

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

**ORIGINAL APPLICATION NOS 1266 & 1267 OF 2022
[CORRECTED COPY OF ORDER]**

DISTRICT : PUNE

1) ORIGINAL APPLICATION NO 1266 OF 2022

1. Shri Ganesh Ambadas Khedkar,
Occ-Student, At Post-Chinchpur Ijade,
Tal-Pathari, Dist-Ahmednagar.
2. Sanjay N. Waghmare,
Occ-Service, At Post-Gaikarawadi,
Tal-Karjat, Dist-Ahmednagar.
3. Shekhar Sitaram Shivale,
Occ-Student, At Post-Vadhu bk,
Tal-Shirur, Dist-Pune.

...Applicants

Versus

1. The State of Maharashtra
Through the Secretary,
Home Department, Mantralaya,
Mumbai 400 032.
2. Maharashtra Public Service Commission,
Through the Secretary,
5th, 7th and 8th floor,
Cooperage Telephone Exchange Bldg,
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...Respondents

2) ORIGINAL APPLICATION NO 1267 OF 2022

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VERSUS**1. The State of Maharashtra**

Through Secretary,
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2. Maharashtra Public Service Commission

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...**Respondents**

Shri Trunal T. Tonape and Ms Nikita Anandache, i/b Shri Asim Sarode, learned advocate for the Applicants.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Mrs Medha Gadgil (Member) (A)

DATE : **03.01.2023**

PER : **Justice Mridula Bhatkar (Chairperson)**

J U D G M E N T

1. Both the Original Applications are heard together and disposed of by a common order as the issues involved therein are similar.

2. The applicants pray that M.P.S.C be directed to correct the Question Nos 48, 89, 20, 34, 45, 18, 16, 68, 42 and 76 and the revised merit list be published on the basis of such corrected results. Further applicants pray that 2 marks be given the candidates who have marked Question No. 42 which is deleted by M.P.S.C. The applicant also pray that an Expert Committee be appointed to determine what is the correct answers to the question against which objections have been raised.

3. Learned Advocate for the Applicants has submitted that examination was conducted on 21.08.2022. 1st answer key was published on 25.08.2022 and the objections were invited on 29.08.2022. Thereafter, 2nd revised answer key was published on 02.11.2022 and on 04.11.2022 results were declared. From 11.11.2022 to 28.11.2022 the Applicants have to fill form for the Main Examination. The Applicants found that their names are not appearing in the merit list and they are shown not qualified in view of the cut of marks in the respective categories. The Applicants did not raise the objection to question no.48 because in the 1st answer key it was correctly answered as per the say of the Applicants. Question No.48 is in respect of Pituitary gland.

4. Learned counsel for the applicants have challenged the answer key in respect of the following questions.

Question No.20:-

Q. Which of the following factors are included in chemical environment?

- (a) Temperature and soil
- (b) Water and soil
- (c) Vegetation and water
- (d) Human functions and Biological components

Which of the statements given above is/are correct?

Applicants has opted answer 2 whereas MPSC states option 3 is the correct answer.

Question No.18:-

Q. What is Alpha, Beta and Gamma Diversity?

- (a) Richness of species.
- (b) Simpson's Diversity Index
- (c) For measuring biodiversity over geographical scale
- (d) Whittaker (1972) suggest these terms.

Which of the statements given above is/are correct?

Answer Options:

- (1) Only (c) and (b)
- (2) Only (b)
- (3) Only (c)
- (4) Only (c) and (d)

Applicants has opted answer 4 whereas MPSC states option 3 is the correct answer.

Question No.16:-

Q. In India, which of the following has become a hot-spot with reference to threats to biodiversity?

Answer Options:

- (a) Northwestern India
- (b) Deccan Plateau
- (c) Northeastern India
- (d) Western India

Applicants has opted answer 3 & 4 whereas MPSC states option 3 is the correct answer.

Question No.68:-

Q. Consider the following statements and choose the correct option:

(a) The subject, 'Co-operative Societies' has been included in the Constitution of India by the 97th Amendment in 2011.

(b) The right to establish 'Co-operative Societies' is given to Article 19(1)(c).

