

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Date of Decision:-August 23rd, 2018

CWP No.28943 of 2017(O&M)

Lovely & Ors.

.....Petitioners.

Versus

The State of Punjab & Ors.

.....Respondents.

2

CWP No.226 of 2018

Rajni Garg.

.....Petitioner.

Versus

State of Punjab & Ors.

.....Respondents.

3

CWP No.1892 of 2018

Neetu Bala.

.....Petitioner.

Versus

State of Punjab & Ors.

.....Respondents.

4

CWP No.28521 of 2017(O&M)

Chander Kanta & Ors.

.....Petitioners.

Versus

State of Punjab & Ors.

.....Respondents.

5

CWP No.1923 of 2018

Baljinder Kaur.

.....Petitioner.

Versus

State of Punjab & Ors.

.....Respondents.

AND

CWP No.28883 of 2017(O&M)

Gurpreet Singh & Ors.

.....Petitioners.

Versus

State of Punjab & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH.

Present:- Mr. Baltej Singh Sidhu, Advocate for the Petitioners
(in **CWP No.28943 of 2017**).

Mr. Karan Garg, Advocate for the petitioner
(in **CWP No.226 of 2018**).

Mr. K.P.S. Virk, Advocate for the Petitioner(s)
(in **CWP No.28521 of 2017, CWP Nos.1892 & 1923 of 2018**).

Mr. Buta Singh Bairagi, Advocate for the Petitioners
(in **CWP No.28883 of 2017**).

Mr. Harsimran Singh Sethi, Additional Advocate General,
Punjab.

Mr. B.S. Khehar, Advocate for respondent no.3
(in **CWP No.28943 of 2017**).

Mr. S.S. Swaich, Advocate for the applicants/proposed
respondent nos.4 & 5 in CM No.653 of 2018 in
(**CWP No.28943 of 2017**).

Mr. Parvesh Saini, Advocate for the applicants/proposed
respondent nos.4 to 28 in CM No.789 of 2018 &
for applicants in CM No.788 of 2018 in
(**CWP No.28943 of 2017**) and
for the applicants/proposed respondent nos.6 to 30
in CM No.725 of 2018 in (**CWP No.28521 of 2017**).

Ms. Nupur Chaudhary, Advocate for the applicants/proposed
respondents in CM No.1096 of 2018 in
(**CWP No.28943 of 2017**)

JASWANT SINGH, J.

1. Vide this common order, I shall dispose of the aforementioned six writ petitions, which involve common questions of facts and law. In all the petitions, 18 petitioners in total could not undertake the written test-language paper for Hindi Subject held on 08.12.2017 at 2.00 PM to 4.30 PM at Amritsar for appointment as Masters/Mistress (Hindi), allegedly due to a Bandh call/Blockage of National Highway no.54 (connecting Amritsar with the Malwa region) by the Akali Dal party. All the petitioners are eligible as they possess the essential statutory qualifications as also have cleared the mandatory qualifying Punjab State Teacher Eligibility Test-2 (PSTET-2).

For the sake of convenience, facts have been taken from CWP No. 28943 of 2017.

2. The Department of Secondary Education, State of Punjab, had issued an advertisement dated 10/09/2017, inviting applications for filling up of 3582 posts in different subjects in the Master Cadre. 521 posts relate to Hindi subject. As per scheme of selection disclosed in the advertisement, eligible candidates were to participate in a written examination and the final merit was to be prepared as per the marks secured by them in the said examination.

The petitioners (who are total 18 in number) belong to different Districts of Punjab and had applied for the post of Hindi teacher in the Master Cadre, in pursuance to the advertisement dated 10/09/2017. Their applications were processed and petitioners were found to be eligible and consequently, roll numbers were issued to them, to appear in a written examination, which was slated for 08/12/2017 at Amritsar and to commence

3. Through the instant writ petition(s), the petitioners have sought issuance of appropriate directions to the respondent-State and respondent No.3-Guru Nanak Dev University, Amritsar to either cancel the examination held for Hindi Subject on 08.12.2017 or afford them a chance to appear afresh in the examination that was conducted on 08/12/2017, on the ground that for reasons beyond their control, they could not appear in such examination, as municipal elections were scheduled in the State of Punjab for 17/12/2017 and thousands of people belonging to different political parties had blocked the national highways/internal roads across different Districts in the State of Punjab on 08/12/2017, which resulted in a situation of Mass road blockage and consequently, the petitioners could not appear for the examination as they were prevented from reaching the centres situated in Amritsar due to the said blockages.

