

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No. 4941 of 2018
Reserved on: 20.04.2022
Pronounced on: 02.06.2022

Pawan Bishnoi and another

...Appellants

VERSUS

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE G. S. SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Vineet Kumar Jakhar, Advocate for the appellants.

Ms. Monica Chhibber Sharma, Senior D.A.G. Punjab.

VIKAS SURI, J.

The present intra-court appeal is directed against the judgment dated 01.05.2017 passed by the learned Single Judge in CWP-17042-2014 titled '*Pawan Bishnoi and another vs. State of Punjab and others*' and the order dated 24.07.2018 in RA-CW-185-2018, respectively, whereby the writ petition was dismissed and the application seeking its review met a similar fate. The writ petitioner-appellants are aspirant candidates who had competed for the post of Assistant District Attorneys (ADAs) advertised vide Advertisement dated 25.07.2013 (Annexure P-1) by the second respondent viz. Punjab Public Service Commission (for short 'PPSC'). They had raised challenge to the revised category wise merit list dated 19.08.2014 (Annexure P-15), alleging irregularities in the question paper as well as the revised answer key, claiming that it affected their *inter se* merit vis-à-vis respondent Nos. 4 to 287 and further for directing the official respondents to consider the writ petitioners for selection and appoint them to the aforesaid posts on the basis of to be revised correct answer key as well as to re-cast final merit list.

2. The facts in brief, shorn of unnecessary detail, are that the second respondent i.e. PPSC advertised posts of ADAs (General-38, Reserved-42) vide Advertisement dated 25.07.2013 (Annexure P-1) in the Department of Home Affairs and Justice, Govt. of Punjab. The writ petitioners had applied under the General category and the cut-off date for submission of online application was 16.08.2013. As per the advertisement, examination was held at various centers across the State of Punjab and Chandigarh on 08.09.2013. Names of both the petitioners found mentioned in the list of 242 candidates, displayed on the website of PPSC along with their interview schedule, which was to be conducted by four Boards constituted for that purpose (Annexures P-2 and P-3) as mentioned in the notice. The interview of the petitioners was scheduled to be held on 20.09.2013.

3. The written result was challenged by some candidates by way of CWP No. 24858 of 2013, alleging infirmities/ambiguities not only in the question paper but also in relation to answer keys posted on the website of PPSC in the evening of 08.11.2013.

4. While issuing notice of motion in CWP No. 24858 of 2013 on 14.11.2013, the following observations were recorded:-

“Even through, in the exercise of judicial review, this Court would not sit in judgment over the wisdom of an Examiner, yet, when such infirmities/ambiguities are apparent on the face of it, a prima facie case is made out for referring the matter to an Expert Committee.”

5. The said writ petition along with other connected matters was disposed of vide order dated 27.11.2013 (Annexure P-7). The said order reads as thus:-

“The writ petitions are, accordingly, disposed of. It is directed that in furtherance of the decision taken by the Commission in its meeting dated 26.11.2013, a public notice shall be issued inviting objections, if any, from the candidates including the petitioners herein, who were participants in the recruitment process for the posts in question with regard to any question/answer key. Adequate breathing time would be given by the Commission while inviting such objections. Such objections shall, thereafter, be dealt with by the Commission by adopting a fair procedure as the Commission itself deems fit i.e. by constituting an Expert Committee. Suffice it to observe that in the eventuality of the Commission coming to a conclusion based upon the findings of the Expert Committee, that the result that already stands declared with regard to the shortlisted candidates requires a revision, then, the requisite consequential steps shall also be taken.”

6. In pursuance to the aforesaid directions, the second respondent (PPSC) on the same day i.e. 27.11.2013 (Annexure P-8), invited objections from all candidates and the last date for submitting objections as per the notice was 04.12.2013. The said notice reads as under:-

“NOTICE

Kind Attention: Candidates who have appeared for the Competitive Examination.

