

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWPOA No.84 of 2019
Reserved on: 18.06.2026
Decided on: 05.08.2026
Uploaded on: 05.08.2026

Dr. Arush Thakur

...Petitioner

Versus

H.P. Public Service Commission and another

...Respondents

Coram

Hon'ble Mr.Justice Jiya Lal Bhardwaj, Judge.

Whether approved for reporting?¹ Yes

For the petitioner: Mr. Harsh Kalta, Advocate.

For the respondents: Mr. Vikrant Thakur, Advocate for respondent No.1.

**Mr. Amit Kumar Chaudhary,
Deputy Advocate General for
respondent No.2.**

Jiya Lal Bhardwaj, Judge

The petitioner by way of present petition has prayed for
the following substantive reliefs:-

- "a) *To allow this Original Application and selection process for the post of Medical Officer (Dental) be quashed and set aside being declared as void-ab-initio.*
- b) *That the Respondent No1, may be directed to reevaluate the answers of the Applicant and prepare the fresh cut off list.*
- c) *That the respondent No1, may be directed to reevaluate the answer sheet of the Applicant and consider the objections raised by the Applicant.*

¹ *Whether the reporters of Local Papers may be allowed to see the judgment?*

- d) *That the Respondent No1, may be directed to interview the Applicant in case he comes in merit after revaluation and to recommend the name of the Applicant for appointment to the post Medical Officer (Dental)."*

2. Shorn of unnecessary details, the key facts of the case are that the petitioner being qualified for appointment as Medical Officer (Dental) had applied for the post pursuant to Advertisement No.8/2017 dated 12.07.2017 (Annexure A-1) before the last date fixed for submitting online application. Respondent No.1-Commission issued an identity card bearing Roll No. 240591 to the petitioner and he appeared in the examination held on 24.09.2017 (Annexure A-4). Thereafter, before declaration of the result, respondent No.1-Commission published the answer key to the questions. The petitioner submitted his objections against the answer keys for nine questions on 27.09.2017. Respondent No.1-Commission declared the result of the screening test held on 24.09.2017 and subsequently issued a press note dated 27.02.2018 (Annexure A-6) declaring the result of the interviews for the post of Medical Officer (Dental).

3. The petitioner through an application dated 04.03.2018 filed under the Right to Information Act (in short 'RTI'), obtained the final result. It has been averred that respondent No.1-Commission considered only two questions, out of nine objected questions, in

the revised answer key, which is arbitrary on the part of respondent No.1-Commission. It has further been averred that the petitioner scored 39 marks i.e., two marks less than the final cut-off marks for the General category candidate. It has also been averred that respondent No.1-Commission had not properly evaluated the answers of the petitioner, despite objections being raised by him along with sufficient documentary proof, submitted within the stipulated time. It has further been averred that the objections raised by the petitioner were not considered with a view to oust him from the selection process. It has also been averred that despite the documentary evidence being handed over by the petitioner to respondent No.1-Commission, it had not acted properly. The answers of the following questions were objected to by the petitioner:-

i) Question number 5.

*Answer to question number 5 in the answer key is option B, and Applicant's answer is option C. Supportive document from the standard text book is herewith annexed as **Annexure-A-9 (colly)**.*

ii) Question number 9.

*Answer to question number 9 in the answer key is option B, and Applicant's answer is option C. Supportive document from the standard text book is herewith annexed as **Annexure-A-10 (colly)**.*

iii) Question number 13.

*Answer to question number 13 in the answer key is option B, and Applicant's answer is option A. Supportive document from the standard text book is herewith annexed as **Annexure- A-11 (colly)**.*

iv) Question number 22.

*Answer to question number 22 in the answer key is option B, and Applicant's answer is option A. Supportive document from the standard text book is herewith annexed as **Annexure- A-12 (colly)***

v) Question number 28.

*Answer to question number 28 in the answer key is option D, and Applicant's answer is option A. Supportive document from the standard text book is herewith annexed as **Annexure-A-13 (colly)**.*

vi) Question number 39.

*Answer to question number 39 in the answer key is option B, and Applicant's answer is option D. Supportive document from the standard text book is herewith annexed as **Annexure-A-14 (colly)**.*

vii) Question number 50.

*Answer to question number 50 in the answer key is option D, and Applicant's answer is option C. Supportive document from the standard text book is herewith annexed as **Annexure-A-15 (colly)**.*

viii) Question number 83.

