

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,**  
**BENCH AT AURANGABAD.**

**ORIGINAL APPLICATION NO. 601 OF 2023**

**DIST.: BEED**

**Santosh s/o Sheshrao Kasbe,** )  
 Age: 40 years, Occ.: Advocate, )  
 C/o House of Subhash Salve, )  
 Devkheda Road, Chinchgavhan, )  
 Tq. Majalgaon, Dist. Beed. ) .. **APPLICANT**

*V E R S U S*

**1. The State of Maharashtra** )  
 Through its Secretary, )  
 Ministry of Home Department, )  
 Mantralaya, Mumbai - 32. )

**2. The Maharashtra Public Service**  
**Commission,** Trishul Gold field, )  
 Plot no. 34, in front of Sarowar Vihar, )  
 Sector 11, CBD Belapur, )  
 New Mumbai – 400 614. )  
 Through its Secretary. ) .. **RESPONDENTS**

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 APPEARANCE :- Shri S.R. Kedar, learned counsel for the  
 applicant.

: Smt. Deepali S. Deshpande, learned  
 Presenting Officer for the respondent  
 authorities.

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**CORAM** : **Hon'ble Shri Justice V.K. Jadhav,**  
**Vice Chariman**  
**AND**  
**Hon'ble Shri Vinay Kargaonkar,**  
**Member (A)**

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**DATE** : **06.03.2025**  
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**ORAL - ORDER**

*(Per : Justice V.K. Jadhav, Vice Chairman)*

1. Shri S.R. Kedar, learned counsel for the applicant and Smt. Deepali S. Deshpande, learned Presenting Officer for respondent authorities, are present.

2. The matter is finally heard with consent of both the sides at the admission stage.

3. By filing this Original Application, the applicant is seeking directions to the respondent authorities to recheck, recalculate, retotaling and moderation of both the papers and if the applicant is found eligible and secured the marks either 71 or above 71, subject to successfully passing of the interview, the appointment order may be issued in favour of the applicant as a Assistant Public Prosecutor, Group-A.

4. Brief facts giving rise to this Original Application are as follows:-

(i) In response to the advertisement no. 01/2022 dated 07.01.2022 issued by the respondent no. 02 for filling up the posts of Assistant Public Prosecutor, Group-A (for short A.P.P., Group-A) from the eligible candidates, the applicant being eligible has submitted his application online on 26.01.2022 along with necessary documents. The applicant was also given admit card for the

examination scheduled on 11.09.2022. Accordingly, the applicant had appeared for the said examination on the scheduled date as per the prescribed papers i.e. paper-I and paper-II respectively.

(ii) It is the further case of the applicant that results were declared of the said examination on 03.03.2023. The applicant belongs to Scheduled Caste category and cut-off marks for SC category shown as 71 marks. The cut-off marks for Female category is 75 and for sports category it is 70 marks. The applicant has moved an application dated 09.03.2023 seeking redressal of his grievance. The respondent no. 02 has supplied copies of answer sheets, however, there was manifest errors committed by the Examiner while checking the papers. The applicant has accordingly moved an application dated 09.03.2023 under the provisions of Right to Information Act, 2005 seeking redressal of his grievance such as recounting, retotaling, rechecking, moderating etc., however, the grievance of the applicant was not redressed by the respondents. The applicant has, therefore, approached to the Hon'ble High Court of Bombay by filing Writ Petition No. 5741/2023 with specific prayers. During pendency of the said writ petition, the respondent no. 02 has supplied the copies of the answer sheets to the applicant. The respondent MPSC has also raised an objection that the applicant has an alternate remedy. Thus, by order dated 05.07.2023 the applicant was permitted to withdraw the said Writ Petition with liberty to approach this Tribunal. Hence, this Original Application.

5. The learned counsel for the applicant submits that on going through the answer sheets, it is revealed that inadequate marks have been given in paper No. I, though the applicant has written proper answer to question no. 01 as regards appeal proposal, however, the Examiner has given only 07 marks out of 20. Similarly, for answers to the question no. 02 sub-questions A and B, the Examiner has not given proper marks despite proper answers. Rest of questions are concerned, the answers are not properly assessed particularly for question no. 04 the Examiner has given only 06 marks out of 16 marks. The learned counsel submits that considering the answer sheet the applicant would get marks more than 50.

