

**IN THE HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR**

Reserved on: 11.11.2020
Pronounced on: 27.11.2020

LPASW No.113/2018

Arshid Ahmad Allayee ...Appellant(s)

Through: - Mr. M. Ashraf Wani, Advocate.

Vs.

State of J&K & Ors ...Respondent(s)

Through: - Mr. B. A. Dar, Sr. AAG.

CORAM:

Hon'ble Mr. Justice Sanjeev Kumar, Judge.
Hon'ble Mr. Justice Rajnesh Oswal, Judge

JUDGMENT

Sanjeev Kumar 'J'

1) This appeal by the appellant, in terms of Clause 12 of the Letters Patent, is directed against the judgment dated 24th of July, 2018, passed by learned Single Judge in SWP No.2629/2017 titled "Arshid Ahmad Allayee Vs. State of J&K and others".

2) The impugned judgment is assailed, primarily, on the ground that the Writ Court has given too much importance to the technicalities and has dismissed the petition on the ground that the writ petitioner had failed to follow the instructions of the

examination and had given wrong/incorrect question Booklet

number and, therefore, rejection of his candidature by the respondents was justified.

3) With a view to better appreciating the grounds of challenge urged on behalf of the appellant, it is necessary to take note of the few relevant facts.

4) Vide Advertisement Notice No. PERS-A-38/2016/59220-320 dated 08.10.2016, online applications were invited by the respondents for recruitment of Constables in IRP Battalion/ Executive Police in accordance with the provisions of J&K Special Recruitment Rules, 2015, as per the District-wise/category wise breakup provided in the Advertisement Notice. In the District of Pulwama, 174 posts in 5th Bn IRP, 18 posts in Armed Police and 30 in Executive Police, were notified for selection, out of which 35 posts, 04 posts and 06 posts respectively were notified under RBA category. The appellant, who submitted his online application, was allotted Roll no.1700297. The appellant after qualifying the physical measurement test sat in the written examination conducted on 8th of October, 2017. The appellant was provided question Booklet bearing No.2905409 in the written examination. He claims that he attempted more than 60 questions correctly as per the key provided and thus became entitled to 60 points while as the last selected candidate in the RBA category secured only 57 points. Claiming that he was arbitrarily kept out of zone of selection, the appellant approached this Court by way of SWP No.2629/2017.

5) On being put on notice by the Writ Court, the respondents appeared and filed their reply affidavit. It was pointed out by the respondents that it was true that the petitioner had participated in the process of selection for the post of Constable but could not make it to the selection because he could secure only 31 points and was figuring at serial No.790 in the merit list of District Pulwama and his merit was far less than the candidate last selected in the RBA category. It was further submitted that going by the scheme of examination, the question paper for the written examination consisted of objective type questions and answer to these questions had to be reflected in the OMR answer sheets. It is stated that all steps involved in the recruitment process were technologically driven with minimum human intervention and the answer sheets of all those who participated in the written examination were evaluated by means of computer by applying relevant answer key. It was thus necessary for the competing candidates to reflect their correct Question Booklet number in the OMR sheet so as to facilitate correct evaluation after locating corresponding Booklet series. It is the further stand of the respondents that the candidates participating in the written examination were made amply clear through a press release issued on 27th of September, 2017, and it was also part of the relevant instructions contained in the Question Booklet, that they were required to fill their roll number and Question Booklet number in OMR sheets correctly as the same were must for evaluation of their answer sheets. The appellant committed a glaring mistake in

indicating his Question Booklet number in OMR answer sheet as 2905490 instead of 2905409 and, therefore, was evaluated as per the Booklet number indicated by him. He thus secured 31 points and could not make it to the final selection list.

6) The Writ Court after considering the rival contentions and having gone through the record came to the conclusion that the error committed by the appellant was not trivial given the fact that the recruitment process was technologically driven with minimal human intervention. The wrong mention of Question Booklet number in the OMR sheet resulted in wrong evaluation by the computer for which the respondents cannot be held liable. Distinguishing the judgments relied upon by the learned counsel representing the appellant i.e. *Khurshid Aijaz Vs. J&K BOPEE & Ors.*, 2016(1) S.L.J 248(HC) and *Gh. Hassan Ganai Vs. State of J&K & Ors*, 2015(1) S.L.J 207, the Writ Court dismissed the petition, being meritless and vacated the interim direction issued by it on 26th of December, 2017. The appellant is aggrieved and has, thus, challenged the impugned judgment on the grounds noticed hereinabove.

7) Having heard learned counsel for the parties and perused the record, we are of the considered opinion that the view taken by the Writ Court is the only correct view that could have been taken in the facts and circumstances of this case. Admittedly, the respondents in the Question Booklet supplied to the candidates had given specific instructions appended at the foot of the Question Booklet. Amongst

other instructions, instruction No.8, which is relevant for our purpose, is reproduced as under:

“8. Immediately write the 7 Digit question booklet number on the OMR sheet. The OMR sheet cannot be evaluated if you don’t fill this or fill it wrongly.”

8) That apart, it was also made abundantly clear to all the candidates through a press release issued vide communication No.PRB-Cts/MF/2017/880 dated 27.09.2017, that the candidates must fill their roll number and Question Booklet number in OMR sheet properly because these were must for evaluation of answer sheets. This has been noticed by the Writ Court in paragraph 5 of the impugned judgment.

