

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.M. Nos. 14646-47-CWP of 2021 in/and
CWP No. 16459 of 2020

Date of decision: 30.09.2021

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Suman Devi

....Petitioner(s)

Versus

State of Haryana and another

...Respondent(s)

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

Present: Ms. Suman Devi, petitioner-in-person.

Mr. Rajneesh Chadwal, AAG, Haryana.

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

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 14647-CWP of 2021

Application for placing on record Annexure P-25 is allowed,
subject to all just exceptions.

The same is taken on record.

C.M. No. 14646-CWP of 2021

Application has been filed for pre-ponement of the main case
from 09.12.2021 on the ground that the case is covered by decision of this
Court in ***CWP No. 19895 of 2020, Rajesh Kumar vs. State of Haryana and
others***, decided on 08.09.2021 (Annexure P-25).

In view of averments made in the application, the same is
allowed.

Main case is pre-poned to today and is taken on Board.

The present petition has been filed on account of the fact that the OMR sheet of the written examination of the petitioner against Advertisement No. 6 of 2000 dated 27.07.2006, Category No. 23 which was held on 23.08.2020 for the post of Physical Training Instructor was not corrected on account of the fact that the same has been smudged and there was a cutting as such.

The petitioner has stated in her writ petition that she was an earlier appointee against the initial advertisement and got selected on 30.04.2010 and had been asked to join her duties on 10.05.2020 at Government Senior Secondary School, Badli, District Jhajjar, (School Code-3225).

It is not disputed that in view of the selection having been set aside by the Single Judge of this Court and thereafter having been upheld in ***Ramjit Singh Kardam vs Sanjeev Kumar, 2020 (2) SCT 491***, the entire selection process was to be redone while giving a chance to the earlier appointees. The petitioner is stated to be a candidate under BCB category, for which, 216 posts had been advertised and, therefore, required 45% marks to secure the minimum qualifying prescribed marks in the written test. It has been pointed out by the petitioner, who is appearing in person, that on account of scratching and smudging of one of the questions on the OMR sheet, her question paper has not been evaluated.

This fact is verified from the reply also filed by respondent no. 2-Commission in para no. 18 wherein, it was stated that question no. 76 had been smudged.

In such circumstances, it is apparent that the case, as such, is covered to the extent of the observations which have been made in *CWP*

No. 19895 of 2020 and the writ petition is accordingly allowed to the limited extent whereby, benefits were given to the candidates who had served for almost a period of 10 years. Resultantly, it was held that it would be highly inequitable to throw them out at the threshold on account of having smudged a particular answer and the fact that there were vacancies as such. Relevant portion of the judgment in CWP No. 19895 of 2020 reads thus:-

“The present writ petition has been filed on the grouse that the OMR sheets have not been evaluated on account of the smudging/erasing/alteration done regarding the written examination held for the post of PTI on 23.08.2020. The same is against advertisement notice dated 22.05.2020 and 25.07.2020 (Annexures P-1 and P-2) in pursuance of the old advertisement no. 6 of 2006 category no. 23 for the post of Physical Training Instructor (in short 'PTI'). The issue, though is settled beyond an anvil of doubt repeatedly by this Court itself, but in view of the peculiar facts and circumstances, out of the main bunch, the hardship which can be caused to three petitioners namely Rajesh Kumar in CWP No. 19895 of 2020 and petitioners no. 1 and 2 in CWP No. 16456 of 2020 namely Krishan Lal and Suman Lata cannot be lost sight of by this Court.

On 06.09.2021, this Court had summarized the issue as under:-

“Counsel for the petitioners has submitted that he wishes to file a table for the benefit of this Court as to whether any of the petitioners were appointed in the earlier selection made in the year 2006 and had joined in the year 2010. The said selection was set aside in the year 2020 and, therefore, submits that in that eventuality a more compassionate view is liable to be taken regarding

the issue of smudging, since admittedly on merits they would still make the cut, if disputed questions are also not kept into consideration, while counting the marks.

Adjourned to 08.09.2021.

Photocopy of the order be placed on the files of connected cases.”

