

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.17042 of 2014

Date of Decision: 01.05.2017

Pawan Bishnoi & Another

....Petitioners

Versus

State of Punjab and Ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Saurabh Goel, Advocate for the petitioners.

Mr. Gurminder Singh, Sr. Advocate with
Mr. Jatinder Singh Gill, Advocate for the applicants/
respondent.

Mr. Harkesh Manuja, Addl.A.G, Punjab.

Mr. Himanshu Chhabra, Advocate for
Mr. Puneet Sharma, Advocate for respondent No.199.

JASWANT SINGH, J

1. Petitioners, Pawan Bishnoi and Tarsem Goyal, who competed for the post of Assistant District Attorneys (for short "ADAs"), advertised vide Advertisement dated 25.7.2013 (**P.1**) by the Punjab Public Service Commission-respondent No.2 (for short "PPSC"), by filing this writ petition are seeking a writ of Certiorari for quashing the impugned final result dated 19.8.2014 (**P.15**), in view of the irregularities in question paper (**P.3 colly.**) as well as revised answer key (**P.12**) thereby affecting their *inter se* merit viz-a-viz respondent Nos.4 to 287; further for directing respondents to consider them for selection and appointment to the aforesaid

posts, on the basis of to be revised correct answer key as well as to be recasted final Merit List.

2. In brief, facts of the case are that respondent No.2-PPSC advertised 80 posts of ADAs (General-38 and Reserved-42) vide Advertisement dated 25.7.2013 (**P.1**) in the Department of Home Affairs and Justice, Government of Punjab/respondent No.1, in pursuance of the requisition dated 04.7.2013 & 11.7.2013, subject to any modification or amendment that may be made by the Government. Last date for filling online application was 16.8.2013 and the petitioners applied in pursuance thereof in the General Category.

3. Competitive Examination was held as per Schedule i.e on 08.9.2013 at various Centres across the State of Punjab and Chandigarh and both the petitioners appeared for the same and by way of notice dated 13.9.2013, a list of 242 candidates was displayed on the website of the Commission and their interview schedule was also published, which was to be conducted by four Boards mentioned in the notice (**P.2 & P.3**). It is necessary to mention here that names of both the petitioners were at Serial Nos.170 and 203 respectively and their interviews were scheduled to be held on 20.9.2013 at 8.30 AM.

4. However, the written result was challenged by the candidates by alleging infirmities/ambiguities not only in the question paper, but also in relation to answer keys posted on the website by respondent-Commission, by filing CWP No.24858 of 2013. This writ petition along with other connected matters were disposed of as under:

“The writ petitions are, accordingly, disposed of. It is directed that in furtherance of the decision taken by the Commission in its meeting dated 26.11.2013, a public notice shall be issued inviting objections, if any, from the candidates including the petitioners herein, who were participants in the recruitment process for the posts in question with regard to any question/answer key. Adequate breathing time would be given by the Commission while inviting such objections. Such objections shall, thereafter, be dealt with by the Commission by adopting a fair procedure as the Commission itself deems fit i.e by constituting an Expert Committee. Suffice it to observe that in the eventuality of the Commission coming to a conclusion based upon the findings of the Expert Committee, that the result that already stands declared with regard to the shortlisted candidates requires a revision, then, the requisite consequential steps shall also be taken.”

5. In pursuance of the above directions, a Public Notice dated 27.11.2013 (P.8) was issued by the PPSC, which reads as under:

“NOTICE

Kind Attention: Candidates who have appeared for the Competitive Examination.

1.0 It is informed that Answer Keys of Paper I and Paper II (All Sets A,B,C,D) of the competitive examination had been uploaded on the website of Punjab Public Service Commission on 08-Nov-2013

2.0 It is further informed that any observation regarding the Answer Keys may be brought to the notice of Commission latest by 4th December, 2013 by 05:00 PM.

3.0 The queries can be mailed to the office of Commission at information @ppsc.gov.in or can be sent through post/by hand before the above mentioned date and time.

4.0 It is informed that the Commission shall not be bound to consider the queries received after the above mentioned date and time.

5.0 The decision taken by the Commission on observations received shall be final.”

6. In pursuance of the Public Notice referred above, petitioner No.1 submitted his objections /observations / representation dated 01/02.12.2013 (P.9).

7. However, again a controversy erupted qua the selection, which was challenged by way of CWP No.20467 of 2013 and connected petitions. These petitions were ultimately disposed of in the following terms:

“After hearing learned counsel for the parties, the writ petitions are disposed of in terms of the statement made by learned counsel for the State and the Commission that the revised result after taking final decisions on the objections raised on the questions or the answer keys will be declared within a period of two weeks. The fresh list of candidates to be short listed for interview on the basis of the eligibility on the cut off date will be prepared thereafter. New candidates who may find place in the zone of consideration for the purpose of interview will be interviewed and thereafter final result of selection shall be declared. The entire exercise be completed within a period of four weeks.”

