

Court No. - 40

Case :- SPECIAL APPEAL DEFECTIVE No. - 425 of 2023

Appellant :- Nitesh Kumar Singh Yadav

Respondent :- State Of U P And 2 Others

Counsel for Appellant :- Ramesh Kumar Tiwari, Seemant Singh

Counsel for Respondent :- C.S.C., Siddharth Singhal

Hon'ble Ashwani Kumar Mishra, J.

Hon'ble Syed Qamar Hasan Rizvi, J.

(Per: Hon'ble Ashwani Kumar Mishra, J.)

1. Heard Sri Seemant Singh, learned counsel for the appellant, Sri Siddharth Singhal, learned counsel for the Commission, Sri H.N. Singh and Sri G.K. Singh, learned Senior counsels for the selected candidates.
2. Delay in filing the present appeal is explained to the satisfaction of the Court. Delay is, accordingly, condoned.
3. Appellant is aggrieved by rejection of his writ petition no.19234 of 2022, whereby challenge laid to the answer to question nos.78 and 93 of booklet series 'F' has been rejected. The recruitment admittedly was for 8085 posts of Revenue Lekhpal pursuant to advertisement issued by the respondent-Uttar Pradesh Subordinate Service Selection Commission (hereinafter referred to as the 'Commission') in January, 2022. Pursuant to the advertisement examination was conducted on 31.7.2022. A tentative answer-key was published by the commission on 1.8.2022. Objections were invited against this tentative answer-key till 7.8.2022. After consideration of the objections raised, the commission published the revised answer-key on 7.9.2023. Result of the examination was declared on 2.5.2023. Document verification thereafter took place in July, 2023. Final result of the examination was declared on 30.12.2023. Recommendation has been made by the commission to State Government for offering appointment against 8085 posts on 16.1.2024.

4. The two questions with which we are concerned in the present appeal are reproduced hereinafter:-

"78. भारत सरकार की निम्नलिखित में से कौन सी योजना ग्रामीण क्षेत्रों से शहरी क्षेत्रों में युवाओं के प्रवास को रोकने का प्रस्ताव करती है?

Which of the following scheme of Indian government proposes to prevent the migration of youth from the rural areas to urban areas?

(A) PURA

(B) NSAP

(C) SAGY

(D) SGRY

93. कन्या विद्या धन योजना के तहत, आर्थिक रूप से कमजोर परिवारों की लड़कियाँ, जो हाई स्कूल पास हैं, को उच्च शिक्षा प्राप्त करने के लिए _____ एकमुश्त राशि प्रदान की जाती है।

Under the Kanya Vidya Dhan Scheme, girls of financially weak families who are high school passout are provided with _____ one time amount for pursuing higher education.

(A) 10000

(B) 15000

(C) 30000

(D) इनमें से कोई नहीं/None of these"

5. According to the appellant, four answers have been suggested to the question no.78 which are different schemes framed by the Government. According to the commission correct answer to question no.78 is '(A) PURA'. PURA stands for Providing Urban Amenities to Rural Areas. Learned counsel for the appellants submits that PURA although was a scheme launched with the object of preventing migration of youths from rural areas to urban areas but the scheme itself was discontinued in the financial year 2015-16. It is, therefore, submitted that PURA was actually not a subsisting scheme on the date question was posed and in such circumstances answer '(A)' could not have been treated to be a correct answer. Learned counsel further submits that none of the other three options were correct either. It is, therefore, submitted that question no.78 in booklet series 'F' ought to have been cancelled and even marks ought to have been awarded to those who had attempted the question as per the prevalent practice.

6. In respect of his contention, Sri Seemant Singh, learned counsel for the appellant has placed reliance upon the answer to question no.442 dated 17.11.2016 by the Minister of Rural Development in the Parliament, wherein it is clearly admitted that

the PURA scheme has been discontinued. A note appended to the Parliamentary answer is also highlighted as per which PURA scheme has been replaced by Shyama Prasad Mukherji Rurban Mission (SPMRM). Other literatures are also replied upon in order to submit that the scheme having been discontinued, it could not have been relied upon as the correct answer to question no.78.

