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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 16.02.2021

+ **LPA 123/2019 & CM APPL. 8801/2019 (for stay)**

THE DISTRICT & SESSIONS JUDGE (HQS) & ANR.

.... Appellants
Through: Mrs. Avnish Ahlawat, Standing
Counsel GNCTD (Services) with Ms.
Tania Ahlawat, Mr. Nitesh Kumar
Singh and Ms. Palak Rohmetra,
Advocates.

versus

NARENDER KUMAR Respondent
Through: Mr. Abhik Chimni, Advocate.

AND

+ **LPA 124/2019 & CM APPL. 8808/2019 (for stay)**

THE DISTRICT & SESSIONS JUDGE (HQS) & ANR.

.... Appellants
Through: Mrs. Avnish Ahlawat, Standing
Counsel GNCTD (Services) with Ms.
Tania Ahlawat, Mr. Nitesh Kumar
Singh and Ms. Palak Rohmetra,
Advocates.

versus

NEERAJ KUMAR SANGWAN Respondent
Through: Mr. Abhik Chimni, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

[VIA VIDEO CONFERENCING]

SANJEEV NARULA, J. (Oral)

1. The present intra-court appeals arise out of a common Order of the learned Single Judge dated 16th January, 2019 [*hereinafter referred to as 'Impugned Order'*]. Since the factual background and grounds of appeal urged therein are nearly identical, the same are being heard together and decided by way of this common judgment.

BRIEF FACTS

2. Briefly stated, in the month of December 2009, Appellant issued an advertisement for filling vacancies of 412 posts of Lower Division Clerk [*hereinafter referred to as 'LDC'*]. As per the selection criteria prescribed in the advertisement, the aspirants were required to qualify a typewriting test and have a minimum speed of 30 words per minute in English, followed by an interview.

3. Both the Respondents herein applied and qualified the typewriting test and were called for interview. Narender Kumar secured 121 marks in total, with 26 marks in typewriting test; and likewise, Neeraj Kumar Sangwan secured aggregate of 113 marks, with 29 marks in the typewriting test. Both were selected, and joined as LDC with Respondent No. 1. Meanwhile, one Sh. Anupam Garg, who had also appeared as a candidate for the selection process, filed a writ petition before this Court [being W.P.(C) No. 3467/2010] praying for direction to the Respondents therein to modify the list of candidates selected for interview by including his name. The petition was dismissed by the learned Single Judge *vide* Order dated 26th May, 2010, but subsequently, in the challenge laid to the afore-noted decision in LPA 417/2010, this Court

vide Order dated 9th August, 2010 directed that all candidates to whom the offer of appointment was given, including candidates who had already joined and those who had not yet joined, would be required to sit for a typewriting test once again [including the Respondents herein] with only those who attain the speed of 30 words per minute becoming eligible for appointment to the post of LDC. The Court further clarified that the aforesaid directions would also apply to those who have already joined duties before the passing of the Order dated 26th July, 2010, but did not attain the speed of 30 words per minute. The relevant portion of the said Order is extracted hereinbelow:

“Since the appointment itself is on purely temporary basis we direct that, rather than terminating the appointment of all the 138 candidates to whom the offer of appointment have been given and who have joined and those candidates who have not yet joined, they should be required to sit for a typewriting test once again and only those who attain the speed of 30 words per minute would be eligible for appointment.

The Chairman of the Recruitment Committee, who is present in person, states that the Examination shall be held within two months. It is clarified that these directions will also apply to those, who have already joined duties before the passing of the orders dated 26th July, 2010 but did not attain the speed of 30 words per minute.”

4. Thereafter, two Circulars dated 13th August, 2010 and 17th August, 2010 were issued by the Appellant herein, clarifying the criteria for evaluation of typing speed. It was stipulated that the criteria of 30 words per minute would be assessed on the basis of a passage of about 450 words, carrying 30 marks to be given to the candidates for typing within 10 minutes. The candidates were allowed to repeat the passage, if time permitted. In order to qualify the prescribed typewriting test, a candidate had to obtain a minimum of 20 marks from a passage of about 450 words. One mark for every 15 mistakes was liable to be deducted out of the total marks. Similarly, one mark was to be awarded for every 15 additional words typed in addition to 300 words. Shortfall below 300 words in typing was to be

treated as a mistake. The said Circulars further clarified that those who had already joined the service pursuant to the LDC Examination, 2009 and had obtained marks in the range of 20 to 29.5 in the previous typewriting test, would also have to pass the re-test with the minimum marks prescribed under the Circulars. Lastly, it was notified that the services of the candidates who failed in the typewriting test were liable to be terminated without any further notice.

