

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 1042 OF 2023

WITH

MISC. APPLICATION NO. 584 OF 2023

DIST. : JALNA

Yogesh S/o Sopanrao Dawle,
Age : 33 years, Occu. Student
R/o. Bramhankheda,
Tq. & Dist. Jalna.

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APPLICANT

V E R S U S

- 1) The State of Maharashtra
Through its Secretary
General Administration Department,
Mantralaya, Mumbai.
- 2) The State of Maharashtra
Through its Secretary
Revenue and Forest Department,
Mantalaya, Mumbai.
- 3) Maharashtra Public Service Commission
Through its Secretary.
- 4) Babar Suraj Sahebrao,
Age : Major, Occu. Student;
R/o: Suraj Plot No. 16,
Shri Swami Samarth Nagar,
Near Palvi Hotel Vijaynagar
Sangli, Sangli, Maharashtra.
- 5) Nigade Yogesh Arjun,
Age : Major, Occu: Student;
R/o: Tandali, Dumala,
Khair Mala Tandali Dumala,
Shrigonda, Ahmednagar,
Maharashtra 413701
- 6) Patil Ahitosh Gangaram,
Age : Major, Occ: Student,
R/o: Maliwali Galli,
Salashi Shahuwadi,
Kolhapur, main road,
Salashi, Maharashtra-416213. ..

RESPONDENTS

APPEARANCE :- Shri Ajay S. Deshpande, learned counsel holding for Shri R.J. Nirmal, learned counsel for the applicant.
: Shri M.B. Bharaswadkar, learned Chief Presenting Officer for the respondent authorities.

**CORAM : Hon'ble Shri Justice P.R. Bora,
Vice Chairman
AND
Hon'ble Shri Vinay Kargaonkar,
Member (A)**

RESERVED ON : 07.02.2024

PRONOUNCED ON : 21.03.2024

ORDER

[Per :- Justice P.R. Bora, V.C.]

1. Heard Shri Ajay S. Deshpande, learned counsel holding for Shri R.J. Nirmal, learned counsel for the applicant and Shri M.B. Bharaswadkar, learned Chief Presenting Officer for the respondent authorities.

2. The Maharashtra Public Service Commission (for short the M.P.S.C.) had published an advertisement on 23.06.2022 for recruitment of various posts including the post of Sub-Registrar/Stamp Inspector, Class-II. The applicant applied for the said post. Applicant belongs to E.W.S. category. Out of total posts to be filled in of Sub-Registrar/Stamp Inspector, Class-II, 06 were reserved for EWS candidates. Applicant cleared the preliminary examination and hence was

eligible to appear for the mains examination. The first paper of the mains examination was held on 01.10.2023 and the second paper was held on 07.10.2023. It was an objective test of 200 marks. The candidates were called upon to answer 100 objective type multiple choice questions within an hour's period. The candidates were to get 02 marks for every correct answer and were to lose 0.5 marks for every question wrongly answered. 04 sets were prepared of the question paper as A, B, C and D. Same 100 questions were in every question paper, however, number of questions were suitably changed in every set. Applicant was given 'C' set question paper. Question no. 40 in the said question paper was as follows:-

40. खालीलपैकी कोणते विधान असत्य आहे ?

- (1) संविधानाच्या भाग - ४ मध्ये मुलभूत कर्तव्ये दिलेली आहेत.
- (2) ४२ व्या घटनादुरुस्ती नंतर मुलभूत कर्तव्ये भारताच्या राज्यघटनेत समाविष्ट केली गेली.
- (3) २००२ मध्ये ८२ व्या घटनादुरुस्ती कायदानंतर, आणखी एक मुलभूत कर्तव्य जोडले गेले.
- (4) लोकप्रतिनिधीत्व कायदा सन १९५१ मध्ये धनियमतीत करण्यात आला.

40. Which of the following statement is false ?

- (1) Fundamental duties are given in Part IV of the Constitution.
- (2) After the 42nd Constitutional Amendment Fundamental Duties have been added to the Constitution of India.
- (3) In 2002 after the 82nd Constitutional Amendment Act, another Fundamental Duty was added.
- (4) The Representation of People Act was enacted in the year 1951.

2. Applicant marked the first option while answering question no. 40. However, when the answer key was published, the applicant noticed that for the aforesaid question 3rd option was given to be the correct answer. It is the contention of the applicant that option no. 01 is also a false statement. According to the applicant, thus, not only one but two statements, first and third were the false statements. The applicant, therefore, lodged his objection in regard to the answer provided to the aforesaid question in the answer key and prayed for taking remedial measures. Nevertheless the M.P.S.C. published the final answer key without making any change. It is the grievance of the applicant that respondent no. 03 has manifestly erred in not considering the request of the applicant. It is the further contention of the applicant that though he has correctly answered question no. 40, respondent no. 03 held it to have been wrongly answered and awarded 0.5 negative marks to the applicant. It is the further contention of the applicant that thus without any fault on his part the applicant has lost 2 ½ marks. It is the further case of the applicant that because of loss of said 2 ½ marks the applicant has missed the appointment.

