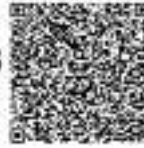


2025:PHHC:008003



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

247

**CWP-30581-2024 (O&M)
Date of Decision: 20.01.2025**

RENU SHARMA AND ORS

... Petitioners

VERSUS

HARYANA PUBLIC SERVICE COMMISSION

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Deepak Vashishth and Mr. Sunil Bhardwaj,
Advocates for the petitioners.

Mr. Gurnoor Sandhu, Advocate for the respondent.

VINOD S. BHARDWAJ, J. (ORAL)

CM-20186-CWP-2024

Disposed of as having been rendered infructuous.

MAIN CASE

Challenging the order of 06.11.2024, whereby the respondent-Commission declined the representations (Annexure P-4 and P-5) submitted by the petitioners and has disqualified them for not filling up the bubbles for booklet series in the Optical Mark Recognition sheet (hereinafter to be referred to as “OMR sheet”), the petitioners have approached this Court with a further prayer that their candidature be entertained as per merit list of the eligible candidates, and if eligible, to permit them to participate in the selection process.

The present writ petition had initially been filed by three petitioners, who were allowed to provisionally appear in the Subject Knowledge Test vide an interim order passed by this Court on 13.11.2024. Copy of the result of Subject Knowledge Test has been produced by the counsel for the respondent-Commission in sealed cover which has been opened in Court. Petitioner No.3 namely Annu bearing Roll No.17155 has not been able to secure marks higher than the cut off marks prescribed for the EWS category, hence, the present petition qua petitioner No.3 has been rendered infructuous and is disposed of accordingly. The case is now being examined with respect to the claims made by petitioners No.1 and 2, who have obtained marks higher than the cut off marks in the Subject Knowledge Test as per the result prepared by the respondent- Haryana Public Service Commission (hereinafter referred to as 'HPSC')

Learned counsel for the petitioners contends that the HPSC had issued an Advertisement bearing No.16 of 2024 on 21.06.2024 inviting applications from the eligible candidates in the public domain for filling up 805 posts of Ayurvedic Medical Officer (Group-B) in Health & Ayush Department, Haryana. The petitioners had applied for the said posts being eligible and fulfilling the prescribed qualifications. On acceptance of their applications, they were issued the Admit Cards by the HPSC to participate in the Screening Test conducted by the HPSC. The result thereof was declared by the HPSC on 09.10.2024. As per the result so declared, OMR sheets of 152 candidates were reported to have been rejected and they were consequently declared disqualified for appearing in the ongoing recruitment process. The candidature of the petitioners was also rejected by the HPSC. Aggrieved

thereof, the petitioners approached the HPSC vide representations dated 10.10.2024 as well as 18.10.2024 respectively for seeking indulgence; and to be informed about the reasons behind their disqualification and/or for rejection of their OMR sheets.

No decision was however taken thereupon and thus compelling the petitioners to approach this Court through CWP-29761 of 2024 titled as 'Renu Sharma Versus Haryana Public Service Commission' and CWP-29726 of 2024 titled as 'Preeti Gehlawat Versus Haryana Public Service Commission'. The same were disposed of by this Court vide order dated 05.11.2024 directing the HPSC to decide the representation(s) submitted by the petitioners by passing speaking order.

In compliance thereof, the HPSC decided their representation(s) and declined the same vide impugned order dated 06.11.2024 by assigning the following the reason:

"It is intimated that it has been found that you did not circle your Booklet Series in the OMR Sheet of the Screening Test. Hence, your OMR Sheet was not evaluated during the scanning process. There is no provision for manual checking of OMR Sheets. Further, it was clearly mentioned in point no. 22 of the "Important Instructions for the candidates mentioned in the Admit Card that

"Any omission or discrepancy in filling the Roll No. Question Booklet Series and Question Booklet No. Will render the OMR Answer Sheet liable for rejection".

Further it was clearly mentioned in the OMR Sheet that

"Any omission or discrepancy in filling the Roll No. Question Booklet Series and Question Booklet No. Will render the OMR Answer Sheet liable for rejection".

Since you failed to comply with these specific instructions and wrongly filled your Booklet Series in the OMR Sheet, therefore, your OMR Sheet was rejected and was not evaluated.

In view of the above, your representations, dated 09, 10 & 18.10.2024 are rejected."

Hence, the present petition has been filed.

Learned counsel for the petitioners has vehemently argued that the inadvertent omission on the part of the petitioners was to the extent of not darkening the bubbles for the booklet series and that the said omission was inadvertent and the petitioners could not receive any undue benefit therefrom and it had no possibility to vitiate the process of selection that had been initiated. He further submits that darkening of the bubbles for the booklet series was only an enabling provision for expediting the process of compilation of the result and would have no further impact. He contends that no prejudice, apart from a little inconvenience, is to be caused to the HPSC in examining the OMR sheets of the petitioners and to afford them an opportunity to compete in public employments. It is submitted that not every inadvertent error or omission should be held to be fatal and that such rigidity should not be adopted by the HPSC as it has the potential impact of ousting a meritorious candidate solely on account of an inadvertent omission(s) or oversights(s).

Learned counsel for the petitioners contends that a similar issue has also arisen for consideration before the Allahabad High Court in a batch of

writ petitions including the one titled as ***Manoj Kumar and 99 others Versus State of U.P. and another***’ passed in ***Writ-A No.20396 of 2019*** decided on ***14.02.2020*** and reported as ***(2020) 4 ESC 1716***. The relevant extract of the same is reproduced hereinafter below:

“15. Rule 12(3) of the Rules, 1998 mandates the Board to evaluate answer sheets through examiner to be appointed by the Board or through computer. Neither any material has been placed before me by learned counsels for the parties nor it has been argued by them that the instructions mentioned on the OMR Answer sheets are statutory or have statutory force. Even if it is assumed that the instructions as printed on the OMR Answer sheets have been lawfully framed by the Board and have statutory force yet in view of Rule 12(3) of the Rules, 1998, the Board cannot refuse to evaluate answer sheet of a candidate if there is no defect in Part-I of the OMR Answer sheet which relates to identity of candidate and subject opted etc. and the answer paper does not suffer from any major defect.

