

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.18896 of 2012
Reserved on: 24.05.2016
Decided on :08.07.2016**

Major Amit Sareen

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Pankaj Jain, Advocate
for the petitioner.

Mr. Anshul Gupta, AAG, Punjab.

Mr. Arjun Partap Atma Ram, Advocate
for respondent No.3.

G.S. Sandhawalia, J.

The petitioner seeks direction for production of answer key of English Paper of Punjab State Civil Services Combined Competitive Examination, 2009. Resultantly, modification of the result and to recommend the name of the petitioner for the post he is entitled, as per his merit is prayed.

The pleaded case of the petitioner is that 143 posts lying vacant in the various departments of the State of Punjab had been notified for making selection by respondent-Commission. The number of posts, were thereafter, increased to 180 by corrigendum dated 21.12.2009. Out of the said posts 13 were for the Ex-Servicemen/LDESM category and out of which 2 were notified for the PCS Executive Branch. The petitioner had applied and cleared his preliminary and main examination and after interview had been placed at merit No.4 in his category, having secured 360

marks with a percentage 60. Candidate at Sr. No.1 had opted for the PCS Executive post, whereas, candidate at merit No.2 had opted for the Punjab Police Service. Respondent No.3 opted for the PCS Executive Branch and, accordingly, the petitioner was recommended for appointment as Excise and Taxation Officer. The difference between petitioner and private respondent was only 0.30, since he had secured 360.30 marks and his percentage was 60.05. The petitioner had applied under the Right to Information Act, 2005 for supply of his answer sheets and on being supplied to him, it had come to his knowledge that certain answers which were correct had been wrongly evaluated. Resultantly, he had been given lesser marks and if the benefit was to be given he had a chance for getting recommended for appointment as PCS Executive. His representation dated 29.08.2012 (Annexure P-5) had been not responded to and resultantly he approached this court with the prayer that the Commission was expected to evolve a centralized system of evaluation of answer books and was bound to disclose the answer to the questions as marked by the petitioner in his English paper alongwith its model key adopted by the examiners while examining the answer sheets. The object being to ensure transparency in conducting the recruitment tests.

The respondent No.2-Commission took the plea that the evaluation of answer sheets was got done from the subject experts of high status and integrity under the supervision of Head Examiners. The representation had been examined and the meeting of the Experts Committee was held on 04.10.2012 (Annexure R-1) to consider his

representation. It has been averred that before the evaluation of the answer books, a key was formulated for all the questions which had very short answers. The evaluation was done uniformly for all the candidates. In the absence of the provisions for re-evaluation, the same could not be done and, therefore, the petitioner could not be granted any relief. Reliance was placed upon the Punjab Civil Services (Appointment by Combined Competitive Examination) Rules, 2009.

Respondent No.3 was impleaded vide order dated 21.09.2012, who took the same plea that there is no scope of judicial review regarding the evaluation of answers, which were correct as per the answers book and the key. Reliance was placed upon the Division Bench judgment in ***CWP No.9040 of 2013 'Anuj Kumar Jain Vs. State of Haryana and others'*** decided on 02.05.2013 (Annexure R-3/1) and it was further submitted that the said order was upheld by the Apex Court. The petitioner had subsequently participated in subsequent advertisements issued in the year 2012 and subjected himself to the subsequent selection. Recruitment for the year 2013 had also commenced and the selection process stood concluded.

Vide order dated 03.04.2013, the original records of the petitioner including the answer to the General English Paper, 2009 examination was called for. Vide order dated 06.05.2013, it was noticed that the assertion of the petitioner had been found to be correct and the answer key indicated attempt of the petitioner for the question 7 (e) is correct, which entitled the petitioner for grant of one additional mark.

The said order reads as under:-

“As per report of the Registry, notice issued to respondent No. 3 has not been received back served or otherwise.

Fresh notice be issued to respondent No. 3 for the date fixed, i.e.4.7.2013.

Dasti process as well.

In compliance with the order passed by this Court on 3.4.2013, answer key of General English paper of Punjab Civil Services Main Examination, 2009 and the answer sheet of the petitioner in the subject of English produced in sealed covers, which have been opened and perused.

The assertion of the petitioner has been found to be correct and the answer key indicates that the attempt of the petitioner of question 7(e) is correct, which would entitle the petitioner to the grant of one additional mark.

Records have been re-sealed and returned to the counsel for the Commission.

List for further consideration on 4.7.2013.

Records be again produced on the next date of hearing.”

