

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO 304 OF 2023**

DISTRICT : PUNE

Gore Tejaswini Chandrakant)
Occ – Education, at Post Phondshiras,)
Tal-Malshiras, Dist-Solapur.)...**Applicant**

Versus

1. Maharashtra Public Service)
Commission, through its Secretary,)
5th, 7th & 8th floor, Cooperage)
Telephone Exchange Bldg,)
M.K Marg, Cooperage,)
Mumbai 400 021.)
2. The State of Maharashtra,)
Through the Secretary,)
General Administration Department,)
Mantralaya, Mumbai 400 032.)...**Respondents**

Shri P.B Kamble, learned advocate for the Applicant.

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

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

DATE : 23.03.2023

J U D G M E N T

1. The applicant prays that the Respondent no. 1 be directed to allow the applicant to appear for the Personality Test of the said recruitment, and further the Respondent no. 1 be directed to reconduct the physical exam of the applicant as per the marking system stated in the MPSC Notification dated 13.12.2022. Learned counsel for the applicant has submitted that Respondent no. 1, issued advertisement no. 5/2020 dated 28.2.2020 for the Combined Preliminary Examination, 2020 for various Group-B posts, including the post of Police Sub-Inspector, for which the applicant has applied. Learned counsel for the applicant has submitted that the applicant cleared both the Preliminary and the Main Examination. The physical test of all the candidates were conducted at Nasik on 15.2.2023, 16.2.2023 and 17.2.2023. The applicant appeared for the physical test at Nasik on 15.2.2023. Learned counsel for the applicant has submitted that the Respondent no. 1 declared the result of candidates qualified for the physical test and the applicant was declared not qualified and the reason stated was that the criteria mentioned in the hall ticket for the physical test was different than the criteria stated by MPSC in its announcement dated 13.12.2022.

2. For the sake of brevity, we reproduce the relevant statements made by MPSC in their affidavit in reply dated 23.3.2023 filed by Mr Dilip A. Waghe, Under Secretary, in the office of Secretary, M.P.S.C, Mumbai.

“4.....It is admitted that inadvertently instead of Annexure-B of Police Sub Inspector Competitive Examination-2020, Annexure-B of Police Sub Inspector Ltd. Departmental Competitive Main Exam-2021 was attached

with the call letter for Physical Test. As soon as the Commission realized the mistake, it has been corrected by providing revised attachment of Annexure-B with call letters to the candidates. The same was done on 10th February, i.e., 5 days before the conduct of Physical Test of the female candidates. Copies of revised Annexure-B, along with system log report are attached herewith and marked as Exh. R-3s colly.”

Thus, the only issue whether the rectified mistake and the method adopted by M.P.S.C can be treated illegal and violative of principles of natural justice.

3. Learned counsel for the applicant while substantiating his submissions, relied on the judgment of the Hon'ble Supreme Court in the case of **K. MANJUSREE Vs. STATE OF A.P & Anr, (2008) 7 SCC 11**, and has submitted that change of criteria or the change of the rules of the game is not permissible in the service jurisprudence. The applicant was declared successful after the hall ticket criteria was applied and she was informed accordingly on the spot by taking her signature on 15.2.2023. However, after nearly one month, i.e., on 11.3.2023, the applicant was informed that she is not successful. Thus, there is a gross violation of the rules by the M.P.S.C and hence as the applicant was not informed which rules are made applicable to decide her performance, the applicant be given second chance for the physical test as per the new criteria.

4. In **K. MANJUSREE**, (supra), the recruitment of District Judges in Andhra Pradesh, was the issue, wherein for the written test 75 marks were assigned and for the oral interview, 25 marks. The entire examination and the selection process was carried out

accordingly. The Selection Committee appointed by the Hon'ble Chief Justice of the High Court has submitted the report. However, thereafter the Full Court appointed another Committee to consider the report and that Committee took decision that the marks of the written test should be 100 and the marks of the oral test was maintained as 25 marks. This change in the marking system ultimately resulted in reshuffling the merit and the revised merit list was prepared. Thus, the aggrieved persons, who have gone below because of the revised result which has taken place on account of the changed criteria, ultimately, moved the Supreme Court, challenging the decision of High Court, which was against them. The Hon'ble Supreme, while meeting with the different issues of change of selection criteria in the said case has held that the action of the Full Court altering the norms for selection by introducing minimum marks for interview, was not correct. It held that not only the rules of the game were changed, but they were changed after the game has been played and the results of the game were being awaited, that is unacceptable and impermissible. While setting aside the order of the Hon'ble High Court, the Hon'ble Supreme Court held as under:-

“If the Full Court had found that the procedure adopted in the examinations or interviews was contrary to the procedure prescribed, the Full Court could have set aside the entire process of selection and directed the Administrative Committee to conduct a fresh selection. The resolution dated 30.11.2004 was approved. It did not find any irregularity in the examination conducted by the Administrative Committee or the interviews held by the Selection Committee. The assessment of performance in the written test by the candidates was not disturbed. The assessment of performance in the interview by the Selection

Committee was not disturbed. The Full Court however, introduced a new requirement as to minimum marks in the interview by an interpretative process which is not warranted and which is at variance with the interpretation adopted while implementing the current selection process and the earlier selections.”

