IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-4917-2025 (O&M)

Date of decision:28.02.2025

Diksha Kalson ....Petitioner

V/s

State of Haryana and others ....Respondents

CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Umeshwar Srivastava, Advocate
Mr. Gaurav Seherawat, Advocate
Mr. Gaurav Yadav, Advocate,
Mr. Birinder Pal, Advocate for the petitioner.

Mr. Naveen S. Bhardwaj, Addl. Advocate General, Haryana.

Mr. Balvinder Sangwan, Advocate for respondent No.2-HPSC.

Mr. Sanjay Kaushal, Senior Advocate with
Mr. Kanwal Goyal, Advocate and
Ms. Harshita Sharma, Advocate
Ms Pawel Preet Kaur, Advocate
for the respondent No.3- High Court.

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SUMEET GOEL, JUDGE

1. The petition in hand filed under Articles 226/227 of the Constitution of India, in essence, is aimed at impugning the final result dated 16.10.2024 of Haryana Civil Service (Judicial Branch) Examination to the extent that it declares the petitioner as an unsuccessful candidate by laying challenge to Clause 33 of the advertisement dated 07.11.2023 (although described in the petition as Advertisement dated 01.01.2024) (*hereinafter referred to as '07.11.2023 advertisement'*) issued for the examination in question and for issuance of ensuing direction(s) for carrying out the re-evaluation to one of the questions answered by the petitioner as also for awarding of requisite marks for same & for her consequential appointment

to the post of Civil Judge-cum-Judicial Magistrate under the Haryana Civil Service (Judicial) Examination 2023-24. The edifice of the relief(s) sought for by the petitioner is that her answer to one of the questions has not been correctly evaluated on account of which no marks were awarded to her for the said question.

2. Shorn of non-essential details, the relevant factual matrix of the *lis* in hand is adumbrated, thus:

(i) Aspiring to be a Judicial Officer, the petitioner applied in response to the *07.11.2023 advertisement* issued by the Haryana Public Service Commission (*hereinafter to be referred as 'HPSC'*) for appointment as 'Civil Judge-cum-Judicial Magistrate under the Haryana Civil Service (Judicial) Examination 2023-24' as a Scheduled Caste candidate.

(ii) *Clause 33 of the 07.11.2023 Advertisement* (*hereinafter referred to as 'Clause 33'*) reads thus:

> *"33. Re-evaluation of answer sheets is not allowed. Only re-checking of answer sheets (i.e. no part of the answer sheets has been left unevaluated or there is no totaling error) on a written request from a candidate can be allowed on payment of fee of Rs.200/- per answer sheet (in the shape of Indian Postal Orders Payable in favour of Secretary, Haryana Public Service Commission, Bays No. 1-10, Block-B, Sector-4, Panchkula) within thirty days from the date of display of marks on the official website of High Court/Commission. No separate request in this regard by any candidate or any other person on their behalf shall be entertained under the RTI Act for re-checking etc."*

(iii) The final result was announced on 16.10.2024 wherein the petitioner is stated to have secured a total of 493.10 marks but could not get selected as the cut-off marks for the final merit list for Scheduled Caste category (in which the petitioner applied) was 495 marks.

(iv) The petitioner sought for copy of her answer-sheets, through RTI, and on perusal of the same she is stated to have found that one of the questions answered by her in English examination was incorrectly evaluated and she was awarded zero marks for the same. The said question i.e. question No.2(x) (*hereinafter referred to as 'question in issue')* in the English examination reads, thus:-

> *"Q5. Make sentences using the following words:*
>
> | | | | |
> |---|---|---|---|
> | *i)* | *xxx* | *xxx* | *xxx* |
> | *ii)* | *xxx* | *xxx* | *xxx* |
> | *iii)* | *xxx* | *xxx* | *xxx* |
> | *iv)* | *xxx* | *xxx* | *xxx* |
> | *v)* | *xxx* | *xxx* | *xxx* |
> | *vi)* | *xxx* | *xxx* | *xxx* |
> | *vii)* | *xxx* | *xxx* | *xxx* |
> | *viii)* | *xxx* | *xxx* | *xxx* |
> | *ix)* | *xxx* | *xxx* | *xxx* |
> | *x)* | *eloquent"* | | |

The answer submitted by the petitioner (*hereinafter referred to as 'answer in issue')* to the *question in issue* reads, thus:

> *"(x) Public Officers become so eloquent and poised after going through the training process."*

(v) The petitioner has accordingly implored this Court on the premise that the above evaluation is incorrect, the same requires to be remedied, and she ought to have been accorded requisite marks for the same.

