

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

**LPA No. 105 of 2021 (O&M) in
CWP No. 1240 of 2021
Date of Decision: 29.01.2021**

Poonam and others

..... Appellants

Versus

State of Haryana and another

..... Respondents

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

Present: Mr. Vivek Salathia, Advocate
for the appellants.

Ms. Shruti Jain Goyal, Deputy Advocate General, Haryana

*[The aforesaid presence is being recorded through video conferencing since the
proceedings are being conducted in virtual court]*

JASWANT SINGH, J.

The appellants, four (04) in number [(1) Poonam; (2) Deepak Malik; (3) Rakesh Kumar, and (4) Harish Kumar] have filed the present intra-Court appeal challenging the order passed by the learned Single Judge dated 19.01.2021 whereby their prayer for quashing the notice dated 28.12.2020 vide which respondent No. 2 – Haryana Staff Selection Commission (for short “Commission”) is holding re-examination for the post of Arts and Crafts teachers in pursuance to the order dated 10.11.2020 passed by this Court in LPA No. 359 of 2015, has been dismissed.

[2] At the outset, learned counsel for the appellants submitted that his prayer with regard to holding the re-examination of only eligible candidates after completing the process of re-verification of documents as done in the case of similarly situated candidates for the post of Physical

Training Instructor (PTI) already stands accepted by respondent No. 2 – Commission as the required scrutiny for short-listing the eligible candidates for written examination has been done by the respondent No. 2 – Commission. He submits that the only grievance which remains now is with regard to the time allotted for the written examination vide the impugned notice dated 28.12.2020 **(P-4)**. His argument is that ordinarily, on an average one minute is allotted for attempting each multiple choice question by the recruiting agencies, whereas in the present case the respondent-Commission has allotted only seventy-five (75) minutes as against 100 Multiple Choice Questions which is not sufficient for attempting all the 100 questions.

[3] At this stage, learned counsel appearing for the State of Haryana as well as the Haryana Staff Selection Commission has brought to our notice that respondent No. 2 – Commission is re-conducting the selection for 816 posts of Art and Craft Teachers as per the criteria dated 11.06.2008 and the same time-line as provided under the said criteria i.e 75 minutes for 100 questions have been provided under the impugned notice dated 28.12.2020 **(P-4)**. She has also produced a copy of criteria dated 11.06.2008, which is taken on record as **“Mark-A”**.

[4] Countering the said argument, learned counsel for the appellants submitted that though he is not aggrieved by the criteria as notified by the impugned notice dated 28.12.2020, however, the criteria dated 11.06.2008 cannot be relied upon by the respondents to justify the insufficient time allotted for written examination as the same has already been quashed in the previous round of litigation, in pursuance of which the

re-examination is being conducted by respondent No. 2 – Commission. The said argument has been rebutted by the learned State Counsel by relying upon paragraphs No. 30, 40-49 and 73 of the judgment dated 20.02.2015 passed by Ld. Single Judge in *CWP No. 18482 of 2010* titled as “*Suman Kumari Versus State of Haryana and others*”, whereby the selection for the post of Art and Craft conducted against advertisement No. 6/2006 dated 20.07.2006 was quashed with a direction to hold the written examination as per criteria mentioned in paragraph 73 i.e on the basis written examination and interview. She has further referred to paragraphs 17, 18 and 34 to 38 of the judgment dated 10.11.2020 passed in *LPA No. 359 of 2015*, titled as “*Vinod Kumar and others Versus State of Haryana and others*”, whereby order of the learned Single Judge dated 20.07.2006 was upheld with a direction to re-conduct the selection for 816 posts of Art and Craft Teachers within a period of five months as directed by the learned Single Judge.

[5] We have heard learned counsel for the parties at length and have scrutinized the paper-book with their able assistance.

