

Birbal Dass Vs. Himachal Pradesh Subordinate Service Selection Board and ors.

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Court : Himachal Pradesh

Decided On : May-25-2011

Judge : RajivÂ Sharma,Â J.

Acts : The Right to Information Act (RTI); The Companies Act - Section 11

Appeal No. : C.W.P. No. 6485 of 2010

Appellant : Birbal Dass

Respondent : Himachal Pradesh Subordinate Service Selection Board and ors.

Advocate for Def. : Mr. Rajesh Kumar; Ms. Ruma Kaushik; Mr. Sunil Mohan Goel; Mr. Lakshay Thakur, Advs.

Advocate for Pet/Ap. : Mr. Adarsh K. Vashista, Adv.

Judgement :

1. Respondent No. 1 has issued an advertisement on 28th August, 2008 to fill up the posts of Lecturers (School Cadre) in the subject of Commerce. Petitioner being eligible and qualified, applied for the same and was assigned Roll No. 31022. He belongs to SC/IRDP category. He appeared in the written examination and was called for interview on 18.06.2010 vide Annexure P-1, dated 20.05.2010. The result was declared by the respondent vide Annexure P-2-A on 27.07.2010.

Petitioner sought information under the Right to Information Act qua question papers alongwith his O.M.R.. The same was supplied to him vide Annexures P-3 and P-4.

2. Mr. Adarsh K. Vashista, learned counsel for the petitioner submitted that the petitioner has answered questions No. 81 and 111 rightly, however, he has not been given marks for the same. According to him, right answer to question No. 81 was option 'B' and not 'A', as given in Key answer. He also submitted that the right answer to question No. 111 was 'B' and not 'C', as given in Key answer. In other words, the submission of Mr. Adarsh K. Vashista is that his client is entitled to get the credit of two marks.

3. Mr. Rajesh Kumar, learned counsel for respondent No. 1 has vehemently argued that all the precautions have been taken while evaluating the question papers and the answers supplied by paper setter to questions No. 81 and 111 are correct.

4. I have heard the learned counsel for the parties and gone through the pleadings carefully.

5. Petitioner has secured 123 marks. Respondent No. 5 has secured 126 marks and respondent No. 6 has secured 124 marks. The candidates, who have been selected pursuant to the declaration of result dated 27.07.2010 have been appointed. [Question No. 81 reads thus:

“81. The maximum number of partners in a firm has been specified by

(A) The Partnership Act, 1932

(B) The Companies' Act, 1956

(C) The Contract Act, 1872

(D) None of these

6. As per O.M.R., petitioner has marked choice 'B'. Mr. Adarsh K. Vashista, learned counsel for the petitioner has drawn the attention of the Court to Section-11 of the Companies Act, 1956, which reads thus:

“11. Prohibition of associations and partnerships exceeding certain number.-

(1) No company, association or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a company under this Act, or is formed in pursuance of some other Indian Law.

(2) No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Indian law.

(3) This section shall not apply to a joint family as such carrying on a business; and where a business is carried on by two or more joint families, in computing the number of persons for the purposes of sub-sections (1) and (2), minor members of such families shall be excluded.

(4) Every member of a company, association or partnership carrying on business in contravention of this section shall be personally liable for all liabilities incurred in such business.

(5) Every person who is a member of a company, association or partnership formed in contravention of this section shall be punishable with fine which extend to (ten thousand rupees).

7. A bare perusal of Section-11 of the Companies Act, 1956 makes it abundantly clear that the maximum number of partners in a firm has been specified by the Companies' Act, 1956. The Partnership Act does not specify the maximum number of partners. It is only in Section 11 of the Companies Act, 1956, which limits the number of partners to 10 for a partnership carrying on banking business and 20 for a partnership carrying on any other type of business. It is also evident from the contents of Annexure P-7 and P-8 that the correct answer of question No. 81 was option 'B' and not 'A'. In Annexure P-7, question No. 64 is the verbatim reproduction of question No. 81 and the answer provided is 'B'. Annexure P-7 is the extract of State Eligibility Test, accredited by University Grants Commission. Similarly, in Annexure P-8, question No. 7 is the verbatim reproduction of question No. 81 and the answer provided therein is also option 'B'. Annexure P-8 is the Multiple Choice Questions, Commerce (Cosmos Book HIVE'S). Question No. 111 reads thus:

“111. Which city is having highest population?”

8. As far as question No. 11 is concerned, as per the Student's General Knowledge Book, correct answer of this question is Tokyo, i.e., option No. 'B' and not 'C'. Similarly, as per the book of General Knowledge written by Mr. Tarun Goyal, the correct answer to question No. 111 is again Tokyo.

9. In view of the material placed on record by the petitioner, correct answers to questions No. 81 and 111 were options No. 'B' and not 'A' and 'C', respectively. Petitioner has been wrongly deprived of the benefit of the marks, to which he was entitled by answering these questions correctly. Normally, in case the petitioner satisfies the Court that the answers given to him were correct, the matter is required to be referred to the experts. However, in the instant case, the matter is not required to be referred to the experts, since the answers given by the petitioner are established to be correct on the basis of material placed on record. The answers to these questions have also not been disputed by the respondents.

10. Accordingly, in view of the observations and discussions made hereinabove, the petition is allowed. Petitioner is entitled to get the benefit of two marks for

answering questions No. 81 and 111 correctly. Respondent No. 1 is directed to re-draw the merit list qua the petitioner and to take necessary steps for recommending his case for appointment, within a period of one month.

Since respondents No. 3 to 6 have also been appointed, their appointments shall not be disturbed and the case of the petitioner shall be considered against the category to which he belongs, if any vacancy is still lying vacant. In case the vacancy is not lying vacant, the respondent-State shall consider the case of petitioner by creating a supernumerary post. No costs.

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