3. Learned counsel appearing for the petitioner; led by Sh. Umeshwar Srivastava, Advocate; have argued that a perusal of the *answer in issue* given by the petitioner to the *question in issue*, for which no marks were awarded to her, reveals that it is in fact a correct one. Learned counsel have further submitted that the petitioner had sought independent opinion from various esteemed Professors/Teachers as also English language experts including online search engines and Artificial-Intelligence database(s) and it has been confirmed to her that her answer was not only grammatically

correct but was also aligned with the Standard English. It has, thus, been iterated by the learned counsel that the said evaluation of the answer given by the petitioner has resulted in iniquitous effect upon her which violates Articles 14, 19 and 21 of the Constitution of India. Learned counsel have thus urged that, in any case, the answer given by the petitioner ought to be got re-evaluated by an independent examiner/expert and requisite marks ought to be awarded to her accordingly. It has been further iterated by the learned counsel that she has already secured 493.10 marks whereas the cut-off marks for the selection were 495 marks & hence awarding of merely 1.90 more marks would make the petitioner a successful candidate. Learned counsel has further iterated that an absolute prohibition on re-evaluation of answer sheets as contained in *Clause 33* of the *07.11.2023 advertisement* is *ultra vires* the constitutional mandate and infringes upon a candidate's right to have her answer sheet re-evaluated. Such a provision, it is exhorted, unlawfully deprives candidate(s) of the reasonable opportunity for a fair review, thereby violating the pristine constitutional guarantee of equality and fairness in the selection process. On the strength of these submissions, the grant of writ petition in hand is entreated for.

4. Learned counsel for the respondents; led by Shri Sanjay Kaushal, Senior Advocate (for respondent No.3 – Punjab and Haryana High Court at Chandigarh); have urged that there is no provision for re-evaluation in the examination process in question and, thus, the petition deserves to be rejected on this score alone. It has been iterated that the *answer in issue* has been evaluated by an expert, having requisite qualifications, and hence the plea(s) put forward by the petitioner is *sans* merits. It has been further iterated that, upon the petitioner's participation in the selection process, she

is precluded from contesting its validity. By voluntarily engaging in the selection process and participating in the examination without objection, the candidate waives the right to challenge the procedure or its outcome thereafter. It has been further urged that the inclusion of a prohibition on re-evaluation of answer sheets, such as *Clause 33* of the *07.11.2023 advertisement* in the instant case*,* aims to ensure efficiency and consistency in the selection process. Such a provision does not infringe upon any candidate's legal rights, as no candidate(s) possesses an inherent or vested entitlement to the re-evaluation of their answer sheets. On strength of these submissions, dismissal of the instant petition has been canvassed for.

5. We have heard learned counsel for the rival parties and have perused the available record.

6. The prime question, which arises for determination in the writ petition in hand is, as to whether the *answer in issue* stated by the petitioner to the *question in issue* deserves to be got re-evaluated in the facts and circumstances of the present case.

7. It is common ground between the learned counsel for the rival parties that the petitioner herein, pursuant to the *07.11.2023 advertisement,* applied for and participated in the selection/examination process. However, following the omission of her name from the final merit list, she has approached this court to impugn the *vires* of *Clause 33* of *07.11.2023 advertisement.* The petitioner, having engaged in the selection/examination process, now seeks to challenge the validity of the aforementioned clause only after the outcome of the process being unfavourable to her, raising questions regarding its legality and application. At this juncture, it would be apposite to refer herein to a judgment of the Hon'ble Supreme Court titled as

Dr. (Major) Meeta Sahai vs. State of Bihar & Ors. 2019(20) SCC 17, relevant whereof reads as under:

> *"17. xxx xxx xxx xxx xxx xxx xxx. The underlying objective of this principle is to prevent candidates from trying another shot at consideration, and to avoid an impasse wherein every disgruntled candidate, having failed the selection, challenges it in the hope of getting a second chance.*
>
> *18. However, we must differentiate from this principle insofar as the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. In a situation where a candidate alleges misconstruction of statutory rules and discriminating consequences arising therefrom, the same cannot be condoned merely because a candidate has partaken in it. The constitutional scheme is sacrosanct and its violation in any manner is impermissible. In fact, a candidate may not have locus to assail the incurable illegality or derogation of the provisions of the Constitution, unless he/she participates in the selection process."*

