

(105) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.29740 of 2017
Date of decision: 05.04.2019

Sheela Devi.

.... Petitioner

Versus

State of Haryana and another.

.... Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Surinder Pal, Advocate for the petitioner.
Ms. Shruti Jain Goyal, DAG, Haryana.

B.S. WALIA, J. (ORAL)

[1] Prayer in the writ petition is for the issuance of a writ of Certiorari for quashing of impugned result Annexure P-5 dated 09.10.2017.

[2] Brief facts of the case leading to the filing of the instant petition are that respondent No.2 issued an advertisement Annexure P-1 dated 24.11.2015 for various posts including Clerk (Category No.1). As against the total 4425 posts of Clerks advertised, 1237 posts were under the General Category. The number of posts was revised vide corrigendum Annexure P2 dated 01.01.2016 and Annexure P3 dated 03.05.2016. The petitioner claiming to be fully eligible applied for the post of Clerk. The form of the petitioner was duly accepted and she appeared in the written test which was held on 04.12.2016 for the post of Clerk (Category No.1).

[3] Learned counsel for the petitioner contends that on the basis of result of the written examination, the petitioner secured 164 marks and

in General Category had secure 152 marks, the petitioner for the reasons best known to the respondents was illegally ignored. In the circumstances, the petitioner filed application dated 10.10.2017 under the RTI Act 2005 seeking information. Thereafter the petitioner invoked the jurisdiction of this Court whereupon notice of motion was issued on 01.03.2018, petitioner was granted interim order in the same terms as in CWP No.24999 of 2017 and the petitioner was ordered to be interviewed provisionally subject to the outcome of the writ petition. Consequently, the petitioner was interviewed. On 14.03.2019, result of the petitioner was directed to be produced in Court in sealed cover. The same has been opened and on perusal of the same, it shows that the petitioner has secured 188 marks against the cut off 174 marks in the General Category.

[4] Reply filed by the State has also been perused and perusal of the same reveals that result of the written examination conducted for the post of Clerk against Advertisement No.10/2015, Category No.1 was declared on 09.10.2017 and roll number of the petitioner was not shown in the list of the shortlisted candidates as she had smudged her OMR answer sheet in response to question No.44. Copy of the OMR sheet has been placed on the record as Annexure R-2/1. It is further the stand of the respondents that in the examination hall, the candidates were given question paper with printed instructions on front side and reverse as well as instructions on OMR sheet in the transparent envelope which could be read by the candidate. The same are reproduced as under :-

**“KINDLY READ THE INSTRUCTIONS BEFORE
ATTEMPTING THIS QUESTION PAPER. IMPORTANT
INSTRUCTIONS FOR THE CANDIDATES”**

The Invigilators were also instructed to announce in the examination hall requiring candidates to read the instructions printed on the question paper. The question paper in sealed envelope was given to the candidates 10 to 15 minutes before the start of examination. Therefore, the candidate had sufficient time to go through the instructions printed on the question paper. Reliance has been placed on the instruction No.8 and 9 which read as under :-

- “8. *Candidates are warned not to fold or make any stray marks on the OMR Answer Sheet. Use of Eraser, Nail, Blade, White Fluid/Whitener etc, to smudge scratch or damage in any manner on the OMR sheet during Examination is strictly prohibited. Candidature/OMR Sheet of candidates using Eraser, Blade, Nail or White Fluids/Whitener to smudge, scratch or damage in any manner the Answer Sheet shall be cancelled.*”
9. *Candidates are warned not to carry any mobile phone, any type of watch, belt, wear ornaments like ring, chain, earring etc., electronic or communication device, Pen, Pencil, Eraser Sharpener and correcting Fluid in the examination centre. If any candidate is found possessing any such item, he/she will not be allowed to enter in the examination centre. Candidate found possessing mobile phone and any other aiding material as mentioned above in the examination room will be treated a serious violation and it will amount to cancellation of the candidature and debarring him/her from future examination. Use of Eraser, nail, blade, white*

fluid/whitener etc., smudging, scratching or damaging in any manner the OMR answer sheet shall lead to cancellation of candidature and such OMR answer sheet shall not be evaluated.”