[6] Admittedly, the impugned notice dated 28.12.2020 has been notified by the Commission in compliance of order dated 20.02.2015 passed by learned Single Judge of this Court which has been duly upheld vide detailed order dated 10.11.2020 passed by a Co-ordinate Division Bench of this Court in appeal. It is further not in dispute that the judgment of Division Bench in Arts and Crafts teachers case has already attained finality as *Special Leave Petition No. 14481 of 2020* titled as “*Vijay Pal and others Versus Mohan Lal and others*” preferred against the order dated 10.11.2020 has been dismissed vide order dated 14.12.2020.

[6.1] Since, the reliance has been placed on criteria dated 11.06.2008 by the learned Deputy Advocate General to contend that the same has been followed *in toto*, including the time allotted for written examination, which has been controverted by learned counsel for the appellants, it would be expedient for us to first examine as to which criteria is required to be followed by the respondent No. 2-Commission in this selection. To answer the said question, it would be fruitful to reproduce the findings returned by the learned Single judge in his judgment dated 20.02.2015 whereby in paragraphs 40-41, 48 and 73, it has been held as under:-

“40. *In the present case, the process of selection started with the issuance of advertisement No. 6/2006 by the Commission on 20.7.2006. The last date for receipt of applications was 21.8.2006. Though it is claimed that the criteria for final selection was fixed on the last date fixed for receipt of applications, i.e., 21.8.2006, but the manner the same was fixed, as has been dealt with in the files maintained by the Commission, and the criteria produced before the court do not inspire confidence, rather, it goes to establish that the criteria was not fixed on that date. It was a tailor-made criteria for making selection of some candidates, who could otherwise not make to the select list. A notice was published in the newspapers on 12.6.2008 mentioning that in view of large number of applications received, the Commission has decided to hold written examination subject to final determination of their eligibility lateron. The written test consisted of 100 objective type multiple choice questions, 60 questions relating to academic knowledge of the respective subject, whereas 40 questions relating to general knowledge, general English and Hindi. Each question was of two marks. The minimum qualifying marks required to be secured by a candidate in the written test were specified,*

which are as under:

- “a) General Category Candidates 50%
- b) SC, BC categories candidates 45%
- c) ESM candidates 40%
- d) DESM and outstanding sports person As per General, SC, BC candidates, as the case may be.”

41. The public notice further provided that as per the law laid down by Hon'ble the Apex Court, the candidates equal to three times the number of vacancies will be called for interview based on their performance in the written test and total marks obtained in written test and viva-voce will determine the merit of the candidates of their respective categories. The relevant part of public notice is extracted below:

“ VIVA-VOCE WILL BE OF 25 MARKS

However, as per law laid down by the Hon'ble Apex Court, candidates equal to three times of the number of vacancies will be called for interview based on their performance in the written test. The total marks obtained in the written test and viva voce will determine the merit of the candidates of their respective categories.”

48. The aforesaid developments clearly established that the object apparently was to select the candidates, who were not meritorious. The actions of the Commission step by step suggested that merit was to be compromised. **Firstly, the written test was cancelled, then the decision to call candidates 8 times the number of vacancies advertised on the basis of marks obtained in essential qualification was diluted by taking a decision to call all the eligible candidates. Commensurate with the note approved on 31.7.2008, a public notice of the even date was issued notifying that all eligible candidates be called for interview.** The schedule for different districts was notified. Even this public notice did not mention the criteria to be followed by the Commission for selection. The matter after the interview remained pending for 1-1/2 years as the result was notified on 25.3.2010. In the aforesaid result, the criteria adopted for selection was

mentioned. It provided for 60 marks for academic qualification and 30 marks for viva voce.

