

**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**

D.B. Civil Writ Petition No. 11347/2021

Rajkamal Basitha

-----Petitioner

Versus

1. Rajasthan High Court, Jodhpur, Through The Registrar, Rajasthan High Court, Jodhpur, District Jodhpur, Rajasthan.
2. Registrar (Examination), Rajasthan High Court, Jodhpur, Rajasthan.
3. Secretary, Law And Legal Affairs, Government Of Rajasthan, Secretariat, Jaipur.

-----Respondents

Connected With

D.B. Civil Writ Petition No. 11040/2021

Ravindra Kumar Sharma S/o Late Shri Nar Singh Dev Sharma, Aged About 44 Years, R/o 64 Green Colony Moti Nagar Vaishali Nagar Jaipur.

-----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

D.B. Civil Writ Petition No. 11190/2021

Smt. Vandana Sharma D/o Shri Damodar Prasad Sharma W/o Shri Amit Kumar Sharma, Aged About 35 Years, R/o E-28, Path No. 6, Jamna Nagar, Sodala, Jaipur (Rajasthan).

-----Petitioner

Versus

1. Rajasthan High Court, Jodhpur Through Registrar General,

Rajasthan High Court Building, Jodhpur.

2. The Registrar Examination, Rajasthan High Court, Jodhpur.

----Respondents

D.B. Civil Writ Petition No. 11219/2021

Renu Goyal Daughter Of Sh. Bhagwan Das Gupta, Aged About 47 Years, Resident Of B-2/10, Gandhi Path, Chitrakoot, Vaishali Nagar, Jaipur.

----Petitioner

Versus

Rajasthan High Court, Jodhpur, Through Its Registrar (Examination)

----Respondent

D.B. Civil Writ Petition No. 11684/2021

Deepti Daughter Of Dr. Shri Shiv Kumar, Aged About 44 Years, Resident Of 1/217, Swami Vivekanand Nagar, Kota (Rajasthan).

----Petitioner

Versus

Rajasthan High Court, Jodhpur, Through Its Registrar (Examination).

----Respondent

D.B. Civil Writ Petition No. 11692/2021

Rajesh Kumar Jha S/o Shri Gita Jha, Aged About 44 Years, R/o 47/s-1, Income Tax Colony-I, Jagatpura, Jaipur.

----Petitioner

Versus

1. Rajasthan High Court, Jodhpur Through Registrar General, Rajasthan High Court Building, Jodhpur.
2. The Registrar Examination, Rajasthan High Court, Jodhpur.

----Respondents

D.B. Civil Writ Petition No. 11731/2021

Pradeep Kumar Son Of Shri Tek Chand, Aged About 43 Years, Resident Of Khasra No. 9/9, Gali No. 12, Swaroop Nagar, Delhi-110042

----Petitioner

Versus

1. The Registrar General, Rajasthan High Court, Jodhpur
2. The Registrar (Examination Cell), Rajasthan High Court, Jodhpur.

----Respondents

D.B. Civil Writ Petition No. 12342/2021

Meenakshi Sharma D/o Late Shri Lakshmi Narayan Sharma,  
Aged About 50 Years, R/o 34/462, C Pratap Nagar, Sanganer,  
Jaipur (Raj.)

----Petitioner

Versus

1. Rajasthan High Court, Jodhpur Through Registrar General.
2. The Registrar (Examination), Rajasthan High Court, Jodhpur

----Respondents

D.B. Civil Writ Petition No. 12397/2021

Vandana Shrivastava D/o Late Shri Bhawani Shankar  
Shrivastava, Aged About 44 Years, R/o Plot No. 44-47, Shyam  
Vatika, Boytawala, Bainer Road, Jhotwara, Jaipur (Raj.)

----Petitioner

Versus

1. Rajasthan High Court, Jodhpur, Through Registrar General
2. The Registrar (Examination), Rajasthan High Court, Jodhpur.

----Respondents

D.B. Civil Writ Petition No. 13195/2021

Gyarsi Lal Meena S/o Rameshwar Prasad Meena, Aged About 41  
Years, R/o 18 And 18-A, Girdhar Vihar, Meenawala, Sirsi Road,  
Jaipur, Rajasthan.

----Petitioner

Versus

1. Rajasthan High Court, Jodhpur, Through The Registrar,  
Rajasthan High Court, Jodhpur, District Jodhpur,  
Rajasthan.

2. Registrar (Examination), Rajasthan High Court, Jodhpur, Rajasthan.

----Respondents

D.B. Civil Writ Petition No. 14174/2021

Girish Chauhan Son Of Shri Rambir Singh Chauhan, Aged About 42 Years, Resident Of Chauhan Clinic, Opposite, Moti Cinema, Mahendergarh, Haryana.

----Petitioner

Versus

1. Rajasthan High Court, Through Its Registrar General, Near Jhalamand Circle, Pali Road, Jodhpur, Rajasthan.
2. The Registrar (Examination), Rajasthan High Court, Near Jhalamand Circle, Pali Road, Jodhpur, Rajasthan.