[5] Further candidates were instructed to open the sealed envelope containing the question paper and OMR sheet approximately 5 minutes before the examination and the OMR sheet had instructions on its back and according to condition No.7, a candidate once had darkened the correct bubble on the OMR answer sheet could not change the same and that use of eraser, nail, blade, white fluid/whitener etc. to smudge, scratch, damage in any manner on the OMR sheet during examination was strictly prohibited and its use anywhere would lead to cancellation and such OMR sheet would not be evaluated. Condition No.7 on the OMR sheet is reproduced as under:-

“Candidates have to answer questions from multiple choice of answer A, B, C or D. Select the right answer of each question and darken the correct bubble on the OMR answer sheet. Once darkened, changes are not permitted. Use of Eraser, Nail, Blade, White Fluid/Whitener etc. to smudge, scratch, damage in any manner on the OMR Sheet during Examination strictly prohibited & it’s use anywhere shall lead to cancellation & such OMR Sheet shall not be evaluated.”

[6] Reply also contains the undertaking as mentioned on the OMR Sheet which the candidate was required to give under his signature. The same is reproduced as under:-

1. *“I, _____, hereby undertake that the information provided by me for my eligibility for examination is true to the best of my knowledge. In case of any information found to be incorrect/incomplete at any state, I am liable for disqualification for Examination and legal action. I have read all the instructions printed on the envelope and understood the same.*
2. *I do hereby declare that I have failed in my Name and Roll No. as it appears on the admit card, I fully understand and agree that in case I darken the wrong circles or fill incorrect Roll No. or use Whitener/Eraser/White Fluid etc. on OMR Answer Sheet my candidatures will be liable to be rejected.”*

Sd/-

“Signature of candidate within the Box.”

On the basis of the aforementioned declaration, it was contended that on all the documents i.e. admit card, question paper and OMR sheet conditions were mentioned unambiguously and a candidate like the petitioner who was appearing for selection for the post of Clerk was required to go through all the instructions and understand the same in the correct perspective and that the Commission had incorporated the condition to rule out any kind of human interference in the conduct and evaluation of the OMR sheets. The same had been done to achieve transparency and to avoid any kind of manipulation at any stage by the candidate or by the staff of the Selection Commission or any other person.

[7] Learned Deputy Advocate General contends that a perusal of the OMR sheet of the petitioner shows that she had scratched/smudged the answer sheet against question No.44, therefore, the OMR had not been evaluated by the answering-responder as per terms and conditions and undertaking as referred to above. The Commission had acted strictly as per the instructions printed on the admit card, question paper and the OMR sheet, that there were many candidates who had not followed the instructions as a result of which their OMR sheets were not evaluated as per the instructions printed on the admit card, question paper and OMR sheet, the petitioner had impliedly consented to the instructions mentioned in the aforesaid annexures by appearing in the written examination and undergone the selection process. It was further mentioned that the object of the instructions was to get evaluation done automatically through computerized mechanism without involving human factor with smudged OMR sheets being discarded and not being subjected to evaluation for if discarded OMR sheets were to be evaluated then the evaluating agency personnel/other human agency would be involved and there would be chance of manipulation and to remove human factor at the instance of agency aforementioned clauses had been inserted in the interest of candidates for holding the examination and evaluating the OMR sheets in fully transparent manner.

[8] A reference has also been made to the decision of a Single Bench of this Court in CWP No.18993 of 2016 in case titled as Sunita Kumari vs State of Haryana and another, decided on 15.09.2016 in which while taking note of condition No.6 printed on the admit card, the specific note on the question paper to read the instructions before attempting the question paper, condition Nos.8, 9 and 14 of the instructions printed on the

question paper/OMR sheet, the learned Single Bench held that a conjoint reading of the relevant conditions contained in the admit card as also the question paper made it amply clear that candidates had been warned not to make use of a eraser, nail, blade, white fluid, whitener etc. so as to smudge, scratch or damage in any manner the OMR sheet during examination and that instruction No.9 printed on the question paper stipulated a clear caution to the candidates against the use of eraser, nail, blade etc., resulting in smudging, scratching or damaging in any manner of the OMR answer sheet under pain of cancellation of the candidature and such OMR answer sheet not being subjected to evaluation.

[9] A perusal of the OMR sheet attached as Annexure R-2/1 as well as the original shows smudging in response to question No.44 on account of erasing the bubble/scratching of one of the responses in the bubble either by use of nail or blade.

[10] Learned counsel for the petitioner reiterated the arguments noticed in Sunita Kumari's case (Supra) that at best it was a case of mistake having been committed by the petitioner and that candidature of the petitioner could not be rejected on such hyper-technical ground as the object of the selection process was to select the most meritorious candidate and that at best the response to question No.44 could be excluded and thereafter her result considered on merit.

