IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.10 OF 2020

DISTRICT : KOLHAPUR

Shri Sangram Shivaji Patil)
Aged 31 years, R/o House No.47, Om Shanti,)
Mouje Sangaon, Wadkar Galli, Taluka Kagal,)
District Kolhapur 416216)..Applicant

Versus

1. State of Maharashtra,)
Through Additional Chief Secretary,)
General Administration Department,)
Mantralaya, Mumbai 400032)

2. The Secretary,)
Maharashtra Public Service Commission,)
Cooperage Telephone Corporation Building,)
Maharshi Karve Road, Cooperage, Mumbai-21)

3. Shri Narayan Kalyan Dolas,)
At: Kolghar, Post: Kankori, Taluka: Gangapur,)
District: Aurangabad 431109)

4. Shri Suraj Suresh Belekar,)
House No.485, Murade Galli,)
Near Jyotiba Temple, Gargoti, Taluka Bhudargad)
District: Kolhapur 416 209)

5. Shri Gaurav Nanaji Chavhan,)
At:Tarsali, Post: Aundane, Taluka: Baglan,)
District: Nasik 423 301)..Respondents

Shri U.V. Bhosle – Advocate for the Applicant
Ms. S.P. Manchekar – Chief Presenting Officer for Respondents No.1 & 2
Shri Abhijeet Pawar holding for Shri D.B. Khaire – Advocate for Respondent No.5

CORAM : Smt. Justice Mridula R. Bhatkar, Chairperson
Smt. Medha Gadgil, Member (A)
RESERVED ON : 21st September, 2021
PRONOUNCED ON: 24th September, 2021
PER : Smt. Medha Gadgil, Member (A)

J U D G M E N T

1. Heard Shri U.V. Bhosle, learned Advocate for the Applicant, Ms. S.P. Manchekar, learned Chief Presenting Officer for Respondents No.1 & 2 and Shri Abhijeet Pawar holding for Shri D.B. Khaire, learned Advocate for Respondent No.5.

2. The applicant challenges his non-selection to the post of Assistant Section Officer because of improper calculation of marks in the examination conducted by the MPSC. He is challenging the process of negative marking.

3. It is the case of the applicant that respondent no.2-MPSC published advertisement No.14/2018 on 28.2.2018 for Preliminary Examination for Group-B Non-Gazetted posts. The applicant applied on 9.3.2018 and

appeared in the preliminary examination which was conducted on 13.5.2018. On 13.7.2018 the results were declared and applicant was declared qualified for Main Examination. He appeared in the Main Examination which were conducted on 26.8.2018 and 27.10.2018. The results of the Main Examination were declared on 19.3.2019 in which it was shown that applicant had scored 76 marks in Paper-I and 60 marks in Paper-II (total 136 marks).

4. It is the case of the applicant that respondent no.2 published a list of candidates eligible for recommendation through waiting list. He submits that last candidate one Sandeep Sukhdev Kadam in the Open General Category of the waiting list had secured 137 marks. He also pointed out that applicant got 77 marks in Paper-I but the MPSC has wrongly given him only 76 marks. If he had been given 77 marks in Paper-I then total marks of both the papers would have been 137 marks and he would be 11th in the Open General Category in the waiting list instead of 23rd.

5. In the general instructions to the candidates on the question paper it was mentioned as under:

> (7) प्रस्तुत परीक्षेच्या उत्तरपत्रिकांचे मूल्यांकन करताना उमेदवाराच्या उत्तरपत्रिकेतील योग्य उत्तरांनाच गुण दिले जातील. तसेच "उमेदवाराने बहुपर्यायी स्वरूनाच्या प्रशनांची दिलेल्या चार उत्तरांपैकी सर्वात योग्य उत्तरेच उत्तरपत्रिकेत नमूद करावीत. अन्यथा त्यांच्या उत्तरपत्रिकेत सोडविलेल्या प्रत्येक चार चुकीच्या उत्तरांसाठी एका प्रश्नाचे गुण वजा करण्यात येतील."
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> (Quoted from page 46 of OA)

6. It is the case of the applicant that while answering 3 questions he had given more than one answer for which marks are not to be given as per instruction no.10 of declaration dated 18.8.2017. It is clearly mentioned in instruction no.10 that a candidate should shade only one circle and if more than one circle is shaded, no marks will be given. But it does not come under the category of negative marking. In instruction no.12 it is mentioned that for every wrong answer, marks of one question will be deducted from the total marks. Instructions No.10 and 12 of the Declaration dated 18.8.2017 reads as under:

> "१०. प्रश्नाचे उत्तर नमूद करण्याकरिता प्रत्येकी एकच वर्तुळ छायांकित करावे. एकापेक्षा अधिक वर्तुळे छायांकित केल्यास अथवा तसा कोणत्याही प्रकारे प्रयत्न केल्यास अशा प्रश्नाच्या उत्तरास गुण दिले जात नाहीत.
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> १२. उत्तरपत्रिकांचे मुल्यांकन करताना उत्तरपत्रिकेत नमूद केलेल्या बरोबर उत्तरांनाच गुण दिले जातात. तसेच संबंधित परीक्षेच्या परीक्षा योजनेमध्ये विहीत केलेल्या प्रमाणानुसार, चुकीच्या उत्तरांमागे एका प्रश्नाचे गुण, एकूण गुणांमधून वजा करण्यात येतात."

7. The applicant further submitted that respondent no.2 has improperly deducted mark for the questions in which the applicant has given more than one answer. As per instruction no.10, in such cases marks are not to be given. Ld. Advocate submitted that there is no provision of deducting marks in case where two answers have been given for the same question and respondent no.2 has given negative marks for giving two answers for a question.

8. It was submitted that during pendency of this OA, the MPSC has published another list of candidates eligible for recommendation through

waiting list for the post of Assistant Section Officer on 6.1.2020. As per the said list following 3 candidates who have scored 137 marks have been recommended from the Open General Category:

(1) Dolas Narayan Kalyan
(2) Belekar Suraj Suresh
(3) Chavan Gaurav Nanaji

9. Applicant further pointed out that applicant had scored 136 marks and if negative marks had not been counted, he would have scored 137 marks. He also pointed out that he is senior in age to the above 3 candidates as per para 3.1 of the general instructions published by respondent no.2 on 16.6.2019. The applicant has therefore prayed as follows:

(a) By a suitable order/direction the respondent no.1 and 2 may be directed to add one mark in Paper-I of the Main Examination held on 26.8.2018 and to further include the name of the applicant at the proper place by revising the merit list.

(b) By a suitable order/direction, the respondent no.2 may be directed to amend the impugned final result along with Merit List of Advertisement No.35/2018 dated 19.3.2019 and to recommend the name of the applicant for the post of Assistant Section Officer considering his position in the revised merit list.

(c) By a suitable order/direction the respondent no.2 may be directed to add the name of the applicant at Sr. No.1 to the List of Candidates – Eligible for Recommendation Through Waiting List for the post of Assistant Section Officer published on 6.1.2020.

(Quoted from page 10 & 11 of OA)

10. In support his contention the Ld. Advocate for the applicant has relied on the judgment of the Hon'ble Supreme Court in (2008) 3 SCC 724 Madan Mohan Sharma & Anr. Vs. State of Rajasthan & Ors. and the judgment of the Hon'ble Bombay High Court, Nagpur Bench in 2012 SCC OnLine Bom 1899 : (2013) 3 Mah.L.J. 673 Tushar Babanrao Deshmukh Vs. State of Maharshtra & Ors.

11. Ld. Advocate for the applicant referred to प्रसिद्धीपत्रक dated 8.9.2020 wherein guidelines 1 to 3 read as under:

१) प्रत्येक चुकीच्या उत्तराकरीता २५% किंवा १/४ एवढे गुण एकूण गुणांमधून वजा/कमी करण्यात येतील.

२) एखाद्या प्रश्नाची एकापेक्षा अधिक उत्तरे दिली असल्यास अशा प्रश्नाचे उत्तर चुकीचे समजण्यात येऊन त्या प्रशनाच्या उत्तराकरीता २५% किंवा १/४ एवढे गुण एकूण गुणांमधून वजा/कमी करण्यात येतील.

३) वरीलप्रमाणे कार्यपद्धतीचा अवलंब करताना एकूण अंतिम गुणांची बेरीज अपूर्णांकात आली तरीही ती अपूर्णांकातच राहील व पुढील कार्यवाही त्याच्या आधारे करण्यात येईल.

12. Shri Devendra Vishwanth Tawade, Under Secretary, MPSC has filed affidavit in reply dated 8.9.2020 on behalf of respondent no.2. In the affidavit in reply, it is stated as under:

"5(i) At the backside of the answer sheet following specific instructions were mentioned for the information of candidates:

"११. प्रश्नाचे उत्तर नमूद करण्याकरिता प्रत्येक प्रश्नाकरिता प्रत्येकी एकच वर्तुळ छायांकित करावे. एकापेक्षा अधिक वर्तुळे छायांकित केल्यास अथवा तसा कोणत्याही प्रकारे प्रयत्न केल्यास अशा प्रश्नाच्या उत्तरास गुण दिले जात नाहीत.