8. In compliance of the order of this Court, the PPSC

decided to revise Answer key of the Examination on 12.8.2014 (P.11 & P.12) and the relevant part thereof reads as under:

Sr. No.	Series-A	Series-B	Series-C	Series-D	Key
1	15	74	45	15	B
2	19	78	49	19	A
3	43	33	3	73	C
4	56	46	16	86	A
5	93	23	93	63	B

Sr. No.	Series-A	Series-B	Series-C	Series-D	Key
1	26	86	56	26	B

9. In view of the revised answer key and taking into account the direction of this court dated 30.7.2014 (P.10), 62 candidates were further shortlisted for the post in question and their names were displayed by way of Public notice dated 12.8.2014 (P.13) and an Interview program qua them was fixed on 12.8.2014 (P.14). After undertaking the abovesaid exercise, the PPSC notified a categorywise merit list of 286 candidates for 80 posts of ADAs on 19.8.2014 (**P.15**), which is being impugned herein.

10. The merit list clearly depicts the marks scored by each candidate in the Competitive Exam as well as *Viva Voce* along with their rank and category. Petitioner No.1, who in Merit List is shown at Sr.No.53, scored total 343.50 marks (322+21.50) whereas petitioner No.2, who is shown at Sr.No.49, scored total 344.50 marks (322+22.50) out of 400. The above Merit list was sent to respondent No.1 by the PPSC on 04.9.2014 and selected candidates joined their services. This Court is apprised by both the parties that the last candidate in the general category, namely,

Ravinder Singh, who was at Sr.No.38, scored 346.17 marks (324+22.17). This Court has further been apprised that some of the selected candidates did not join and consequently, the offer of appointment was made to the candidates next in order of merit and the last selected candidate as on today is Shilpa Gupta, who is at Sr.No.48, who secured 344.67 marks.

11. A perusal of order dated 16.5.2016 reveals that an additional affidavit dated 06.5.2016 of Special Secretary to Government of Punjab, Department of Home Affairs and Justice was filed wherein, it was *inter alia* submitted that in view of the directions in CWP No.20393 of 2015 titled Shilpa Gupta Vs. State of Punjab, three more candidates were considered for the posts of ADAs, namely, Miss Taranbir Kaur, Sh. Amrit Lal and Miss Shilpa Gupta who are shown to be at Sr.Nos.54,55 & 56 of the Common Merit List respectively. It has specifically been submitted in the said affidavit that no post pertaining to General category is lying vacant qua the Advertisement dated 25.7.2013 (**P.1**) and relevant paragraph of the said affidavit filed by Special Secretary reads as under:

" That in view of the position explained above, no post pertaining to General Category is lying vacant qua the Advertisement/requisition sent by the Government to the Punjab Public Service Commission in the year 2013."

12. It seems that the affidavit has been filed on the basis of the revised result prepared, after taking into consideration the question Nos.19,66,74 of Paper-I (Set B), question Nos.89,7 and 15 of Paper-I (Set A), question Nos.89,37 and 45 of Paper-I (Set C) and

question Nos.59,7 & 15 of Paper-I (Set D) respectively and the same has been brought on record by the PPSC along with the affidavit dated 14.9.2016 of its Secretary (Examinations). The affidavit dated 14.9.2016 filed by the Secretary, PPSC also clearly reveals that as per order dated 30.3.2016 of this Court, report of Subject Expert regarding the objections raised by the candidate relating to the selection of ADAs Paper-I Set B was produced in this Court in a sealed envelope and after opening the same, this Court returned it to the counsel for the respondent-State on 14.9.2016 itself.

13. The affidavit dated 14.9.2016 also reveals that as per report of the Subject Expert, answer keys of the relevant questions of Paper-I and II were revised/finalised and the final result was declared accordingly and the same was annexed with the affidavit as Annexure R.1, which is not under challenge by the petitioners.

14. Learned counsel for the petitioners submits that the impugned final result dated 19.8.2014 **(P.15)** is legally unsustainable as the same has been prepared, on the basis of stated faulty questions as well as wrong answer key and thus the same has resulted into violation of Articles 14 & 16 of the Constitution.

