

(2011) 07 P&H CK 0189

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11057 of 2010

S.P. Bhardwaj and others

APPELLANT

Vs

The State of Haryana and others

RESPONDENT

Date of Decision : 05-07-2011

Acts Referred:

Citation : (2012) 166 PLR 130

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ranjit Singh, J.—The petitioners in these three writ petitions seek a writ of mandamus for holding a separate examination in paper IV i.e. Cost Accounts and Financial Management or in the alternative for awarding 21 marks to the petitioners in the said paper on the ground that part of question Nos. 3 and 6 were out of syllabus in the examination held on 10.5.2010. As per the petitioners, question No. 1, concerning cash flow statement, was required to be solved with direct and indirect method whereas in the past examination held during the last 25 years, this was asked only in indirect method. It is further stated that direct method is not in use now a days and the syllabus also did not indicate the direct method. Plea further is that maximum number of adjustment was asked in this question, which required preparing different accounts i.e. Plant accounts, machinery accounts, debtor accounts, provision accounts. Question No. 3 of reconciliation of cost and finance account was of 15 marks and was asked in a manner that it covered both practical and theoretical part. In this background, the petitioner has made the prayer for issuing mandamus either to grant grace marks or to hold a separate examination of paper IV.

2. Almost identical issue was raised by some of the petitioners in Civil Writ Petition No. 15781 of 2010 titled1 (Virender Sharma and others v. State of Haryana and others), which was decided on 22.9.2010. The prayer made in Civil Writ Petition No. 15781 of 2010 was also for holding a separate examination in

paper V, which was Local Rules and Public Works Accounts or in the alternative for awarding 21 grace marks. Finding no merit in the prayer made in the said writ petition, the same was dismissed by this Court. The Court had considered the question of jurisdiction of the Courts and the Tribunals to exercise the power of judicial review regarding departmental examination being out of syllabus.

3. Besides other judgements, a recent judgement of the Hon''ble Supreme Court in the case of H.P. Public Service Commission Vs. Mukesh Thakur and Another, was noticed. It is held in this case that the Court can not take upon itself the task of examiner or Selection Board and examine discrepancies and inconsistencies in the question paper and evaluation thereof. It is further observed in this case that it is not possible for the High Court to examine question papers and answer sheets itself, particularly when the State Public Service Commission has assessed the inter-se merit of the candidates. After making reference to some other precedents, this Court in Civil Writ Petition No. 15781 of 2010 has held as under:-

After making reference to large number of precedents, the Hon''ble Supreme Court has held that it is the settled legal proposition that the court cannot take upon itself the task of statutory authorities. In this regard, reference is made to Hindustan Shipyard Ltd. and Others Vs. Dr. P. Sambasiva Rao and Dr. S. Prasada Rao, Government of Orissa and Another Vs. Hanichal Roy and Another, , Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, and A. Umarani Vs. Registrar, Cooperative Societies and Others, . Having so observed, the Hon''ble Supreme Court finally has held as under:-

In view of the above, it was not permissible for the High Court to examine the question papers and answer sheets itself, particularly, when the Commission had assessed the inter se merit of the candidates. If there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the examination and not for Respondent 1 only. It is a matter of chance that the High Court was examining the answer sheets relating to Law. Had it been other subjects like Physics, Chemistry and Mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court. Therefore, we are of the considered opinion that such a course was not permissible to the High Court.

4. While summing up the law in this regard, this Court observed as under:-

The law, thus, can be summed up to say that the Courts can not take on the role of examiner or the evaluator or that of the Selection Board to examine discrepancies either in the question papers or the answer sheets. Courts can not also examine the question paper or the answer sheet itself. Obviously, if the Courts would start doing so, they would assume the role of examiner, paper setter and evaluator, which is to be left to the expert body. It is with reason and purpose that the courts are to assume the answer given in the "key answer" to be correct. Any interference in this regard would tend to make them to take on

the role of paper setter, which would be beyond the purview of judicial review. As is well understood, the judicial review generally speaking is not directed against a decision but is directed against the "decision making process". Any exercise to observe that a particular question is discrepant or the answer in the key answer is not correct, would tend to be going beyond the permissible grounds of judicial review. As observed in the case, of Public Utilities Commission of the District of Columbia v. Pollak, (1951) 343 US 451, the judicial process demands that a Judge moves within the frame work of relevant legal rules and the covenanted modes of thought for ascertaining them. The fact is that on the whole Judges do lay aside private views in discharging their judicial functions.

It is accordingly observed that it would not be within the domain of this Court to examine the question papers or the answer sheets to notice any discrepancies or inconsistencies either in setting the questions or evaluation thereof. The question paper as set up was equally applicable to all the candidates, who appeared in the examination. No particular prejudice would have been caused to the petitioners in these cases. It would certainly not be within the jurisdiction of this Court to see if any question has been asked out of syllabus or some answers are required to be corrected or if some grace marks are to be awarded. The prayer made in the writ petitions would appear to be beyond the jurisdiction of this Court to grant. There is, thus, no ground to interfere in the writ petitions.

The writ petitions are, therefore, dismissed.