

Before G.S. Sandhwalia, J.

KOMAL PREET SHARMA—Petitioner

versus

PUNJAB PUBLIC SERVICE COMMISSION, PATIALA—

Respondent

CWP No. 2693 of 2016

February 10, 2016.

(A) *Constitution of India, 1950—Art.226—Punjab State Civil Services Combined Competitive Examination, 2015—Preliminary examination—Re-compilation of result—Commission invited objections before declaration of result vide public notice—No submission that petitioner filed any objection—Petitioner cannot approach this Court, at the first instance, for said relief—Writ petition dismissed—Held, firstly the authorities have to be approached before a writ in the nature of mandamus can be issued.*

Held that, the present writ petition is liable to be dismissed, firstly, on the ground that there has been no submission made that the petitioner had filed any objection relating to the said questions before the Commission. It is settled principle that firstly the authorities have to be approached before a writ in the nature of mandamus can be issued.

(Para 6)

(B) *Constitution of India, 1950—Art.226—Writ of mandamus—Firstly, authorities have to be approached before writ in the nature of mandamus can be issued—There has to be a demand which is clear, plain and unambiguous to the concerned officer having requisite authority to perform the act before enforcement of a legal can be claimed.*

Held that there has to be a demand which is clear, plain and unambiguous to the concerned officer having requisite authority to perform the act before enforcement of a legal right can be claimed.

(Para 8)

(C) *Re-Compilation of result—Opinion of the experts should not be interfered.*

Held that Reference can be made to the judgment of the Apex Court in Himachal Pradesh Public Service Commission Vs. Mukesh

Thakur 2010 (6) SCC 759 that the opinion of the experts should not be interfered.

(Para 13)

Amandeep Singh Cheema, Advocate,
for the petitioner.

G.S. SANDHAWALIA , J. (ORAL)

(1) The petitioner seeks a direction for re-computing the result of the preliminary examination of Punjab State Civil Services Combined Competitive Examination, 2015 conducted on 12.12.2015, by deleting question No.99 of Paper-1 Set-A. In the alternative, the relief of 2 grace marks is sought by correcting the answer key of question No.39 of Paper-II Set-A and to award 2.5 marks to the petitioner for the said question.

(2) The pleaded case of the petitioner is that 101 posts in various departments were advertised on 11.09.2015 by the respondent-Punjab Public Service Commission, Patiala. The examination was to consist of two parts, i.e., preliminary competitive examination and main competitive examination. The preliminary examination, which was held on 12.12.2015, consisted of 2 papers- Paper-I of General Studies and Paper-II in the subject of Civil Services Aptitude Test. Paper-I consisted of 100 questions, having 2 marks for answering each question and Paper-II consisted of 80 questions, having 2.5 marks for answering each question, i.e., total 200 marks. There were 4 sets of question papers, i.e., A, B, C & D, having different serial numbers but same questions.

(3) The petitioner had secured 264.50 marks and was short of the cut-off by 2 marks which was 266.50. The Commission had provided the question papers and answer keys of Set-A on its website and for question No.99 of Set-A, option 'd' had been given as correct answer whereas the same was wrong. Question No.99 reads as under:

“99. Which of the following statements are true for the recently test fired Barak-8 Missile?

1. Barak has been jointly developed by India and Israel.
2. It is a surface-to-surface missile.
3. It has a range of 80 Kms.

(a) 1, 2 and 3

- (b) 1 and 2 only
- (c) 2 and 3 only
- (d) 1 and 3 only”

(4) It is, accordingly, contended, while placing reliance upon the news published by the Defence Science Library, Defence Scientific Information and Documentation Centre, Delhi (Annexure P6) and other documents, that the range of the missile was 70kms. and not 80. Accordingly, the argument raised was that there was no correct answer and therefore, the petitioner not having opted for option 'd', was not at fault.

(5) Similarly, the answer key for question No.39 of Paper-II Set-A was also objected to on the ground that the correct answer has been given as option 'b', which was wrong and the correct answer was option 'a', i.e., 'bhet rakhana- in Punjabi (to keep things secret). The question reads as under:

“39. “Dhaki Rijey Koi Na Bujhey” da sahi arth ki hai?