Thereafter, on 01.07.2014, an additional affidavit was directed to be filed by the Commission through its Secretary as to why the petitioner was not entitled for grant of one additional mark. The additional affidavit of the Secretary of the Commission was filed on 22.08.2014, reiterating the earlier stand that there was no provision for re-evaluation and report of the Experts Committee had already been annexed with the detailed affidavit.

Thereafter, order dated 18.01.2016 was passed to clarify whether there was vacancy available to the said posts or not. The relevant part of the said order reads as under:-

“It is not disputed that in the PCS (Executive Branch), 2 posts were reserved for the Ex.Servicemen Category, for which, the petitioner and the private respondent No.3 were the contenders, being at Sr.No.3 & 4 of the merit-list and with only .05 percentage, separating them, as per

the merit-list (Annexure P2). Respondent No.3 has been accommodated on account of one of the candidates above him, having not joined. However, respondent No.1 is directed to clarify the situation by filing a short affidavit as to the other candidate also, above respondent No.3, has joined or not and whether there is any vacancy available to the said post.

List on 02.02.2016.”

Resultantly, the affidavit was filed on 02.02.2016 that there is no vacancy available and both the posts of Ex-Servicemen have been filled up for the process year 2009 for the PCS Executive Branch.

The petitioner has, thereafter, placed on record Annexure P-7 to show that subsequent advertisement was issued in 2015 and there was one vacancy of the Ex-Servicemen Category against the Executive Branch. Affidavit has also been filed that the said vacancy could not be filled as no candidate could clear the exam.

The question in dispute of which the petition has been found entitled for one mark is of the English Paper, which reads as under:-

“Q.7 Change the voice of the following sentences:

a) to d XXXX XX

e) He was refused admittance.”

The petitioner's answer for changing the voice was “They refused him admittance”. Apart from the material which the petitioner has placed on record to demonstrate that his answer was correct for Q.7 (e), this Court had already vide above noted order accepted the said fact that the petitioner is entitled for the benefit of the answer, which has been wrongly marked as incorrect. Resultantly, the necessary effect would be that the petitioner's marks would go up to 361, higher than 360.30 of the private respondent and his percentage would also increase over and

above the private respondent's percentage of 60.05.

Faced with this situation, counsel for respondent had contended that the record had been destroyed and there was no fault on his part that there was an error in answer key. The said respondent could also been entitled for such benefit and, therefore, shuffling at this stage would not be appropriate. It is, accordingly, submitted that respondent should not be permitted to supersede him or effect his service. He had no objection if he was appointed on any post of PCS Executive Branch.

The issue that arises for consideration before this Court is that whether the petitioner is entitled for the benefit of one mark for the abovesaid question, in the absence of any relevant clause, which would push him up in merit and whether at this stage the private respondent is liable to be displaced on that account.

It is pertinent to mention that the petitioner in his representation had only asked that his correct answers have been checked wrongly and no mark had been given. The same had been examined by the Commission and his request was rejected on the ground that the answer key was formulated for all questions, which had very short answers. The evaluation was done uniformly for all the candidates and there was no provision for re-evaluation. The said opinion reads as under:-

“The Head Examiner and the Evaluators of the said examination informed that before evaluation of the answer books, a key was formulated for all the questions which had very short answers. The evaluation was done uniformly for all the candidates. There was no provision for re-evaluation for the said examination and hence the

representation of the candidate does not merit consideration at this stage.”

The petitioner in the present case is not asking for the general re-evaluation of all the questions that he had answered as noticed above. His grouse is against Q. No.7, which has already been examined by this Court and there can be no doubt that the answer which has been given by him cannot be termed as incorrect in any manner. Merely because the Commission's answer key did not depict the said answer correct would not disentitle the petitioner from seeking the necessary relief by approaching this Court under Article 226 of the Constitution of India.

Reliance was rightly placed upon the judgment of the Apex Court in '**Kanpur University through Vice-Chancellor and others Vs. Samir Gupta and others (1983) 4 Supreme Court Cases 309**'. The Apex Court has held that in case of wrong answer key furnished by the paper-setters, the candidates could not be left high and dry and the best way was to publish the answer key, so that the sense of fairness in publishing the key answer would give the candidates an opportunity to have a closer look at the system of examinations. If any defect in the answer key is drawn , the University should take timely action. The relevant paragraphs read as under:-

“15. 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.

