

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

LPA NO. 2087 OF 2023 (O&M)

RESERVED ON : MARCH 21, 2024

DATE OF DECISION : MAY 09, 2024

Rajeev

...Appellant

Versus

State of Haryana and others

...Respondents

**CORAM : HON'BLE MR. JUSTICE G. S. SANDHAWALIA,
ACTING CHIEF JUSTICE**

HON'BLE MS. JUSTICE LAPITA BANERJI

Present : Mr. Suryaveer S. Surjewala, Advocate,
for the appellant.

Mr. Deepak Balyan, Additional Advocate General, Haryana.

LAPITA BANERJI, J.

Consideration in the present Letters Patent Appeal is of an order dated August 22, 2023, whereby the Hon'ble Single Judge dismissed the writ petition by refusing to issue a writ of certiorari, quashing the result of written examination dated September 8, 2015 (Annexure P-3) conducted by respondent No.3/Haryana Staff Selection Commission (for short "HSSC) and the final results dated September 27, 2015 Annexures P-7 and P-8 respectively. Furthermore, the Hon'ble Single Judge refused to issue a writ of mandamus directing the Commission to revise the result of written examination by considering the petitioner to be eligible and to conduct interviews afresh.

2. Facts of the case in brief are narrated hereinafter :-

i) The appellant applied for the post of Hindi Lecturer (School Cadre) pursuant to an advertisement No.6/2006 dated July 20, 2006. The selection to the advertised posts were made, barring 54 posts which were kept vacant on account of pending litigations. The said vacant posts were directed to be filled up from all the unsuccessful candidates by considering their candidature afresh, pursuant to the decision of Hon'ble Supreme Court in Civil Appeal No.4128 of 2012 "*Poonam Rani v. State of Haryana*".

ii) The Commission issued a notification dated June 15, 2015 inviting online applications from the unsuccessful candidates. The appellant applied in response thereto and sat for the written examination held on August 09, 2015. The results of the successful candidates were declared on September 08, 2015. Since the appellant's candidature stood cancelled, his result was not declared.

iii) The appellant's candidature had been cancelled by the Commission on the ground that he had scratched the OMR sheet at question No.28 which had resulted in damage at serial Nos. 27 and 29 as well.

3. It was contended on behalf of the appellant that as per the conditions stipulated in the admit card, any stray mark or smudging on the OMR sheet had to be taken as a wrong answer and only if there was *damage* to the OMR sheet, the same would result in disqualification of a candidate. The definition of the word *damage* as per oxford dictionary meant physical harm that impaired value, usefulness or normal function of something, but the stray mark or smudging on the OMR sheet could not be construed as a *damage* unless its value, usefulness or normal function was impaired. As the appellant's OMR sheet was already evaluated, it could not

be contended by the Commission that the same was *damaged* or his candidature on that account stood cancelled.

4. Furthermore, it was contended on behalf of the appellant that the appellant scored 144 marks in the written examination which was far above the marks of last selected candidate in general category who scored 132 marks. Therefore, the appellant had a right to be considered for appointment against the vacancies which were kept reserved by way of interim order dated October 07, 2015, passed in the writ petition.

5. *Per contra*, the learned counsel appearing for the State submitted that the appellant's candidature was rightly cancelled since he had *damaged* his OMR sheet. The said fact was ascertained by the "*Commission Evaluating Agency*" and the appellant's case along with that of 200 other candidates was considered and the whole exercise had been done in a fair and bona fide manner.

6. The Hon'ble Single Judge found that admittedly the appellant scratched his OMR sheet and proceeded to answer the issue whether smudging/scratching led to *damaging* of the same. There were clear instructions printed on the admit card of the candidates that *damage* to OMR sheet would result in disqualification of a candidate. Furthermore, similar instructions were given to the candidates in the examination hall which were printed not only on the envelope containing the question paper but also on the OMR sheet itself. Since 201 candidates had violated the instructions by using white fluid, smudging of OMR sheets using erasers or scratching the options against different answers, the Commission after considering the relevant facts and circumstances, decided to reject the candidature of all 201 candidates. Thus, no case of arbitrariness and *mala fide* intention in rejection of his candidature by the Commission could be

made out by the appellant as he stood on a similar footing like 200 odd candidates who had violated the instructions.

7. The Hon'ble Single Judge relied on the Division Bench judgment passed in "*Reman Kumari v. Haryana Staff Selection Commission*" 2022 (1) PLR 210, to hold that the law governing the field on the particular issue already stood settled. It has been held in unambiguous terms that in the event of use of any eraser, nail, blade, white fluid, whitener, the answer sheet would be liable to be rejected and candidature would stand cancelled. Merely because the appellant's answer sheet had been evaluated despite being *damaged* and he was found to have scored more marks than the last selected candidate, the same could not be held to be a ground for granting him reliefs in the writ petition. Therefore, in the light of the undisputed facts and the position of law, the Hon'ble Single Judge came to the conclusion that the appellant had *damaged*/smudged the answer sheet and the decision of the Commission to cancel his candidature could not be faulted with. The fact that the OMR sheet was evaluated prior to Commission's decision to reject the candidature did not give any vested right to the appellant to seek consideration for appointment on the basis of marks awarded in such an evaluation.

