

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No.2001 of 2017 (O&M) in
CWP No.12884 of 2010
Date of Decision : 01.03.2018

Shiv Parkash

.... Appellant

Versus

Rajesh Kumar and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Ajit Kumar Sharma, Advocate for
Mr. R.D. Yadav, Advocate for the appellant.

B.S.WALIA, J.

1. Intra court-appeal has been filed against order dated 23.05.2012 dismissing the Civil Writ Petition qua respondent/petitioner Nos.1 and 3 while allowing the same qua respondent/petitioner No.2. Challenge is also to order dated 24.03.2017, passed in CM Nos.14909 and 14910-CWP of 2014, whereby the application filed by the appellant for impleading him as respondent No.3 and for recall of order dated 23.05.2012 was dismissed.

2. Brief facts of the case leading to the filing of the instant appeal are that respondent Nos.1 to 3 approached the Writ Court by way of CWP No.12884 of 2010, challenging order dated 09.07.2010 (Annexure P-6), passed by Director Secondary Education Haryana, Chandigarh i.e. respondent No.5, vide which, they were reverted from the post of Senior Scale Stenographers to the post of Junior Scale

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Stenographers, on rechecking of their answer sheets of type test and finding them to have made more mistakes than permissible.

3. Respondent Nos.1 to 3 who had qualified the type test were thereupon promoted vide order dated 31.10.2005 and 14.11.2005. CWP No.4604 of 2008, titled Shiv Parkash vs. State of Haryana was filed by the appellant for quashing the promotion of respondent Nos.1 to 3 as well as one Pandeeep Singh from the post of Senior Scale Stenographers on the basis of written test conducted by the official respondent on 17.05.2005 and further for directing the official respondents to recheck the written test conducted by them on 17.05.2005 of respondent Nos.1 to 3 as well as Pandeeep Singh, by constituting an expert committee on the subject. Aforementioned writ petition was disposed of vide order dated 24.03.2008 by directing the respondents to look into the representation of the appellant and decide the same within two months by passing a speaking order. When the respondents did not decide the representation of the appellant, COCP No.921 of 2008 was filed by the appellant, in which, the official respondents filed reply along with copy of order dated 12.09.2008, as per which on rechecking of papers, respondent Nos.1 to 3 as well as Pandeeep Singh were found not eligible and liable to be reverted from the post of Senior Scale Stenographer to the post of Junior Scale Stenographer.

4. CWP No.20243 of 2009 was filed by the appellant seeking implementation of order dated 12.09.2008 placed on record by the official respondents in COCP No. 921 of 2008 whereby respondent Nos. 1 to 3 had been found ineligible on rechecking of their test sheets with the following mistakes having been committed by the candidates:-

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1.	Sh. Rajesh Kumar JSS O/o DEO Y.Nagar	20 mistakes
2.	Sh. Pandeeep Singh JSS O/o DIET Mohra	16 mistakes
3.	Sh. Tek Chand JSS O/o DIET GGN	13 mistakes
4.	Smt. Ved Bala JSS O/o DEO Fatehabad	15 mistakes
5.	Sh. Shiv Parkash JSS O/o DEO Rewari	Incomplete paper

Thereafter, by taking into account mistakes permissible in the type test as '10' and number of mistakes by respondent Nos.1 to 3 being more than '10', said respondents were held to have not qualified the test for Senior Scale Stenographer. Accordingly, after issuing show cause notices and taking into account the reply submitted by them, order reverting respondent Nos.1 to 3 from the post of Senior Scale Stenographer to the post of Junior Scale Stenographer was passed with immediate effect by respondent No.5 on 09.07.2010 (Annexure P-6). A perusal of the aforesaid order reveals that appellant also participated in the said test but his merit was not assessed on account of his having submitted incomplete paper.

5. Order of reversion dated 09.07.2010 (Annexure P-6) was challenged by respondent Nos.1 to 3, by way of CWP No.12884 of 2010. The Writ Court dismissed the writ petition qua respondent Nos.1 and 3 but allowed the writ petition qua respondent No.2, on the ground that the number of mistakes permissible in the type test as per instructions (Annexure P-7) dated 22.01.1993 was '14.4' whereas the officials respondents had wrongly taken the number of permissible mistakes as '10'. Accordingly, the Writ Court vide order dated 23.05.2012 quashed the order of reversion of respondent No.2 while dismissing the writ petition qua respondent Nos.1 and 3.