Indubitably, it is an ineluctable legal principle that once a candidate has voluntarily applied for and participated in a selection process, she is interdicted from subsequently challenging its legality or fairness of the process, based on the doctrine of estoppel. This principle operates to prevent a party from approbating and reprobating at the same time viz.; one cannot accept the benefits of a process while simultaneously disputing its validity. Such conduct would be contradictory and inconsistent, akin to blowing hot and cold simultaneously, undermining the integrity of the process and the principles of fairness that govern administrative procedures. The doctrine of estoppel by election is one among the species of estoppel, which essentially is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when it is his duty to speak from asserting a right which he would have otherwise had. The law is thus stated in Halsbury's Laws of England, Vol.XIII, p.464, para 5412, reads thus:

> *"On the principle that a person may not approbate and reprobate, a species of estoppel has arisen which seems to be intermediate between estoppel by record and estoppel in pais, and may conveniently be referred to here. Thus a party cannot, after taking advantage under an order (e.g. payment of costs), be heard to say that it is invalid and ask to set it aside, or to set up to the prejudice of persons who have relied upon it a case inconsistent with that upon which it was founded; nor will he be allowed to go behind an order made in ignorance of the true facts to the prejudice of third parties who have acted on it."*

Ergo, having actively participated in the selection procedure, the petitioner is inhibited from disputing its modalities at this stage.

8. The argument canvassed on behalf of the petitioner regarding validity of a provision akin to *Clause 33* (in the instant case) is devoid of merits. It is within the exclusive prerogative of the selection agency to establish and prescribe the rules, modalities & methodology governing the conduct of an examination/selection. Such rules, designed to ensure a fair and transparent process, are generally presumed to be valid. However, they may be subject to challenge only if they are found to be arbitrary, capricious or discriminatory, resulting in an unjust or inequitable outcome. Any challenge to the validity of these rules must demonstrate a clear and unequivocal violation of Constitutional principles, such as equality before the law or prohibition of unjust discrimination, rather than mere desiderium arising from unpalatable result emanating therefrom.

In the contextual backdrop of the present case, no substantive or tangible material has emerged that impels this Court to conclude that the prohibition contained in *Clause 33* is tainted by any infirmity *nay* legal infirmity. The petitioner has failed to establish any manifest flaw or illegality in the *Clause 33* that would justify judicial intervention. In the

absence of any clear violation of legal principles or constitutional rights, this Court finds no compelling or riveting cause(s) to interfere with the validity of *Clause 33.* Mere dis-satisfaction with the clause, without the presentation of concrete edifice of its legal defect, does not warrant any alteration of or annulment of the provision.

9. Now this Court proceeds to advert to the issue of correctness of the evaluation conducted by the examiner of the *answer in issue* given in response to the *question in issue* by the petitioner.

The scope of the judicial review of the veracity of evaluation done by an examiner of an answer given by a candidate to a subjective/descriptive type of question has been pondered over by this Court in a case titled as ***Jasmine vs. State of Haryana and others (CWP-4826-2025) : Neutral Citation No.2025:PHHC:026023,*** relevant whereof reads as under:

> *"9. The Hon'ble Supreme Court in the case of* ***Ran Vijay Singh*** *(supra) and* ***Vikesh Kumar Gupta*** *(supra) has enunciated, in extenso, the principles pertaining to the scope of judicial review in a plea for re-evaluation of any answer(s) given by an unsuccessful candidate to a subjective/descriptive type of question. The quintessential principle, which is unequivocally forthcoming from the ratio decidendi of the above case law(s) is that the writ Court's jurisdiction to interfere in writ petitions seeking re-evaluation of answers is exceedingly restricted, and such intervention must be exercised with utmost caution and circumspection. This principle would appertain, even more intently and earnestly, in the case of a purely descriptive type of question. The difference between an objective type question and a subjective/descriptive type of question, to say by way of a simile, is as distinct and sharp as the difference between chalk and cheese. A subjective/descriptive type of question, in stark contrast to a multiple choice/objective type of question, requires a candidate to posit an answer based on his/her knowledge and skills. No touchstone method can be effectively applied, to any answer of such a question, as a fixed yardstick is impossible herein. The evaluation by an expert/examiner, in*

