

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

CWP-27271-2016

Date of decision : 06.02.2023

Parnav Kumar

..... Petitioner

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. H.S. Brar, Sr. Advocate with
Mr. Kanwal Goyal, Advocate and
Mr. Rajinder Singh Basra, Advocate
for the petitioner.

Mr. Sehajbir S. Aulakh, AAG, Punjab.

PANKAJ JAIN, J. (Oral)

Present petition has been filed seeking issuance of a writ in the nature of certiorari for quashing the result of Sub-Inspector in the District Police Cadre (Male) Category General, declared on 20.12.2016.

2. The petitioner being one of the applicants appeared in a written examination and secured 82 marks. The petitioner has filed the present writ petition claiming that the answers to the questions bearing No.15, 63 and 72 as contained in paper booklet series 2 was rightly attempted by the petitioner, but have been wrongly evaluated as incorrect as per the answer key.

3. Senior counsel representing the petitioner submits that there is enough material on record placed by the petitioner to show that the answers as contained in the answer key are evidently wrong and thus it will be a case for this Court to interfere while exercising writ jurisdiction under Article 226/227 of the Constitution of India.

4. Per contra, as per the additional affidavit filed on behalf of the respondent, it has been submitted as under:-

“xx xx xx

3. That the answer key for the question paper was duly prepared by the subject experts. The answer sheets of all the candidates were evaluated in accordance with the said answer key. It is relevant to mention here that question paper and the answer key was got prepared by the Administration Wing.

Therefore, the question No. 63 and 72 of Question Paper Booklet Series '2' were also evaluated in accordance with the answer key prepared by the subject experts. The petitioner had also filed his objections, but said objections were scrutinized in the light of answer key prepared by the subject experts. The objections filed by petitioner were found to be wrongly filed.”

5. I have heard counsel for the parties and have gone through the records of the case.

6. The primary issue that arises is:

(i) Whether this Court while exercising jurisdiction under Article 226 can sit over appeal on the opinion/answer key formulated by the Committee of subject experts? The issue is no more *res integra*.

7. Apex Court in the case of **Himachal Pradesh Public Service Commission vs. Mukesh Thakur (2010) 6 SCC 759** held as under:-

“xx xx xx

16. It is a settled legal proposition that the court cannot take upon itself the task of the Statutory Authorities.

17. In *Hindustan Shipyard Ltd. v. Dr P. Sambasiva Rao*, this Court held that in a case where the relief of regularisation is sought by employees working for a long time on ad hoc basis, it is not desirable for the Court to issue direction for regularisation straightaway.

The proper relief in such cases is the issuance of direction to the authority concerned to constitute a Selection Committee to consider the matter of regularisation of the ad hoc employees as per the Rules for regular appointment for the reason that the regularisation is not automatic, it depends on availability of number of vacancies, suitability and eligibility of the ad hoc appointee and particularly as to whether the ad hoc appointee had an eligibility for appointment on the date of initial as ad hoc and while considering the case of regularisation, the Rules have to be strictly adhered to as dispensing with the Rules is totally impermissible in law. In certain cases, even the consultation with the Public Service Commission may be required, therefore, such a direction cannot be issued.

18. In *Govt. of Orissa v. Hanichal Roy* this Court considered the case wherein the High Court had granted relaxation of service conditions. This Court held that the High Court could not take upon itself the task of the Statutory Authority. The only order which High Court could have passed, was to direct the Government to consider his case for relaxation forming an opinion in view of the statutory provisions as to whether the relaxation was required in the facts and circumstances of the case. Issuing such a direction by the Court was illegal and impermissible. Similar view has been reiterated by this Court in *LIC v. Asha Ramchandra Ambekar* and *A. Umarani v. Coop. Societies*.
19. In *G. Veerappa Pillai Vs. Raman and Raman Ltd.*, the Constitution Bench of this Court while considering the case for grant of permits under the provisions of Motor Vehicles Act, 1939, held that High Court ought to have quashed the proceedings of the Transport Authority, but issuing the direction for grant of permits was clearly in excess of its powers and jurisdiction.

