

Judgement Date : 10/06/2015

Case No : WP(C) 7370/2013

Gunajit Majundar –vs- SOA & Ors.

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

Heard Mr AM Buzarbaruah, learned senior counsel for the petitioner assisted by Mr KD Sarma and Mr HK Mahanta, learned counsel for the respondent No.1. Also heard Mr C Baruah, learned counsel for the Assam Public Service Commission (in short, 'APSC').

Mr AM Buzarbaruah submits that the petitioner appeared in the State Civil Service (Mains) examination on 27.5.2012 and subsequently he appeared in the viva voce test held on 18.1.2013 by the Assam Public Service Commission (in short, APSC). In the selection process, the last candidate selected in the OBC category secured 833 marks and the petitioner secured 831 marks i.e. he was two marks shy of the last selected candidate.

Counsel for the petitioner submits that two additional marks should have been given to him for the English Grammar paper against the Question No. 5(d)(vi) which carries two marks. Mr AM Buzarbaruah submits that had the examiner given him two marks for the Question No. 5(d)(vi), the petitioner would have made the cut for selection and appointment to the Civil Services and other Allied Services.

The Question No.5 (d)(vi) was an objective type question and the candidates had to fill in the blanks with the correct response. The Question No.5(d)(vi) reads as under:

“If she _____(go) to Chennai, she would bring that computer.”.

Counsel for the petitioner submits that on the basis of an RTI application, the petitioner had received the answer script and in the said answer script the petitioner had given the answer 'went' to the Question No.5(d)(vi). However, his answer 'went' was declared to be wrong by the examiner and this has caused the petitioner to lose two valuable marks. The petitioner's counsel thus submits that the examiner should have given the petitioner two more marks as 'went' was the correct answer for the Question No.5 (d)(vi).

Counsel for the petitioner submits that under the English Grammar 'if' can be used in three ways :-

(i) The verb in the if clause is in simple present tense, the verb in the main clause is in the future tense, for e.g. “If I go to the market, I will bring a toy for you” which is classified as possible and likely.

(ii) The verb in the if clause is in the past indefinite tense, the verb phrase in the main clause is would or should, for e.g. “If you bought a car today it would spent a lot of money” which is classified as impossible or unlikely.

(iii)The verb in the if clause, is in the past perfect tense, the verb phrase in the main clause is would/ should + have for e.g. “If you had bought a car a year ago, you would have spent much less money than now (But you did not buy the car. So you did not spent less money)”, which is untrue in the past.

The petitioner's counsel also submits that 'would' is a past indefinite tense and, as such, the answer 'went' given by the petitioner is correct and the declaration of the said answer as wrong by the examiner is incorrect. Thus, the petitioner has filed this writ petition praying for a direction to the respondents to

re-assess the answer script of the General English paper of the petitioner of the Combined Competitive (Main) Examination, 2009 held in the year 2012 and, more particularly, the answer given to the Question No. 5(d)(vi) by taking the correct answer of the said question to be 'went'. The petitioner's counsel thus submits that the sentence "If she went to Chennai, she would bring the computer" is the right answer and the sentence "If she goes to Chennai, she would bring the computer" is the wrong answer.

Mr C Baruah, counsel for respondent Nos. 2 to 4 submits that as per the answer key made by the APSC, the correct answer to Question No. 5(d)(vi) is the word 'goes' and, accordingly, the examiner has evaluated all those answers which has been given as 'goes' to be correct. Consequently, all those answers which has been given as 'went' have been evaluated to be incorrect. Mr C Baruah thus submits that the contention of the petitioner of 'went' being the correct answer does not arise.

Mr C Baruah also submitted that a reading of Question No. 5(d)(vi) shows that the correct answer to the said question is 'goes' and not 'went'. Mr C Baruah has also submitted that this Court should not act as an appellate body in matters relating to recruitment or pertaining to conduct of examinations. In this regard, he has relied upon the Division Bench judgment of this Court in *Ratul Kr. Das & Ors. -vs- State of Assam & Ors.*, reported in 2009 (4) GLT 648, wherein at Para 33 it has been held as follows:

"33. In matters pertaining to conduct of examinations either for recruitment to public service as also in the case of examinations conducted by an University, the role of the Court normally is minimal. The Courts are not to act as appellate bodies in such matters. Neither the Judges should assume the role of super examiners. In the absence of any strong compulsion the Courts will not undertake a review of the actions of the scrutinizers and head examiners in allowing higher or lower marks to any particular candidate. The Court will also not carry out a review of the entire process to find out whether similar exercise of increase or decrease of marks should have been done in case of all candidates. In the present cases the materials on record including the statement made by the Controller before the Court sufficiently indicates that all the answer scripts had been subjected to scrutiny and reference to the head examiner, when considered necessary, were made. Consequently, any review of the process is bound to result in a roving enquiry which must be avoided. That apart, the Court does not possess the necessary expertise in matters of evaluation of answer scripts. Such a task, therefore, must be left to the experts in the field."

Mr C Baruah, counsel for the APSC also submitted that Rule 70(4) of the APSC (Procedure & Conduct of Business) Rules, 2010 does not allow re-assessment of the answer scripts of the candidates. Rule 70(4) of the aforesaid Rules is reproduced below:

"The Commission shall not entertain any request for re-examination of answer scripts from candidates or from any other person."

Mr C Baruah has also submitted that the Supreme Court in *Central Board of Secondary Education & Anr. -vs- Aditya Bandopadhyay*, reported in (2011) 8 SCC 497 at Para 35 had held as follows:

"35. In these cases, the High Court has rightly denied the prayer for re-evaluation of answer books sought by the candidates in view of the bar contained in the rules and regulations of the examining bodies."

