

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

CWP No. 28906 of 2018

Date of Decision: 21.11.2018

RAMANPREET KAUR AND OTHERS

...Petitioners

VS.

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: **HON'BLE MR. JUSTICE RAKESH KUMAR JAIN.**
 HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Dr. Rau P.S. Girwar, Advocate,
 for the petitioners.

RAKESH KUMAR JAIN, J. (ORAL)

This petition is filed at the instance of the nine candidates who have failed in the written examination of the Punjab Civil Service (Judicial Branch) Examination, 2016 (for short 'the examination').

In brief, vide advertisement No. 5 dated 14.09.2016, the Punjab Public Service Commission, Patiala (hereinafter referred to as 'the Commission') had offered 121 posts of Civil Judge (Junior Division)-cum-Judicial Magistrate in the State of Punjab. The said posts were to be filled up by way of a selection process, comprised of three stages i.e. preliminary examination, main written examination and viva-voce test. The preliminary test is of objective type test of 500 marks, the main written examination is of 950 marks and the Viva-Voce test is carrying 100 marks. After the Main written Examination, result was declared on 11.10.2018 by publishing the Roll Nos. of the successful candidates who are further asked to appear for the Viva Voce test which is scheduled to be held w.e.f. 21.11.2018 to 28.11.2018.

The prayer made in this writ petition is for quashing the entire process of recruitment which is allegedly in violation of Rules 4, 6 and 10 (i) of Part-C Examination of the Punjab Civil Service (Judicial Branch) Rules (hereinafter referred to as 'the Rules') notified on 26.10.1951 and updated upto 10.10.2017.

Learned counsel for the petitioners has submitted that as per Rule 4 of the Rules, the examination papers were to be set and marks were to be awarded by the examiners duly appointed by the Commission and the viva-voce test is also to be conducted by the Commission, whereas, the representative of the Punjab and Haryana High Court (for short 'the High Court') was only to be associated in the selection process.

Rule 4 of the Rules is reproduced as under: -

“4. The examination papers shall be set and marks awarded by examiners who will be appointed by the Punjab Public Service Commission. There shall also be a viva voce test which will be conducted by the Punjab Public Service Commission.

The representative of the High Court of Punjab and Haryana shall be associated in the selection process and his advice with regard to the suitability of the candidate shall prevail unless there are strong and cogent reasons for not accepting the same for which reasons shall be recorded in writing.”

In order to appreciate the arguments of the learned counsel for the petitioners, respondent No. 4-Registrar Recruitment of the High Court is asked to appear. Sh. Dilbag Singh Johal, Registrar Recruitment has put in appearance and submitted that the Government of Punjab, Department of Home Affairs and Justice (Judicial-I Branch), vide its letter dated 10.08.2016, has intimated the Registrar General of the High Court that the selection

process for the 121 posts of the Civil Judge (Junior Division)-cum-Judicial Magistrate has been handed over to the High Court by taking it out from the purview of the Commission after obtaining the approval from the Cabinet on 29.07.2016. In this regard, letter dated 10.08.2016 of the Government of Punjab, Department of Home Affairs and Justice (Judicial-I Branch) is also reproduced as under:-

*“No. 14/36/13-3.Judl (1)
Government of Punjab
Department of Home Affairs and Justice
(Judicial-I Branch)*

Dated, Chandigarh the 10/08.2016

To,

*The Registrar General,
Punjab and Haryana High Court,
Chandigarh.*

Subject: Regarding recruitment of 121 posts of Civil Judge (Junior Division)-cum-Judicial Magistrate in the State of Punjab.

Sir,

I am directed to invite your attention to your letter No. 11782/REc.Cell dated 03.06.2016 on the subject cited above and to intimate that the matter regarding entrusting the work of selection process of 121 posts of Civil Judges (Junior Division)-cum-Judicial Magistrate (which may vary) to Hon'ble Punjab and Haryana High Court by taking out of the purview of Punjab Public Service Commission was placed before the Hon'ble Cabinet on 29th July, 2016 and the Hon'ble Cabinet was pleased to approve the same. (Copy enclosed)

2. The applications for the posts of PCS (JB) officers will be invite, received and processed by the Punjab Public Service Commission and after issuing the Admit Card/Roll Numbers to the candidates, the further process of holding exams both preliminary and main will be undertaken by the Hon'ble High Court.

3. Interview of the successful candidates will be conducted by a Committee comprising three Hon'ble Judges of the Recruitment Committee of the Hon'ble Punjab and Haryana High Court, Chief Secretary, Punjab and Principal Secretary, Home Affairs and Justice, Punjab, Chairman, Punjab Public Service Commission, Advocate General, Punjab.

Yours faithfully,

Sd/-

Superintendent”

Learned counsel for the petitioners has further submitted that

there is a violation of Rule 6 of the Rules and in this regard he has submitted

that the purpose of taking the examination was to adjudge the practical ability of the candidates rather the range of their theoretical knowledge and for that purpose, the questions were to be designed in such a manner that the candidates appearing in the examination may reflect their clarity on the issues involved. Rule 6 of the Rules is also reproduced as under: -

“6. The object of the examination is to test the practical ability of the candidates rather than the range of their theoretical knowledge. For this purpose, the kind of questions that will be asked will be to give the facts of a typical case and ask the candidate to frame issues, to write a judgment, and to discuss the admissibility of evidence.”

