judgment specifically on the issue and, therefore, the respondents ought to have considered "b" as the correct answer, or at best "b" as well as "c" as the correct answers.

Question No. 36:

Locus Standi means

- (a) one's personal interest
- (b) right to sue
- (c) right to be heard
- (d) right to intervene

22. Learned Counsel for the petitioners contend that in the context of question

No. 36, correct answer to the question in the "Answer Key" has been given as "d". While some of the petitioners contend that the correct answer is reflected in "c" as per law Lexicon, however, some of the petitioners have addressed arguments to say that "b" would be the correct answer as per its dictionary meaning.

23. Learned Counsel contend that in such cases wherein more than one answer is possible, it becomes a subjective type of question and not objective type and, therefore, the matter needs to be addressed in that light. The respondents, under the circumstances, should either ignore the question, or accept both the answers to be correct.

Question No. 41:

41. Which of the following statements is/are correct:

1. A claim for damages arising out of breach of conduct is not debt.
 2. A person who enters into a contract with Government does not necessarily thereby undertake any public duty.
- (a) 1 only (b) 2 only (c) both 1 and 2 (d) Neither 1 nor 2

24. Learned Counsel for the petitioners contend that in case of the above reproduced question, "c" would be the correct answer. "Answer Key", however, provides "b" as the correct answer.

Question No. 44

44. Use of violence by a member of an assembly of five or more persons in furtherance of common object will constitute:

- (a) affray (b) assault (c) rioting (d) unlawful assembly

25. As per the "Answer Key", the correct answer has been indicated as "d" whereas in the contention of the learned Counsel for the petitioners, the correct answer is contained in "c".

26. Learned Counsel for the petitioners contend that the provisions of Section 146 IPC inhere "use of violence" and, therefore, there can be no second opinion in regard to the correct answer in the context of question No. 44.

27. Learned Counsel for the respondents, however, have argued that the correct answer is contained in "d" on the basis of provisions of Section 141 IPC...Fourth and Fifth.... Learned Counsel for the respondents contend that rioting would be a subsequent consequence and not initiation of the incident and, therefore, the answer given in the "Answer Key" is justified.

28. Learned Counsel for the petitioners contend that if both the answers could be correct, either benefit should be given for answer recorded by the candidates as "c" or "d", or the question be disregarded.

Question No. 48

48. A servant collected money from the debtor of his master as authorised by him. The servant retained the money in his hands because it was due to him as wages. He commits:

- (a) criminal breach of trust
- (b) theft
- (c) no offence
- (d) criminal misappropriation

29. Learned Counsel for the petitioners contend that the correct answer would be "c". The "Answer Key", however, provides the answer as "a". Learned Counsel for the petitioners contend that the answer to the question is contained in Section 217 of Indian Contract Act, which reads as under:

217. Agent's right of retainer out of sums received on principal's account.-- An agent may retain, out of any sums received on account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

Question No. 62:

62. Consider the following statements about the Queen's Baton Relay and indicate the correct ones:

1. The helix shape of the Baton for the 2010 Commonwealth Games, created out of aluminium, is coated with a graded and layered soil pattern in black, yellow and red to represent the diversity of Commonwealth nations.
2. This relay traditionally begins with a commencement ceremony at Buckingham Palace, London, during which, the Queen entrusts the Baton containing her message to the athletes to the first honorary relay runner.
3. The Relay for the 1998 Games in Kuala Lumpur, Malaysia was the first to travel to other nations of the Commonwealth.

(a) 1, 2 and 3 (b) 2 and 3 only (c) 2 only (d) 1 and 3 only

30. Learned Counsel for the petitioners contend that the correct answer would be "a", however, the key indicates the correct answer to be "b". Learned Counsel for the petitioner has produced a document sourced from the internet to say that "a" would be the correct answer while learned Counsel for the respondents-High Court has drawn the attention of the Court towards a document also sourced from the internet to say that the correct answer would be "b" as supplied in the "Answer Key".