7. So far as question no.93 is concerned, learned counsel submits that Kanya Vidya Dhan Yojana is a scheme launched by the Government to provide one time financial assistance to girls of financially weak families for pursuing higher education. The scheme of Kanya Vidya Dhan Yojana has been placed before the Court in order to submit that entitlement to receive such amount is only to those girls, who have passed intermediate. It is, therefore, submitted that the question no.93 was incorrectly formulated, inasmuch as Kanya Vidya Dhan Yojana was not admissible to high school pass out and, therefore, answer '(C)', relied upon by the commission, was incorrect.

8. Sri Seemant Singh, learned counsel for the petitioner has further placed reliance upon Government Order dated 20.7.2016 whereby the Kanya Vidya Dhan Scheme has been modified. The entitlement to receive financial aid as per the modified scheme is specified in para 3 of the Government Order which is reproduced hereinafter:-

"3- तदनुसार वर्ष 2016 में मेधावी छात्राओं के लिए प्रदेश के प्रत्येक जनपद में माध्यमिक शिक्षा परिषद, उ०प्र० सी०वी०एस०ई० एवं आई०सी०एस०ई० बोर्ड उ०प्र० मदरसा शिक्षा परिषद, उ०प्र० संस्कृत शिक्षा परिषद से इण्डरमीडिएट/स्तर की परीक्षा उत्तीर्ण 99,000 छात्राओं को प्राप्तांको के अवरोही क्रम में मेरिट के अनुसार रू० 30,000/- (रू० तीस हजार मात्र) की धनराशि प्रदान कर लाभान्वित किया जायेगा।"

9. Learned counsel appearing for the opposite parties submits that though the questions could have been better formulated yet the questions cannot be treated to be incorrect questions, for the reasons enumerated hereinafter.

10. So far as question no.78 is concerned, it is stressed on behalf of the respondents that the precise question posed to the candidate was as to which of the four specified schemes proposes to prevent

migration of youths from rural areas to urban areas. Learned counsels submits that there is no stipulation in the question that any of the four schemes are either existing on the date of question or the question gives an inference that the schemes are presently in vogue.

11. So far as answer to question no.93 is concerned, it is stated that the precise question posed is as to what is the amount which is provided to a girl belonging to financially weak family for pursuing higher education. The four options quantified the amount as Rs.10,000/-; Rs.15,000/-; Rs.30,000/- or none of these. It is argued that Rs.30,000/- is the correct answer. The scheme contained in the Government Order dated 22.8.2012 of Kanya Vidya Dhan Yojana has been placed before the Court. Paras 1 and 2 of the scheme reads as under:-

"उपर्युक्त विषय के संबंध में मुझे यह कहने का निदेश हुआ है कि श्री राज्यपाल महोदय प्रदेश में आर्थिक दशा से कमजोर परिवारों की हाईस्कूल उत्तीर्ण ऐसी छात्रायें जो उच्च शिक्षा की ओर उन्मुख होकर वर्ष 2012 एवं उसके पश्चात इण्टरमीडिएट परीक्षा अथवा उसके समकक्ष परीक्षा उत्तीर्ण हों, को प्रोत्साहन प्रदान किये जाने के उद्देश्य से कन्या विद्या धन योजना वर्ष 2012 से लागू किये जाने की सहर्ष स्वीकृति प्रदान करते हैं।

2- इस योजना के अन्तर्गत निर्धारित मानक एवं शर्तें पूर्ण करने वाली आर्थिक दशा से कमजोर परिवारों की हाईस्कूल उत्तीर्ण छात्रायें उच्च शिक्षा की ओर उन्मुख हों और ऐसी छात्रायें जो उच्च शिक्षा की ओर उन्मुख होकर इण्टरमीडिएट परीक्षा अथवा उसके समकक्ष परीक्षा उत्तीर्ण करने वाली छात्राओं को प्रोत्साहन स्वरूप रु० 30,000/- की धनराशि एक मुश्त प्रदान की जायेगी।"

12. With reference to the scheme, quoted above, it is urged that financial support of Rs.30,000/- would be admissible to high school passed girls students of poor financial families, who pass intermediate after 2012. Submission is that though the amount becomes payable after the girl student passes class 12th but the scheme does refer to eligibility as high school but the payment is to be released after passing the intermediate examination. It is, therefore, submitted that question no.93 is also not incorrect.

