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

+ W.P.(C) 5796/2024 and CM APP No. 23972/2024

HARDEEP

..... Petitioner

Through: Mr. Brajesh Kumar, Mr. Phillip Massey, Mr. Dev Suman Mohanpuria, Ms. Neha Raj, Mr. Arya and Mr. Charanjan, Advocates.

versus

UNIVERSITY OF DELHI & ORS.

..... Respondents

Through: Mr. Mohinder J.S. Rupal and Mr. Hardik Rupal, Advocates for DU

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (O R A L)

06.05.2024

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1. The petitioner, who is a student of the Faculty of Law, University of Delhi is unhappy with the marks awarded to him in the papers bearing Paper Code LB-401, LB-604, LB-4036 and LB-603. In paper code LB-401 (Constitutional Law-II), the petitioner is aggrieved by the marks awarded to him against the answers in response to questions (1), (2), (3), (4) and (7); in paper code LB-4036 (Intellectual Property Rights Law-I), the petitioner is unhappy with the marks awarded against the answers to questions (1), (2) and (4) and, in paper code LB-603 (Environmental Law), the petitioner is aggrieved by the



marks awarded in respect of the answers to questions (2), (4) and (7).

2. The grievance of the petitioner with respect to paper code LB-604 (Principles of Taxation Law), is somewhat different in complexion and would be dealt with separately.

3. The questions in paper code LB-401, LB-4036 and LB-603, which forms subject matter of the petitioner's grievance, may be reproduced thus :

LB 401

“1. “The concept of State has undergone drastic changes in recent years. Today State cannot be conceived of simply as a coercive machinery wielding the thunderbolt of authority. It has to be viewed mainly as a service corporation.”

In light of the above statement discuss the judicial interpretation of the expression “other authorities”.

2. X joined Department of Child Welfare of Government of Rajasthan in 1990 as general candidate on the post of LDC. In 1998, he was promoted to the higher post of UDC. He was further promoted to the post of Section Officer in 2012.

Y and Z joined Department of Child Welfare of Government of Rajasthan in 1994 as LDC. Y and Z belong to Scheduled Caste and Scheduled Tribe respectively. At levels 2 (i.e., UDC) and 3 (i.e., Section Officer), Y and Z were given accelerated promotions as reserved candidates in 2000 and 2013 respectively. Y has been now promoted to the post of Under Secretary, a single cadre post, in the department.

X has approached to you for seeking your legal opinion as regards to his entitlement to promotion to the post of Under Secretary. Tender your legal opinion.

3. “The expression ‘amendment of this Constitution’ does not



enable Parliament to abrogate or take away, fundamental rights or to completely change the fundamental features of the Constitution so as to destroy its identity. Within these limits Parliament can amend every article.”

In the light of the above statement discuss the methodology used by the Supreme Court to identify the basic features of the Indian Constitution. Can a law not included in ninth schedule be declared unconstitutional on the ground that it violates doctrine of basic structure?

4. Discuss the scope of Article 19(1)(a) vis-à-vis broadcasting and the role of the government in controlling it.

7. Article 25 and 26 of the Indian Constitution deals with freedom of religion. How these two article differ in their operation? Has the Judiciary in the name of interpreting these article become clergy? Provide sound reasons for your answer.”

LB-4036

“1. ‘Panicle Enterprise’ deals in range of household product across India, It uses different brand names for different class of products, which are as follows :

DUS for Brown Rice,
COWARDHAN for cooking oil,
SURUCHI for wheat flour
ANHAD for chutneys

‘Panicle Enterprise’ approaches you for possible registration of the aforesaid marks. Advise your client with the help of relevant provisions and case law

2. Shri Nakoda sells homeopathy medication under the brand name ‘BENERJEX” that is registered trademark since 2011. Mr. Ben started using ‘BENERJEEN’ for its allopathic medicines. Shri Nakoda filed a suit for injunction against Mr. Ben contending that the marks are deceptively similar. Decide with relevant cases.

Also state the factor that should be taken into consideration to determine deceptive similarity between the marks if Shri Nakoda’s mark ‘BENERJEX’ is not registered. Discuss with the help of relevant case law.



4. Mr. Mandy is selling readymade garments under the brand name 'MONOGINIS' worldwide. They are the largest retailer in America and fourth largest in the world. With network of around 5000 stores in about 25 countries of the world, realizing the potential in Indian market Mr. Mandy launched its operation here in 2019 and want to get 'MONOGINIS' to be declared a well-known trademark. Citing the relevant provisions of law and decided cases, discuss the concept of well known trademarks under the Trademarks Act, 1999 and also state factors which are irrelevant to determine a trademark as well-known trademarks.”