16. There are four sections in part-II of the OMR Answer sheet. Each section contained 63 questions on each of the four subjects in four separate blocks on the same page. The petitioners were required to answer questions in Part-II of those two subjects opted by them in Part-I and they answered it, but inadvertently they darkened one or two answer circle of questions of another subject. Such bonafide and unintentional mistake, in the absence of any statutory prohibition; cannot disentitle the petitioners from evaluation of their answers to questions in Part-II of the two subjects opted by them in part-I of the OMR Answer sheet. Rule 12(3) of the Rules, 1998 mandates Board to evaluate answer sheets of the written examination. It does not prohibit evaluation of answer sheets. Therefore, if by inadvertence a candidate has committed an unintentional/bonafide minor mistake in Part-II of

the Answer sheet as aforesaid, then the Board cannot refuse to evaluate the entire questions answered by the petitioners.

Human Error:-

*17. The concept of human error or inadvertent error has been explained in brief by Hon'ble Supreme Court in **Price Water, Coopers (P) Ltd. Vs. CIT (2012) 11 SCC 316** (paragraph 15), as under:-*

"The contents of the Tax Audit Report suggest that there is no question of the assessee concealing its income. There is also no question of the assessee furnishing any inaccurate particulars. It appears to us that all that has happened in the present case is that through a bona fide and inadvertent error, the assessee while submitting its return, failed to add the provision for gratuity to its total income. This can only be described as a human error which we are all prone to make. The calibre and expertise of the assessee has little or nothing to do with the inadvertent error. That the assessee should have been careful cannot be doubted, but the absence of due care, in a case such as the present, does not mean that the assessee is guilty of either furnishing inaccurate particulars or attempting to conceal its income."

(emphasis supplied)

18. The petitioners have opted two subjects in Part-I and marked answers to questions of those subjects in the respective sections in Part-II. Inadvertently and unintentionally, they also marked one or two circles in another section/ subject in Part-II. This can only be described as human error. The petitioners should have been careful, but a little inadvertence like the present one cannot deprive them from evaluation of their answers to questions of the subject opted, particularly when there is no statutory prohibition under Rule 12 of the Rules, 1998.

Reliance has also been placed on the judgment of the Hon'ble Supreme Court in the matter of ***Vashist Narayan Kumar Versus The State of Bihar and others*** reported as ***2024 AIR (Supreme Court) 248***, wherein under similar circumstances, the Hon'ble Supreme Court held that such inadvertent error, which is not grave or does not amount to constituting wrong or misleading information or even does not give rise to any criminal action, should not result in causing grave prejudice or irreparable loss to a candidate. A candidate cannot be penalized for an insignificant error that makes no difference to the ultimate result. The relevant extract of the same is reproduced hereinafter below:

“14. We are not impressed with the argument of the State that the error was so grave as to constitute wrong or mis-leading information. We say on the peculiar facts and circumstances of this case. Even the State has not chosen to resort to any criminal action, clearly implying that even they did not consider this error as having fallen foul of the following clause in the advertisement:-

“Instructions to fill online application form are available on the website. It is recommended to all the candidates to carefully read the instructions before filling the online application form and kindly fill the appropriate response in the following tabs. In case, the information given by the candidates found wrong or misleading, the application form will get rejected and necessary criminal actions will also be taken against the candidate.”

*15. Recently this Bench in ***Divya v. Union of India & Ors., 2023:INSC:900: 2023 (13) Scale 730***, while declining relief to candidates who acquired eligibility after the date mentioned in*

*the notification carved out a narrow exception. There, the judgment in **Ajay Kumar Mishra vs. Union of India & Ors., [2016] SCC OnLine Del 6563**, a case very similar to the facts of the present case, was noted. In Ajai Kumar Mishra (supra), Indira Banerjee, J. (as Her Ladyship then was) speaking for the Division Bench of the Delhi High Court in para 9 stated as under:-*

9. It is true that whenever any material discrepancy is noticed in the application form and/or when any suppression and/ or mis-representation is detected, the candidature might be cancelled even after the application has been processed and the candidate has been allowed to participate in the selection process. However, after a candidate has participated in the selection process and cleared all the stages successfully, his candidature can only be cancelled, after careful scrutiny of the gravity of the lapse, and not for trivial omissions or errors.

(emphasis supplied)

The exception for trivial errors or omissions is for the reason that law does not concern itself with trifles. This principle is recognized in the legal maxim - De minimis non curat lex.

16. Learned counsel for the appellant, in her written submissions, cited the following judgments in support of her proposition that inadvertent error in filling up the date of birth when no advantage is derived will not constitute a wilful misrepresentation and contended that in all those cases reliefs were given to the candidates:

- i) Arkshit Kapoor vs. Union of India, 2017 SCC OnLine Del 10154 [para 20]*

- ii) *K. Sangeetha vs. Tamil Nadu Public Service Commission (2018) SCC OnLine Mad 5075 [Paras 9 & 11]*
- iii) *Anuj Pratap Singh vs. Union Public Service Commission, 2018 SCC OnLine Del 10982 [Paras 15,16 & 21]*
- iv) *Shubham Tushir vs. Union of India, 2019 SCC OnLine Del 9831 [Paras 4 & 10]*
- v) *Staff Selection Commission & Anr. Vs. Shubham Tushir LPA No. 237 of 2020 before the Delhi High Court*
- vi) ***Poonam Pal vs. M.P. Gramin Bank, (2022) SCC OnLine MP 2921 [Paras 9-12]***