5. Aggrieved with the aforesaid directions requiring even selected candidates to undergo the typewriting re-test, the affected persons jointly filed a writ petition before this court [W.P.(C) 6443/2010 titled ***Harinder Singh & Ors. Vs. District Judge & Ors.***]. The challenge was unsuccessful, and the writ petition was dismissed *vide* judgment dated 24th September, 2010. The LPA and the SLP preferred against the same were also dismissed on 25th September, 2010 and 13th December, 2010 respectively, and thus the decision attained finality.

6. With no option left, the affected persons, including the Respondents herein, appeared for the re-typewriting test. This time, both the Respondents failed to secure the prescribed minimum marks and did not achieve the speed of 30 words per minute. They were declared unsuccessful and consequently, their services were terminated.

7. With this background, when the Respondents preferred a writ petition before this Court, the learned Single Judge *vide* the Impugned Order dated 16th January, 2019, proceeded to re-evaluate the answer scripts/typewriting sheets of the Respondents (Petitioners therein) with the assistance of the Court Master. Thereafter, applying the criteria laid down by the Appellant, the Court proceeded to re-compute the marks. Since the re-computed marks

were more than the minimum marks prescribed for selection, the learned Single Judge declared the Respondents to have successfully qualified the re-typewriting test. The Court further proceeded to hold that, since the Respondents had not worked from the date of their termination, they would be entitled to 50% of the back wages with all consequential benefits including seniority. The relevant portion of the Impugned Order is extracted hereinbelow: -

“18. As per the stand of the respondent, the petitioner in WP(C) 3245/2012 has typed 345 words whereas the petitioner claimed that he has typed 371 words. To come out from this controversy this Court directed the Court Master to calculate the words and as per his calculation the total words typed are 364.

19. Counsel for the petitioner even does not dispute the same.

20. As per the criteria, which is at page 35, for each 15 words one mark will be awarded to the candidate. If we divide 364/15 it will come as 24.26.

21. On perusal of the typing sheet of the petitioner in W.P.(C) 3245/2012 (at page 151) total circles are 12 which indicates the mistakes committed by the petitioner. As per the criteria for every 15 mistakes one mark is to be deducted, accordingly if one mark is deducted for 12 mistakes then the marks of the petitioner will be 23.26. Whereas the respondents awarded 23 marks to the petitioner and deducted 7 marks for the mistakes. Thus he was awarded only 16 marks which is less than 20 minimum marks and declared fail in the typing test.

22. Again, on perusal of the typing sheet of above petitioner, the mistakes are only 12 and instead of deducting 7 marks the respondent ought to have deducted only one mark. Thus, in my view, the said petitioner got 22.26 W.P.(C) 3245/12 and 3253/12 Page 8 of 9 marks total (after deduction) which is above the minimum 20 marks. Even if I go by the calculation of respondents and by deducting 1 mark, he got 22 marks. Accordingly, I hereby declare that the petitioner in WP(C) 3245/2012 has qualified the re-type test.

23. As per the typing sheet of the petitioner in WP(C) 3253/2012 as per the respondent the petitioner has typed 350 words including additional 50 words above 300 which was minimum. As per the criteria, for every 15 mistakes one mark is to be deducted and if the

marks 350 is divided by 15, the marks of the petitioner comes to 23. I further note that the respondent has deducted 4 marks for the mistakes and finally given 19 marks.