[11] Learned Single Bench in Sunita Kumari's case (Supra) while observing that although the submissions made by the counsel for the petitioner sounded attractive at first blush but the same could not be accepted as the instructions contained in the admit card as also on the question paper were to ensure complete transparency and fairness during the

response to the advertisement issued by the respondent-Commission was obligated to follow the instructions in letter and spirit and that the condition would not only bind the candidate but would also bind the Recruiting Agency as well. It was observed that strict adherence to the terms and conditions for conduct of an examination were absolutely necessary and said instructions were sacrosanct for ensuring the purity of the examination process as also for ensuring that there was no discretion even with the Recruiting Agency in the conduct of examination and evaluation of the OMR sheet. It was further observed that acceptance of the submission and prayer made on behalf of the petitioner would result in a situation where many other candidates would also come forth staking a claim as regards a mistake having been committed and praying for their candidature to be accepted even though the instructions had not been followed. The learned Single Bench held that the aforementioned course of action was clearly not permissible.

[12] Reference was also made by the learned counsel for the petitioner to a decision of a Single Bench judgment of the Hon'ble Rajasthan High Court in *Surinder Versus State of Rajasthan and others (2013) 3 WLN 510*. In the said case, the petitioner therein had applied for the post of Constable in the General Category and had been allowed to appear in the written examination but his attempt was not evaluated and his candidature was rejected in the light of a condition contained in para 9 (11) of the advertisement as regards incorrect information being furnished by the candidate. The learned Single Judge of the Hon'ble Rajasthan High Court took a view in favour of the candidate therein on the basis that such stipulation contained in the advertisement was not on the strength of any statutory rule, besides, said condition was hyper-technical. However,

the decision of the learned Single Judge of the Hon'ble Rajasthan High Court was not followed on the ground that in the judgment, it had not even been noticed as to what information had been withheld or wrongly furnished by the candidate in question and in spite thereof relief had been granted. Accordingly, the writ petition filed by Sunita Kumari was dismissed. The matter was carried in appeal by way of LPA No.1843 of 2016 which was dismissed on 21.09.2016 as was RA-CW No.368 of 2016 on 27.01.2017.

[13] Learned Deputy Advocate General has referred to a decision of a Co-ordinate Bench of this Court in CWP No.26745 of 2017 decided on 18.12.2017 in case titled as Ravinder vs State of Haryana and others, besides other connected writ petitions decided on 18.12.2017 wherein reference has been made to the upholding of the instructions as referred to above in the instant case on account of the same having been upheld by a Division Bench of this Court. Likewise, reference has been made to a decision of another Single Bench in Sunita and another vs State of Haryana and others in CWP No.2365 of 2017 decided on 15.12.2018 wherein while placing reliance on a decision of the Single Bench dated 21.12.2016 (Annexure R-2/4) in case titled as Anshu and others vs State of Haryana and another, the writ petition filed by the petitioner therein challenging the cancellation of the OMR sheet on account of the same being smudged was dismissed. The decision in Anshu's case (Supra) was upheld by a Division Bench of this Court in LPA No.92 of 2017 vide order dated 20.01.2017 and SLP (i.e. SLP No.12169 of 2017 decided on 27.03.2017) against the same was also dismissed.

Likewise, in Ravinder's case (Supra) LPA No.353 of 2018 titled as Jony and others vs State of Haryana and others was dismissed on

this Court in the case of Jony and others vs State of Haryana and others as referred to in Ravinder case (Supra) wherein it was held that if re-consideration of the answer-sheets with reference to the alteration/cutting in the answer keys was permitted, the same may result in tampering of record and consequently the result, which was not the case where only error or cutting in roll number, was there. Hence, there was no error in the order passed by the learned Single Judge dismissing the writ petition. SLP against the said decision was also dismissed vide order dated 25.10.2018.

[14] Since the petitioner scratched out the response in the OMR sheet, consequences as per condition Nos.8 and 9 printed on the question paper had necessarily to follow i.e. cancellation of the candidature of the petitioner and non-evaluation of the answer script. In the light of the position as noted above, the writ petition is bereft of merit and is, accordingly, dismissed. Original OMR Sheet as was produced in sealed cover has been re-sealed and handed back to the learned Deputy Advocate General.

05.04.2019
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(B.S. Walia)
Judge

1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No.