- 1.0 It is informed that Answer Keys of Paper I and Paper II (All Sets A,B,C,D) of the competitive examination had been uploaded on the website of Punjab Public Service Commission on 08-Nov-2013.
- 2.0 It is further informed that any observation regarding the Answer Keys may be brought to the notice of Commission latest by 4th December, 2013 by 05:00 PM.
- 3.0 The queries can be mailed to the office of Commission at information @ppsc.gov.in or can be sent through post/by hand before the above mentioned date and time.
- 4.0 It is informed that the Commission shall not be bound to consider the queries received after the above mentioned date and time.

5.0 The decision taken by the Commission on observations received shall be final.”

7. It is the admitted position that in response to the said notice, petitioner No.1 submitted a detailed representation dated 02.12.2013 (Annexure P-9).

8. A few other aspirant candidates had also challenged the selection process by filing CWP No. 20467 of 2013 titled '*Mohinder Pal Singh and another vs. State of Punjab and others*'. The said writ petition along with another connected petition being CWP No. 20468 of 2013 titled '*Atul Bansal and others vs. State of Punjab and others*', was disposed of vide order dated 13.07.2014, which reads as under:-

“After hearing learned counsel for the parties, the writ petitions are disposed of in terms of the statement made by learned counsel for the State and the Commission that the revised result after taking final decisions on the objections raised on the questions or the answer keys will be declared within a period of two weeks. The fresh list of candidates to be short listed for interview on the basis of the eligibility on the cut off date will be prepared thereafter. New candidates who may find place in the zone of consideration for the purpose of interview will be interviewed and thereafter final result of selection shall be declared. The entire exercise be completed within a period of four weeks.”

9. In compliance to the aforesaid directions and in view of the revised answer key, the names of 62 candidates were further shortlisted and displayed along with interview dates for them. Thereafter on 19.08.2014, PPSC notified category-wise merit list of 286 candidates for 80 posts of ADAs (Annexure P-15), challenge to which has been raised by the writ petitioners.

10. Initially, the writ petition was filed by petitioner No.1 (Pawan Bishnoi) only and vide order dated 29.11.2016, the original 60th respondent viz. Tarun Goyal, was transposed as petitioner No.2.

11. It was also brought on record by filing an additional affidavit dated 06.05.2016 of Special Secretary to Government of Punjab, Department of Home Affairs and Justice that in view of the directions in CWP No.20393 of 2015 titled *Shilpa Gupta vs. State of Punjab and others*, three more candidates were considered for the posts of ADAs namely, Ms. Taranvir Kaur, Sh. Amrit Lal and Ms. Shilpa Gupta. Their names appeared at serial Nos. 54, 55 and 56 in the common merit list. It was specifically averred in the said affidavit that no post pertaining to general category is lying vacant qua the advertisement in question. In the revised merit list, petitioner No.1 is shown at serial No. 53 with total score 343.50 marks (322+21.5) and petitioner No. 2 at serial No. 49 with total score 344.50 marks (322+22.5) out of total 400 marks. The said merit list was sent by PPSC to the first respondent (State) on 04.09.2014 and the candidates joined service shortly thereafter.

12. It has been noticed by the learned Single Judge that in the general category, some of the selected candidates did not join and consequently, the offer of appointment was made to the candidates next in the order of merit and the last selected candidate was one Shilpa Gupta at serial No. 48, who had secured 344.67 marks. The marks depicted in the merit list are those scored by the respective candidates in the competitive exam as well as viva-voce.

13. Thereafter, another affidavit dated 14.09.2016 by the Secretary, PPSC was filed. The said affidavit reveals that as per report of the subject expert, the answer keys of the relevant questions of Paper I and II were

revised/finalized and the final result was declared accordingly and the same was annexed as Annexure R-1 with the affidavit, which has not been challenged by the writ petitioners.

14. The writ petition was opposed by the official respondents by filing the response and additional affidavits, as noticed above.

15. The learned Single Judge taking note of the fact that selection of ADAs in question is under litigation right from the year 2013 and the Writ Court had given a direction to PPSC to declare the revised result and after noticing various judicial pronouncements, came to the conclusion that the facts of the case were squarely covered by the settled principles of law and as such, dismissed the writ petition.