24. *On perusal of the typing sheet total mistakes are 24 which is admitted in letter dated 23.01.2012 by the respondents. If 24 mistakes are divided by 15, it will come to 1.6 and if it is rounded and it will come to 2 marks. Thus, instead of deducting four marks for mistakes, respondents ought to have deducted two marks only.*

25. *Thus, in my view, the petitioner in WP(C) 3253/2012 **has got 21 marks which is above the minimum of 20 marks. Thus, I hereby declare that the petitioner has qualified in the typing test.***

26. *As stated by counsel for the petitioner at Bar that after re-type test the interviews were not conducted and whatever the marks already received by the candidates in previous round of interview those marks were added. Accordingly, I hereby direct the respondents that by adding the marks of the typing test of the petitioners, merit list shall be prepared afresh and accordingly if the petitioners are otherwise eligible, the appointment letters shall be issued within four weeks from the receipt of this order.*

27. *Since the petitioners have not worked from 11.10.2010, the order of termination, till date, the petitioners shall be entitled for 50% of the wages with all consequential benefits including the seniority.*

28. *Both the petitions are accordingly allowed."*

(Emphasis supplied)

CONTENTIONS OF THE PARTIES

8. Mrs. Avnish Ahlawat, learned counsel for the Appellant, submits that the learned Single Judge, in the first place, ought not to have proceeded to re-evaluate the marks of the Respondents. She submits that even otherwise, the re-evaluation is contrary to the instructions, norms and standards set out by the Appellant. She drew our attention to the passage typewritten by the Respondents, as placed on record, and pointed out several mistakes which had been encircled, on which basis, she argued that the Respondents did not achieve the prescribed cut-off marks. She explained that deductions are done for strokes, haphazard typing, faulty shifting, etc. These aspects have not

been taken into account by the learned Single Judge. She further clarified that, in the case of Narender Kumar, besides 24 encircled mistakes, leaving space for 24 strokes in 7th line itself would qualify as 24 mistakes in terms of the evaluation criteria. Besides, the characters printed out of line of writing were also deemed to be errors. Further, there were haphazard lines [more than 14 in number] which were also categorized to be errors, as per the evaluation criteria. Likewise, in the case of Neeraj Kumar Sangwan, there was repeat typing of 26 words, haphazard typing, faulty shifting, etc. and accordingly, 7 marks were liable to be deducted.

9. Mr. Chimni, learned counsel for the Respondents, on the other hand, defended the Order of the learned Single Judge and submitted that while evaluating the typewriting sheets of the Respondents, the same were not checked as per the norms set out in the Circulars dated 13th August, 2010 and 17th August, 2010. The Respondents, under the RTI Act, 2005, sought information as to “...whether only given instructions and rules, which are mentioned on the Roll Nos. supplied to the candidates have been followed for finding of type-writing mistakes in the Re-typing test held on 26/09/2012?” or, in the absence thereof, whether there “were there any other instructions and rules which had not been mentioned in the Roll Numbers regarding finding of type writing mistakes in the said typing test?”. The Appellants had replied to the above, stating that the methods of evaluation of typing speed as mentioned in the roll nos./admit cards, is self-explanatory. Mr. Chimni submitted that, by way of the above, the Appellants have admitted that there were no other rules or instructions for finding and/or calculating mistakes except that which were mentioned in the admit cards. He also submitted that the Appellant had admitted that the method followed for evaluation of the answer scripts was that which was mentioned in the Circular dated 17th August, 2010. It was further stated that on a bare

perusal of the typewriting sheet of the Respondents, it was evident that the criteria laid down had not been applied. Even though the evaluation of the examiner was incorrect, yet, even by the criteria applied by the evaluator, the Respondents would have secured more than 20 marks and as such they were rightly declared by the learned Single Judge to have qualified for the post of LDC. Mr. Chimni also brought the attention of this Court to the communication dated 23rd January, 2012 issued by the Appellant in response to Respondents' representations.

