

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.654 OF 2018

Mr. Shivanand Hanmant Bobade,)
Aged : 32 years, Occ. Service,)
R/at. A/P. Chinchani, Tal. Tasgaon,)
Dist. Sangli) **...APPLICANT**

VERSUS

The Secretary,)
Maharashtra Public Service)
Commission, M.S. Mumbai)
having office at Cooperage Telephone)
Nigam Building, Maharshi Karve)
Road, Mumbai 21) **...RESPONDENT**

Mr. Bhushan A. Bandiwadekar, learned Advocate for Applicant.
Ms. S.P. Manchekar, learned Chief Presenting Officer for Respondent.

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

RESERVED ON : **15.03.2023**

PRONOUNCED ON : **20.03.2023**

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

J U D G M E N T

1. Applicant prays that the Tribunal be pleased to set aside the impugned order dated 09.04.2018 passed by the Respondent, Maharashtra Public Service Commission (M.P.S.C.) under which the Applicant was declared as ineligible to appear in all examinations and selections conducted by Respondent with effect from 12.03.2017 and

debarring him permanently. Further, Applicant prays that he be granted all consequential service benefits, as if impugned order has not been passed.

2. Learned Advocate has submitted that the impugned order passed by the Respondent does not contain order of M.P.S.C. permanently debarring the Applicant to appear in all examinations and selection conducted by the Respondents with effect from 12.03.2017 and is not a reasoned order. Learned Advocate has further submitted that though the impugned order was passed on 09.04.2018 it was given retrospective effect from 12.03.2017 and the Applicant has been declared as ineligible to appear for all the examinations and selections conducted by Respondent, M.P.S.C. Learned Advocate has further relied on the Maharashtra Act No.XXXI of 1982 i.e. Prevention of Malpractices at University Board, which are in fact applicable.

3. Learned Advocate has argued that Clause 1.3.1 of the General Instructions (guidelines) issued by the M.P.S.C. is a warning and it is not a rule and alleged act of the applicant that he did not fall under this Clause. Even if it falls in this Clause, there is no provision of debarring anybody permanently. In the order the guidelines referred are 1.3.1, 3.4.15 and 5.13.1. Thus such action of debarring applicant permanently is not available in the Rules to the M.P.S.C. Learned Advocate has submitted that the show cause notice dated 05.12.2017 is issued by the M.P.S.C., as per Clauses 3.4.15, 2.3.7 and 5.13.2 and on that basis the action was proposed. No specific charges are mentioned in the said show cause notice. Hence, principles of natural justice are violated. In the notice the charge mentioned was different and he was held guilty for

different misconduct. Learned Advocate has argued that when evidence is not shown and as the applicant is acquitted in the Criminal Case, M.P.S.C. has no ground and cause to initiate action against the applicant. Rule 7 of the Maharashtra Act No.XXXI of 1982 i.e. Prevention of Malpractices at University Board is pertaining to copying answers to the question papers set at the examination, from any book, notes or answer papers of other candidates, or appearing at the examination and related malpractice is not mentioned in the Notice.

4. Learned Advocate for the Applicant has submitted that Clause 2.3.7 though invoked is not considered and relied. In the impugned order Respondent has relied on Clauses 1.3.1 and 5.13.1 of the M.P.S.C. Procedural Rules/ Guidelines. Department has failed to justify the order of permanently debarring the Applicant for want of consistency in the show cause notice and the order. They did not blacklist the applicant, but directly passed the order of permanently debarring which is illegal. Learned Advocate has submitted that the punishment is shockingly disproportionate and there is variance in the show cause notice dated 05.12.2017 and impugned order dated 09.04.2018. No legal evidence is brought on record. Applicant has submitted his reply to the show cause notice on 19.12.2017. Learned Advocate has relied on the judgment of Hon'ble Supreme Court in the case of **Vetindia Pharmaceuticals Limited Versus State of Uttar Pradesh and Ors. reported in 2020 S CeJ 1956** on the point of show cause notice and permanently debarring.

5. Learned C.P.O. relies on the Chart at Exhibit-R1. She has submitted that in the Application Forms Nos. PN108021, PN108025, PN108030, and PN108032 all four forms were filled up on 31.12.2016 at

night 1.20 a.m. The date of birth in all the four forms is 31.04.1986. Those on line application forms bearing Application Form Nos.PN108021, PN108025 and PN108030 names of the Applicant's mother is shown one and the same i.e. 'Droupadi' and in Application form No.PN108032 his mother name is shown as 'Droupati'. In all the Application Forms different email ids are seen. Applicant working at Sangli, Superintendent of Police office, Vishrambaug and Application Forms were filed in Cyber café Tasgaon, Sangli. Learned C.P.O. has further submitted that the Internet Protocol reveals the channel of submission of Application Form i.e., from which device the application form is submitted. Learned C.P.O. has relied on the show cause notice. She has submitted that prior to the show cause notice the applicant was called upon to give relevant documents and SMS messages were also sent to him on 14.03.2017, 13.04.2017 and 12.05.2017. Though he received the said communication, he did not submit the explanation on his email id. After the show cause notice the applicant submitted letter dated 20.05.2017 through some other email the address which was not from the email which was on record of the M.P.S.C. Hence, the said reply to the show cause notice on 20.05.2017 could not be identified by M.P.S.C. as the email id was totally different than the email which was earlier used by the applicant for communication and these all facts are mentioned and explained in the order. Learned C.P.O. has relied on the judgment of Hon'ble Supreme court in case of **Bihar Public Service Commission and Another Versus Vinoy Kumar Singh and another reported in (2003) 7 SCC 28** on the point of permanently debaring the candidate.