The learned counsel for the applicant submits that so far paper no. II is concerned, for question no. 01 about writing of Essay for which the examiner has given 08 marks out of 20 and the question nos. 02 to 04 have been assessed and given meager marks despite correct answers given by the applicant.

6. The learned counsel for the applicant submits that the applicant has been deprived his legitimate right to get

participated in the interview process. The applicant has correctly written the answers as per the law and bare acts.

7. The learned counsel for the applicant submits that the applicant is entitled to have the answer sheets of both the papers to be rechecked, recounted, re-totaled and moderated afresh. The applicant has reached 40 years of age and he might not be eligible in the next recruitment process. The learned counsel for the applicant, thus, submits that this Original Application deserves to be allowed.

8. On the basis of the affidavit in reply on behalf of respondent no. 02, the learned Presenting Officer submits that the applicant had applied for the post of A.P.P., Group-A on 26.01.2023 in the SC category. As per the procedure, the screening examination was conducted by the Commission for the said post on 11.09.2022 without checking the eligibility of the candidates including the applicant. The result of the screening examination was declared on 03.03.2023, wherein cut-off marks for various categories were also given. For SC category, the cut-off of 71 marks was fixed for being called for interview of the post in issue. The applicant has secured total of 66 marks in the said screening examination for the post in issue. Thus, the applicant was not held qualified for the

interview. The interviews of the qualified candidates were conducted between the period from 23.05.2023 to 06.07.2023 and final result of the post in issue has already been declared by the Commission on 10.08.2023.

9. The learned Presenting Officer submits that after publication of the result of the screening test, the applicant has submitted an application under RTI Act, 2005 for getting the attested copies of the answer sheets of the screening examination dated 11.09.2022. Though, the applicant has submitted several reminders, however, in the month of March/April, 2023 the work related to shifting of the office of the Commission from Mumbai to New Mumbai was in process. So the Commission could not supply the copies of the answer sheets to the applicant within the stipulated time. However, the same were supplied to the applicant on 18.05.2023.

10. The learned Presenting Officer submits that the applicant has raised a ground that the Commission has not given appropriate marks despite proper answer given by the applicant and accordingly the applicant has prayed to recheck, recount, re-total and moderate the answer sheets of both the papers i.e. paper nos. I and II.

11. The learned Presenting Officer submits that in terms of rule 11 of the Maharashtra Public Service Commission Rules of Procedure, 2014, only verification of answer book of conventional examination is permissible. As per rule 11(2)(a) and (b), verification of answer book means “ascertaining that every answer is assessed” and “totaling of all the marks”, there shall no revaluation of answer books. Thus, considering the same, the prayer of the applicant regarding revaluation of answers is devoid of any merits.

The learned Presenting Officer submits that as per rule 11(3) of the Rules of Procedure, the verification of answer sheets is not permissible in case of preliminary examination and screening examination. In the present matter, the Commission has conducted a screening examination, therefore, considering the said rule, the claim of the applicant regarding verification i.e. recount and re-total of the answer books cannot be entertained.

As per the rule 12 of the Rules of Procedure, the modalities in which moderation is to be done have been spelt out by the Commission in its standing orders. The standing order no. 05/2012, dated 18.09.2012 deals with the rules regarding moderation. Rule 3 of the said Standing Order dated 18.09.2012 clearly clarifies that moderation of the answer books

of screening examination shall not be done. Copy of the said standing order is marked as Exhibit R-4 and copy of Rules of Procedure of the Commission is marked as Exhibit R-3.

12. The learned Presenting Officer has placed reliance on the judgment in the case of **Pramod Kumar Shrivastava Vs. Chairman, Bihar Public Service Commission, Patna and Others, Appeal (Civil) no. 5046/2024** to substantiate his contentions.

13. The learned Presenting Officer submits that there are some Rules stipulated by the Commission for smooth functioning of the recruitment process and the Commission has strictly followed it. The claim of the applicant in the present matter to recount, re-total, reevaluate and moderate the answer books is not permissible under the rules stipulated by the Commission. The learned P.O. submits that this Original Application is devoid of any substance and the same is liable to be dismissed.

