



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: January 08, 2024

+ W.P.(C) 12067/2023, CM APPL. 334/2024

(43) UPENDRA KUMAR AND OTHERS

..... Petitioners

Through: Mr. Alakh Alok Srivastava and
Mr. Chandan Kumar Singh, Advs.

versus

UNION OF INDIA AND OTHERS

..... Respondents

Through: Mr. Syed Abdul Haseeb, Sr. PC with
Ms. Perna Dhall, GP for UOI with
Mr. Sourav, AC (Legal)

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

V. KAMESWAR RAO, J. (ORAL)

1. The present petition has been filed by the petitioners with the following prayers:-

“A. Issue urgent writ, order or direction to the Respondent Authorities to forthwith cancel the Limited Departmental Competitive Examination-HC/GD-2023 (“LDCE-HC/GD-2023) conducted by the Respondent CRPF on 24.08.2023; and/or

B. Accordingly, Issue urgent writ, order or direction to the Respondent Authorities to forthwith re-conduct the said Limited Departmental Competitive Examination – HC/GD (“LDCE-HC/GD) after removing the anomalies pointed out in the instant writ petition; and/or



C. Pass any such further order/order(s) as this Hon'ble Court may deem fit and proper in the circumstances of the case."

2. The petitioners are presently working in respondent No.2 i.e., Central Reserve Police Force ('CRPF', for short). The respondent No.2 had issued a Standing Order No.05/2011 dated July 22, 2011 ('SO', for short) whereby they had prescribed the Rules governing the recruitment of HC (GD) post in CRPF through Limited Departmental Competitive Examination ('LDCE', for short). As per the Rules, the LDCE-HC(GD) *inter-alia* comprises of written examination in which the question paper is based on 10+2 standard.

3. It is the case of Mr. Alakh Alok Srivastava, learned counsel appearing on behalf of the petitioners that in the past also the respondent No.2 has conducted similar LDCE examinations in terms of the aforesaid SO.

4. It is his case that the respondent No.2 has committed multiple errors in many examinations including in its answer key published for LDCE-HC(GD) Examination, 2016 against which various personnel of respondent No.2 had approached this Court by filing ***W.P.(C) Nos. 1900/2017, 7415/2017, 1983/2018*** etc. In those cases, the respondent No.2 had even admitted that the said answer key was incorrect and subsequently issued corrected answer key and as such, revaluated the candidates and revised the merit list. This fact was also recorded by this Court vide order dated March 13, 2018 passed in ***W.P.(C) 1983/2018*** titled as ***Bhupender Kumar Pandey v. Union of India and Ors.***



5. He submits that in the present case, the respondent No.2 has issued an advertisement Notice, whereby applications were invited from the eligible serving CRPF personnel for selection to the post of HC (GD) in CRPF through LDCE-2019 in terms of the SO. It is his case that the petitioners having fulfilled the eligibility criteria along with their colleagues, submitted their applications for the said post. Subsequently, the examination was conducted on December 26, 2021. However, demonstrably erroneous questions were asked in that examination. Being aggrieved, one constable / General Duty viz. Brijesh Kumar (Force No.125111874) preferred a writ petition being ***W.P.(C) 1141/2022*** before this Court wherein he prayed for the cancellation of the aforesaid LDCE-HC(GD) examination. Vide order dated January 21, 2022, this Court directed the respondent No.2 to decide the objections raised by the petitioners therein. Subsequently, vide Signal dated April 08, 2022, the respondent No.2 cancelled the examination and thereafter vide Signal dated July 28, 2023, the respondent No.2 notified the recruitment of HC(GD) through LDCE-2019, to be conducted through Computer Based Test ('CBT', for short). Accordingly, LDCE HC (GD) Examination, 2023, was conducted by the respondent No.2 on August 24, 2023, wherein the petitioners had appeared.

6. It is the case of Mr. Srivastava that upon appearing in the said examination, the petitioners herein and other similarly situated candidates were shocked to note that once again many questions / answers depicted in the question papers were wrong and patently illegal.



