----Petitioner

Versus

1. Registrar General, Rajasthan High Court Jodhpur, New High Court Building Jhalamand, Jodhpur.
2. Registrar Examination, Rajasthan High Court Jodhpur, New High Court Building Jhalamand, Jodhpur.

----Respondents

For Petitioner(s) : Mr. Kamlakar Sharma, Sr. Adv. assisted by Ms. Alankrita Sharma and Mr. Madhusudan Singh Rajpurohit in C.W. Nos.18479/2022 & 17542/2022
Mr. Vikrrant Singh Gurjar in C.W. Nos.17763/2022 & 4617/2023
Mr. Chandra Kant Chauhan in C.W. No.18620/2022
Mr. Girraj P Sharma with Mr. Shamsher Singh Shekhawat in C.W. No.30/2023
Mr. Sunil Samdaria with Mr. Arihant Samdaria in C.W. No.8083/2023
Mr. Vaibhav Pancholi for Mr. Jagdish Narayan Sharma in C.W. No.13762/2023

For Respondent(s) : Mr. Vigyan Shah with Mr. Yash Joshi, Mr. Pulkit Bhardwaj & Mr. Harender Neel

HON'BLE MR. JUSTICE PANKAJ BHANDARI
HON'BLE MR. JUSTICE BHUWAN GOYAL

Order

RESERVED ON :: 20/12/2023
PRONOUNCED ON :: 14/02/2024

(Per Hon'ble Pankaj Bhandari J.)

1. Since the controversy involved in the present batch of writ petitions is similar, the same are being decided by this common order.

2. S.B. Civil Writ Petition No.18479/2022 titled as *Nisha Gaur & Ors. Versus The Registrar (Examination), Rajasthan High Court & Anr.* is considered to be a lead case of the present controversy involved in this bunch of writ petitions.

3. The petitioners are practicing advocates, who have filed this bunch of writ petitions *inter-alia* challenging the entire selection process and evaluation method adopted in the Mains (Written) Examination for Direct Recruitment to the Cadre of District Judge, 2020. Following reliefs are claimed in the writ petitions:-

> "a) Issue a writ, order or direction to quash the result dated 01.10.2022 of the Main (Written) Examination for direct recruitment to the cadre of District Judge, 2020 conducted by the Rajasthan High Court pursuant to advertisement dated 05.01.2021.
>
> b) Issue a writ, order or direction for re-evaluation of all the papers of Main (Written) Examination of all the petitioners, who appeared in the Main Examination by an independent expert committee;
>
> c) Issue a writ, order or direction to revise the result of the said Main Examination in accordance with the recommendations made by the Justice Sikri Committee in Pranav Verma (2020 15 SCC 377) judgment by awarding bonus marks to the candidates qualified for the mains examination to the extent that three times of the vacancy notified candidates should be called for the interview as per Rule 40(4) of the Rajasthan Judicial Service Rules, 2010;
>
> d) Issue a writ, order or direction to produce the question papers of mains examinations of Direct Recruitment to the Cadre of District Judge, 2020 to ascertain the length of the papers;
>
> e) Issue a writ, order or direction declaring the criteria of minimum marks in

each subject in cases where the candidates securing more than the total qualifying marks to be arbitrary and such candidates be declared as selected and called for interview;

f) Issue a writ, order or direction not to fill vacancies on ad hoc basis from judicial services and further not to confirm persons promoted earlier on ad hoc basis on advocate quota;

g) Issue a writ, order or direction directing the respondents that evaluation for all the future competitive examination for direct recruitment to the Cadre of District Judge to be undertaken by independent experts and not by judicial officers so as to avoid any conflict of interest;

h) Any other appropriate order, which may be considered just and proper in the facts and circumstances of the case, may kindly be passed in favour of the petitioners.

i) Costs of the petition may kindly be awarded in favour of the petitioners."

4. One of the relief sought for in the writ petitions is to revise the result of the Mains examination in accordance with the relief granted by the Apex Court after considering the recommendations made by Justice A.K. Sikri in his Report given in *Pranav Verms & Ors. Versus Registrar General of the High Court of Punjab & Anr.*: **(2020) 15 SCC 377**. This Court in its order dated 18.04.2023, after hearing counsel for the parties, deemed it proper to request Justice Govind Mathur, former Judge of Rajasthan High Court and former Chief Justice of Allahabad High Court (hereinafter referred to as 'Justice Govind Mathur') to look into the answer-sheets and communicate his views, suggestions and findings. The aforesaid order came to be challenged by the respondent – High Court before the Supreme Court, however, the Supreme Court upheld the same. In pursuance thereof, Justice Govind Mathur has

submitted his report. Objections were submitted with regard to the said report and reply to same has been filed on behalf of the High Court.

5. Learned counsel for the petitioners have argued both on the report as well as on the merits of the case. The main thrust of the arguments of Mr. Kamlakar Sharma, learned Senior Advocate, assisted by Ms. Alankrita Sharma is that for Direct Recruitment to the post of District Judge, a total of 85 posts were advertised in 2020. In the preliminary examination held on 25.07.2021, as many as 2574 candidates appeared, 1015 candidates were declared provisionally qualified in the preliminary examination, 788 candidates appeared in Mains (Written) Examination, however, only 4 candidates were declared pass and called for interview. It is further contended that for Direct Recruitment to the Cadre of District Judge, 2018 also, as against 75 vacancies, only 5 candidates cleared the examination.

