

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI  
ORIGINAL APPLICATION NO.150 OF 2017**

**DISTRICT : KOLHAPUR**

Shri Vishal Manohar Salokhe, )  
Age 25 years, occ. Nil, )  
R/o 1856, 'B' Ward, )  
Sambhaji Nagar, Mangalwar Peth, Kolhapur )..Applicant

Versus

1. The State of Maharashtra, )  
Through Additional Chief Secretary, )  
Home Department, Mantralaya, Mumbai )

2. The Superintendent of Police, )  
Kolhapur )..Respondents

Shri R.M. Kolge – Advocate for the Applicant

Smt. Archana B.K. – Presenting Officer for the Respondents

CORAM : Shri Justice A.H. Joshi, Chairman  
Shri P.N. Dixit, Member (A)

RESERVED ON : 16<sup>th</sup> January, 2019

PRONOUNCED ON : 23<sup>rd</sup> January, 2019

PER : Shri P.N. Dixit, Member (A)

**J U D G M E N T**

1. Heard Shri R.M. Kolge, learned Advocate for the Applicant and Smt. Archana B.K., learned Presenting Officer for the Respondents.

2. According to the Applicant:-

- (a) *He had appeared for the examination for the post of Police Constable for which advertisement was issued on 3.2.2016 by the Respondent no.2. The examination consisted of physical test and written test. After being selected in the physical test by obtaining 84 marks, he appeared for the written test which was held on 9.4.2016.*
- (b) *Immediately after the written test on the same date, the answer key was displayed and remained on the notice board for short time of half an hour and was removed quickly. As more than ten thousand candidates had appeared for the written test he had no time to closely look at the model answer key.*
- (c) *Respondent no.2 published provisional list on 10.5.2016 to fill up 50% posts of the available vacancies.*
- (d) *As the Respondent no.2 was required to fill in 75% of the vacancies, provisional list was published on 26.5.2016. Based on the first list, revised provisional select list was published on 13.6.2016. Final list of the selected candidates was published on 1.8.2016.*
- (e) Relevant extract of selection list is as under:

कोल्हापूर जिल्हा पोलीस शिपाई भरती २०१६

खुल्या प्रवर्गातील उमेदवारांची निवड यादी (Select List of Open Candidates)

Sr. No.	Chest No.	Applicant Name	Gender	Category	Parallel Reservation	Total Marks
1	851	प्रशांत मारुति पोवार	MALE	Open	None	177
2	808	मोहन मारुती लगारे	MALE	Open	None	176
3	824	संग्रामसिंह नामदेव दळवी	MALE	Open	None	176

4	1833	गणेश भाऊसो पाटील	MALE	Open	None	176
5	2426	अमोल विष्णू पाटील	MALE	Open	None	176

(Quoted from page 123 of OA)

(f) The name of the Applicant figures in the same and reads as under:

खुल्या प्रवर्गातील उमेदवारांची प्रतिक्षा यादी  
(Waiting List of Open Candidates)

Sr. No.	Chest No.	Applicant Name	Gender	Category	Parallel Reservation	Total Marks
1	833	विशाल मनोहन साळोखे	MALE	Open	None	175

(Quoted from page 123 of OA)

(g) On 23.8.2016 the Applicant represented under RTI to Respondent no.2 to provide him photocopies of his answer sheets as well as those of S/Shri Mohan Maruti Lagare, Sangramsinh Namdeo Salvi, Ganesh Bhauso Patil, Amol Vishnu Patil and Prashant Maruti Powar (page 126 of OA). Applicant's request for supply of documents was rejected by Respondent no.2 on 22.9.2016.

(h) Applicant again submitted representation on 26.10.2016 and the second request too was rejected on 21.11.2016.

(i) On 1.9.2016 the applicant made a representation to Inspector General of Police, Kolhapur and mentioned as under:

“सदर वर्षीच्या लेखी परिक्षेतील मला प्रश्नसंच **“B”** मिळाला होता. त्यातील प्रश्न क्रमांक ०९ व प्रश्न क्रमांक ३७ बाबत मला शंका आहे. त्यातली प्रश्नांची बरोबर उत्तरे हि अनुक्रमे पर्याय D व पर्याय A आहेत. तरी कोल्हापूर जिल्हा पोलीस यांनी सादर केलेल्या उत्तरतालिकेत दोन्ही प्रश्नांची उत्तरे हि पर्याय B असे दर्शविण्यात आले आहे. त्या उत्तराचे मी स्पष्टीकरण देण्यास तयार असून सदर प्रश्नांबाबत मी कोल्हापूर जिल्ह्यातील स्पर्धा परिक्षा संदर्भातील नामवंत मार्गदर्शकांकडून अभिप्राय

