

CWP-2213-2023

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

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Date of decision: 03.02.2023

Lakhwinder Singh and others

...Petitioners

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Amit Dhanda, Advocate,
for the petitioners.

HARNARESH SINGH GILL, J. (ORAL)

Challenge in the present petition is to the revised final answer key issued on 27/28.11.2022 (Annexure P-11) by respondent No.3-Haryana Staff Selection Commission, on the ground that report of the Expert Committee has not been provided to the petitioners or the same has not been made available to them to show that the objections raised by them qua certain questions in the written examination, have been dealt with.

Learned counsel for the petitioners contends that in pursuance of the advertisement No.06 dated 20.07.2006, the petitioners applied for the posts of Physical Training Instructors (PTIs); that the selection process for the aforesaid posts was quashed by the Hon'ble Supreme Court, vide judgment dated 08.04.2020 passed in Civil Appeal No.2103 of 2020, titled as 'Ramjit Singh Kardam and others Vs. Sanjeev Kumar and others'.

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Learned counsel further contends that in pursuance of the directions of the Hon'ble Supreme Court, fresh selection process was started; that the petitioners appeared in the examination held on 23.08.2020; that the respondent-Commission uploaded the answer key on the website and had invited the objections qua the answer key; that the petitioners had submitted objections qua the answers of some questions; that result/merit list of the written test was declared on 24.09.2020, and that final result for the said posts was declared on 05.10.2020.

Learned counsel for the petitioners contends that some of the candidates approached this Court, challenging the answer key, and that the aforesaid writ petitions were disposed of keeping in view the stand taken by the respondent-Commission that it had intended to place all the objections received from the candidates before a panel of the experts for their consideration. Learned counsel further contends that a revised merit list dated 09.09.2022 was issued wherein certain candidates had been called by granting grace marks on the basis of report of the expert panel; that by way of CWP-22931-2022, petitioner-Ravinder alongwith other candidates approached this Court for issuance of directions to the respondents to decide the objections raised by them qua 15-16 questions and that the said writ petition was disposed of having not pressed, with liberty to the petitioners to avail their remedy by filing appropriate representation before the authorities concerned.

Learned counsel further contends that the supplementary result of the written examination was declared by the respondent-Commission, on 09.09.2022, and the revised final result was declared on

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on 13.12.2022; that the final amended answer key, in pursuance of the undertaking given by the respondents on 26.07.2022 in CWP-17196-2020, was issued on 27/28.11.2022, but the supplementary result was declared on 09.09.2022. This fact shows that the supplementary result was declared without considering the objections of the petitioners as the answer key was amended only on 27/28.11.2022. Learned counsel further contends that some of the questions are to be removed/rectified and benefit of the same may be granted to the petitioners.

Learned counsel further contends that till date, the petitioners have not been supplied any document, enabling them to know as to how and in what manner, objections qua various questions had been dealt with and if the objections have been rejected, it has not been informed as to on what basis/material, the said objections had been rejected. Learned counsel further contends that without dealing with the objections raised by the petitioners against the answers, the respondent-Commission had declared the revised/amended final result on 13.12.2022.

Notice of motion.

On the asking of this Court, Mr. R.S.Budhwar, Addl. A. G. Haryana, accepts notice on behalf of the respondents-State, and submits that report of the expert panel received after 26.07.2022, was made basis of the declaration of the supplementary result of the written examination, on 09.09.2022, but the answer key was uploaded on the website in November, 2022. Learned State counsel further submits that the answer key was suitably amended and the candidates had been evaluated on the

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basis of the amended answer key while declaring the result of the written examination. Learned State counsel further submits that the conduct of examination involves secrecy, especially qua the paper-setter. In support of his contentions, learned State counsel relies upon the judgment dated 11.12.2017 rendered by the Hon'ble Supreme Court in Civil Appeal No.367-2017, titled as 'Ran Vijay Singh and others Vs. State of Uttar Pradesh and others', and the judgment dated 20.12.2022 by a Coordinate Bench in CWP-28995-2022, titled as 'Narender Kumar Pareek and others Vs. State of Haryana and others'.

I have heard the learned counsel for the parties.

The petitioners are the one, who have not secured the minimum marks required in the written examination held on 23.08.2020 so as to be called for the interview. In CWP-17196-2020, titled as 'Jaspal Singh and others Vs. State of Haryana and others', the respondent-Commission submitted before the Coordinate Bench that all the objections alongwith supporting material, received from the candidates would be placed before the subject experts again and thereafter the appropriate decision would be taken so as to further amend the answer key.

It would be apposite to mention here that supplementary result of the written examination was declared on 09.09.2022 after amending the answer key on the basis of the recommendation/report of the expert panel. Approximately 500 candidates more had cleared the written examination, enabling them to be interviewed. Merely for the reason that the petitioners still have not been able to secure the marks in

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the written examination to be called for the interview, does not given them a liberty to assert that their objections had not been considered by the experts or the same had not been put before the experts. There is nothing on record to suggest that the undertaking given before the Coordinate Bench in CWP-17196-2020, had not been complied with while revising the answer key. Above all, in the absence of any such condition enumerated in the advertisement, no direction can be given by this Court to supply the report of the expert panel.

The Coordinate Bench while dealing with the similar controversy in Narender Kumar Pareek 's case (supra), has held as under:

“At this stage, learned senior counsel argues that the petitioners are entitled for the report of the expert panel so that the grievance of the petitioners stands satisfied that their objections were put before the expert panel before finalizing the revised final answer key.

The conduct of an examination depends upon the terms and conditions of the examination as stated in the advertisement. Nothing has been placed before this Court to show that the report of the expert panel qua the amended answer key needs to be supplied to the candidates as well. In the absence of any such condition enumerated in the advertisement, no direction can be given by this Court to supply the expert panel report to the petitioners also. Even otherwise, the conduct of an examination involves secrecy especially qua the description of the paper setter. Constitution of the Expert Panel also has to be kept secret. This secrecy has to be maintained so that unnecessarily the paper setter or the Expert Panel does not become the target of the candidates so as to level personal allegations. Though, this Court has the jurisdiction to ascertain the personal data of the paper setter or the Expert Panel but the same can only be invoked in case, cogent evidence qua any misconduct on the part of the subject expert or Expert Panel is presented before this Court. In the absence of any cogent evidence qua any misconduct on the part of the subject experts or the paper setter even the Courts

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have to refrain themselves from seeking such kind of data so as to maintain the secrecy. In the present case, there are no allegations of any misconduct against the subject experts or the Expert Panel or even the paper setter hence, there is no justification so as to extend the report of the subject expert to the petitioners so as to disclose their identity, especially when no such terms and conditions exist in the conduct of the examination for supplying of the report of the subject experts to the candidates concerned.

Even otherwise, the petitioners have an appropriate remedy for their grievances as they can seek an information under RTI as to whether, their grievances were put before the expert panel or not, in case petitioners feel that their objections were never put before the expert panel and any such query can be replied by the respondents as and when required but in the absence of any regulation permitting the supply of expert report to the petitioners, no such direction can be given by this Court.

Though, the petitioners have raised the prayer for quashing of revised answer key dated 28.11.2022 as well as final result dated 13.12.2022 but the same was not raised during arguments. Still, keeping in view the settled principle of law settled by the Hon'ble Supreme Court of India in Civil Appeal No.367 of 2017 titled as Ran Vijay Singh and others vs. State of Uttar Pradesh and others, the candidates only have right to raise objections qua the answer key and which grievance can be put to the subject expert for their opinion and after report of the subject expert, Court does not have jurisdiction to entertain any further grievance qua the answer key. As per the Ran Vijay Singh (supra) even if, there exists grey area after the report of the subject expert qua any of the question in the written examination, the benefit has to go to the recruiting agency and not to the candidates. Relevant paragraph of the judgment is as under:-

“30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are: (i) If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it; (ii) If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as

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distinct from prohibiting it) then the Court may permit reevaluation or scrutiny only if it is demonstrated very clearly, without any “inferential process of reasoning or by a process of rationalisation” and only in rare or exceptional cases that a material error has been committed; (iii) The Court should not at all re-evaluate or scrutinize the answer sheets of a candidate – it has no expertise in the matter and academic matters are best left to academics; (iv) The Court should presume the correctness of the key answers and proceed on that assumption; and (v) In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.”

Keeping in view the above, this Court cannot give any direction to further amend the answer key, in the facts and circumstances of the present case, where more than once the subject experts have rendered their opinion qua the objections raised by the petitioners and other candidates, no direction can be given to again put the objections of the petitioners before the Expert Committee for 3rd time. The said prayer of the petitioners is contrary to the settled principle of law settled by the Hon'ble Supreme Court of India in Ran Vijay Singh (supra). Hence the said prayer cannot be allowed. Keeping in view the above, the grievance being raised by the petitioners in the present petition are not maintainable and no relief in respect of the prayer as made by the petitioners can be extended to them.

In view of the above discussion and law laid down by the Coordinate Bench in Narender Kumar Pareek 's case (supra), this Court does not find any merit in the present petition.

Dismissed.

03.02.2023

parveen kumar

**(HARNARESH SINGH GILL)
JUDGE**

Whether reasoned/speaking?

Yes/No

Whether reportable?

Yes/No