

HIGH COURT OF CHHATTISGARH AT BILASPUR

WA No. 109 of 2025

High Court of Chhattisgarh Through Registrar General, High Court of Chhattisgarh, Bilaspur, Chhattisgarh.

--- Appellant(s)

versus

Saifan Khan S/o Shri Hidayat Khan Aged About 27 Years By Occupation- Service, Posted as Stenographer In High Court of Chhattisgarh at Bilaspur, R/o F-10, Old Dfo Compound, Near 4th Bridge, Napier Town, District Jabalpur, Madhya Pradesh, at Present R/o High Court Colony, Chakarbhata, Bilaspur, Chhattisgarh.

--- Respondent(s)

For Appellant	:	Mr. Chandresh Shrivastava, Advocate
For Respondent	:	Mr. Vaibhav A. Goverdhan and Mr. Anshuman Singh, Advocates

WA No. 110 of 2025

Saifan Khan S/o Late Hidayat Khan Aged About 30 Years By Occupation- Service, Posted as Stenographer In High Court of Chhattisgarh at Bilaspur, R/o G-1/7, High Court Colony, Rahangi Road, Chakarbhata, Bilaspur, Chhattisgarh.

---Appellant(s)

versus

High Court of Chhattisgarh Through The Registrar General, High Court of Chhattisgarh, Bilaspur, Chhattisgarh.

---Respondent(s)

For Appellant	:	Mr. Vaibhav A. Goverdhan and Mr. Anshuman Singh, Advocates
For Respondent	:	Mr. Chandresh Shrivastava, Advocate

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Ravindra Kumar Agrawal , Judge

Judgment on Board

Per Ramesh Sinha , Chief Justice

14 .02.2025

1. Since the aforesaid two writ appeals arise out of order dated 18.11.2024 passed by the learned Single Judge in WPS No.2173 of 2022, they are being heard and considered together.
2. Heard Mr. Chandresh Shrivastava, learned counsel {for the appellant in WA No. 109/2025 and respondent in WA No. 110/2025} and and Mr. Vaibhav A. Goverdhan and Mr. Anshuman Singh, learned counsel, {for the appellant in WA No. 110/2025 and respondent in WA No. 109/2025}.
3. Also heard on I.A. Nos. 2 of 2025 {WA No. 109/2025} and I.A No. 1 of 2025 {WA No. 110/2025}, applications for condonation of delay in both the appeals.
4. After hearing the learned counsel for the parties and considering the reasons mentioned in the applications, we are of the opinion that sufficient cause has been shown in the applications and accordingly, I.A. No. 2 of 2025 and I.A. No. 1 of 2025 are **allowed** and delay of 13 days and 25 days, respectively in filing these appeals are condoned and we proceed to hear these matters finally.
5. These intra Court appeals have been filed by the appellant-writ petitioner and the appellant-High Court of Chhattisgarh, against the order dated 18.11.2024 passed by the learned Single Judge in WPS No. 2173 of 2022 (*Saifan Khan vs. High Court of Chhattisgarh*), whereby the learned Single Judge has partly allowed the writ petition filed by the appellant/writ petitioner.

6. The facts of the case, in brief, are that pursuant to an advertisement issued in the year 2018 for recruitment against 60 vacant post of Stenographer, the appellant-writ petitioner filled his application form under unreserved category and appeared in the examination conducted on 16.12.2018 along with other candidates. Thereafter, result was declared on 08.01.2019 and his name found place at Sl. No. 28 of the Common Merit List, by securing total 67 marks (36 in the written examination and 31 in the skill test) and was placed under waiting list. Since the respondent was expecting more marks, he sought his answer-sheet under the Right to Information Act, 2005 (for short, 'RTI Act') and found that the valuation of five answers in the written examination in relation to Question No. 3, making of sentences from given word, have been wrongly checked, even the correct answers were marked as wrong. Being aggrieved, he filed detailed representation stating his grievance and, when no action was taken, ultimately he filed writ petition bearing WPS No. 2007/2019. Thereafter, the learned Single Judge passed its detailed judgment dated 26.03.2021 disposing off the writ petition observing that, the Court, in exercise of power of judicial review can direct the examining body to re-examine the answer key. In view of such proposition, the appellant High Court was directed to re-evaluate the answer-sheet of the appellant-writ petitioner for Question No. 3 by a team of experts within a reasonable time. After revaluation of the answer-sheet by the experts, fresh marks would be allotted to the appellant-writ petitioner and accordingly on the basis of fresh marks obtained his position may be changed/varied and consequence of it would follow with regard to selection. Thereafter, vide order dated 20.12.2021, the appellant-High Court issued appointment order in favor of the appellant-writ petitioner, however, the appellant-writ petitioner was shocked and surprised to see Condition Nos.(1) & (13) of the aforesaid appointment order, which to the extent of period of probation and seniority were adverse and prejudicial to the appellant-writ petitioner in the peculiar facts and circumstances of the case. On

24.12.2021, pursuant to the order of appointment dated 20.12.2021, the appellant-writ petitioner submitted his joining in the establishment of the Hon'ble High Court under protest of the Condition Nos. (1) & (13) of the appointment order, which was duly accepted by the appellant-High Court. However on the same day, *i.e.*, on 24.12.2021, the appellant-writ petitioner submitted his representation before the appellant-High Court stating his grievance regarding Condition Nos. (1) & (13) of the order of appointment and as to why those conditions are not applicable in his case. Thereafter, under the RTI Act, the appellant-writ petitioner again applied for his answer-sheet which was re-evaluated pursuant to the order of this Court dated 26.03.2021 and came to know that revaluation has been wrongly done, as he has been

awarded half (1/2) mark for the sentences with the words: 'hear', 'write', 'wear' and 'wait', instead of one (1) full mark and one (1) mark for the sentence with the words: 'where', in total three (3) more marks have been given to the respondent instead of five (5) marks. The appellant-writ petitioner again submitted a supplementary representation dated 13.01.2022 before the

appellant-High Court stating as to why Condition No. (13) with regard to fixation of seniority is prejudicial to his case and when nothing was received/heard in regard to his grievance qua impugned Condition Nos. (1) & (13) of the appointment order dated 20.12.2021, he submitted a reminder dated 22.02.2022 for deleting the condition of period of probation as well as proper fixation of seniority as mentioned in Condition No. 13 of the appointment order which was rejected on 22.09.2023 and has also prayed for grant of two additional marks so that his total marks became 72 marks and he may be placed below the Stenographer, namely, Ms. Ayushi Landge and above Mr. Vivek Rawat. Being aggrieved, the appellant-writ petitioner filed WP(S) No. 2173/2022 which was partly allowed by the learned Single Judge vide order dated 18.11.2024.

7. The appellant-High Court has filed an appeal challenging the order of the learned Single Judge to the extent that it is aggrieved by allowing the writ petition in part as the appellant/writ petitioner has been held entitled for pay scale w.e.f. 20.12.2021 at par with other stenographers appointed as per the advertisement dated 12.10.2018.

8. The appellant-writ petitioner has filed the appeal challenging the order of the learned Single Judge to the extent that his prayer for modification in Condition No. 13 of his appointment order dated 20.12.2021, award of proper marks in compliance of the order dated 26.03.2021 passed by the learned Single Judge, and fixation of his seniority in between the Stenographers namely Ms. Ayushi Landge and Mr. Vivek Rawat, has been rejected by the learned Single Judge.

9. Mr. Chandresh Shrivastava, learned counsel for the appellant-High Court submits that once the rules have been amended prior to appointment, the service conditions of an employee will always be governed as per the amended rules and the same would not relate back to the date of advertisement or selection. The learned Single Judge has wrongly applied the principle of changing rules of game which is not applicable to the case after appointment and the same is only restricted to the process of recruitment. A candidate from the select list appointed subsequently cannot claim appointment from a back date. Even otherwise appointment of a candidate operates from the date he is appointed and not from the date those from the select list others are appointed. The legal proposition has been well settled that doctrine of 'changing the rules of game have a strict application on eligibility and selection criteria but will not continue to a later stage even after appointment. This Hon'ble Court itself has held in similar matter where the amendment in Rule 8 of CG Civil Services (General Conditions of Service) Rules 1961 and Rule 22C of CG Fundamental Rules incorporating the similar conditions which are subject matter of present dispute were under challenge that the recruitment and appointment are

different and no right accrued in favour of any selected candidate until appointed. The learned Single Judge has failed to consider the observations made by a Division Bench in the case of ***Vijayendra Mahilane & Ors. v.***

State Of Chhattisgarh WPS 2530/2021 in which the decision of the Supreme Court in ***Chairman, Railway Board & Others v. C.R. Rangadhamaiah & Others*** {(1997) 6 SCC 623} has been taken note of. The learned Single Judge has rightly observed that the appellant-writ petitioner was not entitled for any additional two marks in which there is no illegality as the Court cannot substitute its own view for that of examiners. However, the learned Single Judge has failed to consider that the conditions of service of appellant-writ petitioner would be governed by CG High Court Services (Appointment, Conditions of Service and Conduct) Rules 2017 which got amended on 09.10.2020 specifically mentioning that the amendment shall come into force with immediate effect prior to appointment of appellant-writ petitioner and in absence of any challenge to the Rules itself the appellant-writ petitioner cannot derive any benefit. It is further submitted by Mr. Shrivastava that the learned Single Judge has erred by relying on the decision in ***Tej Prakash Pathak v Rajasthan High Court*** {C.A. No. 2634/2013, decided on 07.11.2024} which is relating to recruitment process which commences from the issuance of advertisement and ends with filling up of vacancies however the present is a case of conditions of service after appointment which is entirely different concept. Rather, the ratio laid down by the Apex Court in ***State of Himachal Pradesh & Ors. Versus Raj Kumar & Ors*** {Civil Appeal No. 9746/2011, decided on 20.05.2022} is applicable to the case in hand. The conditions of service are determined by the rules in force on the date of appointment as per Hon'ble Apex Court in ***Union Of India v. S.S Uppal And Another***, {AIR 1996 SC 2340}.

10. On the other hand, Mr. Anshuman Singh and Mr. Vaibhav A. Goverdhan, learned counsel appearing for the appellant-writ petitioner submits that the findings

recorded by the learned Single Judge that the appellant-writ petitioner is not entitled to get additional two marks vis-a-vis half (2) more mark for the sentences with the words: "hear", "write", "wear" and "wait" is bad, illegal, erroneous and contrary to the parameters given in the subject Question No.03 of the written examination as also against the order passed by a learned Single Judge of this Hon'ble Court dated 26.03.2021 (Annexure-P/2 to writ petition). The observation made by the learned Single Judge in paragraph 16 is totally misconceived and completely based on a wrong interpretation of the

parameters given in subject Question No.03 of the written examination as also against the observation and verdict made by a learned Single Judge of this Court on 26.03.2021 in WPS No. 2007/2019. Mr. Singh submits that a bare perusal of the revaluation done by the valuer/expert would reveal that wherever the word is used in its different form *inter alia* past tense or verb form, although correct, but the same has been given half ($\frac{1}{2}$) mark. It is submitted that the requirement of the Question No.3 asked was only to form a correct sentence with the given word/words, for which one (1) mark is to be given to the candidate and there was no provision to give (2) half mark to the candidate. As

per the parameters given in Question No.3 itself, once a sentence constructed/framed by the given word is found to be correct, (1) one mark has to be given and, if it is found to be wrong, no mark is required to be given and there was no provision to give half mark. In the case of the appellant, he framed correct sentences with the given words and, correctness of which, got stamp of approval by the order of this Court dated 26.03.2021 (Annexure-P/2), therefore, there was no question to deny half mark to the writ petitionerappellant for the correct construction of sentences with the words: "hear", "write", "wear" and "wait". In light of the specific guidelines given in Question No.03 itself ie. "each making sentences, carry 2 marks, one marks for correct use of each word)" the learned Single Judge has committed an error while holding the that "the submission of the appellant

that he should be given one mark for each sentence is total imaginary and far from truth and, accordingly, deserves to be rejected. It appears that after revaluation, appellant has been given only 3 more marks in written examination, which brought his total marks to 70, whereas the issue which arose for consideration and adjudged by learned Single Judge in WPS No.2007 of 2019 was in respect of four similarly constructed sentences with the words "hear", "write", "wear" & "wait" and one wrongly evaluated sentence with the word-"where" and thus involved total 5 marks. A bare perusal of re-valuted answer sheet (Annexure-P/5 to the writ petition) would show that while revaluation was being done, the valuer has committed mistake in awarding half (1/2) mark to the appellant for the sentences with the words: "hear", "write", "wear" and "wait", as the appellant writ petitioner has used tense and changed the form of the words, which is completely a wrong interpretation of the order of this Hon'ble Court dated 26.03.2021 (Annexure-P/2). This Hon'ble Court while delivering its verdict has covered and taken into consideration all the aspects of the matter, which involves dictionary meaning and has clearly held and gave specific findings of fact in Para-15 of its detailed order (Annexure-P/2) that "...The simple reading of the answer given by the petitioner would show that he framed the sentence correctly. Mere by change of the tense in the English subject, it would not change the word and the petitioner should have been given marks....." It was also observed by the learned Single Judge in WPS No. 2007/2019 vide order dated 26.03.2021 that "mere change of tense in usage would not change the meaning and petitioner should have been given marks for such correct answers". Thus, in light of such observation made by this Hon'ble Court in Para-15 of the aforesaid judgment dated 26.03.2021, it was no more open to the appellant-High Court or the valuer to award half (1/2) mark each for every correct answers given by the appellant. The scheme of the examination coupled with the observations made by this Hon'ble Court in the aforesaid order dated 26.03.2021 (Annexure-P/2) categorically points out the fact that the appellant was entitled to get

one full mark each for every correct answer and the respondent cannot deviate from the scheme of examination by denying the appellant half a mark for every correct answer despite the fact that in the opinion of the appellant-High Court as also in the opinion of the learned Single Judge, the answers given by the appellant-writ petitioner were correct. The nature of question No.03 is such that the answer is either correct or not correct. It is, therefore, a case where the complete marks allocated to the answers are to be awarded or no marks are to be awarded in the case of wrong answer. Once there is judicial pronouncement that the answers given by the appellant are correct and there is no challenge to the same before any higher Court by the respondent-High Court, there cannot be any subjective satisfaction of the respondent-High Court to deny half a mark to the appellant-writ petitioner. Therefore, necessary corrections are required to be done by the appellant-High Court by awarding half more mark, denied to the appellant-writ petitioner for each correct answer with the words: "hear", "write", "wear" and "wait". The question which has been asked is in order to test the understanding and aptitude of the candidate to differentiate between the two similar phonetic words having different meaning and different usage. The said vital test is meant for stenographers in order to test their understanding and knowledge about the words which are usually used in their work. If the sentence formed implies the meaning as sought in the question, then the change in tense or forms of verb will not make any difference. The valuer therefore ought to have granted one full mark to the appellant-writ petitioner for the correct answers attempted by him. As a consequence of awarding less marks, impugned Condition No.(13) has been applied on the appellant, whereby the appellant has only been given 03 marks out of 05 marks after revaluation and placed in the order of seniority (as per Revised Common Merit List (Annexure-R/2 to the writ petition) in between the Stenographers Vasant Kumar and Ajay Kumar Dwivedi whereas, the appellant-writ petitioner should have been placed below Ms. Ayushi Landge and above Mr. Vivek Rawat. As such, substantial injustice has been done to the appellant-

writ petitioner by denial of half mark and his rights have been seriously prejudiced. The appellant-High Court as also the learned Single Judge has overlooked the specific observations made by this Hon'ble Court as also the scheme of the examination (particularly Question No.03) Therefore, the same is liable to be set aside and prayer of the appellant for modification in Condition No.13 of his appointment order dated 20.12.2021 (Annexure-P/01 with the writ petition) regarding fixation of proper seniority and awarding proper marks (02 more marks) deserves to be allowed.

11. We have heard learned counsel for the parties and perused the impugned judgment and materials available on record.

12. In nutshell, the appellant-writ petitioner is aggrieved by awarding of ½ marks for each questions as referred above and further, because of grant of ½ marks, he has been awarded total of 70 marks and as per the appellant-writ petitioner, it should have been 72 and as such, his placement in the merit list would also change. The appellant-High Court is aggrieved by the fact that the learned Single Judge has held that the appellant-writ petitioner would be entitled to get salary on the pay scale which the other Stenographers were granted as per pay scale in pursuance of the advertisement dated 12.10.2018 from the date of his joining i.e. 20.12.2021 and he will be kept in probation for two years from the date he joined the service on 20.12.2021 and further, if the appellant-writ petitioner is found fit for confirmation or he fulfills the conditions required under the recruitment rules for confirmation, his services would be confirmed immediately.

13. Earlier, the petitioner had filed WPS No. 2007/2019 wherein a learned Single Judge, vide order dated 26.03.2021 had directed the appellant-High Court for revaluation of the answer sheet of the appellant-writ petitioner with regard to the question No. 3 by a team of expert and fresh marks were directed to be allotted and

accordingly, his position may be changed/varied. Pursuant to the said direction, the answer-sheet of the appellant-writ petitioner was examined and the team of expert had awarded only 3 marks whereas he was entitled to 5 marks. The re-evaluation of the answer sheet of the appellant-writ petitioner has been done by team of experts. The learned Single Judge has dealt with this issue from paragraphs 15 to 17 and has relied on a decision of Apex Court in ***Central Board of Secondary Education through Secretary, All India Pre-Medical / Pre Dental Examination & Others v. Khusboo Shrivastava & Others*** {(2014) 14 SCC 523} and observed that it is the subjective satisfaction of the examiner. Even otherwise, this Court cannot step into the shoes of an expert and sit as an appellate authority of the expert. Hence, the findings arrived at by the learned Single Judge deserves no interference.

14. So far as the applicability of the Chhattisgarh High Court Service (Appointment, Condition of Service & Conduct) Rules, 2017 which have been amended on 09.10.2020 to the selection process which was initiated on 13.10.2018 prior to the amendment in the rules, it has further been rightly held by the learned Single Judge that fixation of probation period of the petitioner for three years and grant of stipend at the rate of 70%, 80% and 90% for the first, second and third year, respectively, is illegal as the recruitment process cannot be amended in the mid way and even the rules which have been amended on 09.10.2020 cannot be applied. The appellant-writ petitioner cannot be penalised for any fault on the part of the employer and as such, we also concur with the findings arrived by the learned Single Judge that the appellant-writ petitioner would be entitled to get salary on the pay scale which the other Stenographers were granted as per pay scale in pursuance of the

advertisement dated 12.10.2018 from the date of joining i.e. 20.12.2021. We fully concur with the observation made by the learned Single Judge in paragraph No. 20 of the judgment impugned and as such, we are of the view that the learned Single Judge has committed no illegality or irregularity in passing the impugned judgment and as a result, both the appeals, one filed by the appellant-High Court and the other filed by the appellant-writ petitioner, being devoid of merit, are accordingly **dismissed**.

Sd/-
(Ravindra Kumar Agrawal)
JUDGE

Sd/-
(Ramesh Sinha)
CHIEF JUSTICE