

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.:207

Civil Writ Petition No.21378 of 2015 (O&M)

Pronounced on: 22.08.2023

Rajeev

..... PETITIONER(S)

VERSUS

State of Haryana and others

..... RESPONDENT(S)

. . .

CORAM: **HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

. . .

PRESENT: - Mr. S.K. Nehra, Advocate for the petitioner.

Ms. Tanushree Gupta, DAG, Haryana.

. . .

Tribhuvan Dahiya, J.

CM-11888-2016

For the reasons stated in the application, it is allowed.

Additional affidavit of the petitioner is taken on record,
subject to all just exceptions.

Main case

This petition has been filed seeking a writ of *certiorari* quashing the result of written examination conducted by respondent No.3/Commission on 08.09.2015, Annexure P-3, and the final result published on 27.09.2015, Annexures P-7 and P-8. Further, a writ of *mandamus* has been sought directing the Commission to revise the result of the written examination by considering the petitioner eligible, and conduct interview afresh in consequence thereof.

2. Facts of the case in brief are, the petitioner applied for the post of Hindi Lecturer (School Cadre) pursuant to advt. no.6/2006 dated

20.07.2006. He possesses the requisite qualification of M.A. in Hindi.

2.2. Selection on the advertised posts was made, except fifty four posts which remained unfilled on account of pending litigation. The same was finally decided by the Supreme Court in Civil Appeal No.4128 of 2012 titled *Poonam Rani v. State of Haryana*, holding that all unsuccessful candidates who applied pursuant to the aforesaid advertisement be considered afresh for selection against the unfilled fifty four posts of Hindi Lecturer (School Cadre).

2.3. Accordingly, the Commission issued a notification, dated 05.06.2015, inviting online applications. The petitioner applied in response thereto, and took the written examination on 09.08.2015. The result was declared on 08.09.2015, but the petitioner's result was not so declared as his candidature was cancelled.

2.4. In the short reply filed on behalf of respondent No.3, it has been stated that as per instructions in the admit card, any stray mark or smudging of the Optical Mark Recognition sheet (hereinafter referred to as 'OMR sheet') may be taken as wrong answer, and any damage to it may result in disqualification of the candidate. Further, instructions in this regard were announced for the examinees by the Invigilator in the examination hall, and the same were mentioned on the envelope of the question paper and OMR sheet also. The relevant part of the short reply reads as under:

In this regard, it is submitted that for sitting in the examination the candidates are required to download the admit cards from the official website of Haryana Staff Selection Commission, wherein some instructions were inscribed and the same was to be followed by the candidates strictly, Para 6 of the instructions made in Admit Card was

as follows:-

“Do not fold or make any stray marks on the OMR Answer-sheet. Any stray mark or smudge on the OMR Answer-sheet may be taken as wrong answer. Any damage to OMR Answer-sheet may result in disqualification of the candidate”.

Further, in para 4 of the instructions put on Notice Board and announced in the Examination Hall by the Invigilator were specified as follows:-

“Use of correcting fluid/correcting pens, eraser/blade or any other method on OMR Answer sheet are strictly prohibited. If any candidate is found to have used the same he/she shall be disqualified from the examination”.

Furthermore, in para 4 of the instructions on the envelope of the question paper and OMR sheet it was specified as follows:-

“Use of whitener/eraser/fluid is prohibited”
(English translation).

In the undertaking received from the candidates on the OMR sheet there was declaration to be made by the candidates was as follows:-

“I _____(name of the candidate) do hereby declare that I have filled in my name and Roll No. as appears on the admit card. I fully understand and agree that in case I darken wrong ovals or fill incorrect Roll Number or use whitener/eraser/white

fluid etc. on the answer sheet my candidature will be liable to be rejected.

(Signature of the candidate)”

2.5. After the written examination on 09.08.2015, it was brought to the notice of ‘Commission Evaluating Agency’ that 201 candidates who appeared in the exam used white fluid, smudged the OMR sheet, used eraser or scratched the options against different answers. A decision was required to be taken regarding fate of those candidates. Therefore, keeping in view the instructions brought to the candidates’ notice, as aforementioned, the Commission, vide resolution dated 07.09.2015, resolved to cancel candidature of all those 201 candidates.

2.6. It was found that the petitioner, “has scratched the OMR sheet at Question No.28, during scratching the question of answer No.28 has damaged the answer sheet at Sr.No.27 and 29. Therefore, his candidature, as per list of names supplied/provided by the Evaluating Agency and thereafter as per Commission’s resolution dated 7.9.2015 (Annexure R-3/1), has been rejected due to damaging of answer sheet by the petitioner himself’. Accordingly, reasons for cancelling his candidature were spelled out.

3. Learned counsel for the petitioner has contended that as per conditions on the admit card issued to the petitioner, any stray mark or smudging on the OMR sheet may be taken as wrong answer; and any damage to OMR sheet may result in disqualification of the candidate. As reproduced in the replication to the short reply filed by respondent No.3, he has referred to definition of the word ‘damage’ as per Oxford Dictionary to mean, “Physical harm that impairs the value, usefulness or normal function of something”. On this basis, he submits that unless on account of the damage caused to the OMR sheet its value, usefulness or normal function

has been impaired, it cannot be said that the sheet has been damaged. Since, the petitioner's OMR sheet already stands evaluated, as mentioned by the Commission itself, it cannot be said that it has been damaged; nor the petitioner's candidature/result on that account be cancelled. He further submits that as per additional affidavit filed by respondent No.2, the petitioner scored 144 marks in the written examination, which are far above the marks scored by the last selected candidate in general category, i.e., 132. The petitioner, therefore, has a right to be considered for appointment against the post which was kept reserved by way of interim order, dated 07.10.2015, passed in this petition.