Question No. 90:

Compounding of offence u/s 320 of Cr.P.C. Results in

- (a) acquittal of the accused under all circumstances
- (b) acquittal of the accused only where the charge has already been framed
- (c) discharge of the accused where the charge has not yet been framed
- (d) either (b) or (c)

31. Learned Counsel for the petitioners contend that the correct answer would be "d". The "Answer Key", however, provides the answer as "a". Learned Counsel contend that in case where charge has not been framed, a person can only be discharged, and not acquitted. In such circumstances, in terms of Sub-section 8 to Section 320, the answer would be "b" and as given out above, the answer could also be "c". Since all the above depict correct answer, the respondents need to address the issue accordingly so as to ensure that a correct answer does not go unrewarded.

Question No. 93:

93. Hearing on sentence by a Magistrate is required, on conviction

- (a) in a summons trial case u/s 255(2) of Cr.P.C.
- (b) in a warrant trial case u/s 248(2) of Cr.P.C.
- (c) both (a) & (b)
- (d) neither (a) nor (b)

32. As per learned Counsel for the petitioners, the correct answer is contained in "b" in view of the language of the provision [Section 248(2) of the Cr.P.C.], while as per the "Answer Key", the correct answer has been indicated at "c". It has been contended by learned Counsel for the High Court that considering the rights of the accused, before awarding sentence, an accused is required to be heard and, therefore, the answer indicated in the "c" is the correct answer.

Question No. 113:

113. Which school of law does not recognise the talaq pronounced under compulsion or undue influence or by

- (a) Shia (b) Malikis (c) Shafiis (d) All the above

33. Learned Counsel for the petitioners contend that the correct answer would be "a" while the key provides the answer as "d". Learned Counsel for the petitioners contend that the correct answer as pleaded above, is established from Chapter 9 that deals with divorce (talaq) Note 13 at page No. 118 of Text Book of Mohammedan Law by Aqil Ahmad, seventeenth Edition, Re Print 1997. The relevant portion from the portion pointed out by learned Counsel for the petitioner reads as under:

13. Distinction between Sunni and Shia Laws of Talaq.--- xx xx xx xx

The following differences may be marked between the two:

xxx xxx xxx xxx xxx xxx

3. Under Shia Law, intention is a necessary ingredient which is dispensed with under Sunni Law. Hence a talaq pronounced under intoxication or compulsion, or in jest is invalid under Shia law because under such circumstances man does not do what he intends, but in Sunni Law, even such talaq is valid and effective.

34. Learned Counsel for the petitioners further contend that as per established law, Malikis and Shafiis are sub schools of Sunni Sect.

35. Learned Counsel for the respondent contends that the correct answer at "b" has been given in the "Answer Key" as per the book Muslim Law in India authored by Manzar Saeed, Chapter 10, Note 31 wherein, it has been provided that the Shia law, does not recognize talaq pronounced under compulsion or intoxication, the Shafiis and Malikis and the Hanbalis also agree with the Shias. Learned Counsel further states that there is no doubt that Shafiis and Malikis are a part of Sunni Sect.

36. In view of the above circumstances, learned Counsel for the petitioners have argued that since one established book contains an answer contrary to the answer provided in the "Answer Key", the question itself is rendered subjective and not objective and in any case open to the eventuality of two correct answers for the same question in view of the fact that the law at issue is not codified.

37. Having referred to the facts and circumstances, on the basis of which the petitioners pray for the reliefs claimed in the petition, learned Counsel has relied on Kanpur University and Others Vs. Samir Gupta and Others, to say that the judgment of the High Court, wherein such exercise, as proposed by the petitioners, was undertaken, had been upheld by the Hon"ble Supreme Court of India. In such circumstances, learned Counsel contend that this Court is required to interfere in writ jurisdiction so as to do complete justice.

