

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No.3 of 2011
Date of decision : August 3, 2015

Parveen Kumari and others

Versus **Petitioners**

State of Haryana and others

..... **Respondents**

CWP No. 26062 of 2014

Kavita Kumari and others

Versus **Petitioners**

State of Haryana and others

..... **Respondents**

CWP No.2674 of 2011

Dinesh Kumar

Versus **Petitioner**

State of Haryana and others

..... **Respondents**

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Jasbir Mor, Advocate
for the petitioners in CWP Nos.3 of 2011 &
26062 of 2014.

Mr. Jagbir Malik, Advocate
for respondent Nos. 7 to 9 in CWP No.3 of 2011.

Mr. Naveen Daryal, Advocate

for the petitioner in CWP No. 2674 of 2011

Mr. D. S. Nalwa, Additional Advocate
General, Haryana.

Mr. S. K. Nehra, Advocate
for the applicant.

Mr. Vivek Khatri, Advocate and
Mr. Lajpat Sharma, Advocate
for respondent Nos. 5 and 6 in
CWP No. 3 of 2011.

Mr. H. N. Mehtani, Advocate
for respondent No.3.

Mr. GPS Bal, Advocate
for respondent No.4.

Mr. M. S. Rana, Advocate
for respondent No.10.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

CM No. 4120 of 2011 in CWP No.3 of 2011

This is an application for placing on record the written statement on behalf of respondent No.4.

C.M.is allowed.

Written statement taken on record.

CWP No.3 and 2674 of 2011, 26062 of 2014

This order of mine shall dispose of CWP Nos. 3 of

2011, 26062 of 2014 and 2674 of 2011 as common question of fact and law is involved in the aforementioned writ petitions.

The main grievance which has been raised in the aforementioned writ petitions is that the petitioners have sought indulgence of this Court for challenging the selection made by the respondents, all the candidates who have been selected in pursuance to the advertisement bearing No.4 of 2009 for selecting JBT teachers with a further prayer that they should also be selected as the entire process of selection has not been in consonance with the terms and conditions of the prospectus/advertisement. It has been submitted that, had the respondent-State complied with the terms and conditions of the prospectus/advertisement, *ibid* in letter and spirit probably the stage at which the cases have arrived at/reached would not have come. Many candidates who had appeared in the test were different than the one who appeared in the interview in essence, it was a case of impersonation, apprehending such an act, one of the selected candidates namely Kavita Kumari approached this Court in CWP No. 22925 of 2010, this Court vide order dated 22.12.2010 disposed of the writ petition by directing respondent No.2-Director Elementary Education, Haryana to conduct the necessary enquiry within a period of four months from the date of receipt of certified copy of the order.

Mr. Jasbir Mor, learned counsel for the petitioners submits that instead of complying with the directions aforementioned of this Court, respondents started initiating the process of selection which necessitated the petitioner-Parveen Kumari to approach this

Court. This Court after noticing the contention of the petitioners, issued notice of motion to the respondents, however, in order to test the bona fides of the petitioners directed them to deposit costs of ₹1 lac. This Court vide order dated 6.8.2012 while noticing the contention as well as submissions made on behalf of the department of Elementary Education, Haryana directed that the enquiry be completed within a period of three months. The matter was adjourned from time to time and in the meantime, enquiry report was received by the Registry and it was opened it was found that it pertains to 51 candidates out of total 54 candidates. This Court found that there was a case of impersonation and accordingly issued a direction to the Director Elementary Education, Haryana to enquire into the whole process of selection, which included the checking/comparing scientifically the signatures/thumb impressions of all the persons who appeared in the JBT written test viz-a-viz the application form of STET by some handwriting and Finger Print Expert of Government Laboratory. Directions were also issued to the Director Forensic Science Laboratory, Madhuban Karnal to carry out the work of comparing signatures/thumb impressions of the selected candidates and direction was given to complete the enquiry within a period of three months. The operative portion of the order dated 6.8.2012 reads thus:-

“The first enquiry report which has been submitted by the Director, Elementary Education, Haryana in the Registry pertains to 51 candidates out of total 54 candidates, whose samples of finger prints/thumb impressions were got verified with

comparison of the finger prints/thumb impressions belonging to the category of elementary education as the posts in question were JBT. As per the report of the Finger Print Bureau, Madhuban, Karnal out of samples of these 54 candidates sent for verification, thumb impressions of only eight candidates could be declared clearly identical, 22 candidates could be called the cases of clear impersonation and verification of 21 candidates could not be done conclusively because their samples available on record were not found fit for comparison. For remaining these candidates, the supplementary report was submitted in Court on 30.7.2012. These three samples also were found to be that of impersonation s the finger prints did not tally.