----Respondents

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For Petitioner(s) : Mr. H.V. Nandwana with  
Mr. Y.V. Nandwana  
Mr. P.C. Sharma  
Mr. Ram Pratap Saini  
Mr. Krishan Chander Sharma assisted  
by Mr. Pawan Sharma, Mr. Vijay  
Sharma and Mr. R.P. Meena  
Mr. Amit Jindal  
Mr. Takhat Singh  
Mr. Punit Singhvi  
Mr. Akshat Dewan  
Mr. Ayush Singh  
Mr. Pradeep Kumar in person through  
VC

For Respondent(s) : Mr. Rajendra Prasad, Sr. Adv. assisted  
by Mr. Ashish Sharma

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**HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI**

**HON'BLE MR. JUSTICE SUDESH BANSAL**

**Order**

**21/02/2022**

1. This group of petitions arises in similar back ground. The principal challenge of all the petitioners is to the ongoing recruitment process undertaken by the High Court administration

for direct recruitment to the District Judges in the Rajasthan Judicial Service. The petitioners are all those candidates who had appeared in response to the advertisement issued by the High Court administration on 05.01.2021 in which in all 85 vacancies in the cadre of District Judge for direct recruitment were notified. 23 vacancies were for general category candidates out of which six were set apart for women candidates which would include one vacancy for a widow. There was bifurcation of the remaining vacancies for different reserved category candidates such as SC/ST, OBC, EWS and MBC. In each reserved category also there was sub-bifurcation in favour of women candidates.

2. As per the Rajasthan Judicial Service Rules, 2010 (hereinafter to be referred as 'the said Rules of 2010') and in particular Rule 40, the recruitment would be made on the basis of competitive examination in accordance with Schedule-III. The procedure would be held in 3 stages i.e. preliminary examination, main examination and interview to test the candidate's knowledge and fitness for appointment. The marks obtained in the preliminary examination by a candidate who is called for the main examination will not be counted for determining his final merit. As per sub-rule (3) of Rule 40 of the said Rules of 2010, the number of candidates to be admitted to the main examination will be to the extent of 15 times the total number of notified vacancies (category-wise). In the said range all those candidates who secure same percentage of marks will be admitted to the main examination. As per sub-rule (4) of Rule 40 of the said Rules of 2010, on the basis of marks secured in the main examination,

candidates to the extent of 3 times of total number of notified vacancies shall be declared qualified to be called for interview. Rule 41 provides that the Court shall prepare the merit list category-wise on the basis of aggregate marks obtained in the main examination and in the interview considering the suitability in general. Proviso to Rule 41 provides that notwithstanding anything contained in any rule or schedule, and having regard to the requirement of efficiency in service, the Court may determine such cut-off marks as considered fit for being recommended for appointment. Select list of the successful candidates would be prepared as provided under Rules 42 and appointment be offered as provided under Rule 43 of the said Rules of 2010.

3. The preliminary examination was conducted by the High Court on 25.07.2021. This examination contained objective questions with multiple choices and had no negative marks prescribed. The result of this examination was declared on 16.09.2021. The cut-off marks for different categories was prescribed as under:-

**Cut Off Marks**

Category	Cut Off Marks
General	96
General (Widow)	73
General (Divorcee)	84
SC	58
ST	58
OBC-NCL	85
OBC-NCL (Women)	79
MBC-NCL	65
EWS	69
EWS (Women)	66

4. On the basis of these cut-off marks candidates in various categories were declared successful in the preliminary examination and were shortlisted for being admitted in the main examination. The roll numbers of the successful candidates was published in the result declared on 16.09.2021.

5. The result was declared by first publishing the model answer keys for all questions of the preliminary examination which would enable the candidate to make a representation with respect to correctness of any of these answers. Several representations were received from different candidates. All these representations were examined by specially constituted committee comprising of 2 Hon'ble Judges of the High Court and Dr. Nidhi Gupta, Associate Professor, NLU, Jodhpur (Law). The committee examined all the representations. Accepted some of the disputes raised by the candidates and changed the correct answers originally declared, rejected some of these representations and reiterated the original correct answers and in some cases the committee came to the conclusion that on account of incorrect question or on account of lack of clarity in the answers or no clear cut single correct choice was offered, suggested deleting some questions altogether. These recommendations were made in the report of the committee dated 20.08.2021. This report of the special committee was placed before the examination committee and was accepted on 7.9.2021.

6. All the petitioners herein failed to make a mark in the preliminary examination. They were not shortlisted and did not qualify for the main examination. In these petitions they have raised following three grounds of challenge.

(1) There were in all 85 vacancies notified by the High Court administration. As per Rules of 2010 candidates 15 times the notified vacancies would be called for main examination. 1275 candidates therefore had to be invited for further examination. As against this only 1015 candidates were shortlisted.

(2) No separate cut-off marks are prescribed for women general candidates. This has resulted in injustice.

