CWP-17608-2019 (O&M)

Rustam Garg

vs.

Punjab and Haryana High Court Chandigarh and others

Present: Mr. Rustam Garg – petitioner in person.

Mr. Rajiv Anand, Advocate for respondent No.1.

Mr. Salil Sabhlok, Senior DAG Punjab
for respondents No. 2 & 3.

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1. The *petition in hand,* is a civil writ petition filed under Articles 226/227 of the Constitution of India seeking, in essence, correction of the totalling of the Civil Law-I examination (hereinafter referred to as '*Civil Law paper*'); correct evaluation of an answer in the English subject examination (hereinafter referred to as '*English paper'*) attempted by the petitioner in the Punjab Civil Services (Judicial Branch) Examination 2016 (hereinafter referred to as *'examination in question')*& for further consequential directions, accordingly.

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

(i) An advertisement (hereinafter referred to as '*advertisement in question*')inviting application from eligible candidates for *examination in question*was issued by respondent-Punjab Public Service Commission. The relevant rule of the *advertisement in question*, namely Clause 11 (hereinafter referred to as '*Clause 11')*, reads thus:

> *"11.0 <u>FOR MAIN EXAMINATION</u>*
>
> *Re-evaluation of answer sheets is not allowed. Only rechecking of answer sheets on a written request from a candidate addressed to the Secretary, Punjab Public Service Commission, Patiala, can be allowed on payment of fee of Rs. 500/- (in the shape of Indian Postal Orders) per answer sheet within thirty days from the date of dispatch of marks sheet or display of*

> *marks on the website of High Court/Commission. Since the candidates are being permitted to seek rechecking on payment of fee prescribed by Recruitment to Subordinate Judicial Service Committee, no separate request in this regard by any candidate or any other person on their behalf shall be entertained under the RTI Act for rechecking."*

(ii) The petitioner, aspiring to be a Judicial Officer, applied in pursuance thereto and was successful in the preliminary examination conducted therein. The petitioner, thereafter, appeared in the main examination which was conducted from 07.09.2018 to 09.09.2018.

(iii) The result was declared but the petitioner did not qualify for Viva-Voce as per the said result. Later on, the final result of the *examination in question* was declared on 29.11.2018 from which it transpired that the petitioner was awarded 472 marks in the main examination whereas the qualifying cut-off marks for the Viva-Voce was 475.

(iv) Dis-satisfied with the same, the petitioner obtained his answer sheets, as per rules. Upon perusal thereof, the cause pleaded herein is that the petitioner found 02 aspects/issues amiss therein;

*FIRST ISSUE;*a mistake pertaining to 01 mark in totalling of marks in the *Civil Law paper* was detected;

SECOND ISSUE; the answer to one of the questions in the *English paper* was not correctly evaluated. The said questionreads thus:

> *"**Q.4. Give meaning of the following words/idioms and make meaningful sentences:***
>
> | | | |
> |---|---|---|
> | *Green-horn,* | *nick of time,* | *of the first water,* |
> | *a queer fish,* | *En masse,* | *cuts no ice,* |
> | *daggers drawn* | *lip service* | *itching palm,* |
>
> *like a bull in a china shop."*

The answer submitted by the petitioner to this question reads thus:

"Ans.4 (1) Green – horn

2) Nick of time (at correct time or at a right time.

- *The child was about to fall from bed but mother came at nick of time and saved him*
- *The milk was about to boil but Rani switches of the gas at the nick of the time*

3) of the first water (of the finest quality)

- ***Mohan is a painter of the first water.***
- ***Le Carbusor was an architect of the first water***

4) A queer fish (Insentric Person)

- *Every one laugh at Ram as he is a queer fish.*
- *Keep away from Rohan, he is a queer fish*

5) En masse (of huge crowd or people or among people at large)

- *Rajiv Gandhi was the leader of En masse.*

6) Cuts no ice (having no effect)

- *His argument cuts no ice.*

7) Daggers Drawn (having enmity feeling)

- *Both loves the same girl, so the are at daggers drawn with each other*

8) Lip Service (Pretends that one joins or participating)

