

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

**LPA No.1139 of 2021(O&M)
Date of decision: 30.11.2021**

Lovepreet Singh

... Appellant

Versus

Haryana Public Service Commission and another

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA,
CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI**

Present: Mr. Vivek Sharma, Advocate, for the appellant.

Mr. Deepak Balyan, Additional Advocate General, Haryana.

(The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual Court)

ARUN PALLI, J.

This is an intra-court appeal, under clause X of the Letters Patent, against an order and judgment dated 26.10.2021, rendered by the learned Single Judge, vide which the writ petition preferred by the appellant has since been dismissed.

A brief narration of facts that have led the appellant to the current stage shall be imperative.

Vide advertisement No.5, dated 17.11.2015, the Haryana Public Service Commission (for short, 'the Commission') invited online applications for a competitive examination to fill up the posts of Assistant Engineer (Civil) and (Mechanical) Class-II in Public Health Engineering Department, Haryana. The appellant competed for selection to the post of Assistant Engineer (Civil) in BC-A Category. The written examination was

conducted by the Commission from 03.09.2020 to 05.09.2020. And, before formal declaration of result, the Commission uploaded the standard question booklet ***along with the proposed answer key*** to enable the candidates to submit objections thereto through a prescribed link. Accordingly, the appellant filed objections in respect to six questions: Q.No.45 (Civil Engineering Paper-I), Q.No.27 (Civil Engineering Paper-II), Q.No.25, 62, 97 & 98 (General Ability Paper). Whereafter, the Commission declared the results on 01.01.2021. However, for the appellant could not secure the requisite marks, he failed to qualify for viva-voce/interview. The grievance of the appellant being that without consideration of the objections submitted by him and based upon the incorrect answer key, the Commission had declared the result, he approached this Court vide Civil Writ Petition No.719 of 2021. In its written statement, the Commission refuted the claim of the appellant and clarified that post receipt of the objections from the candidates including the appellant, the same were sent to the subject experts, who upon analysis of all such objections, submitted their report. Accordingly, based upon the said report, the Commission declared the result. Faced with this position and the decision of the experts qua the objections submitted by the appellant, the counsel for the appellant chose not to press any of the issues raised in the petition, except that marks scored by him in the General Ability Paper be rounded off from 39.9% to 40% to enable him to qualify for interview. However, even the said prayer was rejected by the learned Single Judge and vide order and judgment dated 27.01.2021 (Annexure P-6), the petition was dismissed.

However, thereafter the appellant filed yet another petition (Civil Writ Petition No.17937 of 2021) and prayed for quashing the report

submitted by the Expert Committee recommending deletion of Q.Nos.25 & 62 (General Ability Paper). Further, to command the Commission to restore those questions and since the appellant had chosen the correct options, to award him the marks therefor. However, upon analysis of the matter in issue, the learned Single Judge dismissed the petition, for ordinarily the wisdom of the Expert Committee ought not to be substituted with that of the Court. And secondly, the selection process had already withstood the judicial scrutiny in the previous round of litigation and, therefore, the second petition filed by the appellant was even hit by the principle of *res judicata*. Thus, this appeal.

Learned counsel for the appellant submits that even though Q.Nos.25 & 62 (General Ability Paper) were found to be ambiguous by the Expert Committee and consequently deleted, but since the appellant had ticked one of the correct options he was entitled to be awarded marks for those two questions. Secondly, the appellant had competed against one of the six posts reserved for BC-A Category and as one post was still vacant, he could still be considered and appointed against the said post.

We have heard learned counsel for the appellant and perused the record.

In context of the limited issue that arises for consideration, we may re-state that in the earlier petition (CWP-719-2021), the appellant had questioned the sanctity/validity of the results. His grievance was that even though, he had filed specific objections to the proposed answer key but those were never examined or dealt with by the Commission and, thus, based upon the wrong/incorrect answers the results were declared. Whereas, the Commission in its written statement, filed in those proceedings, clarified that

objections submitted by all the candidates, including the appellant, were sent to the Experts Committee who, upon considering each of those, submitted its report. Accordingly, based upon the said report, the answer key was revised and results were declared. As regards the objections submitted by the appellant, the subject experts had opined:

“a) Objection regarding question No.45 of Civil Engineering paper-I has been accepted.

b) Questions No.25 and 62 of General Ability Paper have been found to be ambiguous & hence recommended for deletion by the Expert Committee.

c) Objections regarding question No.27 of Civil Engineering paper-II and question No.97 and 98 of General Ability Paper have not been accepted by the Expert Committee.

Consequently, appropriate action has been taken by the answering respondent Commission by accepting the recommendations of the subject Expert Committee. Accordingly, the petitioner has been given the benefit in respect of his objection qua question no.45 of Civil Engineering Paper-I and question No.25 & 62 of General Ability Paper. Thus, the answering respondent Commission has rightly declared the result of written examination as per the report of the Expert Committee.”

And, thus, in the wake of the report submitted by the Expert Committee and the stand set out by the Commission in its written statement, counsel for the appellant, as is discerned from paras 8 and 12 of the judgment (*ibid*) vide which the earlier petition was dismissed, chose not to press any of the issues raised in the petition and gave up the challenge.