Therefore, out of the 54 candidates, whose finger prints have been compared, thumb impressions of only 8 candidates have been clearly declared identical, 25 candidates have been found to be cases of impersonation and remaining 21 candidates could not be clearly said to be either of the same person or of impersonation as the samples available on record were not found fit for comparison. This gives an indication that the allegations as made by the petitioners in writ are substantially correct with regard to the impersonation practiced by the candidates during the written test which was held by the respondents during the selection process of JBT. The matter requires to be further probed and gone into in detail. Therefore, this Court is of the view that a full scale enquiry with regard to all the selected candidates for the posts of JBT needs to be conducted to find out the genuine selected candidates from those

who have used unfair means to seek selection.

Accordingly, direction is issued to Director, Elementary Education, Haryana-respondent No.2 to enquire into the whole process of selection which would include the checking/comparing scientifically the signatures/thumb impressions of all the persons who have appeared in the JBT written test with the thumb impressions appearing in the application forms of the STET by some Handwriting and Finger Print Expert of Government Laboratory. Direction is also issued to the Director, Forensic Science Laboratory, Madhuban Karnal to carry out the work of comparing signatures/thumb impressions of the selected candidates. The enquiry be concluded within a period of three months and the report be submitted to this Court on or before 30.11.2012.

It is clarified that as per order dated 4.1.2011 the record shall remain in custody of the Deputy Commissioner, Bhiwani and the arrangement with regard to making available the record to respondent No.2 as ordered vide order dated 28.1.2011 shall continue.

Enquiry report be resealed and be kept in safe custody by the Registrar (Judicial) of this Court who shall produce the same as and when ordered to do so.

A copy of this order, under the signatures of the Bench Secretary, be handed over to Mr. Rathee, learned Senior Deputy Advocate General, Haryana for information and compliance thereof to the concerned Authority. A copy of this order be sent to (i) The Director Elementary Education, Haryana: (ii) The Deputy Commissioner,

Bhiwani and (iii) The Director, Forensic Science Laboratory, Madhuban, District Karnal by the Registry forthwith.”

Thereafter, numerous adjournments were sought which were granted by this court but a stage reached when this Court was constrained to put a time limit to complete the enquiry, failing which the Director, Elementary Education was directed to appear before this Court. In terms of the directions issued from time to time, an affidavit was filed on behalf of the Director, Elementary Education as well as Director Forensic Science Laboratory, Madhuban to the extent of completing the exercise of comparison and as well as proposed/initiated action to be taken against the candidates after identification, who had actually impersonated or resigned or even did not give the signatures/thumb impressions.

Mr. D. S. Nalwa, Additional Advocate General, Haryana has filed an affidavit of Mr. R. S. Kharb, Director Elementary Education, Haryana on the premise that FSL's report has been received in their office. It has been stated in the affidavit that identification of various candidates had been made. The detail of which is extracted as under:-

That the Department had on 23.2.2015 written to all District Elementary Education Officers for issuing show cause notices for termination of their services those 776 candidates whose thumb impressions were found to be Non identical/Not matching. It is submitted that those 776 candidates

approached this Hon'ble Court against the show cause notices. This Hon'ble Court vide order dated 13.5.2015 decided CWP No. 4729 of 2015 titled as Silk Ram & others Vs. State of Haryana and others and other similar cases passed orders which is reproduced below:-

Mr. Harish Rathee, learned Senior Deputy Advocate General, Haryana has assured this Court that the action will be taken as per law after considering the reply, if it is filed.

