

**CM-3386-CWP-2018 in/and
RA-CW-462-2017 (O&M) in
CWP-14519-2017**

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

**CM-3386-CWP-2018 in/and
RA-CW-462-2017 (O&M) in
CWP-14519-2017**

Date of Decision:30.07.2018

Rajesh Kumar

.....Non-applicant-Petitioner

Vs.

The State of Haryana and others

....Applicants-Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr.R.K.Doon, A.A.G., Haryana,
for the applicants.
(RA-CW-462-2017).

Ms.Nupur Choudhary, Advocate
for the applicants.
(in CM-3386-CWP-2016)

Mr.Jasbir Mor, Advocate,
for the non-applicant-petitioner.

AMOL RATTAN SINGH, J. (Oral)

RA-CW-462-2017

By this application the respondent Staff Selection Commission seeks a review of the order of this Court dated 04.08.2017, by which the accompanying petition was disposed of with the following directions:

“The contention of the learned counsel for the petitioner is found to be rational by this Court and it is consequently directed that as regards the ongoing process for selection to the posts in

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question and for all such process in which interviews have still not been held by the Commission, the process of comparison of finger prints/thumb impressions shall be done with the data base of all those who have cleared the HTET/STET, such data base to be supplied by the Board of School Education, Haryana, to the Commission, within a period of two weeks.

Obviously, only the data base as regards the candidates who had appeared in such HTET/STET, the results of which are still valid, would be sent to the Commission by the Board.

Thereafter, the Commission, upon receiving the finger prints data base/thumb impressions data from the Board, would compare the thumb impressions available on its own data base, uploaded from the applications submitted by the candidates who had applied for the posts in question.

Consequently, if there is any impersonation found, obviously at the first stage notice would have to be issued to the candidates, who, as per the Commission, are found to have been impersonators, and in the meanwhile, if the Commission wishes to proceed with the process of selection, it would call for interviews those candidates, as are not found to “have been impersonated”, the numbers of candidates called being to the extent as is the norm which is adopted by the Commission.

The directions be carried out within two weeks, as aforesaid.

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The directions issued in the present case, to repeat, shall be adopted by the Commission in all future examinations/selection processes also. If the Commission faces any difficulty in implementing the directions for any valid reason, it would obviously be at liberty to file an appropriate application giving such reasons.

The respondent-Board of School Education, Haryana, is also directed to ensure that comparison of thumb prints/finger prints is duly carried out before declaring any result in the future of the Haryana Teachers Eligibility Test or any other exam conducted in respect of which such finger printing is undertaken/done by the Board.”

2. As already noticed in the order dated 09.11.2017, the contention of learned counsel appearing at that time for the respondent Commission as also the State of Haryana was noticed as follows:

“Mr. Sinhal, learned Addl.A.G. Haryana and Ms.Shruti Goyal, learned AAG, Haryana, submit that the direction given by this Court is practically difficult to carry out, first essentially for the reason that the respondent-Commission does not have the necessary technical expertise to match finger prints on a common data base also containing the finger prints taken at the time of the HTET (and the finger prints taken by the Commission at the time of written examination).

Further, the HTET having been conducted by a different organization altogether, i.e. the Board of School

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Education, Haryana, the Commission cannot in any case be expected to have a common data base with the said Board so as to compare fingerprints/thumb impressions/ any other form of biometrics record, with the data base of a different organization.

Mr. Sinhal further submits that the HTET having been conducted in different years starting from year 2008, it would not be possible in any case to obtain old data.

As regards the last contention, it is to be observed that the validity of the HTET is for a period of 5 years, and the selection process having started in the year 2015, the earliest valid HTET score would be of year 2010 (of course relevant to the cut off date prescribed in the advertisement).

However, Ms. Shruti Goyal, learned AAG submits that whereas it is a fact that as regards the HTET from the year 2011 onwards, the validity period is 5 years, an undertaking was given in a different writ petition, that as regards examinations conducted prior to 2011, their validity would not be counted for just 5 years but upto a particular date in the year 2016, because as regards the 2011 examination, the validity of that score (of HTET) would be valid till 2016.

Be that as it may, the issue is as to whether the State, including the Commission, can be allowed to continue with examinations where allegations are coming that the candidate actually is not the person who cleared the HTET examination and is a wholly different person using somebody else's score to

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validate his candidature, for the selection process in question.

