

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.693 of 2009.

(D.B.)

1. Prakash Santosh Patil,
Aged about 44 years,
Occ:- Police Head Constable,
P.S. Ambazari, Nagpur.
R/o House No.311, Bada Indora Nara Road, Nagpur.
2. Chandrakant M. Nimbarte,
Aged about 38 years,
Occ:- NPC, P.S. Nandanvan, Nagpur.
R/o Gopal Nagar, Near Mata Mandir, Nagpur.
3. Prashant E. Bhoyar,
Aged about 35 years,
Occ:- NPC, ACB. Nagpur-10.
R/o Plot No.13, Balaji Nagar,
Near Dutt Kirana Stores, Hingna Road, Nagpur.
4. Pramod Yadav,
Aged about 31 years,
Occ:- NPC, SB., Nagpur.
R/o Gawali Pura, Gittikhadan Katol Road,
Nagpur.

Applicants.

-Versus-

1. The State of Maharashtra,
Through its Chief Secretary,
Department of Home,
Mantralaya, Mumbai-32.
2. Maharashtra Public Service Commission,
3rd floor, Bank of India Building,
Mahatma Gandhi Marg, Hutatma Chowk,
Mumbai-400 001.

3. The Director General of Police (M.S.),
Shahid Bhagatsingh Marg, Colaba,
Mumbai-400 001.

Respondents

ORIGINAL APPLICATION NO.694 of 2009.

(D.B.)

1. Nitin Harishchandra Jawalkar,
Aged about 34 years,
Occ:- NPCPS, Ambazari, Nagpur.
R/o 84, Radke Layout, MIDC, Hingna Road,
Nagpur.
2. Anand P. Wankhede,
P.C., Aged about 31 years,
P.S. Ambazari, Nagpur.
R/o Flat No. 301, Yashwardhan Apartment,
Koradi Road, Near Rly. Crossing, Nagpur-30
3. Anil P. Patil,
Aged about 36 years,
NPCPS, Ambazari, Nagpur.
R/o Bezen Bagh Layout,
Near Jaripatka Bus Stop, Nagpur.
4. Amar A. Dhandar,
Aged about 32 years,
PC, ACB, Nagpur.
R/o 42, Thakre Layout, Vaishali Nagar,
Near SRP Camp, Hingna Road, Nagpur.
5. Yuvraj Boke,
Aged 35 years, Occ-Head Constable,
R/o Plot No.41, Suraksha Nagar, Adiwasi Layout,
Wadi, Dattawadi, Nagpur.
6. Sandeep S. Agarkar,
Aged 31 years, Occ-Head Constable,
R/o Police Line, Takli, Lal Bldg., Qtr. No.25,
Bldg.No.1, Katol Road, Nagpur-13.

Applicants.

-Versus-

1. The State of Maharashtra,
Through its Chief Secretary,
Department of Home,
Mantralaya, Mumbai-32.
2. Maharashtra Public Service Commission,
3rd floor, Bank of India Building,
Mahatma Gandhi Marg, Hutatma Chowk,
Mumbai-400 001.
3. The Director General of Police (M.S.),
Shahid Bhagatsingh Marg, Colaba,
Mumbai-400 001.

Respondents

ORIGINAL APPLICATION NO.675 of 2009. (D.B.)

Amit M. Pande,
Aged about 26 years,
Occ:- PC,ACB, Nagpur.
R/o Plot No.19, Near Water Filter Tank,
Utthan Nagar, Gorewada, Nagpur.

Applicant.**-Versus-**

1. The State of Maharashtra,
Through its Chief Secretary,
Department of Home,
Mantralaya, Mumbai-32.
2. Maharashtra Public Service Commission,
3rd floor, Bank of India Building,
Mahatma Gandhi Marg, Hutatma Chowk,
Mumbai-400 001.
3. The Director General of Police (M.S.),
Shahid Bhagatsingh Marg, Colaba,
Mumbai-400 001.

Respondents

Shri A.S. Deshpande, the learned counsel for the applicants in O.A. Nos. 693 and 694 of 2009,.

Shri S.A. Sainis, the Ld. P.O. for the respondents.

None appeared for the applicant in O.A. No. 675/2009.

Coram:-Shri J.D. Kulkarni, Vice-Chairman (J)

and

Shri Shree Bhagwan, Member (A)

JUDGMENT

(Delivered on this 13th day of August 2018.)

Per:-Vice-Chairman (J)

All these three O.As are being disposed of by common judgment. All the matters were to be heard together, since the issue involved in these matters is same. However, none appeared for the applicant in O.A. No. 675/2009.

