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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 17.02.2025

\+ W.P.(C) 1965/2025 & CM APPL. 9228/2025

SHOBHIN BALI .....Petitioner

Through: Mr.Prashant Manchanda, Ms.Nancy Shah, Mr.Angad Singh, Mr.Tushar Bukkle, Mr.Rohan Pratap Singh, Advs. with petitioner in person.

versus

REGISTRAR GENERAL DELHI HIGH COURT .....Respondent

Through: Mr.Raj Shekhar Rao, Sr. Adv. with Mr.Samar Singh Kuchwaha, Ms.Kavita Vinyak, Mr.Harshwardhan Thakhur, Mr.Yash Datriwal, Mr.Vamic Washim, Ms.Vishakha Gupta, Ms.Shivangi Nanda, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed by the petitioner praying for the following reliefs:-

> *"**A.** Issue a Writ of Mandamus or any other appropriate Writ/Order/Direction to the Respondents to revise the list of shortlisted candidates by including the name of the petitioner for viva voce of the Delhi Judicial Services Examination, 2023 by awarding him marks for correctly answered questions and taking into consideration the judgment of Pallav Mongia V. Registrar General, Delhi High Court and Anr. (Civil Appeal No.*

4794/2012).

B. *Direct the respondents to call the candidates for viva voce in accordance with the ratio mentioned in para 15 of the instant petition in line with the ratio provided by statutory rules (Delhi Judicial Services Rules, 1970) framed under proviso to Art. 309 of the constitution of India;*

C. *Direct the respondents to delete the questions having doubtful or debatable answers with clear direction to not write explanation as such questions require detailed reasoning and consideration and barring any explanation/reasoning in descriptive examination is unfair and arbitrary.*

D. *Direct the respondents to issue fresh/revised list of shortlisted candidates for viva voce for DJSE 2023 in accordance with the abovementioned prayers."*

2. As a brief background, it is the case of the petitioner that the respondent, by an advertisement dated 06.11.2023, had invited applications for the appointment of Judicial Officers through the Delhi Judicial Services Examination, 2023. The total number of seats advertised was 53. The petitioner was successful in the preliminary round of the examination. Due to certain orders being passed on the challenge to the result of the preliminary examination, a total of 698, as against the earlier 502 shortlisted candidates, were allowed to appear for the Mains examination, which was conducted on 13.04.2024 and 14.04.2024. By a corrigendum dated 16.12.2024, in exercise of powers under Note-3 of the said advertisement, there was a change made with respect to the bifurcation of vacancies into various categories. On 07.01.2025, the result of the Mains examination was declared and 153 candidates were shortlisted and called for the *viva-*

voce. The petitioner was not one of them.

3. The petitioner, on 10.01.2025, filed an RTI application under the Right to Information Act, 2005, in order to obtain the answer sheets for the said examination. He, thereafter, received his answer sheet of the Mains examination and discovered that for two of the questions, that is, question 11(iv) and question 11(vii), he had been awarded zero marks, which the petitioner claims was incorrect. The petitioner has, therefore, filed the present petition, *inter alia*, praying for revision of the result of the Mains examination by awarding him marks for the correctly answered questions and to call the candidates for *viva-voce* in accordance with the ratio mentioned in the Delhi Judicial Service Rules, 1970 (in short, 'Rules').

4. Given the urgency of the petition, inasmuch as the *viva-voce* of candidates was to start from today, when the petition was first listed before us on 14.02.2025, we had requested the learned counsel for the respondent to seek instructions on the claim of the petitioner that the answer-key of the abovementioned two questions was incorrect.

5. Today, the learned senior counsel for the respondent has placed before us the Minutes of the Meeting of the Examination Committee (DHJS & DJS) held on 14.02.2025, which, after obtaining the comments of the learned Examiner, has found no merit in the representation of the petitioner.

6. The learned counsel for the petitioner, however, prays that the above decision of the learned Committee cannot be sustained.

7. Before proceeding further, we would quote the two disputed questions as under:-

> *"11. Please state whether each of the following statements is true or false. (Only either 'true' or 'false' is to be written, and nothing else.)*
> *****
> *(iv) An Agreement, where both the parties are under a mistake as to a matter of fact, is voidable at the option of either of the parties.*
> *****
> *(vii) An injunction can be granted to restrain any person from instituting or prosecuting any proceedings in a Court not subordinate to that from which the injunction is sought"*

8. The learned counsel for the petitioner, at the outset, submits that though the Mains examination was to be a subjective test, question number 11, which is in challenge, was an objective question wherein, the legal acumen and the understanding of the legal principles could have been answered only in a 'yes' or a 'no'. He submits that the petitioner cannot, therefore, be made to suffer only because he applied legal reasoning in answering the questions, rather than going strictly by the book.