Learned counsel for the petitioner has pointed to the fact that certain directions were given by a Division Bench of this Court in a Public Interest Litigation, in the case of Primary Teachers (PRTs), on account of the fact that in the selection for the year 2014 (initiated in 2012), out of 8000 candidates selected, 273 were found to be persons who were impersonating someone else as regards the HTET examination, and as regards 1093 candidates, their “verification” is still in doubt.

That being so, in the opinion of this Court in order to avoid continuous allegations of this kind coming at a stage when any selection process is already over, thereby vitiating at least some part of the selection, it would be more appropriate for the State to put a mechanism in place to ensure that impersonators are not getting the benefit of fraud committed by them and it is only genuine candidates who actually compete and are selected. Needless to say, once the selection process is over, with impersonators having been selected, those who were genuine candidates but were not selected on account of those impersonators, obviously lose out completely in that selection process.

Hence, the Additional Chief Secretary to the Government of Haryana, Department of School Education, is directed to go into the matter and to file his affidavit after consulting whomsoever he may wish to consult, in the

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Government and/or in the Commission, and thereafter give his response to the issue, as to why, even if it entails large expenditure, a common data base be not created by the State, to match the biometrics of a candidate in a selection process, to determine whether it is the same person as took the eligibility examinations like the HTET.

Adjourned to 02.12.2017.”

3. Thereafter, an affidavit having been filed by the Additional Chief Secretary to Government of Haryana, Department of School Education, various interim orders were passed and vide the order dated 10.05.2018, it had been observed as follows:-

“As regards the second part of the aforesaid averment of the Additional Chief Secretary, Mr. Doon today has filed in Court an affidavit of Sh. Mahavir Kaushik, Secretary, Haryana Staff Selection Commission, based on the report received from the Centre for Development of Advanced Computing (C-DAC), Calcutta, to the effect that as regards the thumb impressions contained on the OMR sheets sent to that laboratory/institution (stated to be the OMR sheets of the HTET examinations conducted in the years 2008, 2009 and 2011), the thumb impressions are not of a quality good enough to be compared with the thumb impressions subsequently obtained in the examination process, as the size of the image file of the thumb impressions should be 200/300 dpi for such comparison to be possible (other than by manual comparison).

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Though learned counsel for the petitioner submits that therefore a manual comparison of the thumb impressions be carried out, in the opinion of this court, that may not be feasible in view of the experience already existent on that, inasmuch as a similar exercise was ordered to be conducted by a Division Bench of this Court in the hope of weeding out ineligible candidates, but even upon the result of the Government Forensic Science Laboratory having been published, showing that thumb impressions of about 272 candidates did not match, and more than 1000 were stated to be doubtful, the report of the FSL itself came under challenge, with that selection process, of the year 2012, therefore still not having reached its logical conclusion.”

Having observed as above, it was further observed as follows:

“However, even if this Court were to reject the prayer of the petitioner for comparison of thumb impressions by the Government Forensic Science Laboratories established in the State of Haryana (as regards the thumb impressions / finger prints of the candidates who took the HTET examination between the years 2008 and 2011 and thereafter participated in the selection process in question), what is further seen is that even upgradation of the data base with the Haryana Staff Selection Commission has not been done so far by the State, despite the assurance of the Additional Chief Secretary, on affidavit, as noticed hereinabove.

Consequently, the Chairman of the Haryana Staff

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Selection Commission as also the Additional Chief Secretary to the Government of Haryana, Department of Education, are directed to file their personal affidavits as to why the needful has still not been done and by when, within a practical time frame, it would be done, failing which of course whatever strictures are needed to be passed, shall be passed by this Court in addition to exemplary costs to be imposed on the said officers.

Learned State counsel would also take instructions with regard to the facial recognition process directed to be undertaken by this Court in the selection of primary teacher (PRTs).

Adjourned to 21.05.2018.”

4. Thereafter, eventually, Mr.Doon, learned State counsel having filed the affidavit of Ms.Deepti Umashanker, Chairperson, Haryana Staff Selection Commission, it is again to be noticed from that affidavit, that the process for verification of the identity of the candidates appearing for the competitive examinations conducted by the Commission would be done as follows:

“The software application used to perform authentication generates authentication packet using Aadhar no. & Biometric data of the individual to be authenticated and sends the same to UIDAI server for authentication through AUA/KUA. Aadhar Authentication response (in form of Yes/No) is considered to verify/authenticate the identity of the candidate in case of a complete authentication transaction. UIDAI doesn't provide

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access to any biometric data on UIDAI server and responds in form of Yes/No or error code for a authentication request.”