*Answer to question number 83 in the answer key is option C, and Applicant's answer is option B & C. Supportive document from the standard text book is herewith annexed as **Annexure-A-16 (colly)**.*

ix) Question number 85.

*Answer to question number 85 in the answer key is option D, and Applicant's answer is option A. Supportive document from the standard text book is herewith annexed as **Annexure-A-17 (colly)**.*

4. As per revised answer key issued by respondent No.1-Commission for the post of Medical Officer (Dental), the answers to Question Nos. 5 and 9 were corrected after considering the objections submitted by the petitioner. According to the petitioner, the answer given to Question No.13 was Option 'B', whereas the petitioner had given Option 'A'. He has placed on record the supporting material from a standard text book (Annexure A-11) and as per that, the answer would have been 'A'. Similarly, in respect of the other objected questions, the answers provided by the petitioner were correct. Since respondent No.1-Commission had failed to correct the answer key, the petitioner has prayed that the selection for the post of Medical Officer (Dental) made by respondent No.1-Commission be quashed and set aside and further respondent No.1-Commission may be directed to re-evaluate the answers of the petitioner and prepare a fresh cut-off list and in case the petitioner falls in merit after re-evaluation, his name may be recommended for appointment to the post of Medical Officer (Dental).

5. Respondent No.1-Commission filed reply to the petition and raised preliminary objections that the petitioner is seeking re-evaluation of his answer sheet and the petition filed by him is not maintainable, in view of the law laid down by the Hon'ble Supreme Court in ***Himachal Pradesh Public Service Commission v.***

Mukesh Thakur, (2010) 6 SCC 759 and other judgments. It has further been averred that the petition is bad for non-impleadment of selected candidates, who are necessary parties. Further, the petitioner once having availed the opportunity to appear in the screening test for the post of Medical Officer was not entitled to challenge the selection process, merely because he failed to qualify the screening test. The petitioner is estopped from questioning the selection after having appeared in the screening test, when the result was not favourable to him. It has also been averred that upon receipt of a requisition from the State Government (in the Department of Health), respondent No.1 advertised 26 posts of (General =14, General Ex-Servicemen=3, SC =03, SC-WFF=01, ST=02, OBC=02 and OBC-O.H.=01) of Medical Officer (Dental) Class-I (Gazetted) (on contract basis). In response to the advertisement, 1387 online recruitment applications were received. Out of these, 61 applications were rejected for non-payment of examination fee. Out of 1326 provisionally admitted candidates, 924 appeared in the screening test (including the petitioner), while 402 candidates remained absent. The screening test was conducted across various centres in Shimla on 24.09.2017. Upon scrutiny of requisite documents, 12 candidates were rejected for various reasons and 81 candidates were declared qualified in the screening

test. The result was declared on 17.01.2018. Personality test/interviews were conducted from 19.02.2018 to 22.02.2018 at the Commission's office. 22 candidates were selected and their names were recommended to the Government for appointment vide letter dated 06.03.2018. Four posts (General Ex-Servicemen=02, SC-WFF=01, and OBC-OH=01) could not be filled due to the non-availability of eligible candidates in those categories. The answer key for the screening test was uploaded on Commission's website on 25.09.2017, inviting objections within a stipulated period of seven days (up to 01.10.2017) in accordance with the prevailing Rules of Business of respondent No.1-Commission. In response, 27 representations (including that of the petitioner) were received. To prevent copying at test centres, questions were jumbled into booklet series A, B, C and D. The petitioner was allotted Question Booklet Series 'C' and submitted objections regarding Question Nos. 5, 9, 13, 22, 28, 39, 50, 83, and 85 (Annexure R-1/2). The representations submitted by all candidates, including the petitioner, were referred to Subject Expert, who provided opinion on each objected question. Accordingly, the answer key was revised in accordance with the prescribed procedure. Respondent No.1-Commission has submitted that the prayer of the petitioner for re-evaluation is not permissible under the terms and conditions of the advertisement, Rules of

Business of the Commission and the law laid down by the Hon'ble Supreme Court in ***Mukesh Thakur's*** case (supra). However, the detail of questions objected to by the petitioner is as under:-

Questions objected by the applicant under Series 'C'	Questions converted into Series 'A'	Key displayed by the Commission	Version of the applicant	Opinion of the Expert	Revised key displayed by the Comm. as per opinion of the expert
5	35	B	C	C	Key was changed from 'B' to 'C'
9	39	B	C	C	Key was changed from 'B' to 'C'
13	43	B	A	B	No change
22	52	B	A	B	No change
28	58	D	A	D	No change
39	69	B	D	B	No change
50	80	D	C	D	No change
83	13	C	B&C	C	No change
85	15	D	A	D	No change