घेतला असून ते देखील माझे उत्तराशी सहमत आहेत. तरी मला सदर २ मार्क प्राप्त झालेस माझे एकूण गुणसंख्या १७७ इतकी होऊन पोलीस दलामध्ये मला निसंकोच पणे संधी मिळू शकते. सदर दोन मार्कांमुळे माझे करीयर चे नुसार होत असल्याने माझेवर अन्याय झाला आहे. तरी विनंती की योग्य तो न्याय द्यावा.”  
(Quoted from page 133 of OA)

*Applicant's representation has been acknowledged on 8.9.2016 by the office of IGP, Kolhapur.*

- (j) *The Respondent no.2 issued appointment orders on 2.11.2016 and accordingly one Shri Sangramsinh Namdeo Dalvi including other selected candidates joined on 7.11.2016 (Exhibit R-5 page 69 of OA).*
- (k) *The Applicant contends that even though he had approached Respondent no.2 as well as IGP, Kolhapur from 23.8.2016 till 8.9.2016, his request for furnishing necessary details was rejected. The Applicant further contends that despite his objections, raised from time to time Respondent no.2 has proceeded to issue appointment orders by disregarding his grievance.*

3. The Applicant has, therefore, prayed as under:

“9. (b) *by suitable order and directions this Hon'ble Tribunal be pleased to direct the Respondent no.2 to select and appoint the Applicant to the post of Police Constable from open category after placing the Applicant in the merit list of the 10 candidates and application be allowed accordingly.*

(c) *by suitable order and direction this Hon'ble Tribunal be pleased to hold and declare that the Applicant is entitled to have 2 extra grace marks for the question no.9 and 37.”*

(Quoted from page 8 of OA)

4. In support of the claim in OA applicant has furnished following grounds as foundation thereof:-

(a) The Applicant was asked to answer a question paper marked as set 'B'. Said question paper comprised of following two questions:

०९) त्याला बढती मिळाली, कारण त्याने चोख कामगिरी बजावली. - क्रियाविशेषण ओळखा.

A) बढती B) कारण C) कामगिरी D) यापैकी नाही

३७) सहोदर

A) सह + उदर B) सह + ऊदर  
C) सहो + उदर D) सहो + दर

(Quoted from page 13-15 of OA)

(b) According to the Applicant for both the questions (Q.No.9 & Q.No.37) the answer key mentions 'B' as the correct answer. However, as per the reply dated 18.1.2017 received by the Applicant from Acting Editor of Nitin Prakashan, which had published the book, "सुगम मराठी व्याकरण व लेखन, मो.रा. वाळंबे, या पुस्तकावर आधारित प्रश्नसंग्रह" reads as under:

"□ पण मागविलेल्या प्रश्नांची स्पष्टीकरणे पुढीलप्रमाणे -

प्रश्न क्र. ०९) त्याला बढती मिळाली, कारण त्याने चोख कामगिरी बजावली. - क्रियाविशेषण ओळखा.

A) बढती B) कारण C) कामगिरी D) यापैकी नाही

**स्पष्टीकरण -** वरील प्रश्नात क्रियेबद्दल विशेष माहिती देणारे म्हणून "चोख" हे क्रियाविशेषण □ हे, मात्र हे उत्तर पर्यायांमध्ये नसल्याने ड) यापैकी नाही हे उत्तर योग्य □ हे.

प्रश्न क्र. ३७) सहोदर

A) सह + उदर B) सह + ऊदर  
C) सहो + उदर D) सहो + दर

**स्पष्टीकरण -** वरील प्रश्नात सह + उदर म्हणजेच अ + उ = ओ यानुसार अ) सह + उदर हा पर्याय योग्य आहे. "

(Quoted from page 38 of OA)

(c) The Applicant claims that his answers were in conformity with the reply received from the publisher based on the book, yet applicant's answer was declared as "incorrect", because the answer key contained different answer, which is erroneous.

