

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

CWP No.18993 of 2016 (O&M)

Date of decision : 15.09.2016

Sunita Kumari

....Petitioner

Vs.

State of Haryana and another

....Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Sunil K. Nehra, Advocate for the petitioner.

Mr. Rajesh Gaur, Additional Advocate General, Haryana.

Mr. B.R. Mahajan, Advocate General, Haryana with
Mr. Ravi Pratap Singh, AAG, Haryana
for respondent No.2-Haryana Staff Selection Commission.

...

TEJINDER SINGH DHINDSA, J.

A short reply on behalf of Haryana Staff Selection Commission along with Annexures R-2/1 to R-2/3 has been filed in Court today and the same is taken on record. A complete copy thereof has been furnished to learned counsel for the petitioner.

With the consent of counsel appearing for the parties, the writ petition is taken up for final disposal today itself.

Petitioner is aggrieved of the action of the respondent-Commission in not having declared her successful in the written examination conducted for the post of TGT (English) and against the ESM (General Category).

Brief facts that may be noticed are that an advertisement dated 23.07.2015 was issued by the Commission inviting applications for recruitment of 694 posts of TGT (English). 49 posts were reserved for ESM (General Category).

Petitioner stating herself to be eligible applied for the post of TGT (English) in the ESM (General Category). The written examination was conducted on 07.02.2016. Such written examination was in the nature of an objective type test in which OMR sheets were to be given to the prospective candidate and against each question there were four options and out of which the candidate was to opt for any one.

It is submitted on behalf of the petitioner that the question paper and one copy of the OMR sheet was permitted to be retained by the candidate after conduct of the examination. That apart, even the answer key in relation to the question paper/OMR sheet was also supplied.

Counsel would submit that as per calculations done by the petitioner by co-relating her response in the OMR sheet with the answer key, she would have secured 106 marks. In the result that has been declared on 03.09.2016, the last candidate called for the interview against the ESM (General Category) has secured only 68 marks and as such, there would be no justifiable basis to deny to the petitioner participation in the selection process i.e. for the interview.

The instant petition came up for preliminary hearing on 14.09.2016 and upon which notice of motion was issued for today.

In response to the petition, apart from the short reply from the Commission even the original OMR sheet of the petitioner has been produced for perusal of this Court in a sealed cover.

The sealed cover was opened and the OMR sheet of the petitioner has been perused. For the sake of satisfaction, the original OMR sheet of the petitioner has even been shown to Mr. Sunil K. Nehra, learned counsel for the petitioner.

To the naked eye itself, it becomes apparent that in relation to questions No.1 and 67, the petitioner had chosen to darken two options for each of such questions and thereafter has erased one option each. It is clear on the face of it that in relation to questions No.1 and 67, the petitioner has either used a blade or the nail to erase the response.

Counsel appearing for the petitioner would argue that at best it is a case of mistake having been committed by the petitioner. Candidature of the petitioner cannot be rejected on such hyper technical ground. It is further argued that the entire object of the selection process is to select the most meritorious candidate and in the light of the fact that even if the response to questions No.1 and 67 is not given any weightage, still she would secure marks in excess of 68 i.e. marks secured by the last candidate called for the interview in the ESM (General Category). Case built up in a nutshell is that if the petitioner is called for the interview no prejudice would be caused to the respondent-Commission/Recruiting Agency or to the other candidates. Rather it would help in the selection process as a meritorious candidate would not be eliminated from the field of selection. Mr. Nehra further submits that it is not the case on behalf of the Commission that any unfair means has been resorted to. Reliance has also been placed upon a Single Bench judgment of the Hon'ble Rajasthan High Court in ***Surinder Versus State of Rajasthan and others (2013) 3 W.L.N. 510.***

Learned Advocate General, Haryana on behalf of respondent No.2 would submit that the action of the Commission is strictly in conformity with the instructions that were issued to the candidates for conduct of the examination. He further submits that it was an examination in which large number of candidates had appeared and no exception can be

made as regards any instructions that had been put across to the prospective candidates for conduct of the examination. He submits that there would be no provision for relaxation of any of the instructions and as such, prays for dismissal of the writ petition.

Counsel for the parties have been heard at length.

During the course of arguments, it has gone uncontroverted that even prior to conduct of the written examination, a notice had been issued for information of the candidates for downloading of the admit card. The petitioner had in fact downloaded the admit card and which in turn had facilitated her participation in the written examination. A copy of the admit card has been appended as Annexure R-2/1 along with short reply filed on behalf of the Commission. Condition No.6 printed on the admit card itself was in the following terms:

“6. Candidates are warned not to fold or make any stray marks on the OMR Answer Sheet. Use of eraser, nail, blade, white fluid/whitener etc. to smudge, scratch or damage in any manner on the OMR sheet during examination is strictly prohibited. Candidature/OMR sheet of candidates using eraser, blade, nail or white fluids/whitener to smudge, scratch or damage in any manner the answer sheets shall be cancelled.”

Furthermore, even at the time of conduct of the examination and issuance of the question paper/OMR sheet printed instructions were there on the question paper itself. There was a specific note on the question paper and to the following effect:

“KINDLY READ THE INSTRUCTIONS BEFORE ATTEMPTING THIS QUESTION PAPER. IMPORTANT INSTRUCTIONS FOR THE CANDIDATES.”