Except, as indicated earlier, that his marks in the General Ability Paper be

rounded off from 39.9% to 40% though even this prayer and argument was rejected:

“8. At this stage, learned counsel for the petitioner submits that the petitioner does not press his petition qua the quashing of the result declared by the respondent-Commission on 1st of January, 2021 keeping in view the reply filed by the respondent-Commission.

9. to 11. xxx xxx xxx

12. As noticed above, learned counsel for the petitioner has not pressed his prayer for setting-aside the result of the written examination declared on 1st of January, 2021 by the Commission...”

In conspectus of the above, need we say, if the appellant was aggrieved by the opinion of the Experts Committee to delete questions No.25 & 62 (General Ability Paper), nothing stopped him to still press his claim or persist with his grievance. But he chose not to. And on the contrary, accepted the report, which formed basis of the results, as also the decision of the subject experts vide which the objections submitted by him to certain questions were dealt with. Significantly, for the order and judgment dated 27.01.2021 was never assailed by the appellant, it has since attained finality. Thus, ex facie, the second writ petition (CWP-17937-2021) filed by the appellant was not even maintainable being barred by the principle of *res judicata*.

Albeit, having said that we are not required to delve any further into the merits but we still consider it expedient to dilate on the issue: if pursuant to the recommendations of the Expert Committee who found that question Nos.25 & 62 (General Ability Paper) were ambiguous/confusing,

could those at all be deleted? And, whether the Commission was competent to cause such deletion – suffice it to say the matter is not *res integra*. The Supreme Court while dealing with a similar situation in **Kanpur University v. Samir Gupta**, 1983(4) SCC 309 (para 18) observed:

“... in a system of 'Multiple Choice Objective-type test', care must be taken to see that questions having an ambiguous import are not set in the papers. That kind of system of examination involves merely the tick-marking of the correct answer. It leaves no scope for reasoning or argument. The answer is 'yes' or 'no'. That is why the questions have to be clear and unequivocal. Lastly, if the attention of the University is drawn to any defect in a key answer or any ambiguity in a question set in the examination, prompt and timely decision must be taken by the University to declare that the suspect question will be excluded from the paper and no marks assigned to it.”

Likewise, a Division Bench of this Court in **Ankita Mittal v. State of Haryana and others**, 2015(2) PLR 482, concluded:

“3. In respect of deletion of five questions, we find as to whether a particular answer to a particular question is ambiguous or not or warrants any clarification is a decision which is required to be taken by experts on the basis of various inputs received by them. Once it has been decided to delete five questions, the deletion is applicable across all candidates. The result is that instead of 125 questions the candidates have been marked out of 120 questions. Thus, it cannot be said that the petitioner has suffered any prejudice since all candidates have been treated at par. We also do not find any merit in the argument

raised that the examining body was not competent to delete any question. The preliminary examination is a short-listing examination for the candidates. The process of examination has been applied uniformly to all the candidates. If it has been found that five questions are such which have multiple answers or the frame of the questions is not clear, the same could very well be deleted. The consequences of deletion is that all candidates whether they have attempted such questions or not or attempted such questions rightly or wrongly are treated at par as no credit or discredit is given to any candidate of such questions. The decision to delete a question lies in the wisdom of the experts who in the process of finalization of the answer key have decided to delete such questions. It is not necessary that there should be a condition in the advertisement itself that an objective type question can be deleted by the examining body in the process of finalization of the answer key.”

Thus, what can be deduced from the principle of law expounded in the decisions referred to above, is: In an objective multiple-choice question, where the candidate has to merely mark a correct response, a question which has no single, unique or ‘most appropriate answer’ (i.e., suspect question) becomes incapable of being asked. This may be because the answer requires an explanation and argumentation or reasons for its justification, which is an exercise permissible for the exam where the format is subjective and not objective. A suspect question, thus, needs to be deleted so that no student gets advantage, or is denied advantage, because of evaluation of such questions. Similarly, the examining authority, guided by the experts in the subject, is well equipped and, thus, rightly authorized to

decide the answer-key and in that process delete the suspect questions. Further, whether a question is framed aptly or is vague, ambiguous or has multiple correct answers and, therefore, required to be deleted is the exclusive domain of the subject experts. Thus, ordinarily this Court in exercise of power of judicial review would not interfere with the opinion of the experts unless shown to be conclusively erroneous or flawed. However, such is not the case in the matter at hands. For, the authenticity or correctness of the report submitted by the expert committee or its decision to delete question Nos.25 & 62 (General Ability) in particular, was not even remotely questioned by the learned counsel for the appellant.

The argument, for against the six posts reserved in the BC-A Category only five candidates were selected and, therefore, claim of the appellant could still be considered against the post that was vacant is also equally erroneous and misconceived. For, concededly the appellant had failed to secure the requisite marks to qualify for viva-voce/interview.

In the wake of the above, we are dissuaded to interfere with the impugned order and judgment rendered by the learned Single Judge. The appeal being devoid of merit is accordingly dismissed.

(Ravi Shanker Jha)
Chief Justice

(Arun Palli)
Judge

30.11.2021
Rajan

Whether speaking / reasoned:
Whether Reportable:

YES
NO