(c) The first law related to Co-operative Societies in India was passed in the tenure of Lord Curzon.

Answer Options:

(1) (a) and (c) are correct

(2) (b) and (c) are correct

(3) (a) and (b) are correct

(4) All these three statements are correct

Applicants submit that no correct option is available in the question paper whereas MPSC states option 3 is the correct answer in 1st key; however, they marked option 4 as a correct answer in 2nd key.

Question No.42:-

Q. Which of the following plant hormone is responsible for senescence?

Answer Options:

(a) Auxin

(b) Cytokinin

(c) Ethylene

(d) Abscisic Acid

Applicants has opted answer 3 & 4 whereas MPSC states that option (4) is the correct answer in the 1st key; however they deleted the question in 2nd answer key.

Question no. 48:-

“48. Pituitary gland is endocrine gland connected to hypothalamus at the base of the brain. It secretes many hormones.

- (a) It is called as master endocrine gland.
- (b) Its anterior part is neurohypophysis and posterior is adenohypophysis.
- (c) Oxytocin and Vasopressin are secreted by posterior pituitary.
- (d) STH, JTSH, ACTH are secreted by adenohypophysis.

Which of the statements given above is/are correct?

- (1) (a), (c) and (d)
- (2) Only (a) and (c)
- (3) Only (d)
- (4) Only (b) and (d)

Question No. 76.

“76. Find out the incorrect statement from the following about the Yazidi Group.

- (1) It is one of Iraq’s older minorities
- (2) They are concentrated in northern Iraq around Mount Sinjar.’
- (3) This ancient religion is rumored to have been founded in 11th century by Umayyad Shaikh.
- (4) This religion has taken some elements from Christianity so they are targeted by Islamic terrorist groups.

Applicants have opted option (3) & (4) as the correct answer, whereas M.P.S.C has marked option (4) as the correct answer.

Question No. 89:-

Q. After passing away of Dr. Babasaheb Ambedkar, who from the followers of Dr. Ambedkar, became members of the Congress?

- | | |
|-----------------------|-----------------------|
| (a) R.D. Bhandare | (b) Rajabhau Bhole |
| (c) Dadasaheb Rupwate | (d) Bapusaheb Rajbhoj |

Answer Options:

- | | |
|------------------------|------------------------|
| (1) Only (a), (c), (d) | (2) Only (a), (b), (c) |
| (3) Only (a), (b), (d) | (4) (a), (b), (c), (d) |

Applicants has opted answer 4 whereas MPSC states option 2 is the correct answer.

5. Learned counsel for the applicants has submitted that in the first answer key published on 25.8.2022, answer (1) was shown correct and that was the same answer opted by the applicants. They did not raise any objection. However, in the revised answer key which was published on 2.11.2022, the correct answer was shown as (2), i.e. only (a) & (c). Learned counsel for the applicants submitted that the material on which the applicants are relying is widely circulated by the Government of Maharashtra for the 12th Standard examination.

6. Learned counsel for the applicants relied on page 114, i.e. Maharashtra State Bureau of Textbook Production and Curriculum Research, Pune. He further relied on pages 117, 118 and 119. The relevant portion is reproduced below:-

“The pituitary gland is the smallest gland. It is a pea sized reddish-grey coloured gland. It controls almost all other endocrine glands, hence earlier it was called the master endocrine gland. It is located just below the hypothalamus and is attached to it by a stalk called infundibulum or hypophyseal stalk. Pituitary gland remains lodged in a bony depression called sella turcica of the sphenoid bone.

Pituitary gland consists of two lobes called anterior lobe (Adenohypophysis). Both the lobes develop from different parts of embryo. Hence, it has dual origin.

Adenohypophysis is an outgrowth from the roof of buccal cavity. This outgrowth is called Rathke's pouch. It grows upward towards the brain. The neurohypophysis grows as a downward extension of hypothalamus. The two outgrowths together form the pituitary gland. The connection of Rathke's pouch with pituitary gland is lost in embryo. Intermediate lobe (Pars intermedia) is a small reduced part lying in the left between the anterior and posterior lobe.

