

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 21786 of 2023****With****CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2024****In R/SPECIAL CIVIL APPLICATION NO. 21786 of 2023****With****R/SPECIAL CIVIL APPLICATION NO. 256 of 2024****With****CIVIL APPLICATION (DIRECTION) NO. 1 of 2024****In R/SPECIAL CIVIL APPLICATION NO. 256 of 2024**

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VISHALKUMAR KANUBHAI PATEL

Versus

HIGH COURT OF GUJARAT

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Appearance:

MR VAIBHAV A VYAS(2896) for the Petitioner(s) No. 1

LAW OFFICER BRANCH(420) for the Respondent(s) No. 1

MR GM JOSHI SR.ADV. WITH MR. R.D.KINARIWALA(6146) for the

Respondent(s) No. 1

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CORAM:HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI**Date : 22/08/2024****ORAL ORDER**

1. Heard Mr.Vaibhav Vyas, learned advocate appearing for the petitioners and Mr.G.M. Joshi, learned Senior Counsel appearing with Mr.R.D. Kinariwala, learned advocate for the respondent.

2. Since the issue involved in the present petitions is identical and in view thereof, at the request made by the learned advocates appearing for the respective parties, both these petitions are heard analogously and are decided by a common order. Special Civil Application No.21786 of 2023 be treated as lead matter.

3. Briefly stated, respondent herein, on administrative side, issued an advertisement No.RC/1434/2022(II) inviting online



applications for centralized recruitment to the post of Assistant for the Subordinate Courts in the State of Gujarat for 1778 posts on 27.04.2023, which is duly produced at Annexure-B. In the stipulation provided in the said advertisement, the recruitment process for appointment on the post in question consist of (1) Elimination Test (Objective Type - MCQs — 100 marks — 1½ hours) (ii) Main Written Examination (Descriptive Type — 60 marks — 1 ½ hours, and (iii) Practical/ Skill Test (Typing Test - 40 — 10 minutes. The petitioners herein applied pursuant to the same and appeared in the elimination test, which was scheduled on 02.07.2023. The result of the same was declared on 10.11.2023, which is duly produced at Annexure-E.

3.1. The petitioners' name did not figure in the said result and in view thereof, the petitioners approached the respondent - authority by representations representations dated 12.11.2023, 22.11.2023 and 29.11.2023. The said representations were not answered by the respondent - authority and in view thereof, the petitioners are constrained to file present petitions, praying for the following reliefs:-

“(A) Direct the respondent authorities to include the name of the petitioner in the list of candidates who have obtained minimum qualifying marks in the Elimination Test by checking/evaluating the OMR Answer Sheet of the petitioner in connection with advertisement No.RC/1434/2022(II), Annexure-B to this petition, and/ or

(B) Direct the respondent authorities to consider the candidature of the petitioner for appointment



to the post of Assistant by including his name in the list of candidates who have obtained minimum qualifying marks in the Elimination Test in connection with advertisement No.RC/1434/2022(II), Annexure-B to this petition, and

(C) Pending admission and final disposal of this petition the Honourable Court may be pleased to direct the respondent authority to reconsider the case of the petitioner for recruitment to the post of Assistant in connection with the advertisement No. RC/1434/2022(II), Annexure-B to this petition, and

(D) Pending admission and final disposal of this petition the Honourable Court may be pleased to direct the respondent authority to consider and decide the representation of the petitioner dated 22.11.2023 and 29.11.2023, Annexure-F to this petition, and

(E) Pending admission and final disposal of this petition the Honourable Court may be pleased to direct the respondent authority to permit the petitioner to participate in the Main Written Examination in connection with the advertisement No.RC/1434/2022(II), Annexure-B to this petition, and

(F) Award the cost of this petition, and

(G) Grant any other relief or pass any other order



which the Honourable Court may consider as just and proper in the facts and circumstances of the case.”

3.2. Notice came to be issued on 01.01.2024 whereby, following order was passed:-

“1. Heard learned Advocate Mr.Vaibhav Vyas for the petitioner, who by way of this petition inter alia challenges the decision of the respondents in not declaring the result of the petitioner in selection to the post of Assistant for subordinate Courts in the State of Gujarat, which selection had been conducted vide Advertisement No.RC/1434/2022(II).

2. Considering the submissions made by the learned Advocate for the petitioner, it would appear that while the instructions to fill up OMR Sheets inter alia stated that in case of any discrepancy, the candidate would be entitled to replace the question book-let and OMR Answer Sheet from the Invigilator within five minutes of the start of the examination and whereas it would also appear that the error in question, which probably has led to the petitioner’s answer-sheet not being evaluated could be attributed solely to the petitioner, yet it would also appear that the petitioner having marked wrong digit while mentioning his roll number had brought the said issue to the notice of the Invigilator as well as the Supervisor present in the hall and whereas instead of issuing a fresh question book-let along with the OMR Answer-sheet the petitioner was permitted to encircle the correct digit as regards his roll number and an endorsement had been made by the



Invigilator present in the examination hall.

3. In any case, it would appear that an error in marking the roll number of the petitioner in the OMR Answer Sheet has left the petitioner in a precarious position since as per the OMR Answer Sheet the petitioner would score higher marks than the cut-off required for reserved category candidates. Further considering the submissions of learned Advocate Mr.Vyas that as of now, except for declaring the results, no further steps have been taken as regards the selection process, therefore, at this stage interference is warranted.

4. Hence, issue notice to the respondents returnable on 12.1.2024. The respondent by the next date is directed to ensure that the OMR Sheet of the petitioner be evaluated, if not evaluated already and whereas the result of such evaluation shall be placed before this Court in a sealed cover by the returnable date. Direct service is permitted.”

3.3. Being aggrieved by the said interim order passed in the present petitions, the said order was subject matter of appeal being Letters Patent Appeal No.13 of 2024. The same came to be disposed of by order dated 11.07.2024. It is apposite to refer to the order passed in the said Letters Patent Appeal, which reads thus:-

“1. The present Appeal is directed against the order dated 01.01.2024 passed in captioned writ petition, wherein the following order is passed:-

“4. Hence, issue notice to the respondents returnable on 12.1.2024. The respondent by the next date is directed to ensure that



the OMR Sheet of the petitioner be evaluated, if not evaluated already and whereas the result of such evaluation shall be placed before this Court in a sealed cover by the returnable date. Direct service is permitted.”

2. Thereafter, the Co-ordinate Bench passed the following order in Letters Patent Appeal No.13 dated 17.01.2024, which is reproduced as under:-

“9. Prima facie it is found that learned Single Judge has while granting interim relief, proceeded to decide the rights of the parties finally by directing the evaluation and examination of the answer-sheet of the petitioner whose candidature was rejected for the above reason.”

3. Thereafter, the Co-ordinate Bench passed an order on 01.05.2024 in Civil Application (for direction) No.2 of 2024, which is incorporated as under:-

“7. However, despite objection by the respondent herein, we permit the applicant to appear in the main written examination (descriptive type) which is scheduled to be held on 12.05.2024 so as to see that he may not suffer for not appearing in the main written examination (descriptive type) if at all his petition is allowed. More particularly, when he has submitted that he will not claim any equity for the permission granted to take main



written examination. However, our permission to take main written examination is subject to condition that he shall not claim any type of equity by the said permission.”

3.1 Thus, the respondent is permitted to appear in the main written examination.

4. Under these circumstances, since the grievance of the respondent, at this stage, for appearing in the examination, does not survive and the main issue is still at large in the captioned writ petition, the present Letters Patent Appeal No.13 of 2024 is disposed of. All the contentions raised by the respective parties are kept open for the learned Single Judge, the same are to be decided by the learned Single Judge on its own merits.”

4. In light of the aforesaid, the matter is listed today for hearing.

5. Considering the dispute in question, it emerges that the result of the petitioners herein pursuant to the elimination test undertaken by the respondent is not declared on the ground that though the petitioners stated the roll number in the OMR sheet correctly however, the petitioners were required to encircle the same in the columns below and because of the discrepancy in the encircling of the said roll numbers of the respective petitioners, the results of the petitioners in elimination test are withheld.

6. By way of the interim order, both the petitioners have appeared in the written examination however, their results are not declared and are kept in the sealed cover.



7. In the civil applications, the petitioners herein have prayed that they may be permitted to appear in the practical/skill typing test which is scheduled on 25.08.2024.

8. In the opinion of this Court, considering the dispute in question, the petitions are required to be heard and decided finally so that the petitioners are aware of their rights that accrue with regard to appearing in the elimination test.

9. Mr.Vyas, learned advocate appearing for the petitioners, placing reliance on the grounds taken in the present petitions, submitted that though there was an anomaly at the end of the petitioners herein in encircling the roll numbers in the OMR sheet, which is duly produced at Annexure-A and though the actual roll numbers are rightly stated by the petitioners, the said mistake/anomaly having occurred, the petitioners approached the invigilator with a request to give a fresh OMR sheet. The invigilator, upon instructions of the senior officer, asked the petitioners to rectify the mistake and the invigilator had countersigned on the same in the case of the petitioner of Special Civil Application No.21786 of 2023. It is submitted that the aforesaid is not in dispute.

9.1. Mr.Vyas, learned advocate placed reliance on the instructions which are duly produced at Annexure-C and submitted that the said instructions state that filling wrong entry of question Booklet number and Set Code in OMR Answer Sheet will cause wrong examination result and the candidate himself/herself will be responsible for the same.



9.2. Reliance is also placed on clause – 1 of the said instructions wherein, it is stated that in case of any discrepancy, the candidate should replace the Question Booklet and OMR Sheet from the invigilator and no objection in that regard would be entertained after five minutes of the starting of examination.

9.3. Placing reliance on the aforesaid, it is submitted that the petitioners herein requested the invigilator to replace the OMR answer sheet. It is upon the instructions of the invigilator that the petitioners encircled the correct roll number in the column below the first column on the right hand side of the OMR sheet. It is submitted that when the petitioners' result was not declared, the petitioners were constrained to approach the respondent authority by representations dated 12.11.2023, 22.11.2023 and 29.11.2023.

9.4. On aforesaid grounds, it is submitted that the mistake committed by the petitioners herein is of a trivial nature and the same is not with any intention of any misrepresentation. It is submitted that the same would also not result in changing the nature of the result.

9.5. It is submitted that in view of such mistake of trivial nature, the petitioners' result should have been declared and the petitioners' answer sheet should have been considered by the respondent authority. It is reiterated that the aforesaid mistake also does not form a part of the instructions, as referred above.

10. Mr.G.M. Joshi, learned Senior Counsel appearing with Mr.R.D. Kinariwala, learned advocate for the respondent relied on the affidavit-in-reply filed by the respondent and submitted that the



petitioners herein are responsible for the mistake committed in filling wrong details with respect to encircling of the roll number of the petitioners and it is the petitioners, who are responsible for the same. It is submitted that the petitioners are bound to abide by the instructions duly issued by the respondent authority which are produced on record at page 27 to the petition.

11. Reliance is placed on clause - 6 of the advertisement, duly produced on record at Annexure-B at page 14, which clearly states that the evaluation of the OMR sheets of the elimination test shall be evaluated on computer, as per the entries made in the OMR sheets. As the evaluation is done on the computer by 'scanning', thereby eliminating manual evaluation, 'Rechecking' and 'Inspection' of OMR sheets, subsequent to the elimination test, would not be entertained by the respondent herein.

11.1. It is submitted that in light of the aforesaid, no interference is called for in the prayers, as prayed for, in the present petitions. It is submitted that granting of any relief would be contrary to such instructions which are stated in the advertisement and the entire criteria of automated computer scanning process of examination would result in futility.

11.2. In light of the aforesaid, it is submitted that the present petitions may not be entertained and the same be dismissed.

12. Mr.Vyas, learned advocate in rejoinder, reiterated the instructions at page 27 and submitted that the mistake committed by the petitioners does not form a part of the instructions and the said instructions state that filling of wrong entry of question Booklet



number and Set Code in OMR sheet will cause wrong examination result and that the candidate himself/herself would be responsible for the same. It is submitted that the said instructions do not include the roll number that is required to be filled in by the petitioners herein. It is submitted that the instructions also are required to be read as they are and in view thereof, since the aforesaid does not fall within the instructions, there is no question of withholding the petitioners' result. It is also submitted that though the mistake has occurred, it is of trivial nature and that the same is such that the same can be rectified.

12.1. Reliance is placed on the ratio laid down by the Hon'ble Apex Court in the case of Vashist Narayan Kumar vs. State of Bihar and others reported in 2024 SCC OnLine SC 2.

12.2. Placing reliance on the same, it is submitted that the Hon'ble Apex Court in an identical issue, held that if the mistakes are that of a trivial nature and are not with an intention of any misrepresentation, under such circumstances, the merits should not be given a go by. The Hon'ble Apex Court held that error in application which was of trivial nature, would not play any part in the selection process.

13. Having heard the learned advocates appearing for the respective parties, it emerges that the petitioners herein appeared in the elimination test on 02.07.2023. At the time when the petitioners appeared for the said examination, the petitioners were issued the question booklet and OMR answer sheet. The question booklet contained the instructions wherein, the candidates were informed to fill in the roll number, question booklet number,



conformation number, exam-centre code and set code by using black/blue ball point pen. The candidates were informed that filling wrong entry of question Booklet number and Set Code in OMR Answer Sheet will cause wrong examination result and the candidate himself/herself will be responsible for the same. The candidates were further informed that in case of any discrepancy, the candidate should replace the Question Booklet and OMR Answer Sheet from the invigilator and no objection in this regard will be entertained after five minutes of the starting of the examination.

14. In the facts of the present case, in the said test, the petitioners committed a mistake in darkening one of the circles in the section of the roll number in the OMR sheet. In view thereof, as per the instructions in the question booklet, the petitioners approached the invigilator within five minutes with respect to the mistake that was committed by the petitioners and had requested to supply a fresh OMR sheet. The petitioners were informed to encircle the correct number. It appears that so far as the petitioner of Special Civil Application No.21786 of 2023 is concerned, the invigilator countersigned the said OMR sheet, the copy of the same is placed on record at page 13, which is undisputed. In view thereof, the petitioners answered the said MCQs. However, in view of the aforesaid mistake, the petitioners' result was not declared and in view thereof, the petitioners made representations to the respondent authority by e-mail on 12.11.2023, 22.11.2023 and 29.11.2023. The same having not been considered by the respondent, the petitioners herein are constrained to file the present petitions under Article 226 of the Constitution of India.

15. Considering the aforesaid dispute, this Court deems it fit to



reproduce the instructions which are required to be abide by the petitioners. The said instructions are duly produced at Annexure-C at page 27. The relevant part of the said instructions read thus:-

“Please fill all your entries like Roll No., Question Booklet No., Confirmation No., Exam Centre Code and Set Code etc. very carefully on the OMR Answer Sheet, using Black/Blue ball point pen. Filling wrong entry of question Booklet No. and Set Code in OMR Answer Sheet will cause wrong examination result and candidate himself/herself will be responsible for the same.”

1. At the start of the examination check your Question Booklet and OMR Answer Sheet and ensure that all the questions from S.No.1 to last S.No.100 are printed and all the pages are present in the Question Booklet. In case of any discrepancy, the candidate should replace the Question Booklet and OMR Answer Sheet from the invigilator. No objection in this regard will be entertained after five minutes of start of examination.”

16. Considering the aforesaid, it emerges that the said instructions provide that filling of wrong entry of the question Booklet number and Set Code in the OMR Sheet will cause wrong examination result and for which, the candidate himself/herself would be responsible for the same.



17. In the facts of the present case, admittedly, the petitioners committed mistake in encircling the roll number which does not form a part of the said instructions. Further, on perusal of the instruction no.1 also, the petitioners approached the invigilator, requesting for a fresh OMR sheet however, the copy of the OMR sheet, which is on record, is duly countersigned by the invigilator and in view thereof, this Court proceeds to accept the fact that the same having been countersigned by the invigilator, there was no objection.

18. In light of the aforesaid undisputed facts, it is apposite to refer to the ratio laid down by the Hon'ble Apex Court in the case of Vashist Narayan Kumar vs. State of Bihar and others reported in 2024 SCC OnLine SC 2. Paragraphs 10,11,12,18,19 and 26 thereof, read thus:-

“Question for Consideration

10. The question that arises for consideration is whether the error committed in the application form, which was uploaded is a material error or a trivial error and was the State justified in declaring the appellant as having failed on account of the same?