15. Per contra, learned State counsel appearing for respondent Nos.1 to 3 argues that the result **(P.15)** was declared after considering the suggestions/objections/representations made by the petitioners or other candidates, after obtaining the opinion of Subject Expert/Paper Setters in pursuance of the order passed by this Court on dated 08.11.2013 in CWP No.20523 of

2013 and thus the result is perfectly legal and valid and the same does not require any interference by this court, while exercising powers of judicial review under Article 226/227 of the Constitution. It is further argued that the question paper and answer keys were applicable to all the candidates, who participated in the examination in question and thus, there was no separate treatment either to the petitioners or the respondents and as such there is no violation of Articles 14 & 16 of the Constitution.

16. Heard learned counsel for the parties and perused the paper book with their able assistance.

17. It is clarified that initially the writ petition was filed by petitioner No.1-Pawan Bishnoi only and petitioner No.2 was impleaded as respondent No.60; but subsequently by way of an application under Order 1 Rule 10 CPC, he has been transposed as petitioner No.2 instead of respondent No.60 vide order dated 29.11.2016 by this Court.

18. After due deliberations of the matter in controversy, it is apparently clear that the selection of ADAs in question is under litigation right from 2013 and this Court has given a direction to the PPSC to declare the revised result, which was declared rightly so. With utmost sympathy to the petitioners that the last candidate i.e Shilpa Gupta, who was at Sr.No.56 of the revised result in the General Category and secured 344.67 marks, whereas petitioner No.2 is at Sr.No.57 and secured 344.50 marks and petitioner No.1, who is at Sr.No.62 secured 343.50 marks could not be accommodated and offered appointment, in view of the categorical affidavit dated 06.5.2016 of Special Secretary that no post in

General Category is lying vacant.

19. It is settled proposition of law that the scope of judicial review in the matter of appointment to public posts is very limited. The said question has been examined in extenso by a Division Bench of this Court in the case of **Khatrī Saurabh Satyapal Vs. Haryana Public Service Commission and another, 2009(4) S.C.T 362**, wherein it has been held that while exercising the power of judicial review under Article 226 of the Constitution, this Court is not to act as an appellate examining body to go into the details of determination of key answers.

The said question has also been examined by Supreme Court in number of judgments. The issue of revaluation of answer-sheets came up for consideration before the Supreme Court in **Maharashtra State Board of Secondary and Higher Secondary Education & another Vs. Paritosh Bhupeshkumar Sheth & others (1984) 4 SCC 27**. The Supreme Court has held that permitting re-evaluation would lead to uncertainty regarding result of competitive examination for indefinite period of time and that such course shall be against public interest. It was held to the following effect:

“28. As pointed out by a Constitution Bench of this Court in Fatehchand Himmatlal v. State of Maharashtra (1977) 2 SCC 670, “the test of reasonableness is not applied in vacuum but in the context of life's realities”. If the principle laid down by the High Court is to be regarded as correct, its applicability cannot be restricted to examinations conducted by School Education Boards alone but

would extend even to all competitive examinations conducted by the Union and State Public Service Commissions. The resultant legal position emerging from the High Court judgment is that every candidate who has appeared for any such examination and who is dissatisfied with his results would, as an inherent part of his right to “fair play” be entitled to demand a disclosure and personal inspection of his answer scripts and would have a further right to ask for revaluation of his answer papers. The inevitable consequence would be that there will be no certainty at all regarding the results of the competitive examination for an indefinite period of time until all such requests have been complied with and the results of the verification and revaluation have been brought into account.

29. Far from advancing public interest and fair play to the other candidates in general, any such interpretation of the legal position would be wholly defeasive of the same. As has been repeatedly pointed out by this Court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a

pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice. It is unfortunate that this principle has not been adequately kept in mind by the High Court while deciding the instant case.”

Following the said judgment, the Supreme Court in **Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission (2004) 6 SCC 714** held to the following effect:

“7. We have heard the appellant (writ petitioner) in person and learned counsel for the respondents at considerable length. The main question which arises for consideration is whether the learned Single Judge was justified in directing re-evaluation of the answer-book of the appellant in General Science paper. Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for reevaluation of his answer-book. There is a provision for scrutiny only wherein the answer-books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totalling of marks of each question and noting them correctly on the first cover page of the answer-book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. In the absence of any provision for re-evaluation of answer-books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for

re-evaluation of his marks. This question was examined in considerable detail in Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth case (supra). In this case, the relevant rules provided for verification (scrutiny of marks) on an application made to that effect by a candidate. Some of the students filed writ petitions praying that they may be allowed to inspect the answer-books and the Board be directed to conduct re-evaluation of such of the answer-books as the petitioners may demand after inspection. The High Court held that the rule providing for verification of marks gave an implied power to the examinees to demand a disclosure and inspection and also to seek re-evaluation of the answer-books. The judgment of the High Court was set aside and it was held that in absence of a specific provision conferring a right upon an examinee to have his answer-books re-evaluated, no such direction can be issued. There is no dispute that under the relevant rule of the Commission there is no provision entitling a candidate to have his answer-books re-evaluated. In such a situation, the prayer made by the appellant in the writ petition was wholly untenable and the learned Single Judge had clearly erred in having the answer-book of the appellant reevaluated.

