

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr. No.112+279

CM-15396-CWP-2022 in/and
CWP-13753-2019 (O&M)

Date of Decision: 27.09.2022

Sunil Kumar

.... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Mukesh Kumar Verma, Advocate
for the petitioner.

Mr. R.S.Budhwar, Addl.A.G.Haryana.

HARSIMRAN SINGH SETHI, J. (ORAL)

CM-15396-CWP-2022

Prayer in the instant application is for placing on record the
Annexures P-13 to P-20.

Application is allowed subject to all just exceptions and the
Annexures P-13 to P-20 are taken on record.

CWP-13753-2019

In the present petition, the challenge is to the terms and
conditions of the Advertisement No.4 of 2015 by which, certain posts of
PGT were advertised by the Government of Haryana, a copy of which
advertisement has been appended as Annexure P-1, which was issued on
28.06.2015.

According to the terms and conditions of the advertisement, the
selection was to be made on the basis of written examination followed by
the interview. The petitioner, who applied in pursuance to the said

advertisement, was issued a roll number for appearing in the written examination. The admit card was sent to the petitioner detailing certain terms and conditions, which were to be followed while appearing in the examination and concededly, one of the terms and conditions was that in case of smudging of the OMR Sheet, the candidature of the said candidate will stand cancelled.

The petitioner appeared in the written examination and concededly, the OMR Sheet of the petitioner was smudged, due to which, the petitioner was declared ineligible as his candidature was cancelled. The said act on the part of the respondents in cancelling the candidature of the petitioner is under challenge in the present petition on the ground that the clause/terms and conditions according to which, the candidature of a candidate will stand rejected in case there is smudging in the OMR Sheet, is arbitrary and illegal and the said clause is liable to be set aside and the petitioner be declared eligible to compete for the post of PGT in pursuance to the Advertisement No.4 of 2015.

After notice of motion, the respondents have filed the reply wherein the respondents have stated that there was clear condition in the admit card as mentioned at Serial No.6 that the candidates are warned not to fold, tear, destroy or mark the OMR Sheet. The use of eraser/nail, blade, white fluid or whitener to smudge, scratch or damage the OMR Sheet during the examination is strictly prohibited and in case of failure to follow any of the said instructions, the answer sheet of the candidate will stand cancelled, hence, keeping in view the said instructions, as the OMR Sheet of the petitioner was smudged, the answer sheet of the petitioner was cancelled. In the reply, it has been further mentioned that the said conditions of the admit

card, which is being challenged by the petitioner, has already been upheld to be a valid condition by Hon'ble Division Bench of this Court while passing judgment in LPA No.92 of 2017 decided on 20.01.2017, titled Anshu and others versus State of Haryana and others, which judgment has already been upheld by Hon'ble Supreme Court of India in SLP No.8430 of 2017 decided on 27.03.2017, hence, the prayer of the petitioner that condition mentioned at Serial No.6 of the admit card to be declared as ultra vires, may kindly be rejected and the writ petition may kindly be dismissed.

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

It is a conceded position that prior to the appearing in the written examination, the petitioner was made aware of certain conditions which needs to be adhered to while appearing in the written examination. Condition mentioned at Serial No.6 of the Admit Card was very much cited to be followed by the candidate, failure of which would have entitled the cancellation of the answer sheet, which reads as under:-

“Candidates are warned not to fold, tear, destroy or marks on the OMR Answer Sheet. Use of eraser, nail, blade, white fluid/whitener etc. to smudge, scratch or damage in any manner on the OMR Sheet during examination is strictly prohibited. Candidature/OMR Sheet of candidates using eraser, blade, nail or while fluids/whitener to smudge, scratch or damage in any manner the Answer sheet be cancelled.”

In the present case, the petitioner concededly has not followed the condition No.6. A bare perusal of the OMR Sheet, which has been attached by the petitioner himself as Annexure P-3, shows that answer No.63

has been smudged. That being so, applying condition mentioned at Serial No.6 of the admit card upon the petitioner, can not be treated as arbitrary, illegal or factually incorrect.

With regard to the prayer of the petitioner that condition No.6 of the admit card be declared as ultra vires, the same argument is not available to the petitioner keeping in view the judgment rendered by Hon'ble Division Bench of this Court in Anshu's case (supra), wherein on the basis of the said clause, the candidature of a similarly situated candidate was rejected. The relevant paragraphs of the said judgment read as under:-

“We may extract Clause 6 of the admit card and the warning given in the question paper at Sr. Nos.8 and 9 herebelow :-

“6. Candidates are warned not to fold or make any stray marks on the OMR Answer Sheet. Use of Eraser, nail, blade, white fluid/whitener etc. to smudge, scratch or damage in any manner on the OMR sheet during examination is strictly prohibited. Candidature/OMR sheet of candidates using eraser, blade, nail or white fluids/whitener to smudge, scratch or damage in any manner the answer sheets shall be cancelled.”

