

(2013) 09 P&H CK 0388

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition Nos. 4223 and 15403 of 2008 (O and M)

Shiv Kumar

APPELLANT

Vs

Punjab and Haryana High Court and Others

RESPONDENT

Date of Decision : 10-09-2013

Acts Referred:

Citation : (2014) 173 PLR 382

Hon'ble Judges : Hemant Gupta, J; Fateh Deep Singh, J

Bench : Division Bench

Judgement

Hemant Gupta, J.—By this order we shall dispose of CWP No. 4322 of 2008 and CWP No. 15403 of 2008 wherein challenge is to the result declared for the appointment as member of the Haryana Civil Services (Judicial Branch). The petitioners have claimed a writ of mandamus to produce the original answer scripts and to ascertain as to whether such answer scripts were written by the petitioners and also the marks awarded to them were actually the marks reflected in the answer scripts written by them and to verify from the subject experts as to whether the awarding of marks are as per the contents written by them in the answer scripts.

2. It may be stated that the applications were invited for Haryana Civil Services (Judicial Branch) Examination-2007 vide advertisement published in June, 2007. In the result (Annexure P-8) declared on 22.12.2007, the names of the petitioners namely Rajesh Kumar and Shiv Kumar appears at merit list No. 378 and 467 respectively. In view of the merit positions, the petitioners were declared as not qualified and eligible for appointment to Haryana Civil Services (Judicial Branch).

3. Neither the Punjab Civil Services (Judicial Branch) Rules, 1951, as applicable to the State of Haryana nor the advertisement published contain any condition of revaluation of the marks. In the absence of any condition of revaluation, the petitioners cannot claim revaluation of their answer scripts and for setting aside of the same.

4. The Hon''ble Supreme Court in, Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, , has held that in the absence of provision for revaluation, a candidate has no right to seek revaluation of the answer scripts. It was held to the following effect:

28. As pointed out by a Constitution Bench of this Court in Fatehchand Himmatlal and Others Vs. State of Maharashtra, , "the test of reasonableness is not applied in vacuum but in the context of life's realities". If the principle laid down by the High Court is to be regarded as correct, its applicability cannot be restricted to examinations conducted by School Education Boards alone but would extend even to all competitive examinations conducted by the Union and State Public Service Commissions. The resultant legal position emerging from the High Court judgment is that every candidate who has appeared for any such examination and who is dissatisfied with his results would, as an inherent part of his right to "fair play" be entitled to demand a disclosure and personal inspection of his answer scripts and would have a further right to ask for revaluation of his answer papers. The inevitable consequence would be that there will be no certainty at all regarding the results of the competitive examination for an indefinite period of time until all such requests have been complied with and the results of the verification and revaluation have been brought into account.

29. Far from advancing public interest and fair play to the other candidates in general, any such interpretation of the legal position would be wholly defensive of the same. As has been repeatedly pointed out by this Court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice. It is unfortunate that this principle has not been adequately kept in mind by the High Court while deciding the instant case.

5. Following the said judgment, the Supreme Court in Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission and Others, held to the following effect:

7. We have heard the appellant (writ petitioner) in person and learned counsel for the respondents at considerable length. The main question which arises for consideration is whether the learned Single Judge was justified in directing re-

evaluation of the answer-book of the appellant in General Science paper. Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for revaluation of his answer-book. There is a provision for scrutiny only wherein the answer-books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totalling of marks of each question and noting them correctly on the first cover page of the answer-book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. In the absence of any provision for re-evaluation of answer-books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re-evaluation of his marks. This question was examined in considerable detail in Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth case (supra). In this case, the relevant rules provided for verification (scrutiny of marks) on an application made to that effect by a candidate. Some of the students filed writ petitions praying that they may be allowed to inspect the answer-books and the Board be directed to conduct re-evaluation of such of the answer-books as the petitioners may demand after inspection. The High Court held that the rule providing for verification of marks gave an implied power to the examinees to demand a disclosure and inspection and also to seek reevaluation of the answer-books. The judgment of the High Court was set aside and it was held that in absence of a specific provision conferring a right upon an examinee to have his answer-books re-evaluated, no such direction can be issued. There is no dispute that under the relevant rule of the Commission there is no provision entitling a candidate to have his answer-books re-evaluated. In such a situation, the prayer made by the appellant in the writ petition was wholly untenable and the learned Single Judge had clearly erred in having the answer-book of the appellant reevaluated.

8. Adopting such a course as was done by the learned Single Judge will give rise to practical problems. Many candidates may like to take a chance and pray for re-evaluation of their answer-books. Naturally, the Court will pass orders on different dates as and when writ petitions are filed. The Commission will have to then send the copies of individual candidates to examiners for re-evaluation which is bound to take time. The examination conducted by the Commission being a competitive examination, the declaration of final result will thus be unduly delayed and the vacancies will remain unfilled for a long time. What will happen if a candidate secures lesser marks in re-evaluation? He may come forward with a plea that the marks as originally awarded to him may be taken into consideration. The absence of clear rules on the subject may throw many problems and in the larger interest, they must be avoided.

6. In The President Board of Secondary Education, Orissa and Another Vs. D. Suvankar and Another, , the Supreme Court held that the court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by

professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It was held to the following effect:

5. The Board is in appeal against the cost imposed. As observed by this Court in *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth* case (supra), it is in the public interest that the results of public examinations when published should have some finality attached to them. If inspection, verification in the presence, of the candidates and re-evaluation are to be allowed as of right, it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking, etc. of the Candidates, besides leading to utter confusion on account of the enormity of the labour and time involved in the process. The court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It would be wholly wrong for the court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to pragmatic one was to be propounded. In the above premises, it is to be considered how far the Board has assured a zero-defect system of evaluation, or a system which is almost foolproof.

6. Award of marks by an examiner is to be fair, and considering the fact that re-evaluation is not permissible under the statute, the examiner has to be careful, cautious and has a duty to ensure that the answers are properly evaluated. No element of chance or luck should be introduced. An examination is a stepping stone on career advancement of a student. Absence of a provision for re-evaluation cannot be a shield for the examiner to arbitrarily evaluate the answer script. That would be against the very concept for which re-evaluation is impermissible.

7. The above said principle of law was also reiterated in a later judgment reported as *H.P. Public Service Commission Vs. Mukesh Thakur and Another*, . Recently in another judgment reported as *Sanchit Bansal and Another Vs. The Joint Admission Board (JAB) and Others*, relating to admission to professional Engineering Colleges, the Supreme Court observed that process of evaluation, the process of ranking and selection of candidates are of technical matters in academic field and the courts will not interfere in such processes. The Court will interfere only if there is violation of any enactment, statutory rules and regulations; malafides or ulterior motives to assist or enable private gain to someone or cause prejudice to anyone; or where the procedure adopted is arbitrary and capricious. The Court held to the following effect:

27. Thus, the process of evaluation, the process of ranking and selection of

candidates for admission with reference to their performance, the process of achieving the objective of selecting candidates who will be better equipped to suit the specialised courses, are all technical matters in academic field and the courts will not interfere in such processes. The courts will interfere only if they find all or any of the following: (i) violation of any enactment, statutory rules and regulations; (ii) mala fides or ulterior motives to assist or enable private gain to someone or cause prejudice to anyone; or where the procedure adopted is arbitrary and capricious.

8. Same view was taken by this Court in CWP 9040 of 2013 Anuj Kumar Jain v. State of Haryana, decided on 2.5.2013. Even in respect of the selection in question, the similar writ petition has been dismissed on November 3, 2009. In view thereof, we do not find any merit in the present writ petition. Thus the present writ petitions are dismissed.