

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

CWP No.10742 of 2018
DATE OF DECISION : 2ND MAY, 2018

Rupinder Singh

.... Petitioner

Versus

State of Punjab & others

.... Respondents

**CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI
HON'BLE MR. JUSTICE INDERJIT SINGH**

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Present : Mr. Arjun Sheoran, Advocate for the petitioner.

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A. B. CHAUDHARI, J. (ORAL)

1. This is petition under Article 226/227 of the Constitution of India by which the petitioner has sought writ of mandamus for directing the respondents to consider the petitioner eligible for the PCS (Judicial) examination held for the year 2014-15, on the ground that there was improper/wrong marking in the written test in the subjects of Civil Law-II and English (language paper). There is further prayer to order his interview and selection for the post of Civil Judge-cum-Judicial Magistrate.

Facts:

2. The petitioner had applied for PCS (Judicial) examination 2014-15 conducted by the Punjab and Haryana High Court and Punjab Public Service Commission for recruitment for 118 posts of Civil Judge (Junior Division)-cum-Judicial Magistrate. An Advertisement dated 19.01.2015 was issued for the purpose. The petitioner cleared the preliminary examination for the mains examination and received total

419 marks in the mains examination cumulatively as per the result that was declared in January, 2016. The petitioner came to know that one candidate by name Davinder Singh had questioned the allotment of marks to the answers on the ground that they were wrongly decided by the examiner and he had filed a Civil Writ Petition in this Court i.e. CWP No.7910 of 2016. That Civil Writ Petition was allowed by this Court vide order dated 17.07.2017 and this Court was pleased to order his appointment. The petitioner submits that in his case also in Civil Law-II paper question No.3(b) had been wrongly marked for 1 out of 10 marks and question 3(c) had been wrongly marked 0 out of 20 marks even though the questions were answered correctly. Similarly in English (language paper) the petitioner had been allotted 0 marks out of 2 marks in question No.2(A)(v) even though the said question was also answered correctly. The petitioner then submits that out of total questions worth 32 marks, the allotment of marks was wrongly made and the petitioner was given only 1 mark. There are 7 posts still vacant qua the said advertisement. Cut-off marks for interview were 427.5 as per the advertisement and the last person who was called for interview had scored 429 marks, while the petitioner was allotted 419 marks. In the light of the fact that he was given one mark out of 32, the petitioner would also be entitled to the same relief as was granted to the said Davinder Singh. Hence this petition.

Submissions:

3. Learned counsel for the petitioner vehemently argued that the petitioner is entitled to the same relief as granted to Davinder Singh vide order dated 17.07.2017 passed in CWP No.7910 of 2016 by this

Court. Therefore, the petitioner should also be appointed to the post. He then contended that even otherwise the allotment of marks to the petitioner namely 1 mark out of 32 marks and wrong marking of marks to the petitioner has resulted into miscarriage of justice. Learned counsel for the petitioner then submitted that the petitioner could not approach this Court earlier as the petitioner did not know about the filing of petition by Davinder Singh and ultimate result of that petition. The petitioner would be entitled to the relief on the same footing and therefore, the same relief should be granted to the petitioner also. Learned counsel for the petitioner further submitted that at any rate there are 7 posts still vacant in respect of the aforesaid advertisement and none would be affected if the petitioner is granted the relief.

Consideration:

4. We have heard learned counsel for the petitioner and noted his submissions carefully.

5. At the outset, we have confronted counsel for the petitioner with the following term in the advertisement dated 19.01.2015 namely 11.0. In fact, the said term was pointed out in fairness by the counsel for the petitioner. We quote 11.0 as under:

“11.0 FOR MAIN EXAMINATION

Re-evaluation of answer sheets is not allowed.

Only rechecking of answer sheets on a written request from a candidate, can be allowed on payment of fee of Rs.500/- (in the shape of Indian Postal Orders) per answer sheet within thirty days from the date of dispatch of marks sheet or display

of marks on the website of High Court/Commission.

Since the candidates are being permitted to seek rechecking on payment of fee prescribed by Recruitment to Subordinate Judicial Service Committee, no separate request in this regard by any candidate or any other person on their behalf shall be entertained under the RTI Act for rechecking.”

6. In our opinion, the petitioner having agreed to the said condition that re-evaluation of the answer sheet was not allowed, he is estopped in law in seeking re-evaluation now and, therefore, the petition would be hit by the law of estoppel. The counsel for the petitioner had the answer only by making reference to the judgment in the case of Davinder Singh (supra). But then the principle of estoppel was not raised or dealt with in the said judgment by the Division Bench of this Court. Therefore, we do not think that the said judgment would be of any help to the petitioner. We are of the view that the petitioner is estopped from raising a challenge by asking for re-evaluation of the answer sheets in the light of the aforesaid term which he voluntarily accepted and thereafter appeared in the examination concerned.

7. Further; we find that the petition suffers from delay and laches. The selections pertain to the year 2014-15 and the advertisement was issued in the year 2015 and the entire procedure was completed way back in the year 2016 while the present petition has been lodged in this Court on 24.04.2018. Admittedly, the said process of selection and appointment came to an end in the year 2016 itself. The

explanation that the petitioner came to know about the petition filed by Davinder Singh and the result thereof at a later point of time; in our opinion is a faint attempt and cannot cure the serious defect. Undoubtedly; certain rights have crystallized in favour of the respondents namely the High Court, State Government as well as the candidates, which cannot be lightly interfered with by the Court. We, therefore, think that the petition suffers from delay and latches.

8. The submission that 7 posts are still vacant does not impress us. Large number of candidates have become eligible after the said selection process. Merely, because 7 posts are still vacant, the right of the prospective candidates to compete, cannot be marred in the manner suggested by the counsel for the petitioner.

9. The upshot of the above discussion is that there is no merit in the petition. In the result we made the following order:

ORDER

(i) CWP No.10742 of 2018 is summarily dismissed.

(A. B. CHAUDHARI)
JUDGE

2ND MAY, 2018
'raj'

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned: **Yes**

Whether Reportable: **Yes**