3. In the aforesaid circumstances, the applicant has approached this tribunal seeking the following reliefs:-

“(B) Record and proceedings be called for.

(C) By way of allowing the present Original Application the it may be directed to the respondent No. 3 to delete the question No. 40 from Set No. C pursuant to the advertisement dated 14.08.2023 (advertisement No. 33/2023).

In alternate

It may be directed to grant benefit of two mark in favour of present applicant.

(C-1) The name of the applicant may be added in final selection list, dated 04.01.2024 and it may be directed to the respondent to appoint the present applicant for sub registrar/ stamp inspector (grade I).

(D) Any other suitable and equitable relief may please be granted in favour of the applicant.

(11) INTERIM RELIEF SOUGHT

(A) During pendency of it may be directed to not to declare the result of examination pursuant to the advertisement dated 14.08.2023 (Advertisement No. 33/2023).

(B) Ad-interim Relief in terms of Prayer Clause-A may kindly be granted.

(C) Any other suitable and equitable relief may kindly be granted in favour of the applicant.”

4. Respondent no. 03 has filed affidavit in reply. Respondent no. 03 had denied all the allegations raised and the prayers made in the application. According to respondent no. 03 there was no error in the answer provided to question no. 40

in 'C' set question paper. To the reply filed by respondent no. 03, rejoinder affidavit was filed by the applicant. To the said rejoinder affidavit respondent no. 03 submitted sur-rejoinder. In the sur-rejoinder it is the contention of respondent no. 03 that in multiple choice objective examination all the answer options of a particular question may appear to be correct, but only one of them is most appropriate answer. It is further contended that experts who set the questions always provide twists to mislead the candidates and the candidates have to interpret the question properly and are expected to choose most appropriate answer option out of 04 answer options. It is also the contention of respondent no. 03 that the objections received to the first answers key published by it were referred to the expert committee and on the basis of the report received from the expert committee the final answer-key has been published by respondent no. 03. The respondent no. 03 has thus remained firm on the answer given to the disputed question in the provisional as well as final answer-key, and has prayed for rejecting the application. Though the State is also one of the respondents in the matter, it has not filed any separate reply to the O.A. Respondent nos. 04 and 05, though, have been duly served, did not cause appearance.

5. Shri Ajay S. Deshpande, learned counsel holding for Shri R.J. Nirmal, learned counsel appearing for the applicant vehemently argued that out of 04 answer options given to question no. 40, two are the correct answers. In the final answer key which has been published by the M.P.S.C., however, only 3rd option is held to be the correct answer to the said question. Applicant has, however, marked option no. 01 as the correct answer to the said question and consequently the answer given by the applicant is held to be a wrong answer and the applicant has been given negative 0.5 marks. It is the case of the applicant that the answer given by him was also the correct answer and as such he was entitled to receive 02 marks for the said question. The applicant is shown to have secured 277 marks. According to him, he was entitled to receive 279.5 marks. Learned Counsel further submitted that if the error is rectified and the applicant scores the aforesaid marks, he is likely to be selected.

6. As against the submissions made on behalf of the applicant, Shri Mahesh B. Bharaswadkar, learned C.P.O. has argued with equal vehemence that in view of the settled legal position it may be impermissible for this Tribunal to sit over the opinion given by the experts, as an appellate authority. Learned

C.P.O. further argued that it is for the examiner to decide the manner in which he expects a candidate to answer a question and the Tribunal cannot act as a super examiner. Learned C.P.O. further argued that as has been consistently held by the Hon'ble Supreme Court, the Courts should presume the correctness of the key answer and even if there may be any doubt, the benefit should go to the examiner authority rather than the candidate.

7. In so far as the factual matrix is concerned, there appears no dispute. The controversy revolves around the question no. 40 as per set 'C' question paper and question no. 44 as per set 'A', which we have reproduced hereinbefore. As is revealing from the nature of question, the candidates were asked to identify which one out of four options is the false statement and to mark the same. Applicant marked the first statement to be false. However, in the answer key published by the M.P.S.C. 3rd statement was stated to be the correct answer and as noted above, M.P.S.C. is firm on the stand that the 3rd statement is the correct answer.

