

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 110 of 2022 (DB)

- 1) Prince Darasing Parteki,
aged 25 years,
Occ. unemployed R/o Khrushipar,
Taluka Lakhani, District Bhandara.
- 2) Vinayak Vitthal Tadas, aged 30 years,
Occ. labourer, R/o Khosarsar, Tq. Warora,
District Chandrapur.
- 3) Vivek Shrawan Bawankar,
aged 29 years, Occ. unemployed,
R/o Dhabetekadi, Tq. Lakhani, District Bhandara.
- 4) Pankaj Ramdas Sawarbandhe,
age 26, Occ. unemployed, R/o At post Asgaon,
Tq. Pawani, District Bhandara.
- 5) Ankush Vijay Banait, aged 28,
Occ. unemployed R/o Hanwat Kheda,
Tq. Achalpur District Amravati.
- 6) Sopan Ramrao Mane,
Aged 24 Occ. unemployed,
r/o Bori, Post Chatari, Tq. Umarched Yavatmal.
- 7) Pravin Purushottam Yewale,
Aged 28, r/o Kapashi Talaw, Akola,
Tq. Dist. Akola.
- 8) Akash Naresh Gedam,
Aged 24, Occ. unemployed, Vilas Nagar, Amravati.
Tq. District Amravati.
- 9) Ilu Baburao Rathod,
aged 30, at Kawadipur,
Post Paradi, Tq. Pusad, District Yavatmal

Applicants.

Versus

- 1) The State of Maharashtra,
through Chief Secretary,
Mantralaya, Mumbai-400 032.
- 2) Maharashtra Public Service Commission,
through its Secretary,
Cooprej Telephone Exchange Bldg.,
Maharshi Karve Marg, Cooprej, Mumbai-400 021.

Respondents.

**S/ N.B. Rathod, A.S. Uikey, R. Waghmare, Advs. for the applicant.
Shri S.A. Sainis, P.O. for the respondents.**

**Coram :- Shri Shree Bhagwan,
Vice-Chairman and
Shri Justice M.G. Giratkar,
Member (J).**

Date of Reserving for Judgment : 9th June, 2022.

Date of Pronouncement of Judgment : 21st June, 2022.

JUDGMENT

Per : Member (J).

(Delivered on this 21st day of June, 2022)

Heard Shri N.B. Rathod, learned counsel for the applicants
and Shri S.A. Sainis, learned P.O. for the respondents.

2. The applicants filled in their forms for preliminary examination as per the advertisement issued by respondent no.2 for the combined examination for the recruitment to the posts of ASO, STI and PSI. On 4/9/2021, preliminary examination was conducted. On 7/9/2021, first answer key came to be published by respondent no.2

calling for objections from the interested or aggrieved candidates. On 17/11/2021 revised and final (second) answer key came to be published specifically noting that there shall be no change for question nos.17,27 & 90. On 25/11/2021, the respondent no.2 issued notification stating that they have revoked earlier answer key and published the another one, in which question nos.17,27 & 90 were discarded (deleted) from the competition without ascribing any reason. On 3/12/2021 list of qualified candidates came to be published, based on the 3rd answer key. On 24/1/2022 the Hon'ble Bombay High Court, Bench at Mumbai directed respondent no.2 to allow petitioners to appear provisionally subject to final outcome of the applications The application was filed at Maharashtra Administrative Tribunal, Principal Bench at Mumbai. The applicants prayed to this Tribunal with a following prayer –

“(a) That the Hon'ble Tribunal after going through the legality validity and tenability of the action in issuing third answer key at Annex-A-6, dated 25/11/2021 hold and declare same to be illegal, in contravention of principle of fairness and unnecessary and therefore quash and set aside the same, with further direction to the respondent no.2 Maharashtra Public Service Commission to restore answer key dated 17/11/2021 at Annex-A-4 and process to draw qualifiers list in accordance with the same.

(b) That pending the final hearing and disposal of the application, Hon'ble Tribunal may direct respondent no.2 to refer the mentioned three questions to independent panel of experts for their opinion for correct answers.

