

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

239+272

CWP-17812-2020
Decided on : 30.11.2023

Rishab Gill		...	Petitioner
	Versus		
Haryana Staff Selection Commission		...	Respondent
	AND		
Neeraj and others		...	Petitioners
	Versus		
State of Haryana and another		...	Respondents
	AND		
Tushar		...	Petitioner
	Versus		
State of Haryana and another		...	Respondent
	AND		
Sher Singh		...	Petitioner
	Versus		
State of Haryana and another		...	Respondent
	AND		
Rahul Kanwal and another		...	Petitioner

CWP-17812-2020 and connected cases-2-2023:PHHC:152218

Versus

State of Haryana and others

... Respondents

AND

CWP-14122-2020

Sunil

... Petitioner

Versus

State of Haryana and others

... Respondent

AND

CWP-14571-2020

Yudhveer Singh and another

... Petitioners

Versus

State of Haryana and another

... Respondents

AND

CWP-8255-2020

Narveer Singh

... Petitioner

Versus

State of Haryana and another

... Respondent

AND

CWP-9525-2020

Deepak Kumar and others

... Petitioners

Versus

State of Haryana and another

... Respondents

AND

CWP-7132-2022

Ankit Kumar

... Petitioner

Versus

State of Haryana and another		... Respondents
	AND	
Varun		CWP-6513-2022
		... Petitioner
	Versus	
Haryana Staff Selection Commission		... Respondents
	AND	
Mohit		CWP-12142-2022
		... Petitioner
	Versus	
State of Haryana and another		... Respondents
	AND	
Shweta Sheokand		CWP-36390-2009 (O&M) and CM-11445-CWP-2021
		... Petitioner
	Versus	
State of Haryana and another		... Respondents
	AND	
Suresh Kumar		CWP-30244-2022
		... Petitioner
	Versus	
State of Haryana and others		... Respondents
	AND	
Deepak Kumar		CWP-30253-2022
		... Petitioner
	Versus	

State of Haryana and another

. . . Respondents

AND

CWP-3655-2023 (O&M)

Azad Singh

. . . Petitioner

Versus

Haryana Staff Selection Commission and another

. . . Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Rajesh Garg, Senior Advocate with
Ms. Neha Matharoo and Ms. Latika Garg, Advocates
for the petitioner in CWP-17812-2020.

Mr. Shrinath A. Khemka, Advocate and
Mr. Jasbir Mor, Advocate
for the petitioner in CWP-8185-2020 and CWP-11393-2020.

Mr. Yashdeep Nain, Advocate
for the petitioner in CWP-12341-2020.

Mr. Bikram Chaudhary, Advocate
for the petitioner in CWP-14122-2020.

Mr. Ajit Sihag, Advocate
for the petitioners in CWP-14571-2020.

Mr. Shokeen Singh Verma, Advocate
for the petitioner in CWP-8255-2020 and CWP-30253-2022.

Mr. Sumit, Advocate for
Mr. Amit Alok, Advocate for the petitioners in CWP-9525-2020.

Mr. R. S. Kundu, Advocate and
Mr. Chirag Kundu, Advocate
for the petitioner in CWP-7132-2022.

Mr. Devinder Singh, Advocate
for the petitioner in CWP-6513-2022.

Mr. Rajiv Kumar Saini, Advocate
for the petitioner in CWP-3655-2023.

Mr. Ravinder Malik (Ravi), Advocate
for the petitioner in CWP-13947-2020.

Mr. Arun Sharma, Advocate
for the petitioner in CWP-36390-2009.

Mr. Ashutosh Kaushik, Advocate
for the petitioner in CWP-30244-2022.

Ms. Shruti Jain, Senior DAG, Haryana.

Mr. Harish Nain, Sr. DAG, Haryana.

Mr Arun Gosain, Advocate
for respondent No. 2 in CWP-3655-2023.

HARSIMRAN SINGH SETHI, J. (ORAL)

1. In the present petition, the question of law raised for the adjudication is whether the answer key, on the basis of which the candidates competing in pursuance to an advertisement dated 15.06.2019 have been evaluated, is correct or not and whether any direction can be issued to the respondent-Commission to issue fresh answer key.
2. Before adjudicating the issue in hand, the facts leading to filing of the present petition needs to be noticed. The respondent-Commission issued Advertisement No. 10 of 2019 dated 15.06.2019 advertising 1259 posts of Junior Engineers (Civil) to be filled up in various departments of the Government of Haryana. The mandatory qualifications required to be eligible were mentioned in the advertisement. There were certain posts reserved for the reserved categories.
3. As per the criteria fixed, selection was to be made on the basis of the written test carrying 90 marks and 10 marks for the social economic criteria. Written test was conducted by the Commission on 01.09.2019. After the

written test was conducted, the answer key was made public on 05.09.2019 inviting objections from the candidates qua the answers depicted in the answer key. The petitioners, who were aggrieved against the answers depicted in the answer key qua certain questions, raised objections qua the answer key which was made public on 05.09.2019. The objections raised by the petitioners were sent to the Experts/Chief Examiner for their opinion as to whether, the said objections need to be accepted or rejected.

