



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA-286-2022 (O&M)
Reserved on: 16.05.2025

Pronounced on : 29th May, 2025

Amit Kumar Sharma ...Appellant

Vs.

Municipal Corporation, Chandigarh and others ...Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present: Mr. Gurnoor S. Sandhu, Advocate for the appellant.

Ms. Divya Sodhi, Advocate for respondent No.1.

Mr. Subhash Ahuja, Advocate for respondent No.2.

Mr. Arjun Pratap Atma Ram, Advocate for respondent No.3.

SANJEEV PRAKASH SHARMA, J.

1. This Letters Patent Appeal under Clause X of the Letters Patent is directed against the judgment dated 07.02.2022 passed by the learned Single Judge in CWP No.1007 of 2022, whereby the writ petition filed by the appellant was dismissed.

2. The writ petition was filed by the appellant challenging the action of Respondent No.1 - the Municipal Corporation, Chandigarh - in treating an incorrect answer as correct in the official answer key of a competitive recruitment examination, which ultimately deprived the appellant of selection to the post of Law Officer.

3. The Municipal Corporation, Chandigarh, vide public notice dated 08.04.2021, advertised several posts including one post of Law Officer.

The selection process comprised a single-stage written examination of 100 marks containing objective-type multiple-choice questions. Out of the total questions, 50 questions were related to law, with each correct answer awarded one mark and a penalty of 0.25 marks for each incorrect response.

4. The appellant, a duly qualified law graduate with an LL.M. and relevant experience, appeared in the examination held on 29.08.2021. Upon publication of the answer key, the appellant discovered that one of the questions, Question No.73, had been erroneously answered in the official key. The question was as follows:-

“Which of the following schedules of the Constitution is immune from judicial review on the ground of violation of fundamental rights”

- (A) Seventh Schedule
- (B) Ninth Schedule
- (C) Tenth Schedule
- (D) None of the above.”

5. The appellant selected Option ‘D’ – ‘None of the above’, relying on the Constitution Bench judgment in **I.R. Coelho v. State of Tamil Nadu, (2007) 2 SCC 1**, wherein it was held that even laws placed in the Ninth Schedule after 24.04.1973 are subject to judicial review if they infringe upon Fundamental Rights forming part of the Basic Structure.

6. However, the official answer key treated Option ‘B’ – ‘Ninth Schedule’ as the correct answer. Consequently, the appellant was penalised with a deduction of 0.25 marks, which affected his overall ranking, pushing him to third place in the merit list and resulting in the denial of selection to the lone post of Law Officer.

7. Aggrieved, the appellant filed CWP No.1007 of 2022 seeking re-evaluation and correction of the answer key. The writ petition was dismissed by the learned Single Judge on the ground that it was not open to the Court to interfere with academic matters or expert opinion in evaluating answer keys. Hence, the present appeal.

8. Learned counsel for the appellant submitted that the learned Single Judge committed a grave error in dismissing the writ petition without appreciating that the impugned Question No.73 in the recruitment examination conducted by the Municipal Corporation, Chandigarh, suffers from a fundamental error of law.

9. It is contended that the official answer key marked Option B (Schedule IX) as the correct response. However, the appellant had selected Option D (None of the above), relying on the authoritative pronouncement of the Constitution Bench of the Hon'ble Supreme Court in **I.R. Coelho (supra)**, which held that the inclusion of laws in the Ninth Schedule after 24th April 1973 is not immune from judicial review and such laws are open to challenge on the ground of violation of the basic structure of the Constitution.

10. Learned counsel submitted that the law declared in **I.R. Coelho (supra)** is binding under Article 141 of the Constitution, and hence, it is no longer legally tenable to assert that the Ninth Schedule, or for that matter, any schedule of the Constitution, enjoys blanket immunity from judicial scrutiny. Therefore, the correct answer to Question No.73 ought to have been "**None of the above.**"

11. It was further submitted that the appellant, being a law graduate, answered the question correctly in accordance with prevailing constitutional jurisprudence. However, not only was the appellant denied one mark, but also

subjected to negative marking of 0.25 marks, thereby resulting in a net loss of 1.25 marks. This loss materially affected the appellant's merit ranking and prospects of selection.

12. The learned counsel further relied on the judgments of the Hon'ble Supreme Court in Richal v. Rajasthan Public Service Commission, (2018) 8 SCC 81 and Hiranmayee Bhattacharyya v. State of West Bengal, (2021) 13 SCC 149, to contend that while Courts generally exercise restraint in interfering with expert opinion in the context of evaluation of answers, such restraint does not extend to cases where the answer key is demonstrably wrong or perverse in the face of binding judicial precedent.

13. It was also argued that the respondent authorities, being instrumentalities of the State, are duty-bound to uphold the law laid down by the Hon'ble Supreme Court and cannot take positions contrary to the same. The continued adherence to an incorrect key not only undermines the appellant's rights under Articles 14 and 16 of the Constitution but also militates against the principles of fairness and non-arbitrariness in public employment.

14. Respondent No.3, through learned counsel, contends that he has already been appointed to the post of Law Officer pursuant to the selection process and has been discharging his duties diligently since 12.04.2022. There are no complaints against his service, and he is not at fault in the current dispute.