7. Being aggrieved, the petitioners submitted the detailed objections on the portal of the respondent No.2 and thereafter also submitted a detailed representation to the respondent No.2 wherein the errors in the question paper were categorically pointed out and a request was made to the respondent No.2 to cancel the examination and re-conduct the same after removing the anomalies.

8. Suffice to state, being Member of the respondent No.2, the petitioners also sought permission from the respondent No.2 to prefer the instant writ petition for redressal of their grievances, in case the same are not redressed by the respondent No.2. It is his case that despite repeated requests of the petitioners, the respondent No.2 has not cancelled the examination.

9. Therefore, being aggrieved by the conduct of the respondent No.2, the petitioner has preferred the instant petition on the following grounds:-

(a) Mr. Srivastava has relied upon the judgment of the Supreme Court in the case of **Kanpur University and Others Vs. Samir Gupta and Others, 1983 SCC (4) 309**, to contend, if a paper-setter commits an error or if any of the answer is proved to be 'demonstrably wrong' or is such that 'no reasonable body well-versed in the subject would regard it as correct', then a Court of law can issue an appropriate direction to rectify it;

(b) He has also relied upon the following table to demonstrate that the questions / answers as mentioned in the table, which were asked in the examination in question, as palpably wrong:-



Question Paper Shift	Section	Question No.
Shift I (9 AM to 12 PM)	Section — II (Professional Knowledge)	6, 37, 44, 48, 69
	Section — III (Language Comprehension and Communication Skills (General English))	1 to 15
	Section — IV (Language Comprehension and Communication Skills (General Hindi))	1 to 15
Shift II (2 PM to 5 PM)	Section — I (General Intelligence, Awareness, Reasoning, Numerical Ability)	22 and 31
	Section — II (Professional Knowledge)	9, 11, 17, 24, 32, 37, 59, 66
	Section — III (Language Comprehension and Communication Skills (General English))	1 to 15
	Section — IV (Language Comprehension and Communication Skills (General Hindi))	1 to 15

(c) He has specifically relied upon Instruction No.11, mentioned in the admit card issued to the petitioner, which is reproduced as under, to submit that all the 30 questions asked in Section III (Language, Comprehension and Communication Skills) of the question paper of the examination were either required to be in English or in Hindi:-

“The questions will be bilingual i.e., in Hindi & in English, except for language section of the paper.”
(Emphasis supplied)

(d) He submits, in any case, the said questions of Language Section were not required to be bilingual. In other words, in the examination held on August 24, 2023, the respondent No.2 has committed sheer violation of the aforementioned Instruction No.11 and as such, made the said Language Section as bilingual



inasmuch as it has, divided the said Language Section-III, into two parts viz. General English (15 questions) and General Hindi (15 questions);

(e) It is his case that such violation of the Instruction No. 11 is patently arbitrary, discriminatory and whimsical and thus all the 30 questions of the said Language Section are demonstrably wrong and as a result, a situation has arisen wherein few of the petitioners as well as other similarly situated candidates whose mother tongue is not Hindi (example, the candidates belonging to South Indian States etc.) have been asked to compulsorily answer 15 questions on Hindi Language, which was impossible for them to answer and thus such candidates are unlikely to qualify the LDCE examination. Similar situation is for the candidates whose mother tongue is though Hindi but they have been asked to compulsorily answer 15 questions in English Language;

(f) He submits that even a candidate who had chosen English as a Language / medium for his question paper, was forced to answer 15 questions of Language Section in Hindi. Similarly, a candidate who had chosen Hindi as a Language / medium, needed to compulsorily answer the 15 questions in English Language and as such, this approach of respondent No.2 is utterly unfair;

(g) He has put reliance on the question paper of LDCE-HC(GD), 2015; the question paper of LDCE-HC(GD) examination, 2019 and other previous year question papers, to



contend that the Language Section questions were never bilingual and all the 30 questions of the said Section were always asked either completely in Hindi or in English. However, in the present LDCE-HC(GD) examination, the respondent No.2 has made it bilingual in an arbitrary manner;

