

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.921 OF 2018

Rohit Mohan Jadhav,)
Age : 31 years, Occ. Service,)
R/at. Anand Nagar Park, Building No.6b,)
Flat No.19, Paud Road, Kothrud,)
Pune 411 038.) **....APPLICANT**

VERSUS

Maharashtra Public Service Commission,)
Having address at : Floor 5-8,)
Telephone Exchange Building,)
Maharshi Karve Road,)
Cooprej, Mumbai, Maharashtra 400 021) **.....RESPONDENT**

Shri N.D. Pote, learned Advocate for the Applicant.

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

**CORAM : JUSTICE MRS. MIRDULA BHATKAR, CHAIRPERSON
SHRI P.N. DIXIT, VICE-CHAIRMAN**

PER : JUSTICE MRS. MIRDULA BHATKAR, CHAIRPERSON

RESERVED ON : 10.02.2021

**PRONOUNCED : 12.02.2021
ON**

J U D G M E N T

1. The Applicant, Government servant, applied for the post of Administrative Officer/ Planning Officer/ Budget Officer and Recovery Officer, Group B which was advertised by the Maharashtra Public Service Commission, (M.P.S.C.), vide Advertisement No.3 of 2018, dated 24.01.2018. His form was accepted and hall ticket was issued to him for the examination which was scheduled on 21.07.2018. The four sets of question papers namely 'A', 'B', 'C', 'D' were provided, out of which the Applicant had attended Set 'B' question paper. A key with 4 answers/options for each question was provided to candidates, and one option was to be selected from 4 options. The Applicant could not secure requisite cut off marks. However, he found that the Respondent deleted Question No.29 and the answer of Question No.13 was changed, as selected option was erroneous. He secured only 61.50 marks, which was just less than cut off marks. He therefore approached this Tribunal with prayer that directions be given to the Respondent to delete Question No.13 and restore Question No.29 with answer key No.3 of Question paper Set 'B' and he also prayed that one post be kept vacant till the disposal of this O.A. He was granted ex-party interim relief by this Tribunal by order dated 30.10.2018. The said order was challenged by the Respondent, M.P.S.C. before the Hon'ble High Court in Writ

Petition No.13739/2018. The Division Bench of the Hon'ble High Court by order dated 21.01.2020, had stayed the ad-interim order of this Tribunal dated 04.12.2018 and stated that there is no bar from the Tribunal for taking up the O.A. for hearing.

2. The learned Counsel for the applicant has submitted that the applicant could have been cleared the examination and appeared for the interview if the correct key would have been provided by the M.P.S.C. He pointed out that the Question No.13 is regarding the Medical Leave permissible in case of miscarriage, abortion and termination of pregnancy. The answer was asked in weeks. As per Rule 74(5)(a) of Maharashtra Civil Services (Leave) Rules 1981 (hereinafter referred as 'M.C.S.(Leave) Rules 1981' for brevity) on maternity leave the leave period is mentioned as 6 weeks. However, as per the Medical Termination Act 1971 (hereinafter referred as 'Act 1971' for brevity), the maximum leave for a period of 45 days is allowed. The learned Counsel has submitted that the period of leave mentioned in the Act 1971 is in 'days' and not in 'weeks'. The question asked is about the permissible 'weeks' and therefore necessarily the answer should be about weeks and it is as per M.C.S.(Leave) Rules 1981, Rule 74(5)(a) comes to 6 weeks. He further submitted that however in the key the period is mentioned as upto 7 weeks. This apparent error is subject of judicial review.

In support of his submissions he relied on the judgment of Hon'ble Supreme Court in ***Ran Vijay Singh and others Versus State of Uttar Pradesh and Ors, reported in (2018) 2 SCC 357.*** Secondly, the learned Counsel has pointed out that the Question No.29 was deleted by the Respondent, M.P.S.C. which should not have been and the same question should have been included. The Hon'ble Supreme Court while addressing the similar issue of the mistake in question paper and revaluation of the answer sheet of the examination conducted by the U.P. Secondary Education Service, Selection Board has discussed the scope of judicial review by the Court and has stated, in paragraph 18 and 19 that,

“18. A complete hands-off or no-interference approach was neither suggested in Mukesh Thakur nor has it been suggested in any other decision of this Court – the case law developed over the years admits of interference in the results of an examination but in rare and exceptional situations and to a very limited extent.

19. In Kanpur University v. Samir Gupta³ this Court took the view that “(SCC p.316, para 16)

“16 the key answer should be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by an inferential process of reasoning or by a process of rationalisation. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well-versed in the particular subject would regard as correct.”