13. Various judgments have been cited before the Court including the Division Bench judgment in Writ-A no.12344 of 2017 on the scope of interference in such matters by the writ Court.

14. Reliance is placed upon the judgment of Supreme Court in Ran Vijay Singh & Ors. vs. State of U.P. (2018) 2 SCC 357. Learned

counsel for the commission has also placed reliance upon the Division Bench judgment of this Court in Special Appeal Defective No.112 of 2024, wherein this Court had recognized the limited scope of the writ Court to re-evaluate or scrutinized the answer-sheets of a candidate.

15. Reliance is also placed on the judgment of this Court in Kapil Kumar & Ors. vs. State of U.P. & Ors. 2023 (12) ADJ 338 (DB), wherein reference is made to various judgments of the Supreme Court, and this Court, specifying the scope of interference made in different cases.

16. The commission has also filed an affidavit stating that the appellant belongs to OBC category and has scored 78.75 marks. His date of birth is 11.1.1996. The cut-off in the respective OBC category stands at 81.25 marks. The last selected candidate was born on 25.6.1992. Referring to Rule 8(2)(iv) of the Uttar Pradesh Direct Recruitment to Group-C Posts (Mode and Procedure) Rule, 2015, it is pointed out that in the event two and more candidates obtain equal marks in the aggregate then the name of the candidate obtaining higher marks in the written examination shall be placed higher in the list. Submission is that even if this appeal was to be allowed yet the appellant would only be placed at serial no.103 of the list of candidate who are not selected. Argument is that, in such circumstances, no interference is otherwise required to be made in the present appeal, at the instance of the present appellant. It is also submitted that no other similar claim is pending before this Court or the Supreme Court.

17. Having heard learned counsel for the parties, we find substance in the argument advanced by the respondents in response to the contentions advanced in this appeal.

18. So far as question no.78 is concerned, the specific question posed to the candidate is with reference to the four schemes namely, PURA, NSAP, SAGY, SGRY. Question is as to which of these schemes proposes to prevent migration of youths from rural areas

to urban areas. The appellant admits that out of these four schemes, the only scheme which proposes to prevent migration of youths from rural areas to urban areas is PURA. What is, however, argued is that PURA scheme stands discontinued with effect from financial year 2015-16. Although this fact is not seriously disputed by the commission, yet learned counsel for the commission points out that on several websites of the Central Government including <https://pib.gov.in/newsite/PrintRelease.aspx?relid=57173>, PURA is still shown as a scheme and it is nowhere mentioned that the scheme is abandoned.

19. Upon examination of the materials on record, we do find that no funds have been sanctioned in PURA scheme after the financial year 2015-16, and the scheme is currently not in vogue yet this fact alone would not be determinative of the issue posed before us. The precise question posed to the candidate is that which of the four schemes proposes to prevent migration of youths from rural areas to urban areas. It is admitted to the appellant that out of the four schemes provided as the option to the question, PURA alone proposes to prevent migration of youths from rural areas to urban areas. In such circumstances, merely because no funds are released in the scheme after financial year 2015-16 or even if the scheme is not presently operational it would not mean that question no.78 becomes wrong. From the formulation of question it is otherwise not suggested in any manner that the scheme had to be an existing scheme.

20. The answer to Lok Sabha question no.442 by the Minister of Rural Development is as under:-

“(a) to (b): The Government was implementing the Scheme of Provision of Urban Amenities in Rural Areas (PURA) on pilot basis for providing basic amenities in rural areas through Public Private Partnership (PPP) mode. The scheme was restructured in 2010 with the aim to achieve holistic and accelerated development of compact areas around a potential growth centre in Gram Panchayat(s) through PPP framework for providing livelihood opportunities and urban amenities to improve the quality of life in rural areas.

(c) to (c): The activities proposed under PURA projects include drinking water supply and sewerage, construction and maintenance of village streets, drainage, solid waste management, skill development,

development of economic activities etc. The current status of PURA projects is as follows. There is no provision to provide funds under the PURA Scheme during the last three years.”