6. Perused all the documents and also the order dated 09.04.2018 issued by the M.P.S.C. permanently debarring the applicant. The Chart at Exhibit-1 is a very important document revealing that for four Application Forms the examination fees was paid from one and the same Bank. In the judgment dated 20.01.2022 passed in Reg. Cri. Case No.17/2020 in the Court of Judicial Magistrate First Class, Tasgaon, District Khondre at paragraph 17, the learned Magistrate had considered the evidence of the Investigating Officer that though the information was called from the Bank about the IP address, he did not receive it. Learned Advocate Mr. Bandiwadekar referred and relied on the judgment of Sessions Court heavily. We have gone through the said judgment carefully. It is settled position of law that to prove the case in the Criminal Court the prosecution has to prove the facts strictly. The degree of standard of proof is very high in Criminal Case as compared to the Civil Case while in the Departmental Enquiry obviously the proof required is of a lesser degree to the satisfaction of the conscience of a prudent man. The Enquiry Officer is not the person in legal field like a Judge but he may be a competent officer from the administration. In the judgment it is rightly pointed out and criticized the investigation conducted by the concerned Enquiry Officer for not collecting the evidence. However, after going through the order in the present matter passed by the M.P.S.C. permanently debarring the Applicant, we are of the view that the authority has properly considered the commission on the part of the Applicant at the time of filling up the four applications on 31.12.2016.

7. We are of the view that the authority has rightly taken into account the similarities of Internet Protocol and other factors in its order. In the

order it is stated that the Applicant did not furnish necessary information in his email. However, it is explained by the learned C.P.O. that the Applicant sent reply on the email which was not used by him earlier. Hence, the authority could not view it in his context.

8. Learned Advocate for the Applicant has contended that the Clauses of M.P.S.C. Procedural Rules (guidelines) which are mentioned in the notice and the order are different and there is no provision available for the M.P.S.C. to debar any candidate permanently. Our attention was drawn to the M.P.S.C. Procedural Rules (guidelines). In the notice the Clauses 1.3.1, 5.13.1, 5.13.2 and 2.3.7 are mentioned.

In Clause 1.3, the guidelines at the time of filling up the forms are mentioned.

In Clause 1.3.1, there is specific warning to the candidates that caution is required to be taken while filling up the forms. It is stated in the said Clause, if deliberately false information is given or suppressed or forged form is filled-up, so also not following the guidelines of the M.P.S.C. will amount to misconduct and for that the M.P.S.C. is empowered to blacklist or debar the person or is empowered to take action as per Rules.

In Clause 1.3.2, it is stated that if eligibility criteria was not fulfilled or if there is misconduct on the part of the candidate then the candidate will be disqualified and he will be liable for appropriate punishment.

Clause 1.3.3 states about the acts committed by the candidate during the examination period and for that there is provision of debarring the candidate permanently. It is true that specific word 'debarring permanently' is not mentioned. But, however, the said Clause states that

the M.P.S.C. has power to take appropriate action as per the conduct and the case of the candidate.

Clause 5.13 pertains to action against the candidate if found guilty of misconduct. If false particulars are furnished or certain things or material is suppressed at the time of filling up the form and if there is any tampering the candidate's explanation is necessary under Clause 5.13.1.

In the present case as held by the Tribunal the Applicant did not submit proper explanation along with relevant documents on his registered email which is available with the M.P.S.C. and if such person is held guilty then that person can be declared guilty under Clause 5.13.2. 12 types of misconduct under Clause 5.13.2 are mentioned. The submission of learned Advocate Mr. Bandiwadekar that whatever act allegedly done by the Applicant is not covered under any of the item from 1 to 12 is not correct or devoid of facts. The items No.2, 3, 5 and 6 are impersonation and the commission of such act a person can be debarred either permanently or for a specific period.

“५.१३.२ A candidate who is or has been declared by the Commission to be guilty of :-

- (1)
- (2) *Impersonating or*
- (3) *Procuring impersonation by any person, or*
- (4)
- (5) *Making statements which are incorrect or false or suppressing material information, or*
- (6) *Resorting to any other irregular or improper means in connection with his/her candidature for the selection or*
- (7) *to (12)”*

9. In the case of **Vetindia (supra)** the Petitioner was aggrieved on the point of indefinite order of blacklisting at the time of tendering. In the present case in the show cause notice Clauses 1.3.1, 5.13.1, 5.13.2 and 2.3.7 are mentioned. In the case of **Vetindia (supra)** it was commercial

transaction involving the process of tendering. In the said matter though show cause notice was issued it did not state that the action of blacklisting was to be taken or it is contemplated. In the present case, the M.P.S.C. is a Constitutional Authority having its own procedural guidelines and under these specific guidelines M.P.S.C. is bound and empowered to take action. Thus, in the show cause notice those relevant Clauses are mentioned and therefore we rely on the submissions of learned C.P.O. on this point and hold action of permanently debarring the applicant is legal in view of the misconduct on the part of the applicant and especially when he is working in the Police Department and appearing for the responsible post of PSI.

10. In view of above, Original Application stands dismissed.

SD/-

(Medha Gadgil)
Member (A)

SD/-

(Mridula Bhatkar, J.)
Chairperson

prk