17. *In fact, in Anuj Pratap Singh (supra), as is clear from para 14 of the said judgment, the candidate unable to correct the error at the first point was forced to repeat it while submitting the application for sitting in the main exam since he had no other option. The Court accepted the explanation and condoned the error in the filling up of the column pertaining to the date of birth.*

18. *The learned counsel for the State drew attention to the verification by the appellant, of the details in a printed form furnished by the selection board. He contended that the appellant signed the form which carried the date of birth. First of all, the form was a printed form which reflected the date of birth as given by the appellant and the appellant signed the printed form on 10.03.2018. We are inclined to accept the explanation of the appellant that since the appellant was unaware of his own mistake he had mechanically signed the printed form. It is only later, on 11.06.2018, on the publication of the result that the appellant realized the error. We do not think that the appellant could be penalised for this insignificant error which made no difference to the ultimate result. Errors of this kind, as noticed in the present case, which are inadvertent do not constitute misrepresentation or wilful suppression.*

*19. In this case, the appellant has participated in the selection process and cleared all the stages successfully. The error in the application is trivial which did not play any part in the selection process. The State was not justified in making a mountain out of this molehill. Perhaps the rarefied atmosphere of the cybercafe, got the better of the appellant. He omitted to notice the error and even failed to avail the corrective mechanism offered. In the instant case, we cannot turn a Nelson's eye to the ground realities that existed. In the **order dated 22.11.2021 in C.A. No. 6983 of 2021 [Prince Jaibir Singh vs. Union of India & Ors.]**, this Court rightly observed that though technology is a great enabler, there is at the same time, a digital divide."*

Reliance has also been placed on the judgment of Hon'ble Gujarat High Court in **Special Civil Application No.21786 of 2023** titled as **Vishal Kumar Kanubhai Patel Versus High Court of Gujarat** decided on **22.08.2024** wherein an identical situation had arisen yet again. The relevant extract of the same is reproduced hereinafter below:

"3.1. The petitioners' name did not figure in the said result and in view thereof, the petitioners approached the respondent – authority by representations dated 12.11.2023, 22.11.2023 and 29.11.2023. The said representations were not answered by the respondent – authority and in view thereof, the petitioners are constrained to file present petitions, praying for the following reliefs:-

"(A) Direct the respondent authorities to include the name of the petitioner in the list of candidates who have obtained minimum qualifying marks in the Elimination Test by checking/evaluating the OMR Answer Sheet of the petitioner in connection with advertisement No.RC/1434/2022(II), Annexure-B to this petition, and/ or

(B) Direct the respondent authorities to consider the candidature of the petitioner for appointment to the post of Assistant by including his name in the list of candidates who have obtained minimum qualifying marks in the Elimination Test in connection with advertisement No.RC/1434/2022(II), Annexure-B to this petition, and

(C) Pending admission and final disposal of this petition the Honourable Court may be pleased to direct the respondent authority to reconsider the case of the petitioner for recruitment to the post of Assistant in connection with the advertisement No. RC/1434/2022(II), Annexure-B to this petition, and

(D) Pending admission and final disposal of this petition the Honourable Court may be pleased to direct the respondent authority to consider and decide the representation of the petitioner dated 22.11.2023 and 29.11.2023, Annexure-F to this petition, and

(E) Pending admission and final disposal of this petition the Honourable Court may be pleased to direct the respondent authority to permit the petitioner to participate in the Main Written Examination in connection with the advertisement No.RC/1434/2022(II), Annexure-B to this petition, and

(F) Award the cost of this petition, and

(G) Grant any other relief or pass any other order which the Honourable Court may consider as just and proper in the facts and circumstances of the case.”

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18. In light of the aforesaid undisputed facts, it is apposite to refer to the ratio laid down by the Hon'ble Apex Court in the case of Vashist Narayan Kumar vs. State of Bihar and others reported in 2024 SCC OnLine SC 2. Paragraphs 10, 11, 12, 18, 19 and 26 thereof, read thus:-

“Question for Consideration

10. *The question that arises for consideration is whether the error committed in the application form, which was uploaded is a material error or a trivial error and was the State justified in declaring the appellant as having failed on account of the same?*

Discussion

11. *Admittedly, the appellant derived no advantage as even if either of the dates were taken, he was eligible; the error also had no bearing on the selection and the appellant himself being oblivious of the error produced the educational certificates which reflected his correct date of birth.*

12. *The facts are undisputed. The appellant's application uploaded from the cyber café did mention the date of birth as 08.12.1997 while his date of birth as recorded in the educational certificate was 18.12.1997. It is also undisputed that it is the appellant who produced the educational certificates. He was oblivious of the error that had crept into his application form. It is also undisputed that the advertisement had all the clauses setting out that in case the information given by the candidates is wrong or misleading, the application form was to be rejected and necessary criminal action was also to be taken. It also had a clause that the candidates had to fill the correct date of birth, according to their 10th board certificate. The clause further stated that candidates will fill their name, father's name, address etc. correctly in the application form. It states that any discrepancy, if found, while checking the documents, the candidature of the candidate will stand cancelled. There was also a clause providing for correction of wrong/erroneously filled application forms, which stated that the errors can be corrected once by*

redepositing the application fee and filling a new application. It also provided that those filling the application on the last date could correct the application till the following day.

18. In fact, in Anuj Pratap Singh (supra), as is clear from para 14 of the said judgment, the candidate unable to correct the error at the first point was forced to repeat it while submitting the application for sitting in the main exam since he had no other option. The Court accepted the explanation and condoned the error in the filling up of the column pertaining to the date of birth.