“8. Candidates are warned not to fold or make any stray marks on the OMR Answer Sheet. Use of Eraser, Nail, Blade, White Fluid/Whitener etc. to smudge scratch or damage in any manner on the OMR Sheet during Examination is strictly prohibited. Candidature/OMR Sheet of candidates using Eraser, Blade, Nail or White Fluids/Whitener to smudge, scratch or damage in any manner the Answer Sheet shall be cancelled.

9. Candidates are warned not to carry any mobile phone, any type of watch, belt, wear ornaments like ring, chain, earring etc. electronic or communication device,

Pen, Pencil, Eraser, sharpener and correcting Fluid in the examination centre. If any candidate is found possessing any such item, he/she will not be allowed to enter in the examination centre. Candidate found possessing mobile phone and any other aiding material as mentioned above in the examination room will be treated a serious violation and it will amount to cancellation of the candidature and debarring him/her from future examination. Use of Eraser, nail, blade, white fluid/whitener etc. smudging, scratching or damaging in any manner the OMR answer sheet shall lead to cancellation of candidature and such OMR answer sheet shall not be evaluated.”

Similarly, instruction Nos.14 and 19, which are relevant, read as under :-

“14. Each question has four alternative answer of which only one is correct. For each question, darken only one circle, which ever you think is correct answer on the OMR answer sheet with only Blue/Black Ball Pen provided by the Commission. Pencil should not be used for darkening the circle. If more than one circle is found darkened, that answer will not be evaluated.

19. While darkening the appropriate bubble(s) in the boxes darken the chosen bubble(s) fully as given below. If you darken more than one circle, your answer will be treated as wrong and such answer shall not be evaluated.”

Further, Clause 7 of the instructions of OMR Answer Sheet is also relevant for our purpose which is reproduced as under :-

“7. Candidates have to answer questions from the multiple-choice of answer ABC or D. Select the right answer of each question and darken the correct bubble on the OMR Answer Sheet. Once darkened changes are

not permitted. Use of Eraser, Nail, Blade, While Fluid/Whitener etc. to smudge, scratch, damage in any manner on the OMR Answer Sheet during Examination is strictly prohibited & its use anywhere shall lead to cancellation & such OMR Answer Sheet shall not be evaluated.”

It is evident that the specific guidelines were provided to the candidates to adopt the manner in which answers were to be marked and similarly they were cautioned not to use fluid or scratch the OMR sheet, but in complete violation of the instructions the answer books were found to be smudged with double marking and even erasing fluid was used as also tampering with the nail/blade.

Having done so the appellants cannot claim any prejudice if strict action has been taken by cancellation of their OMR sheets altogether. Such guidelines are issued as OMR sheets have to be evaluated by a computer which may not respond appropriately in view of abrasions and tampering. The learned Single Judge has rightly discarded the plea of the appellants in the impugned order and we, finding no infirmity therein, would also decline interference, particularly when it is expected of the candidates to be conscious of the guidelines and instructions issued by the examiner in the selection process which has to be thoroughly respected.

Appeal dismissed.”

The said judgment has already been upheld by Hon'ble Supreme Court of India, hence, no relief can be given to the petitioner on the basis of this aspect as well.

Learned counsel for the petitioner submits that the commission does not have power to frame condition No.6 of the admit card as the same

is beyond the power of the commission. In the present case, the commission

has been authorized to undertake the selection process. The selection process has to be undertaken on the basis of certain terms and conditions. The said terms and conditions were informed to the petitioner prior to the conduct of the examination, which conditions were accepted by the petitioner while appearing in the examination. Now, after the examination is over, the petitioner is trying to question the power of the respondent-commission to prescribe those very conditions. Once the petitioner has already accepted those conditions which were made known to the petitioner before appearing in the examination, now after the examination is over, the petitioner is precluded from raising the said objection.

Even otherwise, the imposition of the said condition has already been accepted as a valid condition by the Hon'ble Division Bench of this Court. Once the condition imposed for the conduct of the examination, which is being challenged by the petitioner in this petition, has already been upheld by the competent Court of law, the same has to mean that respondent-commission had the power to impose the said condition.

Keeping in view the above, no ground is made out for interference by this Court.

Petition stands dismissed.

(HARSIMRAN SINGH SETHI)
JUDGE

27.09.2022
Maninder

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No