

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

LPA-2044-2019

Date of decision : 19.12.2019

Haryana Public Service Commission

... Appellant

Versus

Vivek Sehrawat and others

... Respondents

***CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU***

Present: Mr.Rajiv Atma Ram, Senior Advocate with
Mr.Kanwal Goel, Advocate &
Mr.Ajay Pal Singh, Advocate
for the appellant.

Mr.Sarthak Gupta, Advocate
for the caveator-respondent.

RAJIV SHARMA, J.(ORAL)

The present appeal is instituted against the order dated
12.12.2019 passed by the learned Single Judge in CWP-31963-2019.

Brief facts necessary for adjudication of the appeal are that an
advertisement for conducting HCS (Executive Branch) was issued on
02.08.2018. The preliminary examination was held on 31.03.2019. The
result whereof was declared on 21.05.2019. Thereafter, the main
examination was held on 16.08.2019 onwards. The result was declared on
29.10.2019. 544 candidates qualified the written examination against 166
posts. The viva-voce was held on 11.11.2019 onwards. It is in this backdrop
that respondents no.1 & 2 filed writ petition before this Court seeking

following reliefs:-

- (i) *issue a writ in the nature of certiorari quashing the marks awarded to the petitioners in mathematics optional vide detailed marks sheets dated 30.10.2019 (Annexure P-10) (Colly.) for the HCS (Executive Branch) & other Allied Service main Exam-2017 as the same did not include grace marks for patently wrong questions in the said mathematics optional attempted by them.*
- (ii) *Issue a writ in the nature of mandamus directing respondent no.2-HPSC to recalculate the marks of the petitioners herein in mathematics optional by adding grace marks for the patently wrong questions.*
- (iii) *Issue a writ in the nature of mandamus directing respondent no.2-HPSC to consequentially permit the petitioners herein to sit for the viva voce/personality Test scheduled to be held from 11.11.2019 to 15.11.2019 in case after recalculation of marks, the petitioners herein are found eligible for the same.”*

According to the written statement filed by the appellant-Haryana Public Service Commission, the representations of respondents no.1 & 2 were sent to the paper-setter/examiner for consideration and checking. The answer sheets of respondents no.1 & 2 were duly reassessed. The marks obtained by respondents no.1 & 2 were sent to the Haryana Public Service Commission who had compiled the main written examination result accordingly.

Thereafter, the matter was also referred to the Expert Committee. The Haryana Public Service Commission had decided to give full marks for question 1(e) to all the candidates. Now as far as question no.3(a) is concerned, the marks had already been awarded to the candidates who had attempted the question as printed in the question paper or as per report of the Expert Committee. Accordingly, in the case of question no.3(c)

marks had been awarded to all the candidates, who had attempted the answer as printed in the question paper.

The matter was heard at length. The judgment was reserved on 22.11.2019. The matter was listed on 12.12.2019 for pronouncement of judgment. However, instead of pronouncing the judgment, the interim order dated 12.12.2019 was pronounced. The learned Single Judge discussed this issue in paras 3 to 6 of the order dated 12.12.2019 which reads as under:-

“[3] Per contra, stand of the Commission on the other hand based on the report of the paper-setter/examiner of Mathematics paper as accepted by the three Member Expert Committee appointed by the Commission is that qua question No.1(e), there was indeed a printing mistake and three solutions were possible for the said question. In other words, question No.1 (e) could have been visualized in three different ways and could have been attempted accordingly and any candidate attempting the question for either of the three ways in which the question could be visualized would be evaluated and if the answer was correct, marks would be awarded to the candidate. Question number 1(e) is reproduced as under:

“(e) The overall percentage of failures in a certain examination is 20% if six candidates appear in examination, what is the probability that at five pass the examination.”

The report of the paper setter as ratified by the three member expert committee qua question no. 1(e) is reproduced as under:

“1. Q. 1(e): Question INDEED had a printing mistake. Hence all possible solutions i.e.

I. “five students passing the exam”

II. “At least five students passing the exam”

III. “At most five students passing the exam” be considered for the evaluation process.

have been considered for evaluation and if any of the above is correct, marks have been given to the candidate.”

Thus as per the stand of the commission based on the report of the paper setter/ examiner as ratified by the three member expert committee question no. 1 (e) could be visualized in the following three manners

I. The overall percentage of failures in a certain examination is 20% if six candidates appear in examination, what is the probability that five pass the examination.

