

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-21942-2022

Date of decision: 21.10.2022

YOGESH KUMAR AND ORS

....Petitioners

VS

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr.D.S.Patwalia, Senior Advocate with
Mr.Gaurav Rana, Advocate,
for the petitioners.

Mr. Manish Dadwal, A.A.G., Haryana.

Mr.Sanjay Kaushal, Senior Advocate with
Mr. Kanwal Goyal, Advocate,
for the respondent-Commission.

ARUN MONGA, J.(ORAL)

What happened on 24.07.2022 got curiouser and curiouser, as the instant writ proceedings unfolded. More of it later. Under challenge herein, by unsuccessful petitioner, is the preliminary examination conducted for selection on the post of Haryana Civil Services "Executive Branch". In fact, the selection process has already had a rather murkier and cantankerous background, inasmuch, *qua* same very posts, the previous preliminary examination held on 12.09.2021 had to be scrapped in view of leakage of OMR sheets and other allegations which led to the registration of an FIR No.4 dated 17.11.2021 under Sections 7, 7A of Prevention of Corruption Act read with Sections 420, 466, 468, 471, 120-B of IPC and Section 8 (3) (4) of Haryana Public Examination (Prevention of Unfair Means) Act, 2021. The criminal proceedings are slated to be underway as investigation is yet not complete.

2. Be that as it may, the petitioners before this Court seek issuance of an appropriate writ, order or direction, including a writ in the nature of certiorari for quashing the preliminary examination held on 24.07.2022 including its result (Annexure P-19) declared by respondent No.2 on 09.08.2022 w.r.t. the posts of Haryana Civil Services (Executive Branch) and other Allied Services *qua* Advertisement No.3 of 2021 dated 26.02.2021 (Annexure P-1). Allegedly, as on the

date of preliminary examination two different sets of instructions, both dated 12.07.2022 (Annexures P-10 & P-11) were in force which led to confusion. It amounted to changing the scheme of examination as well as the rules of the game mid-way, which led to utter confusion and has caused grave prejudice to candidates such as petitioners herein.

3. It is further prayed that the respondents be directed to reconduct the preliminary examination w.r.t. posts advertised vide Advertisement No.3 of 2021 dated 26.02.2021 (Annexure P-1) by ensuring that there is no loop-hole. Prayer also is that during the pendency of the instant writ petition and subject to the final outcome of the same, the respondents be directed to not to hold the mains examination which is scheduled for 29 and 30th October, 2022.

4. On the very first date of hearing, the controversy involved was summed up in the order dated 22.09.2022 which for ready reference is reproduced hereinbelow:

“Notice of motion.

2. *Having heard pre notice preliminary arguments, prima facie it appears that unwittingly, two sets of candidates (aspirants of HCS) have been created by respondent-HPSC. Both sets are separated from each other by 30 minutes, owing to two contradictory announcements uploaded on HPSC website. In the first announcement it was mentioned that the allotted time of examination was 2 hours and extra 5 minutes would be given for self-verification whether all unattempted questions have been hash-marked. As against this, in the second announcement the clause for giving of extra time was deleted. First lot is of those, who in the very first 30 minutes of uploading of first announcement/instructions dated 12.07.2022 (Annexure P-10) read/downloaded and followed the same, being unaware of it being taken off the web-site and uploading of the subsequent contradictory announcement/instructions (Annexure P-11) on the Commission's web-site. Second lot is of those who, by sheer stroke of good luck, caused by lapse of half an hour, did not have the occasion to read the earlier announcement/instructions (P/10), since in the interregnum it was removed/deleted from the website and they thus read only the subsequent contradictory announcement/instructions (Annexure P-11) uploaded on HPSC web-site on the same very day.*