(3) Between these petitioners the validity of the decision of the examination committee with respect to seven questions has been challenged. They have questioned deletion of six questions by the examination committee and have argued that decision to continue with one question which according to them did not present any correct choice was wrong.

7. Appearing for the petitioners learned counsel vehemently contended that the respondents have committed a serious error in calling only 1015 candidates against requirement of calling 1275 candidates considering 15 times of 85 notified vacancies. They have also highlighted that not prescribing separate cut-off marks for women general candidates was not in consonance with the Rules.

8. They have however devoted maximum energy on disputing the decision of the examination committee to delete six questions and to continue with the 7<sup>th</sup> which according to them had incorrect choices. It was argued that the general hesitance of the Court in reexamining correctness of questions and answers in field of education and other specialized fields, should not be applied in the present case since we are dealing with the recruitment of District

Judge where the Court also possess sufficient skills to analyze the questions and decide the correctness of answers.

9. On the other hand, learned counsel for the High Court administration opposed the petitioners contending that in certain categories candidates 15 times number of notified vacancies were not available and hence the shortfall in the total number of candidates who qualified for the further examination. He pointed out that in the general list women candidates in excess of 15 times the vacancies earmarked for them had already qualified. Separate cut-off marks was therefore not prescribed for this category.

10. With respect to the correctness of questions and answers, counsel submitted that this Court would not lightly overrule the decision of the special committee constituted by the examination committee. In this respect, reliance was placed on the decision of the Supreme Court in the case of **Vikesh Kumar Gupta vs The State Of Rajasthan, reported in (2021) 2 SCC 309**. Counsel had presented before us, the entire report of the special committee in a sealed cover.

11. We may deal with the three challenges of the petitioners in seriatim. With respect to calling 1015 candidates for the main examination instead of 1275 candidates as also not separately prescribing cut-off marks for different candidates, the respondents in reply dated 07.12.2021 filed in writ petition No.11684/2021 have stated as under:-

“3. That it is further submitted that Rule 40 (3) of RJS Rules, 2010 provides that “the number of candidates to be admitted to the main examination will be to the extent of fifteen times the total number

of notified vacancies (Category wise), but in the said range all those candidates who secure the same percentage of marks, as may be fixed by the Recruiting Authority for any lower range, will be admitted to the Main Examination”.

It is submitted that total 25 vacancies were there in General/Unreserved Category, out of which, 05 vacancies were reserved for women candidates and 01 was reserved for Widow. In conformity with the above Rule, 75 (5x15) women candidates were required, whereas, 89 women candidates have found place in the list of candidates belonging to the General Category. As more than the required number of women candidates found place in the list, therefore, no separate cut off was declared for the category of General woman. As against 15 (1x15) Widow candidates, no widow succeeded to find place. Thus, to meet out the shortfall, 05 widow candidates were brought up, as, only 05 widow candidates, were available who secured requisite qualifying marks. Due to non-availability of eligible widow candidates, 04 divorcee candidates were also brought up in accordance with the provision of one third reservation for widow & divorcee and interchange, as envisaged in Rule 10 (3) of RJS Rules, 2010. As widow and divorcee candidates belonging to the General Category were brought up, hence, separate cut off was declared. Thus, total 98 (89+4+5) women candidates including widow and divorcee were declared provisionally qualified for Main Examination.

Since, in the present recruitment, the recruitment of woman candidates got fulfilled from the non-reserved category separate cut-off marks for General Woman Category was not declared in the result of preliminary examination of direct recruitment to the cadre of District Judge.

4. That the petitioner has relied upon un-amended Rule 40 read with Schedule-VII of the Rajasthan Judicial Service Rules, 2010 and the same has been reproduced in the body of the writ petition. It is submitted that the Part-C of the Rules of 2010 deals with Recruitment to the Cadre of District Judge wherein Rule 40 deals with the Scheme of Examination. Rule 40 was substituted vide notification dated 21.08.2020 and for the sake of convenience Rule 40 of the Rules of 2010 is reproduced hereunder:-

.....

It is submitted that the entire examination is being conducted in strict conformity of above said rules and there has been no deviation. In such circumstances, the plea raised by the petitioner is untenable and Rule 20 of the Rules of 2010 which relates to the Scheme of Examination for appointments in Civil Judge Cadre cannot be applied in the Examination of District Judge Cadre.”

12. From the perusal of the above portion of the reply of the respondents it would emerge that the shortfall in the number of candidates who qualified for the written main examination was on account of shortage of candidates belonging to certain categories. What Rule 40 envisages is calling 15 times the number of notified vacancies for main examination category-wise. Therefore if there is a shortfall of candidates in a particular category be it reserved or otherwise and therefore in the total number of candidates who graduate to the next level of recruitment process namely of the written main examination, there is shortfall, it cannot be characterized as a departure from the procedure prescribed in the Rules or in any other manner irregular or illegal. Similarly the explanation rendered by the respondents with respect to no separate cut-off marks being prescribed for the women candidate is also acceptable. It is pointed out that in the general category candidates more than 15 times the number of vacancies notified for the women candidates had already qualified. Prescribing any cut-off marks would perhaps act in reverse and limit the number of candidates in this category. The requirement of prescribing a cut-off marks for this category therefore by virtue of this development had become redundant.