38. Learned Counsel for the respondents has referred to judgment of the Hon"ble Supreme Court of India reported as 2010 (6) SCC 759 Himachal Pradesh Public Service Commission v. Mukesh Thakur and Anr. to say that if there was a discrepancy in framing the question or evaluation of the answer, it would be for the all the candidates taking the examination, and not confined to the petitioners. Learned Counsel further contends that it is not for the High Court in writ jurisdiction to consider the correctness or otherwise of the key provided in the "Answer Key". It is a statutory function which is to be left to the statutory authorities.

39. I have heard learned Counsel for the parties, have gone through the judgments to which reference has been made and the record.

40. Before proceeding further, the law as cited by the learned Counsel is required

to be referred to. From Samir Gupta's case (*supra*), the following needs to be noticed:

15. The findings of the High Court raise a question of great importance to the student community. Normally, one would be inclined to the view, especially if one has been a paper setter and an examiner, that the key answer furnished by the paper setter and accepted by the University as correct, should not be allowed to be challenged. One way of achieving it is not to publish the key answer at all. If the University had not published the key answer along with the result of the test, no controversy would have arisen in this case. But that is not a correct way of looking at these matters which involve the future of hundreds of students who are aspirants for admission to professional courses. If the key answer were kept secret in this case, the remedy would have been worse than the disease because, so many students would have had to suffer the injustice in silence. The publication of the key answer has unravelled an unhappy state of affairs to which the University and the State Government must find a solution. Their sense of fairness in publishing the key answer has given them an opportunity to have a closer look at the system of examinations which they conduct. What has failed is not the computer but the human system.

16. Shri Kacker, who appears on behalf of the University, contended that no challenge should be allowed to be made to the correctness of a key answer unless, on the face of it, it is wrong. We agree that the key-answer should be assumed to be correct unless it is proved to be wrong and that 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. The contention of the University is falsified in this case by a large number of acknowledged text-books, which are commonly read by students in U.P. Those text-books leave no room for doubt that the answer given by the students is correct and the key answer is incorrect.

17. Students who have passed their Intermediate Board Examination are eligible to appear for the entrance Test for admission to the Medical Colleges in U.P. Certain books are prescribed for the Intermediate Board Examination and such knowledge of the subjects as the students have is derived from what is contained in those text-books. Those text-books support the case of the students fully. 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 penalise 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.

18. If the State Government wants to avoid a recurrence of such lapses, it should compile under its own auspices a text-book which should be prescribed for students desirous of appearing for the combined Pre-Medical Test. Education has more than its fair share of politics, which is the bane of our Universities. Numerous problems are bound to arise in the compilation of such a text-book for,

various applicants will come forward for doing the job and forces and counter-forces will wage a battle on the question as to who should be commissioned to do the work. If the State can succeed in overcoming those difficulties, the argument will not be open to the students that the answer contained in the text-book which is prescribed for the test is not the correct answer. Secondly, a system should be devised by the State Government for moderating the key answers furnished by the paper setters. Thirdly, if English questions have to be translated into Hindi, it is not enough to appoint an expert in the Hindi language as a translator. The translator must know the meaning of the scientific terminology and the art of translation. Fourthly, in a system of "Multiple Choice Objective-type test", care must be taken to see that questions having an ambiguous import are not set in the papers. That kind of system of examination involves merely the tick-marking of the correct answer. It leaves no scope for reasoning or argument. The answer is "yes" or "no". That is why the questions have to be clear and unequivocal. Lastly, if the attention of the University is drawn to any defect in a key answer or any ambiguity in a question set in the examination, prompt and timely decision must be taken by the University to declare that the suspect question will be excluded from the paper and no marks assigned to it.

41. Learned Counsel for the respondents have relied on Mukesh Thakur's case (supra) in the context of arguments noticed above.

42. In Mukesh Thakur's case (supra), it has been held that the Court cannot take upon itself the task of statutory authorities. It has also been held that it was not permissible for the High Court to examine the question papers or answer sheets itself. It has further been held that in the absence of any provision under the Statute or Statutory Rules/Regulations, the Court should not generally direct re-evaluation.

