

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

222 (2 cases)

CWP No.6511 of 2018

Date of decision: 08.12.2022

Ram Gopal and Others

..Petitioners

Vs.

State of Haryana and Others

..Respondents

CWP No.16220 of 2018

Kirti Khatkar

..Petitioner

Vs.

State of Haryana and Others

..Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vijay Pal and Mr. Ashish Kumar, Advocate
for the petitioners in CWP No.6511 of 2018.

Mr. Sunil Kumar Nehra, Advocate
for CWP No.16220 of 2018.

Mr. Sandeep Singh Mann, AAG, Haryana.

Mr. Kanwal Goyal, Advocate for respondent-HPSC.

Mr. Sanjay Kaushal, Sr. Advocate with
Mr. Anurag Goyal, Advocate, Mr. Arjun Shukla, Advocate and
Ms. Shelly Arora, Advocate for respondents No. 4 and 5.

Mr. Animesh Sharma, Advocate
for respondents No. 50 and 58 in CWP No. 16220 of 2018

HARSIMRAN SINGH SETHI, J.(ORAL)

By this common order, two writ petitions, details of which have
been given in the heading are being disposed of as both the writ petitions
raise same question of law based on similar facts and also relate to the same

advertisement. For the purpose of the present order, the facts are being taken from CWP No.16220 of 2018. The respondent-Commission issued an advertisement being Advertisement No.7 published on 24.01.2014 (Annexure P-1) advertising 1396 posts of Assistant Professor(College cadre) to be filled up in various subjects in the Higher Education Department of Haryana. Out of the total posts of 1396, 170 posts were advertised in the subject of Computer Science. Again on 16.02.2016 respondent-Commission through Advertisement No.10(Annexure P-2) advertised 1647 temporary posts of Assistant Professor including 167 posts of Assistant Professor in Computer Science and through the said advertisement the Advertisement No.7 dated 24.01.2014 (Annexure P-1) was withdrawn, however, it was also mentioned therein that the candidates who had applied earlier against advertisement dated 24.01.2014 need not apply again and their previous application, shall be considered.

As per the terms and conditions of the advertisement, the selection was to consist of various phases including a written test in each subject. The written test was to be of 100 multiple choices questions and the candidate who were to clear the written test, were to be called for interview keeping in view the number of posts multiplied by three.

Petitioners appeared in the recruitment test which was held on 04.04.2017 and after the written test, the answer key of the written examination was displayed by the Commission so as to invite objections and the objections so received, were to be sent to a subject expert for the opinion and appropriate decision was taken by the Commission as to

whether, any question is to be withdrawn or the objection raised by a candidate are to be rejected keeping in view the recommendation of the subject expert. The petitioners also raised certain objections with regard to the answer key, which were also placed before the subject expert and keeping in view, the recommendation of the subject expert, the appropriate decision required, was taken after which, the result was declared so as to call the candidates for interview. The petitioners are the one, who are aggrieved with regard to the ultimate decision taken by the Commission on the basis of the opinion of the subject experts qua the objection raised by them with respect to the discrepancy in the answer key of the written examination.

As per the petitioners, they had raised grievance qua number of questions which were put to them in the written examination which were either incorrect, or the answer key depicted the incorrect answer hence, non acceptance of their claim by the respondent-Commission qua those very questions renders the whole selection process invalid as the same has caused prejudice to them.

After the writ petitions were filed, notice of motion was issued to the respondents and the Commission has filed a detailed reply justifying their act. As per the respondent, after the conduct of the written examination, the answer key was notified for the information of the candidates and it was mentioned that in case any candidate has any grievance, he/she can avail the remedy of objection within the time frame given. Keeping in view the said option, objections received by the Commission were placed before the subject expert for opinion and after the opinion of subject expert qua the

objections raised was received by the Commission, appropriate decision was taken by the Commission in respect of the written examination, not only in the subject in which the petitioners were competing but with regard to the other subjects also for which the written examination was conducted as, it was a combined advertisement for number of posts in different disciplines. As per the respondent, appropriate decision either to withdraw the question or maintain the question was taken as per recommendation of the subject expert and thereafter, the result was declared so as to call the eligible candidates for interview. As per the respondent, the grievance of the petitioner has been considered by subject expert and the decision of the Commission is based upon the recommendation of the subject expert, therefore, no further grievance can be raised by the petitioners for adjudication by this Court.

