

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 589 OF 2023

DIST. : OSMANABAD

Shri Pramod s/o Laxman Sarvade,)
 Age. 24 years, Occ. : Education,)
 R/o C/o Smt. Nirmala Bajirao Jagade)
 At Post Pangaon, Tq. Kallam,)
 Dist. Osmanabad.).. **APPLICANT**

V E R S U S

Maharashtra Public State Commission,)
 Through its Secretary,)
 Trishul Gold Field, Plot No. 34,)
 In front of Sarovar Vihar, Sector – 11,)
 CBC Belapur, Navi Mumbai.) .. **RESPONDENT**

 APPEARANCE :- Shri K.G. Salunke, learned Advocate for
 the applicant.
 : Shri M.S. Mahajan, learned Chief
 Presenting Officer for the respondent.

CORAM : **Hon'ble Shri Justice P.R. Bora,**
Vice Chairman
 [This matter is placed before the Single Bench
 due to non-availability of Division Bench.]

DATE : **18th July, 2023**

O R D E R

1. Heard Shri K.G. Salunke, learned counsel for the
 applicant and Shri M.S. Mahajan, learned Chief Presenting
 Officer for the respondent.

2. With the consent of learned counsel for the applicant and learned C.P.O. for the respondent, MPSC the present Original Application is taken up for final disposal at the stage of admission itself.

3. Today when the present matter is taken up for consideration the learned C.P.O. has tendered across the bar copy of communication dated 14.7.2023 received to his office from the Maharashtra Public Service Commission (for short M.P.S.C.). It is taken on record and copy thereof is given to the learned counsel for the applicant.

4. Learned counsel for the applicant submitted that the applicant has applied for all the posts advertised including the post of Police Sub-Inspector (for short P.S.I.). Learned counsel further submitted that however the option for the post of P.S.I. could not be recorded because of some technical glitch in the concerned software. Learned counsel submitted that on the basis of model key the applicant must have received more marks than the cutoff marks in the preliminary examination and he is, therefore, entitled to appear for the final examination. Learned counsel submitted that the MPSC, however, has not declared his name in the list of candidates who have been

declared qualified to appear for the final examination. Learned counsel submitted that even in the past the applicant had applied for the post of P.S.I. Learned counsel submitted that the applicant cannot be deprived of an opportunity to appear for the main examination, since he has received more than the cutoff marks in the preliminary examination insofar as post of P.S.I. is concerned. Learned counsel, in the circumstances, has sought direction against the respondent M.P.S.C. to accept the application of the applicant and allow him to appear for main examination in pursuance of the advertisement No. 53/2022 dated 23.6.2022.

5. Shri M.S. Mahajan, learned Chief Presenting Officer has opposed for grant of any such relief. Learned C.P.O. pointed out that in pursuance of the aforesaid advertisement the applicant applied for the post of Assistant Section Officer, State Tax Inspector and Sub-Registrar Grade-I/Inspector of Stamps. Learned C.P.O. pointed out that the applicant in his application form submitted online has given options only for the aforesaid 3 posts and no option is given by the applicant for the post of P.S.I. Learned C.P.O. further submitted that, from the communication received from the M.P.S.C., which today he has tendered before the Tribunal, the applicant did not receive the

cut-off marks fixed for the aforesaid 3 posts and in the circumstances the applicant cannot be held eligible to appear for the main examination. Learned C.P.O. further submitted that since the applicant did not give any option for the post of P.S.I., even though he might have received more than cut-off marks in the preliminary examination insofar as the post of P.S.I. is concerned, the M.P.S.C cannot allow the applicant to appear for the main examination. Learned C.P.O. invited my attention to clause 9.2 of the advertisement concerned and submitted that in view of the provision thereunder no error can be found on the part of the M.P.S.C. Learned C.P.O., therefore, prayed for rejecting the application.

6. I have duly considered the submissions made on behalf of the applicant, as well as, the respondent M.P.S.C. It is not disputed that the applicant applied in pursuance of the advertisement No. 53/2022. Clause 9.1, 9.2, 9.3 and 9.4 are relevant insofar as prayer made in the present O.A. is concerned. I, therefore, deem it appropriate to reproduce aforesaid clauses from the advertisement no. 53/2022 :-

“९.१ विविध संवर्गाकरीता भरती प्रक्रिया खालीलप्रमाणे त्यांच्या नावासमोर दर्शविलेल्या टप्प्यामध्ये राबविण्यात येईल :-

अ.क्र.	संवर्ग	टप्पे	संयुक्त पूर्व परीक्षेचे गुण	मुख्य परीक्षेचे गुण	शारीरिक चाचणीचे गुण	मुलाखतीचे गुण
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१	सहायक कक्ष अधिकरी	संयुक्त पूर्व परीक्षा व स्वतंत्र मुख्य परीक्षा	१००	४००	--	--
२	राज्य कर निरीक्षक			४००	--	--
३	दुय्यम निबंधक (श्रेणी-१)/मुद्रांक निरीक्षक			४००	--	--
४	पेलीस उप निरीक्षक	संयुक्त पूर्व परीक्षा, स्वतंत्र मुख्य परीक्षा, शारीरिक चाचणी व मुलाखत		४००	१००	४०

९.२ संयुक्त पूर्व परीक्षेच्या जाहिरातीस अनुसरून अर्ज करणा-या उमेदवारांना, ते वरीलपैकी एक, दोन किंवा सर्व संवर्गासाठी बसू इच्छितात किंवा कसे याबाबत विकल्प (Option) द्यावा लागेल.