13. We now go to the most contested issue of deletion of six questions by the examination committee and refusal to delete one

which some of the petitioners have objected to. The report of the special committee constituted by the examination committee was not made part of the record. The administration has however provided the original file for our perusal. We have perused this file also shared the same with the counsel for the petitioners. It would not be correct to base our decisions on the contents of the file without sharing the same with the petitioners. Whether we accept the contentions of the petitioners or confirm the view of the committee in either case the fair play and the principles of natural justice required that we share this material with the petitioners so that they can make their submissions and point out what according to them are the errors committed by the committee.

14. The report of the special committee deals with several representations received from different candidates. In relation to each question the committee has given its precise reasons for accepting or not accepting the representation. We need to focus only on seven disputed questions. The report of the committee contains the question, the multiple choice answers given in the question papers as also its reasons for either deleting or retaining the question. In that view of the matter we would reproduced the relevant portion of the report of the committee which contains all these details:-

**"Question No.1:-**

**2. Question No.2-A/22-B/9-C/12-D.**

An Executive Magistrate may drop the order of attachment of immovable property by resorting to provisions under Section:-

- (1) 133 Cr.P.C.
- (2) 139 Cr.P.C.
- (3) 144 Cr.P.C.
- (4) 145 Cr.P.C.

**Model Answer- (4)**

Against model answer (4, in all, total 6 objections are submitted doubting its correctness. From the conjoint reading of Section 145 & 146 of Cr.P.C., it is crystal clear that provision regarding attachment of immovable property is prescribed in Section 146(1) of Cr.P.C., which is not mentioned in any of the option of the given question. Therefore, the Committee is of unanimous opinion that objections are to be **sustained** and recommended that **either the question itself be deleted or any other appropriate decision be taken in the interest of examinees.**

**Question No.2:-****31. Question No.68-A/69-B/69-C/66-D.**

Which of the following is a "controlled substance" under the Narcotic Drugs and Psychotropic Substance Act, 1985:-

- (1) Ammonium hydrochloride
- (2) Potassium permanganate
- (3) Acetic Anhydride
- (4) Hydrocarbon

**Model Answer- (3)**

In all, four objections have been submitted to question the correctness of model answer (3). As per the objections, potassium permanganate and acetic acid anhydride both are notified as control substance vide Notification dated 26.03.2013. The committee has perused the Notification dated 26.03.2013 issued by ministry of finance (Department of Revenue), wherein acetic acid anhydride is declared as control substance in Schedule-A and potassium permanganate is declared as control substance in Schedule-B, hence both are controlled substance. The committee is of the view that as both option (2) and (3) both are correct, **the objections deserve acceptance.** The committee unanimously recommends that **either the question itself be deleted or any other appropriate decision be taken in the interest of examinees.**

**Question No.3:-****36. Question No.79-A/79-B/78-C/80-D.**

A Second Appeal under Section 76 of the Rajasthan Land Revenue Act, 1956 from an order passed in appeal by the Settlement Commissioner, lies to:-

- (1) The Collector
- (2) Revenue Appellate Authority
- (3) Board of Revenue
- (4) None of the above

राजस्थान भू-राजस्व अधिनियम, 1956 की धारा 76 के अन्तर्गत भू-प्रबन्ध अधिकारी द्वारा अपील में पारित आदेश की द्वितीय अपील होती है:-

- (1) कलेक्टर को
- (2) राजस्व अपील अधिकारी को
- (3) राजस्व मण्डल को
- (4) उपरोक्त में से कोई नहीं

### Model Answer- (3)

Solitary objection is received against model answer (3), on the ground that question in Hindi and English are different. The Registrar (Examination) has attracted the attention of this committee upon the point No.10 of the instruction printed on the 1<sup>st</sup> page of the QPB, which reads as under:-

*10. If there is any sort of ambiguity/mistake either of printing or factual nature then out of Hindi and English version of the questions,, the English Version will be treated as standard.*

We gave intense thought and found that the discrepancy occurred in the Hindi and English language of aforesaid question does not fall within the ambit of above instruction. Because English version of the question asks appeal against order of "Settlement Commissioner" and then, option (3) is the correct answer, whereas, the Hindi Version is seen, the question asks appeal against order of "Settlement Officer" against whose order the appeal is provided to Settlement Commissioner, the correct answer, therefore, will be option (4). Hence, the candidates who had opted Hindi medium would be at disadvantageous position and even if their answer is correct, it will be treated wrong. Therefore, the Committee is of unanimous opinion that objection is **sustainable**. It therefore, **recommends that either the question be deleted or any other appropriate decision be taken in the interest of examinees.**

**Question No.4:-****43. Question No.93-A/94-B/93-C/94-D.**

In which provisions of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989, capital punishment was introduced by Amendment Act No.1 of 2016?