73. The contention raised by learned counsel for the private respondents that the petitioners having participated in the process of selection cannot be permitted to assail the same after they were not selected, is merely to be noticed and rejected. It is not in dispute that the criteria, as was finally followed for the purpose of making selection, was never disclosed till such time the result was declared. In fact, as has already been noticed in preceding paragraph of the judgment, the criteria was changed. Initially, the selection was to be made on the basis of written test and interview. Then it was changed to interview and later to marks in academic qualification and interview. Similar contention has been rejected by this court in the case of selection for the posts of PTI carried out at the same time in Vijay Kumar's case (*supra*). ”

(Emphasis Supplied)

[6.2] The selected candidates filed intra-Court appeals against the said judgment dated 20.02.2015 which has been dismissed by the Co-ordinate Division bench of this Court on 10.11.2020 and which dismissing the same, it has observed in paragraphs no 17, 18, 34 to 38 to the following effect:-

- “17. Coming back to the facts of the instant appeals, the main arguments raised by counsel for the appellants were that there was a difference between the criterion fixed for the posts of Art & Crafts Teacher and for the posts of PTIs. Therefore, the decision regarding quashing of selection process for the posts of PTIs would have no effect in the present cases. It was further argued that since the unsuccessful candidates participated in selection process, they were not entitled to challenge the selection. Further it was urged that the selection for the posts of Art & Crafts Teacher was made as per the original criterion which was fixed on 21.08.2006 i.e. the last date of submission of

application and not on the criterion fixed later, and on this ground also, the present case was distinguishable from the case of PTIs.

18. These cases were heard at length by the Ld. Single Judge and after hearing both the parties and perusing the record summoned by him, the Ld. Single Judge held as under:-

- i) The criteria, as was finally followed for the purpose of making selection, was never disclosed till such time the result was declared and in fact the criteria was changed.
- ii) **Initially the selection was to be made on the basis of written test and interview and later it was changed to interview and then to marks in academic qualification and interview.**
- iii) There are basic defects in the process of selection from the very beginning as the respondent No.3-Commission had not been working as a multi member body and there was no decision by the Commission as such. The entire decision making was by the Chairman individually in consultation with the Secretary of the Commission.
- iv) **No criteria was laid down for selection before or immediately after the advertisement was issued, rather the criteria on the basis of which the selections were sought to be justified was tailor made to ensure selection of particular candidates.**
- v) Even the criteria for selection of different posts was fixed arbitrarily.

35. In these circumstances, we are constrained to hold that the decision of the Supreme Court in Ramjit Singh Kardam's case (*supra*) would apply to the facts of the present case on all force. The primary argument raised by the learned counsel for the appellants is that in the

present case, there is no malice involved because criterion was not changed. This argument, however, does not carry weight. In the present case of Art & Crafts Teacher, and other connected matters -29- advertisement was issued on the same date as of PTIs i.e. 20.07.2006 with last date as 21.08.2006. **Thereafter public notice was issued on 11/12.06.2008 by the Commission stating that it was decided to hold written test with 100 multiple choice of questions of 2 marks each and qualifying marks were mentioned. Further, candidates for three times number of vacancies would be called for interview and 25 marks were kept for viva-voce. This notice of 11/12.06.2008 was common for both PTIs and Art & Crafts Teacher.**

36. Thereafter vide notice dated 30.06.2008, it was stated that written test had been cancelled. This notice also pertained to both PTIs and Art & Crafts Teacher amongst others. Thereafter vide public notice dated 11.07.2008, it was stated that the Commission had decided to shortlist eight times candidates for interview and short-listing to be done on the basis of academic qualification and by prescribing minimum marks. Similar notice was also issued on 12.07.2008.
37. Thereafter on 18.07.2008, dates for scheduled interview were published pertaining to both PTIs and Art & Crafts Teacher on 31.07.2008, again it was decided to call all the eligible candidates for interview by changing the earlier decisions. Separate notices were issued on the same day i.e. 31.07.2008 for PTIs and Art & Crafts Teacher respectively.
38. ***The chronology of events as discussed aforesaid would show that both the PTIs' and Art & Crafts Teacher's selection was processed in a similar fashion and most of the public notices were same. There can be no doubt that even in the present case pertaining to Art & Crafts Teacher, there had been change in the criterion midway alike the PTIs' selection processes. Therefore, it cannot be said that parallel cannot be drawn between the two. Resultantly, the judgment***

rendered by Supreme Court in Ramjit Singh Kardam's case would certainly apply in the present case as well.