- *Most of the people gave only lip service for the campain against dowery.*

9) Itching Palm (bribe)

- *Raja is in the habit of Itching Palm for every work.*

10) Like a bull in a china shop (insensitive person)

- *The child entered in the antique shop and started toppling items.*
- *He was like a bull in a china shop. "*

The linchpin of the *lis* in hand, is the question pertaining to idom– *'of the first water'*(hereinafter referred to as *'question in issue'*) to which the petitioner (herein) gave two answers, the first one being '*Mohan is a painter of the first water'* (hereinafter referred to as *'first answer to question in issue').*

It is in the above factual backdrop that the *writ petition in hand* came up for adjudication before this Court.

Rival Submissions

3. The petitioner (who appeared in person when the arguments were heard) has iterated, in respect of the*first issue*, that there is a glaring error in totalling of his marks in the *Civil Law paper* which is visible to the naked eye and the said error ought to have been corrected by the respondents on their own, especially, when the same had been brought to their notice by the petitioner. It has, thus, been urged that the said 01 mark more ought to have been awarded to the petitioner in the *Civil Law paper*.

3.1. The petitioner has, in respect of the*second issue*, argued that he had submitted correct answers to the *question in issue* in the *English paper* which have not been correctly evaluated by the examiner. The petitioner has made two fold submissions in support of his plea for re-evaluation of the *question in issue* of the *English paper*. *Firstly,*he had given more than one answer in respect of some idioms including the *question in issue* and the examiner was required to examine all of them. In other words, the petitioner has implored that the examiner, if not satisfied, with the first answer ought to have evaluated the second one. *Secondly,* it has been iterated that the *first answertoquestion in issue* of the *English paper* is correct and the examiner had wrongly denied benefit thereof to the petitioner. In support of this argument, the petitioner has sought to rely upon various dictionaries/books (*viz.*Cambridge Idioms dictionary, Brewer's Dictionary of Phrases & Fable, Oxford Dictionary of English Idioms, The New International Webster's Comprehensive Dictionary of the English Language, The Universal Dictionary of the English Language, The Random House Dictionary of the English Language, Advanced Twentieth Century Dictionary, Collins

Cobuild English Language Dictionary, Rajpal Dictionary of English Idioms & Phrases, Advanced Learner's English-Hindi Dictionary etc.). The petitioner has, thus, exhorted, that the wrong evaluation of his answer to the *question in issue*' has violated the pristine Constitutional guarantee of equality and fairness in the selection process which ought to be undone by way of re-evaluation.

On the strength of these submissions, the grant of *writ petition in hand* is entreated for.

4. Upon notice of motion having been issued, the respondent No.1 (Punjab and Haryana High Court, Chandigarh) appeared through counsel and a written statement on its behalf has been filed. Shri Rajeev Anand, Advocate; raising submissions in tandem with the said written statement; has submitted in respect of the *first* issue that there was an error of 01 mark in totalling of *Civil Law* Paper, which stands rectified & duly communicated to the petitioner.

In respect of the *second* issue it has been argued that there is no provision for re-evaluation in the *examination in question* and, thus, the petition deserves to be rejected on this score alone. Learned counsel has urged that *Clause 11* clearly proscribes any such endeavour. Learned counsel has iterated that the answer to *question in issue* has been duly evaluated by an expert, having requisite qualifications, and hence the plea(s) put forth by the petitioner is *sans* merit. Learned counsel has further iterated that the petitioner; by voluntarily engaging in the selection process and participating in the *examination in question* in accordance with the mandate contained in the *advertisement in question,*has *ipso facto* waived his right to challenge the same on account of any folly therein, especially after its outcome. It has been further contended that, in circumstances where a

candidate furnishes multiple answers to a singular question, it is neither incumbent upon nor reasonable to expect the examiner to undertake an evaluation of each such response. Thus, examiner's decision to assess only *first answer to question in issue* is proper & unassailable.

