

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

LPA No. 1168 of 2010 (O&M)

& connected appeals

Date of Decision: October 4, 2010

Punjab and Haryana High Court at Chandigarh

...Appellant

Versus

Surinder Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Rajiv Narain Raina, Advocate, and
Mr. Daman Dhir, Advocate,
for the appellant.

Mr. Jagbir Malik, Advocate,
for respondent No. 1 (in LPA Nos. 1228 & 1244 of 2010)

Mr. H.N. Mehtani, Advocate,
for respondent No. 2.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

M.M. KUMAR, J.

1. This order shall dispose of a bunch of 32² Letters Patent Appeals filed under Clause X of the Letters Patent, challenging judgment dated 13.9.2010 rendered by the learned Single Judge, holding that the veracity of the answer key is at issue and after re-drafting, it was required to be applied uniformly to all the candidates. The learned Single Judge has further directed to constitute a Committee requiring it to consider the questions set out in the body of the judgment and the answers provided in the answer key in the context of the argument addressed by the counsel for the writ petitioners-respondent(s). A further direction was issued for re-drafting of the answer key, re-evaluation of

ORM sheets and preparation of new merit list.

2. Facts in brief may first be noticed. The Haryana Public Service Commission (for brevity, 'the Commission') advertised 113 posts of Haryana Civil Services (Judicial Branch), vide Advertisement No. 14 of 2010. The last date of submission of applications was 9.4.2010. The selection is to be made on the basis of competitive examination, which consists of three stages viz. (i) Preliminary Examination; (ii) Main Examination and (iii) Viva-Voce. In the advertisement under the heading 'Syllabus for Preliminary Examination' the following has been mentioned:

“Syllabus for Preliminary Examination:

The Preliminary Examination shall be of objective type with multiple-choice (which can be scrutinized by Computer) as distinguished from the written examination which shall be subjective/narrative type.

The question paper for Preliminary Examination shall be of two hours duration. It shall consist of 125 questions and each question shall carry 04 marks and for every wrong answer one mark shall be deducted.

The objective type multiple-choice question for the Preliminary Examination shall be from the syllabus for the Main Examination. The candidate shall be expected to have a general and basic over view of the main subjects and also the ability to answer questions on current events of national and international importance, Indian legal and constitutional history and governance. The candidate shall also be tested for his analytical skills and aptitude. The standard of the question paper shall be of Law

Graduate level. The object of the Preliminary Examination is to short list candidates for the Main Examination. There shall be no minimum pass marks in the Preliminary Examination. The marks obtained in the Preliminary Examination shall not be counted towards final result. **Candidates equal to 10 times the number of vacancies advertised, selected in order of their merit in the respective categories shall become eligible to sit in the Main Examination.** However, this number shall be subject to variation. If two or more candidates at the last number (the number at the end) get the equal marks, then all of them shall be considered eligible to sit for the Main Examination, warranting the corresponding increase in the stipulated ratio.”

3. On 11.7.2010, Preliminary Examination was held in accordance with the above procedure. The questions were contained in a booklet. It is pertinent to mention here that in all there were four booklets with the Series ‘A’, ‘B’, ‘C’ and ‘D’ containing similar jumbled questions at different serial numbers. On 16.7.2010, the result of the Preliminary Examination was declared by the appellant with the cut-off marks of 364 for General Category. On 12.8.2010, the appellant displayed the question paper of all the Series along with their respective answer keys on the High Court website. Thereafter various writ petitions (32 in all) were filed questioning the correctness of the answers provided in the ‘answer key’. The writ petitions came to be listed before the learned Single Judge. The learned Single Judge after noticing Question Nos. 1, 30, 36, 41, 44, 48, 62, 90, 93, 99, 113 of Booklet Series ‘A’, issued following directions, vide impugned order dated 13.9.2010:

“49. The respondents are accordingly directed to constitute

a Committee, which shall be required to consider the questions given out above and the answers provided in the 'Answer Key' in context of the arguments addressed by the learned counsel. After reconsideration of the questions contained in the Question Booklet and answers provided in the 'Answer Key', in the context of the arguments addressed by the learned counsel, the 'Answer Key' would be redrafted and the papers of the candidates would be rechecked and new merit list would be prepared.

50. Since every question answered correctly would involve award of 4 marks and every question answered incorrectly would require the respondents to deduct 1 mark, there is a likelihood that the cut off marks would be changed. The respondents, under the circumstances, would be at liberty to invite candidates equal to 10 times the number of vacancies advertised, selected in the order of merit redrafted in the respective categories in respect of all the candidates to declare their eligibility to sit in the main examination.

