

CWP-4179-2024

1

2024:PHHC:031943

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-4179-2024

Date of decision : 06.03.2024

Rajesh Kumar

... Petitioner

Versus

Haryana Staff Selection Commission and others

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr. Gaurav Rana, Advocate
for the petitioner.

Ms.Rajni Gupta, Addl.A.G. Haryana.

VIKAS BAHL, J.(ORAL)

1. This is a civil writ petition filed under Article 226/227 of the Constitution of India for issuance of a writ, order or direction in the nature of certiorari for quashing the order dated 28.09.2023 (Annexure P-9) passed by respondent no.3 whereby the second statutory appeal filed by the petitioner has been disposed of in a cryptic manner. Challenge is also to the subsequent order / letter dated 01.03.2023 (Annexure P-4).

2. The second statutory appeal filed by the petitioner was disposed of by the State Information Commissioner vide order dated 28.09.2023 (Annexure P-9). The relevant portion of the said order is reproduced hereinbelow:-

“.....The Commission noted the satisfaction of the appellant with the information furnished qua points (a), (d) and (e) and dissatisfaction with the same furnished qua points (b), (c) and (f) of the RTI application. The appellant prayed for the

Commission's directions to the respondent SPIO to furnish the information qua points (b), (c) and (f) of the RTI application. On perusal of the RTI application, the Commission noted that vide points (b), (c) and (f), the appellant has solicited following information:-

(b) copy of memorandum or list of questions as submitted by HSSC to the Expert Committee.

(c) copy of report of Experts who deliberated and decided the objections as submitted by various candidates.

(f) copy of decision upon representation/objections dated 17.10.2022 as submitted vide Diary No.6963 en 17.10.2022 may kindly be provided.

The respondent SPIO stated that point-wise information (except report of the Expert Committee) has been duly furnished to the appellant vide letters dated 20.01.2023 and 01.08.2023. On perusal of the RTI application, the Commission observes that permissible information on the basis of available record of the respondent public authority qua points (b), (c) and (f) of the RTI application needs to be furnished to the appellant. Therefore, the respondent SPIO is directed to furnish permissible information to the appellant qua points (b), (c) and (f) of the RTI application, keeping in view the Severability Clause as mentioned u/s 10 of the RTI Act, within fifteen days of receipt of this order under intimation to the Commission.

6. In view of the above discussions, the appeal is disposed of accordingly.

Announced. To be communicated.

Place: Chandigarh.

Dated: 28.09.2022.

Sd/-

*(Dr. Satyavir Singh Phulia)
State Information Commissioner,
Haryana."*

3. Learned counsel for the petitioner has submitted that the said order is non-speaking and cryptic and does not adjudicate the issue in hand as the directions which have been given states "permissible information" on

the basis of “available record” of the respondent-public authority should be given. It is further submitted that it was incumbent upon the State Information Commissioner, who should have considered the arguments of both the sides on each of the point regarding which the information was sought and in case there were any objections regarding providing any information on any point then the specific finding regarding the objection should have been given after considering the pleas raised by both the sides and that the same has not been done in the present case. It is argued that it was for the State Information Commissioner to adjudicate as to whether the information sought was permissible or not and could not have left it open for the Public Information Officer to decide the same. It is argued that the said order is in violation of the law laid down by this Court in ***CWP-17672-2023*** titled as “***Rajwinder Singh vs. State of Punjab and others***” decided on 16.08.2023 and that at any rate, the impugned order dated 28.09.2023 and the subsequent proceedings thereto deserve to be set aside and the matter needs to be reconsidered by the State Information Commissioner, Haryana in the light of the judgment passed by this Court in the case of ***Rajwinder Singh*** (supra).

4. Learned State counsel has submitted that the matter would be considered afresh by taking into consideration the judgment passed by this Court in the case of ***Rajwinder Singh*** (supra).

5. This Court has heard the learned counsel for the parties and has perused the paper book.

6. This Court in the case of ***Rajwinder Singh*** (supra) has held as under:-

“12. This Court has found that in a large number of cases, the authorities including the first Appellate Authority {(while

adjudicating the first statutory appeal under Section 19(1)} and the second Appellate Authority {(while adjudicating the second statutory appeal under Section 19(3)} under the Act, have been passing cryptic and non-speaking orders in violation of the judgments passed by the Hon'ble Supreme Court and various High Courts and also in violation of the mandate of the Act of 2005. It is, thus, found necessary to give the following directions to the first Appellate Authority and second Appellate Authority under the Act of 2005 to clearly specify the following at the time of finally adjudicating the case:-

- i) The points on which the information is sought by the applicant as per his/her application filed under the Act of 2005.*
- ii) The point-wise reply with respect to the information sought.*
- iii) A categorical finding as to whether the information on any of the points has been supplied or not and if supplied, the date on which it has been supplied.*
- iv) In case, it is the stand of the authorities from whom the information is sought that the information sought under a particular point is not to be supplied on account of any bar contained in any provisions of the Act of 2005 or for any other reason, then, after recording the said stand and after considering the submissions made by both the parties **with respect to said point/issue, return a finding with respect to the said issue/point.***
- v) Any other observation which the authority deems fit in the facts and circumstances of the case to be recorded.*

*13. The Chief Secretary to the States of Punjab & Haryana and the Advisor to the Administrator, Chandigarh are directed to circulate the judgment passed in the present case i.e. **CWP-17672-2023** titled as “**Rajwinder Singh Vs. State of Punjab and others**” and the **judgment dated 13.07.2023** passed in **CWP-1877-2022** titled as “**Gagnish Singh Khurana Vs. State of Punjab and others**” as well as the **judgment dated***

21.07.2023 passed in CWP-15500-2023 titled as “Gopal Krishan Gupta Vs. Central Information Commission and others”, to all the authorities constituted under the Act for complying with the same.”

7. A perusal of the impugned order dated 28.09.2023 would show that the said order does not meet the parameters of the law laid down by this Court in the case of **Rajwinder Singh** (supra) and thus, the present petition is partly allowed and the impugned order dated 28.09.2023 and also consequential order / letter dated 05.12.2023 are set aside and the matter is remanded to the State Information Commission to re-decide the second statutory appeal of the petitioner, in accordance with law, as expeditiously as possible and after taking into consideration the law laid down by this Court in the case of **Rajwinder Singh** (supra) and after hearing all the necessary parties concerned. The petitioner is directed to appear before the State Information Commission on 14.03.2024.

(VIKAS BAHL)
JUDGE

March 06, 2024
Davinder Kumar

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