8. As has been argued on behalf of the MPSC, the experts ascertain the comprehension and intellectual study of the candidates while preparing these questions. Experts frame

the questions in such a manner that all the options appear to the candidates as the correct answers, however, the experts thereby ensure that the candidates select the most appropriate and correct option based on their intellectual quality and understanding of the question. As such, according to the MPSC the answer provided in the final answer key is the correct answer.

9. Since in the affidavit in reply filed on behalf of the MPSC it was stated that the opinion of the Expert was obtained, the MPSC was directed to place the said opinion on record. The MPSC accordingly produced the said opinion before the Tribunal in a sealed envelope with a prayer that the document so produced i.e. the opinion given by the expert is only for the perusal of the Tribunal and it shall not be made public and may not form the part of the documents placed on record in the matter. We have gone through the opinion given by the expert.

10. It cannot be disputed that the settled legal position does not permit the Tribunals or Courts to assume the role of examiner. However, as has been observed by the Hon'ble Apex Court in the case of **Ran Vijay Singh and Others vs. State of Uttar Pradesh and Others**, [(2018) 2 SCC 357], a complete 'hands off' or 'no interference' approach has not been suggested

in any of the judgments delivered by the Hon'ble Apex Court. It is further observed that the case law developed over the years admits of interference in the result of examination but in rare and exceptional circumstances and to a very limited extent. The Hon'ble Supreme Court in paragraph 30 of the said judgment has highlighted a few significant conclusions. Prior to that, the observations made by the Hon'ble Apex Court in paragraphs 18 & 30 of the said judgment are equally material to be reproduced. We reproduce paragraphs 18 & 30 of the said judgment, which are thus:

“18. A complete hands-off or no-interference approach was neither suggested in Mukesh Thakur nor has it been suggested in any other decision of this Court – the case law developed over the years admits of interference in the results of an examination but in rare and exceptional situations and to a very limited extent.

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 re-evaluation 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.”

From the observations as above made by the Hon’ble Apex Court, it has become explicitly clear that, the Tribunal cannot be a mute spectator and **can in rare and exceptional cases**, in exercise of judicial review, **permit for re-evaluation even when it is not permitted under statute**, rule, regulation governing the examination, in case it is “demonstrated very clearly, without any inferential process of reasoning or by a process of rationalization” that a material error has been committed in the answer key.

11. For an objective type multiple choice questions as is the case in the instant matter even if there is specific bar on reevaluation of answer-sheets, the Tribunal cannot take a complete ‘hands-off’ approach and if the circumstances as are

pointed out by the Hon'ble Apex Court in the case of **Ran Vijay Singh** (cited supra) are existing, indulgence may be caused by the Tribunal.

12. Answer provided in the answer key published by the MPSC to question no.40 is no doubt a correct answer, however, the answer option at Sr.No.1 is also an equally correct answer. Thus, when the candidate was expected to identify and mark only one option out of 4, to be a correct answer, there were 2 statements out of 4 which were liable to be marked as the false statements. The applicant and few others have marked the first option to be correct answer. However, since according to the answer key, the 3rd answer option is correct answer, the applicant has earned negative mark for the said question

13. In the affidavit in reply submitted by MPSC, it has taken a stand that in multiple choice objective examination, all four answer options of a particular question may appear to be correct but only one of them is the most appropriate answer and the candidate is expected to choose the said most appropriate answer option out of 04 answer options and according to MPSC option No. 3 is the most appropriate answer. We are constrained to observe that any person having even a little knowledge of constitution will not agree with the stand taken by

the MPSC. For a question, “in which part of the constitution Fundamental Duties are given”?, one and the only answer will be in part IV-A of the Constitution. Similarly, to a question in which part of the Constitution the Directive Principles are given? one and the only answer will be in part IV of the Constitution. Part IV & part IV-A of the Constitution are quite distinct from each other. Part IV when relates to directive principles of the State, part IV-A contains the fundamental duties. Part IV is the part of the Constitution since its inception whereas part IV-A came to be added in the Constitution much later thereafter by way of 42nd amendment and was made effective from 3rd January, 1977. Without any inferential process of reasoning or by process of rationalization it can be said that “**fundamental duties are given in part IV of the Constitution**” is a false statement. In no case it can be accepted that only because the fundamental duties are given in part IV-A of the Constitution somebody would not mark the said option believing that compared to option 03, it may be less appropriate answer.

We have no manner of doubt that material mistake has occurred in preparing the answer key of the subject question paper so far as answer to question No. 40 in Question Set ‘C’ is concerned Had the dispute be in regard to any other

question that is to say other than on Constitution, we would have refrained ourselves from causing interference and had left it to the wisdom of the examiner. In the instant case, however, we cannot be a mute spectator when the mistake occurred has been demonstrated to us very clearly. We have no manner of doubt in our mind that, material error has been committed in the answer key and without any inferential process of reasoning or by a process of rationalization, it can be said that respondent no.3 has committed glaring mistake in including a question having 2 answers therefor. As such, according to us, this is a fit case requiring indulgence by this Tribunal to rectify the patent error committed by respondent no.3.