2. Heard Shri A.S. Deshpande, the learned counsel for the applicants in O.A. Nos. 693 and 694 of 2009 and Shri S.A. Sainis, the learned P.O. for the respondents in all the matters.

3. In O.A. No. 693/2009, the learned counsel for the applicants submits that out of four applicants, he is arguing the matter for applicant No.2 only i.e. Shri Chandrakant M. Nimbarte. According to him, rest of the applicants are either promoted or are not interested in prosecuting the O.A. In O.A. No. 694/2009, the

learned counsel for the applicants submits that he is arguing the matter for applicant No.5 Yuvraj Boke only, as rest of the applicants are either not interested in prosecuting the O.A. or might have been promoted. Therefore, he is not pressing for rest of the applicants.

4. All the applicants were aspirants to the post of Police Sub-Inspector which is a promotional post for Constables and Naik Constables as well as Head Constables and Assistant Sub-Inspectors. For such post of Police Sub-Inspector, departmental qualifying examination is prescribed which is to be conducted by M.P.S.C. and such examination is called "Police Sub-Inspector Limited Departmental Examination". In 2001, first examination was conducted and thereafter second examination was conducted after a gap of five years. It was scheduled in 2006, but was conducted in 2008 as per Notification dated 15.2.2008.

5. As per procedure, those who cleared preliminary examination, are entitled to main examination and lastly physical test and oral interview. Preliminary examination was conducted on 11.5.2008 and result thereof was declared on 20.6.2008. In all 17,000 candidates appeared for examination. But 6,000 candidates were declared successful in the preliminary examination. The applicants were to submit their detailed forms within a period of 15

days and thereafter the MPSC issued admission cards for main examination on 7.7.2008. Main examination was scheduled on 14.7.2008.

6. Result of main examination was declared on 11.8.2009 and though, the applicants were confident about passing of examination and securing good marks, were declared disqualified. According to the applicants, for the first time, the MPSC declared the list of names of examiners / valuers and copies of relevant letters of appointment of examiners / Valuers alongwith their contact numbers. All the Valuers were incompetent, since none of them were qualified for examining / valuing papers of the subject "Law".

7. Applicants have applied for retotalling of marks secured by them. But nothing was informed to them and, therefore, they are constrained to file these O.As The applicants claimed following reliefs:-

i) Quash and set aside the entire procedure adopted by MPSC for the Main examination for the post of P.S.I. Limited Examination 2006 which was held on 20th July 2008 pursuant to notification below Annexure-I being arbitrary, illegal and unsustainable in law and in violation of Article 14 of the Constitution of India, and

ii) Hold and declare Clause 7.11..2 which restricts the rights of the candidates to get their papers re-evaluated is arbitrary, illegal and against the interest of the student and, therefore, the same is *ultra vires* to the rights of the applicants.

iii) Or in the alternative, direct the respondent MPSC to re-evaluate the examination papers of the Main Examination of the present applicants and

iv) Direct the respondent Commission to consider the eligibility criteria and fix a cut off line marks afresh and then consider the candidature of the present applicants.”

8. By virtue of amendment to the O.A. Nos. 693 and 694 of 2009, it is stated that the MPSC has to appoint the Selection Committee for the purpose of physical test as well as for oral interview and in the past examination, there were six member Committee which comprised of following officers of different departments such as, 1) Director General of Police of IPS cadre, 2) Law Expert, 3) Collector or his Nominee, 4) Welfare officer and 5) Two Members from MPSC.

9. However, only two member Committee was appointed which was included the Superintendent of Police and other officer from MPSC who was Ex. Vice-Chancellor of Aurangabad

and, therefore, physical test and oral interview were not conducted as per the procedure. Thereafter the applicants have also mentioned about the cases of some of the candidates like one Pramod Yadav stating as to how they were wrongly promoted. The applicants were not at all called for physical test and oral interview and, therefore, what happened in the oral interview and physical test, may not be of much importance and the question will be whether the applicants were eligible for being called or not for such tests. If it is proved that they have not obtained the requisite bench marks required for calling the candidates for physical test and oral interview, the applicants cannot claim about so-called illegality in physical test and oral interview.