6. It is contended by learned Senior Advocate, Mr. Kamlakar Sharma that there is a conflict of interest between those who have evaluated the answer sheets and the examinees. The copies have been checked by the Officers of the District Judge Cadre who are mainly Promotee Officers and they have conflict of interest with the Direct recruits because in case Direct recruits are not recruited by direct recruitment, these posts are filled on ad-hoc basis by Promotee Officers and recently also, 26 Officers of the Senior Civil Judge Cadre have been appointed on ad-hoc basis against these vacant posts. It is argued that it is not appropriate for the District Judges to check the copies of candidates appearing for District Judge Cadre and that malice in fact is malice in law. It is

contended that they are not experts in examining the copies. It is also argued that Officers of Senior Civil Judge Cadre who do not clear the Limited Competitive Examination are eventually promoted on ad-hoc basis and finally get promoted in the cadre of District Judge through promotion channel, thus those who are not clearing the Limited Competitive Examination are also being promoted in the cadre of District Judge. It is argued that since there is a conflict of interest between Promotees and Direct recruits, examination of copies by the Promotee Officers does not give a right message to the candidates appearing for Direct recruitment. The Promotee Officers also are not happy with the Limited Competitive Examination for the very reason that Junior Officers as well as advocates, who are younger in age and meritorious, are appointed through the Limited Competitive Examination and then they become senior to the Promotee Officers. Thus, examination of copies by the Promotee Officers is not the correct mode of assessing the candidates who are appearing for direct recruitment through Limited Competitive Examination or direct recruitment from advocate’s quota.

7. It is further argued that the Head Examiners are also Promotee Officers and going by the marks awarded, it is evident that strict marking has been done and proper marks have not been awarded even for correct answers. The purpose of infusing fresh blood through the Scheme of Direct Recruitment is being frustrated as in the last recuitment also, out of 75 vacancies for Direct recruitment, only 5 were filled and in the present recruitment, out of 85 vacancies, only 4 have been filled. The vacancies in service is also jeopardized in case recruitment is not

made through the direct recruitment process. It is also argued that efficiency in service is the main purpose for which direct recruits are appointed.

8. It is further contended that some of the advocates/candidates who did not clear the examination in Rajasthan got merit in Chhattisgarh and Delhi Higher Judicial Service Examination which also points to some lacking in the Scheme of the Examination held by the Rajasthan High Court.

9. It is contended that in order dated 18.04.2023, this Court in Para 11 has clearly mentioned that "From perusal of answer-sheets of Roll No.510735, it is revealed that even in correct answers, appropriate marks have not been assigned, there is overwriting in the marks and in some questions, marks have been reduced."

10. It is further contended that in the above backdrop, this Court had appointed Justice Govind Mathur to look into the answer-sheets of all the writ petitioners and of the four candidates, who have cleared the examination and communicate his views, suggestions and findings. In the report submitted by Justice Govind Mathur, it was mentioned that he has examined all the answer-sheets by keeping in mind the following issues:

> "(i) Whether the alleged over writing in few answer-sheets is founded on extraneous considerations?
> (ii) Whether the question papers in all the subjects were not proportionate to the time given to answer the same?
> (iii) Whether the non-availability of model answer key relating to the questions asked in main examination caused disparity in evaluation of answer-sheets?

(iv) Whether the marks awarded by the evaluators were not appropriate?"

11. It is argued that question No.(iv) of the said report has not been answered and merely a note has been made in Para 10 of the report that "in the entirety, I do not find any wrong in examination of answer-sheets by the examiners." It is contended that from the report, it is not revealed that each and every question have been examined by Justice Govind Mathur. It is also contended that the report lacks detail analysis and evaluation with regard to the issues including lengthiness of papers, inappropriate & strict marking, time available to answer each question etc. Further, there is no comparison with the marks obtained by the successful candidates qua the present petitioners. It is argued that although the report mentions that there is uniformity in awarding the marks, the uniformity is in fact of awarding less marks. It is argued that such vague and unreasoned report should be ignored by the Court. It is also argued that any judicial order or report must be backed by reasoning. In support of this contention, reliance is placed on *Kranti Associates Private Limited & Anr. Versus Masood Ahmed Khan & Ors.*: **(2010) 9 SCC 496;** *Rohit Bishnoi Versus The State of Rajasthan & Anr.*: **2023 LiveLaw (SC) 560;** *Ramesh Chandra Agarwal Versus Regency Hospital Limited & Ors.*: **(2009) 9 SCC 709** and *State of Orissa Versus Dhaniram Luhar*: **(2004) 5 SCC 568.** It is further argued that the Court cannot accept the report submitted by Justice Govind Mathur for the very reason that the said report does not answer to the specific query put across by the Court.

12. It is vehemently argued that the time provided for writing the examination was not sufficient, looking to the number of

questions asked. It is pointed out to the Court that in each paper, the maximum time available to a candidate after excluding the period of reading the question paper was 5-7 minutes. It is also contended that Justice Sikri in his report in Pranav Verma Case (supra) has mentioned that time of 8.5 minutes to answer each question is less. It is also argued that Justice Govind Mathur though has mentioned that all the examinees have completed the paper, but in the same report, he has also mentioned that the candidates have given short answers. It is contended that the mere fact that majority of the candidates have given short answers establishes that the paper was lengthy and candidates gave short answers so that they can attempt the whole paper. Except for the above, there cannot be any reason why majority of the candidates would give short answers. Our attention has been drawn towards the report of Justice Sikri, Retired Judge, Supreme Court of India, given in the case of *Pranav Verma & Ors.* (supra), wherein Justice Sikri dealt with the time required for answering each question and had given several suggestions including recommendation for awarding extra marks.

13. With regard to the issue of lengthy paper, bonus marks, strict marking, learned counsel for the petitioners have placed reliance on the judgments of *Pranav Verma Versus Registrar General of the High Court of Punjab & Haryana at Chandigarh & Anr. (supra)* and *Navneet Kaur Dhaliwal Versus The Registrar General of High Court*: **(2021) 11 SCC 147.**

14. With regard to the contention that Court is not bound with expert opinion and report of the expert, reliance is placed on *M.P. Rajya Tilhan Utpadak Sahakari Sangh Maryadit, Pachama, District*

