

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

CIVIL APPLICATION NO.115/2017

WITH

ORIGINAL APPLICATION NO.532/2015.

Sanjay Namdeorao Wankhede,
Aged about 45 yrs.,
Occ-Unemployed,
R/o Rahul Nagar, Bicchu Tekdi,
Amravati.

Applicant

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of Public Works,
Mantralaya, Mumbai-440 032.
- 2) The Superintending Engineer,
Public Works Circle, Amravati.
- 3) Sanjay Sadashivrao Paturkar,
Aged about Major,
Occ-Nil,
R/o Ram Mandir Road, Ward No.3,
Daryapur, Distt. Amravati.

Respondents

Shri S.P. Kshirsagar, the learned counsel for the applicant.
Shri M.I. Khan, the learned P.O. for the respondents 1 & 2.
Shri Vinay Dahat, the learned counsel for respondent No.3.

Coram:- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).

JUDGMENT**(Delivered on this 5th day of May 2017.)**

With the consent of parties, the matter is being heard and disposed of by this order:-

2. Heard Shri S.P. Kshirsagar, the learned counsel for the applicant, Shri M.I. Khan, the learned P.O. for respondent Nos.1 and 2 and Shri Vinay Dahat, the learned counsel for respondent No.3.

3. The applicant, Sanjay Namdeorao Wankhede responded to the advertisement dated 12.8.2014 issued by respondent No.2 i.e. Superintending Engineer, Public Works Circle, Amravati. The advertisement was for recruitment for the posts of Junior Clerks. There were in all 25 posts of Jr. Clerks. Out of which, 18 posts were for Open category. Out of these 18 posts, 7 were for Open (General) category, 2 for Part Time category, 3 for Ex-servicemen category and 9 for female candidates. According to the applicant, the provisional list of the candidates to appear for examination was published on 12.9.2014 and examination was held on 23.11.2014. The applicant has taken objection to the marks granted to him vide letter dated 29.1.2015.

4. It is the case of the applicant that as per condition No.53 of the advertisement, objection was to be taken till 15.9.2014 till

5.30 p.m. and it was specifically mentioned that no objection will be entertained after 15.9.2014. Respondent No.3, however, took objection after the time frame on the ground that, he applied for the post from Open (Part Time) category and that he got the highest marks in that category and, therefore, his name be considered. His objection was accepted.

5. According to the applicant in the provisional list, the applicant was shown at Sr. No.2 from Part Time category and it was shown that he obtained 126 marks whereas one Raju Wawre was at Sr. No.1 and he obtained 130 marks.

6. According to respondent No.3, he obtained 136 marks and he belongs to Part Time category and, therefore, should have been shown at Sr. No.1 on merit. His objection dated 29.6.2015 was accepted and final select list was published on 30.7.2015, whereby applicant's name was deleted and respondent No.3 was placed at Sr. No.1 in the merit list and Raju is shown at Sr. No.2.

7. The applicant also took objection that the model answer sheet of the question paper dated 23.11.2014 was wrong and several mistakes were committed in respect of answers to the questions asked in the written examination.

8. In view of several mistakes in the model answer sheet, the applicant filed objection on 19.1.2015 and objected that the question Nos.1 40 and 54 in the said answer sheet were wrongly answered. It was noticed that there were in all 30 questions to which the answer was wrong and, therefore, respondent No.2 appointed a committee for revaluation of answers. Had the answers been correctly recorded, the applicant would have got more than 130 marks and he should have been in the select list from Part Time category. The applicant has, therefore, prayed that the final select list dated 30.7.2015 issued by respondent No.2 t the post of Jr. Clerk reserved for Open (Part Time) category be quashed and set aside and the respondents be directed to select the applicant to the post of Jr. Clerk.

9. Respondent No.2 resisted the claim. It is an admitted fact that the applicant as well as respondent No.3 were wrongly shown in the Open (General) category in the provisional seniority list. However, the applicant did not file any objection during the stipulated period. It is admitted that the applicant got 126 marks. Raju Wawre got 130 marks and respondent No.3 got 136 marks. It is stated that the objections were referred to the Committee and the Committee finalized the answer key and published the answer key as per the Committee report after receiving clarification from Vidarbha Institute of

Science and Humanities, Amravati and thereafter the evaluation of answer sheet were done and final list was published on 15.5.2015. No illegality has been committed.

10. The learned counsel for the applicant submits that, as per the advertisement (Clause 53), last date of receiving objections was 15.9.2014 and it was specifically stated that the objections received thereafter will not be entertained. Respondent No.3 did not file any objection till 15.9.2014 and, therefore, objection from respondent No.3 should not have been entertained. This cannot lie in the mouth of the applicant for the simple reason that even the applicant's objection has been entertained subsequently i.e. after final date of receiving objection.

11. Now so far as objection of respondent No.3 is concerned, he has specifically stated that he applied from Open (Part Time) category. But his name was considered from Open (General) category. On receiving the objection, the respondents have rectified their mistake, as there is no doubt that respondent No.3 applied from Part Time category. It is also not disputed that respondent No.3 got 136 marks which was highest in the category of Part Time. Since the applicant got 126 marks from Open (Part Time) category and he was at Sr. No.2 in the final select list, his name was deleted and the name of

respondent No.3 was kept at Sr. No.1, whereas that of one Shri Raju Wawre who was initially at Sr. No.1 having secured 130 marks was kept at Sr. No.2. Thus, there seems to be no malafides in replacing the applicant from the final select list, since respondent No.3 belongs to Open (Part Time) category and got highest marks.