4. As per the facts, which have come on record, the objections were raised qua 5 questions and after the report of the Expert/Chief Examiner, marks were granted against two of the questions out of 5 questions for which the objection was raised and the objections qua the other 3 questions were not sustained as per the report of the expert.

5. Keeping in view the said decision of the Expert/Chief Examiner, the same was accepted by the respondent-Commission and thereafter, the result of the written examination was declared on the basis of the revised answer key. In the present petition, the said result is under challenge on the ground that the action of the respondent in not accepting the objections qua 3 other questions is bad in law and the petitioners are also entitled for the marks for the said 3 questions and thereafter, fresh merit list should be prepared so as to make selection to the advertised post.

6. The respondent-Commission upon notice, has filed the reply, wherein the facts which have been stated hereinbefore have been conceded. The respondent-Commission has submitted that the objections raised by the candidates to the answer key qua 5 questions were considered with open mind by the

Experts/Chief Examiner and after great deliberations, the objections to two questions were upheld and the marks were given to all the candidates qua those 2 questions and the objections qua remaining 3 questions were declined by the experts and all the candidates were evaluated on the basis of the revised answer key which was made in operation after considering the recommendations of the Expert/Chief Examiner.

7. I have heard learned counsel for the parties and have gone through the record with their able assistance.

8. The facts which have been mentioned hereinbefore have been conceded by the respective counsels appearing on behalf of the respondents. Learned Senior counsel appearing on behalf of the petitioners has raised an argument that even after the recommendations of the Expert/Chief Examiner, once the doubt remains qua the other 3 questions keeping in view the nature of questions and 4 options given to each question, the Court can intervene and direct fresh consideration of the claim of the petitioners qua 3 questions keeping in view the settled principle of law settled by Hon'ble Supreme Court of India in Civil Appeal No. 5838 of 2018 decided on 14.06.2018 titled ***Uttar Pradesh Public Service Commission Vs. Rahul Singh and another***, hence, in the facts and circumstances of the present case, the Court has a right to intervene qua 3 questions, qua which the objections were raised by the petitioners but the said objections have not been upheld by the Expert/Chief Examiner.

9. Another argument has been raised that keeping in view the order passed by the Hon'ble Supreme Court of India in Civil Appeal No. 4695 of 2018 decided on 03.05.2018 titled ***Rishal and others Vs. Rajasthan Public Service***

Commission and others, the Court will have a power to look into the aspect whether 3 questions carried correct option in the answer key even after the recommendation of the experts qua the objections raised by a candidate and the Court can formulate its opinion after going through the nature of questions and 4 options depicted for each of the said questions as to whether, the same needs a reconsideration by another expert Committee or not.

10. Learned counsel for the respondents, on the other hand, submits that the law on the issue is well settled by the Hon'ble Supreme Court of India by passing order in Civil Appeal No. 367 of 2017 decided on 11.12.2017 titled ***Ran Vijay Singh and others Vs. State of U.P. and others***, wherein, it has been held that the only remedy available to a candidate who is seeking redressal of his grievance qua certain questions in the written examination and their answers depicted in the answer key that the said objections are to be referred to the Expert Committee and after the Expert Committee's recommendations, the Court has no expertise to opine on the said recommendations as to whether the objections raised by the candidates have been rightly accepted or rejected as the case may be. Hence, in the facts and circumstances of the present case, once the objection qua answer to 2 questions in the written examination has already been accepted, the said opinion of the Expert Committee should be treated as a final qua other 3 questions qua which the grievance raised by the petitioners and other similarly situated has been rejected.

11. Before proceeding to deal with the arguments being raised by the respective parties, the law on the issue as the same exists needs to be cited.

In ***Ran Vijay Singh (supra)***, the Hon'ble Supreme Court of India has

laid down the procedure as to what should be followed in case, any objections are being raised qua the answer key issued by the selecting agency. As per the judgment in **Ran Vijay Singh (supra)**, the jurisdiction of considering the objections and to decide the same lies with the experts and not with the Court. Hon'ble Supreme Court of India held that once, the experts evaluate the objections raised by the candidates and come to an opinion, then, the Court should accept the said opinion without interfering with the same further.

