

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1077 OF 2022

1. Shri Akash Hridas Kamble)
Age : 33 years, Occ. Govt. Service)
Working as Police Constable,)
In the office of Armed Police, Worli)
R/o. Building No.64, Room No.66,)
Worli B.D.D.Chawl, Mumbai 400 018)

2. Avinash Sumersing Rathod,)
Age : 32 years, Occ. Govt. Service,)
Working as Police Constable,)
In the office of Cast Validity Office,)
Wardha. R/o. At post Shidwadi, Post Anjansing,)
Tal.Tiosa, Dist.Amravati.) **...Applicants**

Versus

1. The Maharashtra Public Service Commission)
Through the Secretary, 5th, 7th and 8th floor,)
Cooperage Telephone Exchange,)
Maharshi Karve Road, Mumbai 400 021)

2. The Government of Maharashtra,)
Through the Secretary, Home Department,)
Mantralaya, Mumbai 400 032) **...Respondents.**

Mr. C.T. Chandratre, learned Advocate for the Applicant.

Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Ms. Medha Gadgil, [Member (A)]

DATE : **29.11.2022**

PER : **Justice Mridula Bhatkar (Chairperson)**

Question No.76 : *Culpable homicide is*

- (a) *doing an act with the intention of causing death.'*
- (b) *doing an act with intention of causing such bodily injury as is likely to cause death.*

Answer Options :

- (1) *a is right, b is wrong*
- (2) *Both a and b are right*
- (3) *b is right, a is wrong*
- (4) *Both a and b are wrong.*

Applicant opted : (1) *a is right, b is wrong*
 Answer key of M.P.S.C. : (2) *Both a and b are right*

Question No.121 : *Which of the following offences is / are punishable under Section 136 C of the Representation of People Act, 1951?*

- a. *Fraudulently destroys any nomination paper.*
- b. *Without due authority opens any ballot box*
- c. *Removal of ballot papers from polling station*

Answer Options :

- (1) *Only a and b*
- (2) *Only b and c*
- (3) *Only c*
- (4) *All of the above*

Applicant opted : (1) *Only a and b*
 Answer key of M.P.S.C. : (3) *Only c*

Question No.135 : *Observe the following statements in view of the POCSO Act, 2012 :*

Statement I : Section 8 of the POCSO Act deals with the punishment of penetrative sexual assault.

Statement II : Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years.

Answer Options :

- (1) *Statement I is correct; II is incorrect*
- (2) *Statement II is correct; I is incorrect*
- (3) *Both the statements are correct*
- (4) *Both the statements are incorrect.*

Applicant opted : (2) *Statement II is correct; I is incorrect*
 Answer key of M.P.S.C. : (4) *Both the statements are incorrect.*

3. Out of the above Questions, with regard to Questions No.21, 29, 48 and 76, we find M.P.S.C's Answer key is correct. However, with regard to Questions No.121 & 135, we called upon M.P.S.C. to clarify the reasons, and correctness of Answer key with regard to Questions No.121 and 135 as they are on the point of law. We have considered the submissions of learned Advocate and expert report which is informed by learned C.P.O. .

4. M.P.S.C. has furnished the explanation of the experts. Learned C.P.O. on instructions submits that Question No.135 is referring to old act of 2012. So far as Question No.121 is concerned, we do not consider it is a glaring mistake so far as eliminations of offence mentioned in Section 136(c), hence we give the benefit to M.S.P.C.

5. Hence we do not find any merit to grant interim relief in the O.A., therefore we reject interim relief. In view that interim relief is rejected, nothing survives in the O.A. and the same stands disposed of.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson