

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.438/2019. (D.B.)

Ku. Snehal d/o Dilip Ambade,
Aged about 26 years,
Occ-Student,
R/o Plot No.135, Rounak Vihar,
Vishramnagar, Sugatnagar,
Nagpur-26.

Applicant.

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
General Administration Department ,
Mantralaya, Mumbai-400 032.
- 2) The Maharashtra Public Service Commission,
Through its Secretary,
Office at 5 1/2 , 7 and 8th floor,
Cooperage Telephone Nigam Limited,
Maharshi Karve Marg,
Cooperage, Mumbai-21.
- 3) The Deputy Secretary and
Controller of Examinations,
Maharashtra Public Service Commission,
Office at 5 1/2 , 7 and 8th floor,
Cooperage Telephone Nigam Limited,
Maharshi Karve Marg,
Cooperage, Mumbai-21.

Respondents

Shri S.A. Marathe, the learned counsel for the applicant.
Shri S.A. Deo, the learned C.P.O. for the respondents.

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

Judgment is reserved on 5th July 2019.

Judgment is pronounced on 10th July 2019.

JUDGMENT

Per: Vice-Chairman

(Delivered on this 10th day of July 2019)

1. Heard Shri S.A. Marathe, the Ld. counsel for the applicant and Shri S.A. Deo, the learned C.P.O. for the respondents.
2. The MPSC has published advertisement No. 50/2018 dated 10.12.2018 to fill various 342 Class-I posts in the State Government. The applicant being qualified applied for the post and she was issued admit card for this examination as per Annexure A-2, Page 31. Preliminary examination for the State Civil Services Examination was held and the applicant was given booklet from series-B. After completion of examination, the MPSC published answer key, mentioning correct answers of the question papers, as per applicant's tally answer key with answer sheet and her score was 195. The MPSC called for objections on first answer key sheet was published on 21.2.2019 and after considering the objections again published final answer key on 2.5.2019 (Annexure A-5, P. 58 & 59). After publication of answer key, the applicant found that her four answers which were correct as per first answer key and as per

authenticated reference book, were changed in final answer key sheet. The applicant replied to the answers provided in the question paper stating that answers suggested in final examination are incorrect. However, objection till date is not considered. The MPSC published cut off marks on 24.5.2019 and the applicant was declared not qualified for appearing in the main examination.

3. The learned counsel for the applicant submits that the applicant was declared unqualified, as she scored less marks. It is submitted that had the MPSC corrected its mistake, the applicant's score would increase by 5 marks and she would be entitled to appear in the main examination. The applicant belongs to Backward class category i.e. Scheduled Caste. Answer to the question Nos. 21, 42, 68, 71 and 83 are under dispute. However, as per submission, question No. 83 has been deleted, so disputed questions are only 21, 42, 68 and 71. As per submission made, many objections are still pending with the MPSC. The applicant has submitted her representation dated 3.6.2019 9A.9, P. 66) in which it has been pointed out about question Nos. 21, 42, 68, 71 and 83. The applicant submitted that the MPSC is yet to decide her representation dated 30.6.2019.

4. The respondent No.2 MPSC in its reply in para No.19 has mentioned that the Commission published its first answer key on 21.2.2019 and on the same date Commission also invited objections, if any, from the candidates regarding answers published in the first answer key in prescribed format, the objections were received by the Commission by many candidate and were referred to the State Expert Committee and requested for opinion. On the basis of opinion by the Expert Committee, final answer key was revised and final answer key was published on 2.5.2019. As submitted by respondent No.2 in its reply in para 25 to 28, such practice of publishing first answer key inviting objections and to the answers published as per first answer key, if any, and publishing final answer key after seeking opinion of the State Expert and the Commission's decision thereon is followed in respect of all examinations conducted by MPSC and not in case of instant examination in the question only.

5. In para 20, it is mentioned that the State Civil Service (Preliminary) Examination, 2019 was conducted on 17.2.2019 and first answer key was published on 21.2.2019 and objections were invited till 28.2.2019. On the basis of expert opinion, answer key was revised and final answer key was published on 2.5.2019. As per

expert opinion, the Commission cancelled three questions in final answer key of paper-1. Question booklet -B, answer Nos. are 67, 77 and 83. The applicant raised her objection alongwith detailed explanation before the Commission on 3.6.2019 after the declaration of final answer key and even after declaration of result, of State Civil Service (Preliminary) Examination, 2019. As per procedure, the Commission does not entertain further communication or application regarding objection after the declaration of final answer key. The result was declared as per final answer key.

6. As per advertisement, successful candidates of preliminary examination will required to appear for main examination on 13th, 14th and 15th of July 2019.

7. The respondents in their reply have justified there action in Exh. R.3, P.123. In point No. 3.5, 3.5.1, 3.5.2 and 3.6.1, procedure was given for asking further relief by any applicant. The respondents in its reply on page No.95 have given a Chart which is reproduced below:-

Applicant's objections to Question Nos.(Set-B)	Applicant's Answers (Set-B)	First answer key (Set-B)	Final answer key (Set-B)
21	3	2	2

42	4	1	1
68	1	4	4
71	2	4	4
83	4	4	\$-Cancelled as per opinion of the experts.

8. On the basis of above chart, respondent No.2 has clarified that the applicant's four answers i.e. Question Nos. 21, 42, 68 and 71 of Set-B were incorrect as per final answer key. Copy of first answer key was published on 21.2.2019 and the applicant was given an opportunity for raising objection. But no objection was raised by the applicant. In para 20, the respondents have again clarified that first answer key was published on 21.2.2019 on the official website and on the same day the Commission also invited objections till 28.2.2019. Objections were received and it was referred to the Expert Committee and then final answer key was published on 2.5.2019 and result was published on 23.5.2019. The applicant submitted representation to the respondent No.2 on 3.6.2019 and approached this Tribunal on 14.6.2019 by filing this O.A.

9. The Hon'ble Supreme Court in case of **Himachal Pradesh Public Service Commission V/s Mukesh Thakur and**

others reported in (2010) 6 SCC-759, after considering rival contentions, has held in para 20 of the judgment as under:-

“20. In view of the above, it was not permissible for the High Court to examine the question papers and answer sheets itself, particularly, when the Commission had assessed the inter se merit of the candidates. If there was a discrepancy in framing the question or the valuation of the answer, it could be for all the candidates appearing for the examination and not for respondent No.1 only. It is a matter of chance that the High Court was examining the answer sheets relating to Law. Had it been other subjects like Physics, Chemistry and Mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court. Therefore, we are of the considered opinion that such a course was not permissible to the High Court.”

10. This has also been observed in **W.P. No.3574/2015** **by the Hon'ble High Court of Judicature at Bombay, Bench at Nagpur in case of Dr. Bipul Namdeo Ambade V/s Maharashtra Public Service Commission delivered on 3rd September 2012.**

11. In view of above discussion, we feel that the applicant had enough opportunity to raise objection but it was not

done, the applicant remained silent from the result dated 2.5.2019 to 14.6.2019. The applicant herself did not avail the opportunity provided by the respondents in a systematic way at various levels. We are of the opinion that now the applicant has no right to agitate this issue, hence, the following order:-

ORDER

- (i) The O.A. is dismissed.
- (ii) No order as to costs.

(A.D. Karanjkar)
Member (J)

(Shree Bhagwan)
Vice-Chairman

Dt. 10th July 2019
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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 : P. D. Girhale, Personal Assistant

Court Name : Court of Hon'ble VC and Member (J)

Judgment signed on
and pronounced on
date : 10th July 2019

Uploaded on date : 10th July 2019.
