

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

CWP-698-2022

Date of Decision: 14.01.2022

Penaaz Dhillon

....Petitioner

Versus

State of Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE PANKAJ JAIN**

Present : Mr. Dharam Vir Sharma, Senior Advocate, with
Mr. Tushar Sharma, Advocate,
for the petitioner.

AJAY TEWARI, J. (Oral)

1. By way of this petition, the petitioner has challenged the result of the preliminary examination of the HCS (Judicial Branch) Examination 2020-21 for the post of Civil Judge (Junior Division) held on 13.11.2021.

2. The primary contention is that the question Nos.50 and 54 of the Question Paper (Code B) have been wrongly marked. It is brought out from the petition that after the examination, the answer key was uploaded; objections were invited; objections were uploaded and thereafter, cross-objections were invited. The case of the petitioner is that since it was his opinion that the original answer key was correct therefore, he had filed cross-objections to the proposed objections but the proposed objections have been accepted and, in fact wrong answers have been treated as correct.

3. Learned Senior counsel has argued that nothing was conveyed to the petitioner about his objections. In our considered opinion, once the original answer key has been maintained, it is a clear indication that the objections have been rejected. His further contention that some order had to

be passed and conveyed to the petitioner is completely unreasonable. If this kind of exercise is to be conducted, examination processes may soon descend into a quasi-judicial anarchy and no examination process would ever be finalized because tomorrow it will be further argued that not only objections, the person concerned should be given an opportunity of personal hearing also. As regards the issue on merits, the contention of the learned Senior counsel that a bare perusal of the material which has been provided in the writ petition clearly indicates that in fact the answer which is proposed by the petitioner is the correct answer. In our opinion, the issue of setting of papers of selecting correct answers is the job best left to the experts. By now it is settled law that it is not permissible for the High Court to examine the question paper and answer sheets itself. It cannot assume the role of an expert. The Supreme Court in the case of **Himachal Pradesh Public Service Commission vs. Mudesh Thakur and another, (2010) 6 Supreme Court Cases 759**, while framing the question with respect to the power of the High Court under Article 226 of the Constitution of India in the matters related to examinations held as under:-

“14. In the facts and circumstances of the aforesaid case, three basic questions arise for consideration of this Court:-

(i) As to whether it is permissible for the court to take the task of Examiner/Selection Board upon itself and examine discrepancies and inconsistencies in the questions paper and valuation thereof.

(ii) Whether Court has the power to pass a general order restraining the persons aggrieved to approach the court by filing a writ petition on any ground and depriving them from their constitutional rights to approach the court, particularly, when some other candidates had secured the same marks, i.e., 89 and stood disqualified for being called for interview but could not approach the

court.

(iii) *Whether in absence of any statutory provision for reevaluation, the court could direct for re-evaluation.*”

and went on to hold as follows:-

“15. *In the instant case, the High Court has dealt with Question Nos.5(a) & (b) and 8(a) & (b) and made the following observations:-*

"We perused answer to Question No.5(a) and 5(b) and found that the petitioner has attempted both these answers correctly and the answer to Question No.5(b) was as complete as it could be. Despite the petitioner having attempted a better answer to Question No.5(b) than the answer to Question No.5(a), the petitioner has been awarded 6 marks out of 10 in answer to Question No.5(b) whereas he has been awarded 8 marks in answer to Question No.5(a). Similarly in answer to Question No.8(a) and 8(b) the petitioner has fared better in attempting an answer to Question No.8(b) rather marks out of 10 marks in answer to Question No.8(b) whereas he got 5 marks out of 10 marks in answer to Question No.8(a)."

