

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.5603 of 2017.

Date of Decision:-18.05.2017.

Virender Singh

.....Petitioner

Versus

The State of Haryana and others

.....Respondents

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

Present: Mr. Vijay Pal, Advocate for the petitioner.

Mr. Karan Sharma, AAG, Haryana.

P.B. BAJANTHRI, J. (Oral)

1.) Petitioner has questioned the result for the post of PGT Hindi dated 25.01.2017 vide Annexure P-3 as well as condition No.8 imposed in Annexure P-4 (instructions to the candidates who appeared for the competitive examination). Selecting authority advertised PGT Hindi amongst other subjects on 28.6.2015 vide Advertisement (Annexure P-1). Petitioner is a candidate for the post of PGT Hindi. Accordingly, he was permitted to participate in the process of selection and issued admit card for the competitive examination which was held on 27.3.2016. Results were notified on 25.01.2017 vide Annexure P-3 in which petitioner's roll number was included for the purpose of selection. Thereafter, petitioner came to know that his OMR answer sheet has not been evaluated on the ground that there is some error committed in answering question No.53. Thus, the present petition.

2.) At the very outset, learned counsel for the petitioner submitted that he has already withdrawn his first prayer with regard to challenge of result dated 25.1.2017 (Annexure P/3) vide order dated 29.3.2017. He further submitted that petitioner would secure 120 out of 160 marks in the competitive examination, if the OMR answer sheet is evaluated. Learned counsel further submitted that condition No.8 in Annexure P-4 is arbitrary and illegal and it is not mandatory. It should be treated as directory. Therefore, petitioner's OMR answer sheet is required to be considered for the purpose of evaluation as well as selection and appointment to the post of PGT Hindi. In support of his contention to the extent of challenging condition No.8, learned counsel for the petitioner relied on two decisions:-

(i) reported in **2014(6) S.C.T. 1 Priyanka @ Priyanka Kumari Vs. Jharkhand Academic Council through its Secretary and another.** In the said decision, petitioner therein was required to sign the OMR sheet. Failure to sign the OMR sheet, was not evaluated. Jharkhand High Court has held that it is a trivial issue rest of the instructions given to the candidates are in accordance with the condition. Therefore, it was allowed.

(ii) The other decision was reported in **2013 (23) S.C.T. 139 Surender Vs. State of Rajasthan and others** wherein OMR sheet of the petitioner therein was evaluated on the score that instructions issued to the candidates in particularly condition No.9 (11) has not been complied. Hon'ble Rajasthan High Court has held that imposition of such condition is contrary to rules, it is not in consonance with rules. Hence, impugned condition is to be set aside and petitioner's OMR sheet is to be evaluated.

3.) Per contra learned counsel for the respondents-selecting authority submitted that candidates are required to follow the instructions

given to them which are mandatory. Such imposition of conditions for the candidates was the subject matter of this Court in LPA No.92 of 2017 **(Anshu and others Vs. State of Haryana and others)** decided on 20.1.2017.

Identical conditions were examined by Division Bench of this Court and rejected the claim of the appellant stating that non-compliance of instructions is in violation of the guidelines issued along with OMR sheet and it was found that in the answer books against answers there was smudging with double marking and even erasing fluid was used as also tampering with the nail/blade. Thus, in not evaluating the OMR answer sheet by the selecting authority has been upheld by the Division Bench.

- 4.) Heard learned counsel for the parties.
- 5.) Insofar as challenge to condition No.8 in Annexure P-4 is concerned which reads as under:-

“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., 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.”

Learned counsel for petitioner's contention that it is arbitrary, merely smudging one answer entire OMR answer sheet cannot be rejected with reference to condition No.8. Therefore, it should have been evaluated. It was also contended that with reference to Surinder Kumar's decision cited supra that such a condition is not forthcoming in the rules, therefore,

required to be considered and his OMR answer sheet to be evaluated for the purpose of selection and appointment to the post of PGT Hindi. It is to be noted that condition No.8 is part of the instructions to the candidates. Insofar as conducting of competitive examination rules are silent. Therefore, selecting authority can choose its own method by imposing conditions. In other words, for the purpose of holding competitive examination, rules need not specify. If rules are specific and even if the selecting authority imposes any condition or instructions contrary to rules in that event, it would be violation of rules. Therefore, the cited decision in the case of Surinder is not applicable to the present case. Hence, it is distinguished.

6.) Insofar as decision in the case of Priyanka @ Priyanka Kumari is concerned, it is not relating to any smudging of answers. It is only relating to not signing OMR sheet. Whereas, in the present case there are specific and crystal clear instruction/direction to the candidates how OMR answer sheet is required to be handled by each of the candidate. It was specifically given directions to the candidate that OMR sheet of a candidate shall be cancelled if any using eraser, nail, white fluid, whitener to smudge, scratch or damage in any manner in the answer sheet shall be cancelled.

7.) Learned counsel for the State has produced the original OMR answer sheet in a sealed cover. The same has been de-sealed and opened. Perusal of the OMR answer sheet, it is evident that the petitioner has smudged one of the answer against question No.53. Therefore, the petitioner has violated condition No.8. The original OMR answer sheet was also perused by learned counsel for the petitioner for his satisfaction. After that

the original OMR answer sheet was re-sealed and returned to the counsel

for the selecting authority. Imposing condition No.8 for the purpose of handling OMR answer sheet to the candidate, is not violative of Article 14 of Constitution so as to evaluate the petitioner's OMR answer sheet. That apart, this Court in LPA No.92 of 2017 identical conditions were taken note of and rejected the appellant's contention relating to imposition of conditions is not fair when the more merited candidate commits such a mistake in that event their OMR answer sheets are required to be evaluated. Thus, in the present case, petitioner has not made out a case so as to interfere with condition No.8 (Important instructions for the candidates) vide Annexure P-4.

8.) Hence, petition stands dismissed.

(P.B. BAJANTHRI)
JUDGE

May 18, 2017.
sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.