

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 937/2020

(ASHISH HEMANTRAO BADWAIK **VERSUS** WESTERN COALFIELDS LIMITED, NAGPUR & OTHERS)

*Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders.*

Court's or Judge's order

Shri M.M. Sudame, counsel for the petitioner.
 Shri A.M. Ghare, counsel for the respondents.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.
DATE ON WHICH ARGUMENTS WERE HEARD : 28TH JULY, 2022.
DATE ON WHICH ORDER IS PRONOUNCED : 06TH SEPTEMBER, 2022.

The petitioner who had submitted his application for seeking recruitment on the post of Mining Sirdar/Shot Firer, T&S Gr.-C from the Other Backward Classes category is aggrieved by the decision of the respondents in not correctly evaluating his answer papers of the written examination that was held on 09.12.2018.

2. According to the petitioner the cut-off marks for the Other Backward Classes (non-creamy layer) category was 81 marks. In the written test held on 09.12.2018 the petitioner was shown to have secured 80 marks out of 100 marks. It is the case of the petitioner that no model answer key was supplied by the respondents as demanded and hence the petitioner has sought re-valuation of his answer sheet from an Expert Authority of the Indian School of Mines, Dhanbad.

During pendency of the writ petition the petitioner has filed an additional affidavit stating therein that under provisions of the Right to Information Act, 2005 he was supplied the answer key with model answers on 19.12.2019. According to him in the said model key certain questions have been wrongly answered as a result of which the petitioner was deprived of at least four to five marks. On that basis the petitioner has prayed that his answer sheet be re-valued and he be given an appointment on the post of Mining Sirdar since he secured more than the cut-off marks.

3. Shri M.M. Sudame, learned counsel for the petitioner submitted on the basis of the answer key that was provided to the petitioner under the provisions of the Right to Information Act, 2005 that about five questions were shown with wrong answers in the model answer sheet. The petitioner was awarded 80 marks in the said examination while the cut-off was 81 marks. As a result of the aforesaid five incorrect answers which the petitioner had actually answered correctly he was entitled for 85 marks. Despite answering aforesaid five questions correctly he was awarded '0' marks thus causing prejudice to him. This error of mentioning wrong answers in the model answer sheet was liable to be rectified and the petitioner ought to be granted appointment in the Other Backward Classes category on the basis of his merit. To indicate the scope for the Court to interfere in such matters, the learned counsel for the petitioner placed reliance on the decisions in *Guru Nanak Dev University Versus Saumil Garg & Others* [(2005) 13 SCC 749], *Ran Vijay Singh & Others Versus State of Uttar Pradesh & Others* [(2018) 2 SCC 357], *Rishal & Others Versus Rajasthan Public Service Commission & Others* [(2018) 8 SCC 81], *Alok Kumar Singh & Others Versus State of Uttar Pradesh & Others* [(2018) 18 SCC 242] and *Central Board of Secondary Education & Another Versus T.K. Rangarajan & Others* [(2019) 12 SCC 674]. It was thus submitted that the petitioner ought to be selected on the post of Mining Sirdar. By filing an additional affidavit it has been stated that there were various vacancies in the post of Mining Sirdar from the year 2018 to 2022 and the petitioner could be accommodated in any such post.

4. Shri A.M. Ghare, learned counsel for the respondents opposed the aforesaid submissions. According to him though the examination in question was held on 09.12.2018 the petitioner had approached this Court after a period of more than one year by filing the writ petition on 20.12.2019. Of the 333 posts that were then advertised all the said posts had been filled in. The petitioner failed to implead the last candidate in the Other Backward Classes category to enable consideration of his prayer of seeking appointment. There was no post available on which the petitioner could be appointed if he was

successful. Infact he was placed at Serial Number 31 in the waiting list. It was further submitted that a similar objection as raised by the petitioner was also raised by another examinee-Rohit Kumar. The Examination Committee verified his claim and did not accept the aforesaid objection. Except said Rohit Kumar and the petitioner no other candidate had raised any objection to the said answer sheet. It was then submitted that the scope for interference in such matters was limited and unless it was shown that the decision taken by the Authorities was arbitrary and illegal there was no cause to interfere. Moreover the petitioner had appeared in the subsequent examination for recruiting Mining Sirdar but had failed in the same. It was thus submitted that there was no cause made out to interfere in writ jurisdiction.

