

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

228

CWP-22069-2018 (O&M)
Date of Decision :27.10.2022

Rajani

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sachmeet Singh Randhawa, Advocate
for Mr. Samrat Malik, Advocate for the petitioner.

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

* * *

Harsimran Singh Sethi, J. (Oral)

CM-5939-CWP-2019

Application is allowed, as prayed for.

CWP-22069-2018

In the present writ petition, the grievance of the petitioner is that the petitioner is not being considered for appointment against the post of PGT (Computer Science), which was advertised vide advertisement No.5/2015 issued by the respondents, copy of which has been appended as Annexure P/1 with the present writ petition.

The facts leading to the filing of the present writ petition are that the petitioner applied in pursuance to the advertisement No.5/2015 under the reserved BCA category in respect of the post of PGT (Computer Science). The petitioner fulfilled the qualification envisaged under the said advertisement. The process of selection involved written test thereafter,

scrutiny of documents and interview. Total marks secured by the candidate in the written test as well as interview were to be taken into consideration to be selected, keeping in view the number of posts advertised in the category in which the said candidate is competing.

The petitioner was called for written test, which was held on 06.03.2016. According to the petitioner, in the said written examination, the petitioner was given question booklet of series 'D' to attempt the questions. The said contention is being raised by the petitioner by placing reliance upon the OMR sheet (Annexure P/7) copy of which the petitioner has attached with the present writ petition wherein, the Invigilator has signed the said OMR sheet confirming the fact that the petitioner was given question booklet of series 'D' in the written examination for attempting the written examination.

After the written examination, the petitioner was not declared successful, which surprised the petitioner as according to the petitioner, she had attempted the questions correctly and should have secured minimum required marks to be called for interview. The petitioner approached the respondents raising the said grievance and she was informed that as per record, the petitioner was given question booklet of series 'B' whereas, the petitioner had written in the OMR sheet that she was allotted question booklet of series 'D' and as the petitioner has been evaluated as per the answer key of question booklet of series 'B', the petitioner has not been able to secure the minimum marks required to be called for interview.

Feeling aggrieved against the said action of the respondent-Commission, the petitioner met the Chairman of the respondent-Commission and told him that she was allotted question booklet of series 'D'

and not that of series 'B' and, therefore, result of the petitioner may kindly be revised by evaluating the answer sheet of the petitioner as per the question booklet of series 'D'.

As per the averments made in the petition, the petitioner handed over the booklet which was given to her at the time of written examination to the Chairman of the Commission for making enquiry into the grievance of the petitioner. Thereafter, as nothing was done, the petitioner has filed the present writ petition with a prayer that she be evaluated in the written examination as per the question booklet of series 'D' and not of question booklet of series 'B' so as to decide whether the petitioner has secured minimum marks to be called for interview.

It is the case of the petitioner that in case the answer sheet of the petitioner is evaluated as per the question booklet of series 'D', she secures 106 marks keeping in view the correct answers given in the answer key related to the question booklet of series 'D' and she becomes eligible to be called for interview. Coordinate Bench of this Court while passing interim order had directed that the petitioner be allowed to participate in the selection process for scrutiny of documents and for interview and under the orders of this Court, the petitioner participated in the selection process and in the category of BCA, in which category the petitioner is competing for the post of PGT (Computer Science).

In the reply, the respondents have taken objection that assertion of the petitioner that she was given question booklet of series 'D' instead of series 'B' is incorrect because as per the sitting plan of the written examination, the candidates, who were either sitting in front of the petitioner or behind the petitioner were not given question booklet of series

'B' and as per the sitting plan the petitioner could only be given question booklet of series 'B' and not of series 'D'. Further assertion of the respondents is that even as per the barcode, which has been attached with the OMR sheet, the petitioner was allotted question booklet of series 'B' and not of series 'D'. Respondents have submitted that signatures of Invigilator on the record showing that the petitioner received booklet of series 'D' is an inadvertent mistake on the part of the Invigilator while conceding the said fact. Learned counsel for the respondents further submits that as the petitioner failed to submit actual booklet on the basis of which the petitioner had attempted the question paper, which booklet was given to the petitioner after the written test, the claim of the petitioner that the petitioner attempted the written test in respect of the question booklet of series "D' and not of question booklet of series 'B' may kindly be rejected.

