

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 19895 of 2020 and other connected matters

Date of decision: 08.09.2021

204/5

Rajesh Kumar

....Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

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

Present: Mr. Jasbir Mor, Advocate,
Mr. Sunil Nehra, Advocate,
Ms. Alka Chatrath, Advocate,
Mr. S.S. Duhan, Advocate,
Mr. Varlin Garg, Advocate,
for the petitioner.

Mr. Harish Nain, AAG, Haryana.

G.S.SANDHAWALIA, J. (Oral)

The present judgment shall dispose of 14 writ petitions i.e. CWP Nos. 19895, 16111, 19175, 19179, 20860, 19947, 19979, 17426, 16832, 17230, 20395 and 16456 of 2020 and CWP Nos. 1172, 8656 of 2021 as common questions of facts and law are involved in all the writ petitions. Reference is being made to ***CWP No. 19895 of 2020, Rajesh Kumar vs. State of Haryana and others.***

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

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facts and circumstances, out of the main bunch, the harship 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

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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

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criteria fixed to secure the minimum qualifying prescribed in the written test. The same is as under:-

- “a) General Category = 50%***
- b) SC,BC= 45%***
- c) ESM= 40%”***

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

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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.

Qua the other petitioners, this Court had been consistent in the view that the petitioners had never been appointed in the earlier selection and have not made the grade for the second time also and, therefore, the benefit would not apply to them. The other petitioners who are not appointees of the earlier selection, principles of equity will not apply to them and, therefore, the law laid down by this Court in ***CWP No. 22918 of 2016, Anshu and others vs. State of Haryana and others decided on 21.12.2016*** upheld in ***LPA No. 92 of 2017 on 20.01.2017*** and further upheld in ***SLP (Civil) No. 8430 of 2017 on 27.03.2017*** would be applicable. It is not disputed that co-ordinate Benches have also taken a similar view, which has been further upheld in ***LPA No. 463 of 2021, Reman Kumari vs. Haryana Staff Selection Commission*** and as noticed by this Court in ***CWP No. 4938 of 2021, Nishant Singh vs. State of Haryana and others.***

Accordingly, the writ petitions are allowed to the limited extent of three petitioners i.e. 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. Qua the other petitioners in all other cases, the petitions stand dismissed.

08.09.2021
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No