

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 128

Civil Writ Petition No.14159 of 2023

Date of Decision: July 06, 2023

Kavita Rani and others

..... PETITIONER(S)

VERSUS

Haryana Staff Selection Commission

..... RESPONDENT(S)

. . .

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

. . .

PRESENT: - Mr. Anurag Goyal, Advocate for the petitioners.

Mr. Harish Nain, DAG, Haryana.

. . .

Tribhuvan Dahiya, J. (Oral)

This petition has been filed seeking a writ of *certiorari* for quashing condition No.16.4 in the advertisement No.2/2023 dated 21.02.2023 (Annexure P-1), cancellation of petitioners' candidature on account of smudging/scratching of the Optical Mark Recognition (OMR) answer sheets (Annexures P-8 to P-18), as also declaration No.2 in these OMR answer sheets. Further, writ of *mandamus* has been sought to direct the respondent/Commission to consider the petitioners' candidature and revise the final result dated 21.06.2023 (Annexure P-19).

2. Briefly, as per facts of the case, the respondent/Commission issued an advertisement No.2/2023 inviting applications for direct recruitment of Trained Graduate Teachers (TGT) in various subjects. The petitioners being eligible for the posts of TGT (Sanskrit) submitted their online applications for participating in the selection process. They were issued admit cards, and appeared in the written examination scheduled for 30.04.2023. The result for 926 posts of TGT (Sanskrit) category Nos. 6 & 10 was declared on 21.06.2023 but roll number of none of the petitioners found

mention in the result notified. After obtaining copies of OMR sheets of the petitioners, Annexures P-8 to P-18, the Commission was approached asking the reasons for rejection of the candidature and rectification of result, etc., but no response could be elicited. In these circumstances, the petitioners have approached this Court by filing the instant petition.

3. Learned counsel for the petitioners contends that condition No.16.4 of the advertisement is arbitrary and illegal. It is to the effect, if a candidate darkens more than one circle and smudges/scratches any place in any manner with eraser, nail blade, white fluid/whitener etc. his/her OMR answer sheet as well as the candidature itself shall be cancelled. There is no rationale for incorporating such a condition requiring entire OMR sheet as well as candidature to be cancelled; only the answer in particular which has been smudged/erased etc. should be cancelled. He further submits that condition No.2 incorporated in the OMR sheets requiring the candidate to declare that he/she has fully understood and agreed that in case whitener/eraser/white fluid etc. is used in the OMR sheets or it is scratched or smudged, the candidature will be liable to be rejected, is also illegal as there is no justification for incorporating such a condition. He has also referred to a judgment of this Court dated 18.12.2017 passed in CWP No.26745 of 2017 titled *Ravinder v. State of Haryana and others*, to contend that in view of the expert opinion brought to the Court's notice that the computer scanner does not reject the entire answer sheet but ignores only those answers where an erasure/alteration etc. has been made, this Court has directed that for future selection processes the Commission is to look into the opinion given by the expert and see whether instead of rejecting the entire answer sheet only certain questions can be ignored. This direction has not been followed by the respondents, and the illegal condition has been

notified in the advertisement.

4. Learned State counsel, appearing on advance notice, has submitted that the issue already stands settled by a judgment dated 21.12.2016 passed by this Court in CWP No.22918 of 2016 titled *Anshu and others v. State of Haryana and another*, wherein similar clauses/conditions and instructions to the candidates requiring that any use of eraser, nail, blade, white fluid/whitener etc. and smudging, scratching or damaging the OMR sheet will lead to cancellation of candidature, have been upheld.

5. Learned counsel for the parties have been heard, and case file has been perused.

6. To consider the issues raised, it is apt to reproduce the impugned condition no.16.4 in the advertisement and declaration no.2 in the OMR sheet, hereunder:

Advertisement

16.4 OMR sheets will have three folios- Original OMR, Commission copy and candidate copy. The candidate shall not mark anything on Commission copy. The impression of Original OMR sheet will automatically be marked on Commission's copy and Candidate copy of OMR answer sheet. Pencil should not be used for darkening the circle. If, more than one circle is found darkened, that answer will not be evaluated. Further, if a candidate darkens more than one circle and smudge/scratch any place in any manner with Eraser, Nail, Blade, White Fluid/Whitener etc. then in such circumstances OMR Sheet/Answer Sheet and candidature of the candidate shall be cancelled. The candidate

himself/herself will be solely responsible for this.

OMR Answer sheet

2. I do hereby declare that I have filled in my Name and Roll No. as it appears on the admit card, I fully understand and agree that in case I use Whitener/Eraser/White Fluid etc. on OMR Answer Sheet and scratch/smudge OMR Answer Sheet, my candidature will be liable to be rejected.

7. This very controversy has arisen before the Court in earlier cases as well, and the issue stands finally settled by upholding validity of conditions in the advertisement requiring that in case of darkening of more than one circle the answer will not be evaluated; and in case of darkening of more than one circle and any smudging, scratching, whitening, erasing, etc. of the OMR sheet, the candidature shall be cancelled. A reference in that regard can be made to judgment dated 21.12.2016 passed by this Court in CWP No.22918 of 2016 titled *Anshu and others v. State of Haryana and another*; Letters Patent Appeal No.92 of 2017 against the same was dismissed by the Division Bench vide order dated 20.01.2017, by observing as under:

It is evident that the specific guidelines were provided to the candidates to adopt the manner in which answers were to be marked and similarly they were cautioned not to use fluid or scratch the OMR sheet, but in complete violation of the instructions the answer books were found to be smudged with double marking and even erasing fluid was used as also tampering with the nail/blade.