Thus, the counsel for the APSC submits that there can be no re-examination/ re-assessment of the petitioner's answer script in view of the bar contained in the APSC (Procedure & Conduct of Business) Rules, 2010.

Mr HK Mahanta, counsel for the respondent No.1 submits that he supports the contentions of the respondent Nos. 2 to 4's counsel and also submits that an answer given by this Court in contradiction to the answer key given by the APSC will lead to the opening of a Pandora's box.

I have heard the counsels for the parties.

At the first instance, I find that the answer key given by the APSC to the Question No. 5(d)(vi) has not been challenged by the petitioner. On going through the answer scripts of various other candidates, I find that all the candidates who have given the answer 'goes' have been evaluated as correct by the examiner and candidates who have given the answer 'went' have been evaluated as incorrect by the examiner. Thus, I find that the petitioner has not been singled out for discrimination and there has been a uniform method of evaluating the answers to the Question No. 5(d)(vi).

Though I find that the above two reasons have clearly shown that the respondents have not committed any discrimination or arbitrariness, I would like to delve into the grammatical sense given to the Question No. 5(d)(vi) which is to the effect that :

“If she _____(go) to Chennai, she would bring that computer.”.

The word “would” is in the form of a past tense and can attain a different form if it is conjoint with another word. Also, it can be used to denote a result or possible situation. According to the rule of English grammar, 'would bring' indicates simple future tense. If there is presence of a conditional tense like 'if' in the beginning of a sentence, then the fulfilment of the latter half of the sentence is dependent on the completion of the condition laid down in the first half. Such a sentence containing a conditional tense along with a future in the form of 'would + verb' shows an anticipation, i.e., the occurrence of a possible event in the future or a possible result. The phrase 'would bring' cannot be categorised as a past indefinite tense because 'past indefinite' implies 'simple past tense' where the time of the occurrence of the event is unknown. Moreover, simple past tense is used whenever there is a need to talk about a past event and when there exists no special situation. Furthermore, 'would bring' does not imply impossibility because whenever it is used with a conditional tense, it merely shows contemplation or an anticipation of an action.

For comprehending the inaccuracy in the usage of the word 'went' as an answer to Question no. 5(d)(vi), it is important to reflect upon the rules of Grammar pertaining to the word 'went'. The word 'went' is used to imply an action which has taken place in the past. However, in the above sentence, the second part of it implies possibility of a future event. Therefore, when the sentence is read in its entirety, the usage of the word 'went' creates a situation of contradiction in respect to the rules of English grammar. Explaining the same through an example: If she went to Chennai, she would have brought the computer- therefore, the construction of the Question no. 5 (d)(vi) would have been completely different if the word 'went' was the correct answer. Thus, the use of the aforesaid word would be incorrect.

With respect to Question no. 5(d)(vi), the verb 'goes' stands correct because, firstly, the subject of the sentence is a first person singular and secondly, the word 'went' can only be used when it is impossible for the action to take place. The second condition can be explained through an example- If we started now, we would be in time (but, we cannot start now; therefore, we cannot be in time). Thus, this sentence indicates an impossible action; but, the sentence in Question no. 5(d)(vi) anticipates the possibility of a future action, hence, validating the usage of the word 'goes'.

However, with the word “goes”, the sentence reads “If she goes to Chennai, she would bring that computer”. In other words, I do not find anything wrong in the given answer, i.e. 'goes' to the said Question No. 5(d)(vi).

I have come to the finding that the word 'goes' is the correct answer key by referring to the 'High School English Grammar and Composition by Wren and Martin'. However, in the present case, there is

no error by the APSC in making the answer key 'goes'. A glance at the Question 5(d)(vi) also does not show that the answer key 'goes' is the wrong answer. The petitioner's counsel has not been able to make out a case on the face of the question that the answer key 'goes' is not the right answer and the answer 'went' is the correct answer.

In *Kanpur University & Ors. -vs- Samir Gupta & Ors.*, reported in 1983 AIR 1230, the Supreme Court has held:

“The findings of the High Court raise a question of great importance to the student community. Normally, one would be inclined to the view, especially if one has been a paper setter and an examiner, that the key answer furnished by the paper setter and accepted by the University as correct, should not be allowed to be challenged. One way of achieving it is not to publish the key answer at all. If the University had not published the key answer along with the result of the test, no controversy would have arisen in this case. But that is not a correct way of looking at these matters which involve the future of hundreds of students who are aspirants for admission to professional courses. If the key answer were kept secret in this case, the remedy would have been worse than the disease because, so many students would have had to suffer the injustice in silence. The publication of the key answer has unravelled an unhappy state of affairs to which the University and the State Government must find a solution. Their sense of fairness in publishing the key answer has given them an opportunity to have a closer look at the system of examinations which they conduct. What has failed is not the computer but the human system.

Shri Kacker, who appears on behalf of the University, contended that no challenge should be allowed to be made to the correctness of a key answer unless, on the face of it, it is wrong. We agree that the key- answer should be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by an inferential process of reasoning or by a process of rationalization. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well-versed in the particular subject would regard as correct. The contention of the University is falsified in this case by a large number of acknowledged text-books, which are commonly read by students in U.P. Those text-books leave no room for doubt that the answer given by the students is correct and the key answer is incorrect.”

Due to the reasons stated above, I do not find any error/wrong has been committed by the APSC in holding the answer 'went' as wrong. I also find that the petitioner has not been singled out by the examiner i.e. all the candidates who have given the answer 'went' have been assessed as incorrect. Thus, no discrimination or arbitrariness is made out to the petitioner.

In view of the aforesaid reasons, this writ petition is dismissed.

The interim order passed earlier stands vacated.

No cost.