19. The learned counsel for the State drew attention to the verification by the appellant, of the details in a printed form furnished by the selection board. He contended that the appellant signed the form which carried the date of birth. First of all, the form was a printed form which reflected the date of birth as given by the appellant and the appellant signed the printed form on 10.03.2018. We are inclined to accept the explanation of the appellant that since the appellant was unaware of his own mistake he had mechanically signed the printed form. It is only later, on 11.06.2018, on the publication of the result that the appellant realized the error. We do not think that the appellant could be penalised for this insignificant error which made no difference to the ultimate result. Errors of this kind, as noticed in the present case, which are inadvertent do not constitute misrepresentation or wilful suppression.

26. On the peculiar facts of this case, considering the background in which the error occurred, we are inclined to set aside the cancellation. We are not impressed with the finding of the Division Bench that there was no prayer seeking quashment of the results declared over the web. A

reading of the prayer clause in the writ petition indicates that the appellant did pray for a mandamus directing the respondents to consider the candidature treating his date of birth as 18.12.1997 and also sought for a direction for issuance of an appointment letter. A Writ Court has the power to mould the relief. Justice cannot be forsaken on the altar of technicalities.”

19. *In the facts of the present case also, in the opinion of this Court, the mistake committed by the petitioners herein in encircling the roll number, which does not form a part of the relevant instructions, as referred above, provide that filling of wrong entry of question Booklet number and Set Code in the OMR Answer Sheet will cause wrong examination result and the candidate himself/herself will be responsible for the same. Considering the aforesaid as a mistake also, the same is of a trivial nature and in view thereof, exercising extraordinary jurisdiction under Article 226 of the Constitution of India, the prayers, as prayed for, are required to be allowed to the extent that the respondent herein is directed to reconsider the case of the petitioners in light of the aforesaid findings arrived by this Court and declare the result of the petitioners with respect to the elimination test conducted on 02.07.2023 pursuant to the advertisement No.RC/1434/2022(II).*

19.1. *Upon declaring the result of the elimination test, if the petitioners have cleared the said test as per the prescribed criteria, the result of the written examination wherein, the petitioners appeared in the said examination by interim order passed in Civil Application No.2 of 2024 in Letters Patent Appeal No.13 of 2024 also be declared, the petitioners have not claimed equity.”*

Reference has also been made to the judgment of Hon'ble Delhi High Court in the matter of *Union of India and Others Versus Sumit Kumar* reported as **2017 SCC Online Del. 10138**.

Referring to the above, counsel for the petitioners vehemently argues that inadvertent trivial errors should not have the fatal consequences of eliminating a candidate from being considered for appointment to a public office. It is contended that where such omission does not have the impact of vitiating the process of selection or does not result in a fraudulent tampering with the final result or does not have the cascading effect of any mischievous interference in the final outcome of the process of selection, thus compromising the sanctity of the selection process to public office, any and every trivial error, act or omission should not be fatal to the future and career prospects of candidate.

Learned counsel for the HPSC, on the other hand, contends that it had specifically prescribed the instructions for filling up the requisite details in the Admit Card itself, and that it was mandatory for the candidates to fill up the question booklet series properly and that in the event of failure to fill up the bubbles for the booklet series in the prescribed manner, the candidature of the candidate is liable to be rejected. The relevant extract of the instructions issued by the HPSC are reproduced hereinafter below:

“IMPORTANT INSTRUCTIONS FOR THE CANDIDATES

2. *Candidate should carefully read and follow the instructions printed on the OMR Sheet and question booklet.*

10. *The candidate must write his/her Roll Number, Name and out his/her Thumb Impression in the space provided for the purpose on OMR/ Answer Sheet and Question Booklet. The candidate must not write anything on the Question Booklet/OMR (Answer) Sheet except for the purpose for which pace has been provided.*
13. *The OMR Sheet will be triplicate (in the nature of 2 attached carbon copy). The filling up of information/attempting of answers shall be on original OMR sheet only. After completion of Examination duplicate OMR sheet (candidates copy) attached there-under is to be detached of/take away for personal use by the candidate. Result is to be prepared by scanning of original OMR sheet only. So it should be carefully detached at the risk and responsibility of the candidate lest it becomes unfit for scanning. Further, candidate shall be responsible for detaching the original OMR sheet & Commission's carbon copy and for further handing over both to invigilator.*
22. *Any omission or discrepancy in filing the Roll Number, Question Booklet Series and Question Booklet Number will render the OMR Answer Sheet liable for rejection.*
23. *The original OMR Sheet will be scanned by the computer so fill/darken the circle completely and properly. It should not be folded or damaged in any manner by the candidate.”*

(Emphasis Supplied)

It is submitted that the petitioners No.1 and 2 failed to darken the bubbles in the booklet series as a result whereof, the computer cannot scan the answers attempted by the petitioners. He contends that under similar

circumstances, the decision of the Public Service Commissions in rejecting candidature of a person already stands upheld in different judgments by various Courts.

Reliance is placed on the judgment in the matter of ***State of Tamil Nadu Versus G. Hemlatha*** reported as ***(2020) 19 SCC 430***. The relevant extract of the same is reproduced hereinafter below:

“2. The Respondent came to know that another candidate belonging to the same community to which she belongs (Most Backward Class) was selected in spite of her performance not being satisfactory. The Respondent made a representation to the Commission to furnish her marks in the written examination. On 07.01.2019, the Commission conveyed to the Respondent that her Law Paper 1 written examination was invalidated in view of violation of the Instructions to Applicants (hereinafter referred to as ‘the Instructions’) issued by the Commission.