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

In the present case, the petitioner has raised two relevant arguments. One the affirmation of the Invigilator, who was supervising the conduct of the examination in respect of booklet, which was given to the petitioner for marking the answers. From the said record, it is clear that the Invigilator who checked the booklet series and appended his signatures on the same confirming that the petitioner was allotted question booklet of series 'D' for attempting the questions during the written examination. Secondly, in case the petitioner was given question booklet of series 'B', but petitioner attempted the questions as per question booklet of series 'D', then there has to be use of unfair means by the petitioner to mark the answers as per question booklet of series 'D', which according to the respondents was

not available with the petitioner at the time of attempting the written examination. It is not even the case of the respondents that there was a use of unfair means by the petitioner while appearing in the written examination. In the absence of any allegation of unfair means adopted by the petitioner, benefit of doubt is to be given to the petitioner qua her claim.

This Court has been informed that if the answer sheet of the petitioner is evaluated as per the question booklet of series 'D', the petitioner has enough correct answers to her credit so as to qualify the said written test contrary to the marks she secures if evaluated as per question booklet of series 'B' in which she would be unsuccessful. A candidate if given a booklet of series 'B' can only mark the correct answers as envisaged for booklet of series 'D' in case he/she has used unfair means and that too with the connivance of the official conducting the said examination. In the present case, there is not even a whisper of any unfair means being used by the petitioner during the conduct of the examination. Further, it is highly improbable that a candidate who was actually attempting question from booklet of series 'B' will attempt correct answers to question booklet of series 'D' and that too in the absence of booklet of series 'D' before her. Though, there are certain discrepancies in the present case but, keeping in view the facts and circumstances noted hereinbefore, the benefit of doubt needs to be given to the petitioner on the ground that Invigilator had confirmed that she was given the question booklet of series 'D'. Nothing has come on record to prove the averments of the respondents that confirmation by the Invigilator that the petitioner was given question booklet of series 'D' was incorrect. Learned counsel for the respondents concedes that as of now the Invigilator has not stated before the authorities concerned that factual

aspect depicting on the OMR sheet is incorrect or certification of the factual aspect by the Invigilator is incorrect in any manner. Under these circumstances, averment of the respondents that Invigilator inadvertently certified that petitioner was given question booklet of series 'D', cannot be accepted.

Assertion of the respondents that the petitioner failed to produce question booklet of series 'D' which is supposed to be in her possession so as to justify her claim before this Court or before the authority concerned, in the facts and circumstance of the present case, holds no significance. Moreover the petitioner mentioned that after declaration of result, she met the Chairman of the respondent-Commission, who was holding the office at the relevant time and the petitioner brought her grievance to his notice, who asked her to hand over the said question booklet to him for further action. It is a matter of fact that the said Chairman left the office before the finalization of the selection. The said assertion of the petitioner has been rebutted by the respondents only by submitting that as the earlier Chairman is no more in the said office, the said fact cannot be ascertained. Merely, because a fact cannot be ascertained by the respondents does not mean that the assertion of the petitioner is devoid of truth. Benefit of doubt on this account needs to be given to the petitioner keeping in view the facts and circumstance of the present case in entirety.

Learned counsel for the respondents submitted that in the absence of any diary number given to the petitioner on submitting the question booklet before the Chairman, the petitioner cannot be given benefit of doubt. In this regard, as the petitioner is a candidate appearing before the Chairman of the Commission having a high status and when asked to give

the said booklet, it is understandable that she might not have demanded the diary with respect to submitting the said booklet.

It is not disputed by the respondents that when the answers as given in OMR sheet of the petitioner are evaluated as per the question booklet of series 'D', the petitioner does secure the minimum required marks to be called for interview and keeping in view the marks secured by the petitioner in the interview, she has secured more marks than the last selected candidate in the BCA category, in which category the petitioner was competing. Once, it is not disputed that the petitioner is a meritorious candidate, in the facts and circumstance of this case, the benefit of doubt needs to be given to the petitioner especially, when the post in the category in which the petitioner is competing is still lying vacant and once, the post is vacant, keeping in view the facts and circumstances of this case, the respondents are directed to evaluate the answers given in the OMR sheet of the petitioner in respect of the question booklet of series 'D' instead of series 'B' and, thereafter, keeping in view the marks which she secures in the written examination as well as in interview, if she has secured more marks than the last selected candidate in the category in which she is competing and the post in the said category as advertised is available, she be considered for selection and consequential appointment.

Let the said exercise be carried out within a period of four weeks from the date of receipt of copy of this order. It is made clear that with regard to the inter-se seniority, the same will depend upon the merit, which the petitioner secure in the examination. Though, the petitioner be given appointment from the date when the candidates lower in merit than her were given appointment but keeping in view the facts and circumstances

of this case, the same will be only on notional basis without there being any payment of arrears.

Petition stands allowed in above terms.

CM-13330-CWP-2019

As prayed for, application is allowed.

October 27, 2022

aarti

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No