९.३ संबंधित संवर्गाकरीता उमेदवाराने दिलेला/ले विकल्प हा/हे संबंधीत संवर्ग भरतीकरीता अर्ज समजण्यात येईल/येतील.

९.४ संयुक्त पूर्व परीक्षेस अर्ज करताना दिलेला विकल्प तसेच, भरावयाच्या पदसंख्येच्या आधारे, संबंधित संवर्गाच्या मुख्य परीक्षेसाठी पात्र करावयाच्या उमेदवारांची संख्या निश्चित करून, सामाईक पूर्व परीक्षेच्या आधारे चारही संवर्गाकरीता पूर्व परीक्षेचा स्वतंत्र निकाल जाहीर करण्यात येईल.”

The contents of the aforesaid clauses reveal that the advertisement was issued for recruitment of aforesaid 4 posts for which a common preliminary examination was to be conducted. Vide clause 9.2 the applicant was under an obligation to clarify or to give his option/s whether he is appearing in the preliminary examination for anyone of the aforesaid posts or any of 2 posts or for all the posts. Clause 9.3 speaks that the applicant would be held eligible for reinstatement of the post for which he has exercised option as aforesaid. Clause 9.4 reveals that for deciding the eligibility of the candidate to appear for the main examination the option/s exercised by the applicant while making an application for the

preliminary examination, as well as, the number of posts to be filled in for which option is exercised would be the relevant considerations.

7. It appears that in the form, which the applicant submitted online, only 3 options were given by him and no option was given insofar as the post of P.S.I. is concerned. It is the contention of the applicant that he had very-well tried to give option for the said post also, however, because of some technical glitch said option could not be recorded. It is the case of the applicant that only after the list of candidates eligible to appear for main examination is published, he became aware that he is not held eligible even though he has secured more marks than the cut-off prescribed for the post of P.S.I. Learned counsel for the applicant submitted that the applicant could not exercise the option properly because of the fault in the concerned software and/or technical glitch therein at the relevant time and in such circumstances the applicant cannot be deprived from appearing in the main examination when in the preliminary examination he has secured more than the cut-off marks. Learned counsel submitted that the applicant has already proved his merit in the preliminary examination and he deserves to be given an opportunity to appear for the main

examination. Learned counsel submitted that no prejudice is likely to be caused to anyone because if the applicant fails to prove his merit in the final examination he may not be entitled for his selection. He reiterated that, on technical grounds the applicant shall not be deprived from the opportunity to appear in the main examination.

8. Learned C.P.O. opposed the submissions made on behalf of the applicant. As has been submitted by the learned C.P.O. and as is revealing from the communication received to the C.P.O. office, while filling in the application form for the preliminary examination the applicant has not exercised option for the post of P.S.I. and in the circumstances though he might have received marks more than the cut-off marks prescribed for the post of P.S.I., since he has not received the marks more than the cutoff prescribed for the posts for which he has exercised options, the M.P.S.C. has not included his name in the list of the candidates eligible to appear for the main examination.

9. On query made by the Tribunal whether any immediate action was taken by the applicant to communicate the M.P.S.C. that though the applicant tried to exercise the option even for the post of P.S.I., it could not be recorded because of some

technical glitch, learned counsel for the applicant, on instructions, submitted that immediately no such attempt was made by the applicant. It appears to me that when applicant was fully aware that his option for the post of P.S.I. was not recorded and when it is the contention of the applicant that he was interested in appearing for the post of P.S.I. alone, the applicant must have approached the M.P.S.C. with his grievance alleging that because of technical glitch he could not exercise appropriate option. Since there is nothing on record to show that immediately after filling in online form or any time before declaring the result of the preliminary examination any attempt was made by the applicant to raise a grievance with M.P.S.C. that because of technical glitch he could not record his option for the post of P.S.I., it is difficult to accept the contention of the applicant. In view of unambiguous provisions under clauses 9.1 to 9.4 in the advertisement, no case can be said to have been made out by the applicant. The applicant was fully aware of the condition prescribed that, his candidature would be considered only for the posts for which he has exercised his option. He was also aware of the fact that while filling in application online, for the post of P.S.I., his option was not recorded. In spite of the aforesaid facts within his knowledge, the applicant did not raise any grievance with

M.P.S.C. or not even informed/communicated to M.P.S.C. that because of technical glitch he could not record his option for the post of P.S.I. Applicant has not given any explanation as to why he did not do so. Applicant has not disputed that the marks expected by him in preliminary examination are less than the cut-off provided for the posts for which options are recorded in the application online submitted by him. In the circumstances, no error can be alleged on part of the M.P.S.C. for not including the name of the applicant in the list of candidates 'eligible or qualified to appear for main examination'. Applicant has failed in making out any case in support of the relief/s claimed by him in the O.A. In the result, the following order is passed :-

ORDER

The Original Application is dismissed without any order as to costs.

VICE CHAIRMAN

Place : Aurangabad

Date : 18th July, 2023