3. *Intriguingly, the subsequent impugned announcement does not either mention that it is in supersession of the earlier announcement/instructions read by the first set of the candidates and/or it is a corrigendum of the earlier instructions, so as to alarm the first set of candidates, who had already downloaded the earlier announcement along with instructions conveyed therein. In normal course, once having downloaded instructions, a candidate would not like to keep revisiting the website, unless of course, he is either a paranoid kind or there is due publicity that the earlier announcement has either been substituted or superseded or modified.*

4. *Let us assume, at this stage for the sake of arguments, that some candidates did revisit the website half an hour later and noticed the*

subsequent announcement. In the absence of any claimer or indication thereof, that it was/is in supersession of the earlier and/or being a corrigendum, on first flush, on its re-reading, with no change of date and/or change in the number of announcement, in all likelihood, therefore, even those candidates who re-visited the web-site after the uploading of the subsequent announcement would remain under the impression that it is just the same very announcement already read and downloaded by them. Save only if, one matches/compares both the sets of instructions/ announcements word by word and line by line.

5. *Be that as it may, there is another aspect of the matter, which requires factual clarification, by filing an affidavit of a competent/responsible person i.e., whether as per removed/deleted announcement extra 5 minutes were granted beyond the allotted time at any of the examination centers across the State? In the affidavit, it should also be clarified whether it was mentioned in OMR Sheet/Question Booklet given to the candidates at the time of examination, that the allotted time of examination was 2 hours and no extra 5 minutes would be given? Also, whether any announcement was made in the examination halls prior to commencement of examination that allotted time is only 2 hours? Or, was there any notice put outside halls to the same effect or any newspaper publicity carried out?*

6. *Mr. Pankaj Middha, Additional Advocate General, Haryana and Mr. Kanwal Goyal and Mr. Govind Tanwar, Advocates, on advance service, appear and accept notice on behalf of the respondents, and seek time to file an affidavit to meet the preliminary observations, as aforesaid.*

7. *Post it on 28.09.2022."*

5. *Apropos, an affidavit dated 28.09.2022 has been filed on behalf of HPSC, wherein it has been unequivocally deposed that before issuing any instructions to the candidates, a draft of announcement/instructions is submitted by the concerned branch. Said draft is examined and amended at various levels by the concerned officers. It is then that the final draft is approved by the Commission. The announcement along with instructions dated 12.07.2022 (Annexure P-11) were finalized and duly approved by the Commission.*

6. *However, at the time of uploading the same, the computer operator though uploaded the correct announcement dated 12.07.2022, but while adding the instructions with the said announcement, he inadvertently also uploaded the unapproved instructions (Annexure P-10), which was an earlier draft, and same was never approved by the Commission. When the uploaded instructions were checked, the error was detected and the instructions (Annexure P-10) were promptly removed from the website. The approved instructions (Annexure P-11) were immediately uploaded. The process of upload and removal of erroneous instructions (Annexure P-10) did not take more than a few minutes. Since, the instructions attached as Annexure P-10 were*

not approved, therefore the same are non-existent and cannot be relied upon, is the defense.

7. As regards the grant of additional 5 minutes, HPSC sought a specific report from the concerned Centre Supervisors, who have reported back that no extra five minutes were given to any candidate in any of the centers, where the petitioners had undertaken the examination and the allotted time was strictly kept as 2 hours and not 2 hours and 5 minutes. Affidavits of the Centre Supervisors to that effect have been appended as Annexure R-2/4 to R-2/8, respectively with counter affidavit.

8. What thus emerges thus is that, concededly, erroneous set of instructions were indeed uploaded for a few minutes *vis-a-vis* the conflict of granting additional 5 minutes. In defense, stand taken is that, as already noted, that there was a human error in unauthorizedly uploading of erroneous instructions for a few minutes, and at no centre extra 5 minutes were actually given.

