

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 2634 of 2016
Reserved on: 24.02.2016
Date of decision: 27.02.2016

Shweta Jaswal and another

....Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

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

Present: Mr. D.V. Sharma, Sr. Advocate,
with Ms. Akshita Chauhan, Advocate,
Mr. Anil Kshetarpal, Sr. Advocate,
with Mr. Rojit Nagpal, Advocate,
Mr. Salil Sabhlok, Advocate,
Mr. Sidharth Grover, Advocate,
Mr. Nandal Jindal, Advocate,
Ms. Satwant Mehta, Advocate,
Dr. D.S. Chahal, Advocate,
for the petitioners.

Mr. L.S. Virk, Addl. A.G., Punjab.

Mr. Kamal Sehgal, Advocate,
for respondent no. 2.

G.S.SANDHAWALIA, J.

This present judgment shall dispose of 10 writ petitions i.e. CWP Nos. 2634, 2611, 2689, 2622, 2793, 2796, 2813, 2980, 3331 and 3193 of 2016 as common questions of facts and law are involved in all the writ petitions. For reference, *CWP No. 2634 of 2016, Shweta Jaswal and another vs. State of Punjab and another* is being taken up.

The petitioners, in the present bunch of cases, seek the quashing of the answer to question no. 10 of booklet series A in Paper II of Civil Services Aptitude Test (CSAT) as declared by the Punjab Public

Service Commission vide its result dated 05.01.2016. Reliance is placed upon the judgment passed by this Court in ***CWP No. 858 of 2016, Arashjit Singh and others vs. State of Punjab and another*** decided on 03.02.2016. Resultantly, the benefit of such correction and for declaration of results on the basis of correct answer and to revise the list of shortlisted candidates for the main examination, which is scheduled to be held in March, 2016, is prayed for.

It is a matter of record that regarding the above said question, this Court had granted the benefit to the petitioners in CWP No. 858 of 2016, Arashjit Singh and others vs. State of Punjab and another and CWP No. 1192 of 2016 titled Anil Sharma and others vs. Punjab Public Service Commission. A finding was recorded that the answer of the said question no. 10 in booklet series A of paper II was option 'a' and not 'd'. The reasoning given was that there was a patent ambiguity and the question was based on the direction that the passage had to be read and the whole crux lay in the first paragraph which had to be taken into consideration by the candidate. The original record having been examined and the cutting of the opinion of the subject experts was one of the factors which led this Court to opine in favour of the said petitioners. The relevant portion of the reasoning given reads thus:-

“Regarding question No.10, as reproduced above, there is a patent ambiguity on the face of the record as the question itself talks about as to which of the following medium for the kind of education that writer “mentions in the first paragraph”. The question was based on the directions given that a passage had to be read for answering the said question. The passage itself had 3 paragraphs. A description was given in all

the 3 paragraphs wherein there was reference to exhibition, cine-film and filmstrip, which would help in visual education. The whole crux lies in the question itself whereby the relevance is attached to “the first paragraph” and therefore, what was in “the first paragraph” had to be taken into consideration by the candidates. The content of all the 3 paragraphs, on the basis of which, the Commission has opted for the correct answer as option 'd' was not to be the governing factor.

For the said question, as per the original records, which were also called for since the Commission had itself placed on record photocopy of the opinion of the subject experts, even the subject experts themselves, firstly, had written 'a' and then, crossed it out and made corrections and made it 'd'. It is, thus, apparent that what the Court has opined and what the candidates are also suggesting that the correct answer is option 'a', the experts themselves were of the same opinion, though necessary corrections had been made, thereafter. In such circumstances, it is apparent that the benefit of question no.10 reproduced above has to be given to the petitioners.”

However, after relying upon various judgments, the benefit was only restricted to the petitioners who had approached this Court in those two cases and the Commission was only to give the benefit to them and not to persons who had not approached the Court as it would unsettle the whole issue and other candidates would be affected. The basis of the said restricting the relief is contained in the judgment dated 03.02.2016 (Annexure P-8), which reads thus:-

“However, this Court is also restricting the said benefit only to the petitioners, since none others had

*approached this Court for the said benefits and if the answer key has to be changed, then the other candidates would be adversely affected as some have given the correct answer as option 'd' and it would lead to unsettling the whole issue. Reliance can be placed upon the judgment in **Kanpur University's case** (supra) and in CWP-24869-2013 titled **Sonia Rattan & another Vs. State of Punjab & others**, decided on 07.09.2015, wherein also, the relief was only restricted to the persons who had approached this Court and the benefits were not to be given to other candidates.*

*In **Gourav Jain's case** (supra) also, relief had similarly been restricted, accordingly, by referring to the judgment of the Apex Court in **Virender Singh Hooda & others Vs. State of Haryana & another 2005 (1) SLR 10**. The Apex Court in **State of Uttar Pradesh & others Vs. Arvind Kumar Srivastava & others 2015 (1) SCC 347** has also held out that the fence sitters are not to be granted the benefit and the Court can make it limited whether the judgment is to be in rem or in personam. In such circumstances, it is made clear that the relief is only to be restricted to the petitioners. The Commission shall give benefit of question no.10 to the petitioners only, as referred above, since there is an ambiguity apparently on the face of the record.”*

The petitioners thereafter approached this Court and the first petition, in the present bunch of cases was filed on 06.02.2016 and the last on 16.02.2016 after the above said observations. The case of the petitioners herein also is that they are falling short of 1.5 to 2 marks and if benefit of that one question is given, the petitioners would score 2.5 marks and sail through to qualify for the cut off of the main examination. It has been accordingly argued that the principle of equality as such would be violated

and since the Board has not appealed against the said judgment, the petitioners are entitled for the benefit of the same. The judgments relied upon by this Court are being sought to be distinguished on various grounds including that only a period of one month had elapsed since the filing of the writ petition and the declaration of the result. Reliance was also placed upon the judgment of the Division Bench of this Court in ***Satbir Singh vs. State of Haryana, 2002 (2) SCT 354*** to contend that there should be no discrimination and the State must show its grace and give the benefit to all other members.