9. The learned counsel for the petitioner submits that an agreement, wherein both the parties are under a mistake as to a matter of fact, is void and not voidable. He submits that, therefore, the petitioner had answered question 11(iv) in the negative. In support, he places reliance on Section 20 of the Indian Contract Act, 1872.

10. As far as question number 11(vii) is concerned, he submits that though in terms of Section 41(b) of the Specific Relief Act, 1963, an injunction cannot be granted to restrain any person from instituting or prosecuting any proceeding in a Court not subordinate to that from

which the injunction is sought, Courts do grant anti-suit injunctions against '*foreign courts*', which otherwise are not subordinate to the Courts granting the injunction. He submits that, therefore, the answer to question number 11(vii) was rightly given by the petitioner in the affirmative.

11. He places reliance on the Judgments of the Supreme Court in ***Manish Ujwal & Ors. v. Maharishi Dayanand Saraswati University & Ors.,*** (2005) 13 SCC 744; and the Order dated 28.05.2012 of the Supreme Court passed in Civil Appeal No. 4794 of 2012 titled ***Pallav Mongia v. Registrar General, Delhi High Court***.

12. He further submits that in terms of the advertisement, in the Mains examination, candidates 16 times the number of vacancies were called in the general category, which is far beyond the 10 times limit set by the Rules, while for the *viva-voce* candidates, only 3 times the number of vacancies have been called, instead of calling candidates at 4.8 times the number of vacancies.

13. On the other hand, the learned senior counsel for the respondent has submitted that the Examination Committee has considered the representation of the petitioner and has found no reason to interfere with its final decision of declaration of the result for the Main Examination.

14. Placing reliance on the Judgment of the Supreme Court in ***Ran Vijay Singh & Ors. v. State of Uttar Pradesh & Ors.***, (2018) 2 SCC 357, he submits that a re-evaluation or scrutiny on an inferential process of reasoning should not be adopted by a Court while exercising its power under Article 226 of the Constitution of India. He

submits that the Court can interfere only where the answer is demonstrated to be completely wrong without any inferential process or reasoning.

15. In support, he also places reliance on the Judgments of this Court in ***Kishore Kumar v. High Court of Delhi***, 2018 SCC OnLine Del 12191; ***Aadya Antya v. High Court of Delhi***, 2023 SCC OnLine Del 4472; and ***Vivek Kumar Yadav v. Registrar General, Delhi High Court***, 2022 SCC OnLine Del 1670.

16. On the objective question being asked in the Mains examination, he submits that the same in itself cannot be a ground for the petitioner to challenge the examination process, having failed to succeed in the same. Similar is his reply to the submission of the learned counsel for the petitioner that the ratio of candidates called for in the Mains examination and the *viva-voce* was incorrectly determined.

17. We have considered the submissions made by the learned counsels for the parties.

18. To begin with, we must first note the principles that are applicable to a challenge to a competitive examination process and the questions/answer-key in such process. The Supreme Court has emphasized that a complete hands off or no interference approach in any decision of the Examination Committee cannot be accepted, however, interference in the results of an examination can be made only in rare and exceptional situations and only to a limited extent. The answer key should be presumed to be correct unless it is proved to be wrong. The Court, by inferential process of reasoning or by

rationalization, should not declare the answer-key to be incorrect. The Court can interfere where the answer-key is shown to be palpably incorrect. We may quote from the Judgment of the Supreme Court in ***Ran Vijay Singh*** (supra), as under:-

> *"**18.** A complete hands-off or no-interference approach was neither suggested in Mukesh Thakur [H.P. Public Service Commission v. Mukesh Thakur, (2010) 6 SCC 759 : (2010) 2 SCC (L&S) 286 : 3 SCEC 713] nor has it been suggested in any other decision of this Court—the case law developed over the years admits of interference in the results of an examination but in rare and exceptional situations and to a very limited extent.*
>
> ***19.** In Kanpur University v. Samir Gupta [Kanpur University v. Samir Gupta, (1983) 4 SCC 309] this Court took the view that: (SCC p. 316, para 16)*
>
> > *"16. ... 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."*
>
> *In other words, the onus is on the candidate to clearly demonstrate that the key answer is incorrect and that too without any inferential process or reasoning. The burden on the candidate is therefore rather heavy and the constitutional courts must be extremely cautious in entertaining a plea challenging the correctness of a key answer. To prevent such challenges, this Court recommended a few steps to be taken by the examination authorities and among them are: (i) establishing a system of moderation; (ii) avoid any ambiguity in the questions, including those that might be caused by translation; and (iii)*

prompt decision be taken to exclude the suspect question and no marks be assigned to it.