20. In view of the above, it was not permissible for the High Court to examine the question paper and answer sheets itself, particularly, when the Commission had assessed the inter-se merit of the candidates. If there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the examination and not for respondent no.1 only. It is a matter of chance that the High Court was examining the answer sheets relating to law. Had it been other subjects like physics, chemistry and mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court.”

8. The same view was reiterated in the case of **Ran. Vijay Singh and others vs. State of Uttar Pradesh (2018) 2 SCC 357** wherein the Apex Court while reiterating the aforesaid proposition of law as laid down in Mukesh Thakur’s case (supra) held as under:-

“xx xx xx

30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are:

30.1 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;

30.2 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;

30.3 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;

30.4 The Court should presume the correctness of the key answers and proceed on that assumption; and

30.5 In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.

31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse – exclude the suspect or offending question.

32. It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the Courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of

the task might reveal some lapse at a later stage, but the Court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a classic example of the consequence of such interference where there is no finality to the result of the examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination – whether they have passed or not; whether their result will be approved or disapproved by the Court; whether they will get admission in a college or University or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion being worse confounded. The overall and larger impact of all this is that public interest suffers.”

9. The same has been followed by Division Bench of this Court in **Penaaz Dhillon vs. State of Haryana and others 2022 SCC online P&H 2391** wherein while dealing with the answer key of HCS Judicial Branch examination the Court on being called upon to evaluate the answer key being familiar with the subject of law held as under:-

“xx xx xx

4. As held by their Lordships, merely because in this case the subject happens to be law, we would not be able to arrogate to ourselves the powers of the expert committee. What the Court has to see is whether the process of selection is fair and above board. We are also fortified by the decision of this Court passed in *Ramandeep Kaur v. Council of Scientific and Industrial Research (CSIR)*, 2017(4) S.C.T. 329, wherein 4 of 6

after considering whole case law on the 'Examination Jurisprudence', this Court held as follows:-

“24. The above discussion reveals that while there is no doubt that many cases were decided on their own facts yet over the last 35 years an organic jurisprudence has evolved to cater to different situations arising out of mistakes committed in the questions/answers set for competitive examinations. The objective of the Courts has been to evolve such a resolution mechanism which renders the system just and fair & to this end they have developed various tools viz. publication of answer key, invitation of objections within a limited time frame and consideration thereof by independent subject experts. The process is however not yet complete and that is why litigation of this nature is still burdening the system.

25.

To summarize:-

- i) It must be mandatory that the objections which are received be also published on the website and cross objections be invited within a certain timeframe. This is necessary because just as the objectors have a right to show how and why the prescribed question or answer is wrong, those students who have answered it as per the answer key have a right to show that the prescribed question/answer is correct.
- ii) It must be the duty of the original paper-setter/s to respond to the objections within the same time period and then the objections, cross-objections and the reply of the paper-setter/s should be referred to an independent subject experts who have to deal with the objections.
- iii) The examining bodies must prescribe the permissible level of mistakes in question paper/s/answer

keys and take appropriate punitive action against those examiners who flout the prescribed level of mistakes."

5. Coming to the present case, the petitioner has not been able to show any illegality or irregularity that could persuade us to hold that the process was unfair."

10. At this stage, Mr. Kanwal Goyal submits that in fact the objections were not decided by the experts and therefore it will be a case wherein this Court would be sitting as an expert as there is no opinion by the experts. The arguments raised is totally misplaced. As per the written statement filed, the categoric assertion is that the answer key was formulated by none else but the subject experts. Resultantly, this Court does not find that it is a fit case to interfere while exercising writ jurisdiction.

11. Consequently, the present petition is dismissed.

(PANKAJ JAIN)
JUDGE

06.02.2023

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No