

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 3682 of 2023

Reserved On: 23.02.2023
Date of Decision: 28.02.2023

Navdeep Kaur and Others

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Animesh Sharma, Advocate
for the petitioner(s).

Mr. Navdeep Chhabra, Senior Deputy Advocate,
Punjab, for the respondents.

Anil Kshetarpal, J.

1. After having heard the learned counsel representing the parties at length, in the considered view of the Court, the following issue arises for adjudication:

Is it appropriate for the Court to interfere in the decision of scrapping the written examination, which is the sole basis of selection, particularly when the police, during the investigation of a criminal case filed in this regard, has found that the electronic devices have been rampantly misused by the candidates to cheat in the exam and impostors have written the exam instead of real candidates in some cases and when no appointment letters have been issued?

The relevant facts, in brief, are required to be noticed. Pursuant

to a recruitment notice issued on 17.12.2020 by the Punjab Public Service Commission (hereinafter referred to as “the Commission”) inviting the applications for filling 78 posts of Naib Tehsildars, 42000 candidates, approximately, sat in the examination held on 22.05.2022. The result was declared on the website on 06.10. 2022 and the petitioners are stated to have cleared the said competitive examination and fall within the ambit of selection. The selection was solely based on the result of the written examination and thereafter, only the scrutiny of the documents was required to be conducted. It is the case of the petitioners that certain complaints were made alleging misconduct of examination while pointing out that a few of the toppers, who had miserably failed in the previous similar examination, are residents of the same or proximate geographical location/area. Thereafter, an FIR No. 238 dated 11.11.2022 was registered at Police Station Kotwali, Patiala, in which the six persons, who were running coaching centres and had illegally assisted some of the candidates in the said examination by using electronic devices were named as accused. On 06.01.2023, the police submitted a report wherein six beneficiary candidates and a facilitator were also made accused along with the original six accused. Since there was a delay in issuing the appointment letters, therefore, a writ petition was filed wherein the Commission produced the order dated 20.01.2023 vide which a decision to scrap the merit list of the shortlisted candidates and re-conduct the examination has been taken by the government. The present writ petition has been filed to challenge the correctness of the decision taken by the government directing the Commission to re-conduct the examination.

3. On liberty being given, the learned counsel representing the petitioner has also filed a written note of his submissions.

4. The learned counsel representing the petitioners submits that the impugned order dated 20.01.2023 has been passed without even issuing a notice to the selected non-tainted candidates which is in violation of the principles of the natural justice. When the tainted candidates have already been identified, then, it would not be just and proper to withhold the selection of the non-tainted candidates. He relies upon the judgments passed in *Joginder Pal and Others v State of Punjab and Others (2014) 6 SCC 644* and *Inderpreet Singh Kahlon and Others v. State of Punjab and Others (2006) 11 SCC 356* to contend that for the misdeeds of some candidates, honest and meritorious candidates should not suffer, therefore, endeavour should be to segregate the tainted candidates from those who are above suspicion. He also relies upon the judgment passed in *Union of India and Others v. Rajesh P.U., Puthuvalnikathu and Another (2003) 7 SCC 285* to contend that when it is possible to weed out, from the select list, those candidates who have benefited through fraud or illegalities, then, it would not be justified to deny appointments to the other non-tainted selected candidates. He further contends that the police, on investigation, has already identified 13 tainted candidates against whom there are allegations of cheating through Bluetooth/electronic mode, hence, the remaining should not be made to suffer. It is further submitted that certain documents produced in the court by the learned State counsel have not been provided to the petitioners. Further, it is submitted that no effort has been made by the respondents to segregate tainted and non-tainted candidates. He submits that

neither there are any allegations of paper leakage nor it is a case of mass copying in the examination. He, very strongly, relies upon the judgment passed by the Division Bench of the Madras High Court in *A.Kalaimani and Others v. State of Tamil Nadu and Others 2019 SCC Online Mad 4435*. While referring to paras 5, 22, 23, 24, 25, 26, 32, 33 and 34, he submits that the impugned order is liable to be set aside. The learned counsel further highlights that for 78 posts of Naib Tehsildars, 75000 applications, approximately, were submitted, whereas, nearly 41523 candidates appeared in the competitive examination, out of which only 1700 could clear the cut off marks in the said competitive examination. Hence, the decision to scrap the entire examination is not rational.

5. On the other hand, the learned State counsel has produced a bunch of documents including the inquiry report submitted by the Director General of Police, Punjab, to the Additional Chief Secretary (Revenue), Punjab, on 27.12.2022. Along with the aforesaid communication, the various documents including the copies of the complaints received and report submitted by the Additional Director General of Police (Internal Security) Punjab, has also been attached. The learned State counsel submits that in *Sachin Kumar and Others v. Delhi Subordinate Service Selection Board and Others (2021) 4 SCC 631*, the Supreme Court has held that if the whole process of selection is found to be suffering for fraud and discrepancies, then, it would not be appropriate for the Court to interfere merely on account of some hardship which may be caused to those who were not involved in the wrongdoing.