(h) He submits that the aforesaid bilingual questions in Language Section are violative of the provisions of SO. As per Clause 4 of the SO and also as per the advertisement concerned herein, the LDCE-HC(GD) written test comprises of 160 bilingual multi choice question of 160 marks in the following three Sections:- (i) General Intelligence, Awareness, Numerical Ability – 60 marks (ii) Professional Knowledge – 70 marks (iii) Language Comprehension and Communication Skill – 30 marks. However, the instant examination had four sections, i.e., (i) General Intelligence, Awareness, Numerical Ability – 60 marks (ii) Professional Knowledge – 70 marks (iii) Language Comprehension and Communication Skill (General Hindi – 15 marks) (iv) Language Comprehension and Communication Skill (General English – 15 marks), which further violates the SO;

(i) That apart, it is his submission that the respondent No.2 has committed multiple errors in other questions also which pertain to Section I and II of the question paper. For example, it is his case that the respondent No.2 has asked the following wrong questions:-

- i. Question No. 6 in Section II of the first shift question paper;



- ii. Question No. 37 of Section II of the first shift question paper;
- iii. Question No. 44 of Section II of the first shift question paper;
- iv. Question No. 58 of Section II of the first shift question paper;
- v. Question No. 69 of Section II of the first shift question paper;
- vi. Question No. 22 and 31 of Section I of the second shift question paper;
- vii. Question No. 31 of the Section I of the second shift question paper;
- viii. Question No. 9 of Section II of the second shift question paper;
- ix. Question No.11 of Section II of the second shift question paper;
- x. Question No. 17 of Section II of the second shift question paper;
- xi. Question No. 24 of Section II of the second shift question paper;
- xii. Question No. 32 of Section II of the second shift question paper;
- xiii. Question No. 37 of Section II of the second shift question paper;
- xiv. Question No. 66 of Section II of the second shift question paper.



(j) He submits in the past too, the respondent No.2 has committed similar mistakes / error in LDCE-HC(GD), 2019 and as such, this Court had directed the respondent No.2, in the said case, vide order dated January 21, 2022 passed in ***W.P.(C) 1141/2022***, to decide the objections raised by the petitioner therein. Thereafter, vide Signal dated April 8, 2022, the respondent No.2 cancelled the aforesaid examination in view of demonstrably wrong questions asked in the said examination. Therefore, it is his case that the instant examination should also be cancelled in view of palpably and demonstrably wrong questions. Similarly, in DCE-HC(GD), 2016 examination the respondent No.2 had committed the similar mistakes and being aggrieved the examinees concerned therein had approached this Court filing multiple ***W.P.(C)s*** being ***1900/2016***, ***7415/2017*** and ***1983/2018*** and by the indulgence of this Court, the respondent No.2 admitted its mistake, issued corrected answer key, revaluated the candidates and issued revised merit list.

(k) He submits that in the examination held in 2019, there was no change in the examination pattern. Thus, the petitioners had the legitimate expectation that the same pattern will be followed in the instant examination. However, it is for the first time, in the 2023 examination, that the candidates were forced to compulsorily answer 15 Hindi Language and 15 English Language questions. Such abrupt change in pattern is arbitrary and capricious in nature;



(l) He further submits when the respondent No.2 had switched from pen / paper examination to CBT, in this examination, it had duly informed the candidates through a notification. However, no such advance intimation was given regarding the above change of pattern, which is unfair and unjust and as such, the candidates whose mother tongue was not Hindi and who had never studied Hindi in their schools were forced to answer 15 questions compulsorily in Hindi, causing grave prejudice and injustice to them, specifically, when the respondent No.2 had provided no explanation and reasonable basis for the aforesaid sudden change in the pattern of Language Section;

(m) He also submits that in the instant examination, multiple questions have been asked in utter violation of standard prescribed by the respondent No.2 in its SO. As per clause 4 of SO, the question paper was supposed to be based on 10+2 pass standard, however, majority of the questions asked in the examination were of graduation standard. Thus, the examination should be cancelled on this ground alone;

(n) Similarly, he has submitted that bare perusal of the question papers of previous years conducted by the respondent No.2 would reveal that only one passage of 60-80 words was asked by the respondent No.2. However, in the Part-C of the question paper in the instant examination more than one long passage of about 400-500 words was asked. It is his submission that such long passages of 400-500 words have been usually



asked in the main examinations of Higher / Graduate- level posts and not in 10+2 LDCE-HC (GD) level examination;

(o) Mr. Srivastava in order to justify his submissions has relied upon the judgment of the Supreme Court in the case of **UPSC v. Gyan Prakash Srivastava, (2012) 1 SCC 537** to submit that the law on the scope and ambit of judicial review of multiple choice question papers and answer key is no more *res integra* i.e., an action of a constitutional body is not immune from judicial review and if a competent judicial forum finds an impugned action as *ultra vires*, then there will be ample justification to nullify the same.