6. It has further been submitted that the recruitment was conducted strictly in accordance with the *H.P. Public Service Commission (Procedure & Transaction of Business and Procedure for Conduct of Examination, Screening Tests and Interviews, etc.) Rules, 2007*. It has also been averred that the Subject Expert was consulted with regard to objections raised by the petitioner and all documentary proof submitted by him was sent to him for consideration and the petitioner's stand regarding Question Nos. 13, 22, 28, 39, 50, 83 and 85 was found to be incorrect.

7. The petitioner filed rejoinder to the reply filed by respondent No.1-Commission and controverted the averments made therein.

8. I have heard the learned counsel for the parties and also perused the record carefully.

9. Learned counsel for the petitioner had vehemently argued that respondent No.1-Commission has wrongly rejected objections of the petitioner and further failed to award the marks to him, though he had raised the objections well before the declaration of results. He had placed reliance upon the judgment of the Hon'ble Supreme Court in ***Kanpur University, through Vice-Chancellor and Others v. Samir Gupta and Others***, (1983) 4 SCC 309. It was submitted by him that since the petitioner was merely two marks less than from the final cutoff for the General category candidate, respondent No.1-Commission had not correctly evaluated the answers despite objections raised by the petitioner. As per the petitioner, the answer to question No.13 in answer key was given as option 'B', whereas the option given by him was 'A'. Question No.13 reads as under:-

13. The articular disk:

(A) is made of dense, fibrous tissue.

(B) contains no elastic fibres.

(C) *does not contain blood vessels at its periphery.*

(D) *synovial cells cover its surface.*

10. He has placed reliance upon the supporting material from the chapter of *Management of Temporomandibular Disorders and Occlusion* a book authored by Jeffrey P. Okeson. As per this, the articular disk is a dense, collagenous, fibrous pad between the condylar heads and the articular surfaces and thus, the option given by the petitioner as 'A' was correct as per supporting material and, the answer displayed by the respondent No.1-Commission is wrong.

11. Question No.22 reads as under:-

22. Upon application of heavy pressure forces against the tooth, the PDL fluid is squeezed out, tissues compressed, and immediate pain produced in a time period of:

(A) *<1 min*

(B) *3-5 min*

(C) *1-2 min*

(D) *5-10 min*

12. The answer given in the answer key was option 'B', whereas the answer given by the petitioner was option 'A'. He has placed on record the material from the Contemporary Orthodontics Fourth Edition, a Book authored by William R. Proffit and other authors (Annexure-12), the answer is 'A', whereas as per

respondent No.1-Commission, the answer is option 'B'. This shows that the answer given by respondent No.1-Commission is wrong.

13. Question No.28 reads as under:-

28. Flush terminal plane (according to Baume's classification) usually eventually becomes:

- (A) Molar Class I*
- (B) Molar Class II*
- (C) Molar Class III*
- (D) Either Class II or Class III*

14. The answer given by respondent No.1 in the answer key was option 'D', whereas the petitioner had given option 'A'. In support of said contention, the petitioner has placed on record the material from the *Contemporary Orthodontics, Fourth Edition, a Book* authored by *William R. Proffit*, and other authors. As per this, the answer of the question is Molar Class I, whereas in the answer key displayed by respondent No.1-Commission, answer was option 'D' i.e. either Class II or Class III. Similar is the position in respect of other questions and the petitioner has placed on record the material from the standard books by the renowned authors. The Court is not delving on other questions in detail since the petition is not maintainable in the absence of any of the selected candidates not impleaded as party respondents in the petition.

15. Respondent No.1-Commission has raised preliminary objection that petition is not maintainable, in view of the law declared by the Hon'ble Supreme Court in ***Mukesh Thakur's*** case (supra), wherein it was held that in the absence of the provision for re-evaluation, a direction cannot be given. The said contention cannot be accepted in view of the fact that as per the judgment passed by a three-Judge Bench of the Hon'ble Supreme Court in ***Kanpur University's*** case (supra), it has been held that no doubt the key answer is assumed to be correct, unless it is proved to be wrong, but if the same is proved to be wrong by supporting document and material by the candidate, it would be unfair for the student, who had given the correct answer to not award him marks. However, the onus is on the candidate to clearly demonstrate that the key answer is incorrect and that too without any inferential process of reasoning or by a process of rationalization. Therefore, the burden on the candidate is heavy and Constitutional Courts must be extremely cautious in entertaining the plea challenging the correctness of the key answers. In the present case, the petitioner has placed on record the ample material to suggest that the answer given in the key were wrong as objected to by the petitioner and his answers were correct and few of the questions have been discussed in detail hereinabove.