9. I have heard the competing arguments of both the learned Senior counsels.

10. In course of earlier hearings of the case, order dated 12.10.2022 followed by another order dated 17.10.2022 were passed by me, which too are extracted hereinbelow for better appreciation of the controversy herein :-

Order dated 12.10.2022:

“Having seen the affidavit dated 28.09.2022 deposed by Secretary of Haryana Public Service Commission, in course of hearing today, certain queries have arisen qua the contents thereof viz., (a) whether the inadvertence of uploading the Instructions dated 12.07.2022 (Annexure P-10), prior to its removal, lasted for 30 minutes as was noted in the earlier order dated 22.09.2022 or for just a few minutes, either way exact web proof be furnished before the court; (b) whether guidelines contained at Annexure R-2/1 uploaded on HPSC website, envisaging that a report from each Centre Supervisor qua installation of Mobile jammers and CCTV cameras "in each room" of the Examination Centre, were strictly complied with? (c) whether affidavits contained at Annexure R-2/4 to R-2/10, which on the bare perusal appear to be on dotted lines, were deposed by the respective Centre Supervisors after actually verifying that the guidelines were actually implemented in each and every center, more particularly whether CCTV in every room was installed? These are merely some of the illustrative queries and matter is being adjourned for 17.10.2022 to enable the Secretary to file a further better affidavit clarifying the factual position. It is also made clear that in case CCTV cameras were indeed installed as per the Guidelines, the footage of every room in every Centre shall be

preserved, to obviate its non availability at subsequent stage, in the event same is warranted to be seen by the court. Copy of the instant order be provided to all the learned counsel under the signatures of the bench secretary.

Replication, in the meanwhile, be also filed.”

Order dated 17.10.2022:

“Learned counsel for the respondent-HPSC has tendered an affidavit in course of arguments, which is taken on record. Learned senior representing HPSC, at the outset, submits that the entire controversy regarding additional time of 5 minutes, whether given or not, can be resolved by having a look at the CCTV footage of those centers qua which corresponding affidavits, Annexures P-13 to P-17, have been filed, categorically deposing therein that the candidates in those centers were across board given additional 5 minutes as per Instructions dated 12.07.2022 (Annexure P-10). Said instructions were though erroneously uploaded for a few minutes on the website of HPSC. Apropos, learned Senior counsel for the petitioner, under instructions, submits that time be granted to his briefing counsel to see the CCTV footage in the Court premises, which has already been brought today, and arguments be heard thereafter. Post it on 19.10.2022. Replication, if any, be filed in the meanwhile.”

11. It was in the aforesaid background that an additional affidavit dated 17.10.2022 was also subsequently filed by the HPSC, which in principle substantially contains same averments as the earlier affidavit, other than the clarification on the contradiction that CCTV was installed in every room and footages had been indeed kept in safe custody and Commission had no hesitation to allow inspection thereof. Petitioners, through their counsel inspected the same. In fact, a personal affidavit of the learned counsel for the petitioner has also been filed, necessitated by the compelling circumstances, it was he himself who had inspected the CCTV footage and not the petitioners. Learned Senior counsel for the respondent/HPSC had objected to the footage being seen by the petitioners but not to their learned counsel. Hence the personal affidavit of the counsel.

12. CCTV footage was in fact jointly seen by the learned counsel for the petitioners as well as learned counsel for the Commission. Details of delay caused in collecting the OMR sheets in the rooms of which footage was inspected, as more specifically enumerated in the affidavit of learned counsel for petitioner, are factually not disputed. What is argued vehemently by the learned Senior counsel under instructions from the respondent-Commission is that too much emphasis is being laid

affidavit of the learned counsel for the petitioners, that none of the footages reflects that the collection of OMR sheets began in any of the centers/rooms after 2 hours and 5 minutes. He would submit that human mechanics cannot be compared with the precision a machine. Certain unintended discrepancies, depending on the human sluggishness and/or the efficiency of every human being, may result in variation of the time in collection of the OMR sheets.