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30. *The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are:*

30.1. *If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it;*

30.2. *If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any "inferential process of reasoning or by a process of rationalisation" and only in rare or exceptional cases that a material error has been committed;*

30.3. *The court should not at all re-evaluate or scrutinise the answer sheets of a candidate—it has no expertise in the matter and academic matters are best left to academics;*

30.4. *The court should presume the correctness of the key answers and proceed on that assumption; and*

30.5. *In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.*

31. *On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer.*

> *All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse — exclude the suspect or offending question."*

19. In ***Kishore Kumar*** (supra), this Court re-emphasized the above principles, by observing as under:-

> *"**29.** As far as the attack to the answer keys on the merits goes, possibly, the court may on a close analysis conclude that on one or two questions, the answer keys were inapt. However, this has to be weighed in with the fact that the court exercises judicial review jurisdiction. Absent demonstrably facial arbitrariness, its approach should be circumspect and deferential (to the examining body). In this case, the questions for which answer keys were published that are sought to be disputed do not relate to legal issues-except regarding the one on Constitution of India (i.e. source of law making).The rest relate to language usage, propositions and comprehension. This court also is of the considered view that the explanation given for adopting the answer keys, by the DHC establishment is not per se arbitrary or unreasonable. The court cannot don the hat of a primary decision maker having regard to the overall circumstances and facts of the case."*

20. In ***Vivek Kumar Yadav*** (supra), a Coordinate Bench of this Court reiterated that merely because the Court is *prima facie* of the view that the answer to a question is erroneous, the same would not necessarily warrant interference in the evaluation process. It is possible that a candidate may have got confused by certain questions and another view is possible for the correct answer, however, the same

cannot be a ground to interfere within the limited scope of judicial review available under Article 226 of the Constitution of India. We may quote from the Judgment as under:-

> *"**18.** It is thus, clear that merely because this Court is prima facie of the view that an answer to a question is erroneous, the same would not necessarily warrant interference in the evaluation process. The examining body may have its reasons to support the answer as correct or most appropriate. If the Court finds the decision of the examining body to be capricious, arbitrary or actuated by malice, it would be apposite for this Court to exercise judicial review on merits. The examining body must have its full play in choosing the manner in which it conducts the examination including the evaluation criteria and process. Of course, the selection of questions and answers as well as the process in which the examination and evaluation is conducted must not be arbitrary or discriminatory. It is always possible that certain questions may have the propensity to confuse the candidates. It may also be possible to have another view regarding the correct answer. However, the same is required to be considered by the examining body and cannot be the subject matter of review on merits. Doing so, in effect, places this Court as an appellate body on the decision of the examining body taking its normal course. This is not the scope of judicial review under Article 226 of the Constitution of India, 1949.*
> ***19.** It is also relevant to refer to the decision of the Division Bench of the Kerala High Court in H. Nowfal v. Kerala Public Service Commission, 2014 SCC OnLine Ker 12162. In that case, the court had highlighted the distinguishing feature between the case of Kanpur University v. Samir Gupta (supra) and other cases, where the courts had relied upon the view of the experts regarding the answer keys to examine the challenge to the*

evaluation, and the cases where the concerned authorities/examination bodies had adopted a procedure for inviting objections to draft answer keys and having the same evaluated by experts. In such cases, the procedure for the objections to be considered by the experts was inbuilt and therefore, would not warrant a judicial review on merits. The court held that in cases where such procedure is adopted, the scope of judicial review would be further restricted to cases where the action of the body is afflicted with palpable error or where it is found that the body of experts has not acted in a bona fide manner. The relevant observations of the court are set out below:

> *"11. What is a feature in the present case, which appears to us to distinguish it from the cases which are decided, is the procedure which is already put in place by the Public Service Commission. The judgments of the Supreme Court relied on by the learned counsel for the petitioner were rendered in a situation where the university and in one case the employer, conducted the examinations. There were complaints against the same which reached the courts. The courts took the views of the experts. It is relying on the decision of the experts, which were found convincing to the courts, that the courts granted relief. On the other hand, in these cases, as we have already noticed, the procedure evolved by the Commission pursuant to the direction of this Court was to publish provisional key, invite objections, get them scrutinised with the help of experts and act on the decision of the experts. Therefore this is precisely what the courts have done in the decisions which were relied on by the learned counsel for the petitioners. What the petitioners would seek is a review of even the decision of experts to whom the matter is referred by the Commission under a*