16. Thereafter, application seeking review of the judgment was filed, which was registered as RA-CW-185-2018, ostensibly to re-open and re-argue the matter before the learned Single Judge. The same was dismissed vide order dated 24.07.2018, as no ground for seeking review was made out.

17. We have heard learned counsel for the parties and with their able assistance we have perused the paper book.

18. Learned counsel for the petitioners has contended that the learned Single Judge vide interim order dated 14.03.2016 had observed that the Court harboured some doubt on question No. 74, Paper I, Set D in the examination in the examination held for the appointment of ADAs in the State of Punjab and thus appointed a learned Senior counsel to assist the Court on the point as Amicus Curiae. Learned counsel would refer to another interim order dated 13.02.2016, whereby a few other questions were taken out for debate and the scrutiny was narrowed down to three questions i.e. Nos. 19, 66 and 74. It is, thus, submitted that when the Writ Court had

itself harboured doubt about the questions referred to above, it should have exercised jurisdiction in favour of the writ petitioners. It is also submitted that the questions under reference pertain to Law and this Court would be better equipped to evaluate the correctness of the answers.

19. Per contra, learned State Counsel has supported the judgment passed by the learned Single Judge being well-reasoned, rationale and in consonance with judicial precedents. It has further been contended that as per the additional affidavits already on record, there are no vacancies under the General category, as all vacancies stood consumed. Much stress has been put forth on the contention that the Constitutional Courts must exercise restraint in such matters and should not assume the role of 'Subject Experts', as such it should be left to the wisdom of 'Expert Bodies'. It has also been submitted that pursuant to the directions of the Writ Court, objections were invited by public notice dated 27.11.2013 (Annexure P-8) and the Committee comprising of Subject Experts had already looked into the questions and the respective answer keys, on the basis of which revised final result was declared and the same is not under challenge, as such relief has been rightly declined to the writ petitioners.

20. We are of the considered opinion that there is much force in the submissions of learned State Counsel. It has been rightly noticed by the learned Single Judge that the selection process with regard to the advertisement issued in the year 2013 was still pending in Courts and in the circumstances, observations made by the Apex Court in ***Ran Vijay Singh and others vs. State of Uttar Pradesh and others*, (2018) 2 SCC 357**, which has been followed in ***Uttar Pradesh Public Service Commission through its Chairman and another vs. Rahul Singh and another*, (2018) 7 SCC 254**,

would be relevant. The observations from *Ran Vijay Singh (supra)* read as under:-

“31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse – exclude the suspect or offending question.

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.”

21. In ***Himachal Pradesh Public Service Commission vs. Mukesh Thakur and another*, (2010) 6 SCC 759**, the Apex Court was considering the question whether it is permissible for the Court to take the task of examiner/Selection Board upon itself and examine the discrepancies and inconsistencies in the question papers and evaluation thereof. After referring to plethora of judgments, it was held that it is a settled legal position that the Court cannot take upon itself task of a statutory authority. The said case pertained to the High Court examining the answer-sheets relating to Law. The relevant portion of the said authority reads as under:-

“20. In view of the above, it was not permissible for the High Court to examine the question papers and answer sheets itself, particularly, when the Commission had assessed the inter se merit of the candidates. If there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the examination and not for Respondent 1 only. It is a matter of chance that the High Court was examining the answer sheets relating to Law. Had it been other subjects like Physics, Chemistry and Mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court. Therefore, we are of the considered opinion that such a course was not permissible to the High Court.”

22. The above authority was noticed and approved in ***Vikesh Kumar Gupta and another vs. State of Rajasthan and others*, (2021) 2 SCC 309** and it was further held as under:-

“17. A perusal of the above judgments would make it clear that courts should be very slow in interfering with expert opinion in academic matters. In any event, assessment of the questions by the courts itself to arrive at correct answers is not permissible. The delay in finalisation of appointments to public posts is mainly caused due to pendency of cases challenging selections pending in courts for a long period of time. The cascading effect of delay in appointments is the continuance of those appointed on temporary basis and their claims for regularisation. The other consequence resulting from delayed appointments to public posts is the serious damage caused to administration due to lack of sufficient personnel.”