16. Thereafter the Hon'ble Supreme Court in ***Ran Vijay Singh and Others vs. State of Uttar Pradesh and Others*** (2018) 2 SCC 357, has held that if a Statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of any answer sheet, as a matter of right, then the authority conducting the examination may permit it. However, if the Statute, Rule, or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet, as distinct from prohibiting it, then the Court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any inferential process of reasoning or by a process of rationalization and only in rare or exceptional cases that a material error has been committed. The relevant paragraphs of the judgment read as under:-

"30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are:

30.1. If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it;

30.2.If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the Court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any "inferential process of reasoning or by a process of rationalization" and only in rare or exceptional cases that a material error has been committed;

30.3. The Court should not at all re-evaluate or scrutinize the answer sheets of a candidate – it has no expertise in the matter and academic matters are best left to academics;

30.4. The Court should presume the correctness of the key answers and proceed on that assumption; and

30.5. In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.

31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse—exclude the suspect or offending question.

32. It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the Courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the Court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a classic example of the consequence of such interference where there is no finality to the result of the examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination – whether they have passed or not; whether their result will be approved or disapproved by the Court; whether they will get admission in a college or University or not; and whether they will get recruited or not. This unsatisfactory situation does not work to

anybody's advantage and such a state of uncertainty results in confusion being worse confounded. The overall and larger impact of all this is that public interest suffers.

33. The facts of the case before us indicate that in the first instance the learned Single Judge took it upon himself to actually ascertain the correctness of the key answers to seven questions. This was completely beyond his jurisdiction and as decided by this Court on several occasions, the exercise carried out was impermissible. Fortunately, the Division Bench did not repeat the error but in a sense, endorsed the view of the learned Single Judge, by not considering the decisions of this Court but sending four key answers for consideration by a one-man Expert Committee.

34. Having come to the conclusion that the High Court (the learned Single Judge as well as the Division Bench) ought to have been far more circumspect in interfering and deciding on the correctness of the key answers, the situation today is that there is a third evaluation of the answer sheets and a third set of results is now ready for declaration. Given this scenario, the options before us are to nullify the entire re-evaluation process and depend on the result declared on 14-09-2010 or to go by the third set of results. Cancelling the examination is not an option. Whichever option is chosen, there will be some candidates who are likely to suffer and lose their jobs while some might be entitled to consideration for employment.

35. Having weighed the options before us, we are of opinion that the middle path is perhaps the best path to be taken under the circumstances of the case. The middle path is to declare the third set of results since the Board has undertaken a massive exercise under the directions of the High Court and yet protect those candidates may now be declared unsuccessful but are working as Trained Graduate Teachers a result of the first or the second declaration of results. It is also possible that consequent upon the third declaration of results some new candidates might get selected and should that happen, they will need to be accommodated since they were erroneously not selected on earlier occasions."

17. In view of the pronouncements of the Hon'ble Supreme Court, once the petitioner has placed on record the ample material and without any inferential process of reasoning or by process of

rationalization, it is clear that the answer displayed in the key published by respondent No.1-Commission were wrong, this Court has the power to ask respondent No.1-Commission to re-evaluate the papers and as such, the objection raised by respondent No.1-Commission is rejected.

18. Respondent No.1-Commission has raised the objection with respect to the maintainability of the petition for non-impleadment of selected candidates, who were necessary parties. In the present case, the petitioner had applied for the post of Medical Officer (Dental) as a General category candidate. The result was declared on 27.02.2018 and respondent No.1-Commission had recommended the names of the selected candidates, but the petitioner did not implead any of the selected candidate as party respondents in the petition.

19. It is by now settled by catena of judgments that in case a candidate comes to the Court laying challenge to the selection, the person, who is going to be affected, has to be impleaded as one of the respondents. Since the petitioner has not impleaded any selected candidate, this Court cannot quash the appointment and offer appointment to the petitioner, since all the posts in the General category have already been filled up. Reference in this regard is made to the judgments of the Hon'ble Supreme Court in ***Prabodh***

Verma and others versus State of Uttar Pradesh and others, (1984) 4 SCC 251, ***Tridip Kumar Dingal and others versus State of West Bengal and others***, (2009) 1 SCC 768 and ***Public Service Commission, Uttaranchal versus Mamta Bisht and others***, (2010) 12 SCC 204.