10. Similarly, reliance has been placed on the judgment of the Supreme Court in **Rajesh Kumar and Another v. State of Bihar and Others, 2013 4 SCC 690**, to submit that selection made on the basis of incorrect model answer key is not sustainable. He has also taken the aid of the judgment of the Supreme Court in **Manish Ujjwal and Ors. v. Maharishi Dayanand Saraswati, 2005 13 SCC 744**, to submit that if key answers are palpably and demonstrably erroneous, then students cannot be made to suffer for the fault and negligence of the University. Reliance is also placed on the judgment of this Court in **W.P.(C) 4976/2017** titled as **Salil Maheshwari v. High Court of Delhi and Anr.**, dated September 5, 2014 to submit that if an answer key is demonstrably wrong in the opinion of a reasonable body of persons well versed in the subject, it may also be subjected to judicial review. Similarly, in **Vikash Pratap Singh and Ors. v. State of Chattisgarh and Ors., AIR 2013 SC 3414**, the Supreme Court has held that it is a settled



law if irregularities in evaluation could be noticed and corrected then specifically, then no illegality would be said to have crept in the process of revaluation.

11. Similarly, in *Sunil Kumar Singh & Ors. v. State of U.P. & Ors., in Writ A. No. 28971/2016*, the Allahabad High Court has held that the very object of conducting the test would stand defeated in case wrong answer key is held to be sacrosanct and beyond judicial review.

12. So, on the basis of the aforesaid judgments, it is the case of Mr. Srivastava that the indulgence of this Court is very much warranted in the facts of this case, moreover, when the respondent No.2 has discriminated the petitioners and as against their seniors, who had appeared in the previous examination and as such, violated the fundamental rights of the petitioners, as enshrined under Article 14 of the Constitution.

13. Whereas, Mr. S.A. Haseeb, learned Sr.PC, appearing on behalf of the Union of India, has strongly opposed the aforesaid submissions made by Mr. Srivastava by primarily submitting that no prejudice has been caused to the petitioners as change in the examination pattern has only provided the level playing field for all the candidates who had appeared in the examination in question.

14. He also submits that insofar as the objections with regard to certain questions as highlighted by Mr. Srivastava is concerned, he states that all the questions/answers have been looked into and necessary decision thereof has been taken and acted upon, while preparing the merit list. Today, he also submits that insofar as question



No.59 is concerned, one mark has been given across the board to all the candidates.

15. Insofar as the plea of Mr. Srivastava with respect to change in pattern of Language Section, i.e., in the past all the 30 questions in the Language Section were either asked in Hindi or English language, whereas, in the examination/selection in question, the same have been divided into 15 questions each i.e., 15 questions in Hindi and 15 questions in English, which needed to be compulsorily answered by the candidates and the same has caused prejudice to all the candidates is concerned, it is the submission of Mr. Haseeb, that the same is an untenable argument, as according to him, the respondents by following the methodology of dividing the Language Section into 15 questions each, in Hindi and English, has not caused any prejudice to any of the candidates rather it enured to the benefit of the candidates as the same has provided a level playing field to all the candidates.

16. Having heard the learned counsels for the parties, at the outset, we may state here that on the last date of hearing i.e., January 04, 2024, this Court had passed the following order:-

“CM APPL. 334/2024

1. This is an application filed by the petitioners with the following prayers:

“It is, therefore, most respectfully prayed that during pendency of the instant Writ Petition, this Hon’ble Court may graciously be pleased to:

A. Grant ad-interim urgent stay on the final result dated 28.12.2023 of the HC/GD LDCE-2019 Written Examination conducted by the Respondent CRPF on 24.08.2023; and/or



B. Accordingly, issue ad-interim urgent directions to the Respondent CRPF to put the entire recruitment process of HC/GD LDCE-2019 at abeyance till the final adjudication of the present Writ Petition: and/or
C. Pass any other order or direction which this Hon'ble Court deems fit and proper in the facts and circumstances of the present case."