4. On the strength of the aforesaid facts, learned counsel for the petitioners has/have argued that the State of Punjab had never disputed the fact of blockage in various districts of Punjab due to the ensuing municipal elections due to which, the political parties had blocked the national highways/internal roads passing throughout the State of Punjab, which caused hindrance or resulted in stoppage of supplies of essential commodities, taking of the patients in distress to the hospitals and such other eventualities. He has relied upon a statement made by the learned Advocate General, Punjab in this regard in a public interest litigation titled as Varinderpal Singh and others versus State of Punjab and others CWP-28061-2017 (Annexure P-4). He has further argued that the petitioners have a vested right to participate in the selection process, being eligible, but were prevented due to the circumstances beyond their control. It is also argued

that it was the duty of the State to provide safe and unhampered access to the venue of examination which, they have failed to perform. It is further the argument of learned Counsel for the petitioners that in case they are allowed to take examination, it would be in the interest of the State because the best talent would be available, if more and more candidates are allowed to compete. In any case, no prejudice would be caused to the State or other candidates, if the petitioners and other candidates who are around 416 (2000 candidates applied and 1584 candidates appeared) in number are allowed to appear in a fresh examination.

5. On the other hand, counsel for the State has argued that the arguments raised by learned counsel for the petitioners are a complete after-thought and just a method to get the written examination re-conducted without any basis. While relying upon para No. 5 and 6 of its reply dated 15/01/2018, it is submitted that on 8th of December 2017, two papers were conducted. One was of English, which was held from 9:30 AM to 12 noon and the 2nd examination was of Hindi which started at 2 PM and continued up to 4:30 PM. It is argued that both the said tests were conducted by the Guru Nanak Dev University, Amritsar in Amritsar itself. As per the official record, out of 1786 candidates, 1407 candidates had appeared in the written test for the subject of English, which comes out to an attendance of 78.78%. Similarly, for the test of Hindi, out of 2000 candidates 1584 candidates had appeared which comes out to 79.20% of attendance. Thus, as per him, the overall attendance for the subject tests of all the 3 days of examinations that were conducted on 8th, 9th and 10th of December 2017 was excellent and thus, it cannot be stated that the petitioners were precluded from giving their

examination was given by other candidates as well. It is stated that since approximately 80% candidates were able to take examination on 08.12.2017, therefore, it is a lame excuse on behalf of the petitioners that they could not appear due to blockage. Next, it is argued that only 18 petitioners in total have approached this court raising their grievance of not being able to undertake the examination due to the alleged blockage of roads. However, the remaining absentee candidates who are approximately 400 in number have raised no such grievance and therefore, the alleged blockage was not as extensive as has been projected by the petitioners. It is further argued that as a general rule, for any academic/eligibility or competitive test, a candidate should make ample arrangements from the place of residence to the examination centre, which was made known to the candidates much prior to the examination, which was conducted on 8th of December 2017. Further, as per the State Counsel, the road blockage/agitation was limited to a few places in the State and the road and railway network traffic was normal. In fact, 21 handicapped candidates had managed to appear in the examination which shows that the agitation was limited to a few places and did not affect the examination conducted in Amritsar. In any case, relying upon its affidavit dated 5.02.2018, the State of Punjab is willing to benefit the absent candidates-petitioners by giving them an additional opportunity to appear in the test, whenever the said test is conducted in the future by the Department for the Hindi subject, even if the validity of the qualifying Punjab State Teachers Eligibility Test-1 (PSTET-2) passed by them has expired. Thus, it has been argued that the prayer made by the petitioners for the conducting the entire examination afresh or conducting a special examination for them, would be prejudicial to

those candidates who have successfully taken the examination on the due date and therefore, prayer has been made for dismissal of the writ petition.

6. This Court while issuing notice of motion on 19.12.2017 had passed the following interim directions:-

“ To ensure that no prejudice is caused to the petitioners herein as also other candidates, who may have not appeared in the examination held on 08.12.2017 for reasons beyond their control, interim directions are issued that the result of the written examination for the Master Cadre posts held on 08.12.2017 shall be held back till the next date of hearing.”

The candidates who have undertaken the examination have filed applications for their impleadment, have also made their submissions through their counsel, which is more or less similar to what has been argued by the State.

7. Having scrutinized the rival arguments and the pleadings with the able assistance of the counsel for the parties, I find no merit in the present writ petitions and the same are liable to be dismissed for more than one grounds, which are enumerated here-in-below.

8. It is not in dispute that on 17/10/2017, the Department had uploaded on its website the date as well as the timings of the test/s to be conducted by Guru Nanak Dev University, Amritsar. The said schedule reads as under:

Sr.No.	Subject	Date	Time
1.	English	08.12.2017	09.30 to 12.00
2.	Hindi	08.12.2017	02.00 to 04.30

3.	Maths	09.12.2017	09.30 to 12.00
4.	Science	09.12.2017	02.00 to 04.30
5.	Punjabi	10.12.2017	09.30 to 12.00
6.	Social Study	10.12.2017	02.00 to 04.30

Meaning thereby, the candidates were very well aware that the tests were to be conducted on 08/12/2017. Further, as per the official record produced by the respondents, it is seen that for the English examination conducted on same day i.e 08.12.2017, the attendance was 78.78% and for the Hindi examination, the attendance was 79.20%. The chart depicting the overall attendance for the subject tests for all the 3 dates of examinations i.e 8, 9 and 10/12/2017 is reproduced as under:

