

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

**CWP-21236-2022 (O&M)**

**Date of decision: September 19, 2022**

Naveen Kumar

....Petitioner

versus

State of Haryana and another

....Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN MONGA**

**Present:-** Mr. Sandeep Verma, Advocate for the petitioner.

Mr. Pankaj Middha, Additional AG Haryana.

Mr. Kanwal Goyal, Advocate,

Mr. Govind Tanwar, Advocate for respondent No.2-Commission.

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**ARUN MONGA, J. (ORAL)**

Petition herein, *inter alia*, is for issuance of a writ in the nature of Mandamus directing respondents to retrieve questions removed by respondent No.2, which have more than one correct answers as the said removal has lowered the percentile of petitioner as 2 out of the 5 removed questions have been correctly answered by the petitioner, the said approach allegedly being erroneous, arbitrary, illegal, cryptic and unconstitutional and for benefits of other candidates, who have not attempted or wrongly attempted the said questions.

2. Pledged case is that pursuant to advertisement No.3/2021 (Annexure P-1), petitioner applied for the Haryana Civil Services (Executive Branch and other Allied Services) under BC-B category. Petitioner appeared in the Preliminary Examination held on 12.09.2021. With the roll numbers, respondent No.2 instructed candidates to submit objections/representations

along with reasoning for any incorrect questions/ answers within three days from the date of publishing the answer key. Answer key was uploaded on the website on 25.07.2022 (Annexure P-4). Petitioner filed his objections. Question No.46 has been deleted and question No.44 has been corrected. Question No.87 from the paper of General Studies has also been deleted. Respondents did not consider other questions which were given in the detailed objections (Annexure P-3). Petitioner preferred CWP-18318-2022 which was disposed of vide order dated 23.08.2022 (Annexure P-7) directing authorities to publish the final answer key within one week. Respondent No.2 published final answer key (Annexures P-8 & P-9) after they got the questions evaluated from the expert committee. Four questions in General Studies paper and five questions in the C-SAT paper have been deleted. Candidates in the examination were given hashtags to be marked of every question which has not been attempted. The said exercise was introduced for the first time without any notice of the same. Petitioner brought the said discrepancies to the notice of respondent No.2 by filing representations/ objections. Petitioner applied under BCB Category and cut-off of the marks in any category has not been mentioned. It is not clear whether said representations/ objections were considered by respondent No.2 or not? Petitioner will be securing 6.25 marks for answers to the deleted questions, which would bring his merit to a higher rank amongst the selected candidates. Similar dispute had arisen and was dealt with in CWP-10309-2012 by this Court, which was decided on 30.08.2012 and upheld in LPA-1338-2012 whereby entire matter was referred to an expert committee to consider the representations received by the Commission. Petitioner's case is *para materia* with the directions given in CWP-10309-2012.

3. I have heard rival contentions of learned counsel for the parties and perused the record.

4. Challenge to the selection *inter alia* is premised on the ground that respondent-Commission deleted some questions which have more than one correct answers and said removal has lowered the percentile of petitioner as 2 out of the 5 removed questions have been correctly answered by him and the said approach is erroneous, arbitrary, illegal, cryptic and unconstitutional and for benefits of other candidates, who have not attempted or wrongly attempted the said questions. Even if the claim of the petitioner is accepted *qua* the questions which he had answered correctly, his grievance *qua* their deletion is misconceived, in view of the same having been deleted from the question papers by the HPSC. The stand of the petitioner flies in the face of the aforesaid deletion since all the candidates across board have been meted out with the uniform treatment of not being adjudged on their performance as no one was evaluated *qua* the said questions. To accord the benefit of the evaluation of those questions only to the petitioner by denying the same *qua* other candidates would, no doubt, certainly amount to discrimination by way of judicial process as well as giving the petitioner an undue advantage. Needless to say, it is in the experts' domain to adjudge the questions framed by them vis-à-vis the answers whether or not the same are to be evaluated in case they find any discrepancy or if there are two possible answers *qua* the same after entertaining the objections from the candidates, as has been done in the present case. After inviting objections, same too were referred to the expert committee constituted at the relevant time and after having obtained their opinion, the answers, as per the final answer-key, were uploaded by the HPSC and it was on that basis that all the candidates have been evaluated across board. To sit in appeal over the report

of the Committee would amount to assuming the powers of being an expert of an expert, which no doubt, in certain cases this Court may venture into, but instant is not the case deserving any such indulgence. Trite it is to say, it is not for this Court to superimpose its own views as against those of the experts. In the overall premise, it emerges that wherever the expert committee found that corresponding answers of certain questions were either ambiguous or there were two possible options, corrective measures have already been taken and those questions have been deleted. It is rather contradictory stand taken by the petitioner that while questions *qua* which he claim that he answered correctly, he wants himself to be evaluated and take advantage thereof.

