

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NOS 310 & 311 OF 2023

DISTRICT :

1) ORIGINAL APPLICATION NO. 310 OF 2023

Shri Nikip Bawant Rathod)
R/at Bldg No. 104, Room No. 177,)
Shivaji Nagar Police Line, Pune 411 005.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
2. Director General of Police,)
Near Shahid Bhagat Singh Marg,)
Colaba, Mumbai 400 001.)
3. Commissioner of Police,)
Pune, Saduwasani Chowk,)
Pune 411 001.)
4. The Secretary,)
Maharashtra Public Service)
Commission, 5th, 7th &)
Cooperage Telephone Exchange Bldg,)
Maharshi Karve Marg,)
Cooperage, Mumbai 400 021.)...**Respondents**

2) ORIGINAL APPLICATION NO. 311 OF 2023

Shri Abhilash Yashpal Madale)
R/at Sangamwadi Gaon, Shivaji Nagar,)
Pune 411 005.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
2. Director General of Police,)
Near Shahid Bhagat Singh Marg,)
Colaba, Mumbai 400 001.)
3. Commissioner of Police,)
Pune, Saduwasani Chowk,)
Pune 411 001.)
4. The Secretary,)
Maharashtra Public Service)
Commission, 5th, 7th &)
Cooperage Telephone Exchange Bldg,)
Maharshi Karve Marg,)
Cooperage, Mumbai 400 021.)...**Respondents**

Shri S.S Dere, learned advocate for the Applicants.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : Justice Mridula Bhatkar (Chairperson)
Shri Debashish Chakrabarty (Member) (A)

DATE : 03.11.2023

PER : Justice Mridula Bhatkar (Chairperson)

J U D G M E N T

1. In both the Original Applications, the issue is same and they pray for same relief and therefore they are being heard together and disposed of by a common order.

2. The applicants challenge the impugned order dated 10.2.2023 passed by Respondent No. 4, M.P.S.C, by which the applicants are declared ineligible to appear for all the examinations and selection conducted by Respondent No. 4, w.e.f 30.7.2022 and debarring them permanently. The applicants further seek declaration that the applicants are eligible to appear for the examination and allow them to participate in the recruitment process.

3. Learned counsel submitted that both the applicants joined the Police Force on 20.19.2014 as Constables. Learned counsel submitted that Respondent no. 1, issued advertisement on 11.2.2022 for the post of P.S.I Limited Departmental Pre-Examination, 2021. On 16.4.2022, the Respondents conducted the Preliminary Examination and Respondent No. 4, published the result of the Preliminary Examination and applicants successfully qualified in the said examination. On 15.6.2022, Respondents had issued the advertisement for the Main Examination and on 30.7.2022, the applicants appeared for the Main Examination. The result of the Main Examination was declared on 23.9.2022 by Respondent No. 4, M.P.S.C. Applicant, Shri N.B Rathod in O.A 310/2023 was declared failed as his name did not figure in the

select list of successful candidates. However, Applicant, Shri A.Y Madale, in O.A 311/2023, cleared the Main Examination and his name appeared at Sr. No. 76 in Pune District and he qualified for the interview. Learned counsel submitted that Respondent No. 4, M.P.S.C issued show cause notice dated 4.11.2022 and to applicant Shri Rathod in O.A 310/2023 and applicant Shri Madale in O.A 311/2023 respectively. The Respondent No. 4, M.P.S.C made allegations that the applicants have violated Instruction No. 9.1 (6), (8), (12) & (13) of the General Instructions to the candidates. Learned counsel submitted that the applicants gave their explanation. However, Respondent No. 4, M.P.S.C without considering their explanation passed the impugned order on 10.2.2023 permanently debaring the Applicants.

4. Learned counsel for the applicants has submitted that the applicants have submitted their written explanation before the M.P.S.C that there was no violation of Instructions No. 9.1(6), (8), (12) & (13) of the General Instructions to candidates. The applicants did not intend to violate the rules in respect of copying at the time of the examination. Learned counsel further submitted that there was no incident of copying and whatever footage under CCTV Surveillance in the said Examination Hall was relied on by the Respondent No. 4, it was just for a moment and it was not a deliberate act. Learned counsel prays for mercy mainly on the ground that both the applicants have worked in the Police Force having unblemished service record and if the applicants are permanently debarred then their future career will be spoiled as the chances of promotion of the applicants are scuttled. Learned counsel further submitted that as per G.R dated 25th February, 2023, the Respondents have taken policy decision not to conduct the Limited Departmental Competitive Examination for promotion of the Police Constables to the post of P.S.I. Learned counsel for

the applicants relied on the decision of the Hon'ble Supreme Court in the case of **GURU NANAK DEV UNIVERSITY & ANR Vs. HARJINDER SINGH & ANR, (1994) 5 SCC 208.**