(Emphasis Supplied)

[6.3] We shall also advert to the criteria dated 11.06.2008 (Mark-A), the relevant part of which is extracted here-in-below:-

*“ In response to Haryana Staff Selection Commission advertisement **No. 6/2006, Cat. No. 18, 22 and 23** published in various newspapers for filling up **341 posts of DPE, 816 post of Art & Craft Teacher and 1983 post of PTI**, respectively, it is informed to the eligible candidates that keeping in view the large number of applications, the Haryana Staff Selection Commission has decided to hold the written examinations as per advertised qualification on the cut off date and subject to final determination of their eligibility later on, as per schedule given below:-*

<i>Name of the post</i>	<i>Date</i>	<i>Time</i>	<i>Place</i>
<i>DPE</i>	<i>13.7.2008</i>	<i>10.00 a.m. to 11.15 a.m.</i>	<i>Ambala (Morning)</i>
<i>Art & Craft Teacher</i>	<i>13.7.2008</i>	<i>2.00 p.m. to 3.15 p.m.</i>	<i>Ambala (Evening)</i>
<i>PTI</i>	<i>20.7.2008</i>	<i>10.00 a.m. to 11.15 a.m.</i>	<i>Karnal & Rewari</i>

There will be 100 objective type multiple choice questions in each examination (60 questions relating to academic knowledge of the respective subject including skill and method of teaching ability for which a candidate is appearing in the test and 40 questions relating to General Knowledge, General English and Hindi up to Matric Standard). Each question will carry two marks.

The candidates will have to secure the minimum qualifying marks in the written test as mentioned below:-

- | | | | |
|----|------------------------------------|---|-----|
| a) | General category candidates | - | 50% |
| b) | SC, BC categories candidates | - | 45% |
| c) | ESM candidates | - | 40% |
| d) | DESM and outstanding sportsperson- | As for General, SC, BC, candidates, as the case may be. | |

Viva-voce will be of 25 marks.

However, as per law laid down by the Hon'ble Apex Court, candidates equal to three times of the number of vacancies will be called for interview based on their performance in the written test. The total marks obtained in the written test and viva-voce will determine the merit

of the candidates in their respective categories.”

[7] From the bare perusal of the findings returned by the learned Single Judge as also by the Division Bench of this Court, **we find that** there is no ambiguity with regard to the criteria required to be followed by respondent No. 2 – Commission for re-conducting the selection of Arts and Crafts Teachers i.e written test and interview as notified by the Commission. Since, the said scheme of selection process was notified by respondent No. 2 – Commission for the post of Art & Craft Teacher only vide notice dated 11.06.2008, the same is required to be followed in the case of re-examination as well. As is evident from the afore-reproduced criteria, the Commission has followed the said criteria *in toto* i.e with regard to the scheme of selection and the time allotted for the written examination, therefore, the argument of learned counsel for appellants that no reliance can be placed by the Commission on criteria dated 11.06.2008 as the same has been quashed by this Court is bound to be rejected.

[7.1] Further, we fully concur with the findings returned by the learned Single Judge who has rightly held that once time is being uniformly given to all the candidates in a particular examination, then no person can raise any grievance as the merit of all the candidates will be determined with reference to their performance in the examination of same duration. It has further been rightly held that there is no principle of law as per which the Court can force the respondent No. 2 – Commission to grant a particular duration of time for an exam.

[8] In view of the above, we are of opinion that the present intra-Court **appeal** is bereft of any merit and is thereby **dismissed**.

[8.1] Since the main appeal has been dismissed, no orders are required to be passed in the pending miscellaneous application(s), if any, and the same stand(s) disposed of.

(JASWANT SINGH)
JUDGE

January 29, 2021
'dk kamra'

(SANT PARKASH)
JUDGE

Whether Speaking/reasoned	Yes
Whether Reportable	Yes