- (1) Section 3(1)(g)
- (2) Section 3(1)(z)
- (3) Section 3(2)(i)
- (4) Section 4

**Model Answer- (3)**

Against model answer (3), there are 6 objections. The committee has examined The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (Act NO.1 of 2016) and old edition (2012 edition) of The Scheduled Castes and The Scheduled Tribes Act, 1989 and reached to a unanimous conclusion that the capital punishment was not introduced by the Act No.1 of 2016 but it was very much in existence even before such amendment. That apart, there is typographical error in Hindi version of the question. Option (3) ought to have been 3 (2)(i) but that can be ignored in the light of instruction No.10. Therefore, the committee is of unanimous opinion that objections are to be sustained and recommend that **either the question itself be deleted or any other appropriate decision be taken in the interest of examinees.**

**Question No.5:-****47. Question No.99-A/96-B/96-C/96-D.**

The limitation for filing an application for compensation under the Motor Vehicles Act, 1988 is:-

- (1) 3 years
- (2) 5 years
- (3) 10 years
- (4) No period of limitation is prescribed

**Model Answer- (4)**

Total 25 objections against model answer (4) are received. By virtue of the Motor Vehicles (Amendment) Act, 2019 (Act No.32 of 2019), Section 166 (3) of the act has been amended, whereby, it has been provided that no application for compensation shall be entertained under it, unless it is made within six months of the occurrence of the accident. None of the option of the given question has mentioned "six months". Therefore, the Committee is of unanimous opinion that the objections are **sustainable** and recommended that **either the question itself be deleted or any other appropriate decision be taken in the interest of examinees.**

**Question No.6:-**

**Question No.143-A/145-B/145-C/142-D.**

"Flog a dead horse" means:-

- (1) To beat the horse to death.
- (2) Cruelty to animals.
- (3) Waste efforts on something when there is no chance of succeeding.
- (4) To try to get work out of some one who is already exhausted.

**Model Answer- (3)**

Solitary objections against model answer (3), received pertaining to this question by contending that option (4) is right answer. The members of the committee discussed the issue and considered the written opinion of the language expert (Annexure-1). In view thereof, the committee is of the view that option (3) and (4) both are correct. The committee, therefore, recommends that **either this question be deleted or any other decision deemed appropriate be taken."**

**Question No.7:-**

प्रश्न सं. 149-ए/146-बी/147-सी/149-डी

विहंगम-दृष्टि का अर्थ है:-

- (1) सरसरी दृष्टि
- (2) गहरी दृष्टि
- (3) सम्यक दृष्टि
- (4) पैनी दृष्टि

मॉडल उत्तर – (3)

इस प्रश्न के सम्बन्ध में मॉडल उत्तर (3) को गलत बताते हुए कुल 12 आपत्तियां प्रस्तुत की गई हैं। कुछ अभ्यर्थियों ने उत्तर गलत माना है तो कुछ अभ्यर्थियों का मानना है कि मॉडल उत्तर (1) सही है तथा कुछ का मानना है कि इसके एक अधिक उत्तर विकल्प में दिये गये हैं।

विषय विशेषज्ञ की निम्नलिखित राय है:-

“इस प्रश्न पर कुल 12 आपत्तियां प्राप्त हुई हैं जिसके अनुसार कुछ अभ्यर्थियों ने उत्तर गलत माना है तो कुछ अभ्यर्थियों का मानना है कि इसके एक अधिक उत्तर विकल्प में दिये गए हैं।

स्पष्टीकरण:- हिन्दी और संस्कृत के विभिन्न शब्दकोषों का अवलोकन करने के बाद प्रश्न क्रमांक 149 में दिये गये चारों विकल्प विषुद्ध रूप से सही नहीं हैं। संस्कृत शब्दकोष बामन शिवराम आपटे के अनुसार विहायसा गच्छति से विहंगम शब्द बना है। मानक हिन्दी कोष सम्पादक रामचन्द्र वर्मा का कथन है कि यह शब्द पक्षी चिडिया के सन्दर्भ में प्रयुक्त किया जाता है वहीं हिन्दी समास कोषकार ओमप्रकाश कौषिक और वासुदेव शर्मा शास्त्री के अनुसार विहंगम दृष्टि कर्मधारय समास है जिसका विग्रह करने पर विहंग (पक्षी) जैसी हो तीक्ष्ण तो दृष्टि यानि तीक्ष्ण दृष्टि वाला विहंग जिस तरह से अवलोकन करता है उसे विहंगम दृष्टि कहा गया है। समास के सन्दर्भ में यह विग्रह सही हो सकता है लेकिन शब्द की व्युत्पत्ति विहायसा + गम (जाना) के अर्थ में है। डॉ. हरदेव बाहरी द्वारा लिखित शिक्षार्थी हिन्दी कोष में विहंगम दृष्टि का अर्थ सरसरी निगाह माना गया है। विहंगावलोकन का तात्पर्य है सरसरी तौर पर देखना है। पक्षी आमतौर पर ऊपर उड़ते हुए सरसरी तौर पर देखते हुए उड़ते चले जाते हैं जबकि बाज पक्षी तीक्ष्ण या पैनी दृष्टि से अपने शिकार को देखता है। यहां विहंग शब्द साधारण पक्षी के सन्दर्भ में प्रयुक्त हुआ है इसलिए डॉ. हरदेव बाहरी द्वारा दिया गया अर्थ सही है।