14. As noted by us hereinabove, it is the case of the applicant that since he has marked 1st option as the correct answer to aforesaid question no.40, he has been given minus 0.5 mark. It is the further contention of the applicant that since he has given the correct answer he was entitled to get 2 full marks. Learned Counsel submitted that the applicant has been thus subjected to suffer loss of 2.5 marks. According to the applicant if the aforesaid 2.5 marks are added into the marks scored by him, his total number of marks would be 279.5 marks and he would have all better chances for his selection.

Applicant had applied for the seat reserved for EWS category. It has also been submitted that 6 posts were reserved for the candidates belonging to EWS category. It is his further contention that if the error committed by MPSC is rectified, he will be the candidate scoring highest marks in the EWS category and will be entitled for his appointment.

15. In spite of the fact that error occurred on part of MPSC is apparent, the question arises, to what extent indulgence may be caused by this Tribunal. The applicant seems to be the only candidate who has approached the Tribunal. The learned C.P.O. submitted that M.P.S.C. has not provided any information that any other petition on the subject matter is pending or decided by the Principal Bench at Mumbai or Bench at Nagpur. As has been argued by the learned counsel, the applicant has approached this Tribunal since his chance of sure selection has been jeopardized because of the error committed by M.P.S.C. May the applicant, be only candidate, when the error committed by M.P.S.C. is beyond the realm of doubt, it appear to us that it would be unjust and unfair to adopt the 'let go' approach. Considered from the applicant's perspective it may be a life-time opportunity for him and he cannot be deprived of that.

16. The next question arises what order can be passed in the facts and circumstances, which have come on record? The dispute is in respect of only one question, which we have reproduced hereinabove. The stand taken by the M.P.S.C. that the answer option No. 3 was the only correct answer is already disapproved by us. We have also held that out of 04, 02 answer options i.e. 01 and 03 are false statements. In the circumstances, if any candidate has marked option 01 as the correct answer, he must have been given 02 marks for correctly answering the said question. As is the case of the applicant, though he has correctly chosen the first option to be the correct answer and marked it, the M.P.S.C. has held the said answer wrong and for giving wrong answer has awarded the applicant minus 05 marks when the applicant was expecting 02 marks for correctly answering the question. This is the point of deadlock.

17. As observed by the Hon'ble Supreme Court in the case of **Ran Vijay Singh** (cited supra) way out for such an impasse is – to exclude the suspect or offending question. It appears to us that in the instant matter the aforesaid can be the only solution. The marks of the candidates thus will have to be re-counted excluding the marks awarded to the said question,

which would also include the minus marks. The further question immediately arises whether the marks scored by all the candidates who had appeared for the examination requires recounting? Considering the facts in the present matter recounting of the marks of all the candidates may not be required. We have already noted that the applicant is the only candidate who seems to have raised the dispute. The applicant is admittedly making his claim against the seat reserved for EWS candidates. Competition of the applicant is with the candidates belonging to EWS category. According to him, he is the highest scorer candidate in EWS category. As such, if the direction is given for recounting of the marks scored by the candidates coming from EWS category excluding the marks scored by the said candidates in an answer to the disputed question, that would serve the purpose. According to us, such direction would meet the ends of justice. Hence, the following order: -

ORDER

1. The MPSC (Respondent No. 3) is directed to recount the marks scored by the candidates who have applied for the post of Sub-Registrar/Stamp Inspector (Grade-I) in pursuance of advertisement No. 33/2023 dated 14.08.2023 for the seats reserved for EWS category in the mains examination held for the said post on 07.10.2023

by excluding the marks awarded to question No. 40 in Question Paper Set 'C' and for the same question in the question paper sets 'A', 'B' and 'D' and prepare the select list afresh in order of merit for the said category and issue order of appointments accordingly in order of merit.

2. The aforesaid exercise is to be carried out within 03 weeks from the date of this order.

3. The Original Application stands allowed in the aforesaid terms. No order as to costs.

4. Since the O.A. has been allowed and disposed of, the Misc. Application also stands disposed of.

(VINAY KARGAONKAR)
MEMBER (A)

(P.R.BORA)
VICE CHAIRMAN

Place : Aurangabad
Date : 21-03-2024.

NOTE: Opinion of the learned Expert, confidentially received from MPSC be returned to MPSC in a sealed envelope.