

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.100 OF 2018**

**DISTRICT : SOLAPUR**

Shri Pradeep Tanaji Survase. )  
Age : Adult, Presently residing at At Post : Tirhe,) )  
Taluka North Solapur, District : Solapur. )...**Applicant**

**Versus**

1. Sub Divisional Officer. )  
Division-1, Solapur, District Kolhapur. ) )  
2. Santosh Namdev Ashbe. )  
R/o. Post Tirhe, Tal.- North Solapur, ) )  
District : Solapur. )...**Respondents**

**Mr. M.V. Thorat, Advocate for Applicant.**

**Ms. S.T. Suryawanshi, Presenting Officer for Respondent No.1.**

**Mr. S.K. Hande, Advocate for Respondent No.2.**

**CORAM : A.P. KURHEKAR, MEMBER-J**

**DATE : 18.03.2019**

**JUDGMENT**

1. The Applicant has challenged the appointment of Police Patil of Respondent No.2 and also sought declaration for his appointment on the post of Police Patil of Village Tirhe, Tal. & District : Solapur.

2. The Applicant as well as Respondent No.2 are the residents of Village Tirhe, Tal. & District : Solapur. The Respondent No.1 (S.D.O) by Advertisement dated 20.11.2017 invited the applications to fill-in the post of Police Patil of Village Tirhe, Tal. & Dist. : Solapur. The Applicant and Respondent No.2 amongst others applied to the post and participated in the process. The recruitment process comprises of Written Examination of 80 marks and 20 marks for interview. The Applicant has shown secured 62 marks in Written Examination and 14 marks in Oral, total 76 out of 99 in view of the decision of the Committee to cancel Question No.30 or Written Examination. He contends that, his answer to Question No.30 was correct, and therefore, he was entitled to 63 marks in Written Examination and resultantly his total marks would come to 77 and was entitled to the appointment of Police Patil. Whereas, the Respondent No.1 has appointed Respondent No.2 to the post of Police Patil who secured 64 marks in Written Examination and 12.2 marks in Interview, total 76.2 marks out of 99 in view of cancellation of Question No.30. The Applicant contends that the decision of the Committee to cancel Question No.30 is totally arbitrary and unsustainable in law. The Committee has considered total marks 99 after deleting/cancelling Question No.30 and found Applicant has secured 76 marks whereas the Respondent No.2 has secured 76.2 marks out of 99. The answer of Respondent No.2 to the Question No.30 was 'a' which was incorrect, but he got unfair advantage due to decision of Committee to drop Question No.30 from consideration. The Applicant, therefore, contends that the decision of Respondent No.1 to appoint Respondent No.2 on the post of Police Patil is illegal and sought declaration for his appointment to the post of Police Patil.

3. The Respondent No.1 resisted the application by filing Affidavit-in-reply (Page Nos.26 to 34 of Paper Book) *inter-alia* denying the entitlement of the Applicant to the relief claimed. The Respondent denied that its decision to cancel Question No.30 is arbitrary. The Respondent contends that as per Model Answer Key of Question No.30 "c" was the answer, but the Committee after holding

Examination found that Question No.30 is somewhat ambiguous and might have created confusion in the mind of candidates, and therefore, decided to cancel Question No.30 from consideration. Therefore, for Written Examination, total marks were considered 79 instead of 80. On this line of submission, the Respondent contends that no prejudice has been caused to any of the candidate as Question itself has been cancelled. As such, in view of cancellation of Question No.30, the Respondent No.2 has scored 76.2 marks whereas the Applicant has scored 76 marks. Consequently, the Respondent No.2 having found scored highest marks was appointed to the post of Police Patil by order dated 25.01.2018. The Respondent, therefore, prayed to dismiss the application.

4. The Respondent No.2 has filed Affidavit-in-reply (Page Nos.19 o 25 of Paper Book) *inter-alia* denying the allegations of the Applicant. He adopts the stand taken by Respondent No.1 and contends that, in view of cancellation of Question No.30, he having scored more marks was rightly appointed to the post of Police Patil. He denied that his appointment suffers from any illegality or infirmity and prayed to dismiss the application.

5. Shri Thorat, learned Advocate for the Applicant vehemently urged that the decision of Respondent No.1 to cancel Question No.30 is not only arbitrary but it has caused serious prejudice and injustice to the Applicant and thereby the Applicant has been deprived of his legitimate right to the appointment of Police Patil. He emphasized that, as per Model Answer Key, admittedly, the answer of Question No.30 was "c" which is correct one, and therefore, the Applicant was entitled to one mark for this Question. He has also pointed out that the decision taken by the Committee that, Question No.30 might have caused confusion amongst the candidates is not supported by opinion of medical Expert. His client answer to Question No.30 is being correct, he is entitled to 77 marks out of 100. Whereas, the answer given by Respondent No.2 to Question No.30 being incorrect, he would remain at 76.2 marks. On this line of submission, he urged

that the appointment of Applicant to the post of Police Patil is illegal and in his place, the Applicant be appointed to the post of Police Patil having secured highest marks.

