IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWPOA No. 181 of 2019
Decided on: February 24, 2020

Constable Rajesh Kumar .....Petitioner

Versus

State of Himachal Pradesh and others ...Respondents

Coram
Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting[1]?

For the petitioner: Ms. Suman Thakur, Advocate.

For the respondent: Mr. Subdhir Bhatnagar, Mr. Arvind Sharma and Mr. Anil Jaswal, Additional Advocate General.

Sandeep Sharma, J. *(Oral)*

Being aggrieved and dissatisfied with order dated 9.1.2014 (Annexure A-5) passed by Superintendent of Police, Police Training College, Daroh, District Kangra, Himachal Pradesh, whereby prayer made by the petitioner for grant of grace marks, came to be rejected, petitioner filed OA No. 2384 of 2018 before erstwhile Himachal Pradesh Administrative Tribunal, which now stands transferred to this Court after abolition of the Tribunal and re-registered as CWPOA No. 181 of 2019.

2. Precisely, the facts of the case, as emerge from the record are that the petitioner-Rajesh Kumar, who at the relevant time was serving as a Constable, appeared in the 19th Batch of Lower School Course examination, for promotion the post of Head

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Whether reporters of the Local papers are allowed to see the judgment? .

Constable, which were held on 16.4.2013 and was declared unqualified on account of less marks in the paper of Code of Criminal Procedure. Grouse of the petitioner is that since the paper of Code of Criminal Procedure ought to have been for a maximum of 100 marks but was set for 95 marks only, he alongwith other candidates ought to have been awarded grace marks. Since the petitioner secured 47.5% marks in the said paper, he was declared unqualified because, as per requirement, candidates seeking promotion to the post of Head Constable are/were required to secure 50% of marks in each of the subjects. Apart from above, petitioner also alleged that one question i.e. 1(a) was out of syllabus as such, respondents ought to have awarded 8 marks in total as grace marks i.e. 5 marks for the paper being set for 95 marks instead of 100 and 3 marks for question No.1(a), which was out of syllabus.

3. Respondents, in their reply, have categorically admitted that inadvertently, question paper of Code of Criminal Procedure was set for 95 marks, instead of 100 marks but when this fact came to their notice, an announcement was made at all the examination centres at 10.15 am that questions Nos. 1(b), 8(a), 8(b) and 9(b) shall carry 5, 6, 6 and 5 marks respectively, instead of 4, 5, 5 and 3, so that maximum marks come to 100. Perusal of annexure R-1 placed on record alongwith reply of the respondents further reveals that a formal order in this behalf was

also issued vide office order No. 4502, dated 22.4.2013. Respondents have also refuted the allegation of the petitioner that question 1(a) was out of syllabus, by stating that S.91 CrPC is in the syllabus of Police Practical Work and has been taught to the trainees of 19th Batch of Lower School Course accordingly. As per reply of the respondents, petitioner has secured 02 marks only out of 03 marks in the said question, whereas class average was 1.83 out of 3, hence, it is erroneous to say that question was not in the syllabus of Lower School Course.

4. Having heard learned counsel for the parties and perused the material available on record, this Court finds no merit in the case of the petitioner that the factum with regard to alteration of marks with regard to questions Nos. 1(b), 8(a), 8(b) and 9(b) was not in his knowledge, because, no material worth credence has been placed on record suggestive of the fact that no announcement with regard to alteration of marks was ever made by the respondents before commencement of the examinations. It is not in dispute that none of the other candidate, who appeared in this examination alongwith the petitioner, has raised this issue. Moreover, reply of the respondents clearly reveals that the petitioner has attempted all the questions i.e. 1(b), 8(a), 8(b) and 9(b), qua which total marks were altered to 5, 6, 6 and 5, as such, he cannot have any grouse qua the same. Though there is no material worth credence available on record that question No. 1(a)

was out of syllabus but even otherwise, petitioner has been awarded 02 marks out of 03 qua question No. 1(a), which is now being claimed to be out of syllabus. Reply filed by the respondents clearly reveals that all the Constables including petitioner, who could not qualify 19th Batch Lower School Course examinations in different subjects, were called to re-appear in respective subjects vide communication dated 22.8.2016 (Annexure R-5), but petitioner failed to appear in the re-appear test for the reasons best known to him. Since a fair chance was given to the petitioner to re-appear in the examinations of Code of Criminal Procedure alongwith other candidates, it cannot be said that injustice, if any, has been caused to the petitioner.

5. Consequently, in view of aforesaid, this court finds no merit in the present petition and accordingly, same is dismissed. All pending applications, if any, also stand disposed of.

(Sandeep Sharma)
Judge

February 24, 2020
(Vikrant)