(c) That pending final hearing and disposal of the application, Hon'ble Tribunal may kindly direct respondent no.2 to refrain from holding examination for the post of Police Sub Inspector scheduled on 29th and 30th January,2022 till further orders of this Tribunal

(d) In alternative to prayer clause (c) allow these applicants to appear and participate in the main examination to be held on 29th and 30th January,2022 provisionally subject to outcome of this case”.

3. The application is strongly opposed by the respondents. It is submitted that there was objection for answer key and therefore the opinions of experts were called. There was different of views expressed by two experts when the answer key of the said questions referred to them. Hence, the MPSC took decision of deleting the questions itself. It is submitted that that as per Sub Rule B of Rule 7 of the Maharashtra Public Service Commission Rules of Procedure,2014, the MPSC has a power to delete any question. It is submitted that there was no any malafide on the part of the respondents. Hence, the O.A. is liable to be dismissed.

4. Heard Shri N.B. Rathod, learned counsel for the applicants and Shri Sainis, Id. P.O. for the respondents.

5. The issue is now already decided by the Maharashtra Administrative Tribunal, Mumbai. Some of the candidates who appeared in the examination challenged the decision of MPSC in O.A. 1056/2021 before the Maharashtra Administrative Tribunal, Mumbai.

The issue in the present O.A. is decided by the Division Bench of Maharashtra Administrative Tribunal, Mumbai on 8/2/2022.

6. There is no dispute that two answer keys were published by the respondents and invited the objections from the aggrieved persons. Some objections were raised and therefore the disputed questions were referred to the experts. There was conflicting views of two experts, therefore, the MPSC has discarded (deleted) 3 questions. As per Rule B of Rule 7 of the Maharashtra Public Service Commission Rules of Procedure, 2014 reads as under –

“Sub Rule B of Rule 7 : If it is required to delete a question from any Preliminary / Main/ Screening / Departmental examination, for any reason whatsoever marks allocated for the question shall be reduced from the total maximum marks for that paper and the percentages for that particular paper, subject or examination, as the case may be, shall be deduced on the basis of such reduced maximum marks.”

7. The Maharashtra Administrative Tribunal, Mumbai has discussed in para no.19,20,21,22,23 & 24 as under –

“19. In the present case, we did not turn nelson’s eye to the contentions raised by the Applicants. We also have gone through the textbooks as mentioned above and we found that the contentions of the Applicants in respect of Question No.17 and Question No.90 cannot be accepted. So far as Question No.27 is concerned after going through the material provided to us with all humility we express that the answer key is ex-facie wrong, though the correct answer was available in the options given in the Question. However, the M.P.S.C. deleted the very question because of the conflicting views expressed by two experts when the answer key of the said Question was referred to them. Hence, the M.P.S.C. took decision of deleting the question itself.

20. This decision of M.P.S.C. was challenged by the learned Advocates by pointing out the treatment given to Question No.87. The learned Counsel has argued that the objection was raised about the Answer Key of Question No.87, when first time objections were invited. However, in the first revised Answer Key the M.P.S.C. had corrected the answer key by selecting the right answer and maintained the Question No.87. It was argued that the same treatment should have been given by the M.P.S.C. to Question No.27 as the correct answer was provided by the M.P.S.C. to the Question. It was further submitted that the Applicants have legal right to get the marks for correct answers given by him/her.

21. Prima facie, the submissions made by learned Advocate though we appreciate, however, in the set of some guidelines laid down in paragraph 30 of **Ran Vijay Singh (supra)** and the power of M.P.S.C., the argument is not sustainable. We reproduce the relevant portion in **Ran Vijay Singh (supra)** :-
**“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.”**

22. It is to be noted that unequal treatment given to the candidates appearing for the examination and unequal treatment given to the Questions are two different things. The M.P.S.C. has corrected the answer key of Question No.87 after considering experts opinion that the correct answer was available. This decision was taken by the M.P.S.C. because there was no dispute in the opinion expressed in respect of Question No.87. However, in respect of Question No.27 the opinions given by the experts were conflicting. Therefore, the treatment given to Question No.87 and Question No.27 and their Answer Keys is different. But this will not in any case lead to discrimination or violation of Article 14 or Article 16 of the Constitution so far as Applicants are concerned. The Applicants cannot claim legal right against the decision of the M.P.S.C. because the decision taken is applicable uniformly to all the candidates who appeared for the examination. We understand the plight of the Applicants that they have lost the marks, however, in examinations chance is often a determinant !