6. This Court has considered the submissions of the learned

counsels while examining the record. It appears that the first complaint was submitted to the Additional Chief Secretary on 17.10.2022 wherein, it was highlighted that amongst the top 21 candidates, 10 candidates, who have scored very high marks and fall within the zone of consideration for selection, belong to the two sub divisions of Patran and Moonak bordering the State of Haryana. It was further highlighted that in the recent past, most of these alleged tainted candidates have been placed very low in the merit and were unable to qualify the test for recruitment to the post of Revenue Clerk or that of the Assistant Sub Inspectors. It was also highlighted that out of the first 21 candidates, three are from village Dedhna, two are from village Bangan and another two are from Moonak, while one each is from Bushera, Dudian and Patran, all of them residing within the radius of around 15 kilometers. On the same day, another similar complaint was submitted to the Hon'ble Minister of Punjab Government, Department of Revenue, Rehabilitation and Disaster Management, which triggered the police to investigate the matter. On finding some *prima facie* material, an FIR No. 238 dated 11.11.2022, was registered under Section 419, 420, 465, 468, 471 and 120-B IPC and Section 66-D of the Information Technology (Amendment) Act, 2000, at Police Station Kotwali, District Patiala. The Senior Superintendent of Police, Patiala, on investigation, found certain material against some accused, named in the FIR, who were running the various coaching institutes. It was found that they were illegally using/supplying the electronic devices like GSM, Bluetooth, microphone etc. to aid cheating in the examinations conducted for various posts notified by the Punjab Government. The aforesaid accused were arrested. Thereafter,

certain beneficiary candidates were also identified. Two candidates stated that they purchased two Airtel sims each in their respective names and provided them to the accused for using it in GSM device/mobile. Subsequently, on the basis of the disclosure statements made by the arrested persons, the candidates who got benefited in the examination by using the electronic devices were identified and arrested. Further investigation reveals that seven more candidates may have used the GSM device in the similar manner. Moreover, 50 other candidates have been issued notices to join the investigation though only 35 have joined the investigation. The alleged offence has been carried out in the following manner. The facilitator asked the candidates to arrange for two new sims and mobile phones. Thereafter, the facilitator provided each candidate a GSM device and a very small Bluetooth ear piece for communication during the examination. The candidate carried the GSM device by hiding it probably in the shoes, socks or undergarments. The facilitator called on the GSM device using the other sim and mobile phone provided by the candidate. Then, the candidate used the already agreed signal such as coughing, tapping etc. to communicate the test booklet series received by him and upon hearing the same, the facilitator started dictating the answers. It was also found that the facilitator also arranged impersonator for some candidates to write the exam in their place and ₹ 22,00,000/- to ₹30,00,000/- was charged from each candidate for the same. The electronic gazettes like 11 GSM devices, 7 earbuds, 19 mobile phones and 1 tablet have also been recovered.

7. As already noticed, the police has already submitted the report under Section 173 Cr.P.C. in the Court, where the accused is being

prosecuted. Once the final report was supplied, the State Government, after examining the same, has taken a conscious decision vide order dated 20.01.2023 to conduct the examination afresh.

8. Now, the stage is set to evaluate the case laws on the subject. Though the learned counsel representing the petitioners has relied upon the judgment passed by the Division Bench in *A.Kalaimani's case (supra)*, however, he has not disclosed that the aforesaid judgment has already been set aside by the Supreme Court in *State of Tamil Nadu v. A. Kalaimani 2019 SCC Online SC 1002*. The Supreme Court, while setting aside the said judgment, has concluded as under:-

“14. In the instant case, the Board initially conducted an inquiry on its own regarding the allegations pertaining to manipulation of the OMR answer sheets. The Board found that a few people benefited due to the tampering of the OMR answer sheets. On a deeper scrutiny sufficient material was found against 196 persons who were beneficiaries of the fraud in the alteration of marks. The Board was convinced that there were chances of more people being involved in the manipulation of marks for which reason a decision was taken to cancel the entire examination. A bona fide decision taken by the Board to instill confidence in the public regarding the integrity of the selection process could not have been interfered with by the High Court. Sufficiency of the material on the basis of which a decision is taken by an authority is not within the purview of the High Court in exercising its power of judicial review. More

material is being unearthed in the investigation and several people have been arrested. The investigation is in progress.”