43. Considering the impact of the two judgments noticed above, I am of the considered opinion that providing selection process is the function of the statutory authority and the said process should be left to the authority. In such circumstances, this Court would not transpose its" opinion so as to substitute the correct answers in the "Answer Key".

44. The purpose of having a selection process, as provided in the extracted portion of the advertisement, is to select the best. Merit of a candidate is to be seen in the context of his knowledge. It is required to be evaluated by the respondents whether the knowledge of a candidate justifies him to be placed in a category of persons who should be invited to take final examination, at the first instance. The knowledge of the candidate is to be decided by the respondents by way of posing questions, as per the process adopted by the respondents. The answer to the question, however, is required to be acceptably correct and not suspicious or open to two interpretations or answers. If a wrong answer to a question is provided in the "Answer Key", obviously knowledge of the candidate cannot be correctly tested. If such a condition is allowed to exist, a person who

gives wrong answer to the question would get marks for which, however, he not entitled. Thus, by way of such erroneous exercise, a wrong person would be selected and the very purpose of adopting the selection process would be defeated. By such error, the worthiness of a candidate would not be considered in its correct perspective. The exercise undertaken for selection would not enable the authorities to select the most deserving candidates. Since the merit is of essence, delay in finalizing the selection process is a small price to pay. This is particularly so because the selection process has been evaluated to select the Civil Judges-cum-Judicial Magistrates.

45. The respondents, in their short affidavit, have already admitted that there has been an error in the "Answer Key" in relation to question No. 99 in "Question Booklet A", as noticed above. While the petitioners in their pleadings have dealt with each question and proposed correct answer with proper basis, the respondents have not filed any detailed written statement/counter affidavit asserting that the "Answer Key" contains the correct answer to the questions at issue.

46. Ordinarily, the "Answer Key" should be assumed to be correct unless contrary is proved. If the contrary is proved, it should be clearly demonstrated from an established source. The answers contained in the "Answer Key" are not to be held to be wrong by an inferential process of reasoning or by a process of rationalization. If the answer is beyond the realm of doubt, however, it would be unfair to deprive a candidate of the award to which he is entitled. The arguments addressed by the learned Counsel for the petitioners in the context of questions are based on certain sources.

47. Learned Counsel for the petitioners have drawn the attention of the Court towards 10 questions other than question No. 99, to which reference has been made. Learned Counsel have also drawn the attention of the Court towards the source of suggested answer from which it has been argued that the answer given in the "Answer Key" is either not wholly correct; is wrong; two answers given in the question paper could constitute correct answers or none of the suggested answers in the question paper is the correct answer.

48. The contention of the learned Counsel has been noticed against each question in the context of the "Answer Key". In such circumstances, I am of the considered opinion that the matter needs to be re-addressed by the respondents in the context of the questions and the arguments addressed by the learned Counsel in the context of those specific questions.

49. The respondents are accordingly directed to constitute a Committee, which shall be required to consider the questions given out above and the answers provided in the "Answer Key" in context of the arguments addressed by the learned Counsel. After reconsideration of the questions contained in the Question Booklet and answers provided in the "Answer Key", in the context of the arguments addressed by the learned Counsel, the "Answer Key" would be

redrafted and the papers of the candidates would be rechecked and new merit list would be prepared.

50. Since every question answered correctly would involve award of 4 marks and every question answered incorrectly would require the respondents to deduct 1 mark, there is a likelihood that the cut off marks would be changed. The respondents, under the circumstances, would be at liberty to invite candidates equal to 10 times the number of vacancies advertised, selected in the order of merit redrafted in the respective categories in respect of all the candidates to declare their eligibility to sit in the main examination.

51. The veracity of the "Answer Key" is at issue, which after redrafting would be applied uniformly to all the candidates. Under these circumstances, there would be no necessity to give a hearing to any candidate who has been included in the merit list already published, however, on account of changed circumstances, cannot be included in the new merit list for taking the main examination, after application of the new redrafted "Answer Key".

52. The petition is decided with the above directions.