II. The overall percentage of failures in a certain examination is 20% if six candidates appear in examination, what is the probability that at least five pass the examination.

III. The overall percentage of failures in a certain examination is 20% if six candidates appear in examination, what is the probability that at most five pass the examination.

[4] In response to question No.3(a) the report of the paper-setter/examiner mentions that marks had been awarded to all candidates who had attempted the question as printed in the question paper i.e.

“3(a) Obtain the Taylor’s expression of $\tan(\frac{-y}{x})$

about (1,1) upto and including the second degree terms. Hence compute $f(1.1, 0.9)$.”

Or in the other manner as provided for in the report i.e.

“3(a) Obtain the Taylor’s expression of $\tan^{-1} \left(\frac{y}{x} \right)$

about (1,1) upto and including the second degree terms. Hence compute $f(1.1, 0.9)$.”

[5] Likewise, in the case of question No.3 (c) the report of the paper-setter/examiner mentions that marks had been awarded to all candidates who had attempted the question as printed in the question paper i.e.

“3 (c) Find the intersection point of ellipse of form $\frac{(x-3)^3}{2^2} + \frac{y^2}{5^2} = 1$ and a circle of the form $(x-1)^2 + y^2 = 4^2$ ”

Or in the other manner as provided for in the report i.e.

“3(c) Find the intersection point of ellipse of form

$\frac{(x-3)^2}{2^2} + \frac{y^2}{5^2} = 1$ and a circle of the form $(x-1)^2 + y^2 = 4^2$ ”

Thus, the change is in the exponential power of the component (x-3) in the equation provided for in the above mentioned question as to whether (x-3) is raised to the power of 3 (cube) or 2 (square).

[6] Plea with regard to there being a printing mistake in question Nos. 5 (b) and 7 (b) as also question No.5 (c) being out of syllabus was rejected by the paper-setter/examiner and duly accepted by the Expert Committee as also the Commission.”

The learned Single Judge has extended the interim order dated 18.11.2019 not to declare the result till further orders. The operative portion of the order dated 12.12.2019 reads as under:-

“[8] In order to avoid prejudice to any of the candidates on acceptance of stand of the petitioners or the

respondents, it is deemed appropriate to give opportunity of hearing to all candidates who had appeared in the HCS (Executive Branch) and other Allied Services Main Exam -2017 before taking a final decision in the matter.

[9] Accordingly, notice be issued by respondent No.2 within one week from today for 16.01.2020 in the same manner in which advertisement/notice for conduct of HCS (Executive Branch) and other Allied Services Main Exam -2017 was issued informing all candidates who had appeared in the Main examination of the pendency of the writ petition and of their right to be heard in the writ petition in case they so desire before a final decision is taken in the matter.

[10] In the meantime, interim order, granted vide order dated 18.11.2019 not to declare the result, to continue till further orders.”

The fact of the matter is that respondent no.1 has secured 326 marks out of 600 and respondent no.2 has secured 323 marks out of 600. 544 candidates have qualified the written examination. There is no provision for granting the grace marks in the Haryana Civil Services Holding of Common/Combined Examinations for Direct Recruitment to the posts of Haryana Civil Service (Executive Branch) and Allied Services and Others Services Rules, 2001 as well as the regulations framed by the appellant-Haryana Public Service Commission. Respondents no.1 & 2 have no fundamental right or legal rights to get the grace marks when more than 544 candidates are available against 166 vacancies. Since the marks had already been awarded in accordance with law, there was no occasion to ask the appellant-Haryana Public State Commission to issue public notice.

It is settled law that the decision taken by the Expert Committee is final. We also make it clear by way of abundant precaution that the decision of Expert Committee generally binds only the petitioners, applicants, respondents or interveners alone. Even hypothetically the grace marks could be awarded if only few candidates have qualified the written examination. The scope of judicial review in this matter is very limited. The learned Single Judge overlooked this aspect of the matter.

Accordingly, the LPA is allowed. The order dated 12.12.2019 is vacated.

In view of the observations made hereinabove, nothing survives in the writ petition and the same is also disposed of.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

December 19, 2019.

Davinder Kumar

Whether speaking / reasoned	Yes/No
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Whether reportable	Yes/No
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