

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

Civil Writ Petition No.10829 of 2021 (O&M)

Date of Decision: July 15, 2021

Sunil Kumar

.....Petitioner.

VERSUS

State of Haryana and others

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE G. S. SANDHAWALIA

Present: Mr. Chandeeep Singh, Advocate
for the petitioner.

Ms. Divya Sharma, Advocate
for respondents No.2 and 3.

(The proceedings are being conducted through video
conferencing, as per instructions)

G.S. SANDHAWALIA, J.(Oral)

CM-8767-CWP-2021

Application has been filed for placing on record the reply dated
05.07.2021 received in response to the application under RTI Act, 2005 as
Annexure P-22.

In view of the averments made in the application, the same is
allowed and Annexure P-22 is taken on record subject to all just exceptions.

CWP-10829-2021

By filing present civil writ petition under Article 226/227 of the
Constitution of India, the petitioner seeks re-valuation of his descriptive
examination by way of re-checking from an independent expert committee
and for moderation of the marks obtained by him for the post of Clerk
advertised by this Court through Society for Centralised Recruitment of

Staff in Subordinate Courts (SSSC).

The gamut of argument, as such, raised by counsel for the petitioner is that petitioner has only secured 46.75 (35.25 in objective + 11.50 in subjective) marks as per the response received under the RTI. The last candidate selected had obtained 50 marks in the written test. Thus, his case is that in the descriptive answer sheets, other candidates have been given higher marks whereas the petitioner has been given lesser marks. Reference has been made to writing an essay of 150 words on any one of the following topics, which are as under:-

- a. Life after School
- b. Internet Influence on society
- c. Unity is Strength
- d. A Train Journey.

It is also contended that similarly placed candidates namely Sh. Vijay and Sh. Parveen had also chosen to write an essay on the same topic i.e. "Internet influence on society" and have been awarded 7 marks, whereas the petitioner has been allotted 3.5 marks.

It is admitted fact that petitioner had attempted same questions and obtained 46.75 marks in the written exam, but was required to obtain 50 marks. The petitioner wrote essay of 246 words and similarly placed Mr. Vijay and Mr. Parveen wrote essay of 298 and 291 words respectively.

Counsel has attempted to convince this Court that due to the less area covered and the choice of words contained in essay, he has been granted 3.5 marks. However, counsel is not in a position to show that under which statute or provision, the petitioner is entitled for the re-valuation/re-checking of the said papers. It is a settled principle that the re-counting of

the marks, as such, can be ordered by issuing a writ of mandamus if there is violation of the legal right of the petitioner.

The said issue was considered in ***Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth (1984) 4 SCC 27***; and reiterated by three judges Bench in ***Board of Secondary Education v. Pravas Ranjan Panda (2004) 13 SCC 383*** and in ***Pramod Kumar Srivastava v. Bihar Public Service Commission (2004) 6 SCC 714***. In ***Central Board of Secondary Education Through Secretary, All India Pre-Medical/Pre-Dental Entrance Examination & Ors. v. Khushboo Shrivastava & Ors. 2014 (14) SCC 523*** it was followed thereafter. In ***Himachal Pradesh Public Service Commission v. Mukesh Thakur & Anr. 2010 (6) SCC 759***, the said view was followed and in ***Ran Vijay Singh & Ors v. State of Uttar Pradesh & Ors 2018 (2) SCC 357***, the same question of law was answered that the right to seek a writ of mandamus is based on the existence of a legal right and the corresponding duty with the respondent to carry out the public duty. Hence lastly in ***High Court of Tripura through the Registrar General v. Tirtha Sarathi Mukherjee 2019(2) SCT 117***, it is held that only in extreme cases, the Court could, as such, interfere with the opinion of the subject expert while discussing the above cited judgments.

Even otherwise, this Court has examined the comparative material, which the counsel has placed on record in detail. The contents of the topic covered and the language used by the petitioner in comparison to other examples given are variable to a large extent. The petitioner's description, as such in comparison is more simple on the topic "Internet

range and examples given both on the positive and negative aspects are higher in number than the petitioner. It is settled principle that the Court is not to sit as a subject expert or to evaluate the marks given by the experts. Perusal of the documents placed on record and examples given by the petitioner do not as such, make out a case to call upon the respondents to file detailed reply.

Counsel for the petitioner has relied upon the judgment in ***Sanjay Singh and another Vs. U.P. Public Service Commission, Allahabad and another 2007(3) SCC 720.***

However, perusal of the said judgment would go on to show that it was a case where the scaling of marks was subject matter of consideration and it was accordingly held that the same was contrary to the statutory rules provided for the selection of the Civil Judge (Junior Division) examination. Resultantly, Apex Court issued certain directions, as such and the said judgment is not applicable to the facts and circumstances of the present case.

Ms. Divya Sharma, Advocate, who is present on behalf of respondents No.2 and 3 points out that the examples given of the two other candidates by the petitioner are not of the successful candidates as they also did not secure the minimum cut off 50 marks as required.

Accordingly, the present writ petition has no merits and the same is dismissed in limine.

(G. S. SANDHAWALIA)
JUDGE

July 15, 2021

Sachin M.

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No