8. With reference to the word "*damaged*", the Hon'ble Single Judge opined that on account of smudging of OMR sheet by the appellant, the same got *damaged* for the questions at serial Nos. 27 and 29. The feasible harm caused to the sheet definitely had impaired its value, usefulness and normal function as answers to those questions could not be evaluated. While considering the meaning of word "*damaged*" in relation to the OMR sheets, it was opined that the literal meaning of same may not to be seen for arriving at a decision as the Commission decided the issue in the

larger public interest, in order to maintain sanctity of the examination by preventing any kind of cheating, tampering, manipulation or malpractice. Therefore, the decision of the Commission did not suffer from any irregularity or illegality.

9. This Court has perused the materials on record and heard the arguments on behalf of the parties. It transpires that all the unsuccessful candidates who applied for the post of Hindi Lecturer (School Cadre) were directed to be considered afresh by conducting a written examination in view of the decision of the Supreme Court in Civil Appeal No.418 of 2012 “*Poonam Rani v. State of Haryana*”. The appellant appeared for the written examination on August 09, 2020 when **Set-B** question paper was allotted to him. There were four sets of question papers where all the questions remained the same but serial numbers were different.

10. All the four sets of question papers and their answer keys were uploaded on the website and objections were sought from the candidates from August 11, 2015. The candidates submitted their objections. The respondents vide notice dated August 20, 2015 intimated that the candidates who had sent their objections till 5:00 PM on August 18, 2015 had been forwarded to the Chief Examiner for consideration. The result was declared by the Commission on September 08, 2015. On September 11, 2015, the decision of the Commission to grant 08 grace marks to the candidates was intimated to the candidates and final results were published on September 27, 2015. However, inadvertently the Commission did not grant the grace marks as mentioned in the notice dated September 11, 2015. Therefore, there was no change in the marks allotted to the candidates on September 08, 2015 and the final results declared on September 27, 2015.

11. A total number of 3024 candidates appeared in the examination, out of which the candidates who got **Set-B** were 758 in number. 100 multiple choice questions were required to be answered wherein each of the questions carried 2 marks. After re-evaluation it was found that there had been a difference of 02 marks only in evaluation of **Set-B** in pre and post objection answer key as the only disputed question was the one at Serial No. 54. Only 638 candidates attempted the disputed question No. 54 and 120 candidates did not attempt the same. Result of 545 candidates had not been affected by the change of answer key to the disputed question as they had correctly opted for option (c).

12. The correct option for question No.54 was option (c) but 40 candidates selected the wrong option (a), 27 candidates selected the wrong option (b), 25 candidates selected the wrong option (d) and one candidate selected both options (c) and (d) to the said question No.54. Perusal of the additional affidavit filed by Rajeev Dudeja on behalf of HSSC dated September 11, 2017, would reveal the aforesaid facts. The list of candidates who opted for the correct option along with list of the candidates who opted for the wrong options have been annexed to the said affidavit.

13. Even though in the writ petition the issue of quashing the impugned answer key in four sets of question papers was urged but in the present Letters Patent Appeal primarily the issue with regard to smudging of, or stray marks on the OMR sheets not affecting or *damaging* the same, since had they been *damaged*, the OMR sheets could not have been evaluated and the marks could not have been allotted, had been strenuously argued.

14. This Court is of the considered opinion that a co-ordinate Bench of this High Court in LPA No.1057 of 2023 “*Kavita Rani and others*

v. Haryana Staff Selection Commission” decided on August 08, 2023, held that the candidature of the incumbents would be liable to be cancelled in the event there was smudging/scratching/erasing in the OMR sheet and there is no pressing/logical reason to take a divergent view. The decision in *Kavita Rani’s case (supra)* relied on another Co-ordinate Bench’s order dated February 05, 2022 passed in LPA No.90 of 2022 “*Suman v. State of Haryana and others*”.

15. In LPA No.1922 of 2023 “*Shri Bhagwan v. State of Haryana and others*” decided on February 02, 2024, this Bench was of the view that the candidate had to be well aware as to how the answer the questions and if he had not done so it was at his own peril as such. Therefore, the candidates were expected to read and follow the instructions prior to answering the questions in the OMR sheet. Relevant extract of LPA No.1922 of 2023 is reproduced herein below :-

“xxx

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. Xxx”*

Therefore, after scratching/smudging the OMR sheets, if the candidates were permitted to be considered afresh for selection by quashing the

selection process then the same would lead to opening of flood gates and no selection process would culminate into its logical conclusion.

16. In view of the discussion hereinabove, this Court is of the view that learned Single Judge correctly relied on the decision in “*Anshu and others v. State of Haryana and others*” 2018 (2) SCT 66, whereby it was held that in the eventuality of smudging, damaging or scratching of OMR sheets the candidature was liable to be rejected. The said decision was upheld in Letter Patent Appeal No.92 of 2017 by an order of Co-ordinate Bench dated January 20, 2017 and further upheld in Special Leave to Appeal (Civil) No.8430 of 2017 on March 27, 2017. The order of Hon’ble Single Judge is a well reasoned one whereby the decision of the Commission to take into consideration the larger public interest in order to maintain sanctity of the examination for preventing cheating, tampering, manipulation or malpractice down the line has been appreciated. Therefore, this Court finds that the impugned order of the Hon’ble Single Judge dated August 22, 2023 and the impugned decision of the Commission to cancel the candidature of 201 incumbents do not merit any interference. Accordingly, the present letters patent appeal is dismissed. Connected applications, if any, are also hereby disposed of.

(G. S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

MAY 09, 2024
Shalini

Whether speaking/reasoned : Yes
Whether reportable : Yes