4. Learned State counsel, on the contrary, submits that the petitioner's candidature has rightly been cancelled since he damaged his OMR sheet. This fact was ascertained by the 'Commission Evaluating Agency', and thereupon action was taken in the petitioner's case alongwith that of 200 other candidates. The whole exercise has been done in a fair and *bona fide* manner. She has further referred to a Division Bench judgment in *Reman Kumari v. Haryana Staff Selection Commission*, 2022 (1) PLR 210, to contend once OMR sheet has been damaged, it is liable to be rejected and the candidature cancelled, which has rightly been done.

5. The submissions made by learned counsel for the parties have been considered, and case file has been perused.

6. Undisputedly, the petitioner scratched his OMR sheet and damaged it on that account. There were clear instructions issued to the candidates, as printed on their admit card also, that any damage to OMR sheet may result in disqualification of the candidate. Besides, similar instructions were announced to the examinees in the examination hall, and were printed on the envelope of the question paper and OMR sheet also.

When it was brought to the notice of the Commission by the Evaluating Agency that 201 candidates appearing in the written examination held on 09.08.2015, had used white fluid, smudged the OMR sheet, used eraser or scratched the option against different answers, and decision was required to be taken regarding fate of those candidates; the Commission after considering all the relevant facts and circumstances as well as the instructions issued to the candidates cautioning them against damaging or smudging the OMR sheet, unanimously resolved, on 07.09.2015, to reject candidature of all such 201 candidates, who had violated the instructions. It is not the petitioner's case that the decision was arbitrary or *mala fide*, nor is there any material on record to indicate thus. In these circumstances, in case the Commission has cancelled the petitioner's candidature, alongwith that of all those who violated the instructions and smudged or damaged their OMR sheet, no exception can be taken to it.

7. Law in this regard has stands settled, and a reference can be made to the Division Bench judgment in *Reman Kumari* case (*supra*) wherein it has been held that in the event of any use of eraser, nail, blade, white fluid/whitener etc., the answer sheet would be liable to be rejected and the candidature cancelled. The relevant paragraph 6 of the judgment reads as under:

The learned Single Judge, while personally looking into the OMR answer sheet of the appellant, found that it has been scratched in violation of the instructions (AnnexureP-2), cautioning the candidates appearing in the said written examination that in case their OMR answer-sheets were found to be smudged, damaged or scratched by using eraser, nail, blade, white fluid/whitener etc., the same

would be liable to be rejected/cancelled. Such a situation has been dealt with by the Single Bench of this Court in *Anshu and others v. State of Haryana and others, 2018(2) SCT 66*, wherein it has been observed that in such an eventuality, the OMR Answer-Sheet would be liable to be rejected for evaluation and the candidature would stand cancelled. Letter Patent Appeal No.92 of 2017, preferred against the said judgment of Learned Single Judge, was dismissed on 20.01.2017 and the Special Leave to Appeal (Civil) No.8430 of 2017 as filed to assail the judgment passed in the said LPA, had also been dismissed by the Apex Court on 27.03.2017. It being so, it is explicit that the OMR Answer-sheet of the petitioner has rightly been rejected for its evaluation. Moreover, the learned Single Judge has rightly observed that the instant petition is sans any merit and therefore, it deserves dismissal.

8. Merely because the petitioner's answer sheet was evaluated despite having been damaged, and he was found to have scored more marks than those of the last selected candidate in his category, cannot be a ground to grant the relief claimed in the petition. This is because neither the fact of the answer sheet having been damaged by him can be disputed, nor that OMR sheets of all other candidates like the petitioner, which were found damaged or smudged, were rejected leading to cancellation of their candidature. The decision has been taken by the Commission in the light of instructions issued to the examinees warning them not to damage their OMR sheets or use whitener/eraser etc. In case, prior to taking the decision to cancel the candidature of such examinees, their OMR sheets were evaluated,

that does not give any right to seek consideration for appointment on the basis of marks awarded in such an evaluation. Since the decision to cancel the OMR sheets as well as the candidature has been taken by the Commission for valid reasons, evaluation of the sheets prior thereto is inconsequential, and no right can accrue on that basis.

9. The reference to dictionary meaning of the word ‘damage’ as relied upon by learned counsel for the petitioner is also not relevant to the facts of the case. On account of scratching of the OMR sheet by the petitioner, it got damaged at serial no.27 and 29. This was a physical harm caused to the sheet, which definitely impaired its value, usefulness and normal function as answers to those questions could not have been evaluated. Besides, in deciding upon validity of a damaged OMR sheet, literal meaning of the word ‘damage’ is not to be seen/considered, nor any decision based upon such a consideration is required to be taken. Instead, the Commission is to decide in the larger interest of examination and to maintain its sanctity by preventing any kind of cheating, tampering, manipulation or malpractice all the way down the line. It is in the light of these factors that the impugned decision cancelling the petitioner’s candidature has been taken by the Commission which does not suffer from any irregularity or illegality.

10. In view of the above discussion, there is no merit in the petition, and the same is accordingly dismissed.

(Tribhuvan Dahiya)
Judge

22.08.2023
payal

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No