FINDINGS

10. We have considered the rival contentions of the parties. The learned Single Judge has allowed the writ petitions, holding the Respondents to be successful candidates by undertaking the task of re-evaluation of the typewriting sheets with the assistance of the Court Master. The short question before us is - Whether the Court has overstepped in exercising its jurisdiction of judicial review by adopting such an approach? On this issue, law is quite well-settled. [See: *Ran Vijay Singh & Ors. Vs. State of Uttar Pradesh & Ors. (2018) 2 SCC 357*]. It has been consistently held that the Courts are required to stay away from scrutinising the answer sheets of candidates. The jurisprudence on this issue is based on well-founded reasoning that the Courts do not have the required expertise in such matters and it should left to be decided by the competent authority conducting the test or to the experts in the field. The Courts have to presume the correctness of the criteria applied and have to proceed on that assumption. If power of judicial review is expanded to question the correctness of the evaluation of answer-sheets, the sanctity of the examination shall be adversely affected. In the event of any doubt, the benefit has to be given to the examining authority rather than to the candidate. Even otherwise, if the Court does find

something amiss or erroneous, the proper course would be to set aside the examination, rather than re-evaluating the answer sheets.

11. Even for the purpose of setting aside the result, the test would be that the Court has to come to a conclusion, with certainty, that the defects are of such an extent that it makes impossible for the examining authority or the Court to determine a fair result of the examination. Thus, the annulment of the results would only be justified in those cases where the facts are compelling enough. In our view, the learned Single Judge did not apply the afore-noted benchmarks. If the court indeed finds the evaluation to be appalling, the appropriate course would have been to direct a re-evaluation of the sheets by an expert, rather than undertaking this exercise through the Court Master. The Court could not have substituted its view for that of the examiner or an expert, nor should it have proceeded to compute the marks of the Respondents, while exercising the power of judicial review under Article 226 of the Constitution of India. The Court ought to have exercised restraint in interfering and conducting the process of re-evaluation itself. The approach adopted by the learned Single Judge, in our view, was erroneous on this count.

12. The observations of the Supreme Court in the decision of ***Central Board of Secondary Education Vs. Khushboo Srivastava & Ors.***, (2014) 14 SCC 523, which concerned the All-India Pre-Medical/Pre-Dental Entrance Exam 2007, are squarely applicable in the present case. Therein, the Learned Single Judge of Patna High Court compared answers written by the petitioner-candidate with the model answers provided in the subjects of physics, chemistry and biology, and concluded that two answers of the candidate were incorrectly evaluated. In light thereof, it was held that she was entitled to two more marks, and thereby, qualified for admission in the

MBBS Course. Though the Respondents therein assailed the decision before the Division Bench of the Patna High Court, producing two expert opinions on the matter to contend that the findings of the single judge are erroneous, however, they did not succeed. In these circumstances, when the Respondents approached the Supreme Court, the court observed as under:

“In our considered opinion, neither the learned Single Judge nor the Division Bench of the High Court could have substituted his/ its own views for that of the examiners and awarded two additional marks to Respondent 1 for the two answers in exercise of powers of judicial review under Article 226 of the Constitution as these are purely academic matters. This Court in Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth has observed: (SCC pp. 56-57, para 29)

“...the court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possession technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them.”

(Emphasis supplied)

13. Further, we also would like to observe that in the instant case, there was no rule or procedure for re-assessment of the answer scripts/ typewriting sheets. This Court in the case of **Gunjan Verma Vs. Vice Chancellor & Ors.**, MANU/DE/0336/2005, and the Supreme Court in the case of **H.P. Public Service Commission Vs. Mukesh Kumar Thakur**, (2010) 6 SCC 759, have deprecated the practice of directing re-evaluation in the absence of any provision thereof. It has been observed that in such circumstances, no candidate in any examination has any right to claim or to seek re-evaluation of his marks. Thus, in absence of any such provision, we cannot find any violation of any rule or regulation which could have entitled the Respondents to seek judicial review on the premise that there is an infringement of their legal or fundamental rights. Since the Respondents did not possess the locus to challenge the evaluation criteria, the writ petition

itself was completely misconceived in the first place, and learned Single Judge ought not to have intervened.

14. Accordingly, we have no hesitation in interfering in the present appeals. The Impugned Order is not sustainable in law. Accordingly, the same is set aside and the writ petitions are dismissed. Pending applications are disposed of accordingly.

SANJEEV NARULA, J

RAJIV SAHAI ENDLAW, J

FEBRUARY 16, 2021

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(corrected and released on 6th March, 2021)