51. The veracity of the 'Answer Key' is at issue, which after redrafting would be applied uniformly to all the candidates.

Under these circumstances, there would be no necessity to give a hearing to any candidate who has been included in the merit list already published, however, on account of changed circumstances, cannot be included in the new merit list for taking the main examination, after application of the new redrafted 'Answer Key'.

Feeling aggrieved, the appellant has challenged the order dated 13.9.2010 by filing this bunch of appeals.

4. When the matter came up for consideration of this Court on

22.9.2010, apart from the learned counsel for the appellant, other counsel for the writ petitioners were also present in the Court. We heard detailed arguments and recorded an interlocutory order to the effect that the appellant had fairly conceded that answer to Question No. 99 of Booklet Series 'A' (similar question at different serial number in other booklets) was patently incorrect. Accordingly, the answer key in respect of Question No. 99 of Booklet Series 'A' and in other booklets was ordered to be rectified and the answer sheets were directed to be re-evaluated accordingly. Likewise, Question No. 30 of Booklet Series 'A' was also found to be defective and we thought that the best option at that stage in the larger public interest would be to delete that question from the reckoning and evaluate the answer sheets accordingly. We heard the arguments with regard to a number of other questions but were not impressed to conclude that there was anything wrong with those answers. The operative part of the directions issued by us on 22.9.2010 reads thus:-

“ In view of the above, it is ad-interim directed that in respect of Question No. 99 of Booklet Series 'A', the answer key be rectified and the answer sheets are required to be evaluated accordingly, as stated above. Question No. 30 of Booklet Series 'A' be deleted and then evaluate the answer sheets. After carrying the above exercise, the result may be declared and put on the website of the High Court forthwith.”

5. In pursuance of the aforesaid direction, re-evaluation was done by the appellant in consultation with the Haryana Public Service Commission-respondent No. 2. The arguments were heard in all the appeals. After consideration we passed the following order on 27.9.2010:-

“2. The appellant and respondent No. 2 have undertaken an exercise showing that there would be additional 29 candidates, if limit of cut-off marks is kept at 365. However, Mr. Harsh Bungar, learned counsel for respondent No. 1 (in L.P.A. No. 1246 of 2010) has pointed out that he has become eligible after re-evaluation having secured 364 marks, which is equivalent to those who have already been declared qualified for preliminary test.

3. Mr. R.N. Raina, learned counsel for the appellant has submitted that the cut-off marks after re-evaluation is 365 for the General Category candidates and it may be true that those candidates whose results have already been declared might have 364 marks. On account of earlier declaration of result, the candidates having secured 364 marks would continue to be eligible. If that be so then merely because the result of Shri Kamal Deep Singh, respondent No. 1 (in LPA No. 1246 of 2010) was not declared, he cannot be considered ineligible. The declaration of result earlier or later cannot constitute a valid basis to determine the cut-off marks or eligibility of a candidate. Once candidates belonging to general category with 364 marks are eligible to appear in the main written test then merely because their result has been declared later would not be valid ground to declare them ineligible and continue to retain those candidates who had secured 364 marks cut off limit.

4. In view of the above, it is directed that cut-off marks for qualifying the preliminary test shall be 364 irrespective whether result has been declared earlier or later and on the basis thereof, if some more candidates also acquire eligibility then they should be

permitted to appear in the main written examination. Likewise, percentage of marks for other categories like Scheduled Castes/ Backward Class/ Ex-servicemen etc. shall also be kept same. It may expand the scope of consideration and the number may slightly increase over 10 times the number of vacancies. Let the order be complied with and the result of candidates acquiring eligibility on account of cut-off marks 364 be put on the High Court Website today itself. If possible, they may also be informed by sending SMS on their Cell-phones.

5. We have been informed that the Haryana Public Service Commission has issued telegrams to some of the candidates who have secured 364 marks telling them that they were not eligible to appear in the examination. However, on account of order passed today, such candidates would acquire eligibility and the Haryana Public Service Commission shall immediately send them telegrams withdrawing the earlier intimation. The Commission shall inform them that they are considered eligible. The candidates may also be informed by SMS on their Cell-phones.

