

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

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CWP No.16340 of 2019 (O & M)

Date of Decision : 2.2.2024

*Ankur Chhabra and another**..... Petitioners**versus**State of Haryana and another**..... Respondents***CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

Present: Mr. Sanjay Kaushal, Senior Advocate with
Mr. Lalit Rishi, Advocate, for the petitioners

Mr. Rohit Arya, DAG, Haryana

Mr. Kanwal Goyal, Advocate and
Ms. Sheena Dahiya, Advocate, for respondent no.2/HPSC

TRIBHUVAN DAHIYA J. (ORAL):

This petition has been filed, *inter alia*, seeking a writ of *certiorari* quashing the announcement dated 31.5.2019, Annexure P-7, vide which the respondent/Haryana Public Service Commission (in short 'the Commission') scrapped/cancelled the recruitment test held on 23.5.2019 for appointment to the post of Assistant Professor (College Cadre) in Higher Education Department, Haryana; and a writ of *mandamus* directing the respondents to continue with the selection process by declaring the result of recruitment test for the post in question.

2. Facts relevant to decide the issues at hand are, the Commission published advertisement no.1 of 2019 on 8.3.2019 inviting applications from eligible candidates for recruitment to 524 posts of Assistant

Professor (College Cadre) in Higher Education Department, Haryana. Among others, 81 posts of Assistant Professors-English were advertised, out of which 49 were for open/general category.

2.1. As per the criteria for selection announced on 16.5.2019, the candidates were to be selected on the basis of recruitment test for 50 marks; 37.5 marks were assigned for academic qualifications/personal achievements, and 12.5 for interview. The Commission notified holding of recruitment test on 23.5.2019.

2.2. The petitioners, being general category candidates and fully qualified for the post of Assistant Professor-English, applied for the same, and appeared for the recruitment test on 23.5.2019. After the test, some of the candidates alleged wrongdoings in holding of the recruitment test, and approached this Court by filing CWP No.15001 of 2019 titled *Dinesh Kumar and others v. State of Haryana and another*, mainly on the ground that a large number of questions in the recruitment test were copied from one book, namely, *Pratiyogita Sahitya*.

2.3. Notice on the petition was issued by this Court. However, the respondent/Commission, on coming to know about these alleged irregularities in the question paper, on its own scrapped the recruitment test in English subject held on 23.5.2019, and decided to hold it again on 12.6.2019, vide impugned announcement dated 31.5.2019.

2.4. The petitioners, aggrieved by this impugned announcement, represented to the Commission, and soon thereafter filed the instant writ petition on 1.6.2019. The petition was taken up for hearing on 10.6.2019; notice of motion on the petition was issued and it was ordered that 'any examination, if so conducted, or declaring of the result shall be subject to

the outcome of this writ petition'. Later, vide order dated 18.9.2019, this Court directed the Commission not to destroy the OMR sheets of the recruitment test held on 23.5.2019.

2.5. Finally, the recruitment test was conducted afresh by the Commission on 12.6.2019, wherein both the petitioners, who filed the instant petition, appeared. Petitioner no.2 got selected pursuant to the process of selection and withdrew the instant writ petition; accordingly, the petition *qua* her was dismissed as withdrawn on 27.1.2021.

2.6. In this background, petitioner no.1 has claimed right to be considered for selection on the basis of recruitment test held on 23.5.2019.

3. Learned senior counsel for petitioner no.1 has contended that there was no occasion for the Commission to scrap the entire recruitment test only because a representation alleging wrongdoings was received, or one writ petition alleging irregularities in the test was filed before this Court. The petition had not been adjudicated, and the allegations were not even *prima facie* established. Besides, mere repetition of certain questions in the question paper cannot be a ground to scrap the test itself. The decision was, therefore, arbitrary and bad in law.

3.1. Secondly, learned senior counsel has contended that as per the petitioner's OMR sheet, which has been appended to the petition, he had scored more marks than those of the last selected candidate. This assessment is based upon the answer key uploaded by the Commission itself. Therefore, his right of consideration for the post cannot be taken away.