Having done so the appellants cannot claim any prejudice if

strict action has been taken by cancellation of their OMR sheets altogether. Such guidelines are issued as OMR sheets have to be evaluated by a computer which may not respond appropriately in view of abrasions and tampering. The learned Single Judge has rightly discarded the plea of the appellants in the impugned order and we, finding no infirmity therein, would also decline interference, particularly when it is expected of the candidates to be conscious of the guidelines and instructions issued by the examiner in the selection process which has to be thoroughly respected.

Special Leave to Appeal (C) No(s).8430/2017 against this judgment was dismissed by the Supreme Court vide order dated 27.03.2017.

8. Again, the issue was recently considered by this Court in CWP No.5986 of 2017 titled *Rani Manderna v. Haryana Staff Selection Commission*, dated 04.07.2022. Similar conditions in the Commission's advertisement No.4 of 2015 regarding cancellation of candidature as well as the OMR answer sheet, on account of there being scratching/smudging, were found to be correct. The observations made by the Co-ordinate Bench of this Court in *Ravinder* case (*supra*) regarding corrections in future selection processes, were also considered and found to be not sustainable, in view of the stand taken by the Commission by subsequent resolution, dated 04.01.2018, that the said conditions have been retained to avoid cheating, tampering, manipulation, malpractices etc., in the interests of the candidates. The relevant paragraph of the judgment in *Rani Manderna* case reads as under:

Question of a statement being made in some earlier writ

petition to the extent that the commission is very much willing to look at its option for the future regarding checking of some of the altered/smudged OMR sheet instead of rejecting the entire OMR sheet also stands settled and has been taken note of by a Coordinate Bench of this High Court in **Neeraj Kumar and others Vs. State of Haryana and others, CWP no. 7244 of 2021 decided on 20.08.2021** observing as under:-

“The issue had been raised earlier in CWP No.26745 of 2017 ***Ravinder Vs. State of Haryana and others decided on 18.12.2017*** (Annexure P-9) before another Co-ordinate Bench, wherein certain observations were made by the Bench on account of the fact that Mr. Baldev Raj Mahajan, learned Advocate General, Haryana submitted that the Commission is very much willing to look at its option for the future regarding the checking of the altered/smudged OMR sheets instead of rejecting the entire OMR sheet, relying upon the opinion given by the expert.

In the reply filed by the respondent-Commission, it has been specifically averred that as per the resolution of the Commission dated 04.01.2018, earlier practice as such not to evaluate the smudged answer sheets was being retained to avoid cheating, tampering, manipulation, malpractices etc. The relevant portion of the resolution reads as under:-

“It is also well settled that an examining body can lay its instructions. Thus, in view the position as

mentioned above, the Commission unanimously decide and resolve that even though as per the expect the evaluation of smudged answers is technically possible but in view the larger interest and to prevent cheating in the examination hall by the candidate, candidate's interest and tempering, manipulation, malpractices, fraudulent practices by manual intervention at any stage, pre-exam or post-exam, the process already being followed, i.e. not to evaluate the smudged/scratched should be continued for the exam to be held in further and as such reiterates the stand already taken in the matter."

This aspect has also been noticed by the Coordinate bench in ***Aarti's case (supra)***. In similar circumstances, another Civil Writ Petition No.6952 of 2021 ***Reman Kumari Vs. Haryana Staff Selection Commission, decided on 05.04.2021*** was dismissed against the same advertisement No.6 of 2006 and was upheld by the Division Bench in LPA No.463 of 2021 ***Reman Kumari Vs. Haryana Staff Selection Commission***, on 20.05.2021."

Taking into consideration the consistent view on this matter, no ground whatsoever is pointed out for any interference in this writ petition.

No other argument has been raised.

Writ petition is accordingly dismissed with no order as to costs.

9. Apart from above, it also needs to be noted that the petitioners knowingly participated in the selection process. They were aware of the conditions incorporated in the advertisement regarding cancellation of the OMR sheet and the candidature itself on account of any scratching/smudging or use of eraser, nail, blade etc., still they failed to challenge/object to it. Accepting the condition, they took the examination, and filed the instant petition only after non-declaration of result. This conduct disentitles the petitioners from filing the petition, as they have willingly accepted the conditions incorporated in the advertisement and taken the examination also. Besides, a perusal of the petitioners' OMR sheets *prima facie* shows the same have been smudged and double marked, and there is alteration of answers as well. In *Anshu* case (*supra*) also this Court declined similar plea by the petitioners therein by holding that after participating in the selection, a candidate cannot be allowed to turn around and challenge a condition of the advertisement.

10. Declaration No.2 in the OMR sheet requires that the candidate is to declare he/she has understood and agreed to the condition that in case of use of whitener, eraser, white fluid etc., the OMR sheet as well as the candidature is liable to be rejected. Every candidate is expected to be aware about the conditions, guidelines and instructions regarding the examination, he/she is also expected to have read over and understood that they have to abide by the same while answering the questions/marking the OMR sheets. In case a declaration to that effect is required to be signed by the candidate in the OMR sheet, there is nothing wrong about it and no exception can be taken to the same; rather, it only ascertains the candidates'

awareness about the guidelines/instructions and the consequences of not abiding by the same. It is, therefore, in the candidates’ own interest, and does not suffer from any illegality or irregularity.

11. In view of the aforesaid discussion, there is no ground to entertain the petition and, it is accordingly dismissed.

(Tribhuvan Dahiya)
Judge

July 06, 2023
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<u>Whether Speaking/ Reasoned:</u>	<u>Yes/ No</u>
<u>Whether Reportable:</u>	<u>Yes/ No</u>