2. In effect, the petitioners are seeking stay of the result of promotion under the LDCE quota for the post of Head Constable pending decision of the writ petition.

3. We have heard Mr. Alakh Alok Srivastava, learned counsel for the petitioners and Mr. S.A. Haseeb, learned Senior Panel Counsel appearing for the respondents at length. It is directed that Mr. S.A. Haseeb shall bring to the Court the result of the examination, which shall reflect the marks of the last selectee and the marks obtained by the petitioners. He shall also take instructions as to in what manner the objection to question No.59 was considered and decided by the respondents.

4. Mr. S.A. Haseeb shall serve on Mr. Alakh Alok Srivastava the copy of result in the manner stated above by tomorrow, i.e., January 5, 2024.

5. Re-notify on January 8, 2024 at 02:15 PM."

17. As evident from the perusal of the aforementioned order, on the last date of hearing, we had called upon Mr. Haseeb to take instructions with regard to question No.59. Today, he submits that insofar as question No.59 is concerned, one mark each has been given to all the candidates and, hence, the plea of Mr. Srivastava qua question No.59 has been properly answered.



18. As far as other plea of Mr. Srivastava, that a prejudice has been caused to all the candidates, because the respondents have resorted to change the examination patter by dividing the Language Section into 15 questions each, in Hindi and English, is concerned, we are in agreement with the submission of Mr. Haseeb, that changing the pattern of the Language Section by providing 15 questions each in Hindi and English, shall only benefit the candidates, who belong to different parts of the country and who may not be well versed in Hindi, could do well in English and also vice versa i.e., some candidates who may not be well versed in English, could do well in Hindi. Therefore, it is to create a level playing field, the respondents have resorted to the methodology of changing the pattern of the Language Section.

19. It is also stated that the plea of legitimate expectation advanced by Mr. Srivastava, shall also have no applicability in the facts of this case. This we say so, as it has already been reiterated above, i.e., resorting to the methodology of changing the pattern of the Language Section, of asking 15 questions each, both in Hindi and English, is in the larger interest of the candidates, so that a level playing field could be provided to them and as such, no prejudice has been caused to anyone.

20. Mr. Srivastava, has also relied upon multiple judgments of this Court, High Court of Allahabad and the Supreme Court, as can be noted from paragraphs 9, 10 and 11 above, to broadly contend that if an answer key is erroneous then the same can be made subject matter of judicial review. Suffice to state, the said proposition of law, though cannot be disputed, but in the facts of this case, as discussed above, we



are of the view, the objections raised by the petitioner qua incorrect questions, have been appropriately considered and met with, by the respondents and moreover, the benefit thereof, on upholding the objections (if any), have also been extended to the candidates. Hence, the plea of Mr. Srivastava, relatable to wrong questions/answers being asked by the respondents, having been addressed by them, the same does not arise for consideration.

21. Having said so, we are of the view, the methodology that has been resorted to, by the respondents, i.e., changing the pattern of the Language Section by asking 15 questions each, both in Hindi and English language, shall have the effect of creating a level playing field for all the candidates, inasmuch as, candidates who are not well versed in Hindi language, surely, can properly attempt all the questions asked in English language, and as a corollary, can score good marks, to that extent. Similarly, if a candidate is not well versed in English language, can score appropriate marks in Hindi, being well versed in that language. It goes without saying, that a candidate, who is well versed in one particular language, can score good marks in that language and the same would not mean that such a candidate has been benefited in that language. In any case, we cannot overlook the fact that the post in question having 'All India Transfer Liability', it is expected that an officer/employee, is well versed in both the languages i.e., Hindi as well as English, as it is expected from an officer, when he is posted in a place where Hindi is not spoken, to still interact in English and vice versa.



22. So, in view of our discussion above, no interference is called for, in the examination process initiated by the respondents. The petition being without any merit, the same is dismissed. No Cost.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

JANUARY 08, 2024/aky