8. Adopting such a course as was done by the learned Single Judge will give rise to practical problems. Many candidates may like to take a chance and pray for re-evaluation of their answer-books. Naturally, the Court will pass orders on different dates as and when writ

petitions are filed. The Commission will have to then send the copies of individual candidates to examiners for re-evaluation which is bound to take time. The examination conducted by the Commission being a competitive examination, the declaration of final result will thus be unduly delayed and the vacancies will remain unfilled for a long time. What will happen if a candidate secures lesser marks in re-evaluation? He may come forward with a plea that the marks as originally awarded to him may be taken into consideration. The absence of clear rules on the subject may throw many problems and in the larger interest, they must be avoided.”

In **President, Board of Secondary Education, Orissa Vs. D. Suvankar (2007) 1 SCC 603**, the Supreme Court held that the court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It was held to the following effect:

“5. The Board is in appeal against the cost imposed. As observed by this Court in Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth case (supra), it is in the public interest that the results of public examinations when published should have some finality attached to them. If inspection, verification in the presence of the candidates and re-evaluation are to be allowed as of right, it may lead to gross and indefinite

uncertainty, particularly in regard to the relative ranking, etc. of the candidates, besides leading to utter confusion on account of the enormity of the labour and time involved in the process. The court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It would be wholly wrong for the court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to pragmatic one was to be propounded. In the above premises, it is to be considered how far the Board has assured a zero-defect system of evaluation, or a system which is almost foolproof.

6. Award of marks by an examiner is to be fair, and considering the fact that re-evaluation is not permissible under the statute, the examiner has to be careful, cautious and has a duty to ensure that the answers are properly evaluated. No element of chance or luck should be introduced. An examination is a stepping stone on career advancement of a student. Absence of a provision for re-evaluation cannot be a shield for the examiner to arbitrarily evaluate the answer script. That would be against the very concept for which re-evaluation is impermissible.”

The abovesaid principle of law was also reiterated in a

later judgment reported as **Himachal Pradesh Public Service Commission Vs. Mukesh Thakur (2010) 6 SCC 759**. Recently in another judgment reported as **Sanchit Bansal Vs. Joint Admission Board (2012) 1 SCC 157** relating to admission to professional Engineering Colleges, the Supreme Court observed that process of evaluation, the process of ranking and selection of candidates are of technical matters in academic field and the courts will not interfere in such processes. The Court will interfere only if there is violation of any enactment, statutory rules and regulations; malafides or ulterior motives to assist or enable private gain to someone or cause prejudice to anyone; or where the procedure adopted is arbitrary and capricious. The Court held to the following effect:

“27. Thus, the process of evaluation, the process of ranking and selection of candidates for admission with reference to their performance, the process of achieving the objective of selecting candidates who will be better equipped to suit the specialised courses, are all technical matters in academic field and the courts will not interfere in such processes. The courts will interfere only if they find all or any of the following: (i) violation of any enactment, statutory rules and regulations; (ii) mala fides or ulterior motives to assist or enable private gain to someone or cause prejudice to anyone; or where the procedure adopted is arbitrary and capricious.”

20. There is no allegation of malafide or malpractice either against the official of the PPSC or against the members of the Expert Committee regarding the selection of answer key in

question. The jurisdiction of this Court while exercising the powers of judicial review under Articles 226/227 of the Constitution is very limited and the same cannot be converted into a roving inquiry to either quash the selection result or ask for re-evaluation, especially when the correction of all the questions have been re-examined by the Expert Committee.

Apart from above, it is conceded that the private respondents/candidates have been appointed, pursuant to their selections based on the revised answer keys, and now to undertake a fresh examinations of the alleged wrong answer keys might result into their ouster, without any fault on their part. This view finds support by the judgment of Hon'ble Supreme Court in **Vikas Partap Singh and Ors Vs. State Of Chhatisgarh & Ors, 2013 (14) SCC 494**. Still further a Division Bench of this Court in para 7 of its judgment reported as **Sukhdeep Singh Vs. Punjab State Transmission Corporation Limited and Others 2015 (4) SCT Page 748** has held that once the answer keys have been looked into by the Experts consequent upon the directions of the Court, the issue of wrong answer keys need to set at rest. The facts of the present case are squarely covered by the settled principles of law.

The writ petition is accordingly dismissed.

May 1st, 2017
manoj

(JASWANT SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>