उपर्युक्त तथ्यों के परिप्रेक्ष्य में यह निष्कर्ष निकलता है कि शब्दकोषकार विहंगम दृष्टि के अर्थ को लेकर एकमत नहीं हैं। अतः इस प्रश्न के दिये गये चारों विकल्पों में से निकटतम अर्थ विकल्प क्रमांक 1 सरसरी दृष्टि में निहित है। अतएव डॉ. हरदेव बाहरी द्वारा पृष्ठ क्रमांक 758 में दिया गया अर्थ सरसरी निगाह को सही उत्तर माना जा सकता है। सम्यक दृष्टि का तात्पर्य उचित या मनोनुकूल दृष्टि होता है इसलिए विकल्प क्रमांक 3 सही नहीं माना जायेगा।

इस प्रकार इस शब्द के एकाधिक व भिन्न-भिन्न अर्थ हो सकते हैं। जैसा कि विषय विशेषज्ञ ने अपनी विस्तृत राय में बताया है, अतः समिति की राय में आपत्ति स्वीकार किये जाने योग्य पाई जाकर यह संस्तुति की जाती है कि या तो इस प्रश्न को निरस्त किया जाए या विकल्प (1) को सही माना जाए अथवा परीक्षार्थियों के हित में अन्य कोई उचित निर्णय लिया जाए”

15. It is well settled through series of judgments of the Supreme Court that the judicial review of the decision of the examining body be it in the filed of education or in the recruitment to the public employment, is extremely limited. Particularly when the examination is being conducted by an expert body and disputed questions are scanned by specially constituted expert committee, the Courts are extremely slow in interfering with the decisions of

such bodies. Unless it is pointed out that there is a glaring error or an irrational decision has been rendered the Court in exercise of its writ jurisdiction under Articles 226 and 227 of the Constitution of India would not interfere. In the case of **Ran Vijay Singh and Ors. Vs. State of Uttar Pradesh and Ors., reported in (2018) 2 SCC 357**, the law was discussed at length. Following observations may be noted:-

**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 scrutinize 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.

**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."

16. In the case of **Bihar Staff Selection Commission and Ors. Vs. Arun Kumar and Ors., reported in (2020) 6 SCC 362,** these principles were reiterated. Reference was made to the decision in the case of **Ran Vijay Singh (supra)** and it was observed as under:-

"26. Given the clear declaration of law in the judgments of this court, we are of the opinion that the unilateral exercise of re-valuation undertaken by the High Court (both by the single judge and the Division Bench) has not solved, but rather contributed to the chaos. No rule or regulation was shown by any party during the hearing, which justified the approach that was adopted. The BSSC, in our opinion, acted correctly in the first instance, in referring the answers to a panel of experts. If there were justifiable doubts about the recommendations of that panel, the least that should have been done, was to require the BSSC to refer the disputed or doubtful questions to another expert panel. That was not done; the "corrections" indicated by the single judge were accepted by the BSSC; several candidates who made it to the select list freshly drawn up pursuant to his directions, were appointed. The Division Bench, thereafter undertook the entire exercise afresh, compounding the matter further by not referring the disputed questions to any panel of experts. We are left reiterating the lament, (made in *Ran Vijay*) that the High Court's interference has not resulted in finality "to the result of the examinations" despite a long lapse of time. There is an air of uncertainty about the entire selection - nay, the entire cadre, because the inter se seniority of selected (and appointed) candidates is in a state of flux."

17. In the case of **Vikesh Kumar Gupta and Ors. Vs. State of Rajasthan and Ors., reported in (2021) 2 SCC 309** once again there was a reference to the decision in the case of **Ran Vijay Singh (supra)**. It was further observed as under:-

"16. 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*<sup>10</sup> 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.

17. 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. The delay in finalization of appointments to public posts is mainly caused due to pendency of cases challenging selections pending in courts for a long period of time. The cascading effect of delay in appointments is the continuance of those appointed on temporary basis and their claims for regularization. The other consequence resulting from delayed appointments to public posts is the serious damage caused to administration due to lack of sufficient personnel."

18. In addition to this restraint advised by the Supreme Court, independently also having examined the relevant questions, the multiple choices printed in the question papers and the recommendations of the specially constituted committee for either deletion or retention of the question, we find that in every instance, the committee has examined the position correctly and where ever it was found that either the question was ambiguous or the multiple choices in the question papers did not present one and only one clear cut answer which was correct, recommendation was made for deleting such questions.

19. We may quickly run through all these questions. With respect to question No.1 noted above, the committee correctly came to the conclusion that model answer No.4 was not correct since Section 145 (5) of Cr.P.C. in our opinion does not refer to dropping of the order of attachment of immovable property by an executive magistrate. No other option fitted the correct answer.

