

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(103)

CWP-3442-2020

Date of Decision : October 11, 2022

Upesh Malik

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sajjan Singh, Advocate, for the petitioner.

Mr. Harish Nain, Assistant Advocate General, Haryana.

Mr. Kanwal Goyal, Advocate, for respondent No.2.

HARSIMRAN SINGH SETHI J. (ORAL)

Present writ petition has been filed challenging the written examination held in pursuance to the advertisement Annexure P-1 by which, 524 posts of Assistant Professors (College Cadre) were advertised.

As per the petitioner, he being fully eligible in pursuance to the advertisement and applied for the post of Assistant Professor and as per the advertisement, the selection was to be made on the basis of a written test which was to be conducted by the selecting agency. The petitioner was issued the admit card and the written test in pursuance to the advertisement was conducted on 27.01.2020. The written test comprised of 100 questions which were to be answered by a candidate by pointing out the correct option. The petitioner appeared in the said written test but failed to qualify

the said written test to be called for interview. The petitioner is challenging the said written test on the ground that the questions which were part of the said written test were taken from a particular question paper which infringed the right of the petitioner keeping in view the judgment of the Rajasthan High Court in ***Civil Writ Petition No.8786, 9223, 9225, 9206, 9582 and 8829 of 2011 titled as Rewant Dan vs. Rajasthan Public Service Commission and others, decided on 04.07.2012.***

As per the petitioner, the written test has been conducted in a manner which is a clear cut case of bungling and is a easy way of leakage of paper to the favorites.

After notice of motion, the respondents have filed the reply wherein, the respondents have stated that the question paper was same for all the candidates who had appeared for the written examination in pursuance to the advertisement Annexure P-1 dated 08.03.2019 and after the conduct of the examination, no representation from any student was received raising any grievance qua the said conduct of the written examination. In the reply, the respondents have further stated that the setting of a paper is the prerogative of a paper setter and as per the practice adopted by the respondent-Commission, more than one paper setter are asked to set the particular paper and no one knows that which paper, will be put before the students during the examination so as to maintain the secrecy.

As per the respondents, the present petition has been filed on the basis of the apprehension without there being any evidence of any irregularity in conduct of the written examination either during the setting of the written paper in question or thereafter, hence, the prayer of the petitioner for setting aside the written examination may kindly be declined.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The primary contention of the petitioner is that as certain question in the written examination in which the petitioner appeared in pursuance to the advertisement Annexure P-1 dated 08.03.2019, were taken from a particular question paper which act, according to the petitioner, amounts to bungling and leakage of the same to the favorites so as to render the said written examination void.

Nothing has been placed on record so as to show the basis of the said allegations which have been alleged by the petitioner against the paper setter especially when the petitioner does not know even the name of the paper setter, who has set the said question paper. The allegations have only been pointed towards the paper setter probably because the petitioner failed to clear the written examination so as to be called for interview for appointment to the post of Assistant Professor.

The setting of a question paper is the prerogative of the paper setter and once, a selecting agency has reposed faith on a particular paper setter, unless and until any substantive wrong doing is brought on record, the integrity of the paper setter has to be maintained under all respects. Merely on the asking of a particular student, who failed to clear the written examination, the investigation of the paper setter cannot be undertaken. It is only in a case where a Court is prima facie convinced of any irregularity on the part of the paper setter, that action can be taken. In the present case, only bald allegations have been made by the petitioner without substantiating the same in any manner by any event or any evidence to support the said allegations.

Learned counsel for the petitioner argues that the Coordinate Bench of this Court in the present petition, had directed that the names of the paper setter be brought before this Court in the sealed cover, which order is yet to be complied with and therefore, the said order be complied with by the respondents.

The paper setter identity cannot be disclosed to any one so as to maintain the secrecy and integrity of the said paper setter especially when nothing has been brought to the notice of this Court to show that there was any misconduct on the part of the paper setter or there was any favoritism done by the said paper setter or the said paper was leaked to any favorites as being alleged, in the absence of any even prima facie material being brought on record to substantiate the allegations, the identity of the paper setter which was only for the purpose of this Court is not required and also otherwise was not to be brought in the domain of the general public.

This Court, does not think fit that in the facts and circumstances of the present case, there is need to disclose the name of the paper setter and therefore, though the Coordinate Bench of this Court had directed to bring the name of the paper setter in a sealed cover for the information of this Court, non-compliance of the same, cannot give any right to the petitioner to claim that the name of the said paper setter needs to be disclosed to the general public or not.

Further, learned counsel for the petitioner submits that once, a competent Court of law dealing with the same subject had passed certain directions to be complied with by the Selection Commission passed in ***Rewant Dan's case (supra)***, the same need to be complied with by the

respondent-Commission also.

The recommendations which were given by the Rajasthan High Court in *Rewant Dan's case (supra)*, are also to the knowledge of the respondent-Commission. It is for the Commission to adopt the same in case they feel that the conduct of the examination will be done in a smooth manner but non-adherence of the same by the respondents, will not grant any right to the petitioner so as to challenge the written examination. The prayer of the petitioner is that the directions given by the Rajasthan High Court in paragraph 26 be also imposed upon the respondent-Commission for future cannot be accepted as directions can only be given in case any right to claim any benefits exist with the candidates but in the present case, candidates cannot claim that question paper needs to be set up in a particular manner so as to bound the paper setter for future purposes. But in case the Commission intends to adopt the same, it is for the Commission to decide and not for this Court to pass any order binding the Commission in any manner.

Now the question which arise is whether a candidate, who has not raised any objection qua the conduct of examination by filing any representation, can be allowed to raise finger towards the paper setter so as to ruin the integrity and credibility of the said paper setter or not. No doubt, in case a candidate has material to show that the written examination was conducted in a manner which is not prescribed as per law or there is a favoritism or irregularities, which have crept into the said written examination so as to cause prejudice to particular candidate(s), the same can be looked into but the same does not mean that after being unsuccessful in a written examination, in order to satisfy the ego, the candidate can be given an instrument of filing a writ petition raising questions on the integrity of

the paper setter and that too without any valid evidence.

In the present case, the petitioner has casted aspersion upon the examiner and that too without there being any evidence to the said effect. Only vague allegations have been made by the petitioner that the written examination has led to favoritism and bungling, without substantiating the same.

In order to avoid such kind of frivolous writ petitions, strict orders need to be passed so that the candidates think twice before casting aspersion on a recruiting agency without any valid justification or the evidence to the said effect.

Keeping in view the above, no ground is made out for any interference by this Court in the facts and circumstances of this case.

Accordingly, the present writ petition is dismissed.

Though the Court is refraining from imposing any cost at this stage but the petitioner is warned to be careful in future before alleging such kind of misconduct without there being any evidence.

October 11, 2022

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes