



CWP-6184-2019 (O&M) & connected cases

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

312 (25 cases)

CWP-6184-2019 (O&M)

Date of Decision:08.05.2025

Mukul Poonia

...Petitioner

Versus

State of Haryana and others

...Respondents

With

Sr. No.	Case No.	Petitioner(s)	Respondent(s)
2.	CWP-10994-2019 (O&M)	Anil Kumar	State of Haryana and another
3.	CWP-16090-2019	Hitesh Rathee and another	State of Haryana and another
4.	CWP-10449-2019	Anil Kumar	State of Haryana and another
5.	CWP-11012-2019 (O&M)	Rohit Bairagi	State of Haryana and others
6.	CWP-11143-2019	Ashok Kumar	State of Haryana and another
7.	CWP-11558-2019 (O&M)	Deepak Sharma	State of Haryana and another
8.	CWP-8044-2019 (O&M)	Naveen Kumar	State of Haryana and others
9.	CWP-6523-2019	Harkesh	State of Haryana and others
10.	CWP-14519-2019	Vikash	State of Haryana and others
11.	CWP-11662-2019	Nikhil Yadav	State of Haryana and others
12.	CWP-8519-2019	Vikash and another	State of Haryana and another
13.	CWP-17721-2023	Vikram Singh	State of Haryana and others
14.	CWP-13830-2019	Manish Kumar	State of Haryana and others
15.	CWP-12105-2019	Vijay	Haryana State Selection Commission and others
16.	CWP-13913-2019	Kulbeer Sharma	State of Haryana and others



17.	CWP-16611-2019 (O&M)	Rakesh Beniwal and others	State of Haryana and others
18.	CWP-7399-2019	Devinder Kumar Saini	Haryana Staff Selection Commission and others
19.	CWP-9941-2019 (O&M)	Sudhir Yadav	State of Haryana and others
20.	CWP-14747-2023	Jitender Singh	State of Haryana and others
21.	CWP-15481-2019	Ankit	State of Haryana and another
22.	CWP-12195-2019 (O&M)	Amit Kumar	State of Haryana and another
23.	CWP-12577-2019	Jagdeep	State of Haryana and another
24.	CWP-15315-2020 (O&M)	Rupender Punia	State of Haryana and another
25.	CWP-6051-2025	Ram Mehar	State of Haryana and others

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. D.S. Patwalia, Senior Advocate with
Mr. Gaurav Rana, Advocate for the petitioner(s)
(in CWP-6184-2019)

Mr. Amit Kaith, Advocate for the petitioner
(in CWP-7399-2019)

Mr. D.P.S. Bajwa, Advocate for the petitioner
(in CWP-13830-2019)

Mr. Nitin K. Gupta, Advocate
Mr. Rakesh Kumar Jangra, Advocate
Mr. Munish Kumar Garg, Advocate and
Mr. Tanuj Goyal Tohana, Advocate for petitioner No.1
(in CWP-8519-2019)

Mr. Vinod Kumar, Advocate and
Mr. Rajesh Lamba, Advocate for the petitioner
(in CWP-6523-2019)

Mr. Rajat Mor, Advocate for the petitioner(s)
(in CWP-17721-2023 & CWP-14747-2023)

Mr. Mazlish Khan, Advocate and
Mr. Vikrant Koundal, Advocate for the petitioner
(in CWP-15481-2019)

Mr. Surender Lamba, Advocate for the petitioner
(in CWP-8044-2019)

Mr. Shubhkarman S. Gill, Advocate
for Mr. Kshitij Sharma, Advocate for the petitioner
(in CWP-9941-2019 & CWP-11012-2019)



Dr. S.K. Redhu, Advocate, for the petitioner(s)
(in CWP-16090-2019)

Ms. Nargis, Advocate,
for Mr. Sandeep Kumar Goyat, Advocate, for the petitioner(s)
(in CWP-16611-2019)

Mr. G.S. Gopera, Advocate for the petitioner
(in CWP-11558-2019)

Mr. Ankur Sheoran, Advocate
for Mr. Samrat Malik, Advocate, for the petitioner(s)
(in CWP-12105-2019)

Mr. Jasbir Mor, Advocate for the petitioner(s)
(in CWP-11662-2019 and CWP-14519-2019)

Mr. Balraj Singh Rathee, Advocate and
Mr. Mohan Sheoran, Advocate for the petitioner
(in CWP-10449-2019)

Mr. Suresh Nain, Advocate
for Mr. Manjeet Singh, Advocate for the petitioner
(in CWP-13913-2019)

Mr. Viney Saini, Advocate for the petitioner
(in CWP-12577-2019)

Mr. P.S. Jammu, Advocate and
Mr. R.K. Poonia, Advocate and
Mr. Gaurav Luhani, Advocate for petitioner
(in CWP-6051-2025)

Mr. Vijay Dahiya, Advocate and
Ms. Sunita Punia, Advocate for petitioner
(in CWP-15315-2020)

Mr. Sanjeev Kaushik, Additional Advocate General, Haryana

JAGMOHAN BANSAL, J. (Oral)

1. As common issues are involved in the captioned petitions, with the consent of both sides, the same are hereby disposed of by this common order. For the sake of brevity and convenience, facts are borrowed from *CWP-6184-2019*.

2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of Answer Key (Set 'L') issued on 17.12.2018 for the post of Sub-Inspector (Category No.4) (Advertisement No.3/2018) as well as final result declared on 04.03.2019.



3. Pursuant to Advertisement No.3 of 2018, the petitioner applied for the post of Sub-Inspector (Category No.4). The selection process comprised (a) written test, (b) Physical Screening Test (for short 'PST'), (c) Physical Measurement Test (for short 'PMT') and (d) scrutiny of documents. The merit list was to be drawn on the basis of marks obtained in the written test, additional qualifications, if any and marks awarded under miscellaneous heads.

4. The petitioner appeared in the written test held on 02.12.2018. He attempted 96 questions out of 100. He was assigned Question Paper Booklet Series 'L'. On 17.12.2018, the respondent uploaded answer key on its website and invited objections from candidates with respect to the answers. A number of candidates submitted their objections with respect to different questions. The matter came to be referred to Chief Examiner who in turn referred all the objections to Expert Committee. The respondent declared result of written test on 31.01.2019 on its website. The respondent notified different dates for PST. Petitioner's name figured in the result of written test and he appeared for PST held on 19.02.2019. The result of PST was declared on 19.02.2019 on the official website. The petitioner was declared successful in PST. He appeared for PMT. He qualified requisite standards, thus, he was allowed to appear for scrutiny of documents held on 22.02.2019. On 04.03.2019, the respondent on the basis of written test, PST, PMT and scrutiny of documents declared final result wherein name of the petitioner did not figure.

5. As submitted in the reply as well as during the course of hearing, the cut-off under different categories is as below:



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<i>Sr. No.</i>	<i>Category</i>	<i>No. of Posts</i>	<i>Cut-off (merit list)</i>	<i>Cut-off (waiting list)</i>
1.	<i>General</i>	184	55.40	55.40
2.	<i>SC</i>	72	49.80	49.60
3.	<i>BC-A</i>	56	52.20	52.20
4.	<i>BC-B</i>	32	53.80	53.80
5.	<i>ESM-General</i>	28	<i>Disabled- 38.40 ESM- 47.20</i>	47.20
6.	<i>ESM-SC</i>	8	40.00	40.00
7.	<i>ESM-BCA</i>	8	43.00	42.40
8.	<i>ESM-BCB</i>	12	45.80	45.60

6. A battery of lawyers led by Mr. D.S Patwalia, Senior Advocate, pleaded that respondent did not appreciate objections of candidates in true spirit. For the namesake, the matter was referred to Expert Committee which mechanically rejected all the objections. Authentic material available in the public domain indicates that opinion of Expert Body is totally incorrect. In view of orders of this Court in *CWP No.11558 of 2019*, an Expert Committee was constituted by the Registrar, Panjab University, Chandigarh which submitted its report to this Court. As per report of the said Committee, the answer of Questions No.1 and 54 selected by respondent-Commission is incorrect.

7. *Per contra*, Mr. Sanjeev Kaushik, learned State counsel submits that a large number of objections were received from the candidates. All the objections were forwarded to the Chief Examiner who in turn referred them to an Expert Committee of three members. On receipt of report of the Expert Committee, the revised answer key was prepared by the Chief Examiner and evaluation of OMR sheets was done by the Commission. The Commission is not an Expert Body to decide the correctness of the answers and it is left to the Chief Examiner. The Commission relies upon report of the Chief Examiner. In the present world of digitization and internet, the answers to different questions may differ from site to site and book to book. The Commission has no mechanism to ascertain the correctness of an answer at



its own level and therefore, has no option but to rely upon the report of the Chief Examiner/Expert Committee.

In compliance of orders of this Court, the Commission referred the matter to an Expert Committee for clarification on the issue. Report of the Expert Committee consisting of three members was received by the Commission on 28.12.2020. The Expert Committee examined all objections to the answer key which were sent by Commission for rechecking. As per report of the said Expert Committee, there is no change in the answers to the questions disputed by the petitioner(s). It is settled law that once the Expert Committee has finalized the answer key then the same shall be considered as final as the expertise in the academic matter is left to the experts only. In the event of doubt, the benefit should go to the examination authority rather than to the candidate. In support of his contentions, learned State counsel relies upon judgment of Supreme Court in ***Ran Vijay Singh and others v. State of Uttar Pradesh and others, (2018) 2 SCC 357*** and ***Bihar Staff Selection Commission and others v. Arun Kumar and others, (2020) 6 SCC 362***.

8. I have heard learned counsel for the parties and perused the record with their able assistance.

9. In *CWP No.8519 of 2019*, the petitioners have doubted answer to 8 questions. Questions in dispute in most of the petitions are common. For the ready reference, all the questions in dispute are reproduced as below:

<i>Questions</i>
<i>Executive head of the State is</i>
<i>(A) Chief Minister</i>
<i>(B) Governor</i>
<i>(C) President</i>
<i>(D) Prime Minister</i>



<p><i>If two events are independent, then</i></p> <p>(A) <i>They must be mutually exclusive</i></p> <p>(B) <i>The sum of their probabilities must be equal to 1</i></p> <p>(C) <i>(A) and (B) are correct</i></p> <p>(D) <i>None of the above is correct.</i></p>
<p><i>GPRS is used in mobile phones for</i></p> <p>(A) <i>Sending SMS</i></p> <p>(B) <i>Data Communication</i></p> <p>(C) <i>Voice Communication</i></p> <p>(D) <i>None of the above.</i></p>
<p><i>The first Buddhist Council which was held at Rajagraha in 487 BC. It was presided over by</i></p> <p>(A) <i>Moggaliputta Tissa</i></p> <p>(B) <i>Mahakassapa</i></p> <p>(C) <i>Vasumitra</i></p> <p>(D) <i>Mahasamghikas</i></p>
<p><i>The plaintiff was _____ when the suit was dismissed.</i></p> <p>(A) <i>put out</i> (B) <i>put in</i> (C) <i>put on</i> (D) <i>put up with</i></p>
<p><i>The Motor Vessel Victoria is bound ____ Naples.</i></p> <p>(A) <i>to</i> (B) <i>for</i> (C) <i>by</i> (D) <i>through</i></p>
<p><i>Number of cities included under Smart Cities Mission is</i></p> <p>(A) 99 (B) 100 (C) 199 (D) None of these</p>
<p><i>What is the sum of the coefficients in the expansion of $(3+2x)^{99}$?</i></p> <p>(A) 5^{99} (B) 3^{99} (C) 2^{99} (D) 6^{99}</p>
<p><i>If 'CENTRE' can be written as 'CNRCNR' how 'HAPPY' can be written in that code?</i></p> <p>(A) <i>YHPYA</i> (B) <i>HPYHP</i> (C) <i>AHPYA</i> (D) <i>HPYAP</i></p>
<p><i>In most of the breeding programmes, the main aim is to develop varieties with which of the following features?</i></p> <p>(A) <i>Dormancy</i></p> <p>(B) <i>High yielding ability</i></p> <p>(C) <i>Improved quality</i></p> <p>(D) <i>Change in maturity date.</i></p>
<p><i>What is related frog in the same way as "Snake" is related to frog?</i></p> <p>(A) <i>Fly</i> (B) <i>Python</i> (C) <i>Tadpole</i> (D) <i>Worm</i></p>
<p><i>What is the smallest positive integer n, for which $(1+i)^{2n} = (1-i)^{2n}$?</i></p> <p>(A) 1 (B) 4 (C) 2 (D) 0</p>



The child is the father of the man.

(A) Epigram (B) Antithesis (C) Hyperbole (D) Metaphor

As per petitioners, the correct answers of aforesaid questions are different from option selected by respondent and its expert committees.

10. Before dwelling into issue involved, it would be apposite to have bird's eye view of judicial precedents.

11. The Supreme Court in ***U.P.P.S.C and another v. Rahul Singh and another, 2018 AIR (Supreme Court) 2861*** while advertng to correctness of answers key has held that the law is well settled that onus is on the candidate to not only demonstrate that the key answer is incorrect but also that it is a glaring mistake which is totally apparent and no inferential process or reasoning is required to show that the key answer is wrong. The Constitutional Courts must exercise great restraint in such matters and should be reluctant to entertain a plea challenging the correctness of the key answers.

In ***Ran Vijay Singh (supra)***, the Supreme Court while dealing with the question of re-evaluation or scrutiny of answer sheets has held that :

“30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are:

30.1 If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it;

30.2 If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the Court may permit reevaluation or scrutiny only if it is demonstrated very clearly, without any “inferential process of reasoning or



by a process of rationalisation” and only in rare or exceptional cases that a material error has been committed;

30.3 The Court should not at all re-evaluate or scrutinize the answer sheets of a candidate – it has no Expertise in the matter and academic matters are best left to academics;

30.4 The Court should presume the correctness of the key answers and proceed on that assumption; and

30.5 In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.”

In ***High Court of Tripura v. Tirtha Sarathi Mukherjee and others, (2019) 16 SCC 663*** the Supreme Court has held that a grave injustice may be occasioned to a writ applicant in certain circumstances. The case may arise where despite giving the correct answer no marks are awarded. If there is any doubt, the doubt should be resolved in favour of the examining body rather than in favour of the candidate. The wide power under Article 226 of the Constitution of India may continue to be available even though there is no provision for re-valuation in a situation where a candidate despite having giving correct answer and about which there cannot be even the slightest manner of doubt, he is treated as having given the wrong answer and consequently the candidate is found disentitled to any marks.

12. Petitions in hand need to be adjudicated in the light of law enunciated by Hon’ble Supreme Court because there are no particular statutory provisions governing the issue involved.

13. From the reading of above cited judgments, it is evident that High Court cannot turn a blind eye if selection board has selected an answer which cannot be accepted at all. If there is doubt, the benefit of doubt must go to selection agency, however, in the absence of doubt, if opinion of selection agency is accepted, it would entail casualty of merit, mis-carriage of justice and violation of Article 14 and 16 of the Constitution of India.



Constitutional Courts are custodian of fundamental rights and assigned role of sentinel on the *qui vive*. One cannot be heard to claim that government job is his fundamental right, however, the moment he cuts the ice and crosses the cut off barrier, cannot be ignored on account of lapse on the part of government machinery because it would amount to violation of fundamental right of equality in job opportunities guaranteed by Articles 14 and 16 of the Constitution of India.

A Constitution Bench in *S.P. Gupta v. Union of India, 1981 Supp SCC 87* has observed that if there is one principle which runs through the entire fabric of the Constitution, it is the principle of the rule of law. It is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the rule of law meaningful and effective. It is to aid the judiciary in this task that the power of judicial review has been conferred upon the judiciary and it is by exercising this power which constitutes one of the most potent weapons in armoury of the law, that the judiciary seeks to protect the citizens against violation of his constitutional or legal rights or misuse or abuse of power by the State or its officers. The judiciary stands between the citizen and the State as a bulwark against executive excesses and misuse or abuse of power by the executive.

14. The respondent has pleaded that Commission is not an Expert Body. It has further pleaded that in the present world of digitalization and internet, the answer to different questions may differ from site to site and book to book. The Commission is dependent upon report of Chief Examiner/Expert Body. The respondent-Commission is right in its averments with respect to questions relating to Physics, Geography, History and other subjects, however, source of answer to Question No.1 is one and



only i.e. Constitution of India. There is no ambiguity in the Constitution with respect to said question i.e. Executive Head of the State. Article 154 of the Constitution of India clearly provides that Governor is Executive Head of the State. The respondent has wrongly declared President as Executive Head of the State. For the ready reference Question No.1 and Article 154 of the Constitution of India are reproduced as below:

Question No.1

“Executive head of the State is

(A) Chief Minister

(B) Governor

(C) President

(D) Prime Minister”

Article 154

“154. (1) The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(2) Nothing in this article shall—

(a) be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or

(b) prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor.”

15. As laid down by Supreme Court, in case of doubt, the benefit of doubt should be given to Selection Committee, however, in the absence of doubt/ambiguity, the candidates cannot be deprived of marks of correct answer. The petitioners who had opted answers of aforesaid question as ‘Governor’ cannot be denied marks, accordingly it is hereby held that respondent shall grant marks for aforesaid question to all the petitioners who had opted for ‘Governor’ as answer to aforesaid question. If any petitioner, after getting marks for aforesaid question, scores more than last selected



candidate in his category, he would be issued appointment letter irrespective of vacant post. The State would either adjust from available posts or create supernumerary posts.

16. In the wake of law laid down by Hon'ble Supreme Court, the fact that respondent referred the matter to Chief Examiner who further forwarded the matter to an expert committee and there is no allegation of *mala fide*, this Court is not inclined to invoke its extraordinary writ jurisdiction with respect to questions other than Question No.1 as noted hereinabove.

17. Correction of answer of one question, in view of aforesaid findings, may affect appointment of few already selected candidates. They are not before this Court. Their appointment on the basis of a properly conducted competitive examination cannot be said to have been affected by any malpractice or other extraneous consideration or misrepresentation on their part. They must have completed probation period. They are serving the respondent State for more than 5 years and any order disturbing their appointment would cause undue hardship to their families and ruin their lives and career. It is settled law that fraud and justice never dwell together. No legal right of appointment to a post vest in a candidate who has obtained employment by fraud, mischief, misrepresentation or *mala fide*. However, in case a wrongful or irregular appointment is made without any mistake on the part of the appointee, Court should take sympathetic view in the light of various factors including *bona fide* of the candidate in such appointment and length of service of the candidate after such appointment.

In the instant case, there was no fraud, mis-representation or malpractice on the part of already selected candidates, thus, their



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appointment would not be disturbed by this order.

18. It is hereby clarified that in the wake of this order, if any petitioner is selected, the date of his joining shall be his date of appointment for all intents and purposes. The respondents would be at liberty to examine other terms and conditions of advertisement while considering claim of the petitioners. The needful shall be done within three months from today.

19. This order may prompt fence sitters to approach this Court. The benefit of this order shall be available only to present petitioners and it would not be available to any fence sitter otherwise there would be no end of litigation and it may open Pandora's Box.

20. In the aftermath, the instant petitions are hereby disposed of in above terms.

21. Pending application(s), if any, shall also stand disposed of.

22. Before parting with the judgment, this Court finds it appropriate to observe that despite interim orders of this Court, the members of Expert Committee reiterated incorrect answer of Question No.1. It was inappropriate on their part. It seems that to justify themselves they have not rectified their mistake. The Selection Commission is hereby directed to consider this fact while assigning work in future to these members of the committee.

(JAGMOHAN BANSAL)
JUDGE

08.05.2025
Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No