Sehore & Ors. Versus M/s. Modi Transport Service: **(2022) 4 SCR 647**; *Singrauli Super Thermal Power Station Versus Ashwani Kumar Dubey & Ors.*: **(2023) 10 SCR 440** and *Manik Versus State of Maharashtra*: **2012 SCC OnLine Bom 1902.** It is further contended that in *Singrauli Super Thermal Power Station Versus Ashwani Kumar Dubey & Ors.* (supra), the Apex Court has observed, that if a report is to be acted upon, an opportunity for discussion and rebuttal should be given to the affected parties. In *M.P. Rajya Tilhan Utpadak Sahakari Sangh Versus M/s. Modi Transport* (supra), the Apex Court has observed that the commissioner's report is only an opinion or noting, as the case may be with the details and/or statement to the court about the actual state of affairs. Such a report does not automatically form part of the court's opinion, as the court has the power to confirm, vary or set aside the report or in a given case issue a new commission. Hence, there is neither abdication nor delegation of the powers of functions of the court to decide the issue. Sometimes, on examination of the commissioner, the report forms part of the record and evidence. The parties can contest an expert opinion/commissioner's report, and the court, after hearing objections, can determine whether or not it should rely upon such an expert opinion/commissioner's report. Even if the court relies upon the same, it will merely aid and not bind the court. In strict sense, the commissioner's report are 'non-adjudicatory in nature' and the courts adjudicate upon the rights of the parties. In *Manik Versus State of Maharashtra* (supra), the Apex Court has held that unlike any other opinion, every opinion of an Expert has to be based on objective foundation. Opinions of Expert get worthiness

of consideration by the Court because those are objectively propelled and concluded due to expertise. Any opinion without objective foundation would be liable for criticism of it being propelled due to subjectivity and would lose credibility as expert opinion. It was further held that an opinion to be worthy of weight is to be supported by reasons. It is further contended that this view is supported by the judgments of Hon'ble Supreme Court, namely, *Madan Gopal Kakad v. Naval Dubey:* **(1992) 3 SCC 204** wherein the Apex Court has held as under:

> "34. We really need not reiterate various judgments which have taken the view that the purpose of an expert opinion is primarily to assist the Court in arriving at a final conclusion. Such report is not binding upon the Court. The Court is expected to analyse the report, read it in conjunction with the other evidence on record and then form its final opinion as to whether such report is worthy of reliance or not. Just to illustrate this point of view, in a given case, there may be two diametrically contradictory opinions of handwriting experts and both the opinions may be well reasoned. In such case, the Court has to critically examine the basis, reasoning, approach and experience of the expert to come to a conclusion as to which of the two reports can be safely relied upon by the Court. The assistance and value of expert opinion is indisputable, but there can be reports which are, ex facie, incorrect or deliberately so distorted as to render the entire prosecution case unbelievable. But if such eye-witness and other prosecution evidence are trustworthy, have credence and are consistent with the eye version given by the eye-witnesses, the Court will be well within its jurisdiction to discard the expert opinion. An expert report, duly proved, has its evidentiary value but such appreciation has to be within the limitations prescribed and with careful examination by the Court. A complete contradiction or inconsistency between the medical evidence and the ocular evidence on the one hand and the statement

> of the prosecution witnesses between themselves on the other, may result in seriously denting the case of the prosecution in its entirety but not otherwise."

15. In support of the contention that re-evaluation of answer scripts can be done, reliance is placed on *Ran Vijay Singh & Ors. Versus State of Uttar Pradesh & Ors.*: **(2018) 2 SCC 357** and *High Court of Tripura through the Registrar General Versus Tirath Sarathi Mukherjee & Ors.*: **(2019) 16 SCC 663.**

16. It is further argued that candidates who have given correct answers for a question, zero marks or inappropriate marks have been awarded. Our attention was drawn to certain questions and answers given by the writ petitioners and the marks awarded to them. Some questions and answers of **Roll No.510468** reads as under:-

> **"Question No.6 of Paper-II**:-
>
> "Is it necessary for male Hindu to take the consent of his wife for a valid adoption of a son or a daughter." Explain with the help of relevant provisions, the circumstances when the consent of the wife is not required.
>
> **Answer**:-
>
> As per Section 5 of Hindu Adoption and Maintenance Act, every adoption is void which is not according to the provision of this Chapter-II of this Act.
>
> Section 7 of HAM Act provides that every male Hindu who seeks to take a son or daughter in adoption shall have to take the consent of his wife.
>
> Provided that he, if his wife has renounced the world or ceased to be Hindu or has declared by a court of competent jurisdiction as an of unsound mind then it is not necessary to take the consent of his wife.
>
> Provided further that if he has more than one wife, he has to take consent of all the wives."

Out of 4 marks, 2½ marks have been awarded for this answer.

Question No.8 of Paper-II:-

Explain the difference between "Batil" and "Fasid" marriage under the Muslim Law?

Answer:

Fasid marriage is not a void marriage. It is considered as irregular marriage because it occurs under accidental circumstances whereas Batil marriage is void marriage.

Fasid marriage may be revived but Batil marriage does not revive.

Children are considered as legitimate in Fasid marriage whereas not in Batil marriage.

If any male muslim solemnizes marriage during the period of iddat or marriage without any witness or marriage with the girl of consanguinity, affinity or fosterage or marriage with a fifth girl without giving talak to anyone then these conditions such marriage is considered as Basid marriage and it can be curable."

Out of 4 marks, 1 mark has been awarded for this answer.

Question No.18 of Paper-II:

A Hindu male died intestate leaving behind father, widow, sister, a son who has converted to Islam, a married daughter and son's widow who is residing with her parents.

How and to whom his property will devolve? Explain with the help of relevant provisions.

Answer:

As per Sections 8, 9, 10 and the schedule the property of a male Hindu died intestate shall devolve to his widow, his married daughter and other son's widow equally.

These three are class I heir of the deceased.

Father is not entitled to get property in inheritance because he is a Class II heir (I entry)

Sister of deceased is also a Class II heir.

If any person has ceased to be Hindu then he shall not be able to get property in Hindu parents.

As per Section 8 of Hindu Succession Act it says about the rules of succession among heirs:-

Firstly: upon the heirs being the relatives of Class I heir.

Secondly: if there is no Class I heir, then upon the Class II heirs.

Thirdly: if there is no Class I or Class II heirs then upon the agnates:

Fourthly: if there is no agnates then upon the cognates.

Section 9 of H.S. Act provides the order of succession: (i) All widow if there are more than one, get one share equally

(ii) all sons and daughters get share equally

(iii) every branches of predeceased son/daughter get share equally. So widow, married daughter and son's widow are Class I heir and get equal share.