4.1. The respondent No.2 (Punjab Public Service Commission, Patiala) as also respondent No.3 (Additional Chief Secretary, Department of Home Affairs and Justice Punjab, Civil Secretariat, Chandigarh) have entered appearance through counsel and have urged, primarily that the prime contesting respondent in the *lis* in hand is respondent No.1 and have accordingly toed the stand of the said respondent.

On the strength of these submissions, dismissal of the *writ petition in hand* is canvassed for.

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

Prime Issue

6. The prime question which arises for cogitation in the *writ petition in hand* is as to whether the petitioner deserves to be awarded one additional mark in the *Civil Law paper*on account of error in totalling & whether the answers to the *question in issue*given by the petitioner in *English paper* deserve to be got re-evaluated in the factual matrix of the *case in hand.*

Analysis

Re: Error in totalling of marks in Civil Law paper

7. The *first issue* pleaded by the petitioner is that the totalling of his marks in the *Civil Law paper* was incorrect, aproposwhich he had made a representation to respondent No.1-High Court. The written statement filed by the said respondent, encapsulates within itself a communication dated

27.05.2019 sent to the petitioner, which indubitably reflects that the marks awarded in the answer-sheet of *Civil Law paper*were got retotalled by the said respondent and an increase of one mark in the said paper was accorded to the petitioner. *Ergo,* this aspect of the *lis* in hand stands closed as the grievance of the petitioner stands redressed.

Re: Evaluation of Answer to question in issue in the English paper.

8. Pleading this cause, the petitioner has made two fold submission(s).

8.1. The *first* submission made by the petitioner is that he had written, more than one answer to the *question in issue* in the *English paper* and in case any one of the answer was correct, the same ought to have been evaluated by the examiner. In this regard, the petitioner has drawn the attention of this Court to his answer-sheet, which reflects that he had writtentwo answers each to three of the total ten posed idioms. This stand of the petitioner, when examined on the anvil of common sense and prudence, deserves rejection as it is not reasonable, by any stretch of imagination, that an examinee can be permitted to write multiple answers on an impulse and then expect the examiner to evaluate all of them to determine the accurate answer and also to enable such an examinee to succeed. Acceptance of such an argument would lead to manifestly absurd and untenable results, thereby undermining the very sanctity & discipline of examination process. Law, after all, is the embodiment of reason & must, at all times, adhere to the dictates of logic & common sense.The present argument, if accepted, would open the floodgates to confusion and arbitrariness in evaluation process, thereby defeating the very object of fair & meaningful assessment. The essential logical corollary that, indubitably, emerges is that only the first answer ought to be evaluated by the examiner.

8.2. The *second* submission made by the petitioner is that, even the *first answer to question in issue* is correct and the same has been wrongly evaluated by the examiner. At this juncture, it would be apposite to refer herein to a judgment passed by this Court titled as ***Jasmine vs. State of Haryana and others = 2025:PHHC:026023 = 2025 (1) PLR 385***, 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.

Article 226 is couched in comprehensive phraseology and ex facie it confers a wide power on the High Court to reach and undo injustice wherever it is found. The Constitution of India has designedly used a broad language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. Indubitably, it can issue writs in the nature of prerogative writs as commonly understood in English law but scope thereof has been widened by the use of word 'in the nature of' in Article 226. Ergo, the High Court is well endowed to issue directions and orders as well apart from writs other than prerogative writs. In other words, Article 226 enables the High Court to mould the relief(s) to meet any peculiar and complicated requirement emerging in a given case. Accordingly, it is true posit of our Constitutional jurisprudence that the jurisdiction exercised by the High Court under Article 226 calls for interference once the Court is satisfied that injustice or arbitrariness; and any restriction, whether self imposed or statutory, stands removed in such a situation and no rule or technicality in the exercise of power can stand in the way of the High Court for rendering justice. The very amplitude of the writ jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations.