१२. एकादा नमूद केलेले उत्तर खोडता येणार नाही. नमूद केलेले उत्तर खोडून नव्याने नमूद केल्यास अथावा त्यामध्ये कोणत्याही प्रकाराचा बदल केल्यास ते तपासले जात नाही.

१४. उत्तरपत्रिकांचे मुल्यांकन करताना उत्तरपत्रिकेत नमूद केलेल्या बरोबर उत्तरांनाच गुण दिले जातात. तसेच संबंधित परीक्षेच्या परीक्षा योजनेमध्ये विहीत केलेल्या प्रमाणानुसार चुकीच्या उत्तरांमागे एका प्रश्नाचे गुण, एकूण गुणांमधून वजा करण्यात येतात."

(ii) The following instructions were also specifically mentioned in the announcement dated 18th August, 2017:

"१०. प्रश्नाचे उत्तर नमूद करण्याकरिता प्रत्येकी एकच वर्तुळ छायांकित करावे. एकापेक्षा अधिक वर्तुळे छायांकित केल्यास अथवा तसा कोणत्याही प्रकारे प्रयत्न केल्यास अशा प्रश्नाच्या उत्तरास गुण दिले जात नाहीत.

११. एकादा नमूद केलेले उत्तर खोडता येणार नाही. नमूद केलेले उत्तर खोडून नव्याने नमूद केल्यास अथावा त्यामध्ये कोणत्याही प्रकाराचा बदल केल्यास ते तपासले जात नाही.

१२. उत्तरपत्रिकांचे मुल्यांकन करताना उत्तरपत्रिकेत नमूद केलेल्या बरोबर उत्तरांनाच गुण दिले जातात. तसेच संबंधित परीक्षेच्या परीक्षा योजनेमध्ये विहीत

केलेल्या प्रमाणानुसार चुकीच्या उत्तरांमागे एका प्रश्नाचे गुण, एकूण गुणांमधून वजा करण्यात येतात."

(iii) Also in the scheme of examination of the said post, the following instructions were specifically mentioned:

"7.1 वस्तुनिष्ठ स्वरूपांच्या उत्तरपत्रिकांच्या मुल्यांकन करताना उत्तरपत्रिकेत नमूद केलेल्या योग्य उत्तरांनाच गुण दिले जातील. तसेच प्रत्येक चार चुकीच्या उत्तरामागे एका प्रश्नाचे गुण एकुण गुणांमधून वजा करण्यात येतील."

(iv) On the fly leaf of question paper vide instruction no.7, it was specifically mentioned that:

"प्रस्तुत परिक्षेच्या उत्तरपत्रिकांचे मुल्यांकन करताना उमेदवाराच्या उत्तरपत्रिकेतील योग्य उत्तरांनाच गुण दिले जातील. तसेच उमेदवाराने वस्तुनिष्ठ बहुपर्यायी स्वरूपाच्या प्रश्नाची दिलेल्या चार उत्तरांपैकी सर्वात योग्य उत्तरेच उत्तरपत्रिकेत नमूद करावीत. उन्याथा त्यांच्या उत्तरपत्रिकेत सोडविलेल्या प्रत्येक चार चुकीच्या उत्तरांसाठी एका प्रश्नाचे गुण वजा करण्यात येतील."

Considering all of these provisions/instructions it becomes clear that if any candidate darkened more than one circle for any question answer, the said answer is treated as wrong and negative marking will be applied for it. As per scanning record of the answer sheet, two circles were darkened by the applicant for the question number 57, 58 & 73. Therefore, answer of these questions were considered as wrong answer and considered for negative marking.

6. Rules with respect to negative marking for wrong answer have already been declared by the Commission by way of 'General Instructions to the candidates' and through announcement dated 18.8.2017 published on Commission's website. Said rules were also mentioned on the question paper as well as on backside of the answer sheet. Thus the action of the Commission is perfectly legal, rational and logical and cannot be said to be improper as alleged by the applicant.

7. Th respondent nos.3, 4 & 5 are the eligible candidates recommended as per merit from the waiting list for the post in issue. They have scored 137 marks and their ranking is above the applicant. The said provisions prescribed in para 3.11 of the 'General Instructions to the candidates' regarding fixing ranking of candidates in case they score equal/same marks is not applicable to the applicant as he secured 136 marks which is less than the marks secured by the respondents no.3, 4 & 5 as well as the cut-off line of marks fixed for the relevant category."