Sr.No.	Subject	Date	Total	Present	Absent	%
1.	English	08.12.2017	1786	1407	379	78.78
2.	Hindi	08.12.2017	2000	1584	416	79.20
3.	Maths	09.12.2017	4597	3947	650	85.86
4.	Science	09.12.2017	3833	3374	459	88.03
5.	Punjabi	10.12.2017	4103	3601	502	87.77
6.	Social Study	10.12.2017	6373	5488	885	86.11

9. Thus, it is seen that the overall attendance for all the 3 days of examination was approximately 85%. However, there was about 5% absence in the English and Hindi examinations held on 8.12.2017. Still, it cannot be held that the petitioners were prevented from taking the examination only due to the alleged blocking of roads by the political

parties. The candidates were required to make advance arrangements for themselves so as to sit in the examinations. A perusal of the addresses given by the candidates would show that barring a few, most of them are from far-away Districts of Punjab and in case they were ready to take a risk of taking the examination by starting from their place of residences on the day of examination itself, then, the court cannot have any sympathy with them. As rightly argued by the State Counsel, as a general rule, for any academic/eligibility or competitive test, a candidate should make ample prior arrangements from the place of residence to the examination centre, which was made known to the candidates as early as on 17.10.2017, i.e. much prior to the examination, which was conducted on 8th of December 2017. Thus, even if all the assertions made by the petitioners are taken to be correct, still, in the opinion of this court, the petitioners themselves are to be blamed for their absence. It is well accepted that the serious candidates visit and familiarize with the location of examination centres and make all necessary arrangements including leaving early to reach prior to the reporting times at the examination centres. The petitioners owe a living to themselves, therefore, should have been more anxious, serious and vigilant to make arrangements for reaching the examination centres well in time rather than being casual/foolhardy in attempting to proceed and reach at the last minute by ignoring the normal vagaries of daily life with examples galore of residents blocking the roads/highways at the slightest of pretext. It is not the case of the petitioners that the Bus and Railway traffic was affected on the said route. The State on affidavit has asserted that the road and railway network was normal except the road blockage/agitation in few places, and however, from the Malwa region itself 526 out of 687 registered

candidates of English subject and 708 out of 960 registered candidates appeared for the respective tests held on 08.12.2017 at Amritsar.

10. Seen from another angle, nearly 80% of the candidates who had applied for the examination had appeared and it is only 20% who did not appear. Out of those 20% candidates as well, as per list Annexure **R-5** with the additional affidavit dated 27.03.2018, 23 candidates only including six petitioners Gurmeet Kaur, Lovely, Rajni Garg, Nisha Rani, Sukhjeet Kaur and Davinder Singh had represented regarding their non appearance by making applications from 11.12.2017 till 04.01.2018. And only a fraction (18 in number out of 416 total absent candidates) are before this court, seeking a re-examination of the test for Hindi subject held on 08.12.2017. That cannot be permitted, especially when the remaining candidates who had taken the examination were not at fault. Special re-examination cannot be allowed as evaluation of merit would not be on “Even / Level playing field” because Paper/tests would be different. Further, the situation would have been same for the candidates who had taken the English examination on the same day in the morning session, however, none of them are before this court raising a grievance about the alleged blockage of roads.

11. It is settled position of law that this Court, while exercising powers Under Article 226 of the Constitution, cannot enter into a roving enquiry and dig up facts of the case. That jurisdiction is exclusively with the civil courts. Here, the overall facts of the case, do not conclusively prove that the petitioners were precluded from taking the examination on account of the alleged blockage of roads. Even if that was the case, the petitioners are to be blamed for their absence. They were well aware that they are taking a recruitment examination for employment in State of Punjab. If they

did not deem it fit to make prior arrangements for this examination, then it can be stated that they were not serious about improving their chances for employment.

12. Even otherwise, the State of Punjab has taken a very fair stand in its affidavit dated 5/2/2018, whereby they are willing to benefit the absentee candidates/petitioners by giving them an additional opportunity to appear in the test, whenever the test is conducted in the future by the Department for the Hindi subject, even if the validity of the qualifying PSTET-2 passed by them has expired.

13. Hence, keeping in view the overall facts and circumstances of the present petition, this court has no hesitation to hold that there is no cause for the petitioners to either seek a re-examination of the test conducted by Guru Nanak Dev University on 8th of December 2017, or seek a special re-examination for Hindi subject on a subsequent date. However, the State of Punjab is directed to abide by its statement made in its affidavit dated 05.02.2018, to the effect that the absentee candidates/petitioners would be given an additional opportunity to appear in the test, whenever it is conducted in the future by the Department for Hindi subject, even if the validity of the PSTET-2 test passed by them has expired.

14. Accordingly, all the writ petitions are dismissed with the aforementioned terms.

Needless to say that interim order dated 19.12.2017 whereby result of written examination for master cadre posts held on 08.12.2017 was stayed, is hereby vacated. It is further directed that the State Government would declare the result forthwith and take immediate steps to complete the recruitment process for the aforesaid posts.

Since the main petitions itself have been dismissed, no orders are required to be passed in the applications seeking impleadment.

(JASWANT SINGH)
JUDGE

August 23rd, 2018
Vinay

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