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APP
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Date of Order	Dharmendra Kumar & anr. v. State ORDER WITH SIGNATURE	Counsel for the petitioner is permitted to withdraw the application preferred on behalf of petitioner no.2, Teg Bahadur Singh. (If any) taken on order
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18.11.1999 Counsel for the petitioner is permitted to withdraw the application preferred on behalf of petitioner no.2, Teg Bahadur Singh.

The case relates to selection and appointment to the post of Assistant Public Prosecutor (A.P.P. for short) of which examination held by B.P.S.C. in June, 1997. The name of petitioner no.1, Dharmendra Kumar having not been included, the writ petition was preferred by him for direction on the respondents to ~~re-evaluate/re-examine~~ re-evaluate/re-examine the answer books of the petitioner. Particularly the answer books of the subjects "Minor Acts" and "General Science".

Generally, this Court do not inclined ~~wish~~ to such prayer for ~~re-evaluation/re-examination~~ re-evaluation/re-examination of answer books in absence of rules/ guideline framed by the ~~State~~ State. However, on 29.10.1999, when the case was taken up, the counsel for the petitioner submitted that he can show from the answer books of "Minor Acts" and "General Science" that no proper marking have been given. In view of aforesaid assertion, this Court directed the counsel for the B.P.S.C. to produce the answer books of petitioner of the aforesaid two subjects with clear stipulation that if the assertion of the petitioner is found to be incorrect, the Court may impose cost of Rs.10,000/- on petitioner for payment in favour of B.P.S.C.

The counsel for the B.P.S.C. produced both the answer books of petitioner in respect of papers "Minor Acts" and "General Science", as also the other answer books.

On 11.11.1999, the counsel for the petitioner

(R.D.O.)

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6. Contd....

requested the Court to go through the question answer no.10 of Minor Acts and 3x question no.12(b) of the said Minor Act's paper to show that wrong marking "Zero" have been given though the petitioner was entitled certain marks for correct answer. Prima facie, the allegation having found to be correct, the counsel for the B.P.S.C. was prayed for time to obtain instruction in this respect.

Today(18.11.99), the counsel for the B.P.S.C. filed a supplementary counter-affidavit without leave of the Court wherein they have enclosed letter of the examiners dattd 12.11.1999(Annexure-C/1).

At this stage, it is pertinent to mention that the candidates were to answer question with the help of the books. Fifteen questions were to be answered within three hours for which maximum marks 150 were allowed. Question no. 10 is of ten marks and reads as follows:

"Describe the constitution of Delhi Special Police Establishment under the Delhi Police Establishment Act, 1947. What are its powers?"

In the 3x answer book after going through Khara's Central Criminal Minor Acts, the petitioner answer the question and practically re-produced the answer from the book in verbatim, reads as follows:

"Constitution and powers of special police establishment.- (1)Notwithstanding anything in the police Act, 1861(5 of 1861), the Central Government may constitute a special Police force to be called the Delhi Special Police 3x Establishment for the investigation in any Union Territory of offences notified under section 3.

(2) Subject to any orders which the Central Government may make in this behalf, members of the said police establishment shall have throughout in any Union Territory, in relation to the investigation of such offences and arrest of persons concerned in such offences, all the powers, duties, privileges and liabilities which police officers of that Union Territory have in connection with the investigation of

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6. Contd.... offences committed therein.

(3)-Any member of the said police establishment of or above the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise any Union Territory or any of the powers of the Officer-in-charge, of a police station in the area in which he is for the time being and when so exercising such powers shall, subject to any such order as aforesaid, be deemed to be an officer-in-charge of a police station discharging the functions of such an officer within the limits of his station."

As the petitioner gave the correct reply to the question no.10 but was granted merely "Zero" marks. The counsel for the B.P.S.C. was granted time to obtain instruction with a view that the B.P.S.C. & MXX may, of its own, agree for re-evaluation of the answer book. However, from the supplementary counter-affidavit it appears that though the authorities ^{rely on} the answer ^{is} (as correct but tried to give some reason for grant of zero marks. The main ground of ^{is} the examiner is that the petitioner has not given reference of the relevant section of the Act.

From the question no.10, as quoted above, it will be evident that the examinees were not supposed to give ^{the} section but were ^{to} describe the Constitution of Delhi Special Police Establishment Act, 1946 and its powers. Thereby, I find no substance in the ^{the} explanation given by ^{the} examiner for awarding 'Zero' marks to the petitioners for such question no.10 (of Minor Acts). The aforesaid explanation is ^{is} not acceptable in view of the fact that the petitioner though had not mentioned the provision of section, ^{the} question answer no.17 has been awarded five marks and not 'Zero'.

In the circumstances, I feel that the answer books of petitioner so far as questions nos. 10 and 13(b) of

(K.T.O.)

