

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 1025/2018 (D.B.)

- (1) Avinash Ramesh Rathod,
Aged about 29 years, Occ. Student
R/o Vishal Nagar, Pimpalgaon, Dist. Yavatmal.
- (2) Sachin Sharadrao Ingle,
Aged about 27 years, Occ. Student,
R/o Nimba Post Dahli, Ta. Darwaha,
Dist. Yavatmal.

Applicants.

Versus

- 1) State of Maharashtra through its Secretary,
Department of Urban Development,
Mantralaya, Mumbai.
- 2) State of Maharashtra,
through Director of Municipal Administration,
Maharashtra State, Mumbai-30.
- 3) State of Maharashtra through the
Director/ Officer In charge,
Maharashtra Information Technology Corporation Ltd.,
Room No.514, 5th floor, Annex Building, Hutatma Rajaguru
Chowk, Mantralaya, Mumbai City,
Maharashtra, India-400 032.
- 4) The Director,
Maharashtra State Bureau of Textbook Production and
Curriculum Research, Pune (Balbharati),
'Balbharati', Senapati Bapat Marg, Pune-411 004.

Respondents.

S/Shri N.B. Rathod, M. Jadhao, N.T. Gwalwansh, Advs. for the applicants.

Shri A.M. Khadatkar, P.O. for respondent nos.1&2

S/Shri C. Sharma, S.K. Bhandarkar, A.S. Ghawde, Advs. for R-3.

Shri Anand Parchure, Advocate for respondent no.4.

**Coram :- Shri Shree Bhagwan,
Vice-Chairman and
Shri Anand Karanjkar, Member (J).**

Date of Reserving for Judgment : 27th February, 2020.

Date of Pronouncement of Judgment : 3rd March, 2020.

JUDGMENT

Per : Anand Karanjkar : Member (J).

(Delivered on this 3rd day of March, 2020)

Heard Shri N.B. Rathod, learned counsel for the applicants, Shri A.M. Khadatkar, learned P.O. for respondent nos.1&2, Shri Chetan Joshi personally present on behalf of the Mahapariksha i.e. respondent no.3 and Shri Rohit Vaidya, learned counsel holding for Shri A. Parchure, learned counsel for respondent no.4.

2. The respondent nos.1&2 published advertisement Annex-A-1 for filling the posts of Accountant and Auditor (Group-C), Grade-A, Grade-B, and Grade-C. Both the applicants were possessing the required educational qualification, therefore, they applied for the said post. The applicants were permitted to appear in the main examination and the applicant no.1 scored 67 marks and the applicant no.2 scored 66.5 marks in the main examination. After the examination, the select list was published by the respondents, as names of the applicants were not included in the select list, therefore, the applicants applied for the certified copies of their answer sheets. It

was noticed by the applicants that they had replied the Question no.5 and though their answer was right, but while checking their papers, it was marked as wrong answer and one mark for the question was not given to them and as wrong answer was given, therefore, 0.25 mark was deducted from the grand total. According to the applicants, the Question no.5 was as under –

“ (Question ID 51923) (5) i Vki V dlke d#u ?ks

; k okD; krhy fdz; ki n dlksR; k i zdkjpsvkgS\

A. I deD B. vdeD C. I a Ør D. I gk; d

Correct Answer : D. I gk; d

User Answer : C. I a Ør **

3. It is contention of the applicants, option ‘C’ was the correct answer and as per the answer key prepared by the Examiner, the correct answer was ‘D’ but it was incorrect. The correspondence was made by the applicants with the respondents, but they were informed that the answer given in the answer key was correct and therefore there was no scope for enhancement of the marks.

4. Being aggrieved by this stand of the respondents there was no alternative, therefore, the applicants rushed to this Bench and filed the application for the relief of declaration that the answer given by the applicants was correct and the applicants be given one mark for the right answer and 0.25 mark deducted be added in their score.

It is also prayed by the applicants that the applicants be declared successful in the main examination and they be given the appointment orders.

5. The respondent no.2 has submitted reply which is at page No.243. It is admitted by the respondent no.2 that the applicant no.1 was belonging to Vimutya Jati (A) Category, he appeared in the main examination and he secured 67 marks. It is also admitted that the applicant no.2 is OBC category and he secured 66.5 marks. According to the respondent no.2, the answer 'D' as given in the answer key was the correct answer and as reply given by the applicants was incorrect, therefore, both the applicants were not entitled for one mark and as wrong answer was given, therefore, 0.25 mark was rightly deducted. It is submitted that the main examination was conducted by the respondent no.3 as per the rules, there is no violation, there was no bias against the applicants, therefore, there is no merit in the O.A. It is also submitted by the respondent no.2 that as per the select list appointment orders are issued, therefore, if any relief is given to the applicants there will be prejudice to the candidates who are appointed in service.

6. The respondent nos.3&4 have filed their joint reply at page no.271 and they have justified their action.

7. When the matter was heard, the learned counsel for the applicants requested to Bench to examine the Marathi Grammar Books for holding that the reply given by them was correct reply to the Question No.5 and the reply in the answer key was incorrect. This prayer was objected by the respondent no.2 on the ground that this Bench cannot exercise the role of the expert, consequently, the order was passed on 05/12/2019 and direction was issued to refer Question No.5 to the Head of the Department (Marathi) Mumbai University along with the answer options and to call opinion which was the correct answer. As per the direction issued by the Bench, the matter was examined by the experts Dr. Anil Sapkal, Professor & HOD (Marathi), Dr. Vandana Mahajan, Professor (Marathi Department) and Dr. Alka Bhatkar, Assistant Professor (Marathi Department), University of Mumbai. This expert committee replied the query made by this Bench along with the reasons. The expert committee has given opinion that the option no.3 was the correct answer and in support the expert committee has given reference of the Marathi Grammar Books written by Shri M.R. Walambe, Shri G.H. Kelkar and Dr. Lila Govilkar. In view of this opinion given by the expert committee, it must be accepted that the answer given by both the applicants to the Question No.5 was correct answer, therefore, we hold that both the applicants were entitled to one mark for giving correct answer to the Question

No.5 and they are entitled for 0.25 mark each deducted from their score. In view of this, the score of the applicant no.1 will be 68.25 marks and the applicant no.2 will be 67.75 marks.

8. We have perused the select list of the V.J. (A) Category, it seems that the candidates who scored 68 marks and even 67.05 marks of N.T. (D) Category are selected. It seems that now score of the applicant is 68.25 marks and the applicant is belonging to N.T. (A) category. It is undisputed that till today some posts of this category are kept vacant.

9. We have perused the list of the OBC candidates. After the correction, the score of the applicant no.2 became 67.75 marks. It seems that the candidates from 286 and onwards in the select list have scored 67.05 marks. Now score of the applicant no.2 is more than the candidate 286 and below him, therefore, this applicant was also entitled to be selected. We have perused the order dated 08/01/2019, when this interim order was passed specific direction was given that any appointments made by the respondent nos.1&2, then said appointments would be subject to the final outcome of this O.A. In view of this discussion, we are of the firm view that the applicants are entitled for their selection and they were also entitled to be appointed in their respective capacity. We have already observed that

in the category V.J. (A) and OBC some posts are till vacant. In view of this, we pass the following order –

ORDER

The O.A. stands allowed in terms of the prayer clauses.
The respondents are directed to comply the order within three months from the date of this order. No order as to costs.

(Anand Karanjkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 03/03/2020.

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I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble V.C. and Member (J).

Judgment signed on : 03/03/2020.

Uploaded on : 04/03/2020.

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