13. Learned Senior counsel for the respondent-Commission, Mr. Sanjay Kaushal, points out that if the petitioners were so misled, as is claimed by them, based on the erroneous set of instructions (Annexure P-10), what held them back from reading the instructions specifically contained on/along with the admit cards. Same unambiguously stated in as many as words as below:

<i>Date of Examination</i>	<i>Paper</i>	<i>Examination time</i>
<i>24.07.2022 (Sunday)</i>	<i>Paper-I General studies</i>	<i>10:00 a.m. to 12:00 Noon</i>
	<i>Paper-II Civil Services Aptitude Test</i>	<i>03:00 PM to 5:00 PM</i>

The candidates must carefully read the following instructions in addition to general instructions of Advt. No. 3 / 2021 and information. Failure to comply with these instructions will render him / her liable to such punishment as the Commission may deem fit to impose.

- 1. The candidates are not permitted to sit on any seat other than the seat allotted to them against their Roll Numbers. Violation would have serious consequences.*
- 2. The candidates will not be allowed to leave their seats during first half time of the paper, for any urgency.*
- 3. The candidate must write his / her Roll Number, Name and put his/her Thumb Impression in the space provided for the purpose on the OMR Answer Sheet and the Question Booklet. The candidate must not write anything on the Question Booklet / OMR (Answer) Sheet except for the purpose for which space has been provided.*
- 4. In case of copying, both the candidates (the one who is copying and the other one who is allowing to copy) will be disqualified or any other punishment be given as the Commission may deem fit.*
- 5. A signal will be given at the beginning of the Examination and then candidates may start writing their answers.*
- 6. Silence must be observed in the Examination Hall.*
- 7. Smoking in the Examination Hall and in the precincts of the Examination Centre is strictly prohibited.*
- 8.(i) Canvassing in any form will disqualify a candidate.*
(ii) A candidate, who makes false accusations or insinuation against rival candidates or the Commission as a whole, Chairman or Member of the Commission or its officials etc. may be disqualified.
(iii) A candidate who is found knowingly to have furnished any false particulars or to have suppressed any material information will be disqualified, and if appointed, will be liable for dismissal. He/She will also be liable for criminal prosecution & unfit from all Government Services.
- 9. Scribe / Extra Time for PwBD category candidates of Haryana:*

- i) *An extra / compensatory time of @ 20 minutes per hour will be allowed in each paper to the Persons with Benchmark Disabilities (Blind and Low vision or Locomotor Disability), only on production of a Medical Certificate issued by Medical Board constituted by the Chief Medical Officer / Civil Surgeon of the concerned district, and after issuing permission by the Commission in this regard. They have to apply well in time i.e. at least 10 days prior to commencement of Examination, to the Commission.*
- ii) *The PwBD (Blindness and Low vision) candidates who want the help of a scribe to write his/her paper will have to apply to the Commission for the permission of a scribe separately well in time i.e. at least 10 days prior to the commencement of the Examination.*
- iii) *The candidate has to make his / her own arrangement of a scribe. Commission will not provide any Scribe.*
- iv) *The scribe should be a studying-student upto 10+2 and his/her photo & other particulars should be duly verified by the Principal of the Institution in which the student is studying. No online request for a scribe will be accepted by the Commission. The PwBD (Blindness and Low vision) candidates who intend to avail extra time without the help of a scribe will have to apply to the Commission for the permission for extra time well in time i.e. 10 days prior to the commencement of the Exam.*
- v) *PwBD candidates suffering from Locomotor Disability who want extra / compensatory time will have to apply to the Commission for permission. Such candidates will be allowed extra time @ 20 minutes per hour for Examination, on production of medical certificate issued by a Medical Board constituted by Civil Surgeon of the concerned District, clearly stating therein that the candidate's writing ability is grossly affected due to his / her disability.*
- vi) *It should be noted that no such permission in the above cases will be granted by the Centre Supervisor.*
10. *Re-evaluation or rechecking of the OMR Answer Sheets is not allowed, as it is scanned by a machine.*
11. *The candidates of those categories against which no post was advertised, shall be considered against the vacancies of General category if they fulfill all the conditions of eligibility as meant for General category candidates, except fees.*
12. *The Admit Cards are not being sent separately to individual candidates. Candidates are required to download the same from the Commission's website.*
13. *The candidate must abide by any further instructions which may be given to him / her by the Supervisor of the Examination centre. If the candidate fails to do so or indulges in disorderly or improper conduct, he / she will render himself or herself liable for expulsion from the Examination or such other punishment as the Commission may deem fit to impose.*
14. *As per orders passed by the Hon'ble Punjab & Haryana High Court in CWP (PIL) No. 65 of 2019 – Charanpal Singh Bagri Vs. State of Haryana and others, the Baptized Sikh candidates, who intend to carry kara and kripa to the examination centre, should reach their examination centres one hour before the reporting time and allow the authorities, who are conducting the examination, to screen their kara and kripa to find out as to whether there is any suspected device, electronic or otherwise, used in the same. In case, it is found that there are suspected devices in the said religious signs, they should be restrained from carrying the same to the examination centre. It is, however, made clear that in case the said baptized Sikh candidates, fail to report at the examination centre one hour before the reporting time and fail to cooperate with the process of screening for the purpose of discovering as to whether they are carrying any suspected*