5. On 18.02.2020 the writ petition came to be dismissed after noting that there was no provision to seek re-valuation of the petitioner's answer sheet as prayed for. However on 24.01.2022 on the review application filed by the petitioner this Court recalled the said order and restored the writ petition for fresh consideration. The respondents being aggrieved by the order passed in exercise of review jurisdiction approached the Hon'ble Supreme Court challenging the said order. On 13.04.2022 the Hon'ble Supreme Court did not find it necessary to consider the argument as regards interference with the OMR answer books. It was observed that since earlier order had been recalled it would be open for the respondents herein to raise all questions of law and facts in the writ petition.

In the aforesaid backdrop, we have heard the learned counsel for the parties and we have perused the documents on record. At the outset we may note that insofar the prayer for re-valuation of the petitioner's answer sheet is concerned no provision has been pointed out that would empower the answer sheet of an unsatisfied examinee to be revalued. In absence of any provision in the concerned recruitment process this Court would not in writ jurisdiction issue such a direction. We may note that in paragraph 30.2 of the decision in *Ran Vijay Singh* (supra) it has been observed that even if the rules or regulations governing an examination do not permit re-evaluation or scrutiny of an answer

sheet, the Court could permit such re-valuation or scrutiny only in rare or exceptional cases that a material error has been committed. At the same time in paragraph 30.3 it has been cautioned that the Court should not re-evaluate or scrutinise the answer sheet of a candidate since it has no expertise in the matter and the academic matters are best left to the academics. The Court should presume the correctness of the key answers and proceed on that assumption and in the event of a doubt, the benefit should go to the Examination Authority rather than to the candidate.

In the aforesaid legal backdrop, the prayer made by the petitioner could be considered.

6. Certain factual aspects that are found relevant are required to be referred to. In the advertisement published on 05.09.2018 for recruiting Mining Sirdar, 333 posts were earmarked for the candidates from the Other Backward Classes category. In the said examination 2443 candidates appeared and 2371 candidates passed the same. All the 333 notified posts were filled in and appointment orders came to be issued to them. This included the 101 posts for the candidates from the Other Backward Classes category. The petitioner was placed at Serial Number 31 in the waiting list. It is thus clear that none of the posts advertised are presently vacant so as to accommodate the petitioner even if he succeeds. In the additional affidavit filed by the respondents on 29.06.2022, the name of the last candidate who joined on the post of Mining Sirdar from the Other Backward Classes category was disclosed. The petitioner failed to implead that person as a party respondent to enable consideration of grant of any relief to the petitioner if he was found eligible. In absence of such candidate being impleaded it would not be permissible to grant relief to the petitioner as regards the 333 posts that were vacant and advertised on 05.09.2018. Another aspect to be noted is that a similar objection as the one raised by the petitioner was also raised by one Shri Rohit Kumar. That objection was considered by a Three Member Committee having knowledge of the relevant subject. That objection came to be rejected after considering the relevant material. It has been stated that except said Rohit Kumar and the petitioner, no other candidate has lodged

any such objection though 2443 candidates had appeared in the written examination. Yet another aspect that requires reference is that during pendency of the proceedings 167 posts of Mining Sirdar were again advertised in the year 2021. The petitioner appeared in the subsequent examination but failed to clear the same. Though it is urged by the learned counsel for the petitioner that such appearance of the petitioner was without prejudice to the challenge raised in this writ petition, we do not find any material on record to hold that such participation was without prejudice to the petitioner's claim in the present writ petition. On the contrary the order dated 25.04.2022 passed in the writ petition records that this aspect would have substantial bearing on the outcome of the writ petition.

7. In the light of these factual aspects which are borne out from the record, we do not find that any case has been made out to invoke extraordinary jurisdiction under Article 226 of the Constitution of India. It is only in a rare or exceptional case that such interference would be permissible. The facts stated above are found to be overwhelming to dissuade the Court from exercising the writ jurisdiction in favour of the petitioner.

8. Hence for aforesaid reasons, we are not inclined to grant any relief to the petitioner. The writ petition stands dismissed with no order as to costs.

(URMILA JOSHI-PHALKE, J.)

(A. S. CHANDURKAR, J.)

APTE