12. The Hon'ble Supreme Court of India has gone to the further extent saying that even, where there is a doubt with regard to any question after the recommendations of the Expert Committee, the benefit of doubt will go in favour of the Commission and not in favour of the candidate. The relevant paragraph 30 of the said 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 distinct from prohibiting it) then the Court may permit re-evaluation 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.”

13. It may also be noticed that Hon’ble Supreme Court of India while deciding civil Appeal No. 7727 of 2019 dated 30.09.2019 titled ***Haryana Public Service Commission Vs. The State of Haryana and others***, wherein, after the opinion of the Experts, the matter was further recommended for another expert opinion, the Hon’ble Supreme Court of India held that the Court has no such jurisdiction to do that as the matter has to attain finality after the recommendations of the expert Committee especially, when there are no allegations against the Expert Committee qua their competence or with regard to *mala fide*. The relevant portion of the order passed by the Hon’ble Supreme Court of India in Civil Appeal No. 7727 of 2019 is as under:-

"By the impugned judgment, the Division Bench has appointed the second Expert Committee for appraisal of the question papers.

Record reveals that the Appellant, Haryana Public Service Commission (for short, 'the Commission') undertook selection process to appoint 133 Assistant Professors of Geography (College) Cadre HES-II for which an objective type question paper was set up wherein the candidates were required to answer 100 questions. Grievance before the learned single Judge was that out of 100 questions, most of them were either ambiguous or not having correct answer keys. Such questions were brought to the notice of the Commission by raising objections. The candidates identified 46 questions as defective.

The Commission based on the objections of candidates, appointed a Committee of Experts in the field for appraisal of the question papers. The Expert Committee, on going through the question paper in detail, concluded that seven questions were either ambiguous or not having correct answer keys. Consequently, the Commission accepting the Expert Committee's report deleted those seven questions and marks and thereafter the results were declared. Thereafter, the candidates approached the learned Single Judge with a writ petition

Learned Single Judge curiously acted himself as an expert and on going through the question paper concluded that four more questions were ambiguous and, therefore, they should also be deleted from consideration.

Then, some of the candidates approached the Division Bench and the Division Bench passed the impugned orders appointing another Expert Committee which is challenged in this petition.

If the judgment of the Division Bench is allowed to stand, there will be no finality to the selection process. There was no allegation as such against the Expert Committee which was appointed by the Commission. The Expert Committee, in its wisdom has concluded that seven questions were either ambiguous or the answer keys were not correct. Accepting the said report, the Commission has proceeded with the selection process and results were announced. Thereafter, the 9 of 10 CWP No.16220 of 2018 candidates approached the High Court. Though learned Single Judge was right in agreeing for deletion of seven questions, was not justified in acting as an expert in the field and, therefore, the learned Single Judge's order relating to deletion of four questions also cannot be accepted.

Accordingly, the judgment of the learned Single Judge as well as that of the Division Bench stand set aside.

The appeal is, accordingly, allowed. The selection process made by the Commission based on the First Expert Committee Report deleting seven questions from consideration stands confirmed. There shall be no order as to costs".

14. A bare perusal of the above settled principle of law would show that the Court has only to ensure as to whether or not the state/Commission has adhered to the procedure envisaged by the Hon'ble Supreme Court of India in ***Ran Vijay Singh (supra)*** while evaluating the candidates with regard to the written examination. In the present case, the objections raised by the candidates concerned were put to the Experts/Chief Examiner and their report was sought. It is not that all the objections raised by the candidates to the answer key were overruled. Rather, the fact that 2 objections were accepted by the Expert body shows

that the objections raised were considered with open mind. That being the factual aspect, keeping in view the settled principle of law that even where there is a slight doubt after the opinion of the expert, the Court will not interfere and the benefit of doubt will go in favour of the Commission. The same law needs to be adhered to while passing an order in the present petition.

15. The argument which has been raised by learned Senior Counsel appearing on behalf of the petitioners on the basis of the judgment of the Hon'ble Supreme Court of India in ***Rahul Singh and others (supra)*** by placing reliance upon paragraph 14 that there is an exception carved out by the Hon'ble Supreme Court of India that the Court still can interfere even after the expert opinion. Paragraph 14 of the said judgment is as under:-

“14. In the present case we find that all the 3 questions needed a long process of reasoning and the High Court itself has noticed that the stand of the Commission is also supported by certain text books. When there are conflicting views, then the court must bow down to the opinion of the experts. Judges are not and cannot be experts in all fields and, therefore, they must exercise great restraint and should not overstep their jurisdiction to upset the opinion of the experts.”