The termination order cannot be passed only on the basis of the report, which is available with the respondent-State. Neither the petitioners have been associated in the inquiry nor any material has been brought to their notice in any manner. Moreover, the petitioners are regular employees and any action with regard to termination of their services cannot be taken without following the procedure laid down under the Haryana Civil Services (Punishment and Appeal) Rule, 1987.

Accordingly, all the petitions, as mentioned here-in-above, are allowed and the impugned Show Cause Notices in all the petitions are, hereby, set aside. However, the respondent-authority is at liberty to proceed further and pass fresh order after

affording proper opportunity of hearing as per law. It is also advised that in case, any enquiry has been conducted, the enquiry report be made available before giving any fresh Show Cause Notice.

It is also made clear that in case, any adverse order is passed against the petitioners, they are at liberty to avail the appropriate remedy. “

In compliance of the above orders of this Hon'ble Court, this Directorate vide letter dated 3.7.2015 gave direction to all District Elementary Education Officers of the State for initiating disciplinary proceedings under Haryana Civil Services (P&A) Rules, 1987, Charge sheets under rule 7 have been issued to such 776 candidates by the District Elementary Education Officers. The Department is also initiating criminal proceedings against these candidates.”

On perusal of the aforementioned averments made in the affidavit, it is evident that issuance of show cause notices have been undertaken as per the Haryana Civil Services (Punishment and Appeal) Rule, 1987 applicable to Haryana and the candidates have submitted their reply and the case is at the stage of consideration of reply. It has been submitted that the advertisement was to fill up the posts of 9647 JBT teachers and 8341 have been selected. The aforementioned averments pertain to 776 candidates.

It has also been submitted that thumb impression of 1103 candidates has been found to be matching, no action is required to be taken in this regard.

It has further been submitted in paragraph 9 that after receipt of report from the Forensic Science Laboratory, specimen signatures of 6081 candidates was sent to Forensic Science Laboratory for verification and it has been found that out of these candidates, signatures of 4743 are found to be matching and 581 are not matching and viz-a-viz signatures of 757 could not be compared for the reasons mentioned in the aforementioned para 9. The relevant portion of para 9 reads thus:-

“That in compliance of the orders of this Hon'ble Court, the Department sent the specimen signatures of 6081 candidates to the Forensic Science Laboratory, Madhuban, Karnal. It is submitted that the Department has received the report of 6081 JBT teachers whose signatures were sent to FSL, Madhuban, Karnal for verification. Now, after receiving the report from the FSL, Madhuban, Karnal, the Department has compiled the report and the status of these 6081 candidates is shown below:-

<i>S.No.</i>	<i>Category</i>	<i>Total candidates</i>
1.	Same person	4743
2.	Not same/Other person	581
3.	Cases where no definite opinion has been given by Forensic Science Laboratory, Madhuban, Karnal due to following reasons: i) Applications forms which were not considered towards opinion by the expert of FSL. ii)The expert of FSL unable to fix the authorship of signatures. Iii)No common material available to the expert FSL for opinion. iv) The expert of FSL not been able to express/give any definite opinion. v) Signatures of the candidates in different languages i.e.Devnagri script and English/Roman. Expert of FSL unable to tender opinion in these cases. vi) The expert of FSL not technically tender opinion on the specimen of signatures. Vii) In case the advice of the FSL expert is to be sought again.	26 22 1 486 48 173 1
	Grand Total from (i) to (vii)	757
	Grand Total	6081

It has further been submitted that the department has initiated departmental proceedings under the aforementioned rules and criminal proceedings against 581 candidates, whose signatures have not been found to be matching and as regards remaining 757 candidates the department proposes to refer these cases to the FSL, Madhuban, Karnal for further clarification and

obtaining fresh specimen signatures so that a conclusive comparison can be made.

It has further been submitted that 203 candidates had resigned and even after resignation given their signatures/thumb impressions and out of them, signatures of 88 candidates are found identical/matching and 111 candidates are found to be un-comparable and of 4 are not matching. It has further been submitted that 4 candidates, whose signatures have not been found to be identical/matching the department is proposing to initiate criminal proceedings against them and viz-a-viz 111 candidates whose signatures are found to be un-comparable, the department proposes to send the case of all the candidates to FSL for verification after taking their signatures/thumb impressions afresh.