6. The learned Advocate for the Applicant in alternative submissions urged that either fresh recruitment process be ordered, so that all can again participate or all answer-sheets particularly of Applicant and Respondent No.2 be revalued, after obtaining opinion of expert in medical about the correct answer of Question No.30, so that issue will resolve finally. In this behalf, he sought to place reliance on the Judgment of Hon'ble Supreme Court in **(2013) 4 SCC 690 (Rajesh Kumar Vs. State of Bihar)** which will be discussed a little later.

7. Per contra, the learned Presenting Officer for Respondent No.1 and learned Advocate for Respondent No.2 sought to contend that in the opinion of Committee, the Question No.30 was ambiguous causing confusion amongst the candidates, and therefore, the Committee decided to cancel Question No.30 and to restrict total marks to 99 instead of 100. They also tried to contend that, no prejudice has been caused by cancellation of Question No.30 as it was not considered at all, and therefore, the decision cannot be termed arbitrary or illegal.

8. It appears that, there was also mistake in respect of Answer Key to Question No.6 but it was rectified at the time of evaluation of Answer Sheets. The learned Counsels appearing for the parties fairly concede this position and restricted their submission to the validity of cancellation of Question No.30 only.

9. At this juncture, it would be apposite to see what was the Question No.30 and the Answer Key.

“३०) खालीलपैकी ----- हा संसर्गजन्य रोग नाही.

A) एच.आय.व्ही. B) कुष्ठरोग C) कर्करोग D) कावीळ''

Whereas, as per Model Key, the answer to Question No.30 was "C" (as per Page 14 of Paper Book), which is not in dispute. However, later, at the time of evaluation of mark-sheets, the Committee has taken decision to cancel Question No. 30 on the ground that the question was ambiguous and causing confusion.

10. Here, it would be relevant to see the decision taken by the Committee while cancelling Question No.30, which is as follows :

''प्रश्न क्र. ३० हा खालीलपैकी ----- हा संसर्गजन्य रोग नाही. a) एच.आय.व्ही. b) कुष्ठरोग c) कर्करोग d) कावीळ या प्रश्नाचे दि. १७.१२.२०१७ रोजीच्या उत्तर तालिकेमध्ये पर्याय c बरोबर असलेचे नमूद केलेले होते. परंतु सदर प्रश्नाबाबत सविस्तर चर्चा केली असता मराठीमधील संसर्गजन्य शब्दाला इंग्रजीमध्ये 1. Communicable Diseases व 2. Contagious Diseases असे दोन शब्द दिसून येतात. वास्तविक एच.आय.व्ही, कुष्ठरोग व कावीळ हे Communicable Diseases मध्ये येतात व कुष्ठरोग हा Contagious Diseases मध्ये येतो. सबब मराठी व इंग्रजी भाषेतील अर्थामुळे उमेदवारांचा गोंधळ निर्माण होण्याची शक्यता दिसून येते. याशिवाय वेगवेगळे अर्थ घेतल्याने वेगवेगळी उत्तरे तयार होत आहेत. सबब सदरचा प्रश्न रद्द करणे आवश्यक असल्याचे बैठकीमध्ये एकमत झाले.

समितीमधील सर्वांच्या मताने सुधारित उत्तर तालिका दि. १८.१२.२०१८ रोजी प्रसिध्द करणेचे ठरविले. तसेच सदरची बैठक संपलेचे घोषित करणेत आले.''

11. The situation in the present case is very peculiar. If the answer 'c' given by the Applicant to Question No.30 is accepted to be correct, then his marks will go up to 77 and being higher than Respondent No.2 would be entitled to the appointment to the post of Police Patil. The answer of Respondent No.2 to Question No.30 was incorrect as per Answer Key itself. Whereas, in view of decision of Committee, the Question No.30 was completely discarded and marks were given out of 99 instead of 100. This being the crucial position, the submission advanced by the learned P.O. that by cancelling Question No.30, no prejudice is caused to any of the candidates is apparently erroneous. Serious prejudice appears to have been caused to the Applicant because though his answer appears correct, the question itself was deleted and it makes all the difference. Suffice to say, the right of the Applicant for appointment to the post

of Police Patil though answered the Question No.30 correctly as per Answer Key itself has been jeopardized and substantial injustice is obvious.