3. The Respondent filed a Writ Petition in the High Court for a direction to declare her result and appoint her as a Civil Judge, provided she has secured more marks than the last selected candidate in the Most Backward Class category. The High Court directed the Commission to announce the results of the Respondent in Law Paper-1 of the main written examination. If she was found qualified, the Commission was directed to conduct the interview of the Respondent as a special case. The Commission was further directed to complete the exercise and announce the final result of the Respondent within a period of four weeks from the date of the judgment. Being dissatisfied with the said judgment of the High Court, this appeal is filed.

4. The Respondent contended before the High Court that she did not violate any of the conditions stipulated by the

Commission. She complained that the Commission wrongfully invalidated her Law Paper-1. The High Court summoned the answer sheets and found that the Respondent had underlined the answer sheet with pencil at several places in Law Paper-1. The High Court was also of the opinion that such marking was in clear violation of Instruction 22 (1)(II) of the Instructions issued by the Commission which prohibits candidates from using a pencil for any purpose. Instruction 22 (1) (II) provides that:

“Penalty for violation of Commission’s instruction in the descriptive type examination.

The answer books of the applicants will be invalidated/marks deducted/ debarred for violations of any one or more of the instructions, besides initiating criminal action wherever necessary.

1) Invalidation

(i). ...

(ii). Usage of whitener, sketch pens, pencil, colour pencils, multi-colour pens, Crayons or any other writing materials, for any purpose.”

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8. We have given our anxious consideration to the submissions made by the learned Senior Counsel for the Respondent. The Instructions issued by the Commission are mandatory, having the force of law and they have to be strictly complied with. Strict adherence to the terms and conditions of the Instructions is of paramount importance. The High Court in exercise of powers under Article 226 of the Constitution cannot modify/relax the Instructions issued by the Commission.

9. The High Court after summoning and perusing the answer sheet of the Respondent was convinced that there was infraction

of the Instructions. However, the High Court granted the relief to the Respondent on a sympathetic consideration on humanitarian ground. The judgments cited by the learned Senior Counsel for the Respondent in Taherakhatoon (D) By LRs v. Salambin Mohammad and Chandra Singh and Others v. State of Rajasthan and Another in support of her arguments that we should not entertain this appeal in the absence of any substantial questions of law are not applicable to the facts of this case.

10. In spite of the finding that there was no adherence to the Instructions, the High Court granted the relief, ignoring the mandatory nature of the Instructions. It cannot be said that such exercise of discretion should be affirmed by us, especially when such direction is in the teeth of the Instructions which are binding on the candidates taking the examinations.

11. In her persuasive appeal, Ms. Mohana sought to persuade us to dismiss the appeal which would enable the Respondent to compete in the selection to the post of Civil Judge. It is a well-known adage that, hard cases make bad law. In Umesh Chandra Shukla v. Union of India, Venkataramiah, J., held that:

“13.... exercise of such power of moderation is likely to create a feeling of distrust in the process of selection to public appointments which is intended to be fair and impartial. It may also result in the violation of the principle of equality and may lead to arbitrariness. The cases pointed out by the High Court are no doubt hard cases, but hard cases cannot be allowed to make bad law. In the circumstances, we lean in favour of a strict construction of the Rules and hold that the High Court had no such power under the Rules.

12. Roberts, CJ. in Caperton v. A.T. Massey Coal Co. Inc. held that: (SCC Online US SC)

“Extreme cases often test the bounds of established legal principles. There is a cost to yielding to the desire to correct the extreme case, rather than adhering to the legal principle. That cost has been demonstrated so often that it is captured in a legal aphorism: “Hard cases make bad law.”

13. *After giving a thoughtful consideration, we are afraid that we cannot approve the judgment of the High Court as any order in favour of the candidate who has violated the mandatory Instructions would be laying down bad law. The other submission made by Ms. Mohana that an order can be passed by us under Article 142 of the Constitution which shall not be treated as a precedent also does not appeal to us.*

Reference is also made to the judgment of the Hon'ble Rajasthan High Court in the matter of ***Payal Soni & Another Versus Rajasthan High Court and Another*** bearing No.***CWP-11861 of 2024*** decided on ***23.07.2024***.

The relevant extract of the same is reproduced hereinafter below:

“4. Admittedly, petitioner no.1 did not fill and left blank the marked space for filling question booklet series. Petitioner no.2 did not darken the bubble relating to question booklet series.

*5. As the examination system of evaluation of **OMR sheets** is based on system based evaluation mechanism using machines, the respondents issued directions and instructions to all the candidates including the petitioners giving detailed guidelines and instructions with regard to marking/darkening in the **OMR sheets**. The reason is that if the **OMR sheet** is not properly filled up as per instructions, then the same cannot be captured and evaluated by the mechanised system. Under the instructions for marking/darkening the bubbles in*

*the **OMR sheets**, clause 6 clearly stated that while filling/darkening the series of QPB-Question Paper Book in the **OMR sheet**, bubble of series wrongly darkened or darkened by wrong method or darkened multiple bubbles or not darkened bubble or spread of ink over the bubble may disrupt the evaluation process. The **OMR** instructions also insist proper marking. If the question booklet series is not indicated through proper marking and darkening of the bubble, it is obvious that the **OMR sheet** cannot be evaluated in the system. It is for this reason that the **OMR sheet** of the petitioners could not be **evaluated** resulting in exclusion of the petitioners from the process of selection.*

6. *It is of utmost importance that in order to preserve the sanctity of the selection process for filling up posts under public employment that the entire process is not only clearly laid down but is scrupulously followed not only by the Examination Agency but also by the candidates who choose to appear in the examination. The candidate in order to ensure that he is allowed to participate in the process of selection, is required to strictly adhere to various instructions which have been given. In a given case the violation of instructions may disrupt the process of evaluation and selection process. Where the series of the question booklet is not mentioned, the OMR is not capable of being evaluated. If such a mistake has already been committed by a candidate, there is no laid down system in the selection process to allow such candidates to remove that defect in a particular manner.*

7. *Learned counsel for the petitioners submits that the respondents ought to have evolved process to allow the petitioners and other candidates who committed defaults in filling **OMR sheets** by correcting the same.*

8. *We are afraid, such a blanket relaxation would completely destroy the sanctity of the examination process. A proposition that after the **OMR sheets** are submitted, it should be again examined by some manual process or where **OMR sheets** are rejected by the evaluation system, it should be allowed to be corrected by the candidates, would completely derail the selection process and it will not only inordinately delay the process of selection but also raise suspicion, as such kind of practice is susceptible to misuse.*

9. *A Division Bench of this Court in the case of Union of India & Ors. vs. Jagdish Chandra Jat (supra) faced with similar issue of non-compliance of instruction with regard to filling up OMR sheets and relying upon Supreme Court decision in the case of State of Tamil Nadu and others vs. G. Hemalathaa and another in Civil Appeal No.6669/2019 decided on 28.08.2019 observed that the instructions issued are mandatory and have to be strictly complied, as strict adherence to the terms & conditions of the instructions is of paramount importance.”*

Reference is also made to the judgment of Hon’ble Jharkhand High Court in the matter of **Aditya Isha Prachi Tirkey Versus Jharkhand Public Service Commission** reported as **2022 SCC Online Jhar. 28**. The relevant extract of the same is reproduced hereinafter below:

“7. Having heard counsel for the parties and considering facts and circumstances of the case, this Court is of the considered view that no case is made out for any interference by this Court. The emphasis has been led to Annexure-2 series at page 21 of the writ petition, which is similar to page 33 of the counter affidavit (Annexure-C). From bare perusal of two documents, it appears that last digit of roll number i.e. 8, the petitioner has wrongly circled in the OMR sheet the digit 6. This fact also supports from the document at Annexure-C of the counter affidavit. In that

document at Annexure-C it appears that instead of digit '8', digit '6' has been circled by the petitioner. In this context, it is relevant to quote clause 4 of the advertisement which reads as under:-

"4. OMR (Optical mark recognition) answer sheet will be processed electronically. As such invalidation of answer sheet due to incomplete / incorrect filling / darkening of the bubbles on OMR sheet, will be the sole responsibility of the candidate. OMR Scanning machine will reject OMR sheet in which Roll No and Booklet series are not properly and correctly (in word or number or both as required) darkened or fill up in OMR sheet).

8. Admittedly the petitioner has wrongly darkened the last digit of her roll number and instead of digit 8, she has darkened digit '6', which is fault on her part and as per instruction in the Admit Card, such mistakes on part of the candidate, cannot be rectified by the Commission and according to the arguments advanced by counsel for the JPSC, such correction would lead to manipulation in the OMR Sheet. Thus, it is evident that the conditions/ instructions mentioned in clause-4 of the Admit Card have not been fulfilled by the petitioner herself and as such, case of the petitioner has rightly been rejected by the Commission for appearing in Mains Examination. Secondly, from the record it appears that petitioner has obtained 140 marks only in totality whereas the marks obtained by the last selected candidate under the Scheduled Tribes category is 230. Thus, plea raised by the petitioner is rejected on this score also. Petitioner cannot take the plea to add marks of second paper of General Studies which could not be evaluated or scanned by the OMR machine due to mistake or laches on part of the petitioner herself by darkening wrong roll number. At this stage this Court cannot direct the Commission to correct the same because it would amount to manipulation in the OMR Sheet. A candidate is supposed to

follow the instructions and such mistakes are not expected by the aspirants appearing in the State Civil Service Examination. Maybe the petitioner has not intentionally darkened digit 6 instead of 8, but sympathy has no place in the eyes of law. The law will prevail in view of the terms and conditions as mentioned in the Advertisement, Admit Card and that of the Rules framed by the JPSC. The Hon'ble Apex Court in the case of Ram Vijay Singh & Ors. State of Uttar Pradesh & Ors., reported in (2018) 2 SCC 357, wherein, taking into consideration its previous decisions, including the one in Manish Ujwal's case (2005) 13 SCC 744, the law was laid down by the Hon'ble Apex Court as follows:-

"30.5 In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.

31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematically precision is not always possible."

9. If the contention of the learned Senior Counsel is accepted regarding re-evaluation of the OMR sheet, it will amount to opening flood gate and a blanket order has to be issued regarding entertaining of those candidates, who have made incorrect entry in violation of clause 4 of the terms and conditions as mentioned in the admit card. This Court sitting

under Article 226 of the Constitution of India cannot interfere in such matters. No interference is warranted in this writ petition.”

Reference is also made to the judgment of Hon'ble Delhi High Court in the matter of ***Pransh Singh Versus National Testing Agency & Others*** reported as ***2024 SCC Online Del. 5347***. The relevant extract of the same is reproduced hereinafter below:

10. Essentially, the grievance of petitioner is that a “stray mark” put by him on the OMR sheet in response to question number 188 has been accounted as a marked response, and the response to question number 197 in the OMR sheet has not been taken into account by the NTA, thereby resulting in loss of marks to the petitioner in NEET (UG)-2024. The respondent, however, relies on the instructions mentioned in the OMR sheet as well as Clause 3.2.(b) of Information Bulletin to refute the claims of the petitioner.

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13. This Court is further of the opinion that the OMR sheet contained clear, specific, pre-defined and pre-declared instructions that "please do not make any stray marks on the Answer Sheet. Incorrect Marks/Stray marks may be ready by the OMR scanner". This Court's attention has also been drawn towards Clause 3.2.(b) of the Information Bulletin, which clearly mandates that in the event a candidate attempts more than 10 questions, only the first 10 attempted questions will be considered for evaluation. This Court also takes note of the fact that as per the guidelines, it is provided that there will also be negative marking for Section B. Thus, since the petitioner had attempted question numbers 186 to 192 (including question number 188) and 194 to 196 in Section B, the 11th question being question number 197 could not have been considered for evaluation.