“The hormones of adenohypophysis are as follows:-

1. Somatotropin/Somatotropic Hormone /STH /Growth hormone/GH :

This hormone stimulates growth and development of all tissues by accelerating protein synthesis and cell division. Highest secretion of GH is seen till puberty and then its secretion becomes low. However, it is continuously secreted throughout life for repair and replacement of body tissue or cells.

Improper secretion of growth hormone produces various disorders. Hyposecretion of growth hormone since childhood results in stunted physical growth and the condition is called pituitary dwarfism.

Hypersecretion of growth hormone in childhood causes Gigantism a condition of overgrowth. The individual attains abnormal height. When the pituitary gland produces excess growth hormone in middle aged adults, it results in disproportionate growth causing disfigurement and enlargement of bones of nose, lower jaw, hands, fingers and feet. The condition is called Acromegaly.

2. Thyrotropin/Thyroid stimulating Hormone / TSH: Its primary action is to stimulate the thyroid gland for secretion of the hormone thyroxine.

3. Adreno corticotropic hormone / ACTH / Adrenocorticotropin : It stimulates adrenal cortex to produce and secrete its hormones. It maintains functioning of adrenal cortex.

4. Prolactin/Luteotropin/Mammotropin: Prolactin is unique among pituitary hormones as it is under predominant inhibitory control from hypothalamus. Prolactin activates growth of breasts during pregnancy (mammotropin) and stimulates the milk production and

secretion of milk (lactogenic) by mammary gland after child birth.

For question No.20, learned C.P.O. informed that no objection was raised by any of the Applicants and also question no.48 has been deleted by the MPSC and they have power to delete.

7. In support of his submission, learned counsel for the applicants relied on the following judgments of the Hon'ble Supreme Court:-

- (i) **KANPUR UNIVERSITY, THROUGH VICE-CHANCELLOR & ORS Vs. SAMIR GUPTA & ORS, (1983) 4 SCC 309.**
- (ii) **RAN VIJAY SINGH & ORS, Vs. STATE OF UTTAR PRADESH & ORS, (2018) 2 SCC 357.**
- (iii) **U.P.P.S.C, through its Chairman & Anr Vs. Rahul Singh & Anr, Civil Appeal No. 5838/2018 (Arising out of SLP (C) No 12472/2018).**

8. Learned C.P.O relied on the judgment of the Hon'ble Bombay High Court dated 4th October, 2022 in Writ Petition No. 8882 of 2022, M.P.S.C Vs. Janakraj M. Gund & Ors. Learned C.P.O. further submits as the objections were invited the answer given in the answer key were referred and reconsidered by the Expert and for some questions, answer key is changed and in some question answer is retained. Table is on record.

9. The Hon'ble Supreme Court in the case of **Rahul Singh** held that the onus is on the candidate to not only demonstrate that the key answer is incorrect but also that it is a glaring mistake. It further held that the constitutional courts must exercise great restraint in such matter and should be reluctant to entertain a plea challenging the correctness of the key answers.

10. Learned counsel Mr Sarode, submits that applicant no. 17 in O.A 1145/2022 has taken objection to Question no. 20. However, in the order of the Tribunal dated 24.11.2022 the Tribunal has wrongly recorded in para 8 that objection to Question No. 20 was not taken and also it is pointed out that Question No. 48 was not deleted.

11. Learned counsel Mr Sarode for the applicants has submitted that the State Services Preliminary Examination is equivalent to the standard of Degree Examination and not above that. Learned counsel further submitted that any person having knowledge of Degree level can assess the question, answer and their correctness. Learned counsel for the applicants submitted that the candidates are remediless when all the Judicial Fora including the Tribunal, High Court and Supreme Court are saying that they have no powers to correct what experts have said. Learned counsel for the applicants submitted that in the Civil Services Examination 2021 the Experts have deleted seven questions and eight questions from Maharashtra Secondary Services Group-B Combined Preliminary Examination-2021. These questions were framed by the Experts and deleted by the Experts. On this background, the complaints made by the candidate to the M.P.S.C are arguable complaints and disposing their objections by just saying that we are not Experts amounts to denial of the Constitutional right to have remedy. Learned counsel further submitted that there is need to appoint an independent expert committee in order to scrutinize and determine which is the correct answers to the questions against which objection have been raised by the applicants. On this background learned counsel submitted that there is no legal definition in law to narrate what is 'glaring mistake' and using such terminology in vague manner will prove detrimental in exercising the fundamental right to access justice. The counsel in all the applications in fact