device (electronic or otherwise), then they should not be allowed to take the examination with such kara and kripan on their persons.

15. *The OMR Sheet will have 4 options viz. A, B, C, D for answering a question and an option #.. Option # is meant for the un-attempted questions. The candidate must fill option # if he/she does not want to attempt the question. No candidate will be permitted to leave the Examination Hall until all the OMR sheets are collected. The OMR Sheets will be collected by the Room Invigilator and the candidate's copy of OMR will be given to the candidate."*

Learned senior urges that there is nothing to even remotely suggest in the above instructions qua grant of additional 5 minutes. Therefore, even if some of the candidates, including the petitioners, still unjustifiably believed otherwise than what is mentioned in instructions, it was completely on their own peril and they must suffer consequences thereof.

14. That apart, he would further point out that in all the leading newspapers also, the similar instructions were published and it is nowhere stated that additional 5 minutes were to be given.

15. *Per contra*, Mr. D.S.Patwalia, learned Senior counsel appearing for the petitioners submits that in the arguments canvassed on behalf of the Commission there is candid admission with regard to the uploading of the erroneous instructions and on that ground alone the preliminary examination is liable to be scrapped without any further ado. Justification of the same being unauthorized uploading cannot and should not be accepted. Even otherwise, delay in collection of OMR sheets in those very specific centers/room pointed out by the petitioners is simply being brushed as human sluggishness. He would submit that these are merely some of the illustrative centers, and in case time was accorded to the petitioners to go through the CCTV footage qua all the centers in entire State, the same would most definitely reflect large scale confusion of 5 minutes accorded at many centers, whereas no extra time at many other places. A large number of candidates stood thus on an advantageous position having got the benefit of extra time. Furthermore, he would strenuously argue that the highest constitutional selection body of the State cannot be permitted to approbate and reprobate, inasmuch as, the enormous mistake of creating two sets of students i.e. one with the advantage of delayed collection of answer sheets and, the other whose answer

sheets were collected dot after two hours, cannot be justified on the ground of mere human error.

16. He further canvasses that there are 100 questions to be attempted in two hours and going by the statistics, each question on an average is to be attempted in 72 seconds. He submits that 5 minutes=300 seconds, in terms of the timeline, translate into attempting 4 questions, which a candidate while doing his time management may have kept to be attempted in the end, thinking that he/she needs to reconsider his/her response once more. However, such candidates have been abruptly denied the said extra time. He would further point out that, trite it is to say that even a fraction of one mark, i.e., 0.25 can lead to rejection or selection of one over the other. To, therefore, accept the arguments of HPSC counsel that a human error may have led to grant of additional time in some centers, amounts to be a premium on the candid admission of the mistake committed, as deposed in the affidavit, is the contention on behalf of the petitioners.