21. As per the answer of the Minister concerned, the PURA scheme has been replaced by SPMRM scheme but SPMRM is not one of the options given for the answer. The appellant in his reply to question no.78 has actually claimed SGRY to be the right answer. Learned counsel for the appellant, however, does not dispute that SGRY is not the right answer. What is asserted by learned counsel for the appellant is that had he not attempted question no.78 it would not have been open for the appellant to challenge answer to the question.

22. Upon analysis of the materials placed on record, we are, therefore, persuaded to the view that the correct answer to question no.78, in the manner the question is posed, would be PURA.

23. We are also conscious of the observations made by the Supreme Court in a series of judgments, limiting the scope of examination of such issues by the High Court. In para 9 and 10 of the judgment of the Supreme Court in Secretary (Health), Department of Health and Family Welfare & Anr. vs. Dr. Anita Puri (1996) 6 SCC 282, the Supreme Court observed as under:-

“9.It is too well settled that when a selection is made by an expert body like the Public Service Commission which is also advised by experts having technical experience and high academic qualification in the field for which the selection is to be made, the courts should be slow to interfere with the opinion expressed by experts unless allegations of mala fide are made and established. It would be prudent and safe for the courts to leave the decisions on such matters to the experts who are more familiar with the problems they face than the courts. If the expert body considers suitability of a candidate for a specified post after giving due consideration to all the relevant factors, then the court should not ordinarily interfere with such selection and evaluation. Thus considered, we are not in a position to agree with the conclusion of the High Court that the marks awarded by the Commission was arbitrary or that the selection made by the Commission was in any way vitiated.

10. In the aforesaid premises, we set aside the judgment of the Division Bench of the Punjab and Haryana High Court and allow this appeal. The writ petition filed by the respondents stand dismissed, there will be no order as to costs.”

24. So far as the question no.93 is concerned, we have already taken note of the Government Order dated 22.8.2012 whereby Kanya Vidya Dhan Yojana was introduced in the State of Uttar

Pradesh. The scheme clearly provides that financial assistance is to be offered to girls belonging to poor financial families who have passed high school examination and are progressing towards higher education and complete intermediate or equivalent examination after 2012. The amount of Rs.30,000/- is to be paid only after the girl student passes intermediate examination after 2012. The formulation of question no.93 is not exhaustive, inasmuch as first part of the scheme although refers to grant of financial assistance to girls of financially weak family who have passed high school but the fact that such amount would be payable only after passing intermediate examination or equivalent post 2012 has been omitted. Although we are of the opinion that the question ought to have been better framed for it to be consistent with the scheme contained in the Government Order dated 22.8.2012, but the fact that question does not specify that the amount would be payable only after the girl student has passed intermediate or equivalent examination, after 2012, the question itself would not become wrong. Considering the substance of question i.e. the amount payable in the scheme, simpler way of putting the question could be as to what is the amount of financial benefit available to a girl student in Kanya Vidya Dhan Scheme. This, in our opinion, remains the substance of the question. The amount payable in the scheme undisputedly is Rs.30,000/-.

25. The question posed is essentially with regard to Kanya Vidya Dhan Scheme which has been introduced by Government Order dated 22.8.2012. The emphasis laid on the question is with reference to original scheme which is already discussed above and the amount payable thereunder. Merely because in the modified scheme, launched later, high school pass out student is omitted and only passing of intermediate or equivalent examination is mentioned, it cannot be said that question no.93 has become wrong. The modified scheme limits the grant of benefit to 99,000 students and specified the criteria for choosing such limited candidates for the grant of benefit.

26. We are of the considered view that in the matter of public examination where large scale recruitment are undertaken some play in the joints would have to be conceded to the examining authority. It is possible that the question may not have been framed in the best possible manner or a better formulation may be advisable, but it cannot be a ground to hold the question itself to be wrong as long as the question can be understood by a candidate and can be answered. Unless it is shown that the question is wrong or the formulation of question is such that the candidate could not have understood the question or answered it, we would not be justified in interfering with the question itself.

27. In view of the deliberations held above, we find ourselves to be in respectful agreement with the view taken by the learned Single Judge for dismissing the writ petition filed by the petitioner. The special appeal lacks merit and is, accordingly, dismissed.

Order Date :- 20.3.2024

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