have questioned the knowledge, experience and authority of the Experts. However, we cannot go deep into who should be an expert as that is the issue which is to be looked into and decided either by M.P.S.C or the State Government under the law. However, we are bound by the guidelines laid down by the Hon'ble Supreme Court in the case of **RAN VIJAY SINGH (supra)** and **Hon'ble High Court in Writ Petition No. 8882 of 2022, M.P.S.C Vs. Janakraj M.Gund & Ors.**

12. In **KANPUR UNIVERSITY's case (supra)**, the students appearing for M.B.B.S Examination have challenged the answer key. The Hon'ble Supreme Court held that it is a good practice to provide the answer key and normally it is presumed that the answers given in the key are correct and if at all it is challenged then it can be ascertained on the basis of the text books prescribed by the State and thereafter the revaluation of the question papers can be directed to the body conducting the examinations.

13. In the case of **RAN VIJAY SINGH's case (supra)**, the Hon'ble Supreme Court referred to the decision in the case of **KANPUR UNIVERSITY Vs. SAMIR GUPTA.**

“19. In Kanpur University v. Samir Gupta, this Court took the view that:

“16.....the key answer should be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by an inferential process of reasoning or by a process of rationalization. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well-versed in the particular subject would regard as correct.”

In other words, the onus is on the candidate to clearly demonstrate that the key answer is incorrect and that too without any inferential process or reasoning. The burden on the candidate is therefore rather heavy and the constitutional courts must be extremely cautious in entertaining a plea challenging the correctness of a key answer. To prevent such challenges, this Court recommended a few steps to be taken by the examination authorities and among them are (i) establishing a system of moderation, (ii) avoid any ambiguity in the questions, including those that might be caused by translation; and (iii) prompt decision be taken to exclude the suspect question and no marks be assigned to it.”

The Hon’ble Court further observed as under:-

“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 rationalization” and only in rare or exceptional cases that a material error has been committed.”

14. We have considered the above decision of the Hon’ble Supreme Court in **RAN VIJAY SINGH’s case (supra)** wherein it is observed that exception is carved out directing reevaluation of an answer sheet or scrutiny of an answer sheet and court may permit it only if it is demonstrated very clearly without any inferential process of reasoning or by a process of rationalization and only in rare or exceptional cases that a material error has been committed. However, it is not shown in the present case.

15. In respect of the two text books relied on by the learned counsel for the applicants, we do not have knowledge whether besides these books any other text books can be considered authentic. We are not experts in the subject in Biology so it cannot be considered as an exception. The questions which were pointed out by the learned counsel for the applicants were reproduced and considered at the relevant time when we decided all the three Original Applications on 24.11.2022. Moreover, we cannot go further and stretch our powers in respect of correcting the answer keys.

16. We rely on the judgment of the Hon'ble High Court in **Writ Petition No. 8882 of 2022, M.P.S.C Vs. Janakraj M.Gund & Ors**, wherein the Hon'ble High Court held:-

“17. In our view principles laid down by the Supreme Court in the case of Ran Vijay Singh and others (supra) clearly apply to the facts of this case though the Tribunal has recorded various findings in favour of the petitioner and has chosen to doubt the correctness of the answer keys given by the experts and has interfered with the decisions taken by the experts by directing the petitioner to appoint another expert who has earlier not seen those questions with the direction to give the correct answers of the said six questions. In our view, the Tribunal could not have gone into the correctness of the answer keys suggested by the experts in their field.”

17. As per the order of the Hon'ble High Court, the link which the M.P.S.C was supposed to be opened for the applicants, was opened yesterday. However, as we have rejected the Original Applications, there is no point for the M.P.S.C in keeping the link open hence forth.

18. In view of the above, Original Applications stand dismissed.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 03.01.2023
Dictation taken by : A.K. Nair.