20. With respect to question No.2 noted above, the committee examined the rule position and noted that both, the option No.2 and 3 were correct since these substances were notified as controlled substances.

21. With respect to question No.3 noted above, the committee noted that there was a variance between the question printed in English and in Hindi. The committee therefore recommended that the question be deleted. The committee did note that as per clause (10) of the instructions in case of any ambiguity or mistake the English version would be treated as standard. However in the opinion of committee and correctly so, this was not a mere ambiguity or mistake in printing. It was the case where the English and Hindi questions were different. There cannot be two different questions under the same serial number depending on in which medium the candidate is answering the examination.

22. With respect to question No.4 noted above, the original model answer was No.3 is a correct choice however, committee noted that there was a typographical error in the Hindi version where option No.3 was wrongly typed and that did not present the correct answer which would mean the Hindi question would be defective. The committee therefore recommended that the question be deleted.

23. With respect to question No.5 noted above, the committee noted that original correct answer as per model key was option No.4 however the Motor Vehicles Act was amended by Motor Vehicles (Amendment) Act, 2019 in which sub-section (3) was inserted in Section 166 prescribing period of limitation of six months for filing the claim petition. All the options under this question were therefore incorrect the committee therefore recommended that the question be deleted.

24. With respect to question No.6 noted above, the committee was of the opinion that options No.3 and 4 both could be possibly correct. This opinion was formed on the basis of a language expert's obtained by the committee.

25. With respect to one question which the petitioners want deleted and in which the committee refused to accept the request, following portion of the report of the committee may be noted:-

“इस प्रश्न पर कुल 12 आपत्तियां प्राप्त हुई हैं जिसके अनुसार कुछ अभ्यर्थियों ने उत्तर गलत माना है तो कुछ अभ्यर्थियों का मानना है कि इसके एक अधिक उत्तर विकल्प में दिये गए हैं।

स्पष्टीकरण:- हिन्दी और संस्कृत के विभिन्न शब्दकोषों का अवलोकन करने के बाद प्रश्न क्रमांक 149 में दिये गये चारों विकल्प विषुद्ध रूप से सही नहीं हैं। संस्कृत शब्दकोष बामन शिवराम आष्टे के अनुसार विहायसा गच्छति से विहंगम शब्द बना है। मानक हिन्दी कोष सम्पादक रामचन्द्र वर्मा का कथन है कि यह शब्द पक्षी चिडिया के सन्दर्भ में प्रयुक्त किया जाता है वहीं हिन्दी समास कोषकार ओमप्रकाश कौषिक और वासुदेव शर्मा शास्त्री के अनुसार विहंगम दृष्टि कर्मधारय समास है जिसका विग्रह करने पर विहंग (पक्षी) जैसी हो तीक्ष्ण तो दृष्टि यानि तीक्ष्ण दृष्टि वाला विहंग जिस तरह से अवलोकन करता है उसे विहंगम दृष्टि कहा गया है। समास के सन्दर्भ में यह विग्रह सही हो सकता है लेकिन शब्द की व्युत्पत्ति विहायस + गम (जाना) के अर्थ में है। डॉ. हरदेव बाहरी द्वारा लिखित शिक्षार्थी हिन्दी कोष में विहंगम दृष्टि का अर्थ सरसरी निगाह माना गया है। विहंगावलोकन का तात्पर्य है सरसरी तौर पर देखना है। पक्षी आमतौर पर ऊपर उड़ते हुए सरसरी तौर पर देखते हुए उड़ते चले जाते हैं जबकि बाज पक्षी तीक्ष्ण या पैनी दृष्टि से अपने शिकार को देखता है। यहां विहंग शब्द साधारण पक्षी के सन्दर्भ में प्रयुक्त हुआ है इसलिए डॉ. हरदेव बाहरी द्वारा दिया गया अर्थ सही है।

उपर्युक्त तथ्यों के परिप्रेक्ष्य में यह निष्कर्ष निकलता है कि शब्दकोषकार विहंगम दृष्टि के अर्थ को लेकर एकमत नहीं है। अतः इस प्रश्न के दिये गये चारों विकल्पों में से निकटतम अर्थ विकल्प क्रमांक 1 सरसरी दृष्टि में निहित है। अतएव डॉ. हरदेव बाहरी द्वारा पृष्ठ क्रमांक 758 में दिया गया अर्थ सरसरी निगाह को सही उत्तर माना जा सकता है। सम्यक दृष्टि का तात्पर्य उचित या मनोनुकूल दृष्टि होता है इसलिए विकल्प क्रमांक 3 सही नहीं माना जायेगा।”

इस प्रकार इस शब्द के एकाधिक व भिन्न-भिन्न अर्थ हो सकते हैं। जैसा कि विषय विशेषज्ञ ने अपनी विस्तृत राय में बताया है, अतः समिति की राय में आपत्ति स्वीकार किये जाने योग्य पाई जाकर यह संस्तुति की जाती है कि या तो इस प्रश्न को निरस्त किया जाए या विकल्प (1) को सही माना जाए अथवा परीक्षार्थियों के हित में अन्य कोई उचित निर्णय लिया जाए।”

26. Here also the committee on the basis of expert's opinion recommended that the question be retained as clear cut correct answer is possible.