Xxxxxxxxxx

18. If the State Government wants to avoid a recurrence of such lapses, it should compile under its own auspices a text-book which should be prescribed for students desirous of appearing for the combined Pre-Medical Test. Education has more than its fair share of politics, which is the bane of our Universities. Numerous problems are bound to arise in the compilation of such a text-book for, various applicants will come forward for doing the job and forces and counter- forces will wage a battle on the question as to who should be commissioned to do the work. If the State can succeed in overcoming those difficulties, the argument will not be open to the students that the answer contained in the text-book which is prescribed for the test is not the correct answer. Secondly, a system should be devised by the State Government for moderating the key answers furnished by the paper setters. Thirdly, if English questions have to be translated into Hindi, it is not enough to appoint an expert in the Hindi language as a translator. The translator must know the meaning of the scientific terminology and the art of translation. Fourthly, in a system of 'Multiple Choice Objective-type test', care must be taken to see that questions having an ambiguous import are not set in the papers. That kind of system of examination involves merely the tick-marking of the correct answer. It leaves no scope for reasoning or argument. The answer is 'yes' or 'no'. That is why the questions have to be clear and unequivocal. Lastly, if the attention of the University is drawn to any defect in a key answer or any ambiguity in a question set in the examination, prompt and timely decision must be taken by the University to declare that the suspect question will be excluded from the paper and no marks assigned to it."

A similar view was also taken in **Vikas Pratap Singh and**

others Vs. State of Chhattisgarh and others' 2013 (4) SCC 494 in which it was held that for proper conduction of competitive examination and to recheck results, it would be highly unjust and unfair to deny the benefit of appointment on an erroneous evaluation of answer scripts. Resultantly, the decision of the board in re-evaluating of the answer key was upheld. The relevant para reads as under:-

“16. In respect of the respondent-Board’s propriety in taking the decision of re-evaluation of answer scripts, we are of the considered view that the respondent-Board is an independent body entrusted with the duty of proper conduct of competitive examinations to reach accurate results in fair and proper manner with the help of Experts and is empowered to decide upon re- evaluation of answer sheets in the absence of any specific provision in that regard, if any irregularity at any stage of evaluation process is found. (See: , (2000) 3 SCC 59 and Chairman, J & K State Board of Education v. Feyaz Ahmed Malik and others., (2009) 1 SCC 599). It is settled law that if the irregularities in evaluation could be noticed and corrected specifically and undeserving select candidates be identified and in their place deserving candidates be included in select list, then no illegality would be said to have crept in the process of re- evaluation. The respondent-Board thus identified the irregularities which had crept in the evaluation procedure and corrected the same by employing the method of re-evaluation in respect of the eight questions answers to which were incorrect and by deletion of the eight incorrect questions and allotment of their marks on pro-rata basis. The said decision cannot be characterized as arbitrary. Undue prejudice indeed would have been caused had there been re- evaluation of subjective answers, which is not the case herein.”

Counsel for the petitioner was, thus, well justified in distinguishing the judgment of the Division Bench ***Anuj Kumar Jain***

(supra) which had been relied upon by the private respondent. In the said case, the petitioner's prayer for rechecking had been done and he had been informed the previous result would stand. The Division Bench accordingly proposed the question whether it should examine the decision of the examiner in evaluating the answer given in a subjective question and whether it should substitute the said view pertaining to the question which was raised under the Indian Contract Act. Resultantly, the writ petition was dismissed by holding that the Court should refrain itself from granting the relief by substituting the view of the experts.

The present case as noticed above, the Committee had itself not disputed the factum that the petitioner's answer was correct and the case has only been rejected on the ground that the key had been formulated for all questions, which had very short answers and the same was uniform for all candidates. In the absence of any provision for re-evaluation, the representation has been rejected. It is also not disputed that the question as answered by the petitioner is not correct.

Accordingly, this Court is of the opinion that the petitioner's right of consideration has been wrongly taken away, as the answer which he had marked is correct. He should have been placed higher than the private respondent and has been wrongly denied, his legal right for consideration to the post of the Executive Branch.

However, it is not denied that the private respondent has been working on the said post and has been appointed in pursuance of the said selection process. More than 5 years have expired since then, and it

would be unfair at this stage to set aside his appointment or recall him from the said post and disturb the appointment which has been already made. Counsel for the private respondent has rightly relied upon the judgment of this Court in '*Sahil Aggarwal Vs. State of Punjab and others*' 2014 (3) SCT 813 to that effect.

Resultantly, the present writ petition is allowed. The respondent-Commission is directed to correct answer sheet of the petitioner regarding Q. No.7 and give him the necessary benefit and, thereafter, recommend his name to respondent No.1 for appointment to post of the PCS Executive Branch in the Ex-Servicemen Category against the vacancy for the subsequent year of 2015, which has not been filled up.

The necessary exercise be conducted within a period of 3 months from the receipt of the certified copy of this order.

JULY 08, 2016
Naveen

(G.S. SANDHAWALIA)
JUDGE