

In the High Court of Punjab and Haryana, at Chandigarh

1. Civil Writ Petition No. 4822 of 2021

Aarti and Others

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

AND

2. Civil Writ Petition No. 4827 of 2021

Parveen Kumar

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

Date of Decision: 03.03.2021

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. G.S.Gopera, Advocate
for the petitioners (In CWP-4822-2021).

Mr. Jasbir Mor, Advocate
for the petitioner (In CWP-4827-2021).

Mr. Samarth Sagar, Additional Advocate General,
Haryana, for the respondents.

Anil Kshetarpal, J.

By this judgment, Civil Writ Petition No. 4822 and 4827 of 2021, involving the common questions of fact and law, shall stand disposed of. Learned counsels, appearing for the petitioner(s) as well as the State of Haryana, are *ad idem* that both these writ petitions can be disposed of by a common judgment.

For facility, the facts are being taken from Civil Writ Petition

No. 4822 of 2021. The petitioner applied for the post of Art and Craft Teacher pursuant to a recruitment notice issued on 20.07.2006. Due to various litigations, there was a delay in the finalisation of selection. The written examination was held on 31.01.202. The multiple choice questions were given in OMR sheets and the result thereof was declared on 23.02.2021. The OMR sheets of the petitioners were found smudged/double blackened and therefore, their candidature has been rejected. It is not in dispute that the candidates, through various instructions, were cautioned that if the OMR answer sheets are found with use of eraser, nail, blade, white fluid/whitener etc. or found to have been smudged, scratched or damaged, then the same shall be liable to be cancelled.

The question as to whether the rejection of the entire answer sheet of a candidate is appropriate or only the question which is found to be smudged or double blackened is required to be kept out of consideration. This question has already been answered by the Court in *Anshu and Others v. State of Haryana and Others* (Civil Writ Petition No. 22918 of 2016, decided on 21.12.2016). By an elaborate judgment, the Court examined the instructions issued and found that the OMR answer sheet shall be liable to be rejected in entirety. A Letter Patent Appeal against the judgment of learned Single Judge was also dismissed on 20.01.2017 in *Anshu and Others v. State of Haryana and Others* (Latter Patent Appeal No. 92 of 2017). A Special Leave to Appeal (Civil) No. 8430 of 2017 filed against the judgment of the LPA Bench was also dismissed by the Supreme Court on 27.03.2017.

certain observations made by another Hon'ble Single Bench (a co-ordinate Bench) in *Ravinder v. State of Haryana and Others (Civil Writ Petition No. 26745 of 2017, decided on 18.12.2017)* to contend that the Court after summoning the Subject Expert, observed that only that particular question should be kept out of consideration.

The relevant observations on which the reliance is placed, are extracted as under:-

“That being so, and as already noticed earlier, the instructions themselves having been upheld by a Division Bench of this Court, these petitions therefore cannot be entertained, as regards the change of instructions for the ongoing selection processes, or for those that have concluded.

Learned counsel for the petitioners in these petitions also submit that once the Commission has started checking the answer sheets manually where there is a discrepancy of roll numbers, it amounts to discrimination in rejecting those answer sheets in which there is an alteration/erasure in the answers themselves.

Whereas the rationale of that argument is not lost on the Court, however, the fact is that the answer sheets in which there is an erasure in roll numbers would be much fewer, when compared with those in which there is an erasure/alteration in the answers to the questions themselves. Therefore, if a direction were to be given to manually check those answer sheets too, obviously it would increase the burden

on the Commission manifold. In any case, that issue having been decided by a Division Bench, as repeated many times in the orders passed in these petitions earlier, this Bench is obviously bound by that decision.

Consequently, as regards the issue of considering the candidature of the petitioners where answers have been either erased or altered, these petitions are dismissed.

As regards the issue of wherever there are erasures in the roll numbers in any of these cases, the petitioners would be at liberty to file a representation to the Secretary of the Commission, who would thereafter take a decision at the earliest, and as very fairly stated by the learned Advocate General, the decision would be taken prior to the announcement of the results in question.

However, for future selection processes, the Commission is directed to go into the opinion given by the expert produced by it before this Court, and see as to why simply the answers that have been altered in the OMR sheet, or have been erased or where double answers have been given etc., should not be the questions which should be ignored, instead of rejecting the entire answer sheet itself. The said issue would be looked at by the Commission even in respect of those selection processes as have been initiated, but where the written examination is still to be held”.

On careful reading of the aforesaid observations, it is apparent

that the writ petitions, where the answers were found to have been either erased or altered, were dismissed. The Court directed the Commission to consider the opinion given by the Subject Expert and thereafter, take a decision.

Mr. Samarth Sagar, Additional Advocate General, Haryana, has submitted that the Commission has considered the opinion and decided to stick to the instructions already issued to the effect that if any question in the OMR answer sheet is found to be smudged or altered or erased, the answer sheet shall be liable to be rejected.

Keeping in view the judgment of the Division Bench, which is binding, this Court does not find it appropriate to entertain these writ petitions. Hence, both the writ petitions are dismissed.

**(Anil Kshetarpal)
Judge**

March 03, 2021

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No