5. Thus, as regards the methodology to be adopted by the Commission (for future selection processes), for comparison of finger prints/thumb impressions of the candidates appearing for the various selection processes conducted by the Commission, to establish their true identities, the bio-metric information related to their Aadhar cards would be used as a base, with an input from the Unique Identification Authority of India (UIDAI).

As recorded in the order dated 10.07.2018, this Court had expressed satisfaction with regard to the process to be carried out as above, but obviously the said only can be implemented qua future selection processes, for the reason already given by this Court in the order dated 10.05.2018, as has been reproduced hereinabove, (essentially that currently the data of the HTET from the Board of School Education being “fluid”, manual comparison is unreliable; it not having succeeded earlier also).

Hence, the previous experience with getting a manual finger print check conducted and verified from the Forensic Science Laboratory not having been a happy experience, with the selection processes at that time having put on hold for a long time, which is still subject matter of litigation, in my opinion as regards the present petition the prayer of the petitioner for physical comparison of the finger print/thumb impressions of the successful candidates with those thumb impressions as were taken at the time of the Haryana Teachers Eligibility Test is impractical, especially as the HTET has been conducted at different points of time since 2008, with 'proper' biometric

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data not available for all selections (as contended).

6. In response to a query of this Court to Mr. Doon, as to why only finger prints and thumb impressions taken in the HTET held in November/December, 2017 (and subsequent examinations) would be subjected to scrutiny by the Unique Identification Authority of India for the purpose of comparison of the said biometrics to establish the correct identity of the candidate appearing for a competitive examination in which the HTET is a base criteria, (as had been stated in the affidavit of the Chairperson of the HSSC), Mr. Doon points to the order of this Court dated May 10, 2018, in which it had already been recorded on the basis of the report submitted to the Staff Selection Commission by the Centre for Development of Advance Computing (C-DAC), Calcutta, to the effect that the size of the image file of the thumb impression should be 200/300 DPI, for a digital comparison to be made of such thumb impressions with any other thumb impressions, (except in the case of manual comparison).

He, therefore submits that digital biometrics having been made compulsory in the HTET as also by the HSSC for any examination, only since November, 2017, comparison with the data base of the Unique Identification Authority of India cannot be made prior to that.

7. (a) Consequently, this review application as regards the relief sought by the petitioner qua the ongoing selection process for the posts of PGT English has to be dismissed, with the order dated 04.08.2017, disposing of the writ petition also modified to the extent that qua all on ongoing processes of selection by the Commission, where the HTET has been taken by the candidates concerned prior to November, 2017, finger print matching

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need not be done by the Commission, unless it develops a methodology to do so on its own, but all selection processes where the HTET-2017 is the base test/criteria for selection (as regards those candidates who had taken the test from November, 2017 onwards), the finger print matching exercise shall be done as has been given in the affidavit of the Chairperson, Haryana Staff Selection Commission.

(b) As regards other selection processes where the selection is not for teachers, the comparison of finger prints would be done by the HSSC with the Aadhar cards of the candidates, to establish the true identity of each candidate.

(c) This would of course be subject to final orders to be passed by the Supreme Court as regards mandatory reference to Aadhar cards for different purposes by the Government. If the the mandatory linkage/usage of Aadhar cards is not approved by the Supreme Court in respect of selection processes, naturally this order shall be treated to have been overruled.

(d) Therefore, a report be filed by the Chairperson of the Commission, once the judgement of the Supreme Court, on the subject, is pronounced.

For that purpose this case file be listed for hearing again on September 6, 2018.

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8. Ms.Nupur Choudhary, learned counsel appearing for the applicants, submits that by this application the selected candidates in various selection processes for post-graduate teachers (in different subjects), also seek modification of the aforesaid order of this Court, as finalization of

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selection processes had been put on hold till the directions issued vide the order dated 04.08.2017 were carried out.

This Court already having modified that order as above, the application has been rendered infructuous, with the results of all selections process to be now declared, after complying with the directions contained in paragraph 7(b) hereinabove, unless there are any interim orders staying such declaration in any other petitions.

Application stands disposed of.

July 30, 2018

dharamvir/nitin

**(AMOL RATTAN SINGH)
JUDGE**

Whether speaking/reasoned	: YES/NO
Whether Reportable	: YES/NO