12. Pertinent to note that, admittedly, while cancelling Question No.30 as a whole, the Committee did not obtain opinion of expert which was required to be taken for the correct evaluation of the answer-sheets. True, there is difference between communicable diseases and contagious diseases. As per the opinion of the Committee itself, the diseases viz. H.I.V, Leprosy and Jaundice comes in the category of communicable diseases and Leprosy comes under contagious diseases. Significantly, Cancer does not figure in any of them, as seen from the decision of Committee reproduced above. This being the position, I find prima-facie substance in the submission advanced by the learned Advocate for the Applicant that, the answer 'c' i.e. Cancer would be correct answer of Question No.30, as rest of the diseases given in option either falls in the category of communicable diseases or contagious diseases. However, this needs to be finalized by expert opinion.

13. The communicable disease is one that spreads from one person to another through variety of ways that included contact bodily fluids, breathing in an air-borne virus or by being bitten by insects. Whereas contagious diseases are transmitted to other person by physical contact with person suffering from disease or by casual contact with their secretions or object touched by them or air-borne route among other routes.

14. Needless to mention that the decision of Committee entrusted with the evaluation of answer-sheets should not result in unfair advantage to any of the candidates nor cause injustice or prejudice to any of the candidate who answered the question correctly and entitled to mark. In the present case, if answer given by the Applicant to Question No.30 i.e. 'c' - Cancer is correct in the opinion of Medical Expert, then he is definitely entitled to the appointment, subject to

fulfillment of other eligibility. But because of decision of Committee to delete/cancel Question No.30 in its entirety out of consideration, the Applicant though appears rightly answered the question goes out of race. Therefore, in my considered opinion, in the interest of justice, fairness and transparency, it is desirable to obtain opinion of Medical Expert about the correct answer of Question No.30 from the options given to the candidates and to evaluate answer-sheets afresh.

15. In this behalf, the Tribunal is guided by the decision of Hon'ble Supreme Court in *Rajesh Kumar's* case (cited supra). In the said case, while dealing with the issue of erroneous evaluation using wrong answer key, the Hon'ble Apex Court directed to get answer-sheets reevaluated on the basis of correct key to be prepared on the basis of expert opinion and to prepare a list of selected candidate to fill-in the posts of Junior Engineers conducted by Bihar State Staff Selection Commission. In Para Nos.19 and 21, the Hon'ble Supreme Court held as follows :

**“19.** The submissions made by Mr. Rao are not without merit. Given the nature of the defect in the answer key the most natural and logical way of correcting the evaluation of the scripts was to correct the key and get the answer scripts re-evaluated on the basis thereof. There was, in the circumstances, no compelling reason for directing a fresh examination to be held by the Commission especially when there was no allegation about any malpractice, fraud or corrupt motives that could possibly vitiate the earlier examination to call for a fresh attempt by all concerned. The process of re-evaluation of the answer scripts with reference to the correct key will in addition be less expensive apart from being quicker. The process would also not give any unfair advantage to anyone of the candidates on account of the time lag between the examination earlier held and the one that may have been held pursuant to the direction of the High Court. Suffice it to say that the re-evaluation was and is a better option, in the facts and circumstances of the case .

**21.** There is considerable merit in the submission of Mr. Rao. It goes without saying that the appellants were innocent parties who have not, in any manner, contributed to the preparation of the erroneous key or the distorted result.

There is no mention of any fraud or malpractice against the appellants who have served the State for nearly seven years now. In the circumstances, while inter-se merit position may be relevant for the appellants, the ouster of the latter need not be an inevitable and inexorable consequence of such a re-evaluation. The re-evaluation process may additionally benefit those who have lost the hope of an appointment on the basis of a wrong key applied for evaluating the answer scripts. Such of those candidates as may be ultimately found to be entitled to issue of appointment letters on the basis of their merit shall benefit by such re-evaluation and shall pick up their appointments on that basis according to their inter se position on the merit list.”

The ratio of this Judgment is squarely attracted to the present case and bound to be followed.

16. For the aforesaid discussion, I have no hesitation to sum-up that the decision of Committee to delete or cancel Question No.30 in its entirety from consideration is arbitrary and unsustainable. Now, it is necessary to obtain opinion of Medical Expert about the correct answer of Question No.30 and to re-evaluate the answer-sheets of the Applicant and Respondent No.2 afresh and then declare the result accordingly. The O.A, therefore, deserves to be allowed partly. Hence, the following order.

### **ORDER**

- (A) The Original Application is allowed partly.
- (B) The decision of the Committee deleting Question No.30 in its entirety from consideration is arbitrary and unsustainable in law and facts.
- (C) The appointment of Respondent No.2 to the post of Police Patil is set aside.
- (D) The Respondent No.1 is directed to obtain opinion of expert from Government Hospital about the correct answer of Question No.30 and on that basis, re-evaluate the answer-



sheets of Applicant and Respondent No.2 and then to declare result accordingly and to take further steps for the appointment of Police Patil in accordance to the result.

- (E) This exercise to be completed within a month.
- (F) No order as to costs.

Sd/-

**(A.P. KURHEKAR)**  
**Member-J**

Mumbai

Date : 18.03.2019

Dictation taken by :

S.K. Wamanse.

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