6. However, the appellant filed application No.14909 and 14910-CWP of 2014 for recall of order dated 23.05.2012 as well as for impleading

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him as respondent No.3. On consideration of reply and hearing counsel for the parties, the Writ Court vide order dated 24.03.2017 dismissed both the applications by holding that neither any ground for impleading the appellant/applicant as respondent No.3 to the writ petition was made out nor any ground was made out to recall order dated 23.05.2012, as the same was based purely on Statutory Rules, therefore, did not require any change.

7. The appellant as has been noticed above has filed appeal challenging not only order dated 23.05.2012 but also order dated 24.03.2017 along with applications seeking condonation of 1767 days' delay in filing the appeal and 65 days' delay in refiling the appeal.

8. We have considered the submissions made by learned counsel for the appellant and are of the view that no circumstance exist warranting interference with the orders dated 23.05.2012 and 24.03.2017 passed by the Writ Court.

9. Admittedly, the appellant was a candidate in the type test for the post of Senior Scale Stenographer, which was held on 17.05.2005. While respondent Nos.1 to 3 committed '20' '13' and '15' mistakes respectively, the appellant's answer sheet was not assessed on account of his having submitted incomplete paper. On the basis of directions issued by this Court dated 24.03.2008 in CWP No.4604 of 2008, the official respondents were directed to look into the representation made by the appellant and to pass speaking orders in accordance with law. Eventually, contempt petition was filed by the appellant leading to re-checking of the answer sheets of respondent Nos.1 to 3. Thereafter, on consideration of

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reply submitted by respondent Nos.1 to 3 to the show cause notice, their reversion was ordered.

10. The order of reversion dated 09.07.2010 was challenged by respondent Nos.1 to 3 by way of CWP No.12884 of 2010, in which while upholding order of reversion of respondent Nos.1 and 3, order of reversion of respondent No.2 was set aside on account of number of mistakes i.e. '13' committed by respondent No.2 being within the permissible limit of 14.4 mistakes as allowed in terms of instructions dated 22.01.1993 (Annexure P-7) as against the permissible mistakes taken by the official respondents at '10'. The impugned order was passed by the Writ Court after having considered the matter in detail and after going through the original record. Since, the number of mistakes committed by respondent No.2 was '13' and the official respondents had ordered his reversion by taking into account the permissible mistakes at '10' in derogation of government instructions dated 22.01.1993 (Annexure P-7), as per which, total mistakes permissible worked out at 14.4, the number of mistakes committed by respondent No.2 being within the mistakes permissible, the order of reversion of respondent petitioner No. 2 was rightly set aside by the Writ Court.

11. Besides, CWP No.4604 of 2008, filed by the appellant was disposed of vide order dated 24.03.2008 by directing the official respondents to look into the representation made by the appellant by passing speaking order and the same lead to re-checking of the answer sheets of all the candidates including the appellant. The answer sheet of the appellant was not evaluated on account of his having submitted an

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incomplete paper. Once, the authorities have got the answer sheets of all the candidates re-checked and it was found that the number of mistakes committed by respondent Nos.1 and 3 were more than the permissible mistakes while the number of mistakes committed by respondent No.2 were less than what was allowed in terms of instructions dated 22.01.1993 (Annexure P-7), no case is made out entitling the appellant to challenge the orders of the Writ Court. Moreover, the reasoning given in the application for condonation of 1767 days' delay in filing the appeal also does not constitute sufficient case as the only ground mentioned therein is that application was filed for recall of order dated 23.05.2012 in CWP No.12884 of 2010 and the same was dismissed on 24.03.2017 and that time for working out limitation would start from 23.05.2017. No reason has been mentioned in the application under Order 1 Rule 10 of the CPC filed before the Writ Court as to why said application had been moved after inordinate delay. Accordingly, we are of the considered view that neither there is any merit in the claim of the appellant in the appeal nor sufficient cause has been established so as to seek condonation of 1767 days' delay in filing of the appeal. Accordingly, the appeal as well as the applications are dismissed with no order as to costs.

(RAJESH BINDAL)
JUDGE

(B.S.WALIA)
JUDGE

March 1, 2018
rajesh.k.khurana

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No