

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 413 of 2016

Girish Digambarrao Dahikar,
aged about 37 years, Occ. Service,
r/o at post Nalwadi, District Wardha.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Higher and Technical Education Department
having its office at Mantralaya, Mumbai-400 032.
- 2) The Under Secretary,
Maharashtra Public Service Commission
having its office at 5/1 & 1/2, 7th and 8th floor Cooperage
Telephone Nigam Building Cooperage, Mumbai.
- 3) Shrikrishna Satwaji Maske,
aged about 28 years, Occ. Service
c/o Government College of Pharmacy
Kathora Naka, Amravati.

Respondents.

S/Shri Bharat Kulkarni, S. Pande, Advs. for the applicant.

Shri S.A.Sainis, P.O. for respondent nos. 1 and 2.

S/Shri Ajay D. Tote and R.V. Shiralkar, Id. Advs. for resp.no.3.

**Coram :- Shri Shree Bhagwan,
Member (A) and
Shri Anand Karanjkar, Member (J).**

JUDGMENT

Per : Anand Karanjkar : Member (J).

(Delivered on this 15th day of March,2019)

Heard Shri Bharat Kulkarni, learned counsel for the applicant, Shri S.A. Sainis, learned P.O. for respondent nos.1 and 2 and Shri R.V. Shiralkar, learned counsel for respondent no.3.

2. In response to the advertisement dated 04/12/2014 the applicant as he possessed educational qualification and the experience, applied for the post of Lecturer in Pharmacy in Government Polytechnic Colleges in the State Maharashtra. The applicant appeared in the written examination and as he cleared the written examination he was called for the interview. It is submission of the applicant that he scored total 150 (122+28) marks in the written examination and in the oral interview and the candidate i.e. respondent no.3 scored total 155 (122+33) marks. It is grievance of the applicant that illegality is committed by the MPSC while checking the examination papers. The MPSC earlier issued the answer key which is dated 15/12/2015, the applicant has replied the question no.60 and answer given by the applicant to this question was correct as per the answer key dated 15/12/2015.

3. It is contended that the MPSC examined the papers as per the answer key dated 01/02/2016, which was prepared by the experts and it was held that the answer given by the applicant to question No.60 was wrong. It is submitted that as per the rules the answer key dated 15/12/2015 was correct, therefore, the applicant be

given full marks to the question no.60. It is submitted that if full marks are given to the applicant to question no.60, then his marks would be increased by 2.5.

4. The next contention of the applicant is that the respondent no.3 has also given wrong answer to question no.60, therefore, his 2.5 marks be deducted. Here we would like to point out that the answer sheet of the respondent no.3 is not before this Bench. It is submitted that the MPSC be directed to produce this record in order to verify the examination paper.

5. The learned P.O. and the learned counsel appearing for the respondent no.3 have objected to adopt this course. It is submitted that the procedure followed by the MPSC is right and there is no error or illegality in it. It is submitted that as it was noticed by MPSC that there was error in the answer to question no.60 in answer key dated 15/12/2015, therefore, the matter was referred to the expert committee and as recommended by the experts the answer to question no.60 was corrected and accordingly, the answer key dated 01/02/2016 was issued. The corrected answer key dated/01/02/2016 was used for checking the examination papers. It is contention of the respondents the Courts and Tribunal do not have jurisdiction to decide whether the opinions given by the expert

committee regarding answer to the questions asked in the examination are correct or incorrect.

6. The learned P.O. has placed reliance on the Judgment in case of the **Maharashtra Public Service Commission Vs. Tejraon Bhagaji Gadekar**, Writ Petition No.7883/2012 delivered on 03/12/2012. In para-14 the Hon'ble Bombay High Court, Division Bench at Aurangabad, has specifically examined the same issue and it is laid down that -

“We are afraid, that the submission canvassed by the respondent no.1, cannot be accepted for the reason that the Tribunal, in the instant matter, has assumed the role of an expert while entertaining the questions of facts and has even overruled opinion of the experts. The Tribunal cannot be said to be possessed of the expertise in the specialised field. Even in respect of matters concerning the field of law, as opined by the Supreme Court, it is not permissible for the Courts or the Tribunal to entertain the objection and substitute its own opinion in place of opinion of the experts.”

7. The learned counsel for the respondent no.3 has placed reliance on the Judgment in case of **Madan Lal and ors. Vs. State of Jammu and Kashmir and others (1995) 3 SCC, 486**. In para-9 following observations are made –

“9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being concerned respondents herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Upto this stage there is no dispute between the parties. The

petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, that they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla, it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner”.

8. The learned counsel for respondent no.3 has also placed reliance on the Judgment in case of **Ganapath Singh Gangaram Singh Rajput Vs. Gulbarga University & Ors., (2014) 3 SCC, 767.**

After going through the judgments discussed above we are of the view that as per the law, the Court or the Tribunal do not have judicial authority to examine the correctness of the views given by the experts. In the present case as it was realised by the MPSC that the answer to question no.60 in the answer key dated 15/12/2015 was incorrect, therefore, the matter was referred to the expert committee and thereafter the expert committee took a view regarding answer to question no.60 and suggested the correct answer. The papers of all

the candidates appearing in the examination were checked as per the answer key dated 01/02/2016 as per the recommendation of the experts. In view of the legal position and the circumstances which are discussed above, we are of the firm view that it is not permissible to interfere in this matter and no purpose would be served by calling the answer sheet of respondent no.3 it would be futile. Hence, the following order –

ORDER

The O.A. stands dismissed with no order as to costs.

(Anand Karanjkar)
Member(J).

(Shree Bhagwan)
Member (A).

Dated :- 15/03/2019.

*dnk.