16. *It is settled legal proposition that the court cannot take upon itself the task of the Statutory Authorities.*

17. *In Hindustan Shipyard Ltd. & Ors. Vs. Dr P. Sambasiva Rao & Ors., (1996) 7 SCC 499, this Court held that in a case where the relief of regularisation is sought by employees working for a long time on ad hoc basis, it is not desirable for the Court to issue direction for regularisation straightaway. The proper relief in such cases is the issuance of direction to the authority concerned to constitute a Selection Committee to consider the matter of regularisation of the ad hoc employees as per the Rules for regular appointment for the reason that the regularisation is not automatic, it depends on availability of number of vacancies, suitability and eligibility of the ad hoc appointee and particularly as to whether the ad hoc appointee had an eligibility for appointment on the date of initial as adhoc and while considering the case of regularisation, the Rules have to be strictly adhered to as dispensing with the Rules is totally impermissible in law. In certain cases, even the consultation with the Public Service Commission may be required, therefore, such a direction cannot be issued.*

18. *In Government of Orissa & Anr. Vs. Hanichal Roy & Anr., (1998) 6 SCC 626, this Court considered the*

case wherein the High Court had granted relaxation of service conditions. This Court held that the High Court could not take upon itself the task of the Statutory Authority. The only order which High Court could have passed, was to direct the Government to consider his case for relaxation forming an opinion in view of the statutory provisions as to whether the relaxation was required in the facts and circumstances of the case. Issuing such a direction by the Court was illegal and impermissible. Similar view has been reiterated by this Court in Life Insurance Corporation of India Vs. Asha Ramchandra Ambekar (Mrs.) & Anr., AIR 1994 SC 2148; and A. Umarani Vs. Registrar, Cooperative Societies & Ors., (2004) 7 SCC 112.

19. In G. Veerappa Pillai Vs. Raman and Raman Ltd., AIR 1952 SC 192, the Constitution Bench of this Court while considering the case for grant of permits under the provisions of Motor Vehicles Act, 1939, held that High Court ought to have quashed the proceedings of the Transport Authority, but issuing the direction for grant of permits was clearly in excess of its powers and jurisdiction.

20. In view of the above, it was not permissible for the High Court to examine the question paper and answer sheets itself, particularly, when the Commission had assessed the inter-se merit of the candidates. If there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the examination and not for respondent no.1 only. It is a matter of chance that the High Court was examining the answer sheets relating to law. Had it been other subjects like physics, chemistry and mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court. Therefore, we are of the considered opinion that such a course was not permissible to the High Court.”

4. As held by their Lordships, merely because in this case the subject happens to be law, we would not be able to arrogate to ourselves the powers of the expert committee. What the Court has to see is whether the process of selection is fair and above board. We are also fortified by the decision of this Court passed in **Ramandeep Kaur Vs. Council of Scientific and Industrial Research (CSIR)**, 2017(4) S.C.T. 329, wherein

after considering whole case law on the 'Examination Jurisprudence', this Court held as follows:-

“24. The above discussion reveals that while there is no doubt that many cases were decided on their own facts yet over the last 35 years an organic jurisprudence has evolved to cater to different situations arising out of mistakes committed in the questions/answers set for competitive examinations. The objective of the Courts has been to evolve such a resolution mechanism which renders the system just and fair & to this end they have developed various tools viz. publication of answer key, invitation of objections within a limited time frame and consideration thereof by independent subject experts. The process is however not yet complete and that is why litigation of this nature is still burdening the system.

25.

To summarize:-

- i) It must be mandatory that the objections which are received be also published on the website and cross objections be invited within a certain timeframe. This is necessary because just as the objectors have a right to show how and why the prescribed question or answer is wrong, those students who have answered it as per the answer key have a right to show that the prescribed question/answer is correct.*
- ii) It must be the duty of the original paper-setter/s to respond to the objections within the same time period and then the objections, cross-objections and the reply of the paper-setter/s should be referred to an independent subject experts who have to deal with the objections.*
- iii) The examining bodies must prescribe the permissible level of mistakes in question paper/s/answer keys and take appropriate punitive action against those examiners who flout the prescribed level of mistakes.”*

5. Coming to the present case, the petitioner has not been able to show any illegality or irregularity that could persuade us to hold that the process was unfair.

6. In view of the above, we find no merit in the petition and the

same is hereby dismissed.

7. Since the main case has been decided, the pending civil misc. application, if any, stands disposed off.

(AJAY TEWARI)
JUDGE

(PANKAJ JAIN)
JUDGE

14.01.2022
adhikari

Whether speaking/non-speaking	:	Yes/No
Whether reportable	:	Yes/No