(d) *The Applicant, therefore, claims that he deserved to get two marks for the answers given by him which alone are correct.*

(e) *According to him, he was declared as first person in waiting list for obtaining 175 marks while the last person in the select list had 176 marks. He, therefore, mentions that if he was given 177 marks, his name would have appeared in the list of selected candidates.*

5. The Respondent no.2 has refuted the above appointment's claim in the affidavit in reply by stating as under:

"3. ....  
The written test of the said recruitment was held on 09/04/2016 at 08.20 hrs. The model answer sheet was displayed on the same date at 11.30 hrs. The Applicant had not objected on the answers of the questions No.9 & 37 at any stage of the said examination. Thereafter the Applicant submitted his representation on 01.09.2016 to Spl. Inspector General of Police Kolhapur range Kolhapur and on 26.10.2016 to the respondent No. 2. It means the Applicant has submitted his representation after the span of 5 months and approached to the Hon'ble Tribunal on 17.02.2017 after the long span of 10 months. The Applicant has done all this exercise afterthought.

4 to 8 not quoted.

9. ....  
The Sub Divisional Police Office, Shahuwadi Division, by written letter No.887/2017 dated 25.3.2017 asked the clarification from Nitin Prakashan as to which answer key correct one. In reply the Executive Editor Shri V.M. Karlekar issued a letter dated 31.3.2017 saying in last para that □ पण □ पल्या पत्रात □ मच्या प्रकाशनाच्या सुगम मराठी व्याकरण व लेखन - मो.रा. वाळंबे या दोन पुस्तकांचा संदर्भ म्हणून वापर करून या प्रश्नांची रचना केली □ हे असे लिहिले □ हे परंतू पुस्तकांच्या तत्कालीन □ वृत्तीमध्ये काही मूद्रण दोष राहून गेल्यामुळे तेथे या प्रश्नांची चूकीची उत्तरे छापली गेली □ हेत. त्यामुळे श्री. विशाल मनोहर साळोखे यांना दिलेली उत्तरे बरोबर गृहीत धरावी अशी □ मची विनंती □ हे.

*It clearly shows that the fault is on Nitin Prakashan as there were printing mistakes. So wrong answers were published inadvertently. The Executive Editor further say that it may kindly be presumed that the answer given by the applicant are correct one, but due to fault of Nitin Prakashan such type of suggestion answer is not at all acceptable.*

10. ....  
As per the revised answers status of marks by these four candidates mentioned in O.A. and Applicant are shown as under :-

<i>Particulars</i>	<i>Salokhe Applicant</i>	<i>Lagare</i>	<i>Dalavi</i>	<i>Ganesh Patil</i>	<i>Amol Patil</i>
<i>Chest No.</i>	833	808	824	1833	2426
<i>Given question set</i>	<i>B</i>	<i>B</i>	<i>C</i>	<i>B</i>	<i>A</i>
<i>Obtained marks</i>	175	176	176	176	176
<i>Given answer of Question No. 9</i>	<i>D</i>	<i>C</i>	<i>B</i>	<i>C</i>	<i>D</i>
<i>Answer of question No. 9 in Model answer sheet -<b><u>B</u></b> Revise answer of question No.9- <b><u>D</u></b> Hence difference in marks</i>	+1	Nil	-1	Nil	+1
<i>Total marks</i>	176	176	175	176	177
<i>Given answer of Question No. 37</i>	<i>A</i>	<i>A</i>	<i>A</i>	<i>A</i>	<i>D</i>
<i>Answer of question No. 37 in Model answer sheet -<b><u>B</u></b> Revise answer of question No.9- <b><u>A</u></b> Hence difference in marks</i>	+1	+1	+1	+1	Nil

Total Marks	177	177	176	177	177
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(i) *Considering the above comparison of marks it is shown that Candidate Shri Dalavi has reduced one mark & obtained 176. But Shri Dalavi has already appointed vide this office order No.33 आशा/ पौ. भ. १५-१६/ नियुक्ती-२०/ २०१६ दि.02.11.2016, a copy whereof is annexed hereto and marked as Exhibit R-4, and he resumed on duty w.e.f 07.11.2016.*

(Quoted from page 43-48 of OA)

6. The plea of the Respondent no.2 in defense in summary is as follows:-

*“Provisional result was declared and opportunity was given to submit any objections, however, Applicant did not raise objection whatsoever at the appropriate time and appointment orders of selected candidates were issued and they have joined duty accordingly. Now there is no vacancy available in open category, and therefore, the relief sought by the Applicant may not be considered.”*