In other words, the onus is on the candidate to clearly demonstrate that the key answer is incorrect and that too without any inferential process or reasoning. The burden on the candidate is therefore rather heavy and the

constitutional courts must be extremely cautious in entertaining a plea challenging the correctness of a key answer. To prevent such challenges, this Court recommended a few steps to be taken by the examination authorities and among them are: (i) Establishing a system of moderation; (ii) Avoid any ambiguity in the questions, including those that might be caused by translation; and (iii) Prompt decision be taken to exclude the suspect question and no marks be assigned to it.”

Further it will be useful to reproduce the ratio laid down in the judgment of **Ran Vijay Singh (cited supra)** with regard to mathematical precision wherein it is held that,

“31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse – exclude the suspect or offending question.”

3. The learned C.P.O. while opposing the said O.A. relied on the affidavit-in-reply, dated 25.10.2018 through Shri Chandrashekhar V. Pawar, Under Secretary in the office of M.P.S.C., Mumbai. The learned C.P.O. justified the answers of the key provided by the experts. In reply of Question No.13 she requested us to refer the

provisional Rule 74(5) regarding maternity leave of M.C.S.(Leave) Rules 1981 and so also Act 1971. She further submitted that, with respect to Question No.29, as soon as Respondent came across the typographical mistake in the question which led to ambiguity, the Respondent took decision to delete the said question. She further submitted that the scope of judicial review in such matter is very limited to the judicial authority and the field is more dominated by the experts. Hence, the O.A. be dismissed. She also relied on the judgment of **Ran Vijay Singh (supra)**.

4. The Question papers were in Marathi language, therefore Question No.13 and Question No.29 both are translated at verbatim in English and also Marathi vernacular and reproduced for the correct understanding.

13. Medical leave should not be exceeded more than weeks which applied for the termination of pregnancy as per the Medical Termination Act 1971.

Options :

- | | |
|------------|------------|
| (i) Six | (ii) Four |
| (iii) Five | (iv) Seven |

29. For years 'C' category files needs to be preserved.

Options :

- | | |
|------------|-------------------------|
| (i) Two | (ii) Three |
| (iii) Five | (iv) Indefinite period. |

१३. गर्भस्त्राव किंवा गर्भपात आणि गर्भसमापन अधिकनयम 1971 अन्वये घडवून आणलेला गर्भपात यांच्या बाबतीत अनुज्ञेय रजा आठवड्यांपेक्षा अधिक होता कामा नये

- | | |
|---------|---------|
| (1) सहा | (2) चार |
| (3) पाच | (4) सात |

२९. 'क' वर्ग नुसत्या वर्षासाठी परिरक्षण करावयाच्या असतात.

- (1) दोन
(3) पाच

- (2) तीन
(4) अनिश्चित काळाकरिता

5. As argued by the learned Advocate for the Applicant and the learned C.P.O. for the Respondent on the point that a female Civil Servant as per Rule 74(5) of M.C.S.(Leave) Rules 1981, is entitled to maximum period for maternity leave is mentioned as 6 weeks and under the Medical Termination Act 1971, it is mentioned as 45 days. Thus, the period available for maternity leave under Medical Termination Act 1971 is three days more than the period available under M.C.S. (Leave) Rules 1981 which is 6 weeks comes to 42 days. In the question as rightly argued by learned C.P.O. there is mention of Medical Termination Act 1971 and not of M.C.S.(Leave) Rules 1981. While answering any question the candidates has to take into account how the question is worded. The Question No.13 clearly refers to the Act 1971 therefore the answer is expected to be given in context with the Act 1971. True, the period of leave mentioned in the Act 1971 is in 'days' and the question is asked about the 'weeks'. The learned C.P.O. has placed on record the original Answer Key of this Question.

6. On perusal we find that the correct Answer for Question No.13 is 'seven'. The period of 45 days is more than 6 weeks and

therefore making the period of Maternity leave should not exceed than '7 weeks' is a correct answer. It was a tricky question but the answer key is not definitely erroneous.

7. The learned C.P.O. also further pointed out that the State of Maharashtra had adopted the policy in consonance with the policy of the Central Government in respect of the period of maternity leave the State of Maharashtra has issued Government Resolution (G.R.) dated 28.07.1995, wherein the leave permissible for miscarriage, abortion and termination of pregnancy, for women Civil Servants working in State of Maharashtra is not 6 weeks or 42 days, but is maximum 45 days.

8. The Question No.29 is reproduced in Marathi, in paragraph 5 above, and it is because it was deleted on account of typographical mistake. The word 'Nustya' should have written as 'Nasti'. This typographical error had changed the meaning of the question and therefore it was rightly and promptly deleted. This deletion did not lead to unequal treatment or disparity to any particular class of candidates. Thus the errors demonstrated in the said Question paper and Answer key are not the mistakes, but the Answer key provided is correct.

9. In view of the above, no indulgence is required in the present Original Application and the same is dismissed with no order as to costs.

Sd/-
(P.N. Dixit)
Vice-Chairman

Sd/-
(Mridula Bhatkar, J.)
Chairperson

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