6. A copy of the order be given to all concerned under the signatures of the Bench Secretary.

7. List again on 04.10.2010.

8. A photocopy of this order be placed on the files of connected appeals.”

6. In pursuance of the above directions, all the candidates, who fulfilled the criteria of minimum cut-off marks of 364, have appeared in the examination held from October 1, 2010 to October 3, 2010 and the learned counsel

for the writ petitioners do not have any grievance left. In fact, they have stated that the order of the learned Single Judge as modified by orders dated 22.9.2010 and 27.9.2010 have resulted in modification of the direction issued by the learned Single Judge in his order dated 13.9.2010. They have further stated that these appeals, in fact, have been rendered infructuous and they are satisfied with the relief granted by the Letters Patent Bench. The aforesaid position has also been accepted by the learned counsel for the appellant and no other argument has been addressed.

7. As a sequel to the above discussion, these appeals have been rendered infructuous and are disposed of as such.

8. A photocopy of this order be placed on the files of connected appeals.

(M.M. KUMAR)
JUDGE

(RITU BAHRI)
JUDGE

October 4, 2010

Pkapor

Sr. No. **LPA No.** **Parties Name** 1168 of 2010 Punjab and Haryana High Court at Chandigarh Versus Surinder Singh & another 1228 of 2010 Punjab and Haryana High Court at Chandigarh Versus Naveen Kumar & another. 1223 of 2010 Punjab and Haryana High Court at Chandigarh Versus Shalini & another. 1224 of 2010 Punjab and Haryana High Court at Chandigarh Versus Surjeet Singh 1225 of 2010 Punjab and Haryana High Court at Chandigarh Versus Sunish Aggarwal 1226 of 2010 Punjab and Haryana High Court at Chandigarh Versus Sunny Sharma 1227 of 2010 Punjab and Haryana High Court at Chandigarh Versus Ajay Singh & Another. 1229 of 2010 Punjab and Haryana High Court at Chandigarh Versus Deepak Jindal & Another. 1230 of 2010 Punjab and Haryana High Court at Chandigarh Versus Sagar Shankar & Another. 1231 of 2010 Punjab and Haryana High Court at Chandigarh Versus Surjan Singh Chohan & Another. 1232 of 2010 Punjab and Haryana High Court at Chandigarh Versus Neeraj Kumar & Others. 1233 of 2010 Punjab and Haryana High Court at Chandigarh Versus Kartar Singh & Another. 1234 of 2010 Punjab and Haryana High Court at Chandigarh Versus Dinesh Kumar & Another. 1235 of 2010 Punjab and Haryana High Court at Chandigarh Versus Jaswinder Singh & Another. 1236 of 2010 Punjab and Haryana High Court at Chandigarh Versus Naveen Singla & Others. 1237 of 2010 Punjab and Haryana High Court at Chandigarh Versus Vikas Chaudhary Another. 1238 of 2010 Punjab and Haryana High Court at Chandigarh Versus Shivani & Another. 1239 of 2010 Punjab and Haryana High Court at Chandigarh Versus Vikas Kaushal 1240 of 2010 Punjab and Haryana High Court at Chandigarh Versus Inderpreet Kaur & Another. 1241 of 2010 Punjab and Haryana High Court at Chandigarh Versus Deepak Mittal & Another. 1242 of 2010 Punjab and Haryana High Court at Chandigarh Versus Manu Goel & Others. 1243 of 2010 Punjab and Haryana High Court at Chandigarh Versus Vishal Mehta & Others. 1244 of 2010 Punjab and Haryana High Court at Chandigarh Versus Yashwinder Paul Singh & Another. 1245 of 2010 Punjab and Haryana High Court at Chandigarh Versus Rakesh & Another. 1246 of 2010 Punjab and Haryana High Court at Chandigarh Versus Kamaldeep & Another. 1247 of 2010 Punjab and Haryana High Court at Chandigarh Versus Ravish Kaushik & Another. 1248 of 2010 Punjab and Haryana High Court at Chandigarh Versus Rohit Kaushik & Another. 1249 of 2010 Punjab and Haryana High Court at Chandigarh Versus Rashmi & Another. 1250 of 2010 Punjab and Haryana High Court at Chandigarh Versus Viren Kadyan & Another. 1251 of 2010 Punjab and Haryana High Court at Chandigarh Versus Sandeep Kumar & Another. 1252 of 2010 Punjab and Haryana High Court at Chandigarh Versus Avnika Gupta & Another. 1253 of 2010 Punjab and Haryana High Court at Chandigarh Versus Amarpal Singh & Another.

(M.M. KUMAR)
JUDGE

October 4, 2010
Pkapoor

(RITU BAHRI)
JUDGE