10. The learned counsel for the applicants submits that the procedure adopted by the respondent MPSC in conducting 2006 examination is a clear cut example of colourable exercise of power which is arbitrary, illegal and, therefore, entire procedure needs to be quashed and set aside. It is further stated that clubbing of examinations for the years 2006 upto 2009 causes great injustice to the candidates and, therefore, the MPSC ought to have bifurcated the examination for those who have been granted exemption and those who are appearing for the first time in the examination. It is further

stated that in the past, i.e. in 1998 and 2003, the main examination was conducted after 45 days of the first examination. However, in the present case, examination was conducted on 11.5.2008 and results were declared in July 2008 and immediately the main examination was held on 28.7.2008. The said main examination was of descriptive nature and no time for preparation was given to the candidates. It is further stated that the MPSC and the respondent No.3 for the first time adopted a very unique procedure of calling and sending names alongwith mobile numbers and landline numbers with detailed addresses of each and every examiners, not only of the examiners but also to the concerned officers and other officers of Police Department and, therefore, sanctity of examination was breached and possibility of malpractice cannot be ruled out. It is further stated that the examiners were from non-executive branch and from Police Department only and were not qualified, since some of them have qualifications such as 10th or 12th standard passed and, therefore, they were neither graduates or law graduates and should not have evaluated the papers. The procedure for cut off marks is also not properly adopted.

11. The learned P.O. submits that the applicants have already participated in the examination and have never objected for

the procedure till result was declared or even thereafter till filing of the O.A. and, therefore, for the first time, the applicants cannot come with a case saying that proper procedure was not followed or that illegalities have been committed. This plea taken is afterthought, as the applicants failed to compete in the examination. The learned P.O. has placed reliance in **2011 (1) Mh.L.J. 889 in case of Dilip Punjaji Kharat V/s State of Maharashtra and others**. In the said case, the Hon'ble High Court has observed that a candidate who participates in the selection process, is barred from challenging the same. In the present case, since the applicants have been declared not qualified for the physical test and oral interview, they are stating about so-called illegalities in the conduction of examination and, therefore, they cannot be allowed to say so at this late stage.

12. The learned P.O. submits that in all 6000 applications were received. Out of which 2223 candidates were qualified for main oral interview and 533 candidates were appointed. Thus, all the posts have been filled in. The applicants never challenged the procedure and participated the process and have been declared not qualified and, therefore, now they cannot claim that no sufficient opportunity was given to them for preparation of written examination and so on. From the record, it seems that it is an

admitted fact that, the cut off marks for physical test and oral interview was 169 and none of the applicants could secure cut off marks. The applicants, therefore, cannot claim right to have physical test and oral interview, since they have not secured cut off marks for such tests.

13. The learned counsel for the applicants has invited our attention to one letter at Annexure A-6, Page No.56), whereby the names of the Valures have been notified alongwith their posts, addressed and telephone numbers. It is stated that all these Valures were not law graduates and, therefore, they should not have been allowed to examine the papers and particularly law papers. The learned P.O. has placed on record the Maharashtra Public Service Commission Rules of Procedure, 2005 at Annexure R.1, page Nos. 159 to 170 (both inclusive) and particularly Rule 5 (6) of the Rules which states about appointment of examiners. From the said Rule 5, it seems that the issue of appointment of examiners comes within the purview of Chairman of MPSC. It is material to note that, all the examiners appointed vide Annexure A-6 are above the rank of Additional Superintendent of Police. Their experience is to be considered and not the qualification. Merely because they do not possess law graduation qualification, that does not mean that they do

not have legal knowledge. They were appointed as examiners for departmental examination and not they were not to evaluate papers of law students appearing for law course and, therefore, merely because the applicants could not succeed in getting the examination cleared or in getting the requisite bench marks for admission for physical test and oral interview, it cannot be said that the examiners were not qualified. No malafides have been shown against the examiners and, therefore, in such circumstances, claim of the applicants seems to be most vague. No arbitrariness have been shown by the applicants.

14. From the discussion in foregoing paras, it will be thus crystal clear that none of the applicants were called for physical test and oral interview, since none of them have secured requisite bench marks for cut off marks required for calling the candidates for such test or interview. Admittedly, the applicants have participated in the process of recruitment and, therefore, merely because they could not pass the examination successfully, they cannot claim that the proper procedure was not followed or so-called illegality has been committed. As already stated, all 533 posts have been filled in the recruitment process of 1989 and the entire process has been conducted successfully. In the circumstances, we do not find any

merit in this objection taken by the applicants. Hence, we proceed to pass the following order:-

ORDER

The O.A. Nos.693, 694 & 675 of 2009 stand dismissed with no order as to costs.

(Shree Bhagwan)
Member (A)

(J.D.Kulkarni)
Vice-Chairman(J)

Dt. 13th August 2018.

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