5. In an earlier round of litigation instituted by the petitioner, I had the occasion to deal with the policy decision taken by the Commission to adopt a Standard Operating Procedure. Reference may be had to my judgment/ order dated 23.08.2022 rendered in **CWP-18318-2022** titled **Naveen Kumar versus State of Haryana and another**, relevant extract whereof is as below:-

*“8. In fact, genesis of the procedure adopted by the Commission is attributable to an earlier round of litigation vide CWP-10309-2012, instituted by aggrieved candidates at the relevant time to seek disclosure of the final answer-key of the preliminary examination. Pursuant thereto, learned Single Judge of this court vide a judgment dated 30.08.2012 directed the Haryana Public Service Commission to publish the answer-key of the preliminary examination within a period of 3 days. It was directed that in case, any of the candidates had any objection/ representation to make qua the answer-key, the same would be entertained and referred to committee of experts, and thereafter, final decision would be taken based on the expert committee report. The said direction though was challenged by way of intra-court appeal vide LPA-1338-2012, wherein as far as direction of uploading the answer-key is concerned, no interference was made and instead Commission took a policy decision to adopt a standard operating procedure, as deposed in the court in the following manner:*

*“5. That H.P.S.C. has taken a decision that it will send those representations already received before and after the publication of answer key as mentioned in*

*Annexure A-1 to the Committee of Experts in the respective subjects alongwith answer key and syllabus relating to the concerned subjects to consider the aforesaid representations and to submit the reports to the Commission about the questions/answers found to be discrepant by the Committee of experts in the respective subjects.*

6. *That on receipt of the reports from the Committee of Experts subject-wise, Commission shall consider the report and shall delete the Questions/Answers found to be discrepant and will prepare and declare the result as per report of the Expert Committee on percentile basis as soon as possible. ”*

9. *What thus emerges is that pursuant to the directions earlier issued by this court, candidates are indeed entitled to have final answer-key of the preliminary examination. To turn around now and canvass per contra that, answer-key once finalized, cannot be uploaded until after declaration of the final selection result and/or the appointment of the candidates is slightly baffling, to say the least. Such a course would naturally leave the candidates high and dry in the absence of not knowing if their answer-sheets have been rightly evaluated as per the final answer key. As to why would Commission adopt such opaqueness in declaring the result of preliminary examination without disclosing the final answer-key, is not clear? To be noted, it is not that HPSC has not disclosed the unfinalized answer-key prior to the expert committee’s report for the purpose of inviting objections, but to say that after inviting objections, candidates are not entitled to know the final answer-key frustrates the very purpose of inviting objections.”*

6. On advance service, learned counsel for respondent No.2-HPSC appears and controverts the arguments of learned counsel for the petitioner that it is only at the time of the examination when the candidates were told that in case any of them does not answer the question, then he has to compulsorily fill up ‘#’ so as to convey that the question has not been attempted.

7. I am not inclined to agree with the learned counsel for the petitioner for two reasons; (A) that the said announcement was made way before the examination on 12.07.2022 by way of uploading the same on the website of the public service commission as well as the same being published in national newspaper, (B) in any case, those of the candidates, who did not

necessarily opt for the ‘#’ as an un-attempted question, have not been put to any adverse consequence as no incorrect marking was done. I do not, therefore, find any grounds for interference.

8. In the parting, I may like to express that such an option seems in the larger interest of the candidates as in the past there have been instances where some unscrupulous elements tried to take advantage of an un-attempted question by pulling out the answer-sheet and attempted it later on which eventually resulted in scrapping of the entire examination. The said exercise, therefore, in fact is rather more in the spirit of being as transparent as possible given today’s age of electronic means of evaluating the question papers so as to leave minimum room for any human interplay.

9. As an upshot of the above discussion, I do not find any grounds for interference.

10. Dismissed.

11. Pending application(s), if any, shall also stand disposed of.

**(ARUN MONGA)**  
**JUDGE**

**September 19, 2022**  
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No