5. There is slight difference in the selection process which has taken place in the case of **Manjusree (supra)** and in the present case. In **Manjusree (supra)** there were two set of marks one in the written test and secondly in the interview. Earlier, out of 100 the bifurcation of 75 marks for written test and 25 marks was oral test was given. However, later the marks for written test were increased to 100 marks and proportionate to that ratio the marks given in the interview, i.e., 25 were not increased. Thus, in the written examination the marks of the candidates who have secured lesser marks out of 75 marks as the marks have been increased from 75 marks to 100 marks, the marks obtained by the candidates in the written test were also increased to that proportion. The candidates who have secured very good mark in the interview, they were left at disadvantageous position, because they have secured the marks in oral test out of 25 marks and the marks remained as they were. So the candidates who earlier could not have fulfilled the required cut-off marks or could not come in the merit, could cross the merit and come in the merit list because of their performance in the written test. The candidates who have secured more marks in the interview, they lagged behind after applying the changed criteria. In the present case, there were three events, i.e., running, walking and shotput and the specific criterion of some seconds and marks allotted to different bench marks was given in all the three events separately. However, the marking system was based completely on the performance of each candidate in each event. The difference in

the announcement of MPSC dated 13.12.2022 was more stringent than the criteria mentioned in the hall ticket. Therefore, the bench mark of the Hall ticket-criteria in all the three events was little bit concessional. Though that relaxation was minor, but it did create a difference of five marks in reaching to a particular bench mark. However, in both the criteria, the criteria of MPSC dated 13.12.2022 and the Hall ticket criteria, has given a very clear picture of the bench marks and the marks assigned to the performance. Therefore, if the Hall ticket criteria is applied then more candidates can reach up to the bench mark by securing more marks and if it relaxed by the method of giving marks as per the earlier criteria, some candidates were unsuccessful like the present applicant.

6. It is a very material fact that M.P.S.C has conducted the physical test at Nasik on three dates, i.e., 15.2.2023, 16.2.2023 and 17.2.2023. On 16th & 17th February, 2023 the tests were performed and marks calculated as per the announcement of M.P.S.C dated 13.12.2022. However, only on 15.2.2023, due to inadvertence on the part of M.P.S.C, which is admitted by them, the criteria applied on 15.2.2023 was different.

7. Learned counsel for the applicant during the course of the arguments has submitted that the applicant seeks that the applicant be declared successful by applying the criteria available and applied to the candidates for the physical test held on 15.2.2023. Alternatively, MPSC be directed to conduct the physical test again and they are to be given second opportunity to perform.

8. We have considered and deliberated on the request of the learned counsel for the applicant. It was a physical test. All the candidates are bound to perform to the best of their physical

capacity in order to reach the bench mark. There is no such disproportionality or any variance in two sets or candidates like in the case of Manjusree (supra) that has taken place. No candidate is in a position to calculate the performance at the time of actual performance as to how many seconds she is going to score or how much meter her throw should be to reach the bench mark. We understand that every candidate had tried to give the best performance as the selection and seniority is decided on merit. Thus, there is no different treatment given by MPSC to the candidate performed on 15.2.2023 by applying the same criteria that was applied on 16.2.2023 and 17.2.2023 while selecting the candidates. If the ground taken by the applicant that the hall-ticket-criteria is to be taken into consideration, then that will lead to injustice on the candidates who have appeared for the physical test on 16.2.2023 and 17.2.2023, where the criteria was more stringent. Secondly giving second chance also cannot be accepted on the ground that it will amount to unequal treatment to the others. If we allow all the 26 candidates second opportunity who failed after applying the criteria laid down by MPSC as per announcement dated 13.12.2022, then the other candidates who have failed on 15.2.2023 will also come forward and ask for the second chance.

9. We were informed by the learned C.P.O that on that day total 300 candidates were called, 203 appeared for the physical test and 174 candidates qualified. Thus, it shows that sizeable number of candidates could reach the benchmark even after applying the criteria laid down as per announcement dated 13.12.2022. There was as such no change in the rules of the game in the present case. Thus, rules of the games were earlier informed to the candidates to give them sufficient time to prepare for the physical test, though there is error in subsequent relaxed criteria along with

the hall ticket, that too was rectified in time. However, we make it clear that it was necessary on the part of M.P.S.C to communicate that rectification immediately to all the candidates which the M.P.S.C failed to communicate.

10. In view of the above, we find no merit in the Original Application and the same stands dismissed.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 23.03.2023
Dictation taken by : A.K. Nair.