

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 22918 of 2016
Reserved on: 08.12.2016
Date of decision: 21.12.2016

Anshu and othersPetitioner(s)

Versus

State of Haryana and another ...Respondent(s)

AND

CWP No. 24810 of 2016

Geeta DeviPetitioner(s)

Versus

State of Haryana and another ...Respondent(s)

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

Present: Mr. J.S. Yadav, Advocate,
and Mr. Praduman Yadav, Advocate,
for the petitioner.

Mr. Gaurav Jindal, Addl. A.G., Haryana.

G.S.SANDHAWALIA, J.

The present judgment shall dispose of two writ petitions i.e. CWP Nos. 22918 and 24810 of 2016, as common questions of facts and law are involved in both the writ petitions. The facts have been taken from ***CWP No. 22918 of 2016, Anshu and others vs. State of Haryana and another.***

The petitioners seek a direction for evaluation of the OMR answer sheets of the written examination held on 06.03.2016 and for short

listing the candidates for interview for the posts of PGT (Mathematics). The same is with reference to Advertisement No. 4/2015 and declaration of result is prayed for on the ground that they have secured more marks than the cut off marks in the categories. A writ of certiorari is sought for quashing Instruction Nos. 8 and 9 which provide that the OMR sheet is not to be erased, scratched or smudged in any manner. The same is sought on the basis that they are contrary to Instructions No. 14 and 19 which further provides that on account of 2 options given, that answer would not be evaluated and would be treated as wrong.

Thus, it is the case of the petitioners that they had darkened one option earlier out of the 4 given and later on felt that the option which they had opted for was not correct and the other option was marked by making the earlier one dim. Chart was accordingly given to the petitioners as per the OMR sheet and the answer keys calculated by them to show that they had got more marks than the cut off marks of the categories but had not been called for interview by respondent no. 2-Commission.

Counsel for the petitioner has, thus, vehemently submitted that in cases where the petitioners had submitted for more than one option, then the said answer could be excluded for the purposes of evaluation as per Condition Nos. 14 and 19 and the respondent-Commission could not be entitled to totally disregard and not evaluate the answer sheets.

The stand of the Commission/State, on the other hand, was that the petitioners had violated the terms and conditions having erased/smudged their answer sheets and, therefore, their OMR sheets had not been evaluated as per the instructions printed on the admit card, question paper and OMR sheet. Reliance was also placed upon judgment of this Court in **CWP No.**

18993 of 2016, Sunita Kumari vs. State of Haryana and another decided on 15.09.2016 (Annexure R-2/1).

Keeping in view the arguments raised by counsel for the petitioners, this Court had summoned the original answer sheets to find out whether it was only a case of double options given against one question and if the benefit was to be granted to the petitioners in case that was so keeping in view the provisions of Clause Nos. 14 and 19. The originals have accordingly been produced, which have been opened in the Court and thereafter sealed. A perusal of the said answer sheets would go on to show that against various options, the petitioners have either applied fluid or tried to erase the earlier answer given by way of an eraser or nail/blade. In certain cases where the nail/blade has been used, there is damage caused to the answer sheet itself. The conditions on the admit card specially prohibited such actions while attempting the questions by the candidates. Clause 6 of the admit card reads thus:-

“6. Candidate 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.”

On the question paper, it is specifically mentioned as under:-

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

Even on the OMR sheet, an undertaking has to be given by the

candidate that the candidate has read all the instructions printed on the envelope and understood the same. In case whitener, eraser is used on the OMR sheet, the candidature is liable to be rejected. The same reads thus:-

“1. I _____, hereby undertake that the information provided by me for my eligibility for examination is true to the best of my knowledge. In case of any information found to be incorrect/incomplete at any stage, I am liable for disqualification for Examination and legal action. I have read all the instructions printed on the envelope and understood the same.

2. I do hereby declare that I have filled in my Name and Roll no. as it appears on the admit card. I fully understand and agree that in case I darken the wrong circles or fill incorrect Roll No. for use Whitener/Eraser/White Fluid etc. on OMR Answer Sheet my candidature will be liable to be rejected.

Signature of the Candidate within the box.”

Similar warning has been given in the question paper at Sr. No. 8 against the use of the eraser, nail, blade, while fluid/whitener. The said condition reads thus:-

“8. Candidates are warned not to fold or make any stray marks on the OMR Answer Sheet. Use of Eraser, Nail, Blade, While 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, sharpener 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.”

The said issue regarding the above said clauses was examined in *Sunita Kumari's case (supra)*. It was noticed that the petitioner in that case had either used a blade or a nail to erase the response to one option after having chosen to darken two options. Resultantly, it was held as under:-

“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.”

As noticed above, the judgment of the Rajasthan High Court in ***Surender vs. State of Rajasthan and others, 2013 (23) SCT 139*** was not followed.

