

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**
Course: **Administrative Law**
Semester-V (Batch: 2018-23)

End Semester Online Examination: December2020

Date: 20thDecember, 2020

Duration: 8 hours

Max. Marks: 50

Instructions:

- The respective marks for each question are indicated in-line.
- Indicate correct question numbers in front of the answer.
- No questions or clarification can be sought during the exam period, answer as it is, giving reason, if any.

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|-----|---|--------------|
| Q.1 | <p>a) The Gujarat Bank granted certain advances to Mr. Yash and for the same Mr. Raj and Ms. Haritha were the guarantors, who had guaranteed repayment of the advance money granted to Mr. Yash. As the loans were not repaid by Mr. Yash, the Gujarat Bank filed a Petition under Section 91 of the Gujarat Co-operative Societies Act, 1970, before the Registrar of Co-operative Societies. The Registrar referred it for the decision to his nominee, Mr. Harsh. In the past, Mr. Harsh, had acted as a legal adviser/Advocate, of the Gujarat Bank and he was also its shareholder of the said Bank. After recording evidence and hearing the parties, the Registrar's nominee passed an Award. The appeal filed against the award of the Registrar's nominee was dismissed by the Co-operative Appellate Tribunal. The said orders are challenged before the High Court of Gujarat by Mr. Yash. Decide the dispute by raising relevant legal issues and arguments of both the parties.</p> <p>b) Mr. Shanker Singh Srivastava, was appointed as a Stenographer in the office of the Commissioner of Urban Affairs of State of Krishna, a State in the Union of India, in the year 2005. He was deputed to work with the LokAyukta in the year 2015 and has been working as a stenographer. Later on, he was promoted to a higher position with effect from 21-07-2016 and re-designated as a Private Secretary. Owing to certain acts of misconduct, LokAyukta censured and warned Mr. Shanker Singh Srivastava and was asked to hand over the key of his almirah. But he refused to do so and also used indecent language against LokAyukta. Subsequently the said almirah was sealed and Mr. Shanker Singh Srivastava was served with an order of suspension. The said seal on the almirah was broken at a later date and it was opened with a duplicate key. A notice was served upon Mr. Shanker Singh Srivastava and a departmental proceeding was initiated against him based on the charges as under:
Charge No. 1- "On 13-1-2019 Deputy Secretary accompanied by Honourable LokAyukta went on round to your room at 10.30 A.M. and he wanted to see if there was any indisposed matters pending and documents were lying with you. LokAyukta found that in violation of his orders, you had locked your almirah. On</p> | (10) |

making request, you did not open the almirah yourself and when you were asked to give its key, you got enraged and using a very indecent and vulgar language, you refused to hand over the key and in a fit of anger crying at the pitch of your voice you said that you may be suspended but you will not give the key and you did not give the key. Therefore, you are guilty of committing indiscipline and misconduct”.

Charge No. 2- “When you did not give the key of your almirah, then your almirah was opened on 15-1-2019 by making alternative arrangements”.

The notice stated that said manner of conduct by Mr. Shanker Singh Srivastava for which he was found guilty along with the other charges of neglecting and suppressing work. Mr. Shanker Singh Srivastava asked LokAyukta to disclose the name of witness and the documents upon which they issued such notice. In the said departmental inquiry, Mr. Shanker Singh Srivastava intended to engage a lawyer, which was declined, inter alia, on the ground that the department did not engage any lawyer. The charges levelled against Mr. Shanker Singh Srivastava were found to be proved as LokAyukta took over upon him the burden of conducting the disciplinary proceedings as it is required by the LokAyukta Act. Based on the findings, LokAyukta terminated Mr. Shanker Singh Srivastava from the service. The said decision is challenged before the Supreme Court of India by Mr. Shanker Singh Srivastava. Decide the dispute by explaining legal arguments and reasons.

- Q.2 Gandhinagr Vendors Association (GVA) consists of wholesalers, distributors and vendors of various food items, food grains, fruits, vegetables and sugar in Gandhinagr. The grievance of GVA is that they have been asked to shift their business premises from the present place in the heart of Gandhinagar city i.e. district shopping complex, sector-21, to a new market yard called the navinmandi at new chilloda which is at the outskirts of Gandhinagar city and seven kilometres away from the present market. All the traders have been informed that if they do not shift to navinmandi, then the Krishi Utpadan Mandi Samiti, Gandhinagar, which is a statutory body, constituted under the Gujarat Agricultural Markets Act, (hereinafter referred to as Gujarat Act), would not renew their licences. (10)

Gujarat Act Section 7(2) states: The State Government, where it considers necessary or expedient in the public interest so to do, may, by notification: (a) declare through rules that the wholesale transactions of all or any of the specified agricultural produce in respect of a market area shall be carried on only at a specified place or places within its principal market yard or sub-market yards.