Learned counsel for the respondent-Commission submits that the grievance as being raised in the present petition qua, the post of Assistant Professor (Computer Science) was also raised with regard to the post of Assistant Professor in the subject of Geography. The said writ petition being CWP No. 16220 of 2018 came up for consideration before this Court wherein, the coordinate bench went into the validity of the question and directed certain remedies to be observed by the Commission, which order of the coordinate bench was tested before the Division Bench in LPA No.1973 of 2017 and the Division Bench came to the conclusion that the questions needed to be referred to another Committee of subject expert for their opinion so as to address the grievance of the petitioners therein and the matter was referred to another Committee of subject expert of Panjab

University to examine the grievance of the petitioner qua certain questions which were put to them in the written examination.

The Commission aggrieved against the said interim order of the Division Bench in LPA No.1973 of 2017 filed SLP No.30800 of 2018. The said special leave petition was ultimately converted into Civil Appeal No.7727 of 2019 and the same was finally decided on 30.09.2019. Hon'ble Supreme Court of India by the said order set aside the order of the Division Bench as well as that of the Ld. Single Judge and it was held that once Expert Committee to which the Commission has referred the matter has given its opinion, there was no further occasion with the High Court to again go into correctness of the questions or to refer the questions to another Committee of subject experts.

The present petitions which were pending when the above-mentioned Civil Appeal was pending consideration before the Hon'ble Supreme Court of India were adjourned sine die to await the decision of the Hon'ble Supreme Court of India in Civil Appeal No.7727 of 2019.

After the decision, the present petitions have been placed for adjudication keeping in view the settled principle of law.

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

The prayer in the present petitions is that though the grievance of the petitioners raised against the answers as depicted in the answer key were put to the subject experts and a particular decision has already been taken by the Commission on the recommendations of the subject experts but the same does not do justice with the petitioners as the grey area still remain qua

certain questions which needs to be looked into by this Court. As per the petitioners, prima facie, the answers to certain questions, are not correct despite the opinion of the subject experts hence, either this Court should examine the said issue or, the Commission be directed to present the objections of the petitioners to another expert Committee for second opinion. One of the prayer of the petitioners is that certain questions are also out of the syllabus.

This Court is to adjudicate whether, after the opinion of the subject expert, this Court will have a jurisdiction to sit in judgment with respect to the correctness of the opinion of the subject expert, and substitute it by the opinion of the Court. The Court is not an expert on the subject hence, it cannot be said that the Court will have a power to over-ride the opinion of the subject experts once given after due application of mind. The opinion of the subject experts needs to be respected and given effect too.

In similar circumstances, Hon'ble the Supreme Court of India while deciding Civil Appeal No.367 of 2017 decided on 11.12.2017 titled as Ran Vijay Singh and Others Vs. State of U.P. held that the matter regarding the academics should be left to the subject experts only. As per the said judgment of the Hon'ble the Supreme Court of India, only in the exceptional circumstances, the Court has a power to interfere but, the same should be restricted as far as possible. Hon'ble Supreme Court of India described certain situations where, the interference of the Court should not be done. The paragraph 32 and 34 of the said judgment are as under:

“32. It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference

by the Courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the Court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a classic example of the consequence of such interference where there is no finality to the result of the examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination – whether they have passed or not; whether their result will be approved or disapproved by the Court; whether they will get admission in a college or University or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion being worse confounded. The overall and larger impact of all this is that public interest suffers.