A specimen copy of the question paper which was distributed

to all the candidates including the petitioner has been appended as Annexure R-2/2 alongwith the short reply. Conditions No.8, 9 and 14 would be relevant to the issue at hand and read as follows:

“8. Candidates are warned not to fold or make any stray marks on the OMR Answer Sheet. Use of Eraser, Nail, Blade, White Fluid/Whitener etc. to smudge scratch or damage in any manner on the OMR sheet during Examination is strictly prohibited. Candidature/OMR Sheet of candidates using Eraser, Blade, Nail or White Fluids/Whitener to smudge, scratch or damage in any manner the Answer Sheet shall be cancelled.

9. Candidates are warned not to carry any mobile phone, any type of watch, belt, wear ornaments like ring, chain, earring etc., electronic or communication device, Pen, Pencil, Eraser, Sharpner and correcting Fluid in the examination centre. If any candidate is found possessing any such item, he/she will not be allowed to enter in the examination centre. Candidate found possessing mobile phone and any other aiding material as mentioned above in the examination room will be treated a serious violation and it will amount to cancellation of the candidature and debarring him/her from future examination. Use of Eraser, nail, blade, white fluid/whitener etc., smudging, scratching or damaging in any manner the OMR answer sheet shall lead to cancellation of candidature and such OMR answer sheet shall not be evaluated.

*14. Each question has four alternative answer of which only one is correct. For each question, darken only one circle, which ever you think is the correct answer on the OMR answer sheet **with only Blue/Black Ball Pen provided by the Commission.** Pencil should not be used for darkening the circle. If more than one circles is found darkened, that answer will not be evaluated.”*

In the instant petition, there is no challenge to the instructions

aforenoticed and this Court would proceed by taking such instructions to be valid.

A conjoint reading of the relevant conditions contained in the admit card as also the question paper would make it amply clear that the candidates had been warned not to make use of a eraser, nail, blade, white fluid, whitener, etc. so as to smudge, scratch or damage in any manner the OMR sheet during examination. Instruction No.9 printed on the question paper put to each candidate a clear caution that use of eraser, nail, blade etc., resulting in smudging, scratching or damaging in any manner the OMR answer sheet would lead to cancellation of the candidature and such OMR answer sheet was not be evaluated.

The original OMR answer sheet that has been produced by counsel appearing for the Commission clearly shows that for questions No.1 and 67, the petitioner has resorted to scratching out one of the responses either by way of use of nail or a blade.

Even though the submissions made by counsel appearing for the petitioner may sound attractive at first blush but the same cannot be accepted. The instructions contained in the admit card as also on the question paper are to ensure complete transparency and fairness during the conduct of the examination. Each candidate who had applied in response to the advertisement issued by the respondent-Commission was obligated to follow the instructions in letter and spirit. Such condition would not only bind the candidate but would also bind the Recruiting Agency as well. Strict adherence to the terms and conditions for conduct of an examination is absolutely necessary. Rather these instructions would be seen as sacrosanct to ensure purity in an examination process. The same would also ensure that

there is no discretion even with the Recruiting Agency in the manner and mode of conduct of examination and evaluation of the question paper. Acceptance of the submission and prayer made on behalf of the petitioner would result in a situation where many other candidates would also come forth staking a claim as regards a mistake having been committed and their candidature to be accepted even though the instructions had not been followed. The same clearly is not permissible.

The petitioner having scratched out the response in the OMR sheet the consequences as per conditions No.8 and 9 printed on the question paper have to necessarily follow i.e. cancellation of her candidature and non-evaluation of the answer script.

In the case of ***Surinder (supra)***, the petitioner therein had applied for the post of Constable in the General Category and had been allowed to appear in the written examination. His attempt had not been evaluated and his candidature had been rejected in the light of a particular condition contained in para 9(11) of the advertisement as regards incorrect information being furnished by the candidate.

The learned Single Judge of the Hon'ble Rajasthan High Court took a view in favour of the candidate therein on the basis that such stipulation contained in the advertisement was not on the strength of any statutory rule and held such condition to be hyper technical. With due deference and with respect, this Court is not inclined to follow such view. Suffice it to observe that in the judgment, it has not even been noticed as to what information has been withheld or wrongly furnished by the candidate in question and in spite thereof relief has been granted.

At this stage, Mr. Nehra has raised a submission as a matter of

last resort. He states that a connected petition had come up before a co-ordinate Bench of this Court (Rajiv Narain Raina, J.) and in which at the stage of issuing notice of motion, interim directions have also been issued for the candidate/petitioner therein to be provisionally interviewed. He submits that on ground of parity itself, this Court should also intervene in the matter and the instant writ petition be not dismissed at this stage.

Even such submission is being noticed only to be rejected.

Mr. Nehra has very fairly conceded that in the other petition that came up before a co-ordinate Bench there was a specific challenge to the validity of the instructions. No such challenge has been raised in the present petition. Furthermore, the co-ordinate Bench had passed the interim directions without the benefit of having seen the original OMR sheet of the candidate in question.

For the reasons recorded above, this Court does not find any merit in the petition and the same is, accordingly, dismissed.

The original OMR sheet be resealed and be handed back to learned counsel for the respondent-Commission.

15.09.2016

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**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | Yes |