12. It is material to note that the applicant did not object for the answer key at time of examination or immediately thereafter. He waited till the result was declared. Even when his name was included in the provisional select list from Part Time category, he never objected for model answer sheet. His objection came for the first time when the mistake of showing respondent No.3 from Open (General) category was rectified and the name of respondent No.3 was included in the final select list.

13. The learned counsel for the applicant has invited my attention to the objection taken by the applicant to the model answer sheet. According to him, to question No.1 मूळ बदलले या वाक्य चाराचा अर्थ सांग, chose the option (1) whereas answer should have been same as given by the applicant. The learned counsel for the applicant pointed out the report of the Committee which is at page Nos. 38 to 48 of the paper book (both inclusive), in which the Committee referred the

question to a Specialist Committee knowing Marathi language. According to the learned counsel for the applicant, the said question was, therefore, not replied properly. I am unable to accept this contention for the simple reason that initially the Committee decided to refer the answer of the said question to the Expert Committee knowing Marathi language and on receiving the answer from the said Committee, it was decided that the answer of the said question was Option-A and not Option-C as given by the applicant. This Tribunal is not expected to go into the merits of the correctness of the answers or decision taken by the Committee. Fact remains that technical Committee found the applicant's answer wrong and, therefore, came to the conclusion that the marks obtained by the applicant were proper. Similar thing happened with question No.40 in which question was "कोणत्या कमावये जमू कामीरला वतं रायाचा दजादेयात आला आहे ?" and answer was Article 152 of the Constitution of India i.e.

Option B: According to the applicant, this answer should have been Option A: As already stated, this Tribunal is not expected to go into the merits of such procedure adopted by the competent committee.

14. The learned counsel for the applicant relied on the judgment reported **in (2015) 11 SCC 493 in case of Pradeep Kumar Rai and others V/s Dinesh Kumar Pandey and others.**

15. I have carefully gone through the said judgment. It is material to note that in the said judgment, the Hon'ble Apex Court has held that challenge to the selection process after participating in interview and declaration of adverse results is not maintainable. It was further observed that, once the appellants participated in the selection process, without raising any objection, they cannot be allowed to challenge the process after being declared unsuccessful. The candidate cannot approbate and reprobate. The candidates should not have either participated in the interview or they should have challenged the procedure immediately after interviews were conducted. In the present case, the applicant has not challenged the process. On the contrary, he agreed for inclusion of his name in the provisional list and when his name was replaced by the competent candidate he filed objection.

16. The learned P.O. has invited my attention to the judgment delivered by the Hon'ble High Court of Bombay, Bench at Nagpur in **W.P. No. 1405/2016 on 8.8.2016 in case of Pravin Bapkurao Warghat V/s Municipal Commissioner, Amravati and**

another. The Honble High Court in the said case has observed as under:-

The petitioner had applied for the post of Law Officer in pursuance of an advertisement issued by the Municipal Corporation , Amravati. The petitioner had appeared at the written examination on 23.10.2015 and the result was declared on the same day. According to the petitioner, in view of the wrongful answers supplied to question Nos. 44 ,87, 142, 159 and 179, the petitioner was not declared successful. It is the case of the petitioner that the answers to the aforesaid five questions have been wrongly mentioned in teh answer key. The petitioner, has therefore sought the cancellation of the selection process in view of the wrongful answers supplied in the answer key to the five aforesaid questions.

We are not inclined to grant the relief sought by the petitioner in this writ petition. The petitioner had secured 114 marks and the last candidate that was interviewed by the Committee had secured 115 marks. The case of the petitioner that he would have secured 119 marks and would have been entitled to appear at the interview, had the answers being correctly stated in the answer key cannot be considered in exercise of the writ jurisdiction. Since the petitioner was not found to be meritorious, his claim was not considered. It would not be possible, in exercise of the writ jurisdiction to direct the respondent No.1 to revalue the answer papers of all the candidates by correcting the

answer key. It is not the case of the petitioner that the answer key was wrongly prepared with a view to favour the selected candidates.

In the circumstances, we dismiss the writ petition with no order as to costs+

17. On a conspectus of discussion in foregoing paras, it will be clear that respondent No.3 had applied for the post from Open (Part Time) Category, but was wrongly shown as a candidate from Open (General) category. He got highest marks in the Part Time Category and, therefore, he has taken objection that his name shall be included in the Part Time Category. Respondent No.3 rightly accepted his objection and rectified the mistake. There is nothing on record to show that the answer sheets were corrected with malafide intention to favour respondent No.3 and, therefore, I do not find any illegality in the selection process.

18. Alongwith the O.A., the applicant has filed C.A. No. 115/2017. The said application is under caption %application for amendment and rejoinder of the applicant+. The learned counsel for the applicant agreed that the said application will be heard on merit alongwith argument. It is not known as to whether this is a rejoinder or amendment application. Even for the argument sake, it is accepted that the applicant wants to join Raju Panjabrao Wawre as respondent

No.4, there is no point in allowing the applicant to join Raju Panjabrao Wawre as respondent No.4 for the simple reason that if the process is held to be illegal as claimed by the applicant, all the selected as well as all candidates who participated in written examination should have been joined as parties to the litigation. Since answer sheet of the applicant has been evaluated properly, there is no question of enhancement of marks obtained by the applicant and in any case the applicant cannot secure more marks than Raju Wawre. In such circumstances, joining of respondent Raju Panjabrao Wawre as respondent no.4 is not necessary.

19. In view of the discussion in foregoing paras, following order is passed:-

ORDER

The O.A. No. 532/2015 as well as C.A. 115/2017 stand dismissed with no order as to costs.

(J.D.Kulkarni)
Vice-Chairman (J)

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