Pursuant to the provision, Government issued the Gujarat Agricultural Markets Rules (Rules) dated 19, July, 2017, issued under Section 7 (2) (a) Gujarat Act. The Rule so made stated that the wholesale trade of certain commodities mentioned in Schedule should be conducted at new market, navinmandi, and whose location was specified in the said notification. By a subsequent notification dated 2, October, 2017, whole sale trade of several other fruits and vegetables were also added to the schedule of the Rules. Food grain and vegetable traders were issued with notices to shift their business premises, including shops and godowns to the navinmandi. Against this, GVA filed petition before the High Court and challenged the Gujarat Agricultural Markets Rules.

But, it was rejected by the Court on the ground that the order is proper and as per law. Against this order, an appeal was filed before Supreme Court by GVA. Decide the appeal by identifying relevant issues and legal arguments.

- Q.3 Mr. Krishnan was appointed temporary as a Junior Computer Operator in the Government Branch Press, Jaipur with effect from June, 1, 2017. The post was non-gazetted Class IV as defined in Clause (IV) of Sub-Rule 3 of Rule 5 of the Rajasthan Civil Services (Classification Control and Appeal) Rules, 2001. The employment was temporary and was to continue until further orders. The Branch Manager of Branch Press, Jaipur, served a notice on Mr. Krishnan on December 29, 2019, stating that he had taken outside the Press some copies of the ballot papers relating to the Director's election of Jaipur Cooperative Societies, Jaipur and was required to show cause before 2.00 P.M of December 30, 2019, as to why disciplinary action be not taken against him as per Rules. It was further stated in the notice that failure to comply with the notice will result in the suspension of Mr. Krishnan and further disciplinary action will be initiated against him. (10)
- Thereafter on January 3, 2020, an order was served on Mr. Krishnan by the Branch Manager of Branch Press, Jaipur, terminating his service. This order (hereinafter called the impugned order) runs as under:
- “Memoranda as per instructions contained in Head Office Order No. 570/66-2020, dated 3-1-2020, Mr. Krishnan, Junior Computer Operator of this Office is hereby informed that your appointment is purely temporary and terminable at any time without any previous notice and without reasons being assigned therefore are not required. Therefore your services are hereby terminated with immediate effect.”
- On January 7, 2020, Mr. Krishnan submitted a written representation to the Branch Manager against termination of his service, but without success, attributing motives to his immediate superior officer, that his relations with the Branch Manager of Branch Press were not cordial for the last three months. He also prayed that three other persons, namely, Mr. Vittala, Mr. Achiah and Mr. Patric D' Souza who are appointed as temporary Junior Compositors subsequent to the respondent's appointment, had been retained and continued in service.
- Mr. Krishnan approached the Rajasthan High Court Seeking remedy against the impugned order, Decide dispute by presenting issues, arguments and reasoning for the decision.

- Q.4 Mr. Vaishnav was a tenant in the premise situated within the Union Territory of Chandigarh and was protected under the provisions of the Punjab Urban Rent Restriction Act, 1959 (the 1959 Act). The Administrator of Chandigarh in exercise of his power conferred upon him under Section 3 of the 1959 Act issued a notification dated November, 7, 2020 and it was directed that the provisions thereof would not apply to the buildings; monthly rent whereof exceeded Rs.15,000/-. Aggrieved by issuance of the said notification, Mr. Vaishnav filed a petition before the High Court of Punjab and Haryana at Chandigarh, challenging the validity of the said notification on diverse grounds. The said petitions have been dismissed and by the High Court and aggrieved by the said decision an appeal is filed before the Supreme Court of India. (10)

Union Territory of Chandigarh was a part of the State of Punjab prior to coming into force of the Punjab Reorganization Act, 1966. The Central Government in exercise of its power conferred under Section 87 thereof issued a notification for extending the provisions of 'the 1959 Act' to the Union Territory of Chandigarh. The 1959 Act was enacted to restrict the increase of rent of certain premises situated within the limits of urban areas and the eviction of tenants therefrom. Relevant provisions of the said Act are as stated below:

“Building” has been defined in Section 2(a) to mean “any building or part of a building let for any purpose whether being actually used for that purpose or not, including any land, godowns, out-houses, or furniture let therewith, but does not include a room in a hotel, hostel or boarding-house;”

“Urban Area” has been defined in section 2(j) to include an area comprised in the Union Territory of Chandigarh.

Section 3 of the 1959 Act provides for exemptions from the operation of the said Act, which is in the following terms: “Exemptions-the Central Government may direct that all or any of the provisions of this Act shall not apply to any particular building or rented land or any class of buildings or rented lands.”

Sections 4 and 5 of the 1959 Act provide for prevention of unfair rent and increase in fair rent in the cases admissible as prescribed thereunder.

