

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(221)

CWP-24274-2017

Date of Decision : November 20, 2023

Shiva Chauhan

.. Petitioner

Versus

Haryana Staff Selection Commission

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Deepak Vashishth, Advocate, for the petitioner.

Mr. Saurabh Mohunta, Deputy Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In view of the order dated 14.11.2023, the respondent-Commission has produced the result of the petitioner in case the OMR sheet of the petitioner is evaluated on the basis of the question booklet of series A.

2. Learned counsel for the respondent-Commission submits that in case the OMR sheet of the petitioner is evaluated keeping in view the booklet Code A, he secures 156 marks whereas, in case his OMR sheet is evaluated qua booklet Code B, he secures 62 marks.

3. Keeping in view the said finding, this Court is now to adjudicate as to whether, the petitioner is to be held entitled for 156 marks in view of evaluation according to booklet Code 'A' or 62 marks as given by the respondent-Commission by evaluating his OMR sheet according to booklet Code B.

4. The grievance which is being raised by the petitioner in the present petition is that the petitioner applied for the post of Clerk in pursuance to the Advertisement No.10 of 2015 dated 24.11.2015 and as per the averments made in the present petition, he was given a booklet of Code A at the time of the written examination as four different booklets were given to the candidates so as to ensure that the written examination is conducted in a transparent manner. As per the petitioner, he was given the booklet of Code A, which was attempted by him, which fact he is corroborating from the description of question booklet code mentioned in the OMR sheet as well as in his attendance sheet, which documents have been duly signed by the invigilator as correct so as to corroborate the said fact.

5. Learned counsel for the petitioner submits that the OMR sheet of petitioner has been evaluated on the basis of question booklet Code B so as to award him 62 marks whereas, in case the said OMR sheet is evaluated as per question booklet Code A, the petitioner secures much more marks. Hence, the respondents are liable to be directed to evaluate the OMR sheet of the petitioner in respect of question booklet Code A instead of question booklet Code B.

6. Learned counsel for the respondent-Commission, on the instructions from Ms. Kamaljeet, Law Officer, Haryana Staff Selection Commission, submits that there is some ambiguity in the present case as the booklet code given to the petitioner is not matching with the code of OMR sheet. Learned counsel for the respondent further submits that the petitioner is claiming that he was given the booklet Code A with Code No. 365873 whereas, the code for the OMR sheet No.365874 whereas code of both i.e. question booklet and OMR sheet should be same. Hence, the petitioner has

rightly been evaluated as having booklet Code B instead of booklet Code A, keeping in the code of his OMR sheet.

7. On asking of the Court, learned counsel for the respondent, who had brought the sealed cover result, opened the result and informed the Court that in case the OMR sheet of the petitioner is evaluated keeping in view the question booklet Code A, he has secured 156 marks and in case his OMR sheet is evaluated as per booklet Code B, he secured 62 marks. The said fact is taken on record.

8. Learned counsel for the petitioner submits that in the present case, the discrepancy is on the part of the respondent as he was given the question booklet No.365873 instead of question booklet No.365874 while attempting the question hence, once the said discrepancy has occurred at the hands of respondent-Commission while conducting the written examination, the petitioner cannot be made escape-goat to overcome the said mistake, which crept in at the time of conducting of the written examination.

9. Learned counsel for the petitioner further submits that in a similar situation, this Court has already passed an order in ***CWP No.22069 of 2018 titled as Rajani vs. State of Haryana and others, decided on 27.10.2022.***

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

11. From the facts, it transpires that the question booklet code and OMR sheet given to the petitioner were having different numbers. The said fact has already been verified by the invigilator who was supervising the conduct of the written examination. It is a conceded fact that the petitioner in his OMR sheet has clearly mentioned that he had got the question booklet series of Code A, which fact has been duly verified by the invigilator while

marking the attendance of the petitioner also. That being the factual position, the petitioner is to be given benefit that while attempting the question paper, he was given the booklet of series A though, there was a discrepancy as the petitioner was required to be given question booklet No.365874 instead of the question booklet which was given to him having serial No.365873. That being the factual aspect, once the petitioner has actually marked the answers as per the booklet of Code A from booklet with Code No.365873, the petitioner needs to be evaluated by the booklet series A only. The same question had already been answered by this Court in similar facts in *Rajani's case (supra)*.

12. Learned counsel for the respondent-Commission has not been able to distinguish the facts of the said case qua the claim raised in the present writ petition.

13. The argument which has been raised by the learned counsel for the respondent is that discrepancy if found should have been informed to the invigilator.

14. Though, learned counsel for the respondent is right but as the candidates are nervous at the time of the written examination, it also becomes the duty of the invigilator to check whether all the candidates have correct copies of OMR sheets and the question booklet for which purpose, invigilators are appointed. In case the said discrepancy has not been noticed by the invigilator also, the petitioner cannot put to blame alone hence, the said argument cannot come to the rescue of the respondent so as to deny the petitioner the benefit of consideration for the post in question.

15. Accordingly, the present writ petition is allowed. A direction is issued to the respondent-Commission to evaluate the OMR sheet of the petitioner by taking into consideration the question booklet of Code A

instead of question booklet of Code B. As the said fact has already been done keeping in view the interim order passed by this Court where the respondent-Commission has already brought to the notice of this Court that the petitioner has secured 156 marks, the said marks be treated as the marks secured by the petitioner in the written examination.

16. Keeping in view the fact that the petitioner has secured 156 marks, further consideration be given to the petitioner for the post in question on the basis of the said marks and in case, he is entitled for any benefit or has secured more marks than the last selected candidate in the category in which the petitioner is competing, the petitioner be given benefit accordingly as given to a candidate having lesser marks than the petitioner in the written examination.

17. The present writ petition is allowed in above terms.

November 20, 2023

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes