

(2012) 05 SC CK 0041

In the Supreme Court Of India

Case No : Civil Appeal No. 4128 of 2012 (Arising out of SLP (C) No. 31804 of 2010)

Poonam Rani @ Poonam

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 01-05-2012

Acts Referred:

Citation : AIR 2012 SC 1811 : (2012) 5 AWC 4589 : (2012) 114 CLT 528 : (2012) 3 JCR 107 : (2013) 1 JLJR 1 : (2013) 1 PLJR 19 : (2012) 5 SCALE 39 : (2012) 6 SCC 596 : (2012) 2 SLJ 299

Hon'ble Judges : Sudhansu Jyoti Mukhopadhaya, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : V.K. Jhanji, Vaibhav Kumar and Jyoti Mendiratta, for the Appellant; Kamal Mohan Gupta, Gaurav Teotia and Sanjeev Kumar, for the Respondent

Final Decision : Disposed Of

Judgement

G.S. Singhvi, J.—Leave granted.

2. Whether the Haryana Staff Selection Commission (for short, 'the Commission') could destroy the answer sheets/papers of the written examination in violation of the policy decision taken vide resolution dated 1.10.1994 and whether the High Court committed an error by dismissing the writ petition filed by the Appellant questioning the selection made by the Commission for recruitment of Lecturers in Hindi (Education Department) are the questions which arise for consideration in this appeal filed against judgment dated 29.6.2010 of the Division Bench of the Punjab and Haryana High Court.

3. In response to an advertisement issued by the Commission on 20.7.2006, the Appellant, who belongs to Scheduled Caste (SC) applied for the post of Lecturer in Hindi. At that time, she was having the qualifications of M.A. (Hindi), M. Phil. (Hindi) and Ph.D. in Hindi. She appeared in written examination conducted by the Commission, the result whereof was declared on 21.6.2008. She was

interviewed along with other candidates who had cleared the written examination. The result of the selection was notified on 14.10.2008. The Appellant's name did not figure in the list of the successful candidates.

4. Immediately after declaration of the result of written examination, the Appellant submitted an application to the Commission through her advocate under the Right to Information Act, 2005 (for short, 'the Act') for supply of the details of the marks secured by the female candidates belonging to Scheduled Caste, who had qualified the written examination. She repeated this request vide letter dated 28.7.2008. After three days the State Public Information Officer sent communication dated 31.7.2008 to the Appellant's advocate informing her that the marks of the candidates cannot be disclosed because final result of the selection was yet to be declared. The Appellant filed an appeal before the Information Commissioner, Haryana, who advised her to file an appeal before the 1st Appellate Authority-cum-Secretary of the Commission. Thereupon, the Appellant filed an appeal through her advocate, but the same was not decided. She then filed CWP No. 18946 of 2008 in the Punjab and Haryana High Court, which was disposed of by the learned Single Judge on 5.11.2008 and a direction was given to the Secretary of the Commission to decide the writ petition by treating it to be a representation and pass a speaking order. Thereafter, the Secretary of the Commission passed order dated 5.12.2008 and rejected the Appellant's representation on the ground that she had secured 117 marks out of 225 as against 119 marks secured by the last selected candidate of Scheduled Caste female category.

5. The Appellant challenged the rejection of representation in CWP No. 136 of 2009 and prayed that the selection made by the Commission may be quashed and a direction be issued to the Respondents to appoint her as Lecturer in Hindi against one of the posts reserved for Scheduled Caste (Female). The learned Single Judge took cognizance of the statement contained in the additional affidavit dated 18/23.9.2009 filed on behalf of the Commission that answer sheets of the written examination had been destroyed and observed that no mandamus can be issued for the Appellant's appointment because the marks of the written examination are available in the result sheet and she had not secured marks sufficient for her inclusion in the select list and no malafides had been alleged against the functionaries of the Commission. The Division Bench of the High Court dismissed the Letters Patent Appeal by reiterating the reasons assigned by the learned Single Judge.

6. Before this Court, Shri P.D. Verma, Secretary, the Commission filed affidavit dated 20.1.2011, the relevant portion of which is extracted below:

REPLY ON MERITS

2. That no question of law is involved in the present writ petition which requires adjudication by this Hon'ble Apex Court. It is respectfully submitted that the Respondent-Commission vide Advt. No. 6/2006, Cat. No. 6 advertised 251 posts,

out of which 17 posts were meant for SC (Female) category and after holding written test and interview as per published criteria, the Respondent-Commission finalized the selection and declared the result on 14.10.2008 (Annexure P-11). The Petitioner belongs to SC (Female) category and she obtained 117 marks (written test=94 and 23 in interview) as against 119 marks of last selected candidate in her category. Therefore, due to lesser marks the Petitioner could not make grade in the main selection list. Furthermore, the Petitioner has appeared in the interview and as per well settled law of the Hon'ble Supreme Court reported as 2002 (3) RSJ 507 SC Chander Parkash Tiwari v. Shakuntala Shukla, and this Hon'ble Court reported as Devki Nandan Sharma v. State of Haryana and Ors. 2002 (I) RSJ 64, if a candidate appears at the interview and participate therein then only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process. It is further submitted that in CWP No. 136 of 2009 the Petitioner had prayed before the Hon'ble High Court to show his answer sheet for the written examination held for the said post. It is respectfully submitted that in reply to Para No. 3 of the writ petition the deponent has already stated that the result of the written examination was declared on 20.6.2008 and that the answer sheet pertaining to said examination was destroyed on 25.10.2008 and at that time no writ petition on the subject was pending in the Hon'ble High Court. It is further submitted that in view of the judgments of the Hon'ble Supreme Court in the case of Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, and President, Board of Secondary Education, Orissa v. D. Suvankar (Civil Appeal No. 4926 of 2006- judgment dated 14.11.2006), the disclosures of evaluated answer sheets cannot be made to the Petitioner. However, it is submitted that the marks of the written examination of the candidates including the Petitioner are kept in the result sheet. Furthermore, while declaring the result of the written examination the unsuccessful candidates are given the liberty to apply within one month for knowing their marks in the written examination and thereafter within one month the Commission conveys the marks to such candidates. Therefore, the Petitioner has no legal right to have access to the answer sheet as per well settled law of the Hon'ble Apex Court. It is further submitted that the final result for the post of Lecturer Hindi was declared on 13.10.2008 by the Respondent-Commission and rest of the selection record (except answer sheets) such as Member sheet, Advisor Sheet, attendance sheet and application forms were destroyed by the Commission on 30.5.2009 in view of judgment of the Hon'ble Apex Court in Pritpal Singh and others Vs. State of Haryana and others, and Commission resolution dated 27.7.1992 read with resolution dated 1.10.1994. The Hon'ble High Court in the impugned order dated 29.6.2010 in LPA No. 1390 of 2010 has rightly held that before the learned Single Judge it was successfully demonstrated by the Respondent-Commission that there was no malafide in destroying the answer sheets and the same has been done as per rules/resolution passed by the Commission and also in terms of judgments of the Hon'ble Supreme Court. Therefore, in the present SLP, no

cause of action subsists to the Petitioner.

7. During the pendency of the special leave petition, an application dated 14.3.2012 was filed on behalf of the Commission for placing on record additional facts and xerox copy of OMR Sheet marked Annexure R-A/1 to show that the Appellant had secured 94 marks in the written examination. Paragraph 12 of the application, which is supported by an affidavit of Shri P.D. Verma, reads as under:

12. That at the cost of repetition, it is humbly stated here that there was no mala-fide on part of the Respondents in destroying the answer sheets etc. of the written test. As per Resolution of the Commission dated 27.7.1992 the answer sheets record (except written examination, result, award list, key book) will be destroyed after six months of the declaration of the written test result and as per Resolution dated 1.10.1994 the answer paper i.e. Answer sheets (except written examination, result, award list, key book) will be destroyed after 3 months from the date of declaration of the result of selection. It appears and rightly so that there was some bona-fide mistake on part of the concerned officer/staff of the Respondent in interpreting the Resolutions of the Commission with respect to destroying the records of the written test and result etc., especially after the amendment of 1.10.1994.

(Underlining is ours)

8. The arguments in the case were heard on 13.4.2012 and the matter was adjourned with a direction that on the next date of hearing, the Secretary of the Commission shall appear along with the relevant records and the file containing the resolutions passed by the Commission on the issue of destruction of the records of the examinations. On the next date of hearing, i.e., 20.4.2012, Shri P.D. Verma, Secretary of the Commission appeared and produced the file in which various decisions were taken to destroy the records of different examinations including the examination held in 2008 for recruitment of Lecturers in Hindi.

9. Shri v. K. Jhanji, learned senior Counsel for the Appellant argued that the decision taken by the Commission to destroy the answer sheets of the written examination is ex-facie contrary to Resolutions dated 27.7.1992 and 1.10.1994 and, this by itself, is sufficient to draw an inference that the concerned functionaries of the Commission had acted with ulterior motive to deprive meritorious candidates like the Appellant of their legitimate right to be appointed against the advertised posts. Learned senior Counsel pointed out that immediately after declaration of the result of written examination, the Appellant had made a request for supply of the details of the marks secured by the female candidates belonging to Scheduled Caste category but the Commission stubbornly refused to accept her request and the relevant records were destroyed within few days of declaration of the result of selection which comprised of written test and interview. Shri Jhanji emphasised that the exercise undertaken by the functionaries of the Commission to destroy the relevant

records was intended to frustrate any possibility of judicial scrutiny of the answer scripts. Learned senior Counsel submitted that if the answer scripts has been preserved, the Appellant could have demonstrated that the same had not been properly evaluated or that the marks had not been properly calculated or transposed in the result sheet but she was deprived of this opportunity on account of wholly arbitrary and illegal action taken by the officers/officials of the Commission to destroy the answer sheets / papers. Learned senior Counsel relied upon the judgment of this Court in Pritpal Singh and others Vs. State of Haryana and others, and argued that the High Court committed grave error by refusing to entertain the Appellant's prayer for issue of a mandamus to appoint her only on the ground that the relevant records had been destroyed by the Commission.

10. Shri Kamal Mohan Gupta, Learned Counsel for the Commission supported the impugned order and argued that in the absence of any allegation of malice in fact, the Court cannot make a detailed probe into the assessment of the answer scripts or calculation of marks and issue mandamus for the Appellant's appointment.

11. We have considered the respective submissions and are satisfied that the learned Single Judge and the Division Bench of the High Court committed serious error by non-suiting the Appellant. In Pritpal Singh v. State of Haryana (supra), this Court considered the question whether the selection made by the Commission which was then known as the Haryana Subordinate Services Selection Board for the appointment of 40 Assistant Sub-Inspectors of Police was vitiated due to manipulations and fraud. The Court noted that in garb of implementing the resolution passed by the Board to create space, the answer papers of the written examinations were destroyed even before the result of the selection was declared and proceeded to observe:

The answer papers having been destroyed, it becomes impossible to ascertain what marks each candidate had secured from the examiners upon the answer papers themselves. Ordinarily, the examiners would have themselves tabulated the marks given by them against the serial numbers or names of the candidates whose answer papers they had examined. No such tabulation has been produced by the Board. There were four written papers. The Board would, in any event, have had to tabulate the marks obtained by each candidate in each of the four papers and aggregate the same for the purposes of ascertaining which of the candidates had obtained the qualifying marks or more. No such tabulation has been produced by the Board. The resolution of the Board authorising payment to the examiners shows that there were 13 of them. There were four written papers. In each subject, therefore, there were more than one examiner and the answer papers of the candidates were distributed amongst them. Ordinarily, there would be a moderation of the marks given by two or more examiners in the same subject so as to ensure that one had not been too strict and other too lenient. No papers in this behalf have been produced by the Board.

From the record produced by the Board it appears that very large sheets of paper with the names of the candidates and their qualifications, etc., typed thereon were placed before the members of the Board who interviewed them. Upon these sheets of paper there are large blanks, in that no notation has been made with regard to many candidates one after the other in serial order. Such notations as there are in pencil and they do not always indicate how the candidates had fared. Along with these very large sheets of paper there is a small strip of paper relating to the only candidate who, for some reason, was interviewed on 3-9-1989. This strip of paper shows the final assessment of the candidate at the interview. There is no corresponding tabulation produced in respect of the candidates who appeared on the earlier dates of interviews. In other words, there is no tabulation of the final marks awarded to these candidates at the interview.

12. The Court further held that the selection made by the Board was not objective and fair and deserves to be quashed. While doing so, the Court gave the following direction:

The Board is directed to preserve the answer papers of the candidates and the tabulations of marks made by the examiners for at least three months after the declaration of the results of the selection. All records of the Board itself pertaining to the selection shall be maintained in files or registers chronologically and these shall also be preserved for the aforesaid period.

13. In view of the direction contained in the aforesaid judgment, the Board passed Resolution dated 1.10.1994, the relevant portions of which are extracted below:

In view of the Hon'ble High Court order passed on 10-9-90 in C.W. P. No. 7748 of 1990 Suresh Kumar Taneja v. State of Haryana and Ors. the Board laid down the policy (vide the resolution dated 27-7-1992) to be adopted in future for destroying the old record.

In view of the orders passed by the Hon'ble Supreme Court of India dated 27-7-1994 in SLP No. 7798-807/92 (Civil Appeal No. 5027-36 of 1994 Prit Pal Singh and Ors. v. State of Haryana) the Board resolves to modify part (ii) of the resolution dated 27-7-1992 to the extent that the answer papers i.e., Answer Sheets(except Written Examination result, Award List, Key Book) will be destroyed after three months from the date of declaration of the result of the selection

14. At this stage, it will be useful to notice the contents of statement dated 12.1.2007 filed by the Ist Appellate Authority-cum-Secretary of the Commission before the Chief Information Commissioner, Haryana in Appeal Nos. 1118 and 1119/2006 titled Satish Kumar v. Secretary/Public Information Officer, Haryana Staff Commission, Panchkula. The same reads as under:

That the present appeal came up for hearing before Hon'ble Commission on

10-1-2007 and Hon'ble Commission directed the Secretary, Haryana Staff Selection Commission to apprise the commission with regard to destruction of the record relating to examination conducted by the Haryana Staff Selection Commission.

In this connection it is respectfully submitted that in view of the order passed by the Hon'ble Supreme Court of India dated 27-7-1994 in S.LP No. 7798-807/92 (Civil Appeal No. 5027-36 of 94 Prit Pal Singh and Ors. v. State of Haryana and in accordance with the resolution dated 27-2-1992 read with resolution dated 1-10-1994 the answer papers i.e., Answer sheet (Except written examination Result, Award Lists, Key Book) are destroyed after three months from the date of declaration of the result of selection (copy of the resolution dated 1-10-1994 is enclosed). This practice is being followed regularly and uniformly, it is however submitted that in case the court case is pending relating to the particular examination, challenging the validity of the examination, in that event the Answer sheets are kept preserved by the commission till the final decision of the writ petition. Further more there is no provision for re-evaluation of OMR sheet in the examination conducted by the Haryana staff selection Commission.

Pursuant to the above resolution of the commission and in view of the fact that no court case challenging the validity of the present examinations were pending, the Haryana Staff Selection Commission decided to destroy the OMR sheets of the present and other examination after three months from the date of declaration of results and accordingly same were destroyed on 30-10-2006.

15. The record produced by Learned Counsel for the Commission shows that on 17.10.2008 (the figure 10 has been interpolated) a note was submitted by the staff for destruction of the records of the written examinations held for various Group 'B' and Group 'C' posts including the post of Lecturer in Hindi (Education Department). The Secretary and other functionaries of the Commission accorded their approval on 24.10.2008. The prefatory portion of noting dated 17.10.2008 is extracted below:

Subject: -Destruction of Record pertaining to various categories of Group "B" and Group "C" posts.

It is submitted that record of various categories of posts of Group "B" and Group "C" where the result of Written Examination has been declared more than three months ago and some other categories of Group "B" and Group "C" where only interviews were conducted and the result of such categories has been declared more than six months ago, has occupied a large space in record rooms of Confidential Branch which is required to be destroyed so as to make space for keeping record pertaining to other categories of posts where interviews are being conducted by the Commission. The detail of such record which is to be destroyed is given as under.

However, the member sheet/advisor sheet/attendance sheet and application forms of the examination held in 2008 were destroyed pursuant to the decision taken sometime in February, 2010.

16. The affidavit filed by the Secretary of the Commission before this Court clearly shows that within few days of declaration of the result of the selection, the officers of the Commission destroyed the answer sheets of the written examination held in June, 2008. This was done in blatant violation of Resolution dated 1.10.1994, in terms of which the answer sheets could be destroyed after three months from the date of declaration of the result of the selection. The statement contained in paragraph 12 of application dated 14.3.2012 filed on behalf of the Commission is reflective of the casualness with which the officers of the Commission have treated the issue of destruction of the most important record, i.e., the answer sheets of the candidates which constituted foundation of the final selection. The explanation given by the Secretary for not preserving the answer sheets for three months is frivolous and wholly unacceptable because it is neither the pleaded case of the Commission nor the counsel appearing on its behalf argued that the concerned officers were not aware of Resolution dated 1.10.1994. Therefore, the action of the officers of the Commission to destroy the record cannot but be termed as wholly arbitrary and unjustified. The sole object of this exercise appears to be to ensure that in the event of challenge to the result of the selection, the Court may not be able to scrutinize the record for the purpose of finding out whether the selection was fair and objective or the candidates had been subjected to invidious discrimination.

17. The learned Single Judge and the Division Bench of the High Court did not pay serious attention to the blatant violation of the resolutions passed by the Commission on the issue of destruction of the record of the selection and erroneously assumed that in the absence of allegations of malafides against the particular officials / officers of the Commission, the Court was not required to go into the legality of their action to destroy the answer sheets within few days of declaration of the result of the selection.

18. The OMR sheets produced for the first time before this Court cannot be relied upon for recording a finding that the assessment of the candidates' performance in the written examination was transparent and fair. If the functionaries of the Commission were confident that the selection was not vitiated by any illegality, favouritism or nepotism then they should not have destroyed the answer sheets within few days of the declaration of the result of the selection.

19. The question which remains to be considered is as to what relief, if any, can be given to the Appellant. Since the record of selection has been destroyed, it is not possible for this Court to consider and decide the Appellant's plea that the assessment of her performance in the written examination was vitiated due to arbitrariness and lack of objectivity. In this scenario, the only possible course could be to direct the Commission to conduct fresh written test and interview. However, it will not be fair to confine the fresh selection to the Appellant alone.

The other unsuccessful candidates, who could not approach the High Court or this Court on account of ignorance or financial constraints cannot be deprived of their legitimate right to be again considered along with the Appellant and any direction by the Court to consider the case of the Appellant alone would result in the violation of the doctrine of equality.

20. In the result, the appeal is allowed and the impugned judgment as also the order passed by the learned Single Judge are set aside. The Commission is directed to hold fresh written test and interview for considering the candidature of the Appellant and other unsuccessful candidates after giving them due intimation about the date, time and place of the examination and interview. This exercise should be completed within a period of four months from the date of receipt/production of this order. The candidates who are selected on the basis of the exercise undertaken pursuant to this direction shall become entitled to be appointed against the vacancies which may be available on the date of finalisation of the selection. The parties are left to bear their own costs.