Section 8 of the 1959 Act provides for recovery of the rent which should have been paid. Section 9 provides for increase of rent on account of payment of rates of local authority but prohibits increase thereof on account of payment of other taxes. Section 10 provides that the landlord without just or sufficient cause cannot interfere with the amenities enjoyed by the tenant. Section 13 protects the tenants from eviction, envisaging that unless one or more ground specified therein is satisfied, no tenant shall be evicted from the tenanted premises save and except in execution of a decree passed by the Rent Controller. Section 13A provides for right to recover immediate possession of residential or scheduled building to accrue to certain persons.

The Administrator of Chandigarh in exercise of his power conferred upon him under Section 3 of the 1959 Act issued a notification dated November, 7, 2020 and made the Chandigarh Urban Restriction Regulations, 2020. The Regulation made there under provided the following

Regulation 1: “the Act” means the Punjab Urban Rent Restriction Act, 1959 as it extended to, and was in force, in certain areas in the pre-reorganisation State of Punjab (being areas which were administered by municipal committees, cantonment boards, town committee or notified area committee or areas notified as urban areas for the purposes of that Act) immediately before the 1st day of November, 1966.

Regulation 2: Notwithstanding anything contained in any judgment, decree or order of any court, the Act shall subject to the modifications specified in the Schedule, be in force in, and be deemed to have been in force with effect from the 4th day of November, 1972 in the Union Territory of Chandigarh as if the provisions of the Act as so modified had been included in and formed part of this section and as if this section had been in force at all material times.

Regulation 3: Notwithstanding anything contained in any judgment, decree or order of any court, anything done or any action taken (including any notification or direction

issued or rents fixed or permission granted or order made) or purported to have been done or taken under the Act shall be deemed to be as valid and effective as if the provisions of this Act had been in force at all material times when such thing was done or such action was taken.

Regulation 4: Nothing in this Act shall render any person guilty of any offence for any contravention of the provisions of the Act, which occurred before the commencement of this Act.

Decide the validity of the Chandigarh Urban Restriction Regulations, 2020 by presenting issues and arguments.

Q.5 The Chief District Medical Officer, Gandhinagar (hereinafter referred to as “the CDMO”) invited applications from lady candidates for opening of day and night second medical store in the District hospital premises at Gandhinagar by issuing an advertisement which was published on Times of India, on 20th May 2020. Applications were required to reach the CDMO, within fifteen days from the date of publication in the said newspaper. Certain criteria for submission of applications were indicated based on the Drugs and Cosmetics Rules, 2019, which are as follows: (10)

- (i) A person having requisite qualification may apply for running a medical store in Government Hospital;
- (ii) A person to be considered eligible for the purpose shall be a registered Pharmacist either with Degree or Diploma in Pharmacy, but a person who can engage a pharmacist irrespective of whether he himself is a pharmacist or not may be considered;
- (iii) An unemployed person having previous experience of running medical store shall be given preference and all other things being equal, persons who have crossed the age limit for entry into Government service shall be given preference.

Ms. Anuradha, submitted an application on 3-6-2020. She submitted a certificate to the effect that she is a Graduate of Arts, has appointed a pharmacist and also certificate of experience of having worked in a drug shop. According to her, she was 32 years of age at the time of submission of application and had crossed the outer age-limit fixed for entry into Government service.

Ms. Sreenidhi was another applicant who was of 25 years age at the time of making the application has been selected by the CDMO. She got selected on a consideration of being a physically handicapped person based on the certificate issued by a Senior Orthopaedic Specialist, It was stated therein that Ms. Sreenidhi was suffering from lumber spondylitis and rheumatoid arthritis which results physical disability for free movement, and she has been advised to do sedentary work.

Ms. Anuradha filed a Petition before the High Court challenging the selection of Ms. Sreenidhi. It was contested in the Petition that, there was no indication in the advertisement that preference would be given to a physically handicapped person. It was contested that by letter dated 17-6-2020 she had submitted four sheets of enclosure whereas Ms. Sreenidhi had enclosed one sheet. It is further submitted that there was no stipulation in the advertisement that any person whose relative is operating another shop is disentitled. Ms. Anuradha’s application was rejected by the CDMO on the ground that, her husband was operating the first day and night medical shop inside the hospital

campus and the selection of Ms. Anuradha would have led to monopoly which is contrary to State's objectives to provide employment facilities to more unemployed persons to earn their livelihood. It was contested by the CDMO before the High Court that Ms. Sreenidhi was a physically handicapped person and therefore, was given preference. Though there was no certificate enclosed to the application form, in view of the undertaking given by her in the application to abide by the terms and conditions that would be fixed by the Government in terms of the advertisement, she was considered suitable. It is stated that there was no stipulation in the advertisement to submit documents along with the application. Therefore, her application was not a bad application. It was stated by the CDMO that Ms. Anuradha has not crossed the age of entry into Government service since she was 32 years and the upper age-limit for entering the Government service is 32 years. It is also relaxed by five years in respect of woman candidates.

Based on the above facts identify relevant legal issues and decide the dispute.
