

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

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**CM-8143-CWP-2021 in/and
CWP No.9864 of 2015
Decided on : 26.07.2021**

Ashok Kumar

... Petitioner

Versus

The Punjab & Haryana High Court, Chandigarh through its Registrar
General and others

... Respondents

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

Present: Mr. B.S. Rana, Senior Advocate with
Mr. Nayandeep Rana, Advocate for the petitioner.

Mr. Jaivir S. Chandail, Advocate
for respondent No.1.

Mr. Gurinder Pal Singh, Advocate
for respondents No.7 & 10.

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

G.S. Sandhawalia, J. (Oral)

CM-8143-CWP-2021

Application has been filed for preponing the date of hearing
from 02.09.2021.

For the reasons given in the application, the application is
allowed and hearing of the case is preponed from 02.09.2021 to today itself
with the consent of counsels for the parties.

CM stands disposed of.

Main case

In the present writ petition filed under Article 226 of the
Constitution of India, the petitioner seeks quashing of the impugned order

dated 20.11.2014 (Annexure P-8) whereby the decision was taken by the Departmental Promotion/Recruitment (High Court) Committee (hereinafter referred to as 'the DPC') that for the candidates who had attempted more than required number of questions, apart from the compulsory question, next four attempted questions would be taken into consideration while preparing the result.

2. Accordingly, a writ in the nature of mandamus is sought directing the respondent No.1 to re-frame the final merit list after counting of marks of best of four attempted questions, apart from the compulsory question no.1 of the petitioner in the written examination and to place the petitioner at the requisite final seniority list of the Readers of this Court.

3. The communication in question dated 18.09.2014 (Annexure P-1) was issued by the Registrar Recruitment of this Court to fill up 13 vacant posts of Readers and to prepare a waiting list of 08 successful candidates and the cut-off date was 30.09.2014. The petitioner appeared in the written test and attempted the question paper (Annexure P-3) in which question no.1 was compulsory pertaining to 20 marks. The candidates had to attempt four other questions out of the questions bearing Sr. Nos.2 to 9 each bearing 20 marks.

4. It is not disputed that the petitioner and some other candidates had attempted more than four questions. A decision was thereafter taken by the DPC which is now impugned that apart from the

compulsory question, the marks would be taken into consideration of the next four attempted questions which was post the examination process having taken place on 20.11.2014. Thus, it was the case of the petitioner that total marks of the answers to the best four questions be taken into consideration and then he would be placed at Sr. No.19 of the merit list instead of being at Sr. No.33.

5. A Coordinate Bench of this Court headed by P.B. Bajanthri, J. on 06.02.2017 took this aspect into consideration that in the mid of the selection process the change of criteria would be a violation of the judgment of the Apex Court passed in **K.Manjusree versus State of A.P. and another, 2008(3)SCC 512**. It was, thus, noticed that reconsideration of the select list would be necessary and the selected candidates who have written more than four questions and whose answer scripts have been evaluated would also have to be heard. Resultantly, directions were issued to the official respondents to implead such candidates who have been selected for the post of Readers. Necessarily private respondents No.5 to 10 were then impleaded on 28.04.2017.

6. It is necessary to note that from the year 2014 till the year 2017, these respondents never agitated for the relief which the petitioner was claiming that the benefit of the best answers should be given. On 03.04.2019 directions were issued to redraw the merit list of the Readers by bifurcating it into two lists consisting of the marks obtained in first four questions and then result of the best four answers from Questions

no.2 to 9 was to be presented to understand the effect of change in the criteria of evaluation. The two page tabulation was taken on record on 10.04.2019 as Mark 'A'.

7. A perusal of the same would go on to show that if the same is read in conjunction with the merit list of the candidates (Annexure P-2) as per the decision taken, the petitioner figures at Sr. No.33, whereas as per Mark-A if the benefit of the best four attempted questions is given, he figures at Sr. No.21. Resultantly, directions were issued on 16.05.2019 for exploring the possibility whether there is any vacancy in the Readers' cadre and whether the petitioner can be adjusted against that vacancy. Consequently on 27.05.2019, the Coordinate Bench, left the matter open to be decided by the DPC to examine possible solutions which are found just and equitable in the peculiar circumstances to bring in equality in the absence of clear cut rules devised before the start of the process of promotions (sic. appointment) to the cadre of Readers.

