

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

**CWP No. 18914 of 2019**

**Date of Decision: 27.11.2019**

**JINDERPAL SINGH**

....Petitioner

**VS.**

**STATE OF PUNJAB AND OTHERS**

...Respondents

**CORAM:**    **HON'BLE MR. JUSTICE RAKESH KUMAR JAIN.**  
                   **HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present:     Mr. Puneet Jindal, Senior Advocate, with  
                   Mr. Amandeep Singh Meho, Advocate,  
                   for the petitioner.

                  Mr. Amit Mehta, Senior DAG, Punjab,  
                   for respondent No. 1

                  Mr. Ranjit Singh Kalra, Advocate,  
                   for respondent Nos. 2 and 3.

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**RAKESH KUMAR JAIN, J. (Oral)**

The petitioner has prayed for the issuance of a writ in the nature of certiorari for quashing the order dated 29.05.2019 (Annexure P-7) by which representation dated 13.05.2019 made by the petitioner has been declined.

In brief, the petitioner joined as an Additional District Attorney in the Prosecution Branch and was subsequently selected as Deputy District Attorney.

Vide notification No. 198 Gaz.I/VI.F.2 dated 16.12.2016, the respondent No. 2 invited applications to fill up 7 vacancies (six existing and one anticipated), for appointment to the Punjab Superior Judicial Service by way of direct recruitment from amongst the eligible Advocates through competitive examination under Section 7 (3) (c) of the Punjab Superior

Judicial Service Rules, 2007 (for short "the Rules"). The last date for submission of the application and eligibility was fixed as 16.01.2017 and the seven vacancies were distributed as under: -

| <b><i>Sr. No.</i></b> | <b><i>Category</i></b>                                                                                                                                                                                                                                 | <b><i>Total Vacancies</i></b> |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|
| 1                     | General<br>(Sports Person), Punjab<br><br><i>(Being advertised for the 2<sup>nd</sup> time)</i><br><br><i>Anticipated vacancy of General Category is being reverted to General (Sports Person) in lieu of taken it in previous recruitment process</i> | 1                             |
| 2                     | Scheduled Caste Others, Punjab                                                                                                                                                                                                                         | 1                             |
| 3                     | Scheduled Caste (Sports Person), Punjab<br><br><i>(Being advertised for the 2<sup>nd</sup> time)</i>                                                                                                                                                   | 1                             |
| 4                     | Scheduled Caste (Balmiki/Mazhbi Sikh), Punjab<br><br><i>(Being advertised for the 2<sup>nd</sup> time)</i>                                                                                                                                             | 1                             |
| 5                     | Backward Class, Punjab<br><i>(Out of 2 vacancies 1 vacancy is being advertised for the 2<sup>nd</sup> time)</i>                                                                                                                                        | 2                             |
| 6                     | Physically Handicapped (Persons with Disabilities), Punjab<br><br><i>(Being advertised for the 2<sup>nd</sup> time)</i>                                                                                                                                | 1                             |

The petitioner, belonging to the category of Backward Class, Punjab, had applied for the aforesaid post and appeared in the written examination held between 16.11.2018 to 18.11.2018.

As per the advertisement, the candidates were required to secure 40% or above marks in each paper to become eligible for the viva voce.

The result of the written examination was declared on 15.02.2019. The petitioner secured more than 40% marks in each subject except in Civil Law-I in which he was short of 0.5 marks i.e. 0.25% because

of which the petitioner was not called for the *viva voce* test. After obtaining his answer sheets, the petitioner made a representation on 13.05.2019 for re-checking of the paper, rounding of marks and alleged that one question was out of syllabus. The representation of the petitioner was rejected on 29.05.2019 and aggrieved against the said order of rejection, the present petition has been filed.

Counsel for the petitioner has opened his arguments in respect of the improper checking of question number 2(b) of Civil Law-I paper, contending that the said question was in two parts carrying five marks but the examiner had awarded only one mark to the petitioner though his answer to the both the parts of the question was correct. He has submitted that he is not asking for re-evaluation for awarding 0.50 marks. In this regard he has referred to a decision of the Hon'ble Supreme Court rendered in the case of **High Court of Tripura Through the Registrar General Vs. Tirtha Sarathi Mukherjee and Other; 2019(2) SCT 117**. The paragraphs which he has been referred to in support of his contention read as under: -

“18. *We have noticed the decisions of this Court. Undoubtedly, a three Judge Bench has laid down that there is no legal right to claim or ask for revaluation in the absence of any provision for revaluation. Undoubtedly, there is no provision. In fact, the High Court in the impugned judgment has also proceeded on the said basis. The first question which we would have to answer is whether despite the absence of any provision, are the courts completely denuded of power in the exercise of the jurisdiction under Article 226 of the Constitution to direct*

*reevaluation? It is true that the right to seek a writ of mandamus is based on the existence of a legal right and the corresponding duty with the answering respondent to carry out the public duty. Thus, as of right, it is clear that the first respondent could not maintain either writ petition or the review petition demanding holding of reevaluation.*

19. *The question however arises whether even if there is no legal right to demand reevaluation as of right could there arise circumstances which leaves the Court in any doubt at all. A grave injustice may be occasioned to a writ applicant in certain circumstances. The case may arise where even though there is no provision for reevaluation it turns out that despite giving the correct answer no marks are awarded. No doubt this must be confined to a case where there is no dispute about the correctness of the answer. Further, if there is any doubt, the doubt should be resolved in favour of the examining body rather than in favour of the candidate. The wide power under Article 226 may continue to be available even though there is no provision for reevaluation in a situation where a candidate despite having giving correct answer and about which there cannot be even slightest manner of doubt, he is treated as having given the wrong answer and consequently the candidate is found disentitled to any marks.*