3.2. Thirdly, it has been contended that the Commission has deliberately violated its own instructions in destroying the selection

record. The record of a selection, which is under challenge before the Court of law, has to be preserved. And in this case, there were specific directions issued by this Court, vide interim order dated 18.9.2019, 'not to destroy OMR sheets of the recruitment test'. The destruction of complete record is in violation of this directive, and shows *mala fide* on the Commission's part.

3.3. Lastly, it has been contended, since holding of the second recruitment test was made subject to final outcome of the petition, the petitioner's right of consideration and appointment on the advertised post cannot be frustrated only because the second test has been conducted or that the process of selection is already over. He also contends that as the holding of second test or the selection process was not stayed by this Court, the petitioner had no option but to appear for the same, and he cannot be non-suited on that account.

4. Learned counsel for the Commission, on the contrary, contends that looking at the irregularities alleged in the conduct of recruitment test, and the need to preserve integrity of the selection process, the Commission's decision to scrap the test and hold it afresh, cannot be faulted. The action was *bona fide*, and in the candidates' interest. There was nothing illegal or irregular about it, besides, the selection process was at the nascent stage and even the OMR sheets of recruitment test had not been evaluated at that time. Therefore, no prejudice was caused to the candidates by scrapping of the test.

4.1. Secondly, he contends that the petitioners themselves have participated in the selection process and took the second recruitment test; one of them got selected also, whereupon, he withdrew the writ petition.

After participating in the selection process and remaining unsuccessful, petitioner no.1 should not be permitted to maintain the petition seeking consideration on the basis of a recruitment test which was scrapped.

4.2. Lastly, he fairly concedes that the Commission was required to preserve the record of selection since it was under challenge before this Court. At the same time, he contends that only on account of an inadvertent mistake the petitioner's OMR sheet was destroyed, as the interim directive of this Court not to do so, could not be communicated to the concerned branch.

5. Heard.

6. The issues arising for consideration in this case are, (i) whether the Commission's decision to scrap recruitment test for the post in question and continue with the selection process by holding it afresh, was arbitrary and illegal; and (ii) whether the petitioner can claim right to be considered for selection on the basis of recruitment test which was scrapped.

FIRST ISSUE

7. It is an undisputed fact on record that the issue of scrapping the recruitment test in the face of allegations against the paper-setter was deliberated by the Commission in its meeting dated 31.5.2019; its proceedings are as under:

Discussed the matter in the Commission's meeting today i.e. on 31.5.2019, it is really a very sorry state of affairs to mention here that it has come to the notice of the Commission that after the recruitment test for the post of Assistant Professor (College Cadre) in the subject of English held on 23.5.2019, a representation has been received from a candidate alongwith media report published in the various newspapers regarding setting of question paper in the

subject of English wherein almost all the questions in the English paper meant for the post of Assistant Professor (College Cadre) have been taken by the paper-setter from UGT-NET question paper of English paper for the year 2012-13.

After receipt of complaint/representation in this regard, the matter was examined by the office. As per report of the office, the UGC-NET English paper-II was downloaded and found that all the question in the English paper of our recruitment test have been taken by the paper setter from the UGC-NET question paper of English for the year 2012-13. This has also been authenticated by the Secretary HPSC, to the extent that “the A.P. (English)-2019 paper was compared with Q. Papers of NET for the years 2012-13 and it was found that most of the questions are repeated/taken from NET exam.

From the above report of the office, it clearly reveals that there is total laxity on the part of our paper setter and this has put the Commission in embarrassing position. Further, setting of such type of question paper of English directly taken from UGC-NET exam for the year 2012-13 is unprecedented and uncalled for. This has not only brought bad name to the Commission and also put a question mark on the quality of examinations being conducted by the Constitutional Authority-HPSC. Commission is of the considered view that such acts on the party of paper-setter have affected the credibility of the Commission in the eyes of public.