xxx *xxx* *xxx* *xxx*

xxx *xxx* *xxx* *xxx*

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. A Division Bench of this Court in the case of ***Radhika Likhi*** *(supra) has enounced that where the answer submitted by the candidate appears to be incorrect even from the stand point of ordinary usage/understanding, the same requires to be got re-evaluated. Ergo, in case accentuating facts of a case receiving consideration at the hands of a writ Court so warrant, such writ Court may enter into the realm of adjudging the veracity of answer given by a candidate, even in the case of a subjective/descriptive type of question. However, such interference by the writ Court ought to be as a matter of exception nay prodigious exception, to be exercised only if compelling and extraordinary facts emerge. While permitting re-evaluation in such a case, the writ Court ought not to substitute the evaluation by its own but should refer it to another expert. It goes without saying that it is neither pragmatic nor feasible to lay any universal exhaustive yardstick or inexorable set of guidelines for exercise of such power, as every case has its own unique factual conspectus, which has to be taken into account by the Court which is seisin of the matter in question. It was said by Lord Denning, an observation which met with approval by the Hon'ble Supreme Court, that:*

> *"….Each case depends on its own facts, and a close similarity between one case and another is not enough, because even a single significant detail may alter the entire aspect. In deciding such case, one should avoid the temptation to decide case (As said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, its broad resemblance to another case is not all decisive."*

It is thus incontrovertibleproposition of law that the scope of judicial review in matters pertaining to the re-evaluation of descriptive or subjective-type answers is inherently circumscribed &the matter lies predominantly within the rubrics of the administrative and academic domain, of the duly constitutedexamining authority. The Court, in exercise of its writ

jurisdiction under Article 226of the Constitution, is neither intended nor equipped to sit as appellate body over academic evaluations, particularly when the process involves exercise of subjective, descriptive&evaluative expertise.However, in exceptional *nay* accentuating circumstances where the evaluation undertaken by the expert body is found to be manifestly perverse, or so wholly unreasonable that no rational evaluatorcould have arrived at such a conclusion, the High Court would be justified in exercising its constitutional prerogative to ensure that justice is not sacrificed at the altar of procedural sanctity.

Analyzing the case put forth by the petitioner, in the backdrop of the judgment of ***Jasmine***case (supra), this Court is of the considered opinion, that even on the touchstone of ordinary knowledge of English language, the answer given by the petitioner cannot be said to be incorrect. This Court, but of-course, cannot turn a *Nelson's eye* to such an *ex-facie* defect in the evaluation. Hence, the *first answer to the question in issue* calls for re-evaluation.

Having said that, even in accentuating circumstances as have arisen in the *writ petition in hand,* the court must exercise circumspection when it comes to re-evaluation of an answer by the Court itself. It is not within the legitimate province of this court to substitute its own evaluative judgment for that of the expert academic authority. The Court cannot arrogate unto itself the role of the examiner, for to do so would be to transgress the boundaries of judicial propriety & venture into realms where Courts lack both the training & competence.The preferable & legally tenable course, when the impugnedevaluation is found to be wholly erroneous, is not for the court to undertake the evaluation itself but rather to remit the matter to another equally competent expert or panel of experts, dissociated from the

original process, for an independent & unbiased re-assessment. Such an approach not only preserves the sanctity of the judicial process but also upholds the institutional competence. It is one thing for this Court to hold that the original assessment is infirm to such an extent as to warrant re-evaluation; it is quite another & indeed impermissible for it to delve into the academic merit of an answer & render its own evaluative opinion thereon. The latter would tantamount to transgression of judicial function and overreach into the domain statutorily reserved for designated expert body, which this Court, in exercise of writ jurisdiction, must scrupulously eschew.

Ergo, in view of the prevenient ratiocination of the peculiar factual milieu of the *writ petition in hand*, it is directed as follows:

(i) The respondents are directed to have the *first answerto the question in issue*, namely, "*Mohan is a painter of the first water*" in the *English paper*aproposthe idiom, namely, "*of the first water*" re-evaluated by an examiner, other than the examiner/evaluator who had previously examined the said answer, in accordance with extant procedure& submit (in a sealed cover) the said re-evaluation, for perusal of this Court on or before the next date of hearing.

(ii) List the matter on 11.07.2025 for further consideration.

(iii) No disposition as to costs, for the *nonce*.

(SUMEET GOEL)
JUDGE

(SHEEL NAGU)
CHIEF JUSTICE

May 27, 2025
Ajay