20. *Should the second circumstance be demonstrated to be present before the writ court, can the writ court become helpless despite the vast reservoir of power which it possesses? It is one thing to say that the absence of provision for revaluation will not enable the candidate to claim the right of evaluation as a matter of right and another to say that in no circumstances whatsoever where there is no provision for revaluation will the writ court exercise its undoubted constitutional powers? We reiterate that the situation can only be rare and exceptional.”*

The second argument raised by counsel for the petitioner is that question No. 5(b) was out of syllabus and if this question is deleted and the marks of the petitioner are counted then it shall be more than 40%.

Countering this argument, counsel for respondents No. 2 and 3 has submitted that the petitioner has already attempted question No. 5(b) and has been awarded marks for the same.

Counsel for respondents No. 2 and 3 has also relied upon a decision in the case of **High Court of Tripura** (Supra). The paragraph which he has referred to in support of his contention read as under: -

*“30. It is to be noted that it is not an objective type question, the maximum marks are 3. This is not a case even if we proceed on the basis that the answer is correct, marks is to be awarded as such. We noticed that for 5 questions, the respondent No. 1 has been given 1 mark, even though,*

*the maximum is 3 marks. It would appear that awarding full marks is based, not merely, on the correctness of the answer.”*

Counsel for the respondents has further argued that in a case titled as Anuj Kumar Jain Vs. State of Haryana and Another, CWP No. 9040 of 2013 decided on 02.05.2013 by the Division Bench of this Court, pertaining to the selection to the post of Additional District and Sessions Judges in the State of Haryana, the same controversy had arisen in regard to rounding-off of marks and re-evaluation which has been declined by this Court. The observations made by this Court in the said case are reproduced as under: -

*“In the present case, the first representation of the petitioner for re-checking of Civil Law – I paper and round off of marks was considered and no discrepancy was detected. Second representation has been considered by the Committee and was rejected on 31.01.2013. The petitioner submitted another representation on 14.02.2013, which has been again declined on 03.04.2013. In view of thereof, we find that in the matter of examination more so in respect of subjective paper, this Court should refrain itself from entertaining the present writ petition, the hardship of the petitioner notwithstanding.*

*It may be noticed that a fresh advertisement inviting applications for Haryana Superior Judicial Services Examination has since been published.*

*In view of the above, we do not find any merit in the present writ petition. The same is accordingly dismissed.”*

Besides this, counsel for the respondents has also referred to a decision rendered by the Division Bench of Delhi High Court in the case of Subhash Chand Vs. High Court of Delhi; 2019 (4) SCT 255 to contend that a person who had been working as Deputy District Attorney should possess atleast the basic legal knowledge to attempt the question on the Stamp Act, 1899 also which he had actually attempted and the marks have been given to him. He has further submitted that if the petitioner was so keen to become a Judicial Officer, much less, to be appointed to the coveted post of Additional District and Sessions Judge, he could have applied for the said post in the fresh advertisement which had been issued on 30.05.2019 and its examination are around the corner, commencing w.e.f. 29.11.2019, but the petitioner kept on harping on the marks which he had obtained in the previous examination, held pursuant to the advertisement dated 16.12.2016.

We have heard counsel for the parties and after examining the overall record, are of the considered opinion that there is no merit in the present petition due to the fact that firstly, there is no dispute that the Court cannot direct re-evaluation because it is not provided in the Rules and the law in this regard is no more res-integra as it has been held by this Court in the case of Anuj Kumar Jain (Supra) and secondly, the grievance of the petitioner has already been considered by the Recruitment Committee (Superior Judicial Services Committee) of this Court and rejected the same. The judgement relied upon by the petitioner in the case of High Court of Tripura (Supra) is not going to help him in view of the ultimate observations made by the Supreme Court in para No. 30 of that very order. Besides this, judgement relied upon by the respondents in the case of Anuj Kumar Jain (Supra) applies to the present case on all fours and therefore, we hardly find

any merit in the present petition even if the petitioner has raised a hue and cry about one question pertaining to the Stamp Act, 1899 which is stated to be out of syllabus though the counsel for the respondent has submitted that the said question pertains to the Registration Act, 1908. Otherwise also it is expected from a person, having a standing of 10 years at the Bar and working as Deputy District Attorney since 13.09.2016, to atleast know the basics of law. Otherwise also, he has attempted the said question and obtained the marks and thus, he cannot raise a grievance that because it was out of syllabus, he could not attempt this question. Thus, looking from any angle there is hardly any merit in the present petition for the purpose of interference, therefore, the same is hereby dismissed as such though without any order as to costs.

**(RAKESH KUMAR JAIN)**  
**JUDGE**

**November 27, 2019**

Ess Kay

**(SUVIR SEHGAL)**  
**JUDGE**

|                                           |          |                   |                 |                  |
|-------------------------------------------|----------|-------------------|-----------------|------------------|
| <b><i>Whether speaking / reasoned</i></b> | <b>:</b> | <b><i>Yes</i></b> | <b><i>/</i></b> | <b><i>No</i></b> |
| <b><i>Whether Reportable</i></b>          | <b>:</b> | <b><i>Yes</i></b> | <b><i>/</i></b> | <b><i>No</i></b> |