14. To sum up, this Court is of the opinion that every candidate taking the exam, i.e. NEET (UG)-2024 was specifically and clearly informed about the instructions in respect of the filling of the OMR sheets, which has been reproduced hereinabove in paragraph number 07. The original OMR sheet filled by the candidate/ petitioner herein was also perused by this Court. Considering the same, this Court is of the opinion that the present petitioner was well-aware that in case he fills the circle against the question, it will be scanned by the OMR reader/scanner, and further that only the first 10 attempted questions will be considered for the purpose of calculating the marks. As noted above, when the original OMR sheet was produced before this Court, which was also shown to learned counsel for the petitioner for his satisfaction, this Court had noticed that the circle against question number 188 was more than half filled, and thus, the same was counted as “attempted” by OMR scanner. It is also to be noted that every OMR sheet is individually scanned by two scanners.”

Reference is also made to the judgment of this High Court in the matter of **Meena Kumari Versus State of Haryana and others** reported as **2024 SCC Online P&H. 11239**. The relevant extract of the same is reproduced hereinafter below:

“2. As per stand taken in the written statement filed on behalf of the Commission, the petitioner scratched/smudged answer to question no.30 of Paper Code-A on the OMR Sheet. As per the instructions issued to the examinees, in the event of scratching/smudging of OMR Sheet, the same were liable to be cancelled. Accordingly, the petitioner’s OMR Sheet was not evaluated, and her candidature was rejected.

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4. *Since the petitioner's candidature was rejected on the basis of clear instructions issued to the examinees not to scratch/smudge OMR Sheet, which was undisputedly scratched by the petitioner, no exception can be taken to the Commission's decision in rejecting her candidature."*

Reference is also made to the judgment of this High Court in the matter of ***Sonu Versus State of Haryana and Others*** reported as **2022 SCC Online P&H 1977**. The relevant extract of the same is reproduced hereinafter below:

"3. Pursuant to notice of motion having been issued as far back as in 2019, reply has been filed on behalf of respondent No.2, wherein a categoric stand has been taken that the candidature of the petitioner stands rejected on account of the fact that there was smudging on his OMR answer sheet.

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6. *In view of the categoric stand taken that the OMR sheet of the petitioner was not evaluated on account of smudging, this Court would find no ground to interfere especially in view of the fact that there are specific instructions issued to the candidates on the admit card itself. A perusal of instruction No.6 is reproduced hereunder:-*

"6. Candidates are warned not to fold, tear, destroy or make any stray marks on the OMR Answer Sheets. Use of Eraser, Nail, Blade, White Fluid/Whitener etc. to smudge, scratch or damage in any manner the OMR sheet during Examination is strictly prohibited. Candidature of candidates using Eraser, Blade, Nail or White Fluids/Whitener to smudge, scratch or damage the answer Sheets shall be cancelled."

No other argument has been advanced nor any other judgment cited by the counsel for the respective parties.

The question which arises for consideration of this Court is as to whether an inadvertent failure on the part of a candidate in filling up the bubbles for marking the booklet series would be a trivial error which can be condoned or is a major lapse rendering his/her candidature liable to be rejected with no opportunity. The terms and conditions relied upon by the HPSC thus need to be examined. The same have already been extracted in the preceding part of the judgment.

It is evident from a perusal of the judgments relied upon by both the parties that the Courts have relied upon the necessity to preserve the sanctity of the selection process while allowing or dismissing the respective petitions. In circumstances where the cause had been trifling and having no prejudicial impact on the sanctity of procedure for appointment to public office or where such a lapse or omission is not detrimental to the final outcome without doubting or eroding the faith of people in the sanctity of the process.

It is also required to be kept in mind that rejecting a candidature of a person is the extreme consequence of an omission and while being a guardian of fairness of the selection process, the Court is also expected to balance the aspirations of the competing candidates considering that public employment is a scarce opportunity which is available occasionally. In such a stage of anxiety laden competing pressure, a candidate may, at one point, commit an oversight, an act/omission that is innocuous and having no meaningful impact, but the consequence of that failure should not haunt a

person for the rest of his life. Even though, in cases, where rejection of candidature has been upheld to give finality to the selection process and to avoid a perceptive doubt in public mind against revision of merit list, however, the recent events have largely shown a repetitive trend of every final result being revised over and over again.

Thus no undue over significance can be extended to an argument that sanctity of selection process may be circumspect due to any revision at the instance of a person aggrieved or that fatal consequence is the only outcome of a lapse by a candidate, irrespective of its significance or magnitude.

In the above context and background, the matter is being examined noticing that even though it has been set out in the instructions issued to the candidates that they have to be carefully read and followed by the respective candidates and it also prescribes that in the event of any omission or discrepancy in filling up the roll number, question booklet series and question booklet number, the same would render the OMR sheet liable for rejection. The condition No.23 gives the reason for the same as that the original OMR sheet is to be scanned by the computer, hence, the circles are to be darkened/filled up completely and it should not be folded or damaged in any manner by the candidate. The filling up of the question booklet series is only for facility of an expedient evaluation of the OMR sheets as the computer is to pick up the answer keys on the basis of the data filled in and pertaining to the question booklet series, lest the final result may suffer from any discrepancy.

It is evident from reading of condition No.22 that it uses an expression “will render the OMR sheet liable for rejection”.

“Rendering the OMR liable for rejection”, has to be understood correctly. “Liable”, as is defined in Black’s Law Dictionary, 8th Edition is an adjective which means as under:

- (1) Responsible or answerable in law; legally obligated.
- (2) (of a person) subject to or likely to incur (a fee, penalty etc.).