(Quoted from page 107-109 of OA)

13. Ld. CPO for respondent no.1 & 2 pointed out that declaration regarding negative marking i.e., deduction of requisite marks for every wrong answer has been made by the Commission vide clause no.36 of General Instructions to candidates as well as vide announcement dated 18.8.2017. It is stated that it was clear that applicant had gone through the said instructions and announcement and was well aware of the provisions made. Ld. CPO contended that applicant took objections to the rules of negative marking only after he realized that he was not recommended for lack of few marks. Further it is well settled position of law that the candidate participating in selection process cannot question the process at a later stage.

14. She further pointed out that instructions are also given in the backside of the answer sheet. Ld. CPO argued that all the instructions for the examination are needed to be seen in entirety and not in a piecemeal fashion. Ld. CPO therefore submitted that the OA should be dismissed.

15. Shri Abhijeet Pawar holding for Shri D.B. Khaire, learned Advocate for Respondent No.5 pointed out that respondent no.5 scored 137 marks in the Main Examination and was declared selected for the post of Assistant Section Officer. As regards other averments made by the Ld. Advocate for the applicant, he did not offer any comment as they all relate to MPSC. He further pointed out that one Suraj Suresh Belekar – Respondent No.4 who also belong to Open General was also recommended but he did not join and the said post is still vacant. He pointed out that in case applicant succeeds, he can be accommodated on the post remaining vacant on account of non-joining of respondent no.4 to the said post.

16. During the course of arguments, we had asked the Ld. CPO to verify the position of whether the post of Suraj Suresh Belekar – Respondent No.4 is vacant. In response to this query, Ld. CPO referred to letter dated 21.9.2021 of GAD and pointed out that out of the 3 candidates Shri Suraj Suresh Belekar did not accept his appointment and informed the department accordingly by letter dated 4.3.2020.

17. We have carefully considered the arguments of both the sides. Here the question relates to whether instructions regarding negative marking were clearly given in the advertisement as well as instructions to the candidates.

18. It is the case of the applicant that while answering 3 questions, he has given more than 1 answer for which negative marks are not to be

given as per Instruction No.10 of declaration dated 18.8.2017. Para 7.1 of the examination scheme dated 5.2.2018 talks for penalty for wrong answers. Here also there is no provision for negative marking if a candidate gives more than one answer. We reproduce Instructions No.10 and 12 of the Declaration dated 18.8.2017 which reads as under:

> "१०. प्रश्नाचे उत्तर नमूद करण्याकरिता प्रत्येकी एकच वर्तुळ छायांकित करावे. एकापेक्षा अधिक वर्तुळे छायांकित केल्यास अथवा तसा कोणत्याही प्रकारे प्रयत्न केल्यास अशा प्रश्नाच्या उत्तरास गुण दिले जात नाहीत.
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> १२. उत्तरपत्रिकांचे मुल्यांकन करताना उत्तरपत्रिकेत नमूद केलेल्या बरोबर उत्तरांनाच गुण दिले जातात. तसेच संबंधित परीक्षेच्या परीक्षा योजनेमध्ये विहीत केलेल्या प्रमाणानुसार, चुकीच्या उत्तरांमागे एका प्रश्नाचे गुण, एकूण गुणांमधून वजा करण्यात येतात."
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> (Quoted from page 77 of OA)

19. From this it is very clear that encircling more than one answer does not qualify for getting negative marks.

20. It is clear that there was some ambiguity in the scheme of negative marking by the fact that MPSC has issued प्रसिद्धीपत्रक dated 8.9.2020 wherein they have clarified that:

> २) एखाद्या प्रश्नाची एकापेक्षा अधिक उत्तरे दिली असल्यास अशा प्रश्नाचे उत्तर चुकीचे समजण्यात येऊन त्या प्रशनाच्या उत्तराकरीता २५% किंवा १/४ एवढे गुण एकूण गुणांमधून वजा/कमी करण्यात येतील.

21. However, this was subsequent to the declaration of the result on 19.3.2019. Hence, this is not applicable to the present case.

22. Hence, in view of the above, the Original Application is allowed on the following terms:

(1) Respondents No.1 and 2 are directed to add one mark in Paper-I of the impugned Main Examination held on 26.8.2018.

(2) MPSC to take necessary steps of recommending the name of the applicant for appointment to the post of Assistant Section Officer.

(3) The respondent-State is directed to consider the applicant in the vacant post of Respondent No.3 – Shri Suraj Suresh Belekar, who was given appointment in Finance Department but did not accept the appointment.

(4) Decision regarding this appointment should be taken within six weeks of the order.

(5) No orders as to cost.

Sd/-
(Medha Gadgil)
Member (A)
24.9.2021

Sd/-
(Mridula R. Bhatkar, J.)
Chairperson
24.9.2021

Dictation taken by: S.G. Jawalkar.