9. The judgment in ***Joginder Pal’s case (supra)*** was, in fact, passed in the second round of litigation. In the first round, the Supreme Court in ***Inderpreet Singh Kahlon’s case (supra)*** remanded the matter back to the High Court. Thereafter, in the second round, the cases were decided in ***Joginder Pal’s case (supra)***. After the decision in ***Inderpreet Singh Kahlon’s case (supra)***, a committee of three High Court Judges was constituted to identify and separate the tainted candidates from the non-tainted ones. The Committee was successful in its efforts. In that context, the judgment in ***Joginder Pal’s case (supra)*** was delivered while observing that once it is found that the segregation of the tainted from the non-tainted candidates is possible, then, the earlier conclusion arrived at by the High Court to set aside the entire process is improper. Hence, the aforesaid judgment was given in the facts of that case.

10. The next judgment relied upon by the learned counsel representing the petitioners is in ***Inderpreet Singh Kahlon’s case (supra)***. The Supreme Court drew a distinction between a proven case of mass cheating in the board examination and an unproven imputed charge of corruption where an appointment of a civil servant is involved. Thereafter, the Supreme Court remanded the matter back to the High Court for deciding afresh.

11. On a careful reading of the judgment in ***Rajesh P.U., Puthuvalnikathu’s case (supra)***, it is evident that 134 posts of Male/Female Constables (Executive) and 5 posts of male candidates (Motor Transport)

were the subject matter of the recruitment notice. Subsequently, it came to the notice of the Central Board of Investigation that there are allegations of favoritism and nepotism on the part of the officers in conducting the physical efficiency test. Subsequently, the Special Committee, which extensively scrutinized and reviewed the situation by re-evaluating the answer sheets of all the 134 successful candidates as well as 184 unsuccessful candidates, found that except for 31 successful candidates, there was no infirmity whatsoever in the selection of the other successful candidates, therefore, the decision to scrap the entire examination has been wrongly taken. Thus, in the aforesaid judgment, 31 such selected candidates were identified and segregated and the selection of the remaining successful candidates was upheld.

12. In *Sachin Kumar's case* (*supra*), the Supreme Court set aside the judgments passed by the Tribunal as well as the Division Bench of the Delhi High Court. The aforesaid judgment was delivered in the context of the recruitment notice issued by the Government of National Capital Territory of Delhi to recruit the Head Clerks. The scheme of examination comprised of Tier-I and Tier-II examination. The various committees were formed and it was found that the examination centres of the successful candidates was extremely limited and the candidates who secured extremely high marks in Tier-I examination failed to appear or secure the same level of marks in Tier-II examination. The process of randomization was manipulated as a result of which the persons belonging to the same family or close relatives were assigned the same examination centres and sat for the Tier-I examination in the same examination room. In that context, the

government annulled the result of the examinations. However, the Tribunal set aside the decision of the government. The Division Bench of the Delhi High Court upheld the aforesaid decision. However, the Supreme Court has set aside both the judgments while observing as under:-

“57. Recruitment to public services must command public confidence. Persons who are recruited are intended to fulfil public functions associated with the functioning of the Government. Where the entire process is found to be flawed, its cancellation may undoubtedly cause hardship to a few who may not specifically be found to be involved in wrong-doing. But that is not sufficient to nullify the ultimate decision to cancel an examination where the nature of the wrong-doing cuts through the entire process so as to seriously impinge upon the legitimacy of the examinations which have been held for recruitment. Both the High Court and the Tribunal have, in our view, erred in laying exclusive focus on the report of the second Committee which was confined to the issue of impersonation. The report of the second Committee is only one facet of the matter. The Deputy Chief Minister was justified in going beyond it and ultimately recommending that the entire process should be cancelled on the basis of the findings which were arrived at in the report of the first Committee. Those findings do not stand obliterated nor has the Tribunal found any fault with those findings. In this view of the matter, both the judgments of the Tribunal and the High Court are

unsustainable.”

13. Now, let us analyze the arguments of the learned counsel representing the petitioners. The first argument is with regard to the violation of the principles of natural justice. It would be noted here that the petitioners do not get any vested right merely because they have been shortlisted for the post of Naib Tehsildar. As is evident, no appointment letters have been issued to the shortlisted candidates. In these circumstances, the question of violation of the principles of natural justice does not arise. In any case, a simplicitor violation of the principles of natural justice cannot, in itself, be a ground to set aside the decision of the government, unless the petitioners establish prejudice. Reliance in this regard can be placed on the judgment of the Supreme Court in ***State of Uttar Pradesh Vs. Sudhir Kumar Singh & Others 2020 SCC Online SC 847***.