Hence, liability to the extent of rejection of candidature is a ‘likely consequence’ and it may not be a compulsory/mandatory consequence. The express “liable” thus implies a possibility or probability of incurring or subjecting to a consequence and it may not be the only consequence. There is thus an element of discretion which inheres in the expression ‘.....liable for rejection’. If the intent was to reject the candidature, the condition would have been differently worded as would prescribe the consequences with no possibility or probability of discretion. Thus the rejection of the answer sheet/OMR sheet is not mandatory but is an empowering provision authorizing the HPSC to reject candidature in a befitting case. The crucial aspect however to be borne in mind by a Public Authority is as to whether the error has the potential of compromising the sanctity of the process of selection or eroding public faith in the process of selection.

It would be relevant at this juncture also to record that on a specific question put to the counsel for the HPSC, he fairly conceded that a mere failure on the part of a candidate in filling up the bubbles for identifying the booklet series would not lead to any prejudice to the final outcome and it does not have the potential of damaging or discrediting the entire result. He also submits that the OMR sheets have all along been with HPSC and the attempt of questions is in no way altered and that on filling up the booklet

series bubbles, the computerized evaluation can be done expeditiously and that the series can be validly determined without any chance of foul play. The fair stand taken by the counsel for the HPSC is appreciated by this Court.

Given the aforesaid aspects and considering it from the perspective that the counsel for the HPSC also does not express any apprehension of any foul play, fraud, misrepresentation or tampering of the final result or any possibility of vitiating of the selection process or creating doubts with respect to the sanctity of the selection process, this Court feels that such a trivial omission is required to be resorted to its extreme only in befitting circumstances, where the omission would have a semblance of vitiating the selection process or creating reasonable doubts and apprehensions in the minds of the general public that the final outcome of the selection process is likely to be severely compromised. None of the said circumstances, however, are alleged to exist in the present case.

In the said factual and undisputed background, it would be apposite to refer also to the judgments relied upon by the counsel for the HPSC.

On perusal of the same, I find that the same would not be applicable to the fact scenario of the present case. Insofar as the judgment of Hon'ble Supreme Court in the matter of *G. Hemlatha (supra)* is concerned, the candidate therein had underlined the answer sheet with a pencil at several places which was in violation of the instructions issued by the Commission. The object behind prescribing such condition is to ensure that the answer sheet is not identified at any later point of time when secret coding is done and identity is concealed. Apparently, no such instance, which has the probability

of vitiating the selection process or creating reasonable apprehension about the sanctity thereof, arises in the present case.

Similarly, the judgment of the Punjab and Haryana High Court in the matter of *Meena Kumari and Sonu (supra)* would also not be applicable since the same are also the instances of smudging on the OMR sheet, which could have the potential of identification of the paper book.

So far as the judgments of the Hon'ble Rajasthan, Jharkhand and Delhi High Courts are concerned, while giving due deference to the same, I am of the opinion that the said judgments have not examined the final impact of such an omission under a normative law and have merely relied on a pure theory by a plain reading of the clause. I find that the assessment of similar clause as undertaken by the High Court of Allahabad as well as the High Court of Gujarat is based upon the purposive reading.

A Court of Law, while applying terms and conditions of a clause, is enjoined upon to also analyze and assess the final impact thereof. Undoubtedly, securing a public employment is a dream for a common person and the failure to compete in the same solely due to certain inadvertent omissions would crush the entire career prospects of a candidate, more so, it is only occasionally that advertisements for such public employment are issued. Hence, enforcement of such extreme power should be made once there is a reasonable doubt or apprehension of mischief in so doing, but not where a mischief is clearly ruled out and that the effect of the omission/error would have no reflection on the sanctity or security of the process of selection.

Further, so far as judgment of Delhi High Court in the matter of ***Pransh Singh (supra)*** is concerned, the same is not applicable to the facts of the present case.

Having considered the arguments by the counsel for HPSC on all the aforesaid facts, I find that the adaptation of the view taken by the HPSC for rejection of the candidature of the petitioners No.1 and 2 above on the ground of failure of the petitioners to fill up the bubbles for the booklet series cannot be upheld.

The counsel for the HPSC has also fairly stated that no prejudice or irreparable loss is likely to occur to any other person, who being eligible has already competed in the process of selection alongwith the petitioners.

For the reasons noticed above, the present writ petition is allowed qua the petitioners No.1 and 2 namely Renu Sharma and Preeti Gehlawat respectively. The HPSC is accordingly directed to scan the OMR sheets of the said petitioners. It is made clear that only in the event of the petitioners securing the prescribed qualifying marks in the evaluation of the OMR sheets for the screening test, would they be eligible to participate in the further selection process.

Learned counsel for the HPSC contends that for filling the bubbles for the booklet series, petitioners would be required to visit the office of the HPSC so that their OMR sheets can be scanned.

Learned counsel for the petitioners has no objection to the same.

Accordingly, the petitioners No.1 and 2 are directed to appear in the office of the Secretary, Haryana Public Service Commission on or before 28.01.2025, whereupon the HPSC shall carry out the evaluation of the OMR

sheets for screening of the petitioners and to ascertain the eligibility of the petitioners to appear in the Subject Knowledge Test. The petitioners shall also carry their Admit Cards and their own copy of OMR sheets for facility of Commission, if so required.

Needless to reiterate that the petitioners would not be eligible to participate in the further process of selection on their failure in clearing the minimum bench marks/cut off marks prescribed by the HPSC for candidates to appear in the Subject Knowledge Test.

The result produced today in a sealed cover by the counsel for the HPSC during the course of hearing has been resealed and returned.

Petition stands allowed accordingly.

All other misc. application(s), if any, also stand(s) disposed of accordingly.

JANUARY 20, 2025.
rajender

(VINOD S. BHARDWAJ)
JUDGE

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