procedure which is evolved. That, we think, may involve the court, which exercises judicial review, to sit in judgment over the experts and, more importantly, attract criticism that it is doing a review as an appellate court will do. At this juncture, it is very apposite to note that the petitioners do not have any case that the persons to whom the matter was referred by the Commission, seeking their opinion as experts, are not experts or they were in any manner actuated by malice. This means that the Commission took care by first publishing the provisional key, inviting objections, getting the objections scrutinised by the body of experts who must be treated as having acted bonafide. Further the result of that exercise, if it is sought to be subjected to further scrutiny, for the purpose of the exercise of judicial review, we would think that it may invite the criticism that the said exercise would be an appellate power exercised in disguise as judicial review. It is true that the Tribunal took the view that the Commission already having followed a procedure which is fair and which involved the scrutiny of the objections by the Commission with reference to experts, the matter did not require interference. The Court or Tribunal doing judicial review should not reduce the exercise of judicial review power to that of appellate review and enter findings on facts for which it may not possess the expertise. If a view from among two views of the matter is taken then if it defers to one of the views this Court does not shun its jurisdiction. On the other hand it would be a restrained exercise of its discretion which would still be in exercise of its jurisdiction keeping it within the four walls of its jurisdiction.

> *12. No doubt in a given case where the parties are able to establish that the action of the Commission is afflicted with a palpable error, it cannot be the law, that the Tribunal or this Court will not interfere. We have noticed the questions which have been deleted and the questions for which answers were modified. At least we are not convinced that the petitioners have, in this case, demonstrated that there is a palpable error in the answers or the decision to delete. In such circumstances, we decline jurisdiction."*
>
> ***20.*** *In the present case, the respondent has followed the procedure of inviting objections. Thus, the petitioners had full opportunity to submit their objections and indeed, had done so. The objections raised by the petitioners were duly considered by sufficiently qualified persons (in fact, a committee of Judges of this Court) before the answer key (including the impugned answer keys) was published. There is no allegation of any malice or lack of bona fide.*
>
> ***21.*** *The petitioners, essentially, seek a re-appraisal of the decision on merits. This Court is of the view that this is impermissible except on limited grounds. It is also material to note that the questions relate to the subject of law and there is always a possibility for the parties to debate the same. However, as stated above, that is beyond the scope of judicial review. As observed by the Court in the case of Kishore Kumar v. High Court of Delhi (supra), the interference in such cases must be restricted only in cases where facially arbitrariness is clearly demonstrated. The challenge to the questions raised requires to be examined bearing in mind the aforesaid principles."*

21. Applying the above principles of law to the facts of the present case, we do not find any sufficient reason being made out by the

petitioner to interfere with the result declared for the Mains examination.

22. Though by legal reasoning, the petitioner has been able to demonstrate that there was an answer other than the one given in the answer-key, which could have been more appropriate, at the same time, this would not be sufficient to upset the entire result.

23. We must herein first note that re-evaluation of the answers was not permitted for the Mains examination. However, at our insistence, the Examination Committee of Judges has considered the grievance of the petitioner; has even taken the comments from the learned Examiner; and then found that the answer-key does not require any interference. We have been informed that there were a total of 698 candidates who were shortlisted for the Mains examination pursuant to the final revised result declared on 21.03.2024. Out of these candidates, 153 have been shortlisted for being called for the *viva-voce*. Merely, because this Court may form a *prima facie* opinion that another answer may have been more appropriate to the questions, the entire result and the selection process should not be upset. This Court cannot take the role of an Examination Committee, which is the primary decision maker. We have also been informed that the petitioner is not only four marks short of the cut-off for the *viva-voce*, but is the sole candidate to have challenged the impugned questions.

24. As far as the challenge of the petitioner that the number of candidates shortlisted for the Mains examination or the *viva-voce* is incorrect is concerned, we again do not find any reason to interfere with the same. As has been contended by the learned senior counsel

for the respondent, due to the orders passed by this Court, the result for the preliminary examination had to be revised and more candidates had to be allowed to participate in the Mains examination. This would be a matter of administrative relaxations to be made by the Examination Committee and would not make the process liable to be questioned merely on this ground. The petitioner having participated in the Mains examination without any protest on the increased number of candidates shortlisted for the same, cannot now be allowed to challenge the same. In this regard, we may also take note of the scheme for conduct of the examination as prescribed in the Delhi Judicial Service Rules, 1970, which, while stating that not more than 10 times the total number of vacancies of each category advertised shall be admitted to the Mains examination, at the same time, states that the same may be exceeded in certain circumstances. Similar is the stipulation with respect to the candidates shortlisted for the *viva-voce*.

25. As far as the objection of the petitioner that in the Mains examination only subjective questions could be asked is concerned, we do not find any prohibition in the respondent prescribing for an objective question to be asked in the said examination.

26. For the reasons stated above, we do not find any merit in the present petition. The same, along with the pending application, is accordingly dismissed.

NAVIN CHAWLA, J

SHALINDER KAUR, J

FEBRUARY 17, 2025/*rv/VS/SJ*

Click here to check corrigendum, if any