Out of 6 marks, 1½ marks have been awarded for this answer.

Question No.21 of Paper-II:

Explain the power of parliament to amend The Constitution of India. Refer to landmark judgments of the Supreme Court of India.

Answer:

The Constitution of India is neither rigid like American Constitution nor flexible like British Constitution. It adopted a medium path and amend the law according to the circumstances.

Article 368 of COI deals with amendment. It provides three types of procedure to amend the Constitution:

(i) Simple majority; (ii) special majority; (iii) Special majority with ratification by State:

(i) Simple Majority:- Parliament may amend some subjects by simply majority ex-(a) creation and abolition of Union territory like Podducherry, (b) Languages, (c) creation and abolition of any legislative assemble or legislative council (Article 169)

(ii) Special Majority:- In such type of amendment, it require 2/3 majority of each house of parliament. For example:- impeachment of Judges.

(iii) Special majority with ratification by state:- In such cases where each house of parliament pass the resolution by 2/3 majority and then it requires ratification of 1/2 states.

For example – Distribution of legislative power between central and state.

Amendment procedure of constitution.

Which can be amended and which cannot be amended is discussed as follows by various judgments.

In Shankari Prasad Vs. UOI case Supreme Court held that Article 368 does not come under the definition of law under Article 13 of COI so parliament can do any amendment. The same view has been adopted in Sajjan Singh's case. But by the judgment of Golak Nath Versus State of Punjab Supreme Court set aside both the judgment and said that parliament could not amend in constitution.

This dispute was set at rest by the 13 Judges Bench judgment Keshvanand Bharti Vs. State of Kerela (1973 SC 148) in which Supreme Court propounded that parliament can do amendment but it cannot disturb the basic structure of the Constitution.

Recently by the judgment of Rajendra Prasad Vs. UOI (2020) Supreme Court struck down the 92th amendment 2011 to the extent of co-operative society and parliament has passed it without taking ratification of states.

Out of 8 marks, 2½ marks have been awarded for this answer.

Question No.10 of Paper-I:-

What are the essential of the doctrine of feeding the grant by estoppel?

Answer:-

Section 43 of Transfer of Property Act, 1882 provides that when any person profess to transfer any property fraudulently or erroneously to the transferee than the transferee has option to operate such transfer to be continued and if he operates than if such property will

vested in the transferor shall be devolved to him till the transfer is in operation.

Essential factors:-(i) Erroneous and fraudulent representation.

(ii) Transferee's choice.

(iii) Transferor get the property in future.

Section 41 and 43 is the exception of famous latin maxim "Nemo quad not habet."

In Tanuram Bohra Vs. Pramod through LR (2019) Supreme Court held that doctrine of feeding the grant of estoppel is for the benefit of the bonafide purchase.

Out of 4 marks, 2½ marks have been awarded for this answer.

Question 18 of Paper-I:-

Prakash mortgaged his land in favour of Smt. Basanti for a sum of Rs.10,000/-. It is one of the conditions of mortgage that the property cannot be redeemed before the expiry of 99 years. Whether this condition is a clog on the equity of redemption?

Explain with the help of relevant provision and case law.

Answer:-

In Murari Lal Vs Dev Karan, Supreme Court held that clog on redemption is based on equity, justice and good conscience.

There is no situation on which clog on redemption may be imposed. If any condition is imposed then the court shall refuse the condition and redeem the property to the mortgagor on payment of mortgage amount and declare it void. In Harris V. Harris; House of Lords also said that once a mortgage always a mortgage. It can never be changed by any other transaction.

In the recent judgment of Supreme Court Harminder Singh Vs. Surjit Kaur (2022), if any property is mortgaged under usufractuary mortgage, then the right of redemption shall never ends. So here such condition which stop the redemption before 99 years is void.

Out of 4 marks, ½ mark has been awarded for this answer.

Question No.22 of Paper-I:-

In which cases the right to recover immediate possession of the premises is available to a landlord

under The Rajasthan Rent Control Act, 2001? Explain with the help of relevant provisions.

Answer:

As per Section 10 of the Raj. Rent Control Act, 2006 where the landlord apply for immediate possession:-

(1) is a member or officer of Armed Forces, Naval or Air Force or Paramilitary Forces, then he may apply after or before 1 year of his retirement, removal or discharge or within 1 year after commencement of this Act;

(2) is an employee of Central Government, State Government, local authority under cent. or state govt., then he may apply after or before 1 year of his retirement, removal or discharge or within 1 year of the commencement of this Act;

(3) Where the person is senior citizen then he may apply within the period of 1 year of the commence of this Act;

(4) Where the person is the legal heir of the person mentioned under sub-section (1), (2) or (3) was apply within the period of 1 year from his death or 1 year after the commencement of the Act;

(5) Where the person is a widow, she may apply within the period of 1 year of the death of her husband [sub-sec. (i) (iii)]

(6) Where the landlord has more than one premises but he/she require the premises in particular locality and he has only one premises in that locality; or

(7) Where the landlord resides on upper floor and he requires ground floor of the same building due to physical incapacity then he may apply for immediate possession. To prove physical incapacity, the landlord has to show the medical certificate of the board."

The candidate has filled the entire space provided to write the answer and still he has been awarded only 3 marks out of 6 marks.