LB-603

“2. “It is better to err on the side of caution and prevent environmental degradation which may become irreversible.” Discuss the statement with reference to scope and applicability of Precautionary Principle in environmental cases along with decided cases.

4. “PIL should not be allowed to degenerate, to become publicity interest litigation or private inquisitiveness litigation.” In light of this statement, elaborate on the vital role played by Public Interest Litigation in safeguarding and expanding our fundamental right to environment with the help of *Subash Kumar v. State of Bihar*.

7. Discuss the jurisdiction, power and functions of the National Green Tribunal and the remedies provided under the National Green Tribunal Act, 2010. Elucidate with the help of decided cases.”

4. A glance at the above questions would reveal that they are subjective type in nature and they call for detailed and comprehensive responses from the student. The marks awarded against the answers provided in response to such questions are, therefore, a matter of subjective discretion of the examiner. Such questions cannot be likened to objective type or multiple choice questions in which there can be only one specific answer to a question and the Court therefore,



is in a position to assess whether a correctly answered question has not been awarded the marks it deserves.

5. The questions forming subject matter of the petitioner's grievance in paper code LB-401 (Constitutional Law-II), LB-4036 (IP Rights Law-I) and LB-603 (Environmental Law) are questions calling for detailed answers and, therefore, if the examiner did not deem the answer provided by way of response to the question sufficient to warrant more than the marks that he awarded against the said answers, the Court must defer to the wisdom of the examiner. It would be improper for the Court to sit in judicial review, much less appeal, over the examiner's decision.

6. The submission that, having put tick marks against the answers given by the petitioners, the examiner could not have awarded such low marks, cannot muster acceptance. As noted, these are subjective type questions, demanding detailed answers by way of response. Even if what has been written by the student may be correct, as is manifested by the "tick marks", it may not be detailed or comprehensive enough, thereby resulting in its being awarded lower marks. These are, at the end of the day, all matters of conjecture, and, in the absence of clear proof of *mala fides*, the court cannot substitute its wisdom for that of the examiner.

7. It would not, in fact, in my opinion, be erroneous, as a proposition of law, to state that, where the questions are subjective, calling for detailed answers, as opposed to objective type questions,



the possibility of judicial review over the marks awarded by the examiner is almost totally foreclosed.

8. As regards paper code LB-604 (Principles of Taxation Law), Mr. Brajesh Kumar, learned counsel for the petitioner submits that the examiner did not make any marking in the entire paper, on the basis of which the petitioner could be made aware as to the errors or omissions on his part. Without making any marking in the paper, the petitioner was awarded far less than the maximum marks which five questions, which he attempted, carried.

9. The tally marking on the cover page of the answer sheet reveals that against question (1), the examiner has awarded “5+5 = 10 marks”; against question (2), 13 marks; against question (4), 4 marks; against question (7), 9 marks; and against question (8), 3 marks. These were against the maximum marks of 20, that each question carried.

10. Apart from the fact that, according to him, his client deserved higher scores against the answers attempted in response to the five questions that he had attempted. Mr. Brajesh Kumar further submits that while the petitioner had attempted question (3), no marks were awarded against it, whereas 4 marks were awarded against question (4) which the petitioner never attempted. This, in his submission, reveals a totally careless approach, and discloses non-application of mind.

11. In so far as question (1), (2), (7) and (8) are concerned, the fate of the challenge laid by Mr. Brajesh Kumar must be the same as the



fate of the challenges raised by him in respect to the other question papers. These questions are subjective in nature and it is not possible for this Court to substitute its wisdom for the wisdom of the examiner and assess, for itself, the number of marks to be awarded against each of them.

12. In so far as the petitioner's grievance that the examiner had awarded him 4 marks against question (4), which he not attempted, and not awarded him against question (3), is concerned, Mr. Rupal, learned Counsel for the University points out, by reference to the actual answer sheet, that this was only an inadvertent error as the examiner had actually awarded 4 marks against answer (3) and the petitioner had not attempted answer (4).

13. On a perusal of the answer sheet, this submission is found to be correct. The failure on the examiner's part to award any marks against the answer to question (3) and the awarding of 4 marks against the answer to question (4) therefore appears to be an unfortunate mix-up, whereas 4 marks which were awarded were actually intended for the answer against question (3).

14. Viewed in the above light, it cannot be said that the petitioner has been able to make out any convincing case as would justify interference by the court within the extremely narrow and circumscribed sphere of its interference with marks awarded by the examiner, as envisaged by Article 226 of the Constitution of India.

15. I regret, therefore, that it is not possible for me to come to the



aid of the petitioner. The petition is, accordingly, dismissed, with no orders as to costs.

C.HARI SHANKAR, J

MAY 6, 2024/yg

Click here to check corrigendum, if any