14. The second argument of the learned counsel is that when the tainted candidates have already been segregated from the non-tainted ones, then the decision to scrap the entire exam is not justified. It would be noted here that as reported by the police, there was mass scale rampant misuse of the electronic devices during the examination. Certain real candidates were also replaced by impostors to give the examination. This has been confirmed on the analysis of the CCTV footage. Moreover, amongst the top 21 candidates in the general category, 11 belong to the two sub divisions, namely Moonak and Patran. Moreover, this raises a serious doubt that similar modus operandi may be adopted at various other centres and no material has been brought to discard such doubt. The Additional Chief Secretary has found that it is not easy to segregate the tainted candidates

from the non-tainted ones. On 27.12.2022, the Director General of Police, Punjab, has informed the Additional Chief Secretary that the whole examination process seems to be vitiated due to the fraudulent means adopted by the candidates who appeared for the examination to the post of Naib Tehsildar and it has jeopardized the chances of the eligible candidates. The government, while passing the order, has also relied upon the report submitted by the Director General of Police. It has not been argued before this Court that the examination has been scrapped due to malafide reasons. Moreover, the examination was recently held on 22.05.2022. The respondents have already initiated the process for holding the examination afresh. In such circumstances, the competent authority has taken a conscious decision that the examination is required to be scrapped. Hence, there is no force in the argument of the learned counsel representing the petitioners that the police has already identified the tainted candidates. A perusal of the documents produced before the Court shows that the process to identify all the accused is still in progress. The police is empowered to conduct further investigation and file a supplementary report under Section 173 (8) Cr.P.C. if any new material or fact is brought to light. Moreover, the standard of proof required for prosecuting the accused in a criminal case is much more stringent and the prosecution is required to prove the guilt of the accused beyond the shadow of reasonable doubt. The same standard cannot be applied for cancelling the written examination.

15. One of the grievance of the learned counsel representing the petitioners is that the copies of documents handed over to the Court have not been supplied to him. On 22.02.2023, this Court had directed the State

counsel to get the required information from the concerned department before assisting the Court. In compliance thereof, the learned State counsel had produced certain documents. Those documents are only for the perusal of the Court. Since the investigation is still ongoing, therefore, it would not be appropriate to make the aforesaid documents public.

16. As regards the contention of the learned counsel representing the petitioners that there is no allegation of any paper leakage or it is not a case of mass copying, it would be noted that there are serious *prima facie* allegations of rampant use of electronic devices to help the candidates in writing the exam and in certain cases, the exam has been written by impostors in place of the real candidates. The cancellation of the examination is not ordered only if there is leakage of paper or mass copying. Primarily, the competent authority is required to form an opinion “Whether it is a case of misuse/cheating by one or two exceptional candidates or the illegalities have been committed at a large scale or a substantial number of candidates are involved?”

17. In *Gohil Vishvaraj Hannubhai v. State of Gujarat (2017)*¹³ *SCC 621*, the Supreme Court held that the examination process pertains to the assessment of academic accomplishments or suitability of the candidates for employment under the State, hence, the authority of the State is required to take appropriate measures to maintain the sanctity of any examination process, which should be unquestionable. Where there are allegations of the occurrence of large scale malpractices in the course of the conduct of any examination process, the State or its instrumentalities are entitled to cancel the examination. Moreover, a bonafide decision taken by the government to

instill confidence in the public regarding the integrity of the selection process should not be interfered with by the Court. The question of sufficiency of the material on the basis of which a decision has been taken by the State in a given case does not fall within the purview of the power of judicial review by the Courts.

18. It is significant to note that the Courts as well as the public recruiting agencies have been making sincere efforts to cleanse the process of recruitments to the public/civil posts in order to make it more transparent. The meritorious candidates who aspire to get employment to the civil posts, should get a fair chance to compete in the recruitment process which, in turn, helps the recruiting agencies to select the best candidates. Hence, all possible endeavours must be made to ensure that the recruitment process does not have loopholes which can be exploited by the tainted candidates. The Courts are expected to decide such cases while keeping the aforesaid goals in mind. In the present case, though some non-tainted candidates may have to, once again, write the exam, however, if some tainted candidates get employment to such a crucially responsible post, then, the consequences would be disastrous. If the Court weighs both the situations, in the facts of the present case, the conclusion inevitably lies in the favour of holding a fresh examination particularly when there is sufficient material to show that some unscrupulous individuals have contaminated the written examination and the police has already expressed apprehension that there may be many more such candidates who have not been traced yet. It is always in the interest of the candidates to conclude the selection process expeditiously. However, at the same time, further investigation into the scam is likely to take time.

Hence, in the given situation, the decision of the competent authority does not appear to be arbitrary, perverse or without any justification. Such a decision has been taken by the government in the overall interest of the society and general public as only the persons having unblemished character and high integrity should be selected for such dignified and accountable post.

19. Keeping in view the aforesaid discussion, this Court finds that the petitioners have failed to make out their case for issuance of the writ of certiorari. However, the respondent-State and the Punjab Public Service Commission are impressed upon to conduct a fresh examination as expeditiously as possible because the recruitment notice was issued around two years and three months back. Consequently, the writ petition is dismissed.

(Anil Kshetarpal)
Judge

February 28, 2023
“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No