context of a subjective/descriptive type of question, ought to be assumed to be correct, unless it is proven to be fundamentally wrong and proof thereof, ought not to be by way of an inferential process of reading or by a process of rationalization. In essence, subjective/descriptive questions differ fundamentally from objective/multiple choice questions, as they necessitate responses/answers based on the candidate's individual comprehension and analytical ability, rendering them inherently variable. In such cases, no absolute or objective yardstick or touchstone method can be effectively applied to gauge correctness. Consequently, the evaluation of subjective/descriptive answers by the examiner must be regarded as presumptively accurate, unless there is clear evidence of manifest error, capriciousness, or arbitrariness. In other words, it must be clearly demonstrated to be wrong, additionally it must be such as no reasonable body of men, well-versed in that subject, would regard it as correct. It is germane to annotate this tenet thus; even a reasonable group of persons cannot/may not agree on a standard/touchstone model answer to a subjective/descriptive type of question. To put it differently, a subjective type of question may result in several, differing answers as individual knowledge and skills of even the experts possessing similar qualification(s) may cause some variation(s). These postulations would apply, with more vigour, where the extant rules/regulations proscribe re-evaluation and hence the writ Court should generally adopt a "hands-off" approach in such a situation. Judicial intervention in such matter should be exercised with considerable circumspection, respecting the examiner's discretion and expertise, and refraining from undue interference unless grave injustice is apparent in the assessment process.

This Court must hasten to sound a word of caution herein. In case, the applicable rules/provisions are silent regarding re-evaluation or even when such rules/provisions proscribe re-evaluation, the writ Court may still interfere and enter into the realm of adjudging the veracity of the answer given by a candidate to a subjective/descriptive type of question.

xxx xxx xxx xxx

While a writ Court is endowed with wide and plenary jurisdiction, empowered to administer justice and uphold Constitutional rights, it must exercise such authority with due caution and judicial restraint. The Court must remain mindful of the fundamental principle that its intervention should not transgress the boundaries of functions conferred upon other institutions or authorities, particularly in matters such as the evaluation of examinations. The evaluation process is an exercise of specialized

> *discretion entrusted to the examiner, and it is not the writ Court's role to encroach upon this domain. As an age old adage goes:*
>
> *"The Judicial Arm should not reach where its grasp is neither necessary nor appropriate"*
>
> *Thus, the Court's intervention must be reserved for matters where justice demands it, not guided by an emotive appeal at the instance of an unsuccessful candidate. Any undue interference by the writ Court would be overstepping the judicial boundaries and would tantamount to usurping the discretion entrusted to the examiner. It would undermine the integrity and autonomy of the evaluation process, thereby disrupting the delicate balance of institutional roles. The writ Court ought not to interfere due to an individual dissatisfaction with the evaluation when no ex-facie defect is detectable. Concomitantly, if an evaluation is clearly deficient, surely the writ Court cannot turn a Nelson's eye to such an ex facie defect. It is only in a case where the evaluation appears to be grossly incorrect, even from the standpoint of a common-man or common sense, that the Writ Court ought to interfere. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx."*

Ergo, it is unequivocally deducible that the scope of judicial review concerning the accuracy of an examiner's evaluation of a candidate's response to a descriptive question is exceptionally limited. The writ court must exercise utmost restraint and avoid interfering with the examiner's assessment as the evaluation is a specialized function entrusted to the concerned examiner/expert. Judicial intervention is warranted only in instances where a manifest error or glaring irregularity is conspicuously apparent on the face of the record.

The factual matrix of the case in hand reflects that the concerned expert/examiner has perused the *answer in issue* given by the petitioner to the *question in issue* and thereafter has chosen to award zero marks to the petitioner for the said answer. We have perused the *question in issue* and answer thereto given by the petitioner and, in our considered opinion, it cannot be said that such evaluation was palpably incorrect or

egregious. The petitioner is indeed seeking this Court to be a super-evaluator, supplanting its view for that of the examiner/expert. This Court is indubitably convinced that, it cannot tread this path muchless in the factual matrix of the present case. Further, *Clause 33* clearly proscribes re-evaluation of the answer sheets. It only permits limited re-checking of the answer sheets, to a limited, extent i.e. as to whether some part of the answer sheet has been left unevaluated or there is a totaling error. In the case in hand, none of these situations emerge, much less are pleaded. *Ergo,* in the attending facts and circumstances of the writ petition in hand, the same deserves to be rejected.

Decision

10. In view of the preceding ratiocination, the writ petition in hand is dismissed. Pending application(s), if any, shall also stands disposed of accordingly. There shall be no order as to costs.

(SUMEET GOEL)
JUDGE

(SHEEL NAGU)
CHIEF JUSTICE

February 28, 2025
Ajay

Whether speaking/reasoned: Yes
Whether reportable: Yes