16. A bare perusal of the relevant paragraph of the judgment would show that in the said judgment also, it has been mentioned that the Judges are not and cannot be expert in all fields and therefore, they must exercise great restraint and should not overstep their jurisdiction to upset the opinion of the experts. Hence, where there are conflicting views with regard to the same aspect, the views of the experts are to be adhered to and not the view being expressed by the candidates concerned.

17. That being so, the judgment in *Rahul Singh (supra)* is in consonance with the judgment of the Hon'ble Supreme Court of India in *Ranvijay Singh (supra)*, hence, the Court will not have any power to supervise and adjudicate the opinion given by the experts qua the objections raised by the petitioners as being prayed in these petitions.

18. Not only this, a similar controversy has come for consideration before this Court in CWP-6511-2018, which was decided on 08.12.2022 keeping in view the settled principle of law and the same view as being held in the present petition, was taken to hold that the Court, not being an expert, cannot comment upon the opinion of the expert which has been given after noticing the objections raised by a candidate.

19. That being the facts and position, coupled with the settled principle of law, in the facts and circumstances of the present case, no interference is called for by this Court in the present bunch of petitions and the same are accordingly dismissed.

CWP-12341-2020

1. Learned counsel for the petitioners submits that the present petition is only being pressed qua petitioner No. 2 and is not being pressed any further keeping in view the order passed in the bunch of petitions above.

2. Learned counsel for the petitioners submits that the grievance of petitioner No. 2 is that he has not been given the marks for the experience which should be given by the respondent-Commission keeping in view the facts and circumstances of the present case.

3. Learned State counsel submits that in case, any representation is received from the petitioner raising the said grievance, the same will be looked into and appropriate order will be passed within a period of 4 weeks from the date of raising any such grievance and after passing the speaking order, in case, it is found that the petitioner is to be granted any relief, the same will be granted forthwith without any delay.

4. Learned counsel for the petitioners submits that keeping in view the statement of learned State counsel, the present petition may kindly be disposed of having been not pressed any further with liberty to petitioner No. 2 to file appropriate representation.

5. Ordered accordingly.

CWP-7132-2022

1. Learned counsel for the petitioner submits that the petitioner has secured equivalent marks secured by the last selected candidate in the category in which the petitioner was competing but the respondents are not stating as to why the petitioner has not been selected.

2. Learned State counsel submits that there is a tie breaker rule which is being adopted by the Commission according to the said rule, a candidate who is elder in age is given preference over a candidate who is younger and for that reason, the petitioner could not be selected and in case, the petitioner want any factual information, he can file appropriate representation seeking the details of the last selected candidate who has ousted the petitioner from the zone of selection and the same will be provided to him within a period of 4 weeks of the receipt of any such grievance.

3. Learned counsel for the petitioners submits that keeping in view the statement of learned State counsel, the present petition may kindly be disposed of having been not pressed any further with liberty to approach the respondents.

4. Ordered accordingly.

CWP-6513-2022

1. Learned counsel for petitioner submits that the petitioner has been considered in a category other than the one for which the petitioner had applied for and therefore, the said inadvertent mistake on the part of the Commission needs to be rectified.

2. Learned State counsel submits that that in case, any representation is received from the petitioner raising the said grievance, the same will be looked into keeping in view the facts and circumstances of the present case including the application filed by the petitioner and in case, any error is found to be rectified on the part of the Commission, the same will be rectified failing which, appropriate speaking order will be passed.

3. Learned counsel for the petitioners submits that keeping in view the statement of learned State counsel, the present petition may kindly be disposed of having been not pressed any further with liberty to the petitioner to approach the respondents.

4. Ordered accordingly.

CWP-13947-2020

1. Learned counsel for the petitioner submits that inadvertently all the candidates who are likely to be effected by the outcome of the present petition, could not be impleaded, hence, the present petition may kindly be disposed of

having been not pressed any further with liberty to file a fresh one on the same cause of cation by impleading all the concerned who are likely to be affected, in case, the prayer of the petitioner as raised in the present petition is allowed.

- 2. Ordered accordingly.
- 3. All the pending civil miscellaneous applications are disposed of as such.

(HARSIMRAN SINGH SETHI)
JUDGE

30.11.2023
Mehak

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