

CWP-13066-2020

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

**CWP-13066-2020 (O & M)
Date of decision: 01.05.2023**

Devender and others

...Petitioners

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Sanjeev Kumar Birla, Advocate for
Mr. Dalbir Singh, Advocate,
for the petitioners.

Mr. Rohit Arya, DAG, Haryana.

Mr. Kanwal Goyal, Advocate,
for respondents No.3 and 4.

Mr. Sunil K. Nehra, Advocate,
for respondents No.26, 41 and 44.

HARNARESH SINGH GILL, J. (ORAL)

1. Present petition has been filed challenging the written examination and the subsequent result declared in pursuance of the advertisement No.01 dated 08.03.2019 qua the post of Assistant Professor (College Cadre) in the subject of Psychology.

2. The only question which has been raised by the petitioners is that in the written test conducted on 27.01.2020 for making appointment to the aforesaid post, 43 questions were copied from one book only and some of the questions were either ambiguous or not having correct answers-key.

3. It is the case of the petitioners that the written test had been

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conducted in a manner which is a clear cut case of bungling and is an easy way of leakage of the paper to the favourites.

4. Learned counsel for respondent No.26, 41 and 44 submits that the written test could not be scrapped for the reason that out of 100 questions, 43 questions had been copied from one book only. He further submits that the petitioners have relied upon the interim orders passed in CWP-3442-2020, but the said petition ultimately stands dismissed, vide order dated 11.10.2022 passed by the Coordinate Bench.

5. I have heard the learned counsel for the parties.

6. In pursuance of the advertisement No.01 dated 08.03.2019, the petitioners had applied for the post of Assistant Professor (College Cadre) in the subject of Psychology. The written test for the aforesaid post was conducted on 27.01.2020. The written test comprised of 100 questions which were to be answered by a candidate by pointing out the correct option.

7. The controversy raised in the present petition challenging the written examination for the reason that some of the questions had been copied from one book only, has already been decided by the Coordinate Bench in CWP-3442-2020, vide judgment dated 11.10.2022. A relevant extract of the same would read as under:

“The primary contention of the petitioner is that as certain question in the written examination in which the petitioner appeared in pursuance to the advertisement Annexure P-1 dated 08.03.2019, were taken from a particular question paper which act, according to the petitioner, amounts to bungling and leakage of the same

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to the favorites so as to render the said written examination void.

Nothing has been placed on record so as to show the basis of the said allegations which have been alleged by the petitioner against the paper setter especially when the petitioner does not know even the name of the paper setter, who has set the said question paper. The allegations have only been pointed towards the paper setter probably because the petitioner failed to clear the written examination so as to be called for interview for appointment to the post of Assistant Professor.

The setting of a question paper is the prerogative of the paper setter and once, a selecting agency has reposed faith on a particular paper setter, unless and until any substantive wrong doing is brought on record, the integrity of the paper setter has to be maintained under all respects. Merely on the asking of a particular student, who failed to clear the written examination, the investigation of the paper setter cannot be undertaken. It is only in a case where a Court is prima facie convinced of any irregularity on the part of the paper setter, that action can be taken. In the present case, only bald allegations have been made by the petitioner without substantiating the same in any manner by any event or any evidence to support the said allegations.

Learned counsel for the petitioner argues that the Coordinate Bench of this Court in the present petition, had directed that the names of the paper setter be brought before this Court in the sealed cover, which order is yet to be complied with and therefore, the said order be complied with by the respondents.

The paper setter identity cannot be disclosed to any one so as to maintain the secrecy and integrity of the said

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paper setter especially when nothing has been brought to the notice of this Court to show that there was any misconduct on the part of the paper setter or there was any favoritism done by the said paper setter or the said paper was leaked to any favorites as being alleged, in the absence of any even prima facie material being brought on record to substantiate the allegations, the identity of the paper setter which was only for the purpose of this Court is not required and also otherwise was not to be brought in the domain of the general public.

This Court, does not think fit that in the facts and circumstances of the present case, there is need to disclose the name of the paper setter and therefore, though the Coordinate Bench of this Court had directed to bring the name of the paper setter in a sealed cover for the information of this Court, non-compliance of the same, cannot give any right to the petitioner to claim that the name of the said paper setter needs to be disclosed to the general public or not.

Further, learned counsel for the petitioner submits that once, a competent Court of law dealing with the same subject had passed certain directions to be complied with by the Selection Commission passed in Rewant Dan's case (supra), the same need to be complied with by the respondent-Commission also.

*The recommendations which were given by the Rajasthan High Court in **Rewant Dan's case (supra)**, are also to the knowledge of the respondent-Commission. It is for the Commission to adopt the same in case they feel that the conduct of the examination will be done in a smooth manner but non-adherence of the same by the respondents, will not grant any right to the petitioner so as to challenge the written examination. The prayer of the*

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petitioner is that the directions given by the Rajasthan High Court in paragraph 26 be also imposed upon the respondent-Commission for future cannot be accepted as directions can only be given in case any right to claim any benefits exist with the candidates but in the present case, candidates cannot claim that question paper needs to be set up in a particular manner so as to bound the paper setter for future purposes. But in case the Commission intends to adopt the same, it is for the Commission to decide and not for this Court to pass any order binding the Commission in any manner.

Now the question which arise is whether a candidate, who has not raised any objection qua the conduct of examination by filing any representation, can be allowed to raise finger towards the paper setter so as to ruin the integrity and credibility of the said paper setter or not. No doubt, in case a candidate has material to show that the written examination was conducted in a manner which is not prescribed as per law or there is a favoritism or irregularities, which have crept into the said written examination so as to cause prejudice to particular candidate(s), the same can be looked into but the same does not mean that after being unsuccessful in a written examination, in order to satisfy the ego, the candidate can be given an instrument of filing a writ petition raising questions on the integrity of the paper setter and that too without any valid evidence.

In the present case, the petitioner has casted aspersion upon the examiner and that too without there being any evidence to the said effect. Only vague allegations have been made by the petitioner that the written examination has led to favoritism and bungling, without substantiating the same. In order to avoid such

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kind of frivolous writ petitions, strict orders need to be passed so that the candidates think twice before casting aspersion on a recruiting agency without any valid justification or the evidence to the said effect.”

8. It is the specific stand of respondents No.3 and 4 that qua answers-key, objections were called from the candidates and the same had been sent to the expert committee, and that as per the expert committee, certain questions of booklet of Series 'A', were found to be incorrect/ambiguous and accordingly, the same had been deleted. It appears that objections/representations qua the answers-key had been considered by the Expert Committee.

9. The Hon'ble Supreme Court in Civil Appeal No.367 of 2017 titled as 'Ran Vijay Singh and others vs. State of Uttar Pradesh and others', has held that the candidates only have a right to raise objections qua the answers-key and the grievance can be put to the subject experts for their opinion and after report of the subject expert, the Court does not have jurisdiction to entertain any further grievance qua the answers-key. Moreover, as per the Ran Vijay Singh's case (supra), even if, there exists a grey area after the report of the subject expert qua any of the questions 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

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statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as 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 rationalization” 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.”

10. In view of the above, this Court restrains itself from re-evaluating or scrutinizing the answers-key as the same has already been looked into by the academicians.

11. As a result of the above discussion, this Court does not find any merit in the present petition.

12. Dismissed.

01.05.2023
parveen kumar

(HARNARESH SINGH GILL)
JUDGE

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