34. Having come to the conclusion that the High Court (the learned Single Judge as well as the Division Bench) ought to have been far more circumspect in interfering and deciding on the correctness of the key answers, the situation today is that there is a third evaluation of the answer sheets and a third set of results is now ready for declaration. Given this scenario, the options before us are to nullify the entire re-evaluation process and depend on the result declared on 14th September, 2010 or to go by the third set of results. Cancelling the examination is not an option. Whichever option is chosen, there will be some candidates who are likely to suffer and lose their jobs while some might be entitled to consideration for employment”.

Keeping in view the above, even if there is a grey area after the opinion of the subject expert, the benefit has to go to the examination authority rather than candidates hence, the prayer of the petitioner that this Court should interfere to examine as to whether, there is any ambiguity with respect to the answer key cannot be gone into by this Court.

Further, in respect of the same selection process, the similar issue was decided by the Hon’ble Supreme Court of India while passing order in Civil Appeal No.7727 of 2019 wherein similar indulgence was prayed for and accepted by the High Court, was held to be bad by the Hon’ble Supreme Court. The short order passed by Hon’ble the Supreme Court of India dated 30.09.2019 is as under:-

“By the impugned judgment, the Division Bench has appointed the second Expert Committee for appraisal of the question papers.

Record reveals that the Appellant, Haryana Public Service Commission (for short, 'the Commission') undertook selection process to appoint 133 Assistant Professors of Geography (College) Cadre HES-II for which an objective type question paper was set up wherein the candidates were required to answer 100 questions. Grievance before the learned single Judge was that out of 100 questions, most of them were either ambiguous or not having correct answer keys. Such questions were brought to the notice of the Commission by raising objections. The candidates identified 46 questions as defective. The Commission based on the objections of candidates, appointed a Committee of Experts in the field for appraisal of the question papers.

The Expert Committee, on going through the question paper in detail, concluded that seven questions were either ambiguous or not having correct answer keys. Consequently, the Commission accepting the Expert Committee's report deleted those seven questions and marks and thereafter the results were declared. Thereafter, the candidates approached the learned Single Judge with a writ petition.

Learned Single Judge curiously acted himself as an expert and on going through the question paper concluded that four more questions were ambiguous and, therefore, they should also be deleted from consideration.

Then, some of the candidates approached the Division Bench and the Division Bench passed the impugned orders appointing another Expert Committee which is challenged in this petition.

If the judgment of the Division Bench is allowed to stand, there will be no finality to the selection process. There was no allegation as such against the Expert Committee which was appointed by the Commission. The Expert Committee, in its wisdom has concluded that seven questions were either ambiguous or the answer keys were not correct. Accepting the said report, the Commission has proceeded with the selection process and results were announced. Thereafter, the

candidates approached the High Court. Though learned Single Judge was right in agreeing for deletion of seven questions, was not justified in acting as an expert in the field and, therefore, the learned Single Judge's order relating to deletion of four questions also cannot be accepted.

Accordingly, the judgment of the learned Single Judge as well as that of the Division Bench stand set aside.

The appeal is, accordingly, allowed. The selection process made by the Commission based on the First Expert Committee Report deleting seven questions from consideration stands confirmed. There shall be no order as to costs”.

From the perusal of the law cited herein before it is clear that the question of law raised by the petitioners is squarely covered against them.

Keeping in view the above, no interference is called for by this Court qua the prayer raised in the present petition. The petitions are accordingly dismissed.

CM No.126-CWP of 2021, CM 16125-CWP of 2018, CM 9712-CWP of 2018, CM 101222-23-CWP of 2018, CM 10222-CWP of 2018, CM 14933-CWP of 2018, CM11238-CWP of 2018, CM 131-CWP of 2021, CM 15090-CWP of 2018 also stand disposed of.

December 08, 2022
Poonam Sharma

(HARSIMRAN SINGH SETHI)
JUDGE

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