17. Some questions and answers of the candidate bearing **Roll No.510777** reads as under:-

Question No.21 of Paper-II:-

भारत के संविधान को संशोधित करने की संसद की शक्ति को स्पष्ट कीजिए। भारत के उच्चतम न्यायालय के महत्वपूर्ण निर्णयों को संदर्भित कीजिए।

Answer:-

भारत के संविधान अनुच्छेद 368 में संशोधन सम्बन्धी प्रावधान किये गये है। अनुच्छेद 368 के अनुसार संविधान में तीन प्रकार से संशोधन किया जा सकता है। कुछ मामले अल्प महत्व के है उनको साधारण बहुमत द्वारा, कुछ मामले अधिक महत्व के होते है उनको विशेष बहुमत द्वारा एवं तीसरी श्रेणी के मामलें को विशेष बहुमत के साथ 50 प्रतिशत राज्यों का अनुसमर्थन करना आवश्यक है।

- अनुच्छेद 368 के अनुसार संसद संविधान में संशोधिन करके उसके किसी भी प्रावधान को परिवर्तित विस्तारित या परीसीमित / परिवर्धित कर सकेगी।
- संविधान संशोधन का विधेयक किसी भी सदन में पेश किया जा सकता है।
- संविधान संशोधन में संयुक्त दल की बैठक नहीं बुलाई जा सकती है।
- संविधान संशोधन में राष्ट्रपति से अनुमति देनी हीं पडती है अर्थात वह वीटो पॉवर का प्रयोग नहीं कर सकता है।
- अनुच्छेद 368 में संविधान संशोधिन पर धारा 13(ए) के अनुसार विधि नही मानी जाती है।

संविधान संशोधन सम्बन्धी विभिन्न न्यायिक निर्णय निम्न है-

1. शंकरी प्रसाद बनाम केरल राज्य AIR 1951 SC

इस मामले में उच्चतम न्यायालय ने निर्णित किया कि संसद को संविधान में संशोधन करने की असीमित शक्ति है।

2– सज्जन सिंह बनाम राजस्थान राज्य AIR 1965 SC

इस मामले में भी माननीय उच्चतम न्यायालय ने शंकरी प्रसाद के निर्णय का अनुमोदन किया।

3– गोलकनाथ बनाम पंजाब राज्य AIR 1967 SC

इस निर्णय ने उपरोक्त पूर्व के दीये निर्णयों को उलटते हुए न्यायाधीश सुव्वाराम ने कहा कि संसद को संविधान में संशोधन करने की शक्ति नहीं है क्योंकि अनु 368 में संसद को शक्ति नहीं दी गई है इसके तो केवल प्रक्रिया बताई गई है एवं संविधान संशोधन भी विधि है जिसके अनु. 138 के आधार पर अवैध घोषित किया जा सकता है।

4. 24वां संविधान संशोधन

संसद ने गोलकनाथ के निर्णय का प्रभाव समाप्त करने के लिए संविधान ने 24वां संशोधन किया, जिसमें अनु. 13 में (4) व 368(3) जोड़ा गया एवं कहा गया कि 13(4) के अनुसार 368 के अधीन संविधान संशोधन विधि नहीं है।

5. केशवानन्द भारती बनाम केरल राज्य AIR 1973 SC 1461

इसमें मा. सर्वोच्च न्यायालय ने कहा कि संसद को संविधान में संशोधन करने की शक्ति है एवं उसे कर सकती है लेकिन ऐसा कोई संशोधन नहीं कर सकती है जो संविधान का मूल ढांचा ही नष्ट होता हो।

6. 42वां संविधान संशोधन,1976

संसद ने केशवानंद के मामले को समाप्त करने के लिए अनु.368 में (4) व (5) जोड़े गए।

7. मिनर्वा मिल्स बनाम भारत संघ AIR 1980 SC

368 (4) व (5) असंवैधानिक घोषित किया

–अब तक अनु. 368 में तीन बार संशोधन हो चुके हैं।

Out of 8 marks, 3½ marks have been awarded for this answer.

Question No.8 of Paper-II:-

मुस्लिम विधि के अन्तर्गत ''बातिल'' और ''फासिद'' विवाह को विभेदित कीजिए।

Answer:-

मुस्लिम विधि में 'बातिल' विवाह वह है जो आवश्यक शर्तो की पूर्ति के अभाव में किया जाता है एवं शून्य होता है।

'फासिद' विवाह वह होता है जो शून्य तो नहीं होता लेकिन कुछ परिस्थितियों में अनियमित होता है।

बातिल विवाह	फासिद विवाह
1. इसमें मुस्लिम विवाह की आवश्यक शर्तों यथा प्रस्ताव या स्वीकृति, निषिद्धि सम्बंध इत्यादि में करने पर यह शून्य होता है।	इसमें कुछ परिस्थितियों में विवाह करने पर वह षून्य तो नहीं लेकिन अनियमित हो जाता है।
2. इसको सही नहीं किया जा सकता अर्थात इसको सुधारा नहीं जा सकता।	2. इसको कुछ कमियों की पूर्ति करके सुधार सकते है।
3. यह शिया व सुन्नी दोनों शाखाओं में मान्य है।	3. यह केवल शिया शाखा में मान्य है।

Out of 4 marks, 1½ marks have been awarded for this answer.

Question No.14 of Paper-II:-

वर्ष 1955 में नारायणी देवी ने दीनदयाल से विवाह किया था। वह उसके विवाह के तीन माह के भीतर विधवा हो गई। उसके पति की मृत्यु के तुरन्त पष्चात उसे वैवाहिक घर से बाहर निकाल दिया गया। वह कभी भी अने वैवाहिक घर ने नहीं रही। उसके पैतृक घर पर उसे शिक्षा दी गई थी। उसने रोजगार प्राप्त किया। वह 11.07.1996 को निर्वसीयती मर गई। उसने विभिन्न बैंक खातों में एवं उसके भविश्य निधि में भी, बहुत सारा धन छोड़ा। नारायणी के पति की बहन के पुत्रों ने उसे उत्तराधिकारियों के रूप में राशि की मांग की जिसका नारायणी की माता द्वारा विरोध किया गया।

सुसंगत प्रावधानों व निर्णित विधि की सहायता से परिक्षित कीजिए कि राशि का कौन हकदार है?