9) In the aforesaid backdrop, the question that begs determination in this appeal is whether a candidate who failed to indicate correct Booklet number in OMR sheet despite mandatory instructions given in this regard can be rescued from its consequences or deserves to be rejected. As noticed above, the selection process in the instant case was technologically driven with minimal human intervention. It was, thus, rightly pointed out that if the candidate failed to indicate correct Booklet number, it would not be possible for the computer to evaluate the answer sheet corresponding to the relevant answer key fed in the computer. The appellant should have been careful as he was well aware that the whole process of selection was put on digital mode with virtually no

General Instructions issued to the candidates making them aware of their duty to correctly mark and indicate the Question Booklet number on their OMR answer sheets.

10) The judgment relied upon by the appellant rendered by the Division Bench of Delhi High Court in **Ajay Kumar vs. Union of India and Ors**, [2017 (2) SLR 403], may not be of much help to the appellant. In the aforesaid case, the Division Bench of Delhi High Court was confronted with a mistake committed by the candidate with regard to non-darkening of one of the blocks pertaining to date of birth. The Court observed that the aforesaid mistake was trivial careless mistake and, therefore, could not be made basis for denial of appointment. The judgment aforesaid is clearly distinguishable on facts. The mistake in the instant case pertains to the mentioning of Booklet number in the absence of which the computer software would not evaluate the answer sheets correctly. We are in agreement with learned counsel for the respondents that with a view to obviate the possibility of occurrence of such mistakes, the respondents had not only issued specific instructions but had also made it known to all through a press release issued on 27th of September, 2017. The appellant was, admittedly, negligent in not indicating the correct Booklet number on his OMR which incapacitated computer to pickup and evaluate his answer sheet correctly. In that view of the matter, no fault can be found with the decision of the respondents to disqualify the appellant.

11) The other judgments relied upon by the appellant are also off mark. The judgment of a Single Bench of this Court in the case of **Sheeraz Ahmad Rather vs. State and Ors.** (SWP No.463/2014 decided on 19th of June, 2018), pertains to the claim of a candidate under RBA category, the certificate whereof he had not submitted along with application form. It is in that context, the judgment was rendered.

12) Another judgment relied upon by the learned counsel for the appellant rendered in the case of **Ghulam Hassan Ganai vs. State &Ors** [2015(1) S.L.J 207], is also distinguishable on its facts. In the aforesaid case the candidate had claimed his qualification as M.Ed. Single Bench of this Court noted that the qualification of M.Ed. pre-supposed acquisition of B.Ed. degree and, therefore, the mistake was trivial and capable of being ignored.

13) Lastly, learned counsel for the appellant pressed into service the judgment of Single Bench of this Court rendered in the case of **Pankaj Sharma vs. State &Ors** (2016 AIR J&K 32). This judgment does support the case of the appellant as in the aforesaid case Single Bench of this Court was confronted with a similar situation where the candidate had mentioned wrong Booklet series on his OMR answer sheet which resulted in wrong evaluation of his answer sheet. This judgment, it appears, was assailed before the Division Bench of this Court but the appeal preferred by the J&K Board of Professional Entrance Examination was disposed of and a cost of Rs.12500/ was

awarded to the writ petitioner and the matter landed before the Supreme Court in Civil Appeal No.7158 of 2019 filed by JKBOPEE which was decided on 11th of September 2019. The Supreme Court did not agree with the view taken by the High Court and set aside the judgment. What was held by the Supreme Court in the aforesaid case is reproduced here-under:

“We have heard learned counsel for the parties. It is difficult for us to uphold the order of the High Court on reasoning that though, the initial mistake was on the part of respondent, the Invigilator at the Examination Hall and the Deputy Superintendent of the Examination Centre ought to have pointed out the error to the respondent so as to facilitate correction by him, on account of which lapse the respondent had suffered.

The OMR answer sheets are checked by scanning. No manual process was involved. The candidates had been cautioned in advance. Once the High Court arrived at the conclusion that the respondent was initially at fault, the impugned order automatically becomes unsustainable.

Consequently, the impugned order is set aside and the appeal is allowed. Pending applications shall stand disposed of.”

14) Recently, the Gujarat High Court was also confronted with an identical issue in an appeal registered as LPA No.114/2020. The Division Bench of Gujarat High Court relying upon judgments of Supreme Court in the case of Pankaj Sharma (supra) and The State of Tamil Nadu & ors. vs. G. Hemalathaa & anr (Civil Appeal No.6669 of 2019 arising out of SLP(C) No.14093 of 2019), rejected

the plea of a candidate who had committed mistake and had acted contrary to the mandatory instructions of singing the OMR sheets.

15) In view of the settled legal position on the point in issue, we are left with no option but to agree with the view taken by the Writ Court, which view, as stated above, is in consonance with law laid down by the Supreme Court. Accordingly, we find no merit in this appeal and the same is dismissed

(Rajnish Oswal)
Judge

(Sanjeev Kumar)
Judge

Srinagar
27.11.2020
"Bhat Altaf, PS"

<i>Whether the order is speaking:</i>	<i>Yes/No</i>
<i>Whether the order is reportable:</i>	<i>Yes/No</i>