8. On 15.07.2019, the DPC decided that best four questions instead of four questions would be the better criteria being more rational in selecting the best candidates. However, it was resolved that in future the criteria would also be best four questions instead of first four. However, the benefit was only to be granted to the petitioner who had timely approached the Court. Resultantly, the result was to be revised and if the petitioner fell within the merit, he was to be adjusted against the available vacancy. Further directions were also issued that the feasibility

of the petitioner of submitting an undertaking to forego all consequential benefits in case of fresh appointment in view of the revised criteria is offered to him be also kept in mind to avoid further complications. Relevant portion of the Minutes of Meeting dated 15.07.2019 reads as under:-

“The matter has been considered at length and this Committee principally resolves that criteria should have been best four questions instead of first four being more rational in selecting the best candidates. We hereby resolve that in future the criteria of evaluation would be best four questions instead of first four. It is further resolved to apply this principle as one time measure to the case of petitioner Ashok Kumar, who has timely approached the Court. Accordingly, his result be revised and if his merit falls within the merit of the selected and appointed candidates, he be adjusted against the available vacancy.

The counsel representing the High Court in the aforesaid writ filed by Ashok Kumar be instructed to humbly request the Hon’ble Court for considering the feasibility of petitioner Ashok Kumar of submitting an undertaking to forego all consequential claims in case fresh appointment in view of the revised criteria is offered to him, so as to avoid further complications.”

9. In view of the said decision the matter again came up before the Coordinate Bench on 15.11.2019 and it was noticed that a notice for filling up of 11 further vacancies of Readers had been issued on 14.11.2019. The Bench then juggled the interest of other candidates also, as there was another recruitment to be made, since an argument was raised by the counsel for the private respondents, specially on behalf of respondents No.7 & 10 that the notional fixation of seniority on inter se

merit was to be determined as a result of revision of marks and they should be heard.

10. Resultantly, it was observed that the petitioner's right crystallized on 15.07.2019 as far as offer of appointment is concerned vis a vis the incoming batch and he would remain senior to others although actually appointed later and the condition would be put in the appointment letter of the incoming batch, if they are separately issued.

11. On 06.12.2019, the DPC was given liberty as such to take another decision without being influenced or bound by any observations made in the earlier order dated 15.11.2019 pertaining to implead respondents No.5, 7 and 10 and that a pragmatic decision be taken. Thereafter, the Minutes of the DPC Meeting held on 17.12.2019 was taken on record as Annexure R-1. Relevant part of the same reads as under:-

“Meeting note perused. Matter has been considered at length. The Committee reiterates its decision dated 15.07.2019. It is clarified that petitioner, Shri Ashok Kumar, who timely approached the Court and the benefit of revised criteria as one time measure is admissible to him only as a measure of compassion. The Committee is not inclined to apply the revised criteria retrospectively. Therefore, result is not revised in respect of already selected candidates. The Hon'ble Court be informed, accordingly.”

12. A perusal of the same thus would go on to show the pragmatic measure has been taken to give the benefit to the petitioner through the revised criteria as a one time measure. However, a condition

was put that the result was not to be revised in respect of the already selected candidates.

13. Argument raised by Mr. Gurinder Pal Singh, Advocate that the result be revised in the case of respondents No.7 & 10, who had attempted more than four questions and their seniority be also revised, is without any basis. As noticed that they had accepted the methodology adopted earlier by the DPC and the requisite appointment. Only on account of the litigation initiated by the petitioner, the matter was being reconsidered. The principle of estoppel will now apply against them as now having accepted the marking pattern which has had been adopted and the correction of the answer sheets had been done as per the earlier decision of the DPC. They cannot now wriggle out and submit that the benefit of the revised criteria should also apply to them.

14. Resultantly, this Court is of the opinion that the present writ petition is liable to be disposed of in terms of the decision of the DPC dated 15.07.2019 and 17.12.2019. Accordingly, the petitioner is granted the necessary benefit of appointment as a Reader with the seniority from 15.07.2019. An undertaking has already been given by Mr. Nayandeep Rana, Advocate on instructions that the petitioner will forego arrears of pay and allowances from the said period. However, all the notional benefits will flow to him from the said date. Necessary steps be taken and the process be completed within 2 weeks from the receipt of certified copy of this order.

15. With the abovesaid directions, the present writ petition is disposed of. All pending civil miscellaneous applications also stand disposed of.

July 26, 2021
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No