

CWP No. 22389 of 2013

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

**CWP No. 22389 of 2013
Date of Decision : 03.08.2016**

Nisha Kumari

...Petitioner

Versus

**General Manager, Administration, Institute of Banking Personnel
Selection and another**

...Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Anil Kumar, Advocate for the petitioner.

Mr. Madan Gupta, Advocate for respondent No. 1.

P.B. Bajanthri, J.(Oral)

Pursuant to the order dated 12.07.2016, one Mr. M.V. Desai, working as a General Manager Administration, Institute of Banking Personnel Selection, Mumbai has filed an affidavit along with the documents. The same is taken on record. In the affidavit, the respondents have admitted that there is no decision to declare that the petitioner's candidature for the post of Clerk is cancelled. Para 4 of the affidavit reads as under :-

“4. That the respondent institution has indigenously developed software for identifying such case of use of unfair means based on an Internationally accepted method. The

responses of each candidate are compared with the responses of the remaining candidates and matched for identical responses. The software generates report of all such pairs of cases which have identical responses mainly identical wrong responses. This report is critically reviewed by a high power committee including heads of three Divisions of IBPS. The committee considers the following in addition to identical wrong answers while deciding on reporting unfair means and a final report is prepared only after the committee reviews the other factor supporting the analysis.

- i) Evidence of any random/pattern marking*
- ii) Identical matches of 'intermittent' and 'end' skipped questions.*
- iii) Item which otherwise show different answer across centres*

The above mentioned method of identifying the use of unfair means is an Internationally accepted practice and in many countries for various examinations, candidates are identified for having use of unfair means by following this method.”

In view of the fair submission, matter is heard.

The petitioner in the present writ petition has questioned the orders dated 17.10.2012 (Annexures P-3 and P-5), whereby candidature of the petitioner was cancelled. Decision to cancel the petitioner's candidature is with reference to the instructions stated in the advertisement, which reads as under :-

“N. Action against Candidates Found Guilty of Misconduct

Candidates are advised in their own interest that they should not furnish any particulars that are false, tampered,

fabricated and should not suppress any material information while submitting online application. At the time of written examination, if a candidate is (or has been) found guilty of -(i) using unfair means during the examination or subsequent selection procedure or (ii) impersonating or procuring impersonation by any subsequent person or (iii) misbehaving in the examination hall or taking away the question booklet (or any part thereof)/answer sheet from the examination hall or (iv) resorting to any irregular or improper means in connection with his/her candidature for selection or (v) obtaining support for his/her candidature by unfair means, such a candidate may, in addition to rendering himself/herself liable to criminal prosecution, be liable:

To be disqualified from the examination for which he/she is a candidate.

To be debarred either permanently or for a specified period from any examination conducted by IBPS. For termination of service, if he/she has already joined any Bank.

The IBPS would be analysing the responses of a candidate with other candidates to detect patterns of similarity, if as per the laid down procedure, it is suspected that the responses have been shared and scores obtained are not genuine/valid, the IBPS reserves right to cancel his/her candidature.”

The respondents have advertised for common written examination for recruitment in Clerical Cadre for the year 2011 in 19 Public Sector Banks on 09.08.2011. The petitioner is one of the candidate has applied for the post of Clerk. On 11.12.2011 common written examination was conducted by the respondents-recruitment agency. Result of the common written examination was announced but the petitioner's result was

not declared. However, her candidature itself was cancelled by the respondents by identifying that the petitioner used unfair means during the examination through software adopted by the recruiting agency. The petitioner sent a legal notice on 17.10.2012. On the same day, respondents have communicated that her candidature has been cancelled with reference to para 'N' of the advertisement. For declaring that the petitioner's candidature is cancelled reasons assigned is that she is involved in unfair means during the examination, the petitioner has not been given an opportunity or show cause notice pointing out under what circumstances or to what extent, the petitioner has used unfair means during examination. Hence, this petition.

Learned counsel for the petitioner submitted that petitioner has not been heard before the action taken by the respondents in cancelling the candidature for recruitment to the post of Clerk pursuant to the advertisement dated 09.08.2011. Decision of the respondents would adversely affect career of the petitioner for the purpose of recruitment. Thus without hearing or giving an opportunity, decision taken by the respondents in cancelling her candidature for the post of Clerk is highly arbitrarily and in violation of Article 14 of the Constitution of India.

Per contra, learned counsel for the respondents submitted that they have taken action to cancel the candidature of the petitioner for recruitment to the post of Clerk with reference to the candidature instructions quoted in the advertisement (Annexure P-1) in particularly para 'N'. Para 'N' is incorporated having regard to a software adopted for the

purpose of evaluation of answers. In other words, the computer/software has detected the unfair means during the examination by the petitioner while comparing answer sheet with other answer sheets (other candidates). Based on the computer/software decision, the petitioner's candidature has been cancelled. It was further submitted that procedure of software using for correction of answers is internationally accepted, therefore, as per the procedure for recruitment to the post of Clerk, petitioner's candidature has been cancelled, therefore, there is no infirmity in the decision.

Heard the learned counsel for the parties.

The petitioner's future is under stake. For the reasons that without hearing the petitioner, the respondents have declared that she was involved in unfair means during the examination. Such a decision has been arrived taken based on the software decision. The same has not been informed to the petitioner before cancellation of her candidature. Merely stating that petitioner used unfair means during the examination, is not sufficient. It is only a conclusive. It must be supported by necessary reasons in what manner she has used unfair means during the examination. In the absence of necessary material as well as decision taken by the respondents in cancellation of petitioner's candidature for recruitment to the post of Clerk would be highly arbitrarily and illegal. Even the mode of computer adopting unfair means during the examination is also arbitrary for the reasons that there is no specific allegations against a candidate to what extent and in what manner, she is involved in unfair means during the examination. That apart, without hearing the affected candidate, the

respondents cannot take a decision to cancel the candidature for selection. The minimum requirement of notice before cancellation is not complied.

Having admitted the fact that respondents have not taken any decision and they have relied only on decision of the computer/software, the impugned orders dated 17.12.2012 (Annexures P-3 and P-5) are set-aside. The respondents are given liberty to furnish reasons to what extent, the petitioner is involved in unfair means during the examination held on 11.12.2011. The respondents are directed to take fresh step within a period of two months from today. If notice is given to the petitioner, she is directed to file her reply. Reply shall be considered by the respondents at the earliest not later than three months.

Petition stands allowed in above terms.

August 03, 2016.
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(P.B. BAJANTHRI)
JUDGE

Whether speaking/reasoned? Yes/No

Whether reportable? Yes/No