Discussion



11. Admittedly, the appellant derived no advantage as even if either of the dates were taken, he was eligible; the error also had no bearing on the selection and the appellant himself being oblivious of the error produced the educational certificates which reflected his correct date of birth.

12. The facts are undisputed. The appellant's application uploaded from the cyber café did mention the date of birth as 08.12.1997 while his date of birth as recorded in the educational certificate was 18.12.1997. It is also undisputed that it is the appellant who produced the educational certificates. He was oblivious of the error that had crept into his application form. It is also undisputed that the advertisement had all the clauses setting out that in case the information given by the candidates is wrong or misleading, the application form was to be rejected and necessary criminal action was also to be taken. It also had a clause that the candidates had to fill the correct date of birth, according to their 10th board certificate. The clause further stated that candidates will fill their name, father's name, address etc. correctly in the application form. It states that any discrepancy, if found, while checking the documents, the candidature of the candidate will stand cancelled. There was also a clause providing for correction of wrong/erroneously filled application forms, which stated that the errors can be corrected once by re-depositing the application fee and filling a new



application. It also provided that those filling the application on the last date could correct the application till the following day.

18. In fact, in *Anuj Pratap Singh* (supra), as is clear from para 14 of the said judgment, the candidate unable to correct the error at the first point was forced to repeat it while submitting the application for sitting in the main exam since he had no other option. The Court accepted the explanation and condoned the error in the filling up of the column pertaining to the date of birth.

19. The learned counsel for the State drew attention to the verification by the appellant, of the details in a printed form furnished by the selection board. He contended that the appellant signed the form which carried the date of birth. First of all, the form was a printed form which reflected the date of birth as given by the appellant and the appellant signed the printed form on 10.03.2018. We are inclined to accept the explanation of the appellant that since the appellant was unaware of his own mistake he had mechanically signed the printed form. It is only later, on 11.06.2018, on the publication of the result that the appellant realized the error. We do not think that the appellant could be penalised for this insignificant error which made no difference to the ultimate result. Errors of this kind, as noticed in the present case, which are inadvertent do not constitute misrepresentation or wilful suppression.



26. On the peculiar facts of this case, considering the background in which the error occurred, we are inclined to set aside the cancellation. We are not impressed with the finding of the Division Bench that there was no prayer seeking quashment of the results declared over the web. A reading of the prayer clause in the writ petition indicates that the appellant did pray for a mandamus directing the respondents to consider the candidature treating his date of birth as 18.12.1997 and also sought for a direction for issuance of an appointment letter. A Writ Court has the power to mould the relief. Justice cannot be forsaken on the altar of technicalities.”

19. In the facts of the present case also, in the opinion of this Court, the mistake committed by the petitioners herein in encircling the roll number, which does not form a part of the relevant instructions, as referred above, provide that filling of wrong entry of question Booklet number and Set Code in the OMR Answer Sheet will cause wrong examination result and the candidate himself/herself will be responsible for the same. Considering the aforesaid as a mistake also, the same is of a trivial nature and in view thereof, exercising extraordinary jurisdiction under Article 226 of the Constitution of India, the prayers, as prayed for, are required to be allowed to the extent that the respondent herein is directed to reconsider the case of the petitioners in light of the aforesaid findings arrived by this Court and declare the result of the petitioners with respect to the elimination test conducted on 02.07.2023 pursuant to the advertisement No.RC/1434/2022(II).



19.1. Upon declaring the result of the elimination test, if the petitioners have cleared the said test as per the prescribed criteria, the result of the written examination wherein, the petitioners appeared in the said examination by interim order passed in Civil Application No.2 of 2024 in Letters Patent Appeal No.13 of 2024 also be declared, the petitioners have not claimed equity.

20. For the foregoing reasons, the present petitions are allowed to the aforesaid extent.

21. Since the main petitions are disposed of, civil applications do not survive and are also disposed of accordingly.

Hitesh

(VAIBHAVI D. NANAVATI,J)