20. Learned counsel for the petitioner had argued that this Court can mould the relief according to the demand of the situation and placed reliance upon the judgment of the Hon'ble Supreme Court in ***Rajesh Kumar and others vs. State of Bihar and Others***, (2013) 4 SCC 690. The ratio laid down in this judgment cannot be made applicable in the present case for the reason that in the said case, the affected persons were made parties in the petition. Once respondent No.1-Commission had taken the specific objection in the reply, the petitioner ought to have impleaded at least one of the selected candidates, who was having the lowest merit in the select list and recommended for appointment to the post of Medical Officer (Dental). Since the petitioner has not impleaded any of the selected candidate as one of the party respondents, in the writ petition, at this stage, that too, after eight years, this Court cannot give direction to create a supernumerary post, which would have the net result, since the petitioner had only two marks less. Therefore, the petitioner at this stage, is not

entitled to any relief, though the action on the part of respondent No.1-Commission was wrong, for the reason that the answer given by him were correct, but he was wrongly denied the marks, though he had placed on record the material of the standard books, which fact has not been denied by the respondent No.1-Commission while filing reply to the petition.

21. Respondent No.1-Commission has only placed much emphasis on the fact that the Subject Expert, after receipt of the documentary proof submitted by the petitioner, referred the matter for consideration to the subject matter expert, who had given its opinion. However, the said opinion is contrary to the material placed on record by the petitioner, which was also supplied by him at the time of preferring the objections, which fact has not been disputed by respondent No.1-Commission.

22. Learned counsel for the petitioner had placed reliance upon the judgment passed by a Division Bench of this Court in CWPOA No. 6529 of 2020, titled ***Sahil Kumar v. HPSEBL and Others***, to contend that the non joining of necessary party is not fatal in his case. However, the said judgment is not attracted and applicable to the case at hand for the reason that, in the said case, respondent No.2, Satish Kumar, was the candidate, who had scored 72.63 marks in General BPL category and he was impleaded as

respondent No.2 and the petitioner was awarded 70.73 marks and 2.5 marks of BPL certificate were not awarded to him. The Court had come to the conclusion that the last person selected in the category was arrayed as respondent No.2. But in the present case, the petitioner has not impleaded any of the selected candidate as required under law. It is true that all the selected or the affected candidates are not to be impleaded as party candidates, but the last candidate had to be impleaded as one of the respondents and in the present case, the petitioner has not impleaded any person. Therefore, the aforesaid judgment is not applicable.

23. No doubt, the Hon'ble Supreme Court in ***Union of India and Others v. Parul Debnath and Others***, (2009) 14 SCC 173, has held that no doubt the creation of posts is the prerogative of the executive, however, in order to meet certain special exigencies, such a course of action has been resorted to by the Court. No doubt, this Court could have done that, in case any of the selected candidates was impleaded as one of the respondents without disturbing his/her selection, but not in the present situation since the petitioner did not implead any of the persons despite the fact that respondent No.1-Commission had taken the specific objection regarding non maintainability of petition for impleadment of selected candidates, while filing reply to the petition.

24. The learned counsel for the petitioner had also placed reliance upon the judgment of the Hon'ble Supreme Court in ***Nur Islam and Others v. State of Assam and Others***, 2025 SCC OnLine SC 3051 to contend that this Court under Article 226 of the Constitution of India can mould the relief. No doubt, this Court has the power to mould the relief and there are no limitations or fetters on the power of this Court under Article 226 of the Constitution of India to do complete justice, except self-imposed limitations. The arm of the Court is long enough to reach injustice, whenever it is found. However, the said power has to be exercised within the four corners of law. In the present case, the petitioner has not impleaded in the writ petition even one of the affected persons as party respondents and thus, this Court, after more than eight years of the selection having been made, is of the view that no relief can be granted to the petitioner and his petition is ordered to be dismissed.

25. Consequently, I do not find any merit in the present petition and the same is accordingly dismissed. However, there shall be no order as to costs. Pending applications, if any, also stand disposed of.

05th August, 2026
(naveen)

(Jiya Lal Bhardwaj)
Judge