The defence of the State is that as per Rule 13(A)(4) of the Punjab Civil Services (Executive Branch Class-I) Rules, 1976, candidates beyond 13 times the number of posts cannot be permitted to sit in the main competitive examination. The issue of relaxation of Rule 28 has been negated on the ground that there was no proposal made by respondent no. 2-Commission to give any relaxation to the petitioners.

Respondent no. 2 also relied upon the above said Rule and contended that the writ petition had been filed after CWP No. 858 of 2016 had been allowed and accordingly relied upon the observations in the above said case, as reproduced above. It is further submitted that 71 candidates had opted for answer 'a' and if the benefit is to be granted to them, then the number of candidates would go beyond 13 times in certain categories as mentioned in Annexure R-1.

The factual aspect remains that the preliminary examination was held on 12.12.2015 and the answer key was uploaded on the 14.12.2015 for which the candidates had to file their objections. It is not disputed that the petitioners filed the objections and the same were rejected

and in the case of petitioner no. 2, it was informed by the respondent-Commission that the application was not received within the prescribed period. However, since question no. 10 had already been examined by the subject experts since other candidates had raised various objections and thereafter, the final result had been declared. The last date for filing of the objections was 18.12.2015 and the report of the subject experts was to come by 27.12.2015. The result was declared on 05.01.2016 on the basis of the final answer key after taking into consideration the report of the subject experts. Thus, there is no doubt that the petitioners did not approach this Court after the result and accepted the result and thus, acquiesced and accepted the fate that they had not cleared the examination. Only because the other similarly situated candidates approached this Court, they are now seeking the benefit of the said observations and thus can be called “fence sitters”. An effort has been made to distinguish the judgment in *Arvind Kumar Srivastava's case (supra)* that there has been no delay and they have come within a period of one month.

The Apex Court in the above said case had defined the persons who are fence sitters and held that normally the benefit is to be granted to all but merely because some counter parts had approached the Court and succeeded, the same benefit cannot be permitted to be given to all. The relevant principles are laid down which reads thus:-

“22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

22.1 Normal rule is that when a particular set of employees is given relief by the Court, all other

identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of [Article 14](#) of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2 However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3 However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the

like (see [K.C. Sharma & Ors. v. Union of India](#) (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

As noticed, in the present case, the main test is to be held on 05.03.2016. If the benefit is to be granted, it will have to be granted to all 71 persons universally across the board and it would lead to unsettling the whole issue in view of Rule 13(A)(4), as amended, which reads as under:-

“13-A (I) A main competitive examination, the regulations of which are contained in Appendix III of these rules, shall be held at any place in the State of Punjab as and when notified by the Government through the Commission for the purpose of selection by competition of as may candidates for the service as Government may determine.

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“Candidates equal to twelve to thirteen time of the total vacancies determined by the Government under sub-rule (1) of Rule 13-A shall qualify for the main competitive examination.”

A perusal of the above would go on to show that if the benefit of answer 'a' is to be given, then the persons who had given answer 'd' would necessarily have to be excluded from the list of candidates who are to give the main examination. The authorities, in such circumstances, are justified in holding out that the benefit of pronouncement which was made

earlier cannot be extended to other similarly situated persons, keeping in mind this object that the relief had been restricted to the petitioners in that case. The petitioners conduct is such which would be clear from CWP No. 2622 of 2016 wherein it has been specifically averred that the proceedings of Arashjit Singh's case were to be awaited. The relevant portion reads as under:-

“The present petitioner was under a bonafide belief that since she was also affected by the same question, she would have also get the same relief.”

Mr. D.V. Sharma, Sr. Advocate, has raised the objection that the word 'shall' mentioned in Rule 13 is not mandatory. The Apex Court in ***Government of Andhra Pradesh vs. P. Laxmi Devi, 2008 (4) SCC 720*** while considering the issue of word 'shall' and 'may' has specifically held that use of word 'shall' means that there is no discretion in the authority and it cannot be read as 'may'. It was held in ***Dilip K. Basu vs. State of West Bengal and others, 2015 (8) SCC 744*** that it is for the Court to see that when two words are used in same provision, the intention of the Legislature is to be examined.

In the present case, the provisions of the Rule suggest that candidates equal to 12 to 13 times of the total vacancies determined by the Government are to qualify. The purpose is salutary in the manner for the purposes of screening for the main competitive examination for which the candidates will further qualify for the purpose of interview. Resultantly, the argument that it should be read as 'may' cannot be accepted.

The judgment of the Division Bench in *Satbir Singh's case* (*supra*) pertains to the benefit of giving the work charge period of service

rendered for the purposes of grant of additional increments and it was in such circumstances, the Division Bench said that the benefit is to be given to all and once the principle of law was laid down each and every person was not expected to approach this Court. The issue of the right of other parties and the time bound effect and the acquiescence as discussed in *Ashok Kumar Srivastava's case (supra)* was not before the Division Bench and, therefore, the said judgment is distinguishable in the facts and circumstances of the case. In such circumstances, this Court is of the opinion that once there is a specific legal bar as such, a direction cannot be given in favour of the petitioners to give the benefit of the said question.

Accordingly keeping in view of the above discussion, this Court does not feel that the benefit can be granted to the petitioners and the writ petitions are dismissed.

27.02.2016
shivani

(G.S. SANDHAWALIA)
JUDGE