Answer:-

हिन्दू उत्तराधिकार एवं भरणपोषण अधिनियम 1956 की धारा 15 व 16 एक निर्वसीयती हिन्दू स्त्री की मृत्युपर उसकी सम्पत्ति के न्यागमन सम्बन्धी प्रावधान दिये गये हैं।

धारा 15 के अनुसार किसी निर्वसीयती हिन्दू स्त्री की सम्पत्ति निम्न प्रकार न्यागत होगी–

(क) सर्वप्रथम उसके पुत्र, पुत्री (पूर्व मृत पुत्र का अपत्य या पूर्व मृत पुत्री के अपत्य) एवं पति

(ख) उसके पति के नातेदारों को

(ग) उसके माता–पिता को

(घ) उसके पिता के नातेदारों को

(ग) उसके माता के नातेदारों को

यदि उसे सम्पत्ति उसके पिता के यहा से प्राप्त हुई थी तो पिता के नातेदारों को एवं उसके पति या ससुर से प्राप्त होने पर पति के नातेदारो को न्यागत होगी।

प्रश्नगत समस्या में नारायणी देवी विवाह के तीन माह पश्चात् ही विधवा हो गयी एवं उसे घर से निकाल दिया गया, उसने शिक्षा के आधार पर रोजगार प्राप्त करके सम्पत्ति प्राप्त की है जिसको वह निर्वसीयती छवि कर मरने पर यह सम्पत्ति धारा 15(ख) के अनुसार उसके पुत्र, पुत्री या उनके अपत्य नहीं होने सर्व पति की अनुपस्थिति में पति नातेदारों को न्यागत होगी।

अभिलाषा बनाम प्रकाश एआइआर 2020 एससी में माननीय न्यायालय ने निर्णित किया धारा 15 के अनुसार सम्पत्ति न्यागत होगी।

अरूणाचल गौन्डर बनाम वीरामा एआइआर 2022 एससी

Out of 4 marks, 2½ marks have been awarded for this answer.

Question No.21 of Paper-III:-

निम्नलिखित को परिभाषित कीजिएः–

अ. दृश्यरतिकता

ब. भारतीय सिक्का

स. चुराई हुई सम्पत्ति

द. छल

य. जारता

र. आपराधिक अभित्रास

Answer:-

(द) भा.द.स. 1860 की धारा 415 में छल की परिभाषा दी गई है। जो कोई किसी व्यक्ति से उददायित करता है कि उस सम्पत्ति को दे दे या किसी अन्य व्यक्ति को परिमत कर दे जिसको करने के लिए वह वैध रूप से आबद की है एवं जो व्यक्ति यह कार्य करें उसे शारीरिक, मानसिक, सम्पत्ति व आर्थिक हानि कारित हो, छल करता हो कहलाता है।

Zero mark has been awarded out of 2 marks for the definition of cheating given by the candidate.

18. It is argued that from perusal of the above answers, it can be inferred that the candidate in his answer has referred to the relevant provisions, the leading case laws of the Apex Court, still meagre marks have been awarded. It can also be inferred that there is strict checking and even in questions where the answer is correct, proper marking has not been done like in a case where the candidate has given the definition of cheating and has also mentioned the Section of IPC, still he has been awarded zero mark out of 2 marks. It is argued that if the reply of the High Court is to be believed, that set of few questions are first evaluated by an examiner and then, each & every answer-sheet was further examined by head examiner, and to maintain uniformity, head examiner may either reduce or increase the marks given by the examiners, then the Head Examiner has also maintained zero mark for a right answer and thus, there is uniformity in awarding of less marks to all the candidates.

19. It is contended that in the reply submitted by the High Court, information has been furnished as per which the maximum marks obtained in Paper-I is 58.5 marks; in Paper-II–50 marks; Paper-III–52 marks and Paper-IV–48.5 marks. Number of candidates who cleared Paper-I and secured minimum qualifying marks other than the 4 candidates who have cleared all the

papers is 25 for Paper-I, 9 for Paper-II, 35 for Paper-III and 45 for Paper-IV. It is contended that the fact that only 25 candidates have obtained minimum qualifying marks in Paper I, 9 in Paper II, 35 in Paper III and 45 in Paper IV goes to show that there was strict marking. It is also contended that no model answer key was prepared and that is why there has been discrepancies in the evaluation of answer sheets. Thus, the petitioners have prayed to quash the result dated 01.10.2022 or to re-evaluate the copies of all the candidates or give bonus marks to them.

20. It is contended by Mr. Vigyan Shah, Advocate, appearing for the High Court that the copies are examined by different examiners. It is also contended that the examiners, who examine the answer-sheets includes Direct recruits as well as Promotee Officers. Each examiner examines few questions and over the examiners, there is a head examiner. The head examiner then looks into each and every answer-sheet and to maintain uniformity, he may either reduce or increase the marks given by the examiners. With regard to the question paper being lengthy, it is argued that since majority of the candidates have completed their papers, it cannot be said that the time provided for writing the examination was less.

21. It is also contended that once a Committee consisting of Justice Govind Mathur has been constituted by the Court and he has given a specific report that he did not find any irregularity in the marking of the candidates and there was uniformity in such marking, this Court should not go beyond the report and should accept the report.

22. It is argued that Justice Govind Mathur in his report has mentioned that most of the incumbents have answered all the questions and further, none of them has utilized the complete space given in the answer-sheet to respond to the questions. Further, on the basis of experience, he opined that question papers of all the subjects contain reasonable number of questions and as such, the questions given in the question paper are not disproportionate to the time given to respond to them. Justice Govind Mathur has also noticed that most of the examinees have given quite short answers and that the examiners have uniformly awarded the marks for the same, thus the answer-sheets does not reflect lack of uniformity in examining the answers given. In the entirety, he had concluded in his report that he did not find any wrong in examination of answer-sheets by the examiners.

23. It is also contended that the High Court does not have the power to order for re-valuation of answer sheets as there is no provision provided for the same in the Rules. In support of this contention, reliance has been placed upon *Taniya Malik Vs. The Registrar General of the High Court of Delhi*, **Writ Petition (Civil) No. 764 of 2017**; *Himachal Pradesh Public Service Commission Vs. Mukesh Thakur and Anr.*, **(2010) 6 SCC 759**; *Dr. NTR University of Health and Science Vs. Dr. Yerra trinadh and Ors*., **Civil Appeal No. 8037 of 2022** and *Vikesh Kumar Gupta & Anr. Versus The State of Rajasthan & Ors.* and other connected cases: **Civil Appeal Nos.3649-3650 of 2020**) decided on 07.12.2020.

24. We have given our thoughtful consideration to the arguments advanced by the Counsels for the parties and have carefully perused the material available on record.