23. While placing heavy reliance on ***Rahul Singh (supra)***, it has been contended that the extent and power of the Court to interfere in the matters of academic nature, with regard to dicta of ***Raj Vijay Singh (supra)*** and ***Kanpur University vs. Samir Gupta, (1983) 4 SCC 309***, was examined and it was held as under:-

“12. The law is well settled that the onus is on the candidate to not only demonstrate that the key answer is incorrect but also that it is a glaring mistake which is totally apparent and no inferential process or reasoning is required to show that the key answer is wrong. The constitutional courts must exercise great restraint in such matters and should be reluctant to entertain a plea challenging the correctness of the key answers. In *Kanpur University case [Kanpur University v. Samir Gupta, (1983) 4 SCC 309]*, the Court recommended a system of:

- (1) moderation;
- (2) avoiding ambiguity in the questions;
- (3) prompt decisions be taken to exclude suspected questions and no marks be assigned to such questions.

13. As far as the present case is concerned, even before publishing the first list of key answers the Commission had got the key answers moderated by two Expert Committees.

Thereafter, objections were invited and a 26-member Committee was constituted to verify the objections and after this exercise the Committee recommended that 5 questions be deleted and in 2 questions, key answers be changed. It can be presumed that these Committees consisted of experts in various subjects for which the examinees were tested. Judges cannot take on the role of experts in academic matters. Unless, the candidate demonstrates that the key answers are patently wrong on the face of it, the courts cannot enter into the academic field, weigh the pros and cons of the arguments given by both sides and then come to the conclusion as to which of the answers is better or more correct.”

24. Learned State Counsel has also place reliance upon the view taken by a coordinate Bench in the matter of ***Khatri Saurabh Satyapal vs. Haryana Public Service Commission and another***, 2009 (2) SCT 362, wherein it was held that while exercising the power of judicial review under Article 226 of the Constitution, this Court is not to act as an appellate examining body to go into the details of determination of key answers.

25. In LPA No. 1956 of 2012 titled ***Sameer Khurana and others vs. Board of School Education Haryana and others***, decided on 16.01.2013, while placing reliance upon ***Mukesh Thakur (supra)*** and ***Kanpur University (supra)***, another coordinate Bench in which one of us (G.S. Sandhawalia, J.) was a member, had approved the view of the learned Single Judge declining to exercise jurisdiction as the discrepancies with regard to the questions had been examined by the expert committee. We are not impressed to take a different view in the present case.

26. Reliance has also been placed upon the decision rendered by another coordinate Bench in CWP No. 25420 of 2021 titled ***Shubhdeep Kaur vs. State of Haryana and others***, decided on 04.02.2022 along with a bunch of 5 other cases, wherein it was held that as on a previous occasion

one of the options was taken to be correct by the same examining body, therefore, it would not be possible to change that view. Challenge being raised to the view taken by the same expert body, was thus, not permitted. In the present case also, pursuant to the notice issued by PPSC in compliance to the directions given by the Writ Court, the questions and answer key in that regard have been re-examined by the Expert Committee; and as per settled law, in such circumstances, challenge to the view of the same expert body is liable to declined.

27. Moreover, a perusal of the prayer of the writ petitioner would reveal that they have not challenged the final revised result, which was brought on the record as Annexure R-1 with the affidavit dated 14.09.2016 by the Secretary, PPSC. The merit list has only been drawn in accordance with the final revised result and in the absence of challenge to the result, the writ petitioners could not have succeeded.

28. In view of the above discussion, we are of the considered opinion that the judgment and order passed by learned Single Judge does not suffer from any infirmity and thus, deserves to be upheld. Accordingly, the Letters Patent Appeal being bereft of any merit fails and is dismissed.

(G. S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

June 2, 2022
Sachin M.

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