14. By filing this Original Application the applicant is seeking directions to the respondent authorities to recheck, recalculate, re-total and moderate his both the papers I.e. Paper-I and Paper-II respectively. Undisputedly, the Commission has conducted the screening test as per the admit



card of the applicant (Annexure A-2). In the backdrop of these facts, we have gone through the Rules of Procedure of the Commission.

15. The Commission framed the Rules of Procedure in the year 1981 to regulate its internal procedure of work. Those, rules were revised at the instance of the Union Public Commission. Even after the Revised Rules of Procedure came into effect on 20.10.2005, several amendments were made to the said Procedure Rules so as to make the functioning of the Commission more transparent, impartial, rational, reasonable, fair and equitable. These Rules are titled as the Maharashtra Public Service Commission Rules of Procedure, 2014 and it came into force on 16.05.2014. In the context of the issue raised in this Original Application, rule 11 and rule 12 of the Procedure Rules are material. We reproduce herein below the said rules 11 and 12:-

*“11. Answer books of the candidates-handling, custody, verification. - (1) Answer books all the examinations conducted by the Commission shall be received at the office of the Commission as specified by the Secretary or the Controller of Examination.*

*(2) For conventional examination, the candidates shall have the right to apply to the Commission for verification of their answer books. The action of verification shall be limited to :-*

- (a) ascertaining that every answer is assessed;*
- (b) totalling of all the marks.*

*Thus there shall be no revaluation of answer books whatsoever:*

*Provided further that the applicant/candidate shall be required to submit his application within a stipulated period of time and with the prescribed fees as laid down either in the Notification or in the Scheme of the examination as the case may be.*

*(3) Verification of the answer sheets shall not be permissible in case of Preliminary Examination and Screening Examination.*

*12. Method of Moderation. - To ensure fair and equitable assessment of the Answer Books, the Commission may resort to moderation of the evaluated answer books in respect of all the conventional examinations. The modalities in which moderation is to be done have been spelt out by the Commission in its Standing Orders. The Commission may suitably modify any one the above orders based on the experience gained by them.”*

16. It is thus clear from the rule 11, the action of verification of answer sheets is limited for (a) ascertaining that every answer is assessed (b) totaling of all the marks, and there shall be no revaluation of answer books whatsoever for conventional examination. It is thus made clear in sub-rule (3) of rule 11 that verification of the answer sheets shall not be permissible in case of Preliminary Examination and Screening Examination. Similarly, in terms of rule 12, moderation of the answer books is permissible in respect of all the conventional examination.

17. In the case of **Pramod Kumar Shrivastava Vs. Chairman, Bihar Public Service Commission, Patna and Others** (cited supra) dated 06.08.2014, the Hon’ble Supreme Court has

dealt with the main question as to whether the learned Single Judge was justified in directing re-evaluation of the answer-book of the appellant in General Science paper. In this connection, the Hon'ble Supreme Court has observed that 'under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for reevaluation of his answer-books'. The Hon'ble Supreme Court has further referred to the view expressed by it on earlier occasion in the case of the **Maharashtra State Board of Secondary and Higher Secondary Education and another v. Paritosh Bhupesh Kurmarsheth and others, AIR 1984 SC 1543**. In the referred case, the judgment of Hon'ble High Court was set aside and it was held that in absence of a specific provision conferring a right upon an examinee to have his answer-books re-evaluated, no such direction can be issued. Under the relevant rules of Commission, there is no provision entitling a candidate to have his answer-books re-evaluated. The Hon'ble Supreme Court has also observed that, if this is encouraged, many candidates may like to take a chance and pray for re-evaluation of their answer-books and in such case the declaration of final result will thus be unduly delayed and the vacancies will remain unfilled for a long time. Paragraph nos. 07, 08 and 09 of the case of **Pramod Kumar Shrivastava Vs.**