25. From perusal of the record, it is revealed that this Court in Para 11 of its Order dated 18.04.2023 has observed that "from perusal of answer-sheets of Roll No.510735, it is revealed that even in correct answers, appropriate marks have not been assigned, there is overwriting in the marks and in some questions, marks have been reduced." and accordingly, while requesting Justice Govind Mathur, to look into the answer-sheets of the writ petitioners and communicate his views, suggestions and findings, a direction was issued to the Registrar (Examination) to take answer-sheets of all the writ-petitioners and of the four candidates, who have cleared the examination, to Justice Govind Mathur who will in addition to the copies of four selected candidates would also examine answer-sheets of Roll numbers-510735 and 510777 and also randomly pick up answer-sheets of writ petitioners at his discretion. After examining the answer-sheets, Justice Govind Mathur has submitted its report before this Court.

26. After perusing the report submitted by Justice Govind Mathur, we are in agreement with the contention made by Mr. Kamlakar Sharma, Senior Advocate, that report submitted by Justice Govind Mathur is not an exhaustive report on the issues/questions referred for examination. It is revealed from the record that a specific request was made to Justice Govind Mathur for examining the copies of four selected candidates in addition to the answer-sheets of Roll Nos. 510735 and 510777, but there is no finding or view in respect of answer-sheet of Roll No.510735. In the report, there is reference of "Roll No. 510 and 510777", but it is not clear as to whether answer-sheet of Roll No.510735 was

examined by Justice Govind Mathur or not. Further, the report also reveals that though, a specific question No. (iv) that whether the marks awarded by the evaluators were not appropriate?, has been framed by Justice Govind Mathur, but the same has not been answered in the report and merely a note has been made in Para 10 that "in the entirety, I do not find any wrong in examination of answer-sheets by the examiners." Thus, the report submitted by Justice Govind Mathur is neither a conclusive report on the issue nor the same meets the directions given by this Court in the order dated 18.04.2023.

27. In a case relied upon by learned counsel for the petitioners titled *Ran Vijay Singh and Others vs. State of Uttar Pradesh and Others* (supra), the Hon'ble Supreme Court after referring to a catena of judicial pronouncements summarized the legal position with regard to the issue whether re-evaluation of answer scripts can be done by the High Court, in the following terms:-

> "…If a statute, Rule or Regulation governing an examination does not permit reevaluation 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.."

28. Supreme Court in *High Court of Tripura vs. Tirtha Sarathi Mukherjee* (supra) as regards the scope of the High Court's jurisdiction in matters of this kind, held in paras 19 & 20 as under:

> "19. The question however arises whether even if there is no legal right to demand revaluation as of right could there arise circumstances which leaves the Court in any doubt at all. A grave injustice may be occasioned to a writ

applicant in certain circumstances. The case may arise where even though there is no provision for revaluation it turns out that despite giving the correct answer no marks are awarded. No doubt this must be confined to a case where there is no dispute about the correctness of the answer. Further, if there is any doubt, the doubt should be resolved in favour of the examining body rather than in favour of the candidate. The wide power under Article 226 may continue to be available even though there is no provision for revaluation in a situation where a candidate despite having giving correct answer and about which there cannot be even slightest manner of doubt, he is treated as having given the wrong answer and consequently the candidate is found disentitled to any marks.

20. Should the second circumstance be demonstrated to be present before the writ court, can the writ court become helpless despite the vast reservoir of power which it possesses? It is one thing to say that the absence of provision for revaluation will not enable the candidate to claim the right of evaluation as a matter of right and another to say that in no circumstances whatsoever where there is no provision for revaluation will the writ court exercise its undoubted constitutional powers? We reiterate that the situation can only be rare and exceptional."

29. In the case of *Registrar General of High Court of Delhi vs. Ravinder Singh,* **2023 LiveLaw SC 553**, the Apex Court while setting aside an order of the Delhi High Court that permitted re-evaluation of the answer script of a candidate for the Delhi Higher Judicial Main Examination 2022 on the ground that there was no 'material error' warranting interference, re-iterated it's findings in *Ran Vijay Singh Versus State of Uttar Pradesh* (supra) that if a statute governing an exam does not permit re-evaluation or scrutiny of an answer-sheet, the court may still permit re-evaluation if it is demonstrated that a material error has been

committed without any "inferential process of reasoning or a process of rationalisation. Such scrutiny/ re-evaluation is only to be allowed in rare and exceptional cases".

30. The judgment relied upon by learned counsel for the respondents in *Mukesh Thakur's case* (supra), the Hon'ble Supreme Court has observed as under :-

> "14. It is settled legal proposition that the court cannot take upon itself the task of the Statutory Authorities.
> 15. In Hindustan Shipyard Ltd. & Ors. Vs. Dr P. Sambasiva Rao & Ors., (1996) 7 SCC 499, this Court held that in a case where the relief of regularisation is sought by employees working for a long time on ad hoc basis, it is not desirable for the Court to issue direction for regularisation straightaway. The proper relief in such cases is the issuance of direction to the authority concerned to constitute a Selection Committee to consider the matter of regularisation of the ad hoc employees as per the Rules for regular appointment for the reason that the regularisation is not automatic, it depends on availability of number of vacancies, suitability and eligibility of the ad hoc appointee and particularly as to whether the ad hoc appointee had an eligibility for appointment on the date of initial as ad hoc and while considering the case of regularisation, the Rules have to be strictly adhered to as dispensing with the Rules is totally impermissible in law. In certain cases, even the consultation with the Public Service Commission may be required, therefore, such a direction cannot be issued.
> 16. In Government of Orissa & Anr. Vs. Hanichal Roy & Anr., (1998) 6 SCC 626, this Court considered the case wherein the High Court had granted relaxation of service conditions. This Court held that the High Court could not take upon itself the task of the Statutory Authority. The only order which High Court could have passed, was to direct the

> Government to consider his case for relaxation forming an opinion in view of the statutory provisions as to whether the relaxation was required in the facts and circumstances of the case. Issuing such a direction by the Court was illegal and impermissible.
>
> 17. Similar view has been reiterated by this Court in Life Insurance Corporation of India Vs. Asha Ramchandra Ambekar (Mrs.) & Anr., AIR 1994 SC 2148; and A. Umarani Vs. Registrar, Cooperative Societies & Ors., (2004) 7 SCC 112.
>
> 18. In G. Veerappa Pillai Vs. Raman and Raman Ltd., AIR 1952 SC 192, the Constitution Bench of this Court while considering the case for grant of permits under the provisions of Motor Vehicles Act, 1939, held that High Court ought to have quashed the proceedings of the Transport Authority, but issuing the direction for grant of permits was clearly in excess of its powers and jurisdiction.
>
> 19. In view of the above, 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 merit of the candidates. If there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the examination and not for respondent no.1 only. It is a matter of chance that the High Court was examining the answer sheets relating to law. Had it been other subjects like physics, chemistry and mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court.
>
> 20. Therefore, we are of the considered opinion that such a course was not permissible to the High Court."