5. Learned C.P.O relied on the affidavit in reply dated 25.4.2023 filed by Megha S. Dhere, Under Secretary in the office of M.P.S.C, Navi Mumbai and submitted that the show cause notice was issued under Instructions No. 9.2.3 of General Instructions to the candidates for violating Instruction No. 9.1 (6), (8), (12) & (13) of the General Instructions to the candidates. Learned C.P.O submitted that Respondent No. 4, M.P.S.C has followed proper procedure before passing the impugned order of debarring the applicants from appearing in the Competitive Examinations. Learned C.P.O explained that in order to avoid the malpractices in the examination by the candidates, the Commission informed all the candidates through official twitter and telegram channel on 29.7.2023 that examination will be held under the surveillance of CCTV. Learned C.P.O submitted that from the CCTV surveillance footage is clearly visible and during examinations the applicants were talking with the candidates and showing the question paper and solving the questions with the help of each other. This being cheating not allowed in the examination process, the applicants have violated the Instruction No. 9.1(6), (8), (12) & (13) of the General Instructions to candidates. Learned C.P.O further submitted that the applicants indulged in copying in the examination and thereafter giving the notice and considering the explanation of the applicants, the Respondent No. 4, M.P.S.C has taken action for permanently debarring the applicants under Instructions No. 9.2.3. Learned C.P.O relied on the decision of the Hon'ble Supreme Court in **Bihar Public Service Commission Vs. Vinay Kumar Singh, (2003) 7 SCC 28.**

6. Considered the submissions of both the parties. The applicants are in-service candidates from the Police Force and they are permanently debarred which will have set back in their career. M.P.S.C itself is a Constitutional body having their powers and rights of conducting the examination for filling up various posts in the Government. They have their set of principles, guidelines and the procedure. The Tribunal cannot go into the correctness of the order of M.P.S.C as an Appellate Authority, but can only find out whether the M.P.S.C has failed to follow the procedure or the order passed is arbitrary or against the principles of natural justice. Admittedly, show cause notice was given to the applicants to give their say. After obtaining their explanation it was considered by the authority and thereafter, Respondent No. 4, M.P.S.C has issued the impugned order dated 10.2.2023 permanently debarring the applicants. These facts are reflected in the impugned order. The evidence by the authority is of CCTV footage and it is submitted by the learned C.P.O that under the CCTV footage the applicants are seen to be talking with each other at the time of the examination. Moreover, the Supervisor had also warned them not to indulge into these practices. They neglected it and went on talking with each other. Though the learned counsel for the applicants while refuting this has submitted that in the CCTV footage no Supervisor is seen, this submission of the learned counsel cannot be accepted, because there can be possibility that the Supervisor may be standing outside the range of camera. We saw the CCTV footage and confirmed that the applicants intermittently talked with the other candidates regarding Question Papers. Thus they helped each other illegally at the time of examination.

7. In the case of **Guru Nanak Dev University (supra)**, a Flying Squad found many students possessed incriminating material of

copying. So the University inquired into the complaints received by it. The answers were compared and found verbatim. The students were charged for using unfair means in the examination and were given opportunity to meet the charges. However, the Standing Committee of the University found the Respondents guilty in its proceedings. The High Court quashed the proceedings of the Standing Committee on the ground of non-recovery of incriminating material from the Respondents. The University approached the Supreme Court challenging the order of the High Court and the Hon'ble Supreme Court dealt with the expression "unfair means" and it held that there is no evidence to the ingenuity in discovering new techniques and methods of copying in the examination halls. It is therefore not possible to give an exhaustive definition of "unfair means". The Hon'ble Supreme Court allowed the appeal. This judgment is in fact is helpful to the Respondent-State.

8. In the case of **Bihar Public Service Commission (supra)**, while dealing with the similar issue in respect of practicing unfair means of examination and recruitment in public employment, the answer books were found to be based on material smuggled from outside. So also the signature of the Invigilators were found to be forged. The Hon'ble Supreme Court while dealing with the powers and action taken by the Commission against the candidates practicing unfair means held that the Courts can certainly examine whether the decision making process was reasonable, rationale and not arbitrary on the facts and circumstances in each case. The Hon'ble Supreme Court has confirmed the order of the Commission of cancelling the examination of the candidate and debarring him in view of the act committed by him.

9. In both the cases discussed above, the copying material was smuggled, the answer sheets and signature of Invigilator was forged and different ink was used. There was proper preparation for planned copying. The present case is distinguishable on facts on that point, however, it is true that they have violated the guidelines of the M.P.S.C that the candidates should not ask the answers to the other candidates and take help of the other candidates while writing answers. In the present case, admittedly there is no planning or preparation to bring external material or cheat the Commission. We do not want to encourage or hush up any act of copying in the examination hall, but we do understand that the unfair means used for copying is of a lesser degree.

10. However, involving in copying by conversation with the nearby candidates seeking their help to solve the question paper does amount to copying which is the easiest and accessible way of copying. It was argued that unfortunately, the applicants, if they miss this chance, then they will be age barred and will not be able to appear for the Limited Competitive Departmental Examination in near future. We unfortunately cannot show any leniency to the applicants as it will be a precedent for others if the incidence of such copying takes place in future. However, we agree that debarring them permanently is disproportionate, hence, we are of the view that the applicants should be debarred from appearing for One Examination, excluding the one for which they have appeared. Though the Government has framed a policy of cancelling the Limited Departmental Competitive Examination for PSI, however, our experience is that the policy may change and if it is changed the applicants may get the benefit of it and if it is not changed then they will be eligible for promotion by way of seniority.

11. We, therefore, do not find any merit in the Original Applications and they stand dismissed.

Sd/-
(Debashish Chakrabarty)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 03.11.2023
Dictation taken by : A.K. Nair.