7. Issues for consideration:

- (i) *Whether the Applicant had raised his objections at appropriate time?*
- (ii) *Whether the Respondents have considered applicant’s representation before reaching final decision to select the candidates and issue them appointment orders based on the same?*

Discussion and findings:

8. Though listed in earlier part of this judgment, the chronological events are reiterated for the purpose of quick reference:



- (i) *The written examination was held on 9.4.2016.*
- (ii) *The provisional final select list was published on 1.8.2016, showing name of the Applicant as waitlisted with 175 marks.*
- (iii) *The Applicant submitted his representation on 23.8.2016 followed by another representation on 1.9.2016 which was received by the respondent on 8.9.2016.*
- (iv) *The appointment orders have been issued on 2.11.2016 and selected candidates joined duties on 7.11.2016.*

9. The chronology of events referred to in the foregoing paragraph reveals that the Respondent no.2 had sufficient time at his disposal between 1.9.2016 to 2.11.2016 for considering representation made by the applicant.

10. The record furnished by the Respondent does not indicate that respondent no.2 had in any manner attended to the applicant's representations to engage in a scrutiny thereof and a decision therein.

11. Record indicates that the Respondent no.2 proceeded by disregarding the prayer made by the applicant as if in a predetermined manner and issued orders of appointment.

12. It is also seen that no efforts have been made to examine as to whether the answer key is perfect/correct and the results have been influenced due to erroneous key.

13. The Respondent No.2 has failed to show as to whether application of mind to the applicant's grievance was done. On the other had respondent

No.2 has tacitly admitted that applicant's plea that answer key being the foundation for the assessment as erroneous.

14. The Respondent No.2 solely relies on a plea that the proposition that applicant had failed to "quickly and punctually" raise objection.

15. Applicant's plea that over ten thousand candidates had written the paper in factual. In this background it is most probable that there would be stampede like situation if single set of answer key was displayed on the notice board. In fact by one push of key, answer key could have been sent to all candidates or could have been flashed on the official website instead of suffering a debate and facing a dispute and then raising an avoidable controversy.

16. Upon consideration of entire facts, we are of considered view and we accordingly hold that the applicant is entitled to receive one mark each for his correct answer to Q.No.9 & Q.No.37 i.e. two marks. In the result, applicant's score would be 177.

17. It is evident from the affidavit in reply of the Respondent No.2 that if correction of marks is to be done it will apply to all candidates named in paragraph 2(f) foregoing and in that eventuality candidate Chest No.824 Shri Sangramsing Dalvi may get displaced.

18. The plea of the Respondent No.2 that only Shri Dalvi may get affected may be fallacious because candidates above/higher in merit above Chest No.851 as well may get affected and their merit ranking may vary downwards if total effect of reduction or gain upto 2 marks occurs if all answers/marks are rechecked.

19. This is a calamity begeted by the Respondent no.2. Had Respondent No.2 looked into Applicant's grievance quickly and dispassionately, an objective approach to entire issue could have been possible. Entire merit list, even if shaken or shuffled, none could have suffered unjustly. Naming Shri Dalvi as one or only affected candidate appears rather must definitely be a parallaxed purview of the situation.

20. In the premises discussed hereinabove, the Respondent No.2 has to blame himself for self-invented and self-invited reward of neglect, indifference and indolence. Choice before the Respondent No.2, therefore, is to follow the law and set the situation in order.

21. We visualize one possibility by which the Respondents can commute the complications, by creating one supernumerary post to accommodate the Applicant, who is meritorious, namely:-

*“Respondent No.2 should take action against the non-deserving candidate as per the procedure laid down by law and place the applicant in the select list and act upon it and appoint him if necessary by creating a supernumerary post.”*

22. In the result, the Original Application is allowed in terms of prayer clause 9(b) and (c). The Respondent no.2 is directed to appoint the Applicant to the post of Police Constable within a period of one month.

23. No order as to costs.

24. Copy of this judgment be provided to the Director General of Police. He should ensure that instructions are issued to the Unit Commanders conducting recruitment to take all the precautions before setting the examination papers to avoid recurrence of such errors, as in the present case.

Sd/-  
**(P.N. Dixit)**  
**Member (A)**  
**23.1.2019**

Sd/-  
**(A.H. Joshi, J.)**  
**Chairman**  
**23.1.2019**

Dictation taken by: S.G. Jawalkar.