*It is not disputed that regarding advertisement no. 6, the present persons, as such, had been selected in the earlier process held on 08.10.2008 as per the averments made in C.M. No. 4515-CWP of 2021 in CWP No. 19895 of 2020 i.e. in Rajesh Kumar's case. The petitioner had been appointed in the year 2010 and on account of the selection process having been set aside by this Court which has been upheld by the Supreme Court, he was relieved from service from 01.06.2020 and, thus, has worked on the post of PTI for a period of more than 10 years. Similarly, in the case of petitioner no. 1-Krishan Lal and petitioner no. 2-Suman Lata in CWP No. 16456 of 2020, it has been averred that the result for the post of PTI had been declared on 11.04.2010 and petitioners no. 1 and 2 had been included in the select list and they had been discharging their duties and were relieved on 02.06.2020 in pursuance of the orders passed by the Apex Court on 08.04.2020. The Apex Court decided the issue in **Ramjit Singh Kardam and others vs. Sanjeev Kumar and others, 2020 (2) SCT 491** and had protected the candidates to the extent that they were not to be asked for refund of salary or any benefit received and neither any refund was to be asked from those candidates who had, after their selection, worked and retired from service. In pursuance of the directions, selection process was to be conducted again and the petitioners had applied afresh.*

It is not disputed that after the selection process

has been completed, there are sufficient vacancies available, as such, in various categories as per the final result now declared on 05.10.2020 by the Commission. The abovesaid three persons are stated to be belonging to the general and scheduled caste categories. The vacancy position reads thus:-

“(19 Posts) GEN, (200 Posts) SCA, (200 Posts) SCB, (318 Posts) BCA, (216 Posts) BCB, (52) ESM Gen (01 Post) ESM SCA, (02 Posts) ESM SCB (05 Posts) ESM BCA and (02 Posts) ESM BCB remained vacant due to non availability of suitable candidates”

The petitioner in the present writ petition namely Rajesh Kumar stated that he has got 102 marks as per the answer key without any interview since he has not been called for the same on account of the fact that he had smudged some question, as such. It is pointed out from the final result that the cut off for general category is 105 and even if the benefit of one question is not granted, the petitioner would still be making the grade if he is granted a chance to participate in the interview process as per the criteria fixed to secure the minimum qualifying prescribed in the written test. The same is as under:-

<i>“a)</i>	<i>General Category =</i>	<i>50%</i>
<i>b)</i>	<i>SC,BC=</i>	<i>45%</i>
<i>c)</i>	<i>ESM=</i>	<i>40%”</i>

Thus, candidate-Rajesh Kumar also makes the cut on that account. Similarly, petitioners no. 1 and 2 in CWP No. 16456 of 2020 have got 98 and 92 marks and, thus, have also made the cut for the reserved categories for scheduled caste.

In the reply filed by the State, it has been mentioned that except petitioner no. 5 namely Shri Bhagwan in CWP No. 16456 of 2020 In who has got

lesser marks than as per the criteria noted above, the others had got more marks. Thus, this Court is of the opinion that qua these petitioners, different approach would be warranted for to the extent that the Commission would re-evaluate their answer sheets and after deleting the marks of the smudged questions, result would be evaluated. If the petitioners still have secured the requisite cut off as fixed by the Commission, they would be interviewed and considered for appointment against vacant posts of their respective categories, if they are otherwise eligible. The necessary exercise be completed in 3 months' time.

The present benefit, as such, is only being given to the petitioners solely on the issue of equity by exercising the extra ordinary writ jurisdiction by this Court keeping in view the fact that they had earlier served the State for almost a period of 10 years. It will be highly inequitable at this stage to throw them out at the threshold on account of error on their part of having smudged a particular answer. Even otherwise, there are vacancies, as such, with the State to fill up the said posts and in such circumstances, the order is being passed.”

It has also further been pointed out that the Commission has given certain benefits, as such, to the candidates for certain questions and though the averment is regarding having secured only 88 marks but if the said benefit is given, the petitioner would make the grade of 90 marks.

Resultantly, the respondent-Commission, as such, is directed to ensure that if the petitioner has made the qualifying cut after deleting the benefit which is to be awarded against the smudged questions, result be declared and the same benefits be given as in ***CWP No. 19895 of 2020,***

Rajesh Kumar vs. State of Haryana and others, decided on 08.09.2021

Petition stands allowed to the limited extent, as observed above.

30.09.2021
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No