Keeping in view all pros & cons of the matter as well as setting of question paper by the paper-setter without application of mind clearly shows complete laxity on the part of paper-setter. Under the compelled circumstances, the recruitment test for the post of Assistant Professor in the subject of English held on 23.5.2019 needs to be scrapped/cancelled. Thus, it has been decided by the Commission to scrap/cancel the above said recruitment test in the subject of English in the interest of justice. The Commission hereby ordered accordingly.

Secretary to look into the matter and take necessary action to conduct fresh recruitment test in the subject of English on priority basis.

8. These proceedings of the meeting establish that the Commission got the matter enquired into. The material placed before it established that the English question paper was virtually copied by the paper-setter from an old National Eligibility Test (NET) question paper of 2012-13. An examining body, like the Commission, which has been entrusted with the task of recruitment for public service, is under obligation to objectively assess the candidates and recommend them for appointment on merit. This Constitutionally assigned task is to be performed by observing the highest standards of probity. It is, therefore, required that the process of selection, including an examination/test, must be fairly and equitably conducted. In case there is slightest of doubt about its even-handedness and impartiality, it should be forthwith be remedied. Once the lapse on the part of the paper-setter was sufficiently established, creating a doubt about the objective and fair assessment of candidates, the Commission could ill afford to ignore the same or delay taking action in the matter as that would have dented its impartiality and credibility. In such a situation, in case the Commission, on examining the issue in the light of relevant material, took a considered view of the matter and decided to scrap the recruitment test held on 23.5.2019, no exception can be taken to it; rather, the step is *bona fide* and in the interests of the candidates as well as the public at large.

9. Further, reliance placed by the learned senior counsel on the judgment, dated 25.07.2023, rendered by this Court in Civil Writ Petition No.15803 of 2023 titled *Varun Girdhar and others v. State of Haryana and another*, to contend that the scrapping of the test was bad in law, is misplaced. The petitioners therein sought setting aside of a civil service

examination on the basis of 'repeated questions' in Civil Service Aptitude Test (CSAT), and this Court rejected the challenge on the ground that repeat of questions in a subsequent examination would not render it illegal and *mala fide*. The *ratio* does not apply to the facts of the instant case which are distinct. As already discussed, the Commission after duly considering the matter took a conscious decision to scrap the test for valid reasons. No illegality or infirmity could be pointed out about it, except submitting that a few representations or mere filing of a writ petition cannot be a basis to scrap the entire recruitment test. The issue is not to be decided on the strength of number of representations received or final outcome of a pending petition; rather, keeping in view the sanctity of examination as also the integrity of the examination process. In case, on examining the matter, the Commission in a *bona fide* manner and on relevant considerations promptly decided to scrap the test and hold it afresh, it was within its rights to do so.

SECOND ISSUE

10. Merely because the petitioner appeared in the recruitment test that was scrapped or, on his own assessment, scored more marks than those of the last selected candidate in the final selection list, cannot give him a right to be considered for the post because- Firstly, the test based upon which consideration is being sought, stands scrapped already. The Commission's decision to do so is *bona fide* and based on sound reasoning, as discussed hereinabove. Secondly, the self-assessed score of a scrapped test is of no consequence; nor can any comparisons be drawn of such an imaginary score of the petitioner with that of the last selected candidate, that too in a different/fresh test, nor can any right be claimed

on such an assumption. Thirdly, scrapping of the test has not caused any prejudice to the petitioner as the test was conducted afresh and he appeared in it as well. Fourthly, no vested right accrued to the petitioners by only appearing in the test, which was a preliminary stage in the process of selection. Even answer-sheets of the candidates had not been evaluated before it was scrapped.

11. Since the petitioners' claim cannot be entertained for the reasons aforementioned, there is no need to consider other arguments advanced by learned counsel for the parties as that will be merely an academic exercise.

12. In view of the discussion, there is no merit in the petition, and it stands dismissed accordingly.

13. Pending miscellaneous application(s), if any, stands disposed of accordingly.

(TRIBHUVAN DAHIYA)
JUDGE

2.2.2024
Ashwani

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No