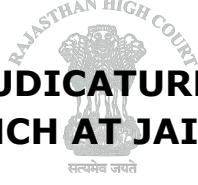


**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



D.B. Civil Writ Petition No. 11861/2024

1. Payal Soni D/o Sh. Chitranjan Soni, Aged About 25 Years, R/o 109, Surya Nagar, Gopalpura Bypass, Jaipur.
2. Priyanka D/o Sh. Rajesh Kumar, Aged About 22 Years, Vpo Kheri Bura, Tehsil And District Charkhi Dadri, Haryana

----Petitioners

Versus

1. Rajasthan High Court, Jodhpur, Through Registrar General, New Building, Dangiyawas Bypass, Jodhpur, Rajasthan-342001.
2. Registrar (Examination), Rajasthan High Court, New Building, Dangiyawas Bypass, Jodhpur, Rajasthan-342001.

----Respondents

For Petitioner(s) : Mr. Ashish Sharma Upadhyay,
Mr. Jaikishan Singh &
Mr. Ramprakash Sharma

For Respondent(s) : Mr. Vishnu Kant Sharma on behalf of
Mr. AK Sharma, Sr. Adv.

**HON'BLE THE CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE ASHUTOSH KUMAR**

Order

REPORTABLE

23/07/2024

1. Heard.
2. Learned counsel for the petitioners would submit that even though the petitioners had committed certain defaults while filling the OMR sheets, it ought not to have resulted in altogether exclusion from the process of selection. Referring to instructions for marking/darkening the bubbles in the OMR sheets and the

instructions contained in the OMR sheets as also in the advertisement, it is submitted that there is no specific declaration given to the effect that if proper darkening is not done or darkening is not done, it would necessarily result in excluding the candidate from the process of selection. It is the submission of learned counsel for the petitioners that in such cases if the OMR sheets were rejected by the system for evaluation, the petitioners ought to have been given one opportunity to correct the OMR sheets by making appropriate corrections, filling or correcting already filled bubbles. Further argument is that the petitioners are meritorious and if they are excluded from the process of selection on such defaults, it may affect their future career prospects.

3. Learned counsel appearing on behalf of respondents on advance copy draws the attention of this Court to an order dated 19.08.2021 passed by Division Bench of this Court in the case of **Union of India & Others vs. Jagdish Chandra Jat in D.B. Civil Writ Petition No.12323/2020.**

4. Admittedly, petitioner no.1 did not fill and left blank the marked space for filling question booklet series. Petitioner no.2 did not darken the bubble relating to question booklet series.

5. As the examination system of evaluation of OMR sheets is based on system based evaluation mechanism using machines, the respondents issued directions and instructions to all the candidates including the petitioners giving detailed guidelines and instructions with regard to marking/darkening in the OMR sheets. The reason is that if the OMR sheet is not properly filled up as per instructions, then the same cannot be captured and evaluated by the mechanised system. Under the instructions for

marking/darkening the bubbles in the OMR sheets, clause 6 clearly stated that while filling/darkening the series of QPB-Question Paper Book in the OMR sheet, bubble of series wrongly darkened or darkened by wrong method or darkened multiple bubbles or not darkened bubble or spread of ink over the bubble may disrupt the evaluation process. The OMR instructions also insist proper marking. If the question booklet series is not indicated through proper marking and darkening of the bubble, it is obvious that the OMR sheet cannot be evaluated in the system. It is for this reason that the OMR sheet of the petitioners could not be evaluated resulting in exclusion of the petitioners from the process of selection.

6. It is of utmost importance that in order to preserve the sanctity of the selection process for filling up posts under public employment that the entire process is not only clearly laid down but is scrupulously followed not only by the Examination Agency but also by the candidates who choose to appear in the examination. The candidate in order to ensure that he is allowed to participate in the process of selection, is required to strictly adhere to various instructions which have been given. In a given case the violation of instructions may disrupt the process of evaluation and selection process. Where the series of the question booklet is not mentioned, the OMR is not capable of being evaluated. If such a mistake has already been committed by a candidate, there is no laid down system in the selection process to allow such candidates to remove that defect in a particular manner.

7. Learned counsel for the petitioners submits that the respondents ought to have evolved process to allow the petitioners and other candidates who committed defaults in filling OMR sheets by correcting the same.

8. We are afraid, such a blanket relaxation would completely destroy the sanctity of the examination process. A proposition that after the OMR sheets are submitted, it should be again examined by some manual process or where OMR sheets are rejected by the evaluation system, it should be allowed to be corrected by the candidates, would completely derail the selection process and it will not only inordinately delay the process of selection but also raise suspicion, as such kind of practice is susceptible to misuse.

9. A Division Bench of this Court in the case of **Union of India & Ors. vs. Jagdish Chandra Jat (supra)** faced with similar issue of non-compliance of instruction with regard to filling up OMR sheets and relying upon Supreme Court decision in the case of **State of Tamil Nadu and others vs. G. Hemalathaa and another in Civil Appeal No.6669/2019** decided on 28.08.2019 observed that the instructions issued are mandatory and have to be strictly complied, as strict adherence to the terms & conditions of the instructions is of paramount importance.

10. The verdict of the Hon'ble Supreme Court highlighting sanctity of the instructions issued for the conduct of the examination and consequence of their violation in the case of **G Hemlata and others (supra)** settles the legal position in following terms:-

"7. [Ms. V. Mohana](#), learned Senior Counsel appearing for the Respondent vehemently argued that we should not exercise our

discretion under [Article 136](#) of the Constitution of India. According to her, there is no substantial question of law in the S.L.P. warranting our interference. She submitted that an error was committed by the Respondent which was rightly condoned by the High Court. She made a fervent appeal to us that the career of a meritorious backward class candidate should not be nipped at the bud.

8. We have given our anxious consideration to the submissions made by the learned Senior Counsel for the Respondent. The Instructions issued by the Commission are mandatory, having the force of law and they have to be strictly complied with. Strict adherence to the terms and conditions of the Instructions is of paramount importance. The High Court in exercise of powers under [Article 226](#) of the Constitution cannot modify/relax the Instructions issued by the Commission¹.

9. The High Court after summoning and perusing the answer sheet of the Respondent was convinced that there was infraction of the Instructions. However, the High Court granted the relief to the Respondent on a sympathetic consideration on humanitarian ground. The judgments cited by the learned Senior Counsel for the Respondent in [Taherakhatoon \(D\) By LRs v. Salambin Mohammad²](#) and [Chandra Singh and Others v. State of Rajasthan and Another³](#) in support of her arguments that we should not entertain this appeal in the absence of any substantial questions of law are not applicable to the facts of this case.

10. In spite of the finding that there was no adherence to the Instructions, the High Court granted the relief, ignoring the mandatory nature of the Instructions. It cannot be said that such exercise of discretion should be affirmed by us, especially when such direction is in the teeth of the Instructions which are binding on the candidates taking the examinations.

11. In her persuasive appeal, Ms. Mohana sought to persuade us to dismiss the appeal which would enable the Respondent to compete in the selection to the post of Civil Judge. It is a well-known adage that, hard cases make bad law. In *Umesh Chandra Shukla v. Union of India*, Venkataramiah, J., held that: (SCC 735, para 13)

“13.... exercise of such power of moderation is likely to create a feeling of distrust in the process of selection to public appointments which is intended to be fair and impartial. It may also result in the violation of the principle of equality and may lead to arbitrariness. The cases pointed out by the High Court are no doubt hard cases, but hard cases cannot be allowed to make bad law. In the circumstances, we lean in favour of a strict construction of the Rules and hold that the High Court had no such power under the Rules.

12. Roberts, CJ. in *Caperton v. A.T. Massey Coal Co. Inc* held that: (SCC Online US SC) :

“Extreme cases often test the bounds of established legal principles. There is a cost to yielding to the desire to correct the extreme case, rather than adhering to the legal principle. That cost has been demonstrated so often that it is captured in a legal aphorism: “Hard cases make bad law.”

13. After giving a thoughtful consideration, we are afraid that we cannot approve the judgment of the High Court as any order in favour of the candidate who has violated the mandatory Instructions would be laying down bad law. The other submission made by Ms. Mohana that an order can be passed by us under Article 142 of the Constitution which shall not be treated as a precedent also does not appeal to us.”

11. Relying upon the aforesaid dictum, the Division Bench of this Court in the case of Union of India and others vs. Jagdish Chandra Jat held that mistakes so committed by the candidate, cannot be allowed to be corrected and the only course open is to exclude such candidate from the process of selection.

12. In view of above consideration, following the declaration of law laid down by the Hon’ble Supreme Court and orders passed by this Court in similar cases referred to herein above, the petition is liable to be dismissed and is, accordingly, dismissed.

(ASHUTOSH KUMAR),J

(MANINDRA MOHAN SHRIVASTAVA),CJ