31. In the case of *Vikesh Kumar Gupta* (supra), the Hon'ble Supreme Court has observed as under :-

> "11. Though re-evaluation can be directed if rules permit, this Court has deprecated the practice of re-evaluation and scrutiny of the

questions by the courts which lack expertise in academic matters. It is not permissible for the High Court to examine the question papers and answer sheets itself, particularly when the Commission has assessed the inter se merit of the candidates (Himachal Pradesh Public Service Commission v. Mukesh Thakur & Anr.) (2010) 6 SCC 759 Courts have to show deference and consideration to the recommendation of the Expert Committee who have the expertise to evaluate and make recommendations [See-Basavaiah (Dr.) v. Dr. H.L. Ramesh & Ors.) (2010) 8 SCC 372. Examining the scope of judicial review with regards to re-evaluation of answer sheets, this Court in Ran Vijay Singh & Ors. v. State of Uttar Pradesh & Ors. (2018) 2 SCC 357 held that court should not re-evaluate or scrutinize the answer sheets of a candidate as it has no expertise in the matters and the academic matters are best left to academics. This Court in the said judgment further held as follows:

> "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.
>
> 32. It is rather unfortunate that despite several decisions of this Court, some of which have been

discussed above, there is interference by the courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a classic example of the consequence of such interference where there is no finality to the result of the examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination — whether they have passed or not; whether their result will be approved or disapproved by the court; whether they will get admission in a college or university or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion being worse confounded. The overall and

larger impact of all this is that public interest suffers."

12. In view of the above law laid down by this Court, it was not open to the Division Bench to have examined the correctness of the questions and the answer key to come to a conclusion different from that of the Expert Committee in its judgment dated 12.03.2019. Reliance was placed by the Appellants on Richal & Ors. v. Rajasthan Public Service Commission & Ors. (2018) 8 SCC 81 In the said judgment, this Court interfered with the selection process only after obtaining the opinion of an expert committee but did not enter into the correctness of the questions and answers by itself. Therefore, the said judgment is not relevant for adjudication of the dispute in this case.

13. A perusal of the above judgments would make it clear that courts should be very slow in interfering with expert opinion in academic matters. In any event, assessment of the questions by the courts itself to arrive at correct answers is not permissible....."

32. Keeping in view the judgments rendered by the Hon'ble Supreme Court in the cases of *Mukesh Thakur* (supra) and *Vikesh Kumar Gupta* (supra), it is not in dispute that it is not permissible for the High Court to examine the question paper and answer sheets itself. However, in the cases *Ran Vijay Singh* (supra) and *High Court of Tripura* (supra), the Apex Court has held that High Court can permit re-evaluation only in rare and exceptional cases. Looking to the facts that out of 3000 candidates appearing Pan India, only 4 candidates as against 85 vacancies have cleared the Mains (Written) Examination and candidates, who have not cleared, have secured positions in other States Higher Judicial Service Examination; also the fact that the report submitted by

Justice Govind Mathur in compliance of the order dated 18.04.2023 is not an exhaustive and conclusive report on the issue as to whether marks have been properly awarded and more particularly, when a specific request was made to Justice Govind Mathur examine two answer-sheets of Roll Nos.510735 & 510777, which were placed before the Court, but there is no definite finding on those answer-sheets and even the roll number is not completely mentioned in the report and; that the vacancies so notified are still lying vacant, getting few answer-sheets evaluated by an Expert Committee would do justice not only to the Examinees, but to the Examiners as well.

33. We, therefore, deem it proper to direct the Examination Cell of the High Court to constitute an Expert Committee consisting of Eminent Jurists/Professors. The Expert Committee would pick up 20 copies of each paper randomly and shall examine and evaluate the same and while evaluating the answer-sheets, the Expert Committee will be free to take into consideration the length of the paper and the time provided for answering the questions. The Examination Cell shall mask the numbers, which the candidates have obtained and then provide it to the Expert Committee. After the copies are evaluated, the Examination Cell shall prepare a tabular chart depicting the marks awarded presently and the marks awarded after the copies are examined by the Expert Committee. The average difference in the marks, be it more or less should then be brought to the notice of the High Court. The High Court while considering the same and for maintaining

efficiency in service would take a decision on administrative side as to whether:

(a) No modification is required to be made in the result;

(b) Bonus marks should be awarded to all the candidates and;

(c) All the answer-sheets are required to be re-evaluated

34. It is made clear that exercise made in pursuance of this order would not have any bearing on the result of 4 candidates, who have already been recruited to the District Judge Cadre. We direct that the above exercise be completed expeditiously and all remaining vacancies in above advertisement will be subject to the outcome of the above exercise. We make it clear that secrecy would be maintained with regard to the copies picked up for re-valuation by the Expert Committee and marks awarded by the Expert Committee and tabular chart prepared by the Examination Cell shall not be provided to any candidate. Looking to the controversy and allegations with regard to evaluation by Officers of the District Judge Cadre, we deem it proper to advise the Examination Cell to get the copies examined by Eminent Jurists/Professors in ensuing examinations.

35. In the light of the above directions, we, accordingly, dispose off the present writ petitions as directed above.

36. All the pending applications also stand disposed off.

(BHUWAN GOYAL),J (PANKAJ BHANDARI),J

SUNIL SOLANKI /PS