- (a) Bhet Rakhna
- (b) Andar Khate Sahee Jana
- (c) Utavale hona
- (d) Vyarth Koshish karni”

(6) In the opinion of this Court, the present writ petition is liable to be dismissed, firstly, on the ground that there has been no submission made that the petitioner had filed any objection relating to the said questions before the Commission. It is settled principle that firstly the authorities have to be approached before a writ in the nature of mandamus can be issued.

(7) The said principle was laid down by three Judges Bench of the Apex Court in *Saraswati Industrial Syndicate Ltd. etc. versus Union of India*¹ wherein it has held asunder:-

“25. As the appeals fail on merits we need not discuss the technical difficulty which an application for a writ of certiorari would encounter when no quasi-judicial proceedings was before the High Court. The powers of the high Court under **Article 226** are not strictly confined

¹ (1974) 2 SCC 630

to the limits to which proceedings for prerogative writs are subject in English practice. Nevertheless the well recognised rule that no writ or order in the nature of a Mandamus would issue when there is no failure to perform a mandatory duty applies in this country as well. Even in cases of alleged breaches of mandatory duties the salutary general rule which is subject to certain exceptions applied by us as it is in England when writ of Mandamus is asked for could be stated as we find it set out in Halsbury's Laws of England (3rd edition vol. 13 p. 106):

"As a general rule the order will not be granted unless the party complained of has known what it was he was required to do, so that he had the means of considering whether or not he should comply and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce and that that demand was met by a refusal."

26. In the cases before us there was no such demand or refusal. Thus, no ground whatsoever is shown here for the issue of any writ, order, or direction under **Article 226** of the Constitution. These appeals must be and are, hereby, dismissed but in the circumstances of the case we make no order as to costs."

(8) Similar principles were laid down by the Apex Court in *Rajasthan State Industrial Development and Investment Corporation versus Subhash Sindhi Cooperative Housing Society, Jaipur and others*² wherein it was held that there has to be a demand which is clear, plain and unambiguous to the concerned officer having requisite authority to perform the act before enforcement of a legal right can be claimed.

(9) Similarly in *Rajasthan State Industrial Development and Investment Corporation and another versus Diamond & Gem Development Corporation Limited and another*³ the same view was taken.

(10) It is not disputed that the Commission had invited objections before the declaration of the result vide public notice dated

² (2013) 5 SCC 427

³ (2013) 5 SCC 470

14.12.2015 and the queries and objections were to be entertained till 18.12.2015 and the candidates were to send the objections by hand/post/email by that date. The said objections were to be sent along with supporting materials along with reasoning and documentary evidence. Relevant cause reads as under:

“4.0 Any objection sent without reasoning and documentary evidence will not be considered or processed by the Commission and it shall be filed without any action.”

(11) The said objections were to be examined by the subject experts, which would be clear from the reading of Clause 5 and thereafter, the shortlisting of the candidates had to take place by uploading the result on the website. Relevant portion reads as under:

“5.0 Objections will be examined by the subject experts to arrive at the final revised and corrected answer key, if necessary. Thereafter, the final answer key will be uploaded on the Commission's Website.

6.0 The list of shortlisted candidates for the Mains Examination will be prepared on the basis of the final answer key and will be uploaded on the Website of the Commission subsequently.”

(12) Once the said requirement has not been pleaded and necessary averments have not been made, the petitioner cannot approach this Court, at the first instance, for the said relief.

(13) It is settled principle that the Court will not go into the issue of the opinion of subject experts. Reference can be made to the judgment of the Apex Court in *Himachal Pradesh Public Service Commission* versus *Mukesh Thakur*⁴ that the opinion of the experts should not be interfered. Similarly, in LPA-1956-2012 titled *Sameer Khurana & others Vs. Board of School Education Haryana & others*, decided on 16.01.2013 (in which, the undersigned was a Member), similar view was taken.

(14) Regarding question No.39, this Court in CWP-858- 2016 titled *Arashjit Singh & others Vs. State of Punjab & another*, decided on 03.02.2016, had also considered the said issue and come to a similar view point.

(15) In such circumstances, there is no scope for interference, as

⁴ 2010 (6) SCC 759

contended by counsel for the petitioner, under Article 226 of the Constitution of India. Consequently, the present writ petition is dismissed in limine.

Shubreet Kaur