**Chairman, Bihar Public Service Commission, Patna and Others**

(cited supra) are reproduced herein below:-

“7. We have heard the appellant (writ-petitioner) in person and learned counsel for the respondents at considerable length. The main question which arises for consideration is whether the learned Single Judge was justified in directing re-evaluation of the answer-book of the appellant in General Science paper. Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for re-evaluation of his answer-book. There is a provision for scrutiny only wherein the answer-books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totalling of marks of each question and noting them correctly on the first cover page of the answer-book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. In the absence of any provision for re-evaluation of answer-books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re-evaluation of his marks. This question was examined in considerable detail in [Maharashtra State Board of Secondary and Higher Secondary Education and another v. Paritosh Bhupesh Kurmarsheth and others](#) AIR 1984 SC 1543. In this case, the relevant rules provided for verification (scrutiny of marks) on an application made to that effect by a candidate. Some of the students filed writ petitions praying that they may be allowed to inspect the answer-books and the Board be directed to conduct re-evaluation of such of the answer-books as the petitioners may demand after inspection. The High Court held that the rule providing for verification of marks gave an implied power to the examinees to demand a disclosure and inspection and also to seek re-evaluation of the answer-books. The judgment of the High Court was set aside and it was held that in absence of a specific provision conferring a right upon an examinee to have his answer-books re-evaluated, no such direction can be issued. There is no dispute that under the relevant rule of the Commission there is no provision entitling a candidate to have his answer-books re-evaluated. In such a situation, the prayer made by the appellant in the writ petition was wholly untenable and the learned Single Judge had clearly erred in having the answer-book of the appellant re-evaluated.

8. Adopting such a course as was done by the learned Single Judge will give rise to practical problems. Many candidates may like to take a chance and pray for re-evaluation of their answer-books. Naturally, the Court will pass orders on different dates as and when writ petitions are filed. The Commission will have to

*then send the copies of individual candidates to examiners for re-evaluation which is bound to take time. The examination conducted by the Commission being a competitive examination, the declaration of final result will thus be unduly delayed and the vacancies will remain unfilled for a long time. What will happen if a candidate secures lesser marks in re-evaluation? He may come forward with a plea that the marks as originally awarded to him may be taken into consideration. The absence of clear rules on the subject may throw many problems and in the larger interest, they must be avoided.*

9. *Even otherwise, the manner in which the learned Single Judge had the answer-book of the appellant in General Science paper re-evaluated cannot be justified. The answer-book was not sent directly by the Court either to the Registrar of the Patna University or to the Principal of the Science College. A photocopy of the answer-book was handed-over to the standing counsel for the Patna University who returned the same to the Court after some time and a statement was made to the effect that the same had been examined by two teachers of Patna Science College. The names of the teachers were not even disclosed to the Court. The examination in question is a competitive examination where the comparative merit of a candidate has to be judged. It is, therefore, absolutely necessary that a uniform standard is applied in examining the answer-books of all the candidates. It is the specific case of the Commission that in order to achieve such an objective, a centralized system of evaluation of answer-books is adopted wherein different examiners examine the answer-books on the basis of model answers prepared by the Head Examiner with the assistance of other examiners. It was pleaded in the Letters Patent Appeal preferred by the Commission and which fact has not been disputed that the model answer was not supplied to the two teachers of the Patna Science College. There can be a variation of standard in awarding marks by different examiners. The manner in which the answer-books were got evaluated, the marks awarded therein cannot be treated as sacrosanct and consequently the direction issued by the learned Single Judge to the Commission to treat the marks of the appellant in General Science paper as 63 cannot be justified.”*

18. Thus, considering the Maharashtra Public Service Commission Rules of Procedure, 2014 particularly rule 11 and rule 12 thereof, we do not think that any case is made out by the applicant. The ratio laid down by the Hon’ble Supreme

Court in the case of **Pramod Kumar Shrivastava Vs. Chairman, Bihar Public Service Commission, Patna and Others** (cited supra) is squarely applicable to the facts and circumstances of the present case. The verification of the answer books is not permissible in case of screening examination and even if it is conventional examination, the verification of the answer books is limited to the extent as detailed in rule 11 sub-rule (1) of the Rules of Procedure of the Commission. In the present matter, even after going through the answer sheets, we find that all the answers are assessed and there is no dispute of totaling of marks. There is no question of revaluation of the questions in whatsoever in both type of examinations i.e. conventional examination so also screening examination. Hence, the following order:-

**ORDER**

- (i) The Original Application No. 601/2023 is hereby dismissed.
- (ii) In the circumstances, there shall be no order as to costs.
- (iii) The Original Application is accordingly disposed of.

**MEMBER (A)**

**VICE CHAIRMAN**

**Place : Aurangabad**

**Date : 06.03.2025**

ARJ O.A. NO. 601 OF 2023 VKJ DB SELECTION PROCESS