Counsel for the petitioner, faced with the above said precedent, sought to distinguish it on the ground that in the present case, the instructions itself have been challenged and that Clause Nos. 14 and 19 provided that if someone has darkened more than one circle, then that answer would not be evaluated. Clause Nos. 14 and 19 read thus:-

“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 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 circle is found darkened, that answer will not be evaluated.*

19. While darkening the appropriate bubble(s) in the boxes darken the chosen bubble(s) fully as given below. If you darken more than one circle, your answer will be treated as wrong and such answer shall not be evaluated.

It is the contention of the counsels accordingly that once Clause Nos. 14 and 19 are read conjointly with clause Nos. 8 and 9, then the benefit should be given to the petitioners regarding the answers which have been double marked and the instructions at Sr. Nos. 8 and 9 were liable to be quashed.

The argument is not be liable to be accepted. Firstly, as noticed, it is not the case of simple double marking. The answer sheets have either been smudged by using the fluid or tampered with the nail or blade. As per Clause No. 9, even the carrying of such items would lead to the cancellation of candidature and debarring him for future examination. The reading of the clause would further go on to show that even the pen, pencil is not to be carried by the candidate and the blue/black pen is to be provided by the Commission as per Clause No. 14. Resultantly, it is apparent that the petitioners were carrying material which would even disqualify them from future examinations and lead to the cancellation of the candidature. The petitioners are bound by the terms and conditions of the instructions and have given their papers and at this stage, cannot turn around and challenge the instructions after having taken a chance. The principle of law laid down by the Apex Court in ***Madan Lal and others vs. State of Jammu and***

Kashmir and others, (1995) 3 SCC 486 has been consistently followed thereafter by the Apex Court. Reference can be made to the decision in *Chandigarh Administration and another vs. Jasmine Kaur and others, 2014 (10) SCC 521* wherein, while reversing the judgment of the Division Bench of this Court, the Apex Court has held that once a candidate takes a calculated chance and appears in the interview and only because the result is not palatable, she cannot turn around and contend that the Committee was not properly constituted. The dispute in the said case was regarding a NRI candidate seeking admission who was not eligible as per the definition provided in the prospectus. The challenge was rejected by the learned Single Judge on the ground that once the candidate had already taken admission in the BDS course and did not challenge the eligibility criteria before submitting her application for the MBBS course, she could not turn around and challenge the impugned clause. The relevant observations read thus:-

“In the decision reported in Parmender Kumar (supra), it was held that once the process of selection of candidates for admission had commenced on the basis of the prospectus, no change could thereafter be effected by government orders to alter the provisions contained in the prospectus. In the decision reported in Madan Lal (supra), it was held that if a candidate takes a calculated chance and appears at the interview then only because the result of the interview is not palatable to him he cannot turn around and subsequently contend that the process of interview was unfair and the selection committee was not properly constituted. By relying upon the above referred to decisions, the contention raised on behalf of the Appellant in SLP(C)

No.18099 of 2014 was that the condition relating to the NRI quota under the first category was prevalent at the time when the contesting Respondent submitted her application and having submitted the said application and participated in the selection process, merely because the said clause was subsequently found to be not valid, would not, on that ground, validate the contesting respondent's right to claim admission.

In fact, the other decisions, namely, [Om Prakash Shukla v. Akhilesh Kumar Shukla and others](#), (1986) Suppl. SCC 285, [Vijendra Kumar Verma v. Public Service Commission, Uttarakhand and others](#), 2010 (4) S.C.T. 556; (2011) 1 SCC 150, [K.A. Nagamani v. Indian Airlines and others](#), 2009 (2) S.C.T 715; (2009) 5 SCC 515, [Dhananjay Malik and others v. State of Uttaranchal and others](#), 2008 (2) S.C.T. 659; (2008) 4 SCC 171 and [Chandra Prakash Tiwari and others v. Shankuntala Shukla and others](#), 2002 (2) S.C.T. 1093; (2002) 6 SCC 127 were all referred to by the learned Senior Counsel for the Appellant in SLP(C) No.18099 of 2014 to show that the statement made in Madan Lal was relied upon in those decisions.”

The view was thereafter followed in ***Madras Institute of Development Studies and another vs. D.K. Sivasubramaniyan and others***, 2016 (1) SCC 454; ***Ashok Kumar and others vs. State of Bihar and others***, 2016 (10) SCALE 320 by a three Judge Bench and in ***Salam Samarjeet Singh vs. High Court of Manipur at Imphal and others***, 2016 (9) SCALE 738.

Keeping in view the above, this Court is of the opinion that there is no scope for interference in the action of the respondents in not correcting the papers of the petitioners since the petitioners themselves have

violated the terms and conditions and the undertakings given and, therefore, cannot now turn around and challenge the same.

Accordingly, finding no merit in the writ petitions, the same are dismissed. The original answer sheets of the petitioners which were retained by this Court be returned to the State Counsel under proper receipt.

21.12.2016
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No