23. Now we advert to the power of the Commission to change the answer key of the Question or to take decision in respect of the examination. We reproduce Sub

Rule B of Rule 7 and Rule 18 of the Maharashtra Public Service Commission Rules of Procedure, 2014 as follows :-

“Sub Rule B of Rule 7 : If it is required to delete a question from any Preliminary/ Main/ Screening / Departmental examination, for any reason whatsoever marks allocated for the question shall be reduced from the total maximum marks for that paper and the percentages for that particular paper, subject or examination, as the case may be, shall be deduced on the basis of such reduced maximum marks.”

“Rule 18 – Matters not regulated : In dealing with the matters for which no provision is made in these Rules, the Commission may regulate the proceeding in such a manner as they deem fit.”

24. Thus, we are of the view that the Commission derives the power from these Rules to meet the challenge or issues arise in the process of examination. In the present case the Commission has deleted three questions and therefore the merit of the candidates in respect of all these three questions is not compromised. When it is demonstrated by M.P.S.C. that they have power to take decisions in respect of correcting the Answer key or deleting the Question then we have to examine whether the power given to M.P.S.C. is abused. Undoubtedly to correct the answer key or to delete a question is an administrative discretion that vests with the M.P.S.C. If we come across either the arbitrariness or discrimination in decision taking then discretion is not immune from judicial review. In the present case, the decision is not discriminatory because it is applicable to all the candidates who have appeared for the examination. Similarly, the examination is not made of 100 marks but it is of 95 marks. This decision of M.P.S.C. though has gone against the applicants, however it cannot be said arbitrary because the M.P.S.C. has considered the views of two Experts and when found conflicting, in order to avoid the ambiguous situation a decision to delete is taken. Thus, all the candidates are brought on the same level of answering 95 Questions. The reply filed by the M.P.S.C. and the record produced enabled us to arrive at a conclusion that this decision is a matter of administrative discretion by the Respondent, M.P.S.C. hence, does not invite judicial interference. Thus, as we are not inclined to grant interim relief, nothing remains in the Original Applications. The cause of action does not survive further”.

8. Issue raised in the present O.A. is the same issue which is decided by the Maharashtra Administrative Tribunal, Mumbai. Therefore, in view of the Judgment of Maharashtra Administrative Tribunal, Mumbai and the Judgment of Hon'ble Supreme Court in the case of **Ran Vijay Singh and others Versus State of Uttar Pradesh and Others (2018) 2 SCC,357** and Judgments of Hon'ble Supreme Court, it is clear that the Court shall not interfere in the examination process. The Rule B of Rule 7 of the Maharashtra Public Service Commission Rules of Procedure,2014 permits the respondents to delete a question from any Preliminary / Main/ Screening / Departmental examination, for any reason whatsoever marks allocated for the question shall be reduced from the total maximum marks for that paper and the percentages for that particular paper, subject or examination, as the case may be, shall be deduced on the basis of such reduced maximum marks.

9. In view of Rule B of Rule 7 of the Maharashtra Public Service Commission Rules of Procedure,2014, the respondents have power to delete any question. When the respondents came to the conclusion that disputed questions referred to the experts were not replied by the experts unanimously. There was conflict of views between two experts. Therefore, those disputed questions were deleted by the MPSC. It cannot be said to be illegal or wrong.

10. The applicants have claimed that the act of the respondents deleting three questions is illegal, has no any force in view of Sub Rule B of Rule 7 of the Maharashtra Public Service Commission Rules of Procedure,2014. In that view of the matter, the following order –

ORDER

The O.A. is dismissed. No order as to costs.

(Justice M.G. Giratkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 21/06/2022.

dnk.*

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 : 21/06/2022

Uploaded on : 21/06/2022