15. It is further submitted that if the Hon'ble Court finds any infirmity in the process, then, without disturbing the appointment of

Respondent No.3, an additional post may be created in terms of **Vikas Pratap Singh & Ors. v. State of Chhattisgarh, (2013) 14 SCC 494.**

16. Respondent No.2, Panjab University, contends that the representation was carefully examined by the subject expert, who opined that laws in the Ninth Schedule enjoy immunity under Article 31-B from mere violation of fundamental rights. The expert emphasized that violation of basic structure, not merely fundamental rights, is the threshold for judicial review post **His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala and another (1973) 4 SCC 225.**

17. They rely heavily on paragraph 148 of **IR Coelho (supra)**, which clearly holds that mere violation of Part III rights does not invalidate a Ninth Schedule law unless it also violates the basic structure.

18. It is further submitted that even hypothetically assuming ambiguity in the question, deletion of the question would not change the outcome of the selection. Even if marks were granted to both options "B" and "D", the appellant would not surpass Respondent No.3 in merit. Reliance is placed on **Lovepreet Singh v. Haryana Public Service Commission, LPA No. 1139 of 2021**, where deletion of a disputed question did not alter the final merit.

19. It is also submitted that Courts should exercise restraint in interfering with expert opinion in academic matters. Strong reliance is placed on:

Ran Vijay Singh v. State of Uttar Pradesh, (2018) 2 SCC 357;
U.P. Public Service Commission v. Rahul Singh, (2018) 7 SCC 254;
Vivek Kumar Gupta v. State of Rajasthan, (2021) 2 SCC 309;

These judgments hold that once an expert body has adjudicated upon an objection to an answer key, Courts must not act as an appellate authority unless the decision is manifestly wrong or arbitrary.

16. We have heard learned counsel for the parties and perused the pleadings and documents on record, including the impugned question, the official answer key, the objections raised by the appellant, the relevant judicial precedents, and the impugned judgment dated 07.02.2022 passed by the learned Single Judge.

17. The central issue requiring adjudication in the present appeal is whether the official answer key treating Option 'B' - "Ninth Schedule" as the correct answer to Question No.73, which asked 'Which of the following Schedules of the Constitution is immune from judicial review on the ground of violation of fundamental rights?' is legally sustainable in view of the binding judgment of the Constitution Bench of the Hon'ble Supreme Court in **I.R. Coelho** (supra).

18. In **I.R. Coelho** (supra), the Supreme Court categorically held that laws inserted in the Ninth Schedule after 24.04.1973 are subject to judicial review on the ground of violation of fundamental rights if such violation damages or destroys the basic structure of the Constitution. The relevant portion of paragraph 148 of the judgment states:

"148. If a law violates the rights in Part III which is considered to be part of the basic structure, then such law will not get the protection of the Ninth Schedule."

Thus, while Article 31-B grants certain immunities to laws placed in the Ninth Schedule, this immunity is not absolute and is subject to the test of basic structure. Consequently, it is incorrect to state, in categorical

terms, that the Ninth Schedule is immune from judicial review merely on the ground of violation of fundamental rights.

19. Therefore, the appellant's selection of Option 'D' 'None of the above' was legally correct and aligned with the settled position of constitutional law as laid down by the Hon'ble Supreme Court. The respondent's reliance on paragraph 148 of IR. Coelho to sustain Option B is misplaced, as it overlooks the appellant's core contention that no Schedule of the Constitution, including the Ninth, is absolutely immune from judicial review merely for infringing fundamental rights.

20. The learned Single Judge, with respect, erred in declining interference on the premise that courts should not interfere with expert opinion in academic matters. While the general principle of judicial restraint in academic evaluations is well-established in **Ran Vijay Singh** case (supra), **U.P. Public Service Commission** case (supra), the Supreme Court has also clarified in Richal case (supra), and Hiranmayee Bhattacharyya case (supra), that such restraint does not extend to cases where the answer key is demonstrably wrong in the face of binding constitutional law.

21. The appellant, being a qualified law graduate, answered the question in consonance with the binding law declared under Article 141 of the Constitution. The penal deduction of 0.25 marks, compounded by the loss of the mark for the correct answer, resulted in a net loss of 1.25 marks, which materially altered the appellant's merit ranking and deprived him of fair consideration for selection. This undermines the appellant's rights under Articles 14 and 16 of the Constitution and offends the principles of fairness in public employment.

22. As regards the appointment of Respondent No.3, who has already joined service, this Court is conscious of the equitable considerations involved. However, the constitutional right of a deserving candidate cannot be defeated solely on account of delay in judicial determination. The judgment of the Hon'ble Supreme Court in Vikas Pratap Singh v. State of Chhattisgarh, (2013) 14 SCC 494, authorizes creation of a supernumerary post in such circumstances to balance equities.

23. The appellant is entitled to the restoration of 1.25 marks (1 mark for correct answer + 0.25 deducted for alleged wrong answer). The respondents are directed to revise the appellant's score accordingly and reconsider his case for selection to the post of Law Officer.

24. In view of the above findings, the appeal is allowed with directions as above. The judgment dated 07.02.2022 passed by the learned Single Judge in CWP No. 1007 of 2022 is set aside. Compliance shall be made within a period of three months henceforth.

25. All pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

29th May, 2025
rajesh

1. Whether speaking/reasoned? : Yes/No
2. Whether reportable? : Yes/No