He has also referred to the question papers of the Civil Law; Paper I and Paper II.

In this regard, respondent No. 4 has submitted that the question papers are comprising of mixed bag of the questions in which some questions were based upon theory and some are based upon problems.

Learned counsel for the petitioners further submitted that there is a violation of Rule 10 (i) of the Rules, which is reproduced as under:-

“10. (i) The result of the examination will be published in the Punjab Government Gazette.”

In this regard respondent No. 4 has submitted that, there is no violation of Rule 10 (i) because the result has to be declared after the final result is declared and at this stage, only Roll Nos. of the successful candidates in main written examination have been published so as to keep the secrecy about their marks even from the Board/Committee who are taking the Viva Voce test.

Learned counsel for the petitioners has also referred to a decision rendered in the case of **Malik Mazhar Sultan** Vs. **U.P. Public Service Commission; 2007(3) JT 352** and referred to para 9 of the said judgment.

We have heard learned counsel for the petitioners and respondent No. 4.

Insofar as the first argument is concerned, in respect of the violation of Rule 4 of the Rules, respondent No. 4 has referred to the letter dated 10.08.2016 in which it is categorically provided that the entire selection process for the posts of Civil Judge (Junior Division)-cum-Judicial Magistrate for the year 2016 in the State of Punjab has been taken out of the purview of the Commission and has been handed over to the High Court. This has not been done by the Commission but by the Government of Punjab after obtaining the approval from the Cabinet. The said letter, which we have already reproduced above, also provides that the interview would be conducted by a Committee, comprising three Hon'ble Judges of the Recruitment Committee of the High Court, Chief Secretary, Punjab, Principal Secretary, Home Affairs and Justice Punjab, Chairman, Punjab Public Service Commission and Advocate General, Punjab.

We do not agree with learned counsel for the petitioners in respect of the first contention that there is a violation of the Rule 4 of the Rules in the face of the decision of the Cabinet dated 29.07.2016, conveyed by the Department of Home Affairs, Government of Punjab vide letter dated 10.08.2018 addressed to the Registrar General of the High Court about the recruitment of 121 posts of the Civil Judge (Junior Division)-cum-Judicial Magistrate in the State of Punjab by way of selection.

It is also submitted by the learned counsel for the petitioners that the last date for the registration for applying to the posts was 26.10.2016. Be that as it may, letter of the Government of Punjab was issued on 10.08.2016 which was issued much before the last date for applying for the post.

Insofar as the second contention of the petitioners is concerned with regard to the violation of the Rule 6 of the Rules, we do not agree that there is violation of Rule 6 of the Rules in which it is provided that the object of the examination is to test the practical ability of the candidates rather than the theoretical knowledge. We have examined the question papers of the subject Civil Law; Paper I and Paper II appended with the writ petition and are of the view that question are designed in such a manner to elicit the working knowledge of the candidates who are to be appointed as Civil Judges (Junior Division)-cum-Judicial Magistrates. The paper-setter has set up composite questions to test the theoretical and practical knowledge of the candidates appearing in the examination. In view thereof, we do not agree with the second contention of the petitioners.

As regards the third contention raised by the learned counsel for the petitioners with regard to violation of Rule 10 (i) about which he has submitted that the result of the examination has not been published in the Government Gazette but it has been uploaded on the website of the High Court and that too only the Roll Nos. of the successful candidates.

The explanation given by respondent No. 4 is found to be more convincing as it is submitted that Rule 10 (i) is placed in the Rules after Rule 9 in which Rule 9 (iv) deals with the Viva Voce Test which means the ultimate result of the examination is to be published in the Punjab

Government Gazette which would be declared after both the main written examination and as well as the viva voce test are held. We are also satisfied by the statement/reply given by respondent No. 4 that the respondents have not disclosed the marks of candidates, called for the viva voce test for the purpose of maintaining secrecy which is required even at the stage of viva voce test because there are 100 marks for the same besides 950 marks of the main written test. Therefore, this contention of the petitioners is, thus, repelled.

In the end, petitioners have also referred Point No. 11.0 of the Advertisement No. 05 which reads 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 addressed to the Secretary, Punjab Public Service Commission, Patiala, 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.”*

Learned counsel for the petitioners has also submitted that the petitioner would have applied for re-checking only after the answer-sheets had been sent to the Commission by the High Court.

In this regard, learned counsel for respondent No. 4 has submitted that the petitioners could have applied for re-checking of their

answer-sheets after the selection process is over because in between answer-sheet could not have been released for re-checking in order to maintain the secrecy and confidentiality of the marks allotted to the candidates.

Thus, in view of the above, we do not find any merit in the present petition and the same is hereby dismissed, though without any order as to costs.

[RAKESH KUMAR JAIN]
JUDGE

November 21, 2018
Ess Kay

[ANUPINDER SINGH GREWAL]
JUDGE

Whether speaking / reasoned :	Yes	/	No
Whether Reportable :	Yes	/	No