

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

LPA No.2411 of 2017(O&M)

Date of Decision:-04.02.2020

Rajeev.

.....Appellant.

Versus

State of Haryana & Ors.

.....Respondents.

**CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH**

Present:- Mr. Sunil Kumar Nehra, Advocate for the Appellant.

Ms. Shruti Jain Goyal, Deputy Advocate General,
Haryana.

Mr. Kanwal Goyal, Advocate for HPSC.

Mr. R.K. Malik, Senior Advocate assisted by
Mr. Sunil Hooda, Advocate for respondent nos.49, 61,
84, 113, 118, 134, 135, 233, 253, 265, 267, 278, 287,
304, 316, 335, 348, 352, 356.

Mr. G.,S. Saharan, Advocate for respondent No.115.

JASWANT SINGH, J.

Appellant-Rajeev has filed the instant intra-court appeal under Clause X of the Letters Patent Appeal, whereby he has sought quashing of the impugned order dated 11.12.2017 passed by Learned Single Judge, who has disposed off the writ petition by giving the following directions and liberty:

the Deputy Commissioner of Police, Panchkula, to ensure that even if the matter has to be referred to the Cyber Crime Cell of the police, with regard to trying to retrieve the message stated to have been sent out by the accused, containing the photograph of the examination paper, proper efforts be made first to retrieve the phone, as also for arresting the accused, who is stated to be missing so far.

The investigation shall be conducted under the supervision of a gazetted officer, eventually to be also monitored by the Deputy Commissioner of Panchkula itself.

Any person aggrieved of improper investigation would be at liberty to take appropriate remedies against the accused and the investigating agency.

A photocopy of this order be placed on the files of the connected cases. ”

Learned Counsel for the appellant has argued that the learned Single Bench has wrongly held that no mass cheating had taken place in the written examination held for the post of Assistant Professor (College Cadre) Hindi, by completely ignoring the fact that there is laxity in the manner in which the events had folded on the date of examination. By referring to an interim order dated 17.04.2018, it is argued that the matter requires to be investigated by an independent agency, as it seems that there is connivance between HPSC, state Police and the accused involved in cheating, which points towards a larger racket. It is further argued that as per the affidavit dated 20.11.2017, it is apparent that police is trying to cover up the issue as the Head Constable, who had apprehended the accused and thereafter released him from custody, alongwith ASI Jaswinder Singh have been let off by awarding minor punishment of censure. Lastly it is argued that the

HPSC had issued multiple roll numbers to the candidates which can result in candidates choosing seats of their own choice and thus may lead to cheating in the examination. Thus, it is submitted that the entire examination is liable to be quashed and the matter is required to be investigated by an independent agency, considering the seriousness of the issue involved.

On the other hand, Learned Counsel for the State on instructions has informed that investigation in the instant case has been concluded and challan has been presented. After presentation of Challan even charges have been framed against five (5) accused. It is further submitted that the investigation in the instant case was supervised by DCP, Panchkula and appropriate action has been taken against the erring officials.

Learned Counsel for the Haryana Public Service Commission has submitted that the allegations of officials of HPSC being involved in letting off any candidate, is absolutely wrong. It is argued that the Commission has never interfered in the investigating process and at all points of time had co-operated with the officials. The process of frisking etc is given to private agencies on contractual basis, being a specialized job and they were not paid any amount for the work undertaken for instant examination on account of mobile phone having been found during examination. It is further submitted that applications for recruitment examinations are submitted through an online process and many a times, candidates submit multiple applications on account of mistakes committed by them while filling up the application form, however such a candidate would still be assigned one Roll Number. In case, the applicants/candidates are allowed to submit only one application form, there have been instances

that candidates have approached the court for relief which has led to unnecessary litigation. Thus, the candidates are permitted to fill multiple application forms and there has been no instance of same persons taking examination twice over with different roll numbers.

Having heard learned Counsel for the parties at length and scrutinized the paper book with the assistance, we are of the view that instant appeal is without any merit and therefore deserves to be dismissed.

The allegation of appellant that mass cheating had taken place is completely baseless as no such fact is borne out from the record. Further, the allegation of involvement of officials in this alleged cheating is too far-fetched. The sequence of events in the instant case points to a stray case of individual who has been caught cheating. No motive has been attributed in the instant case towards any specific official. In fact it is a case of individual who has been caught cheating using mobile phones. As per the report submitted by the investigating agency, the question paper has not been transmitted to multiple locations which could lead to an inference of paper being solved and then answer keys being transmitted to large number of appearing candidates. Operative part of report dated 20.08.2018 submitted by ACP, Panchkula is reproduced as under:

“ That on 30.04.2018 Mobile Soni Ericcson, Experia, IMEI No.3598217045353362 used by the accused Sandeep @ Neetu has been recovered from one Kuldeep Singh Shopkeeper of Village Lakhanmajra, District Rohtak. As per report of DITAC, Gurugram no data/whatsapp message was recovered from it. From the investigation till date, it has become evident that answer key was only transmitted to Sandeep @ Neetu by the accused Arvind, Manoj and Ram Subash to help Sandeep @ Neetu in

solving the paper. Report under Section 173 Cr.PC against arrested accused Sandeep @ Neetu, Sandeep Ahlawat, Arvind, Manoj and Ram Subash has been submitted on 16.08.2018 before the learned Illaqa Magistrate, Panchkula. Now the case is fixed for 20.09.2018. ”

It is further not disputed that investigation has been completed and thereafter the court has also taken cognizance of the incident, as charges have been framed. No one has approached the Court alleging improper investigation till date. Further, once the criminal court has taken cognizance of the issue involved, we are of the view that it is more than competent to unravel the truth by invoking relevant provisions of CrPC. However, at this stage, especially while exercising writ appellate jurisdiction, we cannot delve ourselves into a roving enquiry. In case, the criminal court ultimately comes to a conclusion that there are overwhelming circumstance, which prove that there was mass-cheating in the examination in question, then appropriate action under law can be taken at that stage. Hence, the prayer made by appellant for either scrapping of examination and re-conducting the same or for handing over the investigation to some other agency are not made out.

As far as the issue of issuance of multiple roll numbers and security at examination is concerned, we are of the view that a pragmatic approach is required to be adopted by all the stake holders, including the Courts. We only expect the paper to be conducted in a fair and transparent manner and do not expect it to be holistically perfect. Once there is no allegation or proof coming forth, that two persons had given the examination against name of same candidate who was issued multiple roll

numbers, we see no reason to delve further into this issue. It is relevant to

notice here that this issue was gone in detail by the Ld. Single Judge as well and infact at one stage the counsel for the candidates had satisfied themselves that there is no such discrepancy after going through the record.

Consequently, we have no hesitation in dismissing the instant appeal.

Dismissed.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

February 04, 2020
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>