17. He would further urge that it is a question of lifetime making or breaking of career of candidates who were not accorded benefit of additional 5 minutes. That too, at the HCS level of selection, the highest post/position of recruitment in the State Administrative Services. The selected candidates constitute the talent pool of being further promoted into Indian Administrative Services and, therefore, the mistakes committed by the HPSC cannot be given such a judicial short shrift, as is being sought.

18. I have the rival arguments at some length and shall now proceed to render my opinion thereupon.

19. *Vis-a-vis* the CCTV footages, it appears that irrefragably in the centres *qua* which the same was seen jointly by learned counsel for the petitioners in the presence of learned counsel for the Commission, there is a variation ranging from 1.40 minutes upto 7 minutes in collection of the OMR sheets. Given the delay of as much as 7 minutes, no doubt, on the first flush one gathers an impression that same could have been caused only if the benefit of 5 minutes was accorded to the candidates.

Particularly, given the fact that there were only 8 students in one of the rooms where allegedly additional 5 minutes were accorded. But wholesome scrutiny and analysis of all the room numbers, as per the affidavit, reflects that in none of the rooms collection of OMR sheets started after two hours and 5 minutes, which was to be the precise time in case erroneous instructions were followed. In some rooms, there is a delay of 1 minute, in others 2 or 3 minutes and so and so forth. Collection time thus varies accordingly between 1.5 minutes to 7 minutes, as has been deposed in the personal affidavit filed by learned counsel for petitioner.

20. I am of the view that certain inherent randomness based on the inefficiency and/or the human lethargy of the invigilators most certainly would have resulted in delays in collecting the answersheets. Such randomness cannot be ruled out in view of the fact that in every room, there was a provision of 24 candidates and there were more than two or three rows, where they were made to sit. If the Invigilator starts collecting the answer sheets from left to right, last candidate in the right most row would naturally get additional time to handover his OMR sheet. Likewise, if one chooses to collect from right to left, one on the last left most row would stand to benefit. Such uncertainties caused by the randomness in collecting the OMR sheets most definitely result in some unintended additional time being accorded to some of the candidates. To canvass that such delays were either deliberate and/or based on the erroneous instructions, is not just and proper. In any case, such an error even if committed, though unintentionally, would not *per se* vitiate the entire selection.

21. Besides, given that the petitioners were unsuccessful participants in the examination, puts them on a back foot, to assail the entire selection process at this belated stage. Despite being fully aware that 5 minutes were not accorded, there was not even a murmur by any single one of them, either immediately after the examination or later on before the declaration of result, or for that matter even after the declaration of result. Even subsequently also, not one of the petitioners before this Court and/or unsuccessful candidates, has given a pre-writ petition representation, objecting to the Commission to look into the matter.

22. Furthermore, as already noted in the narrative herein above, Commission on the other hand had taken prudent steps to obviate any misunderstanding, which may have been caused to some of the candidates, who downloaded the erroneous instruction in the short interregnum during which remained on the website, inasmuch as, making it abundantly clear not only the instructions on the admit card but having published in various newspapers that it is only 2 hours that will be accorded to every candidate for taking the preliminary examination. To contend therefore, that the petitioners though read the erroneous instructions but conveniently chose not to read instructions on the admit card and/or in the newspapers publication, would be fraught with too harsh consequences for the successful candidates. It will result in colossal setback to the selection process, which is underway. Written examination is looming round the corner, slated to commence from 29.10.2022 and the candidates have been working hard for months altogether, to appear in the same. The clock cannot, at this stage, be turned back even there was some merit in the allegations, that delay caused in collecting the OMR sheets in some of the centers have resulted in an undue benefit to some of the selected candidates and not the petitioners.

23. As an upshot, no grounds worthy of interference are made out.

24. Dismissed.

(ARUN MONGA)
JUDGE

October 21, 2022
vandana

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