Mr. Jasbir Mor, learned counsel appearing on behalf of the petitioners submits that the entire exercise which has been done belatedly, there could not have been an occasion for the department to undergo the entire exercise involving huge expenses at the cost of State Exchequer, had the respondent-department strictly complied with the condition No. 10.0 i.e. necessary steps ought to have taken to compare the signatures of the candidates available from STET/HTET certificate, much less even at the stage of appointment.

After noticing the aforementioned affidavit, I deem it appropriate to issue following directions to the respondent-State:-

- i) The department would within a period of one month from today shall send the cases of all the*

candidates whose signatures/thumb impressions could not be verified/matched to the FSL, Madhuban.

ii) On receipt of the signatures, FSL Madhuban/or any other Laboratory shall undertake the exercise of matching/comparison within another period of one month.

iii) The respondent-Director of Elementary Education would endeavour to consider the reply of individual candidates who have replied to the show cause notice and on considering their reply pragmatically, take action, if any, in accordance with law.

iv) The criminal action proposed to be initiated should be immediately put into motion by lodging FIR etc.

v) On receipt of report of the FSL, Madhuban/or any other Laboratory, ibid, the department shall take action in accordance with law against the candidates whose signatures could not be found to be matching/identical in the similar manner/fashion as has been undertaken to be initiated.

vi) The Board-respondent No.4 in response to the notice of petitioner averred that in case any impersonation is detected, the Board had

undertaken to initiate the action against the persons involved in the malpractice. The relevant extract of the reply of the Board is reproduced hereinbelow:-

“It is submitted that if any case of impersonation is detected, the Board shall take serious note of it and legal proceedings will be initiated against those involved in the malpractices.”

vii) The record which has been ordered to be sealed vide order 4.1.2011 of this Court is directed to be returned to the Board of School Education, Haryana.

On consideration of the reply, I deem it appropriate to direct the Board to initiate action against the persons involved in the malpractice after departmental enquiry is over. The petitioners, though have sought vindication of their grievance as they have been not selected but the fact remains that they have also acted as whistle blower and on noticing such contentions this Court was compelled to initiate an enquiry and the outcome of the same has already been noticed above.

Since the petitioners have already participated in the written test/interview and have not been found to be successful, I do not deem it appropriate to interfere, for the reason that this Court would not act as a Court of Appeal while sitting over the process of selection-viz-a-viz interview.

The petitioners would have a right to submit

their application aforesaid in case the respondent-State causes advertisement for filling up the posts of JBT teachers.

An enormous expenditure has been incurred by the State in undergoing the task of comparison and involving the government employees considering such situation, I intend to impose costs of ₹1 lac upon the Board of School Education, Haryana, Bhiwani-respondent N.4.

Mr. GPS Bal, Advocate for respondent No.4 has vehemently argued that costs of ₹1 lac could not be imposed on the Board of School Education, Haryana, Bhiwani, for the reason staff even scant and the entire applications were sent to the Deputy Commissioner, Bhiwani.

The terms and conditions of the advertisement are sacrosanct, the Board cannot deviate, it is bounded duty for scrutiny of the certificates of all the candidates viz-a-viz STET/HTET and as well as at the time of appointment, the objection regarding imposition of costs is hereby rejected.

The costs aforementioned are directed to be deposited with the Legal Services Authority, Punjab and Haryana High Court, Chandigarh within one month from the date of receipt of certified copy of this order, failing which the matter be placed before this Court for taking further action.

The writ petitions stand disposed of.

The costs deposited of ₹1 lac by the petitioner vide receipt No. 1547 dated 14.1.2011 are ordered to be refunded back to the petitioner-Parveen Kumari.

The applications for impleadment i.e. CM No. 9204 of 2015 and 1622 of 2013, 7773 of 2012 in CWP No. 3 of 2011 in view of aforesaid findings are dismissed as having been rendered infructuous.

**(AMIT RAWAL)
JUDGE**

**August 3, 2015
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