

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(113)

LPA-1922-2023 (O&M)
Decided on : 05.02.2024

Shri Bhagwan

.....Appellant(s)

Versus

State of Haryana and others

.....Respondent(s)

CORAM : HON'BLE MR. JUSTICE G.S. SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MS.JUSTICE LAPITA BANERJI

Present: Mr. Sandeep Singh Sangwan, Advocate for the petitioner (s).
Mr. Deepak Balyan, Addl. AG, Haryana.

G.S. Sandhawalia, Acting Chief Justice (Oral)

CM-4819-LPA-2023

Application for condonation of delay of 61 days in filing the appeal, is allowed, in view of the averments made in the application, duly supported by affidavit of the appellant. Delay of 61 days in filing the appeal is condoned.

CM stands disposed of.

LPA No.1922 of 2023 (O&M)

1. The present letters patent appeal is directed against the order dated 25.08.2023 of the learned Single Judge passed in **CWP No.21666 of 2020** filed by the appellant, whereby the writ petition was dismissed in which the petitioner had sought the correction of his mistakes and for inclusion of his name in the list of qualified candidates called for documents verification and interview for the post of Physical Training Instructor (PTI) in the General Category as notified vide Advertisement No.6 of 2006.

2. The reasoning given by the learned Single Judge is that the appellant had violated the instruction and did not fill the bubbles in the OMR Sheet and the same has not been properly darkened and, therefore, the electronic scanner did not detect the bubbles and, thus, the marks could not be awarded accordingly. A coloured copy of the OMR Sheet had also been produced before the Court. It was noticed that only 43 questions were rightly answered and the appellant had secured 86 marks and requisite 50% having not been achieved, he could not qualify the written examination and was not called for the documents verification and the interview. The learned Single Judge came to the conclusion that there was no *malafide* or arbitrariness in the process of evaluation and all the OMR Sheets of other applicants were also evaluated by the same process. It was not a case of malpractice or manipulation and, therefore the writ petition was dismissed.

3. Counsel for the appellant has submitted that the photocopies which have been produced would go on to show that the appellant had done all the questions and the OMR Sheet should be sent for evaluation as he has also deposited Rs.20,000/- in terms of the earlier order dated 02.12.2023.

4. The precise issue which would arise for consideration is that whether such a course can be permissible or not. The said issue regarding the smudging, alteration in OMR Sheet has been subject matter of consideration time and again. The Coordinate Bench in **LPA No.92 of 2017 'Anshu and others Vs. State of Haryana and others'** while considering Clause-19 of the Advertisement in the said which is *para-materia* of Clause-20 herein had noticed that the guidelines which have been issued by the Commission that the OMR Sheet have to be evaluated by a computer which may not respond appropriately in view of abrasions and tempering and, therefore, had dismissed

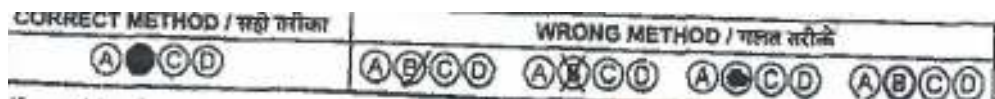
the appeal wherein the candidates had sought the benefit of the marks to be awarded against the answers given when there was scratching, erasing or smudging. The matter was taken to the Apex Court by the appellant therein and the **SLP No.8430 of 2017** was dismissed.

5. Clause 18 and 20 of the question booklet read as under:-

“18. The answer sheet will be evaluated through electronic scanning process. Incomplete or incorrect entries may render the answer sheet invalid.

20. While darkening the appropriate bubble(s) in the boxes darken the chosen bubble(s) fully as given below. If you darken more than one circle, your answer will be treated as wrong and such answer shall not be evaluated.”

6. We have gone through the photocopies of the OMR Sheet which has now been produced as the original one is not traceable by the Commission to satisfy ourselves. The said OMR Sheet would go on to show that some of the answers which have been opted by the appellant by darkening the bubbles have not been fully filled up and it was in such circumstances apparently the calculation by way of electronic method having been applied might have resulted in less marks as the electronic scanner might not have been able to pick up the answers opted for. The correct method and wrong method were also highlighted in the instructions and very specifically put the candidate on the red alert. Same is reproduced as under:-



7. Clause-1 & 2 of the OMR Sheet also provides that the candidates has to read all the instructions printed on the Admit Card as well as question paper and understand the same and in case of darkening wrong circles the candidates is liable for rejection. The same reads as under:-

“2. I SHRI BHAGWAN, hereby undertake that the information provided by me for my eligibility for examination is true to the best of my knowledge. In case of any information found to be incorrect/incomplete at any stage, I am liable for disqualification for Examination and legal action. I have read all the instructions printed in the Admit card as well as question paper and understood the same.

2. I do hereby declare that I have filled in my Name and Roll No. as it appears on the admit card. I fully understand and agree that in case I darken the wrong circles or fill incorrect Roll No. or use Whitener/Eraser/White Fluid etc. on the OMR Answer Sheet my candidature will be liable to be rejected.

Signature of the Candidate within the box”

8. In such circumstances, we are of the considered opinion that the candidate was well aware as to how he has to answer the questions and it had to be done in effective manner by filling up the bubbles correctly, so that the electronic scanner can pick up the same. If he has not done the same, it was at his own peril as such. Counsel for the appellant could not point out any clause or legal right as such on the basis of which he can claim the relief. The right of re-correction would only arise if there was any rule or regulation. In the absence of the same the writ in the form of mandamus also would not be maintainable. We also cannot rule out the fact that if such an exercise is even permitted in one case, it would lead to a *Tsunami* of cases flooding this Court on the same ground and the selection process of 2006 having reached to the Apex Court on an earlier occasion would never be finalized. Therefore, we are of the considered opinion that for the reasons recorded above no case is made out for entertaining the present letter patent appeal and the same is

accordingly dismissed in limine. The costs of Rs.20,000/- as deposited with the office be refunded to the appellant at the earliest.

9. Dismissed in limine.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

February 05, 2024
Naveen

(LAPITA BANERJI)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :		No