

CWP No. 15803 of 2023

2023:PHHC:094494

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(125)

CWP No. 15803 of 2023

Date of Decision : 25.07.2023

Varun Girdhar and others

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. D.S. Patwalia, Senior Advocate with
Mr. Gaurav Rana, Advocate for the petitioners.

Mr. Shruti Jain, Sr. Deputy Advocate General, Haryana.

Mr. Kanwal Goyal, Advocate for respondent No. 2-HPSC.

Harsimran Singh Sethi J. (Oral)

1. The present petition has been filed with a prayer that the order dated 13.07.2023 (Annexure P-15) passed by respondent No. 2 be declared arbitrary and illegal as the grievance raised by the petitioners with regard to the 'repeated questions' in Civil Services Aptitude Test (hereinafter referred to as 'CSAT') conducted on 21.05.2023 in pursuance to Advertisement No. 11 of 2023 dated 09.02.2023 (Annexure P-1), which itself renders the said examination arbitrary and illegal.

2. Learned senior counsel appearing on behalf of the petitioners submits that on a similar fact where, on an earlier occasion also, the questions were repeated in a competitive examination, respondent No. 2-

Commission decided to scrap the said examination, hence, no different view can be taken this time, whereas, the similar plea, which stood accepted on an earlier occasion by the respondent-Commission while passing the impugned order dated 13.07.2023 (Annexure P-15), has not been accepted on the ground that mere repeat of questions in a competitive examination, will not render the examination arbitrary and illegal.

3. Learned senior counsel appearing on behalf of the petitioners further submits that the candidates have been prejudiced keeping in view the repeat of the questions as same questions, which were put to the candidates in the CSAT conducted on 21.05.2023, were part of the examination, which was conducted in the year 2022, hence, the respondents are under an obligation to conduct the said CSAT again so that no candidate suffer any prejudice.

4. Notice of motion.

5. On the asking of the Court, Ms. Shruti Jain, learned Senior Deputy Advocate General, Haryana, who is present in Court, accepts notice on behalf of respondent No. 1 and Mr. Kanwal Goyal, Advocate appears and accepts notice on behalf of respondent No. 2-HPSC.

6. Learned counsel appearing on behalf of the respondent-HPSC submits that though the present petition is at a preliminary stage and no reply has been filed so far, but an oral submission may kindly be taken into consideration that the Commission considered the objections of the petitioners with regard to repeated questions in the CSAT but

keeping in view the settled principle of law coupled with the fact that no prejudice whatsoever has been caused to the petitioners as all the candidates, who appeared in the said CSAT, were to answer the same questions, the order passed by the Commission dated 13.07.2023 (Annexure P-15) is perfectly valid and legal.

7. Learned counsel for the Commission further submits that though initially, on the basis of the same plea, a formula was formulated with regard to the eligibility of the candidates, who will be declared successful but as the said formula was objected to by some of the petitioners herein, it has been decided by the Commission that the marks secured by the candidates will be taken into consideration to adjudge their eligibility/qualifying the said CSAT on the basis of the total questions, which were put to them irrespective of the fact that whether they were repeated or not.

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

9. The primary issue, which has been raised by the learned senior counsel appearing on behalf of the petitioners is that the repeat of the question in CSAT causes prejudice to the petitioners. On being asked, as to what prejudice is caused to the petitioners, learned senior counsel concedes that though, it is prerogative of the examiner to set the question paper of an examination but usually, the same are not repeated, hence, the candidates prepare for the examination, keeping in view the

questions, which are put in the last examination, hence, the repeat of the questions in the subsequent year has caused prejudice to the petitioners.

10. In this regard, it may be noticed that the candidates cannot decide what to study and what not to. They are required to go through the syllabus and then appear in the examination. It is for the examiner to put the questions to the candidates so as to adjudge their capabilities. Whether, a question is repeated again in a subsequent test, in the opinion of this Court, it cannot be treated to have caused any prejudice to any of the candidate, especially, when all the candidates are put the same question paper so as to adjudge their capabilities.

11. Further more, the same question of law had come up for consideration before this Court in CWP No. 19387 of 2019 titled as ***Parveen Kumar and others Vs. State of Haryana and another***, decided on 05.08.2022 and thereafter, once again in CWP No. 3442 of 2020 titled as ***Upesh Malik Vs. State of Haryana and others***, decided on 11.10.2022, wherein similar prayer, as raised in the petition has been negatived.

12. Keeping in view the said decisions, once this Court had already opined that mere repeat of questions in a question paper in subsequent examination will not render the examination as invalid and any insinuation that the repeat of questions in a subsequent examination amounts to mala-fide, cannot be accepted. Learned senior counsel appearing on behalf of the petitioners has not been able to rebut the question of law raised in the petition being covered against the petitioners

keeping in view the settled principle of law noticed hereinbefore in *Parveen Kumar's case (supra)* as well as in *Upesh Malik's case (supra)*, hence, the judgments of this Court in *Parveen Kumar's case (supra)* as well as in *Upesh Malik's case (supra)* will be fully applicable in the facts and circumstances of the present case so as to hold that mere repeat of questions in a subsequent examination will not render the examination as illegal on the account that the same causes prejudice to the candidates, who have appeared in the said examination and the said argument of the petitioners that repeat of questions in the subsequent examination will render the present CSAT conducted on 21.05.2023 as bad, is rejected.

13. Learned senior counsel appearing on behalf of the petitioners further argues that on a similar fact, on an earlier occasion, when there was a repeat of questions in the competitive examination, the respondent-Commission had opined that the said examination needs to be scrapped, hence, the respondent-Commission is estopped from taking a different stand this time while passing the impugned order. It may be noticed that the said stand was taken by the respondent-Commission was in the year 2019 but thereafter, there was a change of circumstances as, the said issue was judicially pronounced by this Court that the repeat of questions will not amount to any illegality so as to scrap the examination, hence, the Commission was well within its jurisdiction to take appropriate stand keeping in view the settled principle of law. In the facts and circumstances of the present case, where the Commission has already taken a decision to evaluate all the questions so as to adjudge the

eligibility of the candidates concerned irrespective of the fact that whether the questions are repeated or not, cannot be faulted with in any manner.

14. Further, the jurisdiction to evaluate a candidate is upon the Commission. Unless and until the action of the Commission in evaluation of a candidate is found to be wholly arbitrary or illegal or against any enactment or is causing prejudice to the candidate, then only the Court can interfere. Merely an allegation that repeat of questions has caused prejudice to a candidate cannot be accepted as no such prejudice has been shown to this Court which have been caused to the petitioners in any manner, hence, even on this score also, this Court will not like to interfere or exercise jurisdiction in the facts and circumstances of the present case.

15. Dismissed.

July 25, 2023
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No