27. All in all we find that the exercise undertaken by the specially constituted committee which culminated into a well-reasoned report touching threadbare on each and every disputed question, and which report was accepted by the examination committee, calls for no interference.

28. In one of the petitions one additional contention has been raised with respect to allowing what the petitioners contend was as many as 50 legal advisers by the respondents in the preliminary examination. According to the petitioners as per clause (2) of Article 233 of the Constitution any person who is in service of Union or the State is disqualified for direct recruitment to the post of District Judge. We do not entertain this contention for several reasons. In the writ petition no details have been given as to who are these so called legal advisers. Whether they are in government service and if so in what capacity is also not stated. Not a single such person is named or joined as respondent. Article 233 of the Constitution pertains to appointment of District Judge. Clause (1) of Article 233 provides that appointment of persons to be and the posting and promotion of District Judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State. Clause (2) of Article 233 provides that a person not already in the service of the Union or of the State shall only be eligible to be appointed as District Judge if he has been for not

less than seven years an advocate or a pleader and is recommended by the High Court for appointment.

29. This expression "a person not already in service of the Union or of the State" has come up for interpretation before the Supreme Court earlier. In case of **Chandra Mohan Vs. State of U.P., reported in (1967) 1 SCR 77** it was held that the expression "the service" in clause (2) of Article 233 has to be seen as judicial service. This view has been consistently adopted by the Supreme Court and was reiterated in three judge bench in the case of **Dheeraj Mor Vs. High Court of Delhi, reported in (2020) 7 SCC 401**. However we are not required to go into this question at any further length since as noted this contention has been raised without giving any specific instances or further details regarding participation of any disqualified candidates.

30. Before closing we would like to touch briefly on two aspects. First, we wonder why the report of the committee was treated as confidential. Publishing the answer keys of the questions and entertaining representations from the candidates was the first step in right direction. If participation of the candidates was thus encouraged in the process of making the selection more transparent, there was no reason why the consideration of such representations should also not be made public. This would be a step further in bringing the transparency in the selection process. At least when the challenge is brought to the Court, the relevant portion of the report should have been included in the reply so that the petitioners can deal with it.

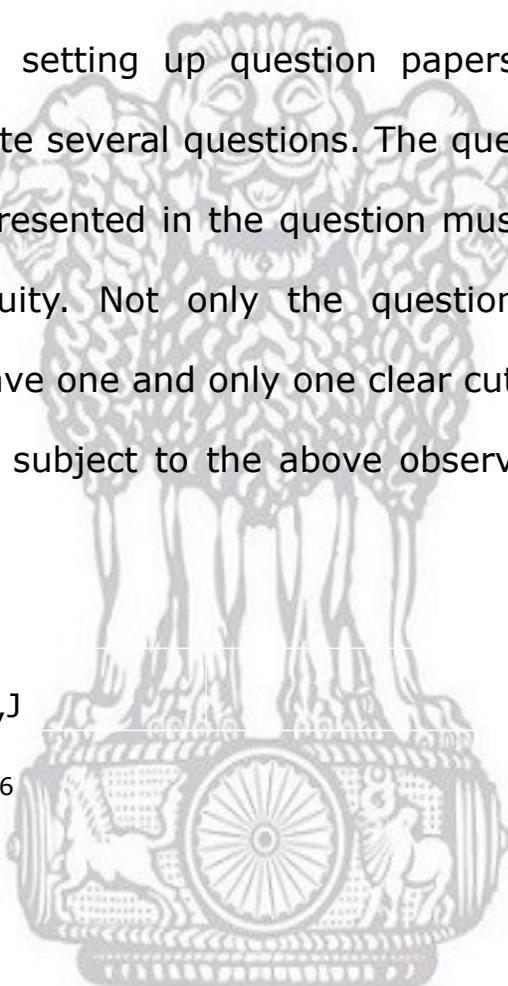
31. The second aspect is that the examination committee was forced to delete as many as six questions. When the examination committee invites suggestions and objections from the candidates, multiple suggestions are bound to be received. However the instances where the examination committee is forced to change the correct answer and more importantly forced to delete the question has to be kept to the minimum. When we refer to the examination committee and similar bodies as expert bodies least that the Court can expect is that such bodies do not commit multiple errors in setting up question papers which eventually force them to delete several questions. The question itself and the multiple choices presented in the question must be so clear as to permit no ambiguity. Not only the question but the choices presented must have one and only one clear cut answer possible.

32. In the result subject to the above observations all petitions are dismissed.